

Arbitration Proceedings



Ajar Rab

Partner, Rab & Rab Associates LLP

B.A.LL.B.(Hons.) NLSIU, Bangalore,

Master of Law, Bucerius Law School, Hamburg

Master of Business, WHU Otto Beisheim School of

Management, Vallendar Germany

PhD (pursuing)

ajar@rabs.in

Procedure



- ∞ Notice of Arbitration
- ∞ Appointment of Arbitrators
- ∞ Organizational Meeting
- ∞ Pleadings
- ∞ Evidence
- ∞ Hearings
- ∞ Award

Beginning



- ∞ Notice filed with the institution or when respondent receives the notice?
- ∞ ICDR, ICC, LCIA – date of filing
- ∞ UNCITRAL – date of receipt
- ∞ Full claim or just notice? –
UNCITRAL – just notice

Beginning



- œ Counter-claim
- œ Preliminary matters – UNCITRAL Notes on Organizing Arbitral Proceedings
- œ If parties haven't chosen – rules, law, language and place will be discussed
- œ Filings, pleadings, technology, confidentiality, schedule, witnesses

Preliminary Matters



- ∞ *Ad-hoc* – expenses and arbitrators fees
- ∞ Letter by Arbitrator
- ∞ Terms of Reference - ICC

Written Submissions



- ∞ Issues, scope of arbitrator's mandate, identify facts, law and defenses
- ∞ Post hearing memoranda

Hearing



- œ Documents only?
- œ Chair to decide procedural issues
- œ Schedule a Hearing
- œ Place of Hearing
- œ Language of the Hearing
- œ Local Bar – 2018 amendment

Hearing



- ∞ Closed Hearings
- ∞ Record of Proceedings
- ∞ Technology
- ∞ Time Limits per Side
- ∞ Default of Appearance
- ∞ Expedited Proceedings
- ∞ Evidence

Burden of Proof



- ∞ No specific standard of proof
- ∞ Usually ‘balance of probabilities’ or ‘preponderance of evidence’
- ∞ Documentary Evidence – civil law
 - ∞ Hearsay
 - ∞ Authentication
 - ∞ Document Requests – non-parties? – Ask the Court
- ∞ Arbitrator Discretion

Witnesses



- œ No testimony before the hearing
- œ Witness statements – only facts
- œ Who can testify?
- œ Meeting the Witnesses
- œ Examining the Witnesses
- œ Arbitrator Intervention
- œ Availability & Compelling a Witness

Expert Witness



- ∞ Provide opinions based on their expertise, which are applied to facts
- ∞ Confrontation or Conferencing

Post Hearing



- ∞ Summary of evidence and arguments
- ∞ Briefs on one or two points of law
- ∞ New evidence
- ∞ Discretion to re-open the hearing

THANK YOU!