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THE ESTABLISHMENT OF ARBITRAL TRIBUNALS UNDER THE RULES OF THE PERMANENT ARBITRATION COURT AT THE CROATIAN CHAMBER OF ECONOMY AND SELECTED INTERNATIONAL ARBITRAL INSTITUTIONS

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ABSTRACT

Arbitration is an alternative dispute resolution (ADR) mechanism, frequently contracted in commercial relations for arbitrable disputes. Given its global dimension, international commercial arbitration is the predominant mechanism for resolving complex international commercial disputes. The paper aims to present arbitration's basic characteristics and analyse the establishment of arbitral tribunals through a comparative overview of selected arbitration rules. The study employs a comparative analysis focusing on the rules of the Permanent Arbitration Court at the Croatian Chamber of Economy (PAC CCE) (Zagreb Rules 2015) and the rules of selected international institutions (ICC, SCC, LCIA, VIAC). The analysis also incorporates PAC CCE tribunal establishment data from 2015 to 2024. The results show that, despite the fundamental principle of party autonomy, institutions differ on criteria for determining the number of arbitrators (quantitative vs. general criteria). PAC CCE data indicates that 134 sole-arbitrator tribunals and 111 three-member tribunals were constituted, predominantly composed of legal professionals, particularly judges and members of the academic community. The establishment of a properly constituted tribunal is a crucial procedural step, driven by the institutions' commitment to improving their respective rules and procedures.

Key words: *arbitration, arbitration procedure, arbitration institutions, arbitration court, arbitrators.*

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1. INTRODUCTION

Arbitration is a means of dispute resolution whereby the parties voluntarily submit their disputes for determination by an impartial third party – the arbitrator[1]. As a rule, it represents a voluntary method of dispute resolution, which is why it is referred to as an alternative dispute resolution mechanism. The English acronym ADR (*alternative dispute resolution*) has also become an internationally recognised abbreviation for this alternative path to justice.[2]

A key feature of so-called "true" or voluntary arbitration lies in the fact that the parties, of their own free will, have entrusted the resolution of their dispute to a third person rather than to a court of law. Consequently, the existence of a valid arbitration agreement between the parties is, as a rule, a necessary condition for arbitration to be conducted and for its outcome – the arbitral award – to have binding effect upon the parties.[3]

Although equivalent in terms of the judicial function they perform, arbitration and state courts differ in the nature of the bodies exercising that function. In state courts, adjudication is performed by a state judge appointed in accordance with national legislation governing the organisation and functioning of the judiciary. In contrast, adjudication in a chosen tribunal, or arbitration, is carried out by persons who have been vested with adjudicatory authority by the parties through their agreement – the appointed arbitrators.[4]

Furthermore, international commercial arbitration has been accepted as the predominant mechanism for resolving international commercial disputes. It may contribute to the facilitation of international trade as a factor that both prevents disputes and sanctions *unfair* business practices. Therefore, international commercial arbitration should be viewed not only from the standpoint of a businessperson or a practising lawyer, but also from the economic, political, and other perspectives relevant to the state and the whole international business community.[5] Arbitration is, therefore, a global "thing/phenomenon".

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[1] Goldštajn, A., Triva, S.: *International Commercial Arbitration*, Zagreb: Informator, 1987, p. 12.

[2] Milašinčić, E.: Alternative Methods of Dispute Resolution in the Republic of Croatia, *FIP*, 10(1) 2022, p. 119.

[3] Uzelac, A.: The Form of the Arbitration Agreement in Croatian Law: New Regulation, Its Foundations, and Prospects for Further Development, *Collected Papers of the Faculty of Law in Zagreb*, 56(2-3) 2006, p. 549.

[4] Triva, S., Belajec, V., Dika, M.: *Građansko parnično procesno pravo*, Zagreb: Narodne novine d.d., 1986, p. 684.

[5] *Op. cit.* in note 1.

In this regard, globalisation is primarily characterised by the interdependence of national economies worldwide through the increased cross-border exchange of goods and services, international capital flows, and technological innovation. The forces of globalisation have generated an increase in international contracts, which in turn has led to a significant rise in complex commercial disputes. This development has stimulated the evolution of international arbitration as the preferred method of dispute resolution.[6]

Arbitration is used to resolve so-called arbitrable disputes – that is, disputes concerning rights over which the parties may freely dispose. It is, as a rule, a voluntary dispute resolution mechanism, which constitutes one of its fundamental characteristics. On the other hand, there also exist so-called mandatory arbitrations, in which arbitration is "imposed" as the method of dispute resolution, usually by virtue of a legal act.

This paper describes the essential characteristics of arbitration as a dispute resolution mechanism, with particular emphasis on the establishment of arbitral tribunals as exemplified by selected arbitration institutions.

2. ARBITRATION – AN ALTERNATIVE METHOD OF DISPUTE RESOLUTION

2.1. HISTORICAL DEVELOPMENT OF ARBITRATION

According to some authors, arbitration has existed since "time immemorial;" it is as old as humankind itself and represents a cross-cultural phenomenon. In legal scholarship, three periods are identified during which arbitration retained its essential features.

The first period is the Middle Ages, during which commercial law emerged – a time when the "old" *lex mercatoria* prevailed. The second period covers the incorporation of the medieval *lex mercatoria* into national legal systems (from the seventeenth to the nineteenth century). The third period followed thereafter, the part of which extending from the Second World War to the present day is considered the most significant for international commercial law (*lex mercatoria*). The origins of arbitration are thus linked to the emergence of international commercial law (*lex mercatoria*), i.e. to the latter half of the nineteenth and the early decades of the twentieth century.[7] It should also be noted that Roman law, during the last century of the Republic and throughout the

[6] Hanotiau, B.: International Arbitration in a Global Economy: The Challenges of the Future, *Journal of International Arbitration*, 28(2) 2011, p. 89.

[7] Lasić, M.: *Arbitration Law*, Mostar: Faculty of Law, 2013, p. 25.

classical and post-classical periods, recognised two basic forms of arbitration. The first was arbitration conducted by *boni viri*. This was an *ad hoc*, informal, institutionally undeveloped, and fully party-adapted private method of dispute resolution, bearing significant features of conciliation. The second type was arbitration *ex compromisso* – an institutionally developed form of arbitration over which the praetor could exercise a certain degree of control, particularly regarding arbitrability, the conduct of proceedings, certain procedural actions, and the enforcement of the arbitral decision.[8]

A key contribution to the modern development of arbitration law at the international level stems from the work of the *United Nations Commission on International Trade Law* (UNCITRAL). Croatian arbitration law is based on the Arbitration Act[9], adopted on the model of the UNCITRAL Model Law on International Commercial Arbitration (UML). The Model Law was adopted by UNCITRAL in 1985 and amended in 2006. Its objective was to harmonise and unify national legal systems in the field of arbitration, given the importance of such harmonisation for the advancement of international commercial relations.[10]

Arbitration as a legal mechanism for dispute resolution existed in the territory of the Republic of Croatia even during the former state and was then regulated within the framework of civil procedural law.

2.2. FUNDAMENTAL CHARACTERISTICS OF ARBITRATION, THE LEGAL EFFECTS OF AN ARBITRAL AWARD, AND THE ADVANTAGES OF ARBITRATION

Arbitration is a method of dispute resolution in which a third, impartial person trusted by the parties (the arbitrator) is vested with the authority to decide the dispute by means of his or her decision. It is, therefore, a specific form of adjudication, and the arbitrator or arbitrators rendering such a decision constitute an arbitral tribunal. Such arbitral tribunals derive their authority to decide a dispute between the parties from the parties' own agreement. Arbitration, accordingly, presupposes a derogation of the jurisdiction of the state court.

In state court proceedings, the judge is appointed on the basis of statute (by virtue of law). In arbitral proceedings, by contrast, the arbitrators receive their investiture to adjudicate from the parties through their agreement. A state

[8] Milotić, I.: Enforcement of Arbitral Awards in Roman Law, *Collected Papers of the Faculty of Law in Zagreb*, 66(6) 2016, p. 785.

[9] Narodne novine: *Zakon o arbitraži*, Zagreb: Narodne novine d.d., 88/2001.

[10] Triva S., Uzelac A.: *Hrvatsko arbitražno pravo*, Zagreb: Narodne novine d.d., 2007, p. 31.

court judge is a public judicial officeholder appointed because he or she enjoys the confidence of the state. Such a judge is, therefore, a permanent representative of the state judiciary (until the conditions for termination laid down by law arise), and his or her judicial authority does not cease upon deciding a particular case. An arbitrator, on the other hand, is not a public officeholder. He or she adjudicates because he or she enjoys the confidence of the parties, which confidence is recognised by the legal order and on the basis of which the legal order transfers to the arbitrator the adjudicatory powers of a state judge. However, those powers terminate once the arbitrator has decided the dispute entrusted to him or her by the parties. The arbitrator is, therefore, not a permanent, standing judicial authority.

Arbitral tribunal is thus a non-state, private tribunal chosen by the parties and not imposed upon them. Proceedings before an arbitral tribunal are proceedings of a judicial nature. The arbitral tribunal decides the dispute on the merits by way of an arbitral award (an "arbitral judgment"). Such a decision is binding upon the parties and, as a rule, they are required to comply with it; it binds them in the same manner as a decision of a state court. Moreover, if so authorised by the parties, the arbitral tribunal may decide according to the principles of equity *ex aequo et bono, en ambiale compositeur*), which does not deprive arbitration of its adjudicatory character. Furthermore, arbitral proceedings are characterised by the following principles: equality of the parties, the adversarial principle, openness of adjudication, party autonomy in the choice of procedural rules and the seat of arbitration, opportunity and procedural economy in the conduct of the proceedings, party autonomy in the choice of the applicable substantive law (and in the arbitration agreement itself), confidentiality/non-publicity, collegial decision-making, and interference/interaction with the state court (and proceedings before it).[11]

Arbitration is generally used to resolve commercial disputes, i.e. disputes arising out of relationships of a commercial nature, whether contractual or non-contractual (that is, any transaction relating to the sale or exchange of goods and services; distribution agreements; commercial agency or mandate; factoring; leasing; construction contracts; consulting; licensing agreements; investment; finance and banking; insurance; exploitation or concession agreements; joint ventures and other forms of industrial or business cooperation; and the carriage of goods or services by air, sea, rail or road) without limitation to what any particular national law classifies as "commercial".[12] With that said, in arbitration, two or more parties may appear on opposing sides (*multi-party arbitration*). As a rule, the parties to an arbitration (contracting parties) are

[11] Ibid., p. 35.

[12] *Op. cit.* in note 7, p. 24.

those that have concluded a contract containing an arbitration clause referring disputes arising from that specific contract to arbitration. Legal theory and legal practice also address the issue of the effect of an arbitration clause to "third parties" i.e. whether an arbitration agreement or arbitral award can bind a "third person." Accordingly, comparative legal literature cites examples of situations in which, under certain conditions, an arbitration clause may be extended to third parties – such as contracts for the benefit of a third party, universal succession, transfer/assignment of contract, cession (assignment of claims), assumption of debt, and, certainly, piercing the corporate veil.[13]

The fundamental principles and features of modern arbitration, on which Croatian arbitration law is likewise based, are the following: non-state character – arbitration as a private, extra-judicial mechanism of dispute resolution; adjudicatory nature – the arbitral tribunal as a body authorised to adjudicate; the binding effect of the outcome of arbitration – the principle of substitution of state jurisdiction and the enforceability of the decision on the merits; voluntariness and party autonomy in the choice of the method of dispute resolution and in determining its essential elements; flexibility and party control over the proceedings; equal treatment of the parties – the principle of a fair hearing and the right of the parties to be heard; efficiency – the principle prohibiting abuse of rights and the principle of adjudication within a reasonable time; and protection of public policy/order and the integrity of arbitration.[14]

Taking all of the above into account, it may therefore be concluded that arbitration, as a method of dispute resolution, offers numerous comparative advantages in resolving disputes as compared with dispute resolution before state courts and other forms of alternative dispute resolution (e.g. mediation).

2.3. TYPES OF ARBITRATION

Legal theory and practice recognise numerous classifications of arbitration; however, the most common and most significant distinction is that between *ad hoc* arbitration and institutional arbitration. From the standpoint of adjudicatory authority and the legal significance of their decisions, there is virtually no difference between institutional and *ad hoc* arbitration; the differences are primarily practical and organisational in nature.[15]

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[13] Ceronja, P.: Extension of the Arbitration Clause to Non-Signatories Through the Piercing of the Corporate Veil, *Collected Papers of the Faculty of Law in Zagreb*, 72(1-2) 2021, p. 727.

