



ICCA CHECKLIST FIRST PROCEDURAL ORDER SECOND EDITION

This is a checklist of issues to consider including in a first procedural order in arbitral proceedings. In your case, it may not be appropriate to include all the issues below: some may be better dealt with later, or not at all.

We encourage you to also check the companion publication to the ICCA Checklist, the ICCA Drafting Sourcebook for Logistical Matters in Procedural Orders, a collection of draft clauses for you to consider, copy or adapt for use in proceedings.

1. **STRUCTURAL ISSUES:** jurisdiction; interim/provisional measures; counterclaims; bifurcation; fast-track; multiple parties; joinder of parties; consolidation or coordination of parallel proceedings
2. **CASE MANAGEMENT CONFERENCE:** video/telephone/in-person conference; whether party representatives required; attempt agreement on terms of first procedural order; planning for remainder of arbitration
3. **COUNSEL/PARTY REPRESENTATIVES:** authority to act; changes to counsel/representatives (how to notify; when effective)
4. **SEAT OF ARBITRATION:** confirm per parties' agreement or determine
5. **GOVERNING LAW:** for arbitration agreement; for procedure; for merits
6. **ARBITRATOR ETHICS:** which rules apply; obligation to disclose conflicts
7. **COUNSEL/PARTY REPRESENTATIVE ETHICS:** which rules apply; obligation to disclose conflicts
8. **ADMINISTRATIVE SECRETARY:** whether to use; under what conditions
9. **CONFIDENTIALITY:** what regime applies; does it cover existence of proceedings, submissions, evidence, orders/awards; exceptions (e.g., legal duty, enforcement proceedings)

10. **PRIVILEGE:** which rules apply
11. **COMMUNICATIONS:** protocols for communication between participants: e.g., when effective, when to copy tribunal, restrictions on *ex parte* communication
12. **CASE MANAGEMENT PLATFORM:** whether to use; institutional or third-party platform; end-to-end or limited use; conditions; costs
13. **CYBERSECURITY:** whether to agree minimum security protocols
14. **DATA PROTECTION AND PRIVACY:** what law applies to which participants; whether to agree protocol addressing relevant obligations
15. **ARTIFICIAL INTELLIGENCE:** whether AI may be used; by which participants; under what conditions
16. **DISABILITY ACCOMMODATION:** how to notify request; maintaining privacy
17. **SUSTAINABILITY:** whether to agree sustainability protocol
18. **SANCTIONS:** whether sanctions apply to any participants; impact on arbitration
19. **MEDIATION/SETTLEMENT:** whether to provide designated period for mediation; whether tribunal authorized to propose and/or facilitate settlement discussions
20. **COSTS:** deposits; budgets and other cost limitation techniques; costs to be dealt with in award on merits or otherwise; format of costs submissions; timing of costs submissions (before or after evidentiary hearing, or after partial award on merits); security for costs; whether disclosure of funding sources required

21. **TIMETABLE:** all events up to jurisdictional or evidentiary hearing, or beyond evidentiary hearing to end of arbitration; time zone(s) for deadlines
22. **EXTENSIONS OF TIME:** applicable standard; short extensions by agreement

23. **SUBMISSIONS:** simultaneous/consecutive; how many rounds; how to submit (e.g., platform, file sharing, email or paper); paper size; numbering; specificity of references; page limits; accompanied by documentary/witness evidence or not; scope of responsive submissions
24. **UNSCHEDULED APPLICATIONS:** whether leave required; procedure for notifying tribunal and other party

25. **IBA RULES ON THE TAKING OF EVIDENCE:** whether to apply/use as guidance
26. **DOCUMENTARY EVIDENCE:** filed with submissions or later; how to submit (e.g., platform, file sharing, email or paper); paper size; exhibit naming/numbering; indices (e.g., hyperlinked, joint chronological); procedure for admission of late evidence
27. **DOCUMENTS NOT IN LANGUAGE OF THE ARBITRATION:** who presents and pays for translation of which documents; translation of witness statements and expert reports; conformity of “look” with originals; where to place; whether certification required; translate all or only relevant parts; procedure for resolving disputes
28. **PHYSICAL EVIDENCE (NON-DOCUMENTARY):** whether site inspections required
29. **WITNESS STATEMENTS/EXPERT REPORTS:** permissible contact with witnesses; statements and reports filed with submissions or later; whether oath/affirmation required; how many rounds; how to submit (e.g., platform, file sharing, email or paper); paper size; replace direct testimony or outline only; numbering; exhibit naming/numbering; tribunal-appointed expert reports
30. **REQUESTS FOR OPPOSING PARTY DOCUMENTS:** timing; applicable rules; specificity; limits on number of requests; format of requests (schedule); tribunal requests; procedure for resolving disputes
31. **PRODUCTION OF REQUESTED DOCUMENTS:** to whom; how to produce (e.g., platform, file sharing, email, paper); in what format (e.g., PDF, accessible native format); numbering; identification of relevant requests; documents not in language of the arbitration; who pays; whether produced documents automatically in the record; production logs (privilege, confidentiality); consequences of failure to produce; procedure for resolving disputes

32. **WHETHER JURISDICTIONAL HEARING REQUIRED:** if so, in-person, remote or hybrid
33. **WHETHER EVIDENTIARY HEARING REQUIRED:** if so, in-person, remote or hybrid
34. **PRE-HEARING CONFERENCE:** time and location; video/telephone/in-person; whether party representatives required
35. **TRIBUNAL MEETING PRE-HEARING:** whether to schedule; video/telephone/in-person; whether tribunal to produce list of issues/questions for parties

36. EVIDENTIARY HEARING – GENERAL: scope of hearing; pre-hearing submissions (e.g., skeletons); joint lists of issues/chronologies/statements of facts; whether hearing bundles required; presentations and demonstratives; who will attend and subject to what restrictions (party representatives, fact witnesses, experts, third-party service providers; live or by video); procedures/deadline for calling other party witnesses; calling own witnesses; tribunal call of witnesses/others; consequences of failure to appear; format/scope of witness/expert examination; sequestration of witnesses/experts; whether oath/affirmation required; whether cross-examination bundles required; ensuring integrity of any remote testimony; simultaneous/consecutive interpretation; hearing schedule; time allocation and recording; oral closing and/or post-hearing briefs

36A. EVIDENTIARY HEARING – IN-PERSON: location; visas; who books/pays for hearing and breakout rooms; catering; arrangements for testing technical equipment

36B. EVIDENTIARY HEARING – REMOTE: whether compliant with applicable laws; selection of hearing platform (electronic case management platform with hearing functionality or videoconferencing platform); who pays for hearing platform; cybersecurity; data protection and privacy; tech support and back-up arrangements; testing connections, camera use, microphone muting; breakout rooms; protocols for remote cross-examination; scheduling hearing day considering time zone differences

36C. EVIDENTIARY HEARING – HYBRID: in addition to 36, 36A and 36B (as relevant), which participants will attend in person/which will attend remotely

37. RECORD OF HEARINGS/OTHER MEETINGS: real-time or other transcript; who engages court reporter; language(s) for transcript; audio or video recording; recording of one or more language versions; transcript corrections and finalization

38. CLOSURE OF PROCEEDINGS: whether tribunal to declare; circumstances in which proceedings can be reopened

39. AWARD: timing; whether electronic signatures allowed under relevant laws; whether hard copies, registration or other formalities required; if in multiple language versions, which version governs

40. TRANSPARENCY/PUBLICATION: whether orders/awards/other documents may be published (in full or redacted); procedure for finalizing redactions

41. ARCHIVING/DOCUMENT DESTRUCTION: what agreements, rules or laws apply to treatment of documents and other data at end of proceeding