FINAL REPORT

A COMPARATIVE STUDY AIMED AT AN IN-DEPTH ANALYSIS OF THE MAIN MECHANISMS FOR DISPUTE RESOLUTION THROUGH ARBITRATION AND MEDIATION IN MAURITIUS, SOUTH AFRICA, AUSTRALIA, INDIA AND SINGAPORE, WITH A SPECIAL FOCUS ON MARITIME TRADE AND FOREIGN INVESTMENT, AND RELATED TO THE 'CREATION OF AN IORA DISPUTE RESOLUTION CENTER ("IDReC")' PROJECT

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DISCLAIMER

This study is being undertaken for the Mauritius Chamber of Commerce and Industry (MCCI) having its registered office at 6 Adolphe de Plevitz Street, Port Louis, Mauritius. The Interim report is submitted as the intermediate deliverable for the consultancy agreement dated 19 May 2021. The consultant, who is the author of this detailed plan, shall not be liable for any loss of profit or revenues and any direct, incidental, or consequential damages incurred by the user of this report.

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I. OBJECTIVE

This Comparative Study is undertaken for the **Mauritius Chamber of Commerce and Industry** (MCCI) having its registered office at 6 Adolphe de Plevitz Street, Port Louis, Mauritius. It is aimed at an in-depth analysis of the main mechanisms for dispute resolution through arbitration and mediation in Mauritius, South Africa, Australia, India, and Singapore, with a special focus on maritime trade and foreign investment and related to the 'Creation of an IORA Dispute Resolution Center ("IDReC")' Project.

The objective of this study is to establish the need for a specialized Alternative Dispute Resolution (ADR) Centre in the Indian Ocean Rim Association (IORA) region. It is also to provide fact-based finding for the establishment of such Centre and to determine the modalities for establishing such Centre based on the global best practices and propose methods to align it with the needs and practices of supply chain and trade across the IORA region.

This report should serve as a practical, in-depth guide for stakeholders including businesses, legal practitioners, in-house counsel and the judiciary. This should serve as a framework for building best practices for ADR in the IORA region, with a special emphasis on the resolution of maritime and investment disputes.

II. TERMS OF REFERENCE EMPLOYED

Following terms of reference were employed for preparation of this report:

1. Undertake comprehensive assessment of the economic development and trade practices within the IORA region. A special emphasis was on studying the impact of laws and the legislative framework of a country on the cross-border trade practices, with a special focus on 5 countries viz. Mauritius, Australia, India, Singapore, and South Africa.

2. To study the existing legislations and mechanisms for ADR (Arbitration and Mediation) in the IORA countries. To check if these countries have signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention) and the United Nations Convention on International Settlement Agreements Resulting from Mediation, 2018 (Singapore Mediation Convention), and study the effects and implications of the same on the framework and practice of ADR in these countries.

3. To study and understand the level of awareness and the appetite of business community and the legal fraternity towards ADR mechanisms, and to study whether alternate mechanisms are preferred over judicial and study the attitude of Courts towards the enforcement of arbitral awards and/or mediation settlement agreements.

4. To study the existing trade relationships among IORA countries and analyse how the trade could benefit from having a specialized dispute resolution system within the region. To study the practices adopted by existing regional ADR institutions, and their impact on the dispute resolution policies or practices in the region.

5. To provide actionable recommendations for coordination amongst existing ADR institutions and suggest draft rules and procedures to be adopted for improving the ADR practice in the IORA region.

6. To study the existing gaps in the practice of ADR in the IORA region as compared to the global best practices, and propose methods to mitigate them, with a special focus on resolution of maritime and investment disputes.

7. To make actionable recommendations for formation of an ADR centre on following accounts:

- ♦ Identify the global best practices from the jurisdictions like London, France, Hong Kong and Singapore. To undertake comparative study with the rules of arbitration and mediation

institutions like the ICC, SIAC, LCIA, MCIA, LMAA, SCMA, ICSID, HKIAC etc., and recommend draft rules. Undertake a detailed analysis of their applicability and feasibility in the context within the IORA region.

♦ Identify gaps and propose methods to mitigate these gaps and recommend region specific improvements to the draft rules.

♦ Provide an evidence-based institutional wireframe for the proposed ADR Centre in the IORA region, including the draft arbitration and mediation rules for the Centre with a special focus on maritime and investment dispute resolution. To recommend actionable ideas to improve the credibility and reliability of such an ADR centre.

♦ Provide evidence-based recommendations for creation of such an ADR Centre in one of the IORA countries. To suggest the most viable and prudent choice of seat of arbitration and the location of the Centre, especially Mauritius, India, Singapore, Australia or South Africa. To undertake fact finding for collaboration between existing institutions.

♦ Make actionable recommendations to generate caseload for the Centre by attracting disputes, first, from all IORA countries and then globally. To propose methods to collaborate with international organisations and creation of collaborative methods for the businesses to choose from and insert the ADR clause of the Centre.

♦ Make fact-based recommendations for establishment of either a collaborative or a new institution for addressing concerns of maritime and investment disputes.

8. To identify the three least efficient countries in the IORA region as regards awareness and practice of ADR. Also, to identify the lowest common denominator and propose measures to mitigate the gaps.

III. COMPARATIVE STUDY - REPORT

INTRODUCTION TO IORA:

The Indian Ocean Rim Association (IORA) is an international organisation consisting of 23 member states comprising of coastal countries in the Indian Ocean. It was previously named Indian Ocean Rim Association for Regional Co-operation and was the brainchild of India and South Africa.

It was founded in the year 1997 and aims to promote open regionalism and liberalisation of trade. It further aims to resolve the difficulties created by the contemporary trade policies by providing a forum to the three major stakeholders in the trade which are the Government, academia, and businesses. The main sentiment and rationale was to create a socio-economic cooperation forum in the third largest ocean in the world. The Indian Ocean borders multiple countries with diverse culture, population, languages, and level of economic development. IORA aims to provide all of its members an opportunity to enhance economic interaction and cooperation over a wide spectrum for mutual benefit and in spirit of equality.

In 2019, the Mauritius Chamber for Commerce and Industry (MCCI) supported by IORA Special Fund announced the project for creation of an ADR Centre cum Centre of Excellence for Dispute Resolution in the IORA Region. This project is aimed at creation of an effective and efficient ADR centre in the IORA region. It aims to promote the use of ADR for improving the trade and increasing investments in the IORA region by providing an active forum for dispute resolution.

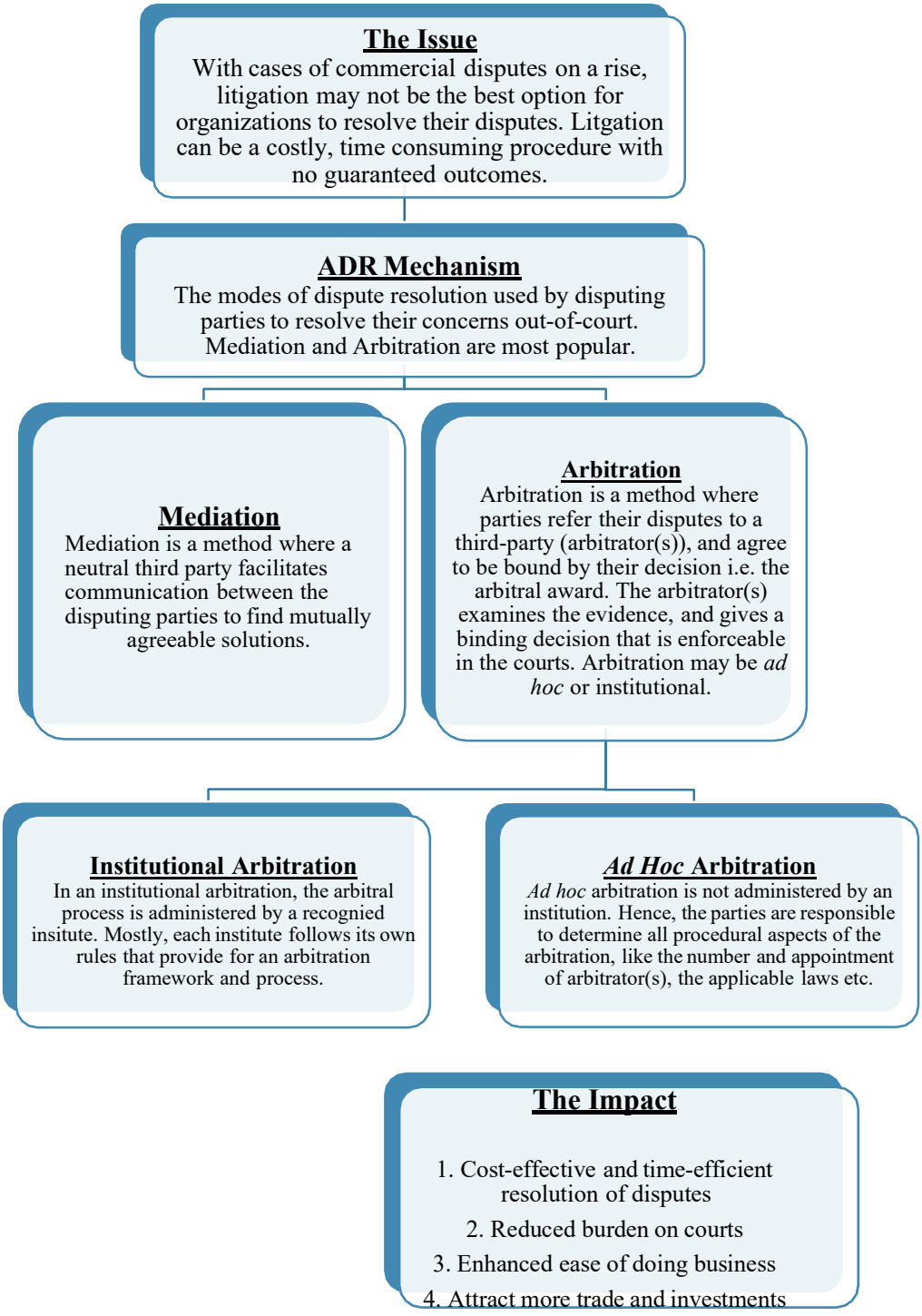
INTRODUCTION TO ADR:

ADR can be described as the alternate methods, modes or procedures for settling a dispute by means other than litigation, Arbitration and Mediation being the most popular and widely used methods of ADR.

Mediation refers to the method of dispute resolution by involving a neutral third party, known as a mediator who facilitates communication between the disputing parties. The mediator does not have the authority to adjudicate the dispute rather s/he facilitates a consensual settlement between the parties, in a confidential setting. It is a non-binding mode of ADR which offers the parties full control over the outcome of their dispute. Traditionally, parties opt for mediation before pursuing other formal and decisive dispute resolution methods like arbitration and litigation.

Arbitration is quasi-judicial in nature and involves adjudication of disputes by a neutral third party known as an Arbitrator(s), collectively called a Tribunal, who adjudicate the disputes based on merits of the case, facts and evidences. The arbitration process differs from the actual Court process by streamlining rules, providing flexibility and limiting discovery. The Arbitral Tribunal is appointed by the parties or by a designated authority. One of the most significant features of arbitration is confidentiality which is missing from the Court process. Arbitration is based on parties' consent which usually predates the dispute and provides the parties wide flexibility in deciding the applicable law, the procedural law, the place of arbitration etc. The decision of the arbitrators known as an arbitral award is legally binding and enforceable in the Courts.

Online Dispute Resolution (ODR) is an evolving branch of dispute resolution that relies on technology to facilitate dispute resolution in a time-efficient and cost-effective manner. Specialized ODR platforms provide the ease of filing cases online and offer arbitration and mediation services in various formats. The platforms also provide means to resolve disputes through document-only arbitrations as well as facilities for virtual hearings. Due to the Covid19 pandemic, ODR is gaining momentum. Milan Chamber of Arbitration and International Centre for Dispute Resolution (ICDR) are among the international ADR centres to have introduced a dedicated ODR platform. ADR can be better explained using the following flow chart:


The Issue
With cases of commercial disputes on a rise, litigation may not be the best option for organizations to resolve their disputes. Litgation can be a costly, time consuming procedure with no guaranteed outcomes.
ADR Mechanism
The modes of dispute resolution used by disputing parties to resolve their concerns out-of-court. Mediation and Arbitration are most popular.
Mediation
Mediation is a method where a neutral third party facilitates communication between the disputing parties to find mutually agreeable solutions.
Arbitration
Arbitration is a method where parties refer their disputes to a third-party (arbitrator(s)), and agree to be bound by their decision i.e. the arbitral award. The arbitrator(s) examines the evidence, and gives a binding decision that is enforceable in the courts. Arbitration may be ad hoc or institutional.
Institutional Arbitration
In an institutional arbitration, the arbitral process is administered by a recognied insitute. Mostly, each institute follows its own rules that provide for an arbitration framework and process.
Ad Hoc Arbitration
Ad hoc arbitration is not administered by an institution. Hence, the parties are responsible to determine all procedural aspects of the arbitration, like the number and appointment of arbitrator(s), the applicable laws etc.
The Impact
1. Cost-effective and time-efficient resolution of disputes
2. Reduced burden on courts
3. Enhanced ease of doing business
4. Attract more trade and investments

COMPARATIVE STUDY:

The comparative study is aimed at in-depth analysis of the key ADR mechanisms and legislations, particularly arbitration and mediation. The study is going to provide an overview and comparative analysis of these mechanisms of all countries in the IORA region. The comparison is based on the parameters identified in the following section.

The Study is specifically focused on analyzing the prevalent practices in the 5 countries, as identified in the scope of this Study. Existing literature and preliminary findings show that these countries have the most evolved ADR practices among the member countries of IORA. In a similar vein, the study is going to focus on identifying and studying 3 countries with least developed ADR mechanisms for providing a holistic analysis of the region-wide practices. Further, a comparison is going to be drawn against the global best standards of ADR practices, as adopted by some of the most renowned institutions in other countries (outside the IORA region) like the United Kingdom (London), France (Paris) and Hong Kong. Lastly, in terms of the subject-matter, the study is also focused on maritime and investment dispute resolution in greater detail.

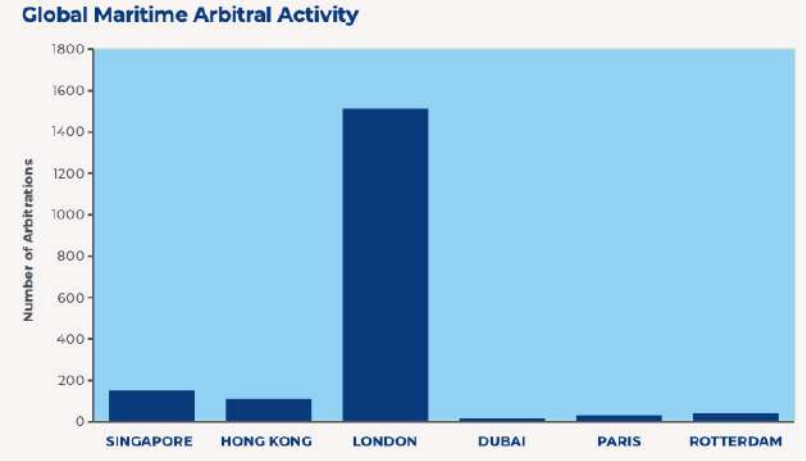
The findings from the comparative study are going to be the basis for logistical and administrative framework as well as the draft arbitration and mediation rules.

MARITIME ARBITRATION:

Maritime Arbitration is a specialised field of arbitration which deals with the resolution of disputes arising out of maritime/ shipping trade. The Maritime Arbitration consists of three major aspects vis-à-vis the governing laws, the procedural laws and the practice of maritime industry. The diverse activities which arise from the affairs of the sea include carriage of goods by sea, insurance, financing etc. Maritime Arbitration is differentiated from the usual InternationalCommercial Arbitration because of the requirement of experts in Maritime Laws and related industry knowledge. Since it is an elaborate subject matter, only the professionals involved in the practice of maritime activities and shipping are considered qualified enough to sit as arbitrators and also deal with matters of maritime arbitration.

Indian Ocean enjoys a strategic location in the global trade chain connecting all major economic activities throughout the world, especially in the Asia-Pacific Region. It handles 20% of total global maritime trade and up to 40% of the world's oil supply.

With this background in mind and in the context of the objective, the Study is focusing on identifying the gaps in maritime arbitration in the IORA region, with a special focus on the 5 countries identified in the study objective. To gain a comprehensive understanding, some of the existing institutions in the region, like the Emirate Maritime Arbitration Centre (EMAC) and the Singapore Chamber of Maritime Arbitration (SCMA) are going to be studied. In a similar vein, a thorough analysis is going to be done of the most preferred maritime arbitration mechanisms across the globe. Some of these institutions are: German Maritime Arbitration Association (GMAA), Tokyo Maritime Arbitration Commission (TOMAC) of the Japan Shipping Exchange, among others. London remains the leader in hosting Maritime arbitrations globally as can be seen from the following two charts:

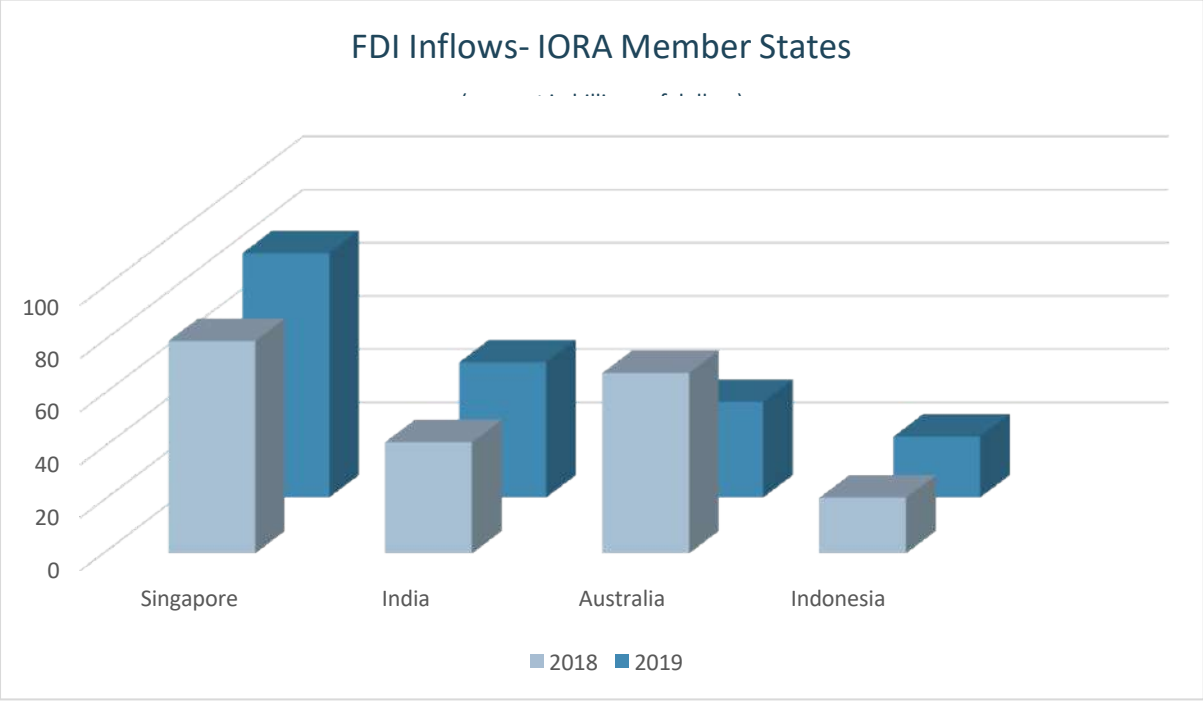


Further, a comparative analysis is going to be done between the regional and global best practices on the basis of the pre-identified parameters (as mentioned in section III). The aim of this comparative analysis, as stated earlier, is to understand the internationally accepted standards and adopt these in a way that is best suited for the industry's needs in the IORA region. This analysis is going to form the basis for proposing the administrative framework of the ADR Centre regarding maritime arbitration and the draft rules for the same.

INVESTMENT ARBITRATION:

Investment Arbitration is the preferred Investor State Dispute Settlement (ISDS) procedure to resolve disputes between foreign investors and host States. The possibility of a foreign investor to bring a claim against the host State provides a guarantee to the former that they would have adequate means to resolve such a dispute. In case of arbitration, it would mean access to independent and qualified arbitrators to resolve their dispute and render an arbitral award which is enforceable.

Some of the member states of the IORA region continue to be among the top 20 host economies in terms of FDI inflows as per the World Investment Report, 2020 (published by the United Nations Conference on Trade and Development). For example, Singapore had an FDI Inflow of USD 92 Billion in the year 2019. This was an increase by USD 12 Billion from the previous year. India had an inflow of USD 42 Billion in 2018 and it increased to USD 51 Billion in the following year.



Thus, the need to have an efficient and expeditious mechanism for resolving investment disputes is pressing.

With this background in mind, and in line with the objective, the Study is focusing on research of the various ISDS mechanisms adopted by the countries within the IORA region to draw a comparison among them. As specified earlier, the focus remains on studying the five best practices and the three least satisfactory practices in the region.

The purpose of the comparison is to identify gaps in the investment dispute resolution mechanisms in the region. The Study is examining the existing regional ADR mechanisms, if any. Further, to delve deeper and get a holistic picture of ISDS worldwide, global best standards are going to be closely examined. To this end, the Study is also looking at the preferred global institutes for investment arbitration like the World Bank's International Centre for Settlement of Investment Disputes (ICSID) and the Permanent Court of Arbitration (PCA).

The comparative analysis is being based on the parameters defined in Section IV. Based on the findings, recommendations are going to be made for improving the existing ISDS mechanismsin the region, and for proposing the most-suited approach for the specialized ADR Centre in the IORA Region.

IV. RESEARCH METHODOLOGY

Following methodology has been employed for undertaking empirical research based on thematic analysis of textual data, literature survey, stakeholders' participation, data collection and analysis:

Phase 1- Quantitative Analysis: The first phase of the research was the quantitative analysis. A comprehensive online questionnaire of objective and subjective questions based on the parameters identified above was prepared. (placed at **Annexure I**). As mentioned earlier, a special emphasis has been placed on the main 5 countries as identified in the objective. The questionnaire was intentionally kept as non-anonymous, and details of the surveyee's name, email address, professional affiliations,and experience were collected with their consent. This information is going to be kept strictly confidential and is only collected for the purpose of facilitating Phase 2 of the research.

The questionnaire was circulated among professionals, including but not limited to, law firm professionals, independent lawyers/ barristers/ solicitors, arbitrators, mediators, in-house counsel, judges, legal academicians across the 23 countries in IORA region and also the countries like UK, Hong Kong and France. The circulation of the questionnaire was done through emails, WhatsApp groups, LinkedIn and one to one connect.

Phase 2- Qualitative Analysis: The second phase of the research focused on an interpretive qualitative analysis of the data obtained. To achieve this, video/ telephonic qualitative in-depth interviews, online panel discussions etc. were organized with some of the key professionals from different countries, while paying attention to maintaining diversity. Among other things, the qualitative research was aimed at better understanding the ADR mechanisms prevalent in the region backed by the professionals' own experiences of practicing in a particular country/region or with a specific ADR institution. Illustratively, if a surveyee said that arbitration is the preferred mode of resolving disputes in their country, the qualitative analysis is going to allow us to understand the surveyee's rationale behind making this choice. Thus, the qualitative information gathered was going to corroborate the findings of Phase 1 and allow to nuance and further explain the findings on some specific issues covered in the questionnaire. Therefore, triangulation of data from

different sources was undertaken to test the validity of findings to develop a deep and comprehensive understandingof the ADR ecosystem which is country and sector specific.

Secondary Data Analysis: Throughout Phase 1 and Phase 2 of the research, existing literature on the key topics, including but not limited to, books, journal articles, conference papers, caselaws, were reviewed to analyze all issues in-depth and provide a more nuanced explanation to some of the key concepts involved in the research. The secondary research was particularly used for understanding the trade practices and the existing gaps in the IORA region, undertaking a comprehensive assessment of the economic development of the region etc.

SWOT Analysis:

The SWOT (Strengths, Weaknesses, Opportunities and Threats) Analysis was employed to discuss the following factors regarding the specialized ADR Centre in the IORA Region, as proposed:

- **Strengths**: To identify and discuss the market strengths that make it feasible to have a dedicated and specialized ADR Centre in the region. For example: the quality of proposed mechanism, inspired by global best practices which would benefit from the expertise of some of the best arbitration professionals.
- **Weaknesses**: To identify and discuss the weaknesses regarding establishing the ADR Centre in IORA region. For example: it will be a newly established center and thus, lack the experience and credibility as compared to the globally renowned centers which have been operational for decades.
- **Opportunities**: To identify and discuss the available opportunities that could contribute to the growth and success of the proposed ADR Centre. For example: the economic development in the IORA region, accompanied by the high volume of trade, especially maritime trade and FDI inflow in the region.
- **Threats**: To identify and discuss some potential threats that could hinder or slow down the growth of the proposed ADR Centre in the IORA Region. For example: the credibility and clientele of existing global institutions which include cases from

IORA region countries to a great extent. The threats, in some cases, may also include the lack of a favourable judicial attitude towards arbitration in some countries in the region.

V. EXECUTIVE SUMMARY

The present study is aimed at comprehensive and thorough analysis of the existing key ADR mechanisms. Firstly, a comparative analysis of the mechanism of all the members of IORA is undertaken based on pre identified parameters. The parameters include adoption and ratification of important international treaties and conventions related to arbitration and mediation like the UNCITRAL Model law, New York convention, ICSID convention, Singapore Convention and the existence of specialized ADR legislation and ADR institutes in the country etc.

A special focus was provided on the mechanisms of dispute resolution practices, especially Arbitration and Mediation, of Mauritius, South Africa, Australia, India, and Singapore. Further, emphasis was also provided on maritime trade and foreign investment matters as the overall aim of the project is to facilitate trade and investment in the IORA region.

Secondly, the best practices and mechanisms of the countries in the IORA region were compared with global practices of the leading institutes like ICC, SIAC, LCIA, MCIA, LMAA, SCMA, and HKIAC etc. Following were identified as the final scope of the study:

1. To understand the comprehensive assessment of the economic developments and trade practices in the IORA region and to analyse how trade could benefit from having specialized and efficient ADR system.

2. To study the existing framework of ADR in IORA countries and compare it with the best global practices in the ADR regime especially in top institutions.

3. To study and understand the level of awareness and acceptance of ADR regime in legal fraternity and business community.

4. To propose drafts rules and procedures for improving ADR practices.

5. To propose draft actionable recommendations for formation of ADR Centre.

6. To identify the three least efficient countries in IORA region in regards with the existing ADR practices.

Further, to enrich the research throughout both stages, secondary data was also analysed. This included but not limited to the books, journal articles, conference papers, case laws. It helped in providing a better understanding of the issues and objectives of the research and helped in more nuanced explanation of the data collected.

VI. BRIEF ON THE QUESTIONNAIRE AND RESPONSES

The questionnaire was titled “Stakeholder Survey for 'Creation of an IORA Dispute Resolution Centre (IDReC)' Project” and it aimed at getting an overview of the ADR practices in the IORA region and the working of institutions in these regions. This survey was undertaken to understand the need of the legal community as well as other stakeholders before the creation of IDReC so that the Centre could be structured in such a way to provide benefits to all the stakeholders and attract trade and business.

The survey was divided in 8 sections. The first two sections provided the basic details of the project and the contact details of the participants for the purpose of the study like the region of their practice etc. Section 3 dealt with ADR experience of the participants like their area of expertise, number of proceedings related to arbitration, mediation, conciliation etc. they have participated in.

Section 4 shifts the focus of the questionnaire to country specific questions to get a comprehensive idea of the existing ADR regime in the IORA countries. These questions deal with the existing arbitration/mediation legislations in the country, ratification of conventions like CISG, ICSID Convention, NY Convention, Singapore Convention and UNICTRAL Model Law on International Commercial Arbitration/ International Commercial Mediation. It further aimed to understand the investment arbitration regime in their country. Lastly, the section tried to comprehend the biggest challenges to cross border trade, maritime trade and Foreign Direct Investment (FDI) in their respective countries. This section helped to understand the trade practices and provided ways to improve it in the IORA region. Further, it helped in strategising the Centre with a focus on trade practices in the IORA Countries.

Section 5 aimed to understand the services, case management and outreach of ADR Centre in the respondent’s respective countries. The questions focused on the services provided by the centers, preferred mode of dispute resolution, types of subject matter referred to the centres, the fee and the arbitration rules of the center.

Section 6 focused on getting the respondent’s preferred arbitration and mediation practices and considerations. The questions were drafted to find the most preferred seat, the most preferred

center, primary considerations undertaken while choosing an ADR Centre for a dispute and how the Covid-19 pandemic has changed the ways to solve the international disputes.

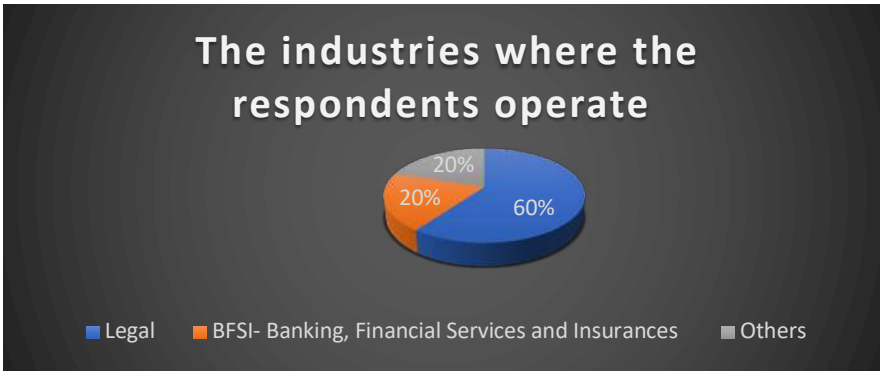
Section 7 aimed to get the general recommendations to understand and improve the ADR practices, services, and rules and to ensure adaptability of arbitration and mediation to solve international disputes. The questions asked the respondents the most effective institutions for international commercial, maritime and investment arbitration. It further tried to get recommendations to improve demographic diversity in pool of international arbitrators and mediators to ensure greater diversity.

The last section directly tried to get insights specific to the IORA region and for the creation of the IORA Centre. The questions aimed to understand, the least developed practice area among International Commercial Arbitration, Maritime Arbitration or Investment Arbitration in the IORA region, the most preferred seats among the current IORA members for different arbitrations and the best ADR practices in the different seats. It also tried to ascertain the least developed members of IORA in terms of arbitration and mediation and asked for recommendations to improve the ADR regime in these regions.

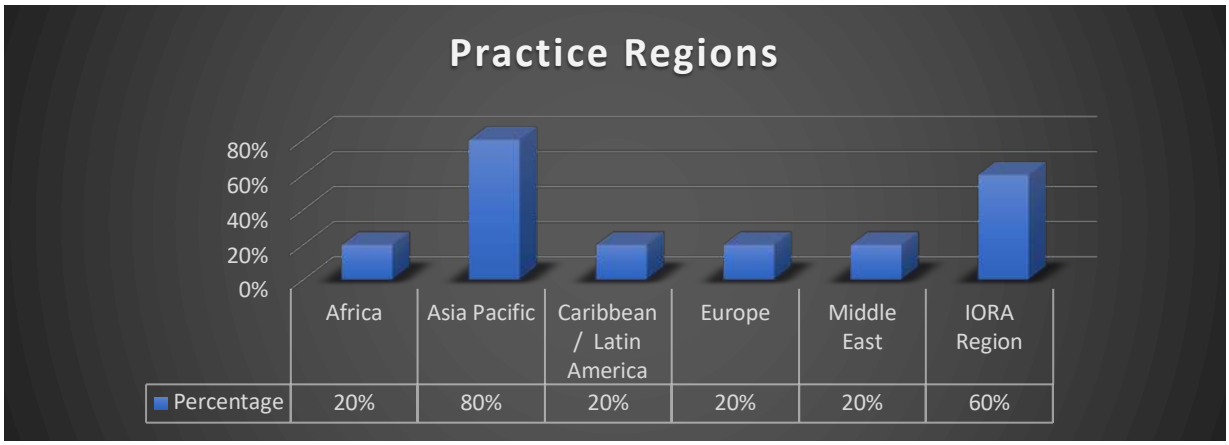
The objective of the questionnaire was to grasp the participants point of view for existing regime in their countries, obtain recommendations to improve the general ADR practices, as well as improve the ADR regime specially in IORA.

The survey received a total of *111 responses* from respondents belonging to wide range of industries and practices. Further, a total of 15 practitioners belonging to diverse regions and different industries out of the respondent's pool were personally interviewed through virtual mode to get a better understanding of their responses and to get a better understanding of the ADR regime in different regions around the globe.

Most of the respondent group (60%) belonged to the legal area of work. Remaining were equally spread between Banking, Financial Services and Insurances (20%) and Others (20%). Others included a wide range of industries like Automobile, Aviation, Construction, Healthcare, Port and Shipping etc. The wide range of industries helped in increasing the understanding across various sectors.

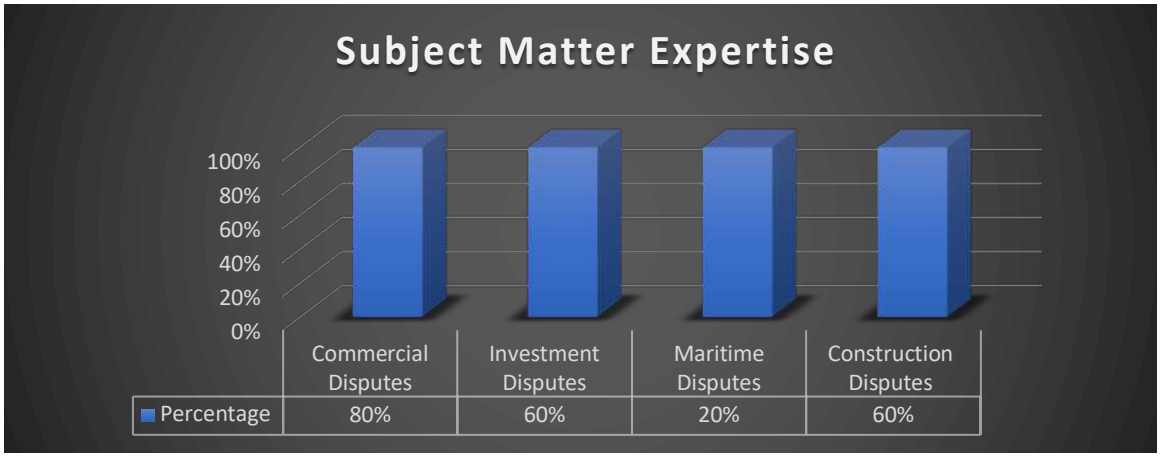


The respondent's group further practices in different geographical regions around the world. An overwhelming majority of the respondents (80%) are practicing in the Asia pacific region. 60% of the respondents practice in the IORA region and 20% are practicing in Africa, Caribbean/ Latin America, Europe and Middle east. This was really important to get a global viewpoint through the eyes of practitioners to ensure all the gaps could be removed and the process could be improved. Certain respondents have multiple regions of practice and therefore it is figuring in the Figure as more than 100%.



Further, majority of the respondents (80%) are experts in Commercial disputes. 60% of the respondents have expertise in Investment and Construction disputes and 20% of the respondents have expertise in Maritime disputes.

Around 20% of the respondents have themselves taken part as an arbitrator or mediator in international disputes.



The respondents belonged to a diverse group which was really helpful in getting a better understanding of the existing gaps in current ADR regime. To receive inputs from subject matter experts was essential to understand the ecosystem that exists for the specific types of arbitration like Commercial, Investment, Maritime and Construction. Commercial Arbitration is most common as all people are engaged in Commercial matters mostly. Maritime is very specific and therefore not many subject matter experts responded to the survey specifically in the IORA region.

VII. IN DEPTH ANALYSIS OF THE LEGAL FRAMEWORK IN IORA COUNTRIES

Indian Ocean enjoys a strategic location in the global trade chain connecting all major economies of the world especially in the Asia- Pacific region. The Indian Ocean connects multiple countries with diverse culture, population, languages, and economic growth. It is home to nearly 2.7 billion people which is approximately 1/3rd of global population.[1]

IORA was formed with the objective to promote open regionalism and liberation of trade. Presently, several regional trading arrangements and bilateral Free Trade Agreements exist between IORA countries. There were 121 regional trade agreements, 700 Bilateral Investment Treaties, 236 Treaties with investment provisions in the IORA member countries in 2017.[2] It showcases the dynamic nature and huge volume of trade practices in the region.

Further, certain member states provide uniliteral trade benefits to other members to promote regional economic cooperation and boost trade relations. In the last few years, there has been an increase in imports and exports caused by such treaties among member states which was reduced due to Covid19 pandemic. But predictions show that these numbers will be back to pre-covid times in near term future and will likely increase.

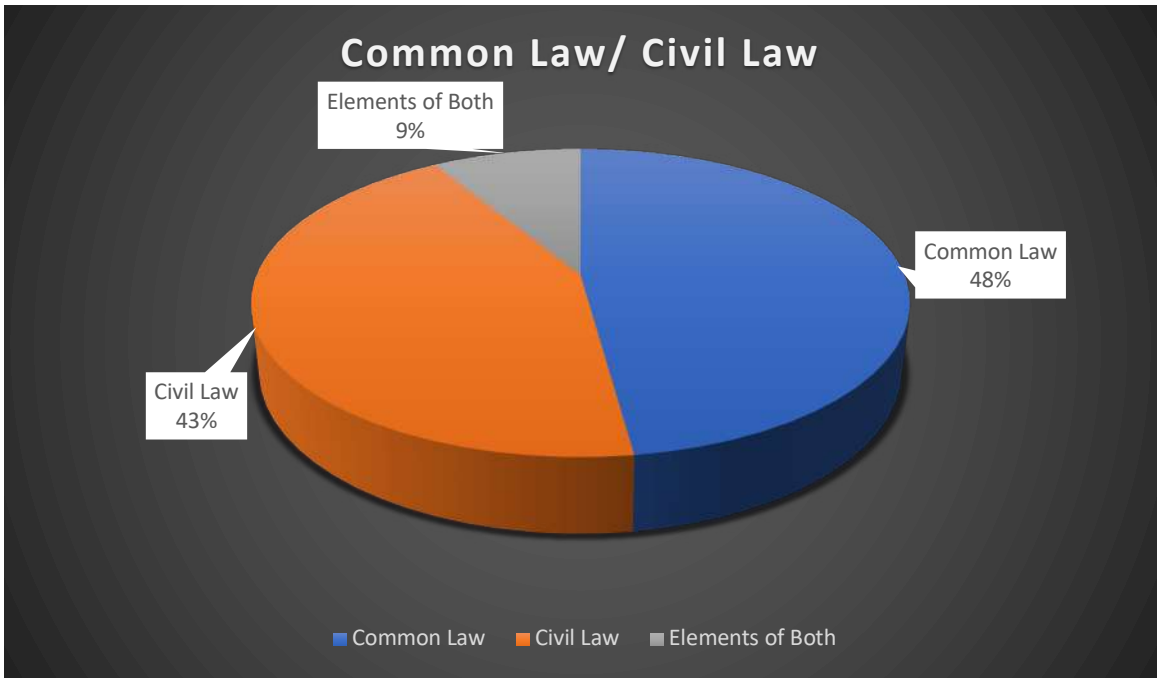
The huge volumes of trade and involvement of private parties result in multiple disputes, and going to Courts with such disputes lead to huge economic loss due to large amount of time taken by Courts. Even with presence of other Centres for ADR in the region, parties tend to go to Courts due to different legislations in force, concerns related to domestic Courts providing preference to domestic parties etc., concerns have been raised against international arbitration. Hence, a Centre with a focus on solving the disputes which arise in the IORA region with the aim to resolve such concerns and providing rules, formed after taking best practices from

[1]Indian Ocean Rim Association, about IORA. Available at https://www.iora.int/en/about/about-iora (Last accessed on 1 January 2022)

[2] Professor V.N. Attri & The Secretariat Indian Ocean Rim Association (IORA); Chapter V: Bilateral Trading Arrangements In Iora Member States: 1997-2017 in "The Study On Bilateral And Regional Trade And Investment Related Agreements And Dialogues Between Members States" p.312,320.

around the globe, is required to help for a quick dispute resolution in the trade. For creation of such a Centre, understating of the current ADR regime in the IORA region is a necessary.

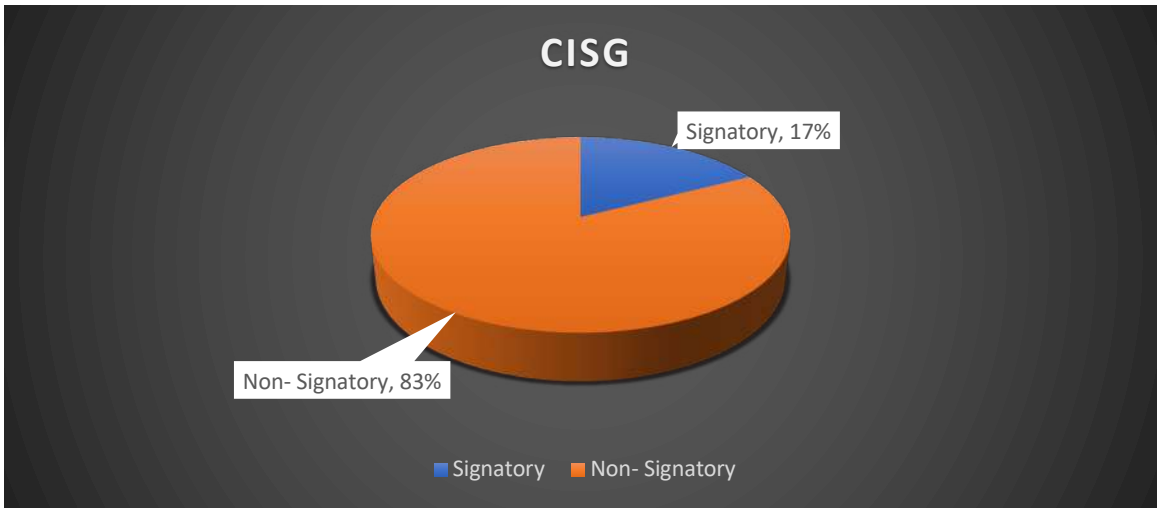
For understanding how the ADR regime is, we need to get the basic understating of the existing legal ecosystem of member countries in general. The member countries were divided into Common law or Civil law jurisdictions to understand the working of Courts and judicial system and the involvement of Courts in formation of law. Out of the existing IORA members, 11 members are Common law countries, 10 members are Civil law countries, and 2 members have a legal system formed out of elements of both Common law and Civil law.



Common Law Jurisdictions are Australia, Bangladesh, India, Kenya, Malaysia, Maldives, Singapore, South Africa, Sri Lanka, Tanzania and Yemen. Civil Law Jurisdictions are Comoros, France, Indonesia, Iran, Mozambique, Oman, Seychelles, Somalia, Thailand and United Arab Emirates. The two countries which have elements of both Civil Law and Common Law are Madagascar and Mauritius. IORA has approximately equal Common law and Civil law jurisdictions which might lead to certain hurdles in implementation of trade agreements. However, due to the existence of certain international conventions, judiciary in both types of jurisdictions take a similar view on certain matters which will reduce the gap between both of the jurisdictions.

