Professional users are those who are the most concerned by the following question: arbitration remains for companies and their legal department an essential mode of settlement of disputes. This is in fact the opinion of Hervé Delannoy, Chairman of the AFJE, and Denis Musson, Chairman of "Le Cercle Montesquieu", the main organization representing General Counsels.

Another observation is obvious: the clear preference of business sectors for institutional arbitration rather than ad hoc arbitration. Among the advantages of arbitration lead by an arbitration center that legal experts evoke: there are the experience of arbitration centers, a better management of arbitral procedures, an optimized timetable, the management of the cost predictability's delicate matter, as well as the control of declarations of independence and impartiality, all these questions being currently the focus of attention. The lawyer Alexis Mourre (founding partner of Castaldi, Mourre & Partners which is the hosted law firm for this newsletter) also shares this preference for institutional arbitration. According to him, institutional arbitration offers security both through the arbitration clause recommended by institutional center and through their intervention during procedure. The cornerstone of arbitration remains in its Rules of arbitration and their binding force, since they become ipso facto an integral part of the contract concluded by the parties as soon as the parties agree on them. *Pacta sunt servanda:* this reflects the sensitive question of the binding force of Arbitration rules discussed in this newsletter.

That is the occasion for Professor François-Xavier Train, president of our Scientific Council, to recall that the International Arbitration Chamber of Paris modified its Rules in 2011 to modernize and be in accordance with the 2011 arbitration Reform. In the end, it must be users – that is to say companies – who benefit from it. So please read on!

**Baudouin Delforge, Chairman of the International Arbitration Chamber of Paris.**

**Professor François-Xavier Train**

Professor at the University of Paris Nanterre La Defense, General Secretary of the French Comity of Arbitration and of the "Revue de l'arbitrage", François-Xavier Train chairs the Scientific Council recently held under the aegis of the CAIP.

Why was a Scientific Council created and what kind of needs does it intend to meet?

The creation of the Scientific Council of the Chamber was justified by the evolutions it is currently facing.
Even though the Chamber’s activity has been very important, it has been, until recent years limited to some professional sectors resulting in a “corporatist” arbitration, between professionals of a same sector. However, nowadays, due to the influence of various factors, the activity of the Chamber has been more diverse. Even if this “corporatist” arbitration remains its core business; there are more “legal” arbitrations and the Rules of Mediation have a bright future.

On the other hand, the complexity of arbitration law justifies a scientific and legal framework, in order to raise awareness amongst all its actors (Companies, Law firms and Arbitrators) concerning the growing requirements of Justice in arbitration. For instance, the Arbitral Chamber is improving its system of declaration of independence and impartiality without challenging the frequent and useful practice of the Arbitral Tribunals composed with professionals and legal experts. Such a system in an Arbitral Tribunal is a guarantee for the quality of the Justice rendered , which must be at the same time realistic, and in direct contact with the reality of the sector as well as being in conformity with the legal criteria.

Finally, in 2011, the Chamber put in place its new Rules of Arbitration, which are modern and in compliance with the 2011 Arbitration law Reform and with the practice.

The creation of a Scientific Council was needed in order to support the current evolutions of the Chamber and strengthen its efficiency. In the end, the Companies will be the ones taking the advantage of the scientific committee.

What will be its role in practice?

The Scientific Council has an advisory role and can make some suggestions on any questions concerning the performance of arbitration and mediation procedures. It is not a decision-making body. However, the decision-making bodies of the Chamber will have the possibility to ask for its opinion on various topics. For instance, the committee could be consulted in order to define the framework of the arbitrators’ removal procedure or to elaborate the program and configuration of the training programs.

That is why the leaders of the Chamber have composed a committee with arbitration specialists coming from various backgrounds (Academics, Judges, Lawyers, Experts and Professionals).

Until now, the Scientific Council has already met twice. It is currently examining the Ethical Code, the Rules of Arbitration and various procedural documents, particularly the declaration of independence and impartiality of the Arbitrators and will propose, when appropriate, changes and adjustments.

