

1955 ICC RULES OF ARBITRATION

The advantages to the business world of an international organisation for the settlement of business disputes of an international character, without recourse to the formalities of court proceedings, are such that the International Chamber of Commerce feels in duty bound to do everything in its power to encourage conciliation and arbitration. The Chamber therefore places its services at the disposal of all businessmen whenever its good offices are likely to conduce to the settlement of such business disputes.

Section A Optional Conciliation

Article 1

Administrative Commission for Conciliation - Conciliation Committees

Any business dispute of an international character may be the subject of a request for settlement by amicable arrangement through the medium of the Administrative Commission for Conciliation established at the International Chamber of Commerce.

Each National Committee may nominate from one to three members to the Commission, from among its nationals resident in Paris; they shall be appointed for a term of two years by the President of the International Chamber of Commerce.

For each dispute, a Conciliation Committee of three members shall be set up by the President of the International Chamber of Commerce.

The Committee shall be composed of two conciliators, who shall be as far as possible of the nationalities of the applicant and of the other party, and of a Chairman of a nationality other than that of the parties involved, chosen in principle from the Administrative Commission for Conciliation.

Article 2

Request for conciliation

The party making a request for conciliation shall apply to International Headquarters of the International Chamber of Commerce through his National Committee or direct; in the latter case, the Secretary General shall inform the National Committee concerned of the application.

The request shall consist of a statement of the case from the point of view of the said party and shall be accompanied by copies of relevant papers and documents as well as by

the deposit laid down in the appended schedule for the expenses incurred by International Headquarters in the conciliation proceedings.

Article 3

Steps to be taken by the Conciliation Committee

Upon receipt of any such request and of the relevant papers and documents and of the deposit, the Secretary General of the International Chamber of Commerce shall inform the other party or parties to the dispute direct or through his or their National Committee or Committees and shall invite him or them to accept an attempt at conciliation and in that event to submit to the Conciliation Committee a statement of the case in writing with copies of relevant papers and documents as well as the deposit laid down in the appended schedule for expenses incurred by International Headquarters in the conciliation proceedings.

The Committee shall acquaint itself with the details of the case and procure any information required for this purpose by communicating with the parties to the dispute direct or through their National Committees and shall hear the parties if possible.

The parties may appear in person before the Committee or be represented by duly accredited agents. They may also be assisted by counsel or solicitors.

Article 4

Terms of settlement

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

Should a settlement result, the Conciliation Committee shall draw up and sign a record of the settlement.

When the parties do not appear in person or are not represented by duly accredited agents, the Committee shall communicate the terms of settlement to the Chairmen of the National Committees concerned and shall request them to endeavour to persuade the parties to accept the settlement proposed by the Committee.

Article 5

Rights of the parties when settlement is not reached

Should a settlement not result, the parties shall be at liberty to refer their dispute to arbitration or to bring an action at law 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.

No person having sat on a Conciliation Committee for the settlement of a dispute may be appointed arbitrator for the same dispute.

Section B Arbitration

I. Court of Arbitration and arbitrators

Article 6

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 of an international character.

The Court shall meet in principle once a month.

When a decision is urgently required in the interval between two sessions of the Court, the Chairman of the Court shall act on the Court's behalf and inform it of his action at the next session.

The Secretariat of the Court of Arbitration shall be at the Headquarters of the International Chamber of Commerce.

Article 7

Choice of arbitrators

The Court of Arbitration does not itself settle disputes. Except when otherwise stipulated, it appoints or confirms the nomination of arbitrators in accordance with the following provisions:

If the parties have agreed to the settlement of a dispute by a sole arbitrator, they may nominate him by common agreement for confirmation by the Court. Failing agreement between the parties within a period of thirty days from the notification of the request for arbitration to the opposite party, the arbitrator shall be appointed by the Court.

