



ICC Institute of World Business Law Training on
the Conduct of the Proceedings and Case
Management: the Arbitrators' Perspective

Paris | 29 March 2023



ACTIVE CASE MANAGEMENT TECHNIQUES

Domitille Baizeau

29 March 2023, Paris

WHY IS ACTIVE CASE MANAGEMENT IMPORTANT?

- ❑ Duty to conduct proceedings in an expeditious and cost effective manner (Art. 22.1, ICC Rules)
- ❑ Duty to ensure the parties' fair opportunity to present their case (Art. 22.4, ICC Rules)
- ❑ Need to reach a common understanding of the “rules of the game” / a level playing field despite diversity of backgrounds

TOOLS AVAILABLE FOR ACTIVE CASE MANAGEMENT

- Terms of Reference - TOR
- Case Management Conference(s) - CMC
- Procedural Timetable - PTT
- Specific procedural measures
(Appendix IV, ICC Rules)

TERMS OF REFERENCE

- Art. 23.1, ICC Rules
- ICC Model ToR ([link](#))
- Personal experience / models

TERMS OF REFERENCE - Checklist

- Parties and their representatives
- Composition of the arbitral tribunal (jurisdiction, managing COIs)
- ICC management team
- Tribunal's secretary
- Communications
- Summary of procedural history
- Background to dispute
- Parties' position / relief claimed
- List of issues to be determined
- Amount in dispute
- Arbitration agreement
- Seat/Place of arbitration
- Applicable laws (merits and procedure)
- Role of arbitral tribunal re settlement of the dispute
- Confidentiality
- Duty to arbitrate in good faith
- Data protection & Cyber attacks
- Fees and costs
- VAT
- Signature

TERMS OF REFERENCE

Key to streamline the proceedings

- Background to the dispute
- Parties' position and claims
- Amount in dispute
- List of issues



Allow arbitral tribunal to

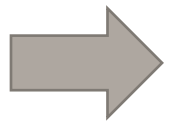
- Test its understanding of the dispute
- Determine complexity of case
- Identify issues for separate/early determination
- Specific needs of the case: DPRs, expert, hearing, etc.

CASE MANAGEMENT CONFERENCE PROCEDURAL TIMETABLE

Art. 24.2, ICC Rules

Purpose of CMC

- Agree “rules of the game”
- Discuss and agree PTT
- Allow protagonists to meet



Avoid surprises
Avoid disruptions



Challenge of CMC

- Party autonomy vs efficiency
- Level playing field vs best practices in international arbitration

CASE MANAGEMENT CONFERENCE

Concrete tips

- Fix early
- Use of video conference
- Offer party representatives attendance
- Ensure parties are prepared
- Ask parties for their views
- Ask parties to liaise
- Exchange drafts
- Record outcome in procedural order

Initial steps – options

- List of procedural questions
- Direct draft procedural rules: submissions, evidence, hearings

CASE MANAGEMENT CONFERENCE

List of initial procedural questions

- Number and sequence of written submissions
- Presentation of evidence
- Issues for early determination (jurisdiction, applicable law, liability)
- Need for document production requests (DPRs)
- Application of IBA Rules on the Taking of Evidence
- Need for expert evidence / Joint work of experts
- Need for a hearing (Art. 25.5, ICC Rules)
- Time period /dates for required procedural steps

CASE MANAGEMENT CONFERENCE

Possible procedural rules

- Written submissions
 - ❖ Content/scope
 - ❖ Form
- Factual exhibits/legal authorities
 - ❖ Presentation/naming
 - ❖ Translation
- DPRs
 - ❖ Criteria: relevance/materiality
 - ❖ Format (schedule)
 - ❖ Process
 - ❖ Power of Tribunal to ask for documents (Art. 25.4)
 - ❖ Adverse inferences
- Time limits/extensions
- Application of IBA Rules on the Taking of Evidence
- Witness statements / expert reports
 - ❖ Who
 - ❖ Content
 - ❖ Availability for examination
- Hearings
 - ❖ Format: virtual?
 - ❖ Purpose/scope
 - ❖ Logistics: court reporter, Interpretation, hearing rooms
 - ❖ Programme?

PROCEDURAL TIMETABLE

Concrete tips

- Cover entire proceedings
- Block hearing dates (fall back?)
- Ask some questions
 - ❖ Are two rounds of submissions required?
 - ❖ Are DPRs necessary? When?
 - ❖ Would a 2nd CMC be useful?
 - To resolve outstanding DPRs
 - To identify key issues for 2nd round
- Fix a pre-hearing conference
 - ❖ To organize the hearing
 - ❖ To identify key issues for examination / oral submissions
- Allow some flexibility
- Confirm PTT after CMC in PO

USEFUL MATERIALS

- ❑ 2021 ICC Note on the Conduct of the Arbitration ([link](#))
- ❑ 2020 ICC Checklist for Protocol on Virtual Hearings ([link](#))
- ❑ 2018 ICC Report on Control of Time and Costs ([link](#))
- ❑ 2010 IBA Rules on the Taking of Evidence in International Arbitration ([link](#))
- ❑ 2016 UNCITRAL Note on Organizing Arbitral Proceedings ([link](#))
- ❑ 2016 International Law Association Resolution on Inherent and Implied Powers of Arbitrators ([link](#))
- ❑ 2023 Swiss Rules Practice Note ([link](#))
- ❑ N. Kaplan, C. Bao, So, Now You are an Arbitrator: The Arbitrator's Toolkit, Kluwer Law International (2022)



Domitille Baizeau

Partner, Geneva

dbaizeau@lalive.law
+41 58 105 2000

Languages

English, French, Spanish (working knowledge)

Nationality

French, New Zealander

Admission

England and Wales

Geneva

(First admitted in New Zealand)

Practices

International Commercial Arbitration

Investment Arbitration

Public International Law

Areas of Focus

Energy & Mining

Pharma & Biotechnology

Technology & Telecom

Construction & Infrastructure

GENEVA
35 rue de la Mairie
1207 Geneva
Switzerland
+41 58 105 2000

ZURICH
Stampfenbachplatz 4
8006 Zürich
Switzerland
+41 58 105 2100

LONDON
9 Cloak Lane
London EC4R 2RU
United Kingdom
+44 20 3880 1540

[lalive.law](https://www.lalive.law)