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ARTICLE 5—NUMBER OF ARBITRATORS

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Article 5

If the parties have not agreed on the number of arbitrators, one arbitrator shall be appointed unless the administrator determines in its discretion that three arbitrators are appropriate because of the large size, complexity or other circumstances of the case.

I. Introduction

5.01 One of the first questions that parties in arbitration must consider when constituting a tribunal is the number of arbitrators that will resolve their dispute.[1] As with most other aspects of international arbitration, the appointment of arbitrators is, in large part, governed by the principle of party autonomy, which grants the parties significant freedom to agree amongst themselves on the number of arbitrators and the mechanism for appointing them, either directly or by reference to institutional rules that invariably make provision for the constitution of the tribunal.[2] Where the parties do not select the number of arbitrators by agreement and also do not select a set of governing institutional rules, they will face default provisions of national

[1] GB Born, *International Commercial Arbitration* (Kluwer Law International, The Hague, 2009) 1,351.

[2] This is because institutions provide fallback rules or presumptions regarding the number of arbitrators. For example, many institutional rules, such as the ICDR Rules, will consider the amount in dispute as a means to determine how many arbitrators are necessary: ICC Rules, Art 8(2); LCIA Rules, Art 5(4); Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber (VIAC Rules, or Vienna Rules), Art 9(2); World Intellectual Property Organization (WIPO) Arbitration Rules, Art 14(b).

arbitration laws, which differ significantly by jurisdiction. It is therefore advisable for parties to select the number of arbitrators in their arbitration agreement, or at least fully to understand the impact of their choice of institutional rules on the constitution of the tribunal.

II. Textual commentary

A. Party autonomy ('if the parties have not agreed')

5.02 The ICDR Rules fully recognize the principle of party autonomy regarding all aspects of the selection of arbitrators. Parties' freedom to choose the number of arbitrators is a concept rooted in national arbitration laws and international conventions, and affirmed by national court decisions. The UNCITRAL Model Law explicitly vests the right to select arbitrators in the parties when it provides that 'the parties are free to determine the number of arbitrators'.[3]

5.03 Although it is certainly not explicit, Article 5, as written, would appear to permit parties to select a tribunal composed of an even number of arbitrators if the parties so choose. We are not aware of any examples of this provision being the basis for parties agreeing upon an even-numbered tribunal, but Article 5 arguably could have been drafted to recognize party autonomy in the utmost. National laws largely follow suit, whether based on the UNCITRAL Model Law or not,[4] although some national laws contain nuances. The breadth of Article 5 may be a nod to the practice in the ICDR's home jurisdiction, the USA, under which law arbitration tribunals comprised of an even number of arbitrators are not explicitly prohibited, as they are by mandatory law provisions under French (in domestic arbitrations), Dutch, Belgian, Egyptian, Indian, Italian, and Portuguese laws.[5] These national arbitration statutes prohibit arbitration by an even number of arbitrators, presumably to avoid delays or impediments to the arbitral process by way of deadlocks.[6] Arguably, such national restrictions on the parties' choice regarding the number of arbitrators conflict with the New York Convention, Articles II(3) and V(1)(d), which mandate that parties' agreements concerning the composition of the tribunal are to be given effect.[7]

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[3] UNCITRAL Model Law, Art 10(1).

[4] *See eg* Spanish Arbitration Act, art 12; Danish Arbitration Act, s 10(1); English Arbitration Act, 1996, s 15(1); Swiss Law on Private International Law, art 179(1).

[5] *See eg* Born, op cit, 1,351 and n 8.

[6] *See eg* French New Code of Civil Procedure, art 1453 (in domestic arbitrations); Italian Code of Civil Procedure, art 809; Indian Arbitration and Conciliation Act, s10(1).

[7] Born, op cit, 1,352–54.