[14] *Op. cit*. in note 9, p. 35.

[15] Čizmić, J., Momčinović, H.: Sport Arbitration Tribunal COC-organisational and procedural provisions, *Collected Papers of the Faculty of Law in Split*, 48(4) 2011, p. 759.

In *ad hoc* arbitration, the parties are not required to resolve their dispute in accordance with the rules of any arbitral institution. Therefore, in ad hoc arbitration, the parties themselves may agree upon their own procedural rules. They must also agree on how the arbitral tribunal will be constituted, where it will sit, as well as on the remuneration of arbitrators and the reimbursement of arbitration costs. While in *ad hoc* arbitration the parties are "left to their own devices," in institutional arbitration they submit their dispute to an arbitral institution (arbitral court, arbitration centre, or similar body) which administers the proceedings in accordance with its own arbitration rules. In order to refer a dispute to a specific arbitral institution, however, the parties must agree that the dispute will be resolved by arbitration under that institution's rules.[16] It is therefore unsurprising that arbitral institutions often publish model or recommended arbitration clauses, which can be incorporated into contracts in case the parties decide to resolve potential disputes arising from that contract through arbitration.

Institutional arbitration, therefore, refers to arbitration conducted under the auspices of established institutions. Frequently, arbitral institutions operate within chambers of commerce or professional associations, although they may also be established or function under the auspices of other organisations, associations, or bodies.

In the Republic of Croatia, several arbitral institutions operate. The Permanent Arbitration Court at the Croatian Chamber of Economy (hereinafter: PCA CCE or the Court) is the oldest and most significant arbitral institution in the Republic of Croatia. In addition, the Arbitration Court "Pravdonoša," established in 2005 through a private initiative and seated in Zadar, also operates as an arbitral institution.[17] Alongside these institutions, Croatia also has several specialised arbitral tribunals that resolve disputes between sports clubs and athletes under the auspices of sports associations — for example, the Arbitration Court of the Croatian Football Federation[18], the Arbitration of the Croatian Basketball Federation[19], and the Sports Arbitration Tribunal of the Croatian Olympic Committee[20], each operating under legal acts adopted by the representative or executive bodies of those organisations.

[16] *Op. cit.* in note 9, p. 13.

[17] <https://www.pravdonosa.hr/site/naslovnica>, last accessed on 10/10/2025.

[18] Izvršni odbor HNS *Pravilnik o radu Arbitražnog suda Hrvatskog nogometnog saveza*, 07.06.2023.

[19] Hrvatski košarkaški savez: *Pravilnik o postupku pred Arbitražom Hrvatskog košarkaškog saveza*, Zagreb: Hrvatski košarkaški savez, lipanj 2020.

[20] <https://www.hoo.hr/page/358>, last accessed on 10/10/2025.

Some of the better-known international arbitral institutions for resolving international commercial disputes include: the International Court of Arbitration of the International Chamber of Commerce (ICC), established in 1923 and today the leading arbitral institution in the world; the German Institution of Arbitration (DIS), originally established in 1920 and reorganised in 1992, administering both domestic and international disputes; the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), established in 1917; the Vienna International Arbitral Centre (VIAC), founded in 1975; the Swiss Chambers Arbitration Institution (SCAI), founded in 2004 by the Swiss Chambers of Commerce; the London Court of International Arbitration (LCIA), founded in 1892 and one of the most popular arbitral institutions in Europe; the Permanent Court of Arbitration (PCA) in The Hague, established in 1899; the American Arbitration Association (AAA) and its International Centre for Dispute Resolution (ICDR), established in 1926 and headquartered in New York, with 35 regional offices across the United States; JAMS International (United States); the Singapore International Arbitration Centre (SIAC), founded in 1991, initially to arbitrate disputes arising from contracts in the fields of construction, shipbuilding, banking, and insurance, later expanding to energy, finance, sales, joint ventures and other sectors; the China International Economic and Trade Arbitration Commission (CIETAC), established in 1956 by the Government of the People's Republic of China; the Shanghai International Arbitration Centre (SHIAC); the Hong Kong International Arbitration Centre (HKIAC), established in 1985; the Kuala Lumpur Regional Centre for Arbitration (KLRCA), founded in 1978 to promote international arbitration in the Asia-Pacific region; the Indian Council of Arbitration (ICA), founded in 1965; the Japanese Commercial Arbitration Association (JCAA), established in 1950 by the Japan Chamber of Commerce and Industry; the Australian Centre for International Commercial Arbitration (ACICA), founded in 1982 on the initiative of the Institute of Arbitrators in Australia; and the Cairo Regional Centre for International Commercial Arbitration (CRCICA), founded in 1979 as a non-profit international organisation under the auspices of the Egyptian Government and the Asian - African Legal Consultative Organization.[21]

Dispute resolution in legal matters related to international sport is entrusted primarily to arbitration. This alternative method of resolving disputes differs in many respects from ordinary judicial proceedings. It should be emphasised, however, that even within arbitration, certain industries, or activities - such as sport - have developed specific procedural and institutional features reflecting

[21] International Arbitration in India: International Arbitration Insitutions / Different Forums, <https://www.internationalarbitration.in/areas/forums.html>, last accessed on 14/3/2025.

their unique needs.[22] The advantages of arbitration have long been recognised in sport; it is now rare for a dispute connected with sport to be brought before a state court. The establishment of institutional sports arbitration bodies arose from the need to resolve disputes directly or indirectly related to sport through an authoritative, expert, and efficient body capable of adjudicating even the most complex sports disputes, while offering flexible, swift, confidential, and cost-effective proceedings.[23] For example, the Court of Arbitration for Sport (CAS) was established in 1984 in Lausanne, Switzerland, and is often referred to as the "Supreme Court of World Sport." The vast majority of sports federations and associations use CAS arbitration services, including the International Olympic Committee (IOC), the International Association of Athletics Federations (IAAF), the Fédération Internationale de Football Association (FIFA), and the Union of European Football Associations (UEFA).[24]

In the region, notable arbitral institutions include: the Permanent Arbitration at the Chamber of Commerce and Industry of Slovenia[25], the Permanent Arbitration at the Chamber of Commerce of Serbia[26], the Belgrade Arbitration Centre[27], the Permanent Arbitration at the Chamber of Commerce of North Macedonia[28], the Arbitration Court at the Foreign Trade Chamber of Bosnia and Herzegovina[29] and the Arbitration Court of the Chamber of Commerce of Montenegro[30].

Furthermore, the World Intellectual Property Organization (WIPO) established its ADR (alternative dispute resolution) bodies for settlement of disputes through arbitration and mediation in Switzerland in 1994 to resolve disputes related to intellectual property (IP).[31] Within this framework, the WIPO Arbi-

[22] Pocrnić Perica, P.: Arbitration Agreement in Legal Matters Related to International Sport, *Collected Papers of the Faculty of Law in Split*, 54(2) 2017, p. 457.

[23] *Op. cit.* in note 14, p. 759.

[24] International Arbitration in India: International Arbitration Insitutions / Different Forums, <https://www.internationalarbitration.in/areas/forums.html>, last accessed on 14/3/2025.

[25] <http://www.sloarbitration.eu/>, last accessed on 14/3/2025.

[26] <http://www.stalnaarbitraza.rs/>, last accessed on 14/3/2025.

[27] <https://www.arbitrationassociation.org/beogradski-arbitrazni-centar/>, last accessed on 14/3/2025.

[28] Permanent Court of Arbitration: Basic information on Arbitration, <https://arbitraza.mchamber.mk/index.aspx?lng=2>, last accessed on 14/3/2025.

[29] Vanjskotrgovinska komora Bosne i Hercegovine: Arbitražni sud priv VTK/STK BiH, <https://komorabih.ba/pravilnik-o-arbitrazi-2/>, last accessed on 14/3/2025.

[30] Privredna komora Crne Gore: Arbitražni sud, 01.01.2022.

[31] Emre, A. Y.: Intellectual property disputes and international arbitration, *Collected Papers of the Faculty of Law in Split*, 58(3) 2020, p. 929.

tration and Mediation Centre offers alternative dispute resolution mechanisms through arbitration, mediation, expedited arbitration, and a special type of proceedings - expert determination. The WIPO ADR bodies are particularly specialised in resolving disputes concerning intellectual property (IP) and "*technology disputes*". The WIPO *Arbitration and Mediation Centre* offers time and cost-efficient mechanisms for resolving disputes related to Internet domain names ("*Internet domain name disputes*") and has resolved more than 60,000 such cases.[32]

Arbitration as a means of dispute resolution thus possesses a global („World Wide"*)* dimension, which is inherent to arbitration as a method of resolving commercial disputes. The dates of establishment of the institutions listed above reveal that some have existed for over a century. Given the existence of numerous arbitral institutions across Europe and worldwide, it is justified to speak of a market for arbitral services, where contracting parties in the global business community can choose among many institutions to resolve potential disputes.

Arbitral institutions provide services of organising arbitration proceedings, continuously improving their services, and promoting their work using modern marketing tools and strategies to increase visibility and confidence in arbitration.

3. ESTABLISHMENT OF ARBITRAL TRIBUNALS

3.1. GENERAL CONSIDERATIONS ON THE ESTABLISHMENT OF ARBITRAL TRIBUNALS

The arbitration rules of arbitral institutions determine the procedure for the establishment of arbitral tribunals. From an organisational and practical standpoint, arbitral proceedings may be "divided" into two fundamental phases. The first phase begins with the filing of a statement of claim or request for arbitration before a given arbitral institution and continues until the arbitral tribunal has been constituted. The second phase commences upon the constitution of the arbitral tribunal and lasts until the conclusion of the proceedings, that is, until the rendering of the arbitral award.

Arbitral institutions that provide arbitration services to the parties, under whose auspices arbitral tribunals are established, and arbitration proceedings are conducted, bear the responsibility of ensuring that every arbitral proceed-

[32] WIPO: Alternative Dispute Resolution, <https://www.wipo.int/amc/en/>, last accessed on 14/3/2025.

ing initiated before them is conducted professionally, efficiently, and in a timely manner, in accordance with the applicable arbitration rules. It may also be said that, in the process of constituting the arbitral tribunal, the arbitral institution plays an additional and crucial role, as the establishment of the tribunal represents the "key step" in the arbitral process. Once the tribunal has been constituted, the "momentum" of the arbitration shifts to that tribunal, which then conducts the arbitral proceedings - in effect, the hearing and adjudication of the dispute on its merits.

The active role in the constitution of the arbitral tribunal - the appointment of arbitrators - belongs primarily to the parties. Namely, the point of departure and foundation of any arbitration is the arbitration agreement between the parties. The parties may agree upon the substantive and procedural rules to be applied, the seat and language of the arbitration, and other matters. Likewise, they may agree upon the number of arbitrators and the method of constituting the arbitral tribunal (i.e. the procedure for their appointment). Thus, in concrete arbitral proceedings, the parties play an active role in the establishment of the tribunal - they propose individuals whom they consider suitable to serve as arbitrators.

The need for the involvement of the arbitral institution in the establishment of the arbitral tribunal (i.e. in the appointment of arbitrators) arises when the parties fail to take the necessary actions themselves. Once such involvement becomes necessary, arbitral institutions must ensure that no undue delay occurs in the appointment process. The arbitral tribunal, once properly and promptly constituted, should take over the dispute as soon as possible and begin its resolution. Indeed, one of the principal reasons why parties choose arbitration as a method of dispute resolution lies in their expectation of speed, efficiency, and procedural economy. Naturally, this requirement of procedural expediency must not come at the expense of the quality of the proceedings or of the substantive adjudication of the dispute.

The following sections will analyse the establishment of arbitral tribunals under the Rules of Arbitration of the Permanent Arbitration Court at the Croatian Chamber of Economy (Zagreb Rules 2015), as well as under the current arbitration rules of selected international arbitral institutions.

3.2. ESTABLISHMENT OF THE ARBITRAL TRIBUNAL UNDER THE ARBITRATION ACT

The Arbitration Act defines the term "arbitral tribunal" (also referred to as "chosen court" or "court of arbitration") as a non-state tribunal deriving its adjudicatory authority from the agreement of the parties. It further defines an

"arbitral institution" as a legal entity, or a body within a legal entity, which organises and ensures the operation of arbitral tribunals. In Chapter III, entitled "Arbitral Tribunal", Articles 9 to 16 regulate the number of arbitrators, the appointment of arbitrators, the rights and obligations of arbitrators, procedure for challenging arbitrators, failure of arbitrators to perform their duties, the appointment of substitute arbitrators, the jurisdiction of the arbitral tribunal, and interim measures in arbitration proceedings.

