

**The International Family Law Arbitration Scheme  
Rules (Sept 2017)**

1. The International Family Law Arbitration Scheme (“the Scheme”) is intended to provide a consensual means, through arbitration, to resolve forum and related family law disputes where more than one jurisdiction could hear a family law dispute. These are the Rules of the Scheme upon which arbitrations will be conducted save and insofar as they may be varied by the agreement as herein.
2. References in these Rules to “*the website*” is to <https://internationalfamilyarbitration.com/>
3. The parties may refer a dispute to arbitration under the Scheme by digitally submitting an application through the website. A party must have independent legal advice before entering into the agreement to arbitrate under the Scheme.
4. These Rules are deemed by the parties to be part of the arbitration upon entering into the Scheme.
5. It is a condition for any case to be heard in the Scheme that the parties entering into the agreement agree to be bound by the arbitrator’s decision, and furthermore either party will pay forthwith all the costs of the arbitration if either continues to argue a forum dispute in any court contrary to the determination of the arbitrator.
6. Each party by entering into arbitration under the Scheme agrees to be estopped from proceeding in any jurisdiction other than that determined by the arbitrator, and furthermore undertakes not to commence proceedings in any jurisdiction other than as determined as the closest connection by the arbitrator in accordance with this Scheme. Insofar as there are any existing forum or other family proceedings, it will be a term of the arbitration that these proceedings are stayed pending the outcome of the arbitration.
7. The parties may not amend or modify these Rules or any procedure under them after the appointment of an arbitrator unless the arbitrator agrees in writing to such amendment or

modification and they have been notified to the administrators. In the event of a gap in these rules, the applicable rules of UNCITRAL shall apply.

8. In any conflict between the applicable rules and the terms of the agreement, the agreement shall prevail.

### **Appointment of arbitrator**

9. The administrators will maintain a panel of arbitrators (“the Panel”) to determine forum disputes who are experienced family law experts. The members of the panel will either have held judicial office in their country or be senior practitioners who are suitably experienced and competent to deal with international family law jurisdiction disputes.
10. The arbitrator should be from a country with which neither party asserts they have a close connection.
11. There are several options for the selection of the arbitrator. The parties may agree jointly to nominate a particular arbitrator from the Panel. Alternatively, one party may propose a shortlist of arbitrators from the Panel for the other party to choose whereupon that choice will be selected, as long as the arbitrator is willing and able to act.
12. The fees of the arbitrator may be requested from the administrators by the parties.
13. The process commences when one of the parties or their lawyer fills in a brief application online on the website. It will include proposals for the selection of the arbitrator, as above, including whether identity has been agreed. Details of the other party or their lawyer is provided. The fee of the administrators is paid simultaneously online, as set out below.
14. The application form is sent by the administrators to the other party or their lawyer. They indicate whether there is agreement on the identity or selection of the arbitrator and confirms agreement to enter into arbitration.
15. Both parties and the arbitrator sign the agreement to arbitrate. It is exchanged so that both parties and the arbitrator have a copy signed by all. The arbitrator delivers a copy to the administrators. The arbitration commences once the agreement to arbitrate is signed by both parties and the arbitrator.
16. If, after considering the initial application and any representations from the parties, either the administrators or the arbitrator considers that the dispute is not suitable for arbitration,

the parties will be so advised and their reference of the matter to the Scheme will be treated as withdrawn.

17. Before accepting the appointment or as soon as any relevant facts are known, the arbitrator will disclose to the parties any actual or potential conflict of interest or any matter that might give rise to justifiable doubts as to his or her impartiality or suitability.
18. In the event of such disclosure, the parties or either of them (as appropriate) may waive any objection to the arbitrator continuing to act, in which case the arbitrator may commence or continue with the arbitration. Alternatively, they are at liberty to agree another arbitrator.