What can we expect from these works? Will they be disseminated?

As said before, the aim of the Scientific Council is to support the Chamber amongst the coming important evolutions of its activity. The missions of the Scientific Council will be adapted according to the circumstances and the needs.

Concerning the works of the Council, their first aim is not to be disseminated as such. Nevertheless, some of them will give rise to documents, circulars, guides, etc., and will be disseminated according to the Chamber’s usual process; that is to say after approval of its decision-making bodies.

POINT OF VIEW

Arbitration : the companies’ expectations

Hervé Delannoy, Chairman of the AFJE

Hervé Delannoy is the Chairman of the French Association of Company’s jurists which gathers more than 600 General Counsels coming from 1.200 Companies.

In this “Point of view”, Hervé Delannoy is addressing the expectations of companies concerning arbitration.

What are the current expectations of legal departments concerning arbitration at a time when half of the companies claim to be disappointed by the Arbitrators’ work and the excesses of the cost and the length of the procedure?

Despite the criticisms that can be made, Arbitration remains an essential way of dispute resolution for companies and their legal department. In my opinion, the real limit of arbitration is related to the fact that when an arbitration clause is inserted in a contract, you have no visibility concerning the nature and the type of dispute you will have to deal with. When the dispute arises, the crystallization of the dispute and of the respective positions as well as the antagonisms bring arbitration (known for its flexibility and speed) close to traditional trial before State courts. In this way, Arbitration is marked by a procedural battle with objections, requests for invalidity, arbitrator removals, etc., and loses its specific interest. This is mainly the case for ad hoc arbitration where everything depends on the way the arbitration is organised. Moreover, the efforts made by State courts these last years – particularly Paris and
Nanterre Tribunals – to fulfill companies’ expectations lead us to consider them as serious competitors to arbitration... Nevertheless, as I said previously, the crucial point here is that when we foresee this form of dispute resolution, we are far from imagining the dispute in question, and its magnitude, therefore the most suitable choice is often impossible to predict. Fortunately, the preliminary mediation procedures existing nowadays allow us to see probable ends satisfying everyone in a controlled timeframe.

What are, according to you, the main advantages of institutional arbitration compared to ad hoc arbitration?

The undeniable advantage of institutional arbitration remains in the fact that permanent arbitration centres are experiences and their Arbitration Rules provides with a wider framework of operating rules. On the contrary, ad hoc arbitration may be vague, complicated and unreliable. Excesses costs may occur and obviously be, for some companies, important and significant. What is totally absurd is when arbitration starts automatically due to an arbitration clause for a small financial dispute, it triggers possible others consequences (matter of image for the company…), and therefore leads to important costs disproportioned with the dispute amount.

The question of independence and impartiality of arbitrators is at the very heart of critics made by companies concerning arbitration. Disclosure of interest, Ethic Charter, Code of good conduct... which role could arbitration centres play in this context?

Here is a real issue: nowadays we don’t know where the disclosure of interests should stop. It’s really important for the arbitrators to be the most complete, accurate and transparent as possible, but this is sometimes going too far. We have to avoid reaching the point where the disclosure interests becomes without any limits. Some Arbitrators ignore where this obligation of disclosure has to stop: drafting of an article, participation to a conference, ancient counselling for a company which at that time wasn’t yet a subsidiary of the company part of the dispute... This can go quite far. Today, the disclosure of interests is so spread that it may become a potential risk for arbitration. Therefore, It’s necessary to find some ways to circumscribe it as well as preserving efficiently the arbitrators' independence and impartiality.

What is your assessment concerning the 2011 Arbitration Reform? Did it answer to your members’ expectations?

This reform was well-managed, well-thought and well-prepared. We didn’t have any negative feedback at the AFJE.

What kind of inputs could arbitration centres bring to answer to companies’ expectations ?