If reference is to be to three arbitrators, each of the parties shall nominate - in the request for arbitration and in the reply to the request - an arbitrator for confirmation by the Court of Arbitration, which shall appoint the third arbitrator. Should one of the parties abstain from nominating his arbitrator, the Court itself shall appoint him. The third arbitrator shall be chairman of the arbitral tribunal.

If the parties fail to agree on the number of arbitrators, the Court shall appoint a sole arbitrator, unless one of the parties requests that the case be submitted to three arbitrators and the dispute appears to the Court important enough to warrant the appointment of three arbitrators. In this case, the rules of the preceding paragraph shall apply and the parties shall be allowed a period of fifteen days in which to nominate their arbitrators.

When the Court has to appoint one or more arbitrators, it shall choose the National Committee or Committees from which it shall request nominations. Sole arbitrators and third arbitrators must be nationals of countries other than those of the parties.

Should an arbitrator be challenged by one of the parties, the decision of the Court of Arbitration, which shall be the sole judge of the grounds of challenge, shall be final.

If an arbitrator should die or be prevented for any reason from carrying out his duties, or if he should resign or leave his duties unfulfilled, the party who nominated him, or the Court if it appointed him, shall nominate another arbitrator in his stead. If the party does not nominate his arbitrator within the period allotted by the Secretariat, the Court shall itself appoint him.

II. Initiating arbitration

Article 8

Request for arbitration

A party or parties desiring to have recourse to arbitration by the International Chamber of Commerce shall make his or their request in writing to the Secretariat of the Court, through their National Committee or direct; in the latter case, the Secretariat shall inform the National Committee concerned of the request.

The request for arbitration shall contain:

- a) Names in full of the parties and their addresses;
- b) Statement of the claimant's case;

- c) Originals (or copies certified true by the claimant) of all contracts, more especially of the document evidencing the arbitral agreement, and of correspondence having passed between the parties, and any other documents or information relied upon;
- d) All relevant particulars of the number of arbitrators and their choice in accordance with the provisions of Article 7 above.

The Secretariat shall send the defendant copy of the request and the documents attached, for reply.

Article 9 Reply to the request

Within thirty days of the date of receipt by the defendant of the documents sent by the Secretariat under the provisions of the third sub-paragraph of Article 8, the defendant must reply to the proposals made to him concerning the number of arbitrators and their choice. He must at the same time and within the same period furnish a statement of the case in answer and any proposals he may wish to make, accompanied by all documents and information in support.

Copy of the reply and of the appended documents, if any, shall be communicated to the claimant for information.

Article 10 Counterclaims

When the defendant puts forward a counterclaim, he must do so within the period laid down for the reply to the claim. The other party may, within thirty days from notification of this counterclaim, submit a statement in reply.

Copy of this statement and of appended documents, if any, shall be communicated to the other party for information.

Article 11 Written statements of case

All written statements submitted by the parties and all appended documents must be supplied in triplicate.

Where there is more than one arbitrator or more than one opposing party, the Secretariat may require such number of further copies to be furnished as it may prescribe.

Article 12

Absence of arbitration clause

When there is no arbitration clause between the parties or when there is an arbitration clause in which the International Chamber of Commerce is not specified, if the defendant does not reply within the period laid down in Article 9(1) above, or declines arbitration by the International Chamber of Commerce, the applicant shall be informed that the case cannot be referred to arbitration by the Chamber.

Article 13

Effect of the arbitral agreement¹

When the parties agree to submit their case to arbitration by the International Chamber of Commerce, they shall be deemed to submit to arbitration in accordance with the present Rules.

Should one of the parties refuse or fail to submit to arbitration, the arbitration shall be proceeded with, such refusal or absence notwithstanding.

If one of the parties raises one or more pleas as to the existence or validity of the arbitration clause, and the Court of Arbitration has satisfied itself of the prima facie existence of such a clause, the Court may, without prejudice to the admissibility or the merits of such pleas, order that the arbitration shall proceed. In this case, any decision as to the arbitrator's jurisdiction shall lie with the arbitrator himself.