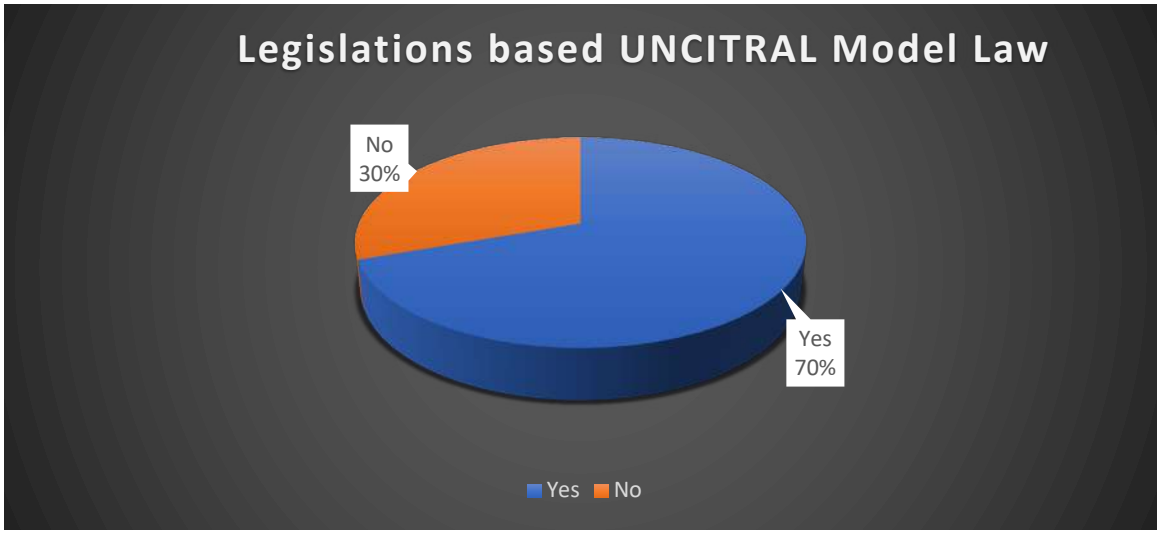
The existence of international conventions helps in facilitation of trade in the regime. Conventions like CISG, UNCITRAL Model on Arbitration, New York convention, Singapore Mediation convention are important to ensure uniformity in trade.

Only 4 members out of 23 members are signatories to United Nations Convention on Contracts for the International Sale of Goods (CISG). The four signatories are Australia, France, Madagascar and Singapore. All other IORA members are non- signatories to CISG. This is a disappointing find as CISG provides a fair regime for contracts for sale of international goods and increase the uniformity while dealing with such trades and disputes.

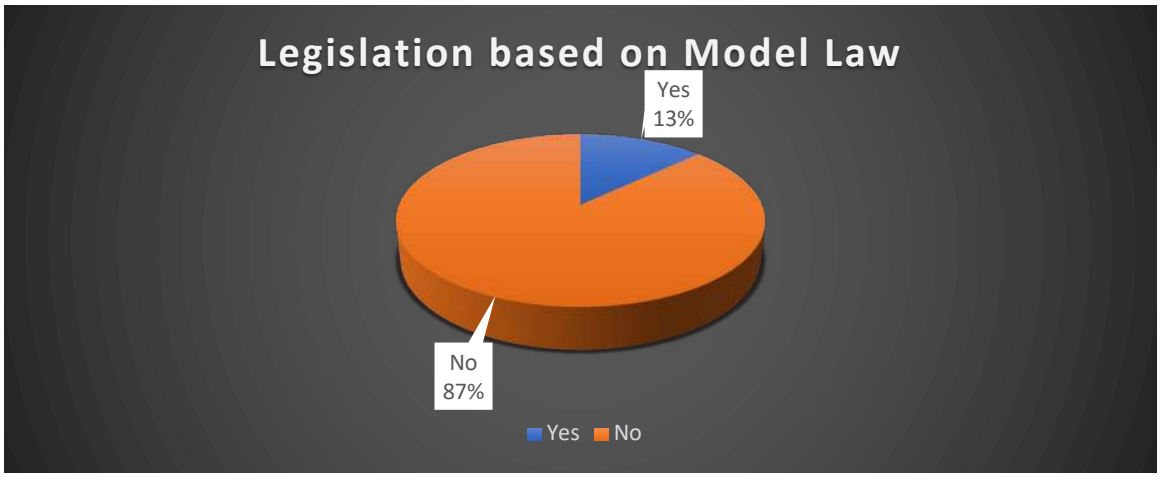


21 out of 23 members are signatories to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958. Only Somalia and Yemen are two members who are non-signatories to the convention.

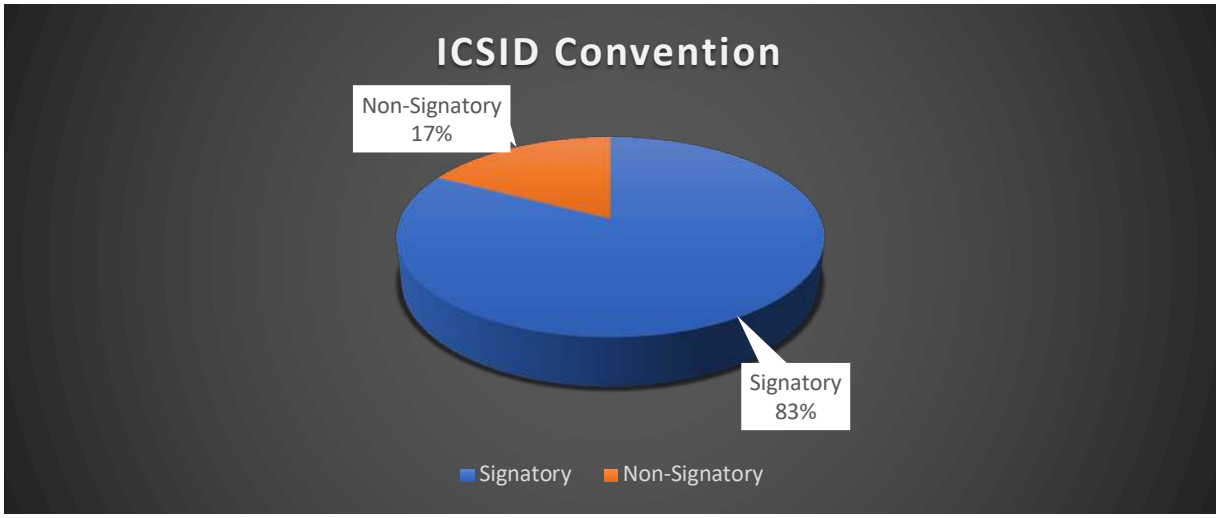
Further, 16 out of the 23 members have legislations based on UNCITRAL Model Law on International Commercial Arbitration with few modifications as per the jurisdictions but key elements of the model law have been adopted in the legislations. Australia, Bangladesh, India, Iran, Kenya, Madagascar, Malaysia, Maldives, Mauritius, Oman, Singapore, South Africa, Sri Lanka, Thailand, and United Arab Emirates have legislations based on Model Law. Remaining 7 members which are Comoros, France, Indonesia, Mozambique, Seychelles, Somalia, and Tanzania, have entirely different legislations. France is a noted absentee in this as the overall French legislation on arbitration is considered effective and it is one of the most arbitration friendly jurisdictions.



The UNCITRAL Model Law on International Commercial Mediation and Convention of International Settlement Agreements Resulting from Mediation or the Singapore Mediation Convention have the lowest signatories among the IORA members out of all major conventions. Only Comoros, France and Malaysia have adopted Mediation Model Law. Rest of the members should be encouraged for adoption of Mediation Model Law to increase mediations at international level and ensure uniformity.



19 members are signatories to ICSID Convention of which Thailand is yet to ratify the same. Only India, Iran, Maldives and South Africa are non- signatories to the convention for investment disputes.



All IORA members should be encouraged to ratify these international conventions to facilitate uniform trade in the region and provide similar means of resolving investment disputes.

VIII. IN DEPTH ANALYSIS OF THE ADR FRAMEWORK IN IORA COUNTRIES

Existing ADR regimes of most of the countries are very important to understand whether there is a need for a dispute resolution centre. The national legislations, preferred mode of ADR, stance of Courts, choice of seat etc. form the ADR regime in the Nation. ADR regime in most of the IORA countries is still developing and require improvement to increase the use of Alternative Dispute Resolution.

Given below is a brief look at the existing legislation, preferred mode of dispute resolution and Court stance to ADR mechanism of all IORA member countries.

1. **Australia**

Preferred mode of Dispute Resolution – Court

Preferred Mode of ADR – Arbitration

Arbitration Legislation – Domestic - Commercial Arbitration Act

International - The International Arbitration Act 1974

Similarity to UNCITRAL Modal Rules – It provides foundation for International Arbitration Act

Courts Support to ADR Mechanism - In recent years, Australian judiciary has adopted a positive approach towards arbitration and an encouraging approach towards application of the legislation to encourage arbitration even in cases when the seat and the parties are not Australian. Combined with the legislative amendments, arbitration in Australia has gained a positive traction.

2. **Bangladesh**

Preferred mode of Dispute Resolution - Court

Preferred Mode of ADR – Arbitration

Arbitration Legislation - Arbitration Act, 2001

Similarity to UNCITRAL Modal Rules – The arbitration act adopted the UNCITRAL Model Law.

Courts Support to ADR Mechanism – The Courts have been known over the years to render some controversial opinions regarding foreign awards. The Courts have been known to give controversial meaning to the scope of the existing Arbitration Act. However, the legislation asks for the Courts to have minimal intervention in the arbitral proceedings.

3. Comoros

Preferred mode of Dispute Resolution- Court

Preferred Mode of ADR – Arbitration

Arbitration Legislation - OHADA Uniform Act on Arbitration 1999

Similarity to UNCITRAL Modal Rules – Influenced by the Modal Law

Courts Support to ADR Mechanism – The legislation which is uniform for all the OHADA members is very rigid and forces Courts to refer all the disputes which have an arbitral agreement to the Arbitral Tribunal

4. **France**

Preferred mode of Dispute Resolution - Court

Preferred Mode of ADR- Arbitration

Arbitration Legislation – Code of Civil Procedure (CCP) and the Civil Code (CC)

Similarity to UNCITRAL Modal Rules – Not based on UNCITRAL

Courts Support to ADR Mechanism – French Courts have showcased a pro-arbitration stance over the years and have helped France develop into one of the more arbitration friendly jurisdictions.

5. **India**

Preferred mode of Dispute Resolution- Court

Preferred Mode of ADR– Arbitration

Arbitration Legislation – Arbitration and Conciliation Act, 1996

Similarity to UNCITRAL Modal Rules – Similar to the UNCITRAL Model

Courts Support to ADR Mechanism – Courts in India over the years have started taking a pro arbitration approach supported by amendments to the legislation. The Supreme Court of India over the last few years have given pro arbitration judgements and enforced foreign arbitral awards.

6. **Indonesia**

Preferred mode of Dispute Resolution - Court

Preferred Mode of ADR - Arbitration

Arbitration Legislation - Law 30/1999 on Alternative Dispute Resolution and Arbitration

Similarity to UNCITRAL Modal Rules – Not based on UNCITRAL Model law

Courts Support to ADR Mechanism – Local Courts cannot interfere in arbitration unless for a few reasons specified by the Act.

7. **Iran**

Preferred mode of Dispute Resolution - Court

Preferred Mode of ADR– Arbitration

Arbitration Legislation- Domestic - Iranian Law on Arbitration

International Law- The Iranian Law Concerning International Commercial Arbitration

Similarity to UNCITRAL Modal Rules – Based on UNCITRAL Model Rules

Courts Support to ADR Mechanism – Courts refer the dispute to arbitration unless the Courts find the Arbitration Agreement to be null and void.

8. **Kenya**

Preferred mode of Dispute Resolution - Court

Preferred Mode of ADR– Arbitration

Arbitration Legislation- Arbitration Act 1995

Similarity to UNCITRAL Modal Rules- Modelled on UNCITRAL Model law with no key modifications.

Courts Support to ADR Mechanism – The Courts are governed by the Arbitration Act and a valid Arbitration Agreement will lead to exclusion of Court's jurisdiction. In presence of a valid Arbitration Agreement, the Courts usually are forced to stay proceedings in the Court and refer the parties to Arbitration. It applies to all arbitration proceedings.

9. **Madagascar**

Preferred mode of Dispute Resolution - Court

Preferred Mode of ADR- Arbitration

Arbitration Legislation – Arbitration Act, 1998

Similarity to UNCITRAL Modal Rules- Based on the Model Law but much less detailed on the Model law

Courts Support to ADR Mechanism – In general situations, under the Arbitration Act, 2003, whenever the parties have a valid Arbitration Clause or Agreement, the Courts are required to declare themselves incompetent to rule on the agreement and must refer the dispute to arbitration. The will of parties while forming the Arbitration Agreement must be followed.

10. **Malaysia**

Preferred mode of Dispute Resolution - Courts

Preferred Mode of ADR - Arbitration

Arbitration Legislation- Arbitration Act 2005 (Laws of Malaysia Act 646)

Similarity to UNCITRAL Modal Rules – Adopted the UNCITRAL model law.

Courts Support to ADR Mechanism- Section 8 of the Arbitration Act stops the Courts from intervening in any matter governed by the Arbitration Act, unless otherwise stated by the act.

11. **Maldives**

Preferred mode of Dispute Resolution - Courts

Preferred Mode of ADR- Arbitration

Arbitration Legislation - Maldives Arbitration Act, 10/2013

Similarity to UNCITRAL Modal Rules – In accordance with UNCITRAL Model Law

Courts Support to ADR Mechanism – Even though there is support for arbitration by the Courts, Courts view an arbitral award in the same light as a standard appeal in litigation.

12. **Mauritius**

Preferred mode of Dispute Resolution - Court

Preferred Mode of ADR- Arbitration

Arbitration Legislation – Domestic - Code of Civil Procedure

International Arbitration Act, 2008; Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act, 2001

Similarity to UNCITRAL Modal Rules- International Arbitration Act is based on UNCITRAL model law.

Courts Support to ADR Mechanism – The Courts will send the parties to arbitration in presence of written Arbitration Agreement unless it can be shown on prima facie basis that the present Arbitration Agreement is void, inoperative or incapable of being performed. In case, there is a high probability of the same then the validity of the Arbitration Agreement is checked by the Courts.

13. **Mozambique**

Preferred mode of Dispute Resolution - Court

Preferred Mode of ADR – Arbitration

Arbitration Legislation – Law on Arbitration, Conciliation and Mediation, 1999

Similarity to UNCITRAL Modal Rules – Based on UNCITRAL model law

Courts Support to ADR Mechanism – Arbitration agreement is taken seriously and unless the Courts find that the existing agreement is null and void or incapable of performance, the Arbitration Agreement will be upheld and the parties will be sent for an arbitration proceeding.

14. **Oman**

Preferred mode of Dispute Resolution - Courts

Preferred Mode of ADR– Arbitration

Arbitration Legislation - The Omani Law of Arbitration in Civil and Commercial Disputes – Royal Decree 47/97

Similarity to UNCITRAL Modal Rules- Based on Modal Law

Courts Support to ADR Mechanism- Under the legislation, it is mandatory for Courts to uphold a valid Arbitration Agreement and refer the parties to arbitration.

15. **Seychelles**

Preferred mode of Dispute Resolution - Court

Preferred Mode of ADR - Arbitration

Arbitration Legislation - Commercial Code of Seychelles, Chapter 38 (1 January 1977) and Seychelles Code of Civil Procedure, Chapter 213 (15 April 1920)

Similarity to UNCITRAL Modal Rules – Not based on UNCITRAL Model Law

Courts Support to ADR Mechanism – Courts refer the dispute for arbitration in presence of a valid Arbitration Agreement.

16. **Singapore**

Preferred mode of Dispute Resolution – Arbitration

Preferred Mode of ADR – Arbitration

Arbitration Legislation – Domestic- Arbitration Act, 2001

International - International Arbitration Act (IAA)

Similarity to UNCITRAL Modal Rules -Adopted the UNCITRAL Model Law

Courts Support to ADR Mechanism – Excellent support by the Courts to the arbitration regime

17. **Somalia**

Preferred mode of Dispute Resolution - Court

Preferred Mode of ADR– Arbitration

Arbitration Legislation – No existing Legislation

Similarity to UNCITRAL Modal Rules – Not based on UNCITRAL

Courts Support to ADR Mechanism – Under Article 317 of the Somali Civil Code, if both the parties willingly submitted to the Arbitration Agreement under the existing Somali law, the Courts will not interfere in the dispute till the proceedings of arbitration are complete.

18. **South Africa**

Preferred mode of Dispute Resolution - Court

Preferred Mode of ADR – Arbitration and Conciliation

Arbitration Legislation – Domestic- The Domestic Arbitration Act

International- International Arbitration 2020

Similarity to UNCITRAL Modal Rules – Based on Model Law

Courts Support to ADR Mechanism – South Africa is an arbitration friendly jurisdiction where Courts recognise and support Arbitration.

19. **Sri Lanka**

Preferred mode of Dispute Resolution – Court

Preferred Mode of ADR – Mediation

Arbitration Legislation – Sri Lanka Arbitration Law, 1995

Similarity to UNCITRAL Modal Rules – Based on Model Law

Courts Support to ADR Mechanism **–** Courts have earlier showed an interventionist approach. However, in recent years Courts have taken a more arbitration friendly approach and have tried to adopt minimal judicial intervention.

20. **Tanzania**

Preferred mode of Dispute Resolution - Court

Preferred Mode of ADR– Arbitration

Arbitration Legislation - The Arbitration Act, 2020

Similarity to UNCITRAL Modal Rules – Not based on UNCITRAL

Courts Support to ADR Mechanism – The parties with a valid Arbitration Agreement will be asked to go for arbitral proceedings in case of absence of any legal reasons to the contrary.

21. **Thailand**

Preferred mode of Dispute Resolution - Courts

Preferred Mode of ADR– Arbitration

Arbitration Legislation - Arbitration Act 2002

Similarity to UNCITRAL Modal Rules – Based on the modal law

Courts Support to ADR Mechanism-The Courts are likely to enforce any Arbitration Agreement and dismiss application for litigation in such disputes.

22. **United Arab Emirates**

Preferred mode of Dispute Resolution - Court

Preferred Mode of ADR– Arbitration

Arbitration Legislation - Federal Arbitration Law No. 6 of 2018 ("UAE Arbitration Law")

Similarity to UNCITRAL Modal Rules – Based on the Model law

Courts Support to ADR Mechanism – Post passing of the 2018 Arbitration Act, chances of Courts interfering in arbitration proceedings are minimal.

23. **Yemen**

Preferred mode of Dispute Resolution – Court

Preferred Mode of ADR– Arbitration

Arbitration Legislation - Yemen Arbitration Act

Similarity to UNCITRAL Modal Rules – Based on Model Law

Courts Support to ADR Mechanism –Commercial Court of Appeal has the exclusive jurisdiction on arbitration. Barring few matters which are stated under Article 5 of Arbitration Law, all other matters are referred to arbitration by the Courts in existence of a valid Arbitration Agreement.

Australia, France, India, Mauritius, Singapore, South Africa, UAE and Malaysia have either shown to have a good arbitration regime or have been working towards improving the arbitration regime in the respective countries. These countries have been remarkable for increasing and promoting ADR practices.

Investment Arbitration in IORA region – Over the last few years, ICSID and investment arbitration has been subject to criticism. The Investor State Dispute Settlement mechanism of ICSID or these agreements in general have caused rise of skepticism in states stating that they benefit the investors and not host states. The table below showcases the investor state disputes involving IORA members.

NAME	CASE AS RESPONDENT STATE	CASE AS HOME STATE OF CLAIMANT
Australia	2	9
Bangladesh	1	0
France	1	56
India	26	9
Indonesia	7	0
Iran	1	3
Kenya	1	0
Madagascar	4	0
Malaysia	3	4
Mauritius	3	9
Mozambique	3	0
Oman	4	2
Seychelles	0	2

Singapore	0	8
South Africa	1	3
Sri Lanka	5	0
Tanzania	8	0
Thailand	2	0
United Arab Emirates	5	13
Yemen	3	0

[3]

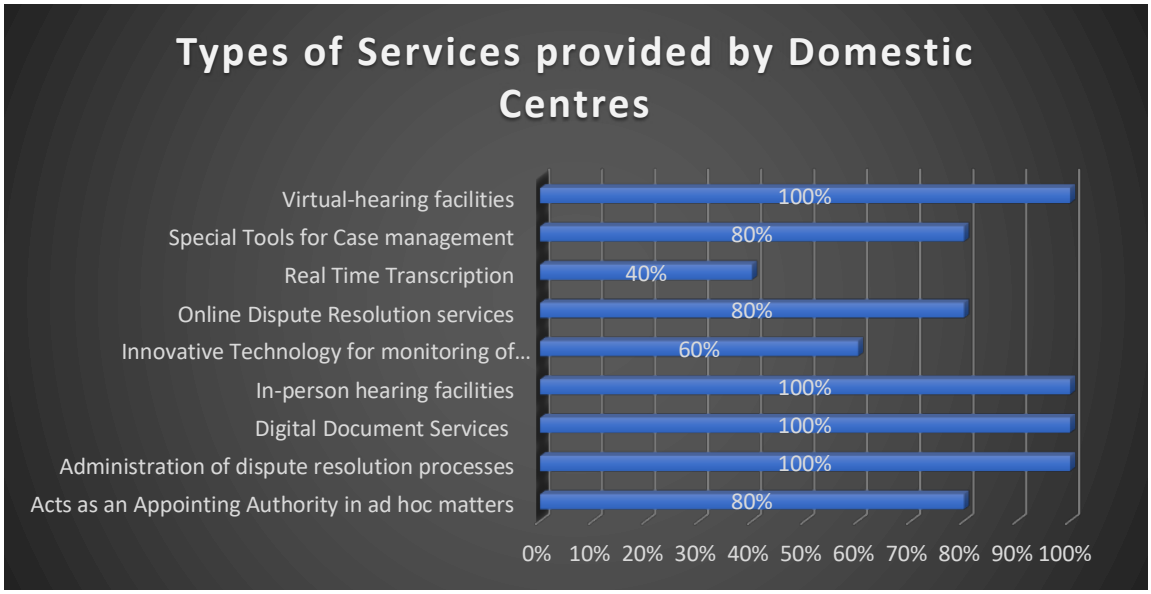
This showcases the high number of Investor State disputes which are currently pending or have been concluded against the IORA members. States like India, South Africa have terminated various BITs with Investor-State arbitration provisions. Over the years there have been increasing critique to Investment Arbitrations especially with the arguments that such investment arbitration undermines Sovereignty and is a skewed system. Further, due to the fact that international treaties like ICSID convention provides for compulsory arbitration without any direct contractual obligation between state and investor, without any mechanism of appeal, the criticism has increased exponentially. Due to public relevance of the subject of such disputes and huge money involved, over the years states like India and South Africa which receive high FDI inflows, moved away from such Investor State arbitration. However, in general around the globe there has been increase in BITs as well as Investment Arbitrations. Further, Investment Arbitration remains one of better mode of dispute resolution of such disputes as there is no better, realistic alternative despite such flaws.

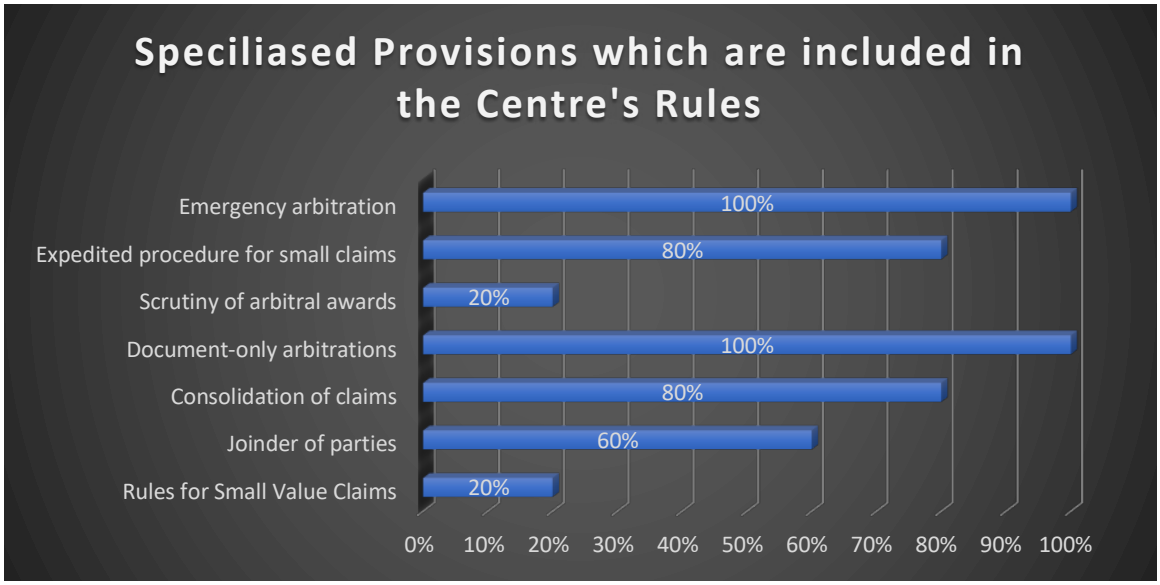
Domestic Dispute Resolution Centres - Domestic Dispute Resolution Centres form a very essential part of the ADR regime of countries. The respondents were asked details about the functioning of the domestic centres in their country, their services and their case management. This was done to understand the practices undertaken by various domestic centers and select the best practices.

Respondents stated that domestic centres in majority of countries provide multiple options and various specialized features in their rules to ensure effective dispute resolution. Many of these

[3] UNCTAD, Investment Dispute Settlement Navigator, available at https://investmentpolicy.unctad.org/investment-dispute-settlement (last accessed at 10 September 2021)

services and provisions can be incorporated in the IDReC to ensure that different types of users are attracted to the array of services and specialized rules provided by the Centre in a single place. Kind of a plug and play set of rules to choose from depending on the type of dispute, seat, governing law etc.





In conclusion, ADR regime in most IORA countries is in developing stage. This is caused by archaic legislations, anti-arbitration decisions by Courts, lack of specialised professionals and reluctance to switch to arbitration from litigation. Further, lack of adoption and ratification of

certain international treaties and conventions is another reason which has caused stagnation of development of ADR in the region.

However, adoption of ICSID Convention and Investor State arbitration might not be preferable to certain members as over the last few years Investment Arbitration has garnered huge criticism as well as has caused forced termination of certain BITs involving the same. To tackle this, it should be ensured that the rules of the new IORA Centre try to mitigate the concerns raised by the member countries while keeping it fair and neutral as Investment Arbitration is viable and good option for solving such disputes. Further, another focus should be laid on maritime arbitration as highest volume of trade in IORA is done through sea.

IX. KEY FINDINGS AND KEY PROPOSALS FOR IDREC

Based on the responses which were received to the questionnaire and the secondary data analysis, the author has found following findings which affect the setting up of the IDReC. These key findings are as follow:

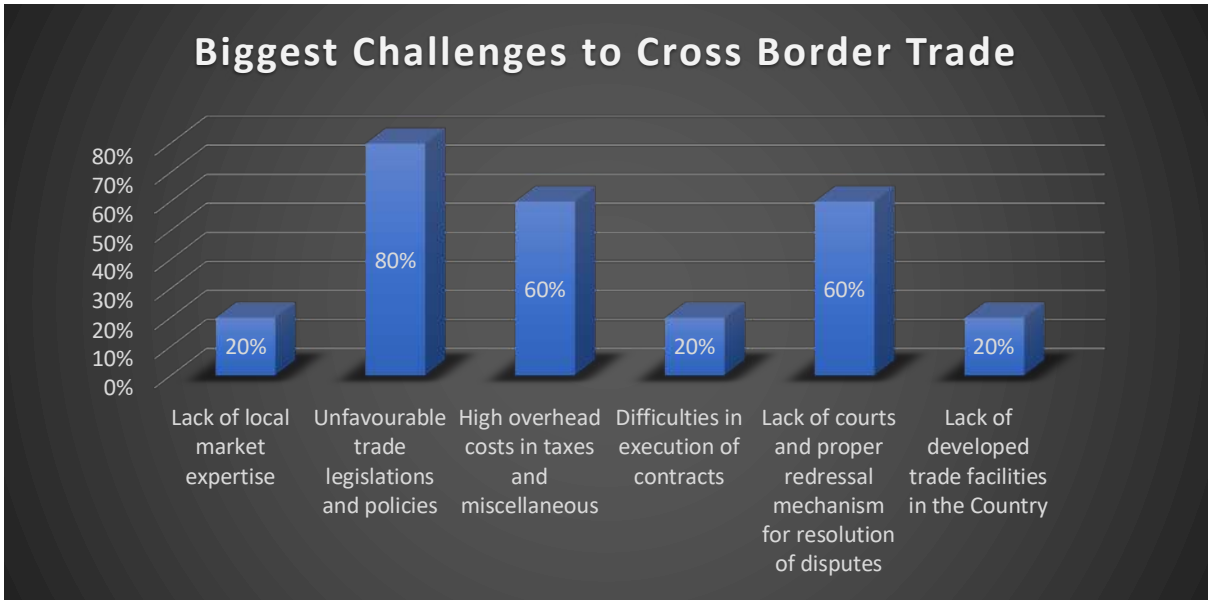
1. Arbitration is the most preferred mode of resolving the international disputes and majority of the parties preferred arbitration over cross border litigation or mediation for solving such disputes. This is a clear indication of high acceptance of arbitration in the international ecosystem. The respondents preferred arbitration as it was cost and time effective, binding, confidential and enforceable.

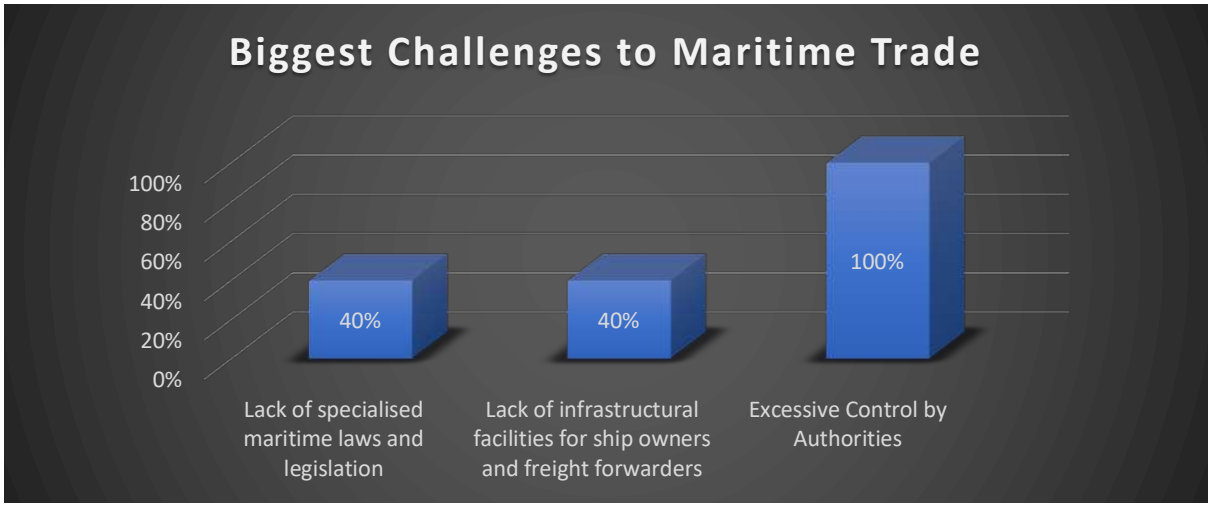
2. Investment Arbitration has lost its attractiveness over the years. Most of the practitioners prefer a robust investment protection legislation to protect against investment arbitrations. This is partially due to the reason that over the last few years, there has been growing distrust for Investment Arbitration as states think that their interests are not taken care of in such arbitrations and partiality is shown to the investors. The rapid increase in number of Investor State disputes in recent times, high financial stakes, unpredictable interpretation of clauses in investment treaty and challenges to public policy which is considered a challenge to sovereignty of state itself, seem to have triggered growing distrust in Investment Arbitration. These combined with other issues of arbitration, the States feel that their own judicial system and dispute mechanism is better than going for Investment Arbitration both institutionalized as well as Ad-hoc. For example- India, which is a prominent IORA member, has been promoting arbitration in the recent years. However, in 2016 it released a new model Bilateral Investment Treaty. In the Model Treaty, there are certain conditions precedent to the arbitration which involves submission of claim to domestic courts or administrative parties within one year.[4] Post exhaustion of local remedies, there is a period of negotiation and consultation. Not only

[4] Model Text for the Indian Bilateral Investment Treaty 2016, Article 15 " In respect of a claim that the Defending Party has breached an obligation under Chapter II……a disputing investor must first submit its claim before the relevant domestic courts or administrative bodies of the Defending Party for the purpose of pursuing domestic remedies in respect of the same measure or similar factual matters for which a breach of this Treaty is claimed. Such claim before the relevant domestic courts or administrative bodies of the Defending Party must be submitted within one (1) year from the date on which the investor first acquired, or should have first acquired, knowledge of the measure in question and knowledge that the investment, or the investor with respect to its investment, had incurred loss or damage as a result." Available at https://dea.gov.in/sites/default/files/ModelBIT_Annex_0.pdf .

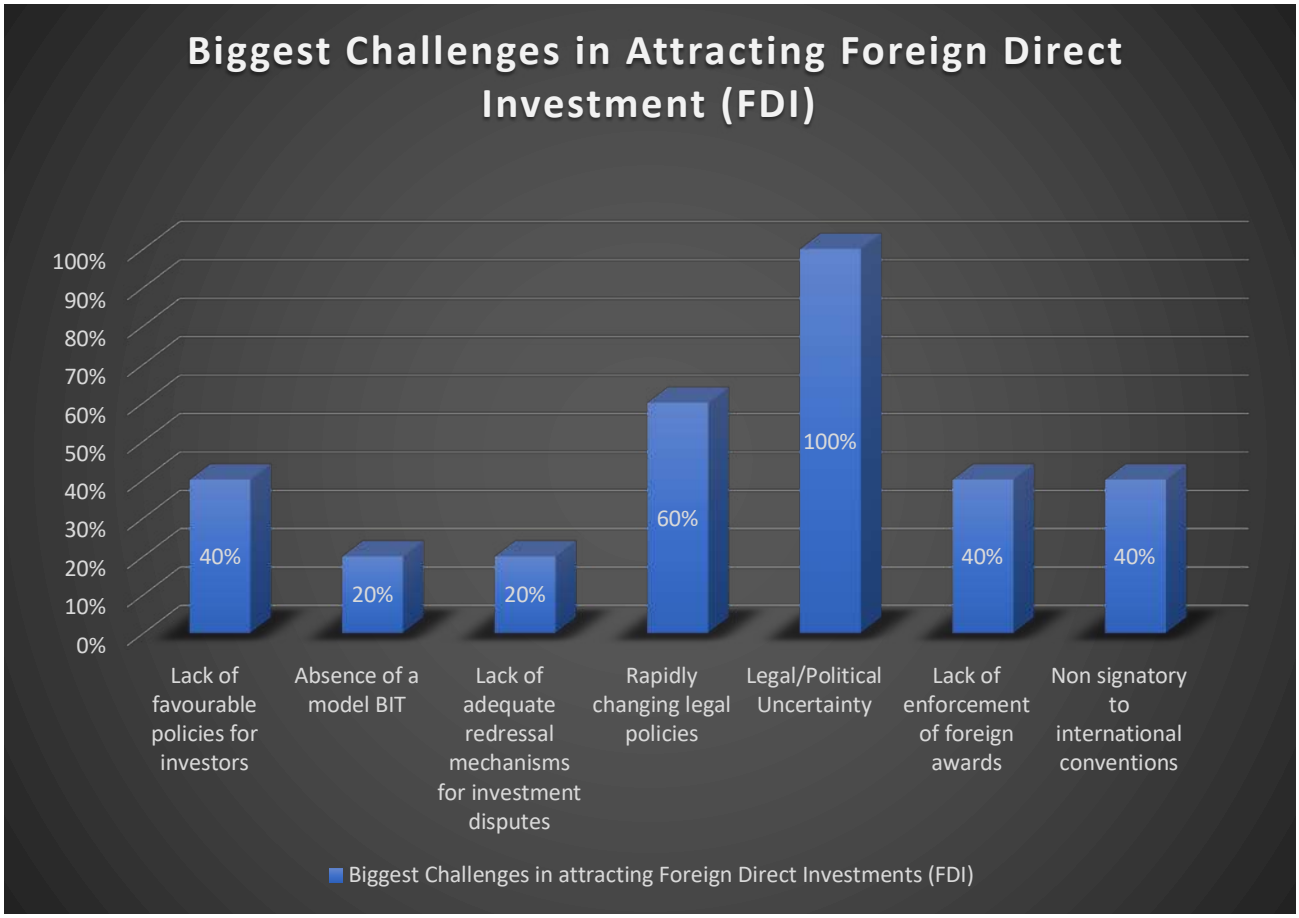
India, but there have also been growing calls against investment arbitration in both developed and developing countries. This showcases increased distrust towards investment arbitration in the last few years.

3. It was found that biggest challenges facing the cross-border trade in the countries are lack of favorable trade legislation, high taxes, lack of Courts and proper redressal system in the countries. For maritime trade, the biggest challenge was found to be excessive regulatory control by the authorities.

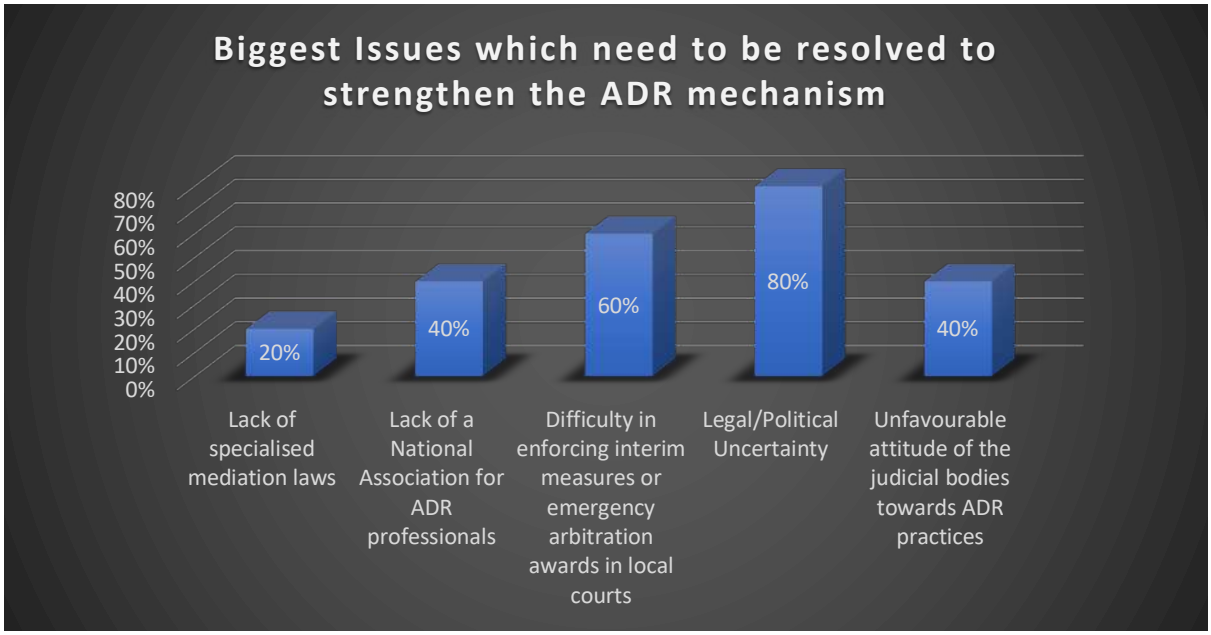




4. The biggest challenges to Foreign Direct Investments in various countries was found to be as unstable and inconsistent legal regime. This erodes the investor's confidence due to ambiguity surrounding their investments and rapidly changing legal framework.



5. Legal and Political uncertainty along with high difficulty in enforcing interim measures or emergency arbitration awards in local Courts were found to be the three most pressing issues which are causing the hindrance to development of the ADR regime.

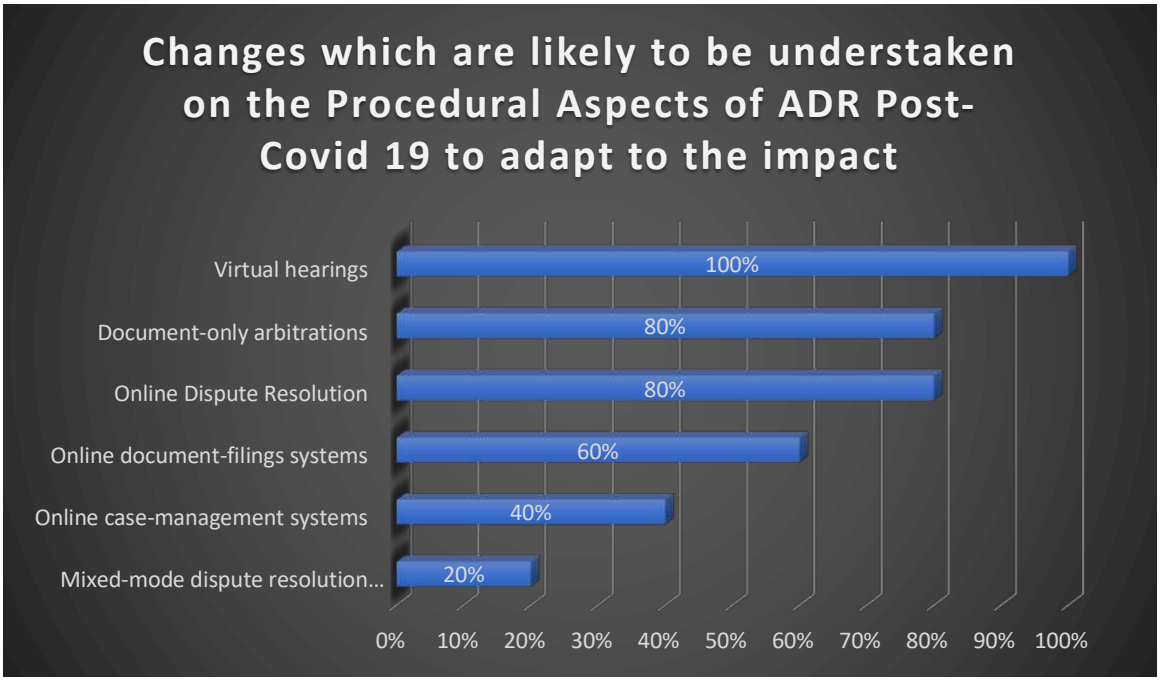


6. Most of the respondents felt that it is important to include specialised provisions for emergency arbitration, documents only arbitration and for expedited procedure for small claims. These provisions are still new to the arbitration world and are gaining acceptance. For example, documents only arbitration is an excellent example of innovation for dealing with low value, less complex cases which does not require the whole procedure of arbitration as is provided for in the LMAA Arbitration Rules for small value claims. As arbitration allows for high procedural flexibility, parties can choose for documents only arbitration where the arbitrator(s) determine the whole dispute based on the documents submitted which include pleadings, claims, statements of witnesses and evidence etc. An award is given without any oral pleadings or testimony. This will help in saving both time and resources for the parties.

7. Due to Covid-19, virtual hearings, document only arbitration and online dispute resolution have gained widespread acceptance. There exist multiple objections to virtual hearings like decrease in effectiveness of cross examination of witness or expert testimony, confidentiality, privacy and security issues, time zones, translators and interpretation, uneven access to technology etc. For example, in 2015, the Permanent Court of Arbitration was hacked in middle of a maritime dispute arbitration between China and Philippines. There was malware which infected the Courts website and left the visitor's systems vulnerable to data theft.[5]

[5] Duarte Mauricio, Essential Tips on Cybersecurity for Arbitrators: Identify, Protect, Detect, Respond and Recover 6 February, 2019.

Arbitration is known for confidentiality and privacy and virtual hearings increase the risk for interruption of the same. Despite these objections, virtual hearings have been growing and will remain part of the arbitration ecosystem especially during the time the whole world is being digitalized. Hence, these objections would reduce over time as the process is improved.