We have concerns about clarification and readability. It is noticeable when arbitrations questions are raised during conferences that even if some companies are familiar with this type of dispute resolution, others adopt a distrustful and reluctant stance towards arbitration while they are looking for liable and complete information. This could contribute to a better use, a better knowledge and therefore a better dissemination of arbitration.

Denis Musson, Chairman of the “Cercle Montesquieu”

Denis Musson is the General Counsel of the Imerys Group. Last April, he was elected as the new Chairman of the “ Cercle Montesquieu” which is an association of General Counsels constituting one of the first reflection places concerning the function of General Counsel in a company and its management aspects.

What do you think of arbitration in general?

Arbitration remains without any doubts the most adapted alternative mode of settlement of disputes for business world, economic exchanges and companies’ life in general. Compared to the regular judicial system, arbitration provides with an uniform expertise which cannot be found with State jurisdictions. When an international dispute arises, arbitration is undoubtedly seen as a security since it avoids the national preferences and overrides the national particularisms. An arbitration clause is a way to find an acceptable agreement between parties concerning the dispute settlement’s matter when this question has been subject to tough negotiations in the context of an international contract. Concerning delays, even if some think that arbitration procedures are longer than before, they remain undoubtedly faster than a trial before State courts with a decision subject to an appeal.

What is your preference between ad hoc arbitration and institutional arbitration?

I am clearly in favor of institutional arbitration which permits to benefit from a simplification of negotiations in a context functioning perfectly. Concerning the organization of arbitral procedure, using permanent arbitration
centers brings a supplementary security which is evident compared to ad hoc arbitration.

The question of independence and impartiality of arbitrators is at the heart of criticisms made by companies concerning arbitration. Do the Rules of permanent centers answer to those companies’ concerns?

One thing is certain: impartiality and independence of arbitrators is an essential question in the competition opposing the main arbitral centers. For instance, from this point of view, the marketing and promotion made by the London Court of International Arbitration (LCIA) and by British legal professionals in its favor appear much more efficient than those made by the Arbitration Court of the ICC. As a matter of fact, the 2011 Prada report about Paris legal competitiveness highlighted this element. It is however an essential issue for Paris to keep and develop its stronghold status for international arbitration, from which not only French legal experts but also its reputation with companies in the conduct of their international trade businesses benefit.

**REPORT**

The binding force of the Rules of arbitration: recent cases

When parties agree to submit their dispute to a permanent arbitration institution, they are presumed to accept its Rules of arbitration. In this way, these Rules of Arbitration become on a contractual basis, their “procedural law.” Even if the Supreme Court ensures the Rules of arbitration’s enforcement, the binding force of the Arbitration Rules is currently undermined by certain decisions of the lower courts. This is particularly the case when conflicts arise between Rules of arbitration and any provision of applicable law or a fundamental procedural principle.

This situation is described in the following different cases.

As we know, the main advantage of having institutional arbitration - made under the aegis of a permanent center and in accordance with the arbitration rules developed by the institution - is the legal certainty it offers to the parties. Compared to an ad hoc arbitration, institutional arbitration overcomes the risk of paralysis of the arbitration proceedings in case of difficulties and thus ensures the efficiency and the authority of the award.

The main criteria leading a company to choose an institutional arbitration rather than an ad hoc arbitration are its experience, its specificities, its reliability, its costs, and finally its Rules of arbitration. Trusting the institutional arbitration, the parties agree with the provisions of the Rules of Arbitration and therefore the arbitration clause. The arbitration clauses often stipulate explicitly that “the parties agree to use arbitration accordingly to the … Rules that parties which they have taken note of and accept”.

In order for the parties to trust the arbitration institution, the Rules of arbitration constitute the law of the parties. Its provisions are binding for the parties as well as for the arbitration center.

