The 2021 ICDR Arbitration Rules: a welcome update for international construction arbitration

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On 1 March 2021, the International Centre for Dispute Resolution (ICDR), the international division of the American Arbitration Association (AAA) and a leading provider of dispute resolution services to businesses in matters involving cross-border transactions released the 2021 update to its international arbitration and mediation rules (the '2021 ICDR Rules').[1] The 2021 update marks the first time the ICDR's arbitration rules and mediation rules have been revised since 2014 and 2008, respectively, and is of particular note to the construction industry both in the United States and elsewhere.

As many construction-dispute practitioners will acknowledge, during the last decade, the construction industry has increasingly favoured arbitration over other forms of dispute resolution. This has been particularly true for international construction projects where, given the varying jurisdictions and nationalities involved, international arbitration is all but a necessity to ensure an efficient and enforceable resolution of disputes.

The numbers bear this trend out. The statistics from nearly all of the leading international arbitration centres around the world, including the ICDR, show that construction disputes make up an increasing proportion of their caseloads.[2] Given the volume of construction disputes overseen by the ICDR, international construction practitioners should be aware of the ICDR's rule changes. This is particularly significant because, while many US construction entities and firms are likely to be familiar with the AAA's Construction Industry Arbitration Rules (the 'AAA Construction Rules'), the ICDR's arbitration rules differ in often subtle but important ways to reflect practices more commonly seen in international arbitration proceedings.

While the ICDR has published a very helpful summary of the individual changes to its arbitration and mediation rules on its website,[3] this article highlights some of the most relevant rule changes as they apply to international construction arbitration disputes and what they may mean in practice. As explained below, the ICDR's arbitration rule revisions are sound and practical efforts to provide users guidance on what to expect and how to manage an ICDR arbitration proceeding.

Definition of international arbitration (the Introduction)

Among the first and easiest to overlook changes to the ICDR Rules comes in the Introduction to the rules themselves.[4] Specifically, the 2021 ICDR Rules include additional language that explains when a case is deemed 'international' for purposes of applying the ICDR Rules.

This is critically important in cases where the arbitration agreement selects the AAA without designating which of the various AAA arbitration rules the parties intended to apply (eg, the Commercial Arbitration Rules, Construction Arbitration Rules). Indeed, according to Article 1 of the ICDR Rules, the ICDR's international arbitration rules will apply to an 'international dispute' where the parties have provided for arbitration 'by either the International Centre for Dispute Resolution ("ICDR"), the international division of the American Arbitration Association ("AAA"), or the AAA *without designating particular rules* […]'.[5] As a result, if a dispute is 'international', the parties will be deemed to have agreed to arbitrate pursuant to the ICDR's international arbitration rules unless the parties expressly agreed to arbitration pursuant to a specific set of the AAA's arbitration rules (eg, Construction Arbitration Rules) or other arbitration rules, such as the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules.

According to the 2021 ICDR Rules' Introduction, the ICDR relies on the UNCITRAL Model Law's definition of an international arbitration to determine whether a dispute is 'international' in nature.[6] Using this definition, the ICDR may deem an arbitration to be 'international' if the parties to the arbitration agreement have:

- their places of business in different countries;
- the place where the substantial part of the obligations of their commercial relationship to be performed is situated outside the country of any party;
- the place with which the subject-matter of the dispute is most closely connected is situated outside the country of any party;
- the place of the arbitration is situated outside the country of any party; or
- one party with more than one place of business (including parent and/or subsidiary) is situated outside the country of any party.[7]

Accordingly, to the extent the parties satisfy one or more of the requirements above, the AAA/ICDR may deem the dispute to be international and, as a result, apply the ICDR Rules if no other rules were specified.

Additionally, the ICDR's Introduction includes a helpful outline of the principal features of the ICDR's Rules that reflect practices more common to *international* arbitration proceedings rather than domestic US arbitration proceedings.[8] Arguably, the most noteworthy of these differences includes the ability of the 'tribunal to manage the scope of document and electronic requests, and to manage, limit, or avoid US

litigation-style discovery practices.'[9] Indeed, limited document exchange is the norm in international arbitration proceedings and substantively differs from the approaches seen in the US courts and domestic arbitrations.[10]

While thoughtful arbitration clause drafting should generally enable parties to avoid confusion over which set of the ICDR/AAA rules should apply, the ICDR's clarification of the term 'international' refines what parties should expect.