Unless otherwise stipulated, the arbitrator shall not cease to have jurisdiction by reason of an allegation that the contract is null and void or non-existent. If he upholds the validity of the arbitration clause, he shall continue to have jurisdiction to determine the respective rights of the parties and to make declarations relative to their claims and pleas even though the contract should be null and void or non-existent.

¹ In the following articles, the word "arbitrator" should be taken to mean "arbitrator or arbitrators".

The parties may, in case of urgency, whether prior to or during the proceedings before the arbitrator, apply to any competent judicial authority for interim measures of protection, without thereby contravening the arbitration clause binding them. Any such application, and any measures taken by the judicial authority shall be brought without delay to the notice of the Court of Arbitration or, when necessary, of the arbitrator.

Article 14²

Submission of the case to the arbitrator

The Secretariat must submit the case to the arbitrator immediately on receipt of the defendant's reply to the request for arbitration, or, as the case may be, of the claimant's reply, if any, to the counterclaim, and in any event must submit the case to the arbitrator at the latest on the expiry of the periods laid down in Articles 9 and 10 above for submitting the statements referred to therein.

However, the Secretariat may, before passing the case on to the arbitrator, require the parties, or one of them, to pay the International Chamber of Commerce such sum as it may deem necessary for the costs of the arbitration in accordance with the appended schedule.

Article 15

Notifications and/or communications from the Secretariat

All notifications and communications from the Secretariat shall be deemed to have been well and duly made if delivered by hand against acknowledgement or sent by registered post to the address given, or, if no address has been given, to the Chamber of Commerce or other body to which the addressee belongs. 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.

Notification or communication shall be deemed to have been made when it is received either by the party itself or by its representative, or when it should have been so received, if well and duly made.

III. Proceedings before the arbitrator

² In the following articles, the word "arbitrator" should be taken to mean "arbitrator or arbitrators".

Article 16
Rules governing the proceedings

The rules by which the arbitration proceedings shall be governed shall be these Rules and, in the event of no provision being made in these Rules, those of the law of procedure chosen by the parties or, failing such choice, those of the law of the country in which the arbitrator holds the proceedings.

Article 17
Notifications and/or communications from the arbitrator

The provisions of Article 15 above relating to notifications and/or communications from the Secretariat also apply to notifications and communications from the arbitrator.

Article 18
Country where arbitration proceedings take place

The proceedings before the arbitrator shall take place in the country determined by the Court of Arbitration, unless the parties shall have agreed in advance upon the place of arbitration.

Article 19
Arbitrator's terms of reference

Before beginning the hearing of the case, the arbitrator shall draw up, on the documents or in the presence of the parties, a statement defining his terms of reference which shall include 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) Name in full of the arbitrator with his address, etc.;
- f) Place of the arbitration proceedings;

- g) All other matters required in order that the award when made shall be enforceable at law, or which in the opinion of the Court of Arbitration and the arbitrator, it is desirable to specify.

The statement referred to in paragraph 1 above must be signed by the parties and by the arbitrator, who shall submit it to the Court of Arbitration for approval.

If one of the parties refuses to join in the drawing up of the aforesaid statement, or refuses to sign it, although such party is bound by a clause stipulating arbitration by the International Chamber of Commerce, the award shall be made notwithstanding, after the expiry of a period granted by the Court to the arbitrator for obtaining the signature of the party concerned.

The Court of Arbitration shall not give the arbitrator power to act as "amiable compositeur" unless the parties agree thereto, and provided that it will not in any way interfere with the legal enforcement of the award.

Article 20

Hearing of the case by the arbitrator

The arbitrator shall, within as short a period as possible, ascertain the facts relating to the case. He shall have the power to hear witnesses. He may also appoint one or more technical or legally qualified experts and request them to report on technical or legal issues, provided that their terms of reference are laid down in advance.

Article 21

The arbitrator may decide on the basis of the relevant documents, unless one of the parties requests a hearing.

