Multiparty Tribunal Constitution: Comparative Cartography, Normative Architecture, and Structural Diagnostics[1]

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I. When Autonomy Meets Arithmetic: The Multiparty Puzzle of Tribunal Constitution

Arbitration begins with a simple promise: parties may entrust their disputes to tribunals of their choosing; the state will enforce both the agreement and the award. Autonomy in exchange for enforceability. The formula appears elegant; the reality proves less so. The moment a tribunal must be constituted reveals that arbitration rests not on a single organising idea but on the uneasy coexistence of two.

The first is freedom—known in arbitral discourse as party autonomy: parties design their own adjudicative machinery; they choose the rules; they select the decision-makers; they shape the procedure through which disputes are resolved. The second is equality: however private the origin of the process, the tribunal must not be structured so that one party stands at a systemic disadvantage.

So long as disputes fall neatly into two opposing camps, the coexistence of these principles appears effortless. The geometry is simple: each side appoints an arbitrator; the arbitrators select the chair. Autonomy and equality seem perfectly aligned. Multiparty disputes disturb that symmetry. Interests no longer divide cleanly into a claimant bloc and a respondent bloc. The bilateral assumptions of arbitration begin to fray: tribunal constitution ceases to be mechanical; autonomy and equality can no longer be maximised simultaneously; design becomes a problem.

Modern arbitration law has not resolved that problem through a single unifying theory. Its response has been incremental; dispersed; pragmatic. Courts have approached the issue through different interpretative traditions: sometimes elevating equality into a near-absolute constraint; sometimes moderating it through side-based analysis; sometimes allowing the alignment of the dispute itself to reshape the meaning of participation; sometimes insisting that the parties' original design must prevail. Legislatures have intervened more sparingly: grafting multiparty overlays onto existing appointment frameworks; leaving their practical operation largely to judicial interpretation. Arbitral institutions—those actors most frequently confronted with appointment deadlock—have undertaken the most deliberate design work: translating competing principles into operational rules capable of governing administered proceedings.

The resulting landscape is structured yet plural. Drafting techniques vary; institutional reflexes differ; judicial vocabularies diverge. Beneath that diversity lies a deeper question: who bears responsibility when the assumptions of bilateral arbitration encounter the realities of multiparty conflict? Some regimes preserve the parties' design and accept the risks that follow from imperfect alignment. Others permit institutional actors to recalibrate tribunal composition; the administering body becomes the guarantor of structural equilibrium. Still others attempt to stabilise the problem through detailed rule design; anticipating the different ways in which appointment mechanisms may fail.

Seen at a sufficient level of abstraction, these variations are not mere procedural refinements. They encode competing allocations of authority within the arbitral

system: when is the parties' original design decisive; when may institutional actors reshape it; when will doctrine impose structural constraints in the name of equality? Tribunal constitution marks the point at which the contractual foundation of arbitration encounters the architectural demands of adjudication.

The analysis that follows maps the positive law that has grown around this problem: judicial decisions; legislative interventions; institutional rules. The exercise is inevitably didactic. Charting a doctrinal landscape requires attention to texts, formulations, and incremental developments; enthusiasm alone cannot transform statutory language into sparkling prose. One may attempt—within reason—to enliven the journey; yet there are limits to how much zest can be infused into the quiet austerity of legal drafting.

Readers who feel little inclination to accompany that doctrinal expedition should not hesitate to navigate selectively. The principal conceptual waypoints are Judicial Crosscurrents (II.I); Invidious Comparisons (III.D); and The War of the Models (IV.E). Each summarises and interprets the doctrinal material that precedes it. The concluding section—Autonomy and Paternalism: The Quiet Struggle for Control (V)—draws the strands together and asks what the law on multiparty tribunal constitution reveals about arbitration—its internal commitments; its institutional anxieties.

Those who reach that point may, if curiosity persists, return to the intervening sections and examine how the argument rests upon the law on the books and the law in action. The pages that follow therefore move from detail toward reflection. The doctrinal survey provides the scaffolding; the conceptual inquiry arrives at the end. If the journey occasionally feels methodical—even, in places, dutiful—it is undertaken in the hope that the destination will justify the effort.

II. Case law on multiparty tribunal constitution

The case law on multiparty tribunal constitution generally does not seek to resolve the tension between freedom and equality by systematically privileging one value over the other, nor by articulating a general theory capable of harmonising them in the abstract. Priority is instead allocated contextually, by reference to the particular configuration of parties, interests, and procedural failure presented by the dispute. That allocation—and the difficulties inherent in it—are best appreciated through the small group of judicial decisions that have, to varying degrees, come to structure the field: *Dutco*, *Culioli*, *State Grain*, *PT Ventures*, and *La Dolce Vita*. Regrettably, none of these decisions is especially lucid, and none purports to articulate a coherent framework for balancing the competing normative values involved. At most, they offer situated responses to specific procedural configurations. Their importance lies not in doctrinal completeness, but in the normative signals they emit—signals that have subsequently informed both legislative intervention and institutional rule-making.

A. Dutco — decision

In 1981, Dutco Construction Company (Dubai) entered into a consortium agreement with BKMI Industrieanlagen GmbH and Siemens AG, for the construction of a cement

plant in Oman. The three-way consortium agreement contained an arbitration clause providing for ICC arbitration by a tribunal of three appointed in accordance with the Rules. A dispute arose, and Dutco commenced arbitration against the other consortium members and nominated an arbitrator. As it happens, Dutco led separate claims against each respondent, and as these claims were put in the alternative, the respondent's interests diverged. Objecting, BKMI and Siemens argued that, given the claims' separateness, Dutco should have commenced separate arbitrations; and given their divergent interests, they should not be required to appoint an arbitrator jointly. At the time, the ICC Rules did not contain an express mechanism governing the constitution of arbitral tribunals in multiparty proceedings; but the ICC Court's established administrative practice was to require respondents in such situations to make a joint nomination, failing which the ICC would appoint the missing arbitrator. Fearing a default appointment, BKMI and Siemens made a joint nomination, albeit "with protestations and reservations." In due course, the tribunal issued a partial (interim) award on jurisdiction in which it held, in substance, that it had been properly constituted and that the arbitration could validly proceed in a multiparty form against both respondents. To reach that conclusion, the tribunal rejected the respondents' objections to consolidation and to the appointment mechanism, treating the ICC's practice as sufficient to sustain the regularity of its constitution.

BKMI and Siemens applied to set aside that award before the Paris Court of Appeal. Their challenge was framed as an irregular-constitution objection. They contended that the tribunal had been constituted in breach of the principle of equality because the two respondents had been compelled to share a single nomination, while Dutco had exercised its nomination right unilaterally.

The Paris Court of Appeal dismissed the application.[2] The court's reasoning was simple: the arbitration clause, as an integral part of a contract linking three companies, expressed the common will of all to submit disputes arising out of that instrument to a single arbitral tribunal composed of three arbitrators. It necessarily followed that the parties had accepted the prospect of a single tribunal adjudicating a dispute involving all three participants, together with such procedural "adaptations" as a multi-party situation might entail.

On appeal, the Cour de cassation reversed.[3] Rejecting that foreseeability could justify inequality in tribunal constitution, the Court held that the right to equal treatment in the choice of arbitrators forms part of France's international public policy, and, as such, can be waived only after the dispute has arisen.[4]

B. Dutco — critique

Dutco owes its historical prominence less to the strength of its reasoning than to the institutional responses it set in motion. As an exercise in judicial craft, the decision is remarkably poor.

First, the judgment formulates a high-order and abstract proposition that was not strictly necessary to the disposition of the case. The circumstances that sharpened the

perception of imbalance in *Dutco* were specific and concrete. The arbitral institution imposed joint nomination upon two respondents without express textual authority to do so. The respondents themselves were unrelated entities, neither horizontally nor vertically affiliated. The claims asserted against them were unrelated. They were also pleaded in the alternative, so that liability would attach to one respondent or the other but not both. In that configuration the respondents had conflicting interests and did not therefore form a coherent procedural bloc. Each of these features bears independently on the perception of inequality: the absence of textual authority for compelled joint nomination; the absence of corporate or economic alignment between the respondents; the absence of a common claim linking them; and the claimant's decision to plead the liabilities in the alternative within a single arbitration. Any one of these elements—still more their combination—could readily have supported a materially narrower holding. The articulation of a general and abstract principle governing multiparty tribunal constitution was therefore not necessary to resolve the dispute presented.

Secondly, the Court proceeded to issue a pronouncement with systemic implications without clarifying either its scope or the operative standard through which it was to be applied. The omission is not merely stylistic: it reflects a deeper conceptual gap. The proposition presupposes a prior account of what equality requires in the constitution of an arbitral tribunal; the judgment provides none.

Two conceptions are available. On one view, equality attaches to each juridical person as an individual entitlement to participate in the nomination process; under that approach, agreements that group multiple entities into a single appointing unit appear problematic: several juridical persons are compressed into a single nomination right. On another view, equality is structural rather than atomistic; the relevant comparison lies not between juridical persons but between the opposing sides of the dispute. Under that approach, commercially aligned entities treated as a single procedural bloc do not generate inequality at all; the question of waiver does not arise: nothing has been relinquished.

The difficulty with *Dutco* lies not merely in the Court's failure to choose between these conceptions but also in that the judgment invokes the language of equality while leaving the content of the principle undefined. Equality is asserted as a constraint; its metric remains unspecified: it is unclear whether the principle protects individual juridical persons, opposing sides, or some notion of structural equilibrium between them. The result is a pronouncement of considerable systemic reach resting upon an undeveloped conceptual foundation.

Nor does the judgment explain why consent expressed in advance, under conditions of symmetry, should be regarded as inherently less reliable than consent given after the dispute has arisen; the preference for post-dispute renunciation is simply announced, without any accompanying account of the inequality said to justify it.

The result is a norm categorical in tone yet indeterminate in content: equality is constitutionalised; its architecture remains undefined. The decision therefore

functions less as a theory than as a pressure point; it establishes a mandatory constraint without specifying the unit of analysis to which that constraint attaches.

The indeterminacy was apparent from the outset (1992); what is more revealing is how little clarity has emerged in the decades since: in 2020, in the context of foreign enforcement proceedings in the British Virgin Islands, arising out of an altogether different award (*PT Ventures*), two eminent French scholars giving expert evidence on French law, advanced materially divergent accounts of what *Dutco* in fact means and requires.[5] That such disagreement could persist some three decades after the Cour de cassation's pronouncement—and at that level of doctrinal authority—is telling: it underscores the conceptual vacuity of the original judgment.

Seen in this light, *Dutco* is best understood as a provocation: a decision that identified a problem sharply but addressed it crudely. Its significance is historical rather than analytical: it marks a moment of rupture rather than a model of reasoning. As the next cases will show, *Dutco* marks the beginning, not the end, of the enquiry.

C. Culioli & State Grain — decisions

Much of the criticism directed at *Dutco*—its abstraction, its failure to distinguish between formal multiplicity and substantive divergence, and its silence as to the operative metric of equality—was, in part, addressed in subsequent decisions of the Paris Court of Appeal. These decisions did not disavow *Dutco*; they recalibrated it. The focus shifted away from the atomised nomination rights of juridical persons toward a structural assessment of sides and alignment. The relevant question ceased to be how many legal persons appeared in the proceedings; it became whether those persons in fact constituted distinct adversarial blocs.

The judgment in *Culioli* v *Gastrolouvre and Sibella* illustrates this reorientation.[6] Two sellers had undertaken, indivisibly and in solidum, to transfer shares to a purchaser. When one of the sellers reneged, the purchaser commenced arbitration and nominated an arbitrator; each seller then attempted to nominate an arbitrator separately. The *juge d'appui* declined to recognise two nominations on the seller side and instead appointed a single arbitrator on their behalf. One of the sellers challenged the decision: invoking *Dutco*, he argued that equality required each juridical person to enjoy an independent right of nomination.

Dismissing, the Paris Court of Appeal held that the appointment of a single arbitrator for co-parties who were contractually bound indivisibly, and whose interests had not been shown to diverge, did not infringe the principle of equality.[7] The Court's reasoning reframed the issue: equality was not treated as a numerical entitlement attached to each legal person; it was assessed structurally, by reference to the alignment of interests revealed by the contractual arrangement and the dispute itself. Where those elements disclosed a single side, side-based nomination did not offend public policy.

A decade later, the same Court returned to substantially the same question in *State Grain Organisation of the Islamic Republic of Iran* v *Redle Grains Silos Ltd*.[8] The

arbitration there had been conducted under the 2012 edition of the ICC Rules. The claimant nominated its arbitrator; the multiple respondents failed to agree upon a joint nomination. Article 12(8) authorised the ICC Court, in such circumstances, to appoint each member of the tribunal. The ICC did not exercise that authority; instead, it appointed a co-arbitrator on behalf of the defaulting respondents, thereby essentially recognizing the bipartite structure of the tribunal.

On annulment, the respondents argued that the ICC had misapplied its own Rules: once Article 12(8) was triggered, the institution should have appointed all three arbitrators; anything less lacked textual basis.