Article 9 of the Act provides that, unless the parties have agreed otherwise, the arbitral tribunal shall be composed of three arbitrators. Under Article 10(3), the parties may agree upon the procedure for the appointment of arbitrators, provided that they comply with paragraphs (4) and (5) of the same Article. Furthermore, paragraph 4 of Article 10 of the Arbitration Act prescribes the procedure to be followed in the absence of an agreement between the parties regarding the procedure for the appointment of arbitrators. Thus, pursuant to Article 4(1) of the Act, where the arbitration is conducted by three arbitrators, each party shall appoint one arbitrator, and the two so appointed shall appoint the third, who shall act as the president of the arbitral tribunal.

If one party fails to appoint an arbitrator and to notify the other party of such appointment within 30 days after receiving notice of the appointment of the other party's arbitrator and an invitation to do the same, or if the two appointed arbitrators fail to agree on the third arbitrator within 30 days from the appointment of the latter of them, the appointing authority designated under Article 43(3) of the Act shall make the appointment upon the request of a party. According to paragraph 2 of Article 4 of the Act, where the arbitration is conducted by a sole arbitrator and the parties fail to agree on the person to be appointed, the appointing authority referred to in Article 43(3) of the same Act shall, at the request of a party, appoint the sole arbitrator. Furthermore, if, in the course of the appointment procedure agreed upon by the parties, as provided in paragraph 5 of the same Article, one of the parties fails to act in accordance with the rules of that procedure, or if a third person, including an institution, fails to perform the function entrusted to it under those rules, either party may request the appointing authority referred to in Article 43(3) of the Act to take the necessary measures, unless the parties' agreement on the appointment procedure provides for another method to secure the appointment.

Paragraph 6 of Article 10 of the Act provides that the appointing authority referred to in Article 43(3) of the same Act, when making an appointment, shall take into account the qualifications required of the arbitrator under the parties' agreement, as well as all other circumstances necessary to ensure the appointment of an independent and impartial arbitrator. In disputes with an international element, it is further desirable that the sole arbitrator or the pres-

ident of the arbitral tribunal be of a nationality other than that of the parties. Furthermore, paragraph 7 of Article 10 stipulates that no appeal shall be permitted against a decision on any matter entrusted to the appointing authority under paragraphs 3 and 4 of the same Article.

The importance of the proper constitution of an arbitral tribunal should also be viewed in the context of the fact that, under the current Arbitration Act, the improper constitution of the arbitral tribunal, where such an irregularity has affected the arbitral award, constitutes one of the grounds for setting aside the award. This provision is contained in Article 36(2)(1)(e) of the Arbitration Act.

3.3. ESTABLISHMENT OF ARBITRAL TRIBUNALS UNDER THE RULES OF ARBITRATION OF THE PERMANENT ARBITRATION COURT AT THE CROATIAN CHAMBER OF ECONOMY

Arbitral proceedings before the Permanent Arbitration Court at the Croatian Chamber of Economy (hereinafter: the Court) are governed by the Rules of Arbitration of the Permanent Arbitration Court at the Croatian Chamber of Economy (Official Gazette Nos. 129/2015[33] and 50/2017[34]) - commonly referred to as the Zagreb Rules 2015 - as well as by the Rules on the Permanent Arbitration Court at the Croatian Chamber of Economy (Official Gazette Nos. 50/2017 and 11/2019) and the Decision on the Costs in Arbitration Proceedings (Official Gazette Nos. 142/2011, 37/2015, 109/2016, 87/2018, and 147/2023).

The Zagreb Rules 2015 were preceded by the Rules on Arbitration before the Permanent Arbitration Court of the Croatian Chamber of Economy (Official Gazette No. 142/2011) (Zagreb Rules 2011), the Rules on Arbitration before the Permanent Arbitration Court at the Croatian Chamber of Economy (Official Gazette No. 150/2002) (Zagreb Rules 2002), and, earlier still, by two sets of rules of the Court that separately regulated the conduct of arbitration proceedings before the Court in disputes without and with an international element. These were the Rules on the Resolution of Disputes with an International Element before the Permanent Elected Court of 1992 (Official Gazette No. 25/92) and the Rules on the Permanent Elected Court at the Croatian Chamber of Economy of 1993 (Official Gazette No. 113/93 – consolidated text). The Arbitration Rules of the Court contain provisions regulating the way arbitral tribunals of the Court are constituted.

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[33] Narodne novine: *Pravilnik o arbitraži Stalnog arbitražnog suda pri Hrvatskoj gospodarskoj komori (Zagrebačka pravila),* Zagreb: Narodne novine d.d., 129/2015, 50/2017.

[34] Narodne novine: *Pravilnik o Stalnom arbitražnom sudištu pri Hrvatskoj gospodarskoj komori,* Zagreb: Narodne novine d.d., 50/2017, 11/2019.

The provisions of the Zagreb Rules 2015, in Section III, Point 1, entitled "Number of Arbitrators and Constitution of the Arbitral Tribunal," govern the process of constituting arbitral tribunals before the Court. Pursuant to Article 14, the parties may agree that the arbitration be conducted either by a sole arbitrator or by an arbitral tribunal. If the parties have not agreed in advance on the number of arbitrators, in disputes where the value of the subject matter does not exceed EUR 200,000, the arbitration shall be conducted by a sole arbitrator; in all other disputes, the arbitration shall be conducted by a tribunal of three arbitrators.

According to the Zagreb Rules 2015 (Article 15), the parties may appoint as arbitrators a person who is not included on the Court's list of arbitrators. However, the appointing authority may appoint a sole arbitrator, or a member or president of the arbitral tribunal, only from the relevant list of arbitrators. The Court, in turn, maintains two lists of arbitrators: – the List of Arbitrators in Proceedings with and without an International Element[35], i.e. the list of domestic arbitrators (arbitrators residing in the Republic of Croatia); and – the List of Arbitrators in Proceedings with an International Element, which contains the names of foreign arbitrators (arbitrators residing outside the Republic of Croatia)[36]. Both current lists of arbitrators were published in the Official Gazette No. 12/2025. Therefore, under the Zagreb Rules 2015, the parties may appoint as arbitrator a person not included on the Court's lists of arbitrators, whereas the appointing authority of the Court, if appointing an arbitrator in a particular case, must do so from the Court's lists of arbitrators.

Furthermore, according to the Zagreb Rules 2015, specifically Article 16(1), if the parties have agreed that a sole arbitrator shall be appointed, they are required to notify the Court of the name of the sole arbitrator. In such a case, the name of the sole arbitrator may be determined in the arbitration agreement itself, in a subsequent agreement, or during the arbitration proceedings. Pursuant to paragraph 2 of the same Article, if the parties fail to act in accordance with paragraph 1 within a reasonable time limit set by the Court - which shall not be less than fifteen (15) days from the date of submission of the statement of defence to the Court, or from the expiry of the time limit for submitting the statement of defence - the appointing authority shall appoint the sole arbitrator.

[35] Narodne novine: *Lista arbitara u postupcima s međunarodnim obilježjem pred Stalnim arbitražnim sudištem Hrvatske gospodarske komore (arbitri s inozemnim prebivalištem)*, Zagreb: Narodne novine d.d., 12/2025-118.

[36] Narodne novine: *Lista arbitara u postupcima s međunarodnim i bez međunarodnog obilježja pred Stalnim arbitražnim sudom pri Hrvatskoj gospodarskoj komori*, Zagreb: Narodne novine d.d., 12/2025-117.

With regard to the constitution of a three-member arbitral tribunal, Article 17 of the Zagreb Rules 2015 provides that where the arbitration is conducted by a tribunal composed of three arbitrators, each party shall appoint one member of the tribunal, and the two so appointed members shall choose the third member, who shall act as the presiding arbitrator. If the claimant fails to appoint a member of the tribunal in the statement of claim or within 15 days after being subsequently invited to do so, or if the respondent fails to appoint a member of the tribunal in the statement of defence or within 15 days after being subsequently invited to do so, the appointing authority shall appoint the member of the tribunal in lieu of the defaulting party. Furthermore, if the two appointed members of the tribunal fail to inform the Court of their choice of the presiding arbitrator within 15 days from the appointment of the later-appointed member, the appointing authority shall appoint the presiding arbitrator. In the notice of appointment and in the declaration of acceptance of appointment, the members of the tribunal shall be expressly notified that the presiding arbitrator will be appointed by the appointing authority should they fail to do so within the prescribed time limit.

The Zagreb Rules 2015, in Article 18, also regulate the method of appointment in cases of joinder of parties (co-claimants). If several claimants participate in a dispute as co-claimants, they are required to reach a prior agreement on the appointment of a joint arbitrator. If they fail to do so within 15 days after being invited to reach such an agreement, the appointing authority shall appoint the arbitrator from the Court's list of arbitrators.

If several respondents participate in a dispute whose rights and obligations forming the subject matter of the dispute arise from the same factual and legal basis, that is, who are jointly bound in respect of the dispute, they are required to appoint a joint arbitrator in their statement of defence or within 15 days after being invited to do so. If they fail to appoint a joint arbitrator, the appointing authority shall appoint one from the Court's list of arbitrators. If, however, several respondents participate in a dispute who are not jointly bound in respect of the subject matter of the dispute, that is, whose rights and obligations do not arise from the same factual and legal basis, and they fail to appoint a joint arbitrator within 15 days after being invited to do so, the appointing authority shall appoint all members of the arbitral tribunal, regardless of whether the claimant has appointed an arbitrator or whether the claimants have jointly appointed one.

Furthermore, pursuant to Article 19 of the Zagreb Rules 2015, the parties may mutually agree to designate an appointing authority. If, however, the parties fail to reach an agreement on the appointing authority, or if the appointing authority designated by agreement declines to perform the entrusted function,

the appointing authority shall be the President or the Vice-President of the Court of Arbitration.

Article 20 of the Zagreb Rules 2015 sets out the procedure to be followed by the appointing authority. It is required to appoint the arbitrator without delay. The appointment shall be made by applying the list procedure only if the parties have expressly agreed to its use or if the appointing authority considers it appropriate in the circumstances of the specific case. The list procedure is applied as follows: At the request of one or both parties, the appointing authority shall provide both parties with an identical list containing at least three names. Within 15 days of receiving the list, each party may return it to the appointing authority after striking out the name(s) to which it objects and numbering the remaining names on the list in order of preference. Upon the expiry of the 15-day period, the appointing authority shall appoint the arbitrator from among the persons approved by the parties, taking into account the order of preference indicated by them. If it is not possible to make the appointment in the manner described, the appointing authority may appoint an arbitrator at its own discretion. In appointing the arbitrator, the appointing authority must consider all circumstances ensuring the appointment of an independent and impartial arbitrator, as well as the appropriateness of appointing an arbitrator who does not share the nationality of the parties.

The Zagreb Rules 2015, furthermore, in Article 21, regulate the situation in which a party (or the parties) appoints an arbitrator who is not included on the Court's list of arbitrators and whose place of residence or habitual abode is outside the seat of arbitration, in connection with the travel and accommodation expenses that may arise from such an appointment. On the other hand, Article 22 of the Zagreb Rules 2015 stipulates when the arbitral tribunal of the Court shall be deemed constituted. The tribunal is considered constituted on the date when the Court receives the statement of independence and acceptance of office from the appointed sole arbitrator, or from all members of the arbitral tribunal. The Court shall notify the sole arbitrator or the members of the tribunal, as well as the parties, of this date.

Finally, under Article 23 of the Zagreb Rules 2015, any person approached in connection with a possible appointment as arbitrator must disclose all circumstances that might give rise to doubts as to their independence or impartiality. Even after appointment, the arbitrator must promptly disclose to the parties any such circumstances, unless they have already been previously disclosed.

3.4. ESTABLISHMENT OF ARBITRAL TRIBUNALS UNDER THE RULES OF ARBITRATION OF THE INTERNATIONAL COURT OF ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE (ICC)

The Rules of Arbitration[37] of the International Chamber of Commerce (ICC), in force as of 1 January 2021 (hereinafter: ICC Rules), contain general provisions stating that each arbitrator must be and remain impartial and independent of the parties involved in the arbitration. Under Article 11(2) of the ICC Rules, before appointment or confirmation, any person proposed as an arbitrator must sign a statement of acceptance, availability, impartiality, and independence. The proposed arbitrator must disclose in writing to the Secretariat any facts or circumstances which might, in the eyes of the parties, call into question the arbitrator's independence or give rise to reasonable doubts as to their impartiality. The Secretariat then communicates such information to the parties in writing and fixes a time limit for any comments or objections by the parties.