International Administrative Review Counsel (Article 5)

The revised 2021 ICDR Rules incorporate an entirely new Article 5 which defines the role of the ICDR's International Administrative Review Counsel (IARC).[11] The IARC is an internal administrative body within the ICDR/AAA composed of a group of former and current AAA-ICDR executives with extensive arbitration and case administration experience.[12] As Article 5 explains, the IARC serves as an administrative decision-making body which may resolve early procedural disputes between the parties including, for example, challenges to the appointment or continuing services of an arbitrator, decisions regarding the number of arbitrators to be appointed, determinations over whether a party has satisfied the administrative requirements to initiate or file an arbitration, and questions concerning the place of arbitration.[13]

While the inclusion of a new Article 5 and reference to the IARC might be interpreted to mean that the IARC is a new invention of the ICDR, in truth the IARC (as well as the Administrative Review Counsel for AAA arbitrations) has existed within the ICDR for nearly a decade. By including the new Article 5, the ICDR has clarified the important role the IARC plays in the early administration of international arbitrations under the ICDR Rules.

Joinder (Article 8) and Consolidation (Article 9)

The 2021 ICDR Rules update the joinder and consolidation rules in articles 8 and 9 (formerly articles 7 and 8).[14] As explained below, these updates streamline the joinder and consolidation procedures under the ICDR Rules and are of particular importance for construction disputes that commonly involve multiple owner/employer, designer, contractor, and subcontractor/supplier relationships.

First, under the previous joinder provision of the ICDR Rules (2014 ICDR Rules), a party to an arbitration could *only* join a new party if all parties to the dispute (eg, claimant and respondent) and the additional party, consented to the joinder.[15] The updated 2021 ICDR Rules now include an additional basis to join a new party to a pending arbitration. Specifically, according to Article 8(1), a new party may be joined to the proceedings if 'the arbitral tribunal once constituted determines that the joinder of an additional party is *appropriate*, and the additional party consents to such joinder.'[16] In other words, even if a party (ie, claimant or respondent) objects to the joinder of a new party, the tribunal can nevertheless order the joinder of an additional party provided that doing so would serve the interests of justice and the additional party consents to joinder.[17]

Second, the 2021 ICDR Rules update the consolidation process under Article 9.[18] While the former ICDR consolidation provisions have largely remained intact, Article 9 now permits the case administrator to appoint a consolidation arbitrator – a sole arbitrator with the authority to consolidate two or more proceedings – *on the sole arbitrator's own initiative.*[19] Previously, a case administrator could only appoint a consolidation arbitrator at the request of a party.[20] As a matter of practice, however, it is unlikely that a case administrator, even with the support of the IARC, would appoint a consolidation arbitrator without the support of at least one party to an arbitration.

More significantly, the updated consolidation rules in Article 9 permit a consolidation arbitrator to consolidate arbitrations pending under the ICDR or AAA that involve 'related parties'.[21] Specifically, under the 2014 ICDR Rules, arbitration proceedings could only be consolidated if: (1) the parties agree to the consolidation (Art. 8(1)(a)); (2) all of the claims/counterclaims arise out of the same arbitration agreement (Art. 8(1)(b)); or (3) in the event the arbitration arises out of different arbitration agreements, the arbitrations involve *the same parties*, the dispute arises out of the same legal relationship, and the consolidation arbitrator finds the arbitration agreements to be compatible.[22] The 2021 ICDR Rules modify the final ground for consolidation to clarify that the arbitrations at issue may be consolidated if they involve 'the same *or related parties.*'[23] The phrase 'or related parties' is an addition that expands the authority of the consolidation arbitrator to consolidate proceedings involving different, but related, parties. In doing so, the ICDR Rules streamline the ability of parties to rely on arbitration to resolve complex multi-party disputes without the need to refer to the courts and risk potentially inconsistent determinations.

Third-party funding (Article 14)

Consistent with broader trends across various other international arbitration rules,[24] the 2021 ICDR Rules include a new Article 14(7) to address questions concerning third-party funding arrangements.[25] Specifically, given the need for arbitrators to render independent and impartial decisions, the rise of third-party funding arrangements

have raised concerns over potential conflicts between third-party funders and arbitrators.