Dismissing, the Court held that Article 12(8) confers a power rather than create an obligation: the ICC Court is authorised to appoint all members of the tribunal but it is not required to do so. The Court further observed that, when no substantive divergence of interests among the respondents had been established, the institution's decision to intervene only partially—by appointing a single arbitrator for the respondents—did not infringe the principle of equality under French law.

D. Culioli & State Grain — critique

Read together, *Culioli* and *State Grain* introduce important glosses to the principle articulated in *Dutco*. Without disavowing that decision, they supply the element that *Dutco* had left undefined: the metric of equality in the constitution of the tribunal. *Dutco* spoke in categorical terms about equality in the designation of arbitrators but did not specify the unit through which that equality was to be assessed. The later decisions answer that question implicitly: equality does not operate at the level of juridical persons taken individually; it operates at the level of adversarial sides. Formal multiplicity does not suffice; what matters is whether the parties grouped on one side of the arbitration in fact constitute a single procedural camp. The equality principle remains intact; its operative metric becomes structural rather than numerical.

In that respect, the later cases supply the contextual discipline that *Dutco* lacked. The earlier judgment reacted to a concrete procedural asymmetry and elevated the resulting intuition into a high-order principle of public policy; the operational conditions of that principle were left unarticulated. *Culioli* and *State Grain* translate the abstraction into a workable test. Equality is preserved, but its application is mediated by an inquiry into alignment of interests. The principle becomes manageable because the question is no longer how many juridical persons are present in the arbitration but whether those persons in fact constitute distinct adversarial blocs.

At the same time, this clarification sits somewhat uneasily beside the language of *Dutco*. That decision insisted that equality in the designation of arbitrators could be renounced only after the dispute had arisen. Once equality is understood as operating between sides rather than individual juridical persons, that proposition becomes more difficult to sustain in its original form. If equality is structural, parties who form a single procedural camp may be treated as such from the outset; the premise that any grouping must necessarily await post-dispute renunciation loses much of its force. The

later decisions therefore do more than merely apply *Dutco*; they quietly recalibrate it. They render the principle workable without openly revisiting the absolutist formulation through which it was first expressed.

This adjustment is achieved without doctrinal confrontation. The later cases proceed as though they were elaborating *Dutco*, not correcting it. Yet the effect is precisely that: the equality principle is retained, but its meaning is stabilised through a side-based conception that *Dutco* itself had never articulated. The result is jurisprudence that is both more coherent and more practical than its point of departure, even if the transition occurs largely sotto voce.

Seen in this light, *Culioli* and *State Grain* perform a quiet repair. They preserve the authority of *Dutco* while supplying the analytical structure that the original decision lacked. The equality principle survives; its application becomes intelligible.

E. PT Ventures — decision

It is against that background that the Paris Court of Appeal's decision in *PT Ventures* must be understood. In P*T Ventures SGPS, S.A.* v *Vidatel Ltd, Mercury Serviços de Telecomunicações SARL & Geni SARL*,[9] the arbitration arose out of a dispute among the four shareholders of Unitel S.A., Angola's principal mobile telecommunications operator. Each shareholder held an equal participation of 25 per cent in the company. In October 2015, PT Ventures commenced ICC arbitration against the three other shareholders, alleging that they had excluded it from participation in Unitel's management in breach of the shareholders' agreement.

The arbitration clause provided for ICC arbitration seated in Paris before a tribunal of five arbitrators:

> one to be designated by each Party, and the fifth one to be designated by the other four arbitrators, provided, however, that if no agreement between the arbitrators designated by the Parties is reached, the independent arbitrator shall be designated by the President for the time being of the International Chamber of Commerce.

When initiating the arbitration, *PT Ventures* proposed that the dispute be heard by a three-member tribunal rather than the five-member tribunal contemplated by the arbitration agreement and, on that basis, designated a single arbitrator. The three respondents rejected that proposal and each designated an arbitrator in accordance with the express terms of the clause. Faced with this divergence, the ICC Secretariat invited the parties to agree an alternative method for tribunal constitution—expressly on the premise it would otherwise proceed under Article 12(8) of its (2012) Rules. No agreement having been reached, the ICC Court appointed all five members of the tribunal.

When an award was ultimately rendered in favour of *PT Ventures*, one of the respondents, Vidatel, applied to set it, arguing, inter alia, that the tribunal had not been properly constituted.

Dismissing, the Paris Court of Appeal invoked Article 1453 of the French Code of Civil Procedure—applicable to international arbitration pursuant to Article 1506—which provides that:

> If there are more than two parties to the dispute and they fail to agree on the procedure for constituting the arbitral tribunal, the person responsible for administering the arbitration or, where there is no such person, the judge acting in support of the arbitration, shall appoint the arbitrator(s).

The Court observed that, in circumstances where the ICC had unavailingly invited the parties to agree an alternative method for constituting the tribunal, it was ultimately for the administering institution to break the deadlock and ensure that the arbitration conducted under its auspices complied with its Rules. Rejecting Vidatel's argument that Article 12(8) of the 2012 ICC Rules did not permit the ICC Court to appoint a five-member tribunal, the Court held that, read together with Article 41 of the Rules—which authorises the ICC Court to act "in the spirit of the Rules" and to make every effort to ensure that the award is enforceable—Article 12(8) empowers the ICC Court to intervene in order to safeguard compliance with fundamental procedural requirements.

For the Court, the principle of equality in the appointment of arbitrators is a matter of public policy and presupposes that each party be able to participate in an equal manner in the constitution of the arbitral tribunal.

Significantly, the Court held that this principle must be assessed not only by reference to the parties' contractual position at the time the arbitration agreement is concluded, but also in light of the configuration of the dispute at the moment it arises. As the Court explained, when the dispute crystallises, equality must be evaluated "not only in light of the parties' status under the contract, but also in light of the demands and interests of each of the parties to the dispute."[10]

Applying that approach, the Court noted that the arbitration had been initiated by one shareholder against the three others, challenging their alleged joint conduct in the management of the company. In those circumstances, and notwithstanding the terms of the arbitration clause, institutional intervention to appoint the tribunal in its entirety is justified in order to preserve equality of treatment among the parties.

On appeal to the Cour de cassation,[11] Vidatel's principal submission was that there had been no "disagreement" within the meaning of Article 1453 of the Code of Civil Procedure or of Article 12(8) of the 2012 ICC Rules. The shareholders' agreement had already prescribed a detailed mechanism for constituting a five-member tribunal in the event of arbitration among the shareholders. The fact that PT Ventures later declined to adhere to that mechanism and proposed a different structure—a three-member tribunal—did not amount to a failure to agree the procedure. The parties had already agreed upon a method; the dispute concerned whether that agreed method should be respected. On that basis, Vidatel contended that the conditions for recourse to Article 1453 of the Code of Civil Procedure and Article 12(8) were not satisfied and

that the ICC Court lacked authority to depart from the contractual mechanism and appoint the tribunal itself.

Dismissing, the Cour de cassation held that the divergence between PT Ventures' conditional nomination, premised on a three-member tribunal, and the respondents' insistence on the five-member tribunal provided for in the arbitration agreement, constituted a disagreement concerning the constitution of the tribunal. That disagreement was sufficient to trigger the institutional powers provided for in Article 12(8) of the ICC Rules and Article 1453 of the Code of Civil Procedure. Once the parties could not converge on a single operative method for constituting the tribunal, the ICC Court was entitled to appoint all members of the tribunal. By doing so, the Court held, the ICC ensured equal treatment among the parties, in that all of them were placed in the same position with respect to the nomination of arbitrators.

F. PT Ventures – critique

PT Ventures marks a renewed moment of instability in the jurisprudence on multiparty tribunal constitution, though of a different kind from that introduced by *Dutco*. If *Dutco* was criticised for elevating an abstract notion of equality without articulating the conditions of its operation, *PT Ventures* generates instability in the opposite direction: it does not merely apply the side-sensitive conception of equality that emerged in the post-*Dutco* cases; it relocates the centre of gravity of the analysis by permitting the agreed constitutional architecture to be revisited in light of the configuration of interests revealed once the dispute has crystallised.

The contrast with the intermediate case law is instructive. *Culioli* and *State Grain* had introduced a functional conception of equality attentive to the alignment of interests among the parties; but they did so in circumstances where the contractual architecture already grouped the parties coherently or where institutional intervention operated within a discernible textual framework. *PT Ventures* proceeds further. It subjects an expressly symmetrical, ex ante appointment mechanism to an equality review conducted ex post and accepts that the agreed structure may be displaced on that basis and with only indirect textual authority.

The starting point is the clause. The shareholders' agreement did not leave the problem of multiparty constitution unaddressed. It provided for a five-member tribunal, with each shareholder designating one arbitrator. In a four-party structure with equal shareholdings, the mechanism was facially symmetrical. Procedural authority was distributed evenly among the four actors, and the clause anticipated precisely the type of dispute that later materialised among them; it was not an incidental carry-over from bilateral drafting, but a bespoke arrangement calibrated to the multiparty configuration of the company's ownership.

The reasoning of the Paris Court of Appeal shifts the axis of analysis. Equality, the Court held, must be assessed not only at the time the arbitration agreement was concluded but also at the moment the dispute arises, "in light of the demands and interests" of the parties. The inquiry thus moves from the structure of the clause to the

geometry of the dispute itself. Once one shareholder challenges the alleged joint conduct of the three others, the resulting 1-versus-3 configuration becomes central to the equality analysis. On that basis, institutional intervention to appoint the tribunal in its entirety becomes permissible notwithstanding the contractual design.

This step is decisive. The clause already ensured parity of nomination rights: each legal person nominated one arbitrator. The fact that several respondents might share convergent interests on the merits does not, without more, alter that distribution of procedural authority. By allowing litigation alignment to reshape the constitutional structure chosen by the parties, the Court effectively collapses the distinction between substantive alignment and procedural design. If numerical disadvantage in the pleadings suffices to justify institutional override, any side-neutral multiparty clause becomes inherently precarious.

The reasoning of the Cour de cassation compounds the difficulty. The appellant's central submission was straightforward: there had been no "failure to agree" within the meaning of Article 1453 of the Code of Civil Procedure or Article 12(8) of the ICC Rules. The parties had agreed ex ante on a detailed constitution mechanism; the dispute concerned whether that mechanism should be respected. The Supreme Court rejected that distinction. It located the relevant "disagreement" in the divergence between *PT Ventures*' conditional nomination—premised on a three-member tribunal—and the respondents' insistence on the five-member structure provided for in the agreement. That divergence sufficed, in the Court's view, to trigger the institutional power to appoint the entire tribunal.

Taken seriously, that reasoning carries implications that are difficult to reconcile with the contractual foundations of arbitration. If "disagreement" arises whenever a party declines to implement the agreed mechanism once the dispute has emerged, the stability of the arbitration agreement itself becomes contingent upon the parties' continuing willingness to adhere to it at the very moment when their interests have most sharply diverged. Consent begins to resemble a revocable posture rather than a binding design commitment: parties are bound by the agreed architecture only so long as none of them chooses to contest it once the dispute crystallises. Pushed to its logical conclusion, that position empties the safeguard "unless the parties have agreed otherwise" in Article 1506 of the CCP of meaningful content. The provision exists, but its operation depends upon a fragile and shifting convergence at the moment of conflict.

Another difficulty lies in the absence of any articulated limiting principle. The judgment does not explain under what conditions ex post alignment justifies displacement of an ex ante symmetrical mechanism. Is it sufficient that several respondents share an interest in resisting the claim? Must there be demonstrable divergence among co-respondents? Must the clause itself generate a structural asymmetry? The Court offers no answer. Equality is invoked as a controlling standard; its metric remains undefined.

Placed alongside *Dutco*, the trajectory of the case law begins to resemble something less like a coherent doctrinal development than a series of oscillations between opposing extremes. *Dutco* elevated equality into a categorical public-policy command while declining to specify the conditions of its operation. The subsequent decisions sought to domesticate that abstraction by introducing a functional, side-based understanding of equality. *PT Ventures* pushes the pendulum back in the opposite direction: equality becomes a dynamic, ex post instrument capable of displacing even carefully calibrated contractual arrangements once the political economy of the dispute becomes visible. The jurisprudence thus moves from abstract absolutism to retrospective recalibration without pausing to articulate the conceptual framework that might reconcile the two.

The impression is less one of cumulative clarification than of successive corrections undertaken without an explicit theory of the underlying problem. The courts move from abstraction to pragmatism and back again, from categorical prohibition to open-ended supervision. The result is a body of law that advances not along a clear analytical path but by a kind of doctrinal drift—a jurisprudential drunkard's walk in which each decision attempts to repair the perceived excesses of its predecessor while introducing new uncertainties of its own.

G. La Dolce Vita – decision

We now turn to a different jurisdiction, operating within a distinct legal tradition and institutional environment. In *La Dolce Vita*, the Supreme People's Court of the People's Republic of China adopted a contract-centred approach to multiparty tribunal constitution and declined to recalibrate an agreed appointment mechanism in the name of structural equality.[12]

The dispute arose out of a December 2013 equity transfer agreement providing for arbitration under the 2012 CIETAC Rules. The arbitration clause envisaged a three-member tribunal, one appointed by the claimant, another by the respondent, and the third, presiding, to be selected according to a bespoke list-based, eligibility-restricted mechanism containing an institutional fallback.

