

INTERNATIONAL DISPUTE RESOLUTION CONVENTIONS

New York Convention

- Signed in 1958
- 172 States have ratified
- Limited grounds for challenge
- Non-signatories include North Korea, Yemen, 12 States from Africa, and many island countries
- Taiwan is not permitted to sign

Singapore Convention

- Signed in 2019
- 11 States have ratified: Belarus, Ecuador, Fiji, Georgia, Iran, Kazakhstan, Qatar, Saudi Arabia, Singapore, Turkey, and Uruguay
- Biggest reservation is to exclude government agencies.

THE INTERNATIONAL DISPUTE RESOLUTION LANDSCAPE

International Arbitration

- NY Convention history since 1958
- Siloed Community
- Unique advocacy skills
- Most rules don't encourage mediation
- Most institutions don't encourage mediation
- Amalgamation for the diversity of practices

International Mediation

- Siloed Community
- Unique advocacy skills
- Debate and uncertainty
- No global practice standards
- Certification
- Process differences

01. A Brief History:

International Centre for Dispute Resolution®

ICDR – Established in 1996 after AAA decided to centralize its international caseload and initiatives

Primary Case Management Center - New York City

Additional case management offices: Houston, Chicago, Miami, Los Angeles and Singapore

Global ICDR team: Staff from Brazil, India, Mexico, Russia, Singapore, Spain, and the US

Attorneys licensed abroad or within the United States; Civil and Common law backgrounds



ICDR International Dispute Resolution Pioneering & Highlights

Exclusion of Punitive Damages - Prior to 2006

Opt-Out Emergency Measures of Protection – 2006

Document Exchange Guidelines with limitation of U.S. style discovery – 2008/2014

Expedited Proceedings – Frontloaded filing and written submissions – 2014

Privilege rule that provides the highest level of protection 2014

Separate award during case for party fronting costs for another party - 2021

Reference to “shall” with cybersecurity, privacy and data protection in rules - 2020-21

Reference to Singapore Convention and concurrent mediation - 2021

Included UNCITRAL based definition of international in introduction

Highlights of AAA & ICDR Rules and Process Generally

Long history of use, adoption and enforcement in thousands of cases and contracts

Applicability with incorporation of an standard clause

Vast array of resources and support including online case management

Global standard of innovation, transparency, efficiency, economy and integrity

Uniquely promote settlement through encouraging and inclusion of mediation in our rules

Boldly incorporated cybersecurity into our rules and process with parties, staff and arbitrators

Administrative conferences offered in B2B cases to promote efficiency and economy

Parties involvement on the creation of lists and access to ICDR-AAA Panel on-line

ICDR Philosophy

Integrity & Transparency

Rule Innovation

Efficiency & Economy

UNCITRAL Principles

Preserve Current Language

ICDR Singapore Office



INTERNATIONAL DEFINITION

Reference to UNCITRAL: An arbitration may be deemed international and administered by the ICDR if the parties to an arbitration agreement have:

- places of business in different countries;
- performance outside the country of any party;
- subject-matter is outside the country of any party;
- place of arbitration is outside the country of any party; or
- a party with more than one place of business situated outside the country of any party.



THE ICDR STANDARD ARBITRATION CLAUSE:

Parties can copy and paste this clause into their contracts.

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules.

The parties should consider adding:

- “The number of arbitrators shall be (one or three)”;
- “The place of arbitration shall be [city, (province or state), country]”;
- “The language(s) of the arbitration shall be ____.”

ClauseBuilder® Tool: <https://www.clausebuilder.org/>

THE ICDR MODEL CONCURRENT ARBITRATION-MEDIATION CLAUSE:

