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Annulment of arbitral awards by state court: Review of national case law with respect to the conduct of the arbitral process

October 2018

A report by the IBA Arbitration Committee

Contents

Introduction

The IBA regularly conducts practical studies intended to provide assistance to users of international arbitration. This study is no exception. It originates in the perception by many stakeholders that arbitral tribunals do not always perform their functions with the necessary of authority. This situation, when it occurs, generally results in frustration from the parties and their counsel. Too often they say, for fear of having their award set aside, arbitral tribunals allow a party to succeed in procedural applications that should be denied.

This is sometimes referred to as 'due process paranoia', but it is far more fundamental. It is a question of who, in practice, is leading the process: arbitrators or the party that is trying to derail proceedings. The traditional answer is that the real sanction comes with the award on the merits. Eventually, the party that should lose the case will lose, regardless of its procedural manoeuvers. This may or may not be true, but the final award often takes quite some time to be issued and, in the meantime, avoidable costs and a growing sense of frustration will develop with the other party.

This explains why the assumption upon which this unnecessary leniency was founded – that the award subsequently risked annulment – needed to be tested. A first study, based on three jurisdictions, demonstrated that the fear was largely exaggerated.[1] Admittedly, these were notoriously arbitration-friendly jurisdictions: the United Kingom, France and Switzerland. There was therefore a need to expand the coverage. This project covers 13 jurisdictions (in alphabetical order):

1. Belgium
2. Brazil
3. China
4. England & Wales
5. France
6. Germany
7. Hong Kong
8. Italy
9. Singapore
10. Spain
11. Sweden
12. Switzerland
13. United States

Overall, these jurisdictions attract the majority of international arbitrations currently taking place worldwide. The top eight countries, according to International Chamber of Commerce statistics for 2017, are included. In particular, the list includes newcomers such as Brazil and China, in addition to the usual suspects like France, the UK, Switzerland, the US and Singapore.

The results of this pretty broad analysis simply confirm the trend that was detected after the initial analysis based on three jurisdictions: courts generally support the arbitration process and it is rare for an award to be set aside for procedural reasons only.

To help the reader, we have developed a template which lists the situation that most frequently leads to a procedural incident (for example, refusing and extension, to file a brief, limiting or refusing cross-examination, excluding evidence not filed in accordance with the procedural calendar, etc). Not all jurisdictions have case law on these specific situations, but many do.

This guide will be updated regularly and the number of jurisdictions will hopefully be expanded. Based on actual cases with references, it will an invaluable tool for any arbitration practitioners conducting the case in any of these jurisdictions.

Philippe Pinsolle
Vice-Chair of the Arbitration Committee

October 2018

Note
1 P. Pinsolle, The need for strong arbitral tribunals, ICCA Mauritius 2016 Plenary.

BELGIUM Herman Verbist, Everest Law				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
I. Submissions				
A. Written Submissions				
Disregarding written submissions filed in breach of the procedural calendar				
Refusing to allow additional written submissions				
B. Oral submissions				
Disregarding oral submissions filed in breach of the procedural calendar				
Refusing to allow additional oral submissions				
II. Evidence				
A. Documentary evidence				
Disregarding new evidence filed in breach of the procedural calendar				

BELGIUM Herman Verbist, Everest Law				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing to order the production of documents for requests made in breach of the procedural calendar				
B. Witnesses				
Refusing to hear witness evidence	Liege Court of Appeal, 14th Chamber, 22 November 2010 (2009/RG/725): *Company S. and Mr. T v. M. L and Company A*, unpublished Commentary published in: Les Cahiers de l'Arbitrage, 2011-3, pp 847-849, L.G.D.J., by Bernard Hanotiau and Charlotte Villeneuve	X (Partial annulment; for another reason)		A party requested the suspension of the proceedings, especially because criminal proceedings had been commenced in connection with the contract. The same party requested that the other party be ordered to produce their witness statements given in the criminal investigation and that the current proceedings be suspended until the other party produced the requested documents. The Court held that the relevance of the requested documents was not specified in the present proceedings and denied the requests. The Court noted that judges have the possibility, and not the obligation, to grant such request i.e. a request to order the production of witness statements given in criminal proceedings.
Calling a witness on the Tribunal's own motion/relying on witness statements not invoked by the parties				
Refusing or limiting witness cross-examination				

BELGIUM Herman Verbist, Everest Law				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
C. Experts				
Refusing or limiting irrelevant expert evidence				
Failing or refusing to appoint an expert	Court of Appeal of Ghent, 12th Chamber, 14 January 2004: *NV V.M. v. NV. S* Published in: Tijdschrift voor Proces- en Bewijsrecht, 2004, pp 77-79		X	There is no legal requirement to appoint an expert, in case the documents filed in an arbitration do not convince the arbitrator. An expert can be appointed to examine exhibits filed by parties in an arbitration, but his findings or his opinion cannot be binding upon the arbitrator, so it is not proven that the lack of appointment of an expert has had an influence on the arbitral award.
Refusing or limiting expert cross-examination				
D. Other evidentiary matters				
Disregarding evidence produced in breach of the procedural calendar				
III. Procedure in general				
Failing or refusing to order a site visit				
Refusing or limiting witness/expert cross-examination				

BELGIUM Herman Verbist, Everest Law				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failing to answer each argument raised by the parties	Court of First Instance of Liege, 6 March 1984, *Q. v. C.* Published in: Jurisprudence de Liege, 1984, pp 197-200.	X (Partial annulment; for another reason)		The Court held that the reasoning in an arbitral award shall meet the same quality standards as those required for judgments. It must be complete, precise, clear and adequate. However, the Court found that the arbitrator, as is the case for a judge, must not answer to a defense that has become irrelevant because of a finding in his decision or because of the solution the arbitrator gives to the dispute. It suffices for a valid reasoning of a decision to reject a defense by contradicting it through a statement of different or contrary facts.
	Court of Appeal of Antwerp, 2nd Chamber, 15 March 2000: *NV E. v. receivers of N.V. I.C.* Published in: Algemeen Juridisch Tijdschrift, 2000-01, pp 913-917		X	When a motion for setting aside is raised against an arbitral award on the basis of lack of reasoning, the Court should only establish that the arbitrator has answered to all the legal grounds raised, without going into the details of each argument. The fact that the findings of the arbitrator are not in accordance with the wishes of the party seeking the setting aside of the award does not lead to the conclusion that the arbitral award is not reasoned.

BELGIUM Herman Verbist, Everest Law				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Court of Cassation, 21 January 2011 (n°C.09.0625.N), *Dever and Transbox v. D.W. and Amofra* Published on : http://www.juridat.be.	X		The Court of Cassation held that when the arbitrators examine the case in the absence of a party who was not regularly summoned, such party may invoke for the first time the violation of its right of defense before the judge who shall decide on the request for enforcement of the arbitral award. The Court of Cassation confirmed the decision of the Ghent Court of Appeal, which had decided that the relevant provisions of the Belgian arbitration law do not require that the parties should invoke the violation of their rights of defense for the first time before the arbitrators and that the parties may still invoke such ground of nullity before the judge. The Ghent Court of Appeal noted that such additional requirement only applies to the grounds of nullity provided by [old] Article 1704 2, c), d) and f) of the Belgian Judicial Code.
	Court of Appeal Brussels, 6 December 2011, *Management Service bvba v. Vlaamse Media Maatschappij.* Published in: b-Arbitra, 2014/1, pp 215-219		X	When a motion for setting aside is raised against an arbitral award on the basis of lack of reasoning, the Court should only establish that the award is reasoned, meaning that the arbitrator has answered to all the arguments raised, without going into the details of each argument. The control of the duty to state reasons does not consist in a review of the merits. The relevance of the reasoning of the arbitrator must not be examined.

BRAZIL Valeria Galindez, Valença Galindez Arbitragem				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
I. Submissions				
A. Written submissions				
Disregarding written submissions filed in breach of the procedural calendar				
Refusing to allow additional written submissions	Jimmie Earl Carliesle v. Luciano Silva Pereira, Court of Appeals of Rio de Janeiro, Rio de Janeiro Circuit, April 4, 2007, *Agravo de Instrumento* No 2006.002.27583, Reporting Justice Leila Mariano. [Published in: CBAr – Comitê Brasileiro de Arbitragem; Escola de Direito de São Paulo da FGV – Fundação Getúlio Vargas. 1ª Etapa da Pesquisa "Arbitragem e Poder Judiciário". Relatório do 1º Tema: Invalidade da Sentença Arbitral. Available at http://cbar.org.br/PDF/Pesquisa_GV-CBAr_relatorio_final_1_etapa_2fase_24.06.09.pdf, accessed on June 5, 2018]	X		A party sought to set aside an arbitral award on the grounds that, among others, the arbitral tribunal did not give Respondent the opportunity to submit its statement of defence and produce evidence, and the hearing took place without the presence of the Respondent and its counsel. The Court of Appeals held the motion based on the fact that the party's right to present its case was violated.
B. Oral submissions				

BRAZIL Valeria Galindez, Valença Galindez Arbitragem				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Disregarding oral submissions filed in breach of the procedural calendar				
Refusing to allow additional oral submissions				
II. Evidence				
A. Documentary evidence				
Disregarding new evidence filed in breach of the procedural calendar				
Refusing to order the production of documents deemed irrelevant or unnecessary for the outcome of the case	Spazio K Engenharia Ltda v. Marcelo Hsiu and Michael Hsiu, Court of Appeals of São Paulo, São Paulo Circuit, 20 October 2015, Civil Appeal No. 1046552-75.2015.8.26.0100, Reporting Justice Claudio Godoy, published in the Court Gazette dated 10.23.2015. [Available at https://esaj.tjsp.jus.br/cposg/search.do?conversationId=&paginaConsulta=1&localPesquisa.cdLocal=-1&cbPesquisa=NUMPROC&tipoNuProcesso=UNIFICADO&numeroDigitoAnoUnificado=1046552-75.2015&foroNumeroUnificado=0100&dePesquisaNuUnificado=1046552-		X	A party sought to set aside the arbitral award on the grounds that the arbitral tribunal prevented it from producing evidence without giving proper reasoning. The Court of Appeals decided that, pursuant to the arbitral tribunal's procedural order, the parties were given sufficient opportunities to produce evidence during the course of the arbitration, and it is within the arbitral tribunal's powers to decide whether evidence should be produced.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	75.2015.8.26.0100&dePesquisa=&uuidCaptcha=&pbEnviar=Pesquisar, accessed on Jun 5, 2018] *Appeal to Superior Court of Justice – STJ pending			
Refusing to order the production of documents for requests made in breach of the procedural calendar				
B. Witnesses				
Refusing to hear witness evidence	Dirceu Alves da Silva v. Luiz Mangieri, São Paulo Court of Appeals, District of Ribeirão Preto, São Paulo Circuit, October 18, 2007, Civil Appeal No. 427.901-4/0, Reporting Justice Waldemar Nogueira Filho. Published in: CBAr – Comitê Brasileiro de Arbitragem; Escola de Direito de São Paulo da FGV – Fundação Getúlio Vargas. 1ª Etapa da Pesquisa "Arbitragem e Poder Judiciário". Relatório do 1º Tema: Invalidade da Sentença Arbitral. Available at http://cbar.org.br/PDF/Pesquisa_GV-CBAr_relatorio_final_1_etapa_2fase_24.06.09.pdf, accessed on June 5, 2018	X		The Court of Appeals set aside the arbitral award based on the understanding that the arbitral tribunal is not allowed to decline the application made by a party to examine witnesses that were previously listed to be heard.
	José Aparecido de Souza Costa e outra(s) v. MTM Construções Ltda., Mato Grosso Court of Appeals, District		X	A party sought to set aside the arbitral award based on the argument that the arbitral tribunal refused to

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	of Cuiabá, 19 March 2014, Civil Appeal No. 154331/2013, Reporting Justice Carlos Alberto Alves da Rocha, published in the Court Gazette dated 03.24.2015. [Available at http://servicos.tjmt.jus.br/processos/tribunal/dadosProcessoPrint.aspx, accessed on June 5, 2018]			hear its witnesses and personal testimony. The Court dismissed the request on the basis that it is within the powers of the arbitral tribunal to decide which evidence is to be produced.
	José Augusto Áscoli v. ECOM Agroindustrial CORP Ltda., São Paulo Court of Appeals, District of São Paulo, 10 November 2015, Civil Appeal No. 0114725-76.2012.8.26.0100, Reporting Justice Ana Catarina Strauch, published in the Court Gazette dated 11.16.2018. [Available at https://esaj.tjsp.jus.br/cposg/search.do?conversationId=&paginaConsulta=1&localPesquisa.cdLocal=-1&cbPesquisa=NUMPROC&tipoNuProcesso=UNIFICADO&numeroDigitoAnoUnificado=0114725-76.2012&foroNumeroUnificado=0100&dePesquisaNuUnificado=0114725-76.2012.8.26.0100&dePesquisa=&uuidCaptcha=&pbEnviar=Pesquisar, accessed on June 5, 2018]		X	A party filed an application to set aside the arbitral award by claiming that, among other things, the arbitral tribunal prevented it from producing oral and expert evidence. The Court dismissed the application on the basis that, throughout the proceedings, the appellant was given the opportunity to produce documentary evidence in support of its allegations. The Court also found that the appellant should have sought the aid of state courts before the final award was issued.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Coopernorpi Cooperativa Agrícola do Norte Pioneiro v. Horizonte Têxtil Ltda., Minas Gerais Court of Appeals, District of Pará de Minas, 11 June 2013, Agravo de Instrumento No. 1.0471.12.012691-0/001, Reporting Justice Mariangela Meyer, published in the Court Gazette dated 06.21.2018. [Available at http://www4.tjmg.jus.br/juridico/sf/proc_complemento2.jsp?listaProcessos=10471120126910001, accessed on June 5, 2018]		X	A party sought the annulment of an arbitral award based on the allegation that the arbitral tribunal acted partially when it dismissed the party's request to produce witness evidence. The Court upheld the arbitral award and noted that, in light of the principles of urgency and procedural economy, witness evidence should only be admitted in cases in which the testimony is essential to the case.
	Sandra Regina Mujol da Cruz Restaurante ME. v. Munique Empreendimentos e Participações Sociedade Ltda et al., Paraná Court of Appeals, District of Curitiba, 8 June 2016, Agravo de Instrumento No. 1.486.395-1, Reporting Justice Luciane R. C. Ludovico, published in the Court Gazette dated 06.24.2016.		X	A party sought to set aside the arbitral award on the grounds that it was precluded from producing witness evidence, which violates its right to be heard. The Court dismissed the appeal due to lack of evidence in support of the party's allegations.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	[Available at https://portal.tjpr.jus.br/consulta-processual/publico/b2grau/consultaPublica.do?tjpr.url.crypto=8a6c53f8698c7ff72d6c5e2eb4a83ec9481449ecd2322fc0120d7c443bf295f1, accessed on June 5, 2018]			
	Marisa Vaz v. Silfredo Klein de Melo, Paraná Court of Appeals, District of Foz do Iguaçu, 17 May 2017, Civil Appeal No. 1.653.176-9, Reporting Justice Marcelo Gobbo Dalla Dea, published in the Court Gazette dated 05.24.2017. [Available at https://portal.tjpr.jus.br/consulta-processual/publico/b2grau/consultaPublica.do?tjpr.url.crypto=8a6c53f8698c7ff72d6c5e2eb4a83ec9f54e42b4ac16c2b5dd62f884c1fe238b, accessed on June 5, 2018]		X	A party sought the annulment of the arbitral award by alleging that the arbitral tribunal did not allow it to produce witness evidence and, consequently, violated the right to present its case. The Court dismissed the application and noted that witness evidence was not necessary since the documentary evidence produced was sufficient to support the arbitral tribunal's decision. The Court further noted that it is within the tribunal's powers to allow the production of evidence.
Calling of a witness on the Tribunal's own motion/relying on witness statements not invoked by the parties				
Refusing or limiting witness cross-examination				
Changing the testimony's order in the Audience	Campos & Saadeddine Ltda. v. Luiz Mariano de Lima, Mato Grosso Court of Appeals, 22 November 2011, Civil Appeal No. 115478/2009, Reporting Justice João Ferreira Filho, published in the Court Gazette dated 12.01.2011.		X	A party sought the annulment of the arbitral award based on the allegation that, during the evidentiary hearing, the arbitral tribunal altered the order of witnesses hearing. The Court found that the appellant was previously aware of the changing of

BRAZIL Valeria Galindez, Valença Galindez Arbitragem				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	[Available at http://servicos.tjmt.jus.br/processos/tribunal/dadosProcesso.aspx, accessed on June 5, 2018]			order to hear witnesses and, pursuant to the hearing minutes, the appellant made no objections, which should be considered as tacit consent to the procedure followed by the arbitral tribunal.
C. Experts				
Refusing or limiting irrelevant expert evidence	Agro Turismo e Aerodromo Botelho Ltda ME. v. ICEL Construções e Pavimentações Ltda., Distrito Federal Court of Appeals, 8 April 2015, Civil Appeal No. 0019447-76.2014.8.07.0001, Reporting Justice Sebastião Coelho, published in the Court Gazette dated 04.17.2015. [Available at http://cache-internet.tjdft.jus.br/cgi-bin/tjcgi1?NXTPGM=plhtml02&MGWLPN=SERVIDOR1&submit=ok&SELECAO=1&CHAVE=00194177620148070001&ORIGEM=INTER, accessed on June 5, 2018]		X	A party sought to set aside the arbitral award by arguing that the arbitrator had disregarded the expert report produced by it and, consequently, violated its right to present its case. The Court dismissed the motion on the grounds that the appellant did not make any request during the arbitral proceedings to produce additional evidence.
	Canopus Empreendimentos e Incorporações Ltda. v. Euclides Gomes Branquinho Filho, Incofer Extração IND COM Export Minérios e outras, Minas Gerais Court of Appeals, District of Belo Horizonte, 19 November 2013, *Agravo de Instrumento* No. 1.0024.09.709385-0/008, Reporting Justice Guilherme Luciano Baeta Nunes, published in the Court Gazette dated 11.21.2013.		X	The party sought to annul the arbitral award based on the allegation that it was prevented from producing technical evidence. The Court dismissed the appeal on the grounds that arguments put by the appellant do not fall within the grounds for annulment set forth in the art. 32 of Brazilian Arbitration Law (Law n. 9.306/97). The Court also noted that the production of expert evidence would

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	[Available at http://www4.tjmg.jus.br/juridico/sf/proc_complemento2.jsp?listaProcessos=10024097093850008, accessed on June 5, 2018]			be unnecessary and irrelevant to the outcome of the case.
Failing or refusing to appoint an expert	Cesenge Engenharia Ltda v. Mineração Gypsum Brasil Ltd, Minas Gerais Court of Appeal, District of Belo Horizonte, 03.12.2015, Civil Appeal n°1.0024.09.499044-7/002, Reporting Justice Marco Aurelio Ferenzini, published in the Court Gazette dated 03.24.2015. [Available at http://www4.tjmg.jus.br/juridico/sf/proc_complemento2.jsp?listaProcessos=10024094990447002, accessed on June 5, 2018]		X	A Party filed an appeal based on the allegation that the arbitral tribunal did not respect the principle of due process of law when it refused to appoint an expert to examine its claim for loss of profits. The Court dismissed the appeal on the basis that the profits sought were hypothetical. The Court also declared that the arbitral tribunal has the power to decide on the procedural directions, pursuant to art. 18, Arbitration Law n. 9.307/96.

CHINA Emmanuel Jacomy, Sherman & Sterling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	**No**	
I. Submissions				
A. Written submissions				
Disregarding written submissions filed in breach of the procedural calendar	Beijing No. 4 Intermediary People`s Court, 3 December 2015, *SHENYANG XINYING NETS INDUSTRIAL CO.,LTD. v. Poway Ltd*, (2015) Si Zhong Min (Shan0 Te Zi No. 284, application for annulment of the arbitral award [2015] No. 0625 rendered by CIETAC in Beijing http://wenshu.court.gov.cn/content/content?DocID=9d7be2bd-c73b-4242-abf1-4f873183091f		X	The applicant alleged that the defendant amended his Statement of Claim 15 days before the hearing. The time left for the applicant to fully prepare his evidentiary documents was so short that the applicant applied for a postponement of the hearing, which was disregarded by the arbitral tribunal. The Court held that the tribunal shall decide whether or not to postpone the hearing. During the hearing, the applicant presented relevant facts and made arguments; after the hearing, the applicant submitted his agent's opinion in writing. Clearly, the arbitral tribunal had given the applicant a reasonable opportunity to present and argue his case.
Refusing to allow additional written submissions				
B. Oral submissions				
Disregarding oral submissions filed in breach of the procedural calendar				
Refusing to allow additional oral submissions				
II. Evidence				

CHINA Emmanuel Jacomy, Sherman & Sterling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	**No**	
A. Documentary evidence				
Refusing to order the production of documents for requests made in breach of the procedural calendar	Beijing No. 4 Intermediary People's Court, 5 December 2017, *Yancheng Dingmian Non-Woven Fabrics Co., Ltd. v. Shyng Wei Machinery Co., Ltd*, (2017) Jing 04 Min Te No. 20, application for annulment of the arbitral award [2017] Zhong Guo Mao Zhong Jing Cai Zi No. 0462 rendered by CIETAC in Beijing http://wenshu.court.gov.cn/content/content?DocID=377d65b2-f9a4-4f5b-9862-a847001319de		X	The applicant complained that the arbitral tribunal had disregarded its request to conduct investigations and collect evidence in accordance with Article 43.1 of the CIETAC Arbitration Rules, thus the applicant had failed to present its case in respect of such evidence. The Court held that, in accordance with Article 43 of the CIETAC Arbitration Rules (which provides that "[t]he arbitral tribunal may undertake investigation and collect evidence as it considers necessary"), the arbitral tribunal had the power to decide whether to undertake investigation and collect evidence based on the facts of the case, and furthermore, the decision made by the arbitral tribunal did not have impact on the applicant's ability to present its case. Both parties participated in the arbitration proceedings in which the applicant defended its case, and both parties examined the evidence, debated on legal issues, and answered questions of the arbitral tribunal.
Order the production of documents for requests made in breach of the procedural calendar	Shenzhen Intermediary People's Court, 18 August 2016, *Beijing Yida Lighting Engineering and Hongbao Technology Co., Ltd. v. Dajin East Lightening Holding Co.*, (2017) Yue 03 Min Te No. 405, application for annulment of the arbitral award [2016] Hua Nan Guo Zhong Shen Cai		X	The applicant alleged that the arbitral tribunal had granted approval to the production of evidence by the respondent beyond the applicable time limits, and had requested the applicant to submit evidential materials upon the request of the respondent.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	**No**	
	No. 177 rendered by Shenzhen Court of International Arbitration in Shenzhen http://wenshu.court.gov.cn/content/content?DocID=52a001ca-754d-4ee2-8eb1-78e2d70c12c7			The Court held that, in accordance with Article 43.1 of the Arbitration Rules which provides "[t]he arbitral tribunal may undertake investigation and collect evidence as the tribunal considers necessary or upon the request of the concerned parties and agreed by the tribunal". Therefore, the fact that the arbitral tribunal required the applicant to submit the evidential materials upon the request of the respondent was not a violation of the Arbitration Rules, nor were the arbitration proceedings inconsistent with the Arbitration Rules.
Refusing to order the production of documents deemed irrelevant or unnecessary for the outcome of the case and refusing to grant an extension of time to submit statement of defense	Beijing No. 2 Intermediary People`s Court, 12 May 2015, *Nexthill Investments Limited v. Beijing Huiquan Properties Development Ltd*, (2013) Er Zhong Min Te Zi No. 15714, application for annulment of the arbitral award [2013] Zhong Guo Mao Zhong Jing Cai Zi No. 0464 rendered by CIETAC in Beijing http://wenshu.court.gov.cn/content/content?DocID=3518649c-6eaa-4916-b887-ce77e9e0dfef		X	The applicant alleged inter alia that (1) the arbitral tribunal deliberately refused to order an audit process, which deprived it of an opportunity to present its case, and (2) the arbitral tribunal did not grant the applicant's request for a 45 day extension of time to submit its statement of defense, counterclaim and evidential materials, which had a material impact on the exercise of its rights by the applicant. The Court held that (1) the arbitral tribunal had the power to decide whether or not to grant an audit process, thus the fact that the arbitral tribunal did not grant approval to the request of the applicant was not a violation of the Arbitration Rules, and (2) in accordance with Article 14.1 of the Arbitration Rules that provides that "*[t]he Respondent shall file a Statement of Defense in writing within forty-five (45) days from the date of receipt of the Notice of*

CHINA Emmanuel Jacomy, Sherman & Sterling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
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				Arbitration, if the Respondent has justified reasons to request an extension of the time period, the arbitral tribunal shall decide whether to grant an extension; where the arbitral tribunal has not yet been formed, the decision on whether to grant the extension of the time period shall be made by the Secretariat of CIETAC", the CIETAC gave the applicant a time period for the statement of defense over 45 days, which was in conformity with the arbitration rules.
Disregarding new evidence filed in breach of the procedural calendar				
Admitting new evidence filed in breach of the procedural calendar	Shenzhen Intermediary People's Court, 20 December 2014, *JIANG Jianjun v. Bangwei Yipin (Hong Kong) Co., Ltd. and Innovation Industry Co., Ltd.*, (2014) Shen Zhong Fa She Wai Zhong Zi No. 248, application for annulment of the arbitral award [2014] Shen Zhong Cai Zi No. 504 rendered by Shenzhen Court of International Arbitration in Shenzhen http://wenshu.court.gov.cn/content/content?DocID=73f1fa71-cc78-4978-8d7a-2a2c9071f94e		X	The applicant alleged that the arbitration proceedings were not in conformity with the statutory procedure notably because the opponent had submitted evidence after the applicable time period. The Court held that, in accordance with Articles 39.2 and 40.1 of the Arbitration Rules, if a party has difficulties in producing evidence within the specified time period, it may apply for an extension before the expiration of the period, and the arbitral tribunal shall decide whether or not to extend the time period.
Admitting new evidence filed after the expiration of the procedural calendar	Beijing No. 4 Intermediary People's Court, 25 May 2015, *Lion Contractor Engineering and Trading PET Ltd v. Jiangsu Xingda Special Metal Composite Wire Co., Ltd*, (2015) Si Zhong Min (Shang) Te Zi No.127, application for		X	The applicant alleged that, after the second hearing, the arbitral tribunal notified the parties in writing that no evidence submitted thereafter would be admitted. However, the arbitral tribunal ignored its written notice, held a hearing again and admitted

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	**No**	
	annulment of the arbitral award [2014] No. 0837 rendered by the CIETAC Beijing. http://wenshu.court.gov.cn/content/content?DocID=80eb9e5d-02b7-49cf-8e32-f4bda1a89ecc			new evidence, that was submitted by the respondent after the expiry of the time limit. The Court ruled that, under Article 36 (2) of the CIETAC Arbitration Rules, "*the arbitral tribunal may specify a time period for the parties to produce evidence and the parties shall produce evidence within the specified time period. The arbitral tribunal may refuse to admit any evidence produced beyond the period. If a party has difficulties to produce evidence within the specified time period, it may apply for an extension before the expiration of the period. The arbitral tribunal shall decide whether or not to extend the time period.*" Therefore, the arbitral tribunal was not prohibited from admitting evidence produced after a specified time period.
B. Witness				
Disregarding witness statement filed in breach of the procedural calendar				
Refusing to hear a witness	Shenzhen Intermediary People's Court, 15 January 2015, *CHEN Ronglian v. CHEN Miner*, (2014) Shen Zhong Fa She Wai Zhong Zi No. 289, application for annulment of the arbitral award [2014] Shen Zhong Cai Zi No. 962 rendered by Shenzhen Court of International Arbitration in Shenzhen		X	The applicant alleged that the arbitration proceedings were not conducted in conformity with the statutory procedure, because the abitral tribunal refused to hear a witness. The Court held that the tribunal may decide on its own discretion whether it was necessary for a witness to appear in the hearing and therefore, the

CHINA Emmanuel Jacomy, Sherman & Sterling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	**No**	
	http://wenshu.court.gov.cn/content/content?DocID=399ccd67-655e-4ad2-9cfa-cf47a0d8a08b			proceedings were conducted in conformity with the statutory procedure.
	Beijing No. 2 Intermediary People`s Court, 18 March 2015, *RBRGTRADING (UK) Ltd v. SINOCORE INTERNATIONAL CO. LTD*, (2015) Er Zhong Min Te Zi No. 00618, application for annulment of the arbitral award [2014] No. 0550 rendered by CIETAC in Beijing http://wenshu.court.gov.cn/content/content?DocID=55559d5d-1e1a-456a-b06b-8926d9e601da		X	The applicant alleged that its main witness could not testify at the hearing in Beijing due to an important training he had to take part in the U.S. Thus, the applicant requested a remote testimony or a postponement of the hearing. However, the tribunal declined its request without any reasons and did not make that decision until a day before the hearing date. The Court held that Article 30 of the CIETAC Arbitration Rules (2005) provides that "*[a] party having justified reasons may request a postponement of the oral hearing. However, the party shall communicate such request in writing to the arbitral tribunal ten (10) days before the hearing. The arbitral tribunal shall decide whether or not to postpone the oral hearing.*" The arbitration rules did not clearly define remote testimony, but it was within the tribunal's discretionary power to determine whether or not to grant a postponement of the hearing or remote testimony based on the circumstances of the particular case. Therefore, the fact that the arbitral tribunal disagreed on the postponement of the hearing and remote testimony did not violate the arbitration rules.

CHINA Emmanuel Jacomy, Sherman & Sterling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	**No**	
Refusing to hear a witness when the request was untimely				
Calling for a witness on the Tribunal`s own motion/relying on witness statements not invoked by the parties				
Refusing or limiting witness cross-examination	Beijing No. 2 Intermediary People's Court, 18 December 2014, *STX Heavy Industries Co., Ltd. v. Bank of Communications Co., Ltd. Dalian Branch* (2014) Er Zhong Min Te Zi No. 08661, application for annulment of the arbitral award [2014] Zhong Guo Mao Zhong Jing Cai Zi No. 0583 rendered by CIETAC in Beijing http://wenshu.court.gov.cn/content/content?DocID=1d2ac41b-e2da-4e75-be76-c339da56ae18		X	The applicant alleged that the arbitration proceedings were not conducted in conformity with the Arbitration Rules because the principal debtor had not been summoned to appear in the arbitral proceedings. The Court held that, despite the fact that the applicant alleged that the principal debtor shall be summoned to appear in the arbitration proceedings, the applicant had not provided sufficient legal basis for it.
	Beijing No. 4 Intermediary People's Court, 16 December 2015, *Hindustan Cleanenegy Limited v. LDK Solar Co., Ltd (Suzhou)*, (2015) Si Zhong Min (Shang) Te Zi No. 00189, application for annulment of arbitral award [2015] No. 016 rendered by the CIETAC Shanghai. http://wenshu.court.gov.cn/content/content?DocID=6bde8caf-c5e8-4468-be38-b17a91d19944		X	The applicant alleged that the newly constituted arbitral tribunal had ignored the procedural arrangements decided by the previous tribunal and scheduled the hearing in such a rush that the applicant did not have an opportunity to present its case fully, in particular because it caused its key witness to be unable to appear at the hearing. The Court held that whether or not witnesses appeared at the hearing did not necessarily affect the respondent's opportunity to present its case.

CHINA Emmanuel Jacomy, Sherman & Sterling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	**No**	
				Therefore, the applicant's claims fell out the legal grounds for annulment of arbitral award.
C. Experts				
Refusing or limiting irrelevant expert evidence				
Failing to appoint appraisers	Beijing No. 4 Intermediary People's Court, 1 October 2017, *ZHANG Yongjian v. China Electronics Technology Group Corporation and Machinery Co., Ltd and China Great Wall Computer Group Co., Ltd.*, (2017) Jing 04 Min Te No. 40, application for annulment of the third item of arbitral award [2017] Zhong Guo Mao Zhong Jing Cai Zi No. 0152 rendered by CIETAC in Beijing http://wenshu.court.gov.cn/content/content?DocID=22783e1c-ebf1-4cb4-b0ae-a82600111802		X	The applicant alleged that the arbitral tribunal failed to appoint a third party appraiser to conduct an appraisal on the equity interest held by the applicant. The Court held that, in accordance with Article 44.1 of the CIETAC Arbitration Rules 2015 which provides that "*[t]he arbitral tribunal may consult experts or appoint appraisers for clarification on specific issues of the case. Such an expert or appraiser may be a Chinese or foreign institution or natural person*", whether or not to appoint an appraiser shall fall within the powers of the arbitral tribunal; the allegation of the applicant was not within the scope of judicial review by the Court, or a ground for annulling the Award.
Failing or refusing to appoint an expert				
Refusing or limiting expert cross-examination				
D. Other evidentiary matters				

CHINA Emmanuel Jacomy, Sherman & Sterling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	**No**	
Disregarding evidence produced in breach of the procedural calendar				
III. Procedure in general				
Failing or refusing to order a site visit	Beijing No. 4 Intermediary People`s Court, 18 May 2016, Beijing Shenglu International Manor Hotel Management Co., Ltd. v. Frontier Design Studio Ltd, (2016) Jin 04 Min Te No. 5, application for annulment of the arbitral award [2015] No. 0672 rendered by CIETAC in Beijing http://wenshu.court.gov.cn/content/content?DocID=193bf89c-d434-441f-9737-bf97a4e8fe8e		X	The applicant alleged that the sole arbitrator ignored both parties' application to collect evidence on site, especially under the circumstances where it was feasible to collect evidence on site. However, the arbitral tribunal found "insufficient evidence" in supporting the applicant's argument. The Court held that the arbitral award proved that, during the arbitral proceedings, the applicant submitted its Statement of Defense and Counterclaim, provided relevant evidence and appeared at the hearings. After the hearings, the applicant also submitted supplementary materials. Apparently, there was no situation in which the applicant "failed to present its case".
Refusing or limiting witness/expert cross-examination				
Failing to give proper time for preparation	Beijing No. 4 Intermediary People's Court, 14 October 2015, *Beijing Xinhua Antong Technology Development Co., Ltd. v. Advanced Evacuation Systems (Israel) Ltd*, (2015) Si Zhong Min (Shang) Te Zi No. 248, application for annulment of arbitral award [2015] No. 0642 rendered by the CIETAC Beijing.		X	The applicant alleged that the arbitral tribunal held only a single hearing and that it was not given proper time to prepare key disputed issues by the parties, which subsequently caused the final award to be unfavorable to the applicant.

CHINA Emmanuel Jacomy, Sherman & Sterling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	**No**	
	http://wenshu.court.gov.cn/content/content?DocID=5126e636-85c9-46ff-9ac0-228c1622593c			The Court held that the arbitral tribunal shall hold oral hearings when examining the case. As for how many hearings will be conducted, the arbitral tribunal shall decide having regard to the circumstance of the case. Furthermore, after the hearing, the applicant had submitted additional evidence, opinions of examination of evidence and statement of defense. Thus, the arbitral tribunal violated neither arbitration rules nor the applicant's procedural rights.
	Beijing No. 4 Intermediary People`s Court, 30 November 2015, *Hugo Görner, Glas- und Kunststoffwarenfabrik v. Büchel Industriebeteiligungen GmbH*, (2015) Si Zhong Min（Shang）Te Zi No. 118, application for annulment of the arbitral award [2014] No. 114 rendered by CIETAC in Beijing http://wenshu.court.gov.cn/content/content?DocID=1f3ddd7c-8630-47d2-80a2-0b46233c83fd		X	The applicant alleged that it was not given time to examine the evidence which was the only evidence that the tribunal replied upon. According to Article 45 of PRC Arbitration Law, "*[t]he evidence shall be presented during the hearings and may be examined by the parties*"; and Article 40 (2) of the CIETAC Arbitration Rules, "*… where the evidence is submitted after the hearing and both parties have agreed to examine the evidence by means of writing, the parties may examine the evidence in writing. In such circumstances, the parties shall submit their written opinions on the evidence within the time period specified by the arbitral tribunal*". However, in the present case, after the time limit had elapsed, the defendant submitted new evidence and the arbitral tribunal did not ask the applicant if it would agree to examine the evidence by means of writing; nor was it given time to examine the new evidence. The arbitral tribunal took into account the unexamined evidence in deciding the case, which allegedly violated the arbitral procedure.

CHINA Emmanuel Jacomy, Sherman & Sterling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	**No**	
				The Court held that the applicant could not establish his contention that he was not given time to examine the evidence, because the applicant received the evidence on 23 April 2014, and filed his additional statement on 20 May 2014, which included its opinions on the evidence. The tribunal rendered the award on 30 September 2014.
Parties did not agree upon rendering an award without a hearing	Beijing No.2 Intermediary People`s Court, 2002, *Taiwan Huaching Plastic Industry Ltd. v. Yantai Economic & Technological Development Zone Plastic Ltd*, (2002) Er Zhong Min Te Ding No. 06244, application for annulment of the arbitration award [2002] No. 0039 rendered by CIETAC in Beijing	X		The applicant alleged that, without the parties' agreement to examine the case on the basis of documents only, the tribunal did not hold oral hearings but dismissed its counterclaim, which was not in conformity with the arbitration rules. The Court held that under Article 39 of Arbitration Law of PRC, "*[a]rbitration shall be conducted by means of oral hearings. If the parties agree to arbitration without oral hearings, the arbitration tribunal may render an arbitration award on the basis of the written application for arbitration, the written defense and other material*". Meanwhile, according to Article 32 of the CIETAC Arbitration Rules (2000), "*[t]he arbitration tribunal will hold oral hearings. At the request of the parties or with their consent, the arbitration tribunal may, if it also considers oral hearings unnecessary, hear and decide a case on the basis of documents only*". In the present case, failing the parties' consent, the arbitral tribunal could not render the award without holding oral hearings. Thus, the arbitral award was annulled.