Furthermore, under Article 11(2), an arbitrator is required to promptly inform the Secretariat and the parties in writing of any facts or circumstances of a similar nature that may arise during the course of the arbitration. The decisions of the Court regarding appointment, confirmation, challenge, or replacement of arbitrators are final. By accepting their appointment, arbitrators undertake to perform their duties in accordance with the Rules. Unless the parties have agreed otherwise, the arbitral tribunal shall be constituted in accordance with Articles 12 and 13 of the ICC Rules. Also, to assist prospective arbitrators in fulfilling their disclosure obligations under Article 11(2) and (3), each party must promptly inform the Secretariat, the arbitral tribunal, and the other parties of the existence and identity of any non-party who has entered into an agreement for the funding of claims or defences and who has an economic interest in the outcome of the arbitration.

Furthermore, Articles 12 and 13 of the ICC Rules govern the constitution, appointment, and confirmation of arbitrators. Pursuant to Article 12, disputes are decided by either a sole arbitrator or three arbitrators. If the parties have not agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, unless it considers that the dispute warrants the appointment of three arbitrators. In that case, the claimant must nominate an arbitrator within 15 days of receiving notification of the Court's decision, and the respondent must nominate an arbitrator within 15 days of receiving notification of the claimant's nomination. If a party fails to nominate an arbitrator, the appointment shall be made by the Court. However, if the parties have agreed that the dispute shall be decided by

[37] International Chamber of Commerce: *2021 Arbitration Rules*, Paris: International Chamber of Commerce, 2021.

a sole arbitrator, they may jointly propose a candidate for confirmation. Should they fail to do so within 30 days from the date on which the respondent received the claimant's Request for Arbitration - or within any extended period granted by the Secretariat - the Court shall appoint the sole arbitrator.

If the parties have furthermore agreed that the dispute shall be resolved by three arbitrators, each party shall, in its statement of claim or statement of defence, nominate one arbitrator for confirmation. If a party fails to nominate an arbitrator, the Court shall make the appointment. Where the dispute is to be decided by three arbitrators, the third arbitrator, who shall act as the president of the arbitral tribunal, shall be appointed by the Court, unless the parties have agreed on a different procedure for such appointment, in which case the nomination shall be subject to confirmation pursuant to Article 13 of the ICC Rules. If such a procedure does not result in a nomination within 30 days from the confirmation or appointment of the co-arbitrators, or within any other period determined by the parties or the Court, the Court shall appoint the third arbitrator.

Where there are multiple claimants or respondents and the dispute is to be decided by three arbitrators, the claimants jointly and the respondents jointly shall each nominate one arbitrator for confirmation pursuant to Article 13. If an additional party joins the proceedings and the dispute is to be resolved by three arbitrators, that additional party may jointly, with either the claimant(s) or respondent(s), nominate an arbitrator for confirmation. However, if no joint nomination is made under Articles 12(6) or 12(7), and all parties cannot agree on the method of constituting the tribunal, the Court may appoint each member of the tribunal and designate one of them as President. In such a case, the Court is free to select any person it deems appropriate as arbitrator, applying Article 13 as it considers suitable. Notwithstanding any party agreement on the constitution of the tribunal, the Court may, in exceptional circumstances, appoint all members of the tribunal in order to avoid a significant risk of unequal treatment or unfairness that could affect the validity of the award.

Moreover, Article 13 of the ICC Rules contains provisions governing the appointment and confirmation of arbitrators. This article stipulates that, in designating or appointing arbitrators, the Court shall take into consideration the nationality of the person to be appointed as arbitrator, their place of residence, and any other relationships they may have with the countries of which the parties or the other arbitrators are nationals, as well as the availability of the person and their ability to conduct the arbitration in accordance with the Rules. All the above also applies when the Secretary General confirms an arbitrator pursuant to paragraph 2 of the same article. Namely, under paragraph 2 of the above-mentioned article, the Secretary General may confirm as arbitrator - whether as a member of the arbitral tribunal, a sole arbitrator, or the president

of the arbitral tribunal - persons nominated by the parties or proposed in accordance with special agreements between them, provided that the statement submitted by the nominee contains no reservations concerning impartiality or independence, or that any such reservations have not given rise to an objection. The Court shall be informed of such confirmation at one of its next sessions.

If, however, the Secretary General considers that a member of the arbitral tribunal, a sole arbitrator, or the president of the arbitral tribunal should not be confirmed, the Court shall decide on the matter. Where the Court itself is to appoint an arbitrator, it shall make the appointment upon the proposal of a National Committee or Group of the ICC which it deems appropriate. If, however, the Court does not accept the proposal, or if the National Committee or Group fails to submit the requested proposal within the time limit fixed by the Court, the Court may either renew its request or seek a proposal from another National Committee or Group it considers appropriate, or it may directly appoint any person it deems suitable.

Furthermore, under paragraph 4 of Article 13, the Court may also directly appoint any person it deems appropriate as arbitrator: a) if one or more of the parties is a State or may be considered a State entity, b) if the Court considers it appropriate to appoint an arbitrator from a country or territory where there is no National Committee or Group, or c) if the President confirms to the Court that there exist circumstances which, in their opinion, make a direct appointment necessary and appropriate.

If the Court appoints a sole arbitrator or the president of the arbitral tribunal, the nationality of such arbitrator or president shall be different from that of the parties. However, in appropriate circumstances, and provided that no party objects within the time limit set by the Secretariat, the sole arbitrator or president of the arbitral tribunal may be chosen from the same country as one of the parties. If the arbitration agreement on which the arbitration is based arises from an international treaty, then, unless the parties agree otherwise, no arbitrator shall share the nationality of any party to the arbitration.

3.5. ESTABLISHMENT OF ARBITRAL TRIBUNALS UNDER THE ARBITRATION RULES OF THE ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE – "SCC RULES"

The Arbitration Institute of the Stockholm Chamber of Commerce (The SCC Arbitration Institute, hereinafter: SCC) administers disputes in accordance with the SCC Arbitration Rules[38], the SCC Rules for Expedited Arbitrations

[38] SCC Arbitration Institute: SCC Rules, Stockholm: SCC Arbitration Institute, <https://sccarbitrationinstitute.se/en/resource-library/scc-rules>, last accessed on 30/3/2025.

(Expedited Arbitration Rules), and other procedures and regulations adopted by the Stockholm Chamber of Commerce. The SCC comprises two bodies — the Board (the Council) and the Secretariat. Disputes are decided by an Arbitral Tribunal, consisting of one or more arbitrators, in accordance with the SCC Arbitration Rules.

Under Article 16 of the SCC Arbitration Rules, the parties may agree upon the number of arbitrators. If they fail to reach such an agreement, the Board shall determine whether the Arbitral Tribunal will consist of a sole arbitrator or three arbitrators, considering the complexity of the case, the value of the dispute, and any other relevant circumstances. Furthermore, the parties may agree on the procedure for appointing the Arbitral Tribunal. If they fail to reach an agreement on the procedure, or if the Arbitral Tribunal is not appointed within the time limit agreed upon by the parties, or, in the absence of such agreement, within the time limit set by the Board, the tribunal shall be appointed in accordance with the SCC Arbitration Rules, specifically pursuant to the provisions contained in paragraphs 3 to 7 of Article 17 of the SCC Arbitration Rules.

Where the Arbitral Tribunal is to consist of a sole arbitrator, the parties are granted ten days to make a joint appointment. If they fail to do so, the Board shall make the appointment. Where the tribunal is to consist of multiple arbitrators, each party appoints an equal number of arbitrators, and the Board appoints the Chairperson of the tribunal. If the parties fail to appoint their arbitrators within the prescribed time, the Board shall appoint them. In cases involving multiple claimants or multiple respondents, where the tribunal is to consist of multiple arbitrators, the co-claimants jointly, or the co-respondents jointly, must appoint an equal number of arbitrators. If either side fails to make a joint appointment, the Board may appoint the entire Arbitral Tribunal. Where the parties are of different nationalities, the nationality of the sole arbitrator or the Chairperson of the Arbitral Tribunal must differ from that of the parties, unless the parties agree otherwise or the Board determines that a departure from this rule is appropriate. In making its appointments, the Board considers the nature and circumstances of the dispute, the applicable law, the seat and language of the arbitration, and the nationalities of the parties.

Pursuant to Article 18 of the SCC Arbitration Rules, every arbitrator must be impartial and independent. Any prospective arbitrator must, prior to appointment, disclose all circumstances that may give rise to justifiable doubts as to their impartiality or independence. Upon appointment, the arbitrator must submit to the Secretariat a signed statement of acceptance, availability, impartiality, and independence, indicating any such circumstances that could give rise to reasonable doubt. The Secretariat provides copies of these statements

of acceptance, availability, impartiality, and independence to the parties and the other arbitrators. Should any circumstance arise during the arbitration that might raise reasonable doubts as to the arbitrator's impartiality or independence, the arbitrator must promptly inform the parties and the other arbitrators in writing.

3.6. ESTABLISHMENT OF ARBITRAL TRIBUNALS UNDER THE ARBITRATION RULES OF THE LONDON COURT OF INTERNATIONAL ARBITRATION (LCIA)

If an agreement, submission, or reference - regardless of how it is drafted or evidenced in writing (whether signed or unsigned) - provides in any manner that the London Court of International Arbitration (LCIA), the London Arbitral Court, or the London Court shall conduct an arbitration in accordance with the Rules of that Court, it shall be deemed that the parties have agreed in writing that any arbitration between them shall be conducted in accordance with the LCIA Rules[39], or with such amended Rules as may subsequently be adopted by the LCIA and come into force before the commencement of the arbitration proceedings, and that these LCIA Rules form an integral part of their agreement ("Arbitration Agreement"). These LCIA Rules comprise a preamble, articles, and schedule, together with an annex to the LCIA Rules and a schedule of costs, which the LCIA may from time to time amend separately (hereinafter referred to as the "LCIA Rules").

According to Article 5 of the LCIA Rules, any disputes between the parties regarding the sufficiency of the Request for Arbitration or the Response (including any Counterclaim) shall not prevent the formation of the Arbitral Tribunal constituted by the LCIA Court. Likewise, the LCIA Court may proceed with the arbitration regardless of whether the Request is incomplete, or the Response (or Counterclaim) is missing, delayed, or incomplete. For this purpose, the term "Arbitral Tribunal" includes a sole arbitrator (including, where applicable, an emergency arbitrator) or all arbitrators where there is more than one. All arbitrators must always be and remain impartial and independent of the parties; no arbitrator in an arbitration shall act as an advocate or representative of any party. Furthermore, no arbitrator may provide advice to either party concerning the dispute between the parties or the conduct or outcome of the arbitration.

Before an arbitrator is appointed by the LCIA Court, each prospective arbitrator must, at the request of the Registrar, provide a brief written summary of

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[39] LCIA: *LCIA Arbitration Rules 2020*, 01.10.2020.

their qualifications and professional experience (both past and present). The candidate must also agree in writing on the amount of fees in accordance with the Schedule of Costs. Furthermore, the candidate must sign a written declaration stating: (i) whether there exist any circumstances presently known that might give rise, in the eyes of any party, to justifiable doubts as to their impartiality or independence, and, if so, fully and precisely disclose such circumstances in the declaration; and (ii) whether they are ready, willing, and able to devote sufficient time, diligence, and effort to ensure the expeditious and efficient conduct of the arbitration. The candidate must also promptly submit such consent and declaration to the Registrar of the Court. Also, each arbitrator assumes a continuing duty, lasting until the conclusion of the arbitration, to promptly disclose in writing any circumstances arising after the date of their written declaration (paragraph 4 of Article 5) that might give rise, in the view of any party, to justifiable doubts as to their impartiality or independence. Such disclosure must be submitted to the LCIA Court, to all other members of the Arbitral Tribunal, and to all parties in the arbitration proceedings.

Furthermore, the LCIA Court appoints the Arbitral Tribunal immediately after the Response (including any Counterclaim) has been delivered to the Registrar, or, if no Response (Counterclaim) has been received, upon the expiry of 28 days from the commencement of the arbitration (or such shorter or longer period as the LCIA Court may determine under Article 22.5). No party or third person may appoint an arbitrator pursuant to the Arbitration Agreement. The LCIA Court alone is therefore authorized to appoint arbitrators (though it must take into account any written agreement or joint nomination submitted by the parties or by other candidates or arbitrators). As a rule, a sole arbitrator is appointed, unless the parties have agreed otherwise in writing, or the LCIA Court decides, in view of the circumstances, that it is appropriate to constitute a tribunal composed of three (or, exceptionally, more than three) arbitrators.