Accordingly, while previous versions of the ICDR Rules were silent on the question of third-party funding disclosures, the updated ICDR Rules now permit the tribunal to require the parties to disclose the existence and identity of: (1) a third-party funder who has undertaken to pay or contribute to the cost of a party's participation in the arbitration; or (2) a non-party (such as a funder, insurer, parent company, or ultimate beneficial owner) that has an economic interest in the outcome of the arbitration.[26] While third-party funding arrangements are not particularly common in international construction arbitrations,[27] the involvement of subrogated insurance carriers and complicated ownership structures, including special purpose entities and joint ventures, are. As a result, parties to construction arbitration disputes under the ICDR Rules must understand their additional disclosure obligations under the new Article 17(7).

Arbitral jurisdiction (Article 21)

In large part a product of peculiar US Supreme Court precedent, the updated Article 21(1) of the 2021 ICDR Rules further clarifies the arbitral tribunal's ability to rule on its own jurisdiction 'without any need to refer such matters first to a court.'[28] While many other major arbitral jurisdictions approach the issue of *competence-competence* by affording the arbitrators the right, in the first instance, to decide questions concerning their jurisdiction, the default approach in the US is the opposite. According to the US Supreme Court in *First Options of Chicago, Inc. v. Kaplan*, 514 U S 938, 944 (1995), arbitrators only retain the right to rule, in the first instance, on questions such as arbitrability and the existence, scope or validity of an arbitration agreement *if* the arbitration agreement contains 'clear and unmistakable evidence' of an intention to delegate questions of arbitrability to the arbitrators instead of the courts.

Commonly, parties to arbitration agreements that select a US jurisdiction as the place of arbitration explicitly incorporate a delegation provision in their arbitration agreements to satisfy the *First Options* standard. However, there is an ongoing debate in the US over whether reference to a particular set of arbitration rules in an arbitration agreement is, in and of itself, sufficient to delegate questions of arbitrability to the arbitrators as required by *First Options*. While the US Supreme Court has flirted with this issue in recent years, the question remains undecided.[29]

In 2019, the authors of the *Restatement of the US Law of International Commercial and Investor State Arbitration* (the 'Restatement') weighed in on this matter and concluded that:

> 'In theory, parties can make such a clear and unmistakable agreement by incorporating by reference in their arbitration agreement arbitration rules that include language sufficient to foreclose judicial consideration of certain defenses to enforcement of the agreement. Many institutional arbitration rules give the arbitral tribunal the authority to rule on such defenses to enforcement, and specify that the tribunal's award is final and binding. *These rules, however, do not expressly give the tribunal exclusive authority over these issues.*'[30]

Therefore, according to the authors of the Restatement, the previous version of the ICDR Rules *did not* contain language adequate to satisfy the US Supreme Court's 'clear and unmistakable evidence' standard.

In an effort to rebut the Restatement's conclusion, the revised Article 21(1) of the 2021 ICDR Rules seeks to establish that reference to the ICDR Rules is, *ipso facto*, 'clear and unmistakable evidence' of an intent to delegate the question of arbitrability to the arbitrators.[31] While the US courts have yet to have their say on whether Article 21(1), in fact, satisfies the *First Options* standard, the intent of the ICDR is clear.

Use of video, audio, or other electronic means (Article 22 and 26)

The Covid-19 pandemic required the international arbitration community to adapt rapidly to the use of remote hearing technology to manage ongoing international arbitration proceedings. As a result, arbitral institutions and related entities responsible for promulgating soft international arbitration guidelines (eg, *IBA Rules on the Taking of Evidence in International Arbitration*), have incorporated rules relating to the use of remote hearing technology in international arbitration proceedings.[32] Articles 22 and 26 of the 2021 ICDR Rules are an extension of this trend and a recognition that remote hearing practices are unlikely to disappear completely even after the Covid-19 pandemic has passed.[33]

According to Article 22(2) of the ICDR Rules, the tribunal is required to conduct an initial procedural hearing at the outset of an arbitration to discuss various organisational, scheduling, and other logistical matters.[34] Article 22(2) has been revised, however, to clarify that 'the tribunal and the parties may consider how technology, including video, audio, or other electronic means, could be used to increase the efficiency and economy of the proceedings.'[35] While many practitioners may long for the days of in-person hearings, Article 22(2)'s gentle reminder reflects the ICDR's belief that remote or hybrid arbitration proceedings can generate significant cost savings and efficiencies under the right circumstances.

