



ICCA CHECKLIST FIRST PROCEDURAL ORDER

This is a checklist of issues to consider including in a first procedural order in arbitration. In your case, it may not be appropriate to include all of the issues below: some may be better dealt with later, or not at all.

The ICCA Drafting Sourcebook for Logistical Matters in Procedural Orders (<www.arbitration-icca.org>) contains boilerplate drafting for some of the listed issues – see footnotes below.

1. **STRUCTURAL ISSUES:** jurisdiction; interim/provisional measures; counterclaims; bifurcation; fast-track; multiple parties; related proceedings; joining proceedings
2. **CASE MANAGEMENT CONFERENCE:** in person or telephone/video conference; attempt agreement on terms of first procedural order; planning for remainder of arbitration
3. **TIMETABLE:** all events up to hearing, or beyond hearing to end of arbitration
4. **GOVERNING LAW:** for arbitration agreement; for procedure; for merits
5. **CONFIDENTIALITY:** what regime applies; does it cover existence of proceedings, submissions, evidence, orders/awards
6. **PRIVILEGE:** which rules apply
7. **COUNSEL ETHICS:** which rules apply; obligation to disclose counsel conflicts
8. **ADMINISTRATIVE SECRETARY:** whether to use; under what conditions
9. **SUBMISSIONS:**¹ how many rounds; paper/electronic; paper size; numbering; specificity of references; page limits; accompanied by documentary/witness evidence or not
10. **UNSCHEDULED APPLICATIONS:**² procedure for notifying tribunal and other side
11. **DOCUMENTARY EVIDENCE:**³ filed with submissions or later; paper/electronic; paper size; exhibit naming/numbering
12. **DOCUMENTS NOT IN LANGUAGE OF THE ARBITRATION:**⁴ who presents and pays for translation of which documents; conformity of “look” with originals; where to place

1. Sourcebook: 8. Written Submissions; and 9. Formatting.
2. Sourcebook: 5. Unscheduled Applications and Submissions.
3. Sourcebook: 8. Written Submissions; and 12. Documentary Evidence and Legal Authorities.
4. Sourcebook: 13. Document Translations.

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13. **WITNESS/EXPERT STATEMENTS:**⁵ filed with submissions or later; how many rounds; paper/electronic; paper size; replace direct testimony or outline only; numbering; exhibit naming/numbering
14. **WITNESS/EXPERT EVIDENCE NOT IN LANGUAGE OF ARBITRATION:**⁶ translation; who arranges simultaneous/sequential interpretation at hearing
15. **EXCHANGE OF SUBMISSIONS AND WITNESS/EXPERT STATEMENTS:**⁷ simultaneous/sequential; deadline time zone
16. **REQUESTS FOR OPPOSING PARTY DOCUMENTS:** timing; applicable rules; specificity; procedure for resolving disputes
17. **PRODUCTION OF REQUESTED DOCUMENTS:** to whom; in what format; who pays; whether automatically in the record
18. **PRE-HEARING CONFERENCE:**⁸ time and location; in person or by telephone/video conference
19. **TRIBUNAL MEETING PRE-HEARING:**⁹ whether to schedule Reed Retreat; whether tribunal to produce list of issues/questions
20. **HEARING:**¹⁰ who books/pays for hearing and breakout rooms; whether hearing bundle required; who will attend and subject to what restrictions (party representatives; fact witnesses and experts; live or by video); time allocation; scope of hearing; format/scope of witness/expert examination; oral closing or post-hearing briefs
21. **RECORD OF HEARINGS/OTHER MEETINGS:**¹¹ real time or other transcript; who engages court reporter; language/s for transcript; audio or video recording; recording of one or more language versions; how transcript becomes final
22. **COSTS:**¹² security for costs; budgets and other cost limitation techniques; costs to be dealt with in award on merits or otherwise; format of costs submissions; timing of costs submissions (before or after merits hearing, or after partial award on merits); whether disclosure of funding sources required

5. Sourcebook: 10. Witness Statements; and 11. Expert Reports.

6. Sourcebook: 13. Document Translations; and 21. Interpretation of Oral Testimony.

7. Sourcebook: 2. Pre-hearing Filing (Time Zones); and 8. Written Submissions.

8. Sourcebook: 15. Pre-hearing Meeting or Teleconference.

9. Sourcebook: 14. Pre-hearing Deliberations of the Arbitral Tribunal.

10. Sourcebook: 6. Presence of Party Representatives; 15. Pre-hearing Meeting or Teleconference; 18. Time Allocation and Chess Clock; 19. Hearing Bundles; 20. Direct and Cross Bundles; 23. Appearance of Witnesses and Experts at the Hearing; 24. Experts Appointed by the Arbitral Tribunal; 25. Party Communication with Witnesses and Experts; 26. Presence of Witnesses and Experts Before and After Testimony; 27. Sequence of Witness and Expert Examinations; 28. Testimony of Co-signing Experts; 29. Scope of Examinations.

11. Sourcebook: 15. Pre-hearing Meeting or Teleconference; 22. Hearing Transcript.

12. Sourcebook: 32. Costs Submissions.