

INTERNATIONAL CHAMBER OF COMMERCE RULES OF CONCILIATION AND ARBITRATION*

The International Chamber of Commerce Rules of Conciliation and Arbitration were adopted in 1975. The New Conciliation Rules and amended Arbitration Rules reproduced in this volume have been in operation since 1 January 1988. The amended Rules of Arbitration have three appendices: Appendix I - Statutes of the Court; Appendix II - Internal Rules of the Court of Arbitration; and Appendix III - Schedule of Conciliation and Arbitration costs. The Appendices have not been reproduced in this volume.

Rules of Optional Conciliation

PREAMBLE

Settlement is a desirable solution for business disputes of an international character.

The International Chamber of Commerce therefore sets out these Rules of Optional Conciliation in order to facilitate the amicable settlement of such disputes.

Article 1

All business disputes of an international character may be submitted to conciliation by a sole conciliator appointed by the International Chamber of Commerce.

Article 2

The party requesting conciliation shall apply to the Secretariat of the International Court of Arbitration of the International Chamber of Commerce setting out succinctly the purpose of the request and accompanying it with the fee required to open the file, as set out in Appendix III hereto.

* **Source:** International Chamber of Commerce (1993). *ICC Rules of Conciliation and Arbitration* (Paris: International Chamber of Commerce) Publication ICC No. 447-3 [Note added by the editor].

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Article 3

The Secretariat of the International Court of Arbitration shall, as soon as possible, inform the other party of the request for conciliation. That party will be given a period of 15 days to inform the Secretariat whether it agrees or declines to participate in the attempt to conciliate.

If the other party agrees to participate in the attempt to conciliate it shall so inform the Secretariat within such period.

In the absence of any reply within such period or in the case of a negative reply the request for conciliation shall be deemed to have been declined. The Secretariat shall, as soon as possible, so inform the party which had requested conciliation.

Article 4

Upon receipt of an agreement to attempt conciliation, the Secretary General of the International Court of Arbitration shall appoint a conciliator as soon as possible. The conciliator shall inform the parties of his appointment and set a time-limit for the parties to present their respective arguments to him.

Article 5

The conciliator shall conduct the conciliation process as he thinks fit, guided by the principles of impartiality, equity and justice.

With the agreement of the parties, the conciliator shall fix the place for conciliation.

The conciliator may at any time during the conciliation process request a party to submit to him such additional information as he deems necessary.

The parties may, if they so wish, be assisted by counsel of their choice.

Article 6

The confidential nature of the conciliation process shall be respected by every person who is involved in it in whatever capacity.

Article 7

The conciliation process shall come to an end:

(a) Upon the parties signing an agreement. The parties shall be bound by such agreement. The agreement shall remain confidential unless and to the extent that its execution or

application require disclosure.

(b) Upon the production by the conciliator of a report recording that the attempt to conciliate has not been successful. Such report shall not contain reasons.

(c) Upon notification to the conciliator by one or more parties at any time during the conciliation process of an intention no longer to pursue the conciliation process.

Article 8

Upon termination of the conciliation, the conciliator shall provide the Secretariat of the International Court of Arbitration with the settlement agreement signed by the parties or with his report of lack of success or with a notice from one or more parties of the intention no longer to pursue the conciliation process.

Article 9

Upon the file being opened, the Secretariat of the International Court of Arbitration shall fix the sum required to permit the process to proceed, taking into consideration the nature and importance of the dispute. Such sum shall be paid in equal shares by the parties.

This sum shall cover the estimated fees of the conciliator, expenses of the conciliation, and the administrative expenses as set out in Appendix III hereto.

In any case where, in the course of the conciliation process, the Secretariat of the Court shall decide that the sum originally paid is insufficient to cover the likely total costs of the conciliation, the Secretariat shall require the provision of an additional amount which shall be paid in equal shares by the parties.

Upon termination of the conciliation, the Secretariat shall settle the total costs of the process and advise the parties in writing.

All the above costs shall be borne in equal shares by the parties except and insofar as a settlement agreement provides otherwise.

A party's other expenditures shall remain the responsibility of that party.