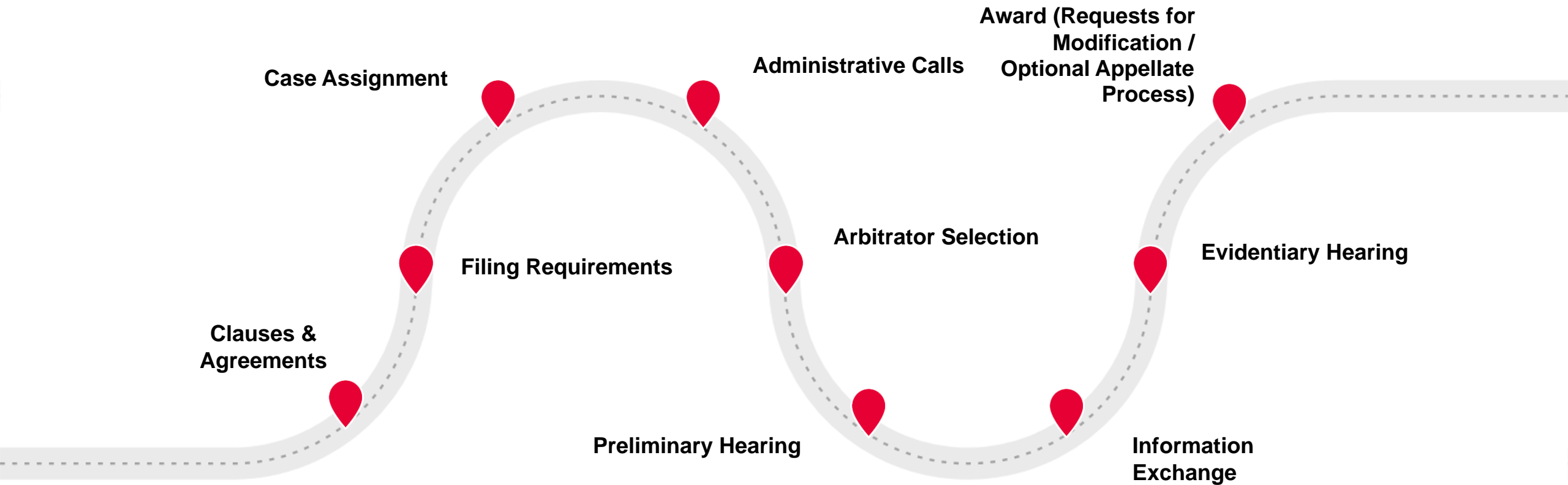
Any controversy or claim arising out of or related to this contract, or a breach thereof, shall be resolved by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. Once the demand for arbitration is initiated, the parties agree to attempt to settle any controversy or claim arising out of or relating to this contract or a breach thereof by mediation administered by the International Centre for Dispute Resolution under its International Mediation Rules. Mediation will proceed concurrently with arbitration and shall not be a condition precedent to any stage of the arbitration process.”

The parties should consider adding:

- “The number of arbitrators shall be (one or three)”;
- “The number of mediators shall be (one or two)”;
- “The place of arbitration shall be [city, (province or state), country]”;
- “The place of mediation shall be [city, (province or state), country]”;
- “The language(s) of the arbitration shall be ____.”;
- “The language(s) of the mediation shall be ____.”



Life Cycle of an Arbitration



Claim, Answer and Counterclaim Timeframes

Institution and year of recent rule change	Required Answer	Deadline for Answer	Deadline to file Counter-claim	Deadline to increase or decrease claim or counterclaim	Deadline to add new or different Claim
ICDR 2021	Yes	30 days after notice from ICDR	30+ days or with approval of tribunal after appointment	Okay unless tribunal determines otherwise	Okay unless tribunal determines otherwise

ICDR Expedited Procedures

Estimated 135 day cycle time to get an Award

Applies for Cases below USD \$500,000
Written Submissions only for USD \$100,000

Detailed
Submissions
Upon Filing

Arbitrator
Appointment

ICDR List
due back
within
10 Days

Procedural
Hearing and
Order due
14 Days from
Appointment

Proceedings
on Written
Submissions
due within
60 Days from
Order

Proceedings
with an Oral
Hearing held
within **60 Days**
from Order

The Award is
due within
30 Days from
Closing of
Hearing

Expedited Rules Provision

Institution and year of recent rule change	Expedited Scope	Expedited Amount Threshold	Appointment of Arbitrator	One Arbitrator Presumed	Written Submissions	Days to Procedural Hearing or Order	One Day Hearing	Days to Hearing or Written Submissions	Expedited Award Deadline	Unique
ICDR 2021	ICDR & arbitrator determine or party agreement	500K	List of 5 in 10 days	Yes	100K (arbitrator can order hearing)	14 days for procedural order	Yes	60 Days from Procedural Order	30 Days	Detailed Submissions & no U.S. discovery

Article 5 - International Administrative Review Council

Filing
Administrative
Requirements

Number of
Arbitrators

Arbitrator
Challenges

Place of
Arbitration

Other
administrative
decisions

ICDR Final
Decision

ICDR Final
Decision

ICDR Final
Decision

Tribunal Final
Decision

ICDR Final
Decision

IARC time from including requesting comments is from 10 to 20 days

RULE TRENDS AND LESSONS

- **2014 - Article 5 Mediation:** Following the time for submission of an Answer, the Administrator may invite the parties to mediate in accordance with the ICDR's International Mediation Rules. At any stage of the proceedings, the parties may agree to mediate in accordance with the ICDR's International Mediation Rules. Unless the parties agree otherwise, the mediation shall proceed concurrently with arbitration and the mediator shall not be an arbitrator appointed to the case.
- **2021 - Article 6 Mediation:** Subject to (a) any agreement of the parties otherwise or (b) the right of any party to elect not to participate in mediation, the parties shall mediate their dispute pursuant to the ICDR's International Mediation Rules concurrently with the arbitration.

