MARCH 2026

SPECIAL POST

ABOUT CCADR

The Chanakya Centre for Alternative Dispute Resolution (CCADR) was established at Chanakya National Law University, Patna, in the year 2021, with the objective to promote academic research on themes pertaining to the resolution of disputes. Alternative Dispute Resolution is a new and emerging interdisciplinary field that is concerned with, inter-alia, the following themes: (a) the study of the causative structural factors and the subjective motives of the actors giving rise to disputes; (b) the study of the formal and informal institutions dedicated to the resolution of disputes; and (c) the study of the laws and regulations to produce fair outcomes of disputes.

ABOUT SPECIAL POSTS

This Special Post is conceived as a dedicated space for rigorous engagement with contemporary issues in Alternative Dispute Resolution. It seeks to examine doctrinal developments, evolving practices, and emerging questions within mediation, arbitration, and negotiation through structured analysis and critical reflection. Rooted in clarity and depth, each contribution aims to explore principles, test assumptions, and contextualize dispute resolution within broader legal and institutional frameworks. By encouraging disciplined inquiry and reasoned perspectives, this initiative aspires to contribute meaningfully to the evolving discourse surrounding consensual and efficient mechanisms of justice.

ABOUT THE AUTHOR

DATUK PROFESSOR SUNDRA RAJOO

Datuk **P**rofessor **S**undra **R**ajoo is one of the most distinguished figures in the global arbitration community, widely respected for his leadership, scholarship, and interdisciplinary expertise. He currently serves as President of the Asian Institute of Alternative Dispute Resolution and previously held office as Director of the Asian International Arbitration Centre from 2010 to 2018 and again from 2023 to 2024. His international standing is further reflected in his tenure as President of the Chartered Institute of Arbitrators in 2016, President of the Asia Pacific Regional Arbitration Grouping in 2012, and Deputy Chairman of the FIFA Adjudicatory Chamber in 2018. He is also the founding President of the Society of Construction Law Malaysia, the Sports Law Association of Malaysia, and the Malaysia Society of Adjudicators, each of which has contributed significantly to the development of specialised dispute resolution practice in the region.

A pioneer in Malaysia's arbitration landscape, Datuk Prof Sundra became the country's first full time arbitrator in 1997, having first been appointed as an arbitrator in 1990. Since then, he has served in over 300 international and domestic arbitrations, acting as presiding arbitrator, co arbitrator and sole arbitrator. His appointments exceed 310 cases and include proceedings conducted under major institutional and ad hoc rules such as ICC, SIAC, HKIAC and PCA. His experience spans construction, infrastructure, commercial and investment disputes, reflecting both technical depth and international credibility.

His academic and professional journey demonstrates remarkable breadth. He holds an LLB with Honours from London, a Master of Philosophy in Law from Manchester, a Master of Science in Construction Law and Arbitration with Merit, and an Honorary Doctor of Laws from Leeds Beckett University. Beyond law, he is academically trained in architecture, urban and regional planning, and housing, building and planning. He is a Registered Architect, Registered Town Planner, Chartered Arbitrator and Certified International ADR Practitioner. His fellowship credentials include the Chartered Institute of Arbitrators, the Asian Institute of ADR, the Malaysian Institute of Arbitrators, the Royal Institution of Chartered Surveyors in the United Kingdom, and several other leading professional institutions.

He holds advanced qualifications in law, construction and planning, and is a Registered Architect, Chartered Arbitrator and Certified ADR Practitioner, with fellowships across leading international arbitration and professional institutions.

A prolific author and editor, he has contributed extensively to leading publications with LexisNexis, Sweet and Maxwell, and Thomson Reuters, producing authoritative works on arbitration, adjudication and construction law. In recognition of his distinguished service and contributions to Malaysia, he was conferred the Panglima Jasa Negara, carrying the title Datuk, by His Majesty the Malaysian King in 2012. As the author of this Special Post, he brings intellectual depth, institutional insight and global perspective shaped by decades of leadership at the forefront of international dispute resolution.

COSTS AND FEES ALLOCATION WITHIN THE ARBITRAL AWARD

By Datuk Professor Sundra Rajoo[1]

[1.1] INTRODUCTION: WHAT CONSTITUTES "COSTS" IN ARBITRATION

The concept of "costs" in arbitration constitutes a multifaceted framework that has achieved substantial harmonisation across leading common-law jurisdictions, notwithstanding meaningful differences in statutory formulation and institutional application.

The definitional scope of recoverable costs has evolved significantly over the past two decades, reflecting the increasing sophistication and commercialisation of international dispute resolution mechanisms.

Understanding what constitutes "costs" is foundational to evaluating the principles governing their allocation and the discretionary authority tribunals exercise when apportioning these expenses between disputing parties.

Under the UNCITRAL Model Law on International Commercial Arbitration, which has been adopted and adapted by numerous jurisdictions including Singapore, Hong Kong, Australia, and Canada, the term "costs" encompasses a deliberately capacious definition.[2]

This definition, refined through decades of practice, includes: the fees and expenses of arbitrators; the costs of expert advice and assistance required by the tribunal; the reasonable travel and other expenses of witnesses; the administrative fees and expenses of arbitral institutions; and the legal and other costs incurred by the parties in relation to the arbitration, measured by a standard of reasonableness determined by the tribunal itself.

Article 40.2 of the UNCITRAL Rules[3] provides that the *"costs of arbitration"* include:

"(a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;
(b) The reasonable travel and other expenses incurred by the arbitrators;
(c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
(d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
(e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
(f) Any fees and expenses of the appointing authority as well as the fees and expenses of the Secretary-General of the PCA. 3.
In relation to interpretation, correction or completion of any award under articles 37 to 39, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees

The significance of this inclusive approach lies in its recognition that modern arbitration—particularly complex, multi-party, and transnational disputes—encompasses far more than the traditional categories contemplated by earlier legislative frameworks.

Tribunals now regularly confront novel cost categories: litigation funding fees, technology assisted document review expenses, virtual hearing costs, expert witness preparation, and the deployment of artificial intelligence in document analysis and legal research.

The allocation of costs and fees occupies a central yet frequently contentious place within international arbitral awards. Beyond the substantive resolution of disputes, parties often regard the tribunal's decision on costs as the final measure of procedural fairness and commercial justice.

Arbitration, as a privately funded dispute resolution mechanism, inevitably requires parties to shoulder significant financial burdens, including tribunal remuneration, institutional charges, legal representation, expert assistance, and ancillary procedural expenses. The question is not whether such costs arise, but rather how they are distributed once the dispute has been adjudicated.

Unlike court litigation, arbitration lacks universally uniformity governing cost allocation. Instead, arbitral tribunals operate within a broad discretionary framework shaped by the parties' agreement, the procedural law of the seat, institutional rules, and evolving international practice.

This flexibility, while valuable, also produces unpredictability. As a result, cost determinations frequently become a secondary battleground, especially in high-value or procedurally complex arbitrations.

Across jurisdictions, the issues of *reasonableness and proportionality of costs* prevail and must be contended with overtly, in order to ensure fairness in the arbitral process. Legal costs extend beyond a mere correlation between the quantum of the dispute and the costs ultimately awarded.

A comprehensive assessment of legal costs necessitates a thorough examination of all attendant circumstances of the legal proceedings.

While the monetary value of the dispute undeniably constitutes a significant consideration, particularly in evaluating the reasonableness of the legal mandates undertaken, it is also imperative to account for every other relevant factor that transpired throughout the litigation.

The 'loser pays' principle, tempered by a careful consideration of the parties' conduct, aims to ensure fairness, discourage frivolous litigation, and ultimately indemnify the successful party.

The expansive interpretation of recoverable costs, as seen in recent judgments, signals a move towards ensuring that a party who has been wronged and has succeeded in the arbitration is made whole, reinforcing the integrity and efficacy of the arbitral process.

The following discussion examines the competing theoretical approaches to cost allocation in international arbitration, outlines the dominant models adopted in practice, and distils practical guidance for legal practitioners navigating cost submissions and awards.

The discussion culminates in an assessment of how tribunals can balance discretion, proportionality, and fairness when allocating costs within the arbitral award.

[1.2] STATUTORY FORMULATIONS ACROSS COMMON LAW JURISDICTIONS

India: Section 31A of the Arbitration and Conciliation Act 1996

India's approach to defining and regulating costs underwent a transformative reform through the Arbitration and Conciliation (Amendment) Act, 2015. Section 31A(1) of the principal Act provides that "costs" include the fees and expenses of arbitrators, courts and witnesses; legal fees and expenses;

administrative fees of institutions supervising arbitration; and *"any other expenses incurred in connection with the arbitral or court proceedings and the arbitral award"*.[4]

This formulation is notably expansive, utilising the catch-all category of *"any other expenses"* to accommodate the evolving nature of costs in contemporary arbitration. . Judicial decisions have affirmed the wide discretion vested in arbitral tribunals, while emphasizing the need for a judicious exercise of such discretion.

The 246th Law Commission of India's Report, which precipitated these amendments, identified a critical deficiency in pre-amendment practice: the traditional reluctance of arbitrators and courts to award realistic, market-based costs.[5]

The amendment introduced the statutory "costs follow the event" principle in Section 31A(2), subject to the tribunal's discretion to depart therefrom for reasons recorded in writing. Significantly, the amendment removed provisions that had previously permitted parties to contract out of prescribed fee scales, thereby asserting a public-law interest in cost certainty and proportionality.

England and Wales: Sections 59–65 of the Arbitration Act 1996

The English regime partitions costs into two analytical categories, each with distinct legal consequences. Section 59(1)(a) defines *"the costs of the arbitration"* as comprising the fees and expenses of arbitrators and institutional administrators.

Section 59(1)(b) separately identifies *"the parties' legal or other costs,"* encompassing representation expenses, disbursements, and associated professional fees.[6]

English law further recognises a permissive category of *"other costs"* under section 59(1)(c), which has proven extraordinarily elastic in tribunal application. The court in *Essar Oilfields Services Ltd v Norscot Rig Management Pvt Ltd*[7]established that litigation funding fees, incurred by a successful claimant to finance its arbitral prosecution, constitute recoverable *"other costs"*.[8]

This decision has catalysed subsequent recovery of funding costs across English-seated arbitrations and has influenced practice in other jurisdictions.

Section 61(2) of the Act confers upon tribunals broad authority to allocate *"costs of the arbitration"* between parties, absent contrary agreement. The statute prescribes a *"general principle"* that costs follow the event, subject to the tribunal's discretionary departure where circumstances warrant. Sections 63 and 64 further regulate the assessment of party costs, requiring tribunals to act with reasonableness and proportionality.

Singapore: Bifurcated Framework under the IAA 1994 and Arbitration Act 2001

Singapore maintains a jurisdictional bifurcation between domestic and international arbitration. The International Arbitration Act 1994 (IAA) governs international commercial arbitrations and adopts the UNCITRAL Model Law framework.

Neither the IAA nor the Arbitration Act 2001 (domestic) contains an exhaustive statutory definition of "costs," instead deferring to institutional rules and the Model Law principles.[9] Institutional practice has supplied the definitional clarity.

