

**RULES-of-THUMB**  
**for**  
**DELIBERATIONS and AWARD DRAFTING**

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**RULE 1**

Keep an open mind throughout the proceedings

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**RULE 2**

Avoid discussing ultimate conclusions with Tribunal members while the record is still open

- Discussing unanswered questions, demeanor can be OK
  - so long as it does not reflect a closed mind as to the ultimate questions submitted to the tribunal for decision

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**RULE 3**

Make sure all tribunal members are working with the same record

- Put counsel to the task, before the record is closed, to keep the tribunal organized

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**RULE 4**

Prepare for deliberations

Re-read

The pleadings

Witness statements and exhibits

Any post-hearing briefs and make a list of questions /  
discussion topics for the tribunal

Prepare a list of Decision Points

Cover what the Parties raise – No More, No Less

If there is a transcript – read it thoroughly

Take notes, highlight, flag points for discussion

Read the exhibits with the transcript

Annotate your Decision Points with transcript and exhibit references

If there is no transcript, make sure you take good notes and read them in  
connection with deliberations and drafting

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**RULE 5**

"Arbitral discretion" is no substitute for reasoning

- Reasoning explains why arbitrators exercise discretion in a certain manner
- "The Tribunal, in the exercise of its wide discretion, finds that..." is excess verbiage except to remind counsel and a reviewing court of the standard of review comes across as defensive
  - or worse, *lazy*

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**RULE 6**

Resolve any doubts as to applicable law long before the parties brief the law

Be comfortable with the briefing before the record closes

Limit yourself to the law as it has been briefed, unless you disclose and obtain consent *in advance* authorizing you to independent legal research

- *Iura novit curia* is for the courts in civil law countries
- In common law countries, the typical party expectation is that, in arbitration, the arbitrators will confine themselves to the law as briefed

Do not check your prior knowledge at the door – make use of it before and during the hearing process to make sure the briefing is adequate

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**RULE 7**

- Never compromise on essential points
- Compromise on non-essential points to achieve consensus

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RULE 8

Listen carefully to your tribunal colleagues  
Remain collegial even if a disagreement is heartfelt  
Look for points of agreement in the midst of any disagreement

RULE 9

THINK AGAIN  
Sleep on it

RULE 10

Have your draft of the award reviewed  
By co-arbitrators (INSIST) and/or by the institution  
Language  
Sense  
Reasoning  
Calculations

Supplemental Rules for the  
Preservation of Arbitrator Sanity  
(the “Sanity Rules”)

### SANITY RULE 1

In the pre-hearing phase, maintain an up-to-date chronology of procedural developments

- Avoid the need to re-construct it at the end of the case
- Keep it concise, but include dates
  - American parties tend to find lengthy procedural preambles to be an infuriating waste of time and money in commercial cases
  - A detailed procedural history may be necessary or helpful to enforce the award in some countries, so strike an appropriate balance

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### SANITY RULE 2

Have counsel for the parties keep you organized

- Stipulated chronology
  - Stated in the most neutral terms possible
  - Temporal relations of events to one another – nothing more or the parties will not agree
- A list of the named parties with essential descriptions
  - Alignment of each party
  - Legal nature/nationality of the party
  - Legal headquarters/ relevant place(s) of operations
  - Membership in any Corporate Group

Affiliates relevant to the case

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### SANITY RULE 2 cont.

- Witness Lists
  - Identity
  - Affiliation(s)
  - Citizenship; place of business
  - Topic areas of testimony
  - For experts, short description of areas of expertise
  - Date(s) of witness statement(s), testimony
- Exhibit Lists
  - In a logical order
  - Brief description of each document with other identifiers
  - Area(s) of relevance
  - Cross-references, if used with multiple witnesses

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### SANITY RULE 3

Persuade the parties to arrange for a verbatim transcript

- Explain that a transcript will empower the tribunal to provide more detailed reasoning
  - If necessary, explain that the lack of a transcript will adversely impact the level of detail in the award or will increase the time and cost of deliberations, or both

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#### SANITY RULE 4

Develop a workplan with tribunal members while you are all still together at the hearing

- Ensure that all tribunal members have their calendars with them on the last day of the hearing
- Agree on a workplan to ensure completion of the award, taking into account the institutional review process, within the deadline set by the applicable rules
  - Confirm the workplan in writing as soon as you get back to your computer

Use your computer to deny your colleagues deniability – send them calendar appointments with the deadlines and with generous reminders.