

TERMS OF REFERENCE FOR INTERNATIONAL COMMERCIAL ARBITRATION: HERDING THE CATS

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Presented to
THE BCAMI SYMPOSIUM
May 31, 2016



THE RULES

- International Commercial Arbitration Act, R.S.B.C. 1996 c.233
- IBA Rules on the taking of evidence in international arbitrations
- UNCITRAL Arbitration Rules



	ICAA	UAR	IBA
Must be in B.C.	✓		
Parties/subject matter/place of arbitration/performance of obligations in different states	✓		
Includes construction works	✓		
Can engage BCICAC	✓		
Deemed document delivery / receipt	✓		
Deemed waiver of non-compliance	✓		
No intervention by Supreme Court	✓		
Can refer to UNCITRAL	✓		
Stay of legal proceedings	✓		
Default is three arbitrators	✓	✓	
Can challenge appointment	✓	✓	
Can decide jurisdiction	✓	✓	
Protection orders	✓		
Can agree on procedure or panel decides	✓		



	ICAA	UAR	<u>IBA</u>
Can agree on place or panel decides	✓		✓
Pleadings	✓	✓	
Panel can decide on evidence / witness statements	✓	✓	
Panel can appoint experts and parties to deliver documents	✓	✓	✓
Can order / allow consolidation	✓	✓	
Parties can agree on rules or Panel decides	✓		
Parties and panel consult and then elect rules to be followed			✓
Submit relevant documents / requests to produce			✓
Identify witnesses			✓
Can require witness statements			✓
Expert reports permitted	✓		✓
Can order inspection of property			✓
Hearing permitted		✓	✓
Can order deposit for fees	✓		



TERMS OF REFERENCE

- Need to decide:
 - Which rules
 - Which procedure
 - What schedule



KEY FEATURES OF TERMS OF REFERENCE

Appointing Panel

- Confirm appointments
- Confirm Chair
- Acceptance by panel members
- No challenge to appointments



KEY FEATURES OF TERMS OF REFERENCE

Notices

- By and to parties
- By and to panel
- No ex parte communications



HISTORY OF AGREEMENT TO ARBITRATE

- Terms of contract (if any)
- Dispute Resolution Provisions
- Delivery of notices



CONSOLIDATION

- Terms of contract
- Agreement of parties
- Order of Panel



SUMMARY OF CLAIMS

- Outline specific claims
- Summarize issues to be determined



PLACE OF ARBITRATION

- Stipulate geographic location
- Discretion to alter from time to time



APPLICABLE LAW

- In contract
- Determined by parties
- By Panel



PROCEDURAL RULES

- Stipulate rules
- Process to establish rules
- Agreed by parties
- Determined by Panel
- Evidentiary rules
- Discretion of Panel
- Langue of Arbitration and documents
- Responsibility for translation



PROCEDURAL RULES

- Extension of time
- Panel discretion if default
- Role of Chair



COMMERCIAL ISSUES

- Cost of arbitration
- Fees / disbursements
- Deposits



ELECTRONIC DOCUMENTS / PRODUCTION

- Protocol for communications
- Protocol for production of documents



CONFIDENTIALITY

- Agreement of parties and panel



GOOD FAITH

- Commitment to good faith / fairness in participation and presentation of case