- **Article 14: Impartiality and Independence of the Arbitrator**
 1. Arbitrators shall be impartial and independent and shall act in accordance with the **Code of Ethics for Arbitrators in Commercial Disputes**
 7. Arbitrators may require parties to disclose whether:
 - **a non-party (such as a third-party funder or an insurer) has undertaken to pay or contribute** to the cost of a party's participation in the arbitration, or
 - **a non-party has an economic interest** in the outcome of the arbitration

RULE TRENDS AND LESSONS

- **Article 15 Challenge of an Arbitrator:** 1. A party may challenge an arbitrator whenever circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, **or for failing to perform the arbitrator's duties.**
- **Article 15 Challenge of an Arbitrator:** 4. The Administrator, on its own initiative, may remove an arbitrator for failing to perform his or her duties. **or if the arbitrator becomes incapable of performing the duties of an arbitrator.**



RULE TRENDS AND LESSONS

- **Article 17: Arbitral Tribunal Secretary:** The tribunal may, with the consent of the parties, appoint an arbitral tribunal secretary, who will serve in accordance with ICDR guidelines.
- **Article 21 Arbitral Jurisdiction:** 1. Arbitral tribunal has authority to decide issues of **arbitrability** and jurisdiction without **any need to refer such matters first to a court.**



RULE TRENDS AND LESSONS

- **Article 22:2 and 26.2 Conduct of Proceedings/Hearing:** Express provisions allow for video, audio or other electronic means during the proceedings.
- **Article 22 Conduct of Proceedings: 3.** At the procedural hearing, the tribunal shall discuss with the parties cybersecurity, privacy, and data protection...



Article 23: Early Disposition

Party must first request leave to apply to Tribunal in advance of hearing on the merits

Application of any issues in claim or counterclaim if:

- Reasonable possibility of succeeding,
- Dispose, or narrow one more issues, and
- More efficient or economical than leaving the issue to be determined with the merits

RULE TRENDS AND LESSONS

Exchange of Information.

Article 24.10 Depositions, interrogatories, and requests to admit as developed for use in U.S. court procedures generally are not appropriate procedures for obtaining information in an arbitration under these Rules.

Article 26: Hearing

- A hearing or a portion of a hearing may be held by video, audio, or other electronic means when:
 - the parties so agree; or
 - the tribunal determines, after allowing the parties to comment, that doing so would be appropriate and would not compromise the rights of any party to a fair process.
- Unless otherwise agreed by the parties or directed by the tribunal, evidence of witnesses ~~may~~**should** be presented in the form of **written statements** signed by them.
- If a witness whose appearance has been requested fails to appear without valid excuse as determined by the tribunal, the tribunal may make such order it deems appropriate, which may include reducing the weight to be given to the statement(s) or disregarding such statement(s).

RULE TRENDS AND LESSONS

- **Article 32 Awards, Orders, Decisions and Rulings:** 4. An order or award may be signed electronically, unless (a) the applicable law requires a physical signature, (b) the parties agree otherwise, or (c) the arbitral tribunal or Administrator determines otherwise.
- **Article 39 Deposits:** 4. If any such deposit is made by one or more of the parties, the tribunal may, upon request, make a separate award in favor of the paying party(s) for recovery of the deposit,...



Cybersecurity

- **ICDR Article 22 Conduct of Proceedings: 3.** At the procedural hearing, the tribunal shall discuss with the parties cybersecurity, privacy, and data protection...
- **ICDR M-9:** A provision provides that the parties and the mediator consider compliance and practice related to cybersecurity, privacy, and data protection.
- **Commercial P-2 (a.vi)** “should address” “issues related to cybersecurity, privacy and data protection to provide for an appropriate level of security and compliance in connection with the proceeding;”
- **We request presiding arbitrator in all case to raise this and related issues of privacy and data protection with the parties.**

Joinder

- Arbitral tribunal once appointed will determine any joinder request.
- The additional party is required to consent to joinder.
- Expressly provides that the joined party is required to submit an Answer and allowed to file any claims or counterclaims.

Recent Amendment to International

- 8.1. A party wishing to join an additional party to the arbitration shall submit to the Administrator a Notice of Arbitration against the additional party. No additional party may be joined after the appointment of any arbitrator, unless (a) all parties, including the additional party, otherwise agree, or (b) the arbitral tribunal once constituted determines that the joinder of an additional party is appropriate, and the additional party consents to such joinder. The party wishing to join the additional party shall, at that same time, send submit the Notice of Arbitration to the additional party and all other parties. The date on which such Notice of Arbitration is received by the Administrator shall be deemed to be the date of the commencement of arbitration against the additional party. Any joinder shall be subject to the provisions of Articles ~~12~~ 13 and ~~19~~ 21.