When arbitration was commenced, multiple legal persons appeared on the respondent side. The respondents argued that this configuration triggered Article 27.3 of the CIETAC Rules, which states that, in a multiparty arbitration, if the claimant side or respondent side fails jointly to nominate an arbitrator within the prescribed period, the Chairman of CIETAC shall appoint all three members of the tribunal and designate the presiding arbitrator. According to the respondents, the arbitration clause did not exclude the operation of Article 27.3; the use of the terms "claimant" and "respondent" did not determine how multiple signatories on one side were to act; and the separate corporate personality of the parties precluded treating them as one appointing unit. Notwithstanding those objections, CIETAC proceeded based on a two-sided structure: one arbitrator nominated by the claimant, one by the respondents collectively, and a presiding arbitrator selected through the contractual list mechanism. Ultimately, the respondents relented: they appointed a single arbitrator, albeit under protest.

The constitution of the tribunal was subsequently challenged before the courts. The annulment application raised a single issue: whether the composition of the tribunal contravened the parties' agreement, thereby engaging the statutory ground applicable in foreign-related arbitration where "the composition of the arbitral tribunal or the arbitral procedure" is not in conformity with that agreement.

The Supreme People's Court rejected the challenge and upheld the constitution of the tribunal. Its reasoning proceeded through a structured interpretation of the arbitration clause as a contractual instrument. The Court declined to treat the clause as a redundant restatement of Article 27 of the CIETAC Rules. In its view, the interpretive choice was binary: either the clause merely replicated the institutional default, thereby incorporating the consequences of Article 27.3 without modification, or it reflected a deliberate contractual allocation of nomination authority between two sides combined with a specific mechanism for selecting the chair. The Court adopted the latter interpretation, invoking the principle that contractual provisions should be construed so as to give them operative effect.

Once that premise was established, the Court considered that the consequences followed directly: where the parties have expressly allocated one nomination to each side, the inability of co-parties on one side to coordinate their nomination does not justify depriving the opposing side of its agreed right of nomination by resort to institutional appointment of the entire tribunal. Allowing the failure of coordination on one side to extinguish the contractual entitlement of the other would invert the procedural allocation that the parties themselves had chosen and undermine the autonomy that underpins arbitral authority.

The Court also addressed the characterisation of the dispute as a multiparty case. It rejected the argument that the presence of several legal persons on one side rendered the dispute structurally indeterminate. Examining the architecture of the transaction, the Court identified two opposing camps, corresponding to the seller and the buyer. The references to "claimant" and "respondent" in the arbitration clause were therefore understood as reflecting that underlying alignment. The presence of multiple entities on one side did not displace the bipartite structure embedded in the clause.

Finally, the Court, declining to follow *Dutco*, observed that the French decision was neither binding on Chinese courts nor factually apposite.

H. La Dolce Vita – critique

La Dolce Vita does not seek to formulate a general theory of multiparty tribunal constitution; nor does it attempt to derive from the dispute before it any abstract proposition about equality, institutional authority, or the architecture of multiparty arbitration more broadly. That restraint is not a limitation of the judgment but one of its defining strengths. The Supreme People's Court confined itself to the juridical task properly before it: the interpretation and enforcement of the arbitration agreement actually concluded by the parties. In doing so, it resisted the temptation to elevate the case into a vehicle for general doctrinal pronouncement.

The decision is instead anchored in a careful and disciplined exercise in contractual interpretation. The Court approached the arbitration clause as a deliberate and operative expression of party autonomy rather than as a redundant overlay upon the institutional rules incorporated by reference. Where parties have taken the trouble to design a specific mechanism for constituting the tribunal that diverges from the institutional default, respect for consent requires that the clause be read as a meaningful allocation of procedural authority. The Court adopted precisely that premise and treated the appointment mechanism as the organising centre of its analysis.

The interpretive method employed is notable for its insistence that contractual drafting be given practical effect. The Court declined to collapse the clause into a mere restatement of Article 27 of the 2012 CIETAC Rules. Instead, it examined the clause as an integrated design: one nomination allocated to each side and a bespoke list-based procedure for selecting the presiding arbitrator. Declining to substitute institutional default rules for the parties' own procedural choices, the Court adopted the interpretation that preserves the clause's independent function and internal coherence.

This approach reflects a healthy appreciation of the central significance of party autonomy. By giving effect to the nomination structure chosen by the parties, the Court reinforced the foundational premise that arbitration agreements are not merely gateways to institutional rules but instruments through which the parties themselves shape the adjudicative process.

The Court's treatment of alignment of interests is careful and persuasive. The respondents argued that the presence of multiple legal persons on one side of the arbitration necessarily triggered the multiparty deadlock mechanism under Article 27.3 of the CIETAC Rules. The Court rejected that formalistic proposition. Rather than equating corporate multiplicity with procedural fragmentation, it examined the economic and contractual structure of the underlying transaction in order to identify how the parties had themselves organised the relationship at the time of contracting. That inquiry revealed two coherent camps: the seller side and the buyer side. The contractual references to "claimant" and "respondent" therefore reflected a side-based allocation of nomination authority rather than a strict one-person-one-arbitrator scheme.

This analysis preserves an important conceptual distinction. Separate legal personality does not automatically entail procedural independence for the purposes of tribunal constitution: where the agreement and the transaction structure reveal a single economic alignment, treating the parties as a single appointing side reflects the contractual design rather than distorting it. The Court's reasoning thus situates tribunal constitution within the commercial reality that produced the arbitration clause.

Equally significant is the temporal discipline of the Court's approach. Alignment was assessed by reference to the structure of the parties' relationship at the time of

contract. The Court did not revisit that structure through the lens of litigation strategy once the dispute had crystallised; nor did it allow the procedural dynamics of the arbitration retroactively to reshape the agreed nomination architecture. By maintaining that focus on the contractual moment, the judgment preserves the stability of ex ante design and affirms the principle that arbitration agreements should be interpreted according to the parties' original allocation of procedural authority.

The resulting judgment is therefore intentionally concrete rather than programmatic. Its significance lies not in the articulation of a universal doctrinal test but in the demonstration of how rigorously a court can and should engage with the parties' agreement when confronted with a complex multiparty configuration. The decision shows that meaningful respect for consent requires more than literal adherence to contractual labels; it requires a substantive examination of the structure and purpose of the clause within the commercial relationship that produced it.

A further dimension of the case concerns the institutional conduct of CIETAC itself. What emerges from the record, is an administrative posture characterised by restraint and fidelity to the parties' contractual design. CIETAC did not seize upon the presence of multiple respondents as an automatic trigger for the multiparty deadlock mechanism under Article 27.3 of the 2012 Rules; instead, it implemented the nomination architecture that the parties had chosen. In doing so, the institution treated the arbitration as structured around two opposing sides, consistent with the commercial logic of the transaction and the wording of the clause itself. This approach reflects a principled conception of institutional administration. Institutional rules operate as defaults—frameworks that facilitate arbitration where the parties have not provided their own design; where the parties have done so, the institution's role is not to displace that design but to give effect to it.

The Supreme People's Court's reasoning reinforces that institutional posture. By upholding the tribunal's constitution and by emphasising the primacy of the arbitration clause as interpreted within its contractual context, the Court confirmed that arbitral authority remains rooted in the agreement of the parties. Institutional rules and judicial supervision operate within that framework rather than overriding it.

Taken together, the conduct of CIETAC and the judgment of the Supreme People's Court reveal an approach to multiparty tribunal constitution grounded in contractual fidelity, contextual interpretation, and respect for the procedural architecture chosen by the parties themselves.

I. Judicial crosscurrents

The French courts have, on balance, done more harm than good in this field. What has emerged from the jurisprudence is not stability but drift. The difficulty is not merely that the decisions are characteristically under-reasoned, or that particular outcomes are plainly contestable. The problem is deeper. The case law has made intervention intellectually easier than restraint; improvisation easier than principle. What ought to

have remained a narrowly delimited judicial competence has instead become normalised as a mode of supervision.

The defect lies in the conception of adjudication that underpins the decisions. The courts proceed as though the deficiencies of multiparty arbitration can be managed through episodic correction: case by case; clause by clause; dispute by dispute. Yet the prior question is never squarely addressed. What kind of order is arbitration meant to be? A structure whose legitimacy depends primarily on the integrity of ex ante design; or a process permanently open to judicial and institutional reconstitution in the name of fairness as later perceived? The French decisions repeatedly exercise the latter authority; they never assume the burden of defending it at the level of principle.

That omission matters because the subject is constitutive, not incidental. Tribunal formation is not a peripheral matter of procedure; it is the moment at which authority is allocated before adjudication begins. A jurisprudence that treats agreed mechanisms of constitution as readily revisable once the dispute has taken shape does more than resolve difficult cases. It alters the political morality of arbitration. The centre of gravity moves: away from planned private ordering; toward supervisory redistribution by courts and institutions. That may be a coherent policy. What is objectionable is that the movement occurs without candour.

The cumulative effect is corrosive. The capacity of commercial actors to organise for conflict before conflict arises is weakened. The practical security of negotiated procedural arrangements is diminished. A lesson begins to circulate through practice: in complex disputes the true constitution of the tribunal may ultimately be determined not by the clause but by a later judicial or institutional sensibility. The law becomes not merely unsettled; it becomes unsettling. Design begins to appear provisional.

The contrast with Communist China is, for that reason, devastating. One might have expected the French courts—speaking from within a mature liberal arbitral tradition—to display greater confidence in the parties' capacity to structure their own adjudicative order. One might have expected China's highest court to exhibit greater comfort with supervisory control. In *La Dolce Vita*, the opposite occurs. The Chinese court proves more exacting in its respect for the agreed architecture; more disciplined in its interpretive method; more reluctant to treat multiparty difficulty as a warrant for institutional substitution. The French jurisprudence, by contrast, appears avuncular, statist, and casually interventionist.

It is therefore unsurprising that the Supreme People's Court declined to treat the French authority placed before it as persuasive. The dismissal reads almost like a quiet rebuke: a signal that Dutco offers little analytical guidance. The Middle Kingdom, it seems, has no need to look to the Fifth Republic for instruction in this area.

III. Legislation on multiparty tribunal constitution

Against that unsettled judicial background, legislative intervention has occurred in only a small number of jurisdictions. Three statutory models may readily be identified—France, Switzerland, and Singapore. Each addresses the procedural

deadlock that may arise when multiple parties cannot coordinate the constitution of the tribunal. Each does so through a structural rule: once a specified condition of failure is met, the power to constitute the tribunal shifts from the parties to an institutional or judicial authority.

A. France

France was the first jurisdiction to address the issue legislatively. As previously noted, Article 1453 of the French Code of Civil Procedure—applicable to international arbitration by virtue of Article 1506—provides:

> Where a dispute involves more than two parties and they fail to agree on the procedure for constituting the arbitral tribunal, the administering authority or, failing that, the juge d'appui shall appoint the arbitrator or arbitrators.

The provision is expressed in compact and categorical terms. Its trigger lies in the conjunction of two elements: the presence of more than two parties, and a failure to agree on the procedure of constitution. Once those conditions are satisfied, the statute directs that the tribunal be constituted by the administering authority or else by the court. The language is broad and, on its face, plenary.

Three observations follow.

First, judicial practice has not consistently applied the provision in the plenary manner suggested by its wording. Article 1453 appears to contemplate comprehensive substitution once its conditions are satisfied. Yet French courts have accepted more limited forms of intervention, allowing one side's nomination to stand while completing or replacing the nomination on the other. The approaches adopted in *Culioli* and later in *State Grain* illustrate this practice. The statute reads as authorising full reconstitution, but the courts have instead permitted partial substitution.

Secondly, the interpretation of the statutory trigger has itself become unsettled. Article 1453 refers to a "failure to agree on the procedure for constituting the tribunal." On its face, that formulation appears directed to the absence of an agreed mechanism. But the reasoning adopted by the Paris Court of Appeal—and subsequently endorsed by the Cour de cassation—in *PT Ventures* points in a much more radical direction. There, disagreement at the moment of implementation was treated as sufficient, even though the arbitration agreement itself contained a multiparty constitution mechanism. Under that reading, the statutory trigger expands considerably: the existence of an agreed procedure does not prevent intervention if the parties disagree once the dispute arises. Whether that interpretation reflects the true reach of Article 1453 or is confined to the particular configuration of *PT Ventures* remains to be seen. The possibility that it might represent the statute's operative meaning is, however, remarkable.

Thirdly, the combined effect of these developments produces an unusual legislative dynamic. The statute itself is framed in broad and categorical terms, yet its practical operation has been mediated through judicial interpretation. The courts have both softened the plenary logic of the appointment power and, through their reading of "failure to agree," potentially widened the circumstances in which that power may be

invoked. The result is a provision whose text appears stable, but whose practical reach remains in a state of considerable flux.

