FEASIBILITY OF ADOPTION OF DOCUMENTS-ONLY ARBITRATION AS A MODE OF DISPUTE RESOLUTION

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ABOUT BRIDGE POLICY THINK TANK

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A INTRODUCTION

1. Research Rationale

Arbitration has been a recognized practice for resolving disputes in India for a significant period of time, and has undergone various changes and modifications over the years. Studies have indicated that the redressal mechanism implemented through the engagement of arbitration and courts is lengthy and costly.[1] Lack of efficient and speedy resolution for procurement-related disputes, especially, has been noted by the Supreme Court of India.[2] Further, disputes concerning PSUs have become a prime concern since the majority of the arbitration disputes in India involve them.[3]

Presently, the Government of India follows a multi-tiered mechanism for grievance redressal for disputes arising under the PPP model. The first step often involves the engagement of an arbitrator or Dispute Review Expert in accordance with the provisions of the Indian Arbitration and Conciliation Act, 1996. The second option for the party to the dispute is to approach the court.[4] Further, an alternative dispute resolution mechanism in the form of an Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD) has also been implemented by the Government to strengthen the resolution mechanism for commercial disputes among themselves (i.e. Central Public Sector Enterprises (CPSEs)) and with other government departments and organizations.[5] Further, the mechanism has been expanded to cover all disputes, except for those related to taxation, that arise between Central Government Ministries or Departments, as well as between these entities and other organizations, subordinate or attached offices, and autonomous and statutory bodies that are under their administrative supervision or control.[6] However, in a recent judgment delivered by the Delhi High Court, it has been stated that use of this mechanism is not an alternative to arbitration if an agreement in the contract refers to the same.[7] Given this scenario, there is a need to develop a mechanism which allows the resolution of disputes in a manner that is more time and cost-effective for disputants.

In India, efforts have been made to improve the arbitration landscape by way of amendments in the Arbitration and Conciliation Act, 1996 ("**Act**") that sought to expedite the disposal of matters and improve efficiency, along with the imposition of time limits,

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[1] Bhabesh Hazarika and Pratap Ranjan Jena, Public Procurement in India: Assessment of Institutional Mechanism, Challenges, and Reforms, NIPFP Working paper series, National Institute of Public Finance and Policy, No. 204 (2017)

[2] N. L. Rajah, In the absence of good law, June 16, 2019, available at https://www.thehindu.com/opinion/op-ed/in-the-absence-of-good-law/article27957849.ece (last accessed on September 14, 2022)

[3] Tariq Khan, Making India a Hub of Arbitration: Bridging the Gap Between Myth and Reality, 2021 SCC OnLine Blog Exp 10, available at https://www.scconline.com/blog/post/2021/02/17/making-india-a-hub-of-arbitration-bridging-the-gap-between-myth-and-reality/ (last accessed on September 12, 2022)

[4] PPP Toolkit, Ministry of Finance, Government of India

[5] Cabinet approves strengthening the mechanism for resolution of commercial disputes of Central Public Sector Enterprises, May 16 2018, Press Information Bureau, Government of India, available at https://pib.gov.in/Pressreleaseshare.aspx?PRID=1532298 (last accessed on April 19, 2023)

[6] Office Memorandum, Department of Legal Affairs, Ministry of Law and Justice vide Notification No. 334774/ DoLA/ AMRD/2019 dated March 31, 2020

[7] Prasar Bharti vs. National Brain research Centre and Ors, MANU/DE/4092/2022

efforts to reduce court intervention and any other delays.[8] Although arbitration has substantially reduced the time taken for the resolution of disputes as compared to the conventional method of litigation, there exists a severe backlog of cases which requires immediate attention.[9]

According to a study, the average time taken to resolve challenges under section 34 of the Arbitration and Conciliation Act, 1996 is 24 months in lower courts, 12 months in High Courts, and 48 months in the Supreme Court. Thus, on average, it takes a total of approximately 2508 days to decide on applications filed under Section 34.[10] Based on the study's findings, it is evident that the arbitration process in India can be quite time-consuming and costly. Further, arbitrators tend to follow a strict approach to the procedure adopted with respect to arbitration even though the law states that the rules of evidence and the Code of Civil Procedure, 1908 ("**CPC**") do not apply, thereby defeating the purpose of the provision.[11]

With the ongoing efforts of the Government of India to promote ease of doing business in India, there is a need to assess the potential benefits of documents-only arbitration. One of the key components of the ease of doing business is the efficient resolution of commercial disputes, as it can significantly reduce transaction costs and legal uncertainty for businesses. Document-only arbitration, which involves the resolution of disputes based solely on the documentary evidence presented by the parties, has the potential to significantly reduce the time and costs associated with traditional arbitration proceedings, as it eliminates the need for witness testimony and extensive oral arguments.

In light of the above, research has been undertaken to understand the viability of adoption of documents-only process in arbitrations by the Government of India. Conducting a study on documents-only arbitration may provide insights into the feasibility of implementing this approach in India and the potential impact it could have on businesses operating in the country.

2. Objectives of Research

The aims and objectives of this study are as follows:

i. To conduct a comparative study of traditional arbitration vis-a-vis documents-only arbitration and their potential impact on procurement-related disputes.
ii. To study international practices in relation to documents-only arbitration including implementational challenges and considerations.

[8] Arbitration procedures and practice in India: overview, Thomson Reuters Practical Law, available at: https://uk.practicallaw.thomsonreuters.com/9-502-0625?transitionType=Default&contextData=(sc.Default)&firstPage=true (last accessed on September 12, 2022)
[9] Ibid
[10] Bibek Debroy and Suparna Jain, Strengthening Arbitration and its Enforcement in India – Resolve in India, SMARTNET, available at: https://smartnet.niua.org/sites/default/files/resources/Arbitration.pdf (Accessed on September 15, 2022)
[11] Section 19, Arbitration and Conciliation Act, 1996

iii. To analyse the feasibility of the adoption of documents-only arbitration to resolve disputes in India.

3. Research Methodology/Design

3.1. Research Design & Approach

The study is being carried out through both primary and secondary research. In order to study the feasibility and potential impact of documents-only arbitration, we have reviewed the process and international best practices followed in the regulations and institutions established in the United Kingdom, Singapore, Hong Kong, France, Sweden, Luxembourg and Malaysia. The selected countries have been identified as comparative jurisdictions to India because these nations were found to have institutions or regulations that allow for document-only arbitration as per the information collected through the public domain. Moreover, these nations house institutions like the London Court of International Arbitration (LCIA), Singapore International Arbitration Centre (SIAC) and Hong Kong International Arbitration Centre (HKIAC), International Chamber of Commerce (ICC), Arbitration Institute of the Stockholm Chamber of Commerce, Arbitration Centre of the Luxembourg Chamber of Commerce and Asian International Arbitration Centre (AIAC) which are some of the leading international arbitration centres in the world. Some of the abovementioned institutions and countries have also been selected owing to the use of documents only arbitration in their rules, laws or identifiable data indicating its use in the public domain.

After identifying the countries and studying the process and procedures followed with respect to documents-only arbitration through secondary research, we shared questionnaires and conducted interviews with arbitral institutions, arbitrators and legal professionals in the field of arbitration for their inputs on the use of documents-only arbitration, the various advantages and disadvantages, the value of contracts where documents only arbitration is feasible etc.

The information collected is collated, studied and analysed to understand the level of use of documents only arbitration in other countries, the process and procedures followed, and the viability of its adoption.

3.2. Data Collection

The primary data is collected from practitioners in the field of arbitration, including legal professionals, arbitrators, arbitral institutions, etc, in the form of questionnaires and interviews. The secondary research aspect of the study was based on secondary sources such as academic journals and articles, research papers, and studies (including working papers), publications by relevant organisations, domestic and international legal and policy frameworks and guidelines, and judgments of both Indian and foreign courts, wherever necessary.

3.3. Data Processing and Analysis

The data collected was compiled, interpreted and analysed using a variety of tools, aided by graphical representation in the form of pie charts, bar charts, tables, diagrams,

flowcharts etc. for easy access. This data will be collated, interpreted and analyzed based on the aims and objectives of the research.

4. Definition of Documents-only Arbitration

Documents-only arbitration ("**DoA**") is a procedure adopted by the arbitral tribunal where it decides the matter solely on the basis of documents produced as evidence and written submissions. Therefore, documents-only arbitration is a form of arbitration that allows parties to resolve their disputes without a formal hearing. In this type of arbitration, the arbitrator may request additional information or clarification from the parties but typically does not conduct an in-person hearing.

Documents-only arbitration can be less expensive and time-consuming than traditional arbitration, as there is no need for the parties to prepare for and attend a formal hearing. It can also be more flexible, as the parties can choose an arbitrator with expertise in the subject matter of the dispute, regardless of their location with ease.

Pertinently, it needs to be understood that by deciding to waive off physical hearing, the parties are not necessarily waiving off the right to be heard, as is a common notion as the written submissions shall qualify as an expression of pleadings. Moreover, the entire concept of arbitration is based on party autonomy and therefore, when the parties expressly opt for "Document-Only" arbitration, they are choosing to do away with personal hearings.

Although United Nations Commission on International Trade Law ("**UNCITRAL**") Model and the extant rules form the primary legislation for arbitration-based laws and procedures, there is no express reference to DoA in the UNCITRAL Rules. It has been vaguely referred to in Article 17(3) and Article 24 (1) of the UNCITRAL Rules which lay down that depending on the facts and issues of the underlying matter and subject to agreement by the parties, the parties can resort to DOA.[12]

Article 17(3) of UNCITRAL Rules is reproduced hereunder:-

> '*If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.*'

Based on the above understanding, many institutional arbitration rules and national laws have incorporated DoA as (i) either the default rule unless otherwise agreed by parties; (ii) or allowing the provision of mutual consent between the parties to proceed with DoA. Additionally, the Chartered Institute of Arbitrators has issued a set of guidelines titled "Documents-only Arbitration Procedure", which outlines the recommended practices for utilizing documents-only procedures in international commercial arbitration. It provides for

[12] Paula Hodges, 'Drive for Efficiency and the Risks for Procedural Neutrality – Another Tale of the Hare and the Tortoise' (2012) 6 Disp Resol Int'l 183 & CHAN, Darius and GOH, Gerome. Hearing. (2022); Handbook of Evidence in International Commercial Arbitration: Key Issues and Concepts. 247-284. Research Collection School Of Law, available at: https://ink.library.smu.edu.sg/sol_research/392, (last accessed on April 17, 2023)

five general principles that may be followed while using documents-only procedure and they are as follows :[13]

General Principles	
	If an arbitration agreement includes provisions for a documents-only procedure, those provisions must be followed.
	In cases where the arbitration agreement does not contain provisions for a documents-only procedure, but the parties mutually agree to apply it for some or all of the issues in the arbitration, the arbitrators should proceed accordingly, taking into consideration any relevant rules or laws
	It is suggested that the arbitrators should consult with the parties and seek their agreement before using a documents-only procedure if a party requests for the DoA or if the arbitrators believe that it may be suitable for some or all of the issues in the arbitration.
	When a documents-only procedure is employed, the arbitrators are responsible for giving unambiguous instructions to the parties regarding the specific actions that must be taken to resolve the issues based exclusively on the submitted documents.
	The last principle requires the arbitrators to ensure that each party is given a fair opportunity to present its case in relation to the issues subject to the documents-only procedure, regardless of whether or not such a procedure is provided for in the arbitration agreement.

Article 2 of the document discusses the methods to be followed when conducting documents-only procedure. It states that arbitrators are required to ensure that parties have a fair opportunity to submit evidence to decide disputes based on documents alone. If a party who hasn't waived their right to a hearing ask for one, the arbitrators must allow it subject to the arbitration rules. Further, if a party who has waived their right to a hearing ask for one, arbitrators should reconsider if a hearing is necessary provided all parties to the dispute agree for hearing. Additionally, in a scenario where the arbitrators believe a hearing is necessary but none of the parties have requested one, they may only order it if all parties agree.[14] Lastly, as a best practice, it has been stated that the once all the written submissions and evidence have been exchanged, or upon the expiry of the deadline for the last exchange, if the arbitrators are content that the parties have had a justifiable opportunity to present submissions and evidence that can assist the arbitrators to make a decision solely based on documents, they should declare the proceedings complete and inform the parties when they intend to make an award.[15] Moreover, it has been recommended that while preparing an award pertaining to a DoA procedure, the arbitrators should document the parties' consent to such a procedure or any direction issued for it (if allowed), along with the procedural measures taken to reduce the likelihood of the award being contested.

[13] Article 1, Documents-Only Arbitration Procedure, International Arbitration Practice Guideline, Chartered Institute Of Arbitrators

[14] Article 2, Documents-Only Arbitration Procedure, International Arbitration Practice Guideline, Chartered Institute Of Arbitrators

[15] Article 3, Documents-Only Arbitration Procedure, International Arbitration Practice Guideline, Chartered Institute Of Arbitrators

B. INDIA

1. Legislative Framework

India has a well-established legislative framework for arbitration, which is governed by the Arbitration and Conciliation Act, 1996 ("**Act**"). The Act was enacted with the aim of providing a fast and efficient means of dispute resolution for commercial disputes, and to encourage the growth of international trade and investment in India. The Act has been amended several times since its enactment, with the most significant amendments being made in 2015. The amendments were introduced to make the arbitration process in India more efficient and effective, and to bring it in line with international best practices. It provides for two types of arbitration – ad hoc and institutional. Ad hoc arbitration is where the parties to the dispute appoint an arbitrator, and the arbitration proceedings are conducted in accordance with the rules agreed upon by the parties. Institutional arbitration, on the other hand, is where the parties appoint an arbitral institution to administer the arbitration proceedings. The institution will appoint an arbitrator or a panel of arbitrators, and the proceedings will be conducted as per the institution's rules.

The Act also provides for the appointment of arbitrators, the conduct of arbitration proceedings, the enforcement of arbitral awards, and the setting aside of arbitral awards. It recognizes the autonomy of parties in choosing the law governing the arbitration, the place of arbitration, and the language of the arbitration proceedings.

The concept of DoA is recognized and permitted under the Indian Arbitration and Conciliation Act, 1996. The Act does not specifically provide for DoA, but it allows the parties to agree on the procedure to be followed in the arbitration, including the conduct of the proceedings. Section 19 of the Act, which deals with procedural rules pertaining to arbitration proceedings provides autonomy to the disputants for the determination of rules of procedure for arbitration.[15] Therefore, the conduct of arbitration is typically governed by the rules of the arbitral institution chosen by the parties, or by the rules agreed upon by the parties themselves. The parties may also agree on the qualifications of the arbitrator or arbitrators who will decide the dispute and the language in which the arbitration is to be conducted.

Further, like the UNCITRAL model clause, the Act provides a skeletal provision on hearings and written proceedings and gives primacy to party autonomy. It states that the parties have the liberty to opt-out of oral hearings and conduct proceedings via documents-only on their express request.[16] This provision recognizes the cost-effectiveness and efficiency of documents-only arbitration and allows parties to choose the most suitable dispute resolution method for their case.

If the parties have not expressly agreed on the procedure to be followed in the arbitration, including whether oral hearings will be held or not, then the arbitral tribunal has the discretion to determine the procedure that will be followed. However, even in such

[16] Section 24, Arbitration and Conciliation Act, 1996

scenarios, if a party requests an oral hearing, the tribunal must hold one, unless the parties have agreed otherwise.[17]

Practitioner's Point of View [18]

In practice, even if the parties have not agreed on the procedure to be followed, it is common for the tribunal to consult with the parties and consider their preferences before deciding on the procedure. This helps to ensure that the parties have an opportunity to present their case effectively and efficiently and that the arbitration is conducted in a fair and impartial manner. Further, the arbitrators are bound to provide an oral hearing if the parties request for the same owing to the way Section 34 of the Act is structured.

Moreover, in India the commonly understood meaning of "documents alone arbitration" in India is that parties agree not to present oral evidence during the arbitration process, rather only documentary evidence will be presented. However, this does not necessarily preclude the possibility of oral arguments, as oral arguments are deeply ingrained in the Indian legal system and are typically expected to be part of the process. Further, the law does not provide any threshold in terms of value as to what type of arbitrations can be resolved through a documents-only procedure. Hence, arbitration procedures are not bound by values under the law.

Further, the concept of DOA has also been incorporated within the Fast-Track Arbitration ("**FTA**") procedure under Section 29B of the Arbitration and Conciliation Act (Amendment) Act, 2015 (hereinafter, **"Amendment 2015")**. As the name suggests, FTA is an arbitral procedure that makes the arbitral proceedings subject to shorter timelines. The umbrella term, "fast-track arbitration" has been introduced as a concept to cut down on the cost and unnecessary procedural delaying, and includes DOA procedure as one of the ways to achieve the same.[19]

Starting with a non-obstante clause, the section lays down that the parties to an arbitration agreement in a dispute can opt for FTA either before the appointment of the arbitral tribunal or at the time of appointment of the arbitral tribunal.[20] Typically, the time cap for the arbitral tribunal for passing the award is six months, which can be further extended through mutual consent of the parties.[21] Further, Section 29B(3)(a) of Amendment 2015 also lays down that the *"arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties without any oral hearing".*[22] Section 29B(a) shows that DoA is a part of the FTA in the Indian regime. However,

[17] Sumeet Kachwaha, Partner of Kachwaha & Partners, via interview dated March 01, 2023
[18] Sumeet Kachwaha, Partner of Kachwaha & Partners, via interview dated March 01, 2023
[19] Fast-track arbitration is, inter alia, also known as "expedited arbitration", "accelerated arbitration", and "lean arbitration": see A.F. Serbest, "Fast-Track Arbitration-Should it be Encouraged in International Commercial Disputes?": in C. Yenidnya, M. Erkan and R. Asat (eds), Reopening the Silk Road in the Legal Dialogue Between Turkey and China (Ankara: Adalet Yayinevi, 2013), pp.309-33, [last accessed on December 8, 2022].
[20] Vishrut Kansal, 'Fast Track Arbitration in India' (2016) 2016 Int'l Bus LJ 485
[21] Section 29B, Amendment 2015
[22] Section 29B(a), Amendment 2015

according to Section 29B (3)(c), an oral hearing may be held even under FTA if all the parties agree to it or if the arbitrator determines that an oral hearing is necessary to clarify specific issues. Therefore, the FTA's DOA procedure includes an exception that allows for oral hearing.

2. DoA Procedure under arbitral institutional rules in India

While ad-hoc arbitrations follow the procedural provisions provided under Indian Arbitration and Conciliation Act, 1996, institutional arbitrations often follow the rules of procedure provided by the respective institution. Although the use of DoA procedure is uncommon in India, provisions allowing for the same can be found in the institutional rules of certain arbitration institutions such as the Delhi International Arbitration Centre ("**DIAC**"), Mumbai Centre for International Arbitration ("**MCIA**") etc.

2.1 Mumbai Centre for International Arbitration

The Mumbai Centre for International Arbitration is one of the prominent arbitral institutions set up in India which allows for documents-only arbitration. Although no specific rules have been developed for DoA, the MCIA Rules allow for documents-only arbitration procedure under its institutional rules. This can be inferred from Rule 26.1 of the MCIA Rules.

Rule 26.1 reiterates the legislative provision incorporated under the arbitration law of India. It states that a hearing may be held for the presentation of evidence and oral pleadings on the merits of the dispute, including any issue as to jurisdiction, unless the parties have agreed on a documents-only arbitration. Hence, express interest to conduct the procedure in documents only format is necessary to carry out the arbitration in its entirety in documents only form.

Further, the MCIA Rules also provide for the procedure to be followed for expedited arbitration proceedings. It states that a party may apply to the Registrar of MCIA for an expedited procedure of arbitration prior to the constitution of the arbitral tribunal on the condition that it fulfils either one of the criteria specified in Rule 12.1 of MCIA Rules. As per Rule 12.1, the anticipated amount in dispute must not exceed INR 10 crore including claim, counterclaim and any set-off or there must be a mutual agreement between the parties to settle the dispute through expedited arbitration. However, unlike the FTA procedure provided in the Indian arbitration law, expedited procedure under the MCIA rules has specified that hearing for examination of the all witnesses and experts as well as arguments shall be held in all cases unless either the parties or Tribunal agree on making an award on documentary evidences alone.