More significantly, the 2021 ICDR Rules include an entirely new provision on remote hearing technology under Article 26(2).[36] There, the ICDR makes explicit that a hearing may be conducted in video, audio, or other electronic means by: (1) agreement of the parties; or (2) if the tribunal determines, after consulting with the parties, that 'doing so would be appropriate and would not compromise the rights of any party to a fair process.'[37] Moreover, Article 26(2) also clarifies that the 'tribunal may at any hearing direct that witnesses be examined through means that do not require their physical presence.'[38] While the ICDR has elected to refrain from imposing specific remote hearing procedures or guidelines, the new Article 26(2) establishes that a tribunal retains the authority to order a remote hearing over the objection of one or more parties.

Early disposition (Article 23)

A common criticism of international arbitration procedure is the lack of a uniform mechanism for the early disposition of claims akin to a motion to dismiss or even summary judgment as seen in US court proceedings. As a result, some users complain that an unnecessary amount of time and effort is wasted by allowing a party to prosecute otherwise unmeritorious claims for the entire duration of an arbitration proceeding. This is particularly true in construction arbitrations where the ability to narrow or dispose of subsets of claims may be potentially advantageous. Accordingly, consistent with a broader trend among leading arbitration rules,[39] the 2021 ICDR Rules have incorporated a new Article 23 to address the early disposition of claims.[40]

While previous versions of the ICDR Rules also permitted the early dismissal of unmerited claims,[41] the novelty of Article 23 is that the ICDR has outlined a specific early disposition procedure.[42] Indeed, the ICDR's Article 23 is somewhat unique among international arbitration rules in this respect because, while most other leading arbitration institution rules afford tribunals the authority to make early determinations on particular claims, they often refrain from outlining a specific process to do so.

According to Article 23, to seek the early disposition of an issue, a party must first request leave from the arbitral tribunal to submit an application for the early disposition of a claim or claims.[43] Thereafter, the tribunal will allow the early disposition application if the tribunal determines that the application: (1) has a reasonable chance of success; (2) will dispose or narrow one or more issues in the case; and (3) is likely to lead to a more efficient and economical outcome than would be the case if the issue were to be determined at the merits stage of the arbitration.[44] Article 23 also ensures that both parties will have the right to be heard on whether the tribunal should grant: (1) leave to file the application; and (2) the application itself.[45]

While some arbitral tribunals have historically held reservations about the affirmative use of early disposition procedures out of concerns over potential challenges to a final award, the 2021 ICDR Rules reinforce the authority of tribunals to dispose of non-meritorious claims and narrow the issues in dispute prior to a final hearing.

Witness statements (Article 26)

In addition to the revisions concerning remote hearing technology, Article 26 – specifically, Article 26(4) – includes another important revision related to the use of witness statements under the ICDR Rules. Article 26(4) now states that 'evidence of witnesses *should* be presented in the form of witness statements […]', whereas the former provision simply stated that witness evidence '*may*' be presented in the form of witness statements.[46] For international arbitration practitioners, this revision is uncontroversial because it is extremely common for parties to rely on witness statements in lieu of oral direct testimony in international arbitration proceedings.[47] The revision in Article 26(4) therefore brings the ICDR Rules in line with international arbitration practice. However, for US practitioners who may be more comfortable and familiar with oral direct witness testimony, the ICDR Rules' support for the use of witness statements is a change of practical note.

Deposits (Article 39)

Consistent with past versions of the ICDR Rules, according to Article 39, the ICDR's case administrator has the authority to request that the parties deposit a particular amount of funds with the ICDR in advance of the proceedings to cover the costs associated with, among other things, fees of the arbitrators and administrator.[48] That said, the issue of administrative fees can become a contentious dispute in the event of one or more parties failing to pay their share.

While the failure of a party to pay its share of the deposit may result in the withdrawal of that parties' claim or counterclaim, sometimes a respondent, with no counterclaims at issue, will refuse to pay its share of the deposit in an effort to frustrate the proceedings. Under these circumstances, the respondent cannot be precluded from defending itself in the proceeding,[49] but the ICDR has limited ability to compel that party to pay its share of the deposits. Consequently, in an effort to ensure the proceedings continue, the case administrator will offer the other party (or parties) the opportunity to pay the outstanding balance of the deposit.[50] Indeed, consistent with the previous ICDR

Rules and the AAA Construction Arbitration Rules, if no party is willing to pay the outstanding deposits, the arbitral tribunal (or case administrator if no tribunal has been appointed) may order the suspension or termination of the proceedings.[51]

The revised Article 39(4) makes clear that, under these circumstances, '[i]f any such deposit is made by one or more parties, the tribunal may, upon request, make a separate award in favor of the paying party(s) for recovery of the deposit, together with any interest.'[52] The revision helps to clarify the recourse that a party may have in the event another party to the proceeding refuses to pay its share of the deposit.