Article 10

Unless the parties agree otherwise, a conciliator shall not act in any judicial or arbitration proceeding relating to the dispute which has been the subject of the conciliation process whether as an arbitrator, representative or counsel of a party.

The parties mutually undertake not to call the conciliator as a witness in any such

proceedings, unless otherwise agreed between them.

Article 11

The parties agree not to introduce in any judicial or arbitration proceeding as evidence or in any manner whatsoever:

- (a) any views expressed or suggestions made by any party with regard to the possible settlement of the dispute;
- (b) any proposals put forward by the conciliator;
- (c) the fact that a party had indicated that it was ready to accept some proposal for a settlement put forward by the conciliator.

Rules of Arbitration

Article 1

International Court of Arbitration

1. The International Court of Arbitration of the International Chamber of Commerce is the arbitration body attached to the International Chamber of Commerce. Members of the Court are appointed by the Council of the International Chamber of Commerce. The function of the Court is to provide for the settlement by arbitration of business disputes of an international character in accordance with these Rules.
2. In principle, the Court meets once a month. It draws up its own internal regulations.
3. The Chairman of the International Court of Arbitration or his deputy shall have power to take urgent decisions on behalf of the Court, provided that any such decision shall be reported to the Court at its next session.
4. The Court may, in the manner provided for in its internal regulations, delegate to one or more groups of its members the power to take certain decisions provided that any such decision shall be reported to the Court at its next session.
5. The Secretariat of the International Court of Arbitration shall be at the Headquarters of the International Chamber of Commerce.

Article 2

The arbitral tribunal

1. The International Court of Arbitration does not itself settle disputes. Insofar as the parties shall not have provided otherwise, it appoints, or confirms the appointments of, arbitrators in accordance with the provisions of this Article. In making or confirming such appointment, the

Court shall have regard to the proposed arbitrator's nationality, residence and other relationships with the countries of which the parties or the other arbitrators are nationals.

2. The disputes may be settled by a sole arbitrator or by three arbitrators. In the following Articles the word "arbitrator" denotes a single arbitrator or three arbitrators as the case may be.

3. Where the parties have agreed that the disputes shall be settled by a sole arbitrator, they may, by agreement, nominate him for confirmation by the Court. If the parties fail so to nominate a sole arbitrator within 30 days from the date when the Claimant's Request for Arbitration has been communicated to the other party, the sole arbitrator shall be appointed by the Court.

4. Where the dispute is to be referred to three arbitrators, each party shall nominate in the Request for Arbitration and the Answer thereto respectively one arbitrator for confirmation by the Court. Such person shall be independent of the party nominating him. If a party fails to nominate an arbitrator, the appointment shall be made by the Court.

The third arbitrator, who will act as chairman of the arbitral tribunal, shall be appointed by the Court, unless the parties have provided that the arbitrators nominated by them shall agree on the third arbitrator within a fixed time-limit. In such a case the Court shall confirm the appointment of such third arbitrator. Should the two arbitrators fail, within the time-limit fixed by the parties or the Court, to reach agreement on the third arbitrator, he shall be appointed by the Court.

5. Where the parties have not agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, save where it appears to the Court that the dispute is such as to warrant the appointment of three arbitrators. In such a case the parties shall each have a period of 30 days within which to nominate an arbitrator.

6. Where the Court is to appoint a sole arbitrator or the chairman of an arbitral tribunal, it shall make the appointment after having requested a proposal from a National Committee of the ICC that it considers to be appropriate. If the Court does not accept the proposal made, or if said National Committee fails to make the proposal requested within the time-limit fixed by the Court, the Court may repeat its request or may request a proposal from another appropriate National Committee.

Where the Court considers that the circumstances so demand, it may choose the sole arbitrator or the chairman of the arbitral tribunal from a country where there is no National Committee, provided that neither of the parties objects within the time-limit fixed by the Court.

The sole arbitrator or the chairman of the arbitral tribunal shall be chosen from a country other than those of which the parties are nationals. However, in suitable circumstances and provided that neither of the parties objects within the time-limit fixed by the Court, the sole arbitrator or the chairman of the arbitral tribunal may be chosen from a country of which any of the parties is a national.

