INSTITUTE FOR THE PROMOTION OF ARBITRATION AND MEDIATION IN THE MEDITERRANEAN

الغرفة الجزائرية للتجارة و الصناعة
Chambre Algérienne de Commerce et d'Industrie

CCAT
مركز تونس للمصالحة والتحكيم
Centre de Conciliation et d'Arbitrage de Tunis

MILAN CHAMBER OF ARBITRATION

iTOTAM

Lebanese Arbitration Center

Cour Marocaine d'Arbitrage

REPORT ON ARBITRATION COSTS

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ABBREVIATIONS

Centres

CACI - Centre for Arbitration and Conciliation of the Algerian Chamber of Commerce and Industry
CAM –Chamber of Arbitration of Milan
CCAT – Arbitration and Mediation Centre of Tunis
CMA – Arbitration Court of Morocco
CRCICA – Cairo Regional Centre for International Commercial Arbitration
ITOTAM– Arbitration Centre of the Istanbul Chamber of Commerce
LAC – Lebanese Arbitration Centre

International conventions, laws, surveys as mentioned in the Rules Comparison Chart and/or in the present Report

NY Convention - Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 10 June 1958

UNCITRAL ML – United Nations Commission on International Trade Law Model Law on International Commercial Arbitration, 1985, with amendments as adopted in 2006

UNCITRAL Rules - United Nations Commission on International Trade Law Arbitration Rules, 1976, as revised in 2010

ICC Techniques – International Chamber of Commerce Commission Report, Techniques for Controlling Time and Costs in Arbitration, second edition 2012

QM Surveys – 2012-2013-2015 International Arbitration Surveys undertaken by Queen Mary University of London and School of International Arbitration, sponsored by White&Case

ISPRAMED language

ISPRAMED – Institute for the Promotion of Arbitration and Mediation in the Mediterranean

Methodology – Operational pattern agreed upon by the Centres in order to define the common practice in the administration of arbitrations in the Mediterranean area

MOU – Memorandum of Understanding signed by the Centres as members of the Network with the intent to promote arbitration and mediation in the Euro-Mediterranean area and to define shared and common principles

Foreword

The basic purpose of the present Report is to merge in a few principles and practices the data and information collected by ISPRAMED among the Centres of the Network on the issue of costs of arbitration proceedings.

The Centres have been prompted to liaise with ISPRAMED on their own arbitration rules as well as on their experience on practical circumstances which deals with costs of arbitration.

The principles and practices so far collected on the issue, thanks to the contributions of all the members of the Network[1], allow ISPRAMED to illustrate the standards that the Centres generally apply in the cases they administer, when it comes to managing the costs of the procedure.

Hence, they represent a shared view of the good administration of arbitration procedures in the Mediterranean area as far as such costs are concerned.

In the process of elaborating the common principles and practices, ISPRAMED has presented a draft which has circulated among the members of the Network. The comments received by the Centres have generally supported the draft report and have been used to arrange it when necessary.

Therefore, in accordance with the goals set forth in the MOU, such principles, as listed in the present report, are hereby acknowledged by the Centres as general standards, being endowed with a certain binding character. The Centres undertake to abide by such principles in their everyday activity in order to ensure a top-notch service as well as cost effective cases.

Accordingly, such principles may provide guidance and help in the decision-making process of institutions dealing with cases which raise doubts as to costs management. Additionally, they offer guidance to international arbitration users, who are able to know beforehand the positions of the Centres on critical issues of arbitration.

Last but not least, such principles and practices are consistent with the international arbitration practice and able to accommodate the legal and cultural differences in the Mediterranean area.

[1] CMA, ITOTAM, CCAT, CRCICA, CACI, LAC, CAM

Rules Comparison Chart on arbitration costs[2]

When it comes to institutional arbitration, costs generally include the fees of the arbitrators, the institution's fee, the fees of the tribunal appointed expert (if any) as well as any expenses borne by those players. These are called procedural costs.

Parties' costs, i.e. lawyers' fees are not taken into account here, as they are not managed by institutions, hence they fall outside the scope of the present report. As far as parties' costs are concerned, suffice it to say that – as explained elsewhere (ICC Techniques) - those costs (lawyers' fees and expenses, expenses related to witness and expert evidence, and other costs incurred by the parties for the arbitration) make up the bulk (83% on average) of the overall costs of the proceedings.

As we will see, it is such fees that may be indeed responsible for criticism recently raised above the costs of arbitration.

In institutional arbitration, managing and determining the above mentioned costs are typically (and solely) upon arbitral institutions, as there is no room for arbitrators to bargain with the litigating parties for their fees. Arbitral institutions have to perform the cost-calculation task in accordance with their rules and in good faith.

In so doing, institutions may use either an *ad valorem* criteria or an hourly based standard. In the former case, the institution charges the costs taking into account the value of the dispute, to be intended as the sum of the claims filed by all the parties (therefore, the aggregate amount of all claims and counterclaims). As for the latter, determination of arbitration's costs is made pursuant to a time-based method, which considers the time spent on the case.

The issue of costs has become crucial in international arbitration over the last decade; complex and large claims, which have been on the rise in the last years, seem to be the main explanation for the high cost of arbitration. Also, judicialisation of arbitration – to be intended as excessive formality of proceedings and their similarity with litigation - has been pointed out as one of the reasons for costs' escalation.

So that the need is felt to focus on cost efficiency in arbitration.

In fact, costs management can be seen as the other side of the coin of arbitration procedural flexibility: the tailor-making of the arbitral procedure – which is primarily upon the parties and their counsels - has to serve the purpose of making the costs of arbitration proportionate to the needs and peculiarities of the given case.

This is all the more so nowadays, when costs escalation has caused a sort of discontent in the arbitration community. Several studies and statistics showed that, across all sectors, costs were a very important issue, as arbitration is often considered to be more costly than other available alternatives (2013 QM survey). Also, very recently costs have been seen as international arbitration's worst feature (2015 QM survey), being by far the most complained of characteristics. There is also a call for improvements and innovations to address issues concerning, most of all, the cost and speed of arbitrating. The procedural innovation perceived as most effective at controlling time and cost in international arbitration is a requirement for tribunals to commit to a schedule for

[2] Annex no. 1

deliberations and delivery of final awards (2015 QM survey).

Other studies (ICC Techniques) provided valuable indication into where costs are incurred in arbitration. As above recalled, such circumstances are typically those where lawyers are involved, whereas institutional fees and arbitrators' fees enjoy a reasonable degree of predictability and may be subject to accurate estimation.