The LCIA Court appoints arbitrators in accordance with any specific method or criteria of selection that the parties have mutually agreed upon in writing. In making its appointment, the Court also takes into account the business sector(s) concerned, the nature and circumstances of the dispute, its monetary amount or value, the location, the languages of the parties, the number of parties involved, and any other factors it may consider relevant in the circumstances. It should be emphasized that the President of the LCIA Court may be appointed as an arbitrator only if the parties expressly agree in writing to nominate them as a sole arbitrator or as the presiding arbitrator of a tribunal. Conversely, the Vice Presidents of the LCIA Court, as well as the President of the LCIA Board (who serves ex officio as a member of the LCIA Court), may be appointed as arbitrators only if nominated in writing by a party or parties, or by other candidates or arbitrators, provided that such nominee has not par-

ticipated and will not subsequently participate in performing any function of the LCIA Court or the LCIA in connection with that arbitration.

Furthermore, Article 6 of the LCIA Rules contains provisions concerning the nationality of arbitrators and parties. At the request of the Registrar, each party must inform the Registrar and all other parties of its nationality (citizenship). In cases where the parties have different nationalities, the sole arbitrator or the presiding arbitrator of the tribunal must not share the nationality of any party, unless the parties whose nationality differs from that of the prospective arbitrator expressly agree otherwise in writing. For the purposes of paragraph 1 of Article 6, when dealing with a natural person, nationality means citizenship, whether acquired by birth, naturalization, or otherwise in accordance with the laws of the relevant state. However, when dealing with a legal entity, nationality refers to the jurisdiction in which it is incorporated and where it has its registered office or principal place of business. A legal entity that is incorporated in one jurisdiction but has its principal place of business in another is considered a national of both jurisdictions. Furthermore, the nationality of a party that is a legal entity is deemed to include the nationalities of its controlling owners or shareholders. A person holding dual or multiple citizenships is regarded as a national of each state concerned. Citizens of the European Union are considered nationals of their respective member states and must not be treated as having the same nationality. A citizen of an overseas territory of a state is deemed a national of that territory, not of the state itself; likewise, a legal entity incorporated in an overseas territory of a state is regarded as a legal entity of that territory, and not (by that fact alone) a national or legal entity of the state to which the territory belongs.

Furthermore, Article 7 of the LCIA Rules contains provisions concerning the appointment of arbitrators by the parties and other nominating authorities. If the parties have agreed in any manner that one or more of them, or any third person or entity (other than the LCIA Court), shall appoint the arbitrators, such agreement is to be treated under the Arbitration Agreement as an agreement to propose nominations for appointment. Any candidate so proposed may be appointed only by the LCIA Court, provided that the candidate meets the requirements set out in Articles 5.3 to 5.5 of the LCIA Rules.

The LCIA Court must not approve the appointment of any candidate if it determines that the candidate does not meet the required conditions or is otherwise unsuitable. In cases where the parties have agreed in any manner that the claimant, respondent, or any third party (other than the LCIA Court) shall propose a nomination for appointment, but such a proposal is not submitted within the prescribed time limit (whether in the request for arbitration, the response or counterclaim, or otherwise), the LCIA Court may proceed to ap-

point an arbitrator notwithstanding the absence of a proposal. The LCIA Court may, but is not obliged to, consider any late nomination proposals submitted after the deadline. In the absence of a written agreement between the parties, no party may unilaterally appoint an arbitrator or the presiding arbitrator of the tribunal.

Finally, Article 8 of the LCIA Rules contains provisions regarding the appointment of arbitrators in multi-party arbitration. In cases where, under the Arbitration Agreement, each party has the right to propose the appointment of an arbitrator in any manner, but there are more than two parties to the dispute, and those parties have not agreed in writing that the parties to the dispute shall jointly form two separate "sides" for the composition of the Arbitral Tribunal (for example, claimants on one side and respondents on the other, with each side appointing one arbitrator), the LCIA Court shall appoint the Arbitral Tribunal independently of such rights or proposals made by any of the parties. In such circumstances, the Arbitration Agreement shall be deemed, in all respects, to constitute a written agreement of the parties under which the LCIA Court alone is authorized to propose and appoint the Arbitral Tribunal.

3.7. ESTABLISHMENT OF ARBITRAL TRIBUNALS UNDER THE ARBITRATION RULES OF THE VIENNA INTERNATIONAL ARBITRAL CENTRE (VIAC)

According to Article 16 of the VIAC Rules[40] (General Provisions on the Arbitral Tribunal), the parties are free to designate persons of their choice as arbitrators. Any individual with full legal capacity may act as an arbitrator, unless the parties have agreed upon specific additional qualifications or requirements for appointment.

Arbitrators are in a contractual relationship with the parties and provide professional services to them. They must perform their duties independently, impartially, and to the best of their knowledge and ability, and they are not bound by any instructions from the parties. Arbitrators are further obliged to maintain confidentiality regarding all information acquired while performing their duty. Any person who intends to accept appointment as an arbitrator must, prior to appointment, sign and submit to the Secretary General a declaration on the official VIAC form confirming their: (i) impartiality and independence, (ii) availability, (iii) qualifications, (iv) acceptance of the appointment, and (v) commitment to act in accordance with the VIAC Rules. Also, each arbitrator

[40] Vienna International Arbitral Centre: *Rules of Arbitration and Mediation*, Vienna: Austrian Federal Economic Chamber, January 2025.

is required, in this written declaration, to disclose any circumstances that may give rise to doubts as to their impartiality, independence, or availability, or that may conflict with the parties' agreement. The duty of prompt disclosure of such circumstances continues throughout the entire arbitration.

Parties or co-arbitrators may nominate members of the Board of the Arbitration Committee, but the Committee itself cannot appoint its own members as arbitrators. The Secretary General may take into account the conduct of proceedings by any or all arbitrators when determining their remuneration, pursuant to Articles 28(1) and 44(2), (8), and (11) of the VIAC Rules.

Furthermore, Article 17 of the VIAC Rules regulates the procedure for the constitution of the arbitral tribunal. The parties may agree whether the arbitral proceedings shall be conducted before a sole arbitrator or a tribunal composed of three arbitrators. The parties may also agree on the method of appointment of the arbitrators. If no such agreement exists, paragraphs 2 to 6 of Article 17 of the VIAC Rules shall apply. Moreover, if the parties have not agreed on the number of arbitrators, the Board shall determine whether the dispute will be decided by a sole arbitrator or a tribunal of three arbitrators. In making such a determination, the Board shall consider the complexity of the case, the value of the dispute, and the parties' interest in a prompt and cost-efficient resolution of the dispute.

Where the dispute is to be resolved by a sole arbitrator, the parties shall jointly nominate the arbitrator and provide his or her name, address (including email), and contact details within 30 days of receiving the Secretary General's request. If the appointment is not made within that period, the sole arbitrator shall be appointed by the Board. However, if the dispute is to be resolved by a three-member tribunal, each party shall appoint one arbitrator (the claimant in the Statement of Claim and the respondent in the Statement of Defence). If a party fails to do so, the Secretary General shall invite the party to provide the name, address (including email), and contact details of its nominee within 30 days of receipt of the request. Should the party fail again to comply, the Board shall make the appointment. If, however, the dispute is to be decided by an arbitral tribunal, the co-arbitrators shall, within 30 days from the date of receipt of the Secretary General's request, jointly appoint the presiding arbitrator and provide his or her full name, address (including email address), and other contact details. If the appointment is not made within this time limit, the presiding arbitrator shall be appointed by the Board.

Article 18 of the VIAC Rules regulates the constitution of the arbitral tribunal in multi-party arbitrations. The procedure is carried out in accordance with Article 17 of the VIAC Rules, with certain additional provisions. Specifically, if the dispute is to be decided by an arbitral tribunal, the claimants and respon-

dents shall each jointly appoint one arbitrator. The participation of the parties in such a joint appointment does not constitute consent to multi-party arbitration. If the admissibility of multi-party arbitration is contested, the arbitral tribunal shall decide on this issue upon request, after hearing all parties and taking into account all relevant circumstances. If, in accordance with paragraph 2 of the above-mentioned Article of the VIAC Rules, a joint arbitrator is not appointed within the prescribed time limit, the Board shall appoint an arbitrator on behalf of the party or parties that failed to do so. In exceptional circumstances, after giving the parties an opportunity to comment, the Board may revoke already confirmed appointments and appoint new co-arbitrators or all arbitrators.

Furthermore, Article 19 of the VIAC Rules provides for a confirmation mechanism for appointments. According to this provision, once an arbitrator has been appointed, the Secretary General shall obtain the arbitrator's declarations in accordance with Article 18(3) and (4). A copy of these declarations shall then be provided to the parties. The Secretary General shall confirm the appointment of an arbitrator if there is no doubt as to his or her impartiality, independence, and ability to perform the duties. The Secretary General shall inform the Board of such confirmation at its next meeting. However, if the Secretary General considers it necessary, the Board shall decide on the confirmation of the appointed arbitrator. Before making its decision, the Secretary General may request comments from the appointed arbitrator and the parties. All such comments shall be communicated to both the parties and the arbitrator.

Once confirmation has been granted, the appointed arbitrator shall be deemed officially appointed. If, however, the Secretary General or the Board refuses to confirm the appointed arbitrator, the Secretary General shall invite the party or parties entitled to appoint an arbitrator or co-arbitrator to appoint another arbitrator or presiding arbitrator within 30 days. If the newly appointed arbitrator is also not confirmed by the Secretary General or the Board, the right to appoint ceases, and the Board shall make the appointment.

4. ANALYSIS OF THE EXAMINED ARBITRATION RULES

The analysis and comparison of the procedures for the constitution of arbitral tribunals, as presented through the examples of the arbitration rules of various arbitral institutions in this paper, focus on the following key issues: 1. Number of arbitrators and the criteria for determining that number; 2. Bodies of arbitral institutions acting as appointing authorities in the process of constituting arbitral tribunals; 3. Auxiliary sources or reference materials used for the selection of potential arbitrator candidates; 4. Mechanisms for confirmation of

appointed arbitrators; 5. The appointment of a sole arbitrator and the presiding arbitrator of the arbitral tribunal; 6. Additional criteria or distinctions applied in the appointment or selection of arbitrators; 7. The constitution of arbitral tribunals in multi-party arbitrations; 8. The independence and impartiality of arbitrators; and 9. Certain specific features and procedural particularities found in the analysed arbitration rules.

4.1. NUMBER OF ARBITRATORS AND CRITERIA FOR DETERMINING THE NUMBER OF ARBITRATORS

With regard to the number of arbitrators, the analysis of the arbitral rules shows that all arbitral institutions provide that arbitral proceedings may be conducted either by a sole arbitrator or by an arbitral tribunal (in other words, all foresee that the arbitral tribunal may consist of one or more arbitrators). The number of arbitrators, in accordance with the principle of party autonomy, is primarily determined by the parties themselves. All the analysed rules, except for the LCIA Rules, stipulate that, when an arbitral tribunal is constituted, it shall generally consist of three arbitrators, whereas the LCIA Rules exceptionally allow for a tribunal composed of more than three members. The SCC Rules provide that if the parties have not agreed on the number of arbitrators, the Board (Administrative Board) of that institution shall decide whether the arbitral tribunal will consist of one or three arbitrators. Furthermore, they state that when the arbitral tribunal consists of more than one arbitrator, "*each party shall appoint an equal number of arbitrators*," from which it follows that an arbitral tribunal may, in principle, have more than three members. In such a case, the SCC Board appoints the president of the arbitral tribunal.

While the institutions are relatively uniform in their basic structure (one or three arbitrators), their rules differ significantly in the criteria used to determine whether proceedings will be conducted by a sole arbitrator or a panel of three (an arbitral tribunal).

The Zagreb Rules 2015 (cro. Zagrebačka pravila 2015) adopt a quantitative criterion based on the value of the dispute as the sole factor determining the number of arbitrators, where the parties have not specified the number in their arbitration agreement. The Rules contain an "opting out" mechanism: unless the parties agree otherwise, disputes with a value not exceeding EUR 200,000 shall be heard by a sole arbitrator, whereas disputes exceeding that amount shall be heard by a tribunal of three arbitrators. In contrast to the criterion of the value of the dispute (a quantitative criterion), which is the only criterion adopted by the Zagreb Rules 2015, the international arbitral institutions whose rules were analysed provide either a single, very general criterion or, in addi-

tion to the value of the dispute, also set out additional criteria for determining the composition of the arbitral tribunal, in cases where the parties have not specified the number of arbitrators in their arbitration agreement.

