



NOTE FROM THE INTERNATIONAL COMMISSION

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1. In January 2020, the Madrid International Arbitration Center and the Ibero-American Arbitration Center ["**CIAM-CIAR**" or "**Center**"] was created, an arbitral institution born from the merger of the international activity of the Madrid Court of Arbitration, the Civil and Commercial Court of Arbitration and the Spanish Court of Arbitration [the "**Driving Entities**"].
2. The International Commission was appointed by CIAM-CIAR to prepare a note ["**Note**"] determining when an arbitration qualifies as international for the purposes of the application of Art. 2.3 of the CIAM-CIAR Arbitration Rules. However, considering that the definition of an internationality criterion, *stricto sensu*, would be reductive, as it does not take into account the reality of an arbitration institution such as CIAM-CIAR, the Commission has prepared this Note also taking into account practical aspects, which make it possible to establish the arbitrations to be referred by the Lead Entities to CIAM-CIAR in two cases:
 - i. The arbitrations the administration of which has been submitted to any of the Driving Entities in arbitration agreements entered into as of January 1, 2020; and
 - ii. Cases in which, in relation to arbitration agreements entered into prior to January 1, 2020 with submission to one of the Driving Entities, the parties may expressly agree to submit the dispute to ICSID-CIAR.
3. It should be understood that the criteria of "internationality" of an arbitration developed in this Note serve the sole purpose of determining which disputes will be administered by CIAM-CIAR and which will be administered by the Driving Entities. Such determination is without prejudice to the decision that an arbitral tribunal constituted under the auspices of CIAM-CIAR may take on the internationality of the dispute for other purposes and to decide on its own jurisdiction.
4. The Commission considers that the Submitting Entities should refer an arbitration to CIAM-CIAR if:
 - Arbitration has seat outside Spain ["**Arbitrajes Extranjeros**"] (I);



- The arbitration has its seat in Spain, but is international in nature in accordance with this Note (II).
5. Arbitrations seated in Spain on a strictly domestic basis pursuant to the Note shall not be referred to CIAM-CIAR by the Submitting Entities. On the other hand, in the event that CIAM-CIAR receives a case seated in Spain on a domestic basis, it shall refer it to the Submitting Entities (III).

I. Arbitrations with seat outside Spain (Foreign Arbitrations)

6. Those arbitrations whose seat is located, by agreement of the parties or by determination of the Promoter Entity, outside Spanish territory shall be considered "Foreign Arbitrations".
7. Foreign Arbitrations shall be referred by the Lead Entities to CIAM-CIAR, regardless of whether they are of a domestic or international nature under the applicable law.

Examples Table 1	
○	A company domiciled in Spain and a company domiciled in Mexico enter into an arbitration agreement based in Mexico City.
○	Two companies with establishments in Peru enter into an arbitration agreement based in Lima.
○	A company with a place of business in Italy and a company domiciled in Brazil enter into an arbitration agreement based in London.
○	Two companies domiciled in Spain enter into a Paris-based arbitration agreement.

II. International arbitrations with seat in Spain

8. All arbitrations seated in Spain and which, *prima facie*, are of an international nature in accordance with this Note, i.e., which meet any of the requirements of internationality set forth below, shall be referred to CIAM-CIAR:



a. That at the time the arbitration request is filed, he/she is outside Spain:

- (i) The domicile of either party, or
- (ii) The establishment from whose activities the dispute arises or in whose charge the contract or legal relationship in question is.

Examples Table 2	
○	A company with a place of business in Spain and a French individual domiciled in Paris enter into an arbitration agreement based in Madrid.
○	Two companies with establishments in Peru and a Paraguayan individual with domicile in Asunción agree on an arbitration agreement based in Barcelona.
○	A Spanish individual, with habitual residence in Switzerland, and a company with a place of business in Spain agree on an arbitration agreement based in Bilbao.
○	In concluding an arbitration agreement with its seat in Madrid, Company A has an establishment in Spain and Company B has two establishments, one in Italy and the other in Spain. Company B, through its establishment in Italy, decides to contract with A and to enter into the arbitration clause. Therefore, for company B, the establishment in Italy will be taken into account as it has a closer relationship with the arbitration agreement.

b. The obligations arising from the dispute must be fulfilled, in whole or in part, outside Spain.

Examples Table 3	
○	Two companies with establishments in Spain agree on the production and sale and purchase of goods in Poland and enter into an arbitration agreement based in Madrid.
○	Two companies with establishments in Spain agree to manufacture and deliver equipment in Spain, but the price is to be paid by bank transfer to Italy, although the cost of transportation and insurance are paid locally. The arbitration agreement was agreed based in Madrid.