According to the French Supreme Court, the Rules of arbitration have a binding force equivalent to a contract in all its provisions. They bind the parties, the arbitration center and the judge: “the Synacomex formula sending the parties before the Arbitration Chamber of Paris in case of dispute implied necessarily the adoption by the parties of the Rules of the center, according to which the award cannot be appealed and a cancellation action is impossible” (Cass. Com. 19 mai 1987, M. Caille et autre c/Société Peter Cremer France).

However, the binding force of the Rules of arbitration has recently been called into question several times. For instance, in the article of Mr. DE FONTMICHEL published in Chronique de droit de l'arbitrage n°9, Petites affiches dated July 17 2012, it can be drawn that: “arbitration is not anymore the binding force of the contract’s last bastion. The latter is yielding to the fundamental principles of fair trial’s power.”

Indeed, several recent cases have shown that the judge of cancellation has sometimes refused to enforce a provision of the rules of arbitration whereas the parties had agreed on it.

The present article is not about the definition of the rules of arbitration which were qualified by the Court of Appeal of Paris in a case dated January, 22nd 2012 as “a standing offer to contract that anyone can accept and embrace its effects upon conclusion of the arbitration contract”.

However, the matter being discussed here is the same as the one in the Cubic case, that is to say the binding force of such rules.

Three recent cases are central in this debate:

1) The Nykcool case : the requirement for referees to submit to a declaration of independence and impartiality

In this case, the Court of Appeal of Paris declared the declaration of independence and impartiality of the arbitrators mandatory in the case where one of the parties asked for it, even if the rules of arbitration did not make it compulsory : “the unreasoned refusal of the arbitrators to fulfill a declaration of interest requested by one of the parties is sufficient to raise justifiable doubts concerning the independence and impartiality of the arbitral tribunal whereas it is established that the appointed arbitrator was participating to others arbitrations between the same parties” (Paris Pôle 1 - Ch. 1, 10 mars 2011)

Following this case, the Nykcool company tried to raise the liability of the arbitration center before the State jurisdictions. Whereas the rules of the Maritime Arbitral Chamber of Paris allowed fifteen days to the parties to ask for the removal of an arbitrator, such a request had been raised more than a year after the beginning of the arbitration hearings. On this occasion, the Paris Court of Appeal affirmed that the delay enshrined by the Rules of arbitration should not deprive one the parties to its right to ask for the removal of an arbitrator due to a new
information obtained after the expiry of the delay: “the Rules of arbitration could not deprive a party of its right to raise a removal cause known after the expiry of the delay of fifteen days following the beginning of the arbitral hearing.” (CA Paris, Pôle 1, Ch. 1, 30 oct. 2012, n° 11/08277, Chambre Arbitrale Maritime de Paris (CAMP) et Générali iar d c/ Nykcool AB).

2) The Tecnimont case: uncertainty concerning the application of the removal delay established by the Rules of arbitration

Apart from the Nykcool case, the Court of Appeal of Paris had always applied the removal delay for arbitrators enshrined by the Rules of arbitration. Then, the judge of cancellation used the Rules of arbitration of the ICC in a case dated October, 7th 2010, to rule the claim inadmissible. Indeed, this claim had not been preceded by an action for removal in the delay enshrined by the Rules, that is to say fifteen days after the reception of the declaration of independence and impartiality of the arbitrator.

Therefore, in the famous Tecnimont case, the Court of Appeal of Reims considered that it was not bound by the delay of thirty days enshrined by the ICC Rules of arbitration: “The cancellation judge ruling on the regularity of the award is not bound by the admissibility delay of the request of removal to the arbitration institution that Tecnimont considered exceeded.” (Reims, 2 novembre 2011, SA J&P Avas c/ Tecnimont SpA).

This case became well known because the position of the Court of Appeal of Reims was “completely contrary to the evolution of the arbitration law in thirty years”, according to T.Clay (Chronique: Arbitrage et les modes alternatifs de règlement des litiges. Recueil Dalloz 2012). This decision has been subject to an appeal and the plenary assembly of the French Supreme Court will rule in 2013 on the question.