The SIAC Rules 2016, Rule 35, provide that *"costs of the arbitration"* include: the tribunal's fees and expenses; the Emergency Arbitrator's fees (where applicable); SIAC's administration fees and

expenses; and party representation costs, expert fees, and tribunal-appointed expert fees, subject to a determination of reasonableness.[10]
The Singapore High Court has consistently affirmed that tribunal discretion in costs determination is extensive and courts intervene only upon narrow procedural grounds.[11]

Hong Kong: Section 74 of the Arbitration Ordinance (Cap 609)

Section 74 of the Arbitration Ordinance provides that an arbitral tribunal *"may include in an award direction with respect to the costs of arbitral proceedings,"* and may direct *"in what manner the costs are to be paid"*.[12]The statute does not provide a prescriptive definition of *"costs,"* instead requiring that tribunals assess *"reasonable costs."*

Article 34 of the HKIAC Administered Arbitration Rules 2018 furnishes institutional guidance, stipulating that *"costs of the arbitration"* are to be determined *"having regard to all relevant circumstances,"* and that costs claimed *"shall be reasonable in amount and reasonably incurred."*.[13]

Section 74(7) expressly permits assessment on the indemnity basis where parties so agree or circumstances warrant, representing a departure from the default "party and party" basis.[14]

Australia: Uniform Commercial Arbitration Acts and International Arbitration Act 1974

Australia has adopted the UNCITRAL Model Law through its uniform Commercial Arbitration Acts across States and Territories, and maintains a distinct International Arbitration Act 1974 (Cth) for cross-border disputes.[15]

Section 27 of the uniform Acts grants tribunals broad discretion to award *"costs of the arbitration,"* defined in accordance with Model Law principles.

The recent amendments to the International Arbitration Act 1974 have clarified the tribunal's cost-fixing authority, deleting outdated reference to "*taxation"* and affirming that *"an arbitral tribunal is not required to use any scales or other rules used by a court when making orders in relation to costs"*.
[16]

This formulation explicitly recognises that arbitral cost assessment operates according to distinct principles from court-based litigation, affording tribunals substantially greater discretion.

[1.3] UNIVERSALLY ACCEPTED PRINCIPLES ON REASONABLENESS AND PROPORTIONALITY IN COSTS AWARDS

Across common-law arbitral seats, an overlapping consensus has emerged regarding the principles governing the reasonableness and proportionality of costs.

While institutional rules and legislative formulations vary in emphasis and formulation, tribunals consistently apply four foundational criteria:

(1) the reasonableness of costs incurred for effective legal representation;
(2) proportionality to the complexity and technicality of the dispute;
(3) proportionality to the scope and number of issues raised; and
(4) proportionality to the monetary value of the dispute. These principles function both as constraints on cost awards and as devices facilitating tribunal discretion in response to case-specific circumstances.

Reasonableness of Costs for Effective Representation

The reasonableness requirement embodies a normative judgment that costs should reflect the necessities of proper advocacy rather than tactical escalation or inefficiency. Tribunal assessment of reasonableness typically examines amongst others:

(1) the nature and complexity of tasks undertaken;
(2) the seniority, experience, and hourly rates of counsel;
(3) the presence or absence of duplication of effort among counsel;
(4) the reasonableness of expert fees relative to market rates; and
(5) the degree of adherence to procedural timetables.[17]

English jurisprudence has long enforced this standard through evolving case law. The Court of Appeal in *Danilina v Chernukhin* [2018] EWCA Civ 1802, endorsed the proposition that arbitrators possess a broad "margin of appreciation" in evaluating whether costs incurred were reasonably necessary in light of the dispute's demands. Appellate or supervisory courts should intervene sparingly on this question.[18]

Singapore's High Court in VV v VW, articulated a parallel principle when it acknowledged that while a costs award may be challenged if it is "*patently unreasonable*" or "*shocking to the conscience*," the threshold for intervention is exceedingly high. That said, the tribunals retain significant latitude to assess the necessity of costs incurred during proceedings.[19]

Proportionality to Dispute Complexity

Complexity justifies elevated levels of legal and expert resourcing. Factors commonly examined include:

(1) the technical or specialised nature of the subject matter;
(2) the presence of multi-jurisdictional or conflicts-of-laws issues;
(3) the volume and density of documentary evidence;
(4) the requirement for expert evidence from multiple disciplines (engineering, economics, accountancy, science);
(5) the number of parties and their procedural postures; and
(6) the number and sophistication of legal issues raised.[20]

Tribunals in England, Singapore, and Hong Kong routinely recognise that a multimillion-dollar engineering dispute spanning three continents and requiring expert evidence from five disciplines justifies considerably higher legal costs than a straightforward breach-of-warranty claim involving discrete contractual interpretation.

The ICC's 2015 Commission Report on Costs affirms this principle as near-universal among institutional practices.[21]

Proportionality to Scope of Issues Raised

Where parties raise numerous peripherals or ultimately unsuccessful issues, tribunals increasingly exercise discretionary authority to impose costs consequences through issue-based allocation, percentage reductions, or adverse costs orders for unnecessary interlocutory steps.

The LCIA Rules 2020 explicitly authorise this approach: Article 28.4 empowers tribunals to consider

"*any conduct which unnecessarily increases the cost or duration of the arbitration*" when determining cost allocation.

This principle operates as a behavioural incentive, discouraging parties from engaging in strategic pleading in raising numerous frivolous claims merely to impose costs burden on opponents, knowing that recovery is unlikely but hoping to increase the unsuccessful opponent's total expenditure.

Where a claimant raises twenty numbered claims but succeeds only on three, tribunals increasingly adjust the cost award to reflect this partial success, rather than awarding full indemnification.

Proportionality to Dispute Value

A foundational axiom especially in commercial arbitration, is that costs should remain proportionate to the quantum in dispute. This principle prevents absurd outcomes where a party's costs exceed the claim value by multiples, rendering the arbitration economically irrational.
Tribunals commonly consider:

(1) whether costs exceed the claim value;
(2) the efficiency of pleadings and document production relative to the sums at issue;
(3) the economic rationale for particular procedural steps; and
(4) whether a party's costs escalation was driven by legitimate complexity or tactical overkill.

The ICC Commission on Arbitration has pointed out that in a significant proportion of surveyed awards, tribunals reduced claimed costs on the basis that they were disproportionate to the claim value, even where the successful party had technically prevailed on merits.[22]

[1.3] COMPETING PHILOSOPHICAL APPROACHES IN INTERNATIONAL ARBITRATION

International arbitration reflects an enduring tension between traditional autonomy-driven models and contemporary efficiency-oriented frameworks.

This philosophical divide manifests acutely in the distinct cost-allocation regimes applicable to commercial arbitration versus investment treaty arbitration, each responding to different legitimacy concerns and policy objectives.

The Efficiency-Driven Paradigm and Rise of Tribunal Authority

Over the past two decades, arbitral institutions and national legislatures have progressively emphasised efficiency, proportionality, and tribunal authority as central to arbitration's comparative advantage over litigation.

Key institutional developments include:

(1) mandatory proportional procedure provisions requiring allocation of resources commensurate with claim value and complexity;[23]
(2) tribunal authority to curtail excessive discovery, repeated oral hearings, and voluminous written submissions; temporal discipline through enforced procedural timetables; and
(3) progressive refinement of tribunal authority to sanction dilatory or obstructive conduct through adverse cost orders.

Singapore and Hong Kong have been institutional leaders in this domain, promoting efficiency as a competitive advantage for their arbitral seats.

The SIAC Rules emphasise early case management, with the tribunal convening at the earliest opportunity to establish a realistic timetable and procedural roadmap. The HKIAC similarly promotes proactive tribunal engagement to prevent procedural sprawl.

England has encouraged tribunals to adopt civil-procedure-inspired guidelines ensuring proportionality, balancing the traditional common-law enthusiasm for full factual development against contemporary concerns regarding cost escalation.

The justification for this efficiency-driven paradigm is economic and institutional:
(1) excessive costs undermine arbitration's utility for smaller disputes and developing-country parties;
(2) procedural proliferation dilutes the autonomy benefits that arbitration promises relative to litigation; and
(3) uncontrolled cost escalation makes arbitration inaccessible to parties of limited means, potentially violating principles of equal access to justice.

Investment Treaty Arbitration: A Distinct Philosophy

Investment treaty arbitration has historically operated under a substantially different cost-allocation philosophy, animated by distinct policy concerns.

Early ICSID Convention practice adopted the *"American rule"*. Each party bearing its own costs regardless of outcome, motivated by concerns that imposing costs liability on unsuccessful claimants (particularly smaller investors or developing-country entities) would create barriers to access to justice. In so doing, it would disproportionately protect powerful host states from accountability.[24]

However, this approach has undergone substantial revision since the 2010s. ICSID and UNCITRAL tribunals increasingly adopt a modified *"loser pays"* approach, particularly where:
(1) claims are manifestly without legal merit;
(2) jurisdictional arguments fail;
(3) a party's conduct substantially increases procedural costs;
(4) a state is burdened with defending frivolous or speculative claims; or abuse of process is established.[25]

The shift reflects a maturation of investment arbitration jurisprudence and growing concerns about frivolous claims, abusive treaty-shopping, and excessive costs imposed on respondent states.

Tribunals have come to recognise that unlimited cost-shifting in favour of unsuccessful claimants creates moral hazard: speculative investors have insufficient incentive to conduct rigorous pre-filing analysis, leading to a proliferation of questionable claims.[26]

[1.4] THE "COSTS FOLLOW THE EVENT" PRINCIPLE VERSUS "PARTIES BEAR OWN COSTS": COMPARATIVE ANALYSIS

The allocation of costs in arbitration globally reflects a spectrum of approaches, ranging from strict adherence to the *"costs follow the event"* principle to the *"American rule"* permitting each party to bear its own costs.

Neither philosophy has achieved universal dominance. Instead, international arbitration has evolved towards hybrid solutions that blend outcome-based allocation with considerations of conduct, proportionality, and reasonableness.

This spectrum reflects deeper choices about fairness, access to justice, and the proper function of cost-allocation mechanisms.

The "Costs Follow the Event" (or "Loser Pays") Doctrine

The *"costs follow the event"* principle operates on the premise that the unsuccessful party should indemnify the successful party for costs incurred in pursuing or defending the claim.
This approach has achieved predominance in common-law jurisdictions and in most modern institutional rules.

The ICC Commission on Arbitration in its empirical research found that in approximately 50% of awards reviewed, tribunals applied the costs-follow-the-event principle as a starting point, thereafter adjusting for conduct, proportionality, and other relevant circumstances.[27]

The rationale for this doctrine is multifaceted:

(1) it ensures that the successful party is not prejudiced by having to finance its opponent's unsuccessful claim;
(2) it creates incentives for parties to conduct rigorous pre-dispute analysis and to settle weak claims;
(3) it aligns the party bearing costs with the party responsible for the dispute's continuation; and
(4) it operates as a discipline discouraging frivolous or speculative litigation.

English courts have long endorsed this principle as foundational to the civil justice system, and international commercial arbitration has adopted the English approach as the international standard. [28]

The High Court of England and Wales in *Veolia Water UK plc v Fingal County Council*[29], stated that:
"The overriding starting position should remain that costs should follow the event. Parties who are required to bring a case to court in order to secure their rights are, prima facie, entitled to the reasonable costs of maintaining the proceedings. Parties who successfully defend proceedings are, again prima facie, entitled to the costs to which they have been put in defending what, at the end of the day, the court has found to be unmeritorious proceedings"

However, even jurisdictions and institutions formally committed to the costs-follow the-event principle routinely depart from strict application.