Where the Court is to appoint an arbitrator on behalf of a party which has failed to nominate one, it shall make the appointment after having requested a proposal from the National Committee

of the country of which the said party is a national. If the Court does not accept the proposal made, or if said National Committee fails to make the proposal requested within the time-limit fixed by the Court, or if the country of which the said party is a national has no National Committee, the Court shall be at liberty to choose any person whom it regards as suitable, after having informed the National Committee of the country of which such person is a national, if one exists.

7. Every arbitrator appointed or confirmed by the Court must be and remain independent of the parties involved in the arbitration.

Before appointment or confirmation by the Court, a prospective arbitrator shall disclose in writing to the Secretary General of the Court any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties. Upon receipt of such information, the Secretary General of the Court shall provide it to the parties in writing and fix a time-limit for any comments from them.

An arbitrator shall immediately disclose in writing to the Secretary General of the Court and the parties any facts or circumstances of a similar nature which may arise between the arbitrator's appointment or confirmation by the Court and the notification of the final award.

8. A challenge of an arbitrator, whether for an alleged lack of independence or otherwise, is made by the submission to the Secretary General of the Court of a written statement specifying the facts and circumstances on which the challenge is based.

For a challenge to be admissible, it must be sent by a party either within 30 days from receipt by that party of the notification of the appointment or confirmation of the arbitrator by the Court; or within 30 days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based, if such date is subsequent to the receipt of the aforementioned notification.

9. The Court shall decide on the admissibility, and at the same time if need be on the merits, of a challenge after the Secretary General of the Court has accorded an opportunity for the arbitrator concerned, the parties and any other members of the arbitral tribunal to comment in writing within a suitable period of time.

10. An arbitrator shall be replaced upon his death, upon the acceptance by the Court of a challenge, or upon the acceptance by the Court of the arbitrator's resignation.

11. An arbitrator shall also be replaced when the Court decides that he is prevented *de jure* or *de facto* from fulfilling his functions, or that he is not fulfilling his functions in accordance with the Rules or within the prescribed time-limits.

When, on the basis of information that has come to its attention, the Court considers applying the preceding subparagraph, it shall decide on the matter after the Secretary General of the Court has provided such information in writing to the arbitrator concerned, the parties and any other members of the arbitral tribunal, and accorded an opportunity to them to comment in writing within

a suitable period of time.

12. In each instance where an arbitrator is to be replaced, the procedure indicated in the preceding paragraphs 3, 4, 5 and 6 shall be followed. Once reconstituted, and after having invited the parties to comment, the arbitral tribunal shall determine if and to what extent prior proceedings shall again take place.

13. Decisions of the Court as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final.

The reasons for decisions by the Court as to the appointment, confirmation, challenge, or replacement of an arbitrator on the grounds that he is not fulfilling his functions in accordance with the Rules or within the prescribed time-limits, shall not be communicated.

Article 3

Request for Arbitration

1. A party wishing to have recourse to arbitration by the International Chamber of Commerce shall submit its Request for Arbitration to the Secretariat of the International Court of Arbitration, through its National Committee or directly. In this latter case the Secretariat shall bring the Request to the notice of the National Committee concerned.

The date when the Request is received by the Secretariat of the Court shall, for all purposes, be deemed to be the date of commencement of the arbitral proceedings.

2. The Request for arbitration shall *inter alia* contain the following information:

- a) names in full, description, and addresses of the parties,
- b) a statement of the Claimant's case,
- c) the relevant agreements, and in particular the agreement to arbitrate, and such documentation or information as will serve clearly to establish the circumstances of the case,
- d) all relevant particulars concerning the number of arbitrators and their choice in accordance with the provisions of Article 2 above.

3. The Secretariat shall send a copy of the Request and the documents annexed thereto to the Defendant for his Answer.

Article 4

Answer to the Request

1. The Defendant shall within 30 days from the receipt of the documents referred to in paragraph 3 of Article 3 comment on the proposals made concerning the number of arbitrators and

their choice and, where appropriate, nominate an arbitrator. He shall at the same time set out his defence and supply relevant documents. In exceptional circumstances the Defendant may apply to the Secretariat for an extension of time for the filing of his defence and his documents. The application must, however, include the Defendant's comments on the proposals made with regard to the number of arbitrators and their choice and also, where appropriate, the nomination of an arbitrator. If the Defendant fails so to do, the Secretariat shall report to the International Court of Arbitration, which shall proceed with the arbitration in accordance with these Rules.