At the request of one of the parties, or, if need be, on his own initiative, the arbitrator giving reasonable notice, shall summon the parties to appear before him at a specified place and time, and shall inform the Secretariat thereof.

If the parties, or any one of them having been duly summoned, fail to appear before the arbitrator, the latter, after satisfying himself that the summons was duly served upon the party or parties, and that they are absent without valid excuse, shall have the power nevertheless to proceed with the arbitration, inquiring into the merits of the case and deciding it as if all parties were present.

The hearings shall be private.

The parties may appear in person before the arbitrator or be represented by duly accredited agents. They may also be assisted by counsel or solicitors.

New claims or counterclaims submitted to the arbitrator must be formulated by the parties in writing. Unless the party against which a new claim has been submitted agrees, the arbitrator may only take cognizance of it if it is within the limits of his terms of reference as laid down in the statement referred to in Article 19.

IV. Arbitral award

Article 22 Settlement by the parties

Should the parties reach an agreement before the arbitrator, this shall be recorded in the form of an arbitral award made by consent of the parties.

Article 23 Time limit of awards

The arbitrator must make the award within sixty days from the date on which he signed the statement referred to in Article 19.

The Court may extend this period if it considers it necessary.

Article 24 Awards by three arbitrators

When three arbitrators have been appointed, the award is given on a majority decision. Failing a majority, the Chairman of the arbitral tribunal alone shall make the award.

Article 25 Decision regarding costs of the arbitration

1. The arbitrator's award shall deal with the question of the costs of the arbitration and shall direct who is to pay costs and all matters relating thereto, or in what manner the costs are to be divided between the parties.

2. The arbitrator's fees and the administrative costs laid down by the Court of Arbitration in accordance with the schedule appended to the present Rules, the fees of experts and any travelling expenses incurred by the arbitrator shall be included in the arbitration costs.

Article 26

Award to be passed by the Court of Arbitration

Before completing the award, the arbitrator shall submit the same to the Court of Arbitration. The Court may lay down modifications as to its form and, if need be, draw the arbitrator's attention even to points connected with the merits of the case, but with due regard to the arbitrator's liberty of decision. No award shall under any circumstances be issued until approved as to its form by the Court of Arbitration.

Article 27

Pronouncement of the award

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

Article 28

Notifying the parties of the award

When an award has been made, the Secretariat shall communicate the arbitrator's signed text to the parties, provided the arbitration costs have been fully paid to the International Chamber of Commerce by the parties or by one of them.

Additional copies certified true by the Secretary General of the Court shall be available to the parties at all times on request, but to no one else.

Article 29

Irrevocability and enforceability of the award

The arbitral award shall be final.

By submitting their dispute to ICC arbitration, the parties undertake to carry out the subsequent award without delay and waive their right to any form of appeal, insofar as such waiver may be valid.

Article 30
Deposit of the award

All awards made in accordance with the present Rules shall be deposited with the Secretariat.

The arbitrator and the Secretariat shall give the parties every assistance in legally filing the award.

Article 31
General rule

In any circumstances not specifically provided for above, the Court of Arbitration and the arbitrator shall act on the basis of these Rules and make their best efforts for the award to be enforceable at law.

Statutes of the Court of Arbitration

Article 1

Appointment of the members of the Court of Arbitration

The members of the Court of Arbitration of the International Chamber of Commerce are appointed for a term of two years by the Council of that Chamber pursuant to Article III, 3 i of the Constitution, on the proposal of each National Committee.

Article 2

Composition of the Court of Arbitration

The Court of Arbitration shall be composed of a Chairman, of five Vice-Chairmen, of a Secretary General and of one or several Technical Advisers chosen by the Council of the International Chamber of Commerce either from among the members of the Court or apart from them, and of one member for, and appointed by, each National Committee.

The chairmanship may be exercised by two Co-Chairmen; in this case, they shall have equal rights, and the expression "the Chairman", used in the Rules of Conciliation and Arbitration, shall apply to either of them equally.