2.2 Nani Palkhivala Arbitration Centre

The Nani Palkhivala Arbitration Centre ("**NPAC**") was formed under the aegis of the Nani Palkhivala Foundation with the intent to promote institutional arbitration in India. The institution has received formal recognition from the Madras High Court to render

assistance in arbitration from 2005 and the institution follows the Rules of Arbitration for NPAC for any dispute referred to the Centre.[23]

The rules include provisions on FTA and refers to DoA under Rule 25 read with Schedule IV. [24] As per Rule 25 of the Rules of Arbitration for NPAC, the documents only arbitration through FTA takes the following into consideration:

- The parties through mutual agreement must opt for FTA and request the Arbitral Tribunal before the commencement of the arbitration proceedings to decide the case in a fixed time frame of 4 months.
- The Arbitral Tribunal must decide the dispute based on the written pleadings, documents and written submissions filed by the parties without any oral evidence.
- The parties have the option to submit a declaration to the Tribunal in which they acknowledge that they do not dispute the authenticity or relevance of the documents submitted before the Tribunal, and that all such documents may be considered as admissible and proven.
- The Arbitral Tribunal shall also have power to call for any further information from the parties in addition to the pleadings and documents filed by them and such information /clarification may be taken on record.
- The Arbitral Tribunal has authority to fix its own time limits for the filing of pleadings arguments and written submissions and to regulate all proceedings accordingly to the exclusion of any other rule as the arbitral tribunal deem fit.

Moreover, the rules provide a Model Agreement that parties to the dispute have to sign at the time of referring the dispute to the Centre. The model agreement provided under Schedule II of the institutional rules shall be applicable in the case of normal arbitration while that of Schedule IV is the one applicable for FTA. Interestingly, the model agreement ensures that there is a declaration by the parties stating that they have agreed to resolve their disputes through a summary procedure and they are in agreement to hold the arbitration proceedings on the basis of documents-only by foregoing the requirement of oral evidence. Additionally, it also notes that the parties have waived their right to present oral evidence and agree that the award made by the Arbitral Tribunal based on documents shall be final and binding on the parties. The parties shall also agree to strictly adhere to the time schedule drawn up for hearing under the fast-track procedure.

Further, Rule 19 of the Rules for Arbitration which shall be applicable for normal arbitration proceeding also allow for the arbitration to be conducted through documents. It provides the arbitrator/ the tribunal with the liberty to decide the procedure. However, if an express

[23] Rules of Arbitration for Nani Palkhivala Arbitration Centre, available at https://nparbitration.in/images/NPAC-Rules-Book.pdf, (last accessed on April 18, 2023).
[24] Rule 25, Chapter VII, Rules of Arbitration for Nani Palkhivala Arbitration Centre, available at https://nparbitration.in/images/NPAC-Rules-Book.pdf, (last accessed on April 18, 2023).

request is made by either one of the parties for a hearing, the tribunal may be obliged to provide such opportunity.

2.3 Delhi Arbitration Centre

Delhi Arbitration Centre ("**DAC**") is an arbitral institution registered under Societies Registration Act, 1860. When a dispute is referred to the DAC, the procedure for resolving the dispute is governed by the Delhi Arbitration Centre Rules, 2017 ("**DAC Rules**").

Section III of DAC Rules covers arbitration proceedings, and Article 17(3) of these Rules specifies that if any party requests hearing at an appropriate stage, the arbitral tribunal must hold such hearings for presenting evidence through witnesses, including expert witnesses, or for oral arguments. However, if there is no such request, the tribunal may decide to conduct proceedings solely on the basis of documents and other materials. Hence, the sub-clause clearly states that the arbitration proceedings can be held on the basis of the document alone if the arbitral tribunal decides so. Further, the arbitral tribunal should prioritize a fair and efficient dispute resolution process, avoiding unnecessary delays and expenses when deciding whether to conduct an oral hearing.

Additionally, the DAC Rules have also incorporated the procedure for FTA under Rule 10, Part I of the Rules. Rule 10 provides that the party may opt for an expedited fast-track procedure if the amount of the dispute does not exceed the equivalent of **INR 5 lakhs** or in case the amount exceeds, the parties to the dispute have mutually agreed to opt for a fast-track procedure under Rule 10.[25] The procedure followed once the parties apply for FTA is provided below:[26]

- Unless DAC determines otherwise, a sole arbitrator shall be appointed to oversee the case.
- An oral hearing shall be conducted by the arbitral tribunal for the examination of witnesses and arguments, unless the parties have agreed to settle the dispute based on documentary evidence alone.
- The time for making the award shall be determined by DAC, taking into account the case's circumstances, but it shall not exceed six months. However, in exceptional circumstances, DAC may extend this time for up to three months.
- The arbitral tribunal must provide a summary of the reasons on which the award is based, unless the parties have agreed not to receive any reasons for the decision.

Therefore, the arbitral tribunal shall be obliged to hold an oral hearing unless the parties have explicitly opted out of any oral hearing.[27] The clause does not give the arbitral tribunal any discretion to pass an award on basis of documentary evidence, thus the proceedings can take place on the basis of documentary evidence only if the parties to the dispute have agreed.

[25] Rule 10(1), Part I, the DAC Rules, 2017
[26] Rule 10(2), Part I, the DAC Rules, 2017
[27] Article 10 Clause 2 Sub Clause (c), the DAC Rules, 2017

2.4 Indian Council of Arbitration

The Indian Council of Arbitration was established as an apex business organization in 1965 by the Government of India and it runs as a specialized arbitral body at the national level with an aim to promote amicable, quick and inexpensive settlement of commercial disputes by means of arbitration, and conciliation. The institution has introduced three sets of rules: the ICA Rules for Domestic Commercial Arbitration of 2022, the ICA Rules for International Commercial Arbitration of 2016 and the ICA Maritime Arbitration Rules of 2016.

Rules of Domestic Commercial Arbitration of the Indian Council of Arbitration

The institution has specific Rules of Domestic Commercial Arbitration of the Indian Council of Arbitration, which were amended and came into effect on January 17, 2022. The rules do not specifically include provisions for DoA. But it has been found that Rule 44 mentions a clause where on consent given by the parties, the arbitral tribunal can pass an award without holding an oral hearing, just on basis of documents and written submissions presented.[28] Rule 44 of the ICA Rules for Domestic Arbitration specifies provisions pertaining to FTA. To adopt FTA procedure under the said rules, the parties must expressly opt for FTA and request the arbitral tribunal before the commencement of the arbitration proceedings to decide the referred case in a fixed time frame of 3-4 months or a specific time frame agreed between the parties. The procedure followed once the parties to the dispute agree to FTA differs slightly from the normal arbitration and it is as follows:[29]

An arbitral tribunal shall decide the dispute based on written pleadings, documents and other documentary submissions filed by the Parties without any oral hearings.

Further, an oral hearing shall take place only when a joint application is filed by the parties requesting for the same or when the arbitral tribunal considers it is necessary to hold a hearing.

The Tribunal shall be empowered with the authority to request additional information from the parties, beyond the pleadings and documents already submitted.

Lastly, if an oral hearing is deemed necessary, the Tribunal can forego technical formalities and use any procedure that it considers suitable and necessary for efficient and prompt resolution.

Hence, under the FTA procedure, the arbitral tribunal can decide the case only on the basis of documents submitted by the parties so long as hearing is not specifically requested by the parties.

Rules for International Commercial Arbitration

The Rules for international commercial arbitration of the Indian Council of Arbitration provide procedures to be followed by the parties in cross-border disputes.[30] The ICA Rules for International Commercials Arbitration came into effect on April 1, 2016 and it has

[28] Rule 44, ICA Rules of Domestic Commercial Arbitration, 2022
[29] Rule 44, ICA Rules of Domestic Commercial Arbitration, 2022
[30] Introduction, ICA Rules of International Commercial Arbitration, 2016

provisions for summary procedure under Rule 32, which allows proceedings to take effect without an oral hearing and the award may be passed based on just documents and written submissions presented by the parties. The provisions under Rule 32 for the summary procedure are identical to the provisions related to FTA in Rule 44 of the ICA Rules for Domestic Commercial Arbitration. Therefore, similar to the Rules of Domestic Commercial Arbitration, the summary procedure under the Rules for International Commercial Arbitration can be conducted without holding an oral hearing, if the parties have agreed and the arbitrator does not find any reason to hold an oral hearing.

Similarly, the Rules for Maritime Arbitration, effective since April 1, 2016, have also included provisions allowing arbitrations to proceed without an oral hearing if both parties agree and the arbitrator determines it unnecessary.[31] As part of its efforts to expedite case resolution, the Indian Council of Arbitration has thus implemented identical provisions for conducting arbitration without an oral hearing, albeit under different rules.

2.5 International Arbitration and Mediation Centre

To facilitate the prompt resolution of disputes, the International Arbitration and Mediation Centre ("**IAMC**"), established in 2019, has developed Domestic Arbitration Rules effective from January 1, 2022, and International Arbitration Rules effective from August 1, 2022.

The Domestic Arbitration Rules, 2022 is applicable to all arbitration proceedings except in the case of international commercial arbitration.[32] The rules have not introduced provisions pertaining to DoA. Nevertheless, Article 28.1. of the Domestic Arbitration Rules has given certain scope for DoA. Article 28.1 of the rules stipulate that the Arbitral Tribunal must allow the parties to have a hearing, unless they have agreed otherwise and such an agreement is acceptable to the Arbitral Tribunal, taking into account the complexity of the arbitration.[33] This means that parties have the option to forgo an oral hearing and rely solely on written submissions and documentary evidence, but this arrangement requires the approval of the arbitral tribunal. Therefore, parties cannot unilaterally eliminate a hearing based on their autonomy; the decision must be acceptable to the arbitral tribunal.

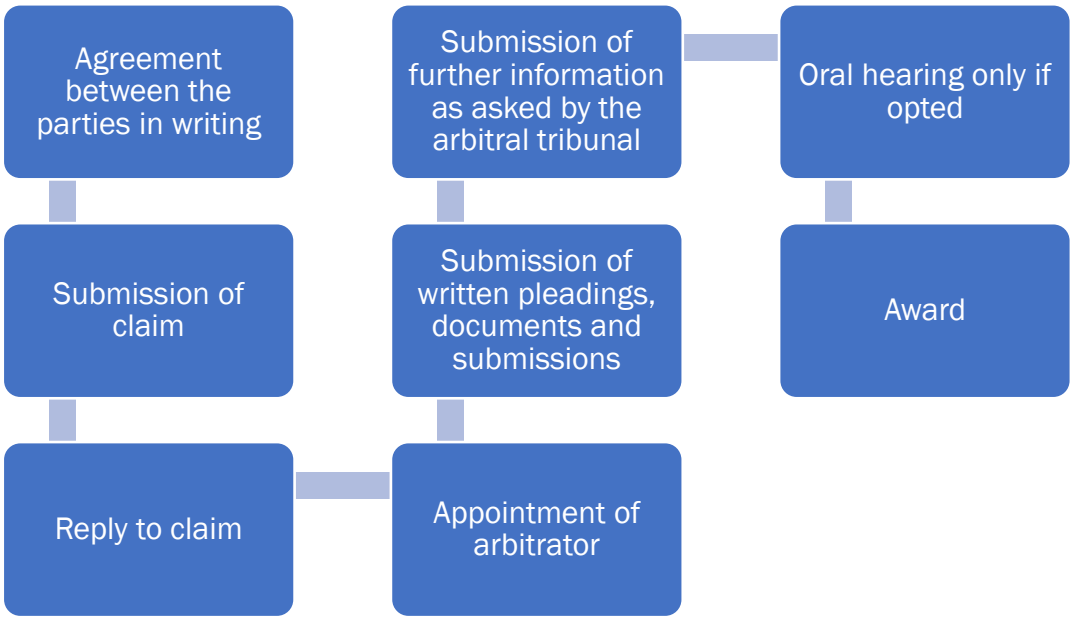
Further, the Domestic Arbitration Rules have included provisions for expedited procedure under Article 23. Under Article 23.1, a party may choose an expedited procedure by submitting a written application to the Registrar if the amount in dispute is equal to or less than **INR 10 crores**, which includes the aggregate of the claim, counterclaim, and any set-off. Alternatively, the parties may mutually agree to an expedited procedure.[34] Furthermore, after an application for an expedited procedure is made before the Registrar, the Registrar shall approve the same only after consulting with the Governing Council.[35] The term "Governing Council" refers to the IAMC Governing Council and includes any sub-

[31] ICA Rules for Maritime Arbitration, 2016
[32] Article 1.3, Domestic Arbitration Rules 2022
[33] Article 28.1, Domestic Arbitration Rules 2022
[34] Article 23.1, Domestic Arbitration Rules 2022
[35] Article 23.2, Domestic Arbitration Rules 2022

committee of the Governing Council.[36] In addition, if the arbitration agreement between the parties calls for the constitution of a three-member tribunal but the tribunal has not yet been formed, and the Registrar determines that an expedited procedure is appropriate for the arbitration proceedings, the direction to appoint members of the arbitral tribunal according to the arbitration agreement would be terminated.[37] Lastly, although documents-only procedure is allowed under FTA as per the institutional rules, oral hearing is mandatory and must be held by the arbitral tribunal, unless parties agree or tribunal decides to resolve the dispute based on documentary evidence only.[38]

2.6 Delhi International Arbitration Centre

Delhi International Arbitration Centre is an international arbitration centre established in 2009 by the Government of India. The Delhi International Arbitration Centre ("**DIAC**") has recently announced its updated rules, known as the Delhi International Arbitration Centre (Arbitration Proceedings) Rules 2023, which are applicable to all types of arbitration disputes.[39] Rule 26 of the DIAC Rules has specified that the Tribunal must hold a hearing on the merits of the dispute, including any jurisdictional issues, unless the parties have agreed to a documents-only arbitration or as provided in these Rules.[40] The Tribunal may hold a hearing if either party requests it or if the Tribunal deems it necessary. Hence, oral hearing is the default system under the normal arbitration process. These Rules have also integrated the FTA procedure under Part D of the DIAC Rules. The process followed is given below:



The parties may agree in writing to adopt the fast-track procedure at any time before or during the appointment of the arbitral tribunal, dispensing with oral evidence.[41] While adopting FTA procedure, the parties are required to submit an undertaking specifying that

[36] Article 2.1, Domestic Arbitration Rules 2022
[37] Article 23.3, Domestic Arbitration Rules 2022
[38] Article 23.4, Domestic Arbitration Rules 2022
[39] Rule 1.2, Part A, DIAC (Arbitration Proceedings) Rules, 2023
[40] Rule 26.1, Delhi International Arbitration Centre (Arbitration Proceedings) Rules 2023
[41] Rule 12.2, Part C, DIAC (Arbitration Proceedings) Rules, 2023

they have agreed to dispense with oral evidence for the purpose of the arbitration. Thereafter, the claimant submits its request, and the other party replies. If the parties are unable to agree on the appointment of an arbitrator from the panel, the chairperson or sub-committee shall appoint an arbitrator within one week after the 30-day period for submitting a reply has expired.

The claimant submitting a request for arbitration would need to submit the claim as per Rule 4 to the Secretariat addressed to the coordinator and share a copy of the same with the other party.[42] On receiving the documents, the other party shall, within thirty days is required to submit its reply along with the supporting documents, to the Secretariat addressed to the coordinator.[43] Further, in the event, that the parties have appointed an arbitrator, the same shall be communicated to the coordinator. The coordinator shall communicate the confirmation of the appointment of the arbitrators to the parties and the arbitrators.[44] In addition, Rule 13 states that the arbitral tribunal shall follow the procedure outlined below when conducting arbitration proceedings under the fast-track procedure:[45]

- In case the parties have opted for the fast-track abitration, the Arbitral Tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties.
- The Tribunal may request for further information from the parties in addition to the pleadings and documents.
- An oral hearing shall only only be held if requested by all parties or if deemed necessary by the Tribunal.
- When the Parties desire an oral hearing, such hearings shall be limited to oral submissions within a specified time determined by the arbitral tribunal.
- The award must be made within six months of adopting the FTA procedure, and if not, the mandate shall terminate unless the court has granted an extension.

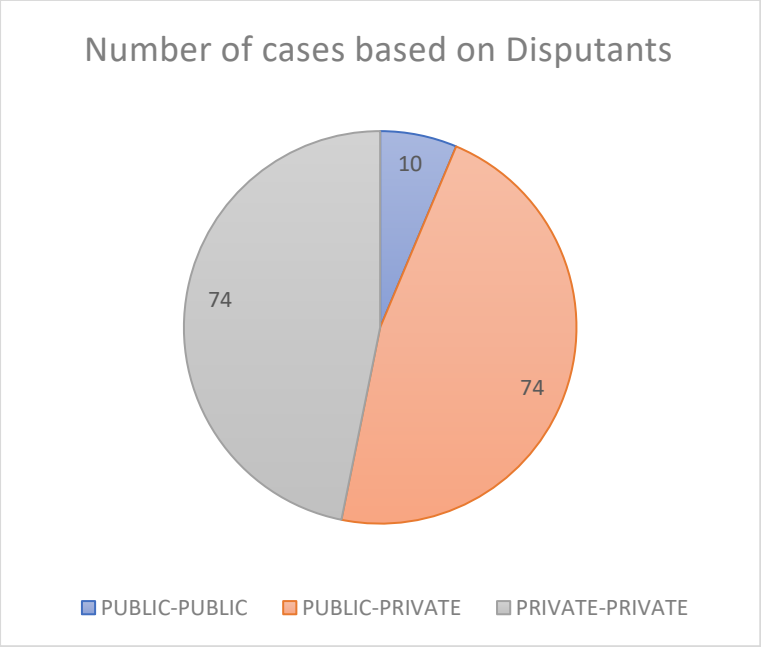
Thus, the DIAC rules have adopted document-based arbitration as the default mechanism under FTA and it can only be avoided with a written application made by the parties or in case the arbitral tribunal thinks it is necessary to hold an oral hearing.

3. Statistical Analysis of Arbitrations in India

To understand the time taken, the value of the dispute and further understand the efficacy of traditional arbitration vis-a-vis documents-only arbitration, we collected data on widely reported cases brought before the Supreme Court and certain High Courts in the country. Data from 158 widely reported cases were collected as part of this exercise. Notably, none of the cases brought before the court were pertaining to documents-only arbitration.

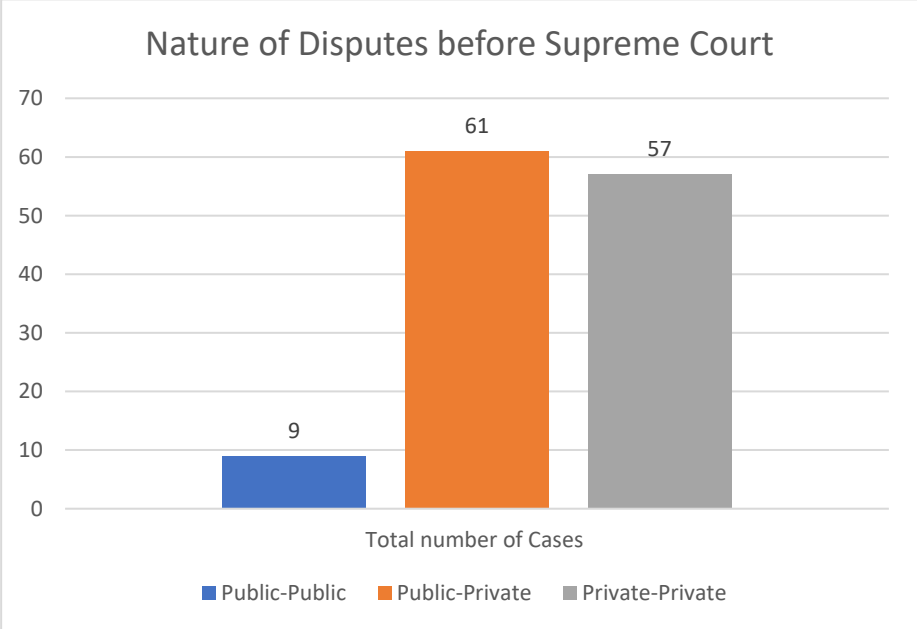
[42] Rule 12.3, Part C, DIAC (Arbitration Proceedings) Rules, 2023
[43] Rule 12.4, Part C, DIAC (Arbitration Proceedings) Rules, 2023
[44] Rule 12.5, Part C, DIAC (Arbitration Proceedings) Rules, 2023
[45] Rule 13, Part C, DIAC (Arbitration Proceedings) Rules, 2023

We analysed a total of 158 cases brought before the courts of India and the majority of cases were the ones that were reported before the Supreme Court of India. Around 127 cases were reported in the Supreme Court while only 10 cases each were from the High Court of Delhi and High Court of Karnataka, and 11 from the High Court of Bombay. Data were analyzed to understand who were the parties to the disputes, the type of arbitration used, the time taken to conclude arbitration proceedings and the time period between the date of invocation of awards till the date of judgment.