2. A copy of the Answer and of the documents annexed thereto, if any, shall be communicated to the Claimant for his information.

Article 5 Counter-claim

1. If the Defendant wishes to make a counter-claim, he shall file the same with the Secretariat, at the same time as his Answer as provided for in Article 4.

2. It shall be open to the Claimant to file a Reply with the Secretariat within 30 days from the date when the counter-claim was communicated to him.

Article 6 Pleadings and written statements, notifications or communications

1. All pleadings and written statements submitted by the parties, as well as all documents annexed thereto, shall be supplied in a number of copies sufficient to provide one copy for each party, plus one for each arbitrator, and one for the Secretariat.

2. All notifications or communications from the Secretariat and the arbitrator shall be validly made if they are delivered against receipt or forwarded by registered post to the address or last known address of the party for whom the same are intended as notified by the party in question or by the other party as appropriate.

3. Notification or communication shall be deemed to have been effected on the day when it was received, or should, if made in accordance with the preceding paragraph, have been received by the party itself or by its representative.

4. Periods of time specified in the present Rules or in the Internal Rules or set by the International Court of Arbitration pursuant to its authority under any of these Rules shall start to run on the day following the date a notification or communication is deemed to have been effected in accordance with the preceding paragraph. When, in the country where the notification or communication is deemed to have been effected, the day next following such date is an official holiday or a non-business day, the period of time shall commence on the first following working day. Official holidays and non-working days are included in the calculation of the period of time. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication is deemed to have been effected, the period of

time shall expire at the end of the first following working day.

Article 7
Absence of agreement to arbitrate

Where there is no *prima facie* agreement between the parties to arbitrate or where there is an agreement but it does not specify the International Chamber of Commerce, and if the Defendant does not file an Answer within the period of 30 days provided by paragraph 1 of Article 4 or refuses arbitration by the International Chamber of Commerce, the Claimant shall be informed that the arbitration cannot proceed.

Article 8
Effect of the agreement to arbitrate

1. Where the parties have agreed to submit to arbitration by the International Chamber of Commerce, they shall be deemed thereby to have submitted *ipso facto* to the present Rules.
2. If one of the parties refuses or fails to take part in the arbitration, the arbitration shall proceed notwithstanding such refusal or failure.
3. Should one of the parties raise one or more pleas concerning the existence or validity of the agreement to arbitrate, and should the International Court of Arbitration be satisfied of the *prima facie* existence of such an agreement, the Court may, without prejudice to the admissibility or merits of the plea or pleas, decide that the arbitration shall proceed. In such a case any decision as to the arbitrator's jurisdiction shall be taken by the arbitrator himself.
4. Unless otherwise provided, the arbitrator shall not cease to have jurisdiction by reason of any claim that the contract is null and void or allegation that it is inexistent provided that he upholds the validity of the agreement to arbitrate. He shall continue to have jurisdiction, even though the contract itself may be inexistent or null and void, to determine the respective rights of the parties and to adjudicate upon their claims and pleas.
5. Before the file is transmitted to the arbitrator, and in exceptional circumstances even thereafter, the parties shall be at liberty to apply to any competent judicial authority for interim or conservatory measures, and they shall not by so doing be held to infringe the agreement to arbitrate or to affect the relevant powers reserved to the arbitrator.

Any such application and any measures taken by the judicial authority must be notified without delay to the Secretariat of the International Court of Arbitration. The Secretariat shall inform the arbitrator thereof.

Article 9
Advance to cover costs of arbitration

1. The International Court of Arbitration shall fix the amount of the advance on costs in a sum

likely to cover the costs of arbitration of the claims which have been referred to it.

Where, apart from the principal claim, one or more counter-claims are submitted, the Court may fix separate advances on costs for the principal claim and the counter-claim or counter-claims.

2. The advance on costs shall be payable in equal shares by the Claimant or Claimants and the Defendant or Defendants. However, any one party shall be free to pay the whole of the advance on costs in respect of the claim or the counter-claim should the other party fail to pay its share.