Consolidation

- Consolidation scope under ICDR rules is similar to other rules administered by AAA/ICDR.
- Scope to consolidate also includes same agreement, same or related parties, same legal relationship and compatible arbitration agreements.
- Consolidation criteria:
 - a. applicable law;
 - b. whether one or more arbitrators have been appointed in more than one of the arbitrations and, if so, whether the same or different persons have been appointed;
 - c. the progress already made in the arbitrations;
 - d. whether the arbitrations raise common issues of law and/or facts; and
 - e. whether the consolidation of the arbitrations would serve the interests of justice and efficiency.

Consolidation

Recent Amendment to International

- 9.1. At the request of a party, the Administrator may appoint a consolidation arbitrator, who will have the power to consolidate two or more arbitrations pending under these Rules, or these and other arbitration rules administered by the AAA or ICDR, into a single arbitration where:
 - a. the parties have expressly agreed to **appoint a consolidation arbitrator**; or
 - b. all of the claims and counterclaims in the arbitrations are made under the same arbitration agreement; or
 - c. the claims, counterclaims, or setoffs in the arbitrations are made under more than one arbitration agreement; the arbitrations involve the same **or related** parties; the disputes in the arbitrations arise in connection with the same legal relationship; and the ~~consolidation arbitrator finds the arbitration agreements~~ **may** to be compatible.

Emergency Measures of Protection

Recent International Rule Amendment

- 1. A party may apply for emergency relief before the constitution of the arbitral tribunal by submitting a written **application** notice to the Administrator and to all other parties setting forth:
 - (a) the nature of the relief sought;
 - (b) the reasons why such relief is required on an emergency basis **before the tribunal is appointed**, and
 - (c) the reasons why the party is **likely to be found to be** entitled to such relief; **and**
 - (d) **what injury or prejudice the party will suffer if relief is not provided.**

The **application** notice shall be submitted concurrent with or following the submission of a Notice of Arbitration. Such **application** notice may be **filed** given by email, or as otherwise permitted by Article 10 **11**, and must include **payment of any applicable fees and** a statement certifying that all parties have been notified or an explanation of the steps taken in good faith to notify all parties.

Emergency Measures of Protection

- The emergency arbitrator shall have the power to order or award any interim or conservatory measures that the emergency arbitrator deems necessary, including injunctive relief and measures for the protection or conservation of property. Any such measures may take the form of an interim award or an order.
- The emergency arbitrator shall give reasons in either case.



INTERNATIONAL ARBITRATION FEE SCHEDULE

Amended and Effective June 1, 2023

For all cases determined to be international by the AAA-ICDR, this International Fee Schedule shall apply. An international case is generally defined as having either the place of arbitration or performance of the agreement outside the United States, or having an arbitration agreement between parties from different countries.

International cases are most frequently administered by the international division of the American Arbitration Association (AAA), the International Centre for Dispute Resolution (ICDR). The international division provides case administration services for the global business and legal communities with legally trained, multilingual staff and executives, giving special attention to the issues that can arise with international disputes and striving for efficient processes leading to lasting and enforceable results.

The AAA offers parties two options for the payment of administrative fees.

For both schedules, administrative fees are based on the amount of the claim or counterclaim and are to be paid by the party bringing the claim or counterclaim at the time the demand or claim is filed with the ICDR. *Arbitrator compensation is not included in either schedule.* Unless the parties' agreement provides otherwise, arbitrator compensation and administrative fees are subject to allocation by an arbitrator in an award.

Standard Fee Schedule: A two-payment schedule that provides for somewhat higher initial filing fees but lower overall administrative fees for cases that proceed to a hearing.

Amount of Claim	Initial Filing Fee	Final Fee
Less than \$75,000	\$1,150	\$1,150
\$75,000 to less than \$150,000	\$2,350	\$1,675
\$150,000 to less than \$300,000	\$3,500	\$2,650
\$300,000 to less than \$500,000	\$5,300	\$4,600
\$500,000 to less than \$1,000,000	\$6,600	\$8,200
\$1,000,000 to less than \$10,000,000	\$9,925	\$11,900
\$10,000,000 and above	\$14,550 plus .015% of the claim amount above \$10,000,000 up to \$100,000	\$18,500
Undetermined Monetary Claims	\$9,925	\$11,900
Nonmonetary Claims*	\$4,350	\$3,300
Deficient Filing Fee	\$700	
Additional Party Fees	If there are more than two separately represented parties in the arbitration, an additional 10% of each fee contained in these fee schedules will be charged for each additional separately represented party. However, Additional Party Fees will not exceed 50% of the base fees contained in these fee schedules unless there are more than 10 separately represented parties. <i>See below for additional details.</i>	
Applications for Emergency Measures of Protection	\$3,500 – Additional Filing Fee Only available with Standard Filing Fee Cases	

Flexible Fee Schedule: A three-payment schedule that provides for lower initial filing fee and then spreads subsequent payments out over the course of the arbitration. Total administrative fees will be somewhat higher for cases that proceed to a hearing.