CHINA Emmanuel Jacomy, Sherman & Sterling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	**No**	
Failing to examine evidence	Beijing No. 3 Intermediary People's Court, 15 December 2014, *CHEN Ziyun v. Jiali Hengde Properties Development Co., Ltd.*, (2014) San Zhong Min (Shang) Te Zi No. 10475, application for annulment of the arbitral award [2014] Jing Zhong Cai Zi No. 0422 rendered by Beijing Arbitration Commission in Beijing http://wenshu.court.gov.cn/content/content?DocID=bf799921-97ee-4dd4-b4f8-9b92b741e417		X	The applicant alleged that the arbitral tribunal failed to examine key evidence and to hold an oral hearing, which deprived the applicant of its rights to examine the evidence, being a circumstance of "*failure to present the case due to reasons not attributable to the fault of the applicant*". The Court found that, according to the transcripts of the hearing, the arbitral tribunal had informed the parties that it may issue a decision on the evidence filed after the hearing. The applicant made submissions on the supplementary evidence it had filed after the hearing, so its right to make submissions had been guaranteed. There was no circumstance under which the rights of the applicant were deprived. As to whether the arbitral tribunal would admit the evidence and whether the evidence would be set out and determined in the arbitral award, such matters fell within the substantive review of the case by the tribunal and the preparation of the arbitration documents, which did not fall within the circumstances under which an arbitral award may be annulled in accordance with the law.
	Beijing No. 3 Intermediary People's Court, 25 May 2015, *Tommy Dong v. LU Jun,* (2015) San Zhong Min (Shang) Te Zi No. 05327, application for annulment of the arbitral award [2014] Jing Zhong Cai Zi No. 0632 rendered by Beijing Arbitration Commission in Beijing		X	The applicant alleged that the examination and determination by the arbitral tribunal of key evidence was not in conformity with statutory procedure, being a circumstance of "*failure to present the case due to reasons not attributable to the fault of the applicant*".

CHINA Emmanuel Jacomy, Sherman & Sterling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	**No**	
	http://wenshu.court.gov.cn/content/content?DocID=d83b4ef0-e957-4f21-bcd6-a7cc9b2c6d11			The Court held that the determinations by the arbitral tribunal on the evidence submitted fell within the merits of the case; furthermore, the applicant authorized its counsel to participate in two rounds of oral hearings, and such counsel went through such proceedings by submitting their defense, submissions and examination of evidence, investigation and debate Therefore the proceedings could not be held as amounting to circumstances of "*failure to present the case due to reasons not attributable to the fault of the applicant*".
	Beijing No. 4 Intermediary People's Court, 16 November 2017, *Anhui Xixia Properties Co., Ltd v. Shuntat Investment (Holding) Limited*, (2016) Jing 04 Min Te No. 48, application for annulment of the arbitral award [2016] Zhong Guo Mao Zhong Jing Cai Zi No. 0592 by CIETAC in Beijing http://wenshu.court.gov.cn/content/content?DocID=7604afa6-ea34-453b-82aa-a8330010b33d		X	The applicant alleged that the arbitration proceedings were not conducted in conformity with the arbitration rules because both the applicant and the respondent submitted new evidence to the arbitral tribunal, which did not hold a second hearing to afford the parties an opportunity to examine the evidence, debate, issue opinions in the case, and made an award instead by examining the case on the basis of written documents without obtaining the consent of the parties. The Court held that, after the oral hearing, the arbitral tribunal received the supplementary evidence, opinions on examination of evidence, and representative's statements submitted by the parties, offered opportunity to both parties to issue written opinions, and made the award based thereon, all of which were in conformity with the relevant

CHINA Emmanuel Jacomy, Sherman & Sterling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	**No**	
				provisions of the PRC Arbitration Law and the Interpretation of the Supreme People's Court concerning Several Matters on Application of the PRC Arbitration Law.
	Yangzhou Intermediary People's Court, 28 December 2017, *Guangdong Metals & Minerals Import & Export Group Corporation v. Yangzhou Dongda Environment Co., Ltd.* and *Xinke Yuan Dtell Company Limited* (2017) Su 10 Min Te No. 50, application for annulment of the arbitral award [2015] Yang Zhong Cai Zi No. 254 rendered by Yangzhou Arbitration Commission in Yangzhou http://wenshu.court.gov.cn/content/content?DocID=ebc9dd6a-b56a-4691-8cc0-a86c01054749		X	The applicant alleged that the arbitration proceedings were not conducted in conformity with the statutory procedure because the tribunal did not examine and verify the "facts" provided by the opposing party. Furthermore, the tribunal accepted anonymous documents from the opposing party without informing the applicant. The Court held that the grounds of the applicant for annulling the award were related to the review by the arbitral tribunal on substantive matters, falling within of the scope of the tribunal's power and beyond the scope of the judicial review conducted by the Court.
	Guangzhou Intermediary People's Court, 27 June 2017, *Tang Heping v. Cai Jitang*, (2017) Yue 01 Min Te No. 281, application for annulment of the arbitral award [2016] Hui Zhong An Zi No. 2968 rendered by Guangzhou Arbitration Commission in Guangzhou http://wenshu.court.gov.cn/content/content?DocID=11d5ffad-282a-419d-a108-a7a5012676cd		X	The applicant alleged that the arbitral tribunal did not verify the original copy submitted by the applicant and that it did not organize a debate between the Parties with respect to some issues of evidence. The Court held that the arbitral tribunal had conducted the arbitration proceedings properly, and whether the tribunal accepted supplementary evidence and organized another examination of evidence fell within the powers of the tribunal to

CHINA Emmanuel Jacomy, Sherman & Sterling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	**No**	
				review the substantive matters of the case, beyond the scope of review by the Court.
	Beijing No. 2 Intermediary People's Court, 20 March 2015, *Valley Holdings Limited v. LIU Jinhui and TAN Qicheng*, (2015) Er Zhong Min Te Zi No. 02134, application for annulment of the arbitration award [2014] Zhong Guo Mao Zhong Jing Cai Zi No. 0997 rendered by CIETAC in Beijing http://wenshu.court.gov.cn/content/content?DocID=a6b10227-9f2b-4ff6-80cb-f8d9056076d9		X	The applicant alleged that, (1) the arbitral tribunal accepted the evidence submitted by the defendants beyond the time limit, which was not in conformity with the statutory procedure; and (2) the defendants did not provide an original copy of the key evidence, and the arbitral tribunal rendered the Award without holding an oral hearing, which was not in conformity with statutory procedure. The Court held that, (1) in accordance with Article 39.2 of the Arbitration Rules, "*[t]he arbitral tribunal may specify a time period for the parties to produce evidence and the parties shall produce evidence within the specified time period. The arbitral tribunal may refuse to admit any evidence produced after that period has expired*", and Article 40 of the Arbitration Rules, "*(1) Where a case is examined by way of an oral hearing, the evidence shall be produced at the hearing and may be examined by the parties. (2). Where a case is to be decided on the basis of documents only, or where the evidence is submitted after the hearing and both parties have consented to examine the evidence by means of writing, the parties may examine the evidence without an oral hearing*", there was no circumstance under which the tribunal violated the Arbitration Rules. Accordingly, the allegation of the applicant

CHINA Emmanuel Jacomy, Sherman & Sterling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	**No**	
				lacked in factual basis and therefore not sustained by the Court.
	Hangzhou Intermediary People's Court, 10 February 2017, *NKK (Hong Kong) Limited. v. China and Japan Dragon Electrical Products (Hangzhou) Co., Ltd.*, (2016) Zhe 01 Min Te No. 52, application for annulment of the third item of arbitral award [2015] Hang Zhong Cai Zi No. 205 rendered by Hangzhou Arbitration Commission in Hangzhou http://wenshu.court.gov.cn/content/content?DocID=8b1c3e96-2d89-4a50-9d56-a85f00c0691d		X	The applicant alleged that the arbitral tribunal did not afford it sufficient time to examine the evidence, nor did it organize evidence examination or debate. The Court held that the arbitral tribunal conducted the proceedings in conformity with the Arbitration Rules, and therefore the allegation of the applicant was lacking in factual basis and could not be sustained by the Court.
Failing to give the opportunity to comment on amended claims	Shenzhen Intermediary People's Court, 13 May 2014, *Yongcheng Chemical Industry Co., Ltd. v. GUO Shunkai*, (2012) Shen Zhong Fa She Wai Zhong Zi No. 207, application for annulment of the arbitral award [2012] Zhong Guo Mao Zhong Shen Cai Zi No. 72 rendered by CIETAC South China sub-commission in Shenzhen http://wenshu.court.gov.cn/content/content?DocID=d49f3ccd-2bb3-4990-9545-f4d56cf87a09		X	The applicant alleged that the arbitration proceedings were not in conformity with the Arbitration Rules: (1) the arbitral tribunal did not hold an oral hearing in respect of the amended claims, which resulted in an unfair treatment to the applicant; (2) the arbitral tribunal should not have accepted the amended claims of the defendant, and (3) the arbitral tribunal did not investigate facts and collect evidence in accordance with its duties. The Court held that, (1) both the applicant and the defendant consented to a hearing based on documents; (2) the arbitral tribunal has the power to make decisions concerning whether or not a hearing is needed.
	Beijing No. 4 Intermediary People's Court, 14 December 2017, *China National Complete Engineering Corporation v. Tesmec S.p.A.*, (2017) Jing 04 Min Te No. 31, application		X	The applicant alleged that the parties had not had an opportunity to debate and reply on the amended claims and to examine supplementary evidence,

CHINA Emmanuel Jacomy, Sherman & Sterling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	**No**	
	for annulment of the third item of arbitral award [2017] Zhong Guo Mao Zhong Jing Cai Zi No. 0599 rendered by CIETAC in Beijing http://wenshu.court.gov.cn/content/content?DocID=4064f9ff-6ff2-49a7-8b20-a8590010f2b5			which was not in conformity with statutory procedure. The Court held that, (1) after review of the arbitration proceedings, the arbitral tribunal had guaranteed procedural rights of the parties; and (2) the applicant had had time and opportunities to present its opinions after the respondent modified the claim; accordingly there was no procedural violation.

ENGLAND AND WALES Angeline Welsh, Matrix Chambers				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
I. Submissions				
A. Written submissions				
Disregarding written submissions filed in breach of the procedural calendar				
Requiring written submissions to be filed by a particular date/Refusing to extend the deadline for written submissions	Overseas Fortune Shipping Pte Ltd v Great Eastern Shipping Co Ltd (The "Singapore Fortune") [1987] 1 Lloyd's Rep. 270		X	The Court held that there was no misconduct where the arbitral tribunal did not grant an extension of time to deal with the Claimant's submissions.
	Bromley Park Garden Estate Limited v. Gary Christopher Mallen, Bruce Maunder Taylor, [2009] EWHC 609 (Ch).		X	A Party argued that it could not put counter-submissions in without first having disclosure of certain documents. Accordingly, it failed to submit its counter-written submissions by the date directed. The Court held that the arbitrator had not acted unfairly by requiring written counter-submissions to be filed by a particular date: (i) complaining party had a reasonable opportunity of putting his case or dealing with G's case; (ii) complaining party deprived itself of that opportunity by failing to put in counter submissions in the absence of the requested documents (iii) even if arbitrator had allowed complaining party more time (14 days was suggested), that deadline would not have been complied with.

ENGLAND AND WALES Angeline Welsh, Matrix Chambers				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing to allow additional written submissions				
B. Oral submissions				
Refusing to allow additional oral submissions	Margulead Ltd v Exide Technologies [2004] EWHC 1019 at para 33		X	Where counsel was only permitted a single closing speech (contrary to English Court procedure of permitting a reply), it was within the scope of what the arbitrator was empowered to do.
Refusal to grant an oral hearing but instead rely on in place of written submissions	Bromley Park Garden Estate Limited v. Gary Christopher Mallen, Bruce Maunder Taylor, [2009] EWHC 609 (Ch).		X	The arbitrator was entitled to ask himself whether an oral hearing could be justified given that it would significantly increase the costs of the arbitration, and to conclude that it could not be justified in the circumstances.
Decision to proceed with an oral hearing in the absence of a party	Konkola Copper Mines v U & M Mining Zambia (No. 2) [2014] EWHC 2374 at [65]-[76]		X	An arbitral tribunal can proceed where parties have had fair notice of the hearing.
II. Evidence				
A. Documentary evidence				
Disregarding new evidence filed in breach of the procedural calendar				

ENGLAND AND WALES Angeline Welsh, Matrix Chambers				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing to order the production of documents for requests made in breach of the procedural calendar				
Refusing to order the production of documents deemed irrelevant or unnecessary for the outcome of the case	Bromley Park Garden Estate Limited v. Gary Christopher Mallen, Bruce Maunder Taylor, [2009] EWHC 609 (Ch).		X	The requested documents were of no relevance and the arbitrator's refusal to order their disclosure was not unfair to the requesting party. The fact that there had been a prior agreement to disclose the documents did not make the refusal unfair. The requesting party also had reasonable opportunity to deal with the opposing party's case.
	ABB AG v. Hochtief Airport GMBH, Athens International Airport S.A., [2006] EWHC 388 (Comm), paras. 84 and 85		X	The Court rejected a challenge to the arbitral tribunal's decision to require only one party to the negotiations to disclose documents relevant to those negotiations, in respect of which there were allegations of lack of good faith. The decision was based on the IBA Rules of Taking of Evidence which were adopted in the arbitration, and allowed the tribunal to exclude any document from production on the ground of lack of sufficient relevance. Although, the decision is not support for the proposition that a refusal to exclude documents could never constitute a serious irregularity; the lack of sufficient relevance was important.
B. Witnesses				

ENGLAND AND WALES Angeline Welsh, Matrix Chambers				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing to hear a witness	Williams v Wallis & Cox [1914] 2 K.B. 478			A direct refusal to hear evidence on a **material** issue would be an irregularity, although this irregularity would also need to cause substantial injustice. The Court did not resolve whether or not there was an irregularity in this case.
Calling of a witness on the Tribunal's own motion/relying on witness statements not invoked by the parties				
Refusing or limiting witness cross-examination	Compania Sud Americana de Vapores SA v Nippon Yusen Kaisha, 9 July 2009, [2009] EWHC 1606 (Comm)		X	There had been an irregularity in arbitration proceedings where one party had not been given an opportunity to cross-examine the other party's witnesses on a particular point, but the irregularity did not cause substantial injustice because the arbitral tribunal had considered the parties' submissions as to the effect of the absence of an opportunity to cross-examine and was entitled to conclude that cross-examination on the point would have made no difference.
	O'Donoghue v. Enterprise Inns Plc [2008] EWHC 2273 (Ch)		X	In deciding not to hold an oral hearing (and permit cross-examination), the arbitrator had been exercising discretion conferred on him under the Arbitration Act. The arbitrator had given both parties an opportunity to put their case, had given reasons for his decision and the decision taken.

ENGLAND AND WALES Angeline Welsh, Matrix Chambers				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Chilton v. Saga Holidays plc [1986] 1 All E.R. 841	X		The arbitrator denied a legally represented party the opportunity to cross-examine his opposing party on the basis that the opposing party was not legally represented. The Court held that the arbitrator should have permitted the cross-examination; otherwise a party would be deprived of legal representation. It was the duty of the arbitrator, without entering the arena to the extent that he was no longer acting judicially, to make good any deficiencies of the unrepresented party.
C. Experts				
Refusing or limiting irrelevant expert evidence	Egmatra AG v Marco Trading Corp., [1999] 1 Lloyd's Rep. 862, [1998] C.LC. 1552		X	The arbitrators' refusal to allow one party to adduce expert evidence had been made after careful consideration and did not give rise to a substantial injustice to that party. Had the arbitrators felt unqualified to deal with the issues, of which they were fully aware, they would have called for expert evidence.
Failing or refusing to appoint an expert				

ENGLAND AND WALES Angeline Welsh, Matrix Chambers				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing to adjourn proceedings for the submission of expert evidence.	Shuttari v Solicitors' Indemnity Fund [2004] EWHC 1537		X	Refusing to adjourn proceedings for submission of expert evidence not a serious irregularity when fair opportunity given to submit evidence, the arbitral tribunal told the nature of the expected evidence, but there was nothing to indicate what that evidence would be and whether it was material.
Refusing or limiting expert cross-examination				
D. Other evidentiary matters				
Disregarding evidence produced in breach of the procedural calendar				
III. Procedure in general				
Failing or refusing to order a site visit				
Failing to answer each argument raised by the parties	Fidelity Management SA v Myriad International Holding BV, 9 June 2005, [2005] EWHC 1193 (Comm)		X	Only the failure by an arbitral tribunal to deal with an important or fundamental issue could be capable of amounting to a serious irregularity causing substantial injustice. The arbitral tribunal had asked itself the right question and had answered the issues put to it.

ENGLAND AND WALES Angeline Welsh, Matrix Chambers				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	World Trade Corporation v Czarnikow Sugar [2005] 1 Lloyd's Reports 422		X	Under the s 68(2)(d) of the Arbitration Act, an award may be set aside if there is a failure by the tribunal to deal with all the issues that were put to it (and this causes substantial injustice). It was alleged that a party had put forward particular features of the evidence in witness statements and documents but that in arriving at their conclusions of fact the arbitrators had not considered the documents or other written evidence placed before them or had not attached sufficient weight to such documents of evidence. The court held that whether the arbitral tribunal accorded any particular evidence more weight or less weight or no weight at all was not a failure to deal with all the issues put to it, because this was not an "issue" for the purposes of s 68(2)(d).
	Schwebel v Schwebel [2011] 2 AER (Comm) 1048 at para 23		X	Arbitrators who are required to give reasons in their awards do not have to list all the argument or items of evidence as advanced which they accept and which they reject. They should identify usually the primary evidence which they do find compelling where the case depends upon factual findings because that will be part of the reasoning.
Failing to address an important issue	Ascot Commodities NV v. Olam International Ltd, [2002] C.L.C. 277	X		Award set aside where the arbitral tribunal failed to deal with the central issue.

ENGLAND AND WALES Angeline Welsh, Matrix Chambers				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failing to address important evidence	UMS Holding Limited & Others v Great Station Properties S.A. [2017] EWHC 2398 at para 28		X	A contention that the arbitral tribunal has ignored or failed to have regard to evidence relied upon by one of the parties cannot be the subject matter of an allegation of a serious irregularity. This is for 4 reasons: (i) an arbitral tribunal's duty is to decide the essential issues put to it for decision and to give its reasons for doing so; not to deal with each point made by a party in relation to those essential issues or refer to all the relevant evidence; (ii) assessment of evidence is a matter exclusively for the abitral tribunal; (iii) if an arbitral tribunal has not referred to evidence in its reasons, there may be a variety of reasons. For a court to determine why an arbitral tribunal has not referred to that evidence would require an assessment of the entirety of the evidence. This is the abitral tribunal's role, not the Court; (iv) the Court is concerned with due process and not whether the arbitral tribunal has made the correct finding of fact.
Failing to put an unargued point or law or fact to a party	Interbulk Ltd v Aiden Shipping Co (The Vimeira) (No.1) [1984] 2 Lloyd's Rep 66 at para 76	X		If the arbitrator considers that the parties or their experts have missed the real point, the arbitrator is obliged to put the point to them so that they have an opportunity to deal with it.

ENGLAND AND WALES Angeline Welsh, Matrix Chambers				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Zermalt Holdings SA v Nu-Life Upholstery Repairs [1985] 2 EGLR 14 at para 15	X		If an arbitrator is impressed by a point that has never been raised by either side, or feels that the proper approach has not been explored or advanced, or is relying on his own personal experience in a specific way, then it is his or her duty to put it to the parties so that they have an opportunity to comment.
	Reliance Industries v Union of India [2018] EWHC 822 (Comm) at para 31	X	X	Where a point is squarely in play and addressed by both parties, the abitral tribunal is not obliged to put the point to the parties.
	ABB AG v Hochtief Airport [2006] 2 Lloyd's Rep 1 at para 72		X	A party will usually have had a sufficient opportunity if the "essential building block" of the arbitral tribunal's analysis and reasoning were in play in relation to an issue.
	A v B 23 March 2017 (Unreported)		X	The arbitrator had to give the parties a fair opportunity of addressing all factual issues material to his intended decision, but it would not usually be necessary to refer back to the parties for further submissions every single inference of fact from the primary facts which the arbitrator intended to draw.
Adopting procedure not advocating by either party	Lorand Shipping Ltd v Davof Trading (Africa) BV Ocean Glory, The [2014] EWHC 3521 (Comm)	X		Where an arbitral tribunal wished to adopt a course not advocated by either party, a failure to give the parties a chance to make representations on that course before adopting it might amount to a serious irregularity.

FRANCE Philippe Pinsolle, Quinn Emanuel Urquhart & Sullivan				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
I. Submissions				
A. Written submissions				
Disregarding written submissions filed in breach of the procedural calendar	Paris Court of Appeal, Pôle 1, 1rst Chamber, 23 June 2015, Mme Sergent c/ SCA Coopérative Agricole Agraly, n° 14/14277 Published in: Rev. Arb. (2015), p 961		X	The Court held that arbitral tribunal was correct to refuse the documents since the party had produced them after the time-limit determined by the procedural calendar and of which the party was aware.
	Paris Court of Appeal, 1st Chamber, Section C, 12 March 2009, *Société SAS Delta Air Plus c/ Mr. E. Montaz*, n°2008/2498 Published in: Gaz. Pal. (18 July 2009, no. 199), p 42, note Alexis MOURRE and Priscille PEDONE		X	
	Paris Court of Appeal, 1st Chamber, Section C, 28 February 2008, Société Liv Hidravlika D.O.O. c/ Société S.A. Diebolt, n°2005/10577 Published in: Recueil Dalloz (2008) p 1325, commentary by Richard MEESE; Rev. Arb. (2009), p 168; LPA (3 October 2008, no. 199), p 3 commentary by Valérie-Laure BENABOU; Gaz. Pal., (3 July 2008, no. 185), p 33, note Alexis MOURRE and Priscille PEDONE		X	The Court noted that the reply was submitted after the time-limit, which was known by the parties, and that the applicant did not prove the existence of a request for an extension of time. It further held that a party "*cannot claim to indefinite extensions of the time-limit to file its brief on the ground that the arbitral procedure is not limited on time under French arbitration law*".

FRANCE Philippe Pinsolle, Quinn Emanuel Urquhart & Sullivan				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Paris Court of Appeal, 1st Chamber, Section C, 18 November 2004, S.A. Ridalis c/ S.A.R.L. Bureau de recherche et d'ingénierie de l'environnement, n° 2004/01551 Published in : Rev. Arb. (2006), pp. 759-761, commentary by Pierre DUPREY		X	The Court dismissed the challenge considering that the appellant should have raised the irregularities before the Arbitral Tribunal itself. It also held that "*the conduct of the arbitral proceedings within reasonable timeframe must not lead the arbitrator to extend time limits to the detriment of the efficiency of the proceedings, and that the arbitrator must put an end to the number of the exchanges between the parties*."
	Paris Court of Appeal's case dated 16 January 1986, *Europmarkets c/ Argolicos Gulf Shipping Co.*, No. L 12357 Unpublished but cited in M. De Boisséson, le Droit français de l'arbitrage interne et international, § 727 at 702 (2nd ed. 1990)		X	The Court held that the arbitral tribunal can refuse to admit counterclaims submitted after the time-limit determined by the Arbitration rules
	Paris Court of Appeal, First Chamber, Section C, 16 October 2008, *SA Prim'Nature c/ SAS Top Pommes de Terre*, n° 07/12356 Published in: Rev. Arb. (2010), p. 110; RTD Com. 2010, p. 545, commentary by Eric LOQUIN	X		An arbitral tribunal had declared a rejoinder filed in breach of the time limits inadmissible. The Court annulled the award on the basis that no request for inadmissibility had been made by the opposing party, and that the tribunal had taken its decision without giving the parties the opportunity to comment on it.

FRANCE Philippe Pinsolle, Quinn Emanuel Urquhart & Sullivan				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing to allow additional written submissions	Paris Court of Appeal, Pôle 1, Chamber 1, 3 June 2010, *Société Chaudronnerie Mécanique Ariegeoise CMA c/ Société Adjor Sofal Nemoneh Pars*, n° 09/2247 Published in : Paris Journ. Int. Arb. (2010, no. 3), p 920, note Alexis MOURRE and Priscille PEDONE Confirmed by French Cour de cassation, 1st civil chamber, 20 June 2012, n° 10-21375 Published in : Rev. Arb. (2012), p 678		X	A party made an application to set aside an arbitral award on the ground that the arbitral tribunal refused to allow a reply to the defense of the other party. The Court dismissed the application and the French Cour de cassation upheld the decision : "having noticed that the parties had decided to submit only one written submission, that no reply to final written submissions was provided by the provisional timetable, which had been largely discussed and amended by the parties, and that no agreement was reached by the parties on the reply, the Court of Appeal rightly decided that the arbitrator, who controls the arbitral procedure, did not breach the rules of due process by deciding to close the proceedings, considering they were complete
B. Oral submissions				
Disregarding oral submissions filed in breach of the procedural calendar				
Refusing to allow additional oral submissions				
II. Evidence				
A. Documentary evidence				

FRANCE Philippe Pinsolle, Quinn Emanuel Urquhart & Sullivan				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing to order the production of documents for requests made in breach of the procedural calendar				
Refusing to order the production of documents deemed irrelevant or unnecessary for the outcome of the case	Paris Court of Appeal, 1st Chamber, Pole 1, 26 November 2009, Madame S. K. Adham v. Maître M. Elias Raphael, n° 08/11583		X	A party claimed that, by refusing its requests to order the production of documents which contained relevant facts and important evidence for the outcome of the dispute, the Tribunal breached the rules of due process and equal treatment of the parties. The Court dismissed the challenge considering that the arbitral tribunal did not breach due process by refusing a request for production of documents which it considered not pertinent and necessary for the outcome of the dispute.
	Paris Court of Appeal, 1st Chamber, Section C, 22 January 2004, Société National Company for Fishing and Marketing 'Nafimco' v. Société Foster Wheeler Trading Company AG, n° 2002/16295 Published in: Rev. Arb. (2003), p. 143; Gaz. Pal. (22 May 2004, no. 143), p. 22, note Alexis MOURRE and Priscille PEDONE		X	The Court held that the arbitral tribunal has the power to decide whether it should order a discovery procedure or not: "(…) the discovery procedure is (…) the obligation to produce everything which is important for the case, the decision to order it or not belongs, as for any measure of investigation, to the Tribunal, which was not excluded by the mandate of the Tribunal conferred by the parties (…)

FRANCE Philippe Pinsolle, Quinn Emanuel Urquhart & Sullivan				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Paris Court of Appeal, 1st chamber, Section C, 18 September 2003, B. Marillier v. C. Ecoiffier, n° 2002/12724		X	A party made a request to set aside an award based on the breach of due process because the abitral tribunal had refused to order the opposing party to communicate financial statements. The Court decided that the tribunal "had not, in any way, breached the principle of due process or violated the right to present its defence by paralysing the search for evidence and, had only used its power to assess whether the production of a piece of evidence was necessary or not"
Disregarding new evidence filed in breach of the procedural calendar	Paris Court of Appeal, Pôle 1, 1rst Chamber, 23 June 2015, Mme Sergent c/ SCA Coopérative Agricole Agraly, n°14/14277 Published in : Rev. Arb. (2015), p 961		X	A party made an application for setting aside an arbitral award arguing that, by refusing to take into account its submissions and new evidence, the arbitral tribunal had breached the rules of due process. The Court rejected the application holding that the arbitral tribunal was correct to refuse the documents since the party had produced them after the time-limit determined by the procedural calendar and of which the party was aware.

FRANCE Philippe Pinsolle, Quinn Emanuel Urquhart & Sullivan				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Paris Court of Appeal, 1st Chamber, Section C, 21 February 2002, CA Groupe Sablières modernes c/ S.A. Groupama Transport et autres Published in: Rev. Arb. (2002), p 955 Confirmed by the French Cour de cassation, 2nd civil chamber, 29 January 2004, n° 02-15.774		X	A party made an application for setting aside an award arguing that the arbitral tribunal had breached the rules of due process by not taking into account evidence produced late. The Court held that by refusing to take into account written evidence produced one month after the closure of the proceedings, of which the parties had been duly informed, the arbitral tribunal did not breach the rules of due process. The French Cour de cassation upheld the decision.
Ordering the production of evidence	Paris Court of Appeal, 1st Chamber, Pôle 1, Chambre 1, 19 January 2016, n °15/12349, SA Z. c/Monsieur G		X	A party asked the Paris Court of Appeal to set aside an award because the arbitral tribunal exceeded its powers by ordering under a penalty the party to produce the requested evidence. The party considered that the arbitrators did not have the right to do this through an interim award. The Paris Court of Appeal stated that this was a power of the arbitral tribunal and that the parties were bound even if the interim award was not exequatured according to Article 1467 of the French Civile Procedure Code.
B. Witnesses				

FRANCE Philippe Pinsolle, Quinn Emanuel Urquhart & Sullivan				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Disregarding witness statement filed in breach of the procedural calendar	Paris Court of Appeal, Pôle 1, Chamber 1, 28 January 2014, S.C.S. GE Medical Systems "GEMS" c/ Société Albanna Group for General Trade Co., n° 12/20550 Published in: Rev. Arb. (2014), p 225; Revista Brasileira de Arbitragem (2015, no. 46), p 145 and commentary by Rory V. WHEELER, p 150		X	A party made an application to set aside an arbitral award on the ground that the arbitral tribunal had breached the rules of due process by considering witness statements inadmissible, whereas they were produced only four days after the time-limit. The Court dismissed the application on the basis that the arbitral tribunal rightly applied the rules of due process. The Court held that the production of the written statements in due time were precisely aimed at enabling debate in accordance with due process.
Refusing to hear a witness	Paris Court of Appeal, Pôle 1, Chamber 1, 5 January 2012, *S.A. Alma Services "ALMABAT" v. S.A. Bouygues Bâtiment Ile de France*, n° 10/19076 Published in: ParisJourn. Int. Arb. (2012, no. 1), p. 206, Alexis MOURRE and Priscille PEDONE		X	A party made an application to set aside an arbitral award on the ground that the arbitral tribunal had refused to hear a subcontractor of the opposite party as a witness or as a party while it could have been at the origin of disorders. The Court dismissed the application, considering that the arbitrator was not bound to accept a request to hear a witness who did not appear to him useful for the resolution of the dispute.
	Paris Court of Appeal, 9 September 1997, *Heilman Richard c/ Grazianno Transmissioni*, n° 96/80322 Published in: Rev. Arb (1998), p 72 (Commentary bv Y.Derains)		X	The Court held that the abitral tribunal had discretionary powers as regards to the production of documents, the hearing of witnesses and the appointment of experts. According to the mandate conferred to the abitral tribunal by the parties, it had the discretion to reject the requests since it considered it was sufficiently informed and that the requested measures were unnecessary.

FRANCE Philippe Pinsolle, Quinn Emanuel Urquhart & Sullivan				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Court of Appeal, Soubaigne v. Limmareds Skogar Published in : Rev. Arb. (1985), p 285			The Court held that the arbitral tribunal has discretionary power as to which witness evidence can be introduced during the proceedings. The arbitrators however have no obligation to allow witness evidence not designated in the arbitration clause. Thus, they can refuse to hear witness evidence that a party wants to introduce in the middle of the procedure. In this case, the arbitrators considered that one witness statement was not necessary because they had sufficient evidence in order to decide the case.
Refusing to hear a witness when the request was untimely	Paris Court of Appeal, Pôle 1, Chamber 1, 10 January 2012, Société Sharikat Al Ikarat Wal Abnieh (SIWA) S.A.L. v. Société Butec S.A.L., n° 10/21671 Published in: Rev. Arb. (2012), p. 409; Paris Journ. Int. Arb. (2013, no. 1), p. 71, commentary by Laurent JAEGER		X	A party submitted a request to present seven witnesses without transmitting any written testimonies. The arbitral tribunal rejected the request considering it was late and that it did not follow the procedural order. The Paris Court of Appeal confirmed this reasoning and dismissed the annulment application.
Calling of a witness on the Tribunal's own motion/relying on witness statements not invoked by the parties	Paris Court of Appeal, 1rst chamber, Section c, 18 January 2007, Société Editions Glenat S.A. v. Société France Animation S.A., n° 05/20604 Published in: Rev. Arb. (2007), p 134		X	A party submitted a request to set aside an award based on the Arbitral Tribunal's decision to hear third-parties which were not mentioned in the list of witnesses communicated by the opposite party. The Court rejected the challenged because the objection had not been raised first before the Arbitral Tribunal.
Refusing or limiting witness cross-examination				

FRANCE Philippe Pinsolle, Quinn Emanuel Urquhart & Sullivan				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
C. Experts				
Refusing or limiting irrelevant expert evidence	Paris Court of Appeal, 1st Chamber, Pole 1, Chamber 1, 28 June 2016, Société Vijay Construction v. Société Eastern Europe Engineering, n °15/03504 [Unpublished]			A party asked the Court to set aside an award because the sole arbitrator did not allow them to adequately respond to the other party's complementary expert report, even through a 10 page memo. Thus, there was an allegation of a breach of the right to equality of arms and the right to be heard. The Court considered that having cross-examined the expert and having been assisted by an expert,the other party did have the time and possibility to adequatly respond to the complementary expert report.
Failing or refusing to appoint an expert	Paris Court of Appeal, 1st Chamber, Pole 1, Chamber 1, 26 June 2012, Mr. Tabbane, v. S.A. Colgate-Palmolive Services, n° 11/05156 Published in: Paris Journ. Int. Arb. (2012, no. 3), p. 703, note Alexis MOURRE and Priscille PEDONNE		X	A party submitted a request to set aside an order enforcing an arbitral award based on breach of due process, of the right to be heard, and of the equality of treatment of the parties, due to the Tribunal's failure to address some claims, and among them the appointment of an expert. The Court of Appeal held that there was no breach "considering (…) that arbitrators have the power to assess the relevance of the evidence without breaching any procedural principle by choosing the piece of evidence they find the most convincing, as far as they had been regularly exchanged, nor by their decision to not appoint an expert."

FRANCE Philippe Pinsolle, Quinn Emanuel Urquhart & Sullivan				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Paris Court of Appeal, 1st Chamber, Section C, 3 July 2008, *Société S.A. Ceric Wistra v. S.A. Belart Industries*, n° 06/09002 Published in: Rev. Arb. (2009), p 767; Gaz. Pal., 16 October 2008, No. 290, p 35, note Alexis MOURRE and Priscille PEDONE		X	A party submitted a request to set aside an award, claiming that the sole arbitrator relied on a document called "expertise" and failed to appoint an expert in order to determine the defects affecting the materials delivered by the opposite party. That party claimed that the arbitral tribunal did not comply with the mandate conferred to it by the parties. The Court of Appeal relied on Article 20 of the previous ICC rules according to which an arbitrator may, after consultation of the parties, appoint an expert, and on the arbitrator's mandate according to which the arbitrator "*may if need be appoint an expert*", and decided that the arbitrator had no obligation to appoint an expert.
	Paris Court of Appeal, 1st Chamber, Section C, *Société Leng d'Or v. Société Pavan S.P.A.*, 29 November 2007, n° 06/02783 Published in: Gaz. Pal. (15 December 2007, no. 349), p 61, note Alexis MOURRE and Priscille PEDONE		X	A party submitted a request to set aside an award, claiming that the tribunal failed to appoint an expert in order to evaluate the damage suffered. The Court dismissed that application and held that the arbitral tribunal did not fail to comply with the mandate conferred to it by the parties by not appointing an expert.
	Paris Court of Appeal, 1st Chamber, Section C, 13 May 1980, *Air Intergulf Ltd v. Société d'exploitation et de construction aéronautique* (S.E.C.A.), n° G9097 Unpublished, cited by Fouchard Gaillard Goldman on International Commercial Arbitration, op. cit., para. 1290		X	The Court held that an arbitral tribunal has discretion in deciding the party's request for the appointment of an expert and that it can reject the request if it has sufficient information to make its decision without violating the rights of the defence.

FRANCE Philippe Pinsolle, Quinn Emanuel Urquhart & Sullivan				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing or limiting expert cross-examination				
D. Other evidentiary matters				
Disregarding evidence produced in breach of the procedural calendar				
III. Procedure in general				
Failing or refusing to order a site visit				
Refusing or limiting witness/expert cross-examination				
Failing to answer each argument raised by the parties	Paris Court of Appeal, 1st Chamber, 30 March 2006, Société Aurilier SA and others v. Société ITM Entreprises SA, n°2004/19639 Published in: Rev. Arb. (2006), p 484		X	A party requested the Court to set aside an award based on the failure of the arbitral tribunal's to give reasons for its decision. The Court dismissed the application and held that: "*the arbitral tribunal* (…) *has no obligation to follow in the parties' arguments in details nor to devote one paragraph for each arguments raised.*"

FRANCE Philippe Pinsolle, Quinn Emanuel Urquhart & Sullivan				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Paris Court of Appeal, 1st Chamber, 21 June 1990, Compagnie Honeywell S.A. v. Computacion Bull de Venezuela CA Published in: Rev. Arb. (1991), p 96.		X	A party submitted an application to set aside an award on the ground that the sole arbitrator failed to reply to some of the arguments raised in the pleadings. The Court rejected the application considering that the arbitrators did not fail to comply with its mission "*which was to rule on the party's claim*". It also added that the failure to reply to each of the allegations made by the parties did not fall within any of the grounds for the setting aside of the award under Article 1502 (predecessor of Art. 1520) of the French Code of Civil procedure

GERMANY Torsten Löercher, CMS Hasche Sigle				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
I. Submissions				
A. Written submissions				
Disregarding written submissions filed in breach of the procedural calendar				
Refusing to allow additional written submissions	Higher Regional Court Frankfurt, 11.04.2014, File Number 26 Sch 13/13 Published in: Zeitschrift für Schiedsverfahren (**SchiedsVZ**) 2014, p 154		X	A party submitted a request to annul an award, claiming to be violated in its right to be heard and its right to defend itself. The arbitral tribunal had rejected the party´s request to postpone the time limit for submitting a pleading and the request for reopening the oral procedure. The Court held that a party´s request for an extension as well as late submissions in general may only be rejected without committing an error of assessment. As the arbitral tribunal did not abuse its discretion, the challenge was dismissed.