3) The Pirelli case: the question of a party impecuniosity during an arbitration

In the Pirelli case, the Paris Court of Appeal overturned an arbitration award according to which a party’s counterclaim was withdrawn on the basis of the Rules of arbitration since the party had not paid the arbitration fees due to his impecuniosity.

The Court of Appeal qualifies as an “excessive measure” the decision to withdraw the counterclaims. However, could the arbitrators have gone against the Rules of arbitration expressing the will of the parties?

Most of the doctrine regrets this solution which allows the judge to “choose the applicable contractual provisions of the Rules of arbitration depending on the difficulties of one or another parties without demonstrating the wrongfulness of the provision concerned” (D. COHEN, Non-paiement de la provision d’arbitrage, droit d’accès à la justice et égalité des parties : avancée ou menace pour l’arbitrage ? Cahiers de l’arbitrage, 1er janvier 2012, n°1). Unconvinced by the reasoning of the Court of Appeal, the French Supreme Court overturned the decision because: “If the arbitral tribunal’s refusal to examine the counterclaims could affect the right of access to Justice and the principle of equality between parties, it is on the condition that the counterclaim are inseparable from the main claim.”

In conclusion, it can be said that the doctrine has been very critical towards this case law as it weakens the binding force of the arbitration rules. It can be deduced from these decisions that a strict interpretation of the arbitration rules leads logically to the annulment of the award.

Pr. Daniel COHEN thinks that “this partial exclusion of the Rules of arbitration which has a contractual value is more and more common in the case law. At the same time, the contractual nature is unfortunately diminishing in favor of a regulatory vision.” Pr. Thomas CLAY regrets this “incomplete application” of the Rules of arbitration and asks: “What is the point to have some Rules of arbitration if they are not binding for the judge?”

On the contrary, others authors deem that “the binding nature of the Rules of arbitration imposes itself only if it respects the fundamental principles of proceeding. Being contractual, Rules of arbitration may yield to international public policy” (X. BOUCOBZA et Y.-M.SERINET, Les principes du procès équitable dans l’arbitrage international, JDI (Clunet), janvier 2012).

One thing is certain: the ruling given by the French supreme court in the Pirelli case is paving the way to a necessary and desirable clarification of the case law’s position, though certain pieces of this “case law puzzle remain to gather”.

POINT OF VIEW

Institutional arbitration: counsels’ point of view

Alexis Mourre

Alexis Mourre is a lawyer at the Paris Bar and a renowned specialist of International Arbitration Law. He is the Chairman of the Arbitration Committee of the International Bar Association (IBA), the Vice-Chairman of the International Court of Arbitration of the ICC and the Vice-Chairman of the International Business Law Institute of the ICC. He has been involved as lawyer, expert or arbitrator in more than 160 arbitration procedures, ad hoc or institutional.
What are generally the main advantages of institutional arbitration as opposed to ad hoc arbitration?

You need to distinguish pure ad hoc arbitration from ad hoc arbitration with references to Arbitration Rules pre-established. In the first case, parties will have to agree on all procedural rules which can be problematic. Moreover, it will be necessary to bring the case before court each time a blockage appears, which may generates delays and may contravene parties wish to subtract their case to State courts. The second situation, particularly illustrated by UNCITRAL arbitration, is closer to institutional arbitration, especially due to the powers recognized to the appointment authority.

Institutional arbitration provides with a safer framework than ad hoc arbitration. This is due to the use of arbitration clauses provided by the institution and to the arbitration center’s intervention during the procedure to ensure swiftness and efficiency. With institutional arbitration, contrary to ad hoc arbitration, the center will deal with questions concerning costs and payment of arbitrators, avoiding a direct and sensitive discussion between arbitrators and parties.