8. There are certain considerations for preference of the Seat of arbitration. The considerations are as follows –

(a) Ease of enforceability of Arbitration Agreements as well as arbitration Awards,

(b) Ability to enforce interim measures ordered by the arbitral tribunal in local Courts and ability to enforce emergency arbitration Awards,

(c) Recognition of virtual or documents only arbitration by the Courts,

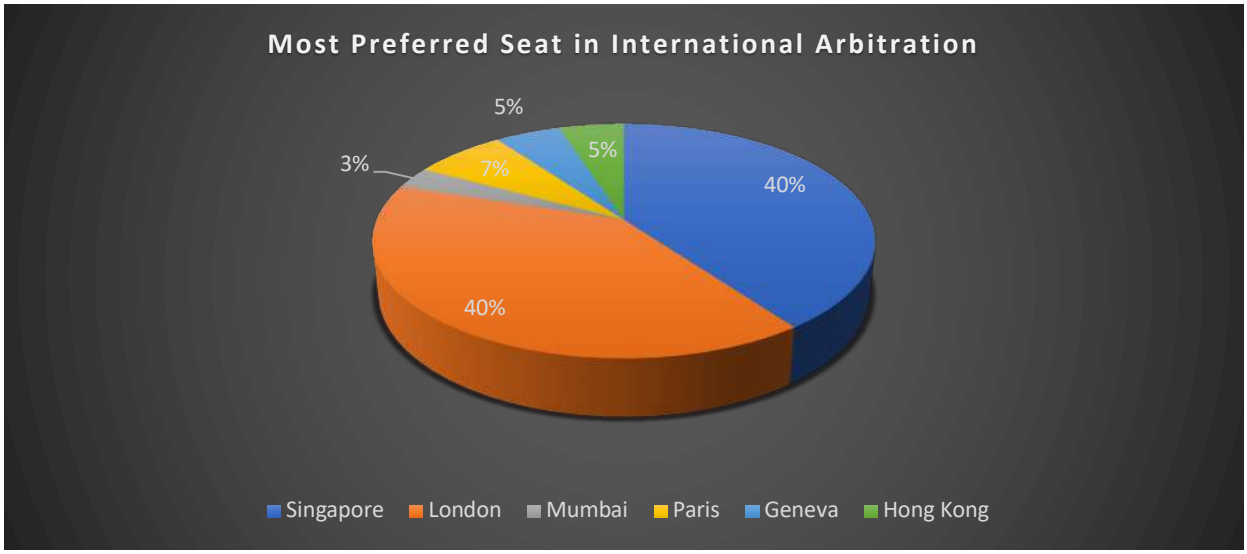
(d) Pro arbitration stance of the judiciary as well as the Government,

(e) Availability of translators and interpreters,

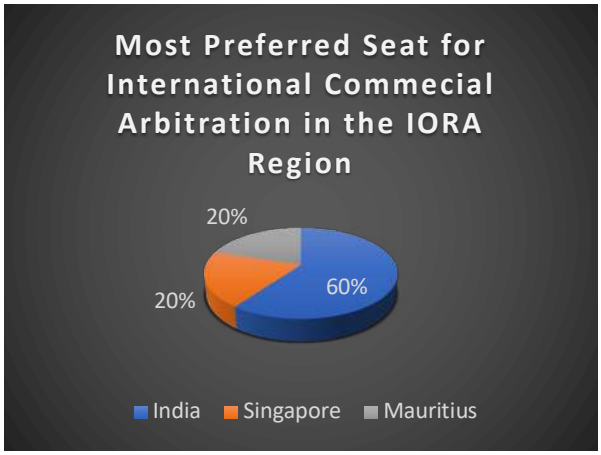
(f) A modern day infrastructure for conduct of proceedings,

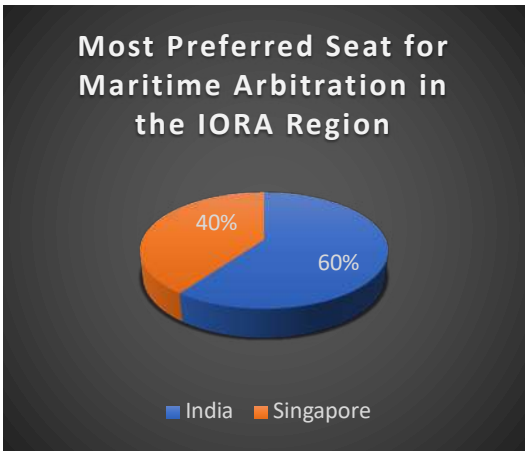
(g) Scope for third party funding etc.

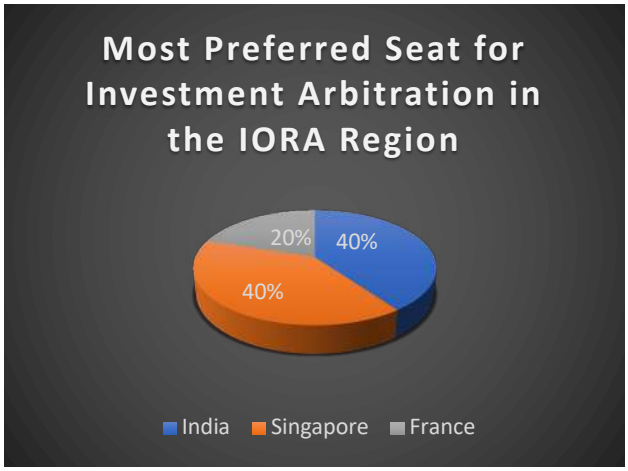
Keeping in mind these considerations, London and Singapore were chosen as the two of the most preferred Seat for arbitration. Mumbai, Paris, Geneva, and Hong Kong are other preferred seats with Hong Kong gaining more acceptance overtime despite the political protests and enactment of National Security Law in 2020.



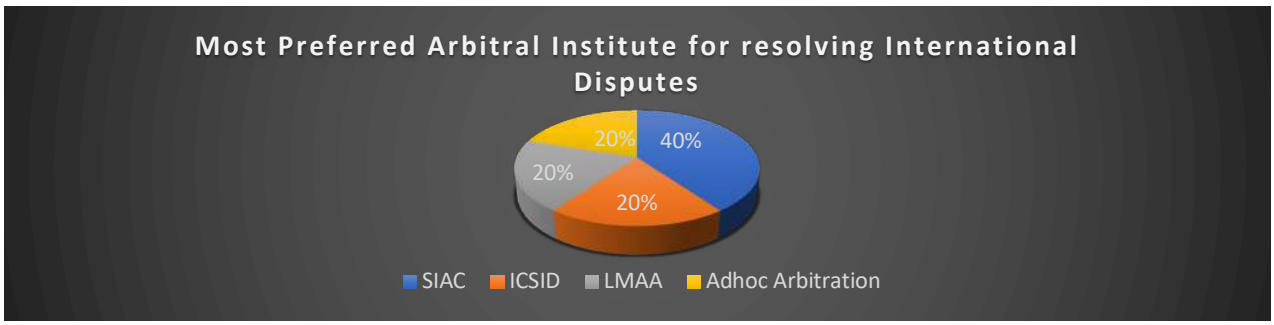
In the IORA region, India, Singapore, and Mauritius were most preferred Seats for International Commercial Arbitration. India and Singapore were the most preferred Seats for Maritime arbitration and India, Singapore and France were most preferred seat for Investment Arbitration.

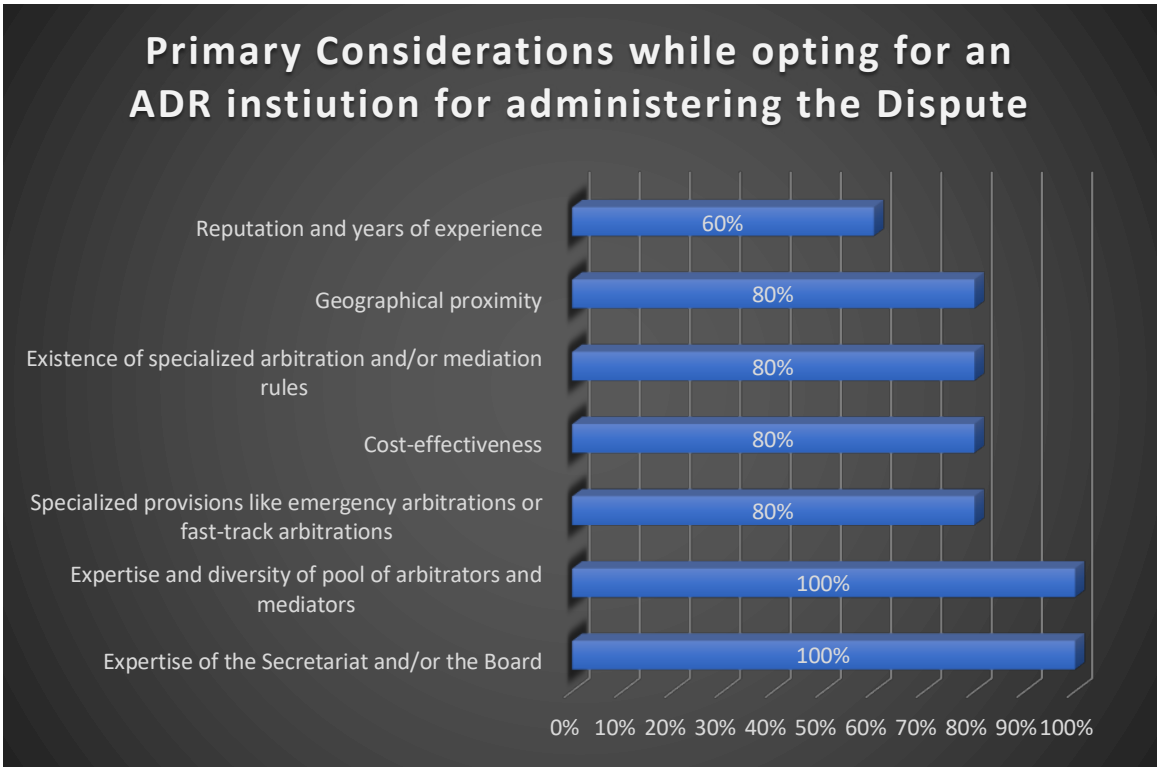






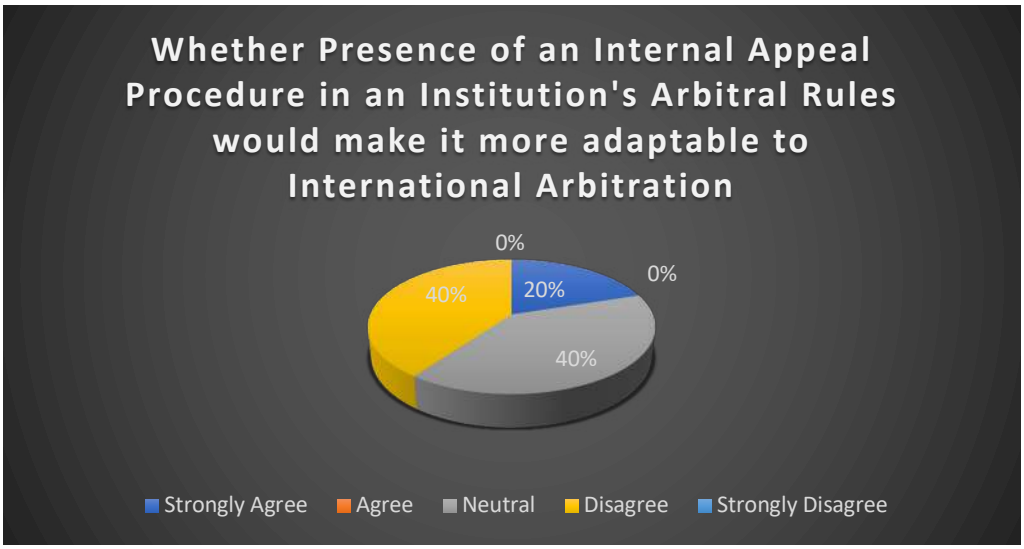
9. Among the institutes, SIAC for International Commercial Arbitration, LMAA for Maritime Arbitration and ICSID for Investment Arbitration are preferred by the parties. The preferences are also substantiated by the annual statistics released by these institutes. The primary considerations while selecting the institutes are geographical proximity, cost, expertise, specialized provisions, diversity of arbitrators, efficiency of the secretariat and the Court/ Council. Further, it is to be noted that Ad-hoc arbitration is still preferred by about 20% respondents instead of arbitral institutes.





10. The respondents when asked which procedural aspects they were willing to forego for faster and cost-effective arbitration, chose to forgo expert testimonies, unlimited length of written submissions, multiple written submissions, cross examination, and oral hearings. Rules must be designed in such a way to provide the Parties an option to opt out of certain procedural requirements which they feel will hinder the dispute resolution process.

11. The respondents were asked whether they would want an internal appeal process for the arbitral awards and 40 % of the respondents rejected such idea and preferred non-existence of such mechanism. 20% of the respondents agreed with it and 40% of participants remained neutral. The existence of an internal appeal process will be against the basic advantages of arbitration -faster dispute resolution and finality of arbitration awards. Furthermore, appeal in certain cases like in cases of absence of due and fair process, involvement of public interest etc. is already available in the national legislations. Principle of finality of awards in arbitration should be followed especially for merits of the case. However, to cater to all parties, the parties can be given an option to select before the start of arbitration proceedings whether they want to keep the internal appeal process open post the decision of the tribunal. Hence, the parties which feel the requirement of an appeal can jointly consent to the same before starting dispute before the tribunal. Otherwise, no appeal should be allowed.



12. When asked about the preferred arbitration rules for Ad-hoc proceedings, majority preferred the UNICITRAL Arbitration rules for conducting the proceedings as these rules are effective and efficient.

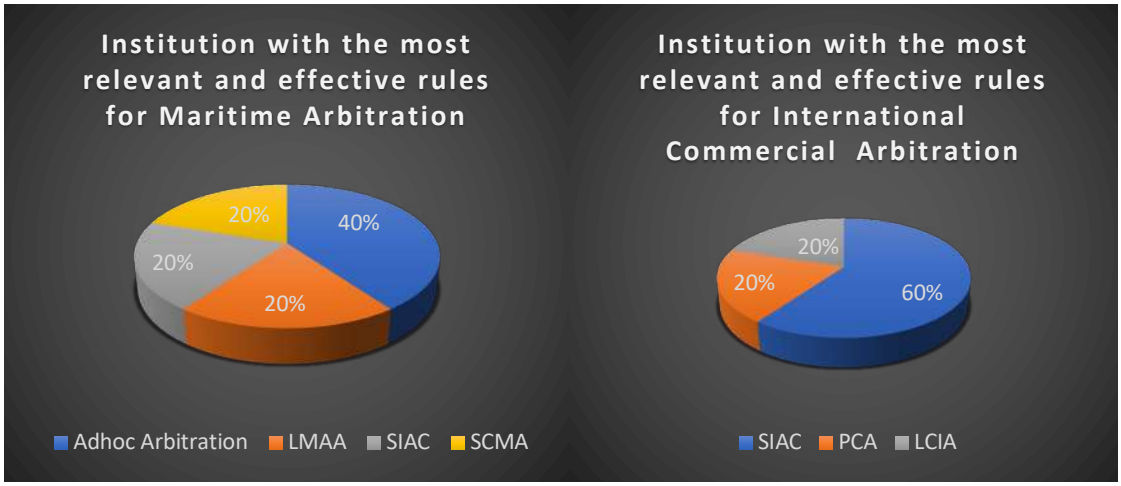
13. The respondents when asked about their preferred rules separately for International Commercial Arbitration, Investment Arbitration or Maritime Arbitration, they stated

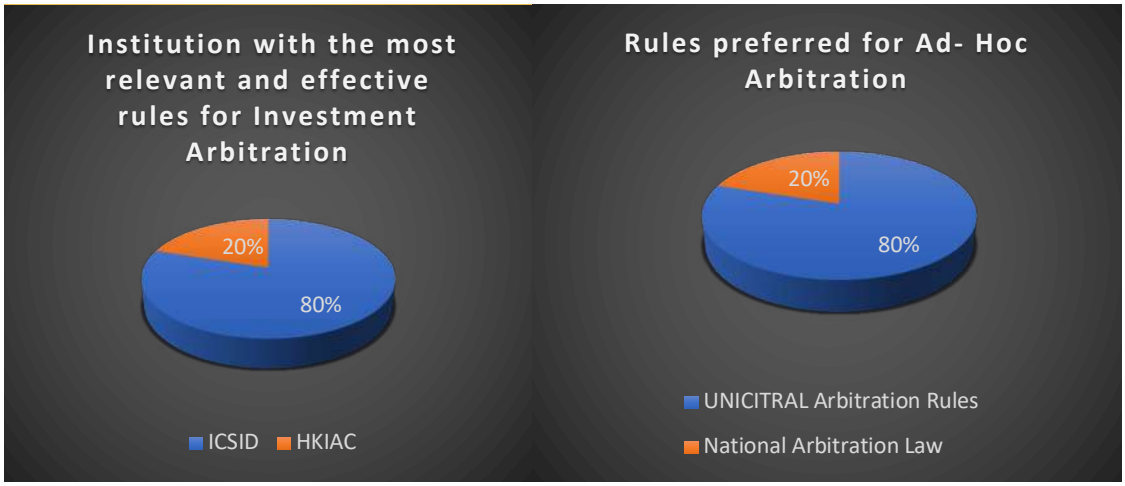
(a) SIAC, LCIA or PCA rules for International Commercial Arbitration

(b) ICSID and HKIAC rules for Investment Arbitration,

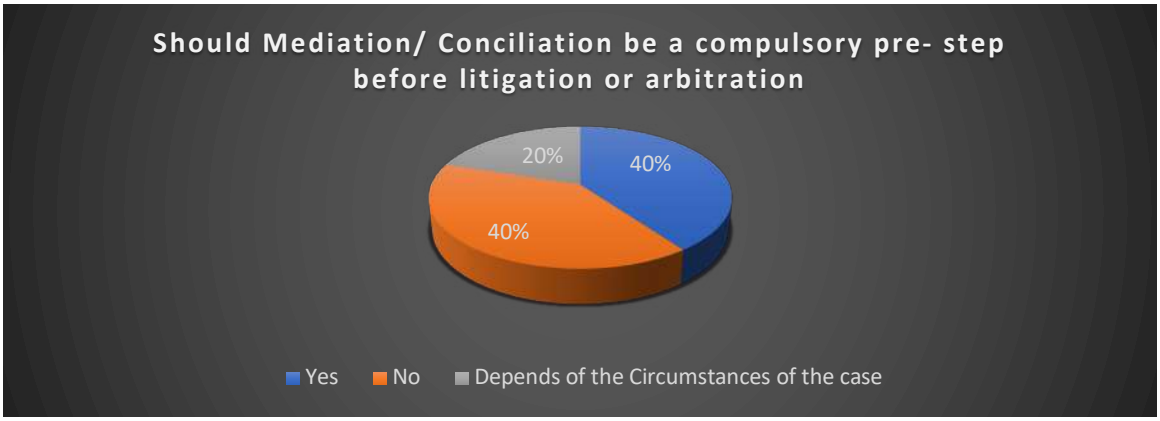
(c) LMAA, SIAC or SCMA rules for Maritime Arbitration. However, 40% of the respondents preferred Ad-hoc proceedings for Maritime Arbitration.

Further, for Ad-hoc arbitration proceedings respondents preferred UNICITRAL Arbitration Rules or National Arbitration Law.





14. When asked about the requirement of mediation or conciliation as prerequisite step before litigation or conciliation, the respondents were split. Some of them preferred it as it was felt that it will provide the parties an appropriate forum for amicable dispute resolution whereas the others felt that it is quite unnecessary and parties who wish to undertake mediation or conciliation can always structure their arbitration clauses around that prerequisite.



15. To make arbitration more adaptable to the international disputes, it was found that certain changes were required to existing regime. These changes are as follows-

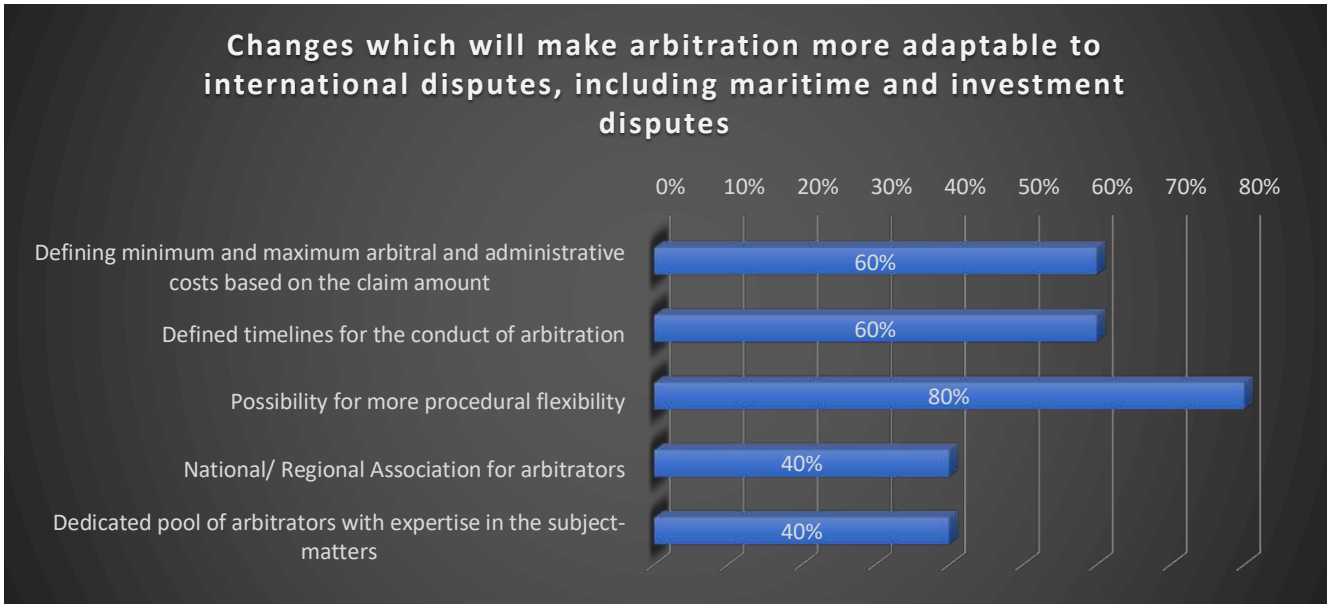
(a) Defining of minimum and maximum arbitral and administrative costs

(b) Defined timelines

(c) High procedural flexibility and

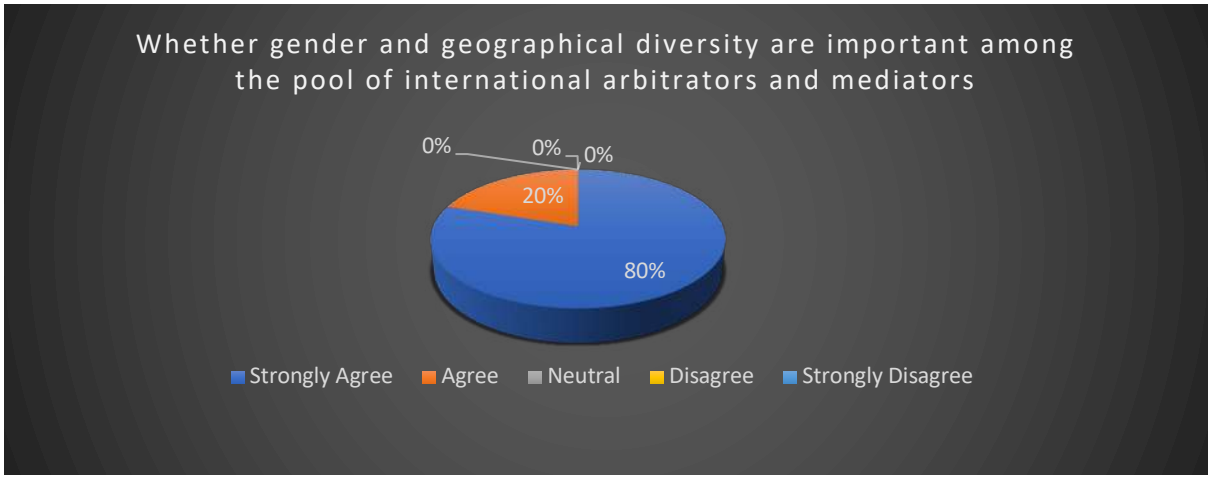
(d) Highly dedicated pool of arbitrators with expertise in the subject matters.

The respondents stated that these changes will make arbitration more accepted and preferable mode of international dispute resolution.

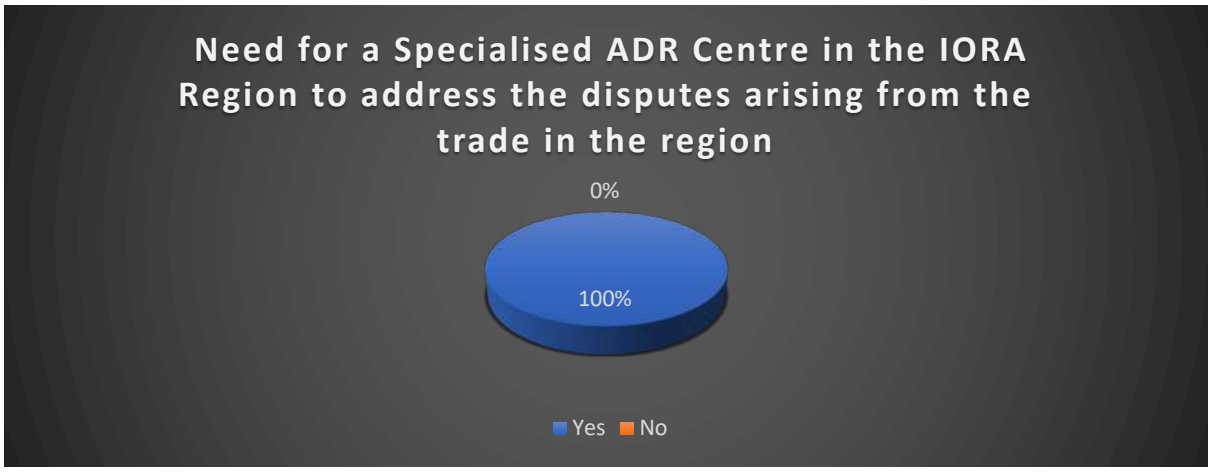


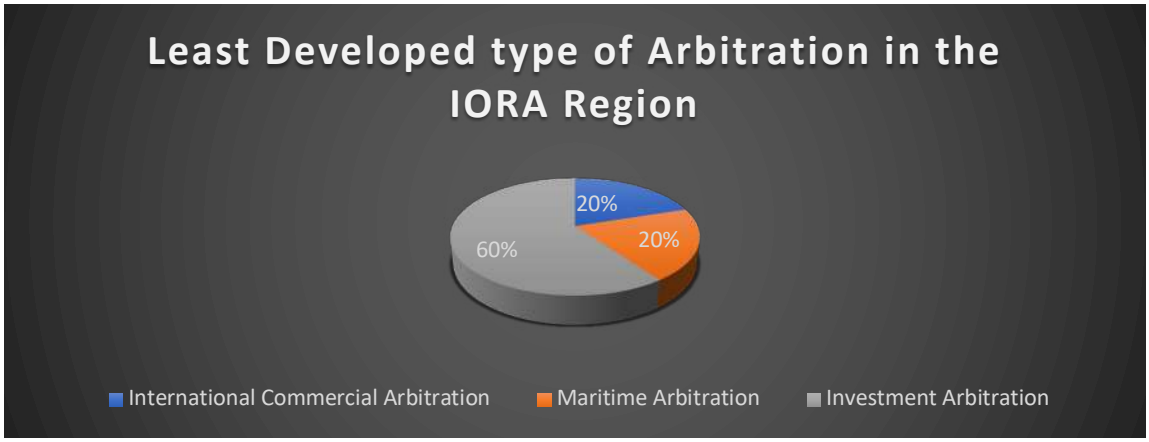
16. Further, in regards with pool of arbitrators, gender and geographical diversity were an extremely important requirement with all the respondents strongly agreeing for increasing pool

of arbitrators with more diverse choices.



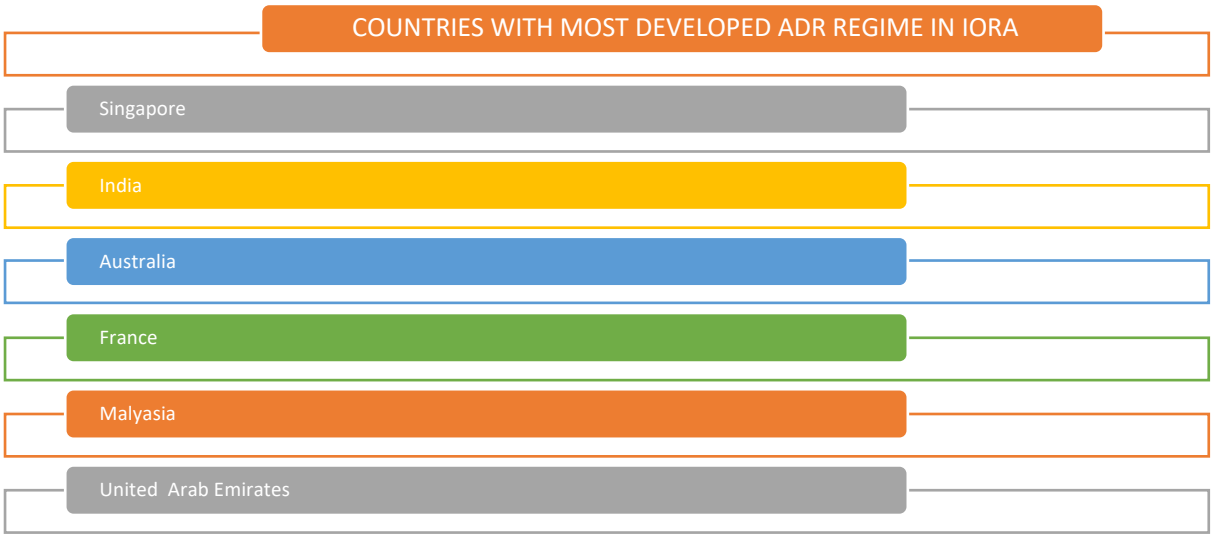
17. When the respondents were posed question whether they believe that an IORA initiative to foster closer cooperation between ADR institutions to facilitate the efficient and enforceable resolution of international disputes would be useful, all the respondents strongly agreed that such an initiative would be a boon for the IORA region. An International Arbitration institute with good infrastructure, effective rules and highly experienced secretariat members, court members and arbitrators are a necessary requirement and would help to address the increasing disputes arising from trade in this region. Further, they felt that investment arbitration was least developed out of International Commercial, Investment and Maritime Arbitration in the IORA region which means that more focus should be done on Investment Arbitration to ensure more adaptability.



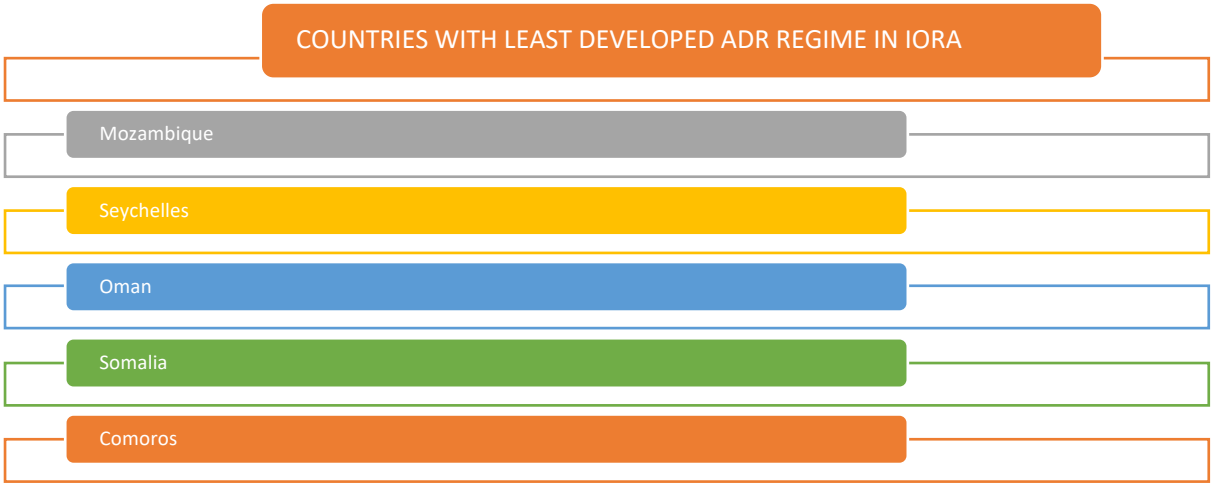


18. For the rules, majority of the respondents preferred having separate specialised rules under one institute for dealing with Maritime, Investment and International Commercial Arbitration than having separate institutes or combined rules for all of them.

19. The respondents stated that Singapore, India, Australia, France, Malaysia, and UAE were the countries with the most developed ADR regime in IORA. Singapore was chosen to have the most developed ADR regime due to the national legislation, support of judiciary to ADR practices and existence of well-respected ADR centres like SIAC and SCMA. India, Australia, France, Malaysia, and UAE were other countries stated to have most developed ADR regime out of the other IORA members. Nations like India, Malaysia and UAE have developed and improved their ADR regimes in recent years to attract international arbitrations. Australia and France were few of the nations which accepted arbitration early on and have developed ADR regimes over a long period of time.



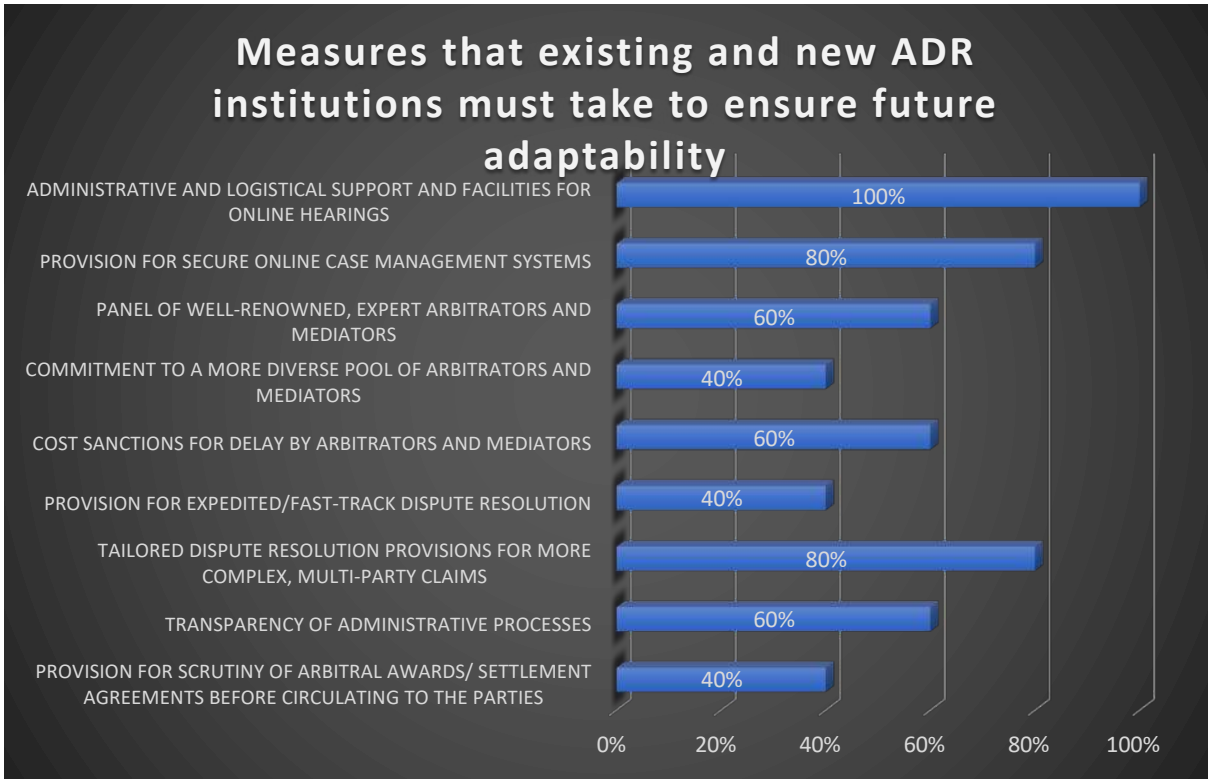
20. The respondents were asked to identify the five least developed countries in regards with the ADR regime in IORA. These countries were



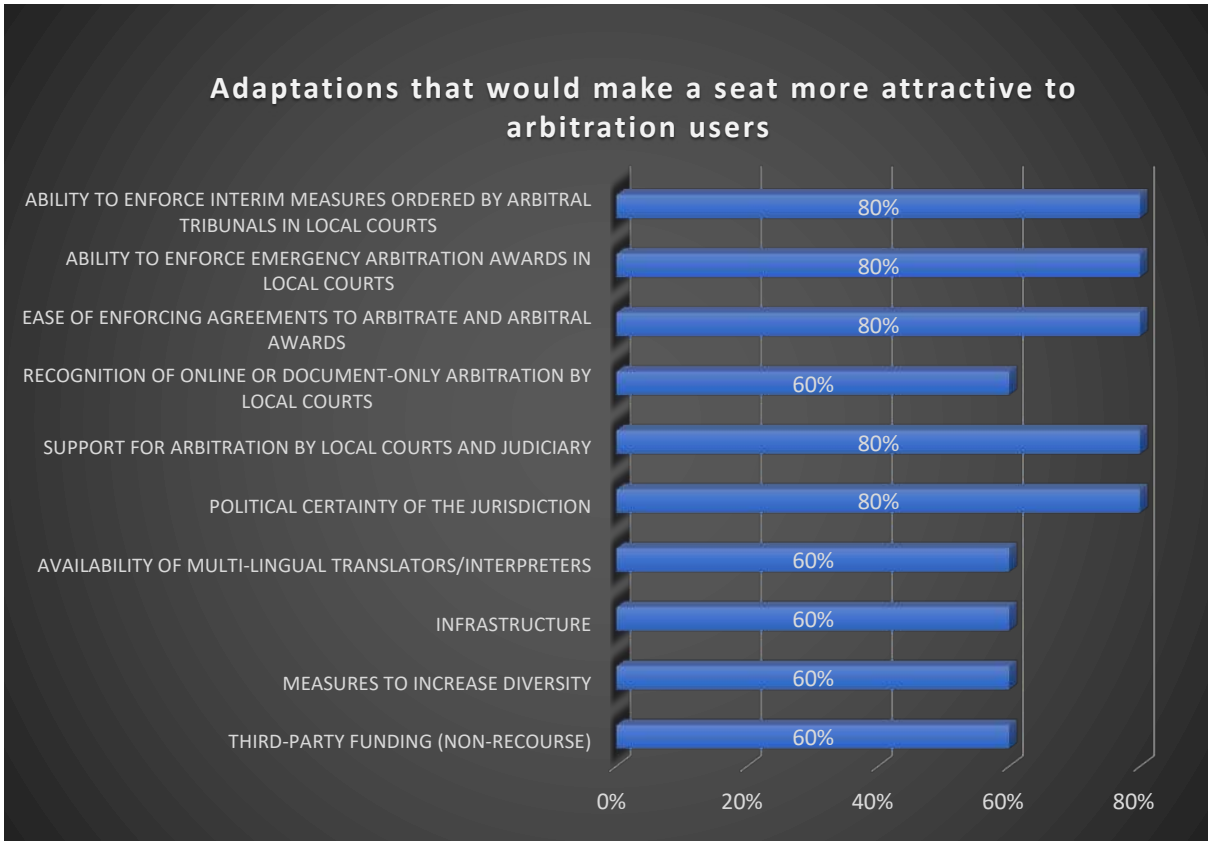
21. The biggest challenge to the creation of the Centre was considered to be the competition as it was felt by the respondents that market is saturated. Entering market against the old and experienced institutions like SIAC, LCIA, LMAA, ICC etc. would be difficult and attracting clients to choose this institute over other institutes will be the biggest hurdle to successful implementation of the project. Another one of the hurdles to the success of the IORA initiative is the lack of cooperation amongst political and business community in IORA member states as well as legal uncertainty in most of IORA regions due to poorly developed ADR Regime.

22. There were certain measures which were felt necessary for both the existing and new ADR institutions must take to ensure future adaptability. 100% of the respondents stated that

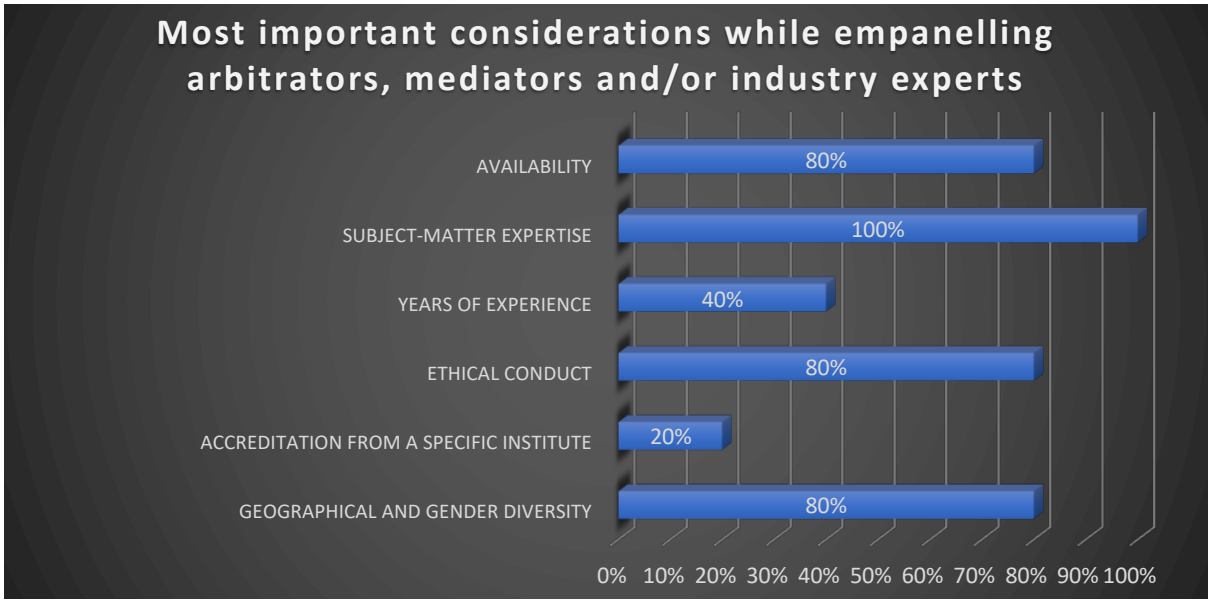
efficient administrative and logistical support and facilities for online hearing is a necessary requirement for future adaptability. Online case management system and tailored dispute resolution provisions for more complex and multi-party claims were other important measures that 80% of the respondents felt were necessary for adaptability in existing and future centers. Further measures like an expert and diverse pool of arbitrators and mediators, cost sanctions caused by delay due to arbitrators and mediators, provision for fast-track dispute resolution and transparency in administrative processes are important to ensure adaptability. All these measures must be kept in mind for the formation of IDReC



23. In order to make a seat more attarctive to the arbitration users - ability to enforce interim measures, ability to enforce emergency arbitration Awards, ease of enforcing arbitration Agreements and Awards, support to ADR by local Courts and political certainty were considered the most important by the respondent groups. Measures like acceptance of online or document only arbitration, developed infrastructure and third pary funding were other important factors which will make a Seat more attractive. The State where the IDReC is built and even other remaining IORA members must enure that most of these suggestions are taken into account and applied as much as possible in order to ensure the growth of ADR regime as well as the success of IDReC.



24. For the selection of arbitrators, mediators or industry experts, the respondents stated that the most important considerations are expertise, diversity, availability, and ethical conduct.



KEY PROPOSALS AND WAY AHEAD

Based on the data received and the secondary data analysis, these are the key proposals for setting up of IDReC.

