

1927 ICC RULES OF ARBITRATION

Convinced that an organization for the settlement of business disputes arising between persons, firms or companies of different nationalities, or which possess an international element or character, is essential to the business world, the International Chamber of Commerce feels in duty bound to do everything in its power to provide facilities for arbitration and conciliation, and therefore places its services freely at the disposal of all business men whenever its good offices are likely to conduce to the settlement of such business disputes without recourse to law.

The Rules of the International Chamber of Commerce relating to Conciliation are set out in Articles 1 to 4; the Rules relating to Arbitration proper follow in Articles 5 to 27.

Conciliation

Article 1

Request of conciliation

In the event of a business dispute arising between persons, firms or companies of different nationalities or which possesses an international element or character, any of the parties to the dispute may seek the good offices of the Administrative Commission¹ of the International Chamber of Commerce with a view to the settlement of the dispute by the acceptance of friendly suggestions to be made by that Commission.

The party making such request to the Administrative Commission shall do so in writing through his National Committee² and shall supply with the request copies of relevant papers and documents.

Article 2

Steps to be taken by the Commission upon receipt of request

¹ Excerpt from the Constitution of the International Chamber of Commerce, Article VII, Paragraph 2: "There shall be an Administrative Commission of which the Secretary General of the International Headquarters shall be Chairman, and which shall be a part of the International Headquarters. The National Committee in each country having members in the International Chamber shall be entitled to select a member of the Administrative Commission. The members of the Administrative Commission shall be resident at the seat of the International Headquarters."

² Excerpt from the Constitution of the International Chamber of Commerce, Article I, Paragraph 3: "The International Chamber is a Confederation of the main economic forces of the countries included in its membership, united in each country by a national organization."

Upon receipt of any such request and of the relevant papers and documents, the Chairman of the Administrative Commission shall inform the other parties or party to the dispute through their or his National Committee and shall invite them or him to accept the intervention of the International Chamber and in that event to submit their or his statement of the case in writing with copies of relevant papers and documents.

Upon the parties agreeing to accept the intervention of the International Chamber, the Chairman of the Administrative Commission shall appoint according to the nature and importance of the case two or more members of the Commission who shall wherever possible be one member of the nationality of the applicant and one member of the nationality of the other party to the dispute. The Chairman and these gentlemen (hereinafter called the "Conciliation Commission") shall acquaint themselves with the details of the case and procure any information required for this purpose communicating with the parties to the dispute through their respective National Committee, and shall hear the parties if possible.

The parties may appear either in person or assisted by Solicitors or Counsel; they may be represented by duly accredited proxy.

Article 3 Terms of settlement

After having examined and studied the case and if possible heard the parties, the Conciliation Commission shall submit to the parties terms of settlement.

Should a settlement result, the Conciliation Commission shall draw up a record of the settlement which shall be signed by the Commission and by the parties thereto.

When the parties do not appear in person or by proxy, the Commission communicates the terms of settlement to the Chairmen of the National Committees concerned, or where there is no National Committee to an Organization Member³ of the International Chamber and requests them to use their influence with the parties to induce them to accept the settlement proposed by the Commission.

³ Excerpt from the Constitution of the International Chamber of Commerce (Article II, Paragraph 2a): "National and local financial, industrial and commercial organizations, which are representative of the interests they embrace and are not conducted for individual profit or partisan purposes are eligible for Organization Membership."

Article 4
Rights of parties when settlement is not reached

Should a settlement not result, the parties shall be at liberty to submit their dispute to arbitration or to appeal to the Courts should they so desire, unless they are bound by an arbitration clause.

Nothing that has transpired in connection with the proceedings before the Conciliation Commission shall in any way affect the legal rights of any of the parties to the dispute whether in an arbitration or in a court of law.

Article 5
Court of Arbitration

The International Chamber of Commerce has a Court of Arbitration, the members of which are appointed by the Council of the International Chamber. The function of the Court is to provide means for settlement by arbitration of business disputes arising between persons, firms or companies of different nationalities or possessing an international element or character.⁴

Article 6
Request for arbitration

Parties desiring to have recourse to arbitration by the International Chamber of Commerce shall make their request in writing through their National Committee or, failing a National Committee, through their Organization Member.

The request for arbitration shall contain:

- a) Names in full of the parties and their addresses.
- b) Statement of the plaintiff's case.
- c) Originals or certified copies of all contracts and correspondence having passed between the parties, and any other documents or information relied upon.

Article 7
Notification of the request of arbitration to the defendant

⁴ The insertion of the following arbitration clause in all foreign contracts is strongly recommended: "All disputes under this contract to be arbitrated according to the Rules of the Court of Arbitration of the International Chamber of Commerce."

If the Court of Arbitration is of opinion that the case is one that can be decided by arbitration under these Rules, it shall notify the other party or parties of the main facts of the claim and ask such other party or parties to furnish within the time stipulated a statement of the case in answer accompanied by all documents and information in support.