GERMANY Torsten Löercher, CMS Hasche Sigle				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Admitting written submissions filed in breach of the procedural calendar	Higher Regional Court Frankfurt, 17.02.2011, File Number 26 Sch 13/10 Published in: SchiedsVZ 2013, p 49		X	A party challenged an award, accusing the arbitral tribunal of wrongfully accepting submissions of the other party although it had already terminated the disclosure procedure. The Court rejected this objection for two reasons: first, the party requesting the setting aside of the award failed to conclusively establish a violation of the right to be heard. Second, the Court held that whether the arbitral tribunal considered a party´s presentation after the expiry of the time limit was at the discretion of the arbitral tribunal.
B. Oral submissions				
Disregarding oral submissions filed in breach of the procedural calendar				
Refusing to allow additional oral submissions	Higher Regional Court Frankfurt, 16.01.2014, File Number 26 Sch 3/09 Published in: SchiedsVZ 2014, p 206		X	A party challenged an award, claiming its request to hold an oral hearing had not been granted which had directly influenced the award. Therefore, the party claimed the violation of its right to be heard. The Court held that the arbitral tribunal could reject the party´s request if an oral hearing "*cannot contribute to the clarification of disputed points*" or help the arbitral tribunal to form an opinion. The extent to which an oral hearing could be helpful in the case is at the discretion of the arbitral tribunal.

GERMANY Torsten Löercher, CMS Hasche Sigle				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Higher Regional Court Cologne, 22.06.2012, File Number 19 Sch 1/12 Published in: Beck-Rechtsprechung (**BeckRS**) 2012, p 21331		X	A party challenged an award, claiming that the arbitral tribunal violated its right to be heard as it did not allow a motion to postpone the oral hearing. The Court held that the complaint of a violation of the right to be heard is generally conditional on the submission of what would have been put forward if the right to be heard had been granted. As the party failed to do so, the challenge was dismissed.
	Higher Regional Court Cologne, 4.08.2017, File Number 19 Sch 6/17 Published in: BeckRS 2017, p 125841		X	A party challenged an award, claiming the arbitral tribunal had not granted further oral submissions. The Court rejected the challenge, stating that the arbitral tribunal had held as many hearings as required by law. Furthermore, it was left to the arbitral tribunals´ discretion whether a further hearing was required or whether the case was ready for decision. As the arbitral tribunal did not consider another hearing to be helpful for its decision, it was entitled to reject the request.
	Higher Regional Court Frankfurt, 17.02.2011, File Number 26 Sch 13/10 Published in: SchiedsVZ 2013, p 49		X	A party challenged an award, claiming that the arbitral tribunal had failed to provide documents to the party submitted by the other party before transferring them to an expert. The Court held that in order to be set aside, an award had to be based on the alleged procedural error. As this was not the case, the challenge was dismissed.

GERMANY Torsten Löercher, CMS Hasche Sigle				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
II. Evidence				
A. Documentary evidence				
Disregarding new evidence filed in breach of the procedural calendar				
Refusing to order the production of documents for requests made in breach of the procedural calendar				
Disregarding evidence deemed irrelevant for the outcome of the case	Higher Regional Court Hamburg, 13.07.2016, File Number 6 Sch 1/16 Published in: BeckRS 2016, p 115224		X	A party challenged an award, claiming the arbitral tribunal disregarded evidence the party had submitted. The Court held that the Tribunal is under the obligation to admit new evidence only if this evidence is relevant for the decision. The arbitral tribunal alone is responsible for assessing the relevance, its decision cannot be reviewed by the state court. Therefore, an incorrect legal assessment of the arbitral tribunal in this context does not in itself constitute a ground for annulment.

GERMANY Torsten Löercher, CMS Hasche Sigle				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Higher Regional Court Cologne, 04.08.2017, File Number 19 Sch 6/17 Published in: BeckRS 2017, p 125841		X	A party challenged an award, claiming the arbitral tribunal had not taken evidence offered by the party. The Court held that an award can only then be set aside if no consideration has been given to the taking of the evidence at all. In the present case the arbitral tribunal took notice of the evidence offered but did not consider it necessary in the process of establishing the truth as it considered the facts of the dispute to have already been sufficiently clarified. Therefore, the party´s rights were not violated and the challenge was therefore rejected.
	Federal Supreme Court, 02.07.1992, File Number III ZR 84/91 Published in: Neue Juristische Wochenschrift Rechtsprechungs-Report Zivilrecht (**NJW-RR**) 1993, p 444		X	A party challenged an award, claiming the arbitral tribunal wrongly dismissed a request for taking evidence, namely the presentation of documents. The Court dismissed the challenge: first, an arbitral tribunal could reject a party´s request if – as in the present case – it did not consider the evidence relevant to the decision. Furthermore, the Court could rule out the possibility that the arbitral tribunal would have reached a different conclusion if it had considered the evidence offered by the party.
B. Witnesses				

GERMANY Torsten Löercher, CMS Hasche Sigle				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing to hear witness evidence	Higher Regional Court Hamburg, 30.05.2008, File Number 11 Sch 9/07 Published in: BeckRS 2008, p 20097	X		A party submitted a request to set aside an award, claiming that the other party - a corporation headquartered in Uganda - was not capable of being party to the legal proceedings and therefore the arbitration agreement was void. At the time of the arbitration procedure, there were discrepancies about whether or not the certificate of incorporation was genuine. Nonetheless, the arbitral tribunal had denied a motion to take evidence (hearing a witness), which they should have done according to the German Court of Appeals. The award was therefore set aside.
	Higher Regional Court Karlsruhe, 27.03.2009, File Number 10 Sch 8/08 Published in: BeckRS 2011, p 08009		X	The Court held that the arbitral tribunal had the right not to take evidence – in the present case hearing a witness - offered by the party: it is within the arbitral tribunal's competence to assess whether or not evidence is relevant to the case provided the arbitral tribunal actually considers the relevance; if the latter is the case, the arbitral tribunal's conclusion cannot be reviewed by the Court.

GERMANY Torsten Löercher, CMS Hasche Sigle				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Higher Regional Court Munich, 24.08.2010, File Number 34 Sch 21/10 Published in: Neue Juristische Online Zeitschrift (**NJOZ**) 2011, p 413		X	The Court clarified that the arbitral tribunal does not have to hear every witness offered by the parties if it does not consider the witness relevant to the case and acts on the assumption that it has sufficient information to adequately assess the case. As the arbitral tribunal had given a detailed justification on why it did not consider the witness relevant to the case, its decision was not arbitrary and therefore did not constitute a ground for challenge.
Calling of a witness on the Tribunal's own motion/relying on witness statements not invoked by the parties				
Refusing or limiting witness cross-examination				
C. Experts				

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing or limiting irrelevant expert evidence	Higher Regional Court Frankfurt, 16.10.2008, File Number 26 Sch 13/08 Published in: BeckRS 2010, p 20179		X	A party resisted enforcement of a foreign arbitral award, claiming that it violated the national "ordre public" as the tribunal had not followed an expert´s opinion when calculating the amount of damages. The Court dismissed the claim, stating that the acknowledgement of a foreign award can only be refused if the award violates basic principles of the German State, economic or social life –a substantive inaccuracy alone does not prevent acknowledgement and enforcement of the award.
	Higher Regional Court Hamburg, 13.07.2016, File Number 6 Sch 1/16 Published in: BeckRS 2016, p 115224		X	A party challenged an award, criticizing the arbitral tribunal for having uncritically followed the statements of an expert appointed by the arbitral tribunal without taking note of the applicant's statements, which were supported by a private expert. The Court held that the arbitral tribunal only had to take notice of and consider the party´s assertion. The Court concluded that the arbitral tribunal had done so and had considered the arguments irrelevant to the decision. The challenge was therefore dismissed

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failing or refusing to appoint an expert	Higher Regional Court Munich, 29.10.2009, File Number 34 Sch 15/09 Published in: BeckRS 2009, p 86918		X	A party challenged an award, claiming that the arbitral tribunal failed to hear an expert-witness. The Court held that the decision whether or not a witness is relevant to the decision is left to the arbitral tribunal. The Court found that the arbitral tribunal, having assessed the written expert opinion, was entitled to conclude that hearing the expert-witness was not relevant for its decision. Therefore, the challenge was dismissed.
	Higher Regional Court Munich, 20.04.2009, File Number 34 Sch 17/08 Published in: BeckRS 2009, p 12100		X	The party submitted a request to annul an award, claiming that the arbitral tribunal had failed to appoint an expert. The Court dismissed the challenge, stating that in the view of the arbitral tribunal this had not been necessary. As the arbitral tribunal had considered the relevance of the experts' opinion, its conclusion had to be accepted by the Court and could not be verified as this was prohibited by the principle that there is no "*révision au fond*".
Refusing or limiting expert cross-examination				
D. Other evidentiary matters				
Disregarding evidence produced in breach of the procedural calendar				
III. Procedure in general				

GERMANY Torsten Löercher, CMS Hasche Sigle				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failing or refusing to order a site visit				
Refusing or limiting witness/expert cross-examination				
Failing to answer each argument raised by the parties	Higher Regional Court Frankfurt, 06.05.2010, File Number 26 Sch 4/10 Published in: BeckRS 2013, p 22822	X		A party submitted a request to set aside an award, stating that the arbitral tribunal had violated the party's right to be heard by not taking note of and considering substantial facts presented by the party in its decision. During the arbitral procedure, the party presented all the important details concerning the damage it had suffered. The arbitral tribunal rejected the claim, stating that the party had not sufficiently explained the damages. The Court set aside the award, stating that as the other party was bearing the burden of proof, the applicant had presented all the relevant details. Also, the award suggested that the arbitral tribunal had completely disregarded the applicant´s submission relevant to the case.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Higher Regional Court Munich, 20.04.2009, File Number 34 Sch 17/08 Published in: BeckRS 2009, p 12100		X	The Court clarified that an arbitral tribunal has to consider all the details given by the parties and decide whether or not they are relevant to the decision. If the arbitral tribunal comes to the conclusion that they are irrelevant, it does not have to mention them in the award. Therefore, silence does not allow the conclusion that arguments have been disregarded. If there is evidence that the arbitral tribunal dealt with the given details, the party is not violated in its right to be heard.
	Higher Regional Court Frankfurt, 28.10.2010, File Number 26 SchH 3/09 Published in: BeckRS 2010, p 29009		X	A party submitted a request to annul an award claiming to be violated in its right to be heard as the arbitral tribunal failed to address every argument in the award given by the party. The court stated that the arbitral tribunal did not breach the party´s right as it took note of every argument but did not consider them relevant to the decision.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Higher Regional Court Munich, 24.08.2010, File Number 34 Sch 21/10 Published in: NJOZ 2011, p 413		X	A party challenged an award stating that the arbitral tribunal did not respond to the applicant´s submission concerning the accusation of bias by a party to the proceedings. The Court dismissed this challenge, arguing that the arbitral tribunal was not obliged to deal with all the details of the party´s assertion, especially if it considered the arguments presented to be digressive. As in the arbitral tribunal´s opinion the party´s assertion was digressive and this legal view could not be seen as arbitrary, the arbitral tribunal acted within its powers when dismissing the party´s application.
	Federal Supreme Court, 14.05.1992, File Number III ZR 169/90 Published in: Neue Juristische Wochenschrift (**NJW**) 1992, p 2299		X	A party challenged an award, claiming the aribitral tribunal had not dealt with all of the party´s assertions as its reasoning did not contain information on the conclusiveness of the party´s motion to take evidence. The Court stated that the arbitral tribunal was not obligated to deal with every part of the party´s assertions in its award, it just had to consider it. An award can violate the right to be heard if it is based on the fact that the arbitral tribunal did not accept and consider the party´s assertions, which did not happen in the present case; therefore the challenge was dismissed.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Federal Supreme Court, 26.09.1985, File Number III ZR 16/84 Published in: NJW 1986, p 1436	X		The Court set aside an award, arguing that the arbitral tribunal had failed to deal with a specific assertion by the party as the arbitral tribunal held an assertion that actually was disputed to be undisputed. The Court stated that the arbitral tribunal is not only obligated to give the parties the opportunity to present whatever they deem necessary, but also to take note of the party´s assertions and consider them. As the arbitral tribunal based its decision on the assumption that one party´s submissions were uncontested, it apparently had ignored their denial by the other party.
	Higher Regional Court Munich, 12.04.2011, File Number 34 Sch 28/10 Published in: SchiedsVZ 2011, p 230		X	A party submitted a request to set aside an award, claiming that the arbitral tribunal in its award had rejected the party's assertions for lack of relevance and lack of substantiation, without previously having pointed this out to the party, thus depriving the party of the opportunity to react and present additional assertions. The Court dismissed the challenge: there was neither a general obligation for the arbitral tribunal to give information or ask questions, nor a general right of the parties to participate in a legal discussion. The right to be heard only required a notification if the arbitral tribunal intended to deviate from a previously communicated or otherwise expressed legal point of view, which in the present dispute was not the case.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Higher Regional Court Munich, 05.10.2009, File Number 34 Sch 12/09 Published in: BeckRS 2011, p 08217		X	A party requested to set aside an award, claiming the award to be a surprising decision which violated its right to be heard. The Court held that an award could only then be set aside if the arbitral tribunal´s solution was based on legal considerations which could not be anticipated by the parties. As this was not the case, the party´s challenge was dismissed.
	Higher Regional Court Dresden, 18.02.2009, File Number 11 Sch 7/08 Published in: BeckRS 2011, p 08223		X	A party challenged an award, stating the arbitral tribunal´s decision was surprising concerning a certain legal opinion and that as a consequence, its right to be heard was violated. The Court clarified that the violation of the right to be heard could lead to the annulment of the award only if the award had possibly been different had the Tribunal given the party the possibility to comment on the arbitral tribunal´s legal opinion. As the party had failed to explicitly state how it would have acted if it had known the arbitral tribunal´s legal opinion, the challenge was dismissed.
	Higher Regional Court Munich, 24.08.2010, File Number 34 Sch 21/10 Published in: NJOZ 2011, p 413		X	A party challenged an award claiming the violation of the right to be heard as the arbitral tribunal had failed to notify the parties of its intention to render an interlocutory judgement and therefore the party could not comment on it. The Court dismissed the application stating that the arbitral tribunal is not obligated to discuss all aspects in favor or against a party, as long as it "*considers the questions and problems relevant to the decision*".

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Higher Regional Court Munich, 29.10.2009, File Number 34 Sch 15/09 Published in: BeckRS 2009, p 86918		X	The party claimed the reasoning of the award to be surprising and thus a violation of its right to be heard. The Court held that this right included that the parties must be able to comment on all the facts and evidence on which the arbitral tribunal intended to base its decision but it neither contained a general duty to clarify or ask questions nor a general right of the parties to a legal discussion.
	Higher Regional Court Stuttgart, 30.07.2010, File Number 1 Sch 3/10 Published in: SchiedsVZ 2011, p 49		X	The party challenged an award, claiming that the Tribunal had failed to notify it about its intended interpretation of the law and therefore deprived it of the opportunity to comment. The Court stated that the Tribunal was not obligated to notify the parties of its intended interpretation. A violation of the right to be heard might be considered if the judge deviated from a legal opinion expressed in the proceedings and the parties had refrained from continuing to present further submissions, confiding in this opinion. Since this had not happened, the challenge was dismissed.
	Federal Supreme Court, 10. 10. 1951, File Number II ZR 99/51 Published in: NJW 1952, p 27	X		A party challenged an award, claiming that it was not given the possibility to participate in a hearing of evidence and was therefore violated in its right to be heard. The Court set aside the award stating, that this right ensures the parties' right and opportunity to present all the information they consider relevant to the decision, which generally had to include the party´s right to participate in the hearing of evidence, as otherwise the "*right to be heard dwarfs*".

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Federal Supreme Court, 08.10. 1959, File Number VII ZR 87/58 Published in: NJW 1959, p 2213		X	The Court stated that the violation of the right to be heard alone does not lead to an annulment of the award. This right is a procedural rule which only serves to find the correct material law. Therefore, in the event of a violation, it must be asked whether this has led to or at least could have led to a wrong decision, precisely whether or not the award is based on this violation. If this is not the case – as in the present case - the violation is considered irrelevant.
Other procedural errors	Higher Regional Court Cologne, 26.02.2014, File Number 19 Sch 12/13 Published in: SchiedsVZ 2014, p 203		X	A party challenged an award, claiming the arbitral tribunal did not comply with the rules of procedure. In the arbitration agreement, the parties had agreed on English as the language of the case, yet in the arbitration procedure, Moldavian was the procedural language. The Court stated that although generally the conduct of arbitration proceedings in a language other than the agreed language can lead to an annulment of the award, in this case the challenge had to be dismissed: the party did not show how the use of the wrong language had had an adverse effect on the award.

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
I. Submissions				
A. Written submissions				
Written submissions filed in breach of the procedural calendar	*Pacific China Holdings Ltd (in Liquidation) v Grand Pacific Holdings Ltd* [2012] HKCA 200, Hong Kong Court of Appeal (9 May 2012)		X	The arbitral tribunal permitted Grand Pacific Holdings ("GPH") to submit pre-hearing submissions zero working days before the hearing and 10 days after Pacific China Holdings' ("PCH") submission was filed, despite the procedural timetable providing for simultaneous exchange of submissions. During set aside proceedings PCH argued that it was not able to respond to GPH's submission, and that GPH had the benefit of making its submission having already reviewed PCH's submission. The Court of Appeal disagreed and found that there was no breach of procedural fairness. The arbitral tribunal had extended the timeline for GPH to file its submission because it considered that GPH had been prejudiced by PCH's late amendment raising an issue regarding Taiwanese law. This was a matter for the arbitral tribunal to decide on, and except in the most egregious cases, arbitrators have wide discretion and flexibility in respect of the arbitral process. Separately, PCH argued that the arbitral tribunal had refused to allow it to respond to GPH's submissions on the relevance of Hong Kong law. The arbitral tribunal stated that it had sufficient material to decide the issue, and did not allow further submissions to be filed on it. The arbitral tribunal

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
				later relied on the GPH's submissions on the relevance of Hong Kong law in its Award. PCH argued that this constituted a breach of procedural fairness as it was unable to present its case. The Court of Appeal again disagreed, finding that the tribunal was entitled to take the view that the Hong Kong law issue was raised at a late stage of the proceedings, and that PCH had already had two opportunities to make submissions on it. Given the circumstances, the arbitral tribunal was entitled to hold that submissions on the issue ended with GPH's submission. Finally, PCH argued that the arbitral tribunal permitted evidence on foreign law to be submitted by GPH one day before an evidential hearing, but did not permit PCH to rely on three foreign law authorities submitted in breach of the procedural timetable. PCH argued that this was a breach of procedural fairness. The Court of Appeal disagreed, finding that it was not entitled to interfere with such case management decisions, which were fully within the Tribunal's discretion.
Refusing to allow additional written submissions				
B. Oral submissions				
Disregarding oral submissions filed in breach of the procedural calendar				

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
Refusing to allow additional oral submissions	*Kenworth Engineering v Nishimatsu Construction Co Ltd* [2004] HKCU 593, Court of First Instance (25 May 2004)		X	Kenworth had applied to the arbitrator for an oral hearing in relation to matters which ultimately became the subject of an interim award dealing with procedural issues. The arbitrator rejected this request, reasoning that having an oral hearing would not be worth the delay and cost. Kenworth sought to set the award aside on the following grounds: (i) the arbitrator failed to properly consider its request for an oral hearing; (ii) the arbitrator should have held an oral hearing having found there were underlying factual issues that were disputed; (iii) the arbitrator based his decision on considerations that had not been advanced by Kenworth; and (iv) the arbitrator reached a wrong decision or a decision he would not have reached had he held an oral hearing. The court declined to set the award aside, finding that the arbitrators' "common sense" reasoning could not be criticised for being unfair or otherwise indicative of misconduct.
II. Evidence				
A. Documentary evidence				
Disregarding new evidence filed in breach of the procedural calendar				
Refusing to order the production of documents for requests made in				

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		Yes	No	
breach of the procedural calendar				
Refusing to order additional discovery on request of one party; permitting party to submit evidence outside the procedural timetable; refusing to consider expert evidence	*L v B* [2016] HKCU 1165, Court of First Instance (25 April 2016; 5 May 2016)		N/A	The respondent sought to adjourn enforcement proceedings in Hong Kong in light of set aside proceedings pending at the seat of the arbitration. As part of its decision on whether to adjourn the proceedings, the Hong Kong court had to assess the strength of the respondent's arguments that the award was invalid, including its arguments based on the arbitral tribunal having (i) rejected and ignored its submissions on the appropriate remedies and quantum of damage, (ii) permitted the claimant to produce additional documents on the eve of the hearing (which were also in the possession of the respondents but had not been disclosed), (iii) refused its application for further discovery, and (iv) rejected expert evidence filed by it. The Hong Kong court opined that all of these were case management decisions within the authority of the tribunal, and that the respondent had already been given a full opportunity to make submissions and argue its case.
Refusing to order the production of certain documents requested	*Re New May Landscape Ltd* [2007] HKCU 1222, Hong Kong Court of First Instance (19 July 2007)		X	The arbitral tribunal refused to order production of certain documents as it found that they were not relevant to one of the claims in the arbitration. The arbitral tribunal later rejected this claim for lack of evidence. The respondent argued that the award should be set aside because the arbitral tribunal

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
				could not have rejected the claim for lack of evidence given that it had refused to order discovery. The Court disagreed, holding that the arbitral tribunal was correct in finding that the documents requested were not relevant.
Refusal of application to inspect original documents	*Tronic International Pte Ltd (Singapore) v. Topco Scientific Co Ltd (Taiwan) & Others* [2016] HKCU 1948, Hong Kong Court of Appeal (15 August 2016)		X	The claimant argued that the arbitral tribunal's refusal to allow it to inspect the original documents relied on by the respondents in their counterclaim prevented it from properly presenting its case. The court held that it was not open to it to rule on the correctness of procedural decisions taken by the arbitral tribunal, as it was only concerned with the fairness of the overall process. As the arbitral tribunal had afforded both sides the opportunity to make submissions on the inspection application, there was no failure of due process.
Refusing to accept evidence proffered	*Paloma Co Ltd v Capxon Electronic Industrial Co Ltd* [2018] HKCU 1846, Hong Kong Court of First Instance (25 May 2018)		X	The respondents in the case sought to contest enforcement of the award against them, arguing that it would be contrary to public policy. They argued that the arbitral tribunal had unfairly formed a presumption against their case on the basis of certain alleged admissions in reports they had prepared in response to the claimant's queries. The respondents argued that they had not made any such admissions and had raised this as an issue with the tribunal; however, the arbitral tribunal failed to consider it and without any justification came to a conclusion that they had made such admissions. The respondents argued that because of this, the arbitral

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		Yes	No	
				tribunal reversed the burden of proof resulting in prejudice to the respondent, in violation of Japanese law and amounting to a serious irregularity under Hong Kong law. Additionally, the arbitral tribunal refused to accept contrary evidence from the respondent rebutting its admissions. The Court found that there had not been any bias or impermissible reversal of the burden of proof. It declined to look into the reasoning of the tribunal and the merits of the award, and held that there was nothing justifying refusal of enforcement under public policy grounds.
B. Witnesses				
Refusing to hear witness evidence	*P v S* [2015] HKEC 1707, Hong Kong Court of First Instance (19 June 2015)		X	During the arbitration the arbitral tribunal sought submissions from the parties as to whether the proceeding should be conducted on a documents-only basis, and as to whether oral evidence was required. The arbitral tribunal eventually ordered a documents-only arbitration, and refused the respondent's application to adduce factual evidence. The respondent sought to set aside the award, arguing that by not being able to adduce witness statements and factual evidence it was unable to present its case. The Court declined to set aside the award, finding that it was within the arbitral tribunal's case management powers to order a hearing on a

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
				documents-only basis and to refuse the respondent's application to adduce factual evidence. During set aside proceedings it was not sufficient to argue that factual evidence could have been filed; rather, the respondent had to show that there was evidence that could have materially affected the award that it was unable to present as a result of the arbitral tribunal's decision. Based on the facts, the Court declined to find that there was a serious error in the conduct of the arbitration, or that the respondent had been materially prejudiced.
Calling of a witness on the Tribunal's own motion/relying on witness statements not invoked by the parties				
Refusing or limiting witness cross-examination	*Brunswick Bowling & Billiards Corp v Shanghai Zhonglu Industrial Co., Ltd* [2009] 5 HKC 1, Hong Kong Court of First Instance (13-15 January, 10 February 2009)		X (set aside on other grounds)	The arbitral tribunal had initially issued a procedural order, following agreement by the parties, regarding the length of time allocated to each party for the hearing. During the hearing, the arbitral tribunal after hearing submissions from the Parties ordered that the hearing be extended by 3 days because additional time had to be allotted for translation. Since many of the respondent's witnesses needed translation, most of the additional time was allocated to the claimant for cross-examination. The respondent argued that this was a breach of the agreed arbitration procedure and equal treatment of the parties. The Court disagreed. Given that most of the

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
				respondent's witnesses needed translation and the claimant's did not, the Tribunal in allocating additional time to the claimant was actually acting in line with its obligations to ensure equal treatment of the parties.
C. Experts				
Refusing or limiting irrelevant expert evidence				
Failing or refusing to appoint an expert				
Refusing or limiting expert cross-examination				
Parties not afforded opportunity to comment on expert evidence	*Paklito Investment Limited v Klockner East Asia Limited* [1993] HKCU 0613, Hong Kong Court of First Instance (4, 15 January 1993)	**X**		The arbitral tribunal retained its own experts to carry out investigations into certain factual issues, as permitted by the applicable CIETAC rules at the time. Shortly following the publication of the experts' report, the arbitral tribunal issued its award. No opportunity was provided to either of the parties to comment on the report, even though the respondent informed the tribunal and CIETAC that it wished to do so. The Court found that the tribunal's experts' report caused the respondent to be confronted with a "very different" case than it had expected, given that it had expressly and vigorously argued against the retention of experts during the proceedings. Under the circumstances, the respondent should have been given an opportunity to respond to the new expert evidence and indeed had a "basic right" to do so.

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
				The arbitral tribunal's failure to provide such an opportunity meant that the respondent was prevented from presenting its case.
	Shandong Textiles Import and Export Corporation v Da Hua Non-Ferrous Metals Company Limited [2002] 2 HKC 122, Hong Kong Court of First Instance (28-29 January 2002, 6 March 2002)		**X**	During the hearing the arbitral tribunal made reference to an expert's report that the respondent argued had not been provided to the parties. However, the Court found that the parties had indeed been provided the report in the form of a piece of paper containing the calculations used. Furthermore, the court did not think that the respondent was disadvantaged even if it could be said that it had not been provided a copy of the report. There was accordingly no unfairness or inequality.
	Hebei Import & Export Corp v Polytek Engineering Co., Ltd [1999] 2 HKC 205, Hong Kong Court of Final Appeal (9 February 1999)		**X**	The arbitral tribunal conducted an inspection of a factory with some experts. During the inspection, the arbitral tribunal chairperson and the experts were accompanied by technicians affiliated with the claimant, who explained the installation and operation of the equipment. The respondent was not present. The award later drew heavily on the conclusions of the experts. The Court held that there was no failure of due process, as the respondent was given a copy of the expert report and had an opportunity to respond to it. The respondent did not indicate that it wished to contest any part of it or to present a case in response to the report. Accordingly, the Court rejected the respondent's argument that it was unable to present its case.

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
D. Other evidentiary matters				
Evidence produced in breach of the procedural calendar				
Refusing to admit new evidence after close of proceedings	*Qinhuangdao Tongda Enterprise Development Co & Other v Million Basic Co Ltd* [1993] HKCU 605, Hong Kong Court of Instance (17 December 1992, 5 January 1993)		**X**	After the arbitral tribunal had fixed a date for final submission of evidence, the respondent in the arbitration sought to introduce new evidence relating to a counterclaim it had filed in the arbitration. The respondent's counsel arranged for a meeting with the chairperson of the tribunal through CIETAC's registrar, where he showed the chairperson this new evidence. The respondent alleged that the chairperson then instructed it to prepare a detailed submission on the evidence to the tribunal, although evidence from CIETAC denied that the chairperson had the power to make such an order, or that he did make such an order. The arbitral tribunal then rendered its award on the same day the respondent submitted this detailed submission, failing to take this submission into account. The respondent then attempted to resist enforcement of the award in Hong Kong by arguing (among other things) that it had been denied an opportunity to present its case. The Court rejected this argument, finding that on the facts the chairperson had not issued any instruction to prepare a detailed submission. Moreover, the respondent had made a full application dealing with the merits when filing its counterclaim, and was represented at

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
				the hearing and had made oral submissions. Further submissions were filed after the hearing. Furthermore, it were aware of the deadline for the submission of evidence. Public policy requires that all proceedings have a finite end, and the respondent could not reasonably expect the proceeding to carry on indefinitely. Once the tribunal has set a date for the end of the proceedings, barring exceptional circumstances parties may not go to the arbitral tribunal with new evidence and demand an opportunity to be heard. In light of the above, the Court found that the respondent had been afforded a reasonable opportunity to be heard and enforced the award.
	Shanghai Fusheng Soya Food Co Ltd & Anor v Pulmuone Holdings Co Ltd [2014] HKCU 1201, Hong Kong Court of First Instance (1, 25 April 2014)		X	After closure of the proceedings, the respondents wrote to the arbitral tribunal notifying it of a court judgment that would have assisted them. The arbitral tribunal wrote to the parties noting that as the proceedings had been declared closed parties could not produce further evidence unless requested by the arbitral tribunal. The arbitral tribunal asked if the claimants would consent to the new evidence being admitted, which was rejected by the claimants. The arbitral tribunal proceeded to render its award and did not take this new evidence into account. The respondents sought to set aside the award, arguing that it was contrary to the public policy of Hong Kong since the arbitral tribunal had failed to

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
				take note of the judgment, even though the judgment decided the same issues raised in the arbitration and was binding on the parties to the arbitration. The Court rejected this argument, finding that there had been no failure of due process. The respondents had a fair opportunity to present their case on all issues raised in the arbitration, and no injustice was caused as a result of the existence or effect of the judgment.
	U v A & Others [2017] HKCU 599, Hong Kong Court of First Instance (23 February 2017)		X	The arbitral tribunal disallowed submission of a foreign judgment involving one of the respondents in the arbitration that, according to the respondents, would have conclusively settled an issue of PRC law that had to be determined in the arbitration. The arbitral tribunal reasoned that the attempted submission was belated, and that in any case it was irrelevant. The respondents argued that as a result they were unable to present their case. The Court declined to set aside the award, holding that the arbitral tribunal was fully entitled to impose timetables for the filing of evidence in the proper exercise of its case management and procedural discretion. In any event, the Respondents had submitted expert reports on the PRC law issue and were not denied an opportunity to present their case.

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
III. Procedure in general				
Failing or refusing to order a site visit				
Refusing or limiting witness/expert cross-examination				
Failing to answer each argument raised by the parties	*Zebra Industries (Orogenesis Nova) Ltd v Wah Tong Paper Products Group Ltd* [2012] HKCU 1308, Hong Kong Court of First Instance (21 March 2012, 20 June 2012)	Remitted to tribunal		The Court in this case found that the arbitral tribunal had failed to address a number of issues that had been raised by the claimant, including in an amended claim filed after the oral hearing. The court remitted the case back to the tribunal for further consideration.
Refusing adjournment of the procedural deadline	*Karaha Bodas Co. LLC v Persusahaan Pertambangan Minyak Dan Gas Bumi Negara (No.2)* [2003] 4 HKC 488, Hong Kong Court of First Instance (7-9, 17 January, 12,27 March 2003)		X	Pertamina, the respondent in the arbitration, sought to contest enforcement in Hong Kong based on (among others things) the arbitral tribunal's refusal of Pertamina's application for adjournment and additional document discovery following the claimant's rebuttal filing, which Pertamina argued raised a fundamentally new case. The Court rejected Pertamina's arguments. In respect of the adjournment application, the Court held that the alleged new case was not so new as to cause it to depart from the basic principle that procedural matters are essentially matters for the arbitral tribunal. On the discovery issue, the Court also noted that Pertamina had been given the opportunity to argue for discovery at the end of the hearing but elected not to do so, and so could not complain about the

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
				issue now. Note: the case was appealed on other grounds.
	Tronic International Pte Ltd (Singapore) v. Topco Scientific Co Ltd (Taiwan) & Others [2016] HKCU 1948, Hong Kong Court of Appeal (15 August 2016)		X	The arbitral tribunal refused to stay the arbitral proceedings pending outcome of related criminal proceedings in Taiwan pertaining to forgery committed by the respondent's employees. The Court held that the arbitral tribunal's decision was not wrong, nor did it have a sufficiently significant impact on the claimant's case as to render the claimant unable to present its case.
Participation in the proceedings	*Sun Tian Gang v Hong Kong & China Gas (Jilin) Ltd* [2017] 1 HKC 69, Hong Kong Court of First Instance (21 September 2016)	X		Notice was not validly served on the respondent in the arbitration, and as the respondent had been detained in China he was unable to participate in the arbitration. The arbitral tribunal allowed this and proceeded to an award. The Court held that as the respondent had not been able to participate in the arbitration, he was unable to present his case.
	樓外樓房地產咨詢有限公司 對 何志蘭[2015] HKCU 914, Hong Kong Court of First Instance (24 April 2015)	X		The respondent sought to contest enforcement in Hong Kong by arguing that he was not able to participate in the proceedings and so was unable to present her case. The claimants had served the Notice of Arbitration on the respondent's Hong Kong address, but the Respondent was not living there when the notice arrived. The notice was returned to the arbitral institution. Nonetheless, under the relevant rules service was deemed to be valid and a hearing was held in respondent's absence leading to an award against her.

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
				The Court held that under the circumstances the respondent did not receive proper notice of the arbitral proceedings and therefore was unable to present her case. The Court denied enforcement of the award in Hong Kong.
	Chongqing Machinery Import & Export Co Ltd v Yiu Hoi, Cheung Shing Yau and Luen Wing Marine Transit Limited Trading as Tin Lee Ship Building & Trading Company [2001] HKCU 1281, Hong Kong Court of First Instance (11 October 2001)		X	During enforcement proceedings in Hong Kong, the respondents argued that they did not know about the arbitration and that accordingly the award should not be enforced. The court rejected this argument on the facts, finding that they did have notice since they had brought set aside proceedings at the seat and since there was ample evidence from the claimant's attorneys showing that the arbitration documents had been properly served.
Tribunal rendering award based on novel issue or reasons not raised by the parties	*Nanjing Cereals, Oils and Foodstuffs Import and Export Corp v Luckmate Commodities Trading Ltd* [1994] 3 HKC 552, Hong Kong High Court (16 September 1994)		X	The arbitral tribunal in this case rendered an award in favour of the claimant, but for an amount of damages that was less than originally sought. The arbitral tribunal stated that "through independent investigation", it had concluded that the quantum of damages should be lower. The respondent sought to resist enforcement in Hong Kong by arguing that it had not been given an opportunity to present its case on the quantum issue. The Court rejected this argument and went on to enforce the award, holding that even though the respondent was not told about the evidence the tribunal had gathered for itself and so had not been given the chance to question it, nonetheless they had

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
				ample opportunity to present their own evidence as to quantum during the arbitration but had failed to do so even though this was clearly an issue before the arbitral tribunal. Accordingly the defendants had to live with the consequences of their failure. Further, the respondent had accepted that because of the arbitral tribunal's independent investigations the award was lower than what had been argued for by the claimant; accordingly, there was nothing for it to complain about. The Court thought that this was grounds for it to exercise its discretion to enforce the award in spite of the arguments now raised by the respondent.
	Apex Tech Investment Ltd. v Chuang's Development (China) Ltd. [1996] HKCU 0479, Hong Kong Court of Appeal (15 March 1996)	X		In an enforcement case, the arbitral tribunal carried out its own investigations into certain Chinese law issues, as permitted by the applicable CIETAC rules at the time. The arbitral tribunal did not provide the parties with an opportunity to comment. The Court of Appeal held that the respondent was unable to present its case, because the arbitral tribunal had conducted its own inquiries on a question that was directly relevant to the main issue in the arbitration – whether an agreement for sale was valid under PRC law – without giving the respondent notice of the result of the inquiries made or the opportunity to make further submissions. The Court of Appeal went on to decline enforcement of the award, as it was unable to conclude that if the defendant had

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
				been given the opportunity to make further representations to the arbitral tribunal after it had made its own inquiries, that could not have affected the outcome of the award.
	Gingerbread Investments Ltd v Wing Hong Interior Contracting Ltd [2008] 2 HKC 299, Hong Kong Court of First Instance (5, 14 March 2008)		X	Gingerbread sought to remove an arbitrator for misconduct based on a discovery order made by the arbitrator. Gingerbread argued that the arbitral tribunal (i) made wrong assumptions of fact, or had been supplied with or generated evidence as to such facts, that it failed to disclose, and (ii) wrongly assumed that the burden of proof was on Gingerbread. Gingerbread argued this meant that it did not have an opportunity to present its case on these assumptions of fact or in respect of the erroneous assumption relating to the burden of proof. The Court rejected both arguments, finding on the facts that (i) there was evidence in the record on which the arbitral tribunal could have based its findings on and that accordingly it had not made any wrong assumptions of fact, and (ii) the arbitral tribunal's choice of words did not show that he had reversed the applicable burden of proof. The court further found that in any case these were mere errors of law.
	Brunswick Bowling & Billiards Corp v Shanghai Zhonglu Industrial Co., Ltd [2009] 5 HKC 1, Hong Kong Court of First Instance (13-15 January, 10 February 2009)	X		During set aside proceedings the respondents alleged that (i) the tribunal had embarked on its own assessment of the requirements on the validity of

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
				contracts under PRC law, (ii) the arbitral tribunal had decided the claimant's conversion claim under PRC law although both sides had argued that Illinois law governed the claim, and (iii) the arbitral tribunal had awarded damages based on loss of revenue even though the parties' pleadings had focused on loss of profits. The Court rejected the respondent's argument under (iii), holding that the arbitral tribunal's determination of quantum did not depend on any findings of primary fact not raised by the parties. The arbitral tribunal had merely drawn different conclusions from the parties as to how damages should be quantified based on the evidence canvassed. However, the Court accepted the respondent's arguments under (i) and (ii). Because the arbitration was seated in Hong Kong, issues of PRC law were factual disputes to be decided on the evidence. Further, the arbitrators had not been appointed because of their expertise in PRC law, and therefore they should have given the parties an opportunity to comment on their views of PRC law before reaching their decision. The arbitrators' failure to do so with respect to the issue of contract validity under PRC law and the conversion claim meant that the respondents were unable to present their case in both instances.