1. Formation of a policy specifically designed for Investment Arbitration which can balance the interest of both host Nation as well as investors is a key aspect for success of Investment Arbitration in the institute. Addressing the concerns of both the host Nation as well as the investors might lead to quick influx of Investment Arbitration matters in the institution.

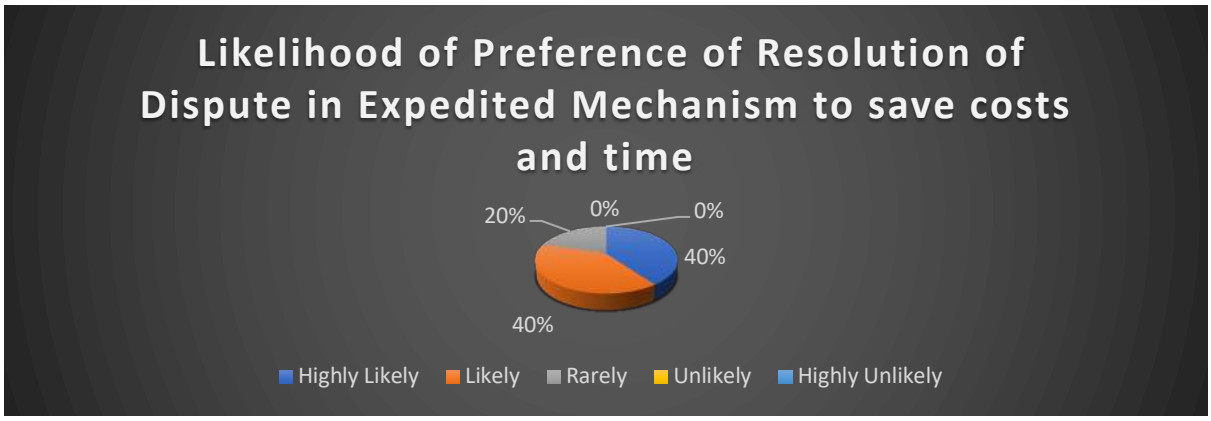
2. Encouraging the IORA members to adopt the UNCITRAL Model law on Arbitration, the NY Convention, UNCITRAL Model law on Mediation, United Nations Convention on Contracts for the International Sale of Goods (CISG) and Convention for International Settlement Agreements Resulting from Mediation to bring uniformity in legal framework of IORA countries as well as that of other Nations. This will lead to increased efficiency, effectiveness and acceptance of arbitration and other dispute resolution processes.

3. Keeping in mind that the biggest challenge faced by the cross-border trade, maritime trade and for FDI is lack of certain and effective framework by the Government, effort must be made to improve the multilateral legislative and regulatory provisions in the IORA region.

4. In regards with the hindrance faced by the ADR practices which are the legislative framework as well as the lack of favor by judiciary, the member countries should be encouraged to adopt more ADR friendly legislative regime in line with the UNICITRAL Model Law on arbitration.

5. The Centre once functional, should facilitate ADR training certificate programs, international conferences, panel discussions, webinars and R&D functions to increase the Centre's outreach. Further, these capacity building initiatives would help increase the awareness of the importance and requirement of the ADR mechanism especially in the IORA member countries where acceptance of the ADR mechanisms is low.

6. Making provision for emergency arbitration, documents only arbitration provisions and expedited procedure for small claims, which is absent in certain institutional arbitration rules (40% of the respondents stated that they were very likely and 40% stated that they were likely to use expedited process to save costs). These provisions should be included in the final rules for the IDReC to attract caseload and help the institute to differentiate from its competitors by providing more options to the parties.



7. The institute should choose the ad valorem method for determination of fees as high value cases require high expertise as complexity of the cases increases, which requires highly experienced and efficient arbitrators and requires more support from the secretariat, increased administrative and logistical expenses. The fee should be set to the proportion of the value of the suit as hourly fees would fail to take such instances into account.

8. Keeping in mind the growth and acceptance of virtual hearings, there are three key requirements –

(a) Either an online case management system should be developed especially for the institute, or an existing online case management system service should be utilised (*like provided by M/s ADRAAS Realtime Environment for Dispute Resolution, New Delhi, India*). It should be ensured that the system is efficient and such platform should be exclusively used for conducting the communications between the parties. It will ensure that record of arbitration is clear and in order. It would also be accessible to all the parties involved whenever required.

(b) The infrastructure of the center should be developed with certain rooms specially aimed towards virtual hearings in cases the arbitrator(s) or one of parties require

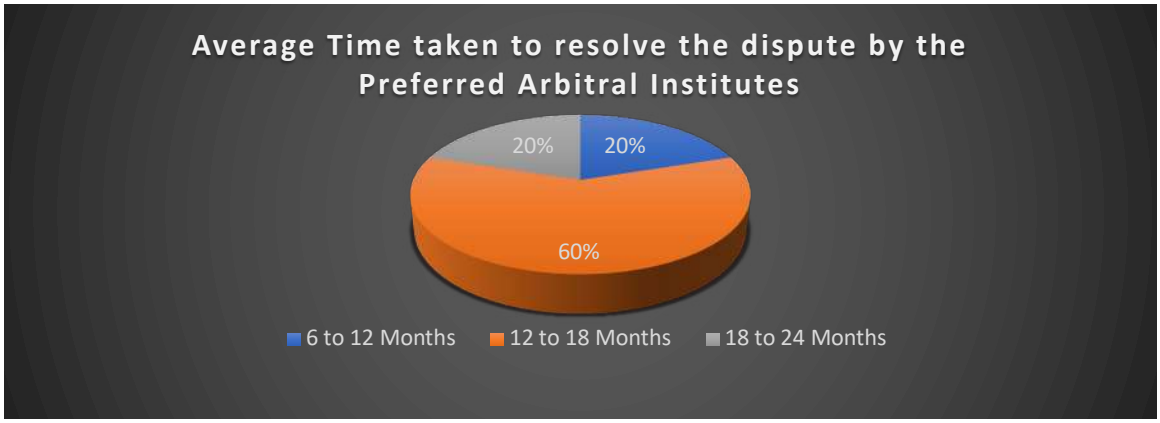
it. Furthermore, the cyber security should be one of key concerns while conducting virtual hearings and the Centre's website as well as the platform on which such hearings will be conducted should be secure.

(c) The parties should be given a choice between virtual, physical or hybrid hearings and in case no agreement is reached between the parties, physical hearings should be the default mode of conducting the arbitration.

9. The parties before the beginning of hearing, should be provided an option to remove or define the processes like numbers of pages of submissions, the number of rounds for written submissions etc. to ensure greater flexibility to the parties. However, in small claims cases or expedited arbitration cases the rules should be set by the secretariat beforehand to ensure timely completion of such proceedings.

10. In general, there should be no internal appeal procedure allowed and the Awards should be considered final. However, if all the parties before the start of the arbitral proceedings agree to allow one appeal to the Award based on merits or if the parties frame the Arbitration Clause allowing for appeal to the Award, in such cases the institute should be able to deal with requests and an internal appellate mechanism in such cases should exist.

11. To make arbitration more adaptable to international dispute resolution and to ensure the inflow of clients, the institute should ensure that high procedural flexibility is allowed and there are defined timelines and defined costs. Furthermore, a highly specialised pool of arbitrators is required to improve efficiency of the proceedings. To ensure future adaptability of the institute, a tailored dispute resolution process in cases of multiple party claims should be adopted and the administration processes should be more transparent. Further, time limit should be set for most of the disputes. Disputes below a certain threshold value should be completed within 12 months from completion of pleadings to gain advantage over other arbitral institutes as shown by the graph that only 20% of the respondent's preferred institute completed dispute within that time.



12. To ensure that the pool of arbitrators is diverse, the institute should adopt the following measures –

(a) The list of arbitrators should be formed keeping in mind both the diversity and expertise.

(b) A training process for arbitrators belonging to different regions specially to developing countries should be undertaken by the institute.

This will help in maintaining the gender and geographical diversity of the arbitrators.

13. To improve the least developed countries in regards to ADR in the IORA region, the arbitration professionals, judges, and other practitioners should be trained and encouraged to undertake ADR to improve the regime. This includes becoming signatories to important treaties, improved arbitration legislation and encouraging the judiciary to take a pro arbitration stance. Furthermore, efforts must be undertaken to educate the parties from these regions about the benefits of the ADR mechanisms.

14. Based on the survey and the analysis of the Secondary Data – **Singapore**, **India** and **Mauritius** are the best choices out of the IORA members where IDReC can be set up. **Singapore** is an arbitration friendly jurisdiction with high support from both legislature and judiciary. However, due to presence of highly reputed institutions like SIAC and SMCA, it can be difficult to compete. India also forms an excellent choice for setting up the centre. With the government's aim and efforts to improve the arbitration regime, the judiciary taking a positive stance on arbitration along with availability of the required infrastructure, **India** can easily become the next arbitration hub and the correct destination for new IDReC Centre. **Mauritius** being the headquarters of IORA and home to secretariat, is also a natural choice for the IDReC

also due to presence of Centres like MARC. Along with the main Centre in Singapore, India or Mauritius, satellite offices in other prominent arbitration countries like Australia, UAE, France and Malaysia can be set up to increase the presence of IDReC. Administrative offices must be set up in countries like Comoros, Mozambique, Iran, Oman, Mauritius etc. It will help by providing the support to the main Centre and would further help in developing ADR regime in these nations by introducing training programmes to educate and improve the skills of the practitioners in the nation.

15. Entering a saturated market and winning trust of parties is going to be difficult yet achievable hurdle which could be achieved through understanding the existing gaps and providing a solution to them through IDReC rules and policies. Further, establishing collaborations with other arbitral institutions, a competitive fee structure, a modern infrastructure along with an effective and efficient administration will help the institution to develop reputation and gain market share quickly. This can only be solved by cooperation of the governments and judiciary and increasing awareness about the benefits of ADR in these regions.

IDEAS FOR COLLABORATION WITH OTHER INSTITUTES, ENTITIES AND GOVERNMENTS

For the development of the institution, collaboration with existing institutes especially in the IORA region can be an excellent step to ensure that the institute is able to showcase presence in the market, develop a symbiotic relationship with other institutes and attract clients. Certain ideas for collaboration with other institutes is as follows –

1. IDReC will be set in a particular IORA country. To ensure that the institute can showcase worldwide presence and is not saturated to only a particular region, IDReC can sign MOUs with existing Arbitration Institutes in various countries to allow for use of their infrastructure for conducting arbitration in that region in cases where venue of such arbitration is set in those countries or if the parties want to conduct the proceedings in that region. In return, those Institutes will also be able to use the infrastructure of IORA whenever they require. This will bolster the presence of the institute in multiple regions.

2. IDReC can also sign deals with certain centers which have hearing and conference spaces, but they rent out the spaces for different meetings, IDReC can sign a contract or MOU with them that they would provide IDReC a moderate discount for use of their services and IDReC will advocate the use of that center to its clients whenever an arbitration takes place in that region. It will help in growing profits for both entities.

3. IDReC can sign MOUs with government entities in which the government will promote the use of IDReC facilitates in that region through marketing and awareness raising efforts in return the institute will undertake efforts to foster educational, academic as well as training activities for the citizens of that region and help the government in training their employees in ADR practices. The government will benefit from increased business activities as that region will be considered a safe seat and venue for arbitration. Such an MOU can also be signed with different and less popular arbitration institutes where IDReC will sponsor and organize training programmes in the region to advance arbitration awareness in that region and the institute will provide hearing and conference spaces in return. This will help in advertisement of the institute and IDReC will benefit from the use of facilities.

4. A MOU can be signed with different institutes on development of the process of transferring of proceedings from one institute to another in cases where the parties want to transfer the proceedings to that institute. The process will determine various considerations and will help in smooth transfer of the proceedings through institutional cooperation.

5. A MOU can be signed with various institutions for allowing cross-institute consolidates of cases. A protocol can be developed where if the parties have multiple arbitration proceedings going on arising from same set of facts or from a single of transactions for consolidation of such proceedings. Currently, all the major institutes have provisions for dealing with Single Arbitration under Multiple Contracts, consolidation of cases or joinder of parties but it is only allowed within the institute. However, if a protocol for cross institute consolidation or joinder of parties can be developed, this will help in increasing efficacy of the international arbitration. For dealing with issues like which institute will take lead on the process or which proceedings should be continued considerations like value and start date of arbitration proceedings should be considered and it can be decided by a joint committee. The Monetary incentives can be divided in pre decided ratio or as per the case value of the cases. This will be beneficial to the institutes as well as the international arbitration community.

X. MODEL CLAUSE FOR IDREC

MODEL CLAUSE

All disputes, diffrences, claims or controversies arising out of, in relation to or in connection with this contract, including questions regarding its validity, existence, interpretation or termination shall be finally settled by Arbitration under the Rules of Arbitration of the IORA Dispute Resolution Center (IDReC), administered by the IORA Dispute Resolution Center (IDReC).

The number of Arbitrators shall be …

The Seat of Arbitration shall be …

The Applicable law shall be…

The law governing the Arbitration Agreement shall be …

The language of Arbitration shall be …

Internal Appeal/ Confidentiality etc. may be included …

[*The qualification of arbitrators, any other administrative requirements may be included if deemed appropriate*]

ANNEXURE I - PROPOSED DRAFT RULES

Proposed Draft Combined Rules are based on the SIAC Arbitration Rules, Proposed Maritime Draft Rules are based on SMCA Arbitration Rules and Proposed Investment Arbitration Rules are based on ICSID. These rules were selected based on effectiveness of these rules for timely dispute resolution. These Rules contain salient features which will help in efficient arbitration proceedings. -

1. Expedited Procedure Rules are provided to ensure that clients who require a quicker dispute resolution can opt for the same. The process is made as smooth and quick as possible to ensure faster resolution. However, there is a limit for amount for which a dispute can be expedited.

2. The Rules allow for consolidation of multiple disputes in cases where parties are same, and the disputes are a part of single transaction.

3. The tribunal has been provided with power to provide interim reliefs as well as emergency interim reliefs to ensure that appropriate interests of the Parties are ensured.

4. Parties are provided with 30 days for correction in Awards, interpretation of the Award or for any additional Awards.

5.For Investment Arbitration, special focus is done on formation of the Arbitral Tribunal due to high possibility of conflict of interests of the Arbitrators.

6. For Investment Arbitration, prehearing conferences rule is provided so that uncontested facts can be accepted so that the main proceedings can be smoother.

7. For Investment Arbitration, parties are allowed to file a revision or annulment of claims due to the nature of such disputes. In case, the request for annulment is accepted, then the dispute can be resubmitted to a new tribunal for an Award.

8. For Maritime Arbitration, Expedited Arbitral Determination of Collision Claims has been allowed to be done by a single arbitrator to ensure much faster dispute resolution so that the party can be correctly compensated.

9. Rule for Emergency Arbitration has been provided for matters which require immediate attention. The process is made as smooth and effective as possible to ensure that the interest of parties could be protected.

It is to be noted that these rules are prepared for general arbitration proceedings. To ensure greater flexibility to the clients, all the parties should be allowed to edit or change certain parts of the rules and tailor them to their dispute. The parties should be able to add or remove any procedure they think is necessary/unnecessary for their dispute. It will help parties to ensure a better and more effective dispute resolution. However, this should be done prior to the beginning of arbitration proceedings so that both arbitral tribunal and secretariat can be made aware of the same. This will be helpful in attracting clients as no major institute allows for tailoring of arbitration rules as per the requirements of the dispute.

ANNEXURE II - PROPOSED INFRASTRUCTURE OF IDREC

Infrastructure forms an important part of any good arbitration Centre. Every modern arbitration Centre requires modern and cutting-edge infrastructure to ensure the success of the institute. Majority of the respondents considered well developed infrastructure as one of the key factors while deciding for choice of arbitration institute.

Hence, to keep with the current times, IDReC center should have the following infrastructure to compete with the existing arbitral institutes.

1. A state-of-the-art hearing facilities

2. Hearing rooms

3. Breakout rooms

4. A business centre

5. A library

6. Dining areas

7. An auditorium

8. Facilities for Video Conferencing and witness examination

9. Simultaneous translation and transcription facilities

10. Live broadcast systems

11. Lounge for Arbitrators

12. Office space for the secretariat and the court

13. Board room

14. Deposit Holder Services

15. Server room

16. Housekeeping and guest services

17. Printing, scanning and documentation services

18. Digital document management services

19. Case Management Services (https://www.adraas.com)

20. Safe lockers for storage of Awards

ANNEXURE III - THE SURVEY QUESTIONNAIRE

Stakeholder Survey for 'Creation of an IORA Dispute Resolution Centre (IDReC)' Project

The Indian Ocean Rim Association (IORA) Secretariat is proud to announce its project on the comparative analysis of Alternative Dispute Resolution mechanisms within the IORA region, with a special focus on Maritime and Investment disputes. The objective of this study is to evaluate the need for a specialized Alternative Dispute Resolution (ADR) Centre in the IORA region. It also aims to provide fact-based finding for the establishment of such Centre and to determine the modalities for establishing such Centre based on the global best practices and propose methods to align it with the needs and practices of supply chain and trade across the IORA region.

This survey constitutes Phase I of the research and is aimed at getting an overview of the ADR practices in the IORA region and the workings of Institutions in this region. The findings of this survey will thus be the basis of Phase II of this research i.e. the Qualitative Analysis.

We invite you to kindly submit your inputs. We would also like to take this opportunity to thank you in advance, and to thank

our partnering organizations for their feedback and guidance.

* Required

Email *

Section 1

Contact Details

This section captures your contact information. This information will be kept strictly confidential and used only for the purpose of this study and will not be shared for any marketing and other purposes.

1. Name and title *

2. Organisation/ Department/ ADR Centre

3. Job Title

4. Area of Work (you may fill this survey multiple times for every area of your work) *

(Mark only one oval.)

- Counsel (Private Practice)
- ADR Institution
- Government
- Arbitrator
- Law Firm
- In house counsel
- Consultant/Academician Other:

5. In which Industry does your organisation operate *

(Mark only one oval).

- Automobile
- Aviation
- BFSI - Banking Financial Services and Insurance
- Construction
- Defence Manufacturing

- [ ] Education
- [ ] Engineering
- [ ] Healthcare
- [ ] IT & BPM
- [ ] Media & Sports
- [ ] Maritime
- [ ] Metals & Mining
- [ ] Legal
- [ ] Oil and Gas
- [ ] Pharmaceuticals
- [ ] Port & Shipping
- [ ] Renewable Energy
- [ ] Telecom
- [ ] Thermal Power
- [ ] Transportation
- [ ] Other

6. In which region(s) do you practice? *

(Check all that apply.)

- [ ] Africa
- [ ] Asia-Pacific
- [ ] Caribbean/ Latin America

- Europe
- Middle east
- North America
- IORA Region
- Australia

Section 2

ADR Experience: Arbitration and Mediation

This section captures the experience of various stakeholders in order to relate the recommendations to the experiences.

7. What is the subject-matter of your expertise? *

(Check all that apply.)

- Commercial Disputes
- Investment Disputes
- Maritime Disputes
- Construction Disputes

Other: _____

8. In which of the following capacity do you act (in addition to being an Arbitrator and/or Mediator)?

(Mark only one oval.)

- Advocate/Solicitor/Barrister/Attorney
- In-House Counsel
- Law Firm Professional

- [ ] Government Counsel
- [ ] Subject Matter Expert
- [ ] Quantum Expert

Other: _____

9. Over the past five years, approximately how many ADR proceedings have you personally been involved in? *

(Mark only one oval.)

- [ ] None
- [ ] 1-5
- [ ] 6-15
- [ ] 16-30
- [ ] 30+

10. Over the past five years, approximately how many ADR proceedings has your organisation been involved in?

(Mark only one oval.)

- [ ] None
- [ ] 1-10
- [ ] 11-25
- [ ] 26-75
- [ ] 75+

11. How many times have you been appointed as an arbitrator in an International arbitration during the past five years?

(Mark only one oval.)

- None
- 1-5
- 6-10
- 11-20
- 20-50

12. How many times have you been appointed as a mediator for an International dispute?

(Mark only one oval.)

- None
- 1-5
- 6-10
- 11-20
- 20-50
- 50+

Section 3

Country-Specific Questions

This section aims to gather inputs in respect of practice of ADR in your Country.

13. Does your country have a specialized legislation/ law for ADR processes (Eg.: arbitration, mediation, conciliation etc.)? *

(Mark only one oval.)

Yes

No

14. If you answered yes in the previous question, please name the relevant legislations.

15. Which of the following conventions has your government ratified/ adopted? Select all that apply. *

(Check all that apply.)

New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention)

United Nations Convention on International Settlement Agreements Resulting from Mediations, 2018 (Singapore Mediation Convention) ICSID Convention

UNCITRAL Model Law on International Commercial Arbitration UNCITRAL Model Law on International Commercial Mediation International Sale of Goods (CISG)

Geneva Convention on the Execution of Foreign Arbitral Award

16. Does your country have a Model Bilateral Investment Treaty agreement for attracting foreign investors? *

(Mark only one oval.)

Yes

No

17. How many Investment Arbitration cases have been initiated against your Country?

(Mark only one oval.)

- None
- 1 to 10
- 10 to 25
- 25 to 50
- 50 to 100
- More than 100
- Not Aware

18. Do you think that a robust Investment Protection legislation in the Country can prevent Investment Arbitrations? *

(Mark only one oval.)

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

19. What are some of the biggest challenges to cross-border trade in your country? Select all that apply. *

(Check all that apply.)

- Lack of local market expertise
- Lack of Shipping and logistics infrastructure
- Unfavourable trade legislations and policies

- [ ] High overhead costs in taxes and miscellaneous
- [ ] Difficulties in execution of contracts
- [ ] Lack of courts and proper redressal mechanism for resolution of disputes
- [ ] Lack of developed trade facilities in the Country

Other

20. What are some of the biggest challenges to maritime trade in your country? Select all that apply. *

(Check all that apply.)

- [ ] Lack of evolved maritime clusters and port facilities Lack of specialised maritime laws and legislation
- [ ] Lack of infrastructural facilities for ship owners and freight forwarders Excessive control by authorities
- [ ] Lack of transportation and connectivity

Other

21. What are some of the biggest challenges faced by your country in attracting Foreign Direct Investments (FDI)? *

(Check all that apply.)

- [ ] Lack of favourable policies for investors Absence of a model BIT
- [ ] Lack of adequate redressal mechanisms for investment disputes Rapidly changing legal policies
- [ ] Legal/Political Uncertainty
- [ ] Lack of enforcement of foreign awards Non signatory to international conventions

Other

22. In your opinion, what are the three most pressing issues in your country that need to be resolved to strengthen ADR mechanisms? *

(Check all that apply.)

- ◯ Lack of specialised arbitration laws Lack of specialised mediation laws
- ◯ Lack of a National Association for ADR professionals
- ◯ Non-ratification of the New York Convention and/or Singapore Mediation Convention
- ◯ Difficulty in enforcing interim measures or emergency arbitration awards in local courts
- ◯ Legal/Political Uncertainty
- ◯ Unfavourable attitude of the judicial bodies towards ADR practices
- ◯ Other _____

Section 4

Services, case management and outreach of ADR centre in your country

This section aims to capture the availability of ADR institution in your jurisdiction and the benefits it has provided to the dispute resolution ecosystem in your country. You can answer this section on behalf of the ADR centre of your country to the extent possible or forward the survey to the institution for answering it.

23. What is the most preferred mode of alternate dispute resolution in your country ? *

(Mark only one oval.)

- ◯ Arbitration
- ◯ Mediation
- ◯ Conciliation
- ◯ Other _____

24. What is the name of the preferred ADR centre in your country? Use NONE if no centre exists. *

25. Which ADR services does these Centres provide? Select all that apply.

(Check all that apply.)

- ◯ Arbitration
- ◯ Mediation
- ◯ Conciliation

Other

26. What type of services are provided by the Centre? *

(Check all that apply.)

- ◯ Acts as an Appointing Authority in ad hoc matters
- ◯ Administration of dispute resolution processes
- ◯ Digital Document Services
- ◯ Fund-holding services
- ◯ In-person hearing facilities
- ◯ Innovative Technology for monitoring of arbitrations and mediations
- ◯ Online Dispute Resolution services
- ◯ Real Time Transcription
- ◯ Special Tools for Case management

- [ ] Third Party Funding
- [ ] Virtual-hearing facilities

Other

27. What types of subject-matter disputes are referred to this Centre?

(Check all that apply.)

- [ ] Domestic/ Foreign trade
- [ ] Foreign Investment Maritime
- [ ] Oil and Gas
- [ ] Construction
- [ ] Energy and Power
- [ ] Finance
- [ ] IT and Technology
- [ ] All of the above

Other

28. Select that is most relevant to the caseload received by this Centre?

(Mark only one oval.)

- [ ] Both or all parties are domestic
- [ ] At least one party is international
- [ ] All parties are international

29. Which country remains the biggest user of this Centre's services?

30. What is the average amount in dispute in the cases administered by this Centre?

(Mark only one oval.)

- Less than USD 100,000 USD 100,001-500,000
- USD 500,001-1,000,000
- USD 1,000,001-10,000,000
- USD 10,000,000+
- Not aware

31. How many times, in the past 5 years, have the arbitral awards from this Centre been challenged?

(Mark only one oval.)

- None
- 1 to 10
- 10 to 50
- 50 to 100
- More than 100
- Not aware

32. Does this Centre maintain a panel or a database of arbitrators, mediators and/or industry experts?

(Mark only one oval.)

- [ ] Yes
- [ ] No

33. What is the success rate of mediations/ conciliations administered by this Centre? (if administered)

(Mark only one oval.)

- [ ] 0-25%
- [ ] 25-50%
- [ ] 50-75%
- [ ] 75-100%
- [ ] Not applicable

34. Please provide the link to the latest Annual/Case Statistics Report.

35. Which of the following outreach, advocacy and capacity-building initiatives has this Centre engaged in?

(Check all that apply.)

- [ ] ADR trainings
- [ ] ADR certificate and/or accreditation programs
- [ ] Conferences and panel discussions

Online panel discussions and/or webinars

Other

36. Which of the following specialised provisions are included in the Centre's rules? Select all that apply.

(Check all that apply.)

Emergency arbitration

Expedited procedure for small claims Scrutiny of arbitral awards

Document-only arbitrations Consolidation of claims Joinder of parties

Rules for Small Value Claims

Other

37. Which of the following fee structure is adopted by this Centres? *

(Mark only one oval.)

Fee per hearing

Fee ad valorem

Fee per hour

Other

38. If you chose the first option in the previous question, please specify what amount (arbitrator and administrative fee) is charged per hearing/per hour by the Centre. If you chose other options, please write 'Not Applicable'. Alternately provide a link to your case fee schedule.

39. How likely is your Centre to receive cases for administration under the Expedited Procedure?

(Mark only one oval.)

- Highly Likely
- Likely
- Rarely
- Unlikely
- Highly Unlikely

40. Which of these provisions are you likely to undertake to adapt to the impact of the Covid-19 pandemic on the procedural aspects of ADR? Select all that apply.

(Check all that apply.)

- Virtual hearings
- Document-only arbitrations
- Online Dispute Resolution
- Online document-filings systems Online case-management systems
- Mixed-mode dispute resolution (Mediation/Conciliation before arbitration/litigation)

Other

Section 5

ADR: Practices, preferences and considerations

This section aims to understand your preferences in choosing ADR mechanisms and reasons for the same, and also, the kinds of disputes that you traditionally engage in.

41. Which is the most preferred seat in the international arbitrations (including maritime and investment) that you have participated in? *

(Mark only one oval.)

- Australia
- Beijing
- Dubai
- Egypt
- Geneva
- Greece
- Hongkong
- London
- Mauritius
- Mumbai
- New Delhi
- New York
- Paris
- Sao Paulo
- Shanghai
- Singapore
- South Africa
- Stockholm
- Other

42. What are your/ your organisation's most preferred arbitral institution for resolving international disputes (cross-border trade, maritime or investment)? *

(Mark only one oval.)

- AFSA
- CIETAC
- EMAC
- HKIAC
- ICC
- ICDR
- ICSID
- ISTAC
- LCIA
- LMAA
- MARC
- MCIA
- PCA
- SCC
- SCMA
- SIAC
- Adhoc Arbitration

Other

43. What was the average time taken to resolve your dispute through the above-mentioned arbitral institution? *

(Mark only one oval.)

- Less than 6 months
- 6 to 12 months
- 12 to 18 months
- 18 to 24 months
- 24 to 36 months
- More than 36 months
- Not Aware

44. What are primary considerations while opting for an ADR institution for administering your disputes? *

(Check all that apply.)

- Reputation and years of experience
- Geographical proximity
- Existence of specialized arbitration and/or mediation rules
- Cost-effectiveness
- Specialized provisions like emergency arbitrations or fast-track arbitrations
- Expertise and diversity of pool of arbitrators and mediators
- Expertise of the Secretariat and/or the Board
- Other

45. As a party or a counsel, which procedural aspects would you willingly forego to ensure cost-efficient and faster arbitration? Select up to three options. *

(Mark only one Box per row.)

	Cross-examination	Early case management meetings	Expert testimonies	In-person hearings	More than one round of written submissions	Oral hearings on procedural issues	Unlimited Length of the written submissions
Row 1							
Row 2							
Row 3							

46. Do you agree that internal appeals procedure in an institution's arbitral rules would make it more adaptable to international arbitrations? *

(Internal appeal refers to an appeal to second tier arbitral tribunal instead of courts)

(Mark only one oval.)

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

47. How likely are you to prefer a virtual hearing over an in-person hearing? *

(Mark only one oval.)

- Highly Likely
- Likely
- Rarely
- Unlikely
- Highly Unlikely

48. How likely are you to refer your dispute to an expedited mechanism to save costs and time? *

(Mark only one oval.)

- Highly Likely
- Likely
- Rarely
- Unlikely
- Highly Unlikely

49. Does your organization have specific policies on dispute resolution (Eg.: default clauses, explicitly stated preference for arbitration, national courts or administrative tribunals, mediation etc.)? *

(Mark only one oval.)

- Yes
- No

50. Prior to Covid-19, what was your preferred method of resolving international disputes? *

(Mark only one oval.)

- Cross-border Litigation
- Arbitration
- Mediation
- Mixed-Mode Dispute Resolution (Mediation before arbitration/litigation)

Other

51. Post Covid-19, what is likely to be your preferred method of resolving international disputes? *

(Mark only one oval.)

- Cross-border Litigation
- Arbitration
- Mediation
- Mixed-Mode Dispute Resolution (Mediation before arbitration/litigation)

Other

52. What factors affect your choice of Dispute Resolution mechanism? *

(Check all that apply.)

- Cost effectiveness
- Time
- Legally binding nature of the mode of dispute resolution
- Ease of enforceability
- Confidentiality

Other

53. If you or your organization have participated in ad hoc arbitrations, which of the following arbitration rules were most used?

(Mark only one oval.)

- UNCITRAL Arbitration Rules
- London Maritime Arbitration Association Terms

National arbitration laws

The Construction Industry Model Arbitration Rules

Bespoke regimes agreed by parties

CPR Non-Administered Arbitration Rules

Other

54. In your opinion, which of the following changes will make arbitration more adaptable to international disputes, including maritime and investment disputes? Select all that apply. *

(Check all that apply.)

Defining minimum and maximum arbitral and administrative costs based on the claim amount Defined timelines for the conduct of arbitration

Possibility for more procedural flexibility

Dedicated pool of arbitrators with expertise in the subject-matters National/ Regional

Association for arbitrators

Other

55. In your opinion, should the ADR methods, like mediation or conciliation, be a compulsory pre-step before litigation or arbitration? *

(Mark only one oval.)

Yes, Mediation or conciliation should be compulsory pre-step before litigation or arbitration

No

Depends on the circumstances of the case

56. Please Provide reasons to support your previous answer.

57. Reforms in the existing international arbitration (including maritime and investment arbitration) regime can ensure greater consistency and efficiency. *

(Mark only one oval.)

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

Section 6

General Recommendations

The aim of this section is to understand what practices, in terms of ADR services and rules, would you recommend to ensure adaptability in resolving international disputes.

58. Which institution in your opinion has the most relevant and effective rules for Investment Arbitration? *

(Mark only one oval.)

- AFSA
- CIETAC
- EMAC

- HKIAC
- ICC
- ICDR
- ICSID
- ISTAC
- LCIA
- LMAA
- MARC
- MCIA
- PCA
- SCC
- SCMA
- SIAC
- Adhoc Arbitration

Other

59. Which institution in your opinion has the most relevant and effective rules for International Commercial Arbitration? *

(Mark only one oval.)

- AFSA
- CIETAC
- EMAC
- HKIAC

- ICC
- ICDR
- ICSID
- ISTAC
- LCIA
- LMAA
- MARC
- MCIA
- PCA
- SCC
- SCMA
- SIAC
- Adhoc Arbitration

Other

60. Which institution in your opinion has the most relevant and effective rules for Maritime Arbitration? *

(Mark only one oval.)

- AFSA
- CIETAC
- EMAC
- HKIAC
- ICC

- ICDR
- ICSID
- ISTAC
- LCIA
- LMAA
- MARC
- MCIA
- PCA
- SCC
- SCMA
- SIAC
- Adhoc Arbitration

Other

61. Do you agree that gender and geographical diversity are important among the pool of international arbitrators and mediators? *

(Mark only one oval.)

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

62. Recommend measures that ADR institutions can adopt to ensure such diversity?

63. What measures must existing and new ADR institutions take to ensure future adaptability? *

(Check all that apply.)

- [ ] Administrative and logistical support and facilities for online hearings
- [ ] Provision for secure online case management systems
- [ ] Panel of well-renowned, expert arbitrators and mediators
- [ ] Commitment to a more diverse pool of arbitrators and mediators
- [ ] Cost sanctions for delay by arbitrators and mediators
- [ ] Provision for expedited/fast-track dispute resolution
- [ ] Tailored dispute resolution provisions for more complex, multi-party claims Transparency of administrative processes
- [ ] Provision for scrutiny of arbitral awards/ settlement agreements before circulating to the parties
- [ ] Other

64. What adaptations would make a seat more attractive to arbitration users? *

(Check all that apply.)

- [ ] Ability to enforce interim measures ordered by arbitral tribunals in local courts

- [ ] Ability to enforce emergency arbitration awards in local courts
- [ ] Ease of enforcing agreements to arbitrate and arbitral awards
- [ ] Recognition of online or document-only arbitration by local courts
- [ ] Support for arbitration by local courts and judiciary
- [ ] Political certainty of the jurisdiction
- [ ] Availability of multi-lingual translators/interpreters Infrastructure
- [ ] Measures to increase diversity
- [ ] Third-party funding (non-recourse)

Other

65. What are the most important considerations while empanelling arbitrators, mediators and/or industry experts? *

(Check all that apply.)

- [ ] Availability
- [ ] Subject-matter expertise
- [ ] Years of experience
- [ ] Ethical conduct
- [ ] Accreditation from a specific institute Geographical and gender diversity

Other

Section 7

Specific Recommendations

The aim of this section is to provide insights specific to the IORA Initiative

66. Do you belong to an IORA country? *

(Mark only one oval.)

- Yes
- No

67. Which IORA country do you belong to?

(Mark only one oval.)

- Australia
- Bangladesh
- Comoros
- France
- India
- Indonesia
- Iran
- Kenya
- Madagascar
- Malaysia
- Maldives
- Mauritius
- Mozambique
- Oman

- Seychelles
- Singapore
- Somalia
- South Africa
- Sri Lanka
- Tanzania
- Thailand
- United Arab Emirates
- Yemen

68. Do you agree that an IORA initiative to foster closer cooperation between ADR institutions to facilitate the efficient and enforceable resolution of international disputes would be useful? *

(Mark only one oval.)

- Strongly Agree
- Agree
- Neutral
- Disagree
- Strongly Disagree

69. Do you think there is a need for specialised ADR Centre in the IORA region to address the disputes arising from trade in this region? *

(Mark only one oval.)

- Yes

- [ ] No

70. Out of International Commercial Arbitration, Maritime Arbitration or Investment Arbitration, which area is the least developed in the IORA region ? *

(Mark only one oval.)

- [ ] International Commercial Arbitration
- [ ] Maritime Arbitration
- [ ] Investment Arbitration

71. Which among the following is your most preferred seat for International Commercial Arbitration? *

(Mark only one oval.)

- [ ] Australia
- [ ] Bangladesh
- [ ] Comoros
- [ ] France
- [ ] India
- [ ] Indonesia
- [ ] Iran
- [ ] Kenya
- [ ] Madagascar
- [ ] Malaysia
- [ ] Maldives
- [ ] Mauritius

- Mozambique
- Oman
- Seychelles
- Singapore
- Somalia
- South Africa
- Sri Lanka
- Tanzania
- Thailand
- United Arab Emirates
- Yemen

72. Which among the following is your most preferred seat for Maritime Arbitration? *

(Mark only one oval.)

- Australia
- Bangladesh
- Comoros
- France
- India
- Indonesia
- Iran
- Kenya
- Madagascar

- Malaysia
- Maldives
- Mauritius
- Mozambique
- Oman
- Seychelles
- Singapore
- Somalia
- South Africa
- Sri Lanka
- Tanzania
- Thailand
- United Arab Emirates
- Yemen

73. Which is the preferred ADR mechanism in the above selected jurisdiction ?

(Mark only one oval.)

- Arbitration
- Mediation

Other

74. Which among the following is your most preferred seat for Investment Arbitration? *

(Mark only one oval.)

- [ ] Australia
- [ ] Bangladesh
- [ ] Comoros
- [ ] France
- [ ] India
- [ ] Indonesia
- [ ] Iran
- [ ] Kenya
- [ ] Madagascar
- [ ] Malaysia
- [ ] Maldives
- [ ] Mauritius
- [ ] Mozambique
- [ ] Oman
- [ ] Seychelles
- [ ] Singapore
- [ ] Somalia
- [ ] South Africa
- [ ] Sri Lanka
- [ ] Tanzania
- [ ] Thailand
- [ ] United Arab Emirates
- [ ] Yemen

75. Any improvements/modifications which you think are necessary in the above jurisdictions to improve the ADR regime

76. Do you agree that it is better to have combined rules under one institution or it is better to have separate specialised rules like Maritime, Investment and International Commercial Arbitration? *

(Mark only one oval.)

- Better to have combined rules under one institution
- Better to have separate specialised rules under one institution
- Better to have separate specialised rules under separate institutions

77. Which among the following has the least developed ADR regime? *

(Mark only one oval per row.)

Countries	Least Developed	Second Least Developed	Third Least Developed	Four Least Developed	Fifth Least Developed
Australia					
Bangladesh					
Comoros					
France					
India					
Indonesia					
Iran					
Kenya					
Madagascar					
Malaysia					
Maldives					
Mauritius					
Mozambique					
Oman					

Seychelles					
Singapore					
Somalia					
South Africa					
Sri Lanka					
Tanzania					
Thailand					
United Arab Emirates					
Yemen					

78. What are your recommendations to improve the ADR regime in the above selected countries ?

79. Which among the following have BEST developed ADR regime?

(Check only one box per row.)

Countries	Best	Second Best	Third Best	Four Best	Fifth Best
Australia					
Bangladesh					
Comoros					
France					
India					
Indonesia					
Iran					
Kenya					
Madagascar					
Malaysia					
Maldives					
Mauritius					

Mozambique					
Oman					
Seychelles					
Singapore					
Somalia					
South Africa					
Sri Lanka					
Tanzania					
Thailand					
United Arab Emirates					
Yemen					

80. What do you think will be the biggest limitations faced in regards to the IORA Initiative?

*

81. Which international organisations can help in promoting Maritime Arbitration in IORA region?

82. Which international organisations can help in promotion of Investment Arbitration in IORA region?

83. Do you agree to volunteer for an in-person interaction after the conduct of this survey? Interaction will be conducted online for about 30 minutes. Interaction will be used to understand the basis of survey findings. *

(Mark only one oval.)

Yes

No

84. Do you consent for your name to be included in the final report? *

(Mark only one oval.)

Yes

No

85. Are there any general comments you would like to add to the survey?

ANNEXURE IV - DRAFT INSTITUTIONAL RULES

ARBITRATION RULES

1. Scope of Application and Interpretation

1.1 Where the parties have agreed to refer their disputes to IDREC for arbitration or to arbitration in accordance with the IDREC Rules, the parties shall be deemed to have agreed that the arbitration shall be conducted pursuant to and administered by IDREC in accordance with these Rules.

1.2 In these Rules:

"Award" includes a partial, interim or final award and an award of an Emergency Arbitrator;

"Committee of the Court" means a committee consisting of not less than two members of the Court appointed by the President (which may include the President);

"Court" means the Court of Arbitration of IDREC and includes a Committee of the Court;

"Emergency Arbitrator" means an arbitrator appointed in accordance with paragraph 3 of Schedule 1;

"Practice Notes" mean the guidelines published by the Registrar from time to time to supplement, regulate and implement these Rules;

"President" means the President of the Court and includes any Vice President and the Registrar;

"Registrar" means the Registrar of the Court and includes any Deputy Registrar;

"Rules" means the Arbitration Rules of the IORA Dispute Resolution Centre

"IDREC" means the IORA Dispute Resolution Centre; and

"Tribunal" includes a sole arbitrator or all the arbitrators where more than one arbitrator is appointed.

Any pronoun in these Rules shall be understood to be gender-neutral. Any singular noun shall be understood to refer to the plural in the appropriate circumstances.

2. Notice and Calculation of Periods of Time

2.1 For the purposes of these Rules, any notice, communication or proposal shall be in writing. Any such notice, communication or proposal may be delivered by hand, registered post or courier service, or transmitted by any form of electronic communication (including electronic mail and facsimile), or delivered by any other appropriate means that provides a record of its delivery. Any notice, communication or proposal shall be deemed to have been received if it is delivered:

(a) to the addressee personally or to its authorised representative;

(b) to the addressee's habitual residence, place of business or designated address;

(c) to any address agreed by the parties;

(d) according to the practice of the parties in prior dealings; or

(e) if, after reasonable efforts, none of these can be found, then at the addressee's last-known residence or place of business.

2.2 Any notice, communication or proposal shall be deemed to have been received on the day it is delivered in accordance with Rule 2.1.

2.3 For the purpose of calculating any period of time under these Rules, such period shall begin to run on the day following the day when a notice, communication or proposal is deemed to have been received. Unless the Registrar or the Tribunal determines otherwise, any period of time under these Rules is to be calculated in accordance with Central Standard Time (GMT -6).

2.4 Any non-business days at the place of receipt shall be included in calculating any period of time under these Rules. If the last day of any period of time under these Rules is not a business day at the place of receipt in accordance with Rule 2.1, the period is extended until the first business day which follows.

2.5 The parties shall file with the Registrar a copy of any notice, communication or proposal concerning the arbitral proceedings.

2.6 Except as provided in these Rules, the Registrar may at any time extend or abbreviate any time limits prescribed under these Rules.

3. Notice of Arbitration

3.1 A party wishing to commence an arbitration under these Rules (the "Claimant") shall file with the Registrar a Notice of Arbitration which shall include:

(a) a demand that the dispute be referred to arbitration;

(b) the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of the parties to the arbitration and their representatives, if any;

(c) a reference to the arbitration agreement invoked and a copy of the arbitration agreement;

(d) a reference to the contract or other instrument (e.g. investment treaty) out of or in relation to which the dispute arises and, where possible, a copy of the contract or other instrument;

(e) a brief statement describing the nature and circumstances of the dispute, specifying the relief claimed and, where possible, an initial quantification of the claim amount;

(f) a statement of any matters which the parties have previously agreed as to the conduct of the arbitration or with respect to which the Claimant wishes to make a proposal;

(g) a proposal for the number of arbitrators if not specified in the arbitration agreement;

(h) unless otherwise agreed by the parties, the nomination of an arbitrator if the arbitration agreement provides for three arbitrators, or a proposal for a sole arbitrator if the arbitration agreement provides for a sole arbitrator;

(i) any comment as to the applicable rules of law;

(j) any comment as to the language of the arbitration; and

(k) payment of the requisite filing fee under these Rules.

