



# International Centre for Dispute Resolution® ICDR® Administrative Review Council

## Review Standards

This document outlines the Review Standards utilized by the ICDR's Administrative Review Council (Council) in making certain administrative decisions arising in cases administered by the ICDR. These decisions include arbitrator challenges, number of arbitrator disputes, the place of arbitration and/or hearing location disputes, and disputes on whether the initiating or filing requirements contained in the Rules applied by the ICDR have been met. In conjunction with the Council Guidelines and these Review Standards, the Council reviews and resolves issues in a time and cost effective manner after careful consideration of the parties' contentions, while upholding the integrity of the arbitration process and reinforcing the parties' confidence in the process.

### Arbitrator Challenges

The Rules applied by the ICDR allow for a party to challenge an arbitrator. This guide will assist the parties in understanding the standards and process to be used in making an arbitrator challenge.

**It is important to note that all challenges to an arbitrator must be made pursuant to the rules applicable to the dispute.**

### Grounds for Challenge

All Rules administered by the ICDR require that the tribunal shall be impartial and independent. In addition, some Rules require that tribunals perform their duties with diligence and in good faith, and refer to the applicable law with regard to any grounds for disqualification. The following grounds are representative of the standard set in most rules applicable to ICDR cases:

- Partiality or lack of independence
- Inability or refusal to perform his or her duties with diligence and in good faith
- Any grounds for disqualification provided by applicable law

Upon receipt of a challenge, the Council shall determine whether the arbitrator should be removed and shall inform the parties of its decision, which decision shall be conclusive.

Under some of the Rules the ICDR may, on its own initiative, remove an arbitrator for failing to perform his or her duties (for example see, Article 14(4) ICDR Rules).



## Standard for Challenge

- **Partiality or lack of independence**

As part of its consideration, the Council utilizes a four-part test in determining whether an arbitrator's disclosure rises to the level of "justifiable doubts" as to the arbitrator's independence or impartiality resulting in the removal of an arbitrator. The four-part test is whether the conflict is:

- o Direct
- o Continuing
- o Substantial
- o Recent

Weighing these factors together, along with the status of a case, for each individual challenge submitted, serves as a guide as to whether the conflict leads to the removal of an arbitrator.

- **Inability or refusal to perform his or her duties with diligence and in good faith**

The Council applies a reasonable person standard to determine whether the arbitrator is unable or has refused to perform his or her duties with diligence and in good faith.

## Procedure for Challenge

- Challenges shall be submitted to the ICDR in writing. All parties to the arbitration must be copied at the same time the challenge is communicated to the ICDR. The tribunal shall not be copied.
- Depending on the applicable Rules the ICDR shall notify the tribunal that a challenge has been received, without identifying the party challenging.
- The ICDR may also advise the challenged arbitrator of the challenge and request further information (see, Article 14(2) ICDR Rules).
- The ICDR will establish a schedule for the other parties to respond to the challenge.
- Replies or sur-replies are not provided for and should not be submitted without the ICDR's prior approval.
- The Council's decision on whether to remove or reaffirm an arbitrator is conclusive. No written reasons shall be issued.

## Best Practice Tips

- Objections shall be raised at the first available opportunity and in accordance with the Rules applicable to the case.
- Any party may challenge an arbitrator at any time up to the issuance of the Final Award, Order of Termination or any other form of closure provided for under the applicable Rules.
- While a party may file multiple challenges, additional challenges should not be made unless there are new grounds for making a challenge.



- If a party raises a potential conflict not previously disclosed by the arbitrator, before considering the challenge, the ICDR will ask that arbitrator to make a supplemental disclosure regarding the new potential conflict. Once the supplemental disclosure is submitted, the ICDR will then provide the parties with the opportunity to file a challenge.
- Party-selected and/or appointed arbitrator shall be impartial and independent. Parties however may specifically agree in writing that the party-appointed arbitrators may act and serve in a non-neutral capacity. Absent this agreement, party-selected arbitrators are subject to the same disclosure and challenge standards contained in all Rules.