5.04 There are only a very few examples of successful even-numbered tribunals, with the most famous of them having been formed not as the result of the parties' original expectations, but as a result of a three-arbitrator tribunal truncated by the retirement of one of the arbitrators in the course of a proceeding lasting more than ten years.[8] The truncated two-arbitrator tribunal in the well-known *IBM-Fujitsu* arbitration delivered a generally acceptable result under the closely related AAA Commercial Rules. The complex, intellectual property dispute involved significant amounts of evidence, required specialized expertise, and staked the long-term business interest of two multinational companies against each other. After more than ten years of continuing consultations and mediation, the two-arbitrator tribunal in the end resolved the multibillion-dollar dispute in a process regarded by both parties as a success.[9] The *Fujitsu* arbitration—one of the few available examples of a successful arbitration by an even-numbered tribunal—is a better example of parties agreeing to continue with a two-arbitrator tribunal following the resignation of the third arbitrator, than of parties intentionally selecting an even number of arbitrators to decide their dispute. In that regard, it is more representative of the operation of a rule similar to that of Article 11 regarding the 'Replacement of an Arbitrator', than the autonomy of the parties to select an even number of arbitrators. Article 11(1), discussed later in this commentary, specifies that in the event that one of the originally appointed arbitrators no longer sits on the panel by reason other than resignation or removal due to challenge, 'the two other arbitrators shall have the power in their sole discretion to continue the arbitration and to make any decision, ruling or award, notwithstanding the failure of the third arbitrator to participate'. Even-numbered tribunals may lead to a more conciliatory, compromise-based award, but they may also lead to deadlock, as noted above. For that reason, parties should exert great caution in selecting such a number, as they may encounter problems in enforcement in some jurisdictions that nullify arbitrations conducted under even-numbered tribunals.[10]

5.05 National courts have also upheld the parties' rights to agree on the number of decision-makers. For example, in the US, lower court cases have often noted that the parties were free to reach an agreement on the number of arbitrators, prior to facing default provisions of institutional or national rules.[11]

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[8] *See eg* C Bühring-Uhle, 'The *IBM-Fujitsu* Arbitration: A Landmark in Innovative Dispute Resolution', 2 Am Rev Intl Arb 113 (1991).

[9] *See* RH Mnookin and JD Greenberg, 'Lessons of the *IBM-Fujitsu* Arbitration: Now Disputants Can Work Together to Solve Deeper Conflicts', 4 Disp Resol Mag 16 (1997/1998) (analysis by the two arbitrators in the dispute).

[10] *See eg* Egyptian Arbitration Law, art 15(2) ('the Tribunal must, on pain of nullity, be composed of an odd number'); Omani Arbitration Law, art 15(2) ('If there is a number of arbitrators, their number shall be odd, failing which the arbitration shall be a nullity').

[11] *See eg Ansonia Copper and Brass, Inc v AMPCO Metal SA and AMPCO Metal Inc*, 419 FSupp2d 186, 188 (D Conn 2006) (holding that the US Federal Arbitration Act, 9 USC s 5, applies by default because the parties to the dispute did not memorialize an agreement on the number of arbitrators, but

5.06 As to the timing of that determination, under Article 5 of the ICDR Rules (and other leading institutional rules), the parties can choose the number in their arbitration agreement; they can also agree upon the number after a dispute has arisen, but before an arbitration is commenced, or they can leave that determination to the discretion of the administrator. Thus, Article 5 of the ICDR Rules, similar to other institutional rules, leaves room for the parties to agree on the number of arbitrators after the dispute has arisen, which occurs frequently,[12] or even after the arbitration has commenced, as long as no tribunal has been constituted.

5.07 While parties are well advised to select the number of arbitrators in their arbitration agreement, they frequently do not. Although statistics from the ICDR are not available, one set of statistics regarding arbitrations under the ICC Rules showed that a mere quarter to a third of arbitration agreements polled actually selected the number of arbitrators.[13]

5.08 If the parties agree to the number of arbitrators, this agreement binds them like any other contractual commitment. Therefore a party can, in principle, not deviate from an earlier agreement (unless, conceivably, it contests the validity or conclusion of the arbitration agreement that *contains* the agreement on the number of arbitrators, in which case, it may be arguable that the agreement on the number of arbitrators was never validly concluded). In the absence of agreement, the parties are deemed to have left the determination of the number of arbitrators to the arbitral institution.[14]

B. Institutional appointment

1. Preference for three-member tribunal

5.09 Although parties remain free to agree to virtually any number of arbitrators, most parties prefer a three-member tribunal. Although statistics regarding ICDR arbitrations are not available, statistics from the ICC show that almost 60 per cent of all arbitrations involve three arbitrators.[15]

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also noting that the parties were free to choose the number of arbitrators); *Ore and Chemical Corp v Stinnes Interoil, Inc*, 611 FSupp 237, 240–41 (SDNY 1985) (holding that, because the parties have not otherwise agreed, the appointment of a sole arbitrator is appropriate).