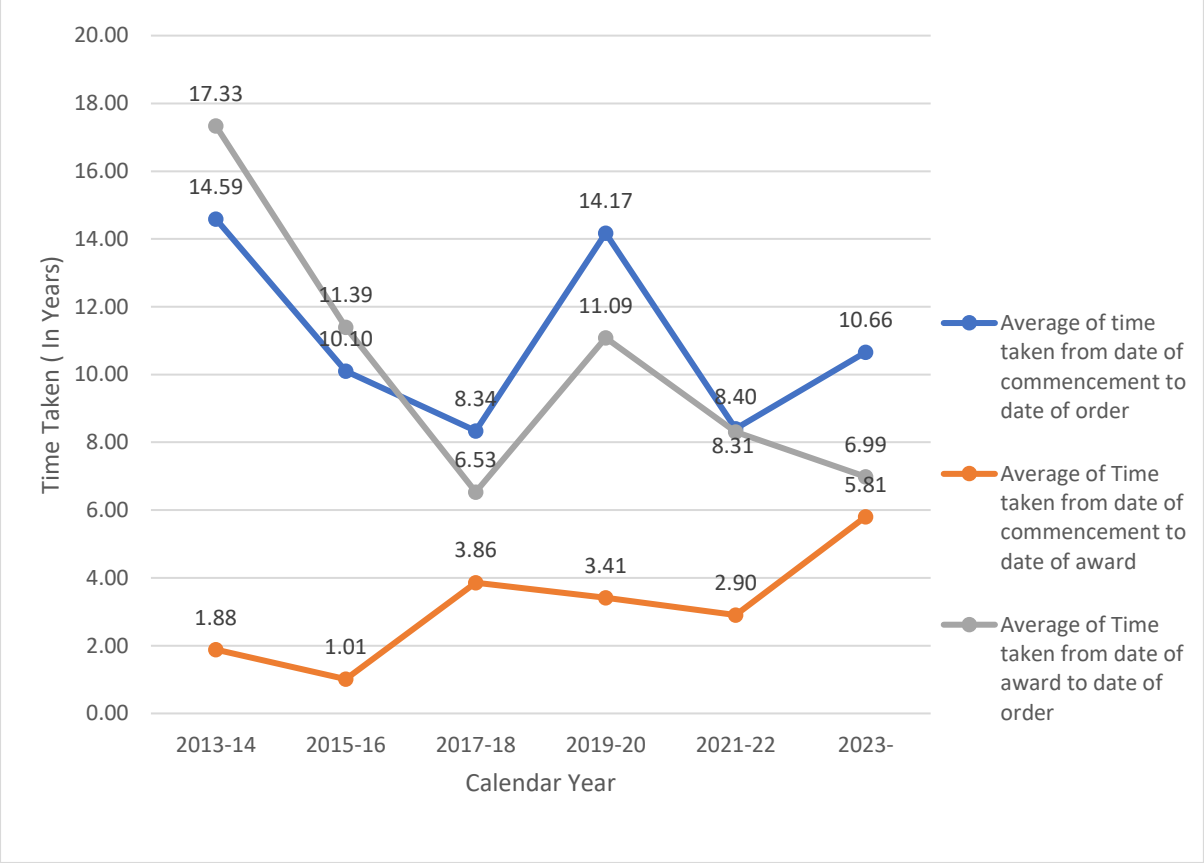


Out of the 158 cases analyzed, there were only 10 cases where both parties involved in the dispute were public bodies. On the other hand, there were 74 cases where the dispute was between two private individuals or organizations, and another 74 cases where one party was public while the other was private. The data indicates that a majority of the arbitration cases analyzed involved private individuals or organizations as one of the parties in the dispute. In this context, a public body refers to an organization or company that is either wholly or partially owned or operated by the government of India, including state or territorial governments and their departments.

The data shows that most of the cases heard by the Supreme Court involved one public party and one private party, which accounted for 61 cases out of the total. Among the remaining cases, 57 had both parties as private entities, while only 9 cases were filed by both public parties.



Further, we also collected information on the date of invocation of arbitration, date of arbitral award and date of final judgment before the court of all the cases to understand the average time taken for concluding arbitration and court proceedings for a particular case. The graph below shows the average time taken from the date of commencement to the date of order (i.e., date of final judgment), the average time taken from the date of commencement to the date of arbitral award, and the average time taken from the date of arbitral award to the date of order for every two-year period from 2013 to 2023.



From the line graph depicted above, it can be observed the average time taken for arbitration to reach a final judgment varies across different years.

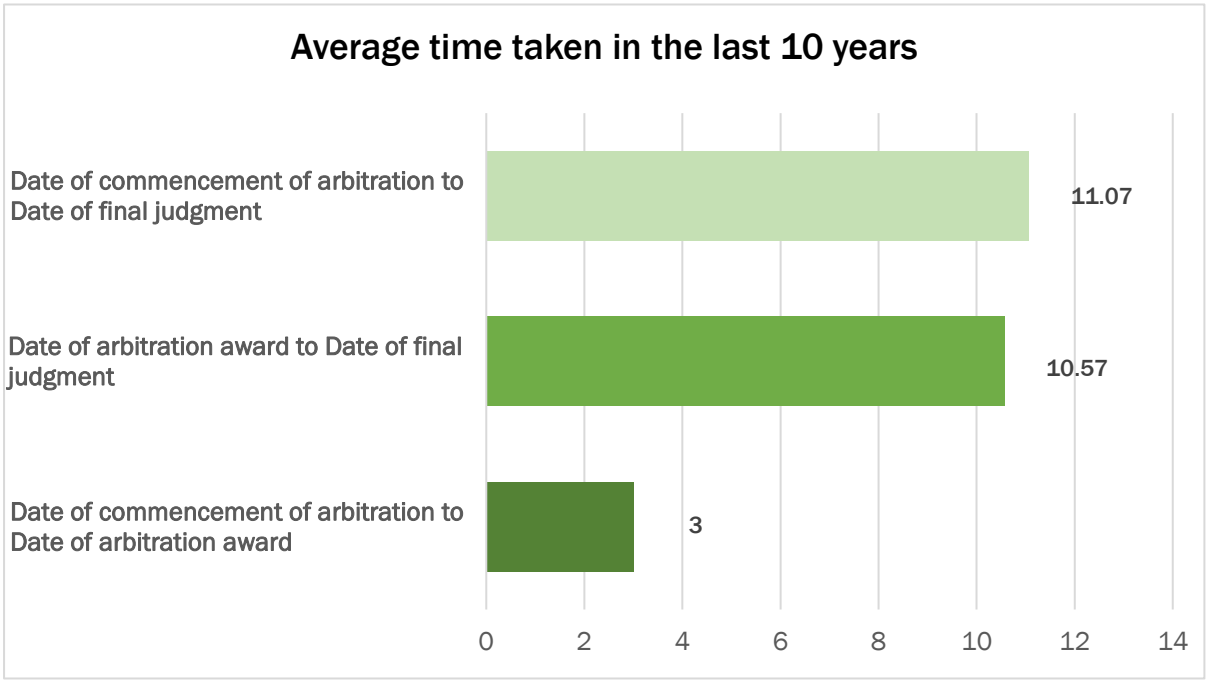
- Notably, the average time taken from the date of commencement of an arbitration to the date of final judgment was recorded to be the least in the period between 2017-18 i.e., 8.34 years while the highest was 14.59 years in the period between 2013-14.
- In the year 2023 (as on March 24, 2023), the average time taken from the invocation of arbitration to the date of judgment is 10.66 years.
- Further, it can be observed that the average time taken from the date of commencement of an arbitration to the date of arbitral award varies as well, ranging from 1.01 years in 2015-16 to 5.81 years in 2023.
- The average time taken from the date of award to the date of order also shows some variation, ranging from 17.33 years in 2013-14 to 6.53 years in 2017-18 and thereafter, 11.09 years in 2019- 2020 and 6.99 years as of 2023.

- Overall, the data indicates that the time taken for an arbitration to reach its final judgment can vary greatly and take several years.

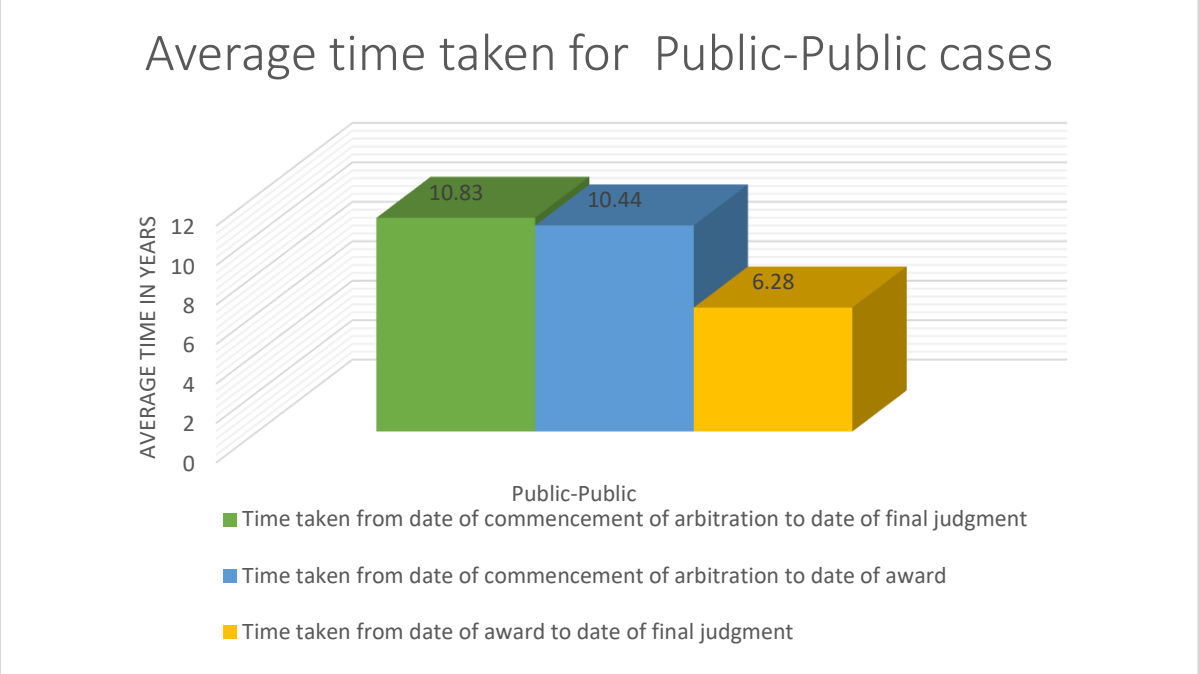
The table of values represented in the line graph along with corresponding years is reproduced below:

Year	Average of time taken from date of commencement to date of order (in years)	Average of Time taken from date of commencement to date of award (in years)	Average of Average of Time taken from date of award to date of order (in years)
2013-14	14.59	1.88	17.33
2015-16	10.10	1.01	11.39
2017-18	8.34	3.86	6.53
2019-20	14.17	3.41	11.09
2021-22	8.40	2.90	8.31
2023	10.66	5.81	6.99

The collected data from the last decade (2013-2023) indicates that the average time taken for an arbitration to reach a final judgment from the date of commencement is around 11.07 years. This is undoubtedly a long time for parties involved in a dispute to wait for a resolution. It can also be observed that the average time taken from the invocation of arbitration proceedings to the date of award is 3 years, while the average time taken from the date of arbitral award to the date of order is 10.57 years. These results suggest that the process of arbitration in India can be a time-consuming affair, with significant delays occurring at various stages of the process.



Similarly, we also analyzed the average time taken at different stages of arbitration and court proceedings of cases where both parties to the disputes fall within the public category. It was noted that a total of 10.83 years was taken to complete the entire proceeding including arbitration award and judgment of the court. The majority of time was spent in the courts with an average of 10.44 years spent for getting recourse from the court. Only a portion of the total average time i.e. 6.28 years was taken for getting the arbitral award. This indicates that the judicial system may be contributing to delays in the resolution of these disputes. Additionally, it suggests that parties may benefit from exploring alternative dispute resolution mechanisms or the existing arbitration process in India may need to be reformed to make it more efficient and faster, to provide timely resolutions for the parties involved.



It is important to note that none of the cases analyzed were pertaining to documents-only arbitration, which is a type of arbitration that is gaining popularity due to its speed and efficiency. Since the traditional form of arbitration has become time consuming and not cost-effective, it may be worth exploring the use of documents-only arbitration or other expedited procedures to streamline the arbitration process in India to reduce delays and increase efficiency.

C. UNITED KINGDOM

1. Legislative Framework

The primary legislation for arbitration in the United Kingdom (which incorporates Great Britain and Ireland, hereinafter referred as the "**UK**") is the Arbitration Act, 1996 ("**Arbitration Act**"). The Arbitration Act of UK does not mention DoA. However, the law on procedural and evidentiary matters under the Arbitration Act does carve out a provision of DoA procedure. In addition to the Arbitration Act, a direct reference to DoA can be found in several popular institutional rules of UK like rules of London Maritime Arbitration Association, London Chamber of Arbitration and Mediation, and London Court of International Arbitration. Further, as per primary data collected from responses received from various arbitrators and legal practitioners in the UK, use of DoA is not uncommon in the country.[46]

The practice of DoA can be traced from the legislation on arbitration and the institutional rules of arbitral institutions set up in the country. As stated earlier, DoA are those in which tribunals base their determinations entirely on written submissions and documentary evidence, with no opportunity to hear from counsel or take evidence from witnesses at oral hearings.

The UK arbitration law under the Arbitration Act does not specifically provide for DoA proceedings. However, it can be inferred from the provision of procedural and evidentiary matters. Under Section 34 (*Procedural and evidentiary matters*), subject to the parties' right to agree on any matter, a tribunal has the power to decide all procedural and evidentiary matters.[47] As per Section 34(2), such procedural and evidential matters also include the extent of oral or written evidence or submissions.

Therefore, DoA procedure can be initiated either at parties' own accord or at tribunal's accord if not otherwise agreed by the parties.[48] However, if there is no agreement between the parties, then the parties' decision to opt for DoA is subject to the mandatory provision of Section 40 (*General duty of parties*), wherein parties are obligated to do all things necessary for proper and expeditious conduct of the arbitral proceedings.[49] This obligation includes complying without delay with any determination of tribunal as to the procedural or evidentiary matters.[50]

[46] Kartik Mittal, Partner, Zaiwalla & Co, via interview dated February 27, 2023; James Clanchy, Arbitrator, FCIArb via questionnaire dated February 24, 2023; Nicholas Peacock, Partner, Bird and Bird, via questionnaire dated March 10, 2023
[47] Section 34(1), the Arbitration Act, 1996
[48] Kartik Mittal, Partner, Zaiwalla & Co, via interview dated February 27, 2023
[49] Section 40(1), The Arbitration Act, 1996
[50] Section 40(2), The Arbitration Act, 1996

Therefore, arbitrators under ad-hoc arbitration may even suggest adoption of documents-only arbitration under certain circumstances if they are of the opinion that documents submitted before them is sufficient to decide the specific case before them.[51] The UK law provides adequate flexibility and freedom to the parties and the arbitrator to decide the procedure best applied to the facts and circumstances of the case. The arbitrator is also given the liberty to decide as to whether the case before her/ him requires the parties to have an oral hearing at a later stage post submission of written statement, defence, pleadings etc.[52]

Notably, at times the arbitrators in UK may impose certain conditions while conducting arbitrations such as the pleading should not be more than 25 pages, skeleton arguments must not exceed 50 pages etc. However, this is imposed as per the discretion of the arbitrator.

On the other hand, English Court procedures contain rules that impose a prescribed page limit on certain documents submitted before the Court. If the parties' submissions are exceeding the specified limit, it shall be the obligation of the parties to write to the court and explain the reason for exceeding the set limit and seek permission to do so.

Further, documents only procedure is the standard procedure for arbitrations arising from international commerce (buying, selling transporting goods between countries).[53] It has been stated that arbitrations with oral hearings are often the exception among international commercial arbitrations seated in England as they are only suitable for high value cases and/or where parties are willing to invest the time and costs required for reasons of principle. DoA procedure allows quick and effective disposal of internationally enforceable awards even when the parties and lawyers are in different time zones.[54] Further, they are considered more inclusive as they eliminate the need to instruct English qualified advocates with fluent English and cross-examination skills.[55] The factors that are often detrimental to continuation of documents-only arbitration centers around the need to have cross-examination of witnesses and experts.