Amount of Claim	Initial Filing Fee	Proceed Fee	Final Fee
Less than \$75,000	Only available for claims \$150,000 and above		
\$75,000 to less than \$150,000			
\$150,000 to less than \$300,000	\$2,175	\$2,250	\$2,650
\$300,000 to less than \$500,000	\$2,650	\$3,975	\$4,600
\$500,000 to less than \$1,000,000	\$3,300	\$5,700	\$8,200
\$1,000,000 to less than \$10,000,000	\$5,300	\$9,250	\$11,900
\$10,000,000 and above	\$7,925	\$13,250 plus .015% of the claim amount above \$10,000,000 up to \$100,000	\$18,500
Undetermined Monetary Claims	\$5,300	\$9,250	\$11,900
Nonmonetary Claims*	\$2,650	\$3,000	\$3,300
Deficient Filing Fee	\$700		
Additional Party Fees	If there are more than two separately represented parties in the arbitration, an additional 10% of each fee contained in these fee schedules will be charged for each additional separately represented party. However, Additional Party Fees will not exceed 50% of the base fees contained in these fee schedules unless there are more than 10 separately represented parties. <i>See below for additional details.</i>		

Deposits and Remedies for Nonpayment

	ICDR International
Advance Deposits	ICDR requests deposit in advance of hearing
Informing parties	ICDR shall inform parties of nonpayment of compensation.
Status of Claims	Failure of party to pay fees or deposits shall be deemed withdrawal of claim or counterclaim.
Claim Defense	Cannot preclude defense
Suspend or terminate	Arbitrator may suspend or terminate.
Unique	Separate award during case when paying for other party

Applicable Law

ICDR Applicable Laws and Remedies

1. The arbitral tribunal shall apply the substantive law(s) or rules of law agreed by the parties as applicable to the dispute. Failing such an agreement by the parties, the tribunal shall apply such law(s) or rules of law as it determines to be appropriate.
2. In arbitrations involving the application of contracts, the tribunal shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.
3. The tribunal shall not decide as amiable compositeur or ex aequo et bono unless the parties have expressly authorized it to do so.
4. A monetary award shall be in the currency or currencies of the contract unless the tribunal considers another currency more appropriate, and the tribunal may award such pre-award and post-award interest, simple or compound, as it considers appropriate, taking into consideration the contract and applicable law(s).
5. Unless the parties agree otherwise, the parties expressly waive and forego any right to punitive, exemplary, or similar damages unless any applicable law(s) requires that compensatory damages be increased in a specified manner. This provision shall not apply to an award of arbitration costs to a party to compensate for misconduct in the arbitration.

The Award

ICDR Article 33: Time, Form, and Effect of the Award

1. ...The tribunal shall make every effort to deliberate and prepare the award as quickly as possible after the hearing...
2. ...The parties shall carry out any such award without delay and, absent agreement otherwise, waive irrevocably their right to any form of appeal, review, or recourse to any court or other judicial authority, insofar as such waiver can validly be made....
3. ...The tribunal shall state the reasons upon which an award is based, unless the parties have agreed that no reasons need be given....

MEDIATION RULE HIGHLIGHTS

- **First amendment to international mediation rules not following AAA Commercial Mediation Rule.**
- M-1 & M-9 Express use of video, audio or other electronic means in any portion of proceeding.
- M-4: Reframed appointment language to have positive inferences of party agreement and institutional support in finding and appointing the mediator.
- M-7: Moved “Language” in a place more consistent with the process and the location of the arbitration rules.

MEDIATION RULE HIGHLIGHTS

- M-8: Duties and responsibilities of the mediator more narrowly referenced to expand party participation and authority.
- **M-9:** New rule “Mediation Proceedings” emphasizes party control and a focus on an efficient and effective mediation process by considering a preparatory conference, the use of technology, document exchange, *ex parte* meetings, communications, and more.
- **M-9:** A provision provides that the parties and the mediator consider compliance and practice related to cybersecurity, privacy, and data protection.



MEDIATION RULE HIGHLIGHTS

- **M-14: Termination of Mediation:**

(e) The parties may request the mediator (by signing the settlement agreement or otherwise) or the ICDR to issue an attestation that a settlement was reached in the course of a mediation to assist in the enforcement of such settlement agreement under the United Nations Convention on International Settlement Agreements Resulting from Mediation or other applicable law.