[12] S Bond, 'How to Draft An Arbitration Clause (Revised)', 1(2) ICC Ct Bull 14, 20 (1990).

[13] Ibid.

[14] For the USA, *see Howsam v Dean Witter Reynolds, Inc*, 537 US 79, 84 (2002) (affirming the principle that questions of arbitrability are issues for judicial determination, as opposed to 'procedural question[s]' that grow out of the dispute and are presumptively not for the judge). Subsequent lower courts have applied *Howsam* to arbitrations conducted under the ICDR Rules for the *Howsam* proposition that the selection of arbitrators is a procedural aspect of arbitration. *See*, eg, *Municipality of San Juan v Corp para el Fomento Económico de la Cuidad Capital*, 597 FSupp2d 247, 249–250 (Civil No 03-1917 2008).

[15] 2006 Statistical Report, 18(1) ICC Ct Bull 5, 8 (2007).

5.10 The widespread preference for three arbitrators exists for several reasons. It is argued that such a choice facilitates a higher degree of quality in the award, in particular in cases that concern different legal areas and in which the arbitrators, due to their possibly different areas of experience and expertise, are able to complement each other in the decision-making process. With three arbitrators deliberating and discussing each other's approaches,[16] a three-member tribunal is vested with a powerful dynamic of internal quality control.[17] These deliberations can reduce the risk of misunderstandings, facilitate the use of more sophisticated expertise, and (as is generally the case with diverse panels) take account of the parties' different national and legal backgrounds, which in turn may make the award of the tribunal more acceptable to the parties.[18]

5.11 As Article 5 recognizes, these quality considerations offset some disadvantages associated with three-member tribunals—in particular the risk of higher costs and the potential for delay.[19] Further, parties are more likely to agree on the presiding arbitrator when the tribunal consists of three arbitrators, as opposed to the sole arbitrator, according to statistics from leading institutions.[20]

5.12 The major perceived advantage of appointing a sole arbitrator is the limitation that this places on the costs of the arbitration (with a sole arbitrator incurring by definition only about a third of the expense incurred by a three-member tribunal). It is argued that a sole arbitrator may also be able to resolve the dispute with greater speed, without the need to coordinate the busy schedules of three members on the panel.[21] Using a sole arbitrator is therefore said to have a significant impact in economic terms.[22] Beyond these considerations, a sole arbitrator also removes the risk of a party-appointed arbitrator employing delaying tactics and of the likelihood

[16] *See* WL Craig, WW Park, and J Paulsson, *International Chamber of Commerce Arbitration* (3rd edn, Oceana Publications, New York, 2000) 191.

[17] JP Lachmann, *Handbuch für die Schiedsgerichtspraxis* (3rd edn, Verlag Dr Otto Schmidt, Cologne, 2008) 208; there is a preference visible in common law countries to choose a sole arbitrator, whereas in civil law countries, preference is made to an arbitral tribunal. *See* J Lew, L Mistelis, and S Kröll, *Comparative International Commercial Arbitration* (Kluwer Law International, The Hague, 2003) para 10-10, commenting that a three-member tribunal also allows the appointment of arbitrators with particular scientific or technical knowledge when required (para 10-18).

[18] *See* Craig, Park, and Paulsson, op cit, 191; Lew, Mistelis, and Kröll, op cit, para 10-18.

[19] Lew, Mistelis, and Kröll, op cit, para 10-19.

[20] In 2003, the ICC statistics showed that, in more than 80 per cent of its cases, the parties failed to agree on the sole arbitrator. However, in cases in which the arbitration agreement called for three arbitrators, the parties agreed on the presiding arbitrator in 55 per cent of all cases. *See* '2003 Statistical Report', 15(1) ICC Ct Bull 7, 10 (2004).

[21] FT Schwarz and CW Konrad, *The Vienna Rules: A Commentary on International Arbitration in Austria* (Kluwer Law International, The Hague, 2009) para 14-004.