B. Switzerland

Then come the Helvetians. Swiss law approaches multiparty deadlock with striking economy. The legislature resolved the problem in a single clause: it vested the court with authority and left the rest largely unsaid. No catalogue of intervention techniques is provided; no internal hierarchy of responses is articulated. The structure is spare: competence is granted; its operational detail is left to interpretation and to the preparatory materials.

The relevant rule appears in Article 179(5) of the Swiss Federal Act on Private International Law (PILA), introduced in the 2021 revision of Chapter 12. The amendment transposes into international arbitration a solution long present in Swiss domestic arbitration.[13] Article 179(5) provides:

> In the case of multiparty arbitration and in the absence of an agreement between the parties or a reference to arbitration rules, the judge may appoint all the arbitrators.

Two structural features deserve attention.

First, the provision is expressly residual. Its operation presupposes three cumulative conditions: the arbitration must be multiparty; the parties must not have agreed upon a workable mechanism of constitution for the circumstances at hand; and no applicable arbitration rules must supply such a mechanism. Only when those elements coincide does the court's authority arise. The judge's role is therefore not triggered by mere disagreement among co-parties; it arises when the constitution process lacks a viable pathway altogether. The provision addresses structural indeterminacy, not tactical obstruction.

Secondly, the statutory text itself contemplates only a single mode of intervention: the appointment of "all the arbitrators." The possibility of a narrower intervention—appointing only the arbitrator of the defaulting party while preserving the remainder of the tribunal's architecture—does not appear in the provision itself: that alternative derives instead from the Federal Council's Message accompanying the reform and has since been reconfirmed in practice and academic commentary.[14] The Message explains that, to forestall strategic behaviour by multiple claimants or respondents, the judge may limit the intervention to the appointment of the arbitrator of the defaulting party.[15]

From a drafting perspective, it would have been neater for the statute itself to acknowledge that alternative pathway; after all, the inference from a power to appoint "all the arbitrators" to a power to appoint only one is not self-evident: it cannot comfortably be justified by the maxim that he who may do the greater may do the lesser. Full constitution and limited substitution are not merely quantitative variants of the same act; they produce different structural consequences: the former replaces the parties' architecture entirely; the latter preserves it while remedying a discrete

failure. Swiss law plainly accepts both modalities: the point is simply that the statute articulates only one of them; the criterion governing the choice between the two must be sought not in the text but in the travaux and surrounding commentary.

C. Singapore

The final whistle-stop on this brief legislative tour is the Little Red Dot. Singapore is a Model Law jurisdiction in the orthodox sense: the UNCITRAL Model Law on International Commercial Arbitration has the force of law through the International Arbitration Act (Cap. 143A), subject to specified modifications and additions. The Model Law therefore provides the default architecture for tribunal constitution. Central to that framework is Article 11(3), which sets out the familiar bipartite mechanism for a three-member tribunal: each side appoints one arbitrator, and the two so appointed select the presiding arbitrator, failing which the appointing authority intervenes.

For many years that Model Law structure—read together with the Act's provisions concerning the appointing authority—also governed multiparty situations. The legislation contained no specific rule addressing the coordination difficulties that arise when multiple parties must act jointly on one side of the arbitration.

That position changed in 2020, when the Singapore legislature introduced a targeted amendment by inserting section 9B into the International Arbitration Act. The provision is tightly framed: it applies to arbitrations involving three or more parties in which the tribunal is to consist of three arbitrators; and it operates expressly "notwithstanding Article 11(3) of the Model Law," thereby displacing the Model Law's default appointment mechanism in that defined multiparty setting.

Section 9B provides:

> Default appointment of arbitrators in arbitration with 3 or more parties
>
> 9B.—(1) Notwithstanding Article 11(3) of the Model Law, in an arbitration with 3 or more parties and 3 arbitrators —
>
> (a) the claimant, or all the claimants by agreement if there is more than one claimant, must appoint an arbitrator on or before the date of sending of the request for the dispute to be referred to arbitration and inform the respondent or respondents of the appointment on the date when the request for the dispute to be referred to arbitration is sent to the respondent or respondents;
>
> (b) the respondent, or all the respondents by agreement if there is more than one respondent, must appoint an arbitrator and inform the claimant or claimants of the appointment within 30 days after the date of receipt of the request for the dispute to be referred to arbitration by the respondent, or by the last respondent to receive the request if there is more than one respondent; and
>
> (c) the 2 arbitrators appointed under paragraphs (a) and (b) must by agreement appoint the third arbitrator, who is to be the presiding arbitrator, within 60 days after the date of receipt of the request for the dispute to be referred to arbitration

> by the respondent, or by the last respondent to receive the request if there is more than one respondent.
>
> (2) Notwithstanding subsection (1), the appointing authority must, upon the request of any party, appoint all 3 arbitrators and designate any one of the arbitrators as the presiding arbitrator if —
>
> (a) the claimant or claimants fail to appoint an arbitrator, or fail to inform the respondent or respondents of such appointment, by the date specified in subsection (1)(a); or
>
> (b) the respondent or respondents fail to appoint an arbitrator, or fail to inform the claimant or claimants of such appointment, within the time specified in subsection (1)(b).
>
> (3) In making the appointments under subsection (2), the appointing authority may, having regard to all relevant circumstances, re-appoint or revoke the appointment of an arbitrator appointed under subsection (1)(a) or (b).
>
> (4) Notwithstanding subsection (1)(c), the appointing authority must, upon the request of any party and having regard to all relevant circumstances, appoint the third arbitrator if the 2 arbitrators appointed by the parties fail to agree on the appointment of the third arbitrator within the time specified in subsection (1)(c).

Two structural features deserve attention.

First, the most natural reading of section 9B ("notwithstanding Article 11(3) of the Model Law") suggests that it is intended to displace only the Model Law default bipartite appointment mechanism; it is not meant to override bespoke multiparty arbitration agreements. If so, then the provision targets a particular procedural failure but leaves intact the broader premise that parties may deliberately design tribunals. On any view, however, an expressly negotiated multiparty appointment mechanism would surely constitute a central "relevant circumstance" under subsection (3), and as such would weigh heavily in determining whether prior nominations should be preserved or displaced. Either way, autonomy remains very much part of the calculus.

Secondly, the statute combines a categorical trigger with a flexible mode of execution. Subsection (2) appears, at first sight, uncompromising: upon default the appointing authority "must … appoint all 3 arbitrators." Yet subsection (3) immediately introduces a discretionary layer: having regard to all relevant circumstances, the appointing authority may re-appoint or revoke arbitrators already appointed. The architecture is therefore two-tiered: the statute authorises plenary constitution of the tribunal; it simultaneously permits differentiated intervention. The appointing authority may preserve a nomination, replace another, or reconstruct the tribunal in full. The outer power is comprehensive; its exercise is calibrated.

Seen as a whole, section 9B performs a precise institutional function: it identifies the condition that triggers intervention and it specifies the authority responsible for resolving it. At the same time, it recognises that deadlock may arise in different forms and therefore gives the appointing authority discretion to respond proportionately. The provision establishes a rule for restoring the process; it also leaves room for judgment in how that restoration is carried out.

D. Invidious comparisons

A brief comparison of the three legislative responses makes their contrasts difficult to ignore. France addressed the problem in characteristically expansive terms: a general formula that entrusts the matter to the administering authority or the juge d'appui once multiparty disagreement appears. Switzerland followed with a provision of notable economy: a single discretionary clause, activated only when no workable constitutive mechanism exists, leaving its calibration largely to interpretation. Singapore, by contrast, adopts a more explicit architecture: the statute identifies the multiparty situation that triggers intervention; it states the consequence—that the appointing authority may constitute the tribunal; and it acknowledges, within the same provision, the possibility of differentiated responses depending on the circumstances.

These techniques disclose distinct legislative instincts. The French model places confidence in a broadly framed supervisory power: the statute sketches the outline; the courts complete the picture. The Swiss model proceeds with even greater restraint: the legislature intervenes only residually, supplying a narrow competence and leaving the rest to doctrinal development. Singapore adopts the opposite posture. The statute itself describes the mechanism; it identifies the trigger; it delineates the range of institutional responses. The law does not merely gesture toward a solution; it articulates one.

The contrast is striking. European legislatures favour sweeping formulae and leave courts to improvise within them; Singapore prefers clarity at the outset. Where the former rely on judicial elaboration to transform principle into practice, the latter anticipates the problem and writes the operative rule directly into the statute. The difference is not merely stylistic. It reflects two legislative temperaments: one comfortable with open-textured authority and judicial construction; the other inclined toward precision, transparency, and architectural completeness in the statute itself. No prizes for guessing which legislative instinct finds favour here.

IV. Institutional rules on multiparty tribunal constitution

As previously noted, the principal site of design innovation in the constitution of multiparty tribunals has been the arbitral institutions themselves. What emerges at that level is not uniformity but pattern. Across the leading rule sets, a limited number of structural solutions recur. These solutions are analytical constructs rather than rigid classifications: they expose the internal logic through which different institutions manage default, discretion, and side-based equality; they do not eliminate drafting variation within each group. Rules that share a common architecture frequently diverge in formulation and emphasis; each institutional framework must be read on its own terms.

The taxonomy adopted here proceeds along a dual axis of inquiry. The first concerns the juridical quality of institutional power once multiparty nomination fails: is intervention authorised or required? The second concerns its scope: does the rule

envisage plenary constitution of the tribunal or permit a more limited substitution? The value of the exercise is diagnostic: by isolating recurrent design choices, it exposes the structural trade-offs embedded in them: between consent and supervisory control; between predictability and adaptive flexibility; between formal symmetry of appointment and functional alignment among parties. Institutional design unfolds within these structural options; mapping them clarifies the field within which rule-makers operate.

The analysis that follows therefore proceeds through four recurring models of institutional response to the breakdown of joint nomination. Each is distinct; all may usefully be understood as points along a spectrum. At one pole lie rules that supress party nomination; at the other, rules that retreat before it; in between, compromises.

A. Mandatory institutional takeover

At the most interventionist end of this spectrum are institutional rules that attach automatic institutional takeover to the failure of joint nomination. Their architecture is consistent: multiple claimants or respondents must act jointly; if they do not, the institution "shall" appoint the tribunal. Upon default, the parties' nomination rights lapse. The tribunal is constituted in its entirety by the institution.

The structure is deliberately categorical. It begins by imposing a side-based obligation of coordination; it then removes discretion if that coordination fails. Deadlock is anticipated and neutralised through rule rather than addressed through contextual calibration. Equality is secured through institutional substitution for party nomination, not through inquiry into alignment or circumstance. The consequence is structural certainty: once joint nomination collapses, the institution steps in and the mechanism of constitution is reset.

Examples of this model are widespread across contemporary institutional rules—among them CIETAC,[16] BCDR,[17] SCCA,[18] SIAC,[19] JCAA,[20] ACICA,[21] and NAI[22]. The formulation varies; the structural logic does not. Each imposes joint nomination on multiple parties occupying the same procedural position and attaches automatic institutional constitution to the failure of coordination. Among these regimes, the LCIA Rules remain the most conceptually explicit articulation of the model. Article 8 provides:

> 8.1 Where the Arbitration Agreement entitles each party howsoever to nominate an arbitrator, the parties to the dispute number more than two and such parties have not all agreed in writing that the disputant parties represent collectively two separate 'sides' for the formation of the Arbitral Tribunal (as Claimants on one side and Respondents on the other side, each side nominating a single arbitrator), the LCIA Court shall appoint the Arbitral Tribunal without regard to any party's entitlement or nomination.
>
> 8.2 In such circumstances, the Arbitration Agreement shall be treated for all purposes as a written agreement by the parties for the nomination and appointment of the Arbitral Tribunal by the LCIA Court alone.

Several structural features of Article 8 merit closer attention.

First, the trigger is formal and objective. Two elements suffice: the presence of more than two parties and the absence of a written agreement recognising two "sides" for purposes of nomination. The operation of the rule does not require any enquiry into divergence of interests, procedural unfairness, or strategic obstruction: it operates by reference to the constitutional architecture of the proceedings rather than the factual alignment among the parties.

Secondly, the operative language is mandatory: the LCIA Court "shall appoint the Arbitral Tribunal." This formulation confers not a discretionary power but an institutional obligation: once the triggering conditions are met, the Court must constitute the tribunal itself. The provision does not contemplate intermediate measures—such as preserving existing nominations or merely completing an incomplete panel. The logic is categorical: the collapse of joint nomination activates institutional substitution.

Thirdly, the rule contains a carefully drafted but limited escape mechanism: institutional takeover does not occur where the disputant parties have agreed in writing that they constitute two sides for the purposes of tribunal formation. The clause therefore recognises the possibility of side aggregation by agreement; it simply requires an express procedural compact directed specifically to the constitution of the tribunal.

The scope of that carve-out is not entirely self-evident. One question concerns whether the relevant agreement must be concluded after the dispute has arisen or whether an ex ante arrangement contained in the arbitration clause itself would suffice. Two textual elements are pertinent to the enquiry.

The first is the reference to "disputant parties." The relevant agreement must bind the parties to the arbitration as constituted in the dispute, not merely the signatories to the arbitration clause considered abstractly. Where those constellations coincide—or where the arbitration proceeds in the configuration anticipated by the clause—there would appear to be no reason for the LCIA to require a further ex post agreement. Nor would there be any evident basis for permitting the disputant parties to resile from an aggregation arrangement already embedded in the arbitration agreement.