### **Commencement and continuance of the arbitration**

19. The arbitration will be regarded as commenced when the arbitrator and the parties have signed the agreement to arbitration.
20. Thereafter the first stage of the arbitration itself shall be for the parties, assisted by their lawyers, to complete a detailed online questionnaire as provided by the administrators. This covers a significant amount of the information which the arbitrator will require to include personal history and connections with particular countries, residency, domicile and nationality and history of cross-border movement. This should be completed within three weeks of the commencement of the arbitration or such other time as may be agreed.
21. It is likely that the arbitrator will conduct a preliminary hearing by videoconference, telephone or other means of communication to determine elements of the process and identify further information which is needed.
22. A party may not withdraw his or her consent to the arbitration after it has commenced.
23. If, without showing sufficient cause, a party fails to comply with his or her obligations under these Rules, or fails to attend a hearing or make submissions, then, after giving that party due notice, the arbitrator may continue the proceedings in the absence of that party or without any written evidence or submissions on their behalf and may make a determination on the basis of the evidence before the arbitrator.
24. The arbitrator may adjourn the proceedings at any time with the consent of the parties or of his or her own motion, provided the adjournment shall not be for longer than one month, unless the parties consent to a longer adjournment.

25. The arbitrator may at any stage allow time for the parties to consider their positions and pursue negotiations or mediation with a view to arriving at a settlement.

### **Criteria for forum disputes**

26. The arbitrator will decide the dispute by determining the jurisdiction with which the parties have the closest connection.

### **Representation**

27. A party to an arbitration under the Scheme may represent himself or herself or be represented in the proceedings by a lawyer. However, a party must have independent legal advice before entering into the agreement to arbitrate under the Scheme.

### **Communications**

28. Any communication between the arbitrator and either party will be copied to the other party unless there is a need to maintain confidentiality in order to protect a person from harm or matters of child protection and safety including matters of potential child abduction or child abuse.
29. Unless agreed by the parties and if so required, the arbitrator will designate one party as the lead party. The lead party will equate to a claimant, but will be formally referred to in the arbitration as the 'Applicant'. The other party will equate to a respondent, and will be formally referred to in the arbitration as the 'Respondent'. The arbitrator is entitled to adopt, in any particular case, any other description as may best assist in the resolution of the arbitration.
30. The arbitrator will not discuss any aspect of the dispute or of the arbitration with either party or their legal representatives in the absence of the other party or their legal representatives, unless such communication is solely for the purpose of making administrative arrangements.
31. For the purposes of these Rules, any notice or proposal shall be in writing. Subject to the following, and in view of the international nature of the disputes pursuant to the Scheme, the default position for filing and service of any papers and communications should be digital and to addresses previously communicated by the parties or their legal representatives. Any such notice, or proposal may be also delivered by hand, registered post or courier service, or delivered by any other appropriate means that provides a record

of its delivery. Any notice, communication or proposal shall be deemed to have been received if it is delivered:

- (i) to the addressee personally or to his or her authorised representative;
- (ii) to the addressee's habitual residence, place of business or designated address;
- (iii) to any address agreed by the parties;
- (iv) according to the practice of the parties in prior dealings; or
- (v) if, after reasonable efforts, none of these can be found, then at the addressee's last-known residence or place of business.

32. Any notice, communication or proposal shall be deemed to have been received on the working day after it is delivered.

33. Unless otherwise agreed at the commencement of the arbitration, the language of the arbitration shall be English. The necessity for translation of any documents will be taken into account by the arbitrator in the conduct of the arbitration and in the allowance for the costs of the arbitration.

### **Form of hearing**

34. An arbitration may be conducted on the papers or by telephone or videoconference, with the agreement of the parties, or otherwise shall be conducted in person. Any hearing other than on the papers may be digitally recorded; if either party or the arbitrator requires a digital record then there shall be one.

35. The arbitrator has full discretion to adopt procedures suitable to the circumstances of the particular case, including taking account of any issues of separate time zones, the need for simultaneous translations, expert evidence regarding separate laws which may be relevant and similar.

36. If he or she considers it appropriate having regard to the scope of the dispute between the parties, the arbitrator will give detailed directions for procedural steps in the arbitration including (but not limited to) the following:

- (a) the drawing up of a list of issues and/or a schedule of points of agreement or disagreement;
- (b) written statements or submissions;
- (c) arrangements for any meeting or hearing and the procedures to be adopted at these events;

(d) time limits to be imposed on oral submissions or the examination of witnesses, or any other procedure for controlling the length of hearings.