Innovation

ICDR: Innovation is at the core of our mission to advance dispute resolution

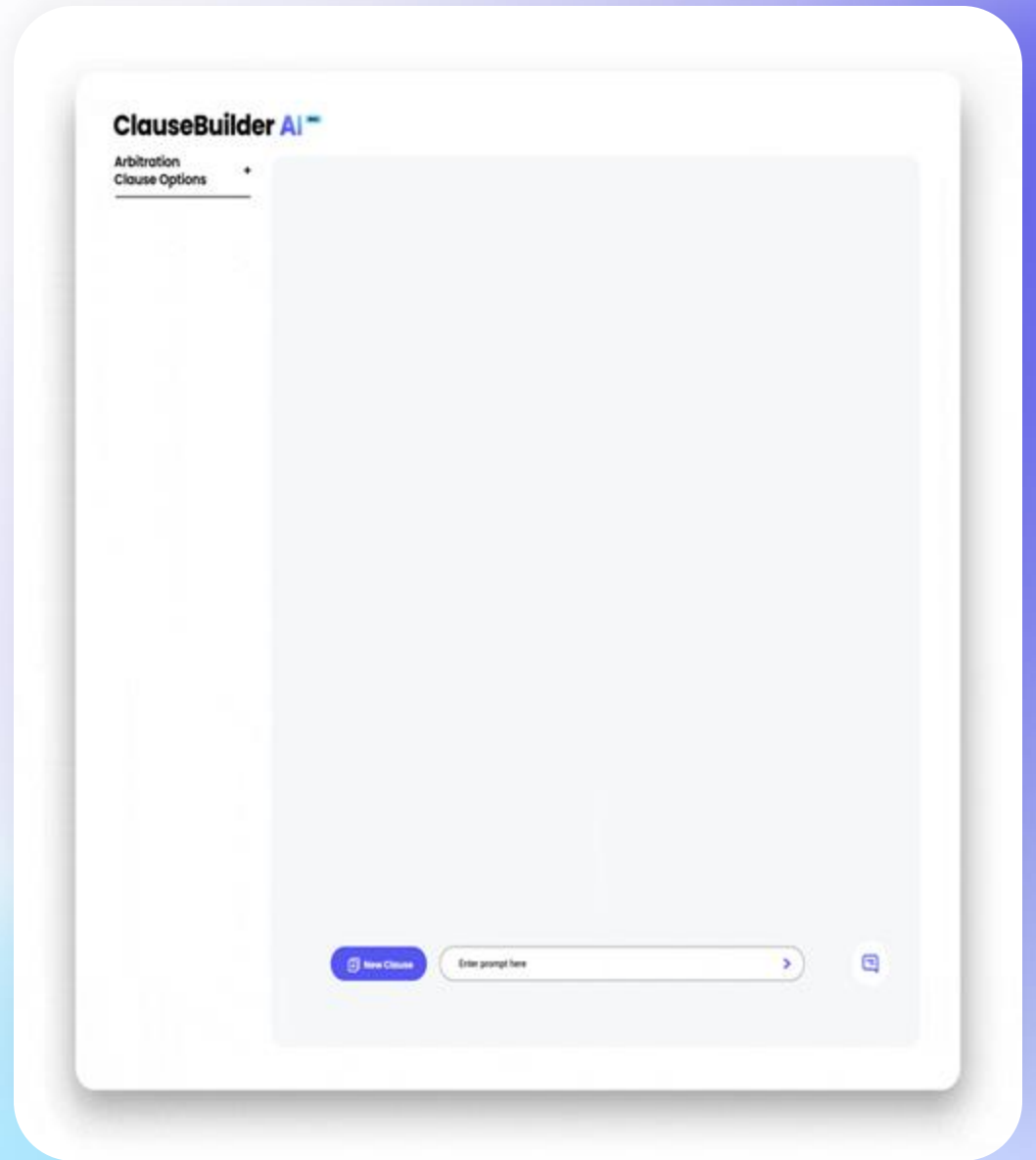
Technology Enhancements

- AAA WebFile System ECF
- AAA WebFile Mobile App
- ClauseBuilder Tool
- Rules and Clauses App
- Innovation Lab

