

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 Iudicata 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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