International Expedited Procedures (Article E-5)

Most major international arbitration rules include a subset of rules commonly referred to as 'expedited procedures.'[53] In theory, these expedited procedure rules allow parties and tribunals to adopt procedures that will make the proceedings more cost-effective and timely. In doing so, they afford parties an opportunity to resolve low-value disputes that might otherwise be too costly to prosecute under the standard ICDR arbitration procedures.

Prior to the 2021 update to the ICDR Rules, the expedited procedures would apply by default to claims that did not exceed US$250,000.[54] The 2021 ICDR Rules have now doubled this amount to US$500,000.[55] The revision is important for construction arbitration disputes because it provides parties an arguably quicker and more cost-effective method for resolving a greater number of low-value disputes in arbitration. However, because the increase to the threshold amount in controversy will now cause the expedited procedures to apply to a larger number of potential disputes, there is also a greater chance that parties may find themselves operating under a set of procedures they may find undesirable. For example, the expedited procedures will require the parties to complete the proceedings within a condensed timeframe. As a result, although the expedited procedures may represent a cost-effective means of resolving low value claims in arbitration, practitioners need to be aware of when these procedures apply and how they affect the presentation of their case.

Conclusion

While the 2021 ICDR Rules include numerous other subtle changes, the key message is that the ICDR has successfully refined and clarified its already popular international arbitration rules. For construction industry representatives and international construction dispute practitioners, the 2021 updates to the ICDR rules should be welcome news. Indeed, although the practical revisions contained in the 2021 ICDR Rules will be of assistance to nearly any industry or sector, for the reasons discussed above, the construction industry, in particular, stands to gain from the ICDR's efforts.

Notes

1 'International Dispute Resolution Procedures', International Centre for Dispute Resolution, 1 March 2021, ('2021 ICDR Rules').

2 *See, eg*, ICDR, 2018 ICDR Case Data Infographic, available at https://www.icdr.org/sites/default/files/document_repository/2018_ICDR_Case_Data.pdf?_ga=2.10242102.222755826.1615226284-2095386157.1611007004, which shows that the construction sector made up the second largest segment of the ICDR's caseload; 2018 was the final year in which the ICDR formally published statistics on industry caseload numbers, accessed 20 March 2021; *see also* ICC, ICC Dispute Resolution 2019 Statistics available at https://iccwbo.org/publication/icc-dispute-resolution-statistics, 'Disputes within the sectors of construction/engineering (211 cases) and energy (140 cases) generated the largest number of ICC Arbitration cases […]'), accessed 20 March 2021.

3 *See* Ann Ryan Robertson and Alan R Crain, *The 2021 ICDR International Dispute Resolution Procedures*, 2021, available at https://go.adr.org/rs/294-SFS-516/images/AAA343_International_Dispute_Resolution_Procedures.pdf, accessed 20 March 2021.

4 2021 ICDR Rules, pp 5–6.

5 2021 ICDR Rules, p 17 (Arts 1, 3) (emphasis added).

6 2021 ICDR Rules, p 5.

7 *Ibid.*

8 2021 ICDR Rules, pp 7–8.

9 *Ibid.*

10 *See, eg*, Albert Bates Jr and R Zachary Torres-Fowler, 'Internationalizing Domestic Arbitration: How International Arbitration Practices Can Improve Domestic Construction Arbitration,' (June 2020) 74 Disp Res J 1, 22–26.

11 2021 ICDR Rules, p 19.

12 *See, eg*, Ann Ryan Robertson & Alan R Crain, *The 2021 ICDR International Dispute Resolution Procedures* (2021) *available at https://go.adr.org/rs/294-SFS-516/images/AAA343_International_Dispute_Resolution_Procedures.pdf*, accessed 20 March 2021.

13 2021 ICDR Rules, p 19.

14 2021 ICDR Rules, pp 21-22.

15 International Centre for Dispute Resolution, International Dispute Resolution Procedures at 17 (1 Jun 2014) [hereinafter "2014 ICDR Rules"].

16 2021 ICDR Rules, p 21 (emphasis added).

17 *See also* Ann Ryan Robertson & Alan R. Crain, *The 2021 ICDR International Dispute Resolution Procedures* (2021) *available at https://go.adr.org/rs/294-SFS-516/images/AAA343_International_Dispute_Resolution_Procedures.pdf*, accessed 20 March 2021.

