



## IDArb Expedited Arbitration Procedure

Tailoring an expedited and cost-effective arbitration procedure, managed by SCAI under the Swiss Rules of International Arbitration ("Swiss Rules"), specially adapted for disputes in the field of distribution, for which at present the recourse to international arbitration is considered to be inappropriate.



The purpose of this initiative is to establish an expedited and cost-effective dispute resolution system, which may encourage companies to submit distribution disputes (e.g. agency and distributorship contracts, franchising, etc.) in order to:

1. have their case resolved by an arbitrator with specific experience in distribution (who can be chosen from the IDArb list of arbitrators)
2. within a short period of time (six months).

IDArb is proposing an arbitration clause (the “IDArb Expedited Arbitration Clause”) based on the standard clause under the Swiss Rules, together with a set of recommendations (“IDArb Recommendations”) to the parties and to the arbitrator aimed at facilitating the expedited resolution of distribution disputes. The clause is intended primarily for disputes which do not exceed CHF 1.000.000, but may also be appropriate for higher amounts.



## The IDArb Expedited Arbitration Clause

For disputes not exceeding CHF 1.000.000

Any dispute, controversy, or claim arising out of, or in relation to, this contract, including the validity, invalidity, breach, or termination thereof, as well as pre-contractual and extra-contractual related issues, shall be resolved by a sole arbitrator, in accordance with the Expedited Procedure under Article 42 of the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The award shall be made within six months from the date on which the SCAI Secretariat transmitted the file to the sole arbitrator pursuant to Art. 42(1)(d) of the Rules.

The seat of the arbitration shall be Geneva. Hearings may be held in any location worldwide.

The language of the arbitration shall be ...

In order to make the procedure as expedited as possible, the Parties agree to follow the IDArb recommendations for expedited arbitration published at: IDArb

## Recommendations

If the amount in dispute determined according to Article 42(2) of the Rules exceeds CHF 1.000.000, the ordinary procedure under the Swiss Rules will apply, unless the parties agree to have recourse to the expedited procedure.



The IDArb Arbitration Clause and Recommendations include, in addition to the Swiss Rules applicable to the expedited procedure, some additional features aimed at providing an even more expedited and cost-effective procedure.

The IDArb Recommendations cover the following issues:

1. Appointment of a sole arbitrator and possible assistance for the choice of the arbitrator.
2. Full statement of claim and defence from the outset.
3. Pro-active role of the arbitrator in view of a settlement.

The Recommendations are not binding: they are simply invitations to take advantage of procedural devices that can expedite the procedure and reduce costs. They imply that a party is authorized to follow them, but the other party is not bound to do the same. Thus, when a claimant makes a full statement of claim already in the Notice of Arbitration, the other party may submit a simple Answer and require that the Statement of Claim and Defence be submitted after the appointment of the arbitrator. This may be reasonable under certain conditions (complicated case, need for expertise), but if the respondent wishes to shorten the procedure, he/she will be in a condition to do so.



## Assistance in the choice of the sole arbitrator

It is of course preferable that the sole arbitrator be selected by agreement between the parties. However, this is not always easy since litigating parties tend by principle to refuse any name proposed by the other party. The possibility of choosing the arbitrator from a list of reputable persons will certainly be an advantage, but the solution can be made even easier by providing a system based on the exchange of names with preferences, such as the mechanism provided in the UNCITRAL rules.

This is proposed in Article 1 of the IDArb Recommendations.



Full statement of claim and defence in the Notice of Arbitration and in the Answer to the Notice of Arbitration

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Hearing



## Pro-active role of the arbitrator regarding settlement

IDI favours recourse to mediation before getting to arbitration and during the proceedings. However, it is also advisable that, even after the parties have decided to submit the dispute to arbitration, the arbitrator can take steps in order to favour a settlement.

The actual practice regarding this issue is very different in the various legal traditions: in some countries the arbitrator will limit himself to encouraging the parties to find an agreement, in others (e.g. Germany) he will have a much more pro-active attitude.

The clause in Article 3 of the IDArb Recommendations intends to favour settlement negotiations by authorizing the arbitrator to give, upon joint request of the parties, a non-binding and provisional assessment of the case.



Recommendations for IDArb Expedited Arbitration.pdf

<https://www.idiproject.com/content/recommendations-idarb-expedited-arbitration>



Thank you for your attention!

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