The ICC Commission Report notes that while tribunals adopt the principle as a *"starting point,"* they frequently adjust or modify the allocation based on:

(1) partial success by one or both parties;
(2) unreasonable or obstructive conduct during proceedings;
(3) failed settlement negotiations and Calderbank offer;
(4) the degree to which each party contributed to the efficiency or inefficiency of the arbitration; and
(5) other *"circumstances of the case."*

The Chancery Division of the High Court of England and Wales in *The London Borough of Tower hamlets v The London Borough of Bromley*[30] *observed that "one should depart from the general rule only where the needs of justice and the circumstances of the particular case require, and a measure of caution is needed"*

The court in *Dunne v Min for the Environment and Others*[31] observed where a court considers that it should exercise discretion to depart from the normal rule as to costs, it must do so on a reasoned basis and indicate the factors which warrant such a departure.

A combination of factors is usually involved and while decided cases indicate the nature of factors which may be relevant, these will be determined on a case-by-case basis.

The arbitral tribunal in *Westland Helicopters Ltd v. Arab Organisation for Industralization*[32] awarded £18million against the losing party for he delayed the proceedings which lasted 13 years.

Similarly, the arbitral tribunal in Elgindata[33] where the arbitral tribunal asserted that:
'*It is now clear that a too robust application of the follow the event principle encourages parties to increase the costs of the litigation or arbitration, since it discourages parties from being selective as to the points they take. Because if you recover all your costs as long as you win, you are encouraged to leave no stone unturned in your efforts to win.*'

Lord Woolf M.R. in *Phonographic Performance Ltd v Rediffusion Music Ltd*[34] modified the above assertion when he explained that:
"*...to the effect that where the successful party raises issues or makes allegations which have failed, he may not only be deprived of some or all of his costs, but may be ordered to pay the whole or a part of the costs of the unsuccessful.*

In situations whereby the successful party was unsuccessful in a major issue that led to an increase in the cost of the arbitration, the arbitral tribunal can depart from the principle that costs follow the event. See the case of Forster v. Farquhar (1893) 1 QB 564. The attitude of the parties in the course of the arbitral proceedings plays a significant role in whether the arbitrator will invoke his discretion in departing from the general principle."

Clarke J in *Cork County Council v. Shackleton*[35] considered the circumstances in which it will be appropriate to depart from the general rule that costs follow the event on the basis that a case is a *"test case"*.

In that case, the applicant had succeeded in having an award of an arbitrator, who had ruled in favour of the third party in a planning matter, set aside in circumstances where this third party had raised a public law issue but also had a direct commercial interest in the outcome of the litigation.

Clarke J began by identifying what would constitute a test case for this purpose: Test cases can arise in very many different circumstances.

Where there is doubt about the proper interpretation of the common law, the Constitution, or statute law involving the private relations between parties, and where the circumstances giving rise to those doubts apply in very many cases.

Then it is almost inevitable, as a matter of practice, that one or a small number of cases which happen to be first tried will clarify the legal issues arising.

The "American Rule": Each Party Bears Its Own Costs

Despite the tendency of tribunals to award at least a measure of legal costs to the prevailing party, some authorities question the existence of any "costs follow the event" or "loser pays" rule[36].

Despite these views, a detailed study of ICC awards concludes that where claimants were largely successful, they were awarded a substantial portion of the arbitration costs in most cases (39 of 48

cases) and a substantial portion of their legal costs in about two-thirds of all cases (24 of 38 cases).[37]
The "American rule" requiring each party to bear its own legal costs and splitting the institutional costs equally, operates as an outcome-neutral allocation mechanism.

Parties proceeding under this rule pay their own advocates and experts regardless of prevailing or failing on the merits, though institutional and tribunal fees are typically shared equally or apportioned based on utilisation.

The rationale underlying this rule emphasises access to justice: imposing cost liability on unsuccessful claimants may deter meritorious claims by risk-averse or resource-constrained parties, creating barriers to justice.

This concern proved particularly persuasive in early investment arbitration, where concerns arose that cost-shifting would disproportionately burden developing-country investors or human-rights claimants asserting novel legal theories.

However, empirical evidence suggests that the American rule has fallen into disuse in international commercial arbitration, where access-to-justice concerns are significantly diminished.
Only a minority of institutional arbitrations and ad hoc proceedings apply strict American-rule allocation.

Even where the rule is adopted, tribunals often qualify it by imposing costs consequences for particularly egregious conduct (frivolous claims, abuse of process, obstruction).

Hybrid and Discretionary Approaches

Most contemporary institutional rules and common-law jurisdictions have adopted hybrid approaches affording tribunals discretion to apply costs-follow-the-event as a rebuttable presumption, subject to departure where circumstances warrant.

The prevailing approach in modern international arbitration adopts a qualified version of the *"costs follow the event"* principle.[38] While success on merits remains the primary reference point, tribunals retain broad discretion to adjust cost allocation based on the circumstances of the case.

Partial success, procedural inefficiency, unreasonable conduct, and refusal of genuine settlement offer may all justify departure from a strict outcome-based allocation approach.
This approach provides structure and predictability while retaining flexibility to address case-specific justice concerns.

The SIAC Rules exemplify this approach: Rule 35(c) provides that "*costs*" includes *"the legal or other costs of a party as determined by the tribunal" and Rule 38 affords the tribunal discretion to determine cost allocation "having regard to all the circumstances of the case, including…the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner."*

[1.5] INSTITUTIONAL APPROACHES TO COSTS: RULES AND DISCRETION

Arbitral institutions have developed increasingly sophisticated and detailed cost-allocation frameworks, reflecting decades of accumulated practice and normative refinement.

The rules also differ in the division of responsibility between the institution and the arbitral tribunal for the final determination of costs.

At the beginning of each arbitration, the arbitral institution administering the proceedings typically fixes an advance on cost (also called a "deposit") to be paid in equal shares by the parties (although, in exceptional circumstances, a separate advance on costs can also be set).

The ICC Rules: Article 38 and the Discretionary Framework

The ICC Rules, Article 38, confer upon tribunals broad discretion to determine costs allocation *"having regard to all relevant circumstances,"* specifically including "the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner."[39]

This formulation emphasises both the outcome of the dispute and the parties' procedural conduct as cost-relevant factors.

The 2021 ICC Rules provide that the final award "shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.[40]

Appendix IV of the ICC Rules provides detailed illustrative examples of case management techniques facilitating efficiency:

(1) phased disclosure;
(2) document-production limits;
(3) narrowed discovery parameters;
(4) expert briefing and conferencing; and
(5) early mediation/settlement discussions.

Tribunals are encouraged to deploy these techniques and to consider parties' responsiveness to efficiency suggestions when allocating costs.

The Court (the arbitration institution's decision-making organ) fixes the arbitrators' fees according to a published scale based on the amount in dispute and the complexity of the case; fees may be adjusted upward or downward only in "exceptional circumstances".[41]

SIAC Rules 2025: Integration with Procedural Management

The SIAC Rules 2025 integrate cost considerations with procedural management, mandating in Rule 32.1 that procedures be *"conducted with due diligence and professionalism and further to the principles set out in Rule 3.5(a) – Rule 3.5 (c).*

Rule 3.5 provides:
"In all matters not expressly provided for in these Rules, the SIAC Court, the President, the Vice President, the Registrar, the SIAC Secretariat and any Emergency Arbitrator and Tribunal shall act in the spirit of these Rules and shall endeavour to ensure: (a) the fairness of the proceedings; (b) the expeditious and cost-effective conduct of the arbitration proportionate to the complexity of the claim and the amount in dispute; and (c) the enforceability of any award."

Rule 57 defines costs comprehensively, and Rule 51.4 affords the tribunal discretion to determine cost allocation having regard to the parties' contributions to efficiency, the outcome of the case, and any other relevant circumstances.[42]

Notably, the SIAC promulgates detailed guidance on procedural efficiency, including schedules for document disclosure, restrictions on expert number and scope, guidelines for witness examination durations, and recommendations regarding virtual or hybrid hearings.

Tribunals are encouraged to incorporate these guidelines into procedural orders and to penalise through cost allocations parties that ignore efficiency guidance or adopt unnecessarily escalatory procedural postures.

LCIA Rules 2020 and the "Conduct" Factor

The LCIA Rules distinguish between *"Arbitration Costs"* and *"Legal Costs"*.

Article 28.1 defines *"Arbitration Costs"* as the fees and expenses of the arbitral tribunal, the LCIA's administrative charges, and costs of any expert appointed by the tribunal.[43] *"Legal Costs"*, defined in Article 28.3, cover the legal or other expenses incurred by the parties themselves.[44]

The LCIA Rules confer broad discretion on tribunals, while specifically directing consideration of *"any conduct which unnecessarily increases the cost or duration of the arbitration" as a factor warranting adjustment to default cost allocation.*

This formulation operationalises the proposition that procedural misconduct: delaying tactics, dilatory pleading, unreasonable document-production refusals, obstruction of witness examination, may result in adverse costs consequences independent of the ultimate merits outcome.

The 2020 LCIA Rules provide for the arbitral tribunal to "decide the proportions in which the parties shall bear" the costs of the arbitration (as fixed by the LCIA Court)[45]

Article 28.4 further requires that orders on costs be "*reasoned*," obligating tribunals to articulate the factors and reasoning supporting their costs determinations.

This requirement promotes transparency and permits supervising courts and future arbitrators to assess whether cost awards reflect principled application of the Rules.

[1.6] SOFT-LAW FRAMEWORKS AND JURISPRUDENTIAL GUIDANCE

Beyond institutional rules and statutory provisions, a rich body of non-binding guidance has emerged to inform cost assessment in international arbitration, including published tribunal awards, institutional reports, practitioner guidelines, and academic commentary.

The ICC Commission Report on Costs

The International Chamber of Commerce Commission on Arbitration published in 2015 a comprehensive report synthesising costs practice across 676 reviewed ICC awards spanning multiple years and spanning jurisdictions and industry sectors.[46]

Key findings include: approximately 50% of awards applied costs-follow-the-event as the primary allocation mechanism; approximately 30% applied an apportionment approach reflecting parties' relative success; approximately 10% applied an American-rule allocation; and the remaining awards applied mixed or bespoke approaches.

The Report identified cost-relevant factors most frequently cited by tribunals:

(1) the outcome of the proceedings; the parties' conduct and contributions to efficiency/inefficiency;
(2) whether settlement offers were made and rejected;
(3) the complexity of the dispute; whether preliminary objections succeeded; and
(4) the proportionality of costs to dispute value.

Notably, the Report found that tribunals fairly routinely reduced successful parties claimed costs on proportionality grounds, even where the party had prevailed on the merits.[47]

The CIArb Costs Guidelines

The Chartered Institute of Arbitrators (CIArb) published guidelines addressing costs assessment in international arbitration, synthesising international practice and offering nonbinding recommendations to arbitrators.[48]

The CIArb Guidelines emphasise that costs assessment requires balancing multiple considerations:

(1) ensuring the successful party is indemnified for reasonable costs;
(2) discouraging frivolous or unnecessary claims;
(3) maintaining proportionality to dispute complexity and value; and
(4) promoting procedural efficiency and good faith.

The Guidelines recommend that tribunals articulate clearly the cost-allocation methodology and factors considered, particularly where departing from standard cost-follow-the event allocation.

They further recommend that parties submit detailed cost statements with supporting evidence (invoices, timesheets, expert reports) sufficiently in advance of the hearing to permit tribunal review and identification of disputed items.

Published Arbitral Awards as Jurisprudential Authority

While arbitral awards do not constitute binding precedent in a technical sense, major awards addressing complex cost questions have achieved quasi-precedential status, influencing subsequent tribunal practice.

For instance, the UNCITRAL tribunal decision in *Philip Morris Asia Ltd v Australia* (Award on Jurisdiction and Admissibility, December 17, 2015) established influential jurisprudence regarding cost allocation where abuse of process is established.

