

Justice Marie L. Garibaldi Inn of Court
December 10, 2020

**Materials List (Contents),
Issues for Consideration,
And Resources List
For
Agreements to Arbitrate Program**

Materials & Resources List For Agreements to Arbitrate Discussion Program

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MATERIALS

Federal Arbitration Act (FAA) 9 U.S.C. Section 1 et seq.	5
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Rule 4:21A, N.J Court Rules, 1969 – Arbitration of Certain Civil Actions	33
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ISSUES FOR CONSIDERATION WHEN DRAFTING AN ARBITRATION CONTRACT/CLAUSE

This list of issues originated from The New Jersey Arbitration Handbook, 2020, by Hon. William A. Dreier and Robert E. Bartkus. It was supplemented with suggestions from panelists John Holsinger and Lea Haber Kuck.

Scope of issues to be arbitrated, emergent relief, carve-outs, dollar limits, niche waiver requirements (jury, statutory rights)

Who decides if issue is arbitrated?

Administered or Non-Administered

Forum Rules – adopting, differences, alternatives, UNCITRAL

Governing Law – for arbitration, for contract

Location of arbitration, hearings – in person or virtual

Parties to be bound

Severability

Arbitrators -- number, selection, and qualifications, diversity

Confidentiality

Timing – expedited, standard, complex

Discovery

Hearings -- motions, evidence rules, bifurcation

Class Actions

Remedies -- prejudgment interest, treble damages, punitive damages

Notice and service – demand through award

Location of arbitration, hearings

Allocation/Shifting of Fees and Costs

Administrative and Arbitrator's Fees and Costs

Attorneys' Fees and Costs

Award

Form -- standard, reasoned, findings of fact and conclusions of law

Continuing jurisdiction, interlocutory award review

Appeals – expanded review (law, manifest disregard)

Enforcement, including venue

Amendments to Agreement to Arbitrate

RESOURCES & LINKS

American Arbitration Association (AAA)

www.adr.org

- Commercial Arbitration Rules and Mediation Procedures
- Construction Industry Rules and Mediation Procedures
- Consumer Arbitration Rules
- Employment Arbitration Rules and Mediation Procedures
- Labor Arbitration Rules
- International Dispute Resolution Procedures
- Optional Appellate Rules

International Institute for Conflict Prevention & Resolution (CPR)

www.cpradr.org

- Administered Arbitration Rules
- Non-Administered Arbitration Rules
- Appellate Arbitration Procedure
- Employment Dispute Arbitration Procedure
- Fast Track Administered Arbitration Rules
- Fast Track Non-Administered Arbitration Rules
- Patent & Trade Secret Arbitration Rules
- CPR Rules for Expedited Arbitration of Construction Disputes

JAMS Mediation, Arbitration ADR Services (JAMS)

www.jamsadr.com

- Arbitration Rules & Procedures
 - Comprehensive
 - Streamlined
 - Discovery Protocols
 - Appeal Procedures
 - Class Action Procedures
 - Consumer Minimum Standards
- International Mediation Rules
- International Arbitration Rules
- Construction Arbitration Rules
- Expedited Construction Arbitration Rules
- Surety Adjudication Rules
- Employment Arbitration Rules
- Employment Minimal Standards

National Arbitration Mediation (NAM)

www.namadr.com

- Appellate Dispute Resolution Rules and Procedures
- Comprehensive Dispute Resolution Rules and Procedures
- Employment Rules, Procedures and Related Documents

American Arbitration Association, Drafting Dispute Resolution Clauses – A Practical Guide.
https://www.adr.org/sites/default/files/document_repository/Drafting%20Dispute%20Resolution%20Clauses%20A%20Practical%20Guide.pdf

JAMS, JAMS Clause Workbook
<https://www.jamsadr.com/files/Uploads/Documents/JAMS-Rules/JAMS-ADR-Clauses.pdf>

Sherby, Eric S. A Checklist for Drafting an International Arbitration Clause. Business Law Today, September, 2010.
https://www.sherby.co.il/pdf/BLT_A_Checklist_For_Drafting.pdf

Certilman, Stven A. Comparison of Selected International Arbitration Rules, 2018 Edition, Alternatives, May, 2018.
https://www.ccarbitrators.org/wp-content/uploads/SelectedInternationalArbitrationRules2018_Certilman.pdf

Kramer, Liz. Comparison of AAA, JAMS, CPR Commercial Rules (7th Blogiversary!). ArbitrationNation, August 11, 2018.
<https://www.arbitrationnation.com/?s=JAMS+AAA+rules>