2. DoA Procedure under arbitral institutional rules in UK

UK has several world-renowned institutes that deals with both international and domestic commercial arbitration. The primary component that acts as a determinant factor in terms of DoA is the rules subscribed by the parties. Certain arbitral institutions in UK such as the London Maritime Arbitration Association have incorporated specific rules for document-only arbitrations.[56] Some of the prominent arbitration institutions which allow for DoA in the country are discussed below in detail:

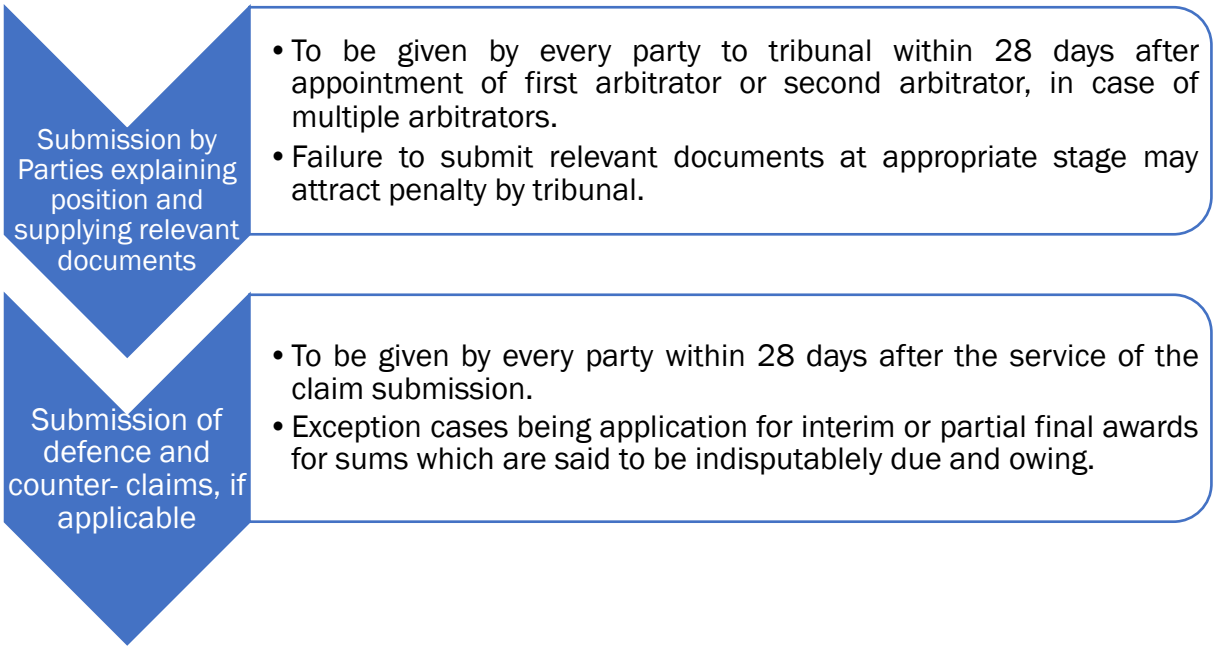
[51] Kartik Mittal, Partner, Zaiwalla & Co, via interview dated February 27, 2023
[52] Kartik Mittal, Partner, Zaiwalla & Co, via interview dated February 27, 2023
[53]James Clanchy, Arbitrator, FCIArb via questionnaire dated February 24, 2023
[54]James Clanchy, Arbitrator, FCIArb via questionnaire dated February 24, 2023
[55]James Clanchy, Arbitrator, FCIArb via questionnaire dated February 24, 2023
[56] Kartik Mittal, Partner, Zaiwalla & Co, via interview dated February 27, 2023; James Clanchy, Arbitrator, FCIArb via questionnaire dated February 24, 2023

2.1. London Maritime Arbitration Association

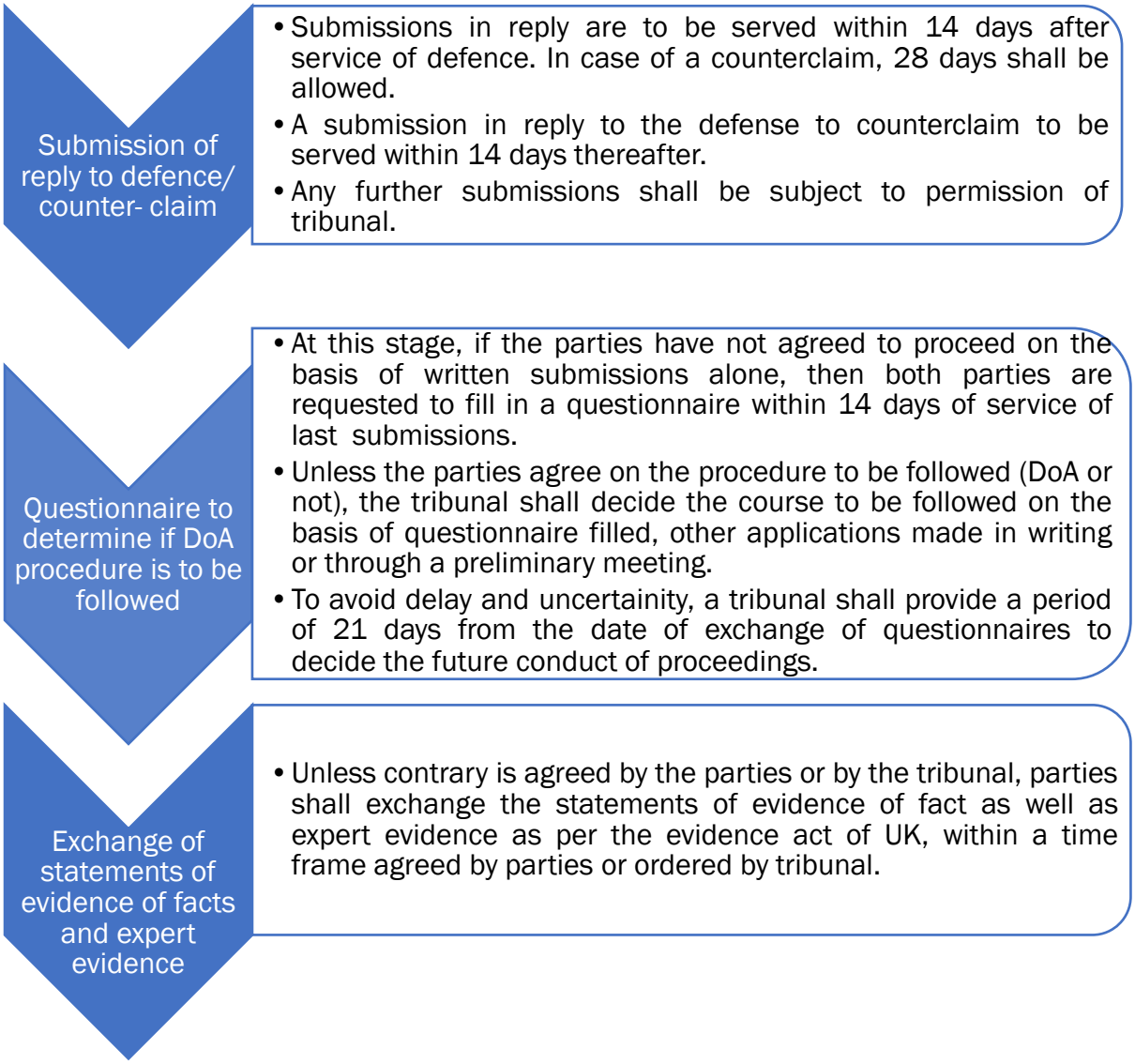
While LMAA has multiple procedural rules in place, the rules that deals with largest amount of claims with huge claim value follows a documents-only process.[57] The 2021 statistics also indicate that the majority of LMAA arbitrations are conducted on documents and written submissions only.[58] The London Maritime Arbitration Association ("**LMAA**") Terms, 2021 ("**LMAA Terms**") provide for document- only arbitration procedure followed in LMAA in detail.

Under Article 15(a) of LMAA Terms, the tribunal has been conferred the power to decide all procedural and evidential matters. However, while exercising its discretions on procedural and evidential matters, tribunal is obligated to take into account the agreements and decisions made by the parties on such matters. In case of absence of an agreement, the tribunal can freely decide the extent to which oral or written evidence or submission in the arbitration can be accepted. However, in spite of the tribunal's discretion, it is suggested that the parties should come to an agreement on whether the arbitration is to be documents alone i.e., without oral hearings or whether there is to be such a hearing.[59]

Irrespective of whether the parties have opted for DoA, the tribunal shall follow the arbitration procedure mentioned in the Second Schedule *(Arbitration Procedure)* of the LMAA Terms. This procedure is applied for the arbitration as well as interlocutory proceedings pertaining to the dispute.[60] A diagrammatic representation of the arbitration procedure followed as per the Second Schedule of LMAA Terms is as follows:



[57] Dr. Arun Kasi, Arbitrator and Lawyer, Arun Kasi & Co, via interview dated March 18, 2023
[58] London Maritime Arbitrators Association, available at https://lmaa.london/london-maritime-arbitration-rides-out-the-pandemic (last Accessed on February 10, 2023).
[59] Article 15(b), The London Maritime Arbitrators Association Terms, 2021.
[60] Article 16 (a) and Article 15(a), The London Maritime Arbitrators Association Terms, 2021.



It may be noted that during the first stage of submission by each party , they are mandated to the set out the position of the parties regarding the issues that have arose between them in a clear and concise manner. The idea of documentation at this stage is to ensure that the tribunal has adequate information to identify the issues in case.[61]

Further, it has been stated in the LMAA Terms that the arbitrator shall have the power to vary from the procedure if it deems so. It may be noted that questionnaire shared with the party for ascertaining whether the case is to be decided on documents-only or not shall pose several questions such as what are the issues in dispute, how many issues are to be dealt with, who are the witnesses to be called, if there are any expert reports to submitted, whether the parties believe hearing is necessary, etc.[62] The questions shall be very

[61] Rule 1, Second Schedule, The London Maritime Arbitrators Association Terms, 2021.
[62] Dr. Arun Kasi, Arbitrator and Lawyer, Arun Kasi & Co, via interview dated March 18, 2023

comprehensive and therefore, the responses provided by the parties shall indicate whether the particular case is fit documents-only arbitration.[63]

As per LMAA Terms, following the completion of the above-mentioned steps covered by the Second Schedule and upon parties' decision to opt for documents alone arbitration, the tribunal shall give notice to the parties of its intention to proceed to its award unless either party requests for permission to serve further submissions and/ or documents and it is subsequently granted.[64]

It is pertinent to note that the questionnaire to be shared with the participants to determine whether the case is to be decided via documents-only is also provided under the Third Schedule of LMAA Terms. The sample questionnaire provided under the LMMA Terms has been replicated below for reference :

Sample Questionnaire shared under LMAA Terms

1. *What, briefly, is the nature of the claim (e.g., "unsafe port" or "balance of accounts dispute")?*
2. *What is the approximate quantum of the claim?*
3. *What is the approximate quantum of any counterclaim?*
4. *What are the principal outstanding issues requiring determination raised by the claim and any counterclaim?*
5. *Are any amendments to the submissions required?*
6. *Are any of the issues in the reference suitable for determination as a preliminary issue?*
7. *Are there any areas of disclosure that remain to be dealt with?*
8. *Would a preliminary meeting be useful, and if so at what stage?*
9. *What statement evidence is it intended to adduce, from whom and when? Which issues will be addressed by statement evidence? Is it possible to limit the length of statements or to avoid duplication of evidence? If there is to be a hearing what oral evidence will be adduced?*
10. *What expert evidence is it intended to adduce by way of reports and/or oral testimony and by when will experts' reports be exchanged? Which issues will be addressed by expert evidence? Can the length of experts' reports be limited? Unless the parties agree or the tribunal rules that a meeting between experts would not be appropriate, when should the meeting take place and when should a record of that meeting be provided?*
11. *What is the suggested timetable for the close of submissions if the case is to go ahead on documents alone or for a hearing if that is appropriate?*
12. *What is the estimated length of the hearing, if any?*
13. *Which witnesses of fact and experts is it anticipated will be called at the hearing, if there is to be one? Will interpreters be required at the hearing for any witnesses?*

[63] Dr. Arun Kasi, Arbitrator and Lawyer, Arun Kasi & Co, via interview dated March 18, 2023
[64] Dr. Arun Kasi, Arbitrator and Lawyer, Arun Kasi & Co, via interview dated March 18, 2023

14. *Which witnesses of fact and experts is it anticipated will be called at the hearing, if there is to be one? Will interpreters be required at the hearing for any witnesses?*
15. *Is it appropriate for a hearing date to be fixed now? (Save in exceptional circumstances, a hearing date will not be fixed until the preparation of the case is sufficiently advanced to enable the duration of the hearing to be properly estimated; this will normally be after disclosure of documents has been substantially completed.)*
16. *Is it contemplated that the hearing should take the form of a virtual, or semi-virtual hearing (e.g., being conducted wholly or partially by video conference)? If so, what arrangements are contemplated? 16. (a) What are the estimated costs of each party (i) up to completion of this Questionnaire; and (ii) through to the end of the reference? Note: a breakdown should be given, identifying separately, among other things, the actual/estimated fees of solicitors/consultants (and the number anticipated to be required), Counsel (and specifying whether senior or junior Counsel will be involved), and experts, including relevant charge out rates. (b) Is this an appropriate case for the tribunal to cap costs, and if so why and at what level?*
17. *Does any party consider that it is entitled to security for costs and, if so, in what amount?*
18. *Are there any orders which are now sought?*
19. *Have the parties considered whether mediation might be worthwhile?*

DECLARATION (TO BE SIGNED BY A PROPERLY AUTHORISED OFFICER OF THE PARTY COMPLETING THE QUESTIONNAIRE: SEE SECOND SCHEDULE, PARA. 11 (a)): On behalf of the [claimant/respondent] I, the undersigned [name] being [state position in organisation] and being fully authorised to make this declaration, confirm that I have read and understood, and agree to, the answers given above. I also understand that in the event of the arbitration settling or being otherwise terminated, I will immediately notify the tribunal.

In addition to the above procedure, LMAA also has a procedure known as small claims procedure which is also DoA friendly. Under this rule, if the claim value is small and the parties have expressly agreed to follow small claims procedure, the case shall automatically be taken up under the Small Claims Procedure. Once this process is commenced, there shall be no calling of witnesses unless the arbitrator feels that the need for it. This is irrespective of opposing opinion with respect to the same by one of the parties in the arbitration. The final decision pertaining to calling witnesses is with the arbitrator under this particular procedure. [65]

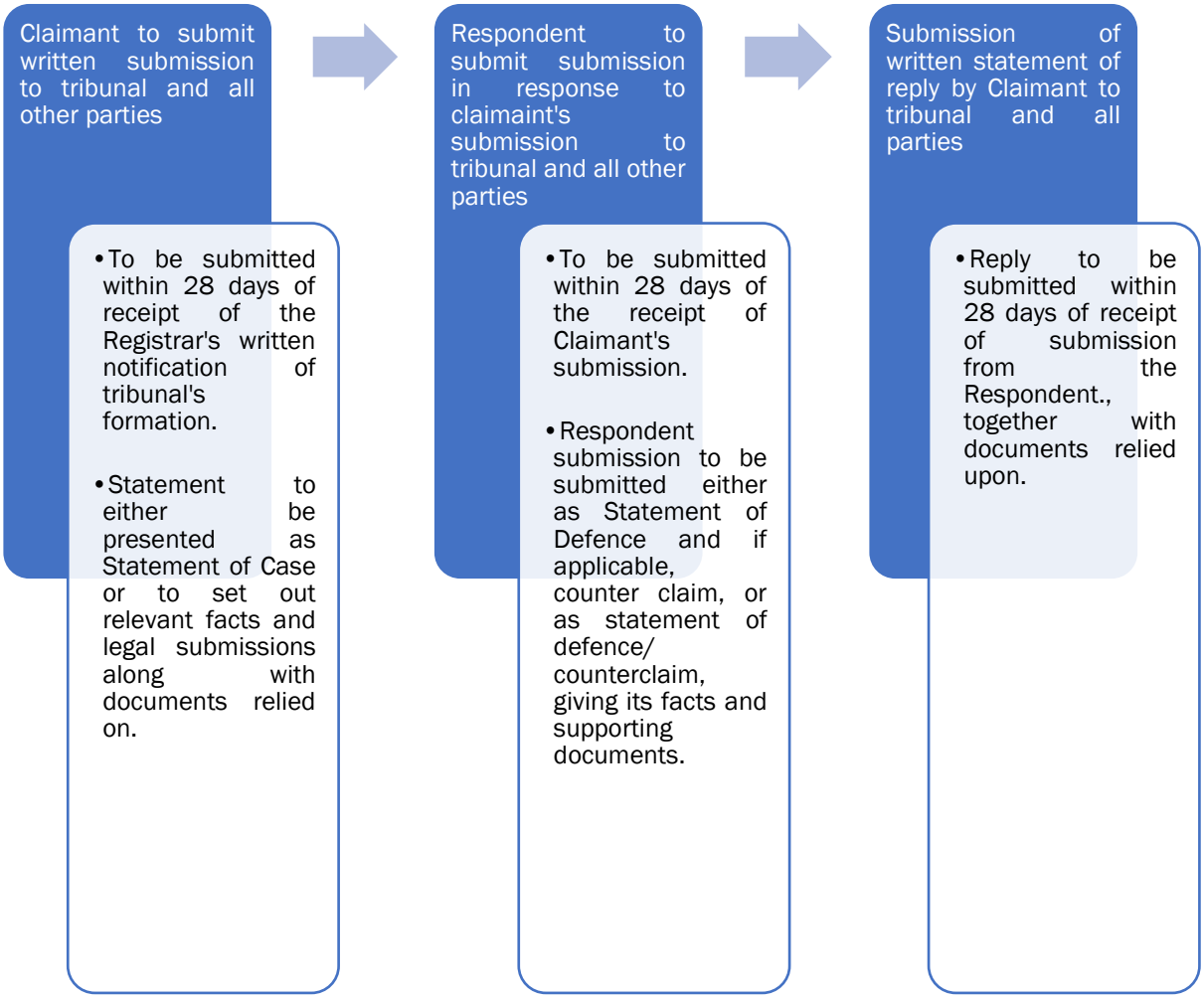
2.2. The London Court of International Arbitration

The London Court of International Arbitration ("**LCIA**") is another renowned institute that facilitates DoA. Arbitrations in LCIA is governed by the LCIA Arbitration Rules dated October

[65] Dr. Arun Kasi, Arbitrator and Lawyer, Arun Kasi & Co, via interview dated March 18, 2023

1, 2020 ("**LCIA Rules**"). As per Article 19.1 *(Hearings)* of the LCIA Arbitration Rules, the arbitral tribunal can conduct hearing at any stage of arbitration, unless parties have agreed in writing upon a DoA. Therefore, parties can mutually opt for DoA procedure and restrict the determination of arbitration dispute by the arbitral tribunal through documents only.

The procedure of submitting documents or giving written submissions before tribunal is specified under Article 15 *(Written Stage of Arbitration)* of the LCIA Rules. The procedure under Article 15 is usually followed unless the parties decide otherwise.[66] The diagrammatic representation of process of making written submissions as per Article 15 is as follows:

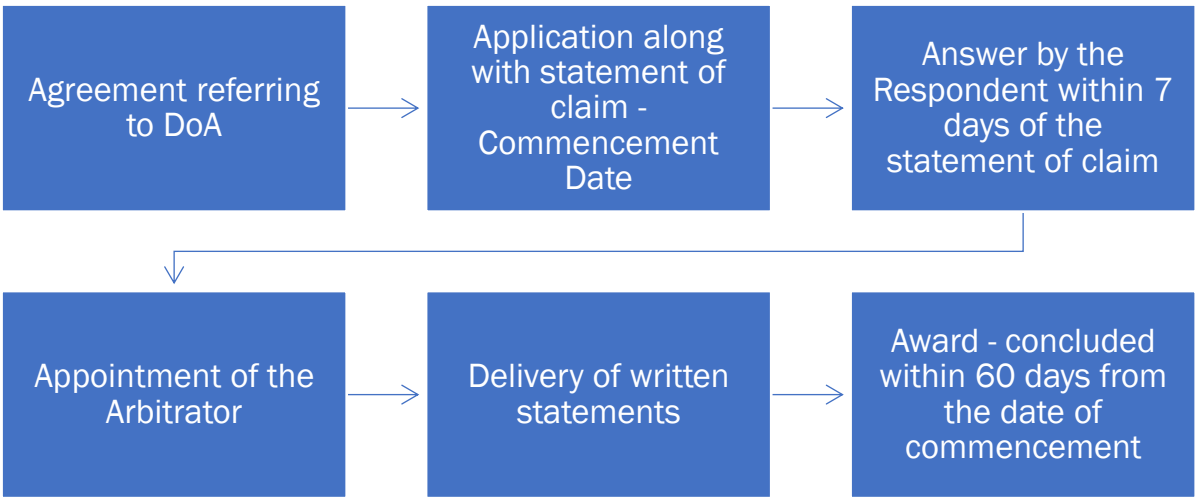


Following the above-mentioned written stage, as per Article 15.10, the arbitral tribunal shall seek to make its final award as soon as reasonably possible and shall ensure that such award is not later than three months following last submission from the parties. Apart from the above- mentioned timelines, an arbitral tribunal may upon request of a party allow additional submission of documents for determination of the dispute.[67]

[66] Article 15.1, LCIA Arbitration Rules, October 1, 2020.
[67] Article 15.6, LCIA Arbitration Rules, October 1, 2020.