The second element is the parenthetical formulation "(as Claimants on one side and Respondents on the other side, each side nominating a single arbitrator)." The use of forensic terminology might be read to suggest that only post-dispute arrangements are contemplated, since the procedural posture of "Claimant" and "Respondent" becomes clear only once proceedings are commenced. That inference is doubtful. Had the intention been to exclude ex ante arrangements, the rule could easily have made that limitation explicit. In its present form, the provision appears satisfied by any express side-aggregation agreement that binds the parties participating in the arbitration.

Absent such an agreement, the LCIA Court must treat the case as falling outside the bilateral paradigm, even where the dispute in substance resembles a conventional claimant-versus-respondent configuration. The drafting deliberately excludes any

inquiry into ex post alignment of interests. The presence or absence of a written aggregation agreement is decisive.

Fourthly, the phrase "without regard to any party's entitlement or nomination" clarifies the nature of the institutional intervention: on its face, it directs the LCIA to proceed as though neither the contractual entitlement to nominate nor any nomination already made retains operative effect. The combination of the mandatory command ("shall appoint") and the instruction to disregard prior nominations indicates a complete institutional takeover: the design is substitutive rather than corrective.

Article 8.2 reinforces this conclusion. For the purposes of the constitution of the tribunal, the arbitration agreement is deemed an agreement for LCIA appointment alone. The displacement is juridical: party nomination rights are extinguished.

Still, the instruction to proceed "without regard to" party nominations does not logically prohibit the Court from appointing an individual previously nominated by a party. The phrase excludes deference, not coincidence. The Court is not bound by earlier nominations and need not consider them; but nothing in the text prevents it from selecting the same individual if, independently and afresh, it regards that person as suitable. What the rule removes is any residual entitlement to preservation of a nomination; whether the same outcome ultimately emerges remains a matter of institutional judgment. In practice, however, the logic of the provision—and the institutional instinct—may favour clearing the field.

B. Discretionary plenary constitution

Further along the same continuum—and occupying a less categorical position on the spectrum of intervention—is a second family of rules adopting what may be described as a discretionary takeover model. Here, the institution is empowered, but not required, to appoint the tribunal in its entirety where joint nomination fails. The defining shift lies in the operative verb: not "shall," but "may." Institutional intervention becomes available rather than automatic. The ICC Rules provide the paradigmatic formulation of this design; analogous structures appear in the rules of the SCC,[23] ICDR,[24] SAC,[25] KCAB,[26] and HKIAC.[27]

The relevant provisions appear in Articles 12(6)–(9) of the ICC Rules:

> (6) Where there are multiple claimants or multiple respondents, and where the dispute is to be referred to three arbitrators, the multiple claimants, jointly, and the multiple respondents, jointly, shall nominate an arbitrator for confirmation pursuant to Article 13.
>
> (7) Where an additional party has been joined (Article 7(1)), and where the dispute is to be referred to three arbitrators, the additional party may, jointly with the claimant(s) or with the respondent(s), nominate an arbitrator for confirmation pursuant to Article 13 and subject to Article 7(5).
>
> (8) In the absence of a joint nomination pursuant to Articles 12(6) or 12(7) and where all parties are unable to agree to a method for the constitution of the arbitral tribunal, the Court may appoint each member of the arbitral tribunal and shall

> designate one of them to act as president. In such cases, the Court shall be at liberty to choose any person it regards as suitable to act as arbitrator, applying Article 13 when it considers this appropriate.
>
> (9) Notwithstanding any agreement by the parties on the method of constitution of the arbitral tribunal, in exceptional circumstances the Court may appoint each member of the arbitral tribunal to avoid a significant risk of unequal treatment and unfairness that may affect the validity of the award.

Article 12(6) establishes the structural premise upon which the ICC regime for multiparty constitution rests: the side-based model of nomination: where several claimants or several respondents appear in the proceedings, each camp must act jointly; the rule thus treats procedural alignment as the default organising principle. Article 12(8) addresses the moment at which that mechanism breaks down. Its activation depends on the satisfaction of a dual condition: first, the absence of a joint nomination; secondly, the inability of "all parties" to agree upon an alternative method for constituting the tribunal. Institutional intervention is therefore not automatic upon default. The architecture is sequential: joint nomination must first fail; the parties must then prove unable to agree upon another method of constitution. Only at that point does the Court's authority arise. In practice, the ICC affords the parties an opportunity to devise an alternative configuration; it also indicates the course it proposes to adopt absent agreement (as happened in *State Grain*). Typically, the parties are invited to make submissions. The discretionary authority is thus embedded in a staged process: consultation; opportunity for consensual repair; indication of the Court's likely course; and only thereafter institutional constitution.

The operative verb—"may appoint each member"—confirms the discretionary nature of the mechanism. The power is plenary in scope yet permissive in character. That drafting choice is deliberate. It preserves flexibility across arbitral seats; it accommodates variation in judicial approaches to equality and waiver; and it allows the Court to calibrate its response to the procedural geometry of the dispute. It also avoids entrenching an automatic override in an area marked by doctrinal instability. Institutional intervention is framed as contingent rather than structural.

The practical advantages of the model follow from those design choices. They allow the Court to distinguish between the mechanical and tactical failure of joint nomination and genuine divergence of interests among co-parties. It facilitates context-sensitive intervention and reduces the risk of unnecessary plenary reconstitution in jurisdictions that might accept more limited corrective measures. Discretion therefore operates as an instrument of calibration rather than blunt substitution.

At the same time, the location of the ICC Court's discretion must be identified with some care. The Rules themselves do not expressly articulate a power of partial substitution. Article 12(8) authorises the ICC Court to "appoint each member of the arbitral tribunal," and does so in permissive terms. The provision therefore confers a plenary authority but does not specify whether, or how, a more limited corrective intervention might occur within that framework.

The practice illustrated by *State Grain* shows where the practical flexibility of the regime in fact lies. In that case the ICC Court did not rely upon Article 12(8) at all; instead, it characterised the procedural configuration as essentially bipartite for purposes of tribunal constitution and proceeded under the ordinary nomination framework of Article 12: one side's nomination was preserved and the missing co-arbitrator alone was appointed by the institution. The elasticity of the model therefore lies at the threshold—in the ICC Court's case-management judgment as to whether Article 12(8) should be engaged in the first place—rather than within the internal operation of the provision itself.

The doctrinal support for that practice is indirect: it appears to rest on an inference drawn from the permissive language of Article 12(8), read together with the ICC Court's general authority under Article 42 "[i]n all matters not expressly provided for in the Rules … [to] act in the spirit of the Rules and … make every effort to make sure that the award is enforceable at law."[28]

What is striking, however, is how easily the textual ambiguity could have been avoided: nothing would have been simpler than for Article 12(8) to state expressly that the ICC Court may either appoint the tribunal in its entirety or make such other more limited appointments as circumstances require. The Rules do not do so; instead, the ICC Court exercises a power that the text does not clearly articulate. The result is a curious drafting gap: a regime that plainly functions with a calibrated corrective capacity yet does so without ever stating that capacity in terms. Why the Rules leave the matter at this level of implication remains puzzling.

In practice, the Court's exercise of that permissive authority exhibits a discernible pattern: as noted by former members of the ICC Secretariat, experience suggests that the Court "has above all appointed the entire tribunal when the parties called upon to make a joint nomination have divergent interests."[29] Substantive divergence—rather than mere numerical multiplicity—thus appears to operate as the decisive trigger for plenary constitution. In *PT Ventures*, none of the original nominations was retained once the Court proceeded to appoint the tribunal in its entirety. That outcome reflects the logic of a clean reset in circumstances where equality concerns are acute. It does not follow that the retention of an earlier nomination is conceptually impossible under Article 12(8); the text does not expressly forbid it. Yet, where divergence is manifest, the institutional instinct appears, understandably, to have favoured comprehensive reconstitution rather than selective preservation.

Article 12(9) introduces a distinct and more radical mechanism. Unlike Article 12(8), it operates "[n]otwithstanding any agreement by the parties on the method of constitution." The provision is thus not confined to situations of failed joint nomination; instead, it authorises plenary appointment "in exceptional circumstances" where this is necessary to avert "a significant risk of unequal treatment and unfairness that may affect the validity of the award." The focus then is squarely on enforceability risk.

Although the provision is not limited to multiparty arbitration, it is best understood against the background of the jurisprudence exemplified by *PT Ventures*. That decision illustrated how an agreed appointment architecture might be impugned on equality grounds once the dispute had crystallised. Article 12(9) equips the Court with a preventive instrument that allows the institution to restructure tribunal constitution ex ante where it apprehends a material risk that the agreed mechanism could later be challenged as incompatible with equal treatment. The assessment is necessarily forward-looking. The seat assumes central importance in that enquiry: the annulment standards of the supervisory presumably inform the evaluation of "significant risk." Potential enforcement fora, too, may also enter the calculus. The clause thus institutionalises a prudential review of tribunal constitution by reference to award survivability.

C. Discretionary power to elect plenary or limited intervention

The preceding discussion revealed a structural feature of the discretionary-takeover model: the institutional power to appoint the tribunal is articulated, but the possibility of limited substitution is not: any calibrated intervention must be derived indirectly—through characterisation of the procedural configuration or reliance upon general clauses. A distinct group of institutional rules removes that indeterminacy. In this third model the gradations of intervention are expressed directly in the rule itself. The institution is authorised either to repair the default of one side or to dismantle the existing constitution and rebuild the tribunal in its entirety. The discretion is therefore not merely permissive; it is structured.

Although several institutions have adopted this design model—e.g. VIAC,[30] DIS,[31] CAS,[32] CIAM,[33] CAM,[34] and QICCA[35]—the discussion will focus on one of the clearest examples—the Finish Arbitration Institute. The governing provision under the FAI Arbitration Rules, Article 20.3(e), reads:

> Where the claimant(s) or the respondent(s) fail to nominate an arbitrator for confirmation within the applicable time limit, the Board may in its discretion:
>
> (i) appoint the arbitrator on behalf of the defaulting claimant(s) or respondent(s), and appoint the presiding arbitrator; or
>
> (ii) revoke any confirmation or appointment made, appoint all three arbitrators and designate one of them as the presiding arbitrator.

The drafting establishes a simple yet conceptually important distinction between remedial and substitutive intervention. Subparagraph (i) addresses the immediate procedural defect—one side has failed to nominate—and the principal solution—the Board supplies the missing nomination and the tribunal proceeds without disturbing the structure already created by the parties. Subparagraph (ii) contemplates a more radical response. Existing confirmations may be revoked and the tribunal reconstructed ab initio. The two outcomes are therefore not variants of the same act but distinct institutional postures toward the same procedural failure: correction on the one hand, reconstruction on the other.

This duality clarifies the institutional task. The appointing authority must first determine the juridical character of the default. Where the failure appears logistical or tactical, the corrective response in subparagraph (i) preserves the architecture originally contemplated by the parties. Where the circumstances suggest deeper structural difficulty—strategic obstruction, genuine divergence of interests, or the risk of asymmetrical influence—the institution may instead invoke the reconstructive power in subparagraph (ii). The rule thus embeds within its own text the evaluative judgment that other regimes, e.g. the ICC, require institutions to perform implicitly.

The significance of that drafting choice lies not only in clarity but in the redistribution of interpretive responsibility. Because the alternative pathways are enumerated, the institution's decision becomes one of selection rather than construction; the appointing authority is not required to infer powers from general clauses or to manipulate the threshold characterisation of the dispute in order to achieve a workable outcome. The text itself provides the necessary vocabulary of intervention.

Other regimes that have adopted this model employ different textual techniques to reach the same structural result. For instance, the Vienna Rules default to limited substitution, but, in "exceptional cases", will allow revocation of appointments and full reconstitution. The CAS Code introduces an explicit evaluative trigger—"divergent interests"—as the condition justifying escalation to institutional takeover. Both approaches perform the same conceptual function: they identify within the rule itself the circumstances in which institutional authorship of the tribunal becomes justified.

What emerges from this model is a clearer alignment between rule design and institutional practice. Multiparty arbitration inevitably produces situations in which the original nomination structure becomes untenable. By acknowledging that reality within the drafting itself, these rules reduce the interpretive distance between text and application. Institutional discretion remains indispensable, but it operates within a framework that openly recognises the range of legitimate responses.

The consequence for judicial supervision correspondingly shifts: where the rule itself delineates the permissible modes of intervention, the reviewing court need not inquire whether the institution possessed authority to depart from party nomination; that question is settled by the text. The judicial task lies elsewhere: in examining the manner in which the conferred discretion has been exercised.

Review therefore moves from the anterior question of competence to the posterior question of calibration. The issue is no longer whether the institution could intervene, but whether it selected the appropriate mode of intervention within the framework the rule provides. A reviewing determines whether the circumstances justified limited substitution or full reconstitution. The point of contestation migrates: instead of disputing the legal basis of the institution's authority, parties are more likely to challenge the proportionality or coherence of the institutional choice. The controversy concerns the deployment of power rather than its existence. Structured discretion clarifies the source of authority; it does not eliminate the possibility of disagreement about how that authority ought to be exercised.

