

P.R.I.M.E. Finance

Panel of Recognized International Market Experts in Finance

Achieving Expediency: a P.R.I.M.E. Finance Update



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Professor Dr. Bastiaan F. Assink on expedited arbitration

P.R.I.M.E. Finance Annual Conference 2019
4 & 5 February, Peace Palace, The Hague

PRIME Finance Arbitration Rules

EXPEDITED PROCEEDINGS

Article 2a

The parties **may agree** to shorten time lines set out in these Rules. If the parties have agreed upon shortened time lines, the shortened time lines shall only become effective **after approval by the arbitral tribunal**. The arbitral tribunal will communicate its approval, or refusal thereof, within 7 days of the parties' submissions, notwithstanding the arbitral tribunal's inherent discretion to suggest reasonable modifications of the parties' agreed time line.

- ❖ Opportunity to rethink and amend the PRIME Finance Arbitration Rules – and then market these new, state-of-the-art Rules
- ❖ Options include:
 - model rules for expedited arbitration
 - default expedited regime for ‘small claims’
 - model arbitration clauses tailored to expedited arbitration
- ❖ UNCITRAL Working Group II sessions in N.Y. this week – PRIME Finance has observer status, will attend
- ❖ Dedicated expert working group at PRIME Finance to follow-up
- ❖ More on this next year?

Thank you

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2018 ISDA Arbitration Guide



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Camilla Perera – De Wit
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Historical Background

- Tide shift in favour of arbitration in finance disputes, especially in Asia and emerging markets
- Errors in incorporating arbitration clauses into Master Agreements, e.g. no disapplication of Section 13(b) containing jurisdiction provisions parallel competences
- Need for guidance on essential elements, e.g. seat, arbitral rules, number of arbitrators etc.

→ 2013 ISDA Arbitration Guide



2013 ISDA Arbitration Guide

- Model arbitration clauses conforming effectively to the 2002 and 1992 Master Agreements
- 7 different sets of arbitration rules, namely ICC, LCIA, AAA-ICDR, HKIAC, SIAC, Swiss Chamber, P.R.I.M.E. Finance
- The combination of seat and arbitration rules reflected the preference of ISDA Members, not ISDA itself
- P.R.I.M.E. Finance also took that opportunity to draft amendment clauses under a number of different seats for the 1992 and 2002 ISDA Masters



2018 ISDA Arbitration Guide

- Five years later: time for an update
- Consultation sought from ISDA Members
- Reflections include:
 - 4 new model arbitration clauses, e.g. under SCC, DIS, DIFC-LCIA, VIAC Arbitration Rules
 - Minor amendments to the existing clauses
 - Introduction of an LCIA Rules clause with a Dublin seat for use with the Irish-law ISDA Master Agreement
 - Broad support for ‘plain vanilla’ arbitration clauses



2018 ISDA Arbitration Guide

- Specific reference to recent key arbitration features such as
 - Flexibility
 - Confidentiality
 - Expertise

Interim relief: as a number of arbitral institutions have published emergency arbitrator provisions, including P.R.I.M.E. Finance under article 26a of the P.R.I.M.E. Finance/PCA Arbitration rules.



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Thank you.



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