3.2 The Notice of Arbitration may also include the Statement of Claim referred to in Rule 20.2.

3.3 The date of receipt of the complete Notice of Arbitration by the Registrar shall be deemed to be the date of commencement of the arbitration. For the avoidance of doubt, the Notice of Arbitration is deemed to be complete when all the requirements of Rule 3.1 and Rule 6.1(b) (if applicable) are fulfilled or when the Registrar determines that there has been substantial compliance with such requirements. IDREC shall notify the parties of the commencement of the arbitration.

3.4 The Claimant shall, at the same time as it files the Notice of Arbitration with the Registrar, send a copy of the Notice of Arbitration to the Respondent, and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

4. **Response** to **the Notice of Arbitration**

4.1 The Respondent shall file a Response with the Registrar within 14 days of receipt of the Notice of Arbitration. The Response shall include:

(a) a confirmation or denial of all or part of the claims, including, where possible, any plea that the Tribunal lacks jurisdiction;

(b) a brief statement describing the nature and circumstances of any counterclaim, specifying the relief claimed and, where possible, an initial quantification of the counterclaim amount;

(c) any comment in response to any statements contained in the Notice of Arbitration under Rule 3.1 or any comment with respect to the matters covered in such Rule;

(d) unless otherwise agreed by the parties, the nomination of an arbitrator if the arbitration agreement provides for three arbitrators or, if the arbitration agreement provides for a sole arbitrator, comments on the Claimant's proposal for a sole arbitrator or a counter-proposal; and

(e) payment of the requisite filing fee under these Rules for any counterclaim.

4.2 The Response may also include the Statement of Defence and a Statement of Counterclaim, as referred to in Rule 20.3 and Rule 20.4.

4.3 The Respondent shall, at the same time as it files the Response with the Registrar, send a copy of the Response to the Claimant, and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

5. Expedited Procedure

5.1 Prior to the constitution of the Tribunal, a party may file an application with the Registrar for the arbitral proceedings to be conducted in accordance with the Expedited Procedure under this Rule, provided that any of the following criteria is satisfied:

(a) the amount in dispute does not exceed the equivalent amount of $4,000,000, representing the aggregate of the claim, counterclaim and any defence of set-off;

(b) the parties so agree; or

(c) in cases of exceptional urgency.

The party applying for the arbitral proceedings to be conducted in accordance with the Expedited Procedure under this Rule 5.1 shall, at the same time as it files an application for the proceedings to be conducted in accordance with the Expedited Procedure with the Registrar, send a copy of the application to the other party and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

5.2 Where a party has filed an application with the Registrar under Rule 5.1, and where the President determines, after considering the views of the parties, and having regard to the circumstances of the case, that the arbitral proceedings shall be conducted in accordance with the Expedited Procedure, the following procedure shall apply:

(a) the Registrar may abbreviate any time limits under these Rules;

(b) the case shall be referred to a sole arbitrator, unless the President determines otherwise;

(c) the Tribunal may, in consultation with the parties, decide if the dispute is to be decided on the basis of documentary evidence only, or if a hearing is required for the examination of any witness and expert witness as well as for any oral argument;

(d) the final Award shall be made within six months from the date when the Tribunal is constituted unless, in exceptional circumstances, the Registrar extends the time for making such final Award; and

(e) the Tribunal may state the reasons upon which the final Award is based in summary form, unless the parties have agreed that no reasons are to be given.

5.3 By agreeing to arbitration under these Rules, the parties agree that, where arbitral proceedings are conducted in accordance with the Expedited Procedure under this Rule 5, the rules and procedures set forth in Rule 5.2 shall apply even in cases where the arbitration agreement contains contrary terms.

5.4 Upon application by a party, and after giving the parties the opportunity to be heard, the Tribunal may, having regard to any further information as may subsequently become available, and in consultation with the Registrar, order that the arbitral

proceedings shall no longer be conducted in accordance with the Expedited Procedure. Where the Tribunal decides to grant an application under this Rule 5.4, the arbitration shall continue to be conducted by the same Tribunal that was constituted to conduct the arbitration in accordance with the Expedited Procedure.

6. Multiple Contracts

6.1 Where there are disputes arising out of or in connection with more than one contract, the Claimant may:

(a) file a Notice of Arbitration in respect of each arbitration agreement invoked and concurrently submit an application to consolidate the arbitrations pursuant to Rule 8.1; or

(b) file a single Notice of Arbitration in respect of all the arbitration agreements invoked which shall include a statement identifying each contract and arbitration agreement invoked and a description of how the applicable criteria under Rule 8.1 are satisfied. The Claimant shall be deemed to have commenced multiple arbitrations, one in respect of each arbitration agreement invoked, and the Notice of Arbitration under this Rule 6.1(b) shall be deemed to be an application to consolidate all such arbitrations pursuant to Rule 8.1.

6.2 Where the Claimant has filed two or more Notices of Arbitration pursuant to Rule 6.1(a), the Registrar shall accept payment of a single filing fee under these Rules for all the arbitrations sought to be consolidated. Where the Court rejects the application for consolidation, in whole or in part, the Claimant shall be required to make payment of the requisite filing fee under these Rules in respect of each arbitration that has not been consolidated.

6.3 Where the Claimant has filed a single Notice of Arbitration pursuant to Rule 6.1(b) and the Court rejects the application for consolidation, in whole or in part, it shall file a Notice of Arbitration in respect of each arbitration that has not been consolidated, and the Claimant shall be required to make payment of the requisite filing fee under these Rules in respect of each arbitration that has not been consolidated.

7. Joinder of Additional Parties

7.1 Prior to the constitution of the Tribunal, a party or non-party to the arbitration may file an application with the Registrar for one or more additional parties to be joined in an arbitration pending under these Rules as a Claimant or a Respondent, if any of the following criteria is satisfied:

(a) the additional party to be joined is prima facie bound by the arbitration agreement; or

(b) all parties, including the additional party to be joined, have consented to the joinder of the additional party.

7.2 An application for joinder under Rule 7.1 shall include:

(a) the case reference number of the pending arbitration;

(b) the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of all parties, including the additional party to be joined, and their representatives, if any, and any arbitrators who have been nominated or appointed in the pending arbitration;

(c) whether the additional party is to be joined as a Claimant or a Respondent;

(d) the information specified in Rule 3.1(c) and Rule 3.1(d);

(e) if the application is being made under Rule 7.1(b), identification of the relevant agreement and, where possible, a copy of such agreement; and

(f) a brief statement of the facts and legal basis supporting the application.

The application for joinder is deemed to be complete when all the requirements of this Rule 7.2 are fulfilled or when the Registrar determines that there has been substantial compliance with such requirements. IDREC shall notify all parties, including the additional party to be joined, when the application for joinder is complete.

7.3 The party or non-party applying for joinder under Rule 7.1 shall, at the same time as it files an application for joinder with the Registrar, send a copy of the

application to all parties, including the additional party to be joined, and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

7.4 The Court shall, after considering the views of all parties, including the additional party to be joined, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for joinder under Rule 7.1. The Court's decision to grant an application for joinder under this Rule 7.4 is without prejudice to the Tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision. The Court's decision to reject an application for joinder under this Rule 7.4, in whole or in part, is without prejudice to any party's or non-party's right to apply to the Tribunal for joinder pursuant to Rule 7.8.

7.5 Where an application for joinder is granted under Rule 7.4, the date of receipt of the complete application for joinder shall be deemed to be the date of commencement of the arbitration in respect of the additional party.

7.6 Where an application for joinder is granted under Rule 7.4, the Court may revoke the appointment of any arbitrators appointed prior to the decision on joinder. Unless otherwise agreed by all parties, including the additional party joined, Rule 9 to Rule 12 shall apply as appropriate, and the respective timelines thereunder shall run from the date of receipt of the Court's decision under Rule 7.4.

7.7 The Court's decision to revoke the appointment of any arbitrator under Rule 7.6 is without prejudice to the validity of any act done or order or Award made by the arbitrator before his appointment was revoked.

7.8 After the constitution of the Tribunal, a party or non-party to the arbitration may apply to the Tribunal for one or more additional parties to be joined in an arbitration pending under these Rules as a Claimant or a Respondent, provided that any of the following criteria is satisfied:

(a) the additional party to be joined is prima facie bound by the arbitration agreement; or

(b) all parties, including the additional party to be joined, have consented to the joinder of the additional party.

Where appropriate, an application to the Tribunal under this Rule 7.8 may be filed with the Registrar.

7.9 Subject to any specific directions of the Tribunal, the provisions of Rule 7.2 shall apply, mutatis mutandis, to an application for joinder under Rule 7.8.

7.10 The Tribunal shall, after giving all parties, including the additional party to be joined, the opportunity to be heard, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for joinder under Rule 7.8. The Tribunal's decision to grant an application for joinder under this Rule 7.10 is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision.

7.11 Where an application for joinder is granted under Rule 7.10, the date of receipt by the Tribunal or the Registrar, as the case may be, of the complete application for joinder shall be deemed to be the date of commencement of the arbitration in respect of the additional party.

7.12 Where an application for joinder is granted under Rule 7.4 or Rule 7.10, any party who has not nominated an arbitrator or otherwise participated in the constitution of the Tribunal shall be deemed to have waived its right to nominate an arbitrator or otherwise participate in the constitution of the Tribunal, without prejudice to the right of such party to challenge an arbitrator pursuant to Rule 14.

7.13 Where an application for joinder is granted under Rule 7.4 or Rule 7.10, the requisite filing fee under these Rules shall be payable for any additional claims or counterclaims.

8. **Consolidation**

8.1 Prior to the constitution of any Tribunal in the arbitrations sought to be consolidated, a party may file an application with the Registrar to consolidate two or more arbitrations pending under these Rules into a single arbitration, if any of the following criteria is satisfied in respect of the arbitrations to be consolidated:

(a) all parties have agreed to the consolidation;

(b) all the claims in the arbitrations are made under the same arbitration agreement; or

(c) the arbitration agreements are compatible, and:

(i) the disputes arise out of the same legal relationship(s);

(ii) the disputes arise out of contracts consisting of a principal contract and its ancillary contract(s); or

(iii) the disputes arise out of the same transaction or series of transactions.

8.2 An application for consolidation under Rule 8.1 shall include:

(a) the case reference numbers of the arbitrations sought to be consolidated;

(b) the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of all parties and their representatives, if any, and any arbitrators who have been nominated or appointed in the arbitrations sought to be consolidated;

(c) the information specified in Rule 3.1(c) and Rule 3.1(d);

(d) if the application is being made under Rule 8.1(a), identification of the relevant agreement and, where possible, a copy of such agreement; and

(e) a brief statement of the facts and legal basis supporting the application.

8.3 The party applying for consolidation under Rule 8.1 shall, at the same time as it files an application for consolidation with the Registrar, send a copy of the application to all parties and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

8.4 The Court shall, after considering the views of all parties, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for consolidation under Rule 8.1. The Court's decision to grant an application for consolidation under this Rule 8.4 is without prejudice to the Tribunal's

power to subsequently decide any question as to its jurisdiction arising from such decision. The Court's decision to reject an application for consolidation under this Rule 8.4, in whole or in part, is without prejudice to any party's right to apply to the Tribunal for consolidation pursuant to Rule 8.7. Any arbitrations that are not consolidated shall continue as separate arbitrations under these Rules.

8.5 Where the Court decides to consolidate two or more arbitrations under Rule 8.4, the arbitrations shall be consolidated into the arbitration that is deemed by the Registrar to have commenced first, unless otherwise agreed by all parties or the Court decides otherwise having regard to the circumstances of the case.

8.6 Where an application for consolidation is granted under Rule 8.4, the Court may revoke the appointment of any arbitrators appointed prior to the decision on consolidation. Unless otherwise agreed by all parties, Rule 9 to Rule 12 shall apply as appropriate, and the respective timelines thereunder shall run from the date of receipt of the Court's decision under Rule 8.4.

8.7 After the constitution of any Tribunal in the arbitrations sought to be consolidated, a party may apply to the Tribunal to consolidate two or more arbitrations pending under these Rules into a single arbitration, provided that any of the following criteria is satisfied in respect of the arbitrations to be consolidated:

(a) all parties have agreed to the consolidation;

(b) all the claims in the arbitrations are made under the same arbitration agreement, and the same Tribunal has been constituted in each of the arbitrations or no Tribunal has been constituted in the other arbitration(s); or

(c) the arbitration agreements are compatible, the same Tribunal has been constituted in each of the arbitrations or no Tribunal has been constituted in the other arbitration(s), and:

(i) the disputes arise out of the same legal relationship(s);

(ii) the disputes arise out of contracts consisting of a principal contract and its ancillary contract(s); or

(iii) the disputes arise out of the same transaction or series of transactions.

8.8 Subject to any specific directions of the Tribunal, the provisions of Rule 8.2 shall apply, mutatis mutandis, to an application for consolidation under Rule 8.7.

8.9 The Tribunal shall, after giving all parties the opportunity to be heard, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for consolidation under Rule 8.7. The Tribunal's decision to grant an application for consolidation under this Rule 8.9 is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision. Any arbitrations that are not consolidated shall continue as separate arbitrations under these Rules.

8.10 Where an application for consolidation is granted under Rule 8.9, the Court may revoke the appointment of any arbitrators appointed prior to the decision on consolidation.

8.11 The Court's decision to revoke the appointment of any arbitrator under Rule 8.6 or Rule 8.10 is without prejudice to the validity of any act done or order or Award made by the arbitrator before his appointment was revoked.

8.12 Where an application for consolidation is granted under Rule 8.4 or Rule 8.9, any party who has not nominated an arbitrator or otherwise participated in the constitution of the Tribunal shall be deemed to have waived its right to nominate an arbitrator or otherwise participate in the constitution of the Tribunal, without prejudice to the right of such party to challenge an arbitrator pursuant to Rule 14.

9. Number and Appointment of Arbitrators

9.1 A sole arbitrator shall be appointed in any arbitration under these Rules unless the parties have otherwise agreed; or it appears to the Registrar, giving due regard to any proposals by the parties, that the complexity, the quantum involved or other relevant circumstances of the dispute, warrants the appointment of three arbitrators.

9.2 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 by the arbitrators already appointed, that agreement shall be deemed an agreement to nominate an arbitrator under these Rules.

9.3 In all cases, the arbitrators nominated by the parties, or by any third person including by the arbitrators already appointed, shall be subject to appointment by the President in his discretion.

9.4 The President shall appoint an arbitrator as soon as practicable. Any decision by the President to appoint an arbitrator under these Rules shall be final and not subject to appeal.

9.5 The President may appoint any nominee whose appointment has already been suggested or proposed by any party.

9.6 The terms of appointment of each arbitrator shall be fixed by the Registrar in accordance with these Rules and any Practice Notes for the time being in force, or in accordance with the agreement of the parties.

10. **Sole Arbitrator**

10.1 If a sole arbitrator is to be appointed, either party may propose to the other party the names of one or more persons to serve as the sole arbitrator. Where the parties have reached an agreement on the nomination of a sole arbitrator, Rule 9.3 shall apply.

10.2 If within 21 days after the date of commencement of the arbitration, or within the period otherwise agreed by the parties or set by the Registrar, 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 appoint the sole arbitrator.

11. Three Arbitrators

11.1 If three arbitrators are to be appointed, each party shall nominate one arbitrator.

11.2 If a party fails to make a nomination of an arbitrator within 14 days after receipt of a party's nomination of an arbitrator, or within the period otherwise agreed by the parties or set by the Registrar, the President shall proceed to appoint an arbitrator on its behalf.

11.3 Unless the parties have agreed upon another procedure for appointing the third arbitrator, or if such agreed procedure does not result in a nomination within the period agreed by the parties or set by the Registrar, the President shall appoint the third arbitrator, who shall be the presiding arbitrator.

12. Multi-Party Appointment of Arbitrator(s)

12.1 Where there are more than two parties to the arbitration, and a sole arbitrator is to be appointed, the parties may agree to jointly nominate the sole arbitrator. In the absence of such joint nomination having been made within 28 days of the date of commencement of the arbitration or within the period otherwise agreed by the parties or set by the Registrar, the President shall appoint the sole arbitrator.

12.2 Where there are more than two parties to the arbitration, and three arbitrators are to be appointed, the Claimant(s) shall jointly nominate one arbitrator and the Respondent(s) shall jointly nominate one arbitrator. The third arbitrator, who shall be the presiding arbitrator, shall be appointed in accordance with Rule 11.3. In the absence of both such joint nominations having been made within 28 days of the date of commencement of the arbitration or within the period otherwise agreed by the parties or set by the Registrar, the President shall appoint all three arbitrators and shall designate one of them to be the presiding arbitrator.

13. Qualifications of Arbitrators

13.1 Any arbitrator appointed in an arbitration under these Rules, whether nominated by the parties, shall be and remain at all times independent and impartial.

13.2 In appointing an arbitrator under these Rules, the President shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations that are relevant to the impartiality or independence of the arbitrator.

13.3 The President shall also consider whether the arbitrator has sufficient availability to determine the case in a prompt and efficient manner that is appropriate given the nature of the arbitration.

13.4 A nominated arbitrator shall disclose to the parties and to the Registrar any circumstances that may give rise to justifiable doubts as to his impartiality or independence as soon as reasonably practicable and in any event before his appointment.

13.5 An arbitrator shall immediately disclose to the parties, to the other arbitrators and to the Registrar any circumstances that may give rise to justifiable doubts as to his impartiality or independence that may be discovered or arise during the arbitration.

13.6 No party or person acting on behalf of a party shall have any ex parte communication relating to the case with any arbitrator or with any candidate for appointment as party-nominated arbitrator, except to advise the candidate of the general nature of the controversy and of the anticipated proceedings; to discuss the candidate's qualifications, availability or independence in relation to the parties; or to discuss the suitability of candidates for selection as the presiding arbitrator where the parties or party-nominated arbitrators are to participate in that selection. No party or person acting on behalf of a party shall have any ex parte communication relating to the case with any candidate for presiding arbitrator.

14. Challenge of Arbitrators

14.1 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess any requisite qualification on which the parties have agreed.

14.2 A party may challenge the arbitrator nominated by it only for reasons of which it becomes aware after the appointment has been made.

15. Notice of Challenge

15.1 A party that intends to challenge an arbitrator shall file a notice of challenge with the Registrar in accordance with the requirements of Rule 15.2 within 14 days after receipt of the notice of appointment of the arbitrator who is being challenged or within 14 days after the circumstances specified in Rule 14.1 or Rule 14.2 became known or should have reasonably been known to that party.

15.2 The notice of challenge shall state the reasons for the challenge. The date of receipt of the notice of challenge by the Registrar shall be deemed to be the date the notice of challenge is filed. The party challenging an arbitrator shall, at the same time as it files a notice of challenge with the Registrar, send the notice of challenge to the other party, the arbitrator who is being challenged and the other members of the Tribunal (or if the Tribunal has not yet been constituted, any appointed arbitrator), and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

15.3 The party making the challenge shall pay the requisite challenge fee under these Rules in accordance with the applicable Schedule of Fees. If the party making the challenge fails to pay the challenge fee within the time limit set by the Registrar, the challenge shall be considered as withdrawn.

15.4 After receipt of a notice of challenge under Rule 15.2, the Registrar may order a suspension of the arbitral proceedings until the challenge is resolved. Unless the Registrar orders the suspension of the arbitral proceedings pursuant to this Rule 15.4, the challenged arbitrator shall be entitled to continue to participate in the arbitration pending the determination of the challenge by the Court in accordance with Rule 16.

15.5 Where an arbitrator is challenged by a party, the other party may agree to the challenge, and the Court shall remove the arbitrator if all parties agree to the challenge. The challenged arbitrator may also voluntarily withdraw from office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

15.6 If an arbitrator is removed or withdraws from office in accordance with Rule 15.5, a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced. This procedure shall apply even if, during the process of appointing the challenged arbitrator, a party failed to exercise its right to nominate an arbitrator. The time limits applicable to the nomination and appointment of the substitute arbitrator shall commence from the date of receipt of the agreement of the other party to the challenge or the challenged arbitrator’s withdrawal from office.

16. Decision on Challenge

16.1 If, within seven days of receipt of the notice of challenge under Rule 15, the other party does not agree to the challenge and the arbitrator who is being challenged does not withdraw voluntarily from office, the Court shall decide the challenge. The Court may request comments on the challenge from the parties, the challenged arbitrator and the other members of the Tribunal (or if the Tribunal has not yet been constituted, any appointed arbitrator), and set a schedule for such comments to be made.

16.2 If the Court accepts the challenge to an arbitrator, the Court shall remove the arbitrator, and a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced. The time limits applicable to the nomination and appointment of the substitute arbitrator shall commence from the date of the Registrar's notification to the parties of the decision by the Court.

16.3 If the Court rejects the challenge to an arbitrator, the challenged arbitrator shall continue with the arbitration.

16.4 The Court's decision on any challenge to an arbitrator under this Rule 16 shall be reasoned, unless otherwise agreed by the parties, and shall be issued to the parties by the Registrar. Any such decision on any challenge by the Court shall be final and not subject to appeal.

17. Replacement of an Arbitrator

17.1 Except as otherwise provided in these Rules, in the event of the death, resignation, withdrawal or removal of an arbitrator while the arbitral proceedings, a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced.

17.2 In the event that an arbitrator refuses or fails to act or perform his functions in accordance with the Rules or within prescribed time limits, or in the event of any de jure or de facto impossibility by an arbitrator to act or perform his functions, the procedure for challenge and replacement of an arbitrator provided in Rule 14 to Rule 16 and Rule 17.1 shall apply.

17.3 The President may, at his own initiative and in his discretion, remove an arbitrator who refuses or fails to act or to perform his functions in accordance with the Rules or within prescribed time limits, or in the event of a de jure or de facto impossibility of an arbitrator to act or perform his functions, or if the arbitrator does not conduct or participate in the arbitration with due diligence and/or in a manner that ensures the fair, expeditious, economical and final resolution of the dispute. The President shall consult the parties and the members of the Tribunal, including the arbitrator to be removed (or if the Tribunal has not yet been constituted, any appointed arbitrator) prior to the removal of an arbitrator under this Rule.

18. **Repetition of Hearings in the Event of Replacement of an Arbitrator**

18.1 If the sole or presiding arbitrator is replaced in accordance with the procedure in Rule 15 to Rule 17, any hearings held previously shall be repeated unless otherwise agreed by the parties. If any other arbitrator is replaced, any hearings held previously may be repeated at the discretion of the Tribunal after consulting with the parties. If the Tribunal has issued an interim or partial Award, any hearings relating solely to that Award shall not be repeated, and the Award shall remain in effect.

19. Conduct of the Proceedings

19.1 The Tribunal shall conduct the arbitration in such manner as it considers appropriate, after consulting with the parties, to ensure the fair, expeditious, economical and final resolution of the dispute.

19.2 The Tribunal shall determine the relevance, materiality and admissibility of all evidence. The Tribunal is not required to apply the rules of evidence of any applicable law in making such determination.

19.3 As soon as practicable after the constitution of the Tribunal, the Tribunal shall conduct a preliminary meeting with the parties, in person or by any other means, to discuss the procedures that will be most appropriate and efficient for the case.

19.4 The Tribunal may, in its discretion, direct the order of proceedings, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence and direct

the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

19.5 Unless otherwise agreed by the parties, the presiding arbitrator may make procedural rulings alone, subject to revision by the Tribunal.

19.6 All statements, documents or other information supplied to the Tribunal and/or the Registrar by a party shall simultaneously be communicated to the other party.

19.7 The President may, at any stage of the proceedings, request the parties and the Tribunal to convene a meeting to discuss the procedures that will be most appropriate and efficient for the case. Such meeting may be conducted in person or by any other means.

20. Submissions by the Parties

20.1 Unless the Tribunal determines otherwise, the submission of written statements shall proceed as set out in this Rule.

20.2 Unless already submitted pursuant to Rule 3.2, the Claimant shall, within a period of time to be determined by the Tribunal, send to the Respondent and the Tribunal a Statement of Claim setting out in full detail:

(a) a statement of facts supporting the claim;

(b) the legal grounds or arguments supporting the claim; and

(c) the relief claimed together with the amount of all quantifiable claims.

20.3 Unless already submitted pursuant to Rule 4.2, the Respondent shall, within a period of time to be determined by the Tribunal, send to the Claimant and the Tribunal a Statement of Defence setting out in full detail:

(a) a statement of facts supporting its defence to the Statement of Claim;

(b) the legal grounds or arguments supporting such defence; and

(c) the relief claimed.

20.4 If a Statement of Counterclaim is made, the Claimant shall, within a period of time to be determined by the Tribunal, send to the Respondent and the Tribunal a Statement of Defence to Counterclaim setting out in full detail:

(a) a statement of facts supporting its defence to the Statement of Counterclaim;

(b) the legal grounds or arguments supporting such defence; and

(c) the relief claimed.

20.5 A party may amend its claim, counterclaim or other submissions unless the Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim or counterclaim may not be amended in such a manner that the amended claim or counterclaim falls outside the scope of the arbitration agreement.

20.6 The Tribunal shall decide which further submissions shall be required from the parties or may be presented by them. The Tribunal shall fix the periods of time for communicating such submissions.

20.7 All submissions referred to in this Rule shall be accompanied by copies of all supporting documents which have not previously been submitted by any party.

20.8 If the Claimant fails within the time specified to submit its Statement of Claim, the Tribunal may issue an order for the termination of the arbitral proceedings or give such other directions as may be appropriate.

20.9 If the Respondent fails to submit its Statement of Defence, or if at any point any party fails to avail itself of the opportunity to present its case in the manner directed by the Tribunal, the Tribunal may proceed with the arbitration.

21. Seat of the Arbitration

21.1 The parties may agree on the seat of the arbitration. Failing such an agreement, the seat of the arbitration shall be determined by the Tribunal, having regard to all the circumstances of the case.

21.2 The Tribunal may hold hearings and meetings by any means it considers expedient or appropriate and at any location it considers convenient or appropriate.

22. Language of the Arbitration

22.1 Unless otherwise agreed by the parties, the Tribunal shall determine the language to be used in the arbitration.

22.2 If a party submits a document written in a language other than the language(s) of the arbitration, the Tribunal, or if the Tribunal has not been constituted, the Registrar, may order that party to submit a translation in a form to be determined by the Tribunal or the Registrar.

23. Party Representatives

23.1 Any party may be represented by legal practitioners or any other authorised representatives. The Registrar and/or the Tribunal may require proof of authority of any party representatives.

23.2 After the constitution of the Tribunal, any change or addition by a party to its representatives shall be promptly communicated in writing to the parties, the Tribunal and the Registrar.

24. Hearings

24.1 Unless the parties have agreed on a documents-only arbitration or as otherwise provided in these Rules, the Tribunal shall, if either party so requests or the Tribunal so decides, hold a hearing for the presentation of evidence and/or for oral submissions on the merits of the dispute, including any issue as to jurisdiction.

24.2 The Tribunal shall, after consultation with the parties, set the date, time and place of any meeting or hearing and shall give the parties reasonable notice.

24.3 If any party fails to appear at a meeting or hearing without showing sufficient cause for such failure, the Tribunal may proceed with the arbitration and may make the Award based on the submissions and evidence before it.

24.4 Unless otherwise agreed by the parties, all meetings and hearings shall be in private, and any recordings, transcripts, or documents used in relation to the arbitral proceedings shall remain confidential.

25. Witnesses

25.1 Before any hearing, the Tribunal may require the parties to give notice of the identity of witnesses, including expert witnesses, whom the parties intend to produce, the subject matter of their testimony and its relevance to the issues.

25.2 The Tribunal may allow, refuse or limit the appearance of witnesses to give oral evidence at any hearing.

25.3 Any witness who gives oral evidence may be questioned by each of the parties, their representatives and the Tribunal in such manner as the Tribunal may determine.

25.4 The Tribunal may direct the testimony of witnesses to be presented in written form, either as signed statements or sworn affidavits or any other form of recording. Subject to Rule 25.2, any party may request that such a witness should attend for oral examination. If the witness fails to attend for oral examination, the Tribunal may place such weight on the written testimony as it thinks fit, disregard such written testimony, or exclude such written testimony altogether.

25.5 It shall be permissible for any party or its representatives to interview any witness or potential witness (that may be presented by that party) prior to his appearance to give oral evidence at any hearing.

26. **Tribunal-Appointed Experts**

26.1 Unless otherwise agreed by the parties, the Tribunal may:

(a) following consultation with the parties, appoint an expert to report on specific issues; and

(b) require a party to give any expert appointed under Rule 26.1(a) any relevant information, or to produce or provide access to any relevant documents, goods or property for inspection.

26.2 Any expert appointed under Rule 26.1(a) shall submit a report in writing to the Tribunal. Upon receipt of such written report, the Tribunal shall deliver a copy of the report to the parties and invite the parties to submit written comments on the report.

26.3 Unless otherwise agreed by the parties, if the Tribunal considers it necessary or at the request of any party, an expert appointed under Rule 26.1(a) shall, after delivery of his written report, participate in a hearing. At the hearing, the parties shall have the opportunity to examine such expert.

27. Additional Powers of the Tribunal

27.1 Unless otherwise agreed by the parties, in addition to the other powers specified in these Rules, and except as prohibited by the mandatory rules of law applicable to the arbitration, the Tribunal shall have the power to:

(a) order the correction or rectification of any contract, subject to the law governing such contract;

(b) except as provided in these Rules, extend or abbreviate any time limits prescribed under these Rules or by its directions;

(c) conduct such enquiries as may appear to the Tribunal to be necessary or expedient;

(d) order the parties to make any property or item in their possession or control available for inspection;

(e) order the preservation, storage, sale or disposal of any property or item which is or forms part of the subject matter of the dispute;

(f) 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;

(g) issue an order or Award for the reimbursement of unpaid deposits towards the costs of the arbitration;

(h) direct any party or person to give evidence by affidavit or in any other form;

(i) direct any party to take or refrain from taking actions to ensure that any Award which may be made in the arbitration is not rendered ineffectual by the dissipation of assets by a party or otherwise;

(j) order any party to provide security for legal or other costs in any manner the Tribunal thinks fit;

(k) order any party to provide security for all or part of any amount in dispute in the arbitration;

(l) proceed with the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Tribunal's orders or directions or any partial Award or to attend any meeting or hearing, and to impose such sanctions as the Tribunal deems appropriate in relation to such failure or refusal;

(m) decide, where appropriate, any issue not expressly or impliedly raised in the submissions of a party provided such issue has been clearly brought to the notice of the other party and that other party has been given adequate opportunity to respond;

(n) determine the law applicable to the arbitral proceedings; and

(o) determine any claim of legal or other privilege.

28. Jurisdiction of the Tribunal

28.1 If any party objects to the existence or validity of the arbitration agreement or to the competence of IDREC to administer an arbitration, before the Tribunal is constituted, the Registrar shall determine if such objection shall be referred to the Court. If the Registrar so determines, the Court shall decide if it is prima facie satisfied that the arbitration shall proceed. The arbitration shall be terminated if the Court is not so satisfied. Any decision by the Registrar or the Court that the arbitration shall proceed is without prejudice to the power of the Tribunal to rule on its own jurisdiction.

28.2 The Tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration agreement. An arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the

contract is null and void shall not entail ipso jure the invalidity of the arbitration agreement, and the Tribunal shall not cease to have jurisdiction by reason of any allegation that the contract is non-existent or null and void.

28.3 Any objection that the Tribunal:

(a) does not have jurisdiction shall be raised no later than in a Statement of Defence or in a Statement of Defence to a Counterclaim; or

(b) is exceeding the scope of its jurisdiction shall be raised within 14 days after the matter alleged to be beyond the scope of the Tribunal's jurisdiction arises during the arbitral proceedings.

The Tribunal may admit an objection raised by a party outside the time limits under this Rule 28.3 if it considers the delay justified. A party is not precluded from raising an objection under this Rule 28.3 by the fact that it has nominated, or participated in the nomination of, an arbitrator.

28.4 The Tribunal may rule on an objection referred to in Rule 28.3 either as a preliminary question or in an Award on the merits.

28.5 A party may rely on a claim or defence for the purpose of a set-off to the extent permitted by these Rules and the applicable law.

29. Early Dismissal of Claims and Defence

29.1 A party may apply to the Tribunal for the early dismissal of a claim or defence on the basis that:

(a) a claim or defence is manifestly without legal merit; or

(b) a claim or defence is manifestly outside the jurisdiction of the Tribunal.

29.2 An application for the early dismissal of a claim or defence under Rule 29.1 shall state in detail the facts and legal basis supporting the application. The party applying for early dismissal shall, at the same time as it files the application with the Tribunal, send a copy of the application to the other party, and shall notify the Tribunal that it has done so, specifying the mode of service employed and the date of service.

29.3 The Tribunal may, in its discretion, allow the application for the early dismissal of a claim or defence under Rule 29.1 to proceed. If the application is allowed to proceed, the Tribunal shall, after giving the parties the opportunity to be heard, decide whether to grant, in whole or in part, the application for early dismissal under Rule 29.1.

29.4 If the application is allowed to proceed, the Tribunal shall make an order or Award on the application, with reasons, which may be in summary form. The order or Award shall be made within 60 days of the date of filing of the application, unless, in exceptional circumstances, the Registrar extends the time.

30. Interim and Emergency Interim Relief

30.1 The Tribunal may, at the request of a party, issue an order or an Award granting an injunction or any other interim relief it deems appropriate. The Tribunal may order the party requesting interim relief to provide appropriate security in connection with the relief sought.

30.2 A party that wishes to seek emergency interim relief prior to the constitution of the Tribunal may apply for such relief pursuant to the procedures set forth in Schedule 1.

30.3 A request for interim relief made by a party to a judicial authority prior to the constitution of the Tribunal, or in exceptional circumstances, thereafter, is not incompatible with these Rules.

31. Applicable Law, Amiable Compositeur and Ex Aequo et Bono

31.1 The Tribunal shall apply the law or rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Tribunal shall apply the law or rules of law which it determines to be appropriate.

31.2 The Tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorised it to do so.

31.3 In all cases, the Tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any applicable usage of trade.

32. Award

32.1 The Tribunal shall, as promptly as possible, after consulting with the parties and upon being satisfied that the parties have no further relevant and material evidence to produce or submission to make with respect to the matters to be decided in the Award, declare the proceedings closed. The Tribunal's declaration that the proceedings are closed shall be communicated to the parties and to the Registrar.

32.2 The Tribunal may, on its own motion or upon application of a party but before any Award is made, re-open the proceedings. The Tribunal's decision that the proceedings are to be re-opened shall be communicated to the parties and to the Registrar. The Tribunal shall close any re-opened proceedings in accordance with Rule 32.1.

32.3 Before making any Award, the Tribunal shall submit such Award in draft form to the Registrar. Unless the Registrar extends the period of time or unless otherwise agreed by the parties, the Tribunal shall submit the draft Award to the Registrar not later than 45 days from the date on which the Tribunal declares the proceedings closed. The Registrar may, as soon as practicable, suggest modifications as to the form of the Award and, without affecting the Tribunal's liberty to decide the dispute, draw the Tribunal's attention to points of substance. No Award shall be made by the Tribunal until it has been approved by the Registrar as to its form.

32.4 The Award shall be in writing and shall state the reasons upon which it is based unless the parties have agreed that no reasons are to be given.

32.5 Unless otherwise agreed by the parties, the Tribunal may make separate Awards on different issues at different times.

32.6 If any arbitrator fails to cooperate in the making of the Award, having been given a reasonable opportunity to do so, the remaining arbitrators may proceed. The remaining arbitrators shall provide written notice of such refusal or failure to the Registrar, the parties and the absent arbitrator. In deciding whether to proceed with the arbitration in the absence of an arbitrator, the remaining arbitrators may take into account, among other things, the stage of the arbitration, any explanation provided by the absent arbitrator for his refusal to participate and the effect, if any, upon the

enforceability of the Award should the remaining arbitrators proceed without the absent arbitrator. The remaining arbitrators shall explain in any Award made the reasons for proceeding without the absent arbitrator.

32.7 Where there is more than one arbitrator, the Tribunal shall decide by a majority. Failing a majority decision, the presiding arbitrator alone shall make the Award for the Tribunal.

32.8 The Award shall be delivered to the Registrar, who shall transmit certified copies to the parties upon full settlement of the costs of the arbitration.

32.9 The Tribunal may award simple or compound interest on any sum which is the subject of the arbitration at such rates as the parties may have agreed or, in the absence of such agreement, as the Tribunal determines to be appropriate, in respect of any period which the Tribunal determines to be appropriate.

32.10 In the event of a settlement, and if the parties so request, the Tribunal may make a consent Award recording the settlement. If the parties do not require a consent Award, the parties shall confirm to the Registrar that a settlement has been reached, following which the Tribunal shall be discharged and the arbitration concluded upon full settlement of the costs of the arbitration.

32.11 Subject to Rule 33 and Schedule 1, by agreeing to arbitration under these Rules, the parties agree that any Award shall be final and binding on the parties from the date it is made, and undertake to carry out the Award immediately and without delay. The parties also irrevocably waive their rights to any form of appeal, review or recourse to any State court or other judicial authority with respect to such Award insofar as such waiver may be validly made.

32.12 IDREC may, with the consent of the parties and the Tribunal, publish any Award with the names of the parties and other identifying information redacted.

33. **Correction of Awards, Interpretation of Awards and Additional Awards**

33.1 Within 30 days of receipt of an Award, a party may, by written notice to the Registrar and the other party, request the Tribunal to correct in the Award any error in computation, any clerical or typographical error or any error of a similar nature. If the

Tribunal considers the request to be justified, it shall make the correction within 30 days of receipt of the request. Any correction, made in the original Award or in a separate memorandum, shall constitute part of the Award.

33.2 The Tribunal may correct any error of the type referred to in Rule 33.1 on its own initiative within 30 days of the date of the Award.

33.3 Within 30 days of receipt of an Award, a party may, by written notice to the Registrar and the other party, request the Tribunal to make an additional Award as to claims presented in the arbitration but not dealt with in the Award. If the Tribunal considers the request to be justified, it shall make the additional Award within 45 days of receipt of the request.

33.4 Within 30 days of receipt of an Award, a party may, by written notice to the Registrar and the other party, request that the Tribunal give an interpretation of the Award. If the Tribunal considers the request to be justified, it shall provide the interpretation in writing within 45 days after receipt of the request. The interpretation shall form part of the Award.

33.5 The Registrar may, if necessary, extend the period of time within which the Tribunal shall make a correction of an Award, interpretation of an Award or an additional Award under this Rule.

33.6 The provisions of Rule 32 shall apply in the same manner with the necessary or appropriate changes in relation to a correction of an Award, interpretation of an Award and to any additional Award made.

34. Fees and Deposits

34.1 The Tribunal's fees and IDREC's fees shall be ascertained in accordance with the Schedule of Fees in force at the time of commencement of the arbitration. The parties may agree to alternative methods of determining the Tribunal's fees prior to the constitution of the Tribunal.

34.2 The Registrar shall fix the amount of deposits payable towards the costs of the arbitration. Unless the Registrar directs otherwise, 50% of such deposits shall be payable by the Claimant and the remaining 50% of such deposits shall be payable by

the Respondent. The Registrar may fix separate deposits on costs for claims and counterclaims, respectively.

34.3 Where the amount of the claim or the counterclaim is not quantifiable at the time payment is due, a provisional estimate of the costs of the arbitration shall be made by the Registrar. Such estimate may be based on the nature of the controversy and the circumstances of the case. This estimate may be adjusted in light of such information as may subsequently become available.

34.4 The Registrar may from time to time direct parties to make further deposits towards the costs of the arbitration.

34.5 Parties are jointly and severally liable for the costs of the arbitration. Any party is free to pay the whole of the deposits towards the costs of the arbitration should the other party fail to pay its share.

34.6 If a party fails to pay the deposits directed by the Registrar either wholly or in part:

(a) the Tribunal may suspend its work and the Registrar may suspend IDREC's administration of the arbitration, in whole or in part; and

(b) the Registrar may, after consultation with the Tribunal (if constituted) and after informing the parties, set a time limit on the expiry of which the relevant claims or counterclaims shall be considered as withdrawn without prejudice to the party reintroducing the same claims or counterclaims in another proceeding.

34.7 In all cases, the costs of the arbitration shall be finally determined by the Registrar at the conclusion of the proceedings. If the claim and/or counterclaim is not quantified, the Registrar shall finally determine the costs of the arbitration, as set out in Rule 35, in his discretion. The Registrar shall have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration concluded. In the event that the costs of the arbitration determined are less than the deposits made, there shall be a refund in such proportions as the parties may agree, or failing an agreement, in the same proportions as the deposits were made.

34.8 All deposits towards the costs of the arbitration shall be made to and held by IDREC. Any interest which may accrue on such deposits shall be retained by IDREC.

34.9 In exceptional circumstances, the Registrar may direct the parties to pay an additional fee, in addition to that prescribed in the applicable Schedule of Fees, as part of IDREC's administration fees.

35. Costs of the Arbitration

35.1 Unless otherwise agreed by the parties, the Tribunal shall specify in the Award the total amount of the costs of the arbitration. Unless otherwise agreed by the parties, the Tribunal shall determine in the Award the apportionment of the costs of the arbitration among the parties.

35.2 The term "costs of the arbitration" includes:

(a) the Tribunal's fees and expenses and the Emergency Arbitrator's fees and expenses, where applicable;

(b) IDREC's administration fees and expenses; and

(c) the costs of any expert appointed by the Tribunal and of any other assistance reasonably required by the Tribunal.

36. **Tribunal's Fees and Expenses**

36.1 The fees of the Tribunal shall be fixed by the Registrar in accordance with the applicable Schedule of Fees or, if applicable, with the method agreed by the parties pursuant to Rule 34.1, and the stage of the proceedings at which the arbitration concluded. In exceptional circumstances, the Registrar may determine that an additional fee over that prescribed in the applicable Schedule of Fees shall be paid.

36.2 The Tribunal's reasonable out-of-pocket expenses necessarily incurred and other allowances shall be reimbursed in accordance with the applicable Practice Note.

37. Party's Legal and Other Costs

The Tribunal shall have the authority to order in its Award that all or a part of the legal or other costs of a party be paid by another party.

38. Exclusion of Liability

38.1 Any arbitrator, including any Emergency Arbitrator, any person appointed by the Tribunal, including any administrative secretary and any expert, the President, members of the Court, and any directors, officers and employees of IDREC, shall not be liable to any person for any negligence, act or omission in connection with any arbitration administered by IDREC in accordance with these Rules.

38.2 IDREC, including the President, members of the Court, directors, officers, employees or any arbitrator, including any Emergency Arbitrator, and any person appointed by the Tribunal, including any administrative secretary and any expert, shall not be under any obligation to make any statement in connection with any arbitration administered by IDREC in accordance with these Rules. No party shall seek to make the President, any member of the Court, director, officer, employee of IDREC, or any arbitrator, including any Emergency Arbitrator, and any person appointed by the Tribunal, including any administrative secretary and any expert, act as a witness in any legal proceedings in connection with any arbitration administered by IDREC in accordance with these Rules.

39. Confidentiality

39.1 Unless otherwise agreed by the parties, a party and any arbitrator, including any Emergency Arbitrator, and any person appointed by the Tribunal, including any administrative secretary and any expert, shall at all times treat all matters relating to the proceedings and the Award as confidential. The discussions and deliberations of the Tribunal shall be confidential.

39.2 Unless otherwise agreed by the parties, a party or any arbitrator, including any Emergency Arbitrator, and any person appointed by the Tribunal, including any administrative secretary and any expert, shall not, without the prior written consent of the parties, disclose to a third party any such matter except:

(a) for the purpose of making an application to any competent court of any State to enforce or challenge the Award;

(b) pursuant to the order of or a subpoena issued by a court of competent jurisdiction;

(c) for the purpose of pursuing or enforcing a legal right or claim;

(d) in compliance with the provisions of the laws of any State which are binding on the party making the disclosure or the request or requirement of any regulatory body or other authority;

(e) pursuant to an order by the Tribunal on application by a party with proper notice to the other parties; or

(f) for the purpose of any application under Rule 7 or Rule 8 of these Rules.