D. Mandatory limited substitution

From the standpoint of rule design, the fourth model along the continuum represents the most restrained form of institutional intervention. The institution's role is mandatory but limited: it simply completes the missing side nomination; the bilateral architecture of tribunal constitution remains intact. The appointing authority does not assume the task of tribunal redesign; multiparty coordination failure is treated as a discrete defect requiring repair, not a catastrophic failure warranting replacement.

A clear illustration appears in the 2025 Shenzhen Court of International Arbitration Rules. Article 30.1 provides:

> Unless otherwise agreed by the parties, within fifteen (15) days from the date of receipt of the Notice of Arbitration, the Claimant and the Respondent shall each appoint, or entrust the President of the SCIA to appoint, an arbitrator, failing which, the arbitrator shall be appointed by the President of the SCIA. Where there are two or more Claimants and/or Respondents in an arbitration, the Claimant side and/or the Respondent side shall each jointly appoint or jointly entrust the President of the SCIA to appoint one arbitrator, failing which, the arbitrator shall be appointed by the President of the SCIA.[36]

The operative logic is unmistakable. Multiplicity is absorbed into a side-based nomination structure. Each side must nominate one co-arbitrator; if joint nomination fails, the President appoints the missing arbitrator. The singular formulation—"the arbitrator"—is significant. The rule does not contemplate revocation of prior nominations or appointment of "all arbitrators." Institutional intervention is confined to curing the specific defect that has arisen. The tribunal's architecture is preserved; only the incomplete element is supplied.

Among comparable examples of this approach,[37] the 2022 Dubai Rules merit particular attention. Article 12.5 provides:

> Where there are multiple parties, whether as Claimants and/or Respondents, and where the dispute is to be referred to a three-member Tribunal, the multiple Claimants, jointly, and/or the multiple Respondents, jointly, shall each nominate an arbitrator for appointment by the Arbitration Court in accordance with this Article 12. In the absence of such a joint nomination by the multiple Claimants and/or multiple Respondents and/or where all the parties are unable to agree to a method for the constitution of the Tribunal, the Arbitration Court shall appoint the respective arbitrator(s). The chairperson of the Tribunal shall be appointed in accordance with Article 12.4 above.[38]

The drafting is less austere than the SCIA formulation. The composite phrase "and/or" aggregates several contingencies, and the expression "respective arbitrator(s)" introduces an element of indeterminacy. At first glance the clause might appear capable of sustaining a broader intervention. Particular emphasis might be placed on the phrase "where all the parties are unable to agree to a method for the constitution of the Tribunal," which seems to address breakdown at the level of the appointment mechanism itself rather than mere failure by one side to nominate its co-arbitrator.

Such an expansive interpretation, however, proves difficult to reconcile with the internal structure of the rule. The default mechanism for a three-member tribunal remains the familiar bipartite model: each side nominates a co-arbitrator, and the chairperson is selected through a separate sequence. The institutional power introduced by Article 12.5 operates within that architecture. It addresses the failure of a nomination unit rather than the collapse of the constitution method as such.

The key lies in the phrase "respective arbitrator(s)." The word "respective" denotes correspondence to a particular appointing constituency: the Court appoints the arbitrator respective to the side that has failed to nominate; the bracketed plural merely accommodates the possibility that both sides may fail. In that event the Court may appoint two co-arbitrators; if only one side defaults, the Court appoints only the arbitrator corresponding to that failure. The language tracks the location of the defect; it does not suggest an authority to displace prior nominations.

Equally telling is the absence of any language authorising revocation or disregard of prior nominations: institutional rules that contemplate plenary reconstitution typically say so in express terms; where rule-makers intend to permit the appointing authority to "revoke," "nullify," or disregard earlier nominations, they normally articulate that consequence explicitly. The silence of Article 12.5 on this point is therefore significant. In a doctrinal landscape where the distinction between supplementation and displacement carries considerable weight, the absence of such language strongly suggests that the Court's role is limited to targeted substitution.

On balance, the narrower interpretation therefore better accords with both the grammar and the structural logic of the provision: the Dubai rule thus belongs within the same design family as the SCIA formulation—a regime of mandatory but limited institutional supplementation. The appointing authority repairs the failure of joint nomination while leaving intact prior nominations. The structure of the tribunal survives the procedural defect; the institution merely restores its operability.

The second regional institutional regime worth reviewing is Abu Dhabi's 2024 Arbitration Rules. The provision on multiparty constitution begins conventionally. Article 13(10) adopts the orthodox side-based appointment premise and default substitution remedy:

> Where there are multiple Claimants or Respondents and the Tribunal is to consist of more than one arbitrator, the multiple Claimants, jointly, and the multiple Respondents, jointly, shall nominate an equal number of arbitrators, unless otherwise agreed by the parties. Any party refusing to participate in the proceeding shall be deemed to have waived its rights to participate in the constitution of the Tribunal, without prejudice to that party's right to challenge any arbitrator in accordance with Article 16, and shall not prevent the other Claimants or Respondents (as the case may be) from jointly nominating an arbitrator. In the event the multiple Claimants or the multiple Respondents do not agree on the nomination of one arbitrator, the Court shall appoint an arbitrator on behalf of the multiple Claimants or the multiple Respondents, as the case may be.

Institutional intervention is mandatory but confined to limited substitution. There is no express power to revoke prior nominations and no warrant to appoint each member of the tribunal. The provision also contains a distinct innovation: an express rule that non-participation in the constitution process carries consequences. The underlying intuition is not new; its codification is. Forfeiture is not inferred from administrative practice nor improvised through case-by-case discretion; it is textually anchored and categorical.[39]

The reference to "the proceeding" is deliberate and precise. It designates the act of constituting the Tribunal rather than the arbitration proceedings in their entirety. The rule therefore isolates a specific procedural stage: participation in the formation of the tribunal. A party may appear in the arbitration, submit pleadings, and participate fully in the merits phase while declining to engage in the constitution process; it is that refusal that activates the forfeiture mechanism. The textual signal lies in the use of the singular. Throughout the Rules, the plural "proceedings" denotes the arbitration as a whole; here, by contrast, the singular "proceeding" is employed to refer to a discrete procedural act within the broader arbitration. The drafting thus marks the constitution of the tribunal as a distinct procedural episode with its own participation obligations and consequences.

Comparison with the Arabic version of the Rules confirms the same structural distinction. The terminology used in that version likewise singles out participation in the constitution of the tribunal as a separate procedural step, rather than as part of the arbitration proceedings generally. The forfeiture mechanism is therefore narrowly targeted: it attaches not to disengagement from the arbitration as such, but to refusal to participate in the process by which the tribunal itself is constituted.

Up to this point, the architecture of Article 13 is a pure-substitution model.

Article 13(11), however, introduces a layer of unanticipated complexity:

> Where there are multiple parties to an arbitration, and the parties have not agreed which of such parties are Claimants and which of such parties are Respondents for the purpose of constitution of the Tribunal, the Court shall appoint all arbitrators (including the president of the Tribunal) without regard to any party's nomination of any arbitrator.

This clause cannot plausibly be understood as a carve-out of the LCIA type, designed merely to address the situation in which the parties have not organised themselves ex ante into two appointing units. Were that its function, the immediately preceding rule—already built upon side-based nomination and substitution—would render the provision superfluous. Nor does the drafting employ the conceptual vocabulary typical of such arrangements: it does not speak of "sides," "appointing units," or equivalent aggregations; instead, it refers to agreement as to which parties are Claimants and which are Respondents. That terminology belongs to the forensic classification of parties once a dispute has crystallised. The provision is framed in ex post rather than ex ante terms.

The more convincing interpretation is that the clause seeks to address situations in which the dispute cannot be coherently reduced to the familiar bipolar configuration. Multiparty disputes may generate geometries that resist compression into a single claimant bloc opposed to a single respondent bloc. One party may proceed simultaneously against several others; respondents may advance claims among themselves; cross-claims may proliferate such that the vertical alignment implied by the claimant–respondent dichotomy ceases to describe the structure of the controversy. On that understanding, the clause is directed at genuine topological indeterminacy rather than at mere coordination failure within an otherwise stable two-side structure.

Yet the surrounding architecture of the Rules leaves uncertain how precisely such a configuration is meant to arise. The procedural mechanisms through which multiparty disputes develop are addressed elsewhere: joinder and consolidation are separately regulated. What the Rules do not provide is a detailed regime for cross-claims capable of destabilising vertical alignment. Such claims are not excluded, but neither are their structural consequences for side classification articulated. The provision therefore presupposes the existence of non-binary dispute geometry without clearly identifying the procedural route through which that geometry is expected to materialise.

The trigger chosen to activate the clause compounds that uncertainty. The condition is not framed in objective terms—such as the impossibility of identifying coherent sides—but in terms of the parties' failure to agree which of them are to be treated as claimants and which as respondents for constitution purposes. In adversarial proceedings, however, disagreement over procedural characterisation is common once interests diverge. The clause does not confine itself to situations in which bipolar alignment is genuinely unattainable; instead, it turns on the absence of agreement. Read literally, the provision risks transforming ordinary disagreement into a gateway for plenary institutional appointment. The rigidity of that outcome is reinforced by the mandatory language—"shall appoint all arbitrators … without regard to any party's nomination." Once the condition is deemed satisfied, the Court appears to have no express discretion to calibrate its response.

The practical vulnerability is evident: because the consequence of non-agreement is complete reconstitution of the tribunal, a party dissatisfied with the emerging composition of the panel may have an incentive to manufacture the necessary trigger. A strategically deployed cross-claim, coupled with refusal to agree on side classification, could suffice to unsettle the bipartite structure. In such a scenario the cross-claim functions less as the articulation of an independent legal grievance than as a procedural instrument designed to force institutional takeover of the constitution process. The clause thus risks serving not merely to resolve genuine structural indeterminacy, but also to facilitate the engineering of a reset in an unwanted tribunal composition.

The subsequent completion clause, Article 13(13), introduces yet further difficulty. It provides:

> The Court shall appoint all remaining arbitrators in case the parties fail to make their nominations in accordance with this Article, or the Court, in its discretion after hearing the parties, considers that the procedure agreed by the parties for nominating the arbitrator(s) is not compatible with the Rules or is otherwise inexecutable.

Two distinct triggers are thus identified. The first is straightforward: failure by the parties to nominate arbitrators in conformity with the Article. The second is evaluative: the Court may determine, after hearing the parties, that the agreed nomination procedure is incompatible with the Rules or otherwise incapable of execution. In both instances the consequence is formulated in identical language: the Court "shall appoint all remaining arbitrators." The emphasis lies on completion rather than express reconstitution. Yet the meaning of the operative term—"remaining"—is left undefined.

That ambiguity is structural. On a strictly mechanical reading, "remaining" refers to seats that have not yet been filled: prior nominations thus presumably remain effective; the Court supplies only those outstanding. Matters become less straightforward when the second trigger is engaged. If the nomination procedure agreed by the parties is declared incompatible with the Rules or otherwise inexecutable, the status of nominations already produced by that procedure becomes uncertain. The text does not clarify whether those nominations continue to stand as procedurally valid acts within a defective method, or whether they fall with the method that generated them. In the absence of express guidance, the phrase "all remaining arbitrators" may function either as a narrow completion power or as a mechanism capable, in practical terms, of unsettling prior nominations. The line between supplementation and reconstitution is therefore not sharply drawn.

A further difficulty concerns the relationship between this clause and the other appointment mechanisms within the same provision. The phrase "failure to nominate in accordance with this Article" admits of broad construction. It may denote simple inaction; it may equally extend to disagreement over side formation, disagreement among co-parties within a side, or nominations alleged to be procedurally defective. The Rules do not specify when such contingencies are to be addressed through the targeted mechanisms earlier in the Article and when they are to be channelled into the more general completion power contained in Article 13(13). In the absence of explicit sequencing, the clause risks operating as a residual catch-all whose scope is determined retrospectively by characterisation rather than prospectively by textual limits.

Against that background, Article 13(15) assumes particular importance. It introduces an express waiver of the right to challenge the Court's constitution of the tribunal under this Article. By agreeing to arbitrate under the Rules, the parties accept in advance that nomination and appointment will proceed in accordance with Article 13 and waive structural objections to that mode of constitution, leaving open only the possibility of classical challenges directed at individual arbitrators. The provision thus seeks to internalise consent through rule incorporation. Its evident purpose is to

stabilise the constitution process by converting potential allegations of institutional overreach into the implementation of an agreed procedural allocation. Whether supervisory courts would invariably give effect to such a waiver in every jurisdiction remains an open question. As a drafting technique, however, it reflects a deliberate effort to insulate the institutional design from collateral challenges.

Overall, the provision reveals an ambitious attempt to anticipate and regulate the various forms of breakdown that may arise in multiparty tribunal constitution. Its treatment of non-participation and its consequence is clear and defensible. The waiver clause reinforces that clarity by embedding consent to the institutional mechanism within the parties' agreement and by seeking to curtail satellite litigation over the constitution process. In these respects, the drafting displays a disciplined approach to rule design: procedural consequences are articulated ex ante, and institutional authority is grounded explicitly rather than left to administrative improvisation.