2.3. The London Chamber of Arbitration and Mediation (LCAM)

London Chamber of Arbitration and Mediation (LCAM) is a well-known arbitration institute in UK. The institution has Expedited Arbitration Rules ("**EAR**"), which has been in force since September 2022 which contain a complete stand-alone documents-only procedure.[68] As per EAR, the resolution of disputes through arbitration would be by a sole arbitrator appointed under Article 7 of the rules. The rules have been created with an aim to achieve fast, innovative and cost-effective dispute resolution for businesses. The applicability of these rules is limited to cases where the parties to dispute have agreed that they should conduct arbitration proceedings under the EAR.[69] The procedure followed under EAR is as follows :



In case of any dispute where the parties have agreed to these rules, any party can make an application before the LCAM along with information provided under Article 4 of the Rules which deals with the request for expedited arbitration.[70] Further, the claimant, who is making an application needs to submit a statement of claim along with all documents and evidence supporting the same. To such an application made by the claimant, within 7 days, the respondent has to submit an answer along with all the additional information and documents required.[71] In case, the parties agree to the arbitration proceeding, an arbitrator shall be appointed according to Article 7 of the rules. Further, the arbitrator is only appointed if the LCAM has jurisdiction over the matter.[72]

The procedure followed for the arbitration proceedings after the appointment of the arbitrator is detailed in the figure below:[73]

[68] Article 1, Expedited Arbitration Rules, London Chambers of Arbitration and Mediation, 2022
[69] Article 2, Expedited Arbitration Rules, London Chambers of Arbitration and Mediation, 2022
[70] Article 3 and Article 4, Expedited Arbitration Rules, London Chambers of Arbitration and Mediation, 2022
[71] Article 5, Expedited Arbitration Rules, London Chambers of Arbitration and Mediation, 2022
[72] Article 6, Expedited Arbitration Rules, London Chambers of Arbitration and Mediation, 2022
[73] Article 8, Expedited Arbitration Rules, London Chambers of Arbitration and Mediation, 2022

Counterclaim	• Within 28 days of the Commencement Date, the Respondent shall deliver to the arbitrator and to the Claimant its Statement of Defence and (if any) Counterclaim together with all supporting documents.
Defense To Counterclaim	• In not more than 28 days of receipt of the Respondent's Statement of Defence and (if any) Counterclaim, the Claimant shall deliver to the arbitrator and to the Respondent its Statement of Reply and, if applicable, Defence to Counterclaim, together with all supporting documents.
Reply for defense of counterclaim	• The Respondent may deliver to the arbitrator and to the Claimant within the next 14 days a Statement of Reply to Defence of Counterclaim.
Extension of time	• Arbitrator may grant extensions to the above time limits, on the application of a party or of their own motion, up to an aggregate of 21 days' extensions for each statement
Failure to deliver within time	• If a party fails to deliver a statement within time, the arbitrator may, on the application of the other party or its own motion, notify the defaulting party that unless the statement is received within a fixed period up to a maximum of 14 days, they shall proceed to the award based on documents before them
Request for further information	• The arbitrator, before issuing award, may request additional information regarding the arguments. The party has a maximum of 14 days to provide the requested information, and the other party has a deadline of not more than 5 days to respond after delivery of the requested information. If no response is received, the arbitrator can proceed with the award.
Award	• Arbitrators must endeavour to issue the final award within six weeks from the closing submissions and within six months from the commencement date.

Additionally, the rules have limited the length of the documents to be presented before the arbitrator.[74] The rules applicable on documents presented before an arbitrator are as follows :[75]

Word Limit for the document to be submitted	Statement of Claim 3000 words	Statement of Defence 3000 words	Statement of Reply 1000 words and Defence to Counterclaim 3000 words	Statement of Reply to Defence to Counterclaim 1000 words
	All the statements submitted before shall be paginated and set out in numbered paragraphs.			
Supporting documents	The supporting document bundles should not exceed 200 pages, unless approved by the arbitrator. Additionally, the bundles should be numbered for clarity.			
Witness statements	It shall be included under the supporting document and must be no longer than 3000 words.			
Experts' report	Requires prior approval of the arbitrator and must not exceed 3000 words.[76]			

The EAR has also provides that in case the parties settle their dispute post-commencement date, they are required to inform about the same to the LCAM and the arbitrator immediately.[77] In addition, the arbitrator shall make a consent award to record the settlement, which shall be issued in the same manner as an award under Article 12 after a joint request by the parties.[78]

The above-mentioned are the processes followed by the major arbitral institutions in UK in DoA.

[74] Farad Asghari, Manager, London Chamber of Arbitration and Mediation, via email dated February 25, 2023
[75] Article 9, Expedited Arbitration Rules, London Chambers of Arbitration and Mediation, 2022
[76] Article 11, Expedited Arbitration Rules, London Chambers of Arbitration and Mediation, 2022
[77] Article 14.1, Expedited Arbitration Rules, London Chambers of Arbitration and Mediation, 2022
[78] Article 14.2 and 14.2, Expedited Arbitration Rules, London Chambers of Arbitration and Mediation, 2022

D. SINGAPORE

1. Legislative Framework

Singapore's arbitration laws are governed by two key pieces of legislation:

- The International Arbitration Act, 1994 ("**IAA**")
- The Arbitration Act, 2001 ("**AA**")

The IAA is applicable to international arbitrations; however, the party has the power to agree to IAA for arbitrations that are not international in character provided the parties expressly agree to IAA in their agreement.[79] AA is applicable in arbitrations which are not categorized as international. Documents-only arbitration is provided for under both IAA and AA in Singapore. The detailed explanation to the provisions that govern DoA in Singapore is covered as below.

IAA (*the current version of the IAA incorporates the 1985 UNCITRAL Model Law on International Commercial Arbitration)*[80] provides for DoA under Article 24(1), First Schedule.[81] It states that the arbitral tribunal shall have the power to decide whether to hold oral hearings for presentation of evidence or whether the proceedings are to be conducted on the basis of documents and other material alone. However, the parties through the agreement itself can decide between themselves the specific method for arbitration proceedings. It may be noted that the arbitral tribunal shall be mandated to hold hearings if it is requested by the parties.[82]

Section 25(1) of the AA also allows DoA and states that, "*Subject to any contrary agreement by the parties, the arbitral tribunal must determine if proceedings are to be conducted by oral hearing for the presentation of evidence or oral argument or on the basis of documents and other materials.*"[83] This is similar to what is stated under the First Schedule of IAA and effectively provides an option to choose DoA procedure.

Therefore, documents-only arbitration is permitted as per the legislative framework of Singapore. However, the adoption of DoA is the discretion of the arbitral tribunal unless the parties have an agreement contrary to the same. The process followed in DoA arbitration varies on the basis of rules followed,[84] but the major steps involved in the process includes omission of oral hearing, agreement on documents only, submission of

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[79] Morgan Lewis, an Introductory Guide to Arbitration in Singapore, Ed. 2, (2018), available at https://www.morganlewis.com/-/media/files/supplemental/2018/international-arbitration-guidesingapore_180640.pdf (Last accessed on 15 February 2023).

[80] First Schedule of International Arbitration Act 1994.

[81] Article 24, International Arbitration Act 1994, available at, https://sso.agc.gov.sg/Acts-Supp/23-1994/Published/19950315?DocDate=19941209&WholeDoc=1 (last accessed on March 14, 2023).

[82] Article 24, International Arbitration Act 1994; Benjamin F. Hughes, Independent Arbitrator, the Arbitration Chambers, via questionnaire dated February 23, 2023

[83] Section 25(1), Arbitration Act, 2001, available at, https://sso.agc.gov.sg/Act/AA2001?ViewType=Pdf&_=20191218022702#:~:text=%E2%80%94(1)%20The%20parties%20are,to%20be%20a%20single%20arbitrator.&text=Appointment%20of%20arbitrators-,13.,from%20acting%20as%20an%20arbitrator, (Last accessed on March 13, 2023).

[84] Abinav Bhushan, Chief Executive for Asia & International Arbitrator, 39 Essex Chambers, via questionnaire dated February 28, 2023

briefs and evidence (with additional request for documents in certain instances), rebuttal submissions and award.[85] At times, document discovery is also included in the process of documents-only arbitration in Singapore.[86]

2. DoA Procedure under arbitral institutional rules in Singapore

Singapore International Arbitration Centre ("**SIAC**") is the most popular arbitration institute in Singapore for alternative dispute resolutions. It is governed by Singapore International Arbitration Centre Rules ("**SIAC Rules**"). Another renowned institution in Singapore for resolving disputes is the Singapore Chamber of Maritime Arbitration ("**SCMA"**), which operates under its own set of rules known as the SCMA Rules. Given below is the procedure for DoA under institutional rules of the two most popular institutions in Singapore.

2.1. Singapore International Arbitration Centre Rules ("SIAC Rules")[87]

Rule 24 of SIAC Rules makes reference to DoA under the hearing procedure. Rule 24.1 of SIAC Rules states that the tribunal can hold hearing unless the parties specifically request for DoA, and thereby, giving discretion to the parties to conduct the arbitration proceeding in any manner, be it oral or document based.

Further, Rule 19 outlines the conduct of proceedings, stating that the tribunal shall conduct the arbitration in consultation with the parties for ensuring fairness in reaching a final resolution of the dispute. However, the usage of DoA under the standard procedure is very rare in SIAC.[88]

Rather, the use of DoA is more commonly used under the expedited procedure of SIAC Rules.[89] Rule 5 of the SIAC Rules provide for expedited procedure in arbitration and it can be adopted by the parties to a dispute for a case under three circumstances: *firstly,* when the claim amount does not exceed SGD 6 million, *secondly,* in cases of exceptional emergency, and *lastly,* when there is mutual agreement between the parties.[90] However, admission of case under the expedited procedure is subject to the discretion of SIAC.[91]

The documents-only procedure is subsumed within the expedited procedure of SIAC Rules and it mentions the following:[92]

a) There is a time limit for the disposal of disputes.

[85] David Bateson, International Arbitrator, 39 Essex Chambers, via questionnaire dated February 24, 2023; Benjamin F. Hughes, Independent Arbitrator, the Arbitration Chambers, Singapore, via questionnaire dated February 23, 2023; Judith Gill, Arbitrator, Gill Arbitration Services Pvt. Ltd., via questionnaire dated February 27, 2023

[86] Benjamin F. Hughes, Independent Arbitrator, the Arbitration Chambers, Singapore, via questionnaire dated February 23, 2023

[87] Singapore International Arbitration Centre Rules, available at https://siac.org.sg/siac-rules-2016 (last accessed on March 14, 2023)

[88] Shwetha Bidhuri, Director & Head (South Asia), Singapore International Arbitration Centre, via interview dated February 20, 2023

[89] Shwetha Bidhuri, Director & Head (South Asia), Singapore International Arbitration Centre, via interview dated February 20, 2023

[90] Rule 5, SIAC Rules

[91] Shwetha Bidhuri, Director & Head (South Asia), Singapore International Arbitration Centre, via interview dated February 20, 2023

[92] Shwetha Bidhuri, Director & Head (South Asia), Singapore International Arbitration Centre, via interview dated February 20, 2023

b) The tribunal, in consultation with the parties, must decide that the dispute shall be decided on the basis of documentary evidence only.[93]

This procedure is initiated on a case-to-case basis and there is no requirement for the parties to agree in writing prior to the invocation of arbitration clause that these rules shall be applicable if dispute arises between the contracting parties.[94]

2.2. Singapore Chamber of Maritime Arbitration (SCMA) [95]

Singapore Chamber of Maritime Arbitration was last amended in 2022 and it came up with a change that oral hearing is not mandatory, The Rule 25.1 of SCMA states that, "*The Tribunal shall decide if a hearing should be held or if the matter is to proceed on documents only, save that there shall, in any event, be a hearing so long as any party requests one*." This effectively means that document only arbitration is allowed, however the tribunal shall have the authority to take the decision and it further states that a hearing shall take place only if a party requests one. Rule 25.3 further states that a hearing may be held in person, by telephone, by video conference or in *any other manner the Tribunal deems appropriate*. Here again, the discretion to hold the hearing lies with the tribunal.

[93] Rule 5.2(c), SIAC Rules; Arbitrating in Singapore: The 2016 SIAC Rules, available at https://www.swlegal.com/media/filer_public/73/cd/73cd9ddf-3dbd-4754-8a23-254124320a9f/161222_cchristopher-boog_arbitrating-in-singapore-the-2016-siac-rules.pdf (last accessed on February 16, 2023).

[94] Shwetha Bidhuri, Director & Head (South Asia), Singapore International Arbitration Centre, via interview dated February 20, 2023

[95] SCMA Rules, available at https://www.scma.org.sg/SiteFolders/scma/387/rules/SCMA%204th%20Edition%20Rules%20(1%20Jan%202022)%20ePDF.pdf (Last accessed on February 16, 2023).

E HONG KONG

1. Legislative Framework

In Hong Kong, the main legislation governing arbitration is the Arbitration Ordinance (Cap. 609) ("**Ordinance**").[96] The Ordinance applies to both domestic and international arbitration in Hong Kong.[97] Hong Kong used to have regulations for two separate regimes, one for international arbitration and one for domestic arbitration, before the Ordinance came into effect in 2011.[98] With the introduction of the Ordinance, the domestic and international arbitral regimes have been unified. Further, the Ordinance applies to all arbitrations seated in Hong Kong and is based on the UNCITRAL Model Law. Although, there is not much distinction between the Model Law and the Ordinance, there are a few changes incorporated as per the requirement of the country.[99]

Besides, the leading arbitration institution in Hong Kong is the Hong Kong International Arbitration Centre (the "**HKIAC**"), which was established in 1985. The HKIAC conducts the arbitration proceeding as per the various HKIAC rules in consonance with the Arbitration Ordinance. The institution has two main sets of arbitration rules that are the HKIAC domestic arbitration rules[100] and the HKIAC administered arbitration rules.[101] In Hong Kong, the practice of DoA can be traced from the above- mentioned laws and rules.

Section 52 of the Ordinance provides for the provisions related to Hearings and written proceedings, providing two modes of the procedures for conducting the arbitral proceedings : one on the basis of the oral hearing and another process based on documents and other related materials. The section states,

> *"Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party".*[102]

Upon perusal of the above provision, we can understand that there is no explicit mention of any DoA procedure in the Arbitration Ordinance. The oral hearings are the norm under the Ordinance. However, the section provides the arbitral tribunal with the authority to decide whether to conduct the proceedings on the basis of documents and other materials, or to undertake oral hearings. Furthermore, the arbitral tribunal may also

[96] The Arbitration Ordinance, 2014
[97] Hong Kong International Arbitration, Legal 500, (2023), available at https://www.legal500.com/guides/chapter/hong-kong-international-arbitration/?export-pdf (Last accessed on February 16, 2023).
[98] Gall, N. International Arbitration Comparative Guide Hong Kong, (2022), available at https://www.mondaq.com/hongkong/litigation-mediation-arbitration/786678/international-arbitration-comparative-guide (last accessed on February 16, 2023).
[99] Section 4, the Arbitration Ordinance, 2014.
[100] The Hong Kong International Arbitration Centre ("**HKIAC**") Domestic Arbitration Rules 2014.
[101] The Hong Kong International Arbitration Centre Administered Arbitration Rules 2018.
[102] Section 52, the Arbitration Ordinance 2011.

conduct oral hearings at an appropriate stage of the proceedings, upon the request of a party, unless the parties have agreed that no hearings shall be held. Therefore, party autonomy is given primacy in the legislation.[103] This also means that an agreement in the contract shall be given priority. So, if the parties opt for a particular institution's arbitration system, and that institution has indicated that it shall be documents only procedure, then DoA is followed unless otherwise agreed by the parties.[104]

In addition, the section is a replica of Article 24 of UNCITRAL Model Law, which gives the parties autonomy to decide the mode in which proceedings are to be carried out. Therefore, even though the Ordinance does not determine the DoA procedure; it gives discretionary power to the parties to represent the arbitral proceedings without the need for an oral hearing.

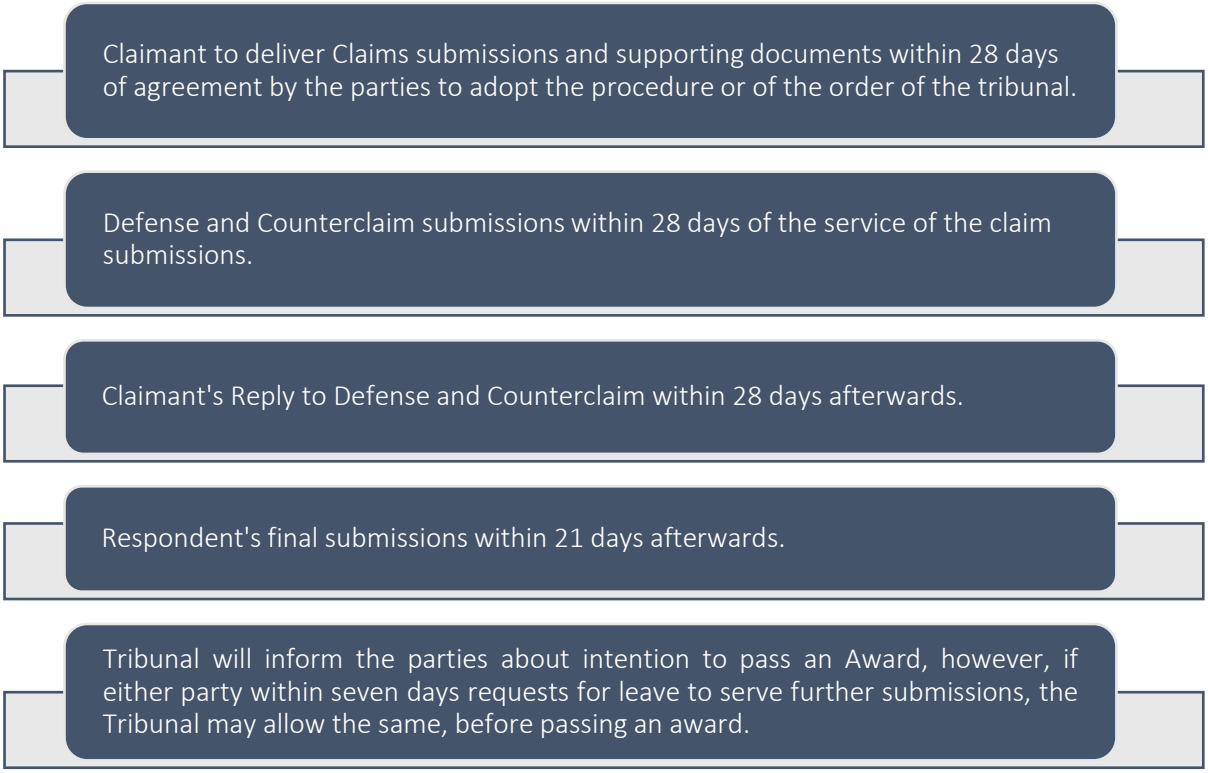
2. DoA Procedure under arbitral institutional rules in Hong Kong

In 2002, the HKIAC introduced two new procedures to provide a cost-effective way of resolving disputes involving relatively small sums, which mainly focused on the shipping and trading communities in Hong Kong and the region.[105] The procedures introduced include the procedure on small claims, which deals with matters that have claim amount of not more than USD 50,000, and an additional new procedure on 'Documents Only' arbitration, which is referred when the parties have decided to not include an oral hearing.[106] Both the procedures introduced were based on the London Maritime Arbitrators Association procedures.[107]

These new procedures showed HKIAC's effort to promote Hong Kong as a centre for international commercial and maritime arbitration. Parties are encouraged to use arbitration to settle their disputes by streamlining the arbitration process and lowering the cost.[108] Further, parties are also offered a speedy, affordable, and user-friendly alternative to courtroom proceedings and other more conventional forms of arbitration.

[103] Peter Scott Caldwell, Arbitrator and Mediator, via interview dated March 14, 2023
[104] Peter Scott Caldwell, Arbitrator and Mediator, via interview dated March 14, 2023
[105] Small Claims Procedures and 'Documents Only' Procedures, HKIAC, dated January 1, 2000, available at http://www.hkiac.org/sites/default/files/ck_filebrowser/PDF/arbitration/Small_Claims_and_%27Documents%20Only%27_Procedures.pdf, (last accessed on February 16, 2023).
[106] Ibid.
[107] Ibid.
[108] Ibid.

The HKIAC Documents -only Procedure is illustrated in the figure below:[109]



Further, as per the procedure, all the communication shall take place between the parties or between their representative and all communication and documents shall also be provided to the tribunal.[110]

2.1. Institutional Rules in Hong Kong for Document-Only Arbitration

In Hong Kong, HKIAC is the major arbitration institution backed by the government and it has released two sets of rules. These two sets are namely, HKIAC Domestic Arbitration Rules and HKIAC Administered Arbitration Rules. The Hong Kong International Arbitration Centre Domestic Arbitration Rules ("**HKIAC Domestic Arbitration Rules**"), has been effective from November 1, 2014. The rules are based on the Arbitration Ordinance Cap 609. The institution has also created the Hong Kong International Arbitration Centre Administered Arbitration Rules 2018 (HKIAC Administered Arbitration Rules), which were adopted and came into effect on November 1, 2018.