- Two companies with establishments in Spain enter into a contract of consortium for the joint construction of a project in Mexico and enter into an arbitration agreement based in Madrid.

c. **One or more of the contracts that are subject to arbitration are not governed by Spanish law.**

Examples Table 4	
○	Two companies established in Spain enter into a sales contract for agricultural products that one of them will export to Brazil. The contract establishes that the products must comply with Brazilian regulations and the dispute is about the compliance or non-compliance with such regulations.
○	A Spanish individual domiciled in Madrid takes out a policy with a U.S. insurer through an establishment in Madrid, subject to New York law.

d. **The execution of the contract involves the transfer of goods, funds or services between two or more States.**

Examples Table 5	
○	Two companies whose establishments are located in Spain agree on a contract for the export of pencils. The products would be shipped monthly from Spain to Portugal.
○	Two companies established in Spain signed a contract for the construction of a tourist complex in El Salvador. The materials and equipment for the construction will be imported, as well as the payment was agreed in euros and Salvadoran currency. A construction controversy is generated related to additional works.
○	Two companies with an establishment in Spain enter into a share purchase agreement to acquire all or part of the shares of an Egyptian company.
○	Two companies with an establishment in Spain enter into a subcontract to carry out work in Morocco, involving the transfer of personnel, materials or technology to Morocco.
○	A company with an establishment in Spain exporting products takes out its insurance policy with a Spanish insurer.



Claims occur in connection with trading operations international.

- A company with an establishment in Spain licenses another company to another company with an establishment in Spain to export their brands to the Latin
- Two companies with establishments in Spain agree that one of the companies will
The two companies will supply canned goods to the other in Spain. A contamination arises in the Spanish canning plant. Several of the contaminated products were marketed in France, which is the operation giving rise to the liability at issue in the arbitration.

III. Strictly domestic arbitration based in Spain

9. Those arbitrations with seat in Spain and which have a domestic nature in accordance with the provisions of the Note, i.e., those arbitrations in which the arbitration is not subject to the administration of CIAM-CIAR, and therefore will have to be referred by CIAM-CIAR to the Lead Entities, will not be considered subject to the administration of CIAM-CIAR, and therefore will have to be referred by CIAM-CIAR to the Lead Entities:

- (i) The seat of arbitration is Spain; and
- (ii) All parties, whether natural persons or legal entities, are domiciled or have their places of business in Spain; and,
- (iii) None of the internationality requirements defined in point II. above are met.

Examples Table 6	
○	Two companies domiciled in Spain enter into an arbitration agreement based in Madrid. The performance of one hundred percent of the obligations of the contract takes place in Spain, and the dispute is only related to Spain.
○	Two companies with a place of business in Spain enter into an arbitration agreement based in Madrid in a contract for the construction of an industrial plant. Five percent of the value of the work is imported equipment. The dispute concerns the compliance with the contract specifications of the materials used in the construction, which are of Spanish origin (and not imported).

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10. For purposes of the interpretation of this Note, the following criteria shall be applicable:
 - i. For the determination of whether a dispute is subject to the administration of CIAM-CIAR or of the Promoting Entities, Law 60/2003, of December 23, 2003, on Arbitration or the Law that replaces or modifies it [**"Spanish Arbitration Law"**] shall not apply.
 - ii. In the case of an arbitration in which the parties have not agreed on the seat of arbitration, for the determination of the referral of a dispute to CIAM-CIAR or to the Lead Entities, the rules of this Note shall apply, assuming preliminarily, only for the purposes of this analysis, that the seat of arbitration is Spain, in order to determine whether the arbitration is of an international nature. Such determination, however, shall not condition the definition of the seat of arbitration when such decision has to be adopted subsequently by CIAM-CIAR or by the Lead Entities in accordance with their respective Rules. Nor shall such determination affect the decision on its own jurisdiction made by an arbitral tribunal constituted under the auspices of CIAM-CIAR. In the event that none of the internationality criteria is met, the parties shall have a period of time to notify whether they agree that the seat should be outside Spain.
 - iii. The criteria used in this Note to characterize an arbitration as "foreign" or "international" are particular and specific to resolve, exclusively, the question of referral of a case to ICSID-CIAR by the Lead Entities and vice-versa. In particular, they are without prejudice to the qualification of the international character of the arbitration which, for other purposes, may be made by the arbitral tribunal.