### **Powers of the arbitrator concerning evidence and procedure**

37. Generally, on commencement of the arbitration, the arbitrator will invite the parties to make submissions setting out briefly their respective views on the issue of jurisdiction, what form of procedure should be adopted, the timetable and any other relevant matters.
38. If appropriate, the arbitrator may convene a preliminary meeting, telephone conference or other suitable forum for the exchange of a summary of each party's position.
39. The arbitrator may give such directions as appear appropriate and set a timetable for the procedural steps in the arbitration.
40. The arbitrator will decide all procedural and evidential matters, subject to the right of the parties to agree any matter.
41. The arbitrator is not bound by the rules of evidence of any country relating to the admission of evidence unless the parties agree otherwise, but shall have regard to any submissions made by either party concerning the weight to be given to particular evidence.
42. There is no requirement under these Rules for evidence to be given on oath unless the parties agree otherwise.
43. The arbitrator may limit the number of expert witnesses to be called by any party or may direct that no expert is to be called on any issue or issues or that expert evidence may be called only with the permission of the arbitrator.
44. The arbitrator will have the power to:
  - (a) direct a party to produce information, documents or other materials in a specified manner and/or within a specified time;
  - (b) give directions in relation to any documents or other materials as to which any question arises in the proceedings, and which are owned by or are in the possession or control of a party to the proceedings for the inspection, photographing, valuation, preservation, custody or detention of the property by the tribunal, an expert or a party.
38. The arbitrator may at any time direct any of the following to be delivered in writing:
  - (a) submissions on behalf of any party;

(b) questions to be put to any witness;

(c) answers by any witness (invited to co-operate) to specific questions.

39. The arbitrator may direct a time limit for making or responding to applications for directions as to procedural or evidential matters.

### **The arbitrator's determination**

40. The arbitrator will deliver a determination within four weeks after the conclusion of the proceedings or the relevant part of the proceedings, unless otherwise agreed with the parties.

41. Any determination will be in writing, will state the seat of the arbitration, will be dated and signed by the arbitrator, and, unless it merely records a full agreement the parties have reached during the course of the proceedings, will contain sufficient reasons to show why the arbitrator has reached the decisions it contains.

42. Once a determination has been made, it will be final and binding on the parties, and the family law litigation will proceed only in the forum determined by the arbitrator.

43. If necessary, the parties will apply to an appropriate court for an order in the same or similar terms as the determination or the relevant part of the determination or to assist or enable its implementation and will take all reasonably necessary steps to see that such an order is made.

### **Costs and fees**

44. The administration fee is set out on the schedule of charges on the website, to be paid at the submission of the originating application.

45. The costs of the arbitration are the costs of the arbitrator - for example specification of an hourly or daily rate - and such other costs as may be reasonably incurred for the determination of the arbitration. These costs include the administrative costs of any actual hearing or meeting. The arbitrator's costs, in as far as they can be ascertained or otherwise by agreement of a rate and otherwise an hourly or daily rate, shall be agreed as part of the agreement to arbitrate. The parties shall either pay the costs of the arbitrator direct or, if the arbitrator requires, the administrators. The costs of the arbitrator shall be paid either at the outset or during the period of the arbitration as may be agreed with the arbitrator. The

arbitrator is entitled to seek or require security for any future costs if there shall be any doubt as to payment.

46. Responsibility for the payment of all costs shall be equal unless the parties agree otherwise between themselves in writing at any time.
47. The arbitrator will deliver the arbitration award to the parties upon full payment of his or her fees or expenses. Subject to this entitlement, the arbitrator will send a copy of the determination to each party or their legal representatives.
48. The arbitrator has no power to order costs of the arbitration against either party nor to require one party to pay the legal or other costs of another party, unless otherwise agreed. In the event that the parties agree that the arbitrator should have a power to order costs, the terms on which any such costs adjudication should be based needs to be agreed also. There should be no costs orders that relate to privileged offers unless it is specifically agreed in writing between the parties that the arbitrator may take this into account.
49. Where it is appropriate to do so because of the conduct of a party in relation to the arbitration, the arbitrator may make recommendations to the court in the jurisdiction that will determine the family law dispute that one party should be required by the court to reimburse the other party for some or all of the cost of the arbitration, or to pay the legal or other costs of another party, even if that party was successful in the outcome of the forum dispute. The parties may agree in writing that this power shall not exist in any particular case.
50. In deciding whether to make any such recommendation, the arbitrator will have regard to the following:
  - (a) any failure by a party to comply with these Rules or any order or directions which the arbitrator considers relevant;
  - (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
  - (c) the manner in which a party has pursued or responded to a claim or a particular allegation or issue;
  - (d) any other aspect of a party's conduct in relation to the arbitration which the arbitrator considers relevant;