The treatment of dispute topology, by contrast, is less fully integrated. The rule correctly identifies a genuine structural difficulty—the collapse of bipolar alignment in certain multiparty disputes—but the trigger chosen to capture that situation may extend beyond its intended scope: it relies on the absence of agreement rather than on the objective impossibility of side classification; it operates through mandatory consequences rather than calibrated discretion; and it sits somewhat uneasily alongside the other appointment pathways within the same provision. The result is a mechanism capable of addressing genuine structural indeterminacy, yet one whose breadth leaves open the possibility of strategic deployment.

E. The War of the Models

Stepping back from the detailed examination of individual provisions, the four models encountered reveal something larger than a catalogue of drafting techniques. They disclose a spectrum of institutional philosophies about the constitution of tribunals in multiparty arbitration. Each model confronts the same structural difficulty—what is to occur when side-based nomination fails—but answers it by locating authority at a different point along the continuum between party autonomy and institutional guardianship. The problem is constant; the responses are architectural.

At one pole stand rules that treat coordination failure as structural collapse. The logic is prophylactic and uncompromising: once joint nomination breaks down, the symmetry that once protected equality among the parties is gone; the institution must assume authorship of the tribunal. Party nomination survives only conditionally; upon default it disappears. Institutional symmetry replaces party symmetry; order replaces improvisation.

A second model tempers that severity by introducing discretion. Institutional takeover remains possible but is no longer inevitable. The appointing authority may intervene fully; it is not required to do so. The conceptual move is small yet consequential. Coordination failure ceases to be treated as proof of structural illegitimacy; it becomes a circumstance calling for judgment. The institution is invited to examine the

procedural geometry of the dispute and determine whether intervention is necessary. Institutional control becomes contingent rather than automatic.

A third model pushes the calibration further by making the available responses explicit. The rule does not merely authorise intervention; it specifies its instruments. Limited substitution appears alongside plenary reconstitution; repair and reconstruction coexist within the text itself. The institution need not infer corrective authority from broadly framed language. The rule acknowledges openly that multiparty breakdown may occur at different depths and equips the appointing authority with tools proportionate to each.

The fourth model proceeds in the opposite direction. Instead of enlarging the institution's repertoire, it deliberately restricts it. Intervention is mandatory but confined: the appointing authority fills the missing seat and nothing more. Whatever has already been validly constituted remains untouched. The bilateral architecture is treated as presumptively sound; the institution acts not as architect but as mechanic. The design is austere, linear, and comparatively predictable.

Seen together, these models articulate competing visions of the appointing authority's role. In the most interventionist regimes the institution becomes guarantor of structural equilibrium, empowered to reconstruct the tribunal whenever party nomination falters. In the most restrained regimes it performs a supplementary function, preserving the parties' design and supplying only what coordination has failed to produce. The intermediate designs attempt to reconcile the two impulses: maintain party authorship where possible; permit institutional correction where necessary.

Beneath the procedural vocabulary lies a fundamental inquiry: where does arbitral authority truly reside? In the will of the parties who create the process; or in the institutional structures that sustain its credibility once created? The models examined here do not answer that question uniformly. They distribute authority differently; they assign responsibility differently; they express different intuitions about how autonomy, equality, and legitimacy must coexist within the arbitral order.

V. Autonomy and Paternalism: The Quiet Struggle for Control

The survey undertaken in this paper reveals less doctrinal fragmentation than first impressions suggest. Courts, legislatures, and arbitral institutions intervene at different moments; they employ different techniques; yet the pattern is recognisable. Tribunal constitution is the moment arbitration's foundational premise assumes institutional form. Consent, in the abstract, is straightforward: the parties agree; the tribunal derives its mandate from that agreement. But consent alone does not decide disputes: it must first produce a body capable of doing so. In multiparty configurations the transformation of contract into tribunal exposes the limits of the contractual metaphor. The question is no longer simply what the parties have agreed; it is how the adjudicative structure through which that agreement will operate is to be assembled.

At that point the emphasis shifts. Arbitration continues to speak the language of autonomy; the practical difficulty becomes one of design. Multiparty disputes push the system beyond the clause and into architecture. The centre of gravity moves: away from contract; toward structure.

The same shift appears in the treatment of neutrality. The traditional vocabulary locates neutrality in the individual: independence; impartiality; detachment from the parties. The doctrinal adjustments surveyed here operate at another level. They attempt to secure neutrality through configuration: through the structure of the tribunal itself. The emphasis moves from personal virtue to institutional balance. Neutrality becomes a property of design.

Seen in that light, the various constitutional models reveal themselves as different calibrations between the twin foundations of arbitral legitimacy: consent and credibility. Some regimes place primary responsibility on the parties: autonomy carries risk; design carries consequence. Others shift responsibility toward institutions: the administering body becomes the guarantor of structural equilibrium. Neither model dispels uncertainty. The attempt to engineer balance necessarily proceeds under conditions of limited foresight. When institutions recalibrate tribunal composition they do so without knowing whom they themselves will ultimately appoint; how those choices will interact with the geometry of the dispute; how the resulting tribunal will be received by the parties. The safeguard lies in the institutional position itself—one step removed from the appointing relationship that links parties to their nominees. Yet this distance merely replaces one uncertainty with another. The identity of the decision-makers—and the professional, intellectual, even ideological orientations they may bring—moves beyond party anticipation or control. One risk recedes; another emerges.

The question then becomes one of responsibility. Autonomy implies responsibility; the debate concerns how much of each the system should bear. One instinct insists that commercial actors must design their own procedures and accept the consequences. The other assigns institutions a stabilising role: credibility requires structural balance, even if autonomy must sometimes yield. To some this appears prudent guardianship; to others it resembles paternalism.

The market itself may decide. Some users will welcome institutions that assume responsibility for equilibrium and treat the administering body as a guarantor of procedural legitimacy. Others will resist the transfer of authority from parties to administrative bodies. If oversight becomes too assertive, alternatives remain available: institutions whose rules adhere more closely to party design; or ad hoc arbitration in seats where courts exercise only restrained intervention in the constitution of the tribunal.

Institutional authority also carries a cost. To guarantee equilibrium is to assume responsibility for error. Once an administering body presents itself as the custodian of structural balance, its judgments inevitably invite scrutiny. Was intervention necessary? Did the new configuration achieve neutrality? Did the cure simply replace

one perceived imbalance with another? The more prominent the institutional role becomes, the more exposed it is to criticism.

A further dimension deserves brief mention. Multiparty proceedings now constitute a significant portion of contemporary arbitration. Rules that permit institutional takeover of tribunal constitution therefore shift a substantial share of appointment authority from parties to administering bodies. The consequence may be the gradual emergence of a professional ecosystem shaped by institutional selection: arbitrators whose opportunities increasingly depend on institutional nomination rather than party confidence. That possibility raises questions about the governance of appointments—about transparency, diversity, and community oversight. These questions lie beyond the present inquiry; they nevertheless form part of the institutional landscape within which tribunal constitution now operates.

The comparison with ad hoc arbitration brings the contrast into sharper focus. Institutional recalibration rests on explicit textual authority embedded in modern arbitration rules. Courts acting in ad hoc settings usually lack comparable legislative mandates. Save in a small number of jurisdictions where statutes expressly authorise judicial intervention in multiparty constitution, judges remain confined to enforcing the appointment mechanisms the parties have chosen. Whether courts would ever move beyond those limits—should the perceived equilibrium of the tribunal appear compromised—remains uncertain. The distinction illustrates the different structural roles assigned to institutions and courts within the contemporary arbitral order.

Stepping back, the lesson is not resolution but choice. Arbitration oscillates between two instincts: confidence in the parties' capacity to design their own adjudicative order; confidence in the institution's capacity to stabilise that order when design falters. Neither instinct is irrational; neither is inevitable. Each distributes authority differently; each reflects a distinct view of where the burden of legitimacy should lie.

Multiparty tribunal constitution exposes that choice with unusual clarity. It is the point at which agreement must become structure. Consent continues to supply the mandate; credibility depends on how the mandate is carried through. The law of tribunal constitution thus performs a revealing function in arbitration: it marks where autonomy ends, authority begins, and how the boundary is constantly negotiated.

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[1] This paper forms the second instalment of a three-part study on institutional discretion in multiparty tribunal constitution. The project originally envisaged only two parts. Part I examined the Cairo Regional Centre's treatment of multiparty constitution by analysing the interaction between its written rules and its administrative practice; it concluded the existing framework does not sufficiently stabilise the exercise of institutional power through clear rule design. Karim Hafez, The Limits of Institutional Discretion in Multiparty Tribunal Constitution — Part I: Critical Assessment of the Cairo Regional Centre's Rules and Practice (2 February 2026), available at SSRN: https://ssrn.com/abstract=6168706. The second part was intended to accommodate the comparative mapping of the positive law on the subject across courts, legislatures, and institutions—and the reform inquiry directed at the Cairo Rules; as research progressed, however, it became clear that these two subjects required separate treatment. The study thus evolved as follows: Part I (critical analysis of Cairo Centre regime); Part II (comparative mapping of positive law); and Part III (Cairo Centre reform enquiry). Of these three parts, the present one treats its subject-matter across the entire field.

[2] *Siemens A.G. & BKMI Industrieanlagen GmbH* v *Dutco Construction Co. (Dubai)*, Cour d'appel de Paris, 5 April 1990.
[3] *Siemens A.G. & BKMI Industrieanlagen GmbH* v *Dutco Construction Co. (Dubai)*, Cour de cassation (1re civ.), 7 January 1992, No. 90-13.08.
[4] Id. In the famously laconic style of France's highest civilian court, the judgement reads (in the original) : «*Attendu que le principe de l'égalité des parties dans la désignation des arbitres est d'ordre public ; qu'on ne peut y renoncer qu'après la naissance du litige* »).
[5] *PT Ventures SGPS SA* v *Vidatel Ltd*, BVIHC (COM) 2015/0117 & 2019/0067, 13 August 2020, High Court of Justice (Commercial Division), British Virgin Islands.
[6] *Culioli* v *Gastrolouvre & Sibella*, Cour d'appel de Paris, 18 October 2003.
[7] *Id.*
[8] Decision of the Cour d'appel de Paris, 3 December 2013, No. 12/07062.
[9] Decision of the Cour d'appel de Paris, 26 January 2021, No. 19/10666.
[10] Id.
[11] Vidatel Ltd v PT Ventures SGPS SA, Mercury Serviços de Telecomunicações SARL & Geni SARL, Cass. civ. 1re, 9 November 2022, No. 21-17.203.
[12] *La Dolce Vita Fine Dining Company Limited* v *Zhang Lan, Grand Lan Holdings Group (BVI) Limited, and Qiao Jiang Lan Development Limited (formerly South Beauty Development Limited)*, Supreme People's Court of the People's Republic of China, Judgment of 29 December 2020.
[13] Swiss Code of Civil Procedure (CPC), 19 December 2008 (SR 272), Art. 362(2): "In multiparty proceedings, the court may appoint all the arbitrators." (Original French: "En cas d'arbitrage multipartite, le juge peut nommer tous les arbitres.")
[14] See Message concerning the Amendment of the Federal Act on Private International Law (Chapter 12: International Arbitration), 24 October 2018, 18.076, Federal Gazette (FF) 2018 7153. See also Sébastien Besson & Antonio Rigozzi, "*La réforme du droit suisse de l'arbitrage international*," Revue de l'arbitrage 2021, No. 1, p. 26.
[15] See Message, at note 14, at 7176–7177 (explanatory remarks on proposed Art. 179(5) PILA), clarifying that the judge may appoint only the arbitrator of the defaulting party in order to avoid purely strategic behaviour by multiple claimants or respondents.
[16] China International Economic and Trade Arbitration Commission (CIETAC) Arbitration Rules (2024), Article 29: "1. Where there are two or more Claimants and/or Respondents in an arbitration case the Claimant side and/or the Respondent side，following discussion, shall each jointly nominate or jointly entrust the Chairman of CIETAC to appoint one arbitrator. … 3. Where either the Claimant side or the Respondent side fails to jointly nominate or jointly entrust the Chairman of CIETAC to appoint one arbitrator within fifteen（15）days from the date of its receipt of the Notice of Arbitration, the Chairman of CIETAC shall appoint all three members of the arbitral tribunal and designate one of them to act as the presiding arbitrator."
[17] Bahrain Centre for Dispute Resolution (BCDR) Arbitration Rules, Article 9: 9.8 Where the dispute is to be referred to three arbitrators, and the parties have agreed in writing that each party shall nominate an arbitrator and there are multiple Claimants or Respondents, the multiple parties, whether as Claimant or Respondent, shall each jointly nominate an arbitrator, failing which the Chamber shall appoint the arbitral tribunal without reference to any party's nomination."
[18] Saudi Centre for Commercial Arbitration Arbitration Rules (2023), Article 16: "16.7 If there are more than two parties to an arbitration, the multiple Claimants, jointly, or the multiple Respondents, jointly, shall nominate an arbitrator no later than 30 days after the commencement of the arbitration. 8. Where an additional party has been joined in accordance with Article 12, the additional party may, jointly with the Claimant or jointly with the Respondent, nominate an arbitrator no later than 30 days after the joinder of the additional party. 9. In the absence of a joint nomination within the time limit provided in paragraph 7 or 8 of this Article, the SCCA Court shall appoint each member of the Arbitral Tribunal in accordance with the provisions below and shall designate the presiding arbitrator. In that case, each party shall be deemed to have waived its right to nominate an arbitrator, and the SCCA Court may revoke the confirmation or appointment of any arbitrators. 10. Unless the parties agree otherwise, the third arbitrator, who shall act as presiding arbitrator, shall be appointed by the SCCA Court in accordance with the below provisions. … 14. Notwithstanding any agreement by the parties on the number of arbitrators or the nomination procedure, the SCCA Court may in exceptional circumstances directly appoint the arbitrator(s) to avoid a significant risk of unequal treatment or unfairness that may risk affecting the validity of the award. In that case, each party shall be deemed to have waived its right to nominate an arbitrator, and the SCCA Court may revoke the confirmation or appointment of any arbitrators."
[19] Singapore International Arbitration Centre (SIAC) Arbitration Rules (2025), Article 23: "23.1 Where there are more than two parties to the arbitration and three arbitrators are to be appointed, the

Claimant(s) shall jointly nominate an arbitrator and the Respondent(s) shall jointly nominate an arbitrator within 28 days from the date of commencement of the arbitration or within the period of time otherwise agreed by the parties or set by the Registrar. The presiding arbitrator shall be appointed in accordance with Rule 22.3. 23.2 In the absence of joint nominations from both the Claimant(s) and the Respondent(s) having been made within 28 days from the date of commencement of the arbitration or within the period otherwise agreed by the parties or set by the Registrar, the President shall appoint all three arbitrators and designate the presiding arbitrator."