39.3 In Rule 39.1, "matters relating to the proceedings" includes the existence of the proceedings, and the pleadings, evidence and other materials in the arbitral proceedings and all other documents produced by another party in the proceedings or the Award arising from the proceedings, but excludes any matter that is otherwise in the public domain.

39.4 The Tribunal has the power to take appropriate measures, including issuing an order or Award for sanctions or costs, if a party breaches the provisions of this Rule.

40. Decisions of the President, the Court and the Registrar

40.1 Except as provided in these Rules, the decisions of the President, the Court and the Registrar with respect to all matters relating to an arbitration shall be conclusive and binding upon the parties and the Tribunal. The President, the Court and the Registrar shall not be required to provide reasons for such decisions, unless the Court determines otherwise or as may be provided in these Rules. The parties agree that the discussions and deliberations of the Court are confidential.

40.2 Save in respect of Rule 16.1 and Rule 28.1, the parties waive any right of appeal or review in respect of any decisions of the President, the Court and the Registrar to any State court or other judicial authority.

41. General Provisions

41.1 Any party that proceeds with the arbitration without promptly raising any objection to a failure to comply with any provision of these Rules, or of any other rules applicable to the proceedings, any direction given by the Tribunal, or any requirement under the arbitration agreement relating to the constitution of the Tribunal or the conduct of the proceedings, shall be deemed to have waived its right to object.

41.2 In all matters not expressly provided for in these Rules, the President, the Court, the Registrar and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure the fair, expeditious and economical conclusion of the arbitration and the enforceability of any Award.

41.3 In the event of any discrepancy or inconsistency between the English version of these Rules and any other languages in which these Rules are published, the English version shall prevail.

Schedule 1

Emergency Arbitrator

1. A party that wishes to seek emergency interim relief may, concurrent with or following the filing of a Notice of Arbitration but prior to the constitution of the Tribunal, file an application for emergency interim relief with the Registrar. The party shall, at the same time as it files the application for emergency interim relief, send a copy of the application to all other parties. The application for emergency interim relief shall include:

(a) the nature of the relief sought;

(b) the reasons why the party is entitled to such relief; and

(c) a statement certifying that all other parties have been provided with a copy of the application or, if not, an explanation of the steps taken in good faith to provide a copy or notification to all other parties.

2. Any application for emergency interim relief shall be accompanied by payment of the non-refundable administration fee and the requisite deposits under these Rules towards the Emergency Arbitrator's fees and expenses for proceedings pursuant to this Schedule 1. In appropriate cases, the Registrar may increase the amount of the deposits requested from the party making the application. If the additional deposits are not paid within the time limit set by the Registrar, the application shall be considered as withdrawn.

3. The President shall, if he determines that IDREC should accept the application for emergency interim relief, seek to appoint an Emergency Arbitrator within one day of receipt by the Registrar of such application and payment of the administration fee and deposits.

4. If the parties have agreed on the seat of the arbitration, such seat shall be the seat of the proceedings for emergency interim relief. Failing such an agreement, the seat of the proceedings for emergency interim relief shall be any, without prejudice to the Tribunal's determination of the seat of the arbitration under Rule 21.1.

5. Prior to accepting appointment, a prospective Emergency Arbitrator shall disclose to the Registrar any circumstances that may give rise to justifiable doubts as to his impartiality or

independence. Any challenge to the appointment of the Emergency Arbitrator must be made within two days of the communication by the Registrar to the parties of the appointment of the Emergency Arbitrator and the circumstances disclosed.

6. An Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless otherwise agreed by the parties.

7. The Emergency Arbitrator shall, as soon as possible but, in any event, within two days of his appointment, establish a schedule for consideration of the application for emergency interim relief. Such schedule shall provide a reasonable opportunity for the parties to be heard, but may provide for proceedings by telephone or video conference or on written submissions as alternatives to a hearing in person. The Emergency Arbitrator shall have the powers vested in the Tribunal pursuant to these Rules, including the authority to rule on his own jurisdiction, without prejudice to the Tribunal's determination.

8. The Emergency Arbitrator shall have the power to order or award any interim relief that he deems necessary, including preliminary orders that may be made pending any hearing, telephone or video conference or written submissions by the parties. The Emergency Arbitrator shall give summary reasons for his decision in writing. The Emergency Arbitrator may modify or vacate the preliminary order, the interim order or Award for good cause.

9. The Emergency Arbitrator shall make his interim order or Award within 14 days from the date of his appointment unless, in exceptional circumstances, the Registrar extends the time. No interim order or Award shall be made by the Emergency Arbitrator until it has been approved by the Registrar as to its form.

10. The Emergency Arbitrator shall have no power to act after the Tribunal is constituted. The Tribunal may reconsider, modify or vacate any interim order or Award issued by the Emergency Arbitrator, including a ruling on his own jurisdiction. The Tribunal is not bound by the reasons given by the Emergency Arbitrator. Any interim order or Award issued by the Emergency Arbitrator shall, in any event, cease to be binding if the Tribunal is not constituted within 90 days of such order or Award or when the Tribunal makes a final Award or if the

claim is withdrawn.

11. Any interim order or Award by the Emergency Arbitrator may be conditioned on provision by the party seeking such relief of appropriate security.

12. The parties agree that an order or Award by an Emergency Arbitrator pursuant to this Schedule 1 shall be binding on the parties from the date it is made and undertake to carry out the interim order or Award immediately and without delay. The parties also irrevocably waive their rights to any form of appeal, review or recourse to any State court or other judicial authority with respect to such Award insofar as such waiver may be validly made.

13. The costs associated with any application pursuant to this Schedule 1 may initially be apportioned by the Emergency Arbitrator, subject to the power of the Tribunal to determine finally the apportionment of such costs.

14. These Rules shall apply as appropriate to any proceeding pursuant to this Schedule 1, considering the urgency of such a proceeding. The Emergency Arbitrator may decide in what manner these Rules shall apply as appropriate, and his decision as to such matters is final and not subject to appeal, review or recourse. The Registrar may abbreviate any time limits under these Rules in applications made pursuant to proceedings commenced under Rule 30.2 and Schedule 1.

ANNEXURE V - MARITME ARBITRATION RULES

1. Scope of Application and Interpretation

1.1 Where the parties have agreed to refer their disputes to IDREC for arbitration or to arbitration in accordance with the IDREC Rules, the parties shall be deemed to have agreed that the arbitration shall be conducted pursuant to and administered by IDREC in accordance with these Rules.

1.2 In these Rules:

"Award" includes a partial, interim or final award and an award of an Emergency Arbitrator;

"Committee of the Court" means a committee consisting of not less than two members of the Court appointed by the President (which may include the President);

"Court" means the Court of Arbitration of IDREC and includes a Committee of the Court;

"Emergency Arbitrator" means an arbitrator appointed in accordance with paragraph 3 of Schedule 1;

"Practice Notes" mean the guidelines published by the Registrar from time to time to supplement, regulate and implement these Rules;

"President" means the President of the Court and includes any Vice President and the Registrar;

"Registrar" means the Registrar of the Court and includes any Deputy Registrar;

"Rules" means the Arbitration Rules of the IORA Dispute Resolution Centre

"IDREC" means the IORA Dispute Resolution Centre; and

"Tribunal" includes a sole arbitrator or all the arbitrators where more than one arbitrator is appointed.

Any pronoun in these Rules shall be understood to be gender-neutral. Any singular noun shall be understood to refer to the plural in the appropriate circumstances.

2. Notices, Service, Calculation of Periods of Time

2.1 For the purposes of these Rules, any notice, communication or proposal shall be in writing. Any such notice, communication or proposal may be delivered by hand, registered post or courier service, or transmitted by any form of electronic communication (including electronic mail and facsimile), or delivered by any other appropriate means that provides a record of its delivery. Any notice, communication or proposal shall be deemed to have been received if it is delivered: (i) to the addressee personally or to its authorised representative; (ii) to the addressee's habitual residence, place of business or designated address; (iii) to any address agreed by the parties; (iv) according to the practice of the parties in prior dealings; or (v) if, after reasonable efforts, none of these can be found, then at the addressee's last-known residence or place of business.

2.2 Any notice, communication or proposal shall be deemed to have been received on the day it is delivered in accordance with Rule 2.1.

2.3 For the purpose of calculating any period of time under these Rules, such period shall begin to run on the day following the day when a notice, communication or proposal is deemed to have been received. Unless the Registrar or the Tribunal determines otherwise, any period of time under these Rules is to be calculated in accordance with Central Standard Time (GMT -6).

2.4 Any non-business days at the place of receipt shall be included in calculating any period of time under these Rules. If the last day of any period of time under these Rules is not a business day at the place of receipt in accordance with Rule 2.1, the period is extended until the first business day which follows.

2.5 The parties shall file with the Registrar a copy of any notice, communication or proposal concerning the arbitral proceedings.

2.6 Except as provided in these Rules, the Registrar may at any time extend or abbreviate any time limits prescribed under these Rules.

3. Notice of Arbitration

3.1 A party wishing to commence an arbitration under these Rules (the "Claimant") shall file with the Registrar a Notice of Arbitration which shall include:

(a) a demand that the dispute be referred to arbitration;

(b) the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of the parties to the arbitration and their representatives, if any;

(c) a reference to the arbitration agreement invoked and a copy of the arbitration agreement;

(d) a reference to the contract or other instrument (e.g. investment treaty) out of or in relation to which the dispute arises and, where possible, a copy of the contract or other instrument;

(e) a brief statement describing the nature and circumstances of the dispute, specifying the relief claimed and, where possible, an initial quantification of the claim amount;

(f) a statement of any matters which the parties have previously agreed as to the conduct of the arbitration or with respect to which the Claimant wishes to make a proposal;

(g) a proposal for the number of arbitrators if not specified in the arbitration agreement;

(h) unless otherwise agreed by the parties, the nomination of an arbitrator if the arbitration agreement provides for three arbitrators, or a proposal for a sole arbitrator if the arbitration agreement provides for a sole arbitrator;

(i) any comment as to the applicable rules of law;

(j) any comment as to the language of the arbitration; and

(k) payment of the requisite filing fee under these Rules.

3.2 The Notice of Arbitration may also include the Statement of Claim referred to in Rule 20.2.

3.3 The date of receipt of the complete Notice of Arbitration by the Registrar shall be deemed to be the date of commencement of the arbitration. For the avoidance of doubt, the Notice of Arbitration is deemed to be complete when all the requirements of Rule 3.1 and Rule 6.1(b) (if applicable) are fulfilled or when the Registrar determines that there has been substantial compliance with such requirements. IDREC shall notify the parties of the commencement of the arbitration.

3.4 The Claimant shall, at the same time as it files the Notice of Arbitration with the Registrar, send a copy of the Notice of Arbitration to the Respondent, and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

4. Response to the Notice of Arbitration

4.1 The Respondent shall file a Response with the Registrar within 14 days of receipt of the Notice of Arbitration. The Response shall include:

(a) a confirmation or denial of all or part of the claims, including, where possible, any plea that the Tribunal lacks jurisdiction;

(b) a brief statement describing the nature and circumstances of any counterclaim, specifying the relief claimed and, where possible, an initial quantification of the counterclaim amount;

(c) any comment in response to any statements contained in the Notice of Arbitration under Rule 3.1 or any comment with respect to the matters covered in such Rule;

(d) unless otherwise agreed by the parties, the nomination of an arbitrator if the arbitration agreement provides for three arbitrators or, if the arbitration agreement provides for a sole arbitrator, comments on the Claimant's proposal for a sole arbitrator or a counter-proposal; and

(e) payment of the requisite filing fee under these Rules for any counterclaim.

4.2 The Response may also include the Statement of Defence and a Statement of Counterclaim, as referred to in Rule 20.3 and Rule 20.4.

4.3 The Respondent shall, at the same time as it files the Response with the Registrar, send a copy of the Response to the Claimant, and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

5. Expedited Procedure

5.1 Prior to the constitution of the Tribunal, a party may file an application with the Registrar for the arbitral proceedings to be conducted in accordance with the Expedited Procedure under this Rule, provided that any of the following criteria is satisfied:

the amount in dispute does not exceed the equivalent amount of $4,000,000, representing the aggregate of the claim, counterclaim and any defence of set-off;

the parties so agree; or

in cases of exceptional urgency.

The party applying for the arbitral proceedings to be conducted in accordance with the Expedited Procedure under this Rule 5.1 shall, at the same time as it files an application for the proceedings to be conducted in accordance with the Expedited Procedure with the Registrar, send a copy of the application to the other party and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

5.2 Where a party has filed an application with the Registrar under Rule 5.1, and where the President determines, after considering the views of the parties, and having regard to the circumstances of the case, that the arbitral proceedings shall be conducted in accordance with the Expedited Procedure, the following procedure shall apply:

the Registrar may abbreviate any time limits under these Rules;

the case shall be referred to a sole arbitrator, unless the President determines otherwise;

the Tribunal may, in consultation with the parties, decide if the dispute is to be decided on the basis of documentary evidence only, or if a hearing is required for the examination of any witness and expert witness as well as for any oral argument;

the final Award shall be made within six months from the date when the Tribunal is constituted unless, in exceptional circumstances, the Registrar extends the time for making such final Award; and

the Tribunal may state the reasons upon which the final Award is based in summary form, unless the parties have agreed that no reasons are to be given.

5.3 By agreeing to arbitration under these Rules, the parties agree that, where arbitral proceedings are conducted in accordance with the Expedited Procedure under this Rule 5, the rules and procedures set forth in Rule 5.2 shall apply even in cases where the arbitration agreement contains contrary terms.

5.4 Upon application by a party, and after giving the parties the opportunity to be heard, the Tribunal may, having regard to any further information as may subsequently become available, and in consultation with the Registrar, order that the arbitral proceedings shall no longer be conducted in accordance with the Expedited Procedure. Where the Tribunal decides to grant an application under this Rule 5.4, the arbitration shall continue to be conducted by the same Tribunal that was constituted to conduct the arbitration in accordance with the Expedited Procedure.

6. Multiple Contracts

6.1 Where there are disputes arising out of or in connection with more than one contract, the Claimant may:

(a) file a Notice of Arbitration in respect of each arbitration agreement invoked and concurrently submit an application to consolidate the arbitrations pursuant to Rule 8.1; or

(b) file a single Notice of Arbitration in respect of all the arbitration agreements invoked which shall include a statement identifying each contract and arbitration agreement invoked and a description of how the applicable criteria under Rule 8.1 are satisfied. The Claimant shall be deemed to have commenced multiple arbitrations, one in respect of each arbitration agreement invoked, and the Notice of Arbitration under this Rule 6.1(b) shall be deemed to be an application to consolidate all such arbitrations pursuant to Rule 8.1.

6.2 Where the Claimant has filed two or more Notices of Arbitration pursuant to Rule 6.1(a),the Registrar shall accept payment of a single filing fee under these Rules for all the arbitrations sought to be consolidated. Where the Court rejects the application for consolidation, in whole or in part, the Claimant shall be required to make payment of the requisite filing fee under these Rules in respect of each arbitration that has not been consolidated.

6.3 Where the Claimant has filed a single Notice of Arbitration pursuant to Rule 6.1(b) and the Court rejects the application for consolidation, in whole or in part, it shall file a Notice of Arbitration in respect of each arbitration that has not been consolidated, and the Claimant shall be required to make payment of the requisite filing fee under these Rules in respect of each arbitration that has not been consolidated.

7. Joinder of Additional Parties

7.1 Prior to the constitution of the Tribunal, a party or non-party to the arbitration may file an application with the Registrar for one or more additional parties to be joined in an arbitration pending under these Rules as a Claimant or a Respondent, if any of the following criteria is satisfied:

(a) the additional party to be joined is *prima facie* bound by the arbitration agreement; or

(b) all parties, including the additional party to be joined, have consented to the joinder of the additional party.

7.2 An application for joinder under Rule 7.1 shall include:

(a) the case reference number of the pending arbitration;

(b) the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of all parties, including the additional party to be joined, and their representatives, if any, and any arbitrators who have been nominated or appointed in the pending arbitration;

(c) whether the additional party is to be joined as a Claimant or a Respondent;

(d) the information specified in Rule 3.1(c) and Rule 3.1(d);

(e) if the application is being made under Rule 7.1(b), identification of the relevant agreement and, where possible, a copy of such agreement; and

(f) a brief statement of the facts and legal basis supporting the application.

The application for joinder is deemed to be complete when all the requirements of this Rule 7.2 are fulfilled or when the Registrar determines that there has been substantial compliance with such requirements. IDREC shall notify all parties, including the additional party to be joined, when the application for joinder is complete.

7.3 The party or non-party applying for joinder under Rule 7.1 shall, at the same time as it files an application for joinder with the Registrar, send a copy of the application to all parties, including the additional party to be joined, and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

7.4 The Court shall, after considering the views of all parties, including the additional party to be joined, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for joinder under Rule 7.1. The Court's decision to grant an application for joinder under this Rule 7.4 is without prejudice to the Tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision. The Court's decision to reject an application for joinder under this Rule 7.4, in whole or in part, is without prejudice to any party's or non-party's right to apply to the Tribunal for joinder pursuant to Rule 7.8.

7.5 Where an application for joinder is granted under Rule 7.4, the date of receipt of the complete application for joinder shall be deemed to be the date of commencement of the arbitration in respect of the additional party.

7.6 Where an application for joinder is granted under Rule 7.4, the Court may revoke the appointment of any arbitrators appointed prior to the decision on joinder. Unless otherwise agreed by all parties, including the additional party joined, Rule 9 to Rule 12 shall apply as appropriate, and the respective timelines thereunder shall run from the date of receipt of the Court's decision under Rule 7.4.

7.7 The Court's decision to revoke the appointment of any arbitrator under Rule 7.6 is without prejudice to the validity of any act done or order or Award made by the arbitrator before his appointment was revoked.

7.8 After the constitution of the Tribunal, a party or non-party to the arbitration may apply to the Tribunal for one or more additional parties to be joined in an arbitration pending under these Rules as a Claimant or a Respondent, provided that any of the following criteria is satisfied:

(a) the additional party to be joined is *prima facie* bound by the arbitration agreement; or

(b) all parties, including the additional party to be joined, have consented to the joinder of the additional party.

Where appropriate, an application to the Tribunal under this Rule 7.8 may be filed with the Registrar.

7.9 Subject to any specific directions of the Tribunal, the provisions of Rule 7.2 shall apply, *mutatis mutandis*, to an application for joinder under Rule 7.8.

7.10 The Tribunal shall, after giving all parties, including the additional party to be joined, the opportunity to be heard, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for joinder under Rule 7.8. The Tribunal's decision to grant an application for joinder under this Rule 7.10 is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision.

7.11 Where an application for joinder is granted under Rule 7.10, the date of receipt by the Tribunal or the Registrar, as the case may be, of the complete application for joinder shall be deemed to be the date of commencement of the arbitration in respect of the additional party.

7.12 Where an application for joinder is granted under Rule 7.4 or Rule 7.10, any party who has not nominated an arbitrator or otherwise participated in the constitution of the Tribunal shall be deemed to have waived its right to nominate an arbitrator or

otherwise participate in the constitution of the Tribunal, without prejudice to the right of such party to challenge an arbitrator pursuant to Rule 14.

7.13 Where an application for joinder is granted under Rule 7.4 or Rule 7.10, the requisite filing fee under these Rules shall be payable for any additional claims or counterclaims.

8. Consolidation

8.1 Prior to the constitution of any Tribunal in the arbitrations sought to be consolidated, a party may file an application with the Registrar to consolidate two or more arbitrations pending under these Rules into a single arbitration, provided that any of the following criteria is satisfied in respect of the arbitrations to be consolidated:

all parties have agreed to the consolidation;

all the claims in the arbitrations are made under the same arbitration agreement; or

the arbitration agreements are compatible, and: (i) the disputes arise out of the same legal relationship(s); (ii) the disputes arise out of contracts consisting of a principal contract and its ancillary contract(s); or (iii) the disputes arise out of the same transaction or series of transactions.

An application for consolidation under Rule 8.1 shall include:

(a) the case reference numbers of the arbitrations sought to be consolidated;

(b) the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of all parties and their representatives, if any, and any arbitrators who have been nominated or appointed in the arbitrations sought to be consolidated;

(c) the information specified in Rule 3.1(c) and Rule 3.1(d);

(d) if the application is being made under Rule 8.1(a), identification of the relevant agreement and, where possible, a copy of such agreement; and

a brief statement of the facts and legal basis supporting the application.

8.3 The party applying for consolidation under Rule 8.1 shall, at the same time as it files an application for consolidation with the Registrar, send a copy of the application to all parties and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

8.4 The Court shall, after considering the views of all parties, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for consolidation under Rule 8.1. The Court's decision to grant an application for consolidation under this Rule 8.4 is without prejudice to the Tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision. The Court's decision to reject an application for consolidation under this Rule 8.4, in whole or in part, is without prejudice to any party's right to apply to the Tribunal for consolidation pursuant to Rule 8.7. Any arbitrations that are not consolidated shall continue as separate arbitrations under these Rules.

8.5 Where the Court decides to consolidate two or more arbitrations under Rule 8.4, the arbitrations shall be consolidated into the arbitration that is deemed by the Registrar to have commenced first, unless otherwise agreed by all parties or the Court decides otherwise having regard to the circumstances of the case.

8.6 Where an application for consolidation is granted under Rule 8.4, the Court may revoke the appointment of any arbitrators appointed prior to the decision on consolidation. Unless otherwise agreed by all parties, Rule 9 to Rule 12 shall apply as appropriate, and the respective timelines thereunder shall run from the date of receipt of the Court's decision under Rule 8.4.

8.7 After the constitution of any Tribunal in the arbitrations sought to be consolidated, a party may apply to the Tribunal to consolidate two or more arbitrations pending under these Rules into a single arbitration, provided that any of the following criteria is satisfied in respect of the arbitrations to be consolidated:

all parties have agreed to the consolidation;

all the claims in the arbitrations are made under the same arbitration agreement, and the same Tribunal has been constituted in each of the arbitrations or no Tribunal has been constituted in the other arbitration(s); or

the arbitration agreements are compatible, the same Tribunal has been constituted in each of the arbitrations or no Tribunal has been constituted in the other arbitration(s), and: (i) the disputes arise out of the same legal relationship(s); (ii) the disputes arise out of contracts consisting of a principal contract and its ancillary contract(s); or (iii) the disputes arise out of the same transaction or series of transactions.

8.8 Subject to any specific directions of the Tribunal, the provisions of Rule 8.2 shall apply, *mutatis mutandis*, to an application for consolidation under Rule 8.7.

8.9 The Tribunal shall, after giving all parties the opportunity to be heard, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for consolidation under Rule 8.7. The Tribunal's decision to grant an application for consolidation under this Rule 8.9 is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision. Any arbitrations that are not consolidated shall continue as separate arbitrations under these Rules.

8.10 Where an application for consolidation is granted under Rule 8.9, the Court may revoke the appointment of any arbitrators appointed prior to the decision on consolidation.

8.11 The Court's decision to revoke the appointment of any arbitrator under Rule 8.6 or Rule 8.10 is without prejudice to the validity of any act done or order or Award made by the arbitrator before his appointment was revoked.

8.12 Where an application for consolidation is granted under Rule 8.4 or Rule 8.9, any party who has not nominated an arbitrator or otherwise participated in the constitution of the Tribunal shall be deemed to have waived its right to nominate an arbitrator or otherwise participate in the constitution of the Tribunal, without prejudice to the right of such party to challenge an arbitrator pursuant to Rule 14.

9. Number and Appointment of Arbitrators

9.1 A sole arbitrator shall be appointed in any arbitration under these Rules unless the parties have otherwise agreed; or it appears to the Registrar, giving due regard to

any proposals by the parties, that the complexity, the quantum involved or other relevant circumstances of the dispute, warrants the appointment of three arbitrators.

9.2 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 by the arbitrators already appointed, that agreement shall be deemed an agreement to nominate an arbitrator under these Rules.

9.3 In all cases, the arbitrators nominated by the parties, or by any third person including by the arbitrators already appointed, shall be subject to appointment by the President in his discretion.

9.4 The President shall appoint an arbitrator as soon as practicable. Any decision by the President to appoint an arbitrator under these Rules shall be final and not subject to appeal.

9.5 The President may appoint any nominee whose appointment has already been suggested or proposed by any party.

9.6 The terms of appointment of each arbitrator shall be fixed by the Registrar in accordance with these Rules and any Practice Notes for the time being in force, or in accordance with the agreement of the parties.

10. Sole Arbitrator

10.1 If a sole arbitrator is to be appointed, either party may propose to the other party the names of one or more persons to serve as the sole arbitrator. Where the parties have reached an agreement on the nomination of a sole arbitrator, Rule 9.3 shall apply.

10.2 If within 21 days after the date of commencement of the arbitration, or within the period otherwise agreed by the parties or set by the Registrar, 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 appoint the sole arbitrator.

11. Three Arbitrators

11.1 If three arbitrators are to be appointed, each party shall nominate one arbitrator.

11.2 If a party fails to make a nomination of an arbitrator within 14 days after receipt of a party's nomination of an arbitrator, or within the period otherwise agreed by the

parties or set by the Registrar, the President shall proceed to appoint an arbitrator on its behalf.

11.3 Unless the parties have agreed upon another procedure for appointing the third arbitrator, or if such agreed procedure does not result in a nomination within the period agreed by the parties or set by the Registrar, the President shall appoint the third arbitrator, who shall be the presiding arbitrator.

12. Multi-Party Appointment of Arbitrator(s)

12.1 Where there are more than two parties to the arbitration, and a sole arbitrator is to be appointed, the parties may agree to jointly nominate the sole arbitrator. In the absence of such joint nomination having been made within 28 days of the date of commencement of the arbitration or within the period otherwise agreed by the parties or set by the Registrar, the President shall appoint the sole arbitrator.

12.2 Where there are more than two parties to the arbitration, and three arbitrators are to be appointed, the Claimant(s) shall jointly nominate one arbitrator and the Respondent(s) shall jointly nominate one arbitrator. The third arbitrator, who shall be the presiding arbitrator, shall be appointed in accordance with Rule 11.3. In the absence of both such joint nominations having been made within 28 days of the date of commencement of the arbitration or within the period otherwise agreed by the parties or set by the Registrar, the President shall appoint all three arbitrators and shall designate one of them to be the presiding arbitrator.

13. Qualifications of Arbitrators

13.1 Any arbitrator appointed in an arbitration under these Rules, whether or not nominated by the parties, shall be and remain at all times independent and impartial.

13.2 In appointing an arbitrator under these Rules, the President shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations that are relevant to the impartiality or independence of the arbitrator.

13.3 The President shall also consider whether the arbitrator has sufficient availability to determine the case in a prompt and efficient manner that is appropriate given the nature of the arbitration.

13.4 A nominated arbitrator shall disclose to the parties and to the Registrar any circumstances that may give rise to justifiable doubts as to his impartiality or independence as soon as reasonably practicable and in any event before his appointment.

13.5 An arbitrator shall immediately disclose to the parties, to the other arbitrators and to the Registrar any circumstances that may give rise to justifiable doubts as to his impartiality or independence that may be discovered or arise during the arbitration.

13.6 No party or person acting on behalf of a party shall have any *ex parte* communication relating to the case with any arbitrator or with any candidate for appointment as party-nominated arbitrator, except to advise the candidate of the general nature of the controversy and of the anticipated proceedings; to discuss the candidate's qualifications, availability or independence in relation to the parties; or to discuss the suitability of candidates for selection as the presiding arbitrator where the parties or party-nominated arbitrators are to participate in that selection. No party or person acting on behalf of a party shall have any *ex parte* communication relating to the case with any candidate for presiding arbitrator.

14. Challenge of Arbitrators

14.1 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess any requisite qualification on which the parties have agreed.

14.2 A party may challenge the arbitrator nominated by it only for reasons of which it becomes aware after the appointment has been made.

15. Notice of Challenge

15.1 A party that intends to challenge an arbitrator shall file a notice of challenge with the Registrar in accordance with the requirements of Rule 15.2 within 14 days after receipt of the notice of appointment of the arbitrator who is being challenged or

within 14 days after the circumstances specified in Rule 14.1 or Rule 14.2 became known or should have reasonably been known to that party.

15.2 The notice of challenge shall state the reasons for the challenge. The date of receipt of the notice of challenge by the Registrar shall be deemed to be the date the notice of challenge is filed. The party challenging an arbitrator shall, at the same time as it files a notice of challenge with the Registrar, send the notice of challenge to the other party, the arbitrator who is being challenged and the other members of the Tribunal (or if the Tribunal has not yet been constituted, any appointed arbitrator), and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

15.3 The party making the challenge shall pay the requisite challenge fee under these Rules in accordance with the applicable Schedule of Fees. If the party making the challenge fails to pay the challenge fee within the time limit set by the Registrar, the challenge shall be considered as withdrawn.

15.4 After receipt of a notice of challenge under Rule 15.2, the Registrar may order a suspension of the arbitral proceedings until the challenge is resolved. Unless the Registrar orders the suspension of the arbitral proceedings pursuant to this Rule 15.4, the challenged arbitrator shall be entitled to continue to participate in the arbitration pending the determination of the challenge by the Court in accordance with Rule 16.

15.5 Where an arbitrator is challenged by a party, the other party may agree to the challenge, and the Court shall remove the arbitrator if all parties agree to the challenge. The challenged arbitrator may also voluntarily withdraw from office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

15.6 If an arbitrator is removed or withdraws from office in accordance with Rule 15.5, a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced. This procedure shall apply even if, during the process of appointing the challenged arbitrator, a party failed to exercise its right to nominate an arbitrator. The time limits applicable to the nomination and appointment of the substitute arbitrator shall commence from the

date of receipt of the agreement of the other party to the challenge or the challenged arbitrator's withdrawal from office.

16. Decision on Challenge

16.1 If, within seven days of receipt of the notice of challenge under Rule 15, the other party does not agree to the challenge and the arbitrator who is being challenged does not withdraw voluntarily from office, the Court shall decide the challenge. The Court may request comments on the challenge from the parties, the challenged arbitrator and the other members of the Tribunal (or if the Tribunal has not yet been constituted, any appointed arbitrator), and set a schedule for such comments to be made.

16.2 If the Court accepts the challenge to an arbitrator, the Court shall remove the arbitrator, and a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced. The time limits applicable to the nomination and appointment of the substitute arbitrator shall commence from the date of the Registrar's notification to the parties of the decision by the Court.

16.3 If the Court rejects the challenge to an arbitrator, the challenged arbitrator shall continue with the arbitration.

16.4 The Court's decision on any challenge to an arbitrator under this Rule 16 shall be reasoned, unless otherwise agreed by the parties, and shall be issued to the parties by the Registrar. Any such decision on any challenge by the Court shall be final and not subject to appeal.

17. Replacement of an Arbitrator

17.1 Except as otherwise provided in these Rules, in the event of the death, resignation, withdrawal or removal of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced.

17.2 In the event that an arbitrator refuses or fails to act or perform his functions in accordance with the Rules or within prescribed time limits, or in the event of any *de jure* or *de facto* impossibility by an arbitrator to act or perform his functions, the

procedure for challenge and replacement of an arbitrator provided in Rule 14 to Rule 16 and Rule 17.1 shall apply.

17.3 The President may, at his own initiative and in his discretion, remove an arbitrator who refuses or fails to act or to perform his functions in accordance with the Rules or within prescribed time limits, or in the event of a *de jure* or *de facto* impossibility of an arbitrator to act or perform his functions, or if the arbitrator does not conduct or participate in the arbitration with due diligence and/or in a manner that ensures the fair, expeditious, economical and final resolution of the dispute. The President shall consult the parties and the members of the Tribunal, including the arbitrator to be removed (or if the Tribunal has not yet been constituted, any appointed arbitrator) prior to the removal of an arbitrator under this Rule.

18. Repetition of Hearings in the Event of Replacement of an Arbitrator

If the sole or presiding arbitrator is replaced in accordance with the procedure in Rule 15 to Rule 17, any hearings held previously shall be repeated unless otherwise agreed by the parties. If any other arbitrator is replaced, any hearings held previously may be repeated at the discretion of the Tribunal after consulting with the parties. If the Tribunal has issued an interim or partial Award, any hearings relating solely to that Award shall not be repeated, and the Award shall remain in effect.

19. Conduct of the Proceedings

19.1 The Tribunal shall conduct the arbitration in such manner as it considers appropriate, after consulting with the parties, to ensure the fair, expeditious, economical and final resolution of the dispute.

19.2 The Tribunal shall determine the relevance, materiality and admissibility of all evidence. The Tribunal is not required to apply the rules of evidence of any applicable law in making such determination.

19.3 As soon as practicable after the constitution of the Tribunal, the Tribunal shall conduct a preliminary meeting with the parties, in person or by any other means, to discuss the procedures that will be most appropriate and efficient for the case.

19.4 The Tribunal may, in its discretion, direct the order of proceedings, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

19.5 Unless otherwise agreed by the parties, the presiding arbitrator may make procedural rulings alone, subject to revision by the Tribunal.

19.6 All statements, documents or other information supplied to the Tribunal and/or the Registrar by a party shall simultaneously be communicated to the other party.

19.7 The President may, at any stage of the proceedings, request the parties and the Tribunal to convene a meeting to discuss the procedures that will be most appropriate and efficient for the case. Such meeting may be conducted in person or by any other means.

20. Submissions by the Parties

20.1 Unless the Tribunal determines otherwise, the submission of written statements shall proceed as set out in this Rule.

20.2 Unless already submitted pursuant to Rule 3.2, the Claimant shall, within a period of time to be determined by the Tribunal, send to the Respondent and the Tribunal a Statement of Claim setting out in full detail:

(a) a statement of facts supporting the claim;

(b) the legal grounds or arguments supporting the claim; and

(c) the relief claimed together with the amount of all quantifiable claims.

20.3 Unless already submitted pursuant to Rule 4.2, the Respondent shall, within a period of time to be determined by the Tribunal, send to the Claimant and the Tribunal

(a) a Statement of Defence setting out in full detail:

(b) a statement of facts supporting its defence to the Statement of Claim;

(c) the legal grounds or arguments supporting such defence; and

(d) the relief claimed.

20.4 If a Statement of Counterclaim is made, the Claimant shall, within a period of time to be determined by the Tribunal, send to the Respondent and the Tribunal a Statement of Defence to Counterclaim setting out in full detail:

a statement of facts supporting its defence to the Statement of Counterclaim;

the legal grounds or arguments supporting such defence; and

the relief claimed.

20.5 A party may amend its claim, counterclaim or other submissions unless the Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim or counterclaim may not be amended in such a manner that the amended claim or counterclaim falls outside the scope of the arbitration agreement.

20.6 The Tribunal shall decide which further submissions shall be required from the parties or may be presented by them. The Tribunal shall fix the periods of time for communicating such submissions.

20.7 All submissions referred to in this Rule shall be accompanied by copies of all supporting documents which have not previously been submitted by any party.

20.8 If the Claimant fails within the time specified to submit its Statement of Claim, the Tribunal may issue an order for the termination of the arbitral proceedings or give such other directions as may be appropriate.

20.9 If the Respondent fails to submit its Statement of Defence, or if at any point any party fails to avail itself of the opportunity to present its case in the manner directed by the Tribunal, the Tribunal may proceed with the arbitration.

21. Seat of the Arbitration

21.1 The parties may agree on the seat of the arbitration. Failing such an agreement, the seat of the arbitration shall be determined by the Tribunal, having regard to all the circumstances of the case.

21.2 The Tribunal may hold hearings and meetings by any means it considers expedient or appropriate and at any location it considers convenient or appropriate.

22. Language of the Arbitration

22.1 Unless otherwise agreed by the parties, the Tribunal shall determine the language to be used in the arbitration.

22.2 If a party submits a document written in a language other than the language(s) of the arbitration, the Tribunal, or if the Tribunal has not been constituted, the Registrar, may order that party to submit a translation in a form to be determined by the Tribunal or the Registrar.

23. Party Representatives

23.1 Any party may be represented by legal practitioners or any other authorised representatives. The Registrar and/or the Tribunal may require proof of authority of any party representatives.

23.2 After the constitution of the Tribunal, any change or addition by a party to its representatives shall be promptly communicated in writing to the parties, the Tribunal and the Registrar.

24. Hearings

24.1 Unless the parties have agreed on a documents-only arbitration or as otherwise provided in these Rules, the Tribunal shall, if either party so requests or the Tribunal so decides, hold a hearing for the presentation of evidence and/or for oral submissions on the merits of the dispute, including any issue as to jurisdiction.

24.2 The Tribunal shall, after consultation with the parties, set the date, time and place of any meeting or hearing and shall give the parties reasonable notice.

24.3 If any party fails to appear at a meeting or hearing without showing sufficient cause for such failure, the Tribunal may proceed with the arbitration and may make the Award based on the submissions and evidence before it.

24.4 Unless otherwise agreed by the parties, all meetings and hearings shall be in private, and any recordings, transcripts, or documents used in relation to the arbitral proceedings shall remain confidential.

25. Witnesses

25.1 Before any hearing, the Tribunal may require the parties to give notice of the identity of witnesses, including expert witnesses, whom the parties intend to produce, the subject matter of their testimony and its relevance to the issues.

25.2 The Tribunal may allow, refuse or limit the appearance of witnesses to give oral evidence at any hearing.

25.3 Any witness who gives oral evidence may be questioned by each of the parties, their representatives and the Tribunal in such manner as the Tribunal may determine.

25.4 The Tribunal may direct the testimony of witnesses to be presented in written form, either as signed statements or sworn affidavits or any other form of recording. Subject to Rule 25.2, any party may request that such a witness should attend for oral examination. If the witness fails to attend for oral examination, the Tribunal may place such weight on the written testimony as it thinks fit, disregard such written testimony, or exclude such written testimony altogether.

25.5 It shall be permissible for any party or its representatives to interview any witness or potential witness (that may be presented by that party) prior to his appearance to give oral evidence at any hearing.

26. Tribunal-Appointed Experts

26.1 Unless otherwise agreed by the parties, the Tribunal may:

(a) following consultation with the parties, appoint an expert to report on specific issues; and

(b) require a party to give any expert appointed under Rule 26.1(a) any relevant information, or to produce or provide access to any relevant documents, goods or property for inspection.

26.2 Any expert appointed under Rule 26.1(a) shall submit a report in writing to the Tribunal. Upon receipt of such written report, the Tribunal shall deliver a copy of the report to the parties and invite the parties to submit written comments on the report.

26.3 Unless otherwise agreed by the parties, if the Tribunal considers it necessary or at the request of any party, an expert appointed under Rule 26.1(a) shall, after delivery of his written report, participate in a hearing. At the hearing, the parties shall have the opportunity to examine such expert.

27. Additional Powers of the Tribunal

27.1 Unless otherwise agreed by the parties, in addition to the other powers specified in these Rules, and except as prohibited by the mandatory rules of law applicable to the arbitration, the Tribunal shall have the power to:

(a) order the correction or rectification of any contract, subject to the law governing such contract;

(b) except as provided in these Rules, extend or abbreviate any time limits prescribed under these Rules or by its directions;

(c) conduct such enquiries as may appear to the Tribunal to be necessary or expedient;

(d) order the parties to make any property or item in their possession or control available for inspection;

(e) order the preservation, storage, sale or disposal of any property or item which is or forms part of the subject matter of the dispute;

(f) 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;

(g) issue an order or Award for the reimbursement of unpaid deposits towards the costs of the arbitration;

(h) direct any party or person to give evidence by affidavit or in any other form;

(i) direct any party to take or refrain from taking actions to ensure that any Award which may be made in the arbitration is not rendered ineffectual by the dissipation of assets by a party or otherwise;

(j) order any party to provide security for legal or other costs in any manner the Tribunal thinks fit;

(k) order any party to provide security for all or part of any amount in dispute in the arbitration;

(l) proceed with the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Tribunal's orders or directions or any partial Award or to attend any meeting or hearing, and to impose such sanctions as the Tribunal deems appropriate in relation to such failure or refusal;

(m) decide, where appropriate, any issue not expressly or impliedly raised in the submissions of a party provided such issue has been clearly brought to the notice of the other party and that other party has been given adequate opportunity to respond;

(n) determine the law applicable to the arbitral proceedings; and

(o) determine any claim of legal or other privilege.

28. Jurisdiction of the Tribunal

28.1 If any party objects to the existence or validity of the arbitration agreement or to the competence of IDREC to administer an arbitration, before the Tribunal is constituted, the Registrar shall determine if such objection shall be referred to the Court. If the Registrar so determines, the Court shall decide if it is *prima facie* satisfied that the arbitration shall proceed. The arbitration shall be terminated if the Court is not so satisfied. Any decision by the Registrar or the Court that the arbitration shall proceed is without prejudice to the power of the Tribunal to rule on its own jurisdiction.

28.2 The Tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration agreement. An arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the

contract is null and void shall not entail *ipso jure* the invalidity of the arbitration agreement, and the Tribunal shall not cease to have jurisdiction by reason of any allegation that the contract is non-existent or null and void.

28.3 Any objection that the Tribunal:

(a) does not have jurisdiction shall be raised no later than in a Statement of Defence or in a Statement of Defence to a Counterclaim; or

(b) is exceeding the scope of its jurisdiction shall be raised within 14 days after the matter alleged to be beyond the scope of the Tribunal's jurisdiction arises during the arbitral proceedings.

The Tribunal may admit an objection raised by a party outside the time limits under this Rule 28.3 if it considers the delay justified. A party is not precluded from raising an objection under this Rule 28.3 by the fact that it has nominated, or participated in the nomination of, an arbitrator.

28.4 The Tribunal may rule on an objection referred to in Rule 28.3 either as a preliminary question or in an Award on the merits.

28.5 A party may rely on a claim or defence for the purpose of a set-off to the extent permitted by these Rules and the applicable law.

29. Early Dismissal of Claims and Defence

29.1 A party may apply to the Tribunal for the early dismissal of a claim or defence on the basis that:

(a) a claim or defence is manifestly without legal merit; or

(b) a claim or defence is manifestly outside the jurisdiction of the Tribunal.

29.2 An application for the early dismissal of a claim or defence under Rule 29.1 shall state in detail the facts and legal basis supporting the application. The party applying for early dismissal shall, at the same time as it files the application with the Tribunal, send a copy of the application to the other party, and shall notify the Tribunal that it has done so, specifying the mode of service employed and the date of service.

29.3 The Tribunal may, in its discretion, allow the application for the early dismissal of a claim or defence under Rule 29.1 to proceed. If the application is allowed to proceed, the Tribunal shall, after giving the parties the opportunity to be heard, decide whether to grant, in whole or in part, the application for early dismissal under Rule 29.1.

29.4 If the application is allowed to proceed, the Tribunal shall make an order or Award on the application, with reasons, which may be in summary form. The order or Award shall be made within 60 days of the date of filing of the application, unless, in exceptional circumstances, the Registrar extends the time.

30. Interim and Emergency Interim Relief

30.1 The Tribunal may, at the request of a party, issue an order or an Award granting an injunction or any other interim relief it deems appropriate. The Tribunal may order the party requesting interim relief to provide appropriate security in connection with the relief sought.

30.2 A party that wishes to seek emergency interim relief prior to the constitution of the Tribunal may apply for such relief pursuant to the procedures set forth in Schedule 1.

30.3 A request for interim relief made by a party to a judicial authority prior to the constitution of the Tribunal, or in exceptional circumstances thereafter, is not incompatible with these Rules.

31. **Applicable Law, *Amiable Compositeur* and *Ex Aequo et Bono***

31.1 The Tribunal shall apply the law or rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Tribunal shall apply the law or rules of law which it determines to be appropriate.