18 2021 ICDR Rules, pp 21–22.

19 *Compare* 2021 ICDR Rules, p 21, *with* 2014 ICDR Rules, p 18.

20 2014 ICDR Rules, p 18.

21 2021 ICDR Rules, p 21.

22 2014 ICDR Rules, p 18.

23 2021 ICDR Rules, p 21.

24 *See, e.g.*, International Chamber of Commerce, 2021 Arbitration Rules, Art. 11(7) (1 Jan 2021); Singapore International Arbitration Centre, *Practice Note, Administered Cases Under the Arbitration Rules of the Singapore International Arbitration Centre, On Arbitrator Conduct in Cases Involving External Funding*, PN-07/17 (31 Mar 2017); Hong Kong International Arbitration Centre, 2018 Administered Arbitration Rules, Art. 45.3(e) (1 Nov 2018).

25 2021 ICDR Rules, p 25.

26 *Ibid.*

27 Queen Mary University of London & Pinsent Masons, *International Arbitration Survey – Driving Efficiency in International Construction Disputes: How can international construction disputes be resolved more efficiently whilst maintaining fairness and access to justice?*, at 36 ("third party funding and insurance/third-party indemnity

arrangements is in its early stages in international construction arbitration.").
28 2021 ICDR Rules, p 28.
29 *See Schein v. Archer & White Sales, Inc.*, 586 U.S. (2019).
30 Restatement, The US Law of International Commercial and Investor-State Arbitration, § 2.8, Competence of the Tribunal to Determine its Own Jurisdiction (2019).
31 *See also* Ann Ryan Robertson & Alan R. Crain, *The 2021 ICDR International Dispute Resolution Procedures* (2021) *available at https://go.adr.org/rs/294-SFS-516/images/AAA343_International_Dispute_Resolution_Procedures.pdf*, accessed 20 March 2021.
32 *See, e.g.*, International Bar Association, IBA Rules on the Taking of Evidence in International Arbitration, Art. 8.2 (Dec 2020); Albert Bates & R. Zachary Torres-Fowler, *Int'l Arbitration Rule Revision Reflects Flexible Approach*, Law360 (25 Feb 2021); Albert Bates & R. Zachary Torres-Fowler, *2020 Update to the IBA Rules: Modest Changes For Challenges New and Old*, Mealey's Int'l Arb. Digest (forthcoming).
33 2021 ICDR Rules, pp 28, 31.
34 2021 ICDR Rules, p 28.
35 *Ibid.*
36 2021 ICDR Rules, p 31.
37 *Ibid.*
38 *Ibid.*
39 *See, e.g.*, London Court of International Arbitration, LCIA Arbitration Rules, Art. 22.1(viii) (1 Oct 2020); Hong Kong International Arbitration Centre, 2018 Administered Arbitration Rules, Art. 43.1 (1 Nov 2018); Singapore International Arbitration Centre, Arbitration Rules, Rule 29 (1 Aug 2016); International Chamber of Commerce, *Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration*, 16–17 (1 Jan 2021).
40 2021 ICDR Rules, p 29.
41 2014 ICDR Rules, pp 24, 27.
42 2021 ICDR Rules, p 29.
43 2021 ICDR Rules, p 29. The procedures outlined in Article 23 of the 2021 ICDR Rules generally mimic US practice as it applies to the early dismissal of claims and are also permitted under the AAA's Construction Arbitration Rules. *See* American Arbitration Association, Construction Industry Arbitration Rules, R-34 (1 July, 2015).
44 2021 ICDR Rules, p 29.
45 *Ibid.*
46 *Compare* 2021 ICDR Rules, p 31 (emphasis added) *with* 2014 ICDR Rules, p 24 (emphasis added).
47 *See, e.g.*, International Bar Association, IBA Rules on the Taking of Evidence in International Arbitration, Art 4 (Dec 2020); *Commentary on the revised text of the 2020 IBA Rules on the Taking of Evidence in International Arbitration* at p 27 (Jan 2021).
48 2021 ICDR Rules, pp 35–36.
49 2021 ICDR Rules, p 36.
50 *Ibid.*
51 *Ibid.*
52 *Ibid.*
53 2021 ICDR Rules, pp 38–40.
54 2014 ICDR Rules, p 33.
55 2021 ICDR Rules, p 38.

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