The ICC Rules adopt, as a general (*default*) rule, that unless the parties have agreed otherwise on the number of arbitrators, the dispute shall be decided by a sole arbitrator. However, even when the parties have not agreed on the number of arbitrators, the Court will, as a rule, appoint a sole arbitrator, unless it considers that the dispute is "*of such a nature*" that it should be referred to three arbitrators. The Rules, however, do not specify concrete criteria on the basis of which the Court should decide that the case warrants an arbitral tribunal rather than a sole arbitrator. A similar solution - the default rule being that arbitration is conducted by a sole arbitrator, with a possible departure in favour of a three-member tribunal based on a general, undefined criterion - is also contained in the LCIA Rules. According to these Rules, arbitration is in principle conducted by a sole arbitrator, unless the parties have agreed otherwise in writing, or the LCIA Court considers that, *"given the circumstances"*, the appointment of a three-member (or, exceptionally, larger) tribunal is appropriate.

In contrast to the ICC and LCIA Rules, the SCC and VIAC Rules specify multiple criteria for determining the composition of the arbitral tribunal. The SCC Rules provide that, if the parties fail to agree on the number of arbitrators, *the Board of the institution* shall decide whether the arbitral tribunal will consist of one or three arbitrators. In doing so, the Board shall take into account "*the complexity of the case, the amount in dispute, and any other relevant circumstances*." The VIAC Rules, on the other hand, stipulate that the parties may specify the number of arbitrators in their arbitration agreement (one or three). If no such agreement exists, *the Board* of the institution shall determine whether the dispute will be decided by a sole arbitrator or a three-member arbitral tribunal, taking into consideration "*the complexity of the case, the value of the dispute, and the parties' interest in a swift and cost-effective resolution of the dispute*."

4.2. BODIES OF ARBITRAL INSTITUTIONS ACTING AS APPOINTING AUTHORITIES IN THE CONSTITUTION OF ARBITRAL TRIBUNALS

The analysed arbitration rules contain provisions stipulating that the bodies of arbitral institutions act as appointing authorities in cases where one of the parties fails to appoint an arbitrator, where the arbitrators appointed by the parties fail to appoint the president of the arbitral tribunal, or where the arbitrators appointed by the parties cannot reach an agreement on the appointment of the president of the arbitral tribunal.

According to the Zagreb Rules 2015, the bodies of the Arbitration Court involved in the appointment process are the President or Vice-President of the Court. They act as the appointing authorities of the Court and, pursuant to the Zagreb Rules 2015, appoint arbitrators in the circumstances specified in those arbitration rules. On the other hand, according to the ICC Rules, the bodies participating in the formation of arbitral tribunals - that is, in the appointment of arbitrators - include the Court, the Secretary General, who confirms the arbitrator or arbitrators, and the National Committees or Groups of the ICC which the ICC deems appropriate. Namely, if the Court is to appoint arbitrators, it shall make the appointment on the proposal of the National Committee or Group it considers suitable. Under the circumstances set out in Article 13, where the Court directly appoints arbitrators, the President of the Court may also take part in the appointment process pursuant to paragraph 4 of that Article. The Secretariat of the ICC Court likewise performs the actions prescribed by the ICC Rules in connection with the appointment of arbitrators.

According to the SCC Rules, the body participating in the formation of arbitral tribunals before that institution is *the Board* ("the SCC Board"), which is responsible for the appointment of the arbitrator or arbitrators, as well as the Secretariat of the Court, which carries out the actions prescribed by the SCC Rules in the process of constituting the tribunal.

Conversely, under the VIAC Rules, the Secretary General and the Board of that arbitral institution are involved in the appointment process. Pursuant to the LCIA Rules, the Registrar of the LCIA Court is also involved in the appointment process. Before being appointed by the LCIA Court, candidates for arbitrator are required to submit to the Registrar "*a brief written summary of their qualifications and past and present professional activities*." The appointment itself is made by the LCIA Court, in accordance with the circumstances set out in the LCIA Rules.

4.3. AUXILIARY TOOLS (SOURCES) FOR THE SELECTION OF POTENTIAL ARBITRATOR CANDIDATES

When it comes to the pool of individuals from which either the parties or the bodies of arbitral institutions, when acting as appointing authorities, may select or appoint an arbitrator, an analysis of the arbitration rules shows that arbitral institutions use different auxiliary tools (sources) to determine the range of potential arbitrators (*roster of arbitrators, pool of arbitrators)*, namely: lists of arbitrators or databases of arbitrators.

A list of arbitrators is provided only by the Zagreb Rules 2015, which prescribe the existence of the List of Arbitrators of the Permanent Arbitration Court at

the Croatian Chamber of Economy (PAC CCE). The PAC CCE maintains two lists of arbitrators: The List of Arbitrators in Proceedings with and without an International Element before the Permanent Arbitration Court at the Croatian Chamber of Economy (domestic arbitrators with residence in the Republic of Croatia)[41] and The List of Arbitrators in Proceedings with an International Element before the same Court (arbitrators residing abroad)[42]. From these lists, the parties may, and the appointing authority must, appoint arbitrators in the cases provided for under the Zagreb Rules 2015.

The arbitration rules of other arbitral institutions presented in this paper, as an auxiliary tool for selecting potential candidates to serve as arbitrators in proceedings conducted before them, do not provide for lists of arbitrators or any similar publicly available register of arbitrators accessible to the parties. Instead, they maintain internal databases of potential arbitrator candidates, which are either offered to the parties as guidance in the selection process or used internally by the institutions' bodies when acting as appointing authorities. A review of the websites of international arbitral institutions shows that such databases typically include information on the nationality, profession, age, area of specialization, professional experience in the legal or other relevant fields (*legal/industry experience*), foreign language skills, and similar details concerning potential arbitrator candidates.

For example, according to the information available on the LCIA website, the arbitrator database is used by the LCIA Court as a source for the possible selection of arbitrators. The parties, if they so agree, may also access the database upon request for the purpose of selecting a potential arbitrator. These sources further indicate that the LCIA Court may, at its discretion, appoint arbitrators who are not listed in the database if it considers that a particular individual is the most suitable choice, taking into account the circumstances of the specific case.

4.4. MECHANISM FOR THE CONFIRMATION OF ARBITRATORS

The analysed arbitral institutions also differ in whether they provide for a specific mechanism for confirming arbitrators. The analysis has shown that the Permanent Arbitration Court at the Croatian Chamber of Economy (PAC CCE) and the SCC do not provide for any formal mechanism of confirmation, whereas the ICC, VIAC, SCC, and LCIA do include such mechanisms, which, however, differ from one another in their structure and procedure.

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[41] *Op. cit.* in note 34.

[42] *Op. cit.* in note 35.

The Zagreb Rules 2015 do not prescribe any additional mechanisms for the confirmation of arbitrators appointed by the parties; that is, arbitrators appointed by the parties are not subject to confirmation by the bodies of the Arbitration Court. The appointing authority of the Court is required to appoint arbitrators from the Court's official lists of arbitrators, and such appointments made by the appointing authority are likewise not subject to any further confirmation by other bodies of the Court.

The SCC Rules likewise do not require the confirmation of arbitrators appointed by the parties by any body of the Court. Under the ICC Rules, however, a confirmation mechanism is provided for arbitrators nominated by the parties. The Secretary General of the Court performs the confirmation of the appointment of an arbitrator proposed by the parties. The ICC Rules further stipulate that if the Secretary General considers that a sole arbitrator, a member of the arbitral tribunal, or the president of the tribunal should not be confirmed, the final decision on the matter shall be made by the Court. When the Court itself is responsible for making the appointment, it does so based on the proposal of the National Committee or ICC Group which the Court deems appropriate.

On the other hand, under the VIAC Rules, the parties are free to select the person they wish to appoint as arbitrator, while the Secretary General or the Board must "*confirm*" the appointed arbitrator. In other words, the Secretary General confirms the appointment of the arbitrator, and if the Secretary General deems it necessary, the Board will decide on the confirmation of the appointed arbitrator. Under the VIAC Rules, the parties are bound by their appointment of an arbitrator from the moment the Secretary General or the Board *"confirms"* the appointment.

An analysis of the ICC and VIAC Rules regarding the provisions determining the (key) criterion for the (non)confirmation of an arbitrator indicates that the decisive factors are the independence and impartiality of the arbitrator. In this respect, the VIAC Rules stipulate that the Secretary General shall confirm the appointment of an arbitrator if there is no doubt as to his or her impartiality, independence, and ability to perform the duties of an arbitrator.

On the other hand, under the LCIA Rules, a candidate for appointment as arbitrator is required, prior to being appointed by the LCIA Court, to submit a concise written summary of his or her qualifications and professional experience (both past and present) and to agree in writing on the applicable fees in accordance with the LCIA schedule of costs. The LCIA Court is authorised to appoint arbitrators; however, in doing so, it must take into account any written agreement or joint proposal for appointment submitted by the parties or by other candidates or arbitrators. The LCIA Court, however, will not appoint a person selected by the parties as arbitrator if the proposed arbitrator lacks

independence or impartiality with respect to the parties, does not possess the requisite experience - whether in international arbitration or in relation to the subject matter of the dispute - or is not sufficiently available to perform the duties of an arbitrator.

4.5. APPOINTMENT OF SOLE ARBITRATORS AND PRESIDENTS OF ARBITRAL TRIBUNALS

Under the Zagreb Rules 2015, a sole arbitrator is jointly appointed by the parties; however, if the parties fail to reach an agreement on the person of the sole arbitrator, the appointing authority shall appoint the arbitrator from the Court's list of arbitrators. Conversely, the president of the arbitral tribunal is jointly appointed by the members of the tribunal, and if the appointed members fail to reach agreement on the appointment, the appointing authority shall appoint the president of the arbitral tribunal from the Court's list of arbitrators.

Under the ICC Rules, the parties may jointly propose a sole arbitrator, and if they fail to do so within the time limit prescribed by the Rules, the Court shall make the appointment. If the parties have agreed that the dispute shall be resolved by three arbitrators, each party shall nominate one arbitrator for confirmation. Should a party fail to do so, the Court shall appoint the arbitrator. The third arbitrator, who acts as the president of the arbitral tribunal, is appointed by the Court, unless the parties have agreed on a different procedure for the appointment of the president; in such case, the proposed appointment remains subject to confirmation by the Court.

Moreover, under the SCC Rules, the parties jointly appoint a sole arbitrator, and if they fail to reach an agreement, the Board shall appoint the sole arbitrator. If the dispute is to be resolved by a three-member arbitral tribunal, each party shall appoint one arbitrator, and the president of the arbitral tribunal shall be appointed by the Board.

On the other hand, under the VIAC Rules, the parties appoint the sole arbitrator, and if they fail to agree on the appointment within the time limit prescribed by the Rules, the Board shall appoint the sole arbitrator. If the dispute is to be decided by a three-member arbitral tribunal, each party shall appoint one arbitrator, and the co-arbitrators shall appoint the president of the arbitral tribunal. However, if the parties fail to appoint their arbitrators even within an additional period granted by the Secretary General, the Board shall appoint the missing member of the tribunal. The Board shall also appoint the president of the arbitral tribunal if the co-arbitrators fail to do so within the period specified by the Rules.

From the above provisions, it follows that the Zagreb Rules 2015 and the VIAC Rules contain similar provisions regarding the appointment of the president of a three-member arbitral tribunal. Namely, the members of the tribunal (co-arbitrators) may appoint the president within a specified period, and if they fail to do so, under the conditions prescribed by the respective rules, the appointment of the president shall be made by the bodies of the arbitral institutions (under the Zagreb Rules 2015, by the Appointing Authority, and under the VIAC Rules, by the Board).

With regard to the appointment of sole arbitrators, the Zagreb Rules 2015, ICC Rules, SCC Rules, and VIAC Rules regulate the process in a similar manner: the parties may jointly appoint a sole arbitrator, and if they fail to reach such an agreement, the appointment is made by the competent body of the arbitral institution (under the Zagreb Rules 2015, by the Appointing Authority; under the ICC Rules, by the Court; under the SCC Rules, by the Board; and under the VIAC Rules, by the Board). According to the LCIA Rules, the LCIA Court appoints the sole arbitrator as well as the arbitral tribunal of three (or, exceptionally, more) arbitrators, but it will consider "*any written agreement or joint nomination submitted by the parties, or any proposal made by another candidate or arbitrator*."