[22] *Report of UNCITRAL, on the Summary of Discussion of the Preliminary Draft, Eighth Session*, UN Doc A/10017, para 39, VIY.B. UNCITRAL 24, 29 (1975).

of an award created as a compromise between the interests of both parties.[23] These rationales led parties who choose ICC arbitrations to select sole arbitrators in about 40 per cent of arbitrations between 2001 and 2007.[24]

5.13 Reflecting these different considerations, there is significant debate about whether institutional rules should provide for one or three arbitrators by default, absent agreement by the parties. Requiring three arbitrators as a default in cases in which the parties cannot agree imparts a particular burden on a claimant who faces a non-cooperative or otherwise non-participating respondent. [25] In those cases, the claimant may be forced to front the full cost of three arbitrators—not an insignificant expense. However, mandating a sole arbitrator could arguably be considered to be stripping the parties of an arguably fundamental right to participate in the selection of the tribunal, which some consider to be a key aspect of arbitration.[26] The reports of the Working Group on the recently approved revisions to the 1976 UNCITRAL Rules evidence this tension in the appropriate default number of arbitrators, due largely to the concern that parties' confidence in the proceedings is rooted in their right to select their decision-makers—and thus necessarily the number of their decision-makers at the outset.[27]

5.14 One potential solution appears in the recently adopted 2010 UNCITRAL Rules, which maintain the old three-arbitrator default that was found in Article 5(1) of the 1976 UNCITRAL Rules (now Article 7(1) of the 2010 UNCITRAL Rules), but include a compromise that is designed to protect a claimant against uncooperative respondents. Thus, if the parties have not agreed upon a sole arbitrator, but one party has proposed a sole arbitrator and no other parties have appointed a second

[23] *See* Y Derains and EA Schwartz, *A Guide to the ICC Rules of Arbitration* (2nd edn, Kluwer Law International, The Hague, 2005) 147; Lew, Mistelis, and Kröll, op cit, para 10-11 ff; Craig, Park, and Paulsson, op cit, 190.

[24] '2001 Statistical Report', 13 (1) ICC Ct Bull 5, 9 (2002) (47 per cent of cases referred to a sole arbitrator); '2002 Statistical Report', 14(1) ICC Ct Bull 7, 10 (2003) (42 per cent of cases referred to a sole arbitrator); '2003 Statistical Report', 15(1) ICC Ct Bull 7, 10 (2004) (43 per cent of cases referred to a sole arbitrator); '2004 Statistical Report', 16(1) ICC Ct Bull 5, 8 (2005) (40 per cent of cases referred to a sole arbitrator); '2005 Statistical Report', 17(1) ICC Ct Bull 5, 8 (2006) (40 per cent of cases referred to a sole arbitrator); '2006 Statistical Report', 18(1) ICC Ct Bull 5, 8 (2007) (42 per cent of cases referred to a sole arbitrator).

[25] J Levine, 'Current Trends in International Arbitral Practice as Reflected in the Revision of the UNCITRAL Arbitration Rules', 31 UNSW Law J 266, 273 (2008).

[26] *See* GB Born, *International Commercial Arbitration* (Kluwer Law International, The Hague, 2009) 1,349; cf J Paulsson, 'Moral Hazards and Wishful Thinking', Lunch Presentation, 21st Annual ITA Workshop, *Commencing an International Commercial Arbitration: Fundamentals and Strategy*, 17 June 2010 (Dallas, Texas). Paulsson instead suggested that institutions such as the ICC, LCIA, and ICDR should be charged with the task of selecting arbitrators, because they are better suited to assessing qualifications for selecting impartial and independent arbitrators, which would avoid such issues as parties appointing from the same limited pool of well-known, increasingly busy (and therefore slow, unavailable, or overwhelmed) individuals.

[27] Levine, op cit.

arbitrator, then the appointing authority may appoint a sole arbitrator at the request of any party, pursuant to the list procedure.[28]

5.15 The newly adopted compromise position in the 2010 UNCITRAL Rules seems to cement a shift in modern arbitration rules toward the default of a sole arbitrator. For example, the ICC Rules call for the default of a sole arbitrator unless facts warrant the appointment of three arbitrators.[29] Similarly, the LCIA Rules provide for a sole arbitrator by default, with the LCIA taking into account the special circumstances of the case.[30] The ICDR Rules are interesting in that, despite the various revisions undertaken,[31] they continue to reflect the structure and track the language of the 1991 AAA International Arbitration Rules, which were modelled on the 1976 UNCITRAL Rules. Yet the AAA abrogated the 1976 UNCITRAL Rules on the issue of sole versus three arbitrators by giving preference to a sole arbitrator by default in smaller cases, in an attempt to embrace a cost-effective approach to constituting the tribunal.[32]