A period of one month from the receipt of this notification shall as a general rule be granted to the other party to furnish such documents and information.

The Court of Arbitration may extend this period should circumstances so require.

Article 8

Notifications and/or communications between the parties and the Court of Arbitration and/or the arbitrators

All notifications and communications between the Court of Arbitration and the parties shall take place, except in urgent cases, through the National Committee concerned or, failing a National Committee, through their Organization Member of the International Chamber of Commerce.

All notifications and communications between arbitrators and the parties shall take place, except in urgent cases, through the Court of Arbitration and the National Committees concerned or, failing a National Committee, through the Court of Arbitration and their Organization Member of the International Chamber.

All such notifications and communications shall be deemed to have been well and duly made if delivered by hand against acknowledgment or sent by registered post to the addresses given by the parties, or, if no address has been given, to the Chamber of Commerce or other business organization to which the parties belong. However, in countries where special provisions of law exist requiring the observance of particular formalities in the case of notifications concerning arbitration, such formalities shall be observed.

Article 9

Cases which cannot be arbitrated

When the parties are not bound by an arbitration clause or bound by an arbitration clause in which the Court of Arbitration of the International Chamber of Commerce is not specified, and in either

case the defendant allows a month to elapse without replying to the notification of the request for arbitration or declines arbitration by the Court of Arbitration of the International Chamber of Commerce, the applicant shall be informed that the case cannot be arbitrated.

Article 10 Arbitral awards by default

When the parties have already agreed to submit their case to arbitration under these Rules, the defendant shall be bound to submit to arbitration.

Should the defendant refuse or fail to submit to arbitration, the Court of Arbitration shall order that the arbitration be proceeded with in the absence of the defaulting party.

No award by default shall be made by the arbitrators unless notification to appear before them has been served upon the defendant in accordance with Article 8, Paragraph 3, above.

Article 11 Choice of arbitrators

The Court of Arbitration shall select the arbitrators or arbitrator for each case from amongst technical or legal experts to be nominated by National Committees of the International Chamber at the request of the Court. As a general rule the Court, unless for good reason shown, shall apply to National Committees of countries other than those of the parties to the dispute.

As a general rule the Court of Arbitration shall appoint but one arbitrator for each case.

It may however appoint three arbitrators if the importance of the case warrants the appointment of three arbitrators. It shall appoint three arbitrators whenever such is the wish of the parties. In this case if the parties are agreed thereon, each party may appoint one arbitrator and the Court shall then appoint an umpire in accordance with the terms of Paragraph 1 of this Article.

The Court or the party having appointed an arbitrator, as the case may be, shall have power to fill any casual vacancy caused by death, illness or failure of the arbitrator appointed to carry out his duties and in any such event the Court shall at the time of filling the vacancy confirm the appointment of the other arbitrators if it had appointed three arbitrators.

Article 12
Place of arbitration

Arbitration shall take place in the country and place decreed by the Court of Arbitration, unless the parties shall have agreed in advance upon the place of arbitration.

Article 13
Time limit of awards

The Court of Arbitration, subject to the provisions of Article 16, Paragraph 2, shall specify the time within which the award is to be made, and the date from which this time limit is to run.

Article 14
Submission

When the arbitrators or arbitrator have or has been appointed, the Court of Arbitration shall draw up a form of submission to arbitration which shall contain the following:

- a) Names in full of the parties.
- b) Addresses of the parties to which all notifications and communications shall be made during the arbitration.
- c) Brief statement of the parties' claims.
- d) Terms of reference, statement of the case, indication of the points at issue to be determined.
- e) Names in full of the arbitrators or arbitrator, with their addresses, etc.
- f) Place of arbitration.
- g) Specification of arbitrators' powers (whether or not they are to act as "amiables compositeurs", etc.).⁵
- h) Undertakings by the parties to comply with the award.
- i) Statement by the parties that the arbitration is to take place under these Rules and that they are well acquainted with these Rules.
- j) All other matter required in order that the award when made shall be enforceable at law, or which in the opinion of the Court of Arbitration it is desirable to specify.

Article 15
Signing of the form of submission

⁵ "Amiables compositeurs" are arbitrators who are not bound by rules of law and from whose findings there is no appeal.

A form of submission shall be sent to the parties for their signature.

If any party having previously agreed to submit a case to arbitration of the International Chamber refuses or neglects to sign the form of submission, the Court of Arbitration may order that arbitration proceed in default.

Article 16

Hearing of the case by arbitrators

The arbitrators or arbitrator shall take such steps as they may in their discretion consider most appropriate for the purpose of ascertaining the facts relating to the case. They shall have power to hear witnesses and may if so decided submit technical or legal matters to experts for report.