3.1.1 HKIAC Domestic Arbitration Rules 2014

The Council of the HKIAC approved these Domestic Arbitration Rules (2014) to provide a set of formal and practical processes for ad hoc arbitration in Hong Kong.[111] The Rules acknowledge and accommodate the parties' preferred method of proceeding to the fullest extent possible. However, they also empower the Arbitrator to guide the proceedings when the parties fail to agree on a course of action or refuse to cooperate with each other.[112]

[109] Ibid.
[110] General, HKIAC Documents Only Procedures, HKIAC, dated January 1, 2000.
[111] Introduction, the HKIAC Domestic Arbitration Rules 2014, at pg.4
[112] Ibid

Article 8 of the HKIAC Domestic Arbitration Rules provides the procedure for hearing or for the presentation of the matter by the parties before the arbitrator. Article 8.1 of the HKIAC Domestic Arbitration Rules is based on Section 52 of the Ordinance. Therefore, similar to section 52, Article 8.1 also does not provide for the DoA procedure. However, it provides the parties with the option to opt out of hearings and conduct the arbitration proceedings in DoA format.[113]

Furthermore, Article 8.2 of the HKIAC Domestic Arbitration Rules makes explicit mention of documents-only procedure. It provides that the parties shall not be entitled to an oral hearing and shall present any witness testimony in writing if the parties have agreed that a DoA process shall be used.[114] Thus, if parties have agreed to opt for DoA, they would have essentially waived off the right to hearing in the said case.[115] However, the Arbitrator has the right to request additional evidence or submissions, whether oral or written, if he believes that the documents presented are insufficient to support an award.[116] Therefore, it gives the discretionary power to the Arbitral Tribunal to hold an oral hearing even if the parties have opted for the document-only proceedings in case the tribunal thinks it is in the interest of the parties.

3.1.2 HKIAC Administered Arbitration Rules 2018

The Council of the HKIAC approved these Rules for providing parties with cost-effectiveness and procedural flexibility of an arbitration managed by the HKIAC.[117] These Rules may be adopted for use in both domestic and foreign arbitrations initiated pursuant to a contract or treaty, and may be adopted at any moment before or after a dispute has arisen in a written agreement.[118]

Article 22 of the rules deals with the provision related to hearing proceedings and evidence. Similar to the HKIAC Domestic Arbitration Rules and Ordinance, the rule under clause 4 gives the arbitral tribunal discretion to conduct the hearing in an oral form or in document only.[119] Hence, under this procedure, the decision of the arbitral tribunal is given primacy. Further, the arbitral tribunal can exercise its discretion as to whether a hearing ought to be conducted at the request of the parties.[120] Further, the tribunal may also determine the mode in which a witness or expert is to be examined in a particular case.[121]

Also, Article 42 of the HKIAC administered arbitration rules 2018 provides provisions related to the expedited procedure. Article 42.2 of the HKIAC Administered Rules provides an expedited process and it states that the award delivered by the tribunal constituted

[113] Article 8.1, the HKIAC Domestic Arbitration Rules 2014
[114] Article 8.2, the HKIAC Domestic Arbitration Rules 2014; Peter Scott Caldwell, Arbitrator and Mediator, via interview dated March 14, 2023
[115] Mateo Lawrence Shiu, Member, Chartered Institute of Arbitrators, via questionnaire dated February 27, 2023
[116] Ibid
[117] Introduction, the HKIAC Administered Arbitration Rules, 2018, at pg.2
[118] Application, the HKIAC Administered Arbitration Rules, 2018, at pg.2
[119] Article 22.4, the Hong Kong International Arbitration Centre Administered Arbitration Rules, 2018.
[120] Article 22.4, the Hong Kong International Arbitration Centre Administered Arbitration Rules, 2018.
[121] Article 22.5, the Hong Kong International Arbitration Centre Administered Arbitration Rules, 2018.

under expedited procedure shall be in summary form and issued within six months of the file having been transmitted to the tribunal.[122] More importantly, as per Article 42.2 clause (e) of the said rules, the default method followed is DoA procedure unless the tribunal determines that a hearing is necessary.[123]

However, any dispute that is to be decided under the expedited procedure has to follow a process where at least one party to the dispute apply for the arbitration to conducted under the expedited procedure before the constitution of the arbitral tribunal. Further, the dispute must fall within the 3 categories provided in the rules to be considered for the procedure. The three categories are as follows :[124]

i) the amount in dispute representing the aggregate of any claim and counterclaim (or any set-off defence or cross-claim) should not exceed the amount set by HKIAC on its website on the date the Notice of Arbitration is submitted.
ii) Mutual agreement by the parties;
iii) In case of exceptional emergency.

Therefore, as per the HKIAC Rules the expedited process provides for default 'documents only' arbitration, however the rules provide that oral hearing shall commence if the HKIAC decides that it is appropriate to hold one or more hearings.[125]

Case Study of Different types of Successful Documents -Only Arbitrations
A contract on sale of commodities was entered into by Singapore and Mainland China concerning sale of commodities. The contract between the parties was concluded through exchange of emails, and therefore all evidences and information pertaining to the contract was available via emails. There was no other evidence in this particular case. Hence, there were no witnesses that had to be cross examined. The entire arbitration proceedings were conducted on basis of the documents only since in the given scenario it was the most feasible mode of dispute resolution in terms of cost as well as efficiency. [126]
A dispute pertaining to debt claim arose between two parties to the contract. The parties had opted for arbitration to deal with the dispute. During, the proceedings, the Respondent did not participate in the arbitral proceedings. Therefore, the arbitral tribunal suggested that the dispute be decided on basis of documents. Hearing was neither requested or nor was the procedure contested by the parties. Hence, the said case concluded purely on the basis of documentary evidence and submissions.[127]

[122] Article 42.2, the HKIAC Administered Arbitration Rules, 2018.
[123] Article 42.2, clause (e), the HKIAC Administered Arbitration Rules, 2018.
[124] Article 42.1, clause (a), the HKIAC Administered Arbitration Rules, 2018; Shahla Ali, Professor and Dean, University of Hong Kong, via questionnaire dated February 28, 2023
[125] Peter Scott Caldwell, Arbitrator and Mediator, via interview dated March 14, 2023
[126] Peter Scott Caldwell, Arbitrator and Mediator, via interview dated March 14, 2023
[127] May Tai, Managing Partner, Asia, Herbert Smith Freehills, in response to the questionnaire dated February 27, 2023; Peter Scott Caldwell, Arbitrator and Mediator, via interview dated March 14, 2023

F MALAYSIA

1. Legislative Framework

The main legislation that applies to both domestic and international arbitration in Malaysia is the Arbitration Act, of 2005("**MAA**").[128] Since the enforcement of the legislation, it has been amended twice. The first amendment in 2018 allowed for the rebranding of the Kuala Lumpur Regional Centre for Arbitration (KLRCA) as the Asian International Arbitration Centre ("**AIAC**") in its new avatar.[129] This was done to recognise it as one of the premium centres for international dispute resolution. Subsequently, on May, 2018, the second Amendment Act came into force which updated the 2005 Act to align it with UNCITRAL Model Law 2006.[130] Presently the Malaysian Arbitration Act, 2005 is significantly based upon the UNCITRAL Model Law.[131]

The leading arbitration institute in Malaysia is AIAC. AIAC along with other arbitration institutes including the Pertubuhan Akitek Malaysia ("**PAM**") Arbitration Rules, 2019 govern the arbitration regime in Malaysia.[132] Further, the AIAC also aids the facilitation of both domestic as well as international commercial arbitrations.

Malaysian law is cognizant of the fact that documents-only procedures are useful where disputes involve relatively simple issues of facts and law and where limitation of costs is an overriding consideration, for example, in consumer disputes. This is evident in the procedures followed in the Malaysian courts system. The court system in Malaysia has a procedure called originating summons procedure. Originating summons procedure is a documents-only procedure followed by the courts where evidence is submitted in the form of documents and the hearings are carried out in chambers.[133] The parties may file the case under this procedure at the time of initiating case as long as it deals only with interpretation of documents and law (unless foreign law).[134] Similarly, DoA may not work

[128] Arbitration Act 2005, available at, http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/87342/124975/F35015673/MYS87342%20Eng.pdf (last accessed on March 7, 2023).

[129] Malaysia: Judicial Approach To Application And Construction Of Arbitration Act 2005 In Malaysia: Introduction, dated October 12, 2022, available at https://www.mondaq.com/arbitration-dispute-resolution/1237766/judicial-approach-to-application-and-construction-of-arbitration-act-2005-in-malaysia-introduction (last accessed on October 12, 2022)

[130] Andre Yeap SC and Avinash Vinayak Pradhan, Malaysia Available at https://globalarbitrationreview.com/review/the-asia-pacific-arbitration-review/2023/article/malaysia#:~:text=The%202005%20Act%20provides%20for,arbitral%20proceedings%20or%20in%20connection (last accessed on February 14, 2023).

[131] Yap Yeow Han, Rahmat Lim & Partners, Arbitration Procedure and Practise in Malaysia. Available at https://uk.practicallaw.thomsonreuters.com/w-025-3009?transitionType=Default&contextData=(sc.Default)&firstPage=true (last accessed on February 14, 2023).

[132] PAM Arbitration Rules, 2019, available at http://www.pam.org.my/images/resources/references/PAM_Arbitration_Rules_2019_Edition.pdf (last accessed on March 4, 2023).

[133] Arun Kasi, International Maritime Lawyers & Arbitrators, Arun Kasi & Co., via interview dated March 18, 2023; Ivan Aaron Francis, An overview on the commencement of proceedings, dated May 22, 2020, available at https://malaysianlitigator.com/2020/05/22/an-overview-on-the-commencement-of-proceedings/, (last accessed on April 17, 2023)

[134] Arun Kasi, International Maritime Lawyers & Arbitrators, Arun Kasi & Co., via interview dated March 18, 2023

in disputes where there are conflicts of facts as the arbitrator does not have the benefit of observing the cross-examination of witnesses.[135]

Section 26 of the MAA specifically contemplates and allows DoA.[136] It refers to both oral hearing and documents-only procedure.[137] It states that subject to the party's agreement, the Arbitral Tribunal shall decide whether the proceeding shall be conducted on the basis of documents and other material or hold an oral hearing for the presentation of evidence or oral arguments.[138] Further, in the absence of an agreement between the parties stating that no hearing is to be conducted, the arbitral tribunal shall be obligated to entertain the application of any party to the dispute requesting for an oral hearing . Hence, like many other jurisdictions, the procedure followed in an arbitration in Malaysia is largely dependent on rules the parties have agreed to.[139] However, the arbitrator has been given the liberty to go ahead with a procedure and rule of their discretion when the case is not subject to any institutional rules.[140]

Case Study[141]

An arbitrator practicing as a lawyer and arbitrator in multiple nations including Malaysia, Singapore and London stated that in case of ad-hoc arbitration, the decision to carry out the arbitration through documents-only is not decided at the initial stage of dispute. The arbitrator shall initiate the proceedings first and thereafter, request the pleadings to be submitted. After receiving the pleadings, DoA procedure is suggested to the parties by the arbitrator based on his assessment of the case. DoA is adopted when both parties mutually agree to adopt the procedure. However, if the case is moved forward without the permission of one party, the likelihood of one-party filing application challenging the award under the principle of natural justice is higher. Hence, when one party disagrees with DoA procedure, then the arbitrator shall allow hearing with witnesses. However, the parties requesting for oral evidences shall be warned that if at the end of the proceeding, it is found that the witnesses have not contributed to the proceedings, then the party who asked for the infructuous proceedings shall be penalised.

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[135] Yap Yeow Han, Rahmat Lim & Partners, Arbitration Procedure and Practise in Malaysia, available at https://uk.practicallaw.thomsonreuters.com/w-025-3009?transitionType=Default&contextData=(sc.Default)&firstPage=true&contextData=(sc.Default)&firstPage=true (last accessed on February 14, 2023)

[136] Sundra Rajoo, Law, Practice And Procedure Of Arbitration — The Arbitration Act 2005 Perspective, Malayan Law Journal, available at https://www.international-arbitration-attorney.com/wp-content/uploads/arbitrationlawLaw-Pratice-Procedure-of-Arbitration-Act-2005.pdf (last accessed on February 14, 2023).

[137] Ibid.

[138] Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or oral arguments, or whether the proceedings shall be conducted on the basis of documents and other materials.

[139] Arun Kasi, International Maritime Lawyers & Arbitrators, Arun Kasi & Co., via interview dated March 18, 2023

[140] Arun Kasi, International Maritime Lawyers & Arbitrators, Arun Kasi & Co., via interview dated March 18, 2023

[141] Arun Kasi, International Maritime Lawyers & Arbitrators, Arun Kasi & Co., via interview dated March 18, 2023

2. DoA Procedure of arbitral institutional rules in Malaysia

2.1. Asian International Arbitration Centre

The most prominent arbitral institution in Malaysia is Asian International Arbitration Centre. Rule 28 of the AIAC Rules, 2021 allows DoA. However, it doesn't provide for specific procedure for DoA.[142] Further, the fast-track procedure of AIAC Rules, 2021 also covers DoA. Rule 8 of AIAC Rules provide the procedure to be followed for conducting FTA. FTA may be requested by one of the parties at the time of dispute when one or more of the conditions provided under Rule 8.2 applies. Its states that the parties must be in agreement to adopt the procedure, have an exceptional emergency or/and the amount in dispute must be not more than USD 500,000 for an international arbitration or less than RM2,000,000. If the dispute has been registered under one of the 3 conditions, the case may be taken up by the Director of AIAC after considering the circumstances of the case.[143]

Notably, FTA under AIAC Rules shall be heard by a sole arbitrator unless a contrary agreement exists between parties and it shall be conducted on a documents-only basis. Nevertheless, DoA process may be waived, if deemed appropriate, by the arbitral tribunal after consulting with the parties to the dispute.

2.2. Pertubuhan Akitek Malaysia- Malaysian Institute of Architects

Similarly, there are also other institutional rules in Malaysia which mention DoA such as the PAM Arbitration Rules, 2019.[144] Article 6 of the PAM Arbitration Rules, 2019 which deals with conduct of proceedings states that hearing shall be held at any stage if the party requests for the same. DoA shall be allowed in the absence of such a request if the arbitral tribunal deems it an appropriate method for the particular case.[145] Further, Article 15 of the PAM Rules, 2019 emphasize that parties who wish to go for document-only arbitration must have an agreement in writing or else, they shall have the right to be heard orally .[146]

[142] Rule 28.2 of the AIAC Rules states that the Arbitral Tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on a **documents-only** basis though it doesn't provide for the procedure for Document only Arbitration.
[143] Rule 8.3 AIAC Rules, 2021.
[144] The PAM Arbitration Rules 2019, available at http://www.pam.org.my/images/resources/references/PAM_Arbitration_Rules_2019_Edition.pdf (last accessed on February 14, 2021)
[145] Article 6.2, the PAM Rules, 2019, available at http://www.pam.org.my/images/resources/references/PAM_Arbitration_Rules_2019_Edition.pdf (last accessed on March 3, 2023).
[146] Article 15, the PAM Arbitration Rules, 2019, available at http://www.pam.org.my/images/resources/references/PAM_Arbitration_Rules_2019_Edition.pdf (last accessed on March 3, 2023).

G FRANCE

1. Legislative Framework

In France, the French Code of Civil Procedure- Book IV- Arbitration in Force, 2011 ("**CCP**") is the primary legislation that governs domestic and international arbitration. To invoke domestic arbitration clause in France, it is mandatory to have an arbitration clause in writing.[147] The clause should ideally contain the procedure of appointment , rules applicable etc or else the default rules provided under the law shall be applicable. Similar conditions are also placed on international arbitration agreements.[148]

Further, the procedure of production of evidence in both domestic and international arbitration is governed by Chapter III of CCP. Articles 1467, 1469 and 1470 of the CCP which apply to the domestic arbitration, also applies to international arbitration by virtue of Article 1506 of CCP.

CCP does not specifically provide for DoA. However, DoA can be inferred from the procedure of arbitral proceeding under Chapter III of CCP. Under Chapter III of CCP production of evidence is also covered. As per Article 1464,[149] unless otherwise agreed by the parties, the arbitral tribunal usually defines the procedure to be followed in arbitration. Additionally, there is no obligation to abide by the rules governing the court proceedings. The same has been reiterated in the CCP under Article 1509. Hence, subject to arbitral tribunal's discretion, unless otherwise agreed by the parties, the arbitration proceedings can be done through documents- only mode.

As for the procedure of production of evidence, in principle each party must prove the facts it relies on while making its submissions. Even though under Article 1467 parties have no duty to produce all documents in their possession, the arbitral tribunal can instruct parties to produce an item of evidence, the manner of production of which shall also be determined by the arbitral tribunal. Hence, while asking for evidence, the arbitral tribunal can resort to documents- only evidence.

Upon the perusal of the abovementioned procedure of arbitral proceedings under CCP, it can be inferred that unless otherwise agreed by the parties, arbitral tribunal can opt for documents-only arbitration by completely relying on documents-only evidences and excluding oral hearings for determination of arbitration disputes.

In practicality, the decision on whether a case has to be decided on documents only basis is based on multiple parameters. It takes into consideration whether a particular case is relatively simple, if there is no witness evidence and whether the tribunal could decide the dispute based on the undisputed and clear facts along with the law.[150]

[147] Article 1443, French Code of Civil Procedure- Book IV- Arbitration in Force, 2011.
[148] Article 1508, French Code of Civil Procedure- Book IV- Arbitration in Force, 2011.
[149] Article 1464, French Code of Civil Procedure- Book IV- Arbitration in Force, 2011.
[150] Athina Fouchard Papaefstratiou, Independent Arbitrator AFP Arbitration, via interview dated March 20, 2023

Best Practice and process followed by practitioners for DoA

Notably, in France and certain other civil law nations, the decision to adopt DoA is taken after a round of exchanges of written pleadings as an arbitrator. The written pleadings shall provide the arbitrator with adequate information as to whether there shall be witness evidence, expert report and if the facts in the given case is undisputed .

Further, as a good practice, after the first exchange of written pleadings, the arbitrator shall form a list of questions and share it with the parties. The questions shall be prepared in a comprehensive manner and the exchanges between the parties shall be such to ensure that that at the stage of drafting an award, the arbitrator is fully equipped to deal with all the issues in question and no aspect of the referenced dispute is left out.

This is a good practice that necessitates the tribunal to take a more active stance and it tries to guide the parties to provide the information , important arguments or the elements that is required for the tribunal to reach a decision on the procedural aspects to be followed in the particular case. This also ensures that documents only procedure, if adopted, is carried out smoothly without a session for hearing.