4.6. ADDITIONAL CRITERIA / LIMITATIONS IN THE SELECTION (APPOINTMENT) OF ARBITRATORS

Under the Zagreb Rules 2015, there are no specific restrictions imposed on the parties regarding the selection of arbitrators. However, a form of indirect limitation is implied in Article 21 of the Zagreb Rules 2015. This provision stipulates that when a party appoints an arbitrator who is not on the list of arbitrators of the Court and whose residence or domicile is outside the place of arbitration, that party is required to advance additional funds to cover the arbitrator's travel and accommodation expenses at the place of arbitration - if the Secretariat of the Court determines that such an appointment would lead to unreasonable costs related to the arbitrator's participation in the proceedings. Paragraph 2 of the same article further provides that if the party fails to advance the required funds within the time limit set by the Secretariat in its notice, it shall be deemed not to have appointed an arbitrator within the prescribed time limit.

When the appointment is made by the Appointing Authority, they are required to appoint the arbitrator from the Court's list of arbitrators. In making the appointment, the Appointing Authority must take into account all circumstances ensuring the appointment of an independent and impartial arbitrator, as well

as the appropriateness of appointing an arbitrator who does not share the nationality of the parties.

With regard to the limitations in selecting an arbitrator, it should be noted that the Arbitration Act contains a mandatory provision stipulating that judges of state courts may be appointed only as sole arbitrators or as presiding arbitrators of arbitral tribunals. They cannot, therefore, be nominated as members of arbitral tribunals, which constitutes a statutory restriction on the parties (and on Appointing Authorities) concerning the nomination or appointment of state court judges as arbitrators serving as members of arbitral tribunals.

Under the ICC Rules, the parties may nominate arbitrators, but the nominated arbitrators must be confirmed by the Court. The Rules provide that, in the process of confirming or appointing an arbitrator, the Court shall take into account the nationality of the person proposed to serve as arbitrator, their place of residence, and their other relationships with the countries of which the parties or other arbitrators are nationals, as well as the availability of the candidate and their ability to conduct the arbitration in accordance with the Rules.

On the other hand, under the SCC Rules, if the parties have different nationalities, the nationality of the sole arbitrator or the president of the arbitral tribunal must be different from that of the parties, unless the parties have agreed otherwise or the Board considers another arrangement to be appropriate. The Rules further provide that, in appointing arbitrators, the Board shall take into account the nature and circumstances of the dispute, the applicable law, the seat and language of the arbitration, as well as the nationalities of the parties.

Under the VIAC Rules, the Secretary General confirms the appointment of an arbitrator. In accordance with the prescribed procedure, the Secretary General shall confirm the appointment if there is no doubt as to the arbitrator's impartiality, independence, or ability to perform their duties, and shall inform the Board of such confirmation. However, if the Secretary General deems it necessary, the Board shall decide on the confirmation of the appointed arbitrator. If the Secretary General or the Board refuses to confirm the appointed arbitrator, the Secretary General shall invite the party or parties entitled to appoint an arbitrator or co-arbitrator to appoint another arbitrator or presiding arbitrator within the time limit prescribed by the Rules. Should the Secretary General or the Board again refuse to confirm the newly appointed arbitrator, the right of appointment ceases, and the Board shall make the appointment.

On the other hand, under the LCIA Rules, the LCIA Court appoints arbitrators while respecting any specific methods or selection criteria that the parties have mutually agreed upon in writing. The Court also takes into account the subject matter of the business or dispute, the nature and circumstances of the case,

its monetary amount or value, the location and language of the parties, the number of parties, and any other factors it considers relevant under the circumstances. Furthermore, the LCIA Rules provide that, where the parties are of different nationalities, the sole arbitrator or the presiding arbitrator of the tribunal shall not have the same nationality as any of the parties, unless the parties of different nationalities expressly agree otherwise in writing. If the parties have agreed in any manner that one or more of them, or any third person (other than the LCIA Court), shall appoint the arbitrators, such an agreement under the Arbitration Agreement shall, in all respects, be deemed an agreement to propose the appointment of an arbitrator. The proposed candidate may only be appointed by the LCIA Court, provided that the candidate meets the requirements prescribed by the LCIA Rules. In this regard, the LCIA Court must not approve the appointment of any candidate if it determines that the candidate "*does not meet the prescribed requirements or is otherwise unsuitable*."

4.7. ESTABLISHMENT OF ARBITRAL TRIBUNALS IN MULTI-PARTY ARBITRATIONS

All arbitral rules analysed contain provisions governing the establishment of arbitral tribunals in so-called multi-party arbitrations, that is, arbitrations in which multiple parties participate, whether on the claimant side, the respondent side, or on both sides. This paper does not undertake a further, detailed analysis of the provisions concerning the constitution of arbitral tribunals in such arbitrations. Generally, it may be concluded that, under all arbitral rules of the institutions examined in this paper, the normative solutions regarding the constitution of arbitral tribunals in multi-party arbitrations follow the same principles applicable to the constitution of arbitral tribunals in arbitrations involving two parties.

4.8. INDEPENDENCE AND IMPARTIALITY OF ARBITRATORS

Under all arbitral rules presented, reflecting standard practice in the engagement of arbitrators within arbitral institutions and in arbitral dispute resolution generally, the arbitral rules prescribe an obligation on the arbitrator to provide (sign) a declaration regarding his or her impartiality and independence, as well as to disclose any circumstances that may give rise to doubts concerning such independence and impartiality.

4.9. CERTAIN SPECIFIC FEATURES OF THE ANALYSED ARBITRAL RULES

The analysis of the provisions of the arbitral rules examined highlights certain specific features concerning the constitution of arbitral tribunals found in the ICC Rules and the LCIA Rules.

Thus, the ICC Rules, in Article 12(9), provide that, notwithstanding the parties' agreement on the method of constituting the arbitral tribunal, in *"exceptional circumstances"* the Court may appoint *"the entire arbitral tribunal"* in order to *"avoid a significant risk of unequal treatment and unfairness that may affect the validity of the award."* Furthermore, the ICC Rules contain a provision requiring the parties, in order to assist prospective and existing arbitrators in the performance of their duties (as set out in Article 11(2) and (3) of those Rules), to inform the Secretariat, the arbitral tribunal, and the other parties of the existence and identity of any third person who is not a party to the arbitration but has entered into an agreement to finance a claim or defence and who has an economic interest in the outcome of the arbitration pursuant to that agreement. By contrast, the arbitral rules of the other institutions presented do not contain a provision of such or similar content within the provisions governing the constitution of arbitral tribunals.

Additionally, the ICC Rules also provide for the involvement of a National Committee or ICC Group that the institution considers appropriate in the process of appointing arbitrators. Namely, where the Court is to make an appointment, it shall request a proposal for an arbitrator from such bodies. Conversely, the arbitral rules of the other institutions presented contain no such or similar provision under which any body would be authorised to submit a proposal for an arbitrator in the appointment process.

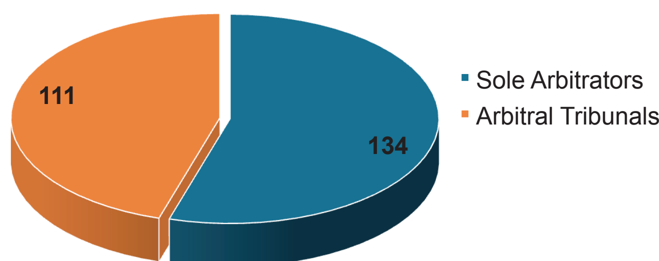
The LCIA Rules, for their part, impose an obligation on candidates for arbitrator (prior to their appointment by the LCIA Court) to submit, at the request of the Registrar, "a written summary of their qualifications and past and present professional experience." The candidate is also required to agree in writing on the amounts of the fees in accordance with the schedule of costs, and to sign a written declaration concerning their independence and impartiality. By contrast, the arbitral rules of the other institutions analysed, with the exception of the LCIA Rules, do not require candidates for arbitrator to submit "*a written summary of their qualifications and past and present professional experience.*"

5. ESTABLISHMENT AND COMPOSITION OF ARBITRAL TRIBUNALS IN THE PRACTICE OF THE PERMANENT ARBITRATION COURT AT THE CROATIAN CHAMBER OF ECONOMY – OVERVIEW OF DATA ON ARBITRAL TRIBUNALS THAT RENDERED ARBITRAL AWARDS IN THE PERIOD FROM 1 JANUARY 2015 TO 31 DECEMBER 2024

Before the PAC CCE, in the period from 1 January 2015 to 31 December 2024, a total of 245 arbitral tribunals were constituted, which rendered 274 arbitral awards. The number of arbitral awards exceeds the number of constituted arbitral tribunals because in 29 arbitral cases the tribunals rendered more than one decision. In other words, in a certain number of cases, within the same arbitral proceedings, the same arbitral tribunals rendered, for example, interim awards, partial awards, or, at the end of the proceedings, final awards, separate awards on the merits and on costs, awards on the correction of awards, awards imposing interim measures, and subsequently, within the same proceedings, awards lifting interim measures, etc. The subsequent sections of this paper present data relating to the 245 arbitral tribunals constituted before the Court in the above-mentioned period.

Out of the total number of constituted arbitral tribunals, 134 tribunals were composed of a sole arbitrator, while 111 tribunals were composed of a three-member arbitral tribunal.

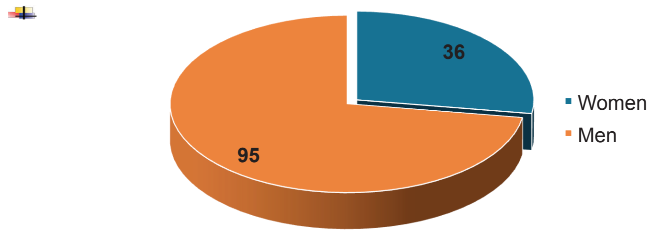
Graph 1. Tabular overview of the share of sole arbitrators and arbitral tribunals



Source: authors' calculation based on collected data

In the reporting period, a total of 131 different arbitrators acted in proceedings. Of the total number of arbitrators, 36 were women and 95 were men. A number of arbitrators served in multiple arbitral proceedings.

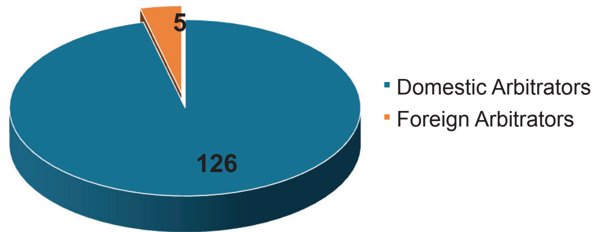
Graph 2. Tabular overview of the gender distribution among arbitrators



Source: authors' calculation based on collected data

Of the total number of arbitrators, 126 were from the Republic of Croatia and 5 were from abroad. All foreign arbitrators were from European countries.

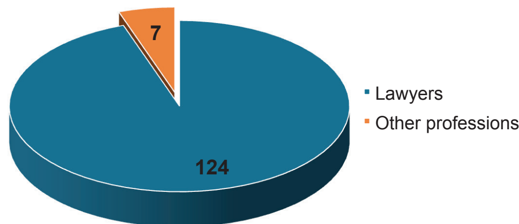
Graph 3. Tabular overview of the share of domestic and foreign arbitrators



Source: authors' calculation based on collected data

Of the total number of distinct arbitrators, 124 were lawyers, while 7 came from other professional backgrounds (civil engineers, maritime engineers, etc.).

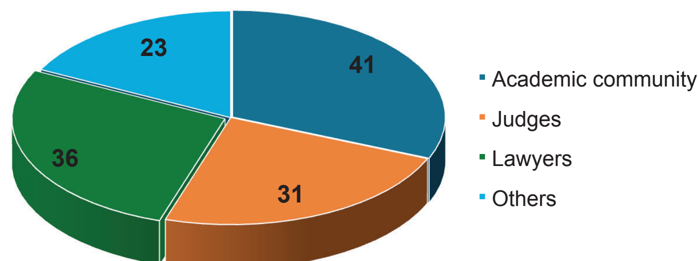
Graph 4. Tabular overview of the share of lawyers and other professions among arbitrators



Source: authors' calculation based on collected data

Of the total number of distinct arbitrators, 41 belonged to the academic community, 36 were attorneys-at-law, 31 were judges (including 5 retired judges), and the remaining 23 arbitrators came from other sectors, for example, the State Attorney's Office of the Republic of Croatia, or were lawyers employed in companies, state bodies or institutions, or arbitrators of other professions, etc.