Among arbitration centers, ICC presents the particular characteristic to organize a thorough quality examination of the award. Indeed, the International Court of Arbitration can prescribe to the arbitral tribunal technical corrections, especially to avoid a potential risk of cancellation of the award. The Court can also make comments concerning the legal grounds of the award which is generally very useful to reinforce the clarity and coherence of arbitrators’ reasoning. The Rules of the International Arbitration Chamber of Paris make mandatory the presence of a Secretary during hearings and deliberations providing a precious help in the accomplishment of arbitrators’ mission. At the end of the arbitration, the award is sent to the Chamber in order to ensure that arbitrators have respected the Rules as well as the due process.

Nearly half of the companies using arbitration say they are disappointed about the way arbitrators accomplish their mission. The critics concern mainly the costs and delays of the procedure. How arbitration centers can fulfill companies’ expectations?

First of all, it was underlined by recent studies that, arbitrators’ and institutions’ fees are minor compared to the global cost of an arbitration. More than 80% of the arbitration costs result from the representation of the parties (legal counsel, experts, etc.). Therefore, using an institution has a low-impact on the global costs of an arbitral procedure. On the contrary, institutions will make sure that the arbitration’s costs are not too high. This is another advantage of institutional arbitration compared to ad hoc arbitration.

As far as the delays are concerned, the role of the arbitral institution is to make sure that arbitration is carried out efficiently. In this way, institutions will act in order to have the most efficient procedure. This is a major concern for all institutions. For example, the ICC adopted rules to ensure its procedures’ efficiency to its procedures and recommend arbitrators to follow them. The institution will make sure that the award will be rendered in the timetable set by the Rules of Arbitration or by the parties’ agreement. Thanks to the flexibility of the International Chamber of Paris’ rules, the procedure can be adapted in order for the award to be rendered in a 6 month delay (which can be extended if necessary).

Choosing an arbitrator is a key moment of the arbitral process for the companies. Obligation of disclosure, ethic charter, code of good behavior: what is the role that arbitration centers are supposed to play in this context?

Arbitral institutions have an essential role on these issues. When they appoint an arbitrator or confirm an appointment made by parties, they make sure that the arbitrators are independent and impartial. The institution will control the arbitrator’s statement of independence and impartiality of the arbitrator. Then, this statement will be transmitted to the parties who may raise comments. The institution’s role in this context is twofold. On one hand, it checks that arbitrators fulfill the conditions of independence and impartiality. On the other hand, it won’t let the parties disrupt the procedure by raising frivolous objections concerning the tribunal constitution.

Priscille Pedone

Lawyer at the Paris Bar since 2001, Priscille Pedone joined Castaldi Mourre & Partners law firm where she has been working as Lawyer Of Counsel since 2008. As a practitioner, she will discuss about the issues of ad hoc arbitration and explain her preference for institutional arbitration, either as counsel or as arbitrator.

“Recently, a client came to me wishing to start arbitration in accordance with his contract. He was economically weaker than his counterparty and wanted to have a visibility concerning the costs of the arbitration. The arbitration clause planned an ad hoc arbitration.

Before discussing the question of arbitrations’ costs, I would only recall an issue commonly raised by the parties unfamiliar with arbitration: the choice of arbitration, rather than a State jurisdiction, is usually prompted by mistrust of parties in each other national Justice. In this case at hand, parties wanted voluntarily to disconnect the contract and its possible disputes from their own law or jurisdiction. It is in the same logic, that they mistakenly chose ad hoc arbitration rather than institutional, thinking the place of arbitration could favor one of the parties.
The independence of arbitration centers towards their host country

If ad hoc arbitration has numerous interests, the main one being its high flexibility, it must not be chosen in order to avoid any link with the country of the counterparty. Thinking that the place of arbitration has an impact on the arbitration means denying the complete independence of arbitral institutions vis-à-vis their implementation country. It’s important to make a difference between the location of the arbitral institution organizing the arbitration procedure, and the arbitration seat, which could be anywhere in the world and still being managed by the arbitral center. In the same way, the arbitral institution’s nationality has no impact on the arbitral tribunal which could be composed of an arbitrator with a nationality chosen by the parties and which is different from the place of arbitration. You have to make a difference between institution, counsel and arbitrator which could all have a different seat or nationality. These details may be a chance to depart from the common idea for companies that you have to choose an arbitral institution according to its seat and an arbitrator or a counsel according to the seat of the institution.