Notwithstanding this, the Network believes that it is also the institutions' responsibility to face such discomfort. They may play a role in costs' mitigation, by possibly promoting the conduct of proceedings in an efficient and expeditious manner.

Focusing on the comparison between the provisions of the Centres' arbitration rules on costs, the chart shows that most of the institutions of the Network ask for a registration fee upon filing the notice of arbitration (art. 43 CRCICA; art. 7 CACI; art. 2.3 CMA; art. 8.2 ITOTAM; art. 3 lett. b Appendix III LAC), which is usually non-refundable and is credited towards the deposit of the party filing the Request. The only institution of the Network which clearly does not provide for a filing fee is CAM.

The payment of the filing fee is a pre-condition for the proceedings to start, hence, failing such payment, the Secretariat of the institutions would not proceed with the notification of the request for arbitration to the respondent(s). The same may hold true for the respondent filing a counterclaim, although a few institutions specify it (art. 43 CRCICA; art. 13 ITOTAM).

It may be opined whether setting a filing fee may be fair and appropriate as regards access to justice; however, the point is that the institutions of the Network charge a flat filing fee which is reasonably cheap (the most expensive amount being around 1,000$).

As a consequence, gaining access to arbitration in the Mediterranean area does not appear to be difficult for entrepreneurs and litigating parties in general; at the same time, the institutions of the Network see their right to get paid for setting in motion the proceedings granted and assessing whether they manifestly lack jurisdiction over the dispute and or the parties.

Also, as above said, it should be noticed that the payment of the filing fee is usually credited to the party's portion of the arbitration costs (art. 3 lett. c LAC; art. 2.3 CMA), so that the registration fee seems to be a down-payment of the overall arbitration expenditure.

A milestone in the cost-related functions of the institutions of the Network is the method of calculation of the arbitration costs. Such method, for all of them, is based on the value of the dispute, which means that a tight connection is drawn between the amount in dispute and the costs of the proceedings, both for the institutions' and the arbitrators' fees (artt. 44.1 and 45.1 CRCICA; art. 26 CCAT; art. 8.2 Annex II ITOTAM Regulation on arbitration costs; art. 35.1 and Annex A CAM; Annex II CMA; art. 9 and Appendix III LAC). The fact that all the institutions of the Network calculate the fees on an ad valorem basis accords with the international arbitration practice, where the value of the dispute is the most used standard.

In practice, when receiving the request for arbitration and the statement of defence with a counterclaim, the Secretariat of the institution is usually in charge of the determination of the overall value of the dispute, by adding all claims submitted by the parties.

As for the specific criteria, a few institutions clarify how they determine, in practice, the value of the dispute. It may be the aggregate value of all (primary) claims, counterclaims and set offs (Art.

44.2 CRCICA; art. 11 Appendix II LAC) whereas in other Centres a set-off claim is considered only in case it exceeds what has been claimed by the other party (art. 5 Annex A CAM). This last Centre appears to be the only one enjoying a high degree of detail when describing the different criteria used by the institution in the determination of the value of the dispute (Annex A, CAM), together with ITOTAM, which has lately introduced in the Rules many provisions that temper the straight application of the ad valorem method (Annex II, art. 4-5-6).

The ad valorem standard ensures great transparency and predictability in the determination of arbitration costs: by resorting to the schedule of fees of the institution, the parties know beforehand the cost of the proceedings; at the same time, contrary to what would happen with a time-based method of calculation of costs, the arbitrators would not enjoy any interest in the length of the proceedings.

However, despite the fact that such method appears to be clear-cut and unambiguous, sometimes the determination of the amount in contention may be problematic: we will see that the institutions of the Network may determine the sum at stake on a case-by-case basis, by integrating the ad valorem standard with other factors.

Also, the determination of the value of the dispute, made by the institution right at the outset of the proceedings, may be subject to further review, due to a change in the economic value of the claims submitted by the parties, which in turn has a bearing on the advance on costs set by the institution (art. 44.2 and 45.2 CRCICA; art. 37.2 CAM; art. 6.1 CMA; art. 42.3 ITOTAM and art. 8.5 Annex II).

It is however crucial to our analysis to understand what the term costs usually includes in arbitration proceedings managed by the Centres of the Network: it is important to find out whether the Centres share the same view about what is covered by the arbitration costs.

Here there is a widespread position according to which the arbitration costs include a core comprising the fees of the institution (administrative fees), the fees of the arbitrators, the fees of the expert (if any) and the expenses borne by all those players (in addition to the registration fee for those Centres providing for it) (art. 36.4 CAM; art. 41.1 and 41.2 ITOTAM; art. 6.5 CMA; art. 20.2 LAC; art. 42 CRCICA).

Arbitrators' fees and administrative fees only are taken into account by the Rules of one Centre (art. 25 and 26 CCAT).

However, it is interesting to see how a few Centres deal with arbitration cost in a more thorough way, as they do consider other fees coming under the costs of arbitration. CRCICA adopts a wide definition of arbitration costs, as including not only the above mentioned categories of fees (institution/arbitrators/tribunal appointed experts) but also the reasonable travel and other expenses of witnesses as approved by the arbitral tribunal, the legal and other costs incurred by the parties in relation to the arbitration as deemed reasonable by the arbitral tribunal, and any fees and expenses of the appointing authority in case the Centre is not designated as the appointing authority (art. 42.2).
Also, ITOTAM and LAC Rules are along the same lines, given that arbitration costs include also reasonable legal and attorney fees (art. 20.3 LAC) as well as other costs for the arbitration incurred by the parties during the arbitral proceedings (art. 41.2 ITOTAM).

The point with the adoption of a more complete definition of arbitration costs is about clearly establishing who would be in charge of the decision on costs, for all the items thereby included,

namely the arbitrators for some of them and the institution for the remaining parts. It may be inferred from the Rules of the Centres that their technical body would fix the fees of the arbitrators, the institution and the expert (if any), whereas the arbitrators may (or should) fix in the award the legal costs incurred by the parties, deciding also on the allocation of the total amount.

As for the mechanism of payment, costs management is dealt with by the Centres roughly in the same way: the Rules of the Centres all provide for an advance payment to be paid by both the claimant and the respondent in equal shares within the time limit set by the institution, presumably soon after the parties have submitted their opening briefs (request for arbitration and statement of defence) (art. 47.1 CRCICA; art. 42 ITOTAM and art. 8.2 Regulation on arbitration costs; art. 37.1 CAM; art. 9 LAC; art. 6.1 CMA; art. 24 CCAT).