2. Default of a sole arbitrator

5.16 Even though parties often agree on the number of arbitrators and increasingly prefer three-member tribunals, institutional rules typically provide for a fallback solution if there is no consent on the number of the arbitrators, and the ICDR Rules are no exception. The default provision captured in Article 5 strives for efficient, cost-effective arbitrations associated with sole arbitrators, yet reserves sufficient flexibility to account for complex cases.[33]

5.17 Indeed, statistics show that parties to higher-value or more complex disputes show a strong preference for three-member tribunals. Some institutional rules take this preference expressly into account; in contrast to the ICDR Rules, which permit some discretion as to whether one or three arbitrators will be chosen in the absence of party agreement, several other institutions explicitly call for the dispute to be decided by three arbitrators absent party agreement.[34]

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[28] UNCITRAL Rules, Art 7(2) (2010).

[29] ICC Rules, Art 8.2 provides, in relevant part, '[w]here the parties have not agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, save where it appears to the Court that the dispute is such as to warrant the appointment of three arbitrators'.

[30] LCIA Rules, Art 5.4 provides, in relevant part, '[a] sole arbitrator shall be appointed unless the parties have agreed in writing otherwise, or unless the LCIA Court determines that in view of all the circumstances of the case a three-member tribunal is appropriate'.

[31] *See* above at para 1.61 ff.

[32] Levine, op cit, 273.

[33] The balance is struck by reserving the right in the ICDR administration to consider the facts of the dispute and TO choose to appoint three arbitrators where appropriate. *See* ICDR Rules, art 5.

[34] ICSID Convention, Art 37(2)(b); Stockholm Chamber of Commerce Arbitration Rules (SCC Rules), Art 12 ('The parties may agree on the number of arbitrators. Where the parties have not agreed on the number of arbitrators, the Arbitral Tribunal shall consist of three arbitrators, unless the Board,

5.18 Other rules introduce a specific threshold to determine whether a dispute should be heard by one or three arbitrators. For example, the AAA Commercial Rules delineate the number of arbitrators by default based on the amount of the claim, under the Supplemental Procedures for Large, Complex Commercial Disputes. These rules call for either one or three arbitrators in claims that exceed US$500,000. If, however, the claim exceeds US$1 million, the rules require a default of three arbitrators to determine the case.

5.19 Article 5 of the ICDR provides for a sole arbitrator as a default, absent party agreement. Unlike the AAA Commercial Rules, it does not contain a fixed threshold, but allows the administrator to deviate from the default if he determines that three arbitrators are appropriate 'because of the large size, complexity or other circumstances of the case',[35] conferring upon the ICDR administrator the discretion to tailor the size of the tribunal to the particular dispute.[36] In reality, the ICDR administrative staff has assumed that the conditions of Article 5 referring to the 'large size, complexity or other circumstances of the case' are met, and a three-member panel is appropriate, if the claim exceeds US$1 million—a practice that aligns with parties' increasing preference for three-member tribunals[37] and parallels the AAA Commercial Rules under the Supplemental Procedures for Large, Complex Commercial Disputes, which, as discussed, create a threshold amount in dispute of US$1 million for a three-member tribunal.[38]

5.20 The default of one arbitrator in Article 5 is unsurprising if one considers the history and provenance of the ICDR Rules, which developed in the US. The US FAA provides for the default of a sole arbitrator as well in section 5, which reads 'unless otherwise provided in the agreement the arbitration shall be by a single arbitrator'.[39] In turn, lower US courts have upheld the appropriateness of a sole arbitrator to

taking into account the complexity of the case, the amount in dispute or other circumstances, decides that the dispute is to be decided by a sole arbitrator').

[35] ICDR Rules, Art 5.

[36] MF Hoellering, 'The Role of the International Arbitrator', in T Carbonneau and J Jaeggi (eds) *American Arbitration Association: Handbook on International Arbitration and ADR* (JurisNet, Huntington, NY, 2006) 87. The UNCITRAL Model Law and the ICC model clause adopt the same approach.

[37] J H Carter, 'The Selection of Arbitrators', in JH Carter and J Fellas (eds) *International Commercial Arbitration* (Oxford University Press, New York, 2010).