## **Conclusion of the arbitration**

52. If the arbitrator at any stage prior to determination of the issues considers that the dispute is no longer suitable for arbitration, the arbitrator will have the power to terminate the proceedings.
53. The agreement to arbitrate will be discharged (and any current arbitration will terminate) if:
- (a) a party to the arbitration agreement including the arbitrator dies; or
  - (b) in the opinion of the arbitrator, informed by such medical or other expert advice as necessary, a party to the arbitration agreement lacks, or has lost, the mental capacity to participate in the arbitration or to give instructions to legal representatives or
  - (c) a court entertains concurrent legal proceedings and declines to stay them in favour of arbitration;
  - (d) if the parties settle the dispute whereupon the parties may ask the arbitrator to set out any particular terms as an arbitration award, by consent;
  - (e) if the parties agree in writing to discontinue the arbitration and notify the arbitrator accordingly;
  - (f) on the arbitrator making a final determination dealing with all the issues;
  - (g) the arbitrator being removed from the panel by the administrators, as distinct from ceasing to be a panel member having already commenced the arbitration, whereupon the administrators will suggest an alternative Panel arbitrator to continue the matter;
  - (h) the arbitrator being physically or mentally unable to continue the arbitration or taking an unreasonable amount of time to deal with the matter as may be certified by the administrators whereupon the administrators will suggest an alternative Panel arbitrator to continue the matter if an alternative is not agreed by the parties themselves.

## **Confidentiality**

54. The general principle is that the arbitration and its outcome are confidential, except insofar as disclosure may be necessary:
- (a) to challenge, implement, enforce or vary a determination, or in relation to applications to the court;
  - (b) in the performance of any legal duty that an arbitrator may have to convey information relating to the safety or wellbeing of the child to any appropriate government agency; or
  - (c) as may otherwise be compelled by law.

55. All documents, statements, information and other materials disclosed by a party to the arbitration will be held by any other party and their legal representatives in confidence and used solely for the purpose of the arbitration unless otherwise agreed by the disclosing party; or if required to be disclosed to any appropriate child protection authority; or as may otherwise be compelled by law or as are necessary to be disclosed to any other person:

(a) to enable that person to provide expert or other evidence for the purposes of the arbitration or related legal proceedings;

(b) to enable a party to the arbitration, by confidential discussion, to obtain support, advice (whether legal or other professional) or assistance in the conduct of the arbitration or related legal proceedings;

(c) to enable a party to the arbitration to make and pursue a complaint against a person or body concerned in the arbitration;

(d) to make and pursue a complaint regarding the law, policy or procedure relating to arbitration.

### **Subsequent legal proceedings**

57. The arbitrator will not be called as a witness by any party either to testify or to produce any documents or materials received or generated during the course of the proceedings in relation to any aspect of the arbitration unless with the agreement of the arbitrator, or in connection with any necessary disclosure to any appropriate child protection authority, or as may otherwise be compelled by law. Subject to this, either party is at liberty to produce the arbitration adjudication document to any court of competent jurisdiction.

### **General**

59. In the event that the dispute is settled (following a mediation or otherwise), the parties will inform the arbitrator. Fees and expenses accrued due to the arbitrator by that stage will remain payable.

### **Exclusion of Liability**

60. In entering into the arbitration, the parties agree that neither the administrators nor the arbitrator shall be liable in negligence or otherwise for any action or omission to act associated with:

(a) the nomination or the appointment of the arbitrator,

- (b) the work of the arbitrator (or his or her employees or agents) in the discharge or purported discharge of the arbitral functions,
- (c) for any consequences if, for whatever reason, the arbitral process does not result in a determination or, where necessary, a court order embodying a determination by which the matters to be determined are resolved.