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
				The Court went on to set aside the award under (ii), as it found that in respect of (i) the arbitral tribunal had decided the issue on several other bases and would have reached the same conclusion even without the due process violation.
	Pacific China Holdings Ltd (in Liquidation) v Grand Pacific Holdings Ltd [2011] HKCFI 424, Hong Kong Court of First Instance (29 June 2011) *Pacific China Holdings Ltd (in Liquidation) v Grand Pacific Holdings Ltd* [2012] HKCA 200, Hong Kong Court of Appeal (9 May 2012)		X	As part of its award the tribunal relied on New York law authorities that had not been referred to by the parties or submitted by them. The respondents argued that this was a violation of due process as they were not given the opportunity to respond to these authorities. The Court of First Instance held that although tribunals should refer parties to new authorities that they come across so that the parties have an opportunity respond, nevertheless the tribunal's failure in this instance did not violate due process. The Tribunal members were sufficiently familiar with New York law, and were "perfectly capable" of dealing with New York law issues without further submissions from the parties. The Court of Appeal agreed.
	Pang Wai Hak v Hua Yunjian [2012] 3 HKC 575, Hong Kong Court of First Instance (22 June 2012)		X	In its award the arbitrator rejected the respondent's defence that the claimant's claim was time-barred because (i) it had not been formally pleaded, and (ii) the respondents' fact witnesses had not given any concrete evidence in support of their contention that the claim was time-barred. The respondents argued that the award should be set aside as these reasons

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
				had not been raised by either party or the tribunal during the proceedings. The Court agreed that (i) was a novel reason and constituted a violation of due process – had it been raised the respondents would have sought to amend their pleadings to formally raise it. However, the same could not be said for (ii). The arbitrator was fully aware of the parties' contentions on the issue and had merely found that there was insufficient evidence given to support it. Accordingly, the court declined to set aside the award, holding that even though (i) violated due process the arbitrator had provided an independent ground for dismissing the defence under reason (ii).
	X Chartering v Y [2014] HKCU 690, Hong Kong Court of First Instance (3 March 2014)		X	The arbitral tribunal had applied a method of calculating damages that neither party had raised or argued during the proceedings, and that was instead based on the parties' experts' opinion. The respondent argued that as a result it was denied an opportunity to present its case against the method of calculation of damages ultimately awarded. The Court rejected this argument, reasoning that both parties had been able to fully present their respective arguments, and that they had ample opportunity to cross-examine the experts.
	Po Fat Construction Co Ltd v Io of Kin Sang Estate [2014] 2 HKC 254, Hong Kong Court of First Instance (6 November 2013)		X	The respondent sought to set aside the award in Hong Kong arguing (among other things) that the tribunal had made certain findings against it that

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
				were not issues pleaded by the parties. Accordingly, the respondent argued that it had not been given the opportunity to present its case. The Court disagreed, finding that these issues could not be said to be unpleaded given the submissions put before the arbitral tribunal. In any case, the Court did not think that under the circumstances, this was sufficiently serious or egregious to justify setting aside the award.
	China Solar Power (Holdings) Ltd. v ULVAC Inc. [2015] HKCU 2931, Hong Kong Court of First Instance (6 November 2015)		X	The arbitration arose from an arbitration clause contained in a turnkey agreement. The arbitrator issued a partial award finding that he did not have jurisdiction to consider a counterclaim based on an earlier strategic alliance agreement entered into by the parties. The Court found that the issue as to lack of jurisdiction had not been properly pleaded because the claimant did not dispute jurisdiction in its defence to the counterclaim. Accordingly, prima facie at least, the respondent had not been afforded the opportunity to present its case on the issue. Nevertheless, the Court declined to set aside the award, finding that there was no violation of due process because the arbitrator's specific reasoning for declining jurisdiction had been based on arguments raised during the arbitration, even though these arguments related to a different issue.
	China Property Development (Holdings) Ltd. v Mandecly Ltd. [2016] HKCU 1225, Hong Kong Court of Appeal (24 May 2016)	X		The first claimant ("CPDH") had entered into a share sale agreement to acquire the second claimant ("BPP"). CPDH and BPP commenced arbitration against the sellers when a dispute arose among the

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
				parties out of the share sale agreement. The respondents counterclaimed for RMB 10 million against BPP, but not CPDH. Yet in its award, the arbitral tribunal ordered CPDH, and not BPP, to pay RMB 10 million to the respondents. The Court found that this was a clear irregularity and that CPDH had been denied an opportunity to present its case. The Court set aside this part of the award.
	S Co v B Co [2014] 6 HKC 421, Hong Kong Court of First Instance (24 July 2014)		**X**	The applicant submitted that in dismissing the respondent's jurisdictional challenge, the arbitral tribunal had referred to certain authorities not cited by the parties and that the parties were not given any opportunity to make submissions on the authorities. Finding that this did not amount to a serious irregularity, the Court declined to set aside the award.
Failing to address issues raised	*A v B (arbitral award: setting aside)* [2015] 3 HKLRD 586, Hong Kong Court of First Instance (15 June 2015)	Remitted to the arbitral tribunal.		The arbitral tribunal had failed to deal with a defence relied upon by A in the arbitration: that the claims made by B were time-barred under the express provisions of the underlying contract. The arbitral tribunal did not give any reasons for its rejection of the limitation defence. B brought an action for setting aside of the award under public policy grounds. The Court held that reading the award in its entirety, and in the context of how the issues had been argued before the arbitral tribunal, the reasons

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
				expressed in the award were insufficient to enable A to understand how, and why, the limitation defence was rejected. Finding that there was a denial of due process that caused substantial injustice and unfairness, the court held that enforcement would offend notions of justice. The court remitted the award to the arbitral tribunal.
	Vigour Ltd v Hyundai Engineering and Construction Co Ltd [2008] HKCU 1306, Hong Kong Court of First Instance (23 August 2008)		X	The respondent sought to challenge an arbitral award on grounds that the arbitrator had failed to address one of its factual arguments. The Court rejected this argument, finding that the arbitral tribunal had rightly concluded in its award that this factual argument had not been properly pleaded by the respondent.
Arb-Med procedure	*Gao Haiyan & Anor v Keeneye Holdings Ltd & Anor* [2012] 1 HKC 335, Hong Kong Court of Appeal (2 December 2011)		X	The dispute concerned an arbitration-mediation procedure that took place before the Xian Arbitration Commission ("XAC"). The circumstances of the mediation session are noteworthy: (i) the mediation took the form of a private dinner meeting; (ii) it was not held in the presence of both parties; and (iii) the mediators, which included a member of the arbitral tribunal, appeared to make a settlement proposal on their own initiative. These facts led the Court of First Instance to refuse enforcement of the award on grounds of apparent bias. The Court of Appeal reversed the CFI and enforced

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		Yes	No	
				the award, holding that the applicant had waived its right to object to the arbitration-mediation procedure during enforcement proceedings given that it had failed to do so during the arbitration itself. The Court also considered that due weight had to be given to how mediation worked in Xian, and taking that into account declined to make a finding of apparent bias.
Failing to give one respondent an opportunity to present its case	*KB v S & ors* [2016] 2 HKC 325, Hong Kong Court of First Instance (15 September 2015)		X	The arbitral tribunal rendered a number of awards against three respondents. During enforcement proceedings in Hong Kong, the third respondent argued that it had been unable to present its case in the arbitration. The Court found that the third respondent had failed to identify any issue relevant to its liability and rights under the contract but which had not been presented to and dealt with by the arbitral tribunal. Under such circumstances the third respondent was not prejudiced in any material way. Further, the Court held that by remaining silent during the arbitration and keeping its complaint up its sleeve, the third respondent deprived the arbitral tribunal of the opportunity to rectify this alleged irregularity. This demonstrated that it was not acting in good faith, and that its application for non-enforcement of the award amounted to an abuse of court process.

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Situations	**Reference to case law**	**Setting aside/ annulment**		**Reasoning**
		Yes	No	
Extension of time to render award	*Shenzhen City Tong Ying Foreign Trade Corporation Limited (formerly known as Shenzhen Tong Ying Foreign Trade Corporation) v Alps Company Limited* [2001] HKCU 985, Hong Kong Court of First Instance (15 October 2001)		X	The CIETAC arbitral tribunal obtained a letter from CIETAC allowing it to render its award after the 9-month period that was required under the rules at the time. CIETAC allowed this time extension because it considered that the tribunal's request to "further investigate" the relevant facts was a proper reason. The respondents sought to contest enforcement on grounds that the award was rendered out of time. The respondents argued that (i) no such "further investigation" had been conducted, and (ii) that they had not been informed of the nature, ambit, or result (if any) of such investigation and thus had been deprived of the opportunity to present their case. The Court rejected these arguments, finding that the time extension had been validly given and that there was no basis for CIETAC to have doubted the tribunal's request.
Award based on issues beyond the scope	*W. M. Construction Limited v Chi Lik Window Works Limited* [1997] HKCU 724 Hong Kong High Court (21 February 1997)	Remitted to the arbitral tribunal		During the arbitration, the respondent objected to the Reply filed by the claimant, which set up new causes of action and relied on new facts. The respondent asked the tribunal to strike out those parts of the Reply that contradicted or departed from the initial Statement of Claim. The arbitral tribunal responded by issuing a direction stating that the causes of action in the claim and counterclaim would be limited to those contained in the Statement of Claim and Statement of Defence. The arbitral

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		Yes	No	
				tribunal later issued an award, and in its reasons it was clear that it did not limit the claimant to its cause of action pleaded in the Statement of Claim. The respondent sought to set aside the award on the grounds that (among others) it did not get a fair hearing. The arbitral tribunal agreed, finding that the claimant had been led to believe that the tribunal would not have regard to any other causes of action, including those raised in the Reply. Had the respondent known about the approach the tribunal eventually took, it would have sought to be heard on the allegations made in the Reply. Under such circumstances, the respondent had been denied a fair hearing. The Court remitted the case to the arbitral tribunal.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
I. Submissions				
Allowing written submissions filed in breach of the calendar.	Milan Court of Appeal, First Section, 03/10/2013, n. 3615 Villa Eros s.r.l. v. Edilizia GDM s.r.l.	x	X X	A party filed for the annulment on the ground that the arbitral tribunal had accepted the new documents introduced by a party after the relevant terms had expired. The Court, in dismissing the application, held that the party had not complained during the arbitral proceedings on the arbitral tribunal's acceptance of the untimely filed submission, and was consequently barred from raising such claim only at the annulment stage.
	Court of Cassation, First Section, 17/02/2011, n. 3917 Record v. De Santis Giustizia civile Massimario 2011, 2, 264 Rivista arbitrato 2011, 4, 653		X	The Supreme Court confirmed the lower court's decision to dismiss the application to set aside the award. The Court stressed that "*the tribunal is free to conduct the proceedings in the manner deemed most appropriate*" and that in the case at stake the lawyer of the aggrieved party had been fully able to argue on the submissions.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Granting one of the parties unfair terms for submissions.	Court of Cassation, First Section, 08/01/2014, n. 131 Ymca v. Comune Bardonecchia Giustizia Civile Massimario 2014		X	A party filed for the annulment on the ground that the arbitral tribunal had granted the same terms to both parties but those terms were beneficial only to one of them. The Court of Appeal denied the application to set aside and the Supreme Court confirmed the decision, noting that the filing party "*did not indicate any specific detriment*" and had not raised such claim during the arbitral proceedings.
	Milan Court of Appeal, First Section, 27/05/2013, n. 2156 Effesistemi s.r.l. v. Serafini Edoardo		X	A party filed for the annulment complaining that the arbitral tribunal granted a single term to both parties for the contemporary reply to the introductory acts, instead of two consecutive terms as requested by the applicant, and by doing so undermined its right of defense. The Court rejected that reasoning noting that the arbitrators are free to conduct the proceedings as they deem appropriate and that both parties were fully able to present their defenses.
II. Evidence				
A. In General				

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Unfair treatment with regard to the admission and evaluation of evidence.	Milan Court of Appeal, First Section, 11/03/2013, n. 1028 Spindial s.p.a. v. Isora s.r.l.		X	A party requested the annulment of the award on the ground that the arbitral tribunal had treated the parties unfairly, namely not admitting evidences of one of the parties on allegedly newly introduced facts and on the contrary allowing ex officio a witness to testify despite the fact that that very witness was previously excluded from the list of witnesses. The Court dismissed the application to set aside the award since the parties in the arbitration clause had agreed for the arbitral tribunal to follow the rules of the Code of Civil Procedure in the conduct of the proceedings and the Appellant did not prove any violation of those rules.
	Milan Court of Appeal, First Section, 12/07/2013, n. 2855 Terra s.r.l. v. UBI Assicurazioni s.p.a.		X	A party filed for the annulment on the ground that the tribunal had not allowed the parties to introduce relevant evidence in the proceedings. The Court dismissed the application on the ground that the arbitral tribunal had validly exercised its power to evaluate the admission of evidence, since the evidence requested by the Appellant was deemed to be irrelevant to the final decision.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Milan Court of Appeal, First Section, 14/07/2015, n. 3071 Omissis v. Omissis Iusexplorer.it		X	A party requested the annulment of the award on the basis that the reasoning was not supported by the evidence and that the tribunal had refused to admit relevant pieces of evidence. The Court dismissed the application holding that the admission and evaluation of evidence is a prerogative of the arbitral tribunal and, in any case, both parties had had the chance to present their case.
	Florence Court of Appeal, First Section, 14/06/2012, n. 836 O.S. s.r.l. v. Montalbano Agr. Alim. Tosc. s.p.a. Leggiditalia.it		X	A party filed for the annulment on the ground that the arbitrators rendered impossible to it to properly exercise its defense and, in particular, that only a partial translation of a witness statement presented by the other party had been submitted during the proceedings. The Court denied the application to set aside the award stating that the arbitrators were free to make determinations on the admission of evidence. In particular, the only partial translation of a witness statement was deemed to be justified as not impinging on the other party's right to defense.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Milan Court of Appeal, First Section, 03/10/2017 T.S. Ltd v. E.S. s.p.a. Leggiditalia.it		X	A party filed for annulment on the ground that the arbitrators erroneously omitted to take into account critical pieces of evidence. The Court dismissed the application to set aside the award by observing "*the full intelligibility of the legal arguments supporting the reasoning*" and concluded that the grievances related to the evidence were aimed at reaching a revision on the merits (revision which is precluded to the Court of Appeal under the Italian Code of Civil Procedure).
	Genova Court of Appeal, First Section, 10/06/2013, n. 759 Maria Luigia GAGGERO v I.R.I.S. s.r.l.		X	A party filed for annulment on the ground that the arbitral tribunal considered as a decisive element a document unilaterally provided by the other party. The Court dismissed the application stating that both parties had agreed on the relevance of the document and that was confirmed by the fact that the allegedly aggrieved party had not complained during the proceedings.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Genova Court of Appeal, First Section, 10/11/2014, n. 1420 P.R. s.r.l. v. N. s.r.l. Arbitratoeimprese.erga.it		X	A party filed for annulment on the ground that the arbitral tribunal considered as a decisive element a document unilaterally provided by the other party. The Court denied the application explaining that the arbitrators had expressly stated that the filing party had not in any way contested the document. Thus, the Court concluded that no effective impairment of due process rights had occurred.
Issuing the award immediately after the introduction of new evidence.	Rome Court of Appeal, Third Section, 20/02/2013, n. 1040 A.D.P. v. P.M.S. Costruzioni Generali s.r.l. Leggiditalia.it		X	A party filed for annulment on the ground that the arbitral tribunal had decided the case during the same hearing in which the other party had introduced new evidence. The Court denied the application to set the award aside reasoning that none of the parties had asked an extension of the terms to examine the evidence and, in any case, the newly introduced evidence was not critical to the outcome of the award.
B. Witnesses				

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failure to admit oral witnesses	Genova Court of Appeal, First Section, 10/06/2013, n. 759 Maria Luigia GAGGERO v I.R.I.S. S.r.l.		X	A party filed for annulment on the ground that the arbitral tribunal had refused to admit its requested witnesses notwithstanding the lack of written documentation concerning the contract. The Court denied the application on the basis that, albeit the refusal to admit witnesses, both parties were able to present evidence and argue on the evidence presented by the opposing party.
	Genova Court of Appeal, First Section, 22/05/2013, n. 681 Strade Blu S.R.L. V. V.T.E. – Voltri Terminal Europa S.P.A.		X	A party filed for annulment on the ground that the arbitral tribunal had rejected its request to admit witnesses to prove one of its heads of claim, and by doing so breached its right to present its case. The Court denied the application to set aside the award on the basis that the witness requested could not have provided adequate evidence, given that the specific claim raised by the applicant was not supported by any documentation.
	Milan Court of Appeal, First Section, 30/11/2012, n. 3890 Ros Roca Group s.p.a. v. UGF Merchant s.p.a.		X	A party filed an application to partially annul the award on the ground that the tribunal had refused to admit a key witness. The Court dismissed the cross-application on the basis that the tribunal had the authority to decide on the admission of witnesses.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Genova Court of Appeal, First Section, 30/07/2008, n. 915 A.O.S.M. v. C. s.p.a. Arbitratoeimprese.erga.it		X	The Court dismissed the application holding that the arbitral tribunal's refusal to admit oral witnesses related to evaluation of factual circumstances which could not be contested, as long as motivated. In particular, the arbitral tribunal's motivated opinion that the case was already sufficiently supported by evidence justified the refusal of additional witnesses.
C. Experts				
Failure to admit expert witness or disregarding expert witness' report.	Milan Court of Appeal, First Section, 04/09/2013, n. 3382 Strhold s.p.a. v. Unicredit s.p.a.		X	A party filed for annulment on the ground that the arbitral tribunal had refused the admission of an expert witness repeatedly indicated as relevant. The Court dismissed the application on the basis that the arbitral tribunal had the power to decide on the admission and evaluation of the evidence. Additionally, the overall procedure showed that none of the parties had its right to defense compromised.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Milan Court of Appeal, First Section, 03/10/2013, n. 3616 Sviluppo e sinergie s.n.c. v. Ercole Davide Giorgio		X	The Court refused to set aside the award since the arbitral tribunal's decision to disregard the expert witness' evaluation and to proceed with a discretional evaluation could not be sanctioned. The Court further noted that, notwithstanding that refusal, both parties were granted full opportunity to present their defences.
	Rome Court of Appeal, First Section, 30/11/2009 Ce. Eu. s.r.l. v. Te. s.r.l. Leggiditalia.it		X	A party filed for annulment of the award on the basis that the arbitral tribunal had refused to take into account the expert witness's report due to methodological mistakes and had not even ordered the repetition of it. The Court dismissed the application holding that the admission and evaluation of evidence is a prerogative of the arbitral tribunal which, in the instant case, was exercised without undermining the parties' right of defence.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Milan Court of Appeal, First Section, 03/10/2013, n. 3615 Villa Eros s.r.l. v. Edilizia GDM s.r.l.	X	X X	A party filed for annulment on the ground that the arbitral tribunal had proceeded to several site visits without notifying the expert witnesses appointed by the parties. The Court, in dismissing the application, held that the arbitral tribunal was allowed to proceed to the site visits relying on its own technical skills. The Court also noted that the party had not complained during the proceedings and was consequently barred from raising such claim at the annulment stage.
	Genova Court of Appeal, First Section, 10/03/2010, n. 296 T.E.V. s.p.a. v. C.E. Scrl Dirittoeimprese.erga.it		X	The Court dismissed the application noting that the expert witness' examination requested by the party lacked any reasonable factual element and, consequently, that the arbitral tribunal had not erred in refusing its admission. Generally, the Court underlined that both parties had had the possibility to effectively exercise their right to present evidence.

ITALY Michelangelo Cigogna, De Berti Jacchia Franchini Forlani				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failure to notify expert examination.	Potenza Court of Appeal, 31/07/2008 Cooperativa Ed. s.r.l. v. Ve. Vi. and Co. s.r.l. Leggiditalia.it		X	A party filed for annulment on the ground that the notification of the expert witness examination was sent at the wrong address, thereby impairing the party's ability to properly present their case. The Court denied the application and reasoned that, despite the lack of notification, the party's lawyer or expert were always present during the expert examination.
	Rome Court of Appeal, Fourth Section, 13/03/2013, n. 1408 Comune di San Giorgio a Cremano v. Iole s.r.l. Leggiditalia.it		X	The Court dismissed the application based on the ground that the arbitral tribunal had granted the aggrieved party extended terms to submit questions for the expert witness.
	Court of Cassation, First Section, 28/02/2014, n. 4808 Maltoni *et alii* v. Data Management s.p.a. Giustizia Civile Massimario 2014		X	A party based its application to set aside the award on an alleged lack of notice of the expert evaluation hearing. The Appellate Court dismissed, and the Supreme Court upheld the decision on the ground that the hearing had been notified to the party's consel. Thus, the Court concluded that "*the party-appointed expert witness could have been informed of the hearing by the lawyer of the same party*".

ITALY Michelangelo Cigogna, De Berti Jacchia Franchini Forlani				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Unduly extending procedural terms to accept party-expert evaluation.	L'Aquila Court of Appeal, 10/05/2017, n. 794 ASL N. 2 DI Lanciano-Vasto-Chieti v. C. ing. F. Leggiditalia.it		X	A party filed for annulment on the ground that the arbitral tribunal had accepted the party-expert evaluation in breach of the procedural terms set at the outset of the proceedings. The Court dismissed the application on the ground that the expert evaluation was submitted before the discussion hearing as prescribed by the Code of Civil Procedure, the only rules which the tribunal was bound to apply.
Partiality of the expert witness named by the Tribunal.	Milan Court of Appeal, First Section, 11/10/2012, n. 3257 Comune di Cinisello Balsamo v. Elettrica System s.r.l.		X	A party filed for the annulment of the award on the basis that the expert witness' previous opinions in academic writings prevented him from impartially evaluating the technical issues. The Court denied the application on the basis that the expert witness had not been properly challenged during the proceedings.

ITALY Michelangelo Cigogna, De Berti Jacchia Franchini Forlani				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Contacting the expert witness for clarifications without involving the parties.	Genova Court of Appeal, First Section, 27/06/2014, n. 870 G.S. s.p.a. v. E. s.r.l. Arbitratoeimprese.erga.it		X	A party filed for annulment on the basis that the arbitral tribunal had asked the expert witness to submit written clarifications on his report without informing the parties. The Court, in dismissing the application, first noted that the filing party provided no concrete evidence that such a conduct occurred. In any case, the Court reasoned that the alleged clarifications "*would not have had any influence on the decision and, consequently, on the validity of the award*".
Refusing submissions on the expert witness' report.	Milan Court of Appeal, First Section, 30/11/2012, n. 3890 Ros Roca Group s.p.a. v. UGF Merchant s.p.a.		X	A party filed for annulment on the ground that the arbitral tribunal had refused to grant additional terms to reply to the expert witness' report. The court dismissed the main application on the basis that the party had had in a previous hearing a full opportunity to argue and submit on the results of the expert witness' report.

ITALY Michelangelo Cigogna, De Berti Jacchia Franchini Forlani				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Court of Cassation, Second Section, 26/05/2015, n. 10809 Eurocostruzioni s.r.l. v. Cooperativa degli Ulivi 2 Leggiditalia.it		X	A party filed for the annulment of the award on the ground that the witness expert had relied on a unilaterally provided document of which the party had no previous knowledge. The Appellate Court denied the application and the Supreme Court affirmed on the basis that the filing party had had knowledge and had even signed the relevant document.
	Naples Court of Appeal, First Section, 04/03/2009 Ca. It. Re. v. Ed. s.r.l. Leggiditalia.it		X	A party filed for annulment on the ground that the arbitral tribunal did not send to the expert witness the replies to its report. The Court denied the application to set aside the award on the ground that both parties had had a chance in previous hearings to reply to the expert witness' report.
III. Procedure in general				
Adjudicating in a manner different from the one requested by the parties.	Court of Cassation, First Section, 16/02/2016, n. 2984 Comune di Ancona v. ICS Grandi Lavori Spa Giustizia Civile Massimario 2016	X		The Court of Cassation reversed the Rome Court of Appeal decision to deny the annulment of the award. The Court noted that the arbitral tribunal "*assumed the mutual intention of the parties to dissolute the contract … without granting the parties the possibility to exercise their right to defense* (on that very issue)".

ITALY Michelangelo Cigogna, De Berti Jacchia Franchini Forlani				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Court of Appeal of Genova, First Section, 10/01/2012, n. 9 Emilio Massimo de Ferrari v. Avv. Giuseppe de Gregori		X	The Court dismissed the application on the ground that the arbitral tribunal was allowed to void the donation *ex officio*, even though the party had only asked for its annulment.
	Florence Court of Appeal, First Section, 25/10/2011, n. 1369 Da. s.p.a. v. Di. Gi. Leggiditalia.it		X	The Court dismissed the application to annul the award on the ground that the arbitral tribunal had the authority to tackle any question of law even without inviting the parties to discuss on the point. Moreover, in the case at hand, the issues adjudicated were substantially similar content-wise to the requests presented by the parties.
	Milan Court of Appeal, First Section, 29/10/2012, n. 3462 Doldo Paolo v. Sanpaolo Invest Sim s.p.a.		X	The Court dismissed the application stressing that both parties had had the opportunity to present their defense on the facts which had then been differently qualified by the arbitral tribunal.
	Genova Court of Appeal, First Section, 17/01/2014, n. 57 Saracena s.r.l. v. Rosalba Mezzorani		X	The Court denied the application and explained that the arbitral tribunal had the power to differently qualify the requests presented by the parties. The Court then stressed that such power is limited only when "*the tribunal bases its decision on facts differing from the ones submitted by the parties*", something which did not happen in the case at hand.

ITALY Michelangelo Cigogna, De Berti Jacchia Franchini Forlani				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Milan Court of Appeal, First Section, 30/05/2013, n. 2251 Tarca Almo v. C.A.V.V		X	A party filed for the annulment of the award on the basis that the arbitral tribunal had adjudicated issues neither requested nor evaluated during the proceedings. The Court, by noting that both parties had had full opportunity to address the arguments and discuss the case, dismissed the application to set aside the award.
	Court of Cassation, First Section, 20/07/2012, n. 12711 F.T. s.p.a. v. N./T. – CCT s.r.l. Arbitratoeimprese.erga.it		X	A party filed for annulment criticising the arbitral tribunal's decision to disregard the party's request to award contractual damages and to grant a smaller relief on the basis of a penalty clause. The lower court dismissed the application and the Court of Cassation confirmed in the relevant part stating that the arbitral tribunal had the power to requalify the facts over which the parties had a full opportunity to be heard.

ITALY Michelangelo Cigogna, De Berti Jacchia Franchini Forlani				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failure to answer each argument raised by the parties.	Milan Court of Appeal, First Section, 15/02/2016, n. 553 B.T. s.r.l. v. I. s.r.l. Iusexplorer.it		X	The arbitrators did not address some issues raised by a party that had not paid the advanced expenses requested by the arbitral rules. The Court noted that the party had not complained during the proceedings and, in any way, that both parties had freely chosen the arbitral rules to be followed. As a consequence, the arbitrators' compliance with the rules could not be a ground for annulment.
	Court of Cassation, First Section, 05/07/2012, n. 11271 Fallimento società Efimm v. Vi. Giustizia civile Massimario 2012, 7-8, 886	X		The Court of Cassation reversed the Appellate Court decision not to annul the award. It reasoned that the arbitrators erroneously considered the issue as being beyond the scope of the arbitration agreement and, as a consequence, failed to address an issue validly presented by a party.
	Milan Court of Appeal, First Section, 30/11/2012, n. 3890 Ros Roca Group s.p.a. v. UGF Merchant s.p.a.		X	The Court dismissed the main application on the basis that the tribunal duly refrained from deciding an issue since a compulsory joinder would have been necessary.

ITALY Michelangelo Cigogna, De Berti Jacchia Franchini Forlani				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failure to order a compulsory joinder.	Milan Court of Appeal, First Section, 03/03/2013 Fousek Giuseppe Federico v. Leone Donatello e Leone Vittorio Pietro		X	A party filed for annulment on the ground that the tribunal had not ordered the joinder of the company in favour of which the contract had been signed. The Court dismissed the application holding that that the joinder was not compulsory since the contract entailed merely mutual obligations and was not beneficial to any third party.
	Genova Court of Appeal, First Section, 10/12/2013, n. 1385 Luigi Bottazzi v. Filippo Bruzzone		X	A party filed for annulment on the ground that not all the signatories of the arbitration clause were included in the arbitral proceedings. The Court dismissed the application on the ground that the joinder was merely optional and not mandatory.
Failure to grant additional time to address new requests or failure to sanction widely formulated requests.	Milan Court of Appeal, First Section, 27/03/2013, n. 1366 Santer Reply s.p.a. v. Sigma Informatica s.p.a.		X	A party filed for the setting aside of the award on the basis that the tribunal had granted a request made by the opposing party without opening a discussion on the point. The Court dismissed the application and reasoned that the arbitral tribunal had the discretion to requalify the requests made by the parties insofar as both parties had the chance to argue on the point. In the case at hand, both parties had had a full chance to exercise their defences.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Milan Court of Appeal, First Section, 28/06/2012, n. 2334 Nipa s.r.l. v. Towertel s.p.a.		X	The Court denied the application to set aside the award based on the ground that a party had introduced new facts and elements so as to substantially amend its initial requests. Specifically, the Court explained that, since the arbitral proceedings did not follow the rules of the Code of Civil Procedure, the arbitral tribunal could have accepted new requests at any time. The Court stressed that the only limit was the respect of the right to be heard, which in the case at hand was fully complied with.
	Court of Cassation, First Section, 06/10/2008, n. 24633 Ministero degli Affari Esteri v. Cesen s.r.l. Iusexplorer.it		X	The Court of Cassation affirmed the Appellate Court's dismissal of the application to set aside the award stressing that "*with regard to the proposition of new requests during the proceedings, …* (the Supreme Court) *has always held their full admissibility, insofar as the right to be heard is respected*". In the case at hand, the aggrieved party had not asked for additional time and had had the chance to argue on the newly introduced requests.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Court of Cassation, First Section, 23/02/2016, n. 3481 C.G. and C.V. v. C.B. Leggiditalia.it		X	The Court of Cassation affirmed the Appellate Court's decision to deny the annulment of the award. It noted that the new requests were actually already encompassed by the requests included in the notice of arbitration and, consequently, the parties had had full opportunity to argue and discuss on the point.
	Court of Cassation, First Section, 27/12/2013, n. 28660 Acqua Pia Antica Marcia s.p.a. v. Cons. Coop. costruzioni C.C.C. Giustizia Civile Massimario 2013		X	The Supreme Court affirmed the Appellate Court's dismissal of the application to set aside the award. The Court held that the new requests did not substantially differ from the requests previously presented and over which the parties had had the opportunity to argue.
	Bologna Court of Appeal, First Section, 26/07/2017 A.B.' S.P.A. v. Società 'G.D.' S.R.L. Leggiditalia.it		X	A party filed for the annulment of the award on the basis of the impossibility of a proper defense caused by the too wide requests submitted by counterparty. The Court dismissed the application holding that the requests were duly formulated during the proceedings and both parties were granted the possibility of a full defense.

ITALY Michelangelo Cigogna, De Berti Jacchia Franchini Forlani				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Court of Cassation, First Section, 04/06/2014, n. 12543 Imago Media s.r.l. v. Nuova Grafica Ponticelli s.a.s. Iusexplorer.it		X	A party filed for annulment on the ground that counterparty had formulated generic requests whose subsequent specification had prevented the party from properly exercising its right to defense. The Supreme Court affirmed the lower court's decision not to set aside the award and explained that, since the arbitral proceedings have no formalistic requirements and both parties had had an opportunity to discuss the case, no due process violation had occurred.
	Genova Court of Appeal, First Section, 09/05/2014, n. 619 I.M. & C. s.p.a. v. A.P. di G. Arbitratoeimprese.erga.it	X		A party filed for the annulment of an interim award on the ground that the tribunal had ruled on a request introduced by the other party during the conclusive hearing, thereby undermining the party's right to reply on the point. The Court granted the annulment of the award on the basis that the party had not been given "*the possibility to formulate any appropriate counterclaim or reply, or any other defense deemed necessary*". Notably, the Court stressed that the party's chance to argue on the point granted in the continuation of the proceedings was not relevant since the tribunal had already adjudicated the issue with the interim award.