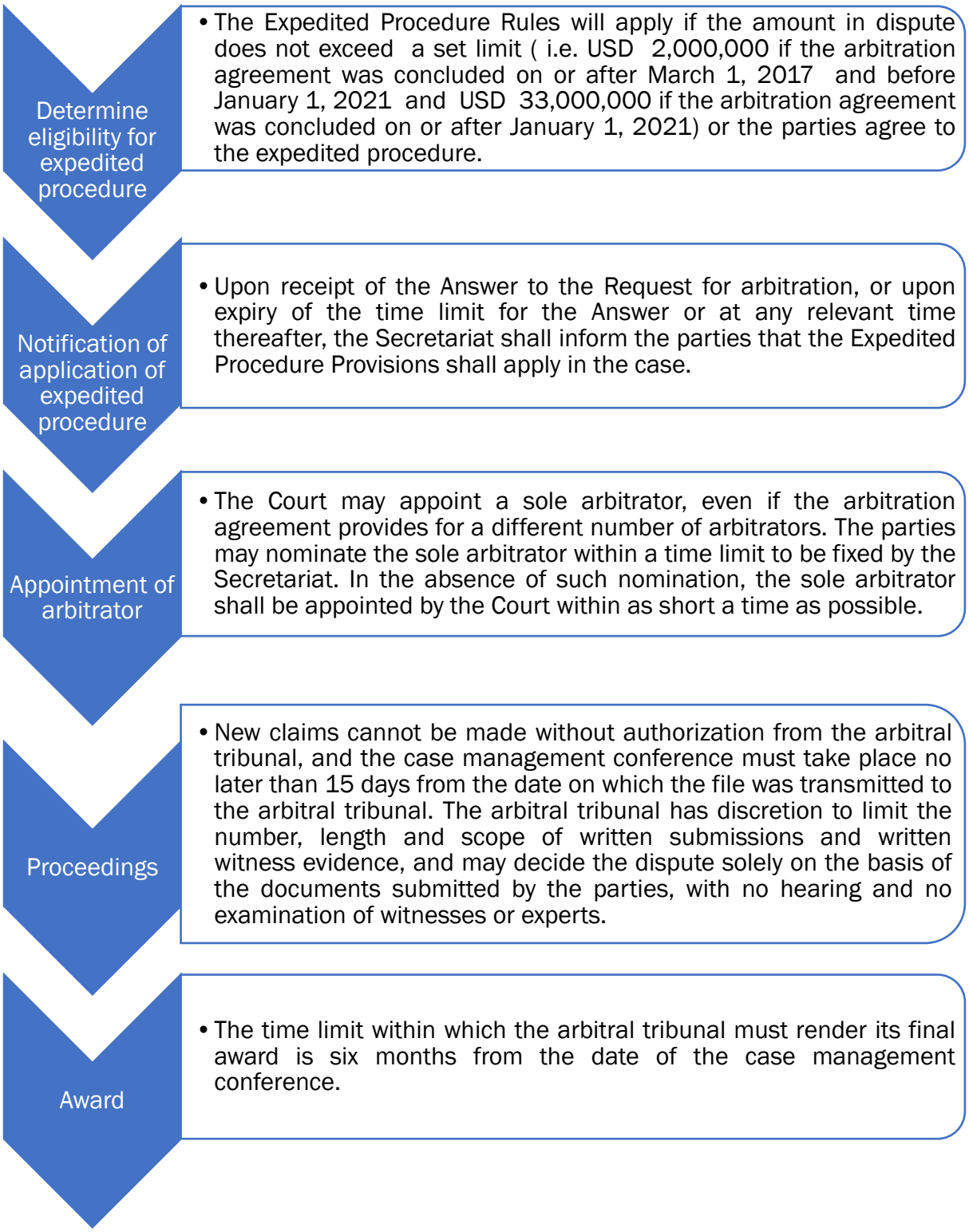
2. Procedure for DoA in France under Institutional Rules

The International Chamber of Commerce ("**ICC"**) headquartered in Paris, is the most popular arbitration institute in France to resolve both domestic and international arbitration matters. The International Court of Arbitration of the ICC is the independent arbitration body of ICC, which is the only body authorised to administer arbitrations under Rules of Arbitration of ICC ("**ICC Rules"**).

Under Article 25(5),[151] the arbitral tribunal has the authority to decide the case completely on the documents submitted by the parties, unless any of the parties request a hearing. Further, under ICC Rules, the arbitral tribunal has the authority and discretion of not holding an oral hearing in the absence of agreement of the parties.[152] However, the provision clearly states that an oral hearing shall be provided to the parties if one or both the parties to the dispute requests for it.[153]

Hence the only possibility for a case not to include an oral hearing shall be when both parties agreed not to have an oral hearing.[154] Additionally, inclusion of expedited procedure rules under the ICC Rules has provided power to an arbitrator to decide not to hold an oral hearing even when both parties do not agree on not having one. This has made it possible for simpler disputes to have a case without an oral hearing, even when one of the parties seeks to have one.[155] The process followed in case of expedited procedure under ICC Rules are as follows :

[151] Article 25(5), Rules of Arbitration of The International Chamber of Commerce.
[152] Article 26, Rules of Arbitration of The International Chamber of Commerce
[153] Ibid
[154] Athina Fouchard Papaefstratiou, Independent Arbitrator AFP Arbitration, via interview dated March 20, 2023
[155] Athina Fouchard Papaefstratiou, Independent Arbitrator AFP Arbitration, via interview dated March 20, 2023



Hence the expedited rules of ICC conduct arbitrations in DoA mode. Unlike other arbitrations, the default arbitration method followed under expedited rules is a documents-only procedure. [156]

[156] Athina Fouchard Papaefstratiou, Independent Arbitrator AFP Arbitration, via interview dated March 20, 2023; Rules of Arbitration of The International Chamber of Commerce

H SWEDEN

1. Legislative Framework

In Sweden, both domestic and international arbitration is governed by the Swedish Arbitration Act, 1999 ("**Swedish Arbitration Act"**). Sweden has not adopted the UNCITRAL Model Law, 1885 ("**Model Law")** on International Commercial Arbitration. However, the Swedish Arbitration Act, 1999 is heavily influenced by the Model Law.[157] The Swedish Arbitration Act applies to arbitral proceedings commenced after April 01, 1999. Further, the extant Swedish Arbitration Act, as amended during 2019, shall be applied for arbitrations commenced after March 01, 2019.[158] For applying Swedish Arbitration Act, it is necessary to have seat of arbitration in Sweden,[159] except where the provisions regarding the recognition and enforcement of foreign awards in Sweden are invoked.[160]

The general rule for arbitral proceedings requires the arbitral tribunal to act as per the agreement entered by the parties to resolve a dispute.[161] Hence, the parties are free to present their cases either in writing or orally and are allowed to depart from the oral hearing unless either of the party's request otherwise.[162]

In Sweden, the practice of DoA can be traced in Swedish Arbitration Act. Although, the law does not specifically provide for DoA, it can be inferred from the wordings of Section 24 of the Swedish Arbitration Act which states that,

> *"The arbitrators shall afford the parties, to the extent necessary, an opportunity to present their respective cases in writing or orally. If a party so requests, and provided that the parties have not otherwise agreed, an oral hearing shall be held before the determination of an issue referred to the arbitrators for resolution."*

Therefore, the parties of arbitration agreement have an option to present their case in writing. Further, parties are subjected to oral hearings only upon a specific request, hence implying that unless parties themselves ask for oral hearing, written hearings are consequently conducted. The normal process followed with respect to DoA contains the following steps. The parties to the dispute and the arbitrator shall agree on a time table and the number of submissions that are allowed to be filed. Once all submissions are filed, the arbitrator shall declare the proceedings closed and render the award.[163]

2. Procedure for DoA in Sweden under Institutional Rules

Since the procedure followed in arbitration is largely guided by the rules applicable or adopted by the parties, the arbitral rules followed in the country is of significance. The

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[157]Dispute Resolution Around the World: Sweden, available at https://www.bakermckenzie.com/-/media/files/insight/publications/2016/10/dratw/dratw_sweden_2011.pdf?la=en (last accessed on February 17, 2023)

[158] International Arbitration Law and Rules in Sweden, available at https://cms.law/en/int/expert-guides/cms-expert-guide-to-international-arbitration/sweden (last accessed on February 17, 2023)

[159] Section 46, The Swedish Arbitration Act, 1999

[160] Section 52- Section 60, The Swedish Arbitration Act, 1999

[161] Section 1, The Swedish Arbitration Act, 1999

[162] Section 24, The Swedish Arbitration Act, 1999

[163] Evelina T. Wahlström, Legal Counsel, SCC Arbitration Institute, via questionnaire dated February 23, 2023

Stockholm Chamber of Commerce ("**SCC**") Arbitration Institute is the most popular arbitration institute in Sweden to resolve both domestic and international arbitration matters. SCC Arbitration Institute is governed by two institutional rules namely, SCC Arbitration Rules and SCC Expedited Arbitration Rules 2023.

2.1. SCC Arbitration Rules, 2023

In order to be eligible to undertake arbitration before SCC, the parties shall have to specifically mention in their arbitration agreement that any disputes shall be resolved in accordance with the SCC Arbitration Rules, 2023.[164] Article 31 of the SCC Arbitration Rules, 2023 deals with Evidence. As per Article 31, all evidence presented before the Arbitral Tribunal needs to be documentary evidence. After presenting documentary evidences, parties upon a request can also opt for a hearing under Article 32 of the SCC Arbitration Rules, 2023. According to Article 32(1) a hearing is held if requested by a party or if the Arbitral Tribunal deems it appropriate. Hence, from the above- mentioned provisions, it can be concluded that conducting a hearing is not mandatory under the SCC Rules. A hearing before the Arbitral Tribunal can be held only if parties request the same.

Thus, if hearing is not requested by the parties, by default ,arbitral tribunal formed as per the SCC Arbitration Rules, 2023 shall resort to DoA and determine the disputes entirely on written submissions and documentary evidence. Notably, the type of arbitration brought under DoA are generally smaller arbitrations of less value (i.e., low amount in dispute) and less complexity.[165] Further, mutual agreement between the parties plays a significant role in the initiation of DoA procedure.[166]

2.2. SCC Expedited Arbitration Rules, 2023

Expedited arbitration with the SCC is a faster and more straightforward process which offers flexible option to the parties. Similar to arbitration under the SCC Arbitration Rules, the Arbitral Tribunal under SCC Expedited Arbitration Rules, 2023, by default can determine disputes through document-only arbitration.

In order to be eligible for expedited arbitration, the parties shall have to specifically mention in their arbitration agreement that any disputes shall be resolved in accordance with the SCC Expedited Arbitration Rules, 2023.

Similar to the SCC Arbitration Rules, 2023, under Article 32 (Evidence) and Article 33 (Hearings) of the SCC Expedited Arbitration Rules, 2023, all evidences are documentary evidences and hearings are opted only upon an express request of the parties. Hence, while determining disputes under expedited arbitration, arbitral tribunal can by default use document- only arbitration.

[164] Arbitration rules of the Arbitration Institute of The Stockholm Chamber Of Commerce, available at https://sccarbitrationinstitute.se/sites/default/files/2022-11/arbitrationrules_eng_2020.pdf (last accessed on March 14, 2023)
[165] Evelina T. Wahlström, Legal Counsel, SCC Arbitration Institute, via questionnaire dated February 23, 2023
[166] Ibid

I Luxembourg

1. Legislative Framework

Article 1224 to Article 1251 of the New Code of Civil Procedure's ((Nouveau Code de Procedures Civile, ("**NCPC**")) cover the Luxembourg Arbitration Law.[167] The NCPC does not provide any provision specifying the scope of applicability and thus, the NCPC without any distinction, is applicable to both domestic and international arbitrations governed by Luxembourg law. Further, the law also does not differentiate between domestic and international arbitration, except for the enforcement of foreign judgements.[168] Therefore, it is applicable to all arbitrations having the arbitration seat in Luxembourg.[169]

The Luxembourg Arbitration Centre ("**LAC**"), established by the Luxembourg Chamber of Commerce (Chambre de Commerce Luxembourg) in 1987, is the primary arbitral institution in Luxembourg.[170] The Institute's Council manages and oversees the Luxembourg Arbitration Centre. Furthermore, the Secretariat assists the Council in various decisions and overlooking arbitration proceedings.[171] Thus, in Luxembourg, the practice of DoA can be traced from the above- mentioned laws and rules.

The Luxembourg Arbitration Law under NCPC does not provide for specific rules for DoA proceedings. Nor do they have any provisions that provide for similar proceedings. Due to absence of provisions of DoA in NCPC, parties often opt for resolving disputes under institutional rules such as the Rules of Arbitration of Luxembourg Chamber of Commerce ("**Arbitration Rules"**). Further, there are no mandatory conditions that are to be fulfilled by law in Luxembourg prior to the adoption of DoA procedure in arbitration matters.[172]

2. DoA Procedure under Institutional Rules in Luxembourg

The institutional arbitration follows the Arbitration Rules, which are based on and inspired by the Rules of Arbitration of the International Chamber of Commerce (ICC).[173] LAC's Rules have recently been revised, and the new Rules took force on January 1, 2020.[174] Unless the parties have agreed that the earlier version of the rules applies, the new Arbitration Rules shall be applicable to all proceedings submitted to the Arbitration Centre after that date.[175]

[167] Title I – Arbitrations, BOOK III, (as amended February 24, 2012), New Code of Civil Procedure
[168] Luxembourg, Arbitration Guide, International Bar Association Arbitration Committee (2018)
[169] Ibid
[170] Rules of Arbitration, Luxembourg Chamber of Commerce, 2020
[171] Véronique Hoffeld and Olivier Marquais, Commercial Arbitration: Luxembourg, Global Arbitration Review, (2022), available at https://globalarbitrationreview.com/insight/know-how/commercial-arbitration/report/luxembourg, (last accessed February 20, 2023)
[172] Daniela Antona, Counsel, Brucher Thieltgen & Partners, via questionnaire dated March 3, 2023; Weil André, Arbitrator, the Council of the LAA, via questionnaire dated March 6, 2023
[173] Luxembourg, Arbitration Guide, International Bar Association Arbitration Committee (2018)
[174] Véronique Hoffeld and Olivier Marquais, Commercial Arbitration: Luxembourg, Global Arbitration Review, (2022), available at https://globalarbitrationreview.com/insight/know-how/commercial-arbitration/report/luxembourg (last accessed on February 20, 2023)
[175] Ibid

Article 17 of the Arbitration Rules enables the arbitrator to base their decision solely on the submitted documents, unless a hearing is requested by any of the parties. Therefore, unless parties specifically request a hearing, the arbitrator can choose to conduct DoA.

Another provision of documents-only arbitration can be found under Article 22 of the Arbitration Rules which provide the procedure for 'Simplified Proceedings'. These proceedings can be conducted in the form of document only form.[176] The simplified proceedings are used for disputes of lower value. The instances where simplified proceedings may be applied are :

Application of Simplified Proceedings

Adoption of these before agreement and where dispute Amount is equal to or less than EUR 1000000	Parties agree to follow these proceedings

According to the rule, the simplified proceedings shall apply where the amount of dispute is less than or equal to EUR 10,00,000 and a mutual agreement has been entered into by the parties for the adoption of simplified proceedings provisions.[177] These arbitration proceedings may also be applied to cases where the parties to the agreement have agreed to subscribe to simplified proceedings.[178]

Further, the Article provides that the Simplified Proceedings shall not be applicable if the parties opt-out of the provisions and the Council determines that the provisions are not appropriate for the specific case and circumstances.[179] It shall also not be applicable if these provisions under the rules were adopted after the arbitration agreement was agreed between the parties and if the parties do not agree to apply these provisions.[180]Notably, the simplified proceeding can be conducted in document only form at the option of the arbitrator, after consulting the parties. The arbitrator can pass an award for the dispute solely on the basis of the documents submitted by the parties, with no hearing and no examination of witnesses or experts.[181] Further, in instances where hearings are to be held, it shall be conducted via videoconference, telephone or similar means of communication.[182]

[176] Appendix II, Simplified Proceedings provisions, Rules of Arbitration, Luxembourg Chamber of Commerce, 2020, at 33
[177] Article 22(2)(a), Rules of Arbitration, Luxembourg Chamber of Commerce, 2020
[178] Article 22(2)(b), Rules of Arbitration, Luxembourg Chamber of Commerce, 2020
[179] Article 22(3), Rules of Arbitration, Luxembourg Chamber of Commerce, 2020
[180] Ibid
[181] Point 5, Appendix II, Simplified Proceedings provisions, Rules of Arbitration, Luxembourg Chamber of Commerce, 2020, (page 33),
[182] Appendix II, Simplified Proceedings provisions, Rules of Arbitration, Luxembourg Chamber of Commerce, 2020, (page 33)

J. FINDINGS AND SUGGESTED ROADMAP

The study was focused towards the question i.e., "*Should the Government of India (say up to a certain value of contracts) insist on document-based arbitration, where no physical appearance shall be called? Analysis of data of number of arbitration cases, time spent, money spent, etc. If yes, what could be such a threshold and the methodology to calculate such threshold?*"

Based on the information gathered on legislations, international best practices and expert inputs from international practitioners in the field of arbitration, it is understood that DoA procedure is not applied to an arbitration case on account of the value of contract of a particular case. Rather, it has been emphasized by various experts that feasibility of using DoA procedure need not be assessed on value of contract or type of disputes as the complexity of the issue is not attributed to the amount in dispute.

However, an analysis of use of DoA process followed in various nations and arbitral institutions has displayed that reference to DoA procedure is more commonly found under FTA or expedited procedure than standard arbitration procedure. As per the information gathered and studied, a maximum value is at times allocated as a condition for inclusion of a particular case under the expedited procedure. The maximum value fixed under different arbitral institutions for expedited proceedings or small claims procedure are as follows :

Institution	Rules	Maximum Value
Mumbai Centre for International Arbitration	MCIA Rules 2016	INR 10 crore
Delhi Arbitration Centre	DAC Arbitration Rules	INR 5 lakh
International Arbitration and Mediation Center, Hyderabad	Domestic Arbitration Rules of IAMC And International Arbitration Rules of IAMC	INR 10 crore
Asian International Arbitration Centre (Malaysia)	AIAC Arbitration Rules 2021	• USD 500,000 [International arbitration] • RM 2,000,000 [Domestic arbitration]
International Chambers of Commerce	ICC Arbitration Rules, 2021	• USD 2,000,000 [if arbitration agreement was concluded between March 1, 2017 to December 31, 2020] • USD 3,000,000 [arbitration agreement was concluded on or after January 1, 2021]
Luxembourg Chamber of Commerce	Rules of Arbitration, 2020	EUR 10,00,000
Singapore International Arbitration Centre	SIAC Rules 2016	SGD 6,000,00
Hong Kong International Arbitration Centre	HKIAC Small Claims Procedure	USD 50,000

The table above indicates that the maximum amount under which expedited procedure may be adopted varies. The government may consider these values when determining whether document-based arbitration is appropriate, considering there isn't adequate data on DoA to evaluate the efficacy of the procedure vis- a- vis the claim amount applied on the same.

Notably, in our research, one commonality noticed among all interviews and responses received is that there is agreement that the DoA procedure allows arbitration to be concluded in half the time compared to traditional arbitrations. Data collected and analysed of widely reported cases suggest that the time taken for the conclusion of arbitration proceedings in India via the traditional method is not feasible in terms of either value or time. Further, it has been noted that issues pertaining to the interpretation of the contract are best suited for resolution through a documents-only procedure. There is neither a specific value or type of disputes that can be identified as ideal for DoA. However, small value claims may be suggested for documents only as it is cost efficient to adopt the DoA procedure in such cases.

Based on the study conducted, we suggest the following measures or amendments that may be adopted to streamline the arbitration mechanism and promote DoA procedure in India.

1. Amendment of Section 24 of the Arbitration and Conciliation Act, 1996

While documents-only procedure is allowed in India, the construct of Section 24 of the Act is such that the arbitrator is mandated to hold oral hearings if either one of the party requests for a hearing. Although party autonomy is integral to arbitration procedure, the basic purpose of promotion of arbitration or other alternative dispute resolution system is to reach resolution in a speedy and time-bound manner. It is suggested that the arbitrator must be given more flexibility within the procedures in situations where there is no agreement between the parties as to which procedure is to be followed. This shall allow the arbitrator with the power to decide the mode of procedure to be followed where there is no agreement between the parties. To ensure the same, it is suggested that the proviso Section 24 (1) may be amended to read that "*Provided that the arbitral tribunal shall hold oral hearings, at an appropriate stage of the proceedings, on request by both/ all parties to the arbitration agreement, unless the parties have agreed that no oral hearing shall be held*". Here the term "on a request by a party" has been replaced by "*on request by both/ all parties to the arbitration agreement.*" This amendment shall allow the arbitrator to have more say on the procedural aspects, aligning with the system in countries like the UK.

2. Inclusion of Explanation clause under Section 24

It is suggested that an explanation may be included under Section 24 to clarify that conducting the arbitration proceedings purely on a documents-only basis shall not be a ground for challenge under the Act. This shall assist in eliminating the likelihood of challenging the award on account of it being documents-only. Further, it shall clarify to parties and the arbitral tribunal that the arbitrator shall have the final decision regarding whether an arbitration can be conducted through documents-only form or not in situations where the parties have not agreed for a particular procedure.

3. Insert a section on DoA procedure under the Arbitration and Conciliation Act, 1996

To ensure that best practices pertaining to DoA are followed, it is proposed that there must be a section under the arbitration law that deals with procedural aspects surrounding DoA. It should provide a strict time limit that may be followed with respect to DoA.