[20] Japan Commercial Arbitration Association (JCAA) Commercial Arbitration Rules (2021), Article 29: "1. If there is more than one claimant or respondent and the number of arbitrators shall be three, the arbitrators shall be appointed under this Article 29. 2. If the Parties have agreed that the number of arbitrators shall be three, the claimant(s) and the respondent(s) shall appoint one arbitrator each and notify the JCAA of such appointment under Article 25.4 within three weeks from the receipt by the respondent(s) of the notice of the Request for Arbitration. 3. If the JCAA determines that the number of arbitrators shall be three under Article 26.3, the claimant(s) and the respondent(s) shall appoint one arbitrator each and notify the JCAA of such appointment under Article 25.4 within three weeks from the Parties' receipt of the notice of the determination by the JCAA under Article 26.3. … 8. If either or both of the claimant(s) or the respondent(s), fail to notify the JCAA of such appointment under Article 25.4 within the time limit under Article 29.2 or 29.3, the JCAA shall appoint all three arbitrators. In such case, the JCAA may appoint the arbitrator already appointed by the claimant(s) or the respondent(s) as one of the three arbitrators, if no Party raises an objection."

[21] Australian Centre for International Commercial Arbitration (ACICA) Arbitration Rules (2021), Article 15: "15.1 For the purposes of Articles 12 and 13, the acts of multiple parties, whether as multiple Claimants or multiple Respondents, shall have no effect, unless the multiple Claimants or multiple Respondents have acted jointly and provided written evidence of their agreement to ACICA. 15.2 If three arbitrators are to be appointed and the multiple Claimants or multiple Respondents do not act jointly in appointing an arbitrator, ACICA shall appoint each member of the Arbitral Tribunal and shall designate one of them to act as Chairperson, unless all parties agree in writing on a different method for the constitution of the Arbitral Tribunal and provide written evidence of their agreement to ACICA."

[22] Netherlands Arbitration Institute (NAI) Arbitration Rules (2024), Article 19: "1. If there are multiple claimants and/or respondents and the composition of the arbitral tribunal takes place in the manner provided in Article 16, in case of an arbitral tribunal consisting of three or more arbitrators, claimants will jointly nominate an arbitrator and respondents will jointly nominate an arbitrator. 2. If either the claimants fail to jointly nominate an arbitrator or the respondents jointly fail to nominate a prospective arbitrator within the time limit set in Article 16(2), all members of the arbitral tribunal will be appointed in the manner provided in Article 17 [list procedure]."

[23] Stockholm Chamber of Commerce Arbitration Institute (SCC) Arbitration Rules, Article 17(5): "Where there are multiple claimants or respondents and the Arbitral Tribunal is to consist of more than one arbitrator, the multiple claimants, jointly, and the multiple respondents, jointly, shall appoint an equal number of arbitrators. If either side fails to make such joint appointment, the Board may appoint the entire Arbitral Tribunal."

[24] International Centre for Dispute Resolution (ICDR) International Arbitration Rules, Article 13(5): "If there are more than two parties to the arbitration, the Administrator may appoint all arbitrators unless the parties have agreed otherwise no later than 45 days after the commencement of the arbitration."

[25] The Swiss Rules of International Arbitration of the Swiss Arbitration Centre (SAC) (2021), Article 11: "11(3). In multi-party proceedings, the arbitral tribunal shall be constituted in accordance with the parties' agreement. 4. If the parties have not agreed upon a procedure for the constitution of the arbitral tribunal in multi-party proceedings, the Court shall set a time limit for the Claimant and for the Respondent (or group of parties) to each designate an arbitrator. If each group of parties has designated an arbitrator, Article 11(2) [on joint designation by the co-arbitrators] shall apply to the designation of the presiding arbitrator. 5. Where a party or group of parties fails to designate an arbitrator in multiparty proceedings, the Court may appoint some or all of the arbitrators, and shall designate the presiding arbitrator."

[26] Korean Commercial Arbitration Board (KCAB) International Arbitration Rules (2026), Article 12: "12.6 Where there are multiple parties, whether as the Claimant or as the Respondent, and the dispute is to be referred to three arbitrators, the Claimant parties and the Respondent parties shall each jointly nominate one arbitrator pursuant to Articles 12.3 and 12.4. If the Claimant parties or the Respondent parties are unable to nominate an arbitrator within the time limit or such additional period of time as fixed by the Secretariat and all parties are unable to agree on a method for the composition of the Arbitral Tribunal, the Court may appoint each member of the Arbitral Tribunal without regard to any party's previous nomination of an arbitrator and shall designate one of them to act as the presiding arbitrator."

[27] Hong Kong International Arbitration Centre (KHIAC) Administered Arbitration Rules (2024), Article 8: "8.2 Where there are more than two parties to the arbitration and the dispute is to be referred to three arbitrators, the arbitral tribunal shall be constituted as follows, unless the parties have agreed otherwise: (a) the Claimant or group of Claimants shall designate an arbitrator and the Respondent or group of Respondents shall designate an arbitrator in accordance with the procedure in Article 8.1(a), (b) or (c), as applicable; … (c)in the event of any failure to designate arbitrators under Article 8.2(a) or if the parties do not all agree that they represent two separate sides (as Claimant and Respondent respectively) for the purposes of designating arbitrators, HKIAC may appoint all members of the arbitral tribunal with or without regard to any party's designation."
[28] See *State Grain*, at note 8 above.
[29] See Darwazeh & Zeman, Joint Nominations in Multiparty Arbitration: The Exercise of the ICC Court's Discretionary Power to Appoint the Entire Tribunal Post-Dutco, 23(1) ICC Bull. 29 (2013).
[30] Vienna International Arbitration Centre (VIAC) Arbitration Rules, Article 18: "(1) The constitution of the arbitral tribunal in multi-party proceedings shall be conducted in accordance with Article 17, with the following additional provisions: (2) If the dispute is to be resolved by a panel of arbitrators, the side of claimant and the side of respondent shall each jointly nominate an arbitrator. …(4) If pursuant to paragraph 2 of this Article a joint arbitrator is not nominated within the set time period, the Board shall appoint the arbitrator for the defaulting party/parties. In exceptional cases, after granting the parties the opportunity to comment, the Board may revoke appointments already made and appoint new co-arbitrators or all arbitrators."
[31] German Arbitration Institute (DIS) Arbitration Rules (2018), Article 20.3: "In the absence of a joint nomination by either the Claimants or the Respondents, the Appointing Committee may, in its discretion, after consultation with the parties: (i) select and appoint pursuant to Article 13.2 a co-arbitrator for the parties who have not jointly nominated a co-arbitrator and appoint the co-arbitrator nominated by the opposing side; or (ii) select and appoint pursuant to Article 13.2 a co-arbitrator both for the parties who have not jointly nominated a co-arbitrator and for the opposing side, in which case any prior party nomination shall be deemed void."
[32] Court of Arbitration for Sport (CAS) Code, Article R41.1: "… If three arbitrators are to be appointed and there are several Claimants, the Claimants shall jointly nominate an arbitrator. If three arbitrators are to be appointed and there are several Respondents, the Respondents shall jointly nominate an arbitrator. In the absence of such a joint nomination, the President of the Division shall proceed with the particular appointment. If there are three or more parties with divergent interests, both arbitrators shall be appointed in accordance with the agreement between the parties. In the absence of agreement, the arbitrators shall be appointed by the President of the Division in accordance with Article R40.2. In all cases, the arbitrators shall select the President of the Panel in accordance with Article R40.2."
[33] Madrid International Arbitration Centre (CIAM) Arbitration Rules (2023), Article 18: "18.1. If there are several claimants or respondents and three arbitrators are to be appointed, the claimants shall jointly propose one arbitrator and the respondents shall jointly propose another. In the event of the appointment of a sole arbitrator, the claimants shall act jointly on the one hand, and the respondents, jointly, on the other. 18.2. In the absence of such a joint proposal and in the absence of agreement on the method of constituting the arbitral tribunal, the Center may appoint the arbitrator whose appointment could not be made jointly, or alternatively, at its discretion, appoint all the arbitrators."
[34] Milan Chamber of Arbitration (CAM) Arbitration Rules (2023), Article 16: "16.1. Where the request for arbitration is filed by or against several parties, where the arbitration agreement provides for a panel without delegating its whole appointment to another authority and the parties form two sides when filing their introductory briefs, Art. 15, Para. 4 [on bipartite appointment and default mechanism] shall apply. 16.2. Regardless of the arbitration agreement, if the parties do not form two sides when filing the request for arbitration and the reply to the request for arbitration, the Arbitral Council, without considering any appointment made by any of the parties, shall appoint the Arbitral Tribunal."
[35] Arbitration Rules of the Qatar International Centre for Conciliation and Arbitration - QICCA (2024), Article 14: "14.1 For the purposes of Paragraph 1 of Article 13, where a tribunal of three or more arbitrators is to be appointed and there are multiple parties as claimant or respondent, the multiple parties shall jointly, whether as claimant or as respondent, nominate an arbitrator pursuant to Article 13, unless all parties agreed to another method of nominating arbitrators compatible with the Rules. 14.2 In the event that any of the multiple parties has not nominated an arbitrator within the time limit stipulated in Article 13 of these Rules, the Center may appoint the arbitrator according to Article 13 of these Rules. 14.3 In the event of any failure to constitute the Arbitral Tribunal under this Article, the Center shall at the request of any party and after consulting with the Committee, constitute the Arbitral Tribunal. In doing so, The Center may revoke any appointment already made, and appoint all the arbitrators and/or designate one of them as the presiding arbitrator of the Arbitral Tribunal."
[36] Shenzhen Court of International Arbitration, Arbitration Rules (2025).

[37] World Intellectual Property Organisation (WIPO) Arbitration Rules, Article 18: "Where: (i) there are multiple Claimants and/or multiple Respondents; and (ii) three arbitrators are to be appointed; the multiple Claimants, jointly, in the Request for Arbitration, shall nominate an arbitrator, and/or the multiple Respondents, jointly, within 30 days after receiving the Request for Arbitration, shall nominate an arbitrator, as the case may be. If a joint nomination is not made within the applicable period of time, the Center shall appoint one or both arbitrators. The two arbitrators shall, within 20 days after the appointment of the second arbitrator, nominate a third arbitrator, who shall be the presiding arbitrator." This provision could be read to mean that WIPO may appoint both arbitrators, even if the default is on one side only. If so, it does not fit the fourth model. By far the better reading, however, would consider that the reference to "one or both arbitrators" references the situation where there is multiplicity and failure on both sides. The absence of an express power to revoke supports this reading. In that case, WIPO belongs firmly in the pure-substitution model of rules.

[38] Dubai International Arbitration Centre (DIAC) Arbitration Rules (2022).

[39] Although the two bear a family resemblance, the Abu Dhabi framing marks a clear departure from the differentiated administrative handling of silence observed under the Cairo Rules (discussed in Part I of this study). See note 1 above. The difference is twofold. The first is the express textual warrant for forfeiture in Abu Dhabi, which under the Cairo Rules is only implied. The second is the uniformity of Abu Dhabi's treatment of silence: all silence results in forfeiture. This stands in sharp contrast with the administrative practice under the Cairo Rules; there, only complete silence leads to forfeiture; partial silence by one co-party counts for nothing.