

Contents

<i>Preface</i>	v
<i>Foreword</i>	vii
<i>Table of Cases</i>	xv
<i>Table of Legislation</i>	xxv
<i>Table of Conventions and Treaties</i>	xxix

Chapter 1 Introduction

1.1 International arbitration and costs	1
1.2 The award as to costs.....	4
1.3 The definition and classification of costs: <i>central costs and party costs</i>	4
1.4 The nature of costs in international arbitration.....	6
1.5 The components of an award as to costs	11
1.6 A brief review of international arbitration costs policy.....	13
1.7 Identifying a harmonised policy: <i>moderated costs follow the event</i>	20
1.8 Differences between international commercial and investment arbitrations	20

Chapter 2 Power and Obligation to make an Award as to Costs

2.1 The tribunal's power to make an award as to costs	21
2.2 The obligation to make an award as to costs	26
2.3 Procedures where the award is incomplete.....	27
2.4 Delegation of powers.....	29
2.5 Linked and consolidated arbitrations.....	29
2.6 Power to award costs incurred in associated legal proceedings.....	31
2.7 Award of interest on costs.....	31
2.8 Tribunal's powers to award costs in the absence of substantive jurisdiction over the underlying dispute	31

Chapter 3 Agreements and Protocols as to Costs

3.1 Party autonomy.....	33
3.2 Constraints on the power to make agreements as to costs.....	34
3.3 References to supplementary costs agreements in legislation and procedural rules.....	35

3.4	Restrictions on abusive costs agreements.....	36
3.5	Costs agreements embedded in procedural guidance	39
3.6	Aligned submissions.....	40
3.7	Supplementary agreements and protocols on costs	41
3.8	Example protocol.....	43
Chapter 4 Practice and Procedure		
4.1	Introduction	47
4.2	Emergency arbitrator costs	47
4.3	Costs discussion at an early case management conference.....	48
4.4	Procedure for making submissions in advance of the decision on costs.....	50
4.5	Caution when making cross-awards.....	58
4.6	Correcting and reviewing costs awards	58
4.7	Dissenting arbitrators.....	60
4.8	The provision of reasons for an award as to costs.....	60
4.9	Costs awards and orders made during the proceedings.....	63
Chapter 5 Apportioning Central Costs and Allocating Liability for Party Costs		
5.1	Introduction	65
5.2	The discretionary nature of an award as to costs.....	66
5.3	Factors which the tribunal may properly take into account when exercising its discretion.....	67
5.4	Success/outcome as a primary factor for the exercise of discretion	70
5.5	Conduct in the proceedings as an important subsidiary factor.....	75
5.6	Reasons which should not be taken into account when allocating liability for costs.....	83
5.7	Consistency between awards as to central costs and party costs	84
5.8	Partial success and failed and/or improperly-raised issues	84
5.9	Counterclaims and set-offs	90
5.10	Identifying success following amendment to a party's case.....	93
5.11	Offers of settlement	93
5.12	Setting the basis for recovery of costs	93

Chapter 6 Quantifying The Amount of Recoverable Party Costs

6.1	Introduction	95
6.2	Agreements between the parties as to costs.....	97
6.3	Irrecoverable costs.....	98
6.4	Reasonableness and proportionality	101
6.5	The form of submissions	103
6.6	Costs of legal representation.....	104
6.7	Experts.....	106
6.8	Witnesses and evidence	107
6.9	Client's internal costs.....	108
6.10	Costs of interim or conservatory measures.....	110
6.11	Agreements between parties and others as to the funding of the proceedings	110
6.12	Tax	112

Chapter 7 Offers of Settlement and their Effect on Awards as to Costs

7.1	Introduction	113
7.2	Open offers, closed offers, privilege and practice	114
7.3	The effect of an offer of settlement on costs	118
7.4	The use of offers in international practice	120
7.5	The terms of the offer	122
7.6	Further considerations in respect of offers of settlement	124
7.7	Amendments made to case subsequent to an offer.....	128

Chapter 8 Tribunal and Institution Fees and Expenses

8.1	The agreement between the arbitrators and the parties as to fees and expenses	131
8.2	Express agreements as to fees	135
8.3	Arbitrators' reasonable fees and expenses.....	139
8.4	Institution-administered arbitrations.....	142
8.6	Enforcing the agreement as to fees and expenses.....	147
8.7	The tribunal's fees where the arbitration is terminated prior to an award disposing of all issues	147
8.8	The arbitrator's fees for correcting an award which is remitted to him.....	151
8.9	Determining the <i>central costs</i>	152

Chapter 9 Security for costs

9.1	Introduction to security for costs	153
9.2	Orders for security for costs and the courts	155
9.3	Specific and non-specific powers to order security for costs	156
9.4	The exercise of a specific power to order security for costs	159
9.4	The exercise of a non-specific power to order security for costs	164
9.5	What costs may be secured	166
9.6	The order for security	167
9.7	Costs of the application	168

Chapter 10 Controlling Costs in International Arbitration

10.1	Introduction	169
10.2	The tribunal's power and duty to control costs by adopting suitable procedures	170
10.3	Practical Steps to reduce overall costs	173
10.4	Positive management of costs	175

Chapter 11 Costs following Settlement or Discontinuance

11.1	Introduction	181
11.2	Negotiated settlements	182
11.3	Costs following the acceptance of a sealed offer	186
11.4	Determination of costs following a unilateral discontinuance	186
11.5	Incorporation of the settlement agreement into the award	187

Chapter 12 Applications to the Court in Respect of Costs

12.1	Introduction	189
12.2	Improper applications to the court	189
12.3	Entitlement to appear in ancillary court proceedings	190
12.4	Security for costs	191
12.5	Taxation in the court	191
12.6	Review of the arbitrators' fees by the court	192
12.7	Procedural irregularity and or public policy issues	193
12.8	An appeal on the merits of the costs award	196
12.9	Enforcement or recognition of costs awards	197

Chapter 13 Costs in Investment Treaty Arbitrations

13.1	Introduction	199
13.2	The costs of investment arbitration	201
13.3	A review of cost shifting in investment arbitration awards	204
13.4	A review of quantum of awards in investment arbitration	215
13.5	A synthesis of approaches to costs in international investment arbitrations	217
13.6	Where the respondent's jurisdictional challenge fails and its substantive defence succeeds	219
13.7	Costs protocols and notices in investment arbitration	220
13.8	Discontinuance	220
13.9	Offers of settlement	221
13.10	Third party funding and fee arrangements	222
13.11	Security for costs	223
13.12	Costs following termination for lack of jurisdiction	227
	Appendix	228
	Index	255