It may be also provided under the section that a model agreement shall be signed by those parties who mutually agree to follow DoA procedure for the arbitration. Further, in those instances where the arbitrator deems it appropriate to have the proceedings only on the basis of documents alone under Section 24 of the Act or as per the procedural rules, a model questionnaire may be submitted to both the parties to the dispute by the arbitrator to understand the issues at hand and the feasibility of adoption of documents-only procedure for the particular case. The responses may be assessed in terms of whether the facts pertaining to the case is disputed or there is a need for oral evidence. This shall be in line with the process followed in LMAA where a large number of arbitrations are conducted through documents-only procedure.

4. Create Documents-only arbitration rules for Government Bodies

To ensure that time and cost spent on arbitration is reduced, the Government of India should develop a set of model rules which shall be applicable in case disputes arising out a contract between government bodies and other institutions or among different departments of the government or/ and autonomous organizations of government. These rules shall be in line with the arbitration law and may or may not be affiliated to any institution. However, it shall ensure that there is no incongruity with respect to the procedural rules applicable in case a particular dispute is referred to arbitration where government is a party to the agreement. Further, these model rules should provide for the exact procedure to be followed in documents only mode for dispute resolution. It should also provide for an ideal page limit and time frame for conducting proceedings based on best practices followed in arbitral institution such as LMAA. The rules must be applicable on all public entities so that it is uniform throughout the country and thereby, lessen the likelihood of confusion owing to adoption of different arbitration procedures in different disputes.

5. Awareness among existing empanelled arbitrators on the DoA

It is understood that as a common law country and close relation of arbitration with judicial system has led to growth of misconceptions with respect to the principle of Right to be Heard. The popular belief is that exclusion of oral hearing is equivalent to negation of right to be heard and therefore contrary to the principle of natural justice. This idea is prevalent among arbitrators as well as legal practitioners. It is pertinent to be informed that fair and reasonable opportunity to represent their cases is the cardinal principle embedded within the principle of natural justice and therefore exclusion of oral hearing alone shall not be a reason for invalidation of award passed by the arbitrators. Hence, awareness regarding the use of documents only arbitration and benefits of the same will have to developed among the practitioners to promote its use. The best way to go forward for the same is by conducting training programmes among empanelled arbitrators of different institutions to promote DoA best practices and procedures.

6. Introduce the concept of page limit for submissions before the arbitral tribunal

It is recommended that the concept of a page limit for submissions and pleadings may be introduced before the arbitral tribunal. This will help to streamline the arbitration process and ensure that parties focus on presenting only the most relevant and essential arguments and evidence. A page limit will also help to prevent lengthy and unnecessary submissions, which can cause delays in the proceedings and increase the cost of arbitration. Moreover, limiting the length of submissions can help to level the playing field between parties by ensuring that each party has an equal opportunity to present their case. This can be especially important in cases where one party has greater resources or a larger legal team, as they may have an advantage in producing more voluminous submissions. However, the limit should be reasonable and take into account the complexity of the case and the nature of the issues involved. By adopting this best practice which is already in place in courts of UK and other arbitral institution, parties can save time and resources, and ensure a more efficient and cost-effective arbitration process. Further, if it is deemed necessary by any party to extend the limit specified, the parties may be obliged to give reason and seek permission from the arbitrator/ arbitral tribunal for the same.

7. Limiting Post-Opting Requests for Hearings in Documents-Only Arbitration

One suggestion to promote efficiency in DoA is to limit a party's request for a hearing after opting for such proceedings. This can be achieved by implementing clear and specific rules regarding the submission of documents and arguments, as well as the timeline for such submissions.

In addition, parties can be made aware of the consequences of requesting a hearing after opting for DoA. For instance, the arbitrators can be empowered to impose additional costs and fees on the party making the request, as well as the costs associated with postponement of the arbitration proceedings. This is in line with the practice followed in several foreign nations.

Limiting the party's request for a hearing after opting for documents-only proceedings can help ensure that the process remains efficient and streamlined. It can also encourage parties to carefully consider their choice of dispute resolution mechanism and the appropriate level of oral arguments needed for their case.

8. Virtual hearings to be adopted where it is deemed necessary to hold oral hearings

It is suggested that in cases where DoA procedure is followed and it has been deemed necessary in the interest of justice to hold hearing by the arbitrator/ arbitral tribunal, the hearing shall be conducted online. Further, there should be a restriction to the number of hearings allowed to ensure that the proceedings are conducted in an expeditious manner. Further, the party seeking hearing shall be obligated to suggest a date for hearing within a timeframe of 30 days from the date last submission made by either one of the parties.

9. Incorporation of DoA clause in tenders and government contracts

It is proposed that the government should incorporate a clause in the tenders and standard contracts for adoption of documents-only arbitration procedure for dispute resolution between parties. The dispute resolution clause should state that all disputes shall primarily be referred to documents-only arbitration. However, the specified clause shall be subject to the discretion of the arbitrator/ arbitral tribunal as under Section 19 of

the Arbitration and Conciliation Act, 1996. This is suggested owing to the fact that interpretation of contract is amenable purely on the basis of documents-only where tenders are involved.

10. Mandate the Panel of arbitrators for PSUs to adopt DoA

The panel of arbitrators empanelled under the PSUs (both central and state departments) should be mandated to adopt a Model DoA procedure for all disputes where there is no pre-determined procedure for conducting arbitration. Further, the practice of circulating questionnaire for assessing the feasibility of adoption of DoA must be implemented among these arbitrators. Based on the assessment, the arbitrator should record a reasoned interim award stating why DoA was adopted/not adopted in the case.

11. Amend arbitration law to include a provision on duty of parties

It is suggested that the arbitration law may be amended to include a mandatory provision stating that the unless otherwise agreed by the parties, it shall be the duty of the parties to do all things necessary for the proper and expeditious conduct of the arbitral proceedings including complying without delay with any determination of the tribunal as to procedural or evidential matters. This provision shall be similar to Section 40 of UK arbitration law and shall help expand the power attributed to the arbitral tribunal with respect to procedural and evidentiary matters in case of ad-hoc arbitrations and thereby, provide discretion to adopt the procedure that is best suited for the arbitration matter brought before them.

ANNEXURE 1 : COMPARATIVE TABLE ON DoA

Country	Legal provision	Arbitration Institutions	Rules provided by arbitral institutions
United Kingdom	Section 34 of the Arbitration Act 1996 states that the tribunal shall have the right to decide on all procedural and evidential matters subject to the right of parties to agree any matter. The procedural and evidentiary matters include whether and to what extent oral evidence, written evidence or submissions may be used. Hence, the provision indicates that the parties to the dispute have the power to decide the mode in which arbitrations are to be conducted. However, in case there is no agreement between the parties on the procedure to be followed, the decision of tribunal has to be followed.	London Maritime Arbitrators Association 2021	DoA is incorporated in the Rules with dedicated procedure to be followed under Second schedule of LMAA Terms The Second Schedule notes the various factors that ought to be taken into account during DoA and provides a questionnaire to be circulated among parties to determine if documents only method or normal arbitration process is to be followed.
		London Court of International Arbitration	The Arbitral Tribunal may decide at any stage of the proceeding whether a hearing should be held unless the parties have agreed in writing for DoA.
		London Chamber of Arbitration and Mediation (LCAM)	The institution has Expedited Arbitration Rules ("EAR"), which contain a complete stand-alone documents-only procedure. The rules also specified the length of documents to be presented before arbitrator in the DoA.
Singapore	Both International Arbitration Act 1994 and Arbitration Act 2001 of Singapore which deals with international and domestic arbitration in Singapore allows for DoA. Section 25 of the Arbitration Act and Article 24 of the International Arbitration Act 1994 states that oral hearings shall be held as	Singapore International Arbitration Centre	Oral hearings are held as part of arbitral proceedings unless DoA is mutually agreed by the parties. DoA is used under Expedited Procedure of SIAC . No value is set for DoA under SIAC rules. However, the rules for expedited procedure have laid down limitations in terms of value.

	part of the arbitration proceeding unless specified by the parties to the dispute. Further, the arbitral tribunal shall be mandated to hold hearings if it is requested by the parties.	Singapore Chamber of Maritime Arbitration (SCMA)	Tribunal decides the procedure to be followed. SCMA Rules 2022 under its Rule 25 states that the tribunal has authority to hold a meeting or pass an award on the basis of documents only in case any of the party has not requested for hearing.
Hong Kong	The legislation dealing with arbitration procedures and processes is Cap 609 Arbitration Ordinance. The Ordinance is based out of the Laws and provisions of UNCITRAL Model Law. Section 52 of the Ordinance deals with Hearings and written proceedings. It is a replica of Article 24 of UNCITRAL Model Law which gives the parties autonomy to decide the mode in which proceedings are to be carried out. Further it states that hearing shall be held as an when requested by the parties if there is no agreement expressly stating the intend to conduct DoA.	Hong Kong International Arbitration Centre	Under the HKIAC Domestics Arbitration Rules, the parent law is replicated. However, in addition to the same, it has been noted that the parties who have agreed for DoA shall not be entitled to hearing. The testimony of witness shall also be in written form. Nevertheless, if the arbitrator is unable to make an award on the basis of documents submitted, he shall be entitled to require further submissions i.e., oral or in writing. *The rules of the arbitral institutions vary from one another depending on which rules are adopted by the parties.* HKIAC provides a Documents-only procedure which may be adopted when parties have agreed, or where an existing arbitration tribunal has directed, that no oral hearing is needed. Similarly, the small claims procedure also has DoA unless deemed inappropriate for the case by arbitrator. Other rules such as expedient procedures also provide DoA option.

Malaysia	Section 26 of Arbitration Act, 2005 states that unless otherwise agreed by parties, the arbitration tribunal decides whether to hold oral hearing or document-based proceeding. Further, in the absence of an agreement between the parties for DoA, the arbitral tribunal shall be obligated to entertain the application of any party to the dispute requesting for an oral hearing. But the arbitrators have been given the liberty to adopt a procedure and rule of their discretion when the case is not subject to any institutional rules.	Asian International Arbitration Centre (AIAC) [Formally known as Kuala Lampur Regional Centre for Arbitration]	Rule 28 of the AIAC Rules, 2021 allows hearing via document-only arbitration. However, it doesn't provide for specific procedure for document-only arbitration. Further, the procedure for fast-track arbitration provides that the procedure shall follow DoA unless otherwise determined by the Arbitral Tribunal, after consulting the Parties. FTA may be applied if the parties are in agreement, in case of emergency and/or when the dispute amounts is less than USD 500,000 for an international arbitration or less than RM2,000,000 for a domestic arbitration.
		Pertubuhan Akitek Malaysia (PAM) - Malaysian Institute of Architects	As per PAM Arbitration Rules, 2019, hearing shall be held at any stage if the party requests for the same. DoA shall be allowed in the absence of such a request if the arbitral tribunal deems it an appropriate method for the particular case. Further, parties who wish to go for document-only arbitration must have an agreement in writing or else, they shall have the right to be heard orally.
France	The French Code of Civil Procedure- Book IV- Arbitration in Force, 2011 (CCP) does not provide the any procedure. Therefore, unless otherwise agreed by the parties, subject to arbitral tribunal's discretion, the arbitration proceedings can be done through documents- only mode. Thus, the law has no bias towards oral hearing or DoA unlike other jurisdictions.	International Chamber of Commerce	Article 25 of the ICC Arbitration Rules 2021 states that the arbitral tribunal has the authority to decide the case completely on the documents submitted by the parties, unless any of the parties request a hearing. On the other hand, the default arbitration method followed under expedited rules is a documents-only procedure. In fact, the arbitrator is empowered to exempt oral hearing from the procedure even when both parties agree on having one.

Sweden	There is no explicit mention of use of DoA in the law. However, Section 24 of the Swedish Arbitration Act states that arbitrators shall give the opportunity to present case in writing or orally. Further, it allows an oral hearing to be held at the request of a party prior to the determination of an issue referred to arbitration.	Arbitration Institute of the Stockholm Chamber of Commerce	By default, it is document-based arbitration, unless otherwise requested by a party. As per Article 32(1) of the SCC Rules, a hearing shall be held for the arbitration if requested by a party or deemed appropriate by the Arbitral Tribunal. It shall the duty of tribunal to ascertain when such hearings shall be conducted and whether it has to be carried out in person or remotely. This is decided after consultation with the parties to dispute. Similarly, the procedure would be DoA by default under SCC Expedited Arbitration Rules, 2023 unless the party has requested for hearing.
Luxembourg	The Nouveau Code de procedure Civile (NCPC) contains the arbitration law of Luxembourg and it does not expressly provide any provisions for hearing or DoA. Owing to this, there is no proclivity towards either oral proceedings or documents only form of arbitration. The procedure followed in arbitration is guided by the rules specified in the arbitration agreement.	Arbitration Centre of the Luxembourg Chamber of Commerce.	Article 17(4) of the Rules of Arbitration of the Luxembourg Chamber of Commerce 2020 allows the arbitrator to decide the case solely on the documents submitted by the parties unless any of the parties requests a hearing. Hearing can be conducted at the request of any one party or if necessary, as per the arbitrator. Further, simplified proceeding containing documents only mode may also be adopted by the parties to dispute.

ANNEXURE 2 : PRIMARY RESEARCH PARTICIPANTS

S.No	Country	Name	Organisation	Designation	Response Received	Date
1.	Singapore	Benjamin Hughes	Hughes Arbitration	Independent Practitioner	Questionnaire	February 23, 2023
		David Bateson	39 Essex Chamber	International Arbitrator	Questionnaire	February 24, 2023
		Judith Gill	Gill Arbitration Services	Independent Arbitrator	Questionnaire	February 27, 2023
		Abhinav Bhusan	39 Essex Chamber	Chief Executive for Asia	Questionnaire	February 28, 2023
		Shwetha Bidhuri	Singapore International Arbitration Centre	Director & Head (South Asia)	Interview	February 20, 2023
2.	Malaysia	Sundra Rajoo	Asia International Arbitration Centre	Arbitrator and Director	Questionnaire	February 25, 2023
		Daniel Tan Chun Hao	Tan Chun Hao	Arbitrator	Questionnaire	February 27, 2023
		Dato Cecil W.M. Abraham	Cecil Abraham and Partners	Senior Partner	Questionnaire	February 27, 2023
		Nahendra Navaratnam	Navaratnam Chambers	Senior Partner	Questionnaire	February 27, 2023
		Chu Ai Li	Azman Davidson & Co. Advocates & Solicitors	Partner	Questionnaire	February 28, 2023
		Kooy Wei Nee	RDS Advocates and Solicitors	Senior Associate	Questionnaire	March 9, 2023
		Dr Arun Kasi	Arun Kasi and Co.	Senior Partner / Head	Interview	March 18, 2023
3.	France	David Woodhouse	David Woodhouse	Construction Contract Adjudicator	Questionnaire	February 27, 2023
		Athina Fouchard Papaefstratiou,	AFP Arbitration	Independent Arbitrator	Interview	March 20, 2023

S.No	Country	Name	Organisation	Designation	Response Received	Date
4.	Hong Kong	May Tai	Herbert Smith Freehills	Managing Partner, Asia	Questionnaire	February 27, 2023
		Peter Scott Caldwell	Caldwell Ltd	Director, Arbitrator and Mediator	Interview	March 14, 2023
		Mateo Lawrence Shiu	Chartered Institute of Arbitrators	Member	Questionnaire	February 27, 2023
		Shahla Ali	Professor and Dean	University of Hong Kong	Questionnaire	February 28, 2023
5.	Sweden	Evelina T. Wahlström	Legal Counsel	SCC Arbitration Institute	Questionnaire	February 23, 2023
6.	Luxembourg	Daniela Antona	Brucher Thieltgen & Partners	Counsel	Questionnaire	March 3, 2023
		Weil André	the Council of the LAA	Arbitrator	Questionnaire	March 6, 2023
7.	United Kingdom	Nicholas Peacock	Bird and Bird	Partner	Questionnaire	March 10, 2023
		Peter Rees KC	39 Essex Chambers	Arbitrator, Mediator and Counsel	Questionnaire	March 10, 2023
		James Clanchy	FCIArb	Arbitrator	Questionnaire	February 24, 2023
		Farad Asghari	London Chamber of Arbitration and Mediation	Manager	Email and Written Responses	February 25, 2023
		Kartik Mittal	Zaiwalla & Co	Partner	Interview	February 27, 2023
		Dr Arun Kasi	Arun Kasi & Co	Arbitrator and Lawyer	Interview	March 18, 2023
8.	India	Sumeet Kachwaha	Kachwaha and Partners	Partner	Interview	March 01, 2023

ANNEXURE 3 : QUESTIONNAIRE

1. Please select the correct option. You are:
   a) Representative of Arbitral Institution
   b) Legal Professional working in the field of arbitration
   c) Arbitrator
   d) Any other, please specify

2. In which country do you practice?
   a) India
   b) United Kingdom
   c) Malaysia
   d) Singapore
   e) Hong Kong
   f) Luxembourg
   g) France
   h) Sweden
   i) Any other, please specify

3. How often do you deal with arbitration cases?
   a) Daily
   b) Minimum one case every week
   c) Once or twice every month
   d) Once in 3 months or more

4. In your experience, what is the most common type of procedure adopted by parties in an arbitration
   a) Standard arbitration
   b) Expedited / Fast Track arbitration
   c) Documents- only arbitration
   d) Other, please specify _____

5. Have you dealt with documents – only arbitration?
   a) Yes
   b) No
   c) Never heard of it

6. How often have you / your organisation used document-only arbitration as part of arbitration clause in contracts in the last year (2022)
   a) Never
   b) Rarely
   c) Sometimes
   d) Mostly

7. If yes, roughly how many cases of document- only arbitration have you dealt with? Please give a rough estimate (calendar year).
   a) 2022- ____
   b) 2021- ____
   c) 2022- ____

8. Would you suggest documents – only arbitration to parties?
   a) Yes, please give reason
   b) No, please give reason

9. What is the percentage of document-only arbitration cases in the total number of the arbitration cases dealt by you or your organization on an average ?

10. On average how long does it take to conclude a matter through standard arbitration procedure.
    a) < 3 months
    b) 3 to 6 months
    c) 6 months - 1 year
    d) More than a year
    e) 1 - 3 years

11. On average how long does it take to conclude a matter through documents-only arbitration.
    a) Not applicable
    b) Less than 3 months
    c) 3 months to 6 months
    d) 6 months to 1 year
    e) More than a year
    f) 1 to 3 years

12. How much money is usually spent on the document only arbitration?
    a) More than standard arbitration
    b) Less than standard arbitration
    c) Same as standard arbitration
    d) Not applicable

13. What type of disputes are usually suggested for documents -only arbitration?
    a) All disputes
    b) Procurement related disputes
    c) Construction Disputes
    d) Maritime Disputes
    e) Other, please specify

14. Are there any mandatory conditions to be fulfilled by law in your jurisdiction before opting for documents- only arbitration?
    a) Yes, if yes please explain
    b) No

15. Is there a threshold in terms of value of contracts for which documents- only arbitration is adopted in your jurisdiction of practice.
    a) Yes, if yes what is the threshold, please specify
    b) No

16. If yes, how did you calculate such threshold?
    a) By law
    b) Party autonomy
    c) Rules of arbitral institution
    d) Any other, please specify

17. What rules make document-only arbitration attractive and adaptive among parties to the dispute?
    a) No oral hearing
    b) Time
    c) Cost
    d) No travel
    e) None of the above
    f) All of the above

18. According to you, what are the benefits of documents-only arbitration? (provide any 3)

19. According to you, what are the negatives of documents-only arbitration? (provide any 3)

20. What factors are to be considered while adopting documents-only procedure for arbitration?
    (Provide any 3)

21. Do you find documents-only arbitration as a feasible alternative to standard arbitration?
    a) Yes
    b) No

22. How often does parties agree for the document only arbitration?
    a) Not applicable
    b) Rarely
    c) Sometimes
    d) Mostly

23. If you have worked on arbitrations that are documents- only, kindly give a brief overview of the process followed.

24. If you have experience working on documents-only arbitration, could you state how such arbitrations are usually initiated?
    a) Imposed by either one of the parties
    b) Imposed by arbitrators
    c) Mutual agreement by parties
    d) Not applicable
    e) Any other reason