ITALY Michelangelo Cigogna, De Berti Jacchia Franchini Forlani				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failure to accept the modification of the requests during the proceedings.	Court of Cassation, First Section, 10/07/2013, n. 17099 R.D.F.M.A v. M.D. Giustizia Civile Massimario 2013 Giustizia Civile 2013, 10, I, 1974	X		The arbitral tribunal dismissed the requests of a party as they were not filed in the notice of arbitration. The Appellate Court annulled the award with regard to that part and the Supreme Court affirmed the lower court's decision. The Court underlined that there are no formalistic requirements in the arbitral proceedings and that the requests can be modified at any time provided that the other party has a chance to be heard. Thus, the arbitral tribunal made a mistake in dismissing the new requests without granting the parties the possibility to discuss on them.
Failure to order/notify hearings.				
	Naples Court of Appeal, First Section, 04/03/2009 Ca. It. Re. v. Ed. s.r.l. Leggiditalia.it		X	The Court denied the application to set aside the award on the ground that the arbitrators were free to determine the procedure and to avoid the discussion hearing. Notably, the Court stressed that the absence of the discussion hearing did not impair the parties' right to a full defense.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Rome Court of Appeal, Second Section, 08/09/2011, n. 3566 ASL Nuoro v. D.C. s.r.l. Leggiditalia.it		X	A party filed for annulment on the ground that the tribunal had anticipated the discussion hearing disrespecting the 5-day notice prescribed by Article 163.2 of the Code of Civil Procedure. In dismissing the application, the Court first noted that the tribunal was not bound by the rules of the Code of Civil Procedure with regard to the notification of the anticipation of a hearing. The Court then stressed that, even though the party could not participate in the hearing, it was granted a full opportunity to present its defence during the proceedings.
	Court of Cassation, First Section, 16/11/2015, n. 23402 Coop. Artcop S.C.AR.L. v. M.E. and M.F. Iusexplorer.it		X	The Supreme Court, affirming the lower court's decision to refuse the annulment of the award, held that "*in the absence of procedural rules, the arbitrators are free to decide how to articulate the proceedings, the only limit being the right to be heard.*" Notably, even the principle of the right to be heard can be derogated with regard to the closing hearing, provided that the parties agree on the point, as found by the Court in the case at hand.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failure to notify or invalid notice of arbitration.	Court of Cassation, First Section, 05/05/2011, n. 9839 Ba. v. Da. Giustizia civile 2012, 9, I, 2137		X	In affirming the lower court's decision, the Court of Cassation explained that the request for arbitration without the signature of the party and without a signed power of attorney could not be considered as affected by invalidity, since the parties had agreed on a simplified procedure to institute the proceedings, thus derogating from the formalities prescribed by the Italian rules of civil procedure.
	Milan Court of Appeal, First Section, 06/03/2013, n. 993 L. e E.M. Salviato v. L'Igienica s.r.l.		X	A party filed for annulment on the ground that the notice of arbitration had been received by the doorkeeper and the absence of the recipient had not been indicated as prescribed by Article 7.2 of the Law 890/1982. The Court held that the notification was merely irregular and was then rectified by the postponement of the first hearing.
	Court of Cassation, First Section, 04/04/2018, n. 8331 So. Coop. Ed. Perla v. G.M. e G.P. Iusexplorer.it		X	A party filed for the annulment on the ground that the notification of the request of arbitration was void since it had been sent to the wrong recipient. The Supreme Court affirmed the Appellate Court's decision to refuse the annulment reasoning that the invalid notification was then rectified and the party voluntarily avoided to present its defences throughout the proceedings.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Court of Cassation, First Section 14/09/2012, n. 15445 Associazione comunità meneghina v. D.A. Giustizia civile Massimata 2012, 9, 1118 Rivista arbitrato 2013, 1, 117	X		A party filed for the annulment of the award on the basis that it had had knowledge of the arbitral proceedings only when the final award was notified. The Court of Appeal granted the annulment and the Supreme Court affirmed on the basis that the failure to notify the notice of arbitration prevented the party from exercising its right to defence.
Failing of the tribunal to address the issues in the right order.	Genova Court of Appeal, First Section, 23/07/2013, n. 946 S.a.s. Pietro Casaretto Tonnara Portoscuso V. S.R.L. Sulivan		X	A party filed for the annulment of the award criticising the arbitral tribunal's decision to deal with and adjudicate issues on the merits before addressing a preliminary issue. The Court denied the application holding that the arbitral tribunal's reading of the arbitration clause was "*not so inappropriate as to undermine the understanding of the reasoning*".
Conducting hearings in the absence of the parties.	Milan Court of Appeal, First Section, 03/03/2013 Fousek Giuseppe Federico v. Leone Donatello e Leone Vittorio Pietro		X	The Court held that, since the parties had not agreed on the mandatory application of the rules of civil procedure, the arbitral tribunal had freedom to conduct the proceedings, as long as due process was respected. Specifically, the parties' absence in some hearings did not prevent them from effectively exercising their defence.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Lack of participation of dissenting arbitrator in the drafting of the award.	Firenze Court of Appeal, First Section, 17/02/2017, n. 384 Curatela Del Fallimento di R.G. 1735 s.p.a. v. T. s.r.l. Leggiditalia.it		X	A party filed for annulment on the ground that the dissenting arbitrator had not been involved in the decision-making process and, in particular, that he received a draft of the award already completed in all its parts by the two other members of the arbitral tribunal. The Court dismissed the application to set aside on the basis that the dissenting arbitrator did actually participate and expressed his opinion in the proceedings. His absence in the drafting of the award did not amount to a due process violation.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
I. Submissions				
A. Written submissions				
Disregarding written submissions filed in breach of the procedural calendar				
Refusing to allow additional written submissions	*CRW Joint Operation v PT Perusahaan Gas Negara (Persero) TBK* [2011] 4 SLR 305; [2011] SGCA 33	X		A party sought to set aside an award on the basis that the arbitral tribunal did not allow both parties to tender submissions on the merits of the underlying dispute, and only allowed them to make submissions on preliminary issues before making a determination on the merits. The Court set aside the award for a breach of natural justice because the arbitral tribunal's acts deprived the part of a "real opportunity to defend its position". The decision on merits was premature as no submissions had been tendered on it. The case is unusual as it specifically considers the effect of a dispute adjudication board and the dispute resolution mechanism under the terms of the 1999 FIDIC Red Book.
	AUF v AUG and other matters [2015] SGHC 305		X	A party sought to set aside an award on the basis that the Court refused the party leave to reply to the

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
				opposing party's submissions. The Court found that the party had ample opportunity to make and had in fact made submissions in respect of the submissions it said it was not allowed to make.
Considering issues which were not raised by parties in the arbitration	*JVL Agro Industries Ltd v Agritrade International Pte Ltd* [2016] 4 SLR 768; [2016] SGHC 126	X		A party sought to set aside an award on the basis that the arbitral tribunal had reached its decision on an issue which was not raised by the parties in the arbitration. The court held that this precluded the tribunal from 'adopting [the issue] as part of its chain of reasoning'.
	GD Midea Air Conditioning Equipment Co Ltd v Tornado Consumer Goods Ltd and another matter [2017] SGHC 193	X		In this case, the arbitral tribunal found that there had been a breach of a specific clause in the contract, although it was never an issue in the arbitration. The High Court found that the arbitral tribunal had made its finding on the clause without giving any prior notice to the parties. As such, there was a breach of natural justice.
	ADU v AQV [2015] SGHC 26		X	A party sought to set aside an award on the basis that the arbitral tribunal had reached a conclusion not argued by either party. The applicant argued that the arbitral tribunal found an oral agreement even though neither party had submitted on this. However, the High Court disagreed, having found that the arbitral tribunal did not find that there was

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
				an agreement but only a 'mutual understanding' based on the evidence submitted by the parties.
	Sobati General Trading LLc v PT Multistrada Arahsarana [2010] 1 SLR 1065; [2009] SGHC 245		X	A party sought to set aside an award on the basis that the arbitral tribunal had reached its decision on a point which the applicant had not been given a chance to address. However, the High Court disagreed, having found that the applicant had "ample opportunities" to deal with the point, but chose not to do so.
	Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd [2007] 3 SLR(R) 86; [2007] SGCA 28		X	A party sought to set aside an award on the basis that the arbitral tribunal had reached its decision on a point that had not been in play during the arbitration proceedings. On appeal, the Court of Appeal found that the argument had in fact been raised in the respondent's pleadings in the arbitration, and that the applicant was given a chance to submit on the issue. In fact, there was evidence that the tribunal had called for additional written submissions on the issue.
Failing to order additional written submissions where they were necessary	*AKN and another v ALC and others and other appeals* [2015] 3 SLR 488; [2015] SGCA 18	X		A party sought to set aside an award on the basis that the arbitral tribunal recharacterized its submissions on a "loss of profit" claim to a "loss of opportunity to make profit" claim without giving parties a chance to submit on whether the

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
				recharacterization should have been done. The Court held that this was a breach of natural justice, especially since the recharacterization was done at the eleventh hour and the arbitral tribunal acknowledged the need for further submissions from the parties before deciding, but still decided on the issue. This warranted setting aside the part of the award that was "infected" by the breach. (at [80])
	Lim Chin San Contractors Pte Ltd v L W Infrastructure Pte Ltd [2012] 2 SLR 1040; [2012] SGHC 75 affirmed on appeal in *LW Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd and another appeal* [2012] SGCA 57	X		A party sought to set aside an award on the basis that the Arbitrator had rendered the Additional Award a mere three days from the defendant's solicitors' letter of request for an additional award, without inviting the plaintiff's solicitors to respond or giving them reasonable time to so do. The Court agreed that inadequate opportunity was given to the plaintiffs to make additional submissions on the Additional Award as it was a different question from what was dealt with in the main arbitration.
B. Oral submissions				
Disregarding oral submissions filed in breach of the procedural calendar	*PT Asuransi Jasa Indonesia (Persero) v Dexia Bank SA* [2006] 1 SLR 197; [2005] SGHC 197 (affirmed on appeal)		X	A party sought to set aside an award because the arbitral tribunal did not call for an oral hearing where parties could address the issues orally. The court found no merit in this claim because the arbitral tribunal had in fact called for a meeting, and it was

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
				the parties inability to adhere to the deadlines set by the arbitral tribunal for filing of submissions that the oral hearing could not go on. Furthermore, neither party requested for an oral hearing.
Refusing to allow additional oral submissions				
II. Evidence				
A. Documentary evidence				
Disregarding new evidence filed in breach of the procedural calendar	*China Machine New Energy Corp v Jaguar Energy Guatemala LLC and another* [2018] SGHC 101		X	A party sought to set aside an award on the basis that the arbitral tribunal excluded a report from an expert witness which was filed in breach of the procedural calendar. The arbitral tribunal held that there was no breach as the report had been tendered barely a week before the Main Hearing began, in breach of the agreed procedural calendar.
	Triulzi Cesare SRL v Xinyi Group (Glass) Co Ltd [2015] 1 SLR 114; [2014] SGHC 220		X	A party sought to set aside an award on the basis that the arbitral tribunal had refused to admit the party's expert witness statement due to its being tendered in breach of the procedural calendar. The Court held that the Tribunal was justified in setting a timeline of 10 days to preserve the efficiency of proceedings. Furthermore, the party did not have a

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
				credible excuse for not submitting the expert witness statement. A reasonable opportunity to present does not mean party has the right to "present everything it wants to present".
	ADG v ADI [2014] 3 SLR 481, [2014] SGHC 73		**X**	A party sought to set aside an award for breach of their right to a fair hearing because the tribunal declined the Plaintiff's request to reopen proceedings to allow the Plaintiffs to adduce new evidence. The Court held that the tribunal was right in declining to reopen proceedings because a reasonable time had been given to the plaintiffs to adduce new evidence before proceedings were closed. Furthermore, the plaintiffs did not have new evidence to adduce, and were merely asking the arbitral tribunal to wait and see what new evidence might arise beyond the date that the arbitral tribunal had declared as the close of proceedings.
Refusing to order the production of documents for requests made in breach of the procedural calendar				
B. Witnesses				
Refusing to hear witness evidence				

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Calling of a witness on the Tribunal's own motion/relying on witness statements not invoked by the parties				
Refusing or limiting witness cross-examination				
C. Experts				
Refusing or limiting irrelevant expert evidence				
Failing or refusing to appoint an expert	*Kempinski Hotels SA v PT Prima International Development* [2011] 4 SLR 633; [2011] SGHC 171		**X**	A party applied to set aside an award on the basis that the arbitral tribunal had reached conclusions on matters of Indonesian law without the benefit of expert evidence, and their lack of consideration of expert evidence was evidence of the arbitral tribunal's apparent bias. However, the High Court rejected this and held that it was sufficient that the arbitral tribunal "had seen each party's experts and listened to their responses to questions in cross-examination".

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing or limiting expert cross-examination	*Kempinski Hotels SA v PT Prima International Development* [2011] 4 SLR 633; [2011] SGHC 171		X	A party applied to set aside an award on the basis of a breach of natural justice because they were not allowed to cross examine their witnesses during proceedings for a third award. The Court held that the tribunal should have at asked the parties whether they wished to cross-examine each others' experts on the new opinions submitted before it proceeded to issue the award. However, because the award would have been set aside anyway due to lack of jurisdiction, there was no actual prejudice suffered. Prejudice was a requirement for an award to be set aside for breach of natural justice.
Refusing to provide parties with the tribunal's expert report	*Luzon Hydro Corp v Transfield Philippines Inc* [2004] 4 SLR(R) 705		X	A party applied to set aside an award on the basis that the arbitral tribunal's expert had given his report to the tribunal without providing a copy to the applicant to make comments on it. It was held that the expert had not tendered any written report but was merely exercising the duties of collating evidence and understanding technical terms in assisting the arbitral tribunal. The communications exchanged between the expert and the arbitral tribunal was confidential, in the same way that communications exchanged between the members of the arbitral tribunal would be confidential.

SINGAPORE Paul Tan, Rajah & Tann				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
D. Other evidentiary matters				
Disregarding evidence produced in breach of the procedural calendar				
III. Procedure in general				
Failing or refusing to order a site visit				
Refusing or limiting witness/expert cross-examination				
Failing to answer each argument raised by the parties	*AKN and another v ALC and others and other appeals* [2015] 3 SLR 488; [2015] SGCA 18		X	The Court at first instance held that an award could be set aside based on his finding that the tribunal failed to consider the liquidator's arguments. However, this decision was overturned on appeal because the Court held that on the evidence, it was clear that the arbitral tribunal did attempt to engage the liquidator's arguments; the tribunal subsequently chose to dismiss them. It was simply impossible, given the context of the arbitration, to draw the inference that the abitral tribunal failed to apply its mind to the liquidator's arguments. Accordingly, there was no breach of natural justice.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	BLB v BLC [2013] 4 SLR 972		X	A party applied to set aside an arbitral award on the basis that the award failed to decide a counterclaim submitted to arbitration under s34(2)(a)(iii) of the Model Law. The High Court held that arbitrator had failed to consider an entire head of counterclaim which was one of the essential issues before him. The High Court upheld the award but remitted a counterclaim to a new arbitral tribunal for determination.
	Kempinski Hotels SA v PT Prima International Development [2011] 4 SLR 633; [2011] SGHC 171		X	A party sought to set aside an award by alleging several breaches of natural justice, one of which was the failure of the arbitral tribunal to consider its submissions on the defences. The High Court rejected this and held that although the arbitral tribunal did not expressly address each of the defences in the awards, there was ample evidence that the arbitral tribunal had considered and rejected the defences. The Court further noted that there was no duty on the arbitrator to expressly address each point in the submissions of both parties. There was thus no breach of natural justice.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	AQU v AQV [2015] SGHC 26		X	A party applied to set aside an award on the basis that the arbitrator had not dealt with substantial parts of the party's argument, and only dealt with the party's main argument. The High Court rejected this, stating "as has been repeatedly stated by the courts, a judge or an arbitrator does not need to deal with all arguments put forward by a party."
	Front Row Investment Holdings (Singapore) Pte Ltd v Daimler South East Asia Pte Ltd [2010] SGHC 80		X	A party applied to set aside an award on the basis that the arbitrator had failed to consider material submissions raised by the party. The arbitrator had concluded in his award that the applicants had abandoned two of the three alleged misrepresentations pleaded despite the fact that reference was made to all three alleged misrepresentations in the applicants' opening and closing submissions. The Court set aside the arbitral award for a breach of natural justice.
Failing to provide a party with correspondence / notes of evidence of the arbitral proceedings	*Rakna Arakshaka Lanka Ltd* v *Avant Garde Maritime Services (Private) Limited* [2018] SGHC 78		X	A party sought to set aside a claim on the basis that the Court had not provided notes of evidence to the parties, and the court had not ordered certain correspondences to be forwarded to the party. This was rejected by the Court which pointed to the party's uncooperative conduct throughout the

SINGAPORE Paul Tan, Rajah & Tann				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
				arbitral proceedings. Furthermore, the parties needed to cite authority for their argument that a failure to provide notes of evidence was a breach of natural justice serious enough to set aside an award.

SPAIN Alvaro Lopez de Argumedo, Uría Menéndez				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
I. Submissions				
A. Written submissions				
Admission of a new claim and additional evidence after the procedural deadline / Disregard of evidence submitted with the final pleadings	High Court of Madrid 62/2015, 15 September Id Cendoj: 28079310012015100097		X	The dispute arose in relation to the breach of a contract. The respondent in the arbitral proceedings brought a set-aside action against the award, alleging that the arbitrator had violated public policy because: (i) he admitted a new claim based on evidence filed after the deadline established in the procedural schedule; and (ii) the arbitrator rejected the new evidence submitted by the respondent with his final pleading in order to answer the new claim. The High Court dismissed the set-aside action. The High Court stated that arbitration is sufficiently flexible to allow an arbitrator to make decisions about evidence broadly. It was reasonable to admit the evidence submitted, as well as the new claim. The arbitrator was entitled to do so pursuant to the rules of the Madrid Court of Arbitration (CAM) – the institution administering the arbitral proceedings. Regarding the rejection of the evidence submitted by the respondent, the HC concluded that the arbitrator did not admit the documentary evidence on the basis that it was submitted extemporaneously with the final pleading (and not immediately after the claimant's evidence was submitted).

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Disregard of a counterclaim	High Court of Catalonia 56/2013, 7 October Id Cendoj: 08019310012013100094		X	The dispute arose regarding a breach of contract. It was resolved through an award based in equity (*en equidad*). The respondents in the arbitral proceedings brought a set-aside action against the award arguing, among other points, that the arbitrators made a mistake when they did not admit a counterclaim, a circumstance that prevented the respondents from exercising their procedural rights. The High Court dismissed the set-aside action, finding that, although the counterclaim was permissible (as it fell within the scope of the arbitration agreement), the arbitrators' decision did not violate any procedural right of the respondents given that the counterclaim was finally analysed by the arbitrators as if it were an exception. In essence, the High Court found that the respondents did not suffer from an actual lack of defence.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Disregard of a counterclaim / Disregard of a piece of evidence filed by parties (previously admitted)	High Court of Madrid 56/2014, 3 November Id Cendoj: 28079310012014100075	X		The dispute arose regarding a breach of contract. The respondent in the arbitral proceedings brought an action to set aside the award arguing, among other issues, that: (i) they were denied the ability to exercise their procedural rights as a result of the tribunal not admitting their counterclaim; and (ii) the arbitral tribunal rejected the testimony of a key witness because he could not attend the hearing and the arbitral tribunal failed to offer any alternative to the party proposing the witness. Regarding the first claim, the High Court held that the arbitrators were obliged to reject the counterclaim filed by the respondent because it was not notified in the answer to the request of arbitration, as required by the rules of the Madrid Court of Arbitration (CAM) –the institution administering the arbitral proceedings. Regarding the second claim, the High Court found that the arbitral tribunal rejected a key piece of evidence (which had previously been accepted) merely because the witness could not attend the hearing. The High Court found that this resulted in the party suffering a lack of defence, leading the High Court to set aside the award.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
II. Evidence				
A. Documentary evidence				
Admission of additional evidence filed after the procedural deadline	HC of Madrid 38/2017, 29 May Id Cendoj: 28079310012017100061		X	The dispute arose in relation to the payment of a specific monetary amount deriving from an insurance agreement. After the hearing, the arbitrator requested new evidence from the claimant (who filed it). The arbitrator subsequently gave the respondent the opportunity to make allegations and file additional evidence (which he also did). The claimant then alleged that the submission of new evidence by the respondent was extemporaneous and should be rejected by the arbitrator. Consequently, the claimant brought a set-aside action. The High Court dismissed the set-aside action and confirmed the validity of the award on the basis that the terms of reference of the arbitration established that the arbitrator had authority to admit, in very broad terms, new evidence and that the arbitrator had given equal opportunity to both parties to make their pleadings and submit evidence, thus respecting the right to be heard of both parties.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Admission of evidence after having been previously rejected	High Court of Madrid 43/2015, 19 May Id Cendoj: 28079310012015100047		X	The dispute arose in relation to the breach of a construction contract. The arbitrator upheld the claimant's case. During the arbitral proceedings, the arbitrator rejected some of the documentary evidence provided by the claimant on the basis that it was immaterial and submitted extemporaneously. However, subsequently, the arbitrator – answering a complaint raised by the claimant – ruled that the evidence submitted was, in fact, material, relevant and submitted in a timely manner. The arbitrator also granted the respondent a term to file the evidence that the latter considered appropriate. The respondent sought to set aside the award due to the admission of the evidence submitted by the claimant. It argued, in essence, that this violated public policy because it led to a lack of defence and an infringement of its procedural rights. The High Court dismissed the claim finding that the admission of the evidence did not breach the parties' procedural rights in view of the flexibility of arbitral proceedings and arbitrators' broad faculties. Arbitral proceedings are sufficiently flexible to allow the admission of evidence after the erroneous rejection of the same evidence. Claims attempting to equate

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
				arbitral proceedings with civil proceedings are inadmissible. The High Court also stated that the admission of evidence was sufficiently reasoned and the arbitrator was merely rectifying the earlier mistake.
Disregard of a claimant's document-production request / Disregard of an expert report submitted after the deadline	High Court of the Basque Country 4/2015, 18 June Id Cendoj: 48020310012015100013		X	The dispute arose in relation to the breach of a lease contract. The arbitrator rejected the claimant's document-production request that was made after its claim on the basis that the arbitrator considered that it was neither relevant nor material to the matter. In addition, the arbitrator rejected an expert report. The arbitrator had previously admitted the report, but had nevertheless conditioned its admission on the claimant providing the report at least seven days prior to the hearing. The claimant submitted the expert report the day after that term lapsed and the arbitrator rejected the report. The claimant sought to set aside the award due to (among other points) the disregarding of the document-production request and the non-admission of the expert report. The claimant argued that these circumstances amounted to a violation of

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
				public policy because it had suffered from a lack of defence and the infringement of procedural rights. The High Court dismissed the set-aside action and confirmed the award's validity. Regarding the first claim, the High Court found that the rejection of the evidence did not breach the claimant's procedural rights, as it was well-reasoned and justified. Concerning the second claim, the High Court found that disregarding the expert report did not breach the claimant's procedural rights. The claimant submitted the expert report extemporaneously, which therefore had to be rejected.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Issuance of an award without waiting for the claimant to submit a piece of evidence that had been proposed	High Court of the Basque Country 3/2017, 25 April Id Cendoj: 48020310012017100007		X	The claimant brought an action to set aside the award because the arbitral tribunal had rendered it without examining the documentary evidence that he had proposed. The claimant proposed to submit a piece of evidence consisting of a certificate that had to be issued by a public entity. Nevertheless, he ultimately failed to file the actual certificate. After one month had lapsed without the arbitral tribunal receiving the certificate, and in view of the claimant's lack of activity, the arbitral tribunal decided to issue the award. The High Court dismissed the set-aside action on the basis that the claimant had the obligation not only to propose the evidence but also to submit the evidence to the arbitral tribunal. It was the claimant's duty to provide the evidence to the tribunal; the arbitrators were not responsible for the claimant's failure to submit the documents. An arbitral tribunal cannot accept the possibility of one party's lack of activity leading to stay the proceedings or compromising the award's validity.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Disregard of an expert report filed after the deadline	High Court of the Basque Country 3/2014, 13 May Id Cendoj: 48020310012014100003		X	The dispute related to the enforcement of a construction contract. The arbitrator upheld the claimant's case in an arbitration based in equity (*en equidad*). The respondent in the arbitral proceedings brought a set-aside action because the arbitrator did not admit the expert report that it had filed after the term established in the Rules of the Bilbao Court of Arbitration (applicable to the proceedings by agreement of the parties). The respondent alleged that this implied a lack of defence. The High Court dismissed the claim holding that the rejection did not breach the respondent's procedural rights. The respondent did not provide the expert report with the answer to the claim (although it had already been prepared by that time), as required by the Rules of the Bilbao Court of Arbitration. Consequently, the rejection of the evidence was justified.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Lack of assessment of the expert reports filed by the parties	High Court of the Basque Country 6/2017, 26 June Id Cendoj: 48020310012017100013		X	The dispute related to the dissolution of a company. The arbitrator upheld the claimant's case, declaring that the company should be dissolved. The respondent in the arbitral proceedings brought a set-aside action arguing that the arbitrator had not taken into account the expert report that it had filed. According to the respondent, the award was issued without properly assessing the report and, therefore, it violated public policy. The High Court dismissed the set-aside action. The respondent sought a new assessment of the evidence and the High Court stated that it could not re-evaluate the merits of the case or the evidence filed by the parties.
Refusing to hear an expert witness	High Court of Madrid 51/2014, 18 September Id Cendoj: 28079310012014100068		X	The dispute related to the alleged breach of an investment contract and shareholders' agreement pursuant to which the shareholders could not compete with the company that they had jointly established. One shareholder filed a claim seeking to terminate the investment contract and the shareholders' agreement because another shareholder had allegedly been competing with the company they had established jointly.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
				The sole arbitrator dismissed the claim on the basis that a breach of the non-compete clause had not been proved. The arbitrator rejected the claimant's request to examine a private investigator in order to prove the unlawful competition. The arbitrator held, in essence, that if the claimant was in fact interested in examining the private investigator at the hearing, it should have first filed the private investigator's report with the claim (or during the additional evidentiary phase), a circumstance that did not occur. The claimant sought to set aside the award due to the non-admission of the private investigator's examination, arguing that it violated public policy. The High Court dismissed the claim on the basis that the rejection did not breach the parties' procedural rights. The arbitrator's decision was perfectly well grounded. The claimant did not act with due diligence; if it considered the evidence to be essential, it should have filed the private investigator's report with its claim or during the additional evidentiary phase, which it never did.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Arbitrator decided on the validity of a document on his own without giving the parties the opportunity to submit evidence	High Court of Madrid 35/2013, 17 May Id Cendoj: 28079310012013100036	X		The dispute arose in relation to a lease contract. The claimant challenged the authenticity of a document submitted by the respondents in the arbitral proceedings. The sole arbitrator, instead of giving the respondents the opportunity to submit evidence regarding the validity of the document, decided to act as an expert calligrapher, subsequently reaching the conclusion (on his own) that the document had been forged. The respondents brought a set-aside action on the basis that the arbitrator's actions breached the principles of a fair hearing and equality of arms, as he failed to give the respondents the opportunity to file evidence regarding the validity of the allegedly forged document. The High Court set aside the award finding that the sole arbitrator should have given the respondents the opportunity to file evidence regarding the document's validity. As a result of his decisions, the arbitrator violated the principles of a fair hearing and equality of arms.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Disregard of evidence submitted after the term had ended	High Court of Madrid 40/2014, 24 June Id Cendoj: 28079310012014100048		X	The dispute arose regarding the breach of a construction contract. The claimant brought an action to set aside the award arguing, among other reasons, that the arbitrator had failed to properly accept the additional evidence submitted. The High Court dismissed the set-aside action; the additional evidence was submitted after the term to do so had ended and was therefore extemporaneous. In addition, the party failed to justify why the evidence was essential for the resolution of the dispute.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Disregard of documentation challenge made in the final pleading	High Court of Madrid 52/2017, 19 September Id Cendoj: 28079310012017100113		X	The arbitral proceedings related to an insurance dispute. The respondent in the final pleading of the arbitral proceedings challenged the validity of various documents. The arbitrator did not address the challenge in the award. The arbitrator subsequently issued a complementary award analysing the reasons for rejecting the challenge. The respondent brought a set-aside action arguing that the award did not examine his challenge of the documentation, alleging that its procedural guarantees were violated in the arbitral proceedings. The High Court dismissed the set-aside action because the challenge of the documents was made extemporaneously in the final pleading. Challenges of evidence must be made previously. In addition, the High Court found that the award and the complementary award were well-grounded and reasoned.
B. Witnesses				
C. Experts				
D. Other evidentiary matters				

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
III. Procedure in general				
Arbitrator did not allow the respondent to take part in the proceedings as it was financially unable to pay the court fees	High Court of Valencia 9/2015, 23 April Id Cendoj: 46250310012015100018	X		The dispute arose in relation to the termination of a lease contract. After receiving the claim, the respondent stated that it was financially unable to pay the court fees. Subsequently, although the respondent attempted to file an answer to the claim and to be part of the proceedings four times, the sole arbitrator declared the respondent *in absentia* and did not allow it to participate in the arbitral proceedings. Consequently, the respondent in the arbitral proceedings brought a set-aside action on the basis of a breach of due process and, in particular, of the principles of a fair hearing and equality of arms included in art. 24 of the Spanish Constitution. The High Court set aside the award because the arbitrator should have allowed the respondent to take part in the proceedings. The High Court considered that the respondent's intention to be part of the proceedings was clear and could not be ignored by the arbitrator without breaching the principles of a fair hearing and equality of arms.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Arbitrator did not allow the respondent to take part in the proceedings as she was financially unable to pay the court fees	High Court of the Basque Country 7/2016, 13 July Id Cendoj: 48020310012016100007	X		The dispute arose regarding a breach of contract. It was resolved through an award based in equity (*en equidad*). The arbitrator decided not to admit the answer filed by the respondent because she was financially unable to pay the court fees. The sole arbitrator declared the respondent *in absentia*; the respondent was therefore unable to participate in the arbitral proceedings. The respondent consequently brought a set-aside action arguing that she suffered from a lack of a defence. The High Court held, in essence, that the arbitrator's decisions and actions violated the principles of a fair hearing and equality of arms. Furthermore, they resulted in a lack of defence for the respondent.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Issuing an additional award rectifying the original award	High Court of Madrid 83/2013, 6 November Id Cendoj: 28079310012013100085		X	The respondents in the arbitral proceedings brought an action to set aside an additional award arguing that it substantially modified the original award. Pursuant to the Spanish Arbitration Law, an arbitrator cannot substantially modify an award by means of an application for correction or interpretation. The High Court dismissed the claim, stating that the additional award did not substantially modify the original award – finding that it was a mere rectification – and, accordingly, the party did not suffer from a lack of a defence. In addition, the High Court established that, were the additional award to be annulled, the respondents (in the annulment proceedings) would suffer from a clear lack of defence as they did not have any available remedy to either modify or annul the original award.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Issuing an additional award substantially modifying the original award	High Court of Madrid 5/2017, 18 January Id Cendoj: 28079310012017100010	X		The claimant (in the annulment proceedings) argued that the arbitrator violated public policy by issuing an additional award *proprio motu* once the term established in the Spanish Arbitration Law for correcting the award had lapsed, and with the purpose of modifying the party that had to assume the costs of the proceedings as well as the amount of those costs. The High Court set aside the award, holding that the additional award amounted to a substantial modification of the original award – prohibited under the Spanish Arbitration Law. In addition, the High Court established that the arbitrator's actions and decisions violated the parties' right to effective legal protection (*principio a la tutela judicial efectiva*) – established in art. 24 of the Spanish Constitution – and thus public policy.
Award based in equity (*en equidad*)	High Court of Aragon 30/2016, 19 December Id Cendoj: 50297310012016100028		X	The claimant (in the annulment proceedings) argued, among other points, that the award was issued "in law" (*en Derecho*) when it should have been issued exclusively "in equity" (*en equidad*). The High Court held that the arbitrator assessed the claim in both law and equity, therefore dismissing the set-aside action.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failure to resolve a petition filed by the claimant	High Court of Valencia 1/2014, 7 January Id Cendoj: 46250310012014100002	X		The dispute arose in relation to a construction company's breach of its obligation to pay various commissions to one of its agents. The sole arbitrator decided that an expert report needed to be issued in order to resolve the dispute. In order to prepare the expert report, the respondent had to submit various documents to the arbitrator. Nevertheless, the respondent failed to submit all the documents that had been requested. As a consequence, on at least seven occasions the claimant petitioned the sole arbitrator for the respondent to submit the remaining documents. The sole arbitrator never decided on these petitions. The arbitrator ultimately rejected the claim on the basis that the claimant had remained silent regarding the preparation of the expert report. In light of the above, the claimant brought a set-aside action arguing, among other points, that he had suffered a clear violation of his right to a fair hearing. The High Court set aside the award, holding that the claimant had acted properly and that it was, in fact, the arbitrator who had acted passively and decided the dispute without giving the parties the opportunity to present their case. The High Court

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
				decided that the arbitral proceedings had to be resumed at the point where the respondent was instructed to submit the documents.
The award decided an issue that was not expressly raised by the parties	High Court of Madrid 14/2015, 3 February Id Cendoj: 28079310012015100011		X	The dispute arose in relation to a breach of contract. The claimant sought specific performance of the contract. The sole arbitrator understood performance of the contract to be impossible and therefore disregarded the claim. The claimant consequently brought a set-aside action arguing that the arbitrator had acted *ultra vires* in the exercise of his functions because the respondent had not expressly sought a declaration that the contract had to be declared terminated because it could not be performed. The High Court dismissed the claim on the basis that the award was consistent with the petitions of the parties. The set-aside action was baseless and purely formal.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Arbitrators' interpretation of a question that was not submitted to arbitration	High Court of Asturias 3/2014, 9 July Id Cendoj: 33044310012014100009		X	The dispute arose in relation to a breach of contract. It was resolved through an award based in equity (*en equidad*). In the arbitral proceedings, the arbitral tribunal decided on the type of contract signed between the parties, although this precise factual point had not arisen in the arbitral proceedings. The claimants consequently argued that the interpretation as to the type of contract implied an injury to them because they did not submit that issue to the arbitrators' decision. The High Court dismissed the claim on the basis that the award was the logical consequence of the parties' assertions. The arbitral tribunal's classification of the contract and the legal consequences of that classification were intrinsically linked to the main issues submitted to arbitration and, consequently, the arbitrators were able to decide them. The High Court stated that the arbitrators had the authority to decide both the specific issues established in the arbitration agreement as well as all other issues logically deriving from them.

SPAIN Alvaro Lopez de Argumedo, Uría Menéndez				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
The arbitrator's award did not address the allegations raised by the respondent in the arbitral proceedings	High Court of Madrid 70/2015, 13 October Id Cendoj: 28079310012015100082		X	The dispute arose between a tenant and an owner resulting from a failure to pay rent. In the arbitral proceedings, the sole arbitrator confirmed the eviction as it was proved that the tenant had not paid the rent. The arbitrator did not consider the allegations presented by the respondents because, under Spanish law (applied by analogy by the arbitrator), in the eviction process, the only matter open for fact-finding in eviction proceedings is whether or not rent was paid. The respondents brought a set-aside action on the basis that, in the award, the arbitrator failed to address the grounds they had alleged as their justification for refusing to pay the rent (*i.e.* the property was not habitable). The High Court dismissed the set-aside action on the basis that arbitrators' powers allow them to modify the scope of the arbitration (from what is established in the arbitration agreement) according to the assertions of the parties. The High Court also found that the award was well-grounded and sufficiently reasoned.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
The arbitrator applied a legal doctrine that had not been expressly alleged by the parties	High Court of Madrid 17/2016, 10 February Id Cendoj: 28079310012016100019		X	The dispute arose in relation to an amount claimed under an insurance contract. In the arbitral proceedings, the sole arbitrator upheld the claim in application of the *venire contra factum proprio non valet* doctrine, which the claimant had not asserted. The respondent brought the set-aside action on the basis of the alleged incorrect application of that doctrine. The High Court dismissed the claim, holding that the application of the doctrine was within the arbitrator's powers as a manifestation of the *iura novit curia* principle. Moreover, the High Court found that the merits of the case could not be reviewed and identified no inconsistency.

SPAIN Alvaro Lopez de Argumedo, Uría Menéndez				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
The arbitrator did not resolve all claims submitted to arbitration	High Court of the Basque Country 14/2015, 2 December Id Cendoj: 48020310012015100030	X		The dispute arose with regard to the breach of a real-estate sale contract. The arbitrator did not examine one of the claims submitted by the counterclaimants. The counterclaimants brought a set-aside action arguing that the arbitrator did not answer all the claims submitted to arbitration, which they argued amounted to a breach of public policy. The High Court set aside the award on the basis that the arbitrator did not answer all the claims that had been submitted to arbitration. This implied a lack of defence of the counterclaimants and a violation of the procedural public policy (*orden público procesal*). Awards must be logical, well-reasoned and consistent with the petitions of the parties.

SPAIN Alvaro Lopez de Argumedo, Uría Menéndez				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Partial award on interim measures issued *ex parte*	High Court of Catalonia 22/2016, 7 April Id Cendoj: 08019310012016100032		X	In the course of the arbitral proceedings, the arbitrator issued a partial award on interim measures without hearing the respondent. The respondent in the arbitral proceedings brought a set-aside action against the partial award arguing, among other matters, that issuing a partial award on interim measures *ex parte* violated the principles of equality and of a fair hearing. The High Court dismissed the annulment action on the basis that the rules of the *Tribunal Arbitral de Girona* expressly set out that interim measures may be issued exceptionally without hearing the counterparty. The Spanish Procedural Law – subsidiarily applicable – also sets out this possibility for ordinary proceedings. In addition, the parties never limited the power of the arbitrator to issue interim measures *ex parte*.

SPAIN Alvaro Lopez de Argumedo, Uría Menéndez				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failure to address each argument raised by the parties	High Court of Madrid 26/2015, 6 April Id Cendoj: 28079310012015100042		X	The dispute arose regarding the breach of an exclusivity clause in an agreement for the supply of wind turbines. The respondent in the arbitral proceedings brought an action to set aside the award arguing, among other issues, that the arbitrator failed to consider all their allegations. In particular, the respondent argued that the arbitrator did not resolve the *exceptio non adimpleti contractus* that they had alleged. The High Court dismissed the set-aside action on the basis that this alleged infringement was not raised at the appropriate stage of the proceedings. The High Court stated that, if one of the parties considers that all its pleadings have not been addressed in the award, that party must request a complementary award. If it fails to do so, that party will be considered as having accepted the award and rejected its opportunity to challenge it.

SPAIN Alvaro Lopez de Argumedo, Uría Menéndez				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
The award was issued after the agreed deadline	High Court of the Canary Islands 3/2016, 17 May Id Cendoj: 35016310012016100003		X	The arbitral proceedings ended with an award that was issued after the term agreed by the parties. Consequently, the claimant brought a set-aside action, arguing that the arbitral proceedings did not respect the agreement of the parties. The High Court dismissed the set-aside action. The High Court determined that the arbitration agreement stated that the award must be issued within three months of the commencement of the arbitral proceedings, but: (i) it did not contain any provisions regarding the consequences of infringing this deadline; and (ii) according to the Spanish Arbitration Law, the infringement of the deadline does not prevent the effectiveness of either the arbitration agreement or the award (unless otherwise agreed by the parties). In addition, the arbitrators justified the delay in the award.

SPAIN Alvaro Lopez de Argumedo, Uría Menéndez				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
The award was issued after the agreed deadline	High Court of Madrid 67/2013, 30 July Id Cendoj: 28079310012013100063		X	The dispute arose regarding the breach of a construction contract. The arbitral proceedings ended with an award that was issued after the term agreed by the parties. Consequently, the claimant – whose claim was disregarded – brought a set-aside action, arguing that the arbitral procedure was not in accordance with the agreement of the parties. The High Court dismissed the annulment action on the basis that, once the parties had made their final pleadings, the arbitrator extended the term for issuing the award due to the complexity of the matter in accordance with the Spanish Arbitration Law and the rules of the Civil and Mercantile Court of Arbitration (CIMA) – the institution administering the arbitral proceedings. Furthermore, the claimant never challenged the decision concerning the extension. In any event, the High Court stated that the issuance of the award after the term agreed by the parties is not listed among the reasons that may be invoked to annul an award pursuant to the Spanish Arbitration Law.

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
I. Submissions				
A. Written submissions				
Disregarding written submissions filed in breach of the procedural calendar	The Supreme Court's judgment dated 1 January 2002 in case no. 2707-01		X	The arbitral tribunal had refused to admit a counterclaim. The Court found that the arbitration agreement only covered specific claims and that the counterclaim was not covered by the arbitration agreement. The challenge was therefore dismissed.
Refusing to allow additional written submissions				
B. Oral submissions				
Disregarding oral submissions filed in breach of the procedural calendar	The Svea Court of Appeal's judgment dated 24 April 2008 in case no T 1803-07		X	The Court found that there had been no breach of due process, since it had not been shown that any submissions had been disregarded.
Refusing to allow additional oral submissions	The Svea Court of Appeal's judgment dated 24 February 2012 in case no T 6238-10		X	The applicant claimed that the sole arbitrator had committed a procedural error because of the arbitrator's refusal to hold a hearing. The Court held that the sole arbitrator did not err in refusing a hearing and that there had been no breach of the applicable arbitration rules.

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	The Svea Court of Appeal's judgment dated 6 April 2010 in case no T 2513-08		X	The Court held that the arbitral tribunal's refusal to hold a preparatory hearing was not likely to have affected the outcome of the arbitration.
II. Evidence				
A. Documentary evidence				
Disregarding new evidence filed in breach of the procedural calendar	The Svea Court of Appeal's judgment dated 8 November 2004 in case no T 5112-03		X	A party applied to set aside an arbitral award arguing that, by refusing to take into account its submissions and new evidence, the arbitral tribunal had breached the rules of due process. The Court did not find that any violation of due process had occurred and upheld the award.
	The Svea Court of Appeal's judgment dated 26 February 2018 in case no T 6582-16		X	The challenging party claimed that the arbitral tribunal had violated due process when refusing to admit evidence. The Court held that the arbitral tribunal's refusal did not amount to a violation of due process.