[38] The observation that the ICDR administrative staff invokes a similar procedure is unsurprising, because the ICDR Rules developed as a corollary to the AAA Commercial Rules and undoubtedly cover both high-value, complex international disputes and also smaller, simpler international cases. Due to the similarities in interpretation, analogies can be made to US court decisions interpreting the AAA Commercial Rules on the probable outcome of litigation under the ICDR Rules.

[39] 9 USC s 5 provides:

> If the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, . . . then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been

decide even international disputes when the agreements contained no provision for the appointment of arbitrators. For example, in one reported case from New York, the parties did not provide for the number of arbitrators by agreement. In fact, even after the court ordered the parties to reach an agreement or accept the AAA's appointment, the parties still could not agree on the number of arbitrators. One party requested that the court appoint a sole arbitrator, appealing to concerns of cost, efficiency, and consistency in the consideration of evidence. It argued that 'a single arbitrator . . . would be readily able to consolidate the arbitrations without needing to add a chairman and would also provide the salutary benefits of consistency in interpretation of fact and testimony'.[40] The other party, however, sought a three-member panel, with each party choosing one arbitrator and those two selecting the third. The court found the arguments for a three-member tribunal unpersuasive in lieu of section 5 of the US Federal Arbitration Act (FAA), which compelled arbitration by a single arbitrator.[41]

5.21 At least in the USA, the ICDR's discretion in determining the number of arbitrators is not subject to review by the courts. Thus, a US appellate court rejected an appeal in which the parties contested the issue of whether the ICDR had correctly determined the number of arbitrators and whether one arbitrator or three was appropriate to preside over the dispute.[42] Considering that the dispute was governed by the AAA's Procedures for Large, Complex Commercial Disputes—that is, additional procedures for disputes under the AAA that exceed US$500,000 in claim value[43]—the court held that '[t]he parties have agreed that arbitrator selection should follow the rules and procedures of the American Arbitration Association, and the number of arbitrators is a procedural question to be answered *exclusively* in that forum'.[44] Therefore, the court refused to engage in a *de novo* review and did not entertain the arguments regarding the appropriateness of three versus one arbitrator. The ICDR's discretion to determine the number of arbitrators absent party agreement was also upheld in another line of cases. For example, when one party sued to compel the ICDR to appoint three arbitrators instead of one, a lower US court

specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

It appears that this provision applies to domestic, as well as international, arbitrations, and thus is subject to the New York and Inter-American Conventions. Even so, the FAA arguably permits the court to take into account the practice of other leading jurisdictions, as a measure of judicial discretion. *See* GB Born, *International Commercial Arbitration* (Kluwer Law International, The Hague, 2009) 1,361, fn 56. Other rules also provide for one arbitrator as a rule, but leave it to the institution to appoint three arbitrators where the circumstances so require. *See eg* LCIA Rules, Art 5(4); ICC Rules, Art 8(2); SCC Rules, Art 12.

[40] *Ore and Chem Corp v Stinnes Interoil, Inc*, 611 FSupp 237, 239 (SDNY 1985).

[41] Ibid, 240–41.

[42] *Dockser v Schwartzberg*, 433 F3d 421, 426 (4th Cir 2006).

[43] Available online at <http://www.adr.org/sp.asp?id=22440> [accessed 14 July 2010].

[44] *Dockser v Schwartzberg*, 433 F3d 421, 426 (4th Cir 2006).

refused, holding that the selection and number of arbitrators is a procedural decision that must have an arbitral, rather than judicial, resolution.[45] The arbitration clause did not specify how the parties would choose the arbitrators; instead, it stated:

> In the event any controversy arises between the parties with regard to their responsibilities and obligations under this contract, said differences shall be resolved by arbitration. The parties should mutually agree to consent to the designation of an arbitrator and shall become obligated by his decision.[46]

Because the agreement promoted arbitration and made no mention of domestic courts, the court deferred to the ICDR to determine the number of arbitrators.

[45] *Municipality of San Juan v Corp para El Fomento Económico de la Cuidad Capital*, 597 FSupp2d 247 (Civil No 03-1917 2008), applying *Howsam v Dean Witter Reynolds, Inc*, 537 US 79 (2002) to ICDR Rules.

[46] Ibid, 249.