31.2 The Tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorised it to do so.

31.3 In all cases, the Tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any applicable usage of trade.

32. Award

32.1 The Tribunal shall, as promptly as possible, after consulting with the parties and upon being satisfied that the parties have no further relevant and material evidence to produce or submission to make with respect to the matters to be decided in the Award, declare the proceedings closed. The Tribunal's declaration that the proceedings are closed shall be communicated to the parties and to the Registrar.

32.2 The Tribunal may, on its own motion or upon application of a party but before any Award is made, re-open the proceedings. The Tribunal's decision that the proceedings are to be re-opened shall be communicated to the parties and to the Registrar. The Tribunal shall close any re-opened proceedings in accordance with Rule 32.1.

32.3 Before making any Award, the Tribunal shall submit such Award in draft form to the Registrar. Unless the Registrar extends the period of time or unless otherwise agreed by the parties, the Tribunal shall submit the draft Award to the Registrar not later than 45 days from the date on which the Tribunal declares the proceedings closed. The Registrar may, as soon as practicable, suggest modifications as to the form of the Award and, without affecting the Tribunal's liberty to decide the dispute, draw the Tribunal's attention to points of substance. No Award shall be made by the Tribunal until it has been approved by the Registrar as to its form.

32.4 The Award shall be in writing and shall state the reasons upon which it is based unless the parties have agreed that no reasons are to be given.

32.5 Unless otherwise agreed by the parties, the Tribunal may make separate Awards on different issues at different times.

32.6 If any arbitrator fails to cooperate in the making of the Award, having been given a reasonable opportunity to do so, the remaining arbitrators may proceed. The remaining arbitrators shall provide written notice of such refusal or failure to the Registrar, the parties and the absent arbitrator. In deciding whether to proceed with the arbitration in the absence of an arbitrator, the remaining arbitrators may take into account, among other things, the stage of the arbitration, any explanation provided by the absent arbitrator for his refusal to participate and the effect, if any, upon the

enforceability of the Award should the remaining arbitrators proceed without the absent arbitrator. The remaining arbitrators shall explain in any Award made the reasons for proceeding without the absent arbitrator.

32.7 Where there is more than one arbitrator, the Tribunal shall decide by a majority. Failing a majority decision, the presiding arbitrator alone shall make the Award for the Tribunal.

32.8 The Award shall be delivered to the Registrar, who shall transmit certified copies to the parties upon full settlement of the costs of the arbitration.

32.9 The Tribunal may award simple or compound interest on any sum which is the subject of the arbitration at such rates as the parties may have agreed or, in the absence of such agreement, as the Tribunal determines to be appropriate, in respect of any period which the Tribunal determines to be appropriate.

32.10 In the event of a settlement, and if the parties so request, the Tribunal may make a consent Award recording the settlement. If the parties do not require a consent Award, the parties shall confirm to the Registrar that a settlement has been reached, following which the Tribunal shall be discharged and the arbitration concluded upon full settlement of the costs of the arbitration.

32.11 Subject to Rule 33 and Schedule 1, by agreeing to arbitration under these Rules, the parties agree that any Award shall be final and binding on the parties from the date it is made, and undertake to carry out the Award immediately and without delay. The parties also irrevocably waive their rights to any form of appeal, review or recourse to any State court or other judicial authority with respect to such Award insofar as such waiver may be validly made.

32.12 IDREC may, with the consent of the parties and the Tribunal, publish any Award with the names of the parties and other identifying information redacted.

33. Correction of Awards, Interpretation of Awards and Additional Awards

33.1 Within 30 days of receipt of an Award, a party may, by written notice to the Registrar and the other party, request the Tribunal to correct in the Award any error in computation, any clerical or typographical error or any error of a similar nature. If the

Tribunal considers the request to be justified, it shall make the correction within 30 days of receipt of the request. Any correction, made in the original Award or in a separate memorandum, shall constitute part of the Award.

33.2 The Tribunal may correct any error of the type referred to in Rule 33.1 on its own initiative within 30 days of the date of the Award.

33.3 Within 30 days of receipt of an Award, a party may, by written notice to the Registrar and the other party, request the Tribunal to make an additional Award as to claims presented in the arbitration but not dealt with in the Award. If the Tribunal considers the request to be justified, it shall make the additional Award within 45 days of receipt of the request.

33.4 Within 30 days of receipt of an Award, a party may, by written notice to the Registrar and the other party, request that the Tribunal give an interpretation of the Award. If the Tribunal considers the request to be justified, it shall provide the interpretation in writing within 45 days after receipt of the request. The interpretation shall form part of the Award.

33.5 The Registrar may, if necessary, extend the period of time within which the Tribunal shall make a correction of an Award, interpretation of an Award or an additional Award under this Rule.

33.6 The provisions of Rule 32 shall apply in the same manner with the necessary or appropriate changes in relation to a correction of an Award, interpretation of an Award and to any additional Award made.

34. Fees and Deposits

34.1 The Tribunal's fees and IDREC's fees shall be ascertained in accordance with the Schedule of Fees in force at the time of commencement of the arbitration. The parties may agree to alternative methods of determining the Tribunal's fees prior to the constitution of the Tribunal.

34.2 The Registrar shall fix the amount of deposits payable towards the costs of the arbitration. Unless the Registrar directs otherwise, 50% of such deposits shall be payable by the Claimant and the remaining 50% of such deposits shall be payable by

the Respondent. The Registrar may fix separate deposits on costs for claims and counterclaims, respectively.

34.3 Where the amount of the claim or the counterclaim is not quantifiable at the time payment is due, a provisional estimate of the costs of the arbitration shall be made by the Registrar. Such estimate may be based on the nature of the controversy and the circumstances of the case. This estimate may be adjusted in light of such information as may subsequently become available.

34.4 The Registrar may from time to time direct parties to make further deposits towards the costs of the arbitration.

34.5 Parties are jointly and severally liable for the costs of the arbitration. Any party is free to pay the whole of the deposits towards the costs of the arbitration should the other party fail to pay its share.

34.6 If a party fails to pay the deposits directed by the Registrar either wholly or in part:

(a) the Tribunal may suspend its work and the Registrar may suspend IDREC's administration of the arbitration, in whole or in part; and

(b) the Registrar may, after consultation with the Tribunal (if constituted) and after informing the parties, set a time limit on the expiry of which the relevant claims or counterclaims shall be considered as withdrawn without prejudice to the party reintroducing the same claims or counterclaims in another proceeding.

34.7 In all cases, the costs of the arbitration shall be finally determined by the Registrar at the conclusion of the proceedings. If the claim and/or counterclaim is not quantified, the Registrar shall finally determine the costs of the arbitration, as set out in Rule 35, in his discretion. The Registrar shall have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration concluded. In the event that the costs of the arbitration determined are less than the deposits made, there shall be a refund in such proportions as the parties may agree, or failing an agreement, in the same proportions as the deposits were made.

34.8 All deposits towards the costs of the arbitration shall be made to and held by IDREC. Any interest which may accrue on such deposits shall be retained by IDREC.

34.9 In exceptional circumstances, the Registrar may direct the parties to pay an additional fee, in addition to that prescribed in the applicable Schedule of Fees, as part of IDREC's administration fees.

35. Costs of the Arbitration

35.1 Unless otherwise agreed by the parties, the Tribunal shall specify in the Award the total amount of the costs of the arbitration. Unless otherwise agreed by the parties, the Tribunal shall determine in the Award the apportionment of the costs of the arbitration among the parties.

35.2 The term "costs of the arbitration" includes:

(a) the Tribunal's fees and expenses and the Emergency Arbitrator's fees and expenses, where applicable;

(b) IDREC's administration fees and expenses; and

(c) the costs of any expert appointed by the Tribunal and of any other assistance reasonably required by the Tribunal.

36. Tribunal's Fees and Expenses

36.1 The fees of the Tribunal shall be fixed by the Registrar in accordance with the applicable Schedule of Fees or, if applicable, with the method agreed by the parties pursuant to Rule 34.1, and the stage of the proceedings at which the arbitration concluded. In exceptional circumstances, the Registrar may determine that an additional fee over that prescribed in the applicable Schedule of Fees shall be paid.

36.2 The Tribunal's reasonable out-of-pocket expenses necessarily incurred and other allowances shall be reimbursed in accordance with the applicable Practice Note.

37. Party's Legal and Other Costs

The Tribunal shall have the authority to order in its Award that all or a part of the legal or other costs of a party be paid by another party.

38. Exclusion of Liability

38.1 Any arbitrator, including any Emergency Arbitrator, any person appointed by the Tribunal, including any administrative secretary and any expert, the President, members of the Court, and any directors, officers and employees of IDREC, shall not be liable to any person for any negligence, act or omission in connection with any arbitration administered by IDREC in accordance with these Rules.

38.2 IDREC, including the President, members of the Court, directors, officers, employees or any arbitrator, including any Emergency Arbitrator, and any person appointed by the Tribunal, including any administrative secretary and any expert, shall not be under any obligation to make any statement in connection with any arbitration administered by IDREC in accordance with these Rules. No party shall seek to make the President, any member of the Court, director, officer, employee of IDREC, or any arbitrator, including any Emergency Arbitrator, and any person appointed by the Tribunal, including any administrative secretary and any expert, act as a witness in any legal proceedings in connection with any arbitration administered by IDREC in accordance with these Rules.

39. Confidentiality

39.1 Unless otherwise agreed by the parties, a party and any arbitrator, including any Emergency Arbitrator, and any person appointed by the Tribunal, including any administrative secretary and any expert, shall at all times treat all matters relating to the proceedings and the Award as confidential. The discussions and deliberations of the Tribunal shall be confidential.

39.2 Unless otherwise agreed by the parties, a party or any arbitrator, including any Emergency Arbitrator, and any person appointed by the Tribunal, including any administrative secretary and any expert, shall not, without the prior written consent of the parties, disclose to a third party any such matter except:

(a) for the purpose of making an application to any competent court of any State to enforce or challenge the Award;

(b) pursuant to the order of or a subpoena issued by a court of competent jurisdiction;

(c) for the purpose of pursuing or enforcing a legal right or claim;

(d) in compliance with the provisions of the laws of any State which are binding on the party making the disclosure or the request or requirement of any regulatory body or other authority;

(e) pursuant to an order by the Tribunal on application by a party with proper notice to the other parties; or

(f) for the purpose of any application under Rule 7 or Rule 8 of these Rules.

39.3 In Rule 39.1, "matters relating to the proceedings" includes the existence of the proceedings, and the pleadings, evidence and other materials in the arbitral proceedings and all other documents produced by another party in the proceedings or the Award arising from the proceedings, but excludes any matter that is otherwise in the public domain.

39.4 The Tribunal has the power to take appropriate measures, including issuing an order or Award for sanctions or costs, if a party breaches the provisions of this Rule.

40. Decisions of the President, the Court and the Registrar

40.1 Except as provided in these Rules, the decisions of the President, the Court and the Registrar with respect to all matters relating to an arbitration shall be conclusive and binding upon the parties and the Tribunal. The President, the Court and the Registrar shall not be required to provide reasons for such decisions, unless the Court determines otherwise or as may be provided in these Rules. The parties agree that the discussions and deliberations of the Court are confidential.

40.2 Save in respect of Rule 16.1 and Rule 28.1, the parties waive any right of appeal or review in respect of any decisions of the President, the Court and the Registrar to any State court or other judicial authority.

41. General Provisions

41.1 Any party that proceeds with the arbitration without promptly raising any objection to a failure to comply with any provision of these Rules, or of any other rules applicable to the proceedings, any direction given by the Tribunal, or any requirement under the arbitration agreement relating to the constitution of the Tribunal or the conduct of the proceedings, shall be deemed to have waived its right to object.

41.2 In all matters not expressly provided for in these Rules, the President, the Court, the Registrar and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure the fair, expeditious and economical conclusion of the arbitration and the enforceability of any Award.

41.3 In the event of any discrepancy or inconsistency between the English version of these Rules and any other languages in which these Rules are published, the English version shall prevail.

Schedule 1

Emergency Arbitrator

1. A party that wishes to seek emergency interim relief may, concurrent with or following the filing of a Notice of Arbitration but prior to the constitution of the Tribunal, file an application for emergency interim relief with the Registrar. The party shall, at the same time as it files the application for emergency interim relief, send a copy of the application to all other parties. The application for emergency interim relief shall include:

(a) the nature of the relief sought;

(b) the reasons why the party is entitled to such relief; and

(c) a statement certifying that all other parties have been provided with a copy of the application or, if not, an explanation of the steps taken in good faith to provide a copy or notification to all other parties.

2. Any application for emergency interim relief shall be accompanied by payment of the non-refundable administration fee and the requisite deposits under these Rules towards the Emergency Arbitrator's fees and expenses for proceedings pursuant to this Schedule 1. In appropriate cases, the Registrar may increase the amount of the deposits requested from the party making the application. If the additional deposits are not paid within the time limit set by the Registrar, the application shall be considered as withdrawn.

3. The President shall, if he determines that IDReC should accept the application for emergency interim relief, seek to appoint an Emergency Arbitrator within one day of receipt by the Registrar of such application and payment of the administration fee and deposits.

4. If the parties have agreed on the seat of the arbitration, such seat shall be the seat of the proceedings for emergency interim relief. Failing such an agreement, the seat of the proceedings for emergency interim relief shall be any, without prejudice to the Tribunal's determination of the seat of the arbitration under Rule 21.1.

5. Prior to accepting appointment, a prospective Emergency Arbitrator shall disclose to the Registrar any circumstances that may give rise to justifiable doubts as to his impartiality or

independence. Any challenge to the appointment of the Emergency Arbitrator must be made within two days of the communication by the Registrar to the parties of the appointment of the Emergency Arbitrator and the circumstances disclosed.

6. An Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless otherwise agreed by the parties.

7. The Emergency Arbitrator shall, as soon as possible but, in any event, within two days of his appointment, establish a schedule for consideration of the application for emergency interim relief. Such schedule shall provide a reasonable opportunity for the parties to be heard, but may provide for proceedings by telephone or video conference or on written submissions as alternatives to a hearing in person. The Emergency Arbitrator shall have the powers vested in the Tribunal pursuant to these Rules, including the authority to rule on his own jurisdiction, without prejudice to the Tribunal's determination.

8. The Emergency Arbitrator shall have the power to order or award any interim relief that he deems necessary, including preliminary orders that may be made pending any hearing, telephone or video conference or written submissions by the parties. The Emergency Arbitrator shall give summary reasons for his decision in writing. The Emergency Arbitrator may modify or vacate the preliminary order, the interim order or Award for good cause.

9. The Emergency Arbitrator shall make his interim order or Award within 14 days from the date of his appointment unless, in exceptional circumstances, the Registrar extends the time. No interim order or Award shall be made by the Emergency Arbitrator until it has been approved by the Registrar as to its form.

10. The Emergency Arbitrator shall have no power to act after the Tribunal is constituted. The Tribunal may reconsider, modify or vacate any interim order or Award issued by the Emergency Arbitrator, including a ruling on his own jurisdiction. The Tribunal is not bound by the reasons given by the Emergency Arbitrator. Any interim order or Award issued by the Emergency Arbitrator shall, in any event, cease to be binding if the Tribunal is not constituted within 90 days of such order or Award or when the Tribunal makes a final Award or if the

claim is withdrawn.

11. Any interim order or Award by the Emergency Arbitrator may be conditioned on provision by the party seeking such relief of appropriate security.

12. The parties agree that an order or Award by an Emergency Arbitrator pursuant to this Schedule 1 shall be binding on the parties from the date it is made and undertake to carry out the interim order or Award immediately and without delay. The parties also irrevocably waive their rights to any form of appeal, review or recourse to any State court or other judicial authority with respect to such Award insofar as such waiver may be validly made.

13. The costs associated with any application pursuant to this Schedule 1 may initially be apportioned by the Emergency Arbitrator, subject to the power of the Tribunal to determine finally the apportionment of such costs.

14. These Rules shall apply as appropriate to any proceeding pursuant to this Schedule 1, taking into account the urgency of such a proceeding. The Emergency Arbitrator may decide in what manner these Rules shall apply as appropriate, and his decision as to such matters is final and not subject to appeal, review or recourse. The Registrar may abbreviate any time limits under these Rules in applications made pursuant to proceedings commenced under Rule 30.2 and Schedule 1.

Schedule 2

Expedited Arbitral Determination of Collision Claims

1. Parties seeking a determination of a dispute arising out of a collision may agree to refer the dispute to the SEADOCC Terms.

Objective

2. SEADOCC aims to provide a fair, timely and cost-effective means of determining liability for a collision in circumstances where it has not been possible or appropriate to reach such an apportionment of liability using other means of dispute resolution.

3. The purpose of arbitration under these Terms ("the SEADOCC Arbitration") is to provide a binding decision on liability ("the Liability Award") for a collision between two or more ships ("the Collision") by a single appointed arbitrator ("the arbitrator").

4. The arbitrator will be appointed jointly by each Party to the dispute arising out of the collision (together "the Parties"). It is a condition precedent of the Parties taking part in SEADOCC that they agree in writing to the identity and appointment of the arbitrator and commencement of a SEADOCC Arbitration.

5. By agreement between the Parties, the arbitrator may also be called upon to review the quantum of the inter-ship claims and, pursuant to an agreement on the apportionment of liability between the Parties or a Liability Award under these Terms, provide a final and binding Award on the payment to be made on the balance of claims from one Party to the other ("the Settlement Award").

6. The Parties will be free to appoint any person as an arbitrator. It is envisaged that this would be someone with legal or practical experience in dealing with claims arising from collisions between vessels, drawn from the maritime community in Singapore. The IDReC will maintain a list of arbitrators ("the SEADOCC Panel") who have taken part in SEADOCC Arbitration and produced at least one Liability Award as defined herein.

7. The Parties hereby agree that the determination of the apportionment of liability and, where agreed between the Parties, the assessment of inter-ship claims arising out of the Collision will be conducted under the SEADOCC Terms, rather than in accordance with the procedure of the Courts of any jurisdiction. The SEADOCC Terms may however be varied by agreement between the Parties.

8. The seat of the SEADOCC Arbitration shall be------. Unless the parties agree to the contrary, the dispute shall be determined according to ------ law.

9. The SEADOCC Terms shall govern the SEADOCC Arbitration save that if any of these Terms is in conflict with a mandatory provision of the ----- from which the Parties cannot derogate, such provisions shall prevail.

10. The IDReC will not be liable for any claims or disputes arising out of the appointment of any arbitrator, whether chosen from the SEADOCC Panel or not. The Parties will make any such appointments at their own risk.

11. The arbitrator will be entitled to charge the rates set out in the Engagement Letter for work carried out in preparing a Liability Award or Settlement Award as described in these Terms. The fees and costs of an arbitrator appointed under the SEADOCC Terms will be shared equally between the parties regardless of the outcome of the SEADOCC arbitration. The parties shall be jointly and severally liable for payment of all the costs of arbitration.

Initial Assessment

12. As soon as possible following the appointment of the arbitrator, he or she will hold an initial meeting or telephone conference with the Parties to establish the nature of their dispute, the broad issues involved, the likely level of documentation and the service they require.

13. Based on this, the arbitrator will provide an estimate of his or her likely costs for providing the Liability Award and/or Settlement Award. This will be indicative only and will not be binding on the arbitrator.

Engagement Letter and Options

14. On appointment, the arbitrator will provide the Parties with an engagement letter ("the Engagement Letter") clearly setting out his or her hourly rates and terms and conditions which shall be no greater than his or her usual hourly rates.

15. The arbitrator may also seek a letter of comfort or security from the Parties' respective P&I insurers or such other body as the arbitrator shall consider satisfactory, confirming that these insurers shall in the first instance be jointly and severally liable for settling the arbitrator's Costs as defined herein. Early settlement.

16. If the Parties settle their dispute at any stage following the appointment of the arbitrator ("an Early Settlement"), they will inform him or her as soon as reasonably possible.

17. The arbitrator will be entitled to the costs and expenses of any work conducted prior to and up to the date of an Early Settlement in accordance with the Engagement Letter. Submissions 18. The Parties shall each within 14 days of the arbitrator's appointment provide him or her with the following documents and information (collectively "the Evidence"):

(a) A summary of the background facts of the case set out on no more than six pages of A4 paper.

(b) A maximum of one lever arch file of key documents ("The Arbitration Bundle"), which may be provided in electronic form, such as:

(i) Navigation charts;

(ii) Deck and engine logbook extracts;

(iii) Deck and engine bell books;

(iv) Engine data logger records;

(v) Course recorder extracts;

(vi) Weather forecasts and reports; if relevant

(vii) STCW Crew certificates for those officers and ratings involved in the incident;

(viii) Any photographs or notes made by the witnesses;

(ix) Other ship's documents or records which may be relevant to the case;

(x) Any key advices provided to the Parties by their legal advisors;

(xi) Any criminal or civil reports by national maritime administrations;

(xii) Any surveyors' reports; and.

(xiii) Any available AIS data.

(c) Copies of any ECDIS or VDR/SVDR data, including playback software, from the respective Ships.

18. The Parties will promptly after provision of the Evidence to the arbitrator make appropriate arrangements for the simultaneous exchange of their Arbitration Bundles.

19. The arbitrator will review the Evidence and determine whether there is any additional information or documentary evidence ("Additional Evidence") which might assist him or her in making the Liability Award. It is envisaged that this initial review would be conducted within 14 days of the Parties providing to the arbitrator their Arbitration Bundles. The arbitrator will then provide a written list of any such Additional Evidence to the Parties.

20. The Parties shall within 14 days of the arbitrator's written request provide such Additional Evidence as he or she may request. Neither Party shall be obliged to provide such Additional Evidence to the arbitrator, but the arbitrator may draw whatever inference he or she considers appropriate in the circumstances from any failure to do so.

21. Where Additional Evidence is provided to the arbitrator, the Parties will at the same time serve on each other an identical copy of their respective Additional Evidence. The Parties will make appropriate arrangements for the simultaneous exchange of such Additional Evidence.

22. The arbitrator will then prepare a draft Liability Award in writing, with reasons ("the Draft Award") on the apportionment of liability for the Collision, which he will provide to the

Parties for their consideration.

23. The Parties agree that once such a Draft Award has been published, they will be bound to obtain a final written Liability Award from the arbitrator, subject to the Parties achieving an Early Settlement and regardless of whether they provide further written submissions in response to the Draft Award as set out below.

24. The Draft Award will normally be available to the Parties within six weeks after the Parties have provided such Additional Evidence as the arbitrator may require.

25. The Parties shall within 21 days of receiving the Draft Award provide to the arbitrator any further written submissions they may have, on not more than four pages of A4 paper, in response to the Draft Award.

26. Where the Parties provide further written submissions to the arbitrator, the Parties will promptly make appropriate arrangements for the simultaneous exchange of such further written submissions.

27. The arbitrator will then prepare his or her Liability Award with reasons on the apportionment of liability for the collision. The Liability Award will normally be available to the Parties within four weeks after the Parties have provided their further written submissions in response to the Draft Award.

28. It is envisaged that the timescale from the appointment of the arbitrator to the publication of the Liability Award will be no longer than five months, and hopefully shorter than this, subject to any exceptional circumstances. Inter-ship Claims and Settlement

29. By agreement between the Parties, the arbitrator may also provide a Settlement Award on the payment to be made on the balance of inter-ship claims arising out of the Collision from one Party to the other.

30. The arbitrator shall make such directions and orders as he or she considers necessary to obtain evidence on claims ("the Quantum Evidence") including invoices, vouchers and payment receipts. Having reviewed the Quantum Evidence, the arbitrator will then provide a Settlement Award.

31. The Liability Award and any Settlement Award will be final and binding on the Parties. The Liability Award and any Settlement Award shall each have the force of an Arbitration Award made under the Act.

File Closure

32. Three months after the publication of the Liability Award and/or Settlement Award (as appropriate) the arbitrator shall notify the Parties of his or her intention to dispose of the Evidence and any other documents and to close the file. He or she will act accordingly unless otherwise requested by either Party within 21 days of such notice being given. Law and Jurisdiction.

33. Any dispute arising under these Terms shall be subject to ---- Law and the exclusive Jurisdiction of the ---- Courts

ANNEXURE VI - DRAFT INVESTMENT ARBITRATION RULES

Rule 1

General Obligations

1. Upon notification of the registration of the request for arbitration, the parties shall, with all possible dispatch, proceed to constitute a Tribunal.

2. Unless such information is provided in the request, the parties shall communicate to the Secretary-General as soon as possible any provisions agreed by them regarding the number of arbitrators and the method of their appointment.

3. The majority of the arbitrators shall be nationals of States other than the State party to the dispute and of the State who's national is a party to the dispute, unless the sole arbitrator or each individual member of the Tribunal is appointed by agreement of the parties. Where the Tribunal is to consist of three members, a national of either of these States may not be appointed as an arbitrator by a party without the agreement of the other party to the dispute. Where the Tribunal is to consist of five or more members, nationals of either of these States may not be appointed as arbitrators by a party if appointment by the other party of the same number of arbitrators of either of these nationalities would result in a majority of arbitrators of these nationalities.

4. No person who had previously acted as a conciliator or arbitrator in any proceeding for the settlement of the dispute may be appointed as a member of the Tribunal

Rule 2

Method of Constituting the Tribunal in the Absence of Previous Agreement

1. If the parties, at the time of the registration of the request for arbitration, have not agreed upon the number of arbitrators and the method of their appointment, they shall, unless they agree otherwise, follow the following procedure:

(a) the requesting party shall, within 10 days after the registration of the request, propose to the other party the appointment of a sole arbitrator or of a specified uneven number of arbitrators and specify the method proposed for their appointment;

(b) within 20 days after receipt of the proposals made by the requesting party, the other party shall: (i) accept such proposals; or (ii) make other proposals regarding the number of arbitrators and the method of their appointment;

(c) within 20 days after receipt of the reply containing any such other proposals, the requesting party shall notify the other party whether it accepts or rejects such proposals.

2. The communications provided for in paragraph (1) shall be made or promptly confirmed in writing and shall either be transmitted through the Secretary-General or directly between the parties with a copy to the Secretary-General. The parties shall promptly notify the Secretary-General of the contents of any agreement reached.

3. At any time 60 days after the registration of the request, if no agreement on another procedure is reached, either party may inform the Secretary-General that it chooses the formula provided for in Article 37(2)(b) of the Convention. The Secretary-General shall thereupon promptly inform the other party that the Tribunal is to be constituted in accordance with that Article.

Rule 3

Appointment of Arbitrators to a Tribunal Constituted in Accordance with Convention Article 37(2)(b)

1. If the Tribunal is to be constituted in accordance with Article 37(2)(b) of the Convention:

(a) either party shall in a communication to the other party:

(i) name two persons, identifying one of them, who shall not have the same nationality as nor be a national of either party, as the arbitrator appointed by it, and the other as the arbitrator proposed to be the President of the Tribunal; and

(ii) invite the other party to concur in the appointment of the arbitrator proposed to be the President of the Tribunal and to appoint another arbitrator;

(b) promptly upon receipt of this communication the other party shall, in its reply:

(i) name a person as the arbitrator appointed by it, who shall not have the same nationality as nor be a national of either party; and

(ii) concur in the appointment of the arbitrator proposed to be the President of the Tribunal or name another person as the arbitrator proposed to be President;

(c) promptly upon receipt of the reply containing such a proposal, the initiating party shall notify the other party whether it concurs in the appointment of the arbitrator proposed by that party to be the President of the Tribunal.

2. The communications provided for in this Rule shall be made or promptly confirmed in writing and shall either be transmitted through the Secretary-General or directly between the parties with a copy to the Secretary-General.

Rule 4

Appointment of Arbitrators by the Chairman of the Administrative Council

1. If the Tribunal is not constituted within 90 days after the dispatch by the Secretary-General of the notice of registration, or such other period as the parties may agree, either party may, through the Secretary-General, address to the Chairman of the Administrative Council a request in writing to appoint the arbitrator or arbitrators not yet appointed and to designate an arbitrator to be the President of the Tribunal.

2. The provision of paragraph (1) shall apply mutatis mutandis in the event that the parties have agreed that the arbitrators shall elect the President of the Tribunal and they fail to do so.

3. The Secretary-General shall forthwith send a copy of the request to the other party.

4. The Chairman shall use his best efforts to comply with that request within 30 days after its receipt. Before he proceeds to make an appointment or designation, with due regard to Articles 38 and 40(1) of the Convention, he shall consult both parties as far as possible.

5. The Secretary-General shall promptly notify the parties of any appointment or designation made by the Chairman.

Rule 5

Acceptance of Appointments

1. The party or parties concerned shall notify the Secretary-General of the appointment of each arbitrator and indicate the method of his appointment.

2. As soon as the Secretary-General has been informed by a party or the Chairman of the Administrative Council of the appointment of an arbitrator, he shall seek an acceptance from the appointee.

3. If an arbitrator fails to accept his appointment within 15 days, the Secretary-General shall promptly notify the parties, and if appropriate the Chairman, and invite them to proceed to the appointment of another arbitrator in accordance with the method followed for the previous appointment.

Rule 6

Constitution of the Tribunal

1. The Tribunal shall be deemed to be constituted and the proceeding to have begun on the date the Secretary-General notifies the parties that all the arbitrators have accepted their appointment.

Rule 7

Replacement of Arbitrators

1. At any time before the Tribunal is constituted, each party may replace any arbitrator appointed by it and the parties may by common consent agree to replace any arbitrator. The procedure of such replacement shall be in accordance with Rules 1, 5 and 6.

Rule 8

Incapacity or Resignation of Arbitrators

1. If an arbitrator becomes incapacitated or unable to perform the duties of his office, the procedure in respect of the disqualification of arbitrators set forth in Rule 9 shall apply.

2. An arbitrator may resign by submitting his resignation to the other members of the Tribunal and the Secretary-General. If the arbitrator was appointed by one of the parties, the Tribunal shall promptly consider the reasons for his resignation and decide whether it consents thereto. The Tribunal shall promptly notify the Secretary-General of its decision.

Rule 9

Disqualification of Arbitrators

1. A party proposing the disqualification of an arbitrator pursuant to Article 57 of the Convention shall promptly, and in any event before the proceeding is declared closed, file its proposal with the Secretary-General, stating its reasons, therefore.

2. The Secretary-General shall forthwith:

(a) transmit the proposal to the members of the Tribunal and, if it relates to a sole arbitrator or to a majority of the members of the Tribunal, to the Chairman of the Administrative Council; and

(b) notify the other party of the proposal.

3. The arbitrator to whom the proposal relates may, without delay, furnish explanations to the Tribunal or the Chairman, as the case may be.

4. Unless the proposal relates to a majority of the members of the Tribunal, the other members shall promptly consider and vote on the proposal in the absence of the arbitrator concerned. If those members are equally divided, they shall, through the Secretary-General, promptly notify the Chairman of the proposal, of any explanation furnished by the arbitrator

concerned and of their failure to reach a decision.

5. Whenever the Chairman has to decide on a proposal to disqualify an arbitrator, he shall use his best efforts to take that decision within 30 days after he has received the proposal.

6. The proceeding shall be suspended until a decision has been taken on the proposal.

Rule 10

Procedure during a Vacancy on the Tribunal

1. The Secretary-General shall forthwith notify the parties and, if necessary, the Chairman of the Administrative Council of the disqualification, death, incapacity or resignation of an arbitrator and of the consent, if any, of the Tribunal to a resignation.

2. Upon the notification by the Secretary-General of a vacancy on the Tribunal, the proceeding shall be or remain suspended until the vacancy has been filled.

Rule 11 Filling Vacancies on the Tribunal

1. Except as provided in paragraph (2), a vacancy resulting from the disqualification, death, incapacity or resignation of an arbitrator shall be promptly filled by the same method by which his appointment had been made.

2. In addition to filling vacancies relating to arbitrators appointed by him, the Chairman of the Administrative Council shall appoint a person from the Panel of Arbitrators:

(a) to fill a vacancy caused by the resignation, without the consent of the Tribunal, of an arbitrator appointed by a party; or

(b) at the request of either party, to fill any other vacancy, if no new appointment is made and accepted within 45 days of the notification of the vacancy by the Secretary-General.

3. The procedure for filling a vacancy shall be in accordance with Rules 1, 4(4), 4(5), 5 and, mutatis mutandis, 6(2).

Rule 12

Resumption of Proceeding after Filling a Vacancy

1. As soon as a vacancy on the Tribunal has been filled, the proceeding shall continue from the point it had reached at the time the vacancy occurred. The newly appointed arbitrator may, however, require that the oral procedure be recommenced, if this had already been started.

Chapter II Working of the Tribunal

Rule 13

Sessions of the Tribunal

1. The Tribunal shall hold its first session within 60 days after its constitution or such other period as the parties may agree. The dates of that session shall be fixed by the President of the Tribunal after consultation with its members and the Secretary-General. If upon its constitution the Tribunal has no President because the parties have agreed that the President shall be elected by its members, the Secretary-General shall fix the dates of that session. In both cases, the parties shall be consulted as far as possible.

2. The dates of subsequent sessions shall be determined by the Tribunal, after consultation with the Secretary-General and with the parties as far as possible.

3. The Tribunal shall meet at the seat of the Centre or at such other place as may have been agreed by the parties in accordance with Article 63 of the Convention. If the parties agree that the proceeding shall be held at a place other than the Centre or an institution with which the Centre has made the necessary arrangements, they shall consult with the Secretary-General and request the approval of the Tribunal. Failing such approval, the Tribunal shall meet at the seat of the Centre.

4. The Secretary-General shall notify the members of the Tribunal and the parties of the dates and place of the sessions of the Tribunal in good time.

Rule 14

Sittings of the Tribunal

1. The President of the Tribunal shall conduct its hearings and preside at its deliberations. Except as the parties otherwise agree, the presence of a majority of the members of the Tribunal shall be required at its sittings.

2. The President of the Tribunal shall fix the date and hour of its sittings.

Rule 15

Deliberations of the Tribunal

1. The deliberations of the Tribunal shall take place in private and remain secret.

2. Only members of the Tribunal shall take part in its deliberations. No other person shall be admitted unless the Tribunal decides otherwise.

Rule 16

Decisions of the Tribunal

1. Decisions of the Tribunal shall be taken by a majority of the votes of all its members. Abstention shall count as a negative vote.

2. Except as otherwise provided by these Rules or decided by the Tribunal, it may take any decision by correspondence among its members, provided that all of them are consulted. Decisions so taken shall be certified by the President of the Tribunal.

Rule 17

Incapacity of the President

1. If at any time the President of the Tribunal should be unable to act, his functions shall be performed by one of the other members of the Tribunal, acting in the order in which the Secretary-General had received the notice of their acceptance of their appointment to the

Tribunal.

2.

Rule 18

Representation of the Parties

1. Each party may be represented or assisted by agents, counsel or advocates whose names and authority shall be notified by that party to the Secretary-General, who shall promptly inform the Tribunal and the other party.

2. For the purposes of these Rules, the expression "party" includes, where the context so admits, an agent, counsel or advocate authorized to represent that party.

Chapter III

General Procedural Provisions

Rule 19

Procedural Orders

1. The Tribunal shall make the orders required for the conduct of the proceeding.

Rule 20

Preliminary Procedural Consultation

1. As early as possible after the constitution of a Tribunal, its President shall endeavour to ascertain the views of the parties regarding questions of procedure. For this purpose he may request the parties to meet him. He shall, in particular, seek their views on the following matters:

(a) the number of members of the Tribunal required to constitute a quorum at its sittings;

(b) the language or languages to be used in the proceeding;

(c) the number and sequence of the pleadings and the time limits within which they are to be filed;

(d) the number of copies desired by each party of instruments filed by the other;

(e) dispensing with the written or the oral procedure;

(f) the manner in which the cost of the proceeding is to be apportioned; and

(g) the manner in which the record of the hearings shall be kept.

2. In the conduct of the proceeding the Tribunal shall apply any agreement between the parties on procedural matters, except as otherwise provided in the Convention or the Administrative and Financial Regulations.

Rule 21

Pre-Hearing Conference

1. At the request of the Secretary-General or at the discretion of the President of the Tribunal, a pre-hearing conference between the Tribunal and the parties may be held to arrange for an exchange of information and the stipulation of uncontested facts in order to expedite the proceeding.

2. At the request of the parties, a pre-hearing conference between the Tribunal and the parties, duly represented by their authorized representatives, may be held to consider the issues in dispute with a view to reaching an amicable settlement.

Rule 22

Procedural Languages

1. The parties may agree on the use of one or two languages to be used in the proceeding, provided, that, if they agree on any language that is not an official language of the Centre, the Tribunal, after consultation with the Secretary-General, gives its approval. If the parties do not agree on any such procedural language, each of them may select one of the official languages (i.e., English, French and Spanish) for this purpose.

2. If two procedural languages are selected by the parties, any instrument may be filed in

either language. Either language may be used at the hearings, subject, if the Tribunal so requires, to translation and interpretation. The orders and the award of the Tribunal shall be rendered, and the record kept in both procedural languages, both versions being equally authentic.

Rule 23

Copies of Instruments

1. Except as otherwise provided by the Tribunal after consultation with the parties and the Secretary-General, every request, pleading, application, written observation, supporting documentation, if any, or other instrument shall be filed in the form of a signed original accompanied by the following number of additional copies:

(a) before the number of members of the Tribunal has been determined: five;

(b) after the number of members of the Tribunal has been determined: two more than the number of its members.

Rule 24

Supporting Documentation

1. Supporting documentation shall ordinarily be filed together with the instrument to which it relates, and in any case within the time limit fixed for the filing of such instrument.

Rule 25

Correction of Errors

1. An accidental error in any instrument or supporting document may, with the consent of the other party or by leave of the Tribunal, be corrected at any time before the award is rendered.

Rule 26

Time Limits

1. Where required, time limits shall be fixed by the Tribunal by assigning dates for the

completion of the various steps in the proceeding. The Tribunal may delegate this power to its President.

2. The Tribunal may extend any time limit that it has fixed. If the Tribunal is not in session, this power shall be exercised by its President.

3. Any step taken after expiration of the applicable time limit shall be disregarded unless the Tribunal, in special circumstances and after giving the other party an opportunity of stating its views, decides otherwise.

Rule 27

Waiver

1. A party which knows or should have known that a provision of the Administrative and Financial Regulations, of these Rules, of any other rules or agreement applicable to the proceeding, or of an order of the Tribunal has not been complied with and which fails to state promptly its objections thereto, shall be deemed—subject to Article 45 of the Convention—to have waived its right to object.

Rule 28

Cost of Proceeding

1. Without prejudice to the final decision on the payment of the cost of the proceeding, the Tribunal may, unless otherwise agreed by the parties, decide:

(a) at any stage of the proceeding, the portion which each party shall pay, pursuant to Administrative and Financial Regulation 14, of the fees and expenses of the Tribunal and the charges for the use of the facilities of the Centre;

(b) with respect to any part of the proceeding, that the related costs (as determined by the Secretary-General) shall be borne entirely or in a particular share by one of the parties.

2. Promptly after the closure of the proceeding, each party shall submit to the Tribunal a statement of costs reasonably incurred or borne by it in the proceeding and the Secretary-General shall submit to the Tribunal an account of all amounts paid by each party to the Centre

and of all costs incurred by the Centre for the proceeding. The Tribunal may, before the award has been rendered, request the parties and the Secretary-General to provide additional information concerning the cost of the proceeding.

Chapter IV

Written and Oral Procedures

Rule 29

Normal Procedures

1. Except if the parties otherwise agree, the proceeding shall comprise two distinct phases: a written procedure followed by an oral one.

Rule 30

Transmission of the Request

1. As soon as the Tribunal is constituted, the Secretary-General shall transmit to each member a copy of the request by which the proceeding was initiated, of the supporting documentation, of the notice of registration and of any communication received from either party in response thereto.

Rule 31

The Written Procedure

1. In addition to the request for arbitration, the written procedure shall consist of the following pleadings, filed within time limits set by the Tribunal:

(a) a memorial by the requesting party;

(b) a counter-memorial by the other party; and, if the parties so agree or the Tribunal deems it necessary:

(c) a reply by the requesting party; and (d) a rejoinder by the other party.

2. If the request was made jointly, each party shall, within the same time limit determined by the Tribunal, file its memorial and, if the parties so agree or the Tribunal deems it necessary,

its reply; however, the parties may instead agree that one of them shall, for the purposes of paragraph (1), be considered as the requesting party.

3. A memorial shall contain: a statement of the relevant facts; a statement of law; and the submissions. A counter-memorial, reply or rejoinder shall contain an admission or denial of the facts stated in the last previous pleading; any additional facts, if necessary; observations concerning the statement of law in the last previous pleading; a statement of law in answer thereto; and the submissions.

Rule 32

The Oral Procedure

1. The oral procedure shall consist of the hearing by the Tribunal of the parties, their agents, counsel and advocates, and of witnesses and experts.

2. Unless either party objects, the Tribunal, after consultation with the Secretary-General, may allow other persons, besides the parties, their agents, counsel and advocates, witnesses and experts during their testimony, and officers of the Tribunal, to attend or observe all or part of the hearings, subject to appropriate logistical arrangements. The Tribunal shall for such cases establish procedures for the protection of proprietary or privileged information.

3. The members of the Tribunal may, during the hearings, put questions to the parties, their agents, counsel and advocates, and ask them for explanations.

Rule 33

Marshalling of Evidence

1. Without prejudice to the rules concerning the production of documents, each party shall, within time limits fixed by the Tribunal, communicate to the Secretary-General, for transmission to the Tribunal and the other party, precise information regarding the evidence which it intends to produce and that which it intends to request the Tribunal to call for, together with an indication of the points to which such evidence will be directed.

Rule 34

Evidence: General Principles

1. The Tribunal shall be the judge of the admissibility of any evidence adduced and of its probative value.

2. The Tribunal may, if it deems it necessary at any stage of the proceeding:
   (a) call upon the parties to produce documents, witnesses and experts; and
   (b) visit any place connected with the dispute or conduct inquiries there.

3. The parties shall cooperate with the Tribunal in the production of the evidence and in the other measures provided for in paragraph (2). The Tribunal shall take formal note of the failure of a party to comply with its obligations under this paragraph and of any reasons given for such failure.

4. Expenses incurred in producing evidence and in taking other measures in accordance with paragraph (2) shall be deemed to constitute part of the expenses incurred by the parties.

Rule 35

Examination of Witnesses and Experts

1. Witnesses and experts shall be examined before the Tribunal by the parties under the control of its President. Questions may also be put to them by any member of the Tribunal.

2. Each witness shall make the following declaration before giving his evidence: “I solemnly declare upon my honour and conscience that I shall speak the truth, the whole truth and nothing but the truth.”

3. Each expert shall make the following declaration before making his statement: “I solemnly declare upon my honour and conscience that my statement will be in accordance with my sincere belief.”

Rule 36

Witnesses and Experts: Special Rules

1. Notwithstanding Rule 35 the Tribunal may:

(a) admit evidence given by a witness or expert in a written deposition; and

(b) with the consent of both parties, arrange for the examination of a witness or expert otherwise than before the Tribunal itself. The Tribunal shall define the subject of the examination, the time limit, the procedure to be followed and other particulars. The parties may participate in the examination.

Rule 37

Visits and Inquiries; Submissions of Non-disputing Parties

1. If the Tribunal considers it necessary to visit any place connected with the dispute or to conduct an inquiry there, it shall make an order to this effect. The order shall define the scope of the visit or the subject of the inquiry, the time limit, the procedure to be followed and other particulars. The parties may participate in any visit or inquiry.

2. After consulting both parties, the Tribunal may allow a person or entity that is not a party to the dispute (in this Rule called the "non disputing party") to file a written submission with the Tribunal regarding a matter within the scope of the dispute. In determining whether to allow such a filing, the Tribunal shall consider, among other things, the extent to which:

(a) the non-disputing party submission would assist the Tribunal in the determination of a factual or legal issue related to the proceeding by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties;

(b) the non-disputing party submission would address a matter within the scope of the dispute;

(c) the non-disputing party has a significant interest in the proceeding.

The Tribunal shall ensure that the non-disputing party submission does not disrupt the proceeding or unduly burden or unfairly prejudice either party, and that both parties are given an opportunity to present their observations on the non-disputing party submission.