3. The Secretariat may make the transmission of the file to the arbitrator conditional upon the payment by the parties or one of them of the whole or part of the advance on costs to the International Chamber of Commerce.

4. When the Terms of Reference are communicated to the Court in accordance with the provisions of Article 13, the Court shall verify whether the requests for the advance on costs have been complied with.

The Terms of Reference shall only become operative and the arbitrator shall only proceed in respect of those claims for which the advance on costs has been duly paid to the International Chamber of Commerce.

Article 10 **Transmission of the file to the arbitrator**

Subject to the provisions of Article 9, the Secretariat shall transmit the file to the arbitrator as soon as it has received the Defendant's Answer to the Request for Arbitration, at the latest upon the expiry of the time-limits fixed in Articles 4 and 5 above for the filing of these documents.

Article 11 **Rules governing the proceedings**

The rules governing the proceedings before the arbitrator shall be those resulting from these Rules and, where these Rules are silent, any rules which the parties (or, failing them, the arbitrator) may settle, and whether or not reference is thereby made to a municipal procedural law to be applied to arbitration.

Article 12 **Place of arbitration**

The place of arbitration shall be fixed by the International Court of Arbitration, unless agreed upon by the parties.

Article 13 **Terms of Reference**

1. Before proceeding with the preparation of the case, the arbitrator shall draw up, on the basis of the documents or in the presence of the parties and in the light of their most recent submissions, a document defining his Terms of Reference. This document shall include the following particulars:

- a) the full names and description of the parties,
- b) the addresses of the parties to which notifications or communications arising in the course of the arbitration may validly be made,
- c) a summary of the parties' respective claims,
- d) definition of the issues to be determined,
- e) the arbitrator's full name, description and address,
- f) the place of arbitration,
- g) particulars of the applicable procedural rules and, if such is the case, reference to the power conferred upon the arbitrator to act as amiable compositeur,
- h) such other particulars as may be required to make the arbitral award enforceable in law, or may be regarded as helpful by the International Court of Arbitration or the arbitrator.

2. The document mentioned in paragraph 1 of this Article shall be signed by the parties and the arbitrator. Within two months of the date when the file has been transmitted to him, the arbitrator shall transmit to the Court the said document signed by himself and by the parties. The Court may, pursuant to a reasoned request from the arbitrator or if need be on its own initiative, extend this time-limit if it decides it is necessary to do so.

Should one of the parties refuse to take part in the drawing up of the said document or to sign the same, the Court, if it is satisfied that the case is one of those mentioned in paragraphs 2 and 3 of Article 8, shall take such action as is necessary for its approval. Thereafter the Court shall set a time-limit for the signature of the statement by the defaulting party and on expiry of that time-limit the arbitration shall proceed and the award shall be made.

3. The parties shall be free to determine the law to be applied by the arbitrator to the merits of the dispute. In the absence of any indication by the parties as to the applicable law, the arbitrator shall apply the law designated as the proper law by the rule of conflict which he deems appropriate.

4. The arbitrator shall assume the powers of an amiable compositeur if the parties are agreed to give him such powers.

5. In all cases the arbitrator shall take account of the provisions of the contract and the relevant trade usages.

Article 14
The arbitral proceedings

1. The arbitrator shall proceed within as short a time as possible to establish the facts of the case by all appropriate means. After study of the written submissions of the parties and of all documents relied upon, the arbitrator shall hear the parties together in person if one of them so requests; and failing such a request he may of his own motion decide to hear them.

In addition, the arbitrator may decide to hear any other person in the presence of the parties or in their absence provided they have been duly summoned.

2. The arbitrator may appoint one or more experts, define their Terms of Reference, receive their reports and/or hear them in person.

3. The arbitrator may decide the case on the relevant documents alone if the parties so request or agree.

Article 15

1. At the request of one of the parties or if necessary on his own initiative, the arbitrator, giving reasonable notice, shall summon the parties to appear before him on the day and at the place appointed by him and shall so inform the Secretariat of the International Court of Arbitration.

2. If one of the parties, although duly summoned, fails to appear, the arbitrator, if he is satisfied that the summons was duly received and the party is absent without valid excuse, shall have power to proceed with the arbitration, and such proceedings shall be deemed to have been conducted in the presence of all parties.