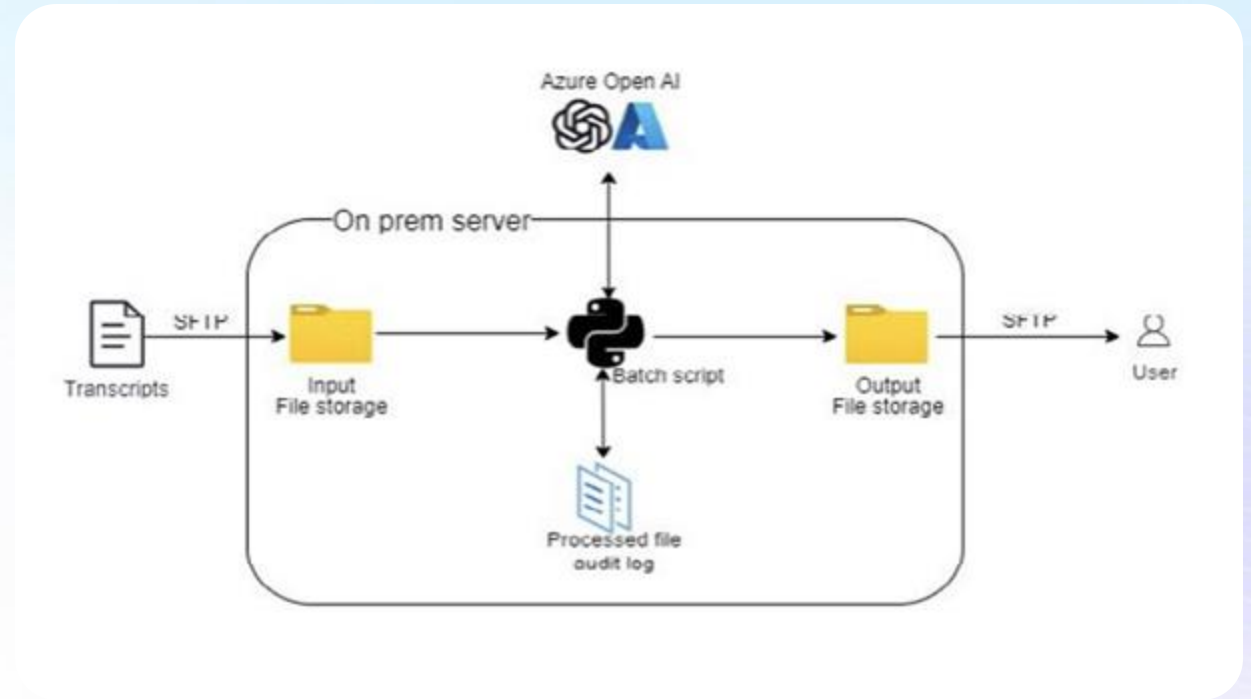
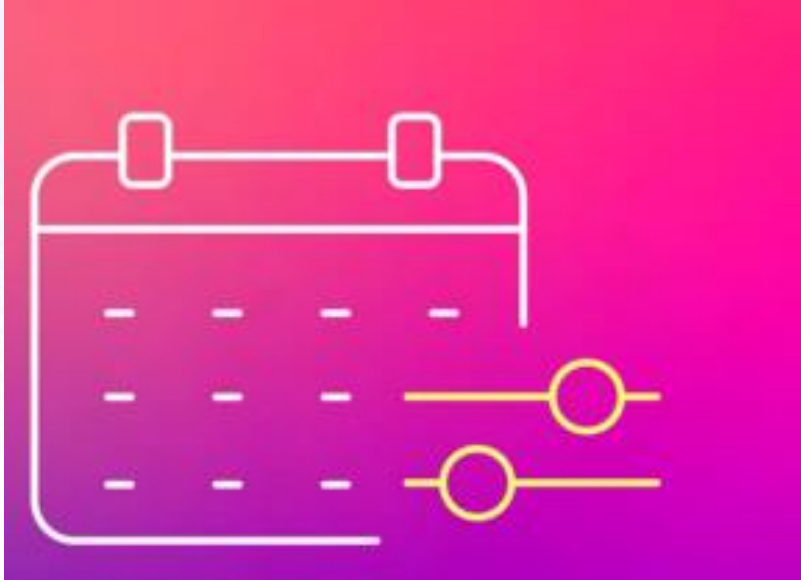


Welcome to **ClauseBuilder[®] AI** Beta

A breakthrough AI chatbot from the AAA[®] that uses AI language models to draft AAA arbitration clauses for your contracts.

[Get Started →](#)

Automated Procedural Order



How can AI change the future of dispute resolution?

The AAA sees the introduction of **AI technology** as an extension of its mission to lead the world in providing innovative measures to prevent and resolve disputes fairly and efficiently.



Guidance

AAA-ICDR Principles Supporting the Use of AI in Alternative Dispute Resolution

November 29, 2023



Event

"Future Dispute Resolution" Conference

Codex—the Stanford Center for Legal Informatics—the Martin Daniel Gould Center for Conflict Resolution and the Deborah L. Rhode Center on the Legal Profession are proud to bring some of the world's foremost dispute resolution experts to Stanford Law School for the "Future Dispute Resolution" conference. Co-sponsoring organizations include the AAA, the AAA-ICDR, ODR.com, System Legal and ITCHEILAW.

September 5, 2024



Article

Advancing AI in Law: Insights from LawNext

At two recent conferences in Chicago, there was compelling evidence that the legal field is making significant strides in integrating generative AI, dispelling previous notions of stagnation. Bob Ambrogio wrote in a recent LawNext article. Read the article here, which includes insights from AAA President and CEO Bridget McCormack.