The arbitrators or arbitrator shall wherever possible seek clerical assistance from employees of Organization Members of the International Chamber of Commerce.

The Court of Arbitration and the arbitrators or arbitrator shall so act as to render an award capable of legal enforcement.

It shall be in the discretion of the Court of Arbitration as to whether or not the grounds of the award shall be stated and, in this connection, due regard shall be had to the laws of the country in which the award may have to be enforced.

The Court of Arbitration shall have power to give to the arbitrators or arbitrator power to act as "amiables compositeurs" provided all parties to the arbitration have previously given their consent to this course and that it will not in any way interfere with the legal enforcement of the award.

Article 17

Appearance of the parties

The parties may agree that they will not appear before the arbitrators and that the latter shall decide upon the documents in the case.

Should the parties request to be heard or should the arbitrators or arbitrator deem it necessary to hear the parties, they shall inform the Court of Arbitration as soon as possible of the date set for that purpose and (subject to the provisions of Article 12 above) the place where the hearings will be held.

The Court of Arbitration, subject to the provisions of Article 8, Paragraph 3 above, shall give due and sufficient notice to the parties to appear before the arbitrators or arbitrator at the time and in the place specified. If the parties or any one of them fail or fails to appear before the arbitrators or arbitrator, the latter shall have the power to proceed nevertheless with the arbitration of the case.

The hearings shall be private.

The parties may appear in person before the arbitrators or may be assisted by Solicitors or Counsel. They may be represented by duly accredited proxy.

Article 18

Written statements of case

Except when otherwise decided by the Court of Arbitration or by the arbitrators or arbitrator, the number of written statements of case that the parties may submit is limited to two each, the first being the statement of claims provided for in Articles 6 and 7 above, the second being the applicant's rejoinder to the answer of the defendant and the latter's reply to this rejoinder.

The Court of Arbitration shall furnish each party with copies of all documents and statements of case lodged by the other party.

Article 19

Agreement of parties before the arbitrators

Should the parties reach an agreement before the arbitrators or arbitrator, this shall be recorded either in the form of an agreement drawn up by the arbitrators and signed by them and by the parties, or of an award made by consent of the parties, as the Court of Arbitration may decide.

Article 20

Award of the arbitrators

When two arbitrators and an umpire are appointed and the arbitrators fail to agree, the decision of the umpire shall be final and binding. The umpire is not bound to adopt the opinion of either of the arbitrators.

When three arbitrators are appointed the opinion of the majority shall prevail.

Article 21

Award to be passed by the Court of Arbitration

Before completing the award the arbitrators or arbitrator shall submit the same to the Court of Arbitration for examination as to its form. No award shall under any circumstances be issued until approved as to its form by the Court of Arbitration.

Article 22

Costs and fees

The award shall in addition to dealing with the merits of the matter deal with the question of costs and shall decide who is to pay costs and all matters relating thereto, or in what manner the costs are to be divided between the parties.

The costs of the arbitration shall include fees of arbitrators, when such are allowed, fees of experts if any, and all expenses of the arbitration.

When each of the parties has appointed an arbitrator under Article 11, Paragraph 2 above, the fees and expenses of such arbitrators shall be paid by the parties who appointed them.

Article 23

Notification of the award

When an award has been made, the Court of Arbitration shall send a certified copy, or if the law so requires the original, to each of the parties as soon as the terms of Article 24 below relating to the payment of costs shall have been complied with.

Article 24

Payment of costs, etc.

The Court of Arbitration may at any time call upon any party to a dispute to deposit with the International Chamber of Commerce such sum as it may deem necessary as security for the costs of the arbitration.

Before receipt of the original or certified copies of the award a party shall pay to the International Chamber of Commerce the amount of costs incurred and stated in the award and shall, where the award so provides, be entitled to recover such costs or a part thereof from the other party.

Article 25

Enforcement of arbitral awards. Measures against recalcitrant parties

The parties shall be bound to comply with the award.

In case the party against whom the award is made does not comply therewith within thirty days of the notification of the award, the party in whose favour the award is made may so inform his National Committee or Organization Member of the International Chamber of Commerce as the case may be.

The latter in such event shall inform the Court of Arbitration which shall then ask the Chamber of Commerce or any other organization to which the recalcitrant member belongs to take suitable measures.

The above provisions leave the party in whose favour the award is made entirely free to enforce same by any means available.

Article 26
Chancery

The Registry of the Court of Arbitration shall be at the Headquarters of the International Chamber of Commerce where all awards shall be duly filed. Certified copies of such awards shall be delivered to the parties at any time but not to any other person.

Copies of awards

Copies of awards will be certified by the Secretary General and two members of the Court of Arbitration.

Article 27
Cases not provided for by the Rules

In any circumstances not specifically provided for by the present Rules, the Court of Arbitration shall have power to determine the matter in question in accordance with the general tenor of these Rules.