3. The arbitrator shall determine the language or languages of the arbitration, due regard being paid to all the relevant circumstances and in particular to the language of the contract.

4. The arbitrator shall be in full charge of the hearings, at which all the parties shall be entitled to be present. Save with the approval of the arbitrator and of the parties, persons not involved in the proceedings shall not be admitted.

5. The parties may appear in person or through duly accredited agents. In addition, they may be assisted by advisers.

Article 16

The parties may make new claims or counter-claims before the arbitrator on condition that these remain within the limits fixed by the Terms of Reference provided for in Article 13 or that

they are specified in a rider to that document, signed by the parties and communicated to the International Court of Arbitration.

Article 17
Award by consent

If the parties reach a settlement after the file has been transmitted to the arbitrator in accordance with Article 10, the same shall be recorded in the form of an arbitral award made by consent of the parties.

Article 18
Time-limit for award

1. The time-limit within which the arbitrator must render his award is fixed at six months. Once the terms of Article 9(4) have been satisfied, such time-limit shall start to run from the date of the last signature by the arbitrator or of the parties of the document mentioned in Article 13, or from the expiry of the time-limit granted to a party by virtue of Article 13(2), or from the date that the Secretary General of the International Court of Arbitration notifies the arbitrator that the advance on costs is paid in full, if such notification occurs later.

2. The Court may, pursuant to a reasoned request from the arbitrator or if need be on its own initiative, extend this time-limit if it decides it is necessary to do so.

3. Where no such extension is granted and, if appropriate, after application of the provisions of Article 2(11), the Court shall determine the manner in which the dispute is to be resolved.

Article 19
Award by three arbitrators

When three arbitrators have been appointed, the award is given by a majority decision. If there be no majority, the award shall be made by the Chairman of the arbitral tribunal alone.

Article 20
Decision as to costs of arbitration

1. The arbitrator's award shall, in addition to dealing with the merits of the case, fix the costs of the arbitration and decide which of the parties shall bear the costs or in what proportions the costs shall be borne by the parties.

2. The costs of the arbitration shall include the arbitrator's fees and the administrative costs fixed by the International Court of Arbitration in accordance with the scale annexed to the present Rules, the expenses, if any, of the arbitrator, the fees and expenses of any experts, and the normal legal costs incurred by the parties.

3. The Court may fix the arbitrator's fees at a figure higher or lower than that which would

result from the application of the annexed scale if in the exceptional circumstances of the case this appears to be necessary.

Article 21
Scrutiny of award by the Court

Before signing an award, whether partial or definitive, the arbitrator shall submit it in draft form to the International Court of Arbitration. The Court may lay down modifications as to the form of the award and, without affecting the arbitrator's liberty of decision, may also draw his attention to points of substance. No award shall be signed until it has been approved by the Court as to its form.

Article 22
Making of award

The arbitral award shall be deemed to be made at the place of the arbitration proceedings and on the date when it is signed by the arbitrator.

Article 23
Notification of award to parties

1. Once an award has been made, the Secretariat shall notify to the parties the text signed by the arbitrator; provided always that the costs of the arbitration have been fully paid to the International Chamber of Commerce by the parties or by one of them.
2. Additional copies certified true by the Secretary General of the International Court of Arbitration shall be made available, on request and at any time, to the parties but to no one else.
3. By virtue of the notification made in accordance with paragraph 1 of this article, the parties waive any other form of notification or deposit on the part of the arbitrator.

Article 24
Finality and enforceability of award

1. The arbitral award shall be final.
2. By submitting the dispute to arbitration by the International Chamber of Commerce, the parties shall be deemed to have undertaken to carry out the resulting award without delay and to have waived their right to any form of appeal insofar as such waiver can validly be made.

Article 25
Deposit of award

An original of each award made in accordance with the present Rules shall be deposited

with the Secretariat of the International Court of Arbitration.

The arbitrator and the Secretariat of the Court shall assist the parties in complying with whatever further formalities may be necessary.

Article 26
General rule

In all matters not expressly provided for in these Rules, the International Court of Arbitration and the arbitrator shall act in the spirit of these Rules and shall make every effort to make sure that the award is enforceable at law.

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