Such advance payments serve the purpose of allowing the Centres to cover part of the arbitrators' and the institution's fees in exchange for the obligations they perform/fulfill as the arbitration unfolds.

The obligation of the parties to pay the institution's and arbitrators' fees stems from the arbitration agreement they agreed upon, where there is a clear reference to the institution's rules.

In the practice of the single Centre the measure of the advance payment asked to the parties may differ, although the purpose is usually to make it proportioned to the work done and to be done. Therefore, most of the Centres do not appear to ask for the payment of the entirety of the fees right at the outset of the arbitration; rather, they usually determine - at their own discretion (based on the circumstances of the case) - the percentage of the whole amount of arbitration costs to be paid as a down-payment.

The benchmark is the schedule of fees attached to the rules of each Centre, where usually there is a minimum and a maximum amount for each slice of sum in dispute.

Under CRCICA Rules, the parties are requested to pay the entirety (rather than an advance on costs) of the administrative and arbitrators' fees at the outset upon the commencement of the proceedings. Such costs are calculated based on the amount in dispute. However, as we will see, further costs may be required in cases where the amount in dispute increases due to an increase in the amount of the claims or counterclaims. For instance, if the amount in dispute is US $ 3,000,000, the parties shall be requested to pay at the outset the entirety of the costs amounting to US $ 57,000.

As above explained, all the Centres ask the parties to pay the advance payment in equal shares, so that each of them bears the same burden as the arbitration progresses; it goes without saying that the Rules of the Centres actually tackle the case of failure of payment, as we will further see.

The advance payments may not be the only instalment of arbitration costs asked by the Centres to the parties in the course of the proceedings, as the parties may be directed to pay additional advances, before the final balance of costs (art. 6.1 CMA; art. 2 lett. g Appendix III LAC; art. 42.3 ITOTAM and art. 8.5 Annex II ITOTAM; art. 35.2 CACI; art. 37.2 CAM).

This may be triggered by different factors, like a change in the value of dispute, the appointment of experts, discovery during the taking of evidence, rendering of interim awards, expenses borne by the arbitrators and the like. All these occurrrences may lead the Centres to ask the parties to increase their financial commitment.

The last step of the costs management function concerns the final determination of the arbitration costs before the final award is rendered. Again, the decision always rests with the Centres, usually their technical body (Court of Arbitration or Arbitral Council) is in charge of it (art. 25 and 26 CCAT; art. 44 and 45 CRCICA; art. 8.5 ITOTAM; art. 36.1 CAM; art. 35.1 CACI which makes reference to the Secretariat; art. 6.5 CMA; art. 20.2 LAC), based on the ad valorem method above illustrated. An institution specifies it in the Rules that the parties are provided with a balance notice, requiring them to make the final payment within a given time limit (art. 37.3 CAM).

It is manifest that when there is an institution administering the case, the arbitrators cannot – either directly or indirectly – enter into agreements with the parties with respect to their fees or the arbitration costs in general: this is a tenet for the Centres of the Network, which can be easily deduced from the costs regime governed by the Rules, although a few of them expressly state it (art. 45.11 CRCICA; art. 12 Code of Ethich CAM; art. 1.4 Annex II ITOTAM).

As for side criteria used by the Centres for the determination of arbitration costs, apart from the value of the dispute, the Centres are quite aligned indeed, as they complete the ad valorem standard with the consideration of other factors, such as the work done by the arbitrators, the complexity and time length of the procedure and the seat of the arbitration (art. 25 CCAT; art. 36.6 CAM; art. 20.3 LAC and art. 13 Appendix II LAC).

Also, in case the dispute cannot be appraised by a monetary value, the determination of the costs is made by the arbitration court, which may substitute the ad valorem method with a determination in equity or with the evaluation of other issues (art. 7 Annex A CAM; art. 1.3 Annex II ITOTAM; art. 2 Appendix III LAC; art. 44.3 and 45.3 CRCICA).

It goes without saying that the parties to the proceedings jointly bear the burden of paying the costs of arbitration, in equal shares, as above said: this accords with the experience of all the Centres.

However, most of the Rules of the Centres provide for an exception to the "equal shares" rule: in some cases, the Centres allow for a division of the value of the dispute, by splitting the claims introduced by the claimant and the counterclaims raised by the respondent (art. 35.3 and art. 37.4 CAM; art. 42.4 ITOTAM; art. 24 CCAT; art. 6.2 CMA; art. 9.1 LAC). CRCICA puts this decision on the parties or the arbitrators (art. 47.1), but for all the other Centres the decision rests with the institution.

In such a case there is not a cumulated value of dispute but rather each party pays their own costs and expenses as related to the claim submitted: therefore, the ratio is not 50/50.

The option of the division of the value of the dispute makes even more responsible the parties for what they claim: exhorbitant or frivolous claims would be avoided.

When deciding upon the division of the dispute value, in the course of the proceedings, the Centres examine the case and its peculiarities: this works at its best when there is a clear disproportion between claim and counterclaim; also, the Centres may tend to divide the value of the dispute as a means of overcoming deadlock situations (e.g. lack of payment).

As the division of the value of the dispute might increase the overall arbitration costs, a Centre has provided in the Rules for a capped fee mechanism: accordingly, in case of division of value, the administrative fees and the fees of the arbitrators may not exceed the maximum of the fees determined on the basis of the cumulated value of the dispute (art. 35.4 CAM).

When it comes to the allocation of arbitration costs between the parties, all the Centres of the Network step down: determining who shall bear the costs of the procedings is for the arbitrators only, who will decide in the award (art. 41.4 ITOTAM; art. 24 CCAT; art. 55 CACI; art. 17 CMA; art. 20.1 LAC; art. 46 CRCICA; art. 36.2 CAM).

The costs follow the event rule is adopted as a standard rule by a few Centres (art. 24 CCAT; art. 46 CRCICA), although the arbitrators are always free to apportion the costs in a different way.

What happens if the parties do not fulfill their contractual obligation to pay their share of arbitration costs in the course of the proceedings? The Rules of the Centres all provide for similar mechanisms of supervision over the parties' duty to make the advance or the final payments.
As a matter of fact, the Centres ask the parties to make payments in equal shares, or related to their individual claims, setting specific time limits. When one of the parties does not make the requested payment within the time limit – and there is a cumulated value of dispute – the other party is directed to make a substitute payment (given that the parties are jointly liable for the arbitration costs).