August 5, 2024



Article

Enhancing AAA Training and Communication with AI Video Generation

The AAA is transforming its training and marketing efforts with HeyGen, an AI-powered video generation tool. Our team members have found HeyGen to be a game-changer in creating high-quality, engaging content quickly and efficiently. From producing training videos to enhancing communication, HeyGen is helping us achieve our goals with impressive results. Learn more in our latest blog post.

August 5, 2024

AAA-ICDR CYBERSECURITY ADMINISTRATIVE PRECAUTIONS

- All AAA-ICDR arbitrators requested to take cybersecurity training
- All AAA-ICDR initiation and appointment letters include Best Practice Guide and Checklist as attachments
- Suggested procedural hearing agenda includes cybersecurity
- 2020 release of AAA-ICDR Best Practice Guide for Maintaining Cybersecurity and Privacy
 - Includes 10 suggested discussion points for parties and arbitrator
- AAA-ICDR has taken extensive cybersecurity measures



Case Trends – 2023

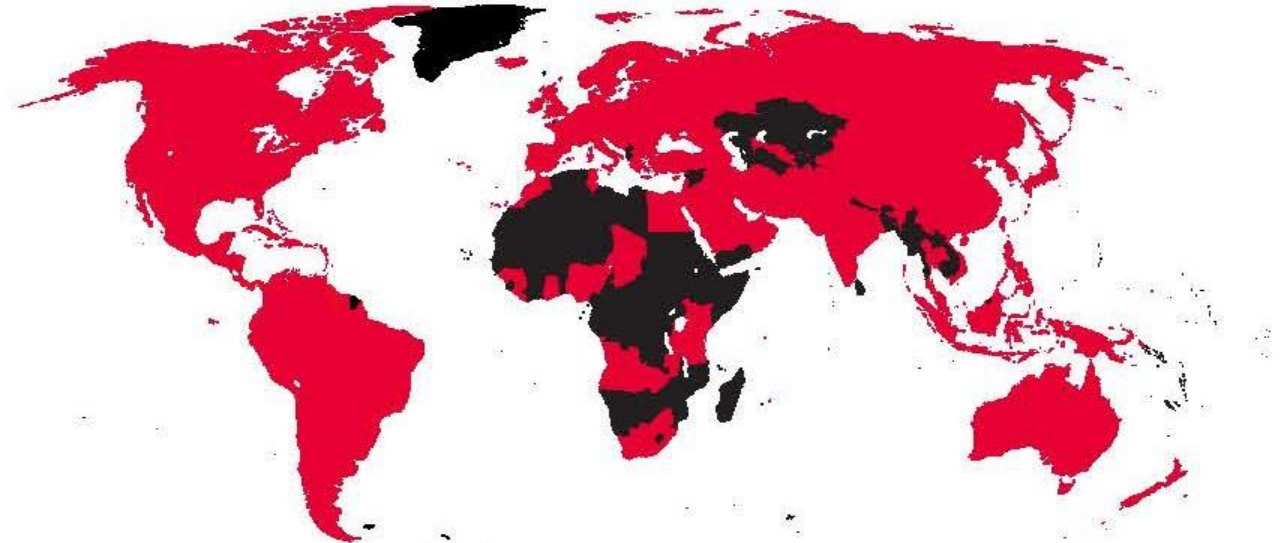
Top Non-U.S. Nationalities Include:

COUNTRIES

CHINA 174 PARTIES	GERMANY 32 PARTIES
CANADA 156 PARTIES	MEXICO 23 PARTIES
UNITED KINGDOM 93 PARTIES	SWITZERLAND 23 PARTIES
UKRAINE 88 PARTIES	KYRGYZSTAN 20 PARTIES
INDIA 32 PARTIES	NETHERLANDS 18 PARTIES

REGIONS

UNITED STATES 887 PARTIES
ASIA 351 PARTIES
EUROPE 369 PARTIES
CANADA 156 PARTIES
LATIN AMERICA 118 PARTIES
AFRICA 15 PARTIES



Note: The color red indicates a case(s) involving a party from that country from 2019-2023.

93 Countries Represented

INTERNATIONAL MEDIATIONS
ADMINISTERED

100

Note: The color red indicates a case(s) filed with ICDR 2019-2023 involving a party from that country

CASE TRENDS – 2023

Most Frequent U.S. Venues

NEW YORK 121 | MIAMI 91

and hundreds of additional international cases seated throughout the United States and abroad.

International Expedited Cases

234 [28% of total]

Multi-Party Cases

295 [35% of total]

Commitment to Diversity

24%
Diverse Roster

26%
Diverse Appointments