Rule 38

Closure of the Proceeding

1. When the presentation of the case by the parties is completed, the proceeding shall be declared closed.

2. Exceptionally, the Tribunal may, before the award has been rendered, reopen the proceeding on the ground that new evidence is forthcoming of such a nature as to constitute a decisive factor, or that there is a vital need for clarification on certain specific points.

Chapter V

Particular Procedures

Rule 39

Provisional Measures

1. At any time after the institution of the proceeding, a party may request that provisional measures for the preservation of its rights be recommended by the Tribunal. The request shall specify the rights to be preserved, the measures the recommendation of which is requested, and the circumstances that require such measures.

2. The Tribunal shall give priority to the consideration of a request made pursuant to paragraph 1.

3. The Tribunal may also recommend provisional measures on its own initiative or recommend measures other than those specified in a request. It may at any time modify or revoke its recommendations.

4. The Tribunal shall only recommend provisional measures, or modify or revoke its recommendations, after giving each party an opportunity of presenting its observations.

5. If a party makes a request pursuant to paragraph (1) before the constitution of the

Tribunal, the Secretary-General shall, on the application of either party, fix time limits for the parties to present observations on the request, so that the request and observations may be considered by the Tribunal promptly upon its constitution.

6. Nothing in this Rule shall prevent the parties, provided that they have so stipulated in the agreement recording their consent, from requesting any judicial or other authority to order provisional measures, prior to or after the institution of the proceeding, for the preservation of their respective rights and interests.

Rule 40

Ancillary Claims

1. Except as the parties otherwise agree, a party may present an incidental or additional claim or counterclaim arising directly out of the subject-matter of the dispute, provided that such ancillary claim is within the scope of the consent of the parties and is otherwise within the jurisdiction of the Centre.

2. An incidental or additional claim shall be presented not later than in the reply and a counterclaim no later than in the counter memorial, unless the Tribunal, upon justification by the party presenting the ancillary claim and upon considering any objection of the other party, authorizes the presentation of the claim at a later stage in the proceeding.

3. The Tribunal shall fix a time limit within which the party against which an ancillary claim is presented may file its observations thereon.

Rule 41

Preliminary Objections

1. Any objection that the dispute or any ancillary claim is not within the jurisdiction of the Centre or, for other reasons, is not within the competence of the Tribunal shall be made as early as possible. A party shall file the objection with the Secretary-General no later than the expiration of the time limit fixed for the filing of the counter memorial, or, if the objection

relates to an ancillary claim, for the filing of the rejoinder—unless the facts on which the objection is based are unknown to the party at that time.

2. The Tribunal may on its own initiative consider, at any stage of the proceeding, whether the dispute or any ancillary claim before it is within the jurisdiction of the Centre and within its own competence.

3. Upon the formal raising of an objection relating to the dispute, the Tribunal may decide to suspend the proceeding on the merits. The President of the Tribunal, after consultation with its other members, shall fix a time limit within which the parties may file observations on the objection.

4. The Tribunal shall decide whether or not the further procedures relating to the objection made pursuant to paragraph (1) shall be oral. It may deal with the objection as a preliminary question or join it to the merits of the dispute. If the Tribunal overrules the objection or joins it to the merits, it shall once more fix time limits for the further procedures.

5. Unless the parties have agreed to another expedited procedure for making preliminary objections, a party may, no later than 30 days after the constitution of the Tribunal, and in any event before the first session of the Tribunal, file an objection that a claim is manifestly without legal merit. The party shall specify as precisely as possible the basis for the objection. The Tribunal, after giving the parties the opportunity to present their observations on the objection, shall, at its first session or promptly thereafter, notify the parties of its decision on the objection. The decision of the Tribunal shall be without prejudice to the right of a party to file an objection pursuant to paragraph (1) or to object, in the course of the proceeding, that a claim lacks legal merit.

6. If the Tribunal decides that the dispute is not within the jurisdiction of the Centre or not within its own competence, or that all claims are manifestly without legal merit, it shall render an award to that effect.

Rule 42

Default

1. If a party (in this Rule called the "defaulting party") fails to appear or to present its case at any stage of the proceeding, the other party may, at any time prior to the discontinuance of the proceeding, request the Tribunal to deal with the questions submitted to it and to render an award.

2. The Tribunal shall promptly notify the defaulting party of such a request. Unless it is satisfied that that party does not intend to appear or to present its case in the proceeding, it shall, at the same time, grant a period of grace and to this end: (a) if that party had failed to file a pleading or any other instrument within the time limit fixed therefor, fix a new time limit for its filing; or (b) if that party had failed to appear or present its case at a hearing, fix a new date for the hearing. The period of grace shall not, without the consent of the other party, exceed 60 days.

3. After the expiration of the period of grace or when, in accordance with paragraph (2), no such period is granted, the Tribunal shall resume the consideration of the dispute. Failure of the defaulting party to appear or to present its case shall not be deemed an admission of the assertions made by the other party.

4. The Tribunal shall examine the jurisdiction of the Centre and its own competence in the dispute and, if it is satisfied, decide whether the submissions made are well-founded in fact and in law. To this end, it may, at any stage of the proceeding, call on the party appearing to file observations, produce evidence or submit oral explanations.

Rule 43

Settlement and Discontinuance

1. If, before the award is rendered, the parties agree on a settlement of the dispute or otherwise to discontinue the proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, shall, at their written request, in an order take note of the

discontinuance of the proceeding.

2. If the parties file with the Secretary-General the full and signed text of their settlement and in writing request the Tribunal to embody such settlement in an award, the Tribunal may record the settlement in the form of its award.

Rule 44

Discontinuance at Request of a Party

1. If a party requests the discontinuance of the proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, shall in an order fix a time limit within which the other party may state whether it opposes the discontinuance. If no objection is made in writing within the time limit, the other party shall be deemed to have acquiesced in the discontinuance and the Tribunal, or if appropriate the Secretary-General, shall in an order take note of the discontinuance of the proceeding. If objection is made, the proceeding shall continue.

Rule 45

Discontinuance for Failure of Parties to Act

1. If the parties fail to take any steps in the proceeding during six consecutive months or such period as they may agree with the approval of the Tribunal, or of the Secretary-General if the Tribunal has not yet been constituted, they shall be deemed to have discontinued the proceeding and the Tribunal, or if appropriate the Secretary-General, shall, after notice to the parties, in an order take note of the discontinuance.

Chapter VI

The Award

Rule 46

Preparation of the Award

1. The award (including any individual or dissenting opinion) shall be drawn up and signed within 120 days after closure of the proceeding. The Tribunal may, however, extend this period by a further 60 days if it would otherwise be unable to draw up the award.

Rule 47

The Award

1. The award shall be in writing and shall contain:

(a) a precise designation of each party;

(b) a statement that the Tribunal was established under the Convention, and a description of the method of its constitution

(c) the name of each member of the Tribunal, and an identification of the appointing authority of each;

(d) the names of the agents, counsel and advocates of the parties;

(e) the dates and place of the sittings of the Tribunal;

(f) a summary of the proceeding;

(g) a statement of the facts as found by the Tribunal;

(h) the submissions of the parties;

(i) the decision of the Tribunal on every question submitted to it, together with the reasons upon which the decision is based; and

(j) any decision of the Tribunal regarding the cost of the proceeding.

2. The award shall be signed by the members of the Tribunal who voted for it; the date of each signature shall be indicated.

3. Any member of the Tribunal may attach his individual opinion to the award, whether he dissents from the majority or not, or a statement of his dissent.

Rule 48

Rendering of the Award

1. Upon signature by the last arbitrator to sign, the Secretary General shall promptly:

(a) authenticate the original text of the award and deposit it in the archives of the Centre, together with any individual opinions and statements of dissent; and

(b) dispatch a certified copy of the award (including individual opinions and statements of dissent) to each party, indicating the date of dispatch on the original text and on all copies.

2. The award shall be deemed to have been rendered on the date on which the certified copies were dispatched.

3. The Secretary-General shall, upon request, make available to a party additional certified copy of the award.

4. The Centre shall not publish the award without the consent of the parties. The Centre shall, however, promptly include in its publication's excerpts of the legal reasoning of the Tribunal.

Rule 49

Supplementary Decisions and Rectification

1. Within 45 days after the date on which the award was rendered, either party may request, pursuant to Article 49(2) of the Convention, a supplementary decision on, or the rectification of, the award. Such a request shall be addressed in writing to the Secretary-General. The request shall:

(a) identify the award to which it relates;

(b) indicate the date of the request;

(c) state in detail:

(i) any question which, in the opinion of the requesting party, the Tribunal omitted to decide in the award; and

(ii) any error in the award which the requesting party seeks to have rectified; and

(d) be accompanied by a fee for lodging the request.

2. Upon receipt of the request and of the lodging fee, the Secretary-General shall forthwith:

(a) register the request;

(b) notify the parties of the registration;

(c) transmit to the other party a copy of the request and of any accompanying documentation; and

(d) transmit to each member of the Tribunal a copy of the notice of registration, together with a copy of the request and of any accompanying documentation.

3. The President of the Tribunal shall consult the members on whether it is necessary for the Tribunal to meet in order to consider the request. The Tribunal shall fix a time limit for the parties to file their observations on the request and shall determine the procedure for its consideration.

4. Rules 46-48 shall apply, mutatis mutandis, to any decision of the Tribunal pursuant to this Rule.

5. If a request is received by the Secretary-General more than 45 days after the award was rendered, he shall refuse to register the request and so inform forthwith the requesting party.

Chapter VII

Interpretation, Revision and Annulment of the Award

Rule 50

The Application

1. An application for the interpretation, revision or annulment of an award shall be addressed in writing to the Secretary-General and shall:

(a) identify the award to which it relates;

(b) indicate the date of the application;

(c) state in detail:

(i) in an application for interpretation, the precise points in dispute;

(ii) in an application for revision, pursuant to Article 51(1) of the Convention, the change sought in the award, the discovery of some fact of such a nature as decisively to affect the award, and evidence that when the award was rendered that fact was unknown to the Tribunal and to the applicant, and that the applicant's ignorance of that fact was not due to negligence;

(iii) in an application for annulment, pursuant to Article 52(1) of the Convention, the grounds on which it is based. These grounds are limited to the following:

(A) that the Tribunal was not properly constituted;

(B) that the Tribunal has manifestly exceeded its powers;

(C) that there was corruption on the part of a member of the Tribunal;

(D) that there has been a serious departure from a fundamental rule of procedure;

(E) that the award has failed to state the reasons on which it is based;

(d) be accompanied by the payment of a fee for lodging the application.

2. Without prejudice to the provisions of paragraph (3), upon receiving an application and the lodging fee, the Secretary-General shall forthwith:

(a) register the application;

(b) notify the parties of the registration; and

(c) transmit to the other party a copy of the application and of any accompanying documentation.

3. The Secretary-General shall refuse to register an application for:

(a) revision, if, in accordance with Article 51(2) of the Convention, it is not made within 90 days after the discovery of the new fact and in any event within three years after the date on which the award was rendered (or any subsequent decision or correction);

(b) annulment, if, in accordance with Article 52(2) of the Convention, it is not made:

(i) within 120 days after the date on which the award was rendered (or any subsequent decision or correction) if the application is based on any of the following grounds:

(A) the Tribunal was not properly constituted;

(B) the Tribunal has manifestly exceeded its powers;

(C) there has been a serious departure from a fundamental rule of procedure;

(D) the award has failed to state the reasons on which it is based;

(ii) in the case of corruption on the part of a member of the Tribunal, within 120 days after discovery thereof, and in any event within three years after the date on which the award was rendered (or any subsequent decision or correction).

4. If the Secretary-General refuses to register an application for revision, or annulment, he shall forthwith notify the requesting party of his refusal.

Rule 51

Interpretation or Revision: Further Procedures

1. Upon registration of an application for the interpretation or revision of an award, the Secretary-General shall forthwith:

(a) transmit to each member of the original Tribunal a copy of the notice of registration, together with a copy of the application and of any accompanying documentation; and

(b) request each member of the Tribunal to inform him within a specified time limit whether that member is willing to take part in the consideration of the application.

2. If all members of the Tribunal express their willingness to take part in the consideration of the application, the Secretary-General shall so notify the members of the Tribunal and the parties. Upon dispatch of these notices the Tribunal shall be deemed to be reconstituted.

3. If the Tribunal cannot be reconstituted in accordance with paragraph (2), the Secretary-General shall so notify the parties and invite them to proceed, as soon as possible, to constitute a new Tribunal, including the same number of arbitrators, and appointed by the same method, as the original one.

Rule 52

Annulment: Further Procedures

1. Upon registration of an application for the annulment of an award, the Secretary-General shall forthwith request the Chairman of the Administrative Council to appoint an ad hoc Committee in accordance with Article 52(3) of the Convention.

2. The Committee shall be deemed to be constituted on the date the Secretary-General notifies the parties that all members have accepted their appointment. Before or at the first session of the Committee, each member shall sign a declaration conforming to that set forth in Rule 6(2).

Rule 53

Rules of Procedure

1. The provisions of these Rules shall apply mutatis mutandis to any procedure relating to the interpretation, revision or annulment of an award and to the decision of the Tribunal or Committee.

Rule 54

Stay of Enforcement of the Award

1. The party applying for the interpretation, revision or annulment of an award may in its application, and either party may at any time before the final disposition of the application, request a stay in the enforcement of part or all of the award to which the application relates. The Tribunal or Committee shall give priority to the consideration of such a request.

2. If an application for the revision or annulment of an award contains a request for a stay of its enforcement, the Secretary-General shall, together with the notice of registration, inform both parties of the provisional stay of the award. As soon as the Tribunal or Committee is constituted it shall, if either party requests, rule within 30 days on whether such stay should be continued; unless it decides to continue the stay, it shall automatically be terminated.

3. If a stay of enforcement has been granted pursuant to paragraph (1) or continued pursuant to paragraph (2), the Tribunal or Committee may at any time modify or terminate the stay at the request of either party. All stays shall automatically terminate on the date on which a final decision is rendered on the application, except that a Committee granting the partial annulment of an award may order the temporary stay of enforcement of the unannulled portion to give either party an opportunity to request any new Tribunal constituted pursuant to Article 52(6) of the Convention to grant a stay pursuant to Rule 55(3).

4. A request pursuant to paragraph (1), (2) (second sentence) or (3) shall specify the circumstances that require the stay or its modification or termination. A request shall only be granted after the Tribunal or Committee has given each party an opportunity of presenting its

observations.

5. The Secretary-General shall promptly notify both parties of the stay of enforcement of any award and of the modification or termination of such a stay, which shall become effective on the date on which he dispatches such notification.

Rule 55

Resubmission of Dispute after an Annulment

1. If a Committee annuls part or all of an award, either party may request the resubmission of the dispute to a new Tribunal. Such a request shall be addressed in writing to the Secretary-General and shall:

(a) identify the award to which it relates;

(b) indicate the date of the request;

(c) explain in detail what aspect of the dispute is to be submitted to the Tribunal; and

(d) be accompanied by a fee for lodging the request.

2. Upon receipt of the request and of the lodging fee, the Secretary-General shall forthwith:

(a) register it in the Arbitration Register;

(b) notify both parties of the registration;

(c) transmit to the other party a copy of the request and of any accompanying documentation; and

(d) invite the parties to proceed, as soon as possible, to constitute a new Tribunal, including the same number of arbitrators, and appointed by the same method, as the original one.

3. If the original award had only been annulled in part, the new Tribunal shall not reconsider any portion of the award not so annulled. It may, however, in accordance with the procedures set forth in Rule 54, stay or continue to stay the enforcement of the unannulled portion of the award until the date its own award is rendered.

4. Except as otherwise provided in paragraphs (1)–(3), these Rules shall apply to a proceeding on a resubmitted dispute in the same manner as if such dispute had been submitted pursuant to the Institution Rules.

Chapter VIII

General Provisions

Rule 56

Final Provisions

1. The texts of these Rules in each official language of the Centre shall be equally authentic.
2. These Rules may be cited as the "Arbitration Rules" of the Centre.

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ANNEXURE VII - COMPARISON OF INSTITUTIONAL RULES

Parameters	**ICC**	**LCIA**	**SCC**	**HKIAC**	**VIAC**	**DIS**	**SCAI**	**SIAC**
Year of Establishment	1923	1883	1917	1985	1975	1992	2004	1991
Effective date of Latest Rules	1 January 2021	1 October 2020	2017	1 November 2018	1 January 2018	1 March 2018[6]	June 2021	1 August 2016
Documents required for commencement of arbitration	Request for Arbitration under Article 4 of the rules	Request for Arbitration under Article 1 of the rules	Request for Arbitration under Article 6 of the rules	Notice for Arbitration Under Article 4 of the rules	Statement of Claim under Rule 7 of the rules	Request for Arbitration under Article 5 of the rules	Notice of Arbitration under Article 3 of the rules	Notice for Arbitration under Rule 3 of the rules
Notice of Arbitration is to be submitted to whom	To the Secretariat under Article 4 of the rules	To the Registrar and the Respondent under Article 1 of the rules	To the Secretariat under Article 7 of the rules	To the Secretariat and the respondent under Article 4 of the rules	To the Secretariat under Article 7 of the rules	To the Secretariat under Article 4 of the rules	To the Secretariat under Article 3 of the rules	To the Secretariat and the Respondent under Rule 3 of the rules
Registration fee	5000 USD	2178 USD	3250 USD	1032 USD	542-1625 USD	812-43336 USD	4632-8235 USD	1404 USD
Commencement Date of Arbitration	Date at which the request is received by the Secretariat under Article 4 of the rules	Date at which the request is received by the registrar under Article 14 of the rules subject to the institute's actual receipt of the registration fee.	Date at which the request is received by the Secretariat under Article 8 of the rules	Date at which the notice of arbitration is received by the institute under Article 4 of the rules	Date at which the statement of claim is received by the Secretariat by an Austrian Regional Economic Chamber in hardcopy form or in electronic form under	Date at which the request is received by the registrar with or without the documents under Article 6 of the rules	Date at which the notice of arbitration is received by the Secretariat under Article 3 of the rules	Date at which the notice of arbitration is received by the registrar under Rule 3 of the rules

[6] Annexure 2 effective from 1 July 2021

Parameters	**ICC**	**LCIA**	**SCC**	**HKIAC**	**VIAC**	**DIS**	**SCAI**	**SIAC**
					Article 7 of the rules			
Time to file the response to the arbitration	Within 30 days after the receipt of request of arbitration by the secretariat under Article 5 of the Rules	Within 28 days after the commencement of proceedings under Article 2 of the Rules	The deadline for the respondent to file the answer to the request of arbitration will set by the secretariat as per Article 9 of the rules	Within 30 days after receiving the notice of arbitration under Article 5 of the rules.	Within 30 days after service of the statement of claim to the respondent as per Article 8 of the rules.	The respondent is required to file the nomination of the arbitrator (if required), any particulars or proposals regarding the seat of the arbitration, the language of the arbitration, and the rules of law applicable to the merit[7] within 21 days under Article 7.1 and the answer to request of arbitration within 45 days of transmission of the request of arbitration under Article 7.2 of the rules.	Within 30 days after receiving the documents from the secretariat as per Article 3 of the rules.	Within 14 days after receiving the notice of arbitration under Rule 4 of the rules.

[7] DIS Arbitration Rules,2018, Article 7.1(ii).

Parameters	**ICC**	**LCIA**	**SCC**	**HKIAC**	**VIAC**	**DIS**	**SCAI**	**SIAC**
Number of Arbitrators by default in case parties did not agree otherwise	A sole arbitrator unless the court finds that the dispute require three arbitrators as per Article 12 of the Rules	A sole arbitrator unless the LCIA finds that the dispute require three arbitrators as per Article 5 of the Rules	The board shall determine whether one or three arbitrators are required in case as per Article 16 of the rules	The institute will decide the number of arbitrators whether sole or three taking into account the circumstances of the case as per Article 6 of the rules	The board shall determine whether one or three arbitrators are required in case by taking into consideration the complexity of the case, the amount in dispute, and the parties' interest in an expeditious and cost-efficient decision. as per Article 17 of the rules	Three Arbitrators unless a request is made and accepted for a sole arbitrator as per Article 10 of the rules	The court will determine the number of arbitrators whether sole or three depending on the relevant facts as per Article 9 of the rules.	A sole arbitrator unless the Registrar owing to complexity, quantum involved or other relevant circumstances decides for appointment of three arbitration as per Rule 9 of the rules.
Right of the tribunal to grant provision measures	Yes, as per Article 28 of the rules	Yes, as per Article 25 of the rules	Yes, as per Article 37 of the rules	Yes, as per Article 23 of the rules	Yes, as per Article 33 of the rules	Yes, as per Article 25 of the rules	Yes, as per Article 26 of the rules	Yes, as per Article 30 of the rules
Expedited Procedure	Present as per Article 30 and Appendix VI of the Rules	Absent; Expedited Formation of Arbitral Tribunal Possible as per Article 9A of the rules	Present only in case of a single arbitrator under The Rules For Expedited Arbitrations,2017	Present as per Article 42 of the rules	Present as per Article 45 of the rules	Present as per Annexure 4 of the Rules	Present; the amount in dispute, representing the aggregate of all claims (or any set-off defence), does not exceed CHF	Present as per the Rule 5 of the rules.

Parameters	**ICC**	**LCIA**	**SCC**	**HKIAC**	**VIAC**	**DIS**	**SCAI**	**SIAC**
							1,000,000 (one million Swiss francs), unless the Court decides otherwise, taking into account all relevant circumstances as per Article 42 of the rules.	
Expedited Procedure deadline	Deadlines for the reply remain the same for reply as per Appendix 6 of the rules	Not Applicable in this case	The deadline for the respondent to file the answer to the request of arbitration will set by the secretariat as per Article 9 of the expedited arbitration rules.	The institute shall reduce the time limits provided in the rules as per Article 42 of the Rules	Deadline for reply remain the same but for jointly appointing an arbitrator and time limit for payment of the advance costs pursuant to Article 42 is reduced to 15 days as per Article 45 of the rules.	Deadline for the reply remains the same as per Annexure 4 of the rules	Deadline for reply remains the same as per Article 42 of the rules.	Registrar can shorten the time limits provided in the rules as per the Rule 5 of the rules
Emergency Arbitration	Yes, as per Appendix V of the Rules	Yes, as per Article 9B of the rules	Yes, as per Appendix II of the rules	Yes, as per Schedule 4 of the rules	No	No	Yes, as per Article 43 of the rules	Yes, as per Schedule 1of the rules
Deadline for relief in cases of emergency arbitration	Within 15 days from the date on which file was sent to the	Within 15 days post the appointment of the emergency	Within 5 days from date on which the application was	Within 14 days from the date on which the file was	Not Applicable	Not Applicable	Within 15 days from the date on which the file was	Within 14 dates from the appointment of arbitrator as

Parameters	**ICC**	**LCIA**	**SCC**	**HKIAC**	**VIAC**	**DIS**	**SCAI**	**SIAC**
	arbitrator as per Appendix 5 of the rules	arbitrator as per Article 9 of the rules	referred to the emergency arbitrator as per Appendix II of the rules	transmitted to the emergency arbitrator as per Schedule 4 of the rules			transmitted to the emergency arbitrator as per Article 43 of the rules	per the Schedule 1 of the rules.
Confidentiality	Arbitral tribunal can make an order regarding confidentiality under Article 22 of the rules. The general work of the court is always of confidential nature under Appendix I,II). If the parties agree, anonymous awards can be published.	The general principle is that all the awards, all material is confidential. No award or anu part of it cannot be published without written consent of the parties and arbitral tribunal under Article 30 of the rules.	All the awards and material remains confidential unless otherwise agreed by the parties under Article 3 and Appendix 1 of the Rules.	All information to the arbitration, the documents, the deliberations remain confidential unless otherwise mentioned by parties and barring the few exceptions as per Article 45 of the Rules. The institute reserves the rights to publish the award anonymously unless objected to by the parties within a reasonable time.	The proceedings remain confidential under Article 16 of the rules. However, the board reserves the right to publish anonymous summary of the proceedings or extracts of the award unless the parties object to it within 30 days of service of the ward under Article 41.	The whole proceedings remain confidential. The institute reserves the right to use the data for statistical analysis or other general information provided the parties as well as the arbitral proceedings are not identifiable. The institute can publish the awards only with prior approval by the parties in writing as per Rule 44.	All parties involved in the arbitration are required to keep the whole process confidential unless otherwise agreed by the parties unless such disclosure is required by a legal duty, to protect and pursue a legal right or to enforce or challenge the award as per Article 44 of the rules.	All the meetings, hearings, documents and matters related to the arbitration shall remain confidential unless otherwise agreed by the parties under Rule 24 and Rule 39 of the rules barring the exceptions mentioned in Rule 39.2.
Model Clauses	All disputes arising out of or in	Any dispute arising out of or in connection	Any dispute, controversy or claim arising out	Any dispute, controversy, difference or	All disputes or claims arising out of or in	(1) All disputes arising out of	Any dispute, controversy, or claim arising	Any dispute arising out of or in

Parameters	ICC	LCIA	SCC	HKIAC	VIAC	DIS	SCAI	SIAC
	connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.	with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be ... The seat, or legal place, of arbitration shall be … The language to be used in the arbitral proceedings shall be … The governing law of the contract shall be the substantive law of ...	of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce	claim arising out of or relating to this contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding noncontractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the Notice of	connection with this contract, including disputes relating to its validity, breach, termination or nullity, shall be finally settled under the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber by one or three arbitrators appointed in accordance with the said Rules	or in connection with this contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law. (2) The arbitral tribunal shall be comprised of [please enter “a sole arbitrator” or “three arbitrators”]. (3) The seat of the arbitration shall be [please enter city and country]. (4) The language of the arbitration shall be [please	out of, or in relation to, this contract, including regarding the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Arbitration Centre in force on the date on which the Notice of Arbitration is submitted in accordance with those Rules. The number of arbitrators shall be ... ; The seat of the arbitration shall be ... ; The arbitration	connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre (“SIAC”) in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated

Parameters	**ICC**	**LCIA**	**SCC**	**HKIAC**	**VIAC**	**DIS**	**SCAI**	**SIAC**
				Arbitration is submitted.		enter language of the arbitration]. (5) The law applicable to the merits shall be [please enter law or rules of law]	proceedings shall be conducted in…	by reference in this clause. The seat of the arbitration shall be .. The Tribunal shall consist of arbitrator(s). The language of the arbitration shall be…..

ANNEXURE VIII - INVESTMENT ARBITRATION RULES – A COMPARISION

Comparison Criteria	SIAC – Investment Arb Rules	ICSID	PCA	UNCITRAL
Commencement of Arbitration and General Rules				
Type of document Required	Notice of Arbitration.	Request of Arbitration.	Notice of Arbitration	Notice of Arbitration
Filing method	To the registrar.	To the Secretary General.	To International Bureau	To the respondent
The date of the commencement of an arbitration	Date of Receipt of the Notice of Arbitration.	Date of Receipt of Request Arbitration.	Date on which the notice of arbitration is received by the respondent	Date of which the notice of arbitration is received by the respondent
Statement of defense/ response to the Request / Answer	Response to the Notice of Arbitration shall be filled within 35 days of receipt of the Notice of Arbitration.	A counter-memorial by the other party based on time limit set by the tribunal.	Statement of defence shall be filled within 30 days or any such period determined by the International Bureau	Response to the notice of arbitration needs to filled within 30 days of receipt of notice of arbitration.
Jurisdictional Challenges	The tribunal has the power to decide on its own jurisdiction.	The tribunal has the power to decide on its own jurisdiction as well as any objections to jurisdiction of the center.	The tribunal has the power to decide on its own jurisdiction.	The tribunal shall have the power to rule on its own jurisdiction
Confidentiality	Unless otherwise agreed by the Parties, all parties related to the dispute, the	The Award remains confidential. However, excerpts of legal reasoning of	Award can only be made public by consent of the parties.	UNCITRAL Rules on Transparency in Treaty-based Investor-

Comparison Criteria	SIAC – Investment Arb Rules	ICSID	PCA	UNCITRAL
	arbitrators, any person appointed by the tribunal, administrative secretary, witnesses are required to keep all matters related to the proceedings as confidential. Exception to the confidentiality is – for the purpose of enforcement of the award, due to subpoena by a court of competent jurisdiction, for purpose for pursuing a legal right, due to compliance with laws of any state which are binding of the parties, on the order of tribunal by application by a party or for purpose for facilitating the written submission or oral submissions of a non-disputing contracting party or a non-disputing party.	the tribunal can be used in publications. The proceedings are confidential.	Exceptions – performance of legal duty of the parties, for pursuing a legal right, for pursuing legal proceedings in front of a court or any other competent Authority.	State Arbitration shall apply unless the parties otherwise agree.

Comparison Criteria	SIAC – Investment Arb Rules	ICSID	PCA	UNCITRAL
Arbitrators				
Number of Arbitrators	The Tribunal can be composed of sole, three or any odd number of arbitrators.	The Tribunal can be composed of sole, three or any odd number of arbitrators.	The tribunal can consist of one, three or five arbitrators.	The tribunal can consist of one or three arbitrators.
Appointment of Arbitrators	In case no agreement can be reached by the parties, Court shall appoint the arbitrator/arbitrators.	If the parties fail appoint arbitrators, the Chairman of Administrative council on the request of secretary general appoint the arbitrator or arbitrators.	The parties are required to reach an agreement for the appointment of sole arbitrators, post which the Secretary general can be requested to do the same. .	In case of failure of appointment by one or both parties, the appointing authority shall appoint the arbitrators.
Interim Measures				
Interim Measures	The tribunal, at the request of one party, issue an order or any interim relief they deem fit.	Any party after institution of proceedings can request the tribunal for provisional measures.	The tribunal may, at request by a party, grant any interim measures.	The tribunal may, at request by a party, grant any interim measures.
Consolidation and Third-party Participation				
Consolidation of Proceedings	NA	NA	NA	NA
Participation of a third Party	A non-disputing contracting party or a non-dispute party by	The Tribunal may allow a person or entity that is not a party to the dispute, the non-disputing party to file a	The arbitral tribunal ,at request of any party, allow one or more	The arbitral tribunal may, at the request of any party, allow one or

Comparison Criteria	SIAC – Investment Arb Rules	ICSID	PCA	UNCITRAL
	written notice to registrar and the parties may submit written submission to tribunal regarding a matter within the scope of dispute.	written submission with the Tribunal regarding a matter within the scope of the dispute after consultation with both parties.	third parties in the arbitration provided that the party is part of the arbitration agreement.	more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement The tribunal may allow non-disputing or non-contracting third party to submit any written submission post consultations with the parties regarding a matter within the scope of dispute.
Award				
Time limit for rendering an award	90 days post declaration of date at which the tribunal declares the proceedings closed.	Within 120 days after closure of proceedings.	Not Given	Not Given
Scrutiny	The award is required to be approved by the registrar.	NA	NA	NA
Fees				
Arbitrators' fees	The fees of the arbitrator shall be fixed as per the schedule applicable or	Each tribunal shall determine the fees and expenses of its members within	The fees of the arbitral tribunal to be stated separately as to each	The tribunal fixes the fees itself based on relevant factors of the

Comparison Criteria	SIAC – Investment Arb Rules	ICSID	PCA	UNCITRAL
	the method determined by the party.	limits established by the secretary general.	arbitrator and to be fixed by the tribunal itself. However, Promptly after the constitution of the tribunal, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review.	case. Post constitution of the tribunal, the tribunal is required to inform the parties about the fees.
Registration fees	S$ 2,000 (US$1450 approx.) for overseas party S$ 2,140 (US$1500 approx.) for Singapore Parties	US$42,000	€ 3000 (US$3,360 approx.)	NA
Model Clause				
Model Clause	Any dispute arising out of or in connection with this agreement, including	The [Government]/[name of constituent subdivision or agency] of name of Contracting State (hereinafter the "Host	Any dispute, controversy or claim arising out of or in	Any dispute, controversy or claim arising out of or

Comparison Criteria	SIAC – Investment Arb Rules	ICSID	PCA	UNCITRAL
	any question regarding its existence, validity or termination, shall be finally resolved by arbitration administered by the Singapore International Arbitration Centre (SIAC) in accordance with the Investment Arbitration Rules of the Singapore International Arbitration Centre (1st Edition, 1 January 2017). The seat of the arbitration shall be [….]. The Tribunal shall consist …. of _____ arbitrator(s). The language of the arbitration shall be _____. The parties agree to the application of the Emergency Arbitrator provisions.	State") and name of investor (hereinafter the "Investor") hereby consent to submit to the International Centre for Settlement of Investment Disputes (hereinafter the "Centre") any6 dispute arising out of or relating to this agreement for settlement by [conciliation]/[arbitration]/[conciliation followed, if the dispute remains unresolved within time limit of the communication of the report of the Conciliation Commission to the parties, by arbitration] pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (hereinafter the "Convention").	relation to this [agreement] [treaty], or the existence, interpretation, application, breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the PCA Arbitration Rules 2012. (a) The number of arbitrators shall be ... (one, three, or five); (b) The place of arbitration shall be ... (town and country); (c) The language to be used in the arbitral proceedings shall be	relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules. Note. Parties should consider adding: (a) The appointing authority shall be . . . [name of institution or person]; (b) The number of arbitrators shall be . . .. [one or three]; (c) The place of arbitration shall be . . . [town and country]; (d) The language to be used in the arbitral proceedings shall be . . . .

ANNEXURE IX - MARTIME ARBITRATION RULES – A COMPARISION

	SCMA	LMAA	APMAC	CMAC	SMA	DIAC	ITLOS
Commencement of Arbitration and General Rules							
Type of document required	Notice of Arbitration.	Notice of Arbitration.	Request for Arbitration	Request for Arbitration.	Written notice for its demand for arbitration	Request for arbitration.	Unilateral written application made by a party.
Filing method	To the respondent.	To the respondent.	To the secretariat.	To the center.	To the respondent.	To the center.	To the registrar.
The date of the commencement of an arbitration	When the notice of arbitration is served on the other party.	a. When the arbitrator is named in the arbitration agreement, date of service of notice of arbitration. b. When the arbitrator are to be appointed, date of service of notice requiring	Receipt of request of arbitration and advance cost payment	The date on which the Arbitration court receives the request for arbitration.	When the demand for arbitration is served.	When the request for arbitration along with requisite arbitration fee is submitted to the center.	When the application for arbitration is received by the center.

	SCMA	LMAA	APMAC	CMAC	SMA	DIAC	ITLOS
		appointment of arbitrator.					
Statement of defense/ response to the Request / Answer	Within 14 days of receipt of the notice of the arbitration, the respondent is required to submit a response.	Within 28 days of the claim submissions.	Within 30 days after commencement of arbitration.	A statement of defense needs to be submitted within 30 days from receipt of notice of arbitration.	The respondent is required to submits its pre hearing defense statement within 10 business after the claimant submits it pre hearing statement of claim.	Within 30 days from receipt of the request by the center, the respondent shall submit Answer to the Request .	The timelines for submission is fixed by the tribunal.
Jurisdictional Challenges	The Tribunal shall rule on its own jurisdiction	The tribunal shall rule on all disputes arising out of the agreement	The tribunal shall rule on its own jurisdiction.	CMAC has the power to determine jurisdiction.	The panel has the jurisdiction to decide on the jurisdictional challenges	The tribunal has jurisdiction to rule on its own jurisdiction.	The tribunal has jurisdiction on all matters related to agreements which confer certain jurisdiction on ITLOS.

	SCMA	LMAA	APMAC	CMAC	SMA	DIAC	ITLOS
Confidentiality	All matters relating to the arbitration (including the existence of arbitration) and the award as confidential. Exceptions -for making an application to any competent court; For enforcement of the Award; pursuant to the order of a court of competent jurisdiction; d. in compliance with the provisions of the laws of any State or requirement of any regulatory body or other	All matters to dispute are confidential.	All matters related to dispute shall remain confidential.	The arbitration proceedings remain confidential.	NA	All awards, orders and proceedings of the arbitration are kept confidential.	NA

	SCMA	LMAA	APMAC	CMAC	SMA	DIAC	ITLOS
	authority which, if not binding, nonetheless would be observed customarily by the party making the disclosure.						
Arbitrators							
No. of Arbitrators	The tribunal can consist of one or three arbitrators.	The tribunal can consist any number of members but three arbitrators are the standard. The parties can also appoint two arbitrators and one umpire	The tribunal shall consist of one or three arbitrations.	The tribunal shall consist of one or three arbitrators.	The panel shall consist of one, two or three arbitrators.	The tribunal shall consist of one or more odd number of members.	The tribunal should consist of five members.
Appointment of Arbitrators	If the one or both parties fails to appoint the arbitrator/ arbitrators, The chairman shall	If one or both parties fail to appoint the arbitrator/ arbitrators, the president shall appoint them	In case of failure of parities to appoint the arbitrator(s), The secretariat shall appoint	In case of failure by the parties, the Chairman of CMAC shall appoint the arbitrator(s).	If one party fails to appoint an arbitrator, the party who made the request for	The center appoints the arbitrator(s) on failure of the parties to appoint them.	NA

	SCMA	LMAA	APMAC	CMAC	SMA	DIAC	ITLOS
	appoint the arbitrators.	on application by the parties.	the arbitrator/ arbitrators.		Arbitration shall appoint the second arbitrator. In case of three arbitrators, then the two selected arbitrators shall appoint the third arbitrator.		
Interim Measures							
Interim Measures	The tribunal may make interim awards	The tribunal may make interim awards	The tribunal may pass any interim measures	The tribunal has the power to pass interim measures on request of parties.	NA	The tribunal has power to pass any provisional or interim order it deems necessary at request of parties subject to rules of applicable law.	The tribunal has power to pass any provisional measures they deem fit.
Consolidation and Third-party Participation							
Consolidation of Proceedings	NA	NA	The centers allows for single arbitration	Multiple arbitration proceedings can be	Whenever a dispute or disputes arises under	NA	The tribunal has the power to consolidate

	SCMA	LMAA	APMAC	CMAC	SMA	DIAC	ITLOS
			under multiple contracts if they arise from same transaction or series of transaction.	consolidated at request by parties if they are from same arbitration agreement, multiple contracts are identical or compatible involving the same parties, or same nature of dispute or all disputes belong to same transaction or series of transaction or if the parties agree.	two or more contracts that have a common question of fact or law and are bound by these rules or belong to same series of transaction(s), at the request of any the parties, All of these disputes shall be resolved before a consolidated panel of arbitrators.		multiple proceedings.
Participation of a third Party	NA	NA	The tribunal may allow the third party to join as an additional party if both parties agree to it or	Before constitution of the tribunal, a party can apply for joinder in writing to	NA	NA	NA

	SCMA	LMAA	APMAC	CMAC	SMA	DIAC	ITLOS
			the additional party was part of the same arbitration agreement.	CMAC. Post formation of tribunal, the decision of joinder depends on tribunal post consultation with parties.			
Award							
Time limit for rendering an award	Within 3 months from closing date of the proceedings.	Within 6 weeks of closing of the proceedings.	Within 30 days of oral hearing.	Within 6 months of constitution of the arbitral tribunal.	Within 120 days from the date of closing of arbitration.	NA	NA
Scrutiny	NA	NA	NA	NA	NA	NA	A request for revision of judgement can be made upon discovery of some fact of such a nature as to be a decisive factor and such a fact

	SCMA	LMAA	APMAC	CMAC	SMA	DIAC	ITLOS
							was unknown to tribunal and the party requesting revision.
Fees							
Arbitrators' fees	The tribunal shall specify the arbitration fees and cost in the final awards.	£1,250 per day for hearings of up to 10 days duration.	Arbitration Cost Schedule is provided.	The tribunal has the power to decide on arbitration fees.	Each Panel member shall determine the amount of their compensation	The fees is decided by the tribunal.	Th fees and expenses to be paid is determined by the tribunal.
Registration fees	NA SCMA does not charge filling or any other fees.	£350 (US$ 400 approx.)	Minimum 50,000 KRW (US$40 approx.)	HKD 8,000 (US$1000 approx.)	NA. No administrative fees is charged	AED 5000 (US$1400 approx.)	-
Model Clause							
Model Clause	Any and all disputes arising out of or in connection with this contract, including any question regarding its existence,	This Contract shall be governed by and construed in accordance with English law and any dispute arising out of or in	All disputes, arguments or differences in opinions between the parties arising from or in relation to this Agreement or	Any dispute arising from or in connection with this contract shall be submitted to China Maritime Arbitration	Should any dispute arise out of this Charter, the Matter in dispute shall be referred to three persons at New York,	Any dispute arising out of the formation, performance, interpretation, nullification, termination or invalidation of this contract or	-

	SCMA	LMAA	APMAC	CMAC	SMA	DIAC	ITLOS
	validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration ("SCMA Rules") for the time being in force at the commencement of the arbitration, which rules are deemed to be incorporated by reference in this clause".	connection with this Contract shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or reenactment thereof save to the extent necessary to give effect to the provisions of this Clause. The seat of the arbitration shall be England, even where the hearing takes place outside England. The arbitration shall be	non-performance of this Agreement shall be finally and conclusively resolved through arbitration in Korea (Busan) pursuant to the Maritime Arbitration Rules of the Asia-Pacific Maritime Arbitration Center and Korean law. The arbitrator(s)' decisions are final and conclusive and are binding on the parties.	Commission (CMAC) for arbitration in accordance with CMAC Arbitration Rules currently in force at the time of applying for arbitration. The arbitral award is final and binding on all the parties. Recommended additions: The arbitral tribunal shall be composed of […] arbitrator(s). The seat of arbitration shall be […]. The language of the arbitration	one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. This Charter shall be governed by the Federal Maritime Law of the United States. The proceedings shall be conducted in	arising therefrom or related thereto in any manner whatsoever, shall be settled by arbitration in accordance with the provisions set forth under the DIAC Arbitration Rules ("the Rules"), by one or more arbitrators appointed in compliance with the Rules."	

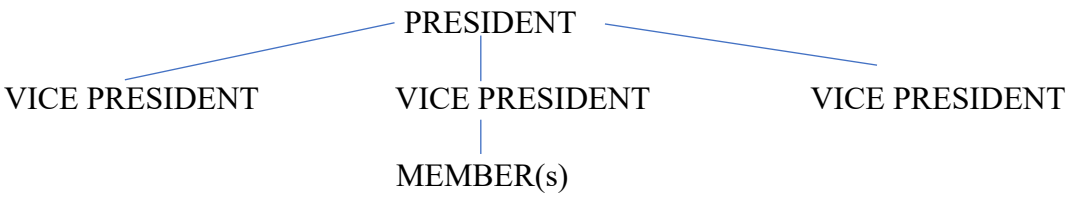
	SCMA	LMAA	APMAC	CMAC	SMA	DIAC	ITLOS
		conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced. The reference shall be to three arbitrators, one to be appointed by each party and the third, subject to the provisions of the LMAA Terms, by the two so appointed		shall be […]. This contract shall be governed by the law of […].	accordance with the Rules of the Society of Maritime Arbitrators, Inc. The arbitrators shall be members of the Society of Maritime Arbitrators, Inc		

ANNEXURE X - PROPOSED STRUCTURE FOR IDREC

The executive stucture for the functioning of the centre should have two stuctures- The Arbitration court and the Secretariat.

ARBITRATION COURT

The Arbitration Court would be the final authority for interpreation of all rules of the center, appointment of the arbitral tribunal and deciding the challenges to the arbitrators. It should be consistent of 27 members which would include a president, 3 vice presidents and 23 members one from each IORA country. These members must be leading pratitioners in the area of arbitration.



SECRETARIAT

Secretariat will ensure day to day administration and handling of the cases refered to the institution. It would headed by the registrar would report to the CEO. The regisitrar will have three deputy registrars belonging to specialised areas- International Arbitration, Maritime Arbitration and Investement Arbitration. These deputy registrars would be assisted by 2 counsels each and asscoiate counsels whose number can be decided based on approximate projection of workload of the institute whenever its launched.