Depending on the stage of the proceedings, lacking the payment, the Centre may react in different ways: the file is not transmitted to the arbitrators, the claim (or counterclaim) is considered withdrawn (in case of a division of value of the dispute), or the entire proceedings may be suspended and later on terminated (art. 36 CACI; art. 6.3 CMA; art. 10 Appendix II LAC; art. 24 CCAT; art. 47 CRCICA; art. 38 CAM; art. 11 and art. 42.6 ITOTAM).

Whatever the reaction, the Centres' provisions are a clear consequence of the parties' mutual obligation to bear the costs of the proceedings as directed by the Centres, given their acceptance of the Rules as referred to in the arbitration agreement.

Focusing on the way of payment of arbitration costs, very rarely the Rules of the Centres expressly state how the parties shall pay their share of costs. In the practice of the Centres, bank cheque and/or bank transfer are the most used way of payment, but also cash is accepted in a couple of institutions.

Finally, as for guarantees concerning the payment of arbitration costs, none of the Centres of the Network provides for security for costs, as an order by a competent court or tribunal requiring one of the party, (usually a claimant) to provide security for the costs of its counterparty in the event that its claim is unsuccessful.

However, a Centre may accept a bank or insurance guarantee if a party submits a motivated request (art. 37.6 CAM). This is a brand new provision, first introduced with the 2010 revision of the Rules and it serves the purpose of allowing an economically weaker party to access to arbitration.

PRINCIPLES

1. Definition of arbitration costs

The Centres of the Network advocate a clear-cut definition of arbitration costs, to be centered around a few main items: fees and expenses of the institution, fees and expenses of the arbitrators, fees and expenses of the tribunal appointed expert (if any). However, if a wider definition of arbitration costs is endorsed in the Rules, the Centres undertake to make it clear for arbitration users who is in charge for fixing different items of costs, either the institution or the arbitrators, each following a specific predetermined pattern.

2. Criteria for determining arbitration costs

All the Centres of the Network agree on the application of the ad valorem method of calculation of arbitration costs. The value of the dispute is therefore regarded as the most reliable standard, also helpful in making the parties responsible for their behavior and mitigating costs. Such system is not affected by the position of a few Centres asking the claimant (and/or the defendant submitting a counterclaim) to pay a flat amount at the beginning of the proceedings (registration fee). The ad valorem standard may, however, be adapted by some Centres to fit the circumstances of the single case, by taking into account other complementary factors, such as the complexity of the dispute, the work done by the arbitrators, the rapidity of the procedure, etc..

Finally, the Centres (secretariat or technical body) are in charge for the overall determination of the arbitration costs for each proceedings they manage.

3. How the arbitration costs are paid

Once the value of the dispute has been determined by the Centre, the parties are requested to pay the arbitration costs in equal shares, except for the case where a division of value is opted for by the institution facing different claims submitted by claimant and defendant.

The payment of the first instalment of costs (advance on costs) is a precondition for the proceedings to start and for the arbitrators to get involved in the case; however, the Centres may ask for further advances, due to any fluctuation of the value of the dispute or to developments of the disputed matter.

4. Failure to pay

The Centres of the Network recognize that arbitration is a form of private justice paid by the parties: the parties of the dispute are jointly liable for the costs generated by the proceedings. If a party does not pay its share of costs, the Centres direct the other to make a substitute payment; failure to pay by both parties may lead to the suspension or termination of the proceedings.

In case a division of value of the dispute has been set forth by the Centres, the claim for which the costs are not paid in the end is deemed to have been withdrawn.

5. Allocation of costs

The Centres of the Network acknowledge the broad discretion arbitrators have in dealing with apportionment of arbitration costs in the award; accordingly, they generally do not provide any guidance regarding cost shifting.

However, in the practice of the Centres, the reimbursement of costs in favor of the prevailing party ("costs follow the event" rule) may be the most recurring paradigm in the tribunal's rulings on costs.

COMMON PRACTICES

The goal of the present report is to study the principles of arbitration costs as well as their practical applications by the members of the Network. Thus, along with a few principles, defining the position of the Centres towards the above mentioned issues, the report illustrates the actual practices of the same institutions on cases concerning arbitration costs.

As above said, the escalation of costs has generated growing discontent in international arbitration; the need is therefore felt to optimize cost efficiency, as a means of addressing those concerns and maintaining arbitration legitimacy (especially in the Mediterranean area).

Therefore, the Centres believe that harmonization of good practices on costs management allows certainty, reliability, hence a climate of trust among arbitration practitioners and users.

The Centres have established and shared the meaning and scope of the costs management function; also they have defined and discussed some problematic cases dealing with arbitration costs. Each institution is expected to react to each of these cases to the extent allowed by the respective rules, in an effort to control costs in arbitration. However, the Centres endeavour to take into account the practice and position of the majority of the Centres, in the following cases.

CASES

The Centres have shared a non-exhaustive list of practical examples which are likely to occur in the administration of arbitration procedures. The Centres undertake to follow the most recurring relevant decisions on arbitration costs when confronted with such circumstances in the real practice.

1. *The parties in the arbitration agreement expressly state that they are bound by a schedule of fees other than that of the institution administering the case.*

Each member of the Network determines the costs of the proceedings according to a schedule of fees based on the value of the dispute, a scale whereby specific amounts of arbitration costs match with different slices of the sum in dispute. This is an essential tool for the institution administering the case as it serves the purpose of defining how each Centre fix the costs of the proceedings. However, the schedule should not be seen as an operational instrument only: the schedule of fees is part and parcel of the system of principles and features of a particular arbitral institution. Costs management through a schedule of fees is crucial in institutional arbitration, therefore it is hard to strike a balance between the public policy of the Centres on the issue and the will of the parties to freely shape the arbitration costs function. Proposed amendments by the parties should certainly pass the consistency test with the provisions of the rules concerning costs. In their everyday practice, a few Centres grant the parties a certain degree of flexibility: the parties are therefore allowed to have the case administered by the chosen institution but with the application of a "self-made" schedule of fees. CRCICA faces such situation in ad hoc arbitrations, where the parties agree upon the involvement of the institution at a later stage, after the execution of the contract and before the proceedings start. ITOTAM position is also along similar lines, although the institution makes sure that the administrative and arbitrators' fees do not drop under a certain level, the threshold being the minimum of ITOTAM's Tariff on arbitration costs and fees.
No such experience has been enjoyed by LAC; however, the reaction of the Centre would be the acceptance of the fees of the arbitrators, provided that they are most favorable than the fees of the Centre.