When a member of the Court does not reside in the city where International Headquarters of the International Chamber of Commerce is situated, the Council may appoint an alternate member.

If the Chairman is unable to attend a session of the Court, he shall be replaced by one of the Vice-Chairmen.

Article 3

Function, powers of the Court of Arbitration

The function of the Court of Arbitration is to ensure the application of the Rules of Conciliation and Arbitration of the International Chamber of Commerce and the Court has all the necessary powers for that purpose. It is further entrusted, if need be, with laying before the Committee on International Commercial Arbitration any proposals for modifying the Rules of Conciliation and Arbitration of the International Chamber of Commerce which it considers necessary.

Article 4
Deliberations of the Court of Arbitration – Quorum

The decisions of the Court shall be taken by a majority vote, the Chairman having a casting vote in the event of a tie.

The deliberations of the Court shall be valid when at least six members are present.

The Secretary General of the International Chamber of Commerce, the Secretary General of the Court and the Technical Adviser or Advisers shall attend in an advisory capacity only.

Schedule of Conciliation and Arbitration Costs (1955)

1. Registration fee

Each party to a dispute submitted to the ICC for conciliation or arbitration shall be liable for a registration fee of Fr. frs 100 (US \$ 20) and no application will be entertained unless accompanied by this deposit.

The registration fee shall also be payable by each party if a dispute is referred to an arbitrator outside the Rules of the ICC.

The registration fee is not recoverable and becomes the property of the ICC.

2. Costs of conciliation

Before a case is considered by the Conciliation Committee, each party shall contribute to the cost of the conciliation procedure by paying half the administrative charge, to be fixed by Headquarters, at a given sum within the following limits:

Sum under dispute	Administrative charge
Under \$ 10,000	10 - 30 per mille
\$ 10,000 - 50,000	5 - 15 per mille
\$ 50,000 - \$ 200,000	3 - 7 per mille
\$ 200,000 - \$ 600,000	2 - 3 per mille
\$ 600,000 - \$ 1,500,000	1 - 2 per mille
\$ 1,500,000 - \$ 3,000,000	0.7 - 1.3 per mille
Over \$ 3,000,000	0.3 - 1 per mille

3. Costs of arbitration

A. Costs of arbitration (fees of arbitrators + administrative charge) are fixed by the Court within the following limits:

Sum under dispute	Costs (fees + administrative charge)
Under \$ 10,000	30 - 100 per mille
\$ 10,000 - 50,000	15 - 50 per mille
\$ 50,000 - \$ 200,000	8 - 20 per mille
\$ 200,000 - \$ 600,000	5 - 10 per mille
\$ 600,000 - \$ 1,500,000	3 - 6 per mille
\$ 1,500,000 - \$ 3,000,000	2 - 4 per mille
Over \$ 3,000,000	1 - 3 per mille

When the sum under dispute is not stated, the Court shall fix the deposit payable subject to later adjustment.

B. When arbitration is preceded by attempted conciliation, the administrative charge paid in respect of the said attempt shall be deducted from the cost of arbitration.

C. When a case is submitted to more than one arbitrator, the Court shall have the right to double or treble, as appropriate, the fixed sum allocated for payment of their fees.

D. Immediately the fees of the arbitrators and the administrative charge are fixed, the Court shall be entitled to require either or both parties to deposit the relevant sums with the ICC.

E. If a case is withdrawn before it reaches the arbitrator, all sums paid in shall be returned to the parties, after deduction of a sum equal to half the administrative charge.

F. Payments made in accordance with paragraph A above do not include either the personal expenses of the arbitrators, which shall, if appropriate, be claimed when the award is given, or any experts' fees, payment of which may be demanded during the arbitration procedure.

Schedule of Conciliation and Arbitration Costs

(In force as from 1 January 1972)

1. Registration fee

Each party to a dispute submitted to the ICC for conciliