

# **Tribunal-Assisted Settlements in International Arbitration - Legal Introduction**

ICC YAF

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# Outline

1. Characteristics
2. Chances and Risks
3. Major Challenges
4. Legal Framework
5. Suggestions

# 1. Characteristics

- Dispute resolution method *sui generis*
- Termination of the proceedings
- Cornerstone: parties' agreement

## 2.

# Chances and Risks

- Chances:
  - Efficiency
  - Flexibility
  - Enforceability
- Risks: Settlements Fail

### 3.

## Major Challenges

- Civil Law v. Common Law
- Arbitrator's impartiality
- Other issues:
  - Res judicata Effects
  - Scrutiny by the Institution
  - Fraud

## 4.

# Legal Framework (1/2)

- Lex Arbitri
- Arbitration Rules
  - The arbitrator “should” be involved:
    - DIS Rules, § 32
  - The arbitrator “may” be involved:
    - Swiss Rules, Art. 15(8): Implied Waiver
    - ICC Rules, Appendix IV, Case Management Techniques, lit. h
    - VIAC Rules, Art. 38
  - Silent:
    - LCIA Rules
    - AAA Rules

## 4.

# Legal Framework (2/2)

- Soft Law
  - Pro involvement:
    - UNCITRAL Notes on Organizing Arbitral Proceedings, para. 12 (2016)
    - IBA Guidelines on Conflicts of Interest in International Arbitration, General Standard Art. 4(d) (2014)
    - CEDR Commission for Settlement in International Arbitration: Rules for the Facilitation of Settlement in International Arbitration (2009)
  - Contra involvement:
    - 2004 AAA Code of Ethics for Arbitrators in Commercial Disputes, Canon IV lit. F, Canon V lit. D

## 5.

# Suggestions

- Arbitrator
  - Require a written waiver
  - Don't exceed the parties' agreement
- Counsel
  - Inform the client on chances *and* risks
  - Seek for the arbitrator's preliminary view

# Thank you.

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