## Filing Requirement Disputes

Pursuant to the Council Guidelines, the ICDR's Center Vice President responsible for Case Administration, or his/her designee, has the discretion whether or not to request that the Council decide if the filing requirements contained in the Rules applied by the ICDR have been met. Any issue not submitted to the Council will be decided by the ICDR Center Vice President or his/her designee.

The Rules applied by the ICDR provide information regarding the filing requirements necessary for the ICDR to administer a case. Should a party challenge whether a Claimant has met the filing requirements, this guide will assist the parties in understanding the standards and process used by the Council to make its determination.

**The ICDR is not authorized to make any legal jurisdiction and/or arbitrability rulings or determinations. These must be made by a Court or arbitral tribunal.**

### Standard for Review

The Council will review the case file and the parties' contentions when making an determination as to whether a filing party has met the filing requirements contained in the Rules applied by the ICDR on a prima face basis. This decision on administrative jurisdiction, if affirmed, may be reviewed by the tribunal once appointed.

### Best Practice Tips

- If the Council has determined that the filing party has met the filing requirements, the ICDR will proceed with administration, unless the parties agree otherwise or a court orders to stay the matter.
- The filing requirement challenge will be made a part of the file. The parties may submit any objections to the Council's determination to the tribunal for review.
- The ICDR serves as a neutral administrative agency and does not generally appear or participate in judicial proceedings relating to arbitration. If a party seeks court intervention regarding the arbitrability of a dispute, the ICDR should not be named as a party-defendant.



## Place of Arbitration and Location of Hearing Disputes

This guide will assist the parties in understanding the standards and process used by the Council to make its determination on place of arbitration/location of hearing disputes in case the arbitration clause is silent and the parties cannot agree.

### Standard for Review

When making its determination and depending on the Rules applied by the ICDR, the Council distinguishes between disputes based on the place of arbitration (where the arbitration has its legal domicile or jurisdictional home) and the place of hearing (where the physical hearings will be held).

- **Factors considered for the determination on the place of arbitration**
  - Law(s) applicable to the contract
  - Any other reasonable arguments that might affect this determination
- **Factors considered for the determination on the place of hearing**
  - Location of the parties
  - Location of the witnesses and documents
  - Location of the site or place or materials
  - Consideration of the relative cost to the parties
  - Place of performance of the contract
  - Law(s) applicable to the contract
  - Place of previous court actions
  - Necessity of an on-site inspection of the project
  - Any other reasonable arguments that might affect this determination

### Best Practice Tips

- The parties are encouraged to address each of the above factors and comment on any additional factors they deem significant.
- The parties should also take great care in differentiating between the place of arbitration and the location of hearing and should identify which of the two is addressed in the Rules (e.g., Article 17 ICDR Rules addresses the place of arbitration; Section R-11 Commercial Arbitration Rules addresses the location of hearing).
- The Council's determination is subject to the power of the tribunal to finally determine the place of arbitration or the place of hearing.
- Some Rules applied by the ICDR provide that the tribunal shall set the date, time and place for each hearing within the locale determined by the Council (e.g., Section R-24 AAA Commercial Arbitration Rules).



## Disputes Regarding the Number of Arbitrator

This guide will assist the parties in understanding the standards and process used by the Council to make its determination on number of arbitrator disputes in case the arbitration clause is silent and the parties cannot agree.

### Standard for Review

The Council will review the parties' contentions and will determine—to the extent it has discretion—the number of arbitrators with finality. The Council's decision will be guided by the Rules applied by the ICDR, which may significantly differ depending on the applicable provisions:

- Select Rules provide the ICDR with the discretion to decide number of arbitrator disputes based on size, complexity or other circumstances of the case (see, Article 11 ICDR Rules)
- Select Rules allow the ICDR to fully regulate impasses in case of party disagreement (see, Section L-2 of the Procedures for Large, Complex Commercial Disputes under the AAA Commercial Arbitration Rules).
- Select Rules provide that in case of disagreement three arbitrators shall hear the dispute (see, Article 7 UNCITRAL Rules).
- The Council's decision is conclusive. No written reasons shall be issued.