

JOINT UNCITRAL – LAC CONFERENCE
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**IT IS THE PARTIES' CASE – WHAT
CAN THE PARTIES DO TO
OPTIMIZE THE COSTS?**

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General Considerations – and Questions to be Addressed

- Arbitration – a matter of agreement between the parties but any agreement as to the procedure must take into account the arbitrator's duty to ensure that each party has a reasonable opportunity to put its own case and answer the other party's case
- How far have the parties agreed to optimize costs?
- What is the position if one party does not wish to cooperate?
- What can/should the arbitrator do to facilitate cost optimization?

How Arbitral Rules promote Cost Optimization

Ljubljana Arbitration Centre

- *All participants in the proceeding shall act in good faith and make every effort necessary for the efficient conduct of the proceedings and to avoid unnecessary costs and delay. (Art. 21.2)*
- Provision for expedited proceedings (Art. 48)

International Chamber of Commerce

- The arbitral tribunal and the parties shall make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute. (Art. 22.1)
- Accent on Case Management (Art. 22.2 and Appendix IV)
- Obligation to issue final award within six months of Terms of Reference (Art. 30.1)

How the parties may take optimization further

Plenty of potential

- Limitation of scope of dispute
 - Early determination of issues
- Organisation of proceedings
 - Content of submissions – focus on issues
 - Length/timing of submissions
 - Timing of presentation of supporting evidence
 - Which evidence is really necessary?
 - Is a hearing necessary? Post-hearing briefs also?
 - ‘Fast-track’ arbitration

Optimization dependent upon choice of experienced and proactive arbitrators and counsel

What if one party does not wish to cooperate?

- How helpful are the general obligations set out in institutional rules?
- How far are arbitrators inclined to go against one party's wishes in order to accommodate the other party's proposals to optimize costs?
- How regularly do arbitrators use powers given to them to penalize parties for failing to participate in an arbitration in a cost-effective manner?

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