A better control of costs

But let’s return to my client request, and more precisely to the difficulty to answer his concern which was : having, before acting, a cost visibility for arbitration and other expenses aside from lawyer’s fees.

By choosing ad hoc arbitration rather than institutional arbitration, parties don’t have access to a scale of costs, generally made by institutions to avoid the uncertainty of ad hoc arbitrators fees which are free and therefore nearly unpredictable. In addition to the choice of arbitrator’s difficulty, it appears clearly that arbitrators’ fees will depend on his personality, his reputation, his experience in the parties’ activity sector and as an arbitrator.

Answering to the question of ad hoc arbitration’s costs depends on several parameters left to the discretion of the parties at a moment where they are opponents.

Without an arbitral institution, parties have to agree, without any exterior authority, on a procedure and on an arbitrator who has to be available, with the requested qualities and who will charge reasonable fees. Any disagreement between the parties may lead to a blockage, triggering consequently an increase of fees and time necessary to settle the dispute. In the end, by not choosing an arbitral center, parties may risk to reach a deadlock which could only be unblocked with the intervention of State jurisdiction (“juge d’appui”), whereas the choice of arbitration by the parties was motivated by an avoidance of blockage and State jurisdictions…

A limited risk of procedural blockage

As far as the arbitral costs are concerned, it’s important to overcome the common idea related to the costs received by arbitral institutions. It is true that their intervention has a price, however it’s generally evaluated to 1% of the global costs of an arbitral procedure. Institutional arbitration offers a better financial visibility and risks of blockage are limited due to the institution trying to be responsive to any organizational issues interfering with the real dispute, and all that at a lower cost.

In addition, the institution offers the possibility for the parties to be helped concerning the arbitrator’s appointment with a list established with strict criteria, guaranteeing the quality of the arbitrators.

Finally, Arbitration rules constitute another advantage for resolving various situations as they provide themselves with solutions to resolve these situations. That being said, it’s good to remember that nothing forbids the parties from submitting their dispute spontaneously and freely to Arbitration rules without seizing the Institution publishing the Rules.

In the end, without the agreement of the counterparty to organize the ad hoc arbitration, starting an ad hoc arbitral procedure is far more difficult than starting an institutional arbitration and seizing an institution to manage the procedural implementation.

A valuable presence for arbitrators themselves

As arbitrator, the presence of institution is a valuable help. Once appointed, the arbitrator gains authority and can focus on the case since a professional administrative center manages all side issues and is prepared to any organizational issues occurring. As the arbitral institution manages the arbitration, the arbitrator can focus on his mission.

In conclusion, except some unforeseen circumstances, I would advise to choose institutional arbitration for the sustainability and visibility offered compared to an ad hoc arbitration in which, by definition, parties have opposed interests and will encounter some difficulties to agree on a procedure or an organization. Since there are a lot of different institutions and Arbitration Rules, the main difficulty for counsels is when they draft contracts to choose between one institution and another. In these conditions, the most reasonable choice is to choose the most experienced institutions, regardless of the place of arbitration or nationality. These institutions will propose the appropriate tools for professionals’ expectations concerning visibility (costs, arbitrators list) and flexibility such as fast, simplified or custom-made procedures. You shouldn’t neglect the attentiveness of an institution which doesn’t resolve the dispute and is constantly available for parties.
The International Arbitration Chamber of Paris (CAIP) is a not-for-profit institution which has a general competence in arbitration. It offers the companies of all sizes, all necessary services for their disputes resolution through the means of arbitration or mediation.

Established in 1926, the International Arbitration Chamber of Paris is the first arbitration center in France. Having resolved about 40,000 disputes arising from transactions of all commercial and industrial sectors, the CAIP has acquired today an important international reputation.

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