CMA did not experience such a situation, whereas CAM usually invites the parties to accept the fees and the system of cost provided by its rules. If the parties decline this invitation, CAM may refuse to administer the arbitration proceedings.

2. *In the same way as in case 1, the parties in the arbitration agreement state that they will handle the economic aspects of the case directly with the arbitrators, regardless of the institution administering the case.*

As above recalled, in institutional arbitration the costs management function is solely for the institution, which directly handles the entire spectrum of the cost-related activities, from the filing of the request for arbitration to the rendering of the award.
The experience and the Rules of the Centres both mirror such assumption, given that direct and indirect arrangements on fees and expenses between the parties (or their counsel) and the arbitrators are generally forbidden (art. 12, Para. 1 Code of Ethics CAM; art. 1.4 ITOTAM Regulation on Arbitration Costs; art. 45.11 CRCICA). If the parties do not accept the Rules on cost and the fees provided by the institution, the institution may refuse to administer the arbitration proceedings (CAM). Also LAC does not allow any direct financial relation between the parties and the arbitrators.
Such position may be deemed as a further bulwark against the risk of lack of independence and impartiality of arbitrators.

3. *The institution makes a prima facie determination of the value of the dispute, hence of the costs to be paid, but the party(ies) contest the former determination.*

Determining the value of the dispute is a crucial task in institutional arbitration, sometimes turning into a thorny issue for the institution administering the case. This induces the Centres to take full care in carrying out such a function, so that the determination is appropriate and correct. Some of the Centres offer on their website to arbitration users a useful application, a costs calculator, by which the parties get to know beforehand their financial exposure for the arbitration to come (CRCICA; ITOTAM). Also, the Rules of the Centres request the parties to state the value of their claim directly in their briefs, so that the costs fixing function is managed accordingly.
However, if a disagreement arises, the Centre may take into consideration any comments of the party(ies) and peruse their briefs in order to confirm or to change its former determination; also, soon after the constitution of the Arbitral Tribunal, the Secretariat may turn to the arbitrators for advises on the value of the dispute (CAM).
Other Centres did not experience such situation (LAC), mainly because it chooses the lowest fee (CMA).

4. *In case 3, does the institution talk to the arbitrators to get a solution?*

It may be argued that the arbitrators enjoy a deep knowledge of the claims of the parties as presented in their briefs and therefore may be better positioned to facilitate the institution's task of determining the value of the dispute.
However, it is unquestionable that the Centres (not the arbitrators) should always have the last say on the issue: whatever the arbitrators may advice, the institution is not to be bound by the arbitrators's opinion (CAM). Other Centres do not even admit the possibility of an exchange of views with the arbitrators on the determination of the value of the dispute, retaining for themselves the delicate task (CRCICA; ITOTAM; CMA; LAC).

5. *Does the institution ask the parties to make advance payment? If so, in case of failure of one of the parties to pay the advance or other portions of costs, can the deadlock be overcome*

by one party paying the entire amount of the advance payment and/or by a division of value?

The parties are usually requested to make advance payments at the beginning of the arbitration; depending on the institution, such advance payment may be a portion (CAM) or the entire amount (CMA; CRCICA; ITOTAM) of the overall arbitration costs fixed by the Centres for the specific case. The rules and practice of the Centres lay down a specific mechanism for the case of a party failing to pay its share of advance payment. The deadlock is usually overcome by the other party paying the entire amount (CMA; CRCICA; ITOTAM; CAM; LAC).

6. *Criteria for determining if and when a request for the division of value made by the party(ies) can be rejected by the institution.*

The decision concerning a division of the value of the dispute, where granted by the Rules (ITOTAM does not allow it), is taken by the Centres of the Network, which evaluate the features of the dispute and the claims submitted by the parties. The precondition for a division of value to be applied is that a counterclaim is submitted.

The parties may always propose to the institution to make a different appraisal of the situation so that a division of the value appear to be a more suitable decision; also, the parties may agree and the arbitral tribunal may decide a different division (CRCICA). It goes without saying that the final decision rests with the Centres (LAC).

Still, a request for the division of value made by the party(ies) can be rejected by the institution when the Arbitral Tribunal states that the claims in the case at hand are formulated in such a way that a division would be impossible or seriously inappropriate (i.e. claim and counterclaim are strictly related to each other) (CAM).

7. *One of the parties refuses to pay the last portion of costs. How this affects the arbitrators' work and its conclusion (issuing the award).*

The lack of payment of arbitration costs by a party usually slows down the proceedings' pace and deeply affects its overall efficiency. Controlling the good administration of payments' collection is therefore crucial for the smooth running of the arbitral process.

Here the institutions' task is to safeguard the right of the arbitrators (as well as theirs) to be paid for their work.

In the practice of those Centres asking for different instalments of arbitration costs in the course of the proceedings, the reaction to non-payment is generally a suspension - and later on a termination - of the proceedings or a suspension/termination of the claim to which the lack of payment is referred (CAM).

Also, in the everyday activity of a Centre which usually asks for the advance payment of the entire amount of arbitration costs, in case the fees are not paid entirely in advance the arbitral proceedings shall be suspended and later on terminated (ITOTAM). In the practice of other Centres, if the arbitrators go on hearing the case, the award is not delivered to the parties until full payment (CRCICA; LAC).

8. *In the arbitration agreement the parties rule how arbitration costs are allocated but the institution's rules or the Arbitral Tribunal see it differently.*

The way the payment of advances and other deposits is managed by each Centre does not affect the free determination by the arbitrators about how such costs are allocated between the parties. As above illustrated, a few Centres set forth in their Rules how the costs should be in principle

apportioned, based on the outcome of the dispute; notwithstanding this, the arbitrators always retain the right to make a free decision on the issue.
The determination on who is going to bear the costs comprises the costs of arbitration as well as the legal costs borne by each party, the latter usually not being calculated by the institution.
However, the parties themselves, when drafting their contract and arbitration agreement, can state how the result of the case shall impact the allotment of arbitration costs, this being another significant application of the parties' autonomy principle. As a matter of fact, the parties may decide that each party shall bear its own costs no matter the outcome, or that the unsuccessful party shall bear the overall procedural costs and the costs for legal representation, or also that one or both parties shall bear part of the costs of the arbitration and costs for legal representation in a proportion that mirrors each party's relative success in the case, depending on the disputed matter: each of these agreements may ensure predictability of costs for the parties involved in arbitration.
Based on the boundless autonomy the parties enjoy on the issue, in the practice of the Centres the arbitrators rather do not vary from the parties' intent as displayed in the agreement (CRCICA; ITOTAM; CAM); if they do so, they provide reasons for that (CAM; LAC).