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	The Svea Court of Appeal's judgment dated 19 June 2016 in case no T 5296-14		X	A party argued that the arbitral tribunal had failed to respect the principle of equal treatment when allowing new evidence filed by the other party. The Court held that it is at the arbitral tribunal's discretion whether to allow new evidence filed in breach of the procedural calendar. The Court also held that nothing in the case implied that the tribunal had disregarded the principle of equal treatment of the parties.
Refusing to order the production of documents (for requests made in breach of the procedural calendar)	The Svea Court of Appeal's judgment dated 16 April 2004 in case no T 6605-03		X	The sole arbitrator had ordered a party to produce certain documents to the other party. The order was not complied with. In the final award, the sole arbitrator allegedly failed to consider the party's refusal to comply with the order. The Court held that the challenging party had failed to show that a violation of due process had occurred.
	The Svea Court of Appeal's judgment dated 18 May 2018 in case no T 82-16		X	The arbitral tribunal had rejected a request for document production, and the challenging party therefore argued that it had been deprived of the possibility to meet its burden of proof. Since the challenging party had not made an objection during the arbitration, the Court rejected the challenge.

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	The Svea Court of Appeal's judgment dated 22 February 2016 in case no T 5296-14		X	A party argued that the arbitral tribunal had violated due process when limiting a document production order by way of a later order. The Court held that the arbitral tribunal had the discretion to clarify which documents should be produced.
	The Göta Court of Appeal's judgment dated 3 July 2003 in case no T 33-02		X	A party claimed that there had been a violation of due process due to a failure to order document production. The Court found that no such request had been made, and therefore no violation of due process.
	The Svea Court of Appeal's judgment dated 26 March 2015 in case no. T 10470-10		X	A party requested that the Court set aside an award because the arbitral tribunal had refused to allow new evidence to be submitted after the expiration of the deadline for the submission of evidence. The Court noted that the dispute had been pending for several years and that the requesting party previously had been granted an extended time limit. The Court held that there were no special reasons why the evidence should have been admitted and rejected the challenge.

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	The Svea Court of Appeal's judgment dated 17 January 2008 in case no T 3473-07		X	The Court held that written evidence which was not admitted by the sole arbitrator would not likely have affected the outcome of the arbitration, and rejected the challenge.
B. Witnesses				
Refusing to hear witness evidence	The Svea Court of Appeal's judgment dated 9 June 2006 in case no T 1526-05		X	The challenging party claimed that the arbitral tribunal had violated due process when refusing to allow certain oral testimony. The challenging party claimed that it had requested oral testimony before the arbitral tribunal but that the tribunal had refused to allow the testimony to be heard. In the challenge proceedings, the Court found that the challenging party had not maintained its request for oral testimony and that there was therefore no violation of due process.
Calling of a witness on the Tribunal's own motion/relying on witness statements not invoked by the parties				
Refusing or limiting witness cross-examination				
C. Experts				

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing or limiting irrelevant expert evidence	The Svea Court of Appeal's judgment dated 19 January 2007 in case no T 5208-05		X	A party argued before the arbitral tribunal that there was no valid arbitration agreement. To clarify whether the arbitral tribunal had jurisdiction, the party had requested that the arbitral tribunal obtain an opinion from the ECT Secretariat. The request was rejected by the arbitral tribunal. The party subsequently applied to the Court to have the arbitral award annulled due to a violation of due process. The Court held that the ECT Secretariat lacked the authority to provide an opinion and, accordingly, could not have complied with the request to issue an opinion. The Court held that there had been no breach of due process.
Failing or refusing to appoint an expert	The Svea Court of Appeal's judgment dated 31 October 2017 in case no T 6247-15		X	A party had requested an extended time period for submitting an expert opinion to the arbitral tribunal. The arbitral tribunal rejected the request. The party then requested that the arbitral tribunal appoint an independent expert. Also this request was rejected. The party subsequently argued before the Court that there had been a violation of due process and that the award therefore must be set aside. The Court found that the party had not made any efforts during the arbitration to explain the need for an expert, and that there had been no violation of due process.

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing or limiting expert cross-examination				
D. Other evidentiary matters				
Disregarding evidence produced in breach of the procedural calendar	The Svea Court of Appeal's judgment dated 21 December 2012 in case no T 2737-11		X	The arbitral tribunal had refused a party's request to postpone a hearing and examine additional witnesses. The Court found that there had been no disproportionate restriction of the party's possibility to present its case, and therefore no violation of due process.
	The Svea Court of Appeal's judgment dated 9 June 2006 in case no T 1526-05		X	The challenging party claimed that the arbitral tribunal had violated due process when not accepting a request to postpone the final hearing until after an expert report had been submitted. The Court found that the parties had agreed on a time limit for the submission of new evidence, and that new evidence after that time limit should only be allowed under special circumstances. The arbitral tribunal had found that no such special circumstances existed. The Court held that there was no violation of due process.
III. Procedure in general				

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failing or refusing to order a site visit	The Svea Court of Appeal's judgment dated 19 February 2016 in case no T 5296-14		X	The challenging party claimed that the arbitral tribunal's decision not to order a site visit violated due process. The Court found that the applicable SCC rules state that, unless otherwise agreed upon by the parties, the tribunal has the discretion to decide whether to order a site visit, and rejected the challenge in this respect. The challenging party also claimed that there had been a violation of due process because it had allegedly been deprived of the right to request a new site visit. The Court held that the challenging party had not properly objected against the arbitral tribunal's order during the course of the arbitration and therefore had lost its right to challenge the order..
	The Skåne and Blekinge Court of Appeal's judgment dated 22 December 2015 in case no T 2165-15		X	The challenging party argued that there had been a violation of due process *inter alia* because the arbitral tribunal had not ordered a site visit. The Court found that the challenging party had not requested a site visit and that there had been no violation of due process.
Refusing or limiting witness/expert cross-examination				

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failing to answer each argument raised by the parties	The Svea Court of Appeal's judgment dated 29 March 2001 in case no T 5781-00		X	The challenging party claimed that the award lacked reasoning and that the arbitral tribunal had not addressed each argument raised. The Court held that the challenging party had failed to present a case warranting a setting aside of the award and that the challenge was manifestly unfounded.
	The Svea Court of Appeal's judgment dated 2 May 2006 in case no T 2956/2960-05		X	A party claimed that the sole arbitrator had misunderstood the other party's claim and should have requested a clarification *sua sponte*. The Court found that the sole arbitrator had not misunderstood the claim.
	The Svea Court of Appeal's judgment dated 6 June 2006 in case no T 1526-05		X	A party claimed that the arbitral tribunal had committed a procedural error due to a failure to take into account one of the challenging party's claims. The Court found that no such claim had been made during the arbitration.
	The Court of Appeal of Skåne and Blekinge's judgment dated 11 March 2009 in case no T 336-08		X	The challenging party argued that the arbitral tribunal had decided claims other than the claims raised by the parties. The Court disagreed.

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	The Supreme Court's judgment dated 31 March 2009 in case no T 4387-07		X	A party claimed that the arbitral tribunal had committed a procedural error due to the award lacking sufficient reasoning. The Court found that the reasoning of the award was sufficient and that no valid reason to set aside the award had been put forward by the challenging party.
	The Svea Court of Appeal's judgment dated 14 November 2011 in case no T 7449-10		X	The challenging party claimed that the arbitral tribunal had violated due process. According to the challenging party, the violation was committed by the arbitral tribunal either not taking an objection into account, or taking the objection into account but not commenting on it in the award. The Court found that the arbitral tribunal had no obligation or reason to elaborate on its reasoning concerning the objection in question.
	The Svea Court of Appeal's judgment dated 2 July 2012 in case no T 611-11		X	The challenging party claimed that the arbitral tribunal had committed a procedural error in not acknowledging an objection. The Court found that the arbitral tribunal had acknowledged the objection.

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	The Svea Court of Appeal's judgment dated 7 October 2011 in case no T 6798-10		X	The Court held that the arbitral tribunal had committed a procedural error by not deciding on an objection made by the challenging party. However, according to the Court, the procedural error had not affected the outcome of the arbitration. The Court thus found no reason to set aside the award.
	The Svea Court of Appeal's judgment dated 4 February 2011 in case no T 63-10		X	The challenging party claimed that the arbitral tribunal had committed a procedural error since the award lacked reasons concerning certain circumstances. The Court held that there had been no lack of reasons and rejected the challenge.
	The Svea Court of Appeal's judgment dated 25 August 2008 in case no T 1926-07		X	A party claimed that the sole arbitrator had violated due process when not acknowledging some of the party's objections. The Court held that disregarding objections did not mean that the sole arbitrator had concluded the arbitration without determining the issues which needed to be determined.
	The Svea Court of Appeal's judgment dated 20 March 2008 in case no T 5398-05		X	The challenging party argued that the arbitral tribunal had not taken into consideration some of the arguments made in support of the party's claims. The Court found that the arbitral tribunal had taken them into consideration.

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	The Svea Court of Appeal's judgment dated 16 February 2007 in case no T 1649-04		X	The challenging party argued that certain objections had not been addressed by the arbitral tribunal. The Court found that the objections had been addressed.
	The Svea Court of Appeal's judgment dated 7 December 2006 in case no T 5044		X	The challenging party claimed that the arbitral tribunal had not acknowledged a number of objections, since the objections were not addressed in the reasons of the award. The Court held that the Swedish Arbitration Act does not require that the arbitral tribunal provide reasoning.
	The Svea Court of Appeal's judgment dated 15 March 2005 in case no T 5043-04		X	The challenging party had requested that the arbitral tribunal determine whether the party's lack of income would affect its right to insurance. According to the challenging party, the arbitral tribunal did not address the issue. The Court found that the arbitral tribunal had not failed to determine what it needed to determine under the arbitration agreement.
	The Svea Court of Appeal's judgment dated 21 February 2005 in case no T 1164-03		X	The challenging party claimed that the arbitral tribunal had failed to take into account an objection. The Court disagreed and found that the Tribunal had taken the objection into account.

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	The Svea Court of Appeal's judgment dated 21 September 2006 in case no T 8890-05		X	The challenging party claimed that the arbitral tribunal had examined another issue than the one raised by the parties. The Court found that it had not been shown that there had been a violation of due process.
	The Svea Court of Appeal's judgment dated 30 December 2004 in case no T 3488-03		X	The challenging party claimed that the arbitral tribunal had committed a procedural error by failing to take into account an objection made during the arbitration. The challenging party alleged that the parties had agreed on an issue which was not mentioned in the award. The Court held that the objection had been taken into account, that it had not been shown that such an agreement had been reached between the parties and that the tribunal was under no obligation to decide on the alleged agreement.
	The Svea Court of Appeal's judgment dated 15 January 2018 in case no T 285-17		X	The challenging party claimed that the arbitral tribunal had committed a procedural error by failing to acknowledge objections made by that party. The Court held that the parties had been given sufficient time in the arbitration and that the challenging party's position on the issue had been thoroughly explained in the award. The Court also held that the tribunal had provided sufficient reasons in the award.

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	The Svea Court of Appeal's judgment dated 31 October 2017 in case no T 6247-15	X		The challenging party claimed that the arbitral tribunal had committed procedural errors by (i) assuming that the parties had agreed on the method of calculating compensation when they in fact had not and (ii) failing to take into account an objection. The Court found that the tribunal's reasoning was partly based on an erroneous assumption. The Court therefore set aside the award in part.
	The Svea Court of Appeal's judgment dated 26 February 2018 in case no T 6582-16		X	The challenging party claimed that the arbitral tribunal had failed to take into account circumstances invoked by that party and, accordingly, that the award was clearly incompatible with the Swedish legal system. The Court held, however, that the circumstances allegedly not taken into account were not so serious so as to warrant the conclusion that the award was clearly incompatible with the Swedish legal system.
	The Göta Court of Appeal's judgment dated 29 November 2016 in case no T-880-16		X	The challenging party claimed that the arbitral tribunal had failed to determine certain facts invoked by that party. The Court held that the challenging party had not shown that the tribunal had failed to determine the facts in question.

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	The Svea Court of Appeal's judgment dated 30 August 2016 in case no T 4302-15		X	The Court held that even though the tribunal may have misunderstood the evidence put forward by the challenging party, it had nevertheless taken it into account. The Court held that an erroneous assessment of the evidence is not a ground for setting aside an arbitral award.

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	The Court of Appeal for Northern Norrland's judgment dated 20 May 2016 in case no T 975-15		X	The challenging party claimed that the arbitral tribunal had committed a procedural error due to a failure to take into account an objection from the challenging party regarding a request to submit new evidence by the other party after the cut-off date. The Court stated that even though the challenging party had expressed its objection to the tribunal, it never filed a formal complaint regarding the issue. Therefore, the Court concluded that the challenging party had waived its right to refer to those circumstances as a ground for setting aside the arbitral award. The challenging party also claimed that the arbitral tribunal had failed to take into account a set-off claim. The Court emphasised that although a claim is not mentioned in an award, it cannot be taken for granted that the tribunal has not taken it into consideration. The Court held that the challenging party had failed to show that the tribunal did not take into account the set-off claim.

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	The Svea Court of Appeal's judgment dated 27 October 2014 in case no T 4525-13		X	The challenging party claimed that the arbitral tribunal had committed a procedural error by disregarding evidence submitted by that party. The Court held that the evaluation of evidence is at the discretion of the arbitral tribunal. Consequently, the Court held that the tribunal was free to disregard irrelevant evidence in its award.
	The Svea Court of Appeal's judgment dated 6 March 2014 in case no T 4519-13		X	The challenging party claimed that the arbitral tribunal had committed an error by failing to take into account circumstances invoked by that party. The Court noted that the award stated that the challenging party had not, in general, provided sufficient grounds or evidence. The Court found that such a general conclusion constitutes proof that the tribunal has taken all circumstances into consideration.
	The Göta Court of Appeal's judgment dated 24 August 2004 in case no T 2658-03		X	The challenging party claimed that the arbitral tribunal had committed an error by failing to take into account circumstances invoked by that party. The Court noted that the tribunal had expressly referred to the challenging party's statement of defence in its reasoning. The Court held that the tribunal must thus have taken the entire statement of defence into account in its award.

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	The Svea Court of Appeal's judgment dated 20 June 2013 in case no T 10913-11		X	In the challenge proceedings, the parties agreed that a certain part of the operative part of the award imposed obligations on third parties. The Court set aside that part of the award. The challenging parties also claimed that the award failed to properly reflect their position. However, the Court disagreed. The challenging parties further claimed that the arbitral tribunal had failed to take into account certain objections. The Court held that a tribunal's lack of reasoning can be a ground for setting aside an award only if there is essentially a complete lack of reasoning. Since the criticism raised against the reasons in the award did not meet the high threshold set by the Court and because the Court should not review an award on the merits, the Court concluded that there was no reason to set aside the award.
	The Svea Court of Appeal's judgment dated 22 April 2013 in case no T 6123-12 a		X	The challenging party claimed that the arbitral tribunal had committed an error by failing to take into account evidence submitted by that party. The Court held that not be the case since the tribunal had expressly addressed the evidence in its award.

SWEDEN Jakob Ragnwaldh, Mannheimer Swartling				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	The Svea Court of Appeal's judgment dated 21 December 2012 in case no T 2737-11		X	The challenging party claimed that the arbitral tribunal had based its award on circumstances not referred to by the parties. The Court held that not to be the case.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
I. Submissions				
A. Written submissions				
Disregarding written submissions filed in breach of the procedural calendar				
Refusing to allow additional written submissions	Swiss Federal Tribunal, First Civil Law Court, 26 April 2016, X1. X2. X3. X.4 v. Z. GmbH, n° 4A_342/2015, para. 4.1.2 and 4.2.2		X	A party argued that the arbitral tribunal had violated its right to be heard by refusing additional written submissions. The Federal Tribunal rejected the argument on the basis that the applicant had agreed to procedural rules in which it had waived its right to a reply. The Federal Tribunal noted that parties are free to agree on which procedural rules they wish to apply and held that in this case they had agreed to limit the first phase of the proceedings to one written submission.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Setting excessively short time limits for written submissions	Swiss Federal Tribunal, First Civil Law Court, 21 May 2015, A. SA v. B. Sàrl, n°4A_709/2014, para. 5.2.6		X	A party argued that the arbitral tribunal had violated its right to be heard by setting excessively short time limits and conducting the proceedings at a frantic rate, which prevented from defending its case properly (e.g. by preventing it from requesting the testimony of witnesses). The Federal Tribunal rejected the argument on the basis that the parties had apparently been subject to the same time limits, that a 20 day time limit to file an answer was not extraordinary in comparison to the time limits applicable in state court proceedings, and that the other party had apparently been able to comply with the time limits without any problem.
B. Oral submissions				
Disregarding oral submissions filed in breach of the procedural calendar				
Refusing an oral hearing	Swiss Federal Tribunal, First Civil Court, 19 April 2011, FC A. v. Trabzonspor Kulübü Dernegi and Turkish Football Federation (TFF), n°4A_404/2010, para. 5		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's right to be heard by refusing to hold an oral hearing, since the right to be heard does not entail the right to an oral hearing.
Refusing to allow additional oral submissions				

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
II. Evidence				
A. Documentary evidence				
Admitting a party's new evidence without giving the other party enough time to review it	Swiss Federal Tribunal, First Civil Court, 24 November 2017, A. SA v. B. Ltd, n°4A_236/2017, para. 3 and 4		X	A party argued that the arbitral tribunal had shown a lack of independence and impartiality and violated its right to equal treatment and right to be heard by admitting new belated evidence from the other party during the hearing without giving the applicant and its witnesses enough time to review it, while refusing to admit the applicant's new own evidence. The Federal Tribunal found that the applicant's allegations were unsupported by the facts and that the applicant had failed to show a lack of independence and impartiality. The Federal Tribunal also reiterated that it applied a strict standard to allegations in this respect. The Federal Tribunal also referred to its established case law under which an arbitral tribunal's procedural decisions, regardless of whether they were right or wrong, cannot in themselves provide objective grounds to suspect bias on the part of an arbitrator. The Federal Tribunal further held that the applicant had failed to show a particularly blatant mistake or repeated mistakes, which would constitute such a

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
				severe breach of duty on the arbitral tribunal's part that they would create the appearance of bias. The Federal Tribunal noted that the applicant had not shown a lack of impartiality in that the arbitral tribunal would have systematically refused to consider evidence in favor of the applicant or given it no weight, while ignoring evidence against the other party. The Federal Tribunal denied the alleged violation of the applicant's right to equal treatment and right to be heard, as it deemed that the arguments in this respect were actually aimed at challenging the arbitral tribunal's assessment of the evidence, which binds the Federal Tribunal and is not subject to its review.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Court, 2 May 2012, X. SA v. Y. SPRL, n°4A_16/2012, para. 3.3		X	A party argued that the arbitral tribunal had violated its right to equal treatment and right to be heard by failing to grant it the opportunity to study and take position on the extensive damage calculations the other party had submitted shorty before the hearing. The Federal Tribunal reaffirmed that a party which considers itself to have been disadvantaged by a procedural irregularity under Art. 190 para. 2 of the Swiss Private International Law Act forfeits its rights if it does not complain in a timely manner in the arbitral proceedings and does not make all reasonable efforts to (allow the tribunal to) cure the irregularity. The Federal Tribunal rejected the applicant's argument on the basis that it had forfeited its right to complain, since it had failed to do so in a timely manner and had instead waited to see whether the tribunal would rule in its favor.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Admitting evidence obtained illegally	Swiss Federal Tribunal, First Civil Law Court, 27 March 2014, X. v. The Football Federation of Ukraine (FFU), n°4A_362/2013, para. 3.2.1 and 3.2.2. Swiss Federal Tribunal, First Civil Law Court, 27 March 2014, A. v. The Football Federation of Ukraine (FFU), n°4A_448/2013, para. 3.2.1 and 3.2.2.		X	A party argued that the arbitral tribunal had violated public policy by admitting an illegally obtained video recording without properly weighing the interest in finding the truth against the interest in protecting the legal interest (*Rechtsgut*) that had been infringed upon obtaining the illegal evidence . The Federal Tribunal rejected the argument, holding that the arbitral tribunal had weighed the interests at issue properly and noting that it had done the same with other illegally obtained recordings, one of which was not admitted. The Federal Tribunal also noted that the applicant had not alleged that it had been prevented from contesting the veracity and the admissibility of the video during the arbitral proceedings, and that it had in fact failed to do so or ask for additional evidence to be taken. The Federal Tribunal emphasized that in any case, the applicant's argument was misguided, since a false or even arbitrary application of a relevant procedural rule by an arbitral tribunal does not in itself constitute a violation of public policy.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Disregarding new evidence filed in breach of the procedural calendar	Swiss Federal Tribunal, First Civil Law Court, 28 February 2013, X. v. Fédération International d'Haltérophilie, n°4A_576/2012, para 4.2.2		X	The Federal Tribunal held that the arbitral tribunal did not violate the applicant's right to be heard by refusing to admit the evidence it had proposed belatedly.
	Swiss Federal Tribunal, First Civil Court, 5 August 2013, FC X. v. FC Z. Ltd, n°4A_274/2013, para. 3		X	The Federal Tribunal held that the arbitral tribunal did not violate the applicant's right to be heard by refusing to admit evidence that had been submitted belatedly without any justification. The Federal Tribunal also held that the arbitral tribunal did not violate the applicant's right to equal treatment by admitting the belated evidence of the other party, which had explained why it had not been able to submit the evidence earlier.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Giving no evidentiary weight to redacted documents	Swiss Federal Tribunal, First Civil Law Court, 9 January 2008, X. SA v. Y. Inc., 4A_450/2007, para. 4.		X	A party argued that the arbitral tribunal had violated its right to be heard by allowing it to produce redacted documents without warning it that it would give them no evidentiary weight because of the redactions. The Federal Tribunal rejected the argument, holding that the appeal was inadmissible as the applicant had wrongly conflated the right to be heard, assessment of evidence and procedural public policy. The Federal Tribunal noted that in any case, the right to be heard does not require an arbitral tribunal to draw the attention of the parties to the decisive facts for the decision and the left open the question of a potential violation of procedural public policy.
Ordering the production of documents	Swiss Federal Tribunal, First Civil Court, 15 April 2013, X. (International) AG v. A., n° 4A_596/2012, para. 3		X	A party argued that the arbitral tribunal's procedural orders ordering the production of documents constituted interlocutory decisions on jurisdiction subject to appeal before the Federal Tribunal. The Federal Tribunal noted that besides final and partial decisions, preliminary and interlocutory decisions in which an arbitral tribunal decides a procedural or substantive issue can be appealed on the grounds listed in Art. 190 para. 2 lit. a and b PILA (i.e. on the ground that the sole arbitrator was irregularly designated or the tribunal irregularly

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
				composed or on the ground that the tribunal wrongly declared or declined having jurisdiction). The Federal Tribunal rejected the applicant's argument that the procedural orders constituted decisions on jurisdiction, holding instead that they were decisions as to the conduct of the proceedings (*verfahrensleitende Verfügungen*) that do not bind the arbitral tribunal and can be revisited in the course of the proceedings and which cannot be appealed before the Federal Tribunal. The Federal Tribunal noted that such decisions (*verfahrensleitende Verfügungen*) included evidentiary orders, decisions on the payment of the advance on costs, as well as those on the temporary suspension of the proceedings, and that the latter can be appealed before the Federal Tribunal if they contain an implicit decision on jurisdiction.
Refusing additional evidence that the tribunal deems irrelevant	Swiss Federal Tribunal, First Civil Court, 11 June 2014, A. v. Nationale Anti-doping Agentur Deutschland, n°4A_178/2014, para. 5.1 and 5.2		X	The Federal Tribunal held that the arbitral tribunal did not violate the applicant's right to submit evidence by refusing the additional analysis that he had suggested based on an expert statement showing that the proposed analysis was not more reliable than the test that had already been performed.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing to order the production of documents for requests made in breach of the procedural calendar				
Refusing to order the production of documents deemed irrelevant or unnecessary for the outcome of the case	Swiss Federal Tribunal, First Civil Court, 29 May 2013, S. S.A.D. v. Fédération Internationale de Football Association (FIFA), n°4A_620/2012, para. 4		X	A party argued that the arbitral tribunal had violated its right to be heard by refusing to order the production of documents on the basis that they were irrelevant and the applicant already possessed them. The Federal Tribunal reaffirmed that a party which considers itself to have been disadvantaged by a procedural irregularity under Art. 190 para. 2 of the Swiss Private International Law Act forfeits its rights if it does not complain in a timely manner in the arbitral proceedings and does not make all reasonable efforts to (allow the tribunal to) cure the irregularity. The Federal Tribunal also noted that waiting until the annulment proceedings to raise an irregularity when the opportunity was already there during the arbitral proceedings goes against good faith, and that it is particularly contrary to good faith for a party to expressly confirm upon the arbitral tribunal's request that it has no objections as to the way the proceedings have been conducted with respect to its right to be heard and then make exactly that complaint during annulment proceedings. According

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
				to the Federal Tribunal, this form of *venire contra factum proprium* deserves no legal protection. The Federal Tribunal rejected the argument on the basis that the applicant had specifically confirmed to the arbitral tribunal that it had no objection as to the way the proceedings had been conducted with respect to its right to be heard.
B. Witnesses				
Calling of a witness on the tribunal's own motion/relying on witness statements not invoked by the parties	Swiss Federal Tribunal, First Civil Law Court, 30 April 2015, A. AG v. B., n°4A_623/2014, para. 3		X	A party argued that the arbitral tribunal had violated its right to be heard by basing its award on facts that the parties had not expressly alleged, but resulted from witness testimony. The Federal Tribunal rejected the argument on the basis that the applicant had been able to comment on the witness testimony at issue.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failing to grant the parties equal time for the examination of witnesses	Swiss Federal Tribunal, First Civil Law Court, 20 February 2013, X. SE and Y. GmbH v. Z. B.V., n°4A_407/2012, para. 3.1 and 3.4		X	A party argued that its right to equal treatment had been violated by the fact that the arbitral tribunal had only granted it 14 hours to examine witness while giving the other party 23 hours to do the same. The Federal Tribunal rejected the argument, reaffirming that a party which considers itself to have been disadvantaged by a procedural irregularity under Art. 190 para. 2 of the Swiss Private International Law Act forfeits its rights, if it does not complain in a timely manner in the arbitral proceedings and does not make all reasonable efforts to (allow the tribunal to) cure the irregularity. The Federal Tribunal found that while the applicant had made certain "objections" and "remarks" with respect to equal treatment during the hearing, none of those constituted sufficiently clear complaints such as would prevent the forfeiture of its rights. The Federal Tribunal held that the applicant had failed to make all reasonable efforts to cure the alleged irregularity since it had not requested the additional hearing of witnesses.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failing to provide enough opportunities for party and witness testimony	Swiss Federal Tribunal, First Civil Law Court, 16 October 2014, Fenerbahçe Spor Kulübü v. Union des Associations Européennes de Football (UEFA), n° 4A_324/2014, para. 3.3		X	The Federal Tribunal rejected the applicant's argument that the arbitral tribunal had violated its right to equal treatment by failing to grant it enough opportunities for party and witness testimony. The Federal Tribunal held that the complaint had been forfeited because the applicant had failed to complain during the arbitral proceedings and had reduced the number of witness it wished to call two days before the hearing from 53 to 35 and then to 32 one day before the hearing and then renounced 13 further witnesses during the hearing.
Failing to take a transcript of the statements of a witness	Swiss Federal Tribunal, First Civil Court, 29 July 2010, X. v. Fédération Equestre Internationale, n°4A_31/2010, para. 4.2		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's right to be heard by failing to take a transcript of the statements of a witness since a right to such transcript cannot be deduced from the right to be heard or from procedural public policy.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing or limiting witness cross-examination	Swiss Federal Tribunal, First Civil Law Court, 11 November 2002, Z. v. Dame A. and Dame B., n°4P.167/2002, para. 2		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's right to present evidence or its right to be equal treatment by refusing to allow the cross-examination of Dame B. The Federal Tribunal rejected the right to evidence argument, holding that it could not review the arbitral tribunal's factual finding that Dame B. had memory problems and that the arbitral tribunal had acted reasonably by refusing to hear a witness who was not capable of contributing to the search for the truth. The Federal Tribunal also noted that applicant's right to present evidence had not been violated because the interrogation of Dame B. was in any case unfit to prove anything. The Federal Tribunal rejected the equal treatment argument, holding that the applicant had benefited from the same possibilities to present evidence as its counterparties and that the arbitral tribunal could not be blamed for the fact that Dame B did not attend the hearing (due to her health).