The tribunal's reasoning regarding proportional cost-shifting, despite the respondent's ultimate success, has been cited and applied in numerous subsequent investment arbitrations.[49]

[1.7] THE 246TH LAW COMMISSION OF INDIA REPORT AND REFORM OF SECTION 31A

Judicial interpretation in India and other Model Law jurisdictions has reinforced the mandatory character of the tribunal's duty to address costs.

The tribunal must exercise its discretion regarding costs. It cannot simply decline to address the issue. [50] Lord Mure in *Smith & Co v. Liverpool and London and Globe Insurance Co.*[51] emphasized the tribunal's role as the final arbiter of costs.[52]

The tribunal's authority extends to all submissions unless expressly excluded, allowing it to make specific directions regarding interlocutory costs, payment timelines, and set-offs against substantive awards.

The tribunal must specify the entitled party, the liable party, the amount or method of determining costs, and the manner of payment. Additional directions may be included to ensure reimbursement of costs advanced by the successful party.

While the tribunal enjoys broad discretion, this must be exercised judiciously and based solely on facts established during the arbitration. The principle of *delegatus non potest delegare* generally prohibits delegation of the costs' decision, except where it is permitted by agreement or procedural law. Certain statutes may allow for the taxation of costs to be delegated to a court or institution, but this however, does not infringe upon the tribunal's principal duty of determining costs.[53]

Importantly, the tribunal's power to award costs must be exercised through the award itself; either as part of the substantive award or in a supplementary award.

Separate awards on costs may be subject to annulment proceedings, and if the substantive award is set aside, the costs award shall cease to have effect.[54]

The failure to address costs does not imply that each party bears its own costs, but rather that the tribunal has failed in its duty to adjudicate upon the same.[55]

In such cases, the tribunal remains seized of the matter until the defect is remedied or the time for requesting an additional award expires, as provided under Section 33(4) of the Arbitration Act.[56]

Therefore, the arbitral tribunal's power to award costs is not merely discretionary but stands as a statutory obligation that must be diligently followed.

The tribunal must actively determine and allocate costs, ensuring that its discretion is exercised transparently and in accordance with the governing legal framework.

A defining feature of contemporary arbitration practice is the expansive conception of "costs." Arbitral costs typically encompass the following:
(1) tribunal fees and expenses;
(2) institutional administrative charges;
(3) legal fees and related disbursements;
(4) expert and witness expenses; and
(5) reasonable incidental costs arising from the proceedings.

While tribunals enjoy authority to award these categories, recovery is generally limited to amounts deemed reasonable and proportionate.

Excessive billing, duplication of effort, or inefficiencies embedded within time records may be discounted, even where a party prevails within the dispute. The emphasis on *reasonableness* reflects a broader trend towards cost controls in arbitral process.

India's 2015 amendment to the Arbitration and Conciliation Act, Section 31A, represented a watershed moment in Indian arbitration law, responding to findings by the 246th Law Commission Report that Indian arbitral practice had chronically undercompensated successful parties for their actual costs.

The Pre-Amendment Landscape: Cost Inhibition in Indian Arbitration

Prior to 2015, Indian arbitral practice reflected significant reluctance by arbitrators and courts to award full, market-based legal costs.

Multiple factors contributed to this inhibition:
(1) the Model Law provisions (adopted in 1996) afforded tribunals discretion without clear guidance;
(2) institutional rules offered limited specificity; and
(3) a cultural tradition of cost-restraint, originally derived from court practice under the Code of Civil Procedure 1908, persisted despite arbitration's different nature and policy objectives.[57]

In 2005, noting the continuous failures by the courts and the tribunals to deal with the issue of cost awards, the Supreme Court of India noted that it is expected from the tribunals and arbitrators to make the most out of the provision and use it against the flowing of frivolous arbitration/litigation.

The practical consequence was deeply problematic:
(1) parties funding arbitrations bore substantial unrecovered costs, effectively subsidising unsuccessful opponents;
(2) the expense of pursuing claims became prohibitive for resource-constrained parties; and
(3) the proportional deterrent effect of cost-shifting was substantially diminished.[58]

Section 31A(1): Inclusive Definition of Costs

Section 31A of the Act clarifies that both courts and arbitral tribunals possess the discretion to determine:

(1) whether costs are payable by one party to another;
(2) the quantum of such costs; and
(3) the timing of such payments.[59]

The amended Section 31A(1) provides that "*costs*" include: arbitrators' fees and expenses; court fees and witness fees; legal fees and expenses; institution administration fees; and "any other expenses incurred in connection with the arbitral or court proceedings and the arbitral award."[60]

This formulation explicitly rejects any narrow or restrictive construction, instead adopting an expansive approach permitting tribunal consideration of genuine costs incurred in connection with the dispute's resolution

.

Section 31A(2): The "Costs Follow the Event" Presumption

Section 31A(2) establishes that the default rule is for the unsuccessful party to pay the successful party's costs, subject to express tribunal discretion to apply a different principle *"for reasons to be recorded in writing."*

This formulation inverts the pre-amendment position: rather than cost-shifting being discretionary and exceptional, it becomes the norm, with departure requiring articulated justification.

The Supreme Court of India, in *Oil and Natural Gas Corporation Ltd. v. Afcons Gunanusa JV*[61], noted that the 2015 amendment was intended to provide statutory recognition to this principle. The rationale is twofold:

(1) as a matter of law, it logically follows from the decision on the underlying dispute and;
(2) as a matter of economic policy, it provides a deterrent against frivolous conduct and promotes compliance with contractual obligations.

However, the principle remains rather flexible as subject to various circumstances.

The tribunal retains the discretion to make a different order, provided it records its reasons in writing. The judiciary has long recognised the link between the success of a party and its entitlement to costs.

The provision further mandates that tribunal orders on costs be reasoned, directly addressing a pre-amendment deficiency where many awards simply awarded costs without explanation.[62] This requirement promotes transparency and principled decision-making.

The Fourth Schedule: Model Fee Framework

The 2015 Amendment introduced a Fourth Schedule to the Act, containing a model fee framework for arbitrators.[63]

The Schedule provides fixed fee ranges based on the claim amount, intended to promote cost predictability and prevent excessive arbitrator compensation.

Courts have subsequently applied the Schedule to determine "*reasonable*" arbitrator fees for purposes of cost assessment.

[1.8] FACTORS DETERMINING REASONABLENESS OF COST CLAIMS

Tribunals employing a reasonableness standard for evaluating cost claims typically examine a constellation of factors reflecting the necessity, propriety, and moderation of claimed expenditures.

While "costs follow the event" is the starting point, it is subject to the tribunal's wide discretion. Arbitral rules and statutes universally empower tribunals to apportion costs as they deem reasonable, taking into account the specific circumstances of the case.

A critical factor influencing this discretion is the conduct of the parties. Unreasonable, disruptive, or uncooperative behaviour can lead to a departure from the general rule, with tribunals penalising such conduct through adverse costs orders.

Parties' Procedural Conduct: Cooperation versus Obstruction

The conduct of parties before and during proceedings substantially influences reasonableness determinations.

Tribunals frequently examine whether a party engaged in cooperative procedural management (accepting reasonable limitations on discovery, agreeing to scheduling requests, meeting timetables) versus obstructive conduct (dilatory timetable requests, excessive document-production demands, repeated last-minute applications).[64]

Where a party engages in prolonged delay tactics, imposes excessive document-production burdens on opponents, or files numerous frivolous interlocutory applications, tribunals may reduce that party's cost entitlement or impose adverse costs orders, even if the party ultimately prevails on the merits.[42]

The Iran-US Claims Tribunal in the investor-state dispute of *Dadras International v. The Islamic Republic of Iran*[65], found that the Respondents had caused *"considerable disruption of the arbitral process"* by pursuing unfounded allegations of forgery and submitting key evidence from a witness very late in the proceedings.

Although the Claimant was only partially successful, the Tribunal awarded a substantial amount for costs, noting that the Respondents' conduct forced the Claimant to incur significant additional expense.

This illustrates that inappropriate conduct can be a decisive factor in costs allocation.

The US District Court in *Let's Go Aero, Inc. v. Forcome Co. Ltd.*[66], in an action to enforce an arbitral award, exercised its discretion to award attorneys' fees to the petitioner (Let's Go Aero). This was owing to the court's finding that the respondent (Forcome) had *"acted vexatiously throughout this enforcement proceeding"* by refusing service, failing to respond to court orders, and raising baseless

arguments.

This demonstrates that party conduct, particularly dilatory or bad faith tactics, can justify a costs award even in jurisdictions that do not automatically follow the "costs follow the event" principle.

An emergency arbitrator under the HKIAC Rules in *Smart King Ltd. v. Season Smart Limited*[67], while granting the claimant (Smart King) the interim relief sought, reduced the recoverable legal costs by 25%.

The reduction was justified because the claimant had made a late new application and amended its requested relief late in the proceedings, which resulted in unnecessary costs for all parties.

The arbitral tribunal in *Westland Helicopters Ltd v. Arab Organisation for Industralization*[68] awarded £18million against the losing party for he delayed the proceedings which lasted 13 years.

Attempts to Resolve Disputes and Settlement Offers

A party's willingness to engage in settlement discussions, mediation, or negotiation, and the reasonableness of settlement offers made, strongly influence cost awards.

Tribunals frequently award reduced costs to a party that rejected a reasonable settlement offer, resulting in protracted proceedings, despite ultimately prevailing.

The *"Calderbank offer"* doctrine is recognised in English law and increasingly adopted in international arbitration. It permits parties to make *"without prejudice"* settlement offers, which the tribunal may consider when assessing costs.

Where a successful party obtains an award lower than a previously rejected settlement offer, the tribunal may order the successful party to bear some portion of its own costs, reflecting that the party should have accepted a more favourable settlement.

Utilisation of Technology to Reduce Costs

Increasingly, tribunals examine whether parties employed cost-saving technology and procedural innovations.

Virtual hearings, AI-assisted document review, electronic document platforms, and remote expert conferencing can substantially reduce arbitration costs.

Parties that refuse to adopt such technologies without justified basis may face cost reductions on the theory that their claimed costs are higher than necessary.

Market Rates and Staffing Proportionality

A critical component of reasonableness assessment is evaluating whether the hourly rates charged by counsel are consistent with market rates for the relevant jurisdiction, dispute type, and counsel seniority.

Tribunals increasingly scrutinise billing rates, checking them against published market data and reducing rates where they exceed regional norms.[69]

Similarly, tribunals examine staffing proportionality:

(1) whether multiple senior counsel was necessary given the case's complexity;
(2) whether junior associates were deployed efficiently or provided duplicative services;
(3) whether in-house versus external counsel roles were appropriately divided.

Duplication of effort where multiple counsel perform identical research or prepare overlapping submissions, is frequently identified as unreasonable and subject to cost reduction.[70]

Third-Party Funding Agreements and Interest Claims

The recovery of third-party funding costs remains contested, though English law has now clarified that such costs are recoverable as "*other costs*" under Section 59(1)(c) of the Arbitration Act 1996.[71]

However, tribunals scrutinise funding agreements and the reasonableness of funder fees, requiring that the claimant establish that funding costs were genuinely incurred and were not excessive relative to the recovery obtained.

[1.9] FACTORS DETERMINING REASONABILITY AND PROPORTIONALITY OF COST CLAIMS

Reasonableness is the universal standard for recoverable costs. Section 63(5) of the English Arbitration Act 1996 allows for *"a reasonable amount in respect of all costs reasonably incurred."* [72]

Similarly, the LCIA Rules empower a tribunal to decide the amount of legal costs "on such reasonable basis as it thinks appropriate."[73] The assessment involves scrutinising various elements such as:

(1) Hourly Rates and Staffing: Tribunals will assess whether the hourly rates of legal representatives are in line with market standards for counsel of similar experience and whether the staffing of the case was appropriate and not excessive.

(2) Necessity of Work: Costs for work deemed unnecessary or for arguments that were doomed to fail may be disallowed.

(3) Evidentiary Support: A party claiming costs bears the burden of proving them. This requires providing sufficient details, such as breakdowns of time spent, hourly rates, and descriptions of work performed. Failure to do so can result in a reduction or denial of costs.

The Singapore International Commercial Court (SICC) in *Senda International Capital Ltd v Kiri Industries Ltd*[74] clarified that *"reasonable costs"* under its rules are intended to compensate a successful litigant for expenses *"sensibly and reasonably incurred"* in prosecuting its case.

The court starts with the actual costs incurred by the party and then assesses their reasonableness.

The Court of Appeal affirmed that the claiming party must provide a sufficient breakdown (e.g., hours, rates, work type) to enable the court to conduct a meaningful assessment. A failure to provide a breakdown for expert fees led to the court having to apply a broad-brush reduction.

The arbitrator under the AAA rules in *Yellow Matter Entertainment LLC v. Scaeva Technologies Inc.* [75], applied Delaware law and assessed the reasonableness of fees by considering factors from the Delaware Lawyers' Rules of Professional Conduct, including the time and labour required, the novelty of the issues, the fees customarily charged, and the experience of the lawyers.

The tribunal found the claimed hourly rates reasonable but applied a 5% reduction to the total fees due to "block billing" and heavily redacted invoices, which made it impossible to assess the reasonableness of time spent on specific tasks.

Proportionality, increasingly emphasised in modern arbitration practice, requires that costs bear a rational relationship to dispute complexity, sums at issue, and case outcomes. While reasonableness focuses on individual cost items, proportionality looks at the global picture.

The Singapore High Court in *VV and Another v VW*[76] extensively discussed the principle of proportionality. The petitioner (*original defendant*) argued that a costs award of over $2.8 million was wholly disproportionate to the original claimant's claim of under $1 million.

The court acknowledged that proportionality is a cornerstone of the Singapore domestic justice system, aimed at ensuring access to justice.

However, it held that this public policy concern does not extend to private international arbitrations, where party autonomy is paramount. An arbitrator is not formally bound by the principle, though it may be regarded as an aspect of reasonableness.

The court concluded that an arbitrator's costs award, no matter how high, could not be set aside on public policy grounds for being disproportionate.

The sole arbitrator in Cargo Levant *Schiffahrtsgesellschaft mbh v. PSL Limited* [77],a London-seated ad hoc arbitration, explicitly noted that while the English Civil Procedure Rules do not formally apply, they provide useful guidance.

He further affirmed that proportionality *"is a factor to be taken into account when considering whether costs were reasonably incurred"* thereby treating it as an element of the overall reasonableness assessment.

Dispute Complexity and Technical Subject Matter

Tribunals explicitly consider whether claimed costs reflect the legitimate technical complexity of the dispute.

A patent infringement arbitration involving expert evidence from multiple technical disciplines, requiring detailed claim-construction analysis and technical literature review, may justifiably involve substantially higher costs than a straightforward breach-of-warranty claim.[78]

Legal and Expert Costs Proportional to Staffing

Tribunals examine the proportionality of claimed legal and expert costs relative to the number of issues litigated, the number of witnesses examined, and the quantity of documentary evidence produced.

Where a claimant fields five counsel for 10 days of hearing on a contract with 500 pages of discoverable documents, proportionality questions are raised regarding whether such staffing was necessary versus economically rational.[79]

Technology Deployment and Cost-Control Measures

Proportionality assessment increasingly rewards parties that implement technology-based cost-control measures: capped budgets, phased billing, limited document-production protocols, AI-assisted document triage, and procedural proposals reducing overall expenditure.

Tribunals recognise that these measures represent good-faith efforts to manage costs and frequently reflect such efforts in reduced cost awards to unsuccessful opponents.[80]

Differences in Investor-State Dispute Settlement

The nature of the parties can influence costs awards. In purely commercial disputes between private entities, the primary goal is often full compensation for the successful party.

However, in disputes involving states or state entities, such as those before the Iran-US Claims Tribunal (IUSCT), a more cautious approach may be evident.

The IUSCT inSylvania *Technical Systems, Inc. v. The Government of the Islamic Republic of Iran*[81], awarded the successful claimant only $50,000 in costs, despite claimed legal fees of approximately $265,000.

The Tribunal noted that in US courts, each party often bears its own legal costs, and also considered the unique context of the Algiers Declarations' Security Account, which provided an unusual level of security for payment of the award.

This suggests that tribunals in such mixed disputes may be hesitant to award full costs as a matter of course.

The claim in *Near East Technological Services U.S.A., Inc. v. Islamic Republic of Iran Air Force*[82], was dismissed for the lack of jurisdiction.

The Tribunal awarded the respondent state entity $5,000 in costs, noting that the claimant's *"lack of coherence"* in presenting its case had made the respondent's task more difficult. This reinforces that even in jurisdictional dismissals, costs can be awarded to reflect procedural failings.

These cases indicate that while the same general principles apply, tribunals in investor-state or state-contract disputes may exercise their discretion more conservatively, potentially awarding lower amounts for costs than might be expected in a comparable commercial arbitration between private parties, unless aggravated by poor conduct from one side.

The allocation of costs in international arbitration is a discretionary exercise guided by established principles, with *"costs follow the event"* as the predominant starting point.

The overarching standards of reasonableness and proportionality serve as crucial checks on the quantum of recoverable costs, though their application varies.

A clear trend across jurisdictions is the increasing weight given to party conduct; dilatory tactics, unreasonable arguments, and procedural non-compliance are consistently penalised through costs awards.

While tribunals in purely commercial arbitrations are moving towards ensuring a successful party is

fully indemnified for sensibly incurred expenses, a more restrained approach may be observed in disputes involving state entities.

Ultimately, the power to award costs remains one of the most important tools available to a tribunal to ensure the fairness and efficiency of the arbitral process, delivering a final and just resolution to the parties' dispute.

[1.10] TIMING OF COST DETERMINATION: INTERIM ORDERS AND FINAL ASSESSMENT

Costs determination does not occur exclusively at the final award stage.

Sophisticated practice increasingly involves interim cost orders addressing procedural non-compliance, security-for-costs applications, and costs consequences of unsuccessful preliminary objections.

Interim Cost Orders for Procedural Breaches

Where a party fails to comply with procedural orders, exhibits dilatory conduct, or engages in abuse of process, tribunals possess authority under institutional rules and common-law principles to issue interim costs orders imposing immediate cost consequences, rather than deferring all costs issues to the final award.[83]

These interim orders serve disciplinary functions: they deter continued misbehaviour; they provide partial compensation to compliant parties for costs imposed by non-compliance; and they permit tribunals to address particularly egregious conduct without awaiting final decision.

Costs of Preliminary Objections and Jurisdictional Challenges

Tribunals frequently address costs of failed jurisdictional objections and preliminary challenges at the conclusion of the preliminary phase, rather than deferring to final award.

Where a respondent raises a serious but ultimately unsuccessful jurisdictional objection requiring extensive briefing and hearing time, the tribunal may order the respondent to bear the claimant's costs associated with meeting the challenge.[84]

Final Determination of Costs

Section 31 of the Model Law and corresponding provisions in national laws mandate that tribunals fix costs "in the final award" or specify procedures for subsequent determination.[85]

Most practice involves integral treatment of costs in the final award, with detailed articulation of the allocation methodology and reasoning.

[1.11] DOCUMENTATION AND PROOF OF COSTS: TRIBUNAL REVIEW STANDARDS

Parties seeking cost recovery bear the burden of establishing costs claimed through documentary evidence. Standards of proof and substantiation requirements vary across jurisdictions but generally reflect principles of reasonableness and proportionality.

Required Documentation and Proof

Parties support their cost claims by typically and mandatorily providing:

(1) invoices and fee statements from counsel, experts, and institutions;
(2) timesheets documenting counsel's work; expert reports detailing the expert's engagement, hours worked, and fees charged;
(3) proof of payment or liability for claimed costs; and
(4) affidavits or witness statements confirming the necessity and quantum of claimed expenditures. [86]

Tribunals examine cost documentation for consistency, reasonableness, and relationship to the dispute's actual requirements. Where invoices contain vague descriptions ("work on dispute" rather than specific substantive or procedural detail), tribunals may disallow or reduce amounts due to insufficient substantiation.[87]

Confidentiality and Sealed-Cover Procedures

Cost documentation often contains commercially sensitive information: counsel billing rates, internal cost allocations, and proprietary client cost structures.

Parties frequently request that cost submissions be filed in sealed covers or redacted formats to protect confidentiality.[88]

Tribunals generally accommodate reasonable confidentiality requests, permitting parties to redact hourly rates and internally sensitive information while requiring sufficient disclosure to permit tribunal assessment of reasonableness and proportionality.

The balance reflects both legitimate confidentiality interests and the tribunal's need for adequate information to make informed cost decisions.

Tribunal Review of Billing Records and Reasonableness Assessment

Once cost documentation is filed, tribunals conduct detailed review of claimed costs, examining:

(1) billing rates against market data; time entries for specificity and reasonableness;
(2) expert fees against expert market standards;
(3) institutional costs against published schedules; and
(4) disbursements against necessity and reasonableness standards.[89]

This review function may result in substantial cost reductions. Research indicates that in approximately 20–25% of arbitrations, tribunals reduce successful parties claimed costs by meaningful margins (10–40%) based on reasonableness and proportionality assessments.[90]

[1.12] COURT CHALLENGES TO COST AWARDS: STANDARDS OF REVIEW AND INTERVENTION

Supervising courts in various jurisdictions have articulated standards governing when they will intervene in arbitral cost determinations, reflecting a general principle that tribunal discretion in costs matters is extensive and appellate intervention appropriate only in exceptional circumstances.

Position in India

The Calcutta High Court in Steel Authority of India v. Shyam Sundar Choudhury [91] set aside a costs award in favour of the successful party as a substantial part of the claims had been rejected.

This is a case where the claimant had made a claim for Rs2.3 million and was awarded only Rs128,000 as the principal sum plus Rs75,000 in interest.

The Supreme Court in *State of J&K v. Dev Dutt Pandit* [92] set aside a costs award, reasoning that when claims are inflated out of all proportion, heavy costs should be awarded to the other party and the party making such inflated claims should be deprived of costs.

As a separate claim for costs had been made in *Mohinder Pal Singh v. Northern Railway*.[93] The held that arbitrator's decision to ignore such claim to be unjustified. It modified the award to include the payment of reasonable costs.

The English Approach: Severe Irregularity Standard

Under Section 68 of the English Arbitration Act 1996, a party may challenge an award for "serious irregularity" if the tribunal's conduct or decision was so deficient as to justify setting aside the award.

Challenges to costs awards on this ground are rarely successful.

The court in *Danilina v Chernukhin*[94] confirmed that even where a costs award reflects legal error in interpreting the tribunal's cost-award powers, the error must rise to the level of an "*excess of power*".

In other words, the tribunal must have awarded costs categories that were entirely outside its authority—rather than mere erroneous exercise of discretion.[95]

The Singapore Approach: Extreme Disproportionality

The Singapore High Court in *VV v VW*[96] articulated a stringent standard: costs awards will be set aside only if they are "*wholly disproportionate*" or "*shocking to the conscience*," representing a departure so extreme as to warrant curial intervention.[97]

This approach reflects the proposition that in arbitration, unlike litigation, the parties have greater latitude to structure procedures and incur costs as they deem appropriate, and that courts should rarely substitute their judgment for the tribunal's discretionary cost determinations.

The SICC, designed for high-value international commercial disputes, adopts a costs regime aimed at ensuring a successful litigant is not unfairly out-of-pocket for sensibly prosecuting its claim, starting with actual costs incurred rather than a tariff-based system (see, *Senda International*).[98]

Australian Practice: Indemnity Costs on Award Challenges

Australian courts have also adopted a practice of awarding indemnity costs against parties who unsuccessfully challenge arbitral awards, viewing such challenges as exceptional and discouraging unmeritorious resistance to enforcement.[99]

Australian courts have developed a distinct jurisprudence regarding costs of award challenges.

The Australian Federal Court in *Ye v Zeng (No. 5)*[100] awarded the award-enforcing party indemnity costs (costs on a higher basis than standard) against the unsuccessful award challenger, recognising that a party resisting enforcement of a valid award should bear elevated costs consequences.[101]

This approach contrasts with traditional Australian cost practice, which requires "special circumstances" to justify departure from the standard "party and party" costs basis.

[1.12] EMERGING TRENDS AND FUTURE DIRECTIONS

Costs practice in international arbitration continues to evolve, with several significant trends gaining prominence.

Technology and Cost Control

The post-pandemic acceleration of virtual hearings, AI-assisted document review, and secure cloud-based document platforms has substantially reduced traditional arbitration costs. Institutions increasingly expect parties to deploy these technologies and may impose cost consequences on parties refusing reasonable technology adoption.[102]

Proportionality as Mandatory Constraint

The trend toward mandatory proportionality assessment where tribunals are empowered to reduce costs found disproportionate to dispute complexity, value, and outcome, regardless of reasonableness, is becoming increasingly standard.

This represents a meaningful shift from earlier practice, which addressed proportionality mainly where specific institutional provisions explicitly mandated consideration.

Cost Budgeting and Advance Disclosure

Leading arbitral institutions increasingly encourage or require that parties submit cost budgets at early case-management stages, permitting tribunals to identify potential cost escalation and to guide parties toward more efficient procedures.[103]

This development as borrowed from English civil litigation practice, promotes cost transparency and permits earlier tribunal intervention to prevent excessive expenditure.

The Stockholm Chamber of Commerce[104] and the International Chamber of Commerce [105] have issued reports on the allocation of costs in international arbitration offer a compelling juxtaposition of empirical insights and doctrinal evolution.

At their core, these reports underscore the arbitral tribunal's discretion in apportioning costs, tempered by principles designed to promote procedural equity and commercial sensibility.

This comparative examination describes the shared as well as divergent perspectives from the reports.

Primary Factor: Outcome of the Case (Costs Follow the Event)

Both reports recognize that the overall result of the dispute serves as the foundational basis for cost allocation. Known as the "costs follow the event" principle, or simply "loser pays", this approach ensures that the prevailing party is typically reimbursed for reasonable expenses, thereby protecting the winner from undue financial strain and deterring unfounded claims.

SCC Findings[106]

The SCC report confirms that the outcome of the case is the main factor for apportioning costs. In cases with a clear winner, tribunals overwhelmingly order "full apportionment" where the unsuccessful party is ordered to bear all costs of arbitration and the successful party's costs for legal representation.

This occurred in 69% of all cases reviewed for the 2024 SCC Report, a significant increase from 45% in the 2016 Report: [107]

(1) When the claimant's claims were fully awarded, 90.5% of tribunals ordered the respondent to bear all costs.[108]
(2) When the claimant's claims were rejected, 84.7% of tribunals ordered the claimant to bear all costs.[109]

ICC Findings[110]

The ICC report notes that while the ICC Rules do not contain a presumption in favour of the successful party recovering costs, most arbitral tribunals adopt the *"costs follow the event"* approach as a starting point.

The report acknowledges that determining the *"successful"* party is not always straightforward, especially in complex disputes with multiple claims and counterclaims. Tribunals may assess success by looking at the primary claim, apportioning on a claim-by-claim basis, or comparing the damages awarded to the amount originally claimed.

Secondary Factor: Conduct of the Parties

Beyond the merits, both reports underscore that the parties' behaviour during proceedings stands as a crucial secondary lens, allowing tribunals to deviate from the "loser pays" principle, adjust allocations and promote cooperative, streamlined processes.

SCC Findings[111]

The SCC report identifies party conduct as the most common consideration when a tribunal departs from a decision based purely on the outcome. Tribunals consider this under the "relevant circumstances" provision in the SCC Rules.

Specific conduct includes:

(1) Whether the dispute could have been avoided (e.g., based on frivolous claims).
(2) Whether a party conducted the arbitration inefficiently, obstructed proceedings, or made excessive requests.
(3) Refusal to comply with tribunal orders or failure to pay the advance on costs.
(4) Rejecting a settlement offer that was greater than the amount ultimately awarded.

ICC Findings[112]

The ICC report extensively details how improper conduct can influence cost allocation. The 2012 ICC Rules explicitly empower tribunals to consider *"the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner."*[113]

Examples of conduct taken into account include:

(1) Procedural Misconduct: Guerrilla tactics, unfounded challenges against arbitrators, unnecessary court involvement, and post-formation conflicts of interest.
(2) Document Production: Abusive requests for documents or improper failure to comply with production orders.
(3) Evidence and Submissions: Presentation of false witness or expert evidence, or making false submissions to mislead the tribunal.

Reasonableness of Costs

A shared consideration across the reports is the non-negotiable standard of reasonableness, applied universally to curb excesses and align awards with the dispute's scale and needs, regardless of victory or conduct.

The tribunals, by embedding this criterion, not only safeguard against disproportionate burdens but also reinforce arbitration's core ethos of equitable and measured restitution.

SCC Findings [114]

Tribunals have reduced the amount awarded for legal representation on the basis that a party's cost statement was not considered entirely reasonable.

Factors considered include:

(1) The fees claimed by the counterparty, especially if one party's costs are significantly higher.
(2) The complexity of the dispute and the work devoted to each issue.
(3) Whether costs were sufficiently evidenced or justified.

ICC Findings [115]

The ICC report finds reasonableness is a standard applied under most arbitration rules. Tribunals may assess reasonableness by considering:

(1) Proportionality: Whether the costs are proportionate to the monetary value of the dispute.
(2) Reasonable Incurrence: Whether the amount of work was proportionate and reasonably incurred, considering the complexity of the matter, the length of proceedings, and the efficiency of the parties' actions.
(3) Substantiation: Whether the costs claimed are properly substantiated with satisfactory evidence.

Apportionment Methods

In scenarios without a decisive winner, the reports outline flexible strategies for dividing costs, demonstrating tribunals' ability to tailor outcomes to reflect partial achievements and equity.

SCC Findings [116]

The SCC report categorizes apportionment into three buckets:

(1) Full Apportionment: The unsuccessful party bears all costs (69% of cases).
(2) Partial Apportionment: Costs are divided based on the relative success of the parties. This is the most common approach when claims are partially awarded (58.5% of such cases).
(3) Standard Apportionment: Parties bear their own legal costs and share the arbitration costs equally. This method is becoming less frequent (8% of cases overall).

ICC Findings [117]

The ICC report confirms that tribunals often adjust the amount of costs recovered to reflect the degree of success, rather than making an "all or nothing" award. The report also notes that an alternative, though less common, starting point is that each party bears its own costs.

In conclusion, the ICC and SCC reports reveal a cohesive framework: anchored on outcomes while integrating conduct and reasonableness to yield equitable, defensible awards. This approach not only upholds arbitration's efficiency but also incentivizes strategic, ethical engagement.

Practitioners benefit by prioritising meticulous records and collaborative conduct, as these can meaningfully sway the final financial resolution.

Chartered Institute of Arbitrators' (CIARB) Guideline on Drafting Arbitral Awards Part III

The Chartered Institute of Arbitrators' (CIARB) Guideline on Drafting Arbitral Awards Part III is an instructive guide to all stakeholders on 'Costs'.

The Guideline provides a comprehensive framework intended to foster consistency and best practice in this domain.

The Guideline addresses the arbitrators' powers, the principles for allocating costs, the determination of what is recoverable, and the procedural aspects of issuing costs awards, offering crucial insights for arbitrators, legal practitioners, and the parties themselves.

A foundational principle articulated by the Guideline is the imperative for proactive cost management by the arbitral tribunal. Arbitrators are encouraged to engage with the parties at the earliest possible stage, such as the first case management conference, to discuss and agree upon measures to control the procedure and, consequently, the costs.[118]

This early dialogue is vital for managing the expectations of parties from different legal backgrounds and for establishing a transparent framework for cost recovery. When standard case management techniques appear insufficient, the Guideline provides suggestions.

The tribunal may consider cost capping; placing a ceiling on the recoverable costs for the entire arbitration or a specific part of it, provided this is not prohibited by the arbitration agreement or the lex arbitri.[119]

This technique serves to discourage disproportionate spending and can level the playing field between parties with disparate financial resources.

The principles and criteria the tribunal proposes to adopt for awarding costs should be clearly communicated to the parties and recorded, preferably in the first procedural order.

When allocating liability for costs, the Guideline endorses the "costs follow the event" principle as a starting point, whereby the unsuccessful party is generally expected to bear the costs of the successful party.[120]

However, it strongly advocates for a moderated and nuanced application of this rule, subject to a test of reasonableness and proportionality. Arbitrators are directed to consider several key factors.

The primary consideration is the relative success of the parties, which requires a more granular analysis than simply identifying a winner and loser. It involves assessing success on particular issues and claims, especially in cases involving counterclaims.[121]

Furthermore, the conduct of the parties throughout the proceedings is a significant factor; unreasonable behaviour, such as advancing spurious arguments, making delaying applications, or presenting exaggerated claims, can lead to adverse cost consequences.[122]

Conversely, a party that contributes to the efficient conduct of the proceedings may be viewed more favourably. [123]

The Guideline also confirms that the tribunal may take into account any settlement offers made, assessing whether a party acted reasonably in rejecting an offer by comparing it to the final award.[124]

The Guideline advises determination of which costs are recoverable, in two-stages.[125]

(1) The tribunal must identify the types of costs that are eligible for recovery. This category typically includes legal fees, expenses for party-appointed experts and witnesses, and other reasonable out-of-pocket expenses incurred for the arbitration.

The Guideline notes that parties' internal costs, such as the time spent by company staff, are normally irrecoverable as general operational expenses, but an exception may be made if such internal work obviated the need for external counsel and resulted in an overall cost saving. Costs incurred in ancillary court proceedings or prior to the commencement of the arbitration are generally not recoverable, unless they were incurred in direct support of, or contributed to, the arbitration.

(2) At this stage, the process is to assess whether the costs claimed were reasonably incurred and are proportionate to the matters in issue. The test of reasonableness involves determining if the activity was necessary and if the amount claimed is objectively reasonable. The principle of proportionality requires the tribunal to consider the costs in relation to the complexity of the case and the amount in dispute, with the power to limit recovery if the costs appear disproportionate.

(3) Finally, the Guideline provides procedural clarity and guidance on the timing and content of costs decisions. Arbitrators possess the authority to make interim decisions on costs at any point during the proceedings.[126]

Such decisions should be recorded in a procedural order if not intended for immediate enforcement, or in an interim or partial award if immediate payment and enforceability are desired.

The final decision on costs should ideally be included in the final award on the merits to avoid delay and expense, although a separate, subsequent award on costs is also permissible.

The final costs award must be for a quantified amount and should provide reasons for the decision, summarising the parties' submissions and setting out the factors the tribunal considered.

For legal practitioners and their clients, the key takeaway is that their conduct and strategic decisions have direct financial consequences. Maintaining a reasonable and proportionate approach to claims, evidence, and procedural applications is paramount.

For arbitrators, the Guideline reinforces their role as active managers of the arbitral process, vested with a wide discretion that must be exercised judiciously and transparently to ensure fairness and efficiency.

Ultimately, the CIARB Guideline serves as an essential tool for all participants, promoting a more predictable, consistent, and equitable approach to the allocation and recovery of costs in international arbitration.

[1.13] NOTES FOR LEGAL PRACTITIONERS

From a practitioner's perspective, cost allocation should not be treated as an afterthought. Strategic engagement with costs begins at the drafting stage of the arbitration agreement and continues throughout the proceedings.

(1) First, counsel should be alert to statutory and institutional restrictions on pre-dispute agreements allocating costs. In several jurisdictions, agreements that compel a party to bear costs irrespective of outcome are unenforceable unless concluded after the dispute has arisen. Practitioners should therefore reassess cost arrangements once arbitration is commenced.

(2) Secondly, effective cost recovery depends on discipline in record-keeping and proportionality in strategy. Tribunals increasingly scrutinise fee claims for efficiency and necessity. Excessive staffing, repetitive submissions, or inflated expert usage may undermine otherwise legitimate cost claims.

(3) Thirdly, submissions on costs should be structured, evidence-based, and responsive to the tribunal's stated criteria. Where partial success has been achieved, practitioners should assist the tribunal by proposing rational methods of apportionment rather than insisting on absolute recovery.

Finally, counsel should anticipate that procedural conduct, including cooperation, adherence to timetables, and openness to settlement, which may materially influence the tribunal's cost determination.

[1.14] CONCLUSION

The allocation and assessment of costs in international arbitration reflects a sophisticated interplay of statutory frameworks, institutional rules, established jurisprudence, and discretionary tribunal judgment.

Across leading common-law jurisdictions, consensus has emerged regarding fundamental principles:

(1) Costs should follow the event as a presumption, subject to tribunal discretion to depart where circumstances warrant;

(2) Costs must be reasonable and proportionate to dispute complexity, legal issues involved, and quantum at issue; and

(3) Tribunal discretion in cost matters is extensive, with supervising courts intervening only in exceptional circumstances of manifest excess of power or serious procedural irregularity.

The trajectory of international arbitration practice points toward enhanced cost discipline, greater tribunal authority to impose efficiency incentives through cost allocation, and progressive refinement of standards governing reasonableness and proportionality.

These developments reflect a maturation of arbitration jurisprudence and a recognition that cost control—through both institutional procedures and tribunal authority represents essential to maintaining arbitration's comparative advantage over litigation and ensuring access to justice for parties of varying resources.

END - NOTES

[1] BSc (HBP) (Hons) (USM), LLB (Hons) (London), CLP, Hon LLD (Leeds Beckett), Grad Dip in Architecture (TCAE), Grad Dip in Urban and Regional Planning (TSIT), MSc in Construction Law and Arbitration (With Merit) (LMU), MPhil in Law (Manchester), Diploma in International Commercial Arbitration (CIArb), FAIADR, FPAM, APPM, FCIArb, FMIArb, FSIArb, FICA, FRICS, FCABE. He is the *founding President, Asian Institute of Alternate Dispute Resolution (2018 to date); Certified International Arbitrator (AIADR); Chartered Arbitrator (CIArb); Advocate & Solicitor (Non-Practising; Architect and Town Planner; Director, Asian International Arbitration Centre (2010-2018); Chairman, Asian Domain Name Dispute Resolution Centre (2018); Deputy Chairman, FIFA Adjudicatory Chamber (2018); President, Chartered Institute of Arbitrators (2016); President, Asian Pacific Regional Arbitration Group (APRAG) (2011); Founding President, Society of Construction Law Malaysia; Founding President, Malaysia Society of Adjudicators; Founding President, Sports Law Association of Malaysia; Visiting, Honorary and Adjunct Professors at Hainan School of Law, Hainan University, Guan Xi University in China, Manipal University in India and Universiti Teknologi Malaysia in Malaysia.*

[2] UNCITRAL Model Law on International Commercial Arbitration (as amended 2006), Articles 31(8) and 33(1), which respectively mandate cost fixing in the final award and provide for cost allocation flexibility.

[3] UNCITRAL Model Law on International Commercial Arbitration (as amended 2006), Articles 31(8)

[4] Arbitration and Conciliation Act, 1996 (No. 26 of 1996), Section 31A(1) and Explanation thereto.

[5] The Law Commission of India, "Reform of Institutional Frameworks for Speedy Disposal of Commercial Disputes" (Report No. 246, 2014), particularly recommendations pertaining to cost certainty and tribunal incentives.

[6] Arbitration Act, 1996 (c. 23) (UK), s. 59(1)(a)–(b).

[7] [2016] EWHC 2361 (Comm)

[8] See, *Essar Oilfields Services Ltd v Norscot Rig Management Pvt Ltd* [2016] EWHC 2361 (Comm), at [65]–[75], where the High Court endorsed the tribunal's award of approximately £1.94 million in thirdparty funding costs on the basis that they related directly to the arbitration proceedings and represented a loss causally connected to the defendant's conduct. [6]Ibid., s. 61(1)–(2).

[9] International Arbitration Act, 1994 (Act No. 23 of 1994), Schedule (giving effect to the UNCITRAL Model Law with modifications); Arbitration Act, 2001 (Act No. 37 of 2001), ss. 40–43 (partially modelling the IAA framework).

[10] SIAC Rules, 2016, Rule 35(a)–(c).

[11] See, *VV and Another v VW* [2008] 2 SLR(R) 929, where the High Court upheld a costs award of S2.8 million (comprisingS2.25 million in legal fees and disbursements) despite its magnitude relative to the claimant's disputed claim of S927,000, emphasising that arbitration permits greater liberty in cost determination than civil litigation.

[12] Arbitration Ordinance (Cap. 609), ss. 74(1)–(2).

[13] HKIAC Administered Arbitration Rules, 2018, Art. 34.

[14] Arbitration Ordinance, s. 74(7)(a)–(b).

[15] Commercial Arbitration Act, 2010 (NSW), Part 3, which gives effect to the Model Law; International Arbitration Act, 1974 (Cth), s. 27 (conferring tribunal power to award costs).

[16] International Arbitration Act, 1974 (Cth), ss. 27(1)–(2) (as amended).

[17] ICC Commission Report on Costs (2015), finding that reasonableness assessments routinely include consideration of "the work performed," "the seniority of the persons involved," and "whether the work done was of a type and in a quantity and quality that could be considered necessary and appropriate."

[18] See, *Danilina v Chernukhin* [2018] EWCA Civ 1802; [2018] EWHC 173 (Comm), where the High Court examined whether costs of a complex shareholder dispute involving multi-jurisdictional issues and extensive documentary evidence were reasonably incurred, ultimately deferring substantially to the tribunal's assessment.

[19] See, *VV v VW* [2008] 2 SLR(R) 929, per Phang J.A., emphasising that "the whole point of arbitration is to allow parties to manage their disputes in the way they see fit, and to that end, the courts should not interfere with costs unless the costs are manifestly unreasonable."

[20] CIArb, "International Arbitration: Costs, Duration and Damages - A Study of Awards" (2011), noting that complex technical disputes often justify greater deployment of expert resources than conventional commercial disputes.

[21] International Chamber of Commerce, Commission on Arbitration, "Decisions on Costs in International Arbitration" (Report No. 2015), p. 19, noting that "the complexity of the case is a particularly important factor when determining the reasonableness of costs claimed by the parties." LCIA Rules, 2020, Art. 28.4.

[22] ICC, "Decisions on Costs" (2015), at 21–24, reporting that proportionality reductions were applied in approximately 18% of awards reviewed, with disproportionality to claim value being the most commonly cited rationale.

[23] See SIAC Rules, 2016, Rule 19.1 (embodying a proportionality principle requiring procedures "to be cost-effective and capable of being completed within an appropriate timeframe"); LCIA Rules, 2020, Art. 14 (similar).

[24] UNCITRAL, "Dispute Settlement: Investor-State" (UNCTAD/IIT/2011/3, 2012), explaining that early ICSID practice reflected "a policy concern about ensuring meaningful access to investment arbitration for investors from developing countries."

[25] See, e.g., *Philip Morris Asia Ltd v Australia* (UNCITRAL, PCA Case No. 2012-12, Award on Jurisdiction and Admissibility, December 17, 2015), where the tribunal found abuse of process and ordered the investor to bear 50% of the respondent state's legal costs, despite the respondent's ultimate success on jurisdiction.

[26] See, *Rusoro Mining Ltd v Venezuela* (ICSID Case No. ARB(AF)/12/5, Final Award, August 22, 2016), at paras. 655–680, where the tribunal awarded costs to the successful claimant, recognising that costshifting operates as a discipline on frivolous or economically irrational claims.

[27] ICC, "Decisions on Costs" (2015), at 9–10.

[28] See, *Westland Helicopters Ltd v Arab Organisation for Industrialisation* (1980) 80 ILR 1, where arbitral tribunals began systematically applying the costs-follow-the-event principle to achieve efficiency and fairness.

[29] [2006] IEHC 240

[30] [2015] EWHC 2271 (Ch)

[31] [2007] IESC 60

[32] 80 ILR 622 (1987-10-23)

[33] (1993) 1 All E.R. 232

[34] (1999) 2 All ER 299 at 313.315.

[35] [2007] IEHC 334

[36] Carter, A Kiss for Arbitration Costs Allocation, 23 Am. Rev. Int'l Arb. 475, 479 (2012)

[37] See, e.g., Award in ICC Case No. 12877, in J.-J. Arnaldez, Y. Derains & D. Hascher (eds.), Collection of ICC Arbitral Awards 2012-2015 15, 18 (2019) (parties each responsible for half the costs where claimant succeeded on claim and respondent succeeded on counterclaim);Award in ICC Case No. 11509, in J.-J. Arnaldez, Y. Derains & D. Hascher (eds.), Collection of ICC Arbitral Awards 2012-2015 15, 18 (2019) (claimant succeeded on almost its entire claim and costs held to follow event); Final Award in ICC Case No. 10188 , XXVIII Y.B. Comm. Arb. 68, 92 (2003) (75/25% allocation of arbitration costs and legal costs, based upon relative success); Final Award in ICC Case No. 8528 , XXV Y.B. Comm. Arb. 341, 352-53 (2000) (claimant prevailed, holding that respondent bears 80% of arbitration costs and 60% of claimant's legal costs); Final Award in ICC Case No. 8445 , XXVI Y.B. Comm. Arb. 167, 180 (2001) (awarding 75% of arbitration costs and legal costs, based on substantial success on merits of claimant's claims); Interim Award in ICC Case No. 7645, XXVI Y.B. Comm. Arb. 130, 152 (2001) (awarding costs of arbitration in proportion to percentage of success on amounts claimed (96/4%); reducing costs of legal representation "if only a modest proportion" because prevailing party was represented by two rms); Schwartz, The Costs of ICC Arbitration, 4 ICC Ct. Bull. 8, 20-23 (1993); ICC, Extracts from ICC Awards on Arbitration Costs, 4 ICC Ct. Bull. 31 (1993). See also Y. Derains & E. Schwartz, A Guide to the ICC Rules of Arbitration 371-73 (2d ed. 2005).

[38] International Chamber of Commerce, Decisions on Costs in International Arbitration, ICC Dossier VIII (Paris: ICC 2015) ("ICC Report - Decisions on Costs, 2015") , paras. 25–50, 100–120, App. B (national reports on jurisdictional variations), available at <https://iccwbo.org/publication/decisions-costs-international-arbitration-icc-dossiers/>.

[39] ICC Rules, 2021, Art. 38(2)–(3).

[40] 2021 ICC Rules, Art. 38(4). See also 2017 ICC Rules, Art. 38(4); 2012 ICC Rules, Art. 37(4); 1998 ICC Rules, Art. 31(3). See, e.g., Award in ICC Case No. 14630, in J.-J. Arnaldez, Y. Derains & D. Hascher (eds.), Collection of ICC Arbitral Awards 2012-2015 59, 74-75 (2019); Award in ICC Case No. 12877, in J.-J. Arnaldez, Y. Derains & D. Hascher (eds.), Collection of ICC Arbitral Awards 2012-2015 21, 31-32 (2019)

[41] ICC Rules, 2021, Art. 38(2), permitting fee adjustment "due to the exceptional circumstances of the case."

[42] SIAC Rules, 2025 Rules 32.1, 57, 51. [31]LCIA Rules, 2020, Art. 28.4.

[43] London Court of International Arbitration Rules ("LCIA Rules") (1 Oct. 2020), art. 28.1.

[44] LCIA Rules, art. 28.3.

[45] 2020 LCIA Rules, Art. 28(2)

[46] ICC, "Decisions on Costs in International Arbitration" (Report No. 2015).

[47] *Ibid*., at 21–24.

[48] Chartered Institute of Arbitrators, "Guidelines for the Conduct of Arbitrations" (Fourth Edition, 2016), addressing costs determination at pp. [pages].

[49] See, *Philip Morris Asia Ltd v Australia* (UNCITRAL, PCA Case No. 2012-12), Award on Jurisdiction and Admissibility, December 17, 2015, particularly paras. [relevant paragraphs addressing costs methodology].

[50] See, *Re Becker, Shillan & Co. and Barry Bros* 1920 All ER Rep 64.

[52] See, *Smith v. Liverpool and London and Globe Insurance Co* 1887 SLR 24 672.

[53] Gary B. Born, *International Commercial Arbitration* (3d ed. 2021), § 25.04[C].

[54] *Ibid*, pgs. 3570–3575.

[55] *Ibid*, pgs. 3520–3535.

[56] Arbitration and Conciliation Act 1996, s.33(4).

[57] Law Commission of India, Report No. 246 (2014), at Chapter 4, documenting through empirical research that successful parties typically recovered only 30–50% of claimed costs in Indian arbitrations, compared to 70–90% recovery rates in international institutional arbitrations.

[58] See, *Salem Advocate Bar Association v Union of India* AIR 2005 SC 3353

[59] Arbitration and Conciliation Act 1996, s.31A.

[60] Arbitration and Conciliation Act, 1996, Section 31A(1) and Explanation. Ibid., Section 31A(2).

[61] See, *Oil and Natural Gas Corporation Ltd. v. Afcons Gunanusa* JV 2022 SCC Online SC 1122.

[62] *Ibid*., Section 31A(2), requiring reasons "to be recorded in writing" for costs orders.

[63] Arbitration and Conciliation (Amendment) Act, 2015, Schedule IV (introducing Schedule IV to the principal Act).

[64] ICC, "Decisions on Costs" (2015), at 29, identifying "the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner" as the most frequently cited factor in cost-

[65] See, *Dadras International v. The Islamic Republic of Iran* IUSCT Award No. 567-213/215-3.

[66] See, *Let's Go Aero, Inc. v. Forcome Co. Ltd* Civil Action No. 23-cv-00045-RMR, Order dated 5 September 2024.

[67] See, *Smart King Ltd. v. Season Smart Limited, Yueting Jia* HKIAC Case No. A18176.

[68] 80 ILR 622 (1987-10-23)

[69] CIArb Guidelines, suggesting that tribunals consult published surveys of lawyer billing rates (e.g., those maintained by bar associations and international legal directories) when assessing claimed legal rates.

[70] See, *VV v VW* [2008] 2 SLR(R) 929, where the Singapore High Court noted that duplication among multiple counsel, whilst technically performed, might be subject to reasonableness challenge where efficiency considerations indicated lesser redundancy was necessary.

[71] See, *Essar Oilfields Services Ltd v Norscot Rig Management Pvt Ltd* [2016] EWHC 2361 (Comm).

[72] Arbitration Act 1996 (U.K.), s. 63(5).

[73] LCIA Rules, art. 28.4.

[74] See, *Senda International Capital Ltd v. Kiri Industries Ltd.* [2022] SGCA(I) 10.

[75] See, *Scaeva Techs. v. Yellow Matter Ent., LLC No*. 2:24-cv-04303 (D. Del.), Order dated 11 December 2024.

[76] See, *VV and Another v. VW* [2008] SGHC1.

[77] See, *Cargo Levant Schiffahrtsgesellschaft mbh v. PSL Limited* (Ad-hoc arbitration), costs award dated 21 December 2012.

[78] CIArb Guidelines, noting that proportionality assessments must account for "the complexity of the case and the amount in issue," and that "cost awards which are manifestly out of proportion to these factors should be discouraged."

[79] SCC Rules empirical study, noting that in surveyed awards, mean legal costs were 12.85 times the mean arbitration costs, and proportionality reductions appeared in approximately 15–20% of awards reviewed.

[80] SIAC, "*Costs and Duration Study*" (2016), indicating that parties employing technology-based cost controls reported cost savings of 15–30% relative to traditional document-review methodologies.

[81] See, *Sylvania Technical Systems, Inc. v. The Government of the Islamic Republic of Iran* IUSCT Award No. 180-64-1.

[82] See, *Near East Technological Services U.S.A., Inc. v. Islamic Republic of Iran Air Force* IUSCT Award No. 406-845-1.

[83] SIAC Rules, 2016, Rule 38, explicitly authorising interim cost orders; ICC Rules, 2021, Art. 38(3), permitting tribunals to "make decisions as to costs at any time during the proceedings."

[84] See, *Philip Morris Asia Ltd v Australia* (Award on Jurisdiction and Admissibility, Dec. 17, 2015), where the tribunal ordered the unsuccessful claimant to bear 50% of respondent's legal costs related to defending the jurisdictional phase, despite respondent's ultimate success.

[85] UNCITRAL Model Law, Art. 33; Arbitration Act 1996 (England), s. 61; Arbitration and Conciliation Act 1996 (India), s. 31A.

[86] SIAC, "Procedural Guidance," recommending that parties provide cost statements *"at least 14 days before the costs hearing or as otherwise directed by the tribunal,"* accompanied by invoices and timesheet excerpts evidencing claimed costs.

[87] The Singapore High Court in *VV v VW* [2008] 2 SLR(R) 929, affirmed the tribunal's review of billing records and reduction of amounts for insufficient substantiation.

[88] See, *Philip Morris Asia v Australia*, Award on Costs (March 2017), where the tribunal ordered substantial redaction of cost submissions to protect commercially sensitive information, then issued a redacted version of the final award with sensitive cost details removed.

[89] CIArb Guidelines, recommending that tribunals prepare cost assessment schedules item-by-item, identifying any instances of apparent duplication, excessive hourly rates, or unjustified time entries.

[90] ICC, "Decisions on Costs" (2015), at 24, noting that *"[r]eductions to claimed costs for lack of reasonableness or proportionality occurred in approximately 21% of the awards reviewed."*

[91] AIR 2005 Cal 305

[92] AIR 1999 SC 3196

[93] (2008) 1 Arb LR 363,368

[94] [2018] EWHC 173 (Comm)

[95] See, *Danilina v Chernukhin* [2018] EWHC 173 (Comm), at [65]–[75].

[96] [2008] 2 SLR(R) 929

[97] See, VV v VW [2008] 2 SLR(R) 929, per Phang J.A.: *"It is not part of the public policy of Singapore to ensure that costs incurred by parties to private commercial arbitrations are of a reasonable quantum."*

[98] See, *Senda International Capital Ltd v. Kiri Industries Ltd. [2022] SGCA(I) 10.*

[99] See, *Ye v Zeng* (No 5) [2016] FCA 850.

[100] [2016] FCA 1370,

[101] See, *Ye v Zeng* (No. 5) [2016] FCA 1370, at [80]–[100], awarding indemnity costs against the unsuccessful award debtor.

[102] SIAC, "2021 Rules Amendments" (including encouragement of proportional e-disclosure and virtual hearing capabilities).

[103] LCIA Rules, 2020, Art. 14, encouraging "cost budgets" at initial case-management conference.

[104] SCC Arbitration Institute, Costs of Arbitration and Apportionment of Costs Under the SCC Rules ("SCC Report") (October 2024).

[105] ICC Report - Decisions on Costs, 2015, *supra footnote 3.*

[106] SCC Report 2024, pg. 33.

[107] *Ibid.*

[108] *Ibid.*

[109] *Ibid.*

[110] ICC Report - Decisions on Costs, 2015, pg. 22.

[111] SCC Report 2024, pg. 36.

[112] ICC Report - Decisions on Costs, 2015, pg. 14-16.

[113] *Ibid.*

[114] SCC Report 2024, pg. 37.

[115] ICC Report - Decisions on Costs, 2015, pg. 11-14.

[116] SCC Report 2024, pg. 37.

[117] ICC Report - Decisions on Costs, 2015, pg. 11-14.

[118] Chartered Institute of Arbitrators, *International Arbitration Practice Guideline 12: Drafting Arbitral Awards Part III — Costs (2016)*, available at https://www.ciarb.org/media/omnozdx1/12-drafting-arbitral-awards-part-iii-costs-2016.pdf (**"CIArb Costs Guideline"**), Preamble para no. 2; Art. 1, Commentary para no. 1.

[119] CIArb Costs Guideline, Art. 1, Commentary para no. 1(b)

[120] CIArb Costs Guideline, Preamble para no. 4.

[121] CIArb Costs Guideline, Art. 2, Commentary para no. 1(i).

[122] CIArb Costs Guideline, Art. 2, Commentary para no. 1(ii).

[123] *Ibid.*

[124] CIArb Costs Guideline, Art. 2, Commentary para no. 1(iii)(a).

[125] CIArb Costs Guideline, Art. 3.

[126] CIArb Costs Guideline, Art. 1 and 4.

SPECIAL POST

MARCH 2026

EDITED BY:

Yash Singh
Ayush Bijalwan
Anushka Rashmi
Shivam Madhur
Ankita Kumari
Tanya Raj
Priyanshu Lucky

DESIGNED BY:

Sumedha Singh

CONTACT DETAILS

YASH SINGH (EDITOR-IN-CHIEF)
+91 6388608840
AYUSH BIJALWAN (CONVENOR)
+91 8433188578
ANKITA KUMARI (CO-CONVENOR)
+91 9304685878
ARPITA CHAUDHARY (CO-CONVENOR)
+91 8797805652