9. *The institution makes a final determination of costs before the award is issued but then the award is not rendered for whatever reason (lack of payment or parties' withdrawal). Has a new determination of costs to be done ? If so, how the costs are determined?*

The calculation of the arbitration costs is made by the Centres on the basis of the schedule of fees, with careful consideration of the work done by the arbitrators, the complexity of the case, duration of the proceedings and other important factors.
However, in case of an anticipated end of the proceedings, the Centres may determine partial fees for the institution as well as the arbitrators (CRCICA; CAM; LAC): fairness and reasonableness are the main pillars of the costs management function in the Network.
In particular, CRCICA Rules (art. 42.5) stipulates that in case an order is issued by the arbitral tribunal, before the final award is made, to terminate the proceedings pursuant to article 36 of the Rules, the Centre shall finally determine the costs of the arbitration having regard to when the arbitral tribunal has terminated the proceedings, the work performed by the arbitral tribunal and other relevant circumstances.
The Practice Notes of the same Centre state that in case of issuing an order terminating the arbitral proceedings or rendering an award on agreed terms the costs are determined on a case-by- case basis, having regard to when the arbitral tribunal has terminated the proceedings, the work performed by the arbitral tribunal and other relevant circumstances (art. 6 Practice Notes). In the same provision it is held that as a general rule, the arbitrator who resigns shall not be entitled to any fees, unless the Centre decides, after consulting the reconstituted arbitral tribunal, to deduct an amount out its fees for the said arbitrator, having regard to the work performed before his/her resignation and other relevant circumstances.
In the Rules and practice of one Centre the determination of partial fees is specifically governed by a provision (art. 4 Regulation on arbitration costs, ITOTAM) which sets forth a list of cases where the arbitrators' fees are to be determined by the technical body of the Centre without a strict application of the schedule of fees. Accordingly, arbitrators are paid in the proportion established by the Arbitration Court in case of lack of jurisdiction, advances not paid in due course, a statement of claim which is not submitted on time, or deficiencies in the statement of claim not corrected within the time granted. Accordingly, when the claimant withdraws its case, the proceedings are terminated by the agreement of the parties, the arbitrators consider the continuation of the proceedings to be impossible or unnecessary, or the award is not rendered unanimously despite the unanimity principle agreed on in the arbitration agreement, then one fourth of the arbitrators' fees shall be awarded (art. 4.4 Regulation on arbitration costs, ITOTAM).

10. *The institution's decision on costs has been challenged before a state court. Experiences and solutions.*

A critical situation arises when the determination on costs made by the arbitral institution is challenged before a state court. Although not a frequent occurrence, such case may be seen as a manifest expression of the current judicialization trend that international arbitration is undergoing, with parties oftenly engaged in aggressive litigious tactics and techniques.

Contrary to such trend, the Centres of the Network (CMA; CRCICA; ITOTAM; LAC) have generally not experienced this atmosphere, in the form of challenges of their decisions on costs. However, in the experience of a Centre (CAM), the Arbitral Council's decision on costs was challenged before the Court of First Instance (Tribunale) of Milan (where the seat of the arbitration was) on the basis of an alleged erroneous application of the criteria for the determination of the value of the dispute. On 20 January 2009 the Court of First Instance dismissed the recourse by its decision No. 766 which remained unpublished, confirming that the CAM duly exercised its power to determine the costs and correctly applied the criteria to determine the value of the dispute in agreement with the Rules chosen by the parties.

11. *The arbitrators made the case advance promptly (time-efficient conduct): the institution's power to reward them disregarding the schedule of fees. In the same way, the institution may disregard the minimum or the maximum of fees set in the rules, given the circumstances of the case (e.g. below the minimum for slow conduct of the case or above the maximum for peculiar difficulty)?*

The schedule of fees is the backbone of every determination of arbitration costs made by the Centres. However, the Centres do enjoy some flexibility when applying the schedule to the single case, so that tailor-made solutions are offered to the litigating parties and to arbitrators too. Consequently, in order to make proportionate assessments (and also to meet the legitimate expectations of the arbitrators), the costs may be fixed in higher or lower amounts than what would result from the strict application of the schedule (art. 36.7 CAM; art. 45.12 CRCICA; art. 41.3 ITOTAM). By so doing, the Centres may use the cost management function as a rewarding or a punitive system (LAC).

In the position of one of those Centres, art. 5 of the CRCICA Practice Notes related to Art. 45.5 of the Rules provides that, as a general rule, the practice of the Centre is to determine the fees of the arbitral tribunal in accordance with the minimum scale of fees set out in Table (3) annexed to the Rules, unless a different determination of such fees, according to any of the average or maximum scales set out in the said Table, is required due to the complexity of the dispute, the high sum in dispute or the seniority of the arbitrators. After determining the fees of the arbitral tribunal, any change in such fees within the scales of fees shall occur upon a reasoned request from the arbitral tribunal, to be decided by the Centre according to its discretion, having regard to the above criteria.

12. *The case ends just soon after the constitution of the Arbitral Tribunal (or even before the constitution) or before the arbitrators render the final award (after a completed evidence-taking phase): criteria applied to determine the costs.*

To paraphrase the beginning of an important novel, each arbitration (good or bad) unfolds in its own way: the sequence of activity is not always the same for each case, therefore the costs are to be assessed correspondingly.