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing to allow a party to examine a witness	Swiss Federal Tribunal, First Civil Law Court, 8 October 2014, A. Inc. v. B. SA, n°4A_199/2014, para. 6.2.3		X	The Federal Tribunal held that the arbitral tribunal did not violate the applicant's right to equal treatment by denying it the opportunity to examine its witnesses and its expert in the context of a direct examination despite multiple requests, while allowing the other party to examine its witnesses in the context of a redirect examination. The applicant was not able to examine its own witnesses since the other party had not requested the cross-examination of those witnesses and the procedural order did not allow for the direct examination of witnesses. The Federal Tribunal also noted that the applicant had failed to show how the testimony of its witnesses and expert could have affected the outcome of the dispute since it did not establish how this would have allowed the taking of evidence that could not have been brought to the arbitral tribunal's attention in written submissions. The Federal Tribunal reaffirmed that in any case the right to be heard does not include the right to orally interrogate the author of a written statement.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 7 January 2004, X. Ltd. v. Y. GmbH and Z. GmbH, n°4P.196/2003, para. 4		X	A party argued that the arbitral tribunal had violated its right to be heard and its right to equal treatment by refusing to allow it to examine witnesses based on an alleged general right to examine witnesses and in particular the authors of witness statements. The Federal Tribunal rejected the argument, holding that no such right exists.
Refusing to hear a witness	Swiss Federal Tribunal, First Civil Court, 30 January 2013, A v. B and C, n° 4 A_335/2012		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's right to be heard by refusing to hear a witness since the testimony of the witness would have focused on facts that were irrelevant for its decision.
	Swiss Federal Tribunal, First Civil Law Court, 23 January 2012, U. V. W. and X. SA v. Y. and Z., n°4A_526/2011, para. 2		X	The Federal Tribunal held that the arbitral tribunal did not violate the applicant's right to be heard by refusing to hear a witness and that that the applicant could not show such violation if it limited itself to criticizing the Arbitral Tribunal's grounds for the refusals.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 24 November 2016, A. LLC v. B. SA, n°4A_497/2015, para. 4		X	The Federal Tribunal held that the arbitral tribunal did not violate the applicant's right to be heard by refusing to hear a witness given that the "new facts" that had allegedly occurred since the witness statement and in relation to which the applicant wished to hear the witness were not actually new and were legal points rather than facts.
	Swiss Federal Tribunal, First Civil Law Court, 20 February 2013, X. SE and Y. GmbH v. Z. B.V., n°4A_407/2012, para. 3			A party argued that its right to be heard had been violated by the arbitral tribunal's failure to hear a witness as it had requested. The Federal Tribunal rejected the argument, reaffirming that a party which considers itself to have been disadvantaged by a procedural irregularity under Art. 190 para. 2 of the Swiss Private International Law Act forfeits its rights, if it does not complain in a timely manner in the arbitral proceedings and does not make all reasonable efforts to (allow the tribunal to) cure the irregularity. The Federal Tribunal held that the applicant's question to the arbitrators during the hearing as to whether "more efforts" should be made to hear the witness did not constitute a complaint such as would prevent the forfeiture of its rights, and that it had failed to make use of subsequent opportunities to complain of the alleged procedural irregularity.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing to hear a witness by way of judicial assistance	Swiss Federal Tribunal, First Civil Law Court, 23 January 2012, U. V., W. and X. SA v. Y. and Z, n° 4A_526/2011, para. 2.1 and 2.2		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's right to be heard by refusing to hear a witness by way of judicial assistance. The Federal Tribunal rejected the applicant's argument as it had not shown a violation of its right to be heard since it had limited itself to criticizing the grounds for the arbitral tribunal's refusal.
	Swiss Federal Tribunal, First Civil Law Court, 19 February 2009, X. SpA v. Y. B.V., n° 4A_539/2008, para. 5.2		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's right to be heard by refusing to hear two witnesses in Milan by way of judicial assistance on the basis that the applicant had not made the request in good faith and in compliance with the procedural rules since it had produced unsigned statements for those witnesses, alleging that they had given their consent, although that was not true.
	Swiss Federal Tribunal, First Civil Court, 14 July 2003, A. v. X. Ltd, n° 4P.114/2003, para. 2.3		X	The Federal Tribunal rejected the applicant's argument that the arbitral tribunal had violated its right to be heard by choosing to submit the parties' written questions to a witness residing in Libya rather than hearing him by way of judicial assistance since the arbitral tribunal had given detailed reasons for doing so, which the applicant had not at all addressed.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing to hear a witness when the request is untimely	Swiss Federal Tribunal, First Civil Court, 5 August 2013, FC X. v. FC Z. Ltd, n°4A_274/2013, para. 3		X	The Federal Tribunal held that the arbitral tribunal did not violate the applicant's right to be heard by refusing to hear a request when the request was untimely without any justification. The Federal Tribunal also held that the arbitral tribunal did not violate the applicant's right to equal treatment by admitting the belated evidence of the other party, which had explained why it had not been able to submit the documents in question earlier.
	Swiss Federal Tribunal, First Civil Law Court, 20 July 2011, *X v. Jamaican Football Federation, JM-Kingston, Jamaica*, n° 4A_162/2011, para. 2.3.3		X	The Federal Tribunal held that the arbitral tribunal did not violate the applicant's right to be heard or its right to equal treatment by refusing an untimely request to hear a witness. The Federal Tribunal noted that a party has the right to present evidence but only to the extent it is submitted in a timely fashion and in accordance with the applicable procedural rules.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing to hear witnesses again in response to new allegations and new evidence	Swiss Federal Tribunal, First Civil Court, 11 October 2012, X. Ltd v. Y. GmbH, n°4A_76/2012, para. 3.3		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's right to be heard by refusing to hear witnesses again following new allegations and evidence from the other party, since the applicant had been given and used the opportunity to be heard by stating its position in detail in writing, and the applicant had failed to show concretely which of the newly submitted evidence had made an additional audition of witnesses necessary.
Refusing to take a witness statement into account	Swiss Federal Tribunal, First Civil Law Court, 31 May 2012, a. v. B. GmbH, n° 4A_682/2011, para. 4		X	A party argued that the arbitral tribunal had violated its right to be heard by deciding not to take a witness statement into account. The Federal Tribunal held that there had been no violation of the right to be heard since the arbitral tribunal did not ignore the witness statement but rather analysed and confronted it with other evidence before deciding to give it no weight to the extent it was not confirmed by any other evidence.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Treating the testimony of witnesses unequally	Swiss Federal Tribunal, First Civil Court, 24 November 2017, A. SA v. B. Ltd, n°4A_236/2017, para. 5.1		X	A party argued that the arbitral tribunal had shown a lack of independence and impartiality, and violated procedural public policy by treating the testimony of two witnesses differently without a valid reason to do so. The Federal Tribunal rejected this argument, as it deemed that the difference in treatment was based on objective considerations and the applicant was actually challenging the arbitral tribunal's assessment of the evidence, which binds the Federal Tribunal and is not subject to its review.
C. Experts				
Refusing to admit an expert report filed in breach of the procedural calendar	Swiss Federal Tribunal, First Civil Court, 11 June 2014, A. v. Nationale Anti-doping Agentur Deutschland, n°4A_178/2014, para. 5.1 and 5.3		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's right to be heard by refusing to admit an expert report filed in breach of the procedural calendar.
	Swiss Federal Tribunal, First Civil Law Court, 20 February 2013, X. SE and Y. GmbH v. Z. B.V., n°4A_407/2012, para. 4		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's right to be heard by refusing to admit an expert report filed in breach of the procedural calendar.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing or limiting irrelevant expert evidence	Swiss Federal Tribunal, First Civil Law Court, 25 February 2015, A. v. X.B., n°4A_486/2014, para. 5		X	A party argued that the arbitral tribunal violated its right to be heard by not considering two expert reports submitted in accordance with the procedural rules. The Federal Tribunal rejected the argument, holding that the expert reports concerned facts that were not relevant for the case according to the arbitral tribunal's assessment of the agreement, which cannot be reviewed by the Federal Tribunal.
Refusing or failing to appoint an expert when the party did not formally request an expert opinion	Swiss Federal Tribunal, First Civil Law Court, 25 July 2017, A. v. International Weightlifting Federation (IWF), n°4A_80/2017, para. 5		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's rights to be heard and to equal treatment or public policy by refusing to appoint an expert, since the applicant had not actually requested an expert report.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 19 June 2014, A. Kft. v. B. GmbH, n°4A_597/2013, para. 3		X	A party argued that the arbitral tribunal had violated its right to be heard by failing to call upon a Hungarian tax law expert despite its lack of knowledge on that subject and by failing to call upon an expert to help it understand certain lists that the applicant had submitted as evidence. The Federal Tribunal rejected the argument, holding that the applicant was acting in bad faith and had forfeited its rights in this respect, since it had never questioned the knowledge of the Arbitral Tribunal or requested the intervention of a Hungarian tax law expert during the proceedings even though a Hungarian tax law issue was in dispute. The Federal Tribunal also held that in arbitration proceedings governed by the principle of negotiation (*Verhandlungsgrundsatz*), it is not the tribunal's task to remedy a party's failure to meet its burdens of assertion or proof based on its obligation to ask questions (*richterliche Fragepflicht*), let alone spontaneously consult experts as to the statements submitted by a party.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 9 January 2007, X. Sàrl v. Masse en faillite de Y. SA, n°4P.96/2002, para. 5		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's right to be heard by refusing to order a complementary expert report since the applicant had not asked for it. The Federal Tribunal also noted that the applicant had forfeited its right to complain by failing to raise the issue immediately with the arbitral tribunal.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 6 September 1996, X. v. Y., non-published, para. 3 ASA Bulletin, 1997, pp 299		X	The Federal Tribunal rejected the applicant's argument that the Arbitral Tribunal had violated its right to be heard and made an arbitrary assessment of evidence on the basis that the applicant had failed to sufficiently motivate its request and had not formally requested an independent expertise. The Federal Tribunal reaffirmed the conditions under which a party has the right to an independent expertise, namely that it must expressly request an expert report, it must do so according to the applicable procedural rules, the expert report must focus on relevant facts which can influence the arbitral tribunal's decision, be apt to prove such facts, and appear necessary. The Federal Tribunal further noted that those conditions are only met if the expertise concerns facts are of a technical nature that cannot be proven otherwise and if the arbitral tribunal does not have the necessary knowledge.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing to appoint an expert when the expert opinion would not be relevant or necessary for the case	Swiss Federal Tribunal, First Civil Court, 30 January 2013, A v. B and C, n° 4 A_335/2012		X	A party argued that the arbitral tribunal had violated its right to be heard by refusing to appoint an expert. The Federal Tribunal rejected the argument, holding that, regardless of the impossibility of appointing an expert mentioned in the arbitral tribunal's decision, the expert report was irrelevant for the award, and that if the party had wanted to challenge the arbitral tribunal's anticipated assessment of evidence, it would have had to invoke a violation of public policy, but it had not.
Refusing or limiting expert cross-examination	Swiss Federal Tribunal, First Civil Law Court, 20 February 2013, X. SE and Y. GmbH v. Z. B.V., n°4A_407/2012, para. 3			A party argued that its right to be heard had been violated by the arbitral tribunal's failure to hear legal experts. The Federal Tribunal rejected the argument, reaffirming that a party which considers itself to have been disadvantaged by a procedural irregularity under Art. 190 para. 2 of the Swiss Private International Law Act forfeits its rights if it does not complain in a timely manner in the arbitral proceedings and make all reasonable efforts to (allow the arbitral tribunal to) cure the irregularity. The Federal Tribunal found that the applicant had failed to complain of the alleged procedural irregularity before the arbitral tribunal.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing to order an independent expertise	Swiss Federal Tribunal, First Civil Law Court, 8 August 2017, Société X. v. Z., n° 4A_277/2017, para. 3		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's right to be heard by rejecting its request for an independent expertise based on the applicant's failure to complete the necessary formalities (i.e. provide certain documents that would be necessary for the expert's mission). The Federal Tribunal also noted that an arbitral tribunal is not required to order an expertise merely because the parties have jointly requested it.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 31 May 2012, a. v. B. GmbH, n° 4A_682/2011, para. 3		X	A party argued that the arbitral tribunal had violated its right to be heard by only partially granting its request for an expertise on the authenticity of a document since the expertise was limited to the authenticity of the signature, and by refusing an expertise on the document by experts designated by the applicant. The Federal Tribunal rejected the argument, reaffirming that a party which considers itself to have been disadvantaged by a procedural irregularity under Art. 190 para. 2 of the Swiss Private International Law Act forfeits its rights if it does not complain in a timely manner in the arbitral proceedings and make all reasonable efforts to (allow the arbitral tribunal to) cure the irregularity, finding that the applicant had failed to do so in this case and had instead waited to see if the award would fall in its favor.
	Swiss Federal Tribunal, First Civil Law Court, 4 April 2018, a. v. B. GmbH, n° 4A_580/2017, para. 3.3			The Federal Tribunal held that the applicant had failed to show that its right to be heard had been violated as it had alleged that an accounting expert was needed in general terms only, without concretely showing for which of its factual allegations an expertise would have been necessary.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing to admit a party's comments on an expert report	Swiss Federal Tribunal, First Civil Law Court, 8 July 2016, A. v. B., n° 4A_259/2015, para. 3		X	A party argued that the arbitral tribunal didn't admit its comments on an expert report and that it therefore couldn't express its opinion on a relevant point for the decision. It invokes a violation of its right to be heard and a denial of justice. The Federal Tribunal dismissed the application and held that the fact that the arbitral tribunal deemed the comments inadmissible fall outside the scope of the invoked grounds because the comments concern the material accuracy of the report (the assessment of the evidence).
Refusing to appoint an expert after the requesting party fails to pay the advance within the time limit	Swiss Federal Tribunal, First Civil Law Court, 21 April 2004, A. Srl in fallimento v. B. SA, n° 4P.270/2003, para. 3.3		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's right to be heard by refusing to appoint an expert after the applicant had failed to pay the advance within the time limit established by the arbitral tribunal.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing a belated challenge to an expert	Swiss Federal Tribunal, First Civil Law Court, 28 May 2000, Egemetal Demir Celik Sanayi ve Ticaret A.S. v. Fuchs Systemtechnik GmbH., n° 4P.42/2000, para. 4.		X	The Federal Tribunal held that the arbitral tribunal did not violate procedural public policy by refusing a belated challenge against the tribunal-appointed expert, since (unlike grounds for exclusion) grounds for challenge do not have to be considered *ex officio*, and a party's right to challenge an expert can be forfeited. The Federal Tribunal noted that as long as an expert does not have a direct personal interest in the outcome of the proceedings, which would cause (waivable) grounds for challenge to become grounds for exclusion that must be considered *ex officio*, there is no violation of procedural public policy if those grounds for challenge are not taken into account *ex officio*.
Rejecting a challenge against an expert	Swiss Federal Tribunal, First Civil Law Court, 2 September 2014, Sàrl X. v. Y. AG, n° 4A_606/2013, para. 6		X	A party argued that the arbitral tribunal had violated public policy by rejecting its challenge against the expert that it had appointed. The Federal Tribunal held that the criteria to challenge an expert are the same as for an arbitrator and that the expert chosen by the arbitral tribunal. The Federal Tribunal rejected the argument, finding that the expert had been duly presented to the parties and that the applicant had raised its objections belatedly.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
D. Other evidentiary matters				
Disregarding evidence produced in breach of the procedural calendar				
III. Procedure in general				
Allowing the other party to introduce a new (or modified) claim during the hearing	Swiss Federal Tribunal, First Civil Law Court, 17 August 2015, A AS v. B. SAL, n° 4A_54/2015, para. 4. 2		X	A party argued that the arbitral tribunal had violated its right to be heard and its right to equal treatment by deciding to allow a new claim introduced by the other party during the hearing. The applicant had opposed debating the new claim, which had never been raised before, at the hearing. Despite this, the arbitral tribunal gave the other party the opportunity to comment on its new allegations and interrogated witnesses on this subject before deciding to allow the new claim. The Federal Tribunal rejected the applicant's argument, noting that it had itself conceded that the arbitral tribunal shared its view that the new (or modified) claim was unfounded, and that in any case, it had not shown how the arbitral tribunal's conduct of the proceedings would have prevented it from presenting its position, nor that the Arbitral Tribunal would have granted the other party something that it had been refused.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Deciding based on equity even though the arbitration clause does not allow it	Swiss Federal Tribunal, First Civil Law Court, 26 November 2012, A. Ltd, B. Ltd, C. and D. v. X. AG, n°4P.129/2002, para. 8	X*		The Federal Tribunal held that it was not sufficient for the applicant to allege that the arbitral tribunal had violated public policy by deciding based on equity despite the arbitration clause not allowing it without showing how this would have violated public policy. *The Federal Tribunal annulled the award based on another ground.
Deciding on a party's request to file an additional submission before expiry of the time limit for comments	Swiss Federal Tribunal, First Civil Law Court, 28 October 2008, X. v. Y., n° 4A_294/2008, para. 3.2.1		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's right to be heard by deciding on the other party's request to file an additional submission before the expiry of the time limit it had set for comments given that the applicant had already submitted comments before the deadline without indicating that it intended to file additional comments.
Deciding on costs before receiving the parties' statements of costs despite having asked for them	Swiss Federal Tribunal, First Civil Law Court, 17 March 2011, Fédération X. v. Fédération A., Fédération B., Fédération C., Fédération D., Fédération E., Fédération E., F. Inc., n° 4A_600/2010, para. 4.2	X		The Federal Tribunal held that an arbitral tribunal had violated the applicant's right to be heard by issuing a decision on costs before it had received the parties' statements on costs despite having asked for them. The Federal Tribunal annulled the award in this respect.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Deciding to admit a party's cross-counterclaims without waiting for the other party's comments	Swiss Federal Tribunal, First Civil Law Court, 6 January 2010, X. SA and Y. SA v. V. Limited and W. GmbH, n° 4A_348/2009, para. 3.3		X	A party argued that the Chairman of the arbitral tribunal had shown a lack of impartiality by admitting the cross-counterclaims of the other party before it had been able to comment and before the deadline to do so had passed. The Federal Tribunal noted that a procedural mistake or a substantively incorrect decision is not in itself sufficient to put in doubt the impartiality of an arbitral tribunal, save in cases where the mistake is particularly serious or there where there have been repeated mistakes, which would constitute such a severe breach of duty that they would create the appearance of bias. The Federal Tribunal rejected the argument, holding that the mistake had been committed by the arbitral tribunal as a whole due to an inadvertence and noting that this was the only error in proceedings which had lasted more than four years and that the arbitral tribunal had repaired its mistake by taking the applicant's comments into account in a new decision on the matter.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Disclosing the decision to the parties before its reasoning had been notified	Swiss Federal Tribunal, First Civil Law Court, 10 November 2005, La République X. v. Y. and Z., n° 4P.154/2005, para. 6.2		X	A party argued that the Chairman of the arbitral tribunal had violated procedural public policy by informing the parties that the rectification of the award was ongoing and that the mistake was in the operative part of the decision. The Federal Tribunal rejected the argument, holding that the Chairman had merely communicated the decision that had been reached one day earlier even though the reasoning was only communicated a few weeks later.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failing or refusing to order a site visit	Swiss Federal Tribunal, First Civil Law Court, 12 July 2012, X. v. Y., n° 4A_150/2012, para. 4.1 and 4.2		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's right to evidence (*droit à la preuve*) by failing to order a site visit since the applicant had not formally requested it and the arbitral tribunal had indicated that it considered this to be unnecessary based on an anticipated assessment of evidence. The Federal Tribunal reaffirmed that the right to evidence must be exercised in accordance with the applicable procedural rules and that the arbitral tribunal can validly refuse to take evidence without breaching the right to be heard if the evidentiary means requested is not apt to prove a fact, if the fact at issue has already been proven, if it is irrelevant or if the arbitral tribunal has already concluded by way of an anticipated assessment of evidence that it has made its mind up and that the requested measures cannot change it.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failing to take evidence on the disputed capacity to be a party (*Parteifähigkeit*) and legal successorship of a party (*Rechtsnachfolge*)	Swiss Federal Tribunal, First Civil Law Court, 9 March 2005, A. v. B., n°4P.226/2004, para. 4 and 5	X		The Federal Tribunal held that the arbitral tribunal had wrongly declared that it had jurisdiction over the applicant since it had failed to take evidence on its capacity to be a party to the dispute and whether it had legally succeeded another party, both of which were disputed. The Federal Tribunal noted that the arbitral tribunal's decision did not contain the relevant factual determinations based on which one could have examined whether or not the applicant was bound to the arbitration clause or any explanations with respect to the issue of legal succession. The Federal Tribunal held that the arbitral tribunal had to determine whether the parties were bound to the arbitration clause with full power of review (*voller Kognition*) even if this depended on facts that were also relevant for the substantive determination of the claim, and that the Arbitral Tribunal had violated Art. 190 para.2 PILA by affirming the applicant's *prima facie* capacity to be a party to the proceedings based on a summary or preliminary examination. The Federal Tribunal annulled the decision and remitted the matter to the arbitral tribunal so that it could make the relevant factual findings before issuing a new decision on its jurisdiction.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failing to answer each argument raised by the parties	Swiss Federal Tribunal, First Civil Law Court, 30 May 2017, A. AG. v. State of Palestine and B. Company, n°4A_532/2016, para. 4.2.	X		The Federal Tribunal held that the arbitral tribunal had violated the applicant's right to be heard by ignoring its allegations, arguments und proof with respect to its state counterparty's obligation to provide the necessary licenses for a tourism project, as it had only addressed the obligation to provide licenses for one part of the project (the casino). The Federal Tribunal annulled the award and remitted the matter to the arbitral tribunal for a new decision on that point.
	Swiss Federal Tribunal, First Civil Law Court, 29 September 2015, A, B v. C, no 4A_172/2015, para. 4		X	
	Swiss Federal Tribunal, First Civil Law Court, 15 July 2015, A. SA v. B. C. D. E. F. G. H. I J. (Association K.) and Federation L., n° 4A_246/2014, para. 6.3.2	X		The Federal Tribunal reaffirmed that while arbitral tribunals do not have to address every single argument raised by the parties, they must address all issues that are relevant for the decision. The Federal Tribunal held that the Arbitral Tribunal had violated the applicant's right to be heard by failing to address arguments that were relevant for the decision and annulled the award.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 4 February 2014, X. v. Y., n°4A_460/2013, para. 3.2 and 3.3.	X		The Federal Tribunal held that the arbitral tribunal had violated the applicant's right to be heard by completely failing to address its arguments with respect to contractual limitations of responsibility even though it had raised them at several points in the proceedings, noting that the issue was manifestly relevant for the decision since it has caused the arbitral tribunal to bifurcate the proceedings. The Federal Tribunal annulled the award and remitted the matter to the arbitral tribunal for a new decision.
	Swiss Federal Tribunal, First Civil Law Court, 16 October 2014, Fenerbahçe Spor Kulübü v. Union des Associations Européennes de Football (UEFA), n° 4A_324/2014, para. 5.2		X	The Federal Tribunal reaffirmed that the right to be heard does not require arbitral tribunals to expressly address all the arguments of a party.
	Swiss Federal Tribunal, First Civil Law Court, 17 April 2013, X. Limited v. Y. Limited, n°4A_669/2013, para. 3.	X		The Federal Tribunal held that the arbitral tribunal had violated the applicant's right to be heard by failing to address an argument that the applicant had raised with respect to the resell price in dispute. The Federal Tribunal annulled the award.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 31 January 2012, X. v. Z. Inc., n°4A_360/2011, para. 5.2	X		The Federal Tribunal held that the arbitral tribunal had violated the applicant's right to be heard by failing to address two relevant arguments in its post-hearing brief due to an IT issue, noting that due to the formal nature of the right to be heard, there was no need to show that the violation had had a negative impact on the applicant. The Federal Tribunal annulled the award.
	Swiss Federal Tribunal, First Civil Law Court, 16 May 2011, X. GmbH v. Y. Sàrl, n° 4A_46/2011, para. 4.1.3	X		The Federal Tribunal held that the arbitral tribunal had violated the applicant's right to be heard by failing to address its argument that the claim was time-barred, which if founded, would have changed the outcome of the decision. The Federal Tribunal noted that it was not its duty to assess whether or not the argument should have been accepted by the arbitral tribunal due to the formal nature of the right to be heard and annulled the award.
	Swiss Federal Tribunal, First Civil Law Court, 29 January 2010, A. GmbH. v. B. SA, n°4A_550/2009, para. 5		X	A party argued that the arbitral tribunal had committed formal denials of justice and violated its right to be heard by making mistakes in its reasoning and failing to address some of its arguments. The Federal Tribunal reaffirmed that the right to be heard does not entail the right to a reasoned

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
				decision, and that although arbitral tribunals have a minimal obligation to actually hear and examine the legally relevant allegations of the parties, this does not mean that they must expressly deal with every single one of the arguments of the parties (in the award). The Federal Tribunal reaffirmed that an obviously incorrect finding is not in itself sufficient to annul an international arbitration award and that while the right to be heard guarantees the right to take part in the decision-making process, it does not entail the right to a substantively correct decision. The Federal Tribunal noted that it does not concern itself with whether arbitral tribunals have taken into account and correctly understood all aspects of the file, and that what is required is a formal denial of justice in the sense that the right to be heard of a party has effectively been hollowed out by the obvious oversight (of the arbitral tribunal) with the result that the party is in no better position than if it had had completely been denied the right to be heard on an important issue for the decision. Thus, a party wishing to rely on a violation of the right to be heard must show that the oversight has prevented it from presenting and evidencing its position with respect to a relevant issue in the proceedings.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
				The Federal Tribunal rejected the applicant's argument, holding that the arbitral tribunal had addressed some of the arguments at issue in detail and one of them implicitly.
	Swiss Federal Tribunal, First Civil Law Court, 26 May 2010, X. v. Y. Inc., n°4A_433/2009, para. 2.1, 2.4.1 and 2.4.2	X		The Federal Tribunal held that the arbitral tribunal had violated the applicant's right to be heard by failed to address a relevant argument that it had raised. The Federal Tribunal annulled the award and remitted the matter to the arbitral tribunal for a new decision.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 29 February 2008, X. GmbH v. Y. Corporation, n°4A_452/2007, para. 3		X	A party argued that the arbitral tribunal had violated its right to be heard and the resulting right to a reasoned decision by only referring to its arguments formally without addressing them properly, and in some cases, at all. The Federal Tribunal reaffirmed that the right to be heard does not entail the right to a reasoned decision, and that although arbitral tribunals have a minimal obligation to actually hear and examine the legally relevant allegations of the parties, this does not mean that they must expressly deal with every single one of the arguments of the parties (in the award). The Federal Tribunal rejected the applicant's argument on the basis that the arbitral tribunal had met its minimal obligation.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 10 December 2007, ENUSA Industrias Avanzadas S.A. v. LIPO CHEMICALS Inc., n°4A_352/2007, para. 5.3		X	A party argued that the arbitral tribunal had violated its right to be heard by failing to address several of its arguments. The Federal Tribunal rejected the argument, holding that the arbitral tribunal did not have to address every single fact or legal aspect raised by the applicant and that its right to be heard would only have been violated if the arbitral tribunal had failed to address an argument that was essential for the decision, which it had not.
	Swiss Federal Tribunal, First Civil Law Court, 22 March 2007, X. v. ATP Tour, n°4P.172/2006, para. 4.1 and 5	X		The Federal Tribunal held that the arbitral tribunal had violated the applicant's right to be heard by failing to address some of its arguments, which if founded, could have changed the outcome of the decision, and that those arguments had to be addressed by the arbitral tribunal if only to be rejected. The Federal Tribunal annulled the award and remitted the decision to the arbitral tribunal.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failing to address arguments that are not decisive for the award	Swiss Federal Tribunal, First Civil Law Court, 18 April 2013, X. SpA. v. Y. GmbH, n°4A_524/2012, para. 4		X	A party argued that the arbitral tribunal had violated its right to be heard by finding that it had failed to allege when and how it had discovered the other party's breach of its fiduciary duties based on an oversight, since the applicant had among others expressly stated in its post-hearing brief when it had first learned of the other party's double representation. The Federal Tribunal held that it was not necessary to examine whether the applicant's right to be heard had been breached because it related to one of two independent grounds for the arbitral tribunal's decision and the Federal Tribunal had already rejected the applicant's challenge of the other ground.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failing to apply a sufficiently stringent standard of proof	Swiss Federal Tribunal, First Civil Law Court, 27 March 2014, X. v. The Football Federation of Ukraine (FFU), n° 4A_362/2013, para. 3.3 Swiss Federal Tribunal, First Civil Law Court, 27 March 2014, A. v. The Football Federation of Ukraine (FFU), n° 4A_448/2013, para. 3.3		X	A party argued that the arbitral tribunal had violated public policy by applying a reduced standard of proof for match-fixing (requiring proof "*to the comfortable satisfaction of the Panel*"), basing its complaint on Swiss Civil and Penal Procedure Rules as well as the provisions providing for the presumption of innocence in the Swiss Procedural Penal Code and the European Convention on Human Rights. The Federal Tribunal rejected the argument, noting that the arbitral tribunal had given its reasons for applying the same principles to match-fixing cases as to doping cases, and that it had decided the applicable burden and standard of proof based on the relevant association rules as well as its own case law, and that as this was a private law matter, it could not be determined from the perspective of "*in dubio pro reo*" or the guarantees of the ECHR.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failing to ask a party to take position on key legal issues	Swiss Federal Tribunal, First Civil Law Court, 18 October 2004, A. Ltd. v. Republic of Turkey, Ministry of Energy and Natural Resources, n°4P_104/2004, para. 5.4		X	A party argued (among others) that the arbitral tribunal had violated its right to be heard by basing its decision on contractual clauses whose scope was not recognizable to it and failing to ask it to take a position on this point. The Federal Tribunal held that the arbitral tribunal did not violate the applicant's right to be heard, since under its case law, parties do not have the right to be heard specifically in relation to the legal assessment of the facts that they have themselves introduced into the proceedings, nor do they have a right to be warned in advance of the facts on which the arbitral tribunal will base its decision. The Federal Tribunal noted that the only exception in this respect is that the arbitral tribunal cannot base its decision on a legal ground that was not invoked by the parties and whose relevance they should not reasonably have expected, and that in the field of international arbitration, the Federal Tribunal reviews this question with restraint. The Federal Tribunal found that the exception was not realized in this case.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failing to give a party the opportunity to respond to new arguments raised in the post-hearing brief and comment on new evidence	Swiss Federal Tribunal, First Civil Law Court, 18 October 2004, A. Ltd. v. Republic of Turkey, Ministry of Energy and Natural Resources, n°4P_104/2004, para. 5.5		X	A party argued (among others) that the arbitral tribunal had violated its right to be heard by failing to grant it an opportunity to respond to the other party's post-hearing brief, even though it had repleaded its case in full with the addition of several new arguments and more than 45 new pieces of evidence. The Federal Tribunal held that the arbitral tribunal did not violate the applicant's right to be heard, since the applicant could and should have raised its complaint with respect to the post-hearing brief during the arbitral proceedings and it had failed to address the fact that the new evidence it complained of all concerned points on which it had succeeded.
Failing to state grounds	Swiss Federal Tribunal, First Civil Court, 19 April 2011, FC A. v. Trabzonspor Kulübü Dernegi and Turkish Football Federation (TFF), n°4A_404/2010, para. 5		X	The Federal Tribunal held that the arbitral tribunal did not violate the applicant's right to be heard by breaching its obligation to state the reasons for its decision, since the right to be heard does not entail this obligation.
	Swiss Federal Tribunal, First Civil Law Court, 23 January 2012, U. V., W. and X. SA v. Y. and Z, n° 4A_526/2011, para. 3.2		X	The Federal Tribunal held that the arbitral tribunal did not violate the applicant's right to be heard by breaching its obligation to state the reasons for its decision (that the first three appellants had a duty to provide information), since the right to be heard does not entail this obligation.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Imposing a hearing date on the parties	Swiss Federal Tribunal, First Civil Law Court, 21 May 2015, A. SA v. B. Sàrl, n°4A_709/2014, para. 5.2.6		X	A party argued that the arbitral tribunal had violated its right to be heard by among others imposing a hearing date on the parties that they had not proposed. The Federal Tribunal rejected the right to be heard argument without expressly addressing the imposition of the hearing date on the basis that the various time limits were not extraordinary and were complied with by the other party without any problem.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Imposing confidentiality obligations on a party	Swiss Federal Tribunal, First Civil Law Court, 29 January 2010, A. GmbH. v. B. SA, n°4A_550/2009, para. 7		X	A party argued that the arbitral tribunal had violated its right to be heard by imposing confidentiality obligations in an interlocutory decision that had prevented it from defending itself properly and by doing so without consulting it. The Federal Tribunal rejected that argument, finding that the applicant had failed to show that this interlocutory decision had had an impact on the final award and that it had had the opportunity to present its views prior to the imposition of the confidentiality obligations. The Federal Tribunal also held that the applicant's allegation that it was prevented from defending itself properly could not constitute a violation of its right to be heard since it was in reality a criticism of the content of the interlocutory decision.
Making a phone call to the counsel of a party	Swiss Federal Tribunal, First Civil Law Court, 28 October 2008, X. v. Y., n° 4A_294/2008, para. 3		X	A party argued that the arbitral tribunal had violated its right to be heard by having a phone call with only the other party's counsel. The Federal Tribunal noted that the subject of the phone call was the other party's request to comment on new facts alleged by the applicant and the arbitral tribunal's invitation to make this request in writing. Based on its content, the phone call did not violate the right to be heard.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Notifying an award to the former counsel of a party	Swiss Federal Tribunal, First Civil Law Court, 15 February 2010, A. & V. Sport Ltd v. Nicola Castaldo, Andrea Conti, Sandro Lerici, Emanuele Lupi, Glenn Magnusson, Michele Massa, Gino Paolini, Federico Profeti, n° 4P.273/1999, 4P.275/1999, 4P.277/1999, 4P.279/1999, 4P.280/1999, 4P.281/1999, 4P.282/1999, 4P.283/1999, para. 5		X	The Federal Tribunal held that the notification of an award to the former counsel of the applicant did not violate its equality of treatment or its right to be heard was valid since the end of the mandate has not been communicated to the arbitral tribunal.
Ordering glaringly excessive party costs and court fees	Swiss Federal Tribunal, First Civil Law Court, 26 November 2012, A. Ltd, B. Ltd, C. and D. v. X. AG, n° 4P.129/2002, para. 8	X*		The Federal Tribunal held that it was not sufficient for the applicant to allege that the Arbitral Tribunal had violated public policy by ordering glaringly excessive party costs and court fees without any basis in any rules on compensation or any agreement on costs with the parties without showing how this would have violated public policy. *The Federal Tribunal annulled the award based on another ground.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Obvious oversight of the arbitral tribunal leading to an incorrect finding	Swiss Federal Tribunal, First Civil Law Court, 25 July 2017, A. v. International Weightlifting Federation (IWF), n°4A_80/2017, para. 4		X	A party argued in a doping case that the Court of Arbitration for Sport had violated its right to be heard and its right to a fair trial (as part of procedural public policy) by basing its decision on a blood concentration of banned substance that was not borne out by the facts. The Federal Tribunal rejected this argument as the allegation was false, and noted that an obvious oversight on the part of an arbitral tribunal leading to an incorrect (and even arbitrary) finding is not in itself sufficient to annul an international arbitration award. To rely on a violation of the right to be heard, a party would have to show that the arbitral tribunal's oversight had prevented the party from presenting and evidencing its position with respect to a relevant issue in the proceedings. The Federal Tribunal also reaffirmed that the right to be heard does not entail the right to a substantively correct decision.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 2 July 2015, Club A. v. B., 4A_684/2014, para. 4		X	A party argued that the arbitral tribunal had failed to address (in its view) decisive points as well as some of its submissions. The Federal Tribunal rejected the argument, reaffirming that the right to be heard does not entail the right to a substantively correct decision and that it does not concern itself with whether arbitral tribunals have taken into account and correctly understood all aspects of the file.
	Swiss Federal Tribunal, First Civil Law Court, 23 April 2013, X. Ltd. v. Y GmbH, n°4A_672/2012, para. 3.1		X	The Federal Tribunal rejected a party's argument that its right to be heard had been violated by the arbitral tribunal's unclear reasoning and incorrect findings. The Federal Tribunal reaffirmed that an obviously incorrect finding is not in itself sufficient to annul an international arbitration award and that while the right to be heard guarantees the right to take part in the decision-making process, it does not entail the right to a substantively correct decision. The Federal Tribunal noted that it does not concern itself with whether arbitral tribunals have taken into account and correctly understood all aspects of the file.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 23 April 2013, X. Ltd. v. Y GmbH, n°4P.72/2001 (ATF 127 III 576), para. 2		X	A party argued that the arbitral tribunal had committed a formal denial of justice and thus violated its right to be heard by committing various obvious oversights. The Federal Tribunal noted that not all obvious oversights entail a violation of the right to be heard and reaffirmed an obviously incorrect finding is not in itself sufficient to annul an international arbitration award. The Federal Tribunal held that an obvious oversight leading to an incorrect finding i.e. a material denial of justice does not already constitute a violation of the right to be heard, and that a party wishing to rely on a violation of the right to be heard cannot limit itself to explaining how the alleged oversight led to an erroneous or even arbitrary assessment of evidence, and must instead show that the oversight has prevented it from presenting and evidencing its position with respect to a relevant issue in the proceedings.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Providing a preliminary assessment of the case during tribunal-assisted settlement discussions	Swiss Federal Tribunal, First Civil Law Court, 20 June 2016, X. v. Y., n°4A_173/2016, para. 2.3		X	A party argued that the arbitral tribunal had violated its duty of impartiality by providing a preliminary assessment of the case during tribunal-assisted settlement discussions, which contrary to the relatively open and deliberately vague opinion the parties expected, consisted in detailed grounds for a decision dealing with each point precisely and granting 98 per cent of the claimant's claims, thus leaving no room at all for the planned settlement discussions, and which did not at all address the respondent's main objections. The Federal Tribunal held that if the applicant's complaint related to preliminary assessment itself, then it was belated, as the applicant waited until it had seen the outcome of the proceedings rather than doing so immediately. The Federal Tribunal also held that the mere fact that the arbitral tribunal's award did not deviate from its preliminary assessment could not lead to conclude a lack of independence or impartiality.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Protecting the bad faith and abusive behavior of a party	Swiss Federal Tribunal, First Civil Law Court, 30 May 2017, A. AG. v. State of Palestine and B. Company, n°4A_532/2016, para. 3.3	X*		A party argued that the arbitral tribunal's award violated public policy as it protected the bad faith and abusive behavior of its state counterparty, which had changed its position as to the enforcement of one of its own laws to evade its contractual obligations. The Federal Tribunal rejected this argument, finding that the applicant had failed to show that it had legitimate expectations and that there were special circumstances, which would make its counterparty's reliance on mandatory law appear abusive. *The Federal Tribunal annulled the award based on another ground.
	Swiss Federal Tribunal, First Civil Law Court, 11 November 2002, Z. v. Dame A and Dame B, n°4P 167/2002, para. 3		X	The Federal Tribunal rejected the applicant's argument that the arbitral tribunal had violated public policy because the other party had abusively avoided having to testify. The Federal Tribunal held that even if a party or a witness refuses to answer questions, an arbitral tribunal can only draw adverse inferences. Refusals to testify, to appear at a hearing or to answer questions do not have the effect of paralyzing the proceedings and they do not prevent the arbitral tribunal from deciding on the claims.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing a public hearing	Swiss Federal Tribunal, First Civil Law Court, 10 February 2010, Claudia Pechstein v. International Skating Union, n° 4A_612/2009, para. 4		X	The Federal Tribunal rejected the applicant's argument that the Arbitral Tribunal should have granted its request for a public hearing based on Articles 6(1) of the European Convention on Human Rights, Article 30(3) of the Swiss Federal Constitution and Article 14(1) of the International Covenant on Civil and Political Rights on the basis that those provisions do not apply to voluntary arbitration proceedings.
Refusing to hold a new hearing after a party's new counsel's failure to provide a power of attorney in time for the first hearing	Swiss Federal Tribunal, First Civil Law Court, 29 April 2015, A. Sport Club v. B., n° 4A_70/2015, para. 3.2.2		X	The Federal Tribunal held that the arbitral tribunal did not violate the applicant's right to be heard by refusing to hold a new hearing after its new counsel had failed to provide a power of attorney in time for the first hearing. The Federal Tribunal rejected the argument on the basis that it was the parties' responsibility to ensure that its counsel was instructed and performed its tasks properly. Award set aside on other grounds.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing to suspend the proceedings	Swiss Federal Tribunal, First Civil Law Court, 19 February 2007, B. v. A., n° 4P.168/2006, para. 6		X	The Federal Tribunal reaffirmed that a suspension of the proceedings is only justified in particular cases, when it is provided for by specific rules or when it is required due to a compelling reason (*motif impérieux*).
Rendering an award after the end of the tribunal's mission	Swiss Federal Tribunal, First Civil Law Court, 28 January 2014, X. AG v. Z., n° 4A_490/2013, para. 4.1	X		The Federal Tribunal held that the arbitral tribunal had violated Article 190 para. 2 let. a PILA by rendering an award after its mission had ended. The Federal Tribunal annulled the award on the basis that the parties had agreed to end the arbitration by a certain date at the latest and that the arbitral tribunal had rendered its award one day after that date.
Rendering an award signed by only one co-arbitrator	Swiss Federal Tribunal, First Civil Law Court, 10 November 2005, La République X. v. Y. and Z., n° 4P.154/2005, para. 3		X	A party argued that the arbitral tribunal was irregularly constituted because the award had only been signed by one of the co-arbitrators, since the Chairman had failed to sign and the other co-arbitrator had issued a dissenting opinion. The Federal Tribunal rejected the argument, holding that the absence of the Chairman's signature was at in this case at most an inadvertence and was thus not enough to annul the award.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Rendering an award with overly colorful language and personal criticism	Swiss Federal Tribunal, First Civil Law Court, 26 September 2007, Sàrl X. v. Y. AG, n° 4P.4/2007, para. 3		X	The Federal Tribunal held that even though the award used colorful language to describe one of the applicant's managers and criticised him personally, considering that the majority of the panel did not speak French, this was not sufficient to annul the award on the ground of impartiality leading to an irregular composition of the tribunal.
Rendering an award with internal inconsistencies	Swiss Federal Tribunal, First Civil Law Court, 29 October 2013, A., B, C v. D., n° 4A_93/2013 , para. 4		X	A party argued (among others) that the arbitral tribunal had violated the principle of *pacta sunt servanda*, and thereby public policy, by finding that the contract had not been terminated validly, despite recognizing the existence of the termination clauses on which that party relied. The Federal Tribunal rejected the argument on the basis that the arbitral tribunal's reasoning was consistent, since it had found that the applicant could not rely on those termination clauses because it was itself in breach of the contract.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 15 March 2011, X. v. Y., n°4A_481/2010, para. 3 and 4		X	A party argued that the arbitral tribunal had violated the principle of *pacta sunt servanda* and thereby material public policy by not interpreting one of four similar contracts in the same way as the three others. The Federal Tribunal noted that an arbitral tribunal violates the *pacta sunt servanda* principle if it refuses to apply a contractual provision which it admits is binding for the parties or if it obliges the parties to comply with a contractual provision which it admits it does not consider to be binding. The Federal Tribunal rejected the applicant's argument on the basis that the arbitral tribunal had merely applied the relevant legal rules to the facts and that inconsistencies in an award do not constitute a violation of material public policy.
	Swiss Federal Tribunal, First Civil Law Court, 15 February 2010, X. v. Y., n°4A_464/2009, para. 5.1		X	The Federal Tribunal held that inconsistencies in an award do not constitute a violation of material public policy (*ordre public matériel*) and therefore do not constitute grounds for setting aside an award under Article 190(2)(e) PILA.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 3 April 2002, X. Inc. and Y. Inc. v. Z. Corporation, n°4P.282/2001, para. 6b (ATF 128 III 191)		X	The Federal Tribunal held that inconsistencies in an award do not constitute a violation of material public policy (*ordre public matériel*) and therefore do not constitute grounds for setting aside an award under Article 190(2)(e) PILA.
Rendering an award based on unexpected legal grounds	Swiss Federal Tribunal, First Civil Law Court, 7 February 2017, A. GmbH v. X and B. Sàrl., n°4A_486/2016, para. 3.4		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's right to be heard by basing its decision on a legal ground that the applicant could not reasonably have expected. The Federal Tribunal noted that the applicant had argued that it had not issued a guarantee for another party's payment and that it was not unexpected for the arbitral tribunal to disagree and find that the applicant had actually (implicitly) issued a guarantee.
	Swiss Federal Tribunal, First Civil Law Court, 26 January 2017, X. S.p.A v. Club Y. and Z., n° 4A_716/2016, para. 3		X	The Federal Tribunal held that even if the reasoning of the arbitral tribunal had been absurd, this would not be enough to annul the award since arbitrariness is not a valid ground for appeal.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 2 July 2015, Club A. v. B., 4A_684/2014, para. 3.		X	A party argued that the arbitral tribunal had decided on a point that had not been submitted to it by awarding rental costs to the other party, even though the other party had not appealed the decision of the previous instance – which had not upheld its claim in full and had rejected its rental costs – to the arbitral tribunal and had instead merely requested that the arbitral tribunal reject the applicant's appeal and confirm the previous instance's decision. The Federal Tribunal held that the arbitral tribunal did not decide *ultra petita* and reaffirmed that arbitral tribunals can weigh the various elements of a claim differently from the claimant as long as they do not award more than the total amount claimed.
	Swiss Federal Tribunal, First Civil Law Court, 24 May 2013, X. SA de C.V. v. A., n°4A_476/2012, para. 4		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's right to be heard by basing its decision on a legal ground that the applicant could not reasonably have expected since the ground at issue had already been raised by the conciliation commission that had been seized before the arbitral tribunal.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 20 February 2013, X. SE and Y. GmbH v. Z. B.V., n°4A_407/2012, para. 5		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's right to be heard since it had not based its decision on a contractual interpretation that the applicant could not have expected. The Federal Tribunal noted that the standard applied by the arbitral tribunal was covered by the parties' arguments and that they had to expect that the arbitral tribunal may opt for a solution somewhere in between their extreme positions.
	Swiss Federal Tribunal, First Civil Law Court, 9 June 2009, X. Kft v. Y. AG, n°4A_108/2009, para. 2.3		X	The Federal Tribunal held that the arbitral tribunal had not violated the applicant's right to be heard by basing its decision on a contractual provision on termination that was not expressly relied on by the parties. The Federal Tribunal held that this was not unexpected since the question of whether or not the applicant could withdraw from the agreement was a point in dispute and the parties must therefore have assumed that the arbitral tribunal would examine all contractual requirements for a withdrawal.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 9 February 2009, X. v. Y., n° 4A_400/2008, para. 3 (only successful appeal to date based on the Tvornica decision (4P.100/2003))	X		The Federal Tribunal held that the arbitral tribunal violated the applicant's right to be heard by basing its decision in a case with no connections to Switzerland on a mandatory provision of Swiss law that none of the parties had raised and without asking the parties to comment on its application, when Swiss law was only applicable as suppletive law (*droit supplétif*) based as provided by the rules of FIFA. The Federal Tribunal annulled the award on the basis that the applicant could not reasonably have expected the arbitral tribunal to rely on that provision.
	Swiss Federal Tribunal, First Civil Law Court, 19 February 2007, B. v. A., n° 4P.168/2006, para. 6		X	A party argued that the arbitral tribunal had violated its right to be heard by basing its decision on an unexpected argument. The Federal Tribunal rejected the argument, holding that the arbitral tribunal had duly asked the parties their opinion on the interpretation of a term in a foreign penal code and that the applicant could not reasonably have thought that this was only a linguistic exercise.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 7 September 2006, X. v Y Holding Ltd., n° 4P.134/2006, para.4		X	The Federal Tribunal held that an arbitral tribunal does not violate the principle "*ne eat iudex ultra petita partium*" if its legal appreciation differs from the arguments presented by the parties as long as it is covered by the claim.
	Swiss Federal Tribunal, First Civil Law Court, 13 July 2007, X. v. A., B., C. and D. , n° 4A_42/2007, para. 7		X	A party argued that the arbitral tribunal had violated its right to be heard by based its decision on an unexpected argument. The Federal Tribunal rejected the argument on the basis that it was in the submissions.
	Swiss Federal Tribunal, First Civil Law Court, 30 September 2003, A. v. B. Limited, C. GmbH, D. Ltd and E. Ltd, n° 4P.100/2003, para. 5 and 6 (Tvornica decision)	X		The Federal Tribunal held that the arbitral tribunal violated the applicant's right to be heard by basing its decision on a provision that had no connection with what the parties had discussed during the proceedings. The provision on which the arbitral tribunal based its reasoning had only been mentioned in a termination letter that had been contested. The Federal Tribunal noted that the arbitral tribunal had relied on a provision that neither of the parties had considered to be decisive to construct a legal reasoning that was very far from the positions that they had both held. The Federal Tribunal annulled the award.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 2 March 2001, Bank Saint Petersburg PLC v. ATA Insaat Sanayi ve Ticaret Ltd., n° 4P_260/2000, para. 6		X	A party argued that the arbitral tribunal had violated the principle "*ne eat iudex ultra petita partium*" by granting the amount claimed by the other party as compensation for damages although that party had based its claim on a right to specific performance. The Federal Tribunal rejected the argument, holding that the Arbitral Tribunal had granted exactly what the claimant had asked for albeit on a different legal ground, and that the principle "*iura novit curia*" implies not only the right but also the obligation to examine all potential grounds for a claim. right to be heard by granting damages instead of specific performance. The Federal Tribunal also denied that the Arbitral Tribunal's reasoning was unexpected since the right to damages in this context had been discussed in legal commentary.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Rendering an award that contradicts an opinion previously expressed in a partial award	Swiss Federal Tribunal, First Civil Law Court, 3 April 2002, X. Inc. and Y. Inc. v. Z. Corporation, n°4P.282/2001, para. 4 (ATF 128 III 191)		X	A party argued that the arbitral tribunal had violated the principles of *res judicata* and *functus officio* and thereby procedural policy by contradicting its previous partial award in the final award. The Federal Tribunal noted that an arbitral tribunal violates procedural public policy if it decides without taking into account the *res judicata* effect of previous decisions or if it departs from the opinions it has expressed in a previous partial award on substantive issues, and that an arbitral tribunal is also bound by its preliminary or incidental awards on procedural or substantial issues, even if they do not have *res judicata* effect. The Federal Tribunal rejected the applicant's argument, holding that the arbitral tribunal in this case had not departed from binding opinions expressed in its previous partial award.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 29 May 2015, A LLP v. B, no 4A_633/2014, para. 3		x	A first arbitral tribunal seated in Germany rendered an award refusing to grant the amounts claimed by the claimant. The (second) arbitral tribunal seated in Switzerland rendered another award in a dispute between the same parties, in which the claimant claimed amounts based on the same contractual provision but for a different period of time. The arbitral tribunal granted the claim based on the contractual clause invoked in the first proceedings but interpreted differently from the first arbitral tribunal. The Federal Tribunal held that the (second) arbitral tribunal did not violate *res judicata* and thereby procedural public policy since the binding effect of *res judicata* covers the operative part of prior decisions but not the reasons that led to them. The Federal Tribunal noted that the claims in the two proceedings were not identical and that the second arbitral tribunal was bound neither by the factual findings nor the legal considerations of the first arbitral tribunal, and that it would in fact have violated procedural public policy if it had considered itself bound by the interpretation of the first arbitral tribunal and failed to examine the question itself.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Rendering an award without giving the party that was voluntarily absent from the hearing the opportunity to comment on new evidence and claims	Swiss Federal Tribunal, First Civil Law Court, 20 June 2013, Egyptian Football Association v. Al-Masry Sporting Club, n° 4A_682/2012, para. 6		X	The Federal Tribunal held that the arbitral tribunal did not violate the applicant's right to be heard by issuing its award without giving the applicant the opportunity to comment on new evidence and modified claims that had been submitted at a hearing that it had chosen not to attend. The Federal Tribunal noted that the arbitral tribunal had acted in accordance with the procedural rules and held that it the applicant had acted contrary to good faith by claiming a violation of its right to be heard and requesting annulment of the award when it had willfully ignored the arbitration proceedings while they were ongoing.
Rendering an award without deciding all claims	Swiss Federal Tribunal, First Civil Law Court, 10 December 2012, A., v. B., n°4A_635/2012, para. 4		X	The Federal Tribunal held that the arbitral tribunal had not violated Article 190(2)(c) PILA by failing to decide on all of the claims submitted by the applicant since it had expressly rejected "all others claims".
	Swiss Federal Tribunal, First Civil Law Court, 5 March 2010, X. v. Association Internationale Y. n° 4A_524/2009, para. 3		X	The Federal Tribunal held that the arbitral tribunal had not violated Article 190(2)(c) PILA by failing to decide on all of the claims submitted by the applicant since it had implicitly dismissed all others claims by stating "the appeal of X. is partially admitted […]".