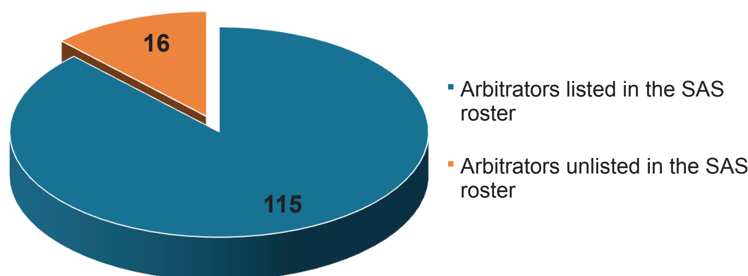
Graph 5. Tabular overview of the structure of arbitrators



Source: authors' calculation based on collected data

Of the total number of arbitrators who served in the above period, 16 arbitrators were not listed on the Court's roster of arbitrators at the time the arbitral proceedings were conducted, while the majority (115 arbitrators) were included on the Court's roster of arbitrators during that period.

Graph 6. Tabular overview of the share of arbitrators listed and unlisted in the SAS roster (list)

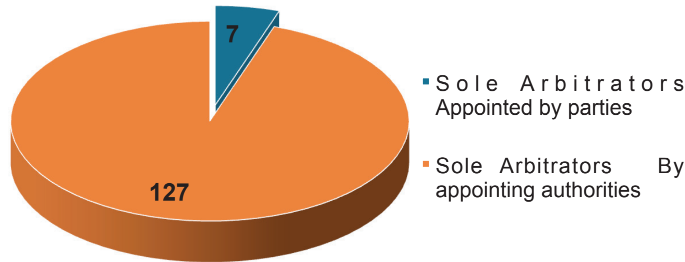


Source: authors' calculation based on collected data

In 134 arbitral proceedings, the cases were heard by sole arbitrators. Of these 134 arbitral proceedings, in 7 proceedings the parties jointly appointed the

sole arbitrator. In doing so, for all such appointments the parties selected sole arbitrators exclusively from the PAC lists of arbitrators. In the remaining 127 proceedings, which constitute the majority of cases conducted before sole arbitrators, the appointment of the sole arbitrator was carried out by the appointing authority, who appointed arbitrators from the PAC lists. In accordance with the PAC Arbitration Rules, when performing this function, the appointing authority is required to appoint arbitrators exclusively from the PAC list of arbitrators, whereas the parties themselves are not subject to this requirement. In two arbitral proceedings, in which the appointing authority performed the appointment of the sole arbitrator, the authority applied the PAC "*list-based procedure*," in accordance with the PAC Arbitration Rules.

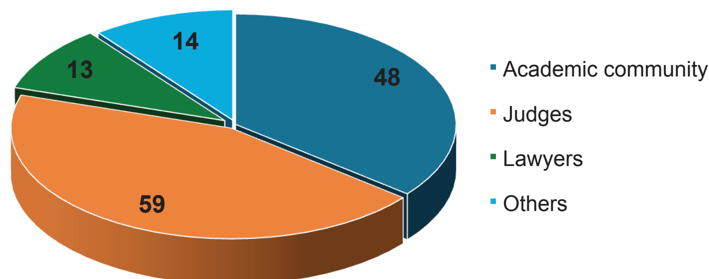
Graph 7. Tabular overview of appointments of sole arbitrators by parties and by appointing authorities



Source: authors' calculation based on collected data

Of the 134 arbitral proceedings conducted before sole arbitrators, one sole arbitrator was from abroad, while in 133 proceedings the sole arbitrators were from the Republic of Croatia. In the same 134 arbitral proceedings conducted before sole arbitrators, in 59 proceedings the function of arbitrator was performed by judges, in 48 proceedings by members of the academic community, in 13 proceedings by attorneys, and in the remaining 14 proceedings by arbitrators from other professional sectors (e.g., in-house lawyers in companies, lawyers employed in state bodies or institutions, etc.).

Graph 8. Tabular overview of representation by profession

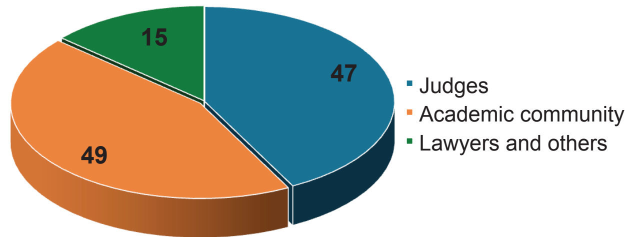


Source: authors' calculation based on collected data

In the 111 arbitral proceedings conducted before arbitral tribunals, the parties exercised their right to appoint the members of the arbitral tribunals. In all proceedings, the appointed arbitrators agreed on the appointment of the president of the arbitral tribunal, except in three proceedings, in which the appointing authority appointed the presidents of the arbitral tribunals. In two of those proceedings, the appointing authority appointed the presidents by applying the institution's "list-based procedure." In one arbitral proceeding, a three-member arbitral tribunal had been appointed prior to the initiation of the arbitration before the Court, and once the arbitration commenced, the parties declared that they agreed with the arbitral tribunal that had already been constituted beforehand. In two arbitral proceedings, the presidents of the arbitral tribunals were from abroad, whereas in all other proceedings the presidents of the tribunals were from the Republic of Croatia.

In the 111 arbitral proceedings conducted before three-member arbitral tribunals, the presidents of the tribunals were judges in 47 proceedings, members of the academic community in 49 proceedings, and attorneys or lawyers from other professional sectors (in-house lawyers in companies, lawyers employed in state authorities or institutions, etc.) in 15 proceedings. In all 111 proceedings conducted before arbitral tribunals, the presidents of the arbitral tribunals were exclusively lawyers, and arbitrators from other professions did not serve as presidents of arbitral tribunals.

Graph 9. Tabular overview of representation concerning the appointment of the presiding arbitrator



Source: authors' calculation based on collected data

From the data presented on the establishment and composition of the arbitral tribunals of the Court, relating to the 245 arbitral tribunals that rendered arbitral awards in the period from 1 January 2015 to 31 December 2024, it follows that, in terms of their basic structure and numerical composition, an approximately equal number of tribunals operated as sole-arbitrator tribunals (134) and three-member arbitral tribunals (111).

The data presented show that 131 different arbitrators served in the arbitral tribunals of the Court (with some arbitrators serving in multiple arbitral proceedings). From the basic data relating to these 131 arbitrators, it follows that: the representation of male arbitrators was significantly higher than that of female arbitrators, that is, male arbitrators accounted for approximately 72%, while female arbitrators accounted for 28%; the number of foreign arbitrators was negligible (5), while almost all arbitrators (126) were from the Republic of Croatia; with respect to professional background, only 7 arbitrators came from other professions, whereas all remaining arbitrators (124) were members of the legal profession; as regards "sectoral" representation, three groups of arbitrators were predominant and approximately equally represented - arbitrators from academia (41), arbitrators who are attorneys (36), and arbitrators who are judges (31) - while the remaining 23 arbitrators fell into a residual group (in-house counsels/lawyers in commercial companies, lawyers employed in state bodies and public institutions, and professionals from non-legal fields).

With respect to the manner of constituting arbitral tribunals, the data show that only 16 arbitrators were appointed from outside the list of arbitrators, while the majority (115) were selected from the Court's lists of arbitrators. As regards the constitution of arbitral tribunals in which sole arbitrators sat, the data indicate that only in 7 arbitral proceedings did the parties jointly appoint the sole arbitrator, whereas in the predominant number of proceedings (127) the

appointing authority appointed the sole arbitrators. It should be noted that in 2 arbitral proceedings the appointing authority appointed the sole arbitrators by applying the "list-based procedure" provided for in the Court's Arbitration Rules. With respect to the origin of sole arbitrators, the above data show that only in one arbitral proceeding was the arbitrator from abroad, whereas in all other proceedings the sole arbitrators were from the Republic of Croatia. The data concerning the "sectoral" composition indicate that judges (59) and members of the academic community (48) were appointed in approximately equal numbers of proceedings, while the remaining two "groups" consisted of attorneys (13) and lawyers from other sectors (lawyers employed in commercial companies, State authorities, public institutions, etc.). All sole arbitrators were exclusively from the legal profession.

With respect to the 111 arbitral proceedings in which, during the relevant period, arbitral awards were rendered by three-member arbitral tribunals, the data show that in all proceedings the parties appointed the members of the arbitral tribunals. In relation to the previously stated information that, out of the total of 131 different arbitrators who acted in the proceedings, 16 arbitrators were from outside the list of arbitrators, it should be noted that these were appointments of tribunal members made by the parties. In all proceedings, the arbitrators so appointed jointly agreed on the appointment of the president of the arbitral tribunal, except in three arbitral proceedings, in which the appointing authority carried out the appointment of the presidents of the arbitral tribunals. In two of those cases, the appointing authority applied the "*list-based*" procedure when making the appointment. Regarding the previously stated information that, out of the total number of different arbitrators (131) who acted in the proceedings, 16 arbitrators were from outside the list of arbitrators, it should be noted that the parties, when appointing members of the arbitral tribunals, appointed persons not included on the list of arbitrators. Moreover, in one arbitral proceeding the appointed members of the arbitral tribunal appointed as president of the arbitral tribunal a person who was not included on the list of arbitrators of the Permanent Arbitration Court.

With respect to the "sectoral" representation of arbitrators serving as presidents of arbitral tribunals, the data show that the arbitrators appointed as members of arbitral tribunals designated judges as presidents in 47 arbitral proceedings, members of the academic community in 49 arbitral proceedings, and attorneys or lawyers from other professional sectors (lawyers employed in companies, state bodies or institutions, etc.) in 15 arbitral proceedings.

Likewise, in the arbitral tribunals composed of three-member arbitral panels, the office of president of the arbitral tribunal was held exclusively by lawyers; that is, arbitrators of other professions did not serve as presidents of arbitral

tribunals, but only as members of arbitral tribunals in a small number of arbitral proceedings.

6. CONCLUSION

Arbitration is, as a rule, a voluntary mechanism of dispute resolution, and this is one of its fundamental features and core values. Moreover, it is a global phenomenon, functioning as a mechanism of alternative dispute resolution (ADR) in commercial matters at the regional, European, and international levels. This is due to the fact that trade and commercial relations, generally speaking, know no borders. Accordingly, it can be said that there exists a global arbitration market, comprised of numerous arbitral institutions.

With regard to the establishment of arbitral tribunals, a comparative overview of the arbitration rules of several arbitral institutions shows that, while these rules share many similarities in this respect (particularly in the area of appointment of arbitrators), they also exhibit certain distinctive features.

In general, the fundamental principle governing the establishment of arbitral tribunals is party autonomy. The parties to an arbitration agreement - that is, the parties to an arbitration proceeding - play a primary role in the constitution of arbitral tribunals, since, by means of their arbitration agreement, they effectively "chart the course" for the formation of the arbitral tribunal. As a rule, if the parties fail to reach agreement or to undertake the actions prescribed by the relevant arbitration rules regarding the establishment of the arbitral tribunal, then the arbitral institution will, in accordance with its rules, take the necessary steps to constitute the tribunal.

A comparison of the arbitration rules analysed demonstrates that arbitral institutions become involved in the constitution of arbitral tribunals to a greater or lesser extent, depending on the powers and procedures prescribed in their respective rules. The establishment of the arbitral tribunal is, in fact, a crucial procedural step since arbitration cannot proceed without a properly constituted tribunal. The principal objective of the parties who have chosen arbitration as their dispute resolution mechanism is to have the arbitrators "seized" of the case and to commence adjudication.

Arbitral institutions across Europe and around the world exchange knowledge and experience at various arbitration-related events such as conferences, workshops, seminars, expert meetings, and lectures by scholars and practitioners, as well as through the publication of specialized arbitration journals and similar activities.

Among the topics frequently addressed in such exchanges is the constitution of arbitral tribunals (appointment of arbitrators). It is reasonable to assume that, in the future as well, arbitral institutions will continue to improve their procedures (including those concerning the establishment of arbitral tribunals) through the sharing of knowledge and best practices. The primary means of doing so will be through the amendment, supplementation, or revision of their arbitration rules. Therefore, it is to be expected that arbitral institutions will increasingly compare the normative solutions contained in their own rules with those of other institutions and assess the appropriateness of implementing particular provisions from the rules of other arbitral institutions into their own regulatory frameworks.

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