In case of very early termination of the proceedings, when the Arbitral Tribunal is not constituted, the Centres do not charge the parties with arbitrators' fees, hence only administrative fees are fixed: such determination takes into account the work done and expenses incurred by the Secretariat from the filing of the request for arbitration to the early end of the proceedings (CAM; CRCICA;

ITOTAM). In the practice of one Centre, apparently no fees at all is charged to the parties, except for the filing fee (CMA).
In any case, the remaining part of the payments made by the parties at the beginning of the arbitration is then reimbursed.
If the Arbitral Tribunal is constituted and the case ends soon after the said constitution, then a reduced fee is charged for the institution (CAM), while the arbitrators' fees are determined by the Centres taking into account the work done by the arbitrators, whether hearing on the merits were held and their number, the complexity of the case, etc. (CRCICA; CAM; CMA; LAC).
In the experience and rules of one Centre, a) if the proceedings are terminated before the arbitrator or arbitral tribunal grants a period of time to the parties to submit their evidence, then half of the fee determined in the Tariff shall be awarded; b) if the proceedings are terminated after the arbitrator or arbitral tribunal grants a period of time to the parties to submit their evidence, then the whole fee shall be awarded (art. 5 Regulation on arbitration costs, ITOTAM). Also, if the proceedings are terminated by the agreement of the parties one fourth of the arbitrator's fee shall be awarded. However, when deemed necessary, the arbitrator's fees shall be determined by the Arbitration Court (art. 4.4.b Regulation on arbitration costs, ITOTAM).

13. An arbitrator is replaced during the case: how the institution determines the fee for the substituted arbitrator.

The practice and rules of the Centres vary a bit as they tackle the case of a replacement of an arbitrator from the panel.
According to art. 45.10 CRCICA Rules, an arbitrator who was removed or successfully challenged will not be entitled to any fees. In case of death of an arbitrator, art. 49.9 provides that the Centre, in consultation with the remaining arbitrators, shall determine the fees of the arbitrator, who has deceased after accepting his or her mission and before rendering the award, having regard to the work performed and all other relevant circumstances; the substitute arbitrator will take the full amount of the fees. In case of resignation, the practice of the Centre, as embodied in Art. VII of its Practice Notes, is that a resigning arbitrator is not entitled to any fees, unless the Centre decides, after consulting the reconstituted arbitral tribunal, to deduct an amount of its fees for the said arbitrator, having regard to the work performed before his/her resignation and other relevant circumstances.
In another Centre, the provisions of tariff shall not be applicable in cases of expiration of the term of office of one of the arbitrators, resignation of an arbitrator due to not being able to legally or de facto fulfill his duty on time, or termination of an arbitrator's authority to serve by the agreement of the Parties or an Arbitration Court decision. (Art.1.2 of the Regulation on Arbitration Costs ITOTAM). Thus, if an arbitrator is replaced during the case, then the Arbitration Court shall determine the fee for the substituted arbitrator taking into consideration the circumstances of the case.
LAC has experienced the situation, the reaction being that the replaced arbitrator was paid the remaining amount left after paying the resigning arbitrator.
Finally, in the CAM's practice, if the replacement occurs after the constitution of the Arbitral Tribunal, the Arbitral Council takes into account the grounds for replacement, the stage of the arbitral proceedings, the work – if any - actually performed by the substituted arbitrator, the complexity and duration of the case and any other circumstances.

14. Rendering an award on agreed terms, if allowed, may affect the determination of costs?

An award on agreed terms is a ruling of the tribunal which incorporates a settlement reached by the parties in the course of the proceedings; in this case the work of the arbitrators on the merits is directly influenced by the determination of the parties, therefore the arbitrators do not depart from the arguments the parties themselves have settled.

The rules of the institutions do not always lay down specific provisions on the case, although the practice accommodates to the situations.
The CAM Rules do not provide for the Tribunal to render an award on agreed terms, nor they prevent it. Award by consent occurred in only two cases. It may affect the determination of costs (reduction) because of the actual arbitrators' workload. For instance, in one of these two cases, the Council determined the arbitrators' fees below the minimum for a panel of three rendering an award on agreed terms: in this case, the value of the dispute fell in the 9th basket of the Schedule in force at that time, between Eur. 5,000,001 and Eur. 10,000,000, providing for Eur. 180,000 as the minimum fees for the arbitrators.
The practice of CRCICA, as embodied in Article VI of its Practice Notes, is to determine the costs of the arbitration including the arbitrators' fees on a case -by- case basis, having regard to when the arbitral tribunal has terminated the proceedings, the work performed by the arbitral tribunal and other relevant circumstances.
CMA does not change its determination of the arbitration costs in case of consent award.
According to Art. 34 of the ITOTAM Rules, if the parties reach an amicable settlement over the dispute after the case file has been transmitted to the Arbitral Tribunal, the amicable settlement may be drafted in the form of an award if the parties make a request to this effect and if the Arbitral Tribunal agrees to do so. Art 5 of the Regulation on Costs, regulates the fees in cases where no decision can be rendered due to waiver or settlement. According to the provision, a) if the proceedings are terminated before the arbitrator or arbitral tribunal grants a period of time to the parties to submit their evidence, then half of the fee determined in the Tariff shall be awarded; b) if the proceedings are terminated after the arbitrator or arbitral tribunal grants a period of time to the parties to submit their evidence, then the whole fee shall be awarded.
In the LAC experience every matter raised during the proceedings is discussed and decided by the Higher Council of Arbitration.

15. *Criteria for distributing the fees to the members of the Arbitral Tribunal. Different fees for each member, safe for particular circumstances of the case (indication of the Arbitral Tribunal, etc..).*

The practice of the Centres of the Network is quite aligned in that respect as they grant to the chairperson a certain portion of the overall arbitrators' fees collected by the parties, amounting to 40% (CAM; ITOTAM; CRCICA; CMA; LAC). A few rules govern expressly the issue (art. 45.6 CRCICA; art. 3 Regulation on arbitration costs ITOTAM).
Such distribution of fees reflects the practice of the international arbitration community on how the fees are divided between the members of the panel, where the chairperson receives a bit more than his/her colleagues in the arbitral tribunal.
The split in the above said proportion is usually justified given the fact that the president has typically the task and the prerogative of drafting the award.
However, a few Centres acknowledge that the Arbitral Council (CAM) or the arbitrators themselves (CRCICA) may decide a different allocation based on the circumstances of the case, or taking into consideration any indication submitted by the members of the Tribunal (CAM).

16. *An expert is appointed during the arbitration. Criteria applied by the institution to determine his/her fees (the expert's note on costs/schedule of state court/value of the dispute and comparison with the arbitrators' fees).*

The involvement of an expert in the proceedings obviously increases the costs of the arbitration. As for the determination of his/her fees, the practice of the Centres provides for various benchmarks, in order to make them reasonable and proportionate to the interests at stake.