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Swiss Federal Tribunal, First Civil Law Court, 30 Mars 2007, X. Ltd., Y. Corps, Z, v. A., n°4P.206/2006, para. 6		X	The Federal Tribunal held that the arbitral tribunal had not violated Article 190(2)(c) PILA by failing to decide on all of the claims submitted by the applicant since it had expressly rejected "all others claims".
	Swiss Federal Tribunal, First Civil Law Court, 1st February 2002, X. Ltd v. Y. BV, n°4P_226/2001, para. 4a and b (ATF 128 III 234)		X	A party argued that the arbitral tribunal had in breached Article 190(2)(c) and (d) PILA failing to decide all of its claims. The Federal Tribunal held that the arbitral tribunal had not violated Article 190(2)(c) PILA by failing to decide on all of the claims submitted by the applicant since it had expressly rejected "all others claims".
Refusing to extend the arbitration to non-signatory third parties	Swiss Federal Tribunal, First Civil Law Court, 5 December 2008, A. v. B. Ltd, n° 4A_376/2008, para. 8	X		The arbitral tribunal decided in a partial award that it did not have jurisdiction over three parties that had not signed the arbitration clause but were signatories of a closely related contract signed on the same day. The Federal Tribunal modified the arbitral tribunal's award and extended the arbitration clause to all three parties.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Seeking assistance from third parties	Swiss Federal Tribunal, First Civil Law Court, 21 Mai 2015, A. SA v. B. Sàrl, n° 4A_709/2014, para. 3.2.2.2 and 3.4	X		A party argued that the arbitral tribunal was irregularly composed because the award was issued by two arbitrators and a secretary even though the agreement specifically provided for a sole arbitrator. The Federal Tribunal noted that although the arbitrator's mission is of a personal nature and the arbitrator cannot delegate his task to third parties, the arbitrator is entitled to ask third parties to assist him in technical fields which are beyond his competence. This also applies when the arbitrator is not a lawyer and seeks legal advice in which case the arbitrator is entitled to hire a legal consultant. The Federal Tribunal also noted that appointing a secretary to the arbitral tribunal does not constitute a delegation of its duties. However, the secretary must provide administrative and legal assistance and may not take the place of the arbitrator in the decision-making process. The Federal Tribunal rejected the argument, holding that in this case the arbitrator had appointed a legal consultant at his own expense and a lawyer as secretary of the tribunal in conformity with these principles.

SWITZERLAND Mike Han, White & Case				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Setting different time limits for the parties	Swiss Federal Tribunal, First Civil Law Court, 19 February 2009, X. SpA en liquidation v. Y. B.V., n° 4A_539/2008, para. 4.1		X	The Federal Tribunal held that setting different time limits for the parties does not necessarily constitute unequal treatment.

UNITED STATES Catherine Amirfar, Debevoise & Plimpton				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Submissions				
A. Written submissions				
Disregarding written submissions filed in breach of the procedural calendar	N/A			
Refusing to allow additional written submissions	*Landmark Ventures, Inc. v. InSightec, Ltd.*, 63 F.Supp.3d 343, (S.D.N.Y.2014), affirmed 619 Fed.Appx. 37 Published in Westlaw		X	The Court held that a tribunal did not commit misconduct when it denied a party's second extension to the deadline to submit expert reports. The Court noted that the arbitrator was empowered to enforce procedural deadlines and was entitled to deference for doing so, especially given that the contracts in question were unambiguous such that expert reports would have been immaterial.
B. Oral submissions				
Disregarding oral submissions filed in breach of the procedural calendar	N/A			
Refusing to allow additional oral submissions	N/A			

UNITED STATES Catherine Amirfar, Debevoise & Plimpton				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
II. Evidence				
A. Documentary evidence				
Disregarding new evidence filed in breach of the procedural calendar	N/A			
Refusing to consider evidence pertinent and material to the controversy	*Balberdi v. Fedex Ground Package System, Inc.*, 209 F.Supp.3d 1160 (D.Hawai'i 2016) Published in Westlaw		X	The Court dismissed a motion to vacate an award based on the alleged failure of the arbitrator to hear pertinent and material evidence in a wrongful termination action, because the employee had a sufficient opportunity to submit any relevant evidence to the arbitrator during a motion for summary judgment but failed to do so.
	Johnson v. Directory Assistants Inc., 797 F.3d 1294 (11th Cir. 2015) Published in Westlaw		X	The Court declined to vacate the award when the party tersely asserted that the arbitrator did not consider documents and correspondence, but failed to identify the precise documents and show how such evidence was material to the case.

UNITED STATES Catherine Amirfar, Debevoise & Plimpton				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Bangor Gas Co., LLC v. H.Q. Energy Services (U.S.), Inc., 846 F.Supp.2d 298 (D.Me.2012), affirmed 695 F.3d 181 Published in Westlaw		X	An arbitrator did not commit misconduct when he considered public records not introduced by either party, where the records were not central and decisive evidence, the opposing party had the opportunity to present its case, and there was no evidence of prejudice arising from the tribunal's consideration of public records.
	Cytyc Corp. v. DEKA Products Ltd. Partnership, 439 F.3d 27 (1st Cir. 2006) Published in Westlaw		X	A party appealed a district court's order confirming an arbitral award on the basis that the tribunal failed to consider material evidence when it refused to allow the appellant to introduce evidence regarding the damages calculation. The Court of Appeals rejected the appellant's appeal because the appellant did not seek to introduce any such damages evidence during the course of the arbitral proceedings notwithstanding ample opportunity to do so. "Arbitrators are, after all, not expected to be mind readers."

UNITED STATES Catherine Amirfar, Debevoise & Plimpton				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Gulf Coast Indus. Workers Union v. Exxon Co., 70 F.3d 847 (5th Cir. 1995) Published in Westlaw	X		The Court vacated an arbitral award for arbitral misconduct when the arbitrator mislead a party into believing that a document had been introduced into the record without the party needing to submit foundational evidence, but then using the party's failure to present the foundational evidence as a basis to ignore the document as hearsay.

UNITED STATES Catherine Amirfar, Debevoise & Plimpton				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Forsythe Intern., S.A. v. Gibbs Oil Co. of Texas, 915 F.2d 1017 (5th Cir 1990) Published in Westlaw		X	The Court of Appeals reversed the district court's decision to vacate an award. The district court had found that a party's conduct had amounted to fraud, and that the arbitral tribunal had refused to take any action in that regard – thus, in effect, refusing to hear material evidence to the controversy. The Court of Appeals noted that the tribunal had found the asserted fraud immaterial after it had heard arguments on the allegation, and introduced and considered related evidence, even if it chose to ignore most of it. "The arbitrator is not bound to hear all of the evidence tendered by the parties; however, he must give each of the parties to the dispute an adequate opportunity to present its evidence and arguments."
	Mut. Redev. Houses, Inc. v. Local 32B-32J, 700 F. Supp. 774 (S.D.N.Y. 1988) Published in Westlaw		X	The Court refused to question an arbitral tribunal's decision-making process and determination that evidence was irrelevant to the dispute.
	United Paperworkers Intern. Union, AFL-CIO v. Misco, Inc., 484 U.S. 29 (1987) Published in Westlaw		X	The US Supreme Court reversed a Fifth Circuit Court of Appeals affirmation of a vacated award regarding termination of employment. The Supreme Court held, *inter alia*, that an arbitrator was entitled to refuse to consider evidence unknown to a company at the time it fired an employee.

UNITED STATES Catherine Amirfar, Debevoise & Plimpton				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Nat'l Post Office, Mailhandlers, Watchmen, Messengers & Grp. Leaders Div. v. United States Postal Serv., 751 F.2d 834 (6th Cir. 1985) Published in Westlaw		X	The Court declined to vacate an award, holding that the arbitral tribunal had the authority to refuse to hear testimony that it considered cumulative. The Court would not look into whether the tribunal's judgment was correct.
	Hoteles Condado Beach, Laconcha & Convention Ctr. v. Union de Tronquistas, 763 F.2d 34 (1st Cir. 1985) Published in Westlaw	X		The Court vacated the arbitral award in question based on the arbitrator's refusal to consider evidence that was both "central and decisive" to a party's position. The Court held that the arbitrator had compromised the party's right to be heard such that vacatur was necessary.
	Fairchild & Co. v. Richmond Fredericksburg & Potomac R.R., 516 F. Supp. 1305 (D.D.C. 1981) Published in Westlaw		X	The Court declined to vacate an award based on a party's allegation that the tribunal refused to hear relevant and material evidence, because the determination of relevance and materiality is up to the tribunal. The Court also noted that "every failure to receive relevant evidence does not constitute misconduct under the [Federal Arbitration] Act so as to require the vacation of the award. The error… must not simply be an error of law, but one which so affects the rights of a party that it may be said to deprive him of a fair hearing."

UNITED STATES Catherine Amirfar, Debevoise & Plimpton				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Graphic Arts Intern. Union, Local 97-B v. Haddon Craftsmen, Inc., 489 F.Supp. 1088 (M.D.Pa.1979) Published in Westlaw		X	The Court held that the sole arbitrator's refusal to entertain testimony by a party's counsel in his opening statement was not a ground for vacatur where the counsel did not adduce any testimony on matters not covered by his opening remarks and conceded during oral argument that there was no additional evidence forthcoming.

UNITED STATES Catherine Amirfar, Debevoise & Plimpton				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Newark Stereotypers' Union No. 18 v. Newark Morning Ledger Co., 397 F.2d 594 (3rd Cir. 1968), certiorari denied 393 U.S. 954 Published in Westlaw		X	The Court of Appeals affirmed the district court's order not to vacate the arbitral award. The Court agreed with the district judge that vacatur was not warranted by the refusal of the arbitrators to investigate a claim that a party had stifled the earlier readiness of a witness to testify for the opposing party, because the alleged suppression of evidence was not, as a matter of law, material to the outcome of the case.
Refusing to allow the introduction of additional evidence	*Century Indem. Co. v. Certain Underwriters at Lloyd's, London, subscribing to Retrocessional Agreement Nos. 950548, 950549, 950646*, 584 F.3d 513 (3rd Cir. 2009) Published in Westlaw		X	The Court found that the tribunal acted appropriately when it refused to admit extrinsic evidence relating to the parties' course of dealing and to industry customs. The tribunal had explained that it found no need to resort to extrinsic evidence to resolve ambiguities in the contracts because it found the contracts in question clear and unambiguous.

UNITED STATES Catherine Amirfar, Debevoise & Plimpton				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Grahams Serv. Inc. v. Teamsters Local 975, 700 F.2d 420 (8th Cir. 1982) Published in Westlaw		X	The Court found that an arbitrator's exclusion of notarized letters offered in lieu of testimony was not unreasonable because the letters or testimony may have been of little relevance in the determination of the tribunal.
B. Witnesses				
Refusing to hear witness evidence	*Thian Lok Tio v. Washington Hosp. Center*, 753 F.Supp.2d 9 (D.D.C.2010) Published in Westlaw		X	The Court held that the arbitral tribunal could select to exclude testimony that it did not consider relevant and material to the case, especially as the party could not show that the excluded testimony was critical to the case or that the exclusion of the testimony deprived him of a fair hearing.
	Rai v. Barclays Capital Inc., 739 F.Supp.2d 364 (S.D.N.Y.2010), affirmed 456 Fed.Appx. 8, certiorari denied 566 U.S. 979, rehearing denied 567 U.S. 957 Published in Westlaw		X	The Court held that an arbitral tribunal did not commit misconduct when it excluded the affidavit of a witness unavailable to testify at the hearing, on the basis both of the opposing party's inability to cross-examine the witness and on the irrelevance of the facts in the witness's affidavit.

UNITED STATES Catherine Amirfar, Debevoise & Plimpton				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Howard University v. Metropolitan Campus Police Officer's Union, 379 U.S. App. D.C. 282 (2009) Published in Westlaw		X	A sole arbitrator's decision to exclude witness testimony on the basis of attorney-client privilege did not amount to misconduct warranting the vacatur of the award because the arbitrator was not bound by federal law governing attorney-client privilege and there was little, if any, prejudice to the opposing party from the exclusion of testimony.
	Tempo Shain Corp. v. Bertek, Inc., 120 F.3d 16 (2d Cir. 1997) Published in Westlaw	X		The Court reversed a district court order confirming an arbitral award and vacated the award instead, on the basis that the record did not support the arbitrators' finding that testimony from a witness would have been cumulative.
	InterCarbon Bermuda, Ltd. v. Caltex Trading and Transport Corp., 91 Civ. 4631 (MJL), (S.D.N.Y. 1993) Published in Yearbook Commercial Arbitration 1994 - Volume XIX, pp. 802-807		X	The Court denied the plaintiff's motion to vacate the award despite the arbitral tribunal's refusal to hear live testimony, because the evidence could have been presented to the tribunal through affidavits.
	Robbins v. Day, 954 F.2d 679, (11th Cir. 1992), certiorari denied 506 U.S. 870 Published in Westlaw		X	The Court held that the arbitral award could not be vacated despite the failure of the arbitrators to compel the testimony of witnesses who asserted the privilege against self-incrimination, when the opposing party stated that the witnesses' testimony was unimportant to the case and would be cumulative of evidence on the record.

UNITED STATES Catherine Amirfar, Debevoise & Plimpton				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Biotronik Mess-Und Therapiegeraete GmbH & Co. v. Medford Medical Instrument Co., 415 F.Supp. 133 (D.C.N.J.1976) Published in Westlaw		X	A US party challenged the confirmation of an arbitral award based on the allegation that the German counterparty, when it appeared alone at the hearing, perpetrated fraud on the tribunal by knowingly withholding evidence concerning an additional agreement between parties and engaging in a calculated attempt to mislead arbitrators. The Court held that because the US party was aware of the pendency of foreign arbitral proceedings and was capable of invoking fraud as a defence at that time, but didn't, its due process rights were not violated.
Calling of a witness on the Tribunal's own motion/relying on witness statements not invoked by the parties	*Bell Aerospace Co. Division of Textron, Inc. v. Local 516, Intern. Union, United Auto., Aerospace and Agr. Implement Workers of America (UAW)*, 500 F.2d 921 (2d Cir. 1974) Published in Westlaw		X	A party challenged an arbitral award, claiming that its rights had been prejudiced when the sole arbitrator considered an affidavit that was not placed in evidence by either of the parties. The Court dismissed the claim on the basis that the affidavit was part of the record of a case that the parties had stipulated was relevant, and the parties had notice of the inclusion of the affidavit in the record.

UNITED STATES Catherine Amirfar, Debevoise & Plimpton				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing or limiting witness cross-examination	*Rainier DSC 1, L.L.C. v. Rainier Capital Management, L.P.*, 828 F.3d 362 (5th Cir. 2016) Published in Westlaw		X	The Court held that an arbitrator did not refuse to hear material evidence and did not deprive a party of a fair hearing when he permitted the opposing party to introduce excerpts of deposition testimony of two witnesses without allowing the party to cross-examine them at the hearing. The party already had deposed the witnesses and could not identify what additional evidence it sought to establish on cross-examination.
	Vitarroz Corp. v. G. Willi Food Intern. Ltd., 637 F.Supp.2d 238 (D.N.J.2009), amended 2009 WL 1941720 Published in Westlaw		X	The arbitral tribunal did not commit misconduct when it decided to limit the cross-examination of a witness, given that the witness had been deposed and that tribunal's decision was based largely on the testimony of witnesses who had been cross-examined.
	Lunsford v. RBC Dain Rauscher, Inc., 590 F.Supp.2d 1153 (D.Minn.2008) Published in Westlaw		X	An arbitral tribunal's decision not to permit cross-examination of parties at an arbitration hearing did not amount to misconduct that would support vacatur of the award.
	Roe v. Cargill Inc., 333 F.Supp.2d 808 (W.D.Ark.2004) Published in Westlaw		X	An arbitrator did not commit misconduct when he refused to reopen a hearing to discuss the issue of good faith, because the parties had the opportunity to make their cases in a previous hearing but did not do so for "business reasons."

UNITED STATES Catherine Amirfar, Debevoise & Plimpton				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Grinnell Hous. Dev. Fund Corp. v. Local 32B-32J, 767 F. Supp. 63 (S.D.N.Y. 1991) Published in Westlaw		X	A party moved to vacate an arbitral award based on an allegation that it was not allowed to rebut the testimony of a witness during a hearing. The opposing party submitted an affidavit asserting that the witness was cross-examined. Notwithstanding the parties' disagreement on facts, the Court found that the tribunal would have been reasonable in its decision because the testimony was immaterial to the outcome of the case.
	Hoteles Condado Beach, La Concha and Convention Center v. Union De Tronquistas Local 901, 763 F.2d 34 (1st Cir. 1985) Published in Westlaw		X	A party sought to vacate an arbitral award after the tribunal allowed a witness to be present during another witness's testimony prior to his own. The Court found that "[a]lthough it is difficult to understand the arbitrator's ruling, he acted within his discretion in making his ruling, and this court may not substitute its judgment for that of the arbitrator." The Court also found that this procedural decision did not prejudice the party's right to present its case.
C. Experts				

UNITED STATES Catherine Amirfar, Debevoise & Plimpton				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Refusing or limiting irrelevant expert evidence	*Lessin v. Merrill Lynch*, 481 F.3d 813, 816 (D.C. Cir. 2007) Published in Westlaw		X	A party contended that the arbitral tribunal engaged in misconduct by refusing to hear pertinent material from an expert. The Court declined to vacate the award because the arbitral tribunal was entitled to deference in determining whether to hear evidence that it considers irrelevant or cumulative, and because the party could not show that it suffered any prejudice.
	Hesfibel Fiber Optik & Elektronik San Ve Tic A.S. v. Four S Group, Inc., 315 F.Supp.2d 1365 (S.D.Fla.2004) Published in Westlaw		X	In the arbitration proceedings, a party failed to include an expert on its witness list and only informed the opposing party that it intended to call the expert two days prior to the hearing. The tribunal refused to permit the expert to testify, and the Court considered that the tribunal acted within its rights, and refused to vacate the award.
Failing or refusing to appoint an expert	N/A			
Refusing or limiting expert cross-examination	N/A			

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Allowing improper expert testimony	*Bonar v. Dean Witter Reynolds*, Inc., 835 F.2d 1378 (11th Cir. 1988) Published in Westlaw	X		An arbitral tribunal admitted testimony from an expert who, it later transpired, had falsified his qualifications. The tribunal, unaware of the perjury , relied on the expert's testimony in its award. The Court of Appeals found that the arbitral award therefore was procured by fraud, and must be vacated.
D. Other evidentiary matters				
Disregarding evidence produced in breach of the procedural calendar	N/A			
III. Procedure in general				
Failing or refusing to order a site visit	N/A			
Refusing to postpone the hearing	*Johnson v. Directory Assistants Inc.*, 797 F.3d 1294 (11th Cir. 2015) Published in Westlaw		X	A party submitted a request to vacate an award, claiming that the arbitrator failed to postpone the hearing. The Court held that vacatur was inappropriate under the circumstances because the party had participated in the proceedings only to withdraw a week before the hearing with little explanation, no evidence for their claim of financial hardship, and no request for an extension.

UNITED STATES Catherine Amirfar, Debevoise & Plimpton				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	ALS & Assocs. v. AGM Marine Constructors, Inc., 557 F. Supp. 2d 180 (D. Mass. 2008)		X	The Court declined to vacate an arbitral award where the sole arbitrator refused to postpone the hearing so that a party could have more time to obtain documents from a third party. The arbitral tribunal and the Court both questioned the materiality of the documents, and the Court underscored the reasonableness of the tribunal's decision.
	Sungard Energy Sys. v. Gas Transmission N.W. Corp., 551 F. Supp. 2d 608 (S.D. Tex. 2008) Published in Westlaw		X	The Court held that an arbitral tribunal had a reasonable basis for refusing to postpone a hearing upon the request of a party whose lead had a scheduling conflict. The Court held that the party failed to show that there was no reasonable basis for the tribunal's refusal to postpone the hearing; and pointed to statements by the arbitral tribunal that delaying the proceedings until the lead counsel was available would likely prevent the hearing from commencing for at least six months. The avoidance of a substantial delay was a reasonable basis for refusing to postpone the hearing.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Al-Haddad Commodities Corp. v. Toepfer Intern. Asia Pte., Ltd., 485 F.Supp.2d 677 (E.D.Va.2007) Published in Westlaw		X	The Court held that the arbitral tribunal was entitled to schedule a hearing only eleven weeks after a party submitted the dispute for arbitration, and that there was no evidence that the arbitral tribunal's refusal to postpone the hearing was made in bad faith or for self-serving reasons, or that the refusal to postpone resulted in the exclusion of pertinent and material evidence.
	Laws v. Morgan Stanley Dean Witter, 452 F.3d 398 (5th Cir. 2006) Published in Westlaw		X	An arbitral tribunal had denied a party's motion for continuance to review documents produced by the opposing party, and later ruled against the first party. The Court refused to vacate the award because the party could not show that it suffered prejudice from the arbitral tribunal's refusal to delay the proceedings.
	Coastal General Const. Services, Inc. v. Virgin Islands Housing Authority, 238 F.Supp.2d 707 (D.Virgin Islands 2002), affirmed 98 Fed.Appx. 156 Published in Westlaw	X		The Court found that an arbitrator's failure to postpone a hearing was misconduct warranting vacatur of the award where a party who had submitted no supporting documentation with its original claim filed an amended claim with voluminous supporting documentation less than 24 hours before the scheduled hearing, and which later appeared to be fraudulent.

UNITED STATES Catherine Amirfar, Debevoise & Plimpton				
Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Bisnoff v. King, 154 F.Supp.2d 630 (S.D.N.Y.2001) Published in Westlaw		X	The Court found that the arbitrator acted reasonably when he refused to adjourn arbitration proceedings to accommodate a witness who claimed to be unable to participate in a hearing via videotape or telephone. The witness worked a part-time schedule and refused alternative means suggested by the arbitrator to offer evidence.
	Ottawa Office Integration Inc. v. FTF Business Systems, Inc., 132 F.Supp.2d 215 (S.D.N.Y.2001) Published in Westlaw		X	An arbitrator was reasonable and fair when he refused to adjourn a hearing due to a key witness's alleged but unsubstantiated ill health one day before the hearing. The arbitral tribunal noted that a previous hearing had been adjourned on account of the witness's alleged ill health, but the party had not complied with the arbitral tribunal's request to submit credible medical evidence to substantiate future requests.
	El Dorado School Dist. No. 15 v. Continental Cas. Co., 247 F.3d 843 (8th Cir. 2001) Published in Westlaw		X	An arbitral tribunal acted reasonably when it denied a party's motion for a continuance based on a family member's outpatient surgery, because of the time and resources already expended toward scheduling the hearing date.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Liberty Securities Corp. v. Fetcho, 114 F.Supp.2d 1319 (S.D.Fla.2000) Published in Westlaw		X	An arbitrator's refusal to postpone a hearing based on a concern that the day would inconvenience the parties was reasonable, especially in light of the tribunal's satisfaction that the respective counsel adequately could prepare in the remaining month before the hearing.
	Tempo Shain Corp. v. Bertek, Inc., 120 F.3d 16 (2d Cir. 1997) Published in Westlaw	X		The Court found that an arbitral tribunal acted with fundamental unfairness when it refused to postpone a hearing to allow a crucial witness to testify, after he became temporarily unavailable following his wife's diagnosis with a recurrence of cancer.
	Naing Intern. Enterprises, Ltd. v. Ellsworth Associates, Inc., 961 F.Supp. 1 (D.D.C.1997), reconsideration denied 1997 WL 335799 Published in Westlaw	X		The Court vacated an arbitral award where the sole arbitrator denied a school board's request for a continuance of the hearing in light of external political chaos surrounding the functioning of the school board.
	ARW Exploration Corp., v. Aguirre, 45 F.3d 1455 (10th Cir. 1995) Published in Westlaw		X	The Court found that an arbitral tribunal had reasonable grounds to refuse to postpone a hearing to allow a witness to testify. The party could not identify why the witness's testimony was crucial, and failed to subpoena him or take his deposition to ensure it would be on the record.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Marshall & Co., Inc. v. Duke, 941 F.Supp. 1207 (N.D.Ga.1995), affirmed 114 F.3d 188, certiorari denied 522 U.S. 1112 Published in Westlaw		X	An arbitral tribunal's decision to refuse additional adjournments to a hearing date given exceptionally lengthy proceedings and a voluminous record had a reasonable basis and did not warrant vacatur.
	Roche v. Local 32B32J Serv. Emps. Int'l Union, 755 F. Supp. 622 (S.D.N.Y. 1991) Published in Westlaw		X	The Court held that the arbitral tribunal was reasonable in refusing to postpone the hearing for the fourth time. The plaintiff had failed to appear prepared to proceed at previously scheduled hearings, and had made several untimely post-hearing submissions that the tribunal nonetheless considered. The Court therefore found that the plaintiff had not been denied a fair hearing.
	Berlacher v. PaineWebber Inc., 759 F. Supp. 21 (D.D.C. 1991)		X	The Court held that the arbitral tribunal's refusal to postpone a hearing after a party's daughter was hospitalized for a broken arm was not misconduct that would warrant vacatur of an award.
	Schmidt v. Finberg, 942 F.2d 1571 (11th Cir. 1991) Published in Westlaw		X	A party had requested postponement of a hearing to allow a witness with a conflicting schedule to provide testimony. The arbitral tribunal declined the request when the party could not identify what testimony the witness would give that was material to the outcome of the case. The Court found that this was a reasonable basis to refuse adjournment.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Agarwal v. Agarwal, 775 F. Supp. 588 (E.D.N.Y. 1991) Published in Westlaw		X	The Court denied the motion to vacate the arbitral award, because a reasonable basis existed for the arbitrator's refusal to grant an adjournment of the hearing. The Court was deferential to the arbitrator's decision, and noted that the defendant seeking vacatur already had been granted two adjournments in the past.
	C.T. Shipping, Ltd. v. DMI (U.S.A.) Ltd., 774 F. Supp. 146 (S.D.N.Y. 1991) Published in Westlaw		X	The Court refused to vacate an arbitral award on the basis that the arbitrators did not grant an adjournment of the hearing to allow a party to call a particular witness. The Court noted that, contrary to that party's interpretation, the Federal Arbitration Act does not provide that arbitrators are guilty of misconduct any time they refuse an adjournment. So long as there exists a reasonable basis for the arbitrator's refusal (such as the avoidance of delay), the courts will not interfere with the award.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Concourse Beauty Sch., Inc. v. Polakov, 685 F. Supp. 1311 (S.D.N.Y. 1988) Published in Westlaw		X	A party had moved to vacate an arbitral award on the basis that the tribunal refused to adjourn a third session to allow a witness with scheduling conflicts to appear. The Court declined to vacate the arbitral award, noting that the witness had appeared during two earlier sessions and that the tribunal had advised the party to depose any witnesses who could not appear during the third session.
	Dan River, Inc. v. Cal-Togs, Inc., 451 F.Supp. 497 (S.D.N.Y. 1978) Published in Westlaw		X	An arbitrator's refusal to adjourn a hearing on the ground of a witness's unavailability was reasonable, because the hearing had been scheduled months before the witness made his conflicting commitments, and because the witness could offer no explanation as to why he could not rearrange his schedule to attend.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Allendale Nursing Home, Inc. v. Local 1115 Joint Board, 377 F.Supp. 1208 (S.D.N.Y.1974) Published in Westlaw	X		During the arbitral proceedings, a critical representative of the plaintiff became seriously ill. Refusing to continue in the absence of the representative, all of the plaintiff's other representatives and witnesses left the hearing. The sole arbitrator nonetheless continued the hearing without any representation for the plaintiff. The Court vacated an arbitral award because there was no reasonable basis for the tribunal's refusal to grant an adjournment. The Court noted in addition that the defendant had been granted several adjournments and had recently introduced additional issues to the case.
	Tube & Steel Corp. of Amer. v. Chicago Carbon Steel Prod., 319 F.Supp.1302 (S.D.N.Y.1970) Published in Westlaw	X		The Court vacated an arbitral award when it found that the tribunal unreasonably refused to postpone the hearings. The respondent had advised the tribunal prior to the scheduling of the hearing that he would be unavailable before a certain date. In spite of the fact that all three arbitrators were available after that date, the tribunal scheduled the hearing at a time when the respondent was unavailable. The respondent was not represented during the hearing, and the Court found that his rights were unfairly prejudiced.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
Failing to hold a hearing	*Riko Enterprises, Inc. v. Seattle Supersonics Corp.*, 357 F.Supp. 521 (S.D.N.Y.1973) Published in Westlaw	X		The Court set aside an award by the commissioner of a professional basketball association, because it violated New York law for the constitution of the association to give the commissioner the power to render binding awards without holding a hearing or affording other due process considerations.
Failing to answer each argument raised by the parties	*IDS Life Ins. Co. v. Royal Alliance Associates, Inc.*, 266 F.3d 645 (7th Cir. 2001) Published in Westlaw		X	A party appealed a district court's order confirming an arbitral award on the grounds that the arbitrators had rendered an incomplete award when they failed to discuss a particular aspect of the claimant's damages calculation. The Court of Appeals rejected the appeal, even though it noted that the record suggested that "the arbitrators lacked the professional competence required to resolve the parties' dispute." According to the Court of Appeals, so long as "a district judge is satisfied that the arbitrators resolved the entire dispute and can figure out what that resolution is, he must confirm the award."

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
IV. Other				
Failing to provide notice to the parties	*Intel Capital (Cayman) Corporation v. Angie Hsia et al., United States District Court*, Northern District of California, Case No. 15-cv-01287-VC, 16 October 2015 Published in ICCA Yearbook Commercial Arbitration 2016 - Volume XLI, pp. 625-626		X	The Court declined to vacate an award and held that the absence of notice afforded to a party after their counsel withdrew from representation did not constitute a failure to afford due process. The party could not point to any evidence or argument that it was unable to present because it had no representation at the hearing.
Ex Parte communications between the tribunal and the parties	*Swenson v. Bushman Inv. Properties, Ltd.*, 870 F.Supp.2d 1049 (D.Idaho 2012) Published in Westlaw		X	A party moved for vacatur of an arbitral award based on ex parte communications between the arbitrator and the opposing party's expert, the substance of which the arbitrator failed to disclose fully. The Court held that vacatur was not required because there was no evidence that the first party had been prejudiced by this contact.
	RZS Holdings AVV v. PDVSA Petroleos S.A., 598 F.Supp.2d 762 (E.D.Va.2009), affirmed 383 Fed.Appx. 281 Published in Westlaw		X	Ex parte communications between an arbitrator and counsel for a party did not rise to the level of misconduct because there was no evidence that the arbitrator's motives were improper, and any relationship between the arbitrator and the party were speculative at best.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Nationwide Mut. Ins. Co. v. Home Ins. Co., 429 F.3d 640 (6th Cir. 2005) Published in Westlaw		X	The Court declined to vacate an award based on the arbitrator's social engagements with the parties' counsel at events that did not involve any communication about arbitration.
	Lefkovitz v. Wagner, 395 F.3d 773 (7th Cir. 2005), certiorari denied 546 U.S. 812 Published in Westlaw		X	In the context of a voluntary arbitration, an arbitrator who engaged in ex parte communications with an accounting firm that he hired to provide neutral expert evidence did not commit improprieties that warrant vacatur of the award.
	Barcume v. City of Flint, 132 F.Supp.2d 549 (E.D.Mich.2001) Published in Westlaw		X	Absent specific facts indicating an improper motive, an arbitrator's ex parte communications with a party's counsel, and the fact that the party owed the arbitrator longstanding unpaid fees did not arise to the level of misconduct that merits vacatur of an award.
	Metropolitan Property and Cas. Ins. Co. v. J.C. Penney Cas. Ins. Co., 780 F.Supp. 885 (D.Conn.1991) Published in Westlaw	X		Ex parte meetings between an arbitrator and a party to discuss the merits of its defense and review documentary evidence prior to the constitution of the arbitral tribunal provided a reasonable basis for a claim of arbitrator misconduct.

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Situations	**Reference to case law**	**Setting aside/annulment**		**Reasoning**
		Yes	No	
	Totem Marine Tug & Barge, Inc. v. N. Am. Towing, Inc., 607 F.2d 649 (5th Cir. 1979) Published in Westlaw	X		The Court vacated an arbitral award based on prejudicial misconduct by the arbitrators when they received ex parte evidence on earning figures relevant to the amount of damages awarded.