In the daily activity of one Centre (CAM), the technical body of the institution determines the Expert's remuneration on the basis of the Expert's note and the comments of the parties and the arbitrators, if any. In its determination, the Council take into account the value of the dispute, the arbitrators' fees, the work done, the complexity and duration of the Expert's task and any other circumstance.
A few Centres let the arbitrators determine the expert's fees, namely CRCICA, LAC and ITOTAM. As for the former, the fees of experts appointed by the arbitral tribunal are determined by the tribunal itself, in the order or the interim award appointing the expert, by taking into consideration the expert's scope of work and its duration. They may be amended after the experts finishes his/her mission and delivers his/her report.
In the latter's experience, the Arbitral Tribunal calculates the expert fees by taking into consideration the schedule of state courts; however, the Centre faced some cases where the expert/s, in light of the circumstances of the case, requested a higher amount than the one set forth under the schedule and the Arbitral Tribunal decided to accept such request.

17. *The party has some financial difficulties. How the institutions handles the situation in order to ensure effective arbitral justice (security for costs, bank guarantee, installments and the like).*

The decade of economic turmoil may indeed have repercussion on access to arbitration as a form of private justice. The substantial costs of this process may discourage users to initiate arbitral proceedings, although the arbitration clause agreed upon by the parties is a stumbling block to any different method of adjudication.
It is not unusual to have litigating parties experiencing financial difficulties, which has recently led to the rise of a specific phenomenon, i.e. the funding of arbitration claims by unconnected third parties (third party funding). Therefore, institutions have to strike a balance between the fundamental right of access to justice and the obligation of the parties to pay the arbitration costs.
The situation is dealt with by the Centres in a variety of ways.
CRCICA does not ask for any type of security for costs, since costs are fully paid at the beginning of the proceedings. However, in some cases one of the parties may request the tribunal to order the other party to provide guarantees for the enforcement of the future awards. The tribunal decides then on the request. The Centres also allows the parties to pay the arbitration costs by installments.
In the same way LAC does not accept bank guarantee or installments of fees.
CAM handles this situation by accepting bank guarantees (art. 37.6). Furthermore, the Secretariat grants *de facto* the possibility to pay arbitration costs by installments.

18. *The institution administers multiple cases pending between the same parties, with the Arbitral Tribunal possibly ordering their consolidation. How the institution deals with such circumstance.*

Consolidation of cases is a procedural mechanism which allows for two (or more) arbitrations to proceed into a single procedure concerning all related parties and disputes, the reasons for that being efficiency and cost-saving.
The arbitral institution, which is the sentinel of procedural fairness, must cope with the possibility that multiple pending cases - between the same parties and with the same arbitral tribunal - may be united into one arbitration. As a consequence, where a consolidation of cases can be predicted, the Centres must deal with the cost-management function accordingly.
Absent, in many cases, specific regulation on the issue in the Rules of the Centres, the practice of a few Centres manages the situation in the following way: in cases where tribunals orders consolidation, the Centre applies its schedule of fees to the aggregate value of the disputed amounts in the two cases (CRCICA).

In the position of another Centre, the Secretariat may take into consideration the value of the dispute that would result from the sum of the multiple cases to fix the advance set by Article 37.1 for each case proportionally (CAM). In any case, although consolidation of cases may be seen as a means of avoiding high costs of arbitration, it should be considered the work done by the arbitrators who may, despite the consolidation, draft two terms of reference and issue two awards (CMA).
Though the ITOTAM Rules do not provide any specific provision regarding consolidation, in case of consolidation the Centre applies its Tariff for the disputed amounts in the two cases.
As for LAC, the Higher Council of Arbitration determines the costs in this case.

19. *Criteria to be followed to determine the costs of the arbitration when the value of the dispute is undeterminable or undetermined.*

In some cases the determination of the value of the dispute may be truly problematic, either because the parties do not provide the institution with information on the financial value of the claim (claim undetermined) or because the sought after relief is undeterminable (this happening when the subject matter of the claim cannot be easily expressed in economic terms).
The arbitral institutions which have experienced the situation usually approaches the issue on a case-by-case basis by pondering the circumstances of the case.
The Rules of the Centres govern the case in different ways. In the CAM position (Annex A of the Rules), where the value of the dispute is undetermined and undeterminable, the Chamber of Arbitration shall determine it in equity.
For another Centre, where the sum in dispute cannot be ascertained, the Centre determine the administrative fees and the fees of the arbitral tribunal taking all relevant circumstances into account (art. 44.3 and 45.3 CRCICA).
Pursuant to Art. 1.3 of the Regulation on Costs ITOTAM, the provisions of the Tariff shall not be applied in cases where the dispute cannot be appraised by a monetary value. In such cases, the arbitrators' fee is determined by the Court.
As for LAC, the Higher Council of Arbitration determines the costs.

20. *Multiparty arbitration and determination of costs. Main criteria applied by the institution to determine the portions of costs to be paid by the parties.*

In multiparty cases the dispute arises between multiple parties, whether as claimant or as respondent. The cost management function of the Centres may be affected by the situation.
In multiparty cases the Secretariat of one Centre (CAM) enjoys flexibility when determining how many sides to consider for the payment of the costs. The Rules (art. 37.5) makes clear that the Secretariat may consider several parties as one. This provision adds a list of criteria followed by the Secretariat in its determination by mentioning (i) the manner in which the Arbitral Tribunal was constituted or (ii) the mutual interests of the parties (the use of "or" make these two criteria alternative). For instance, in case of multiple respondents, any of them may direct a counterclaim toward the claimant and a cross claim toward the other respondent(s): here, the Secretariat may weigh the nature of the cross claim and take into consideration any other element (e.g. if those parties grouped in one side to appoint an arbitrator) to determine on how many sides the costs shall be borne. These are the criteria to be taken into account by the Secretariat when considering several parties as one.
Another Centre divides the costs equally between the multiple Claimants and Respondents, each of them is considered to be one party; the division of the costs between co-claimants and co-respondents is made according to their agreement (CRCICA).
If not governed by the Rules, the critical event may be managed by the technical body of the institution (ITOTAM; LAC).

21. *Failure of the party to pay its share of costs. How (and if) this affects, in the institution's practice, the validity of the arbitration agreement.*

In the practice of the Centres, the failure of the party to pay its share of costs has no effect on the validity of the arbitration agreement. Failure to pay by a party obliges the other party to pay the first party's share, to avoid the suspension or termination of the proceedings (ITOTAM; CRCICA; CAM; LAC).

Therefore, where the case is declared closed on the ground of a lack of payment, the arbitral agreement is not affected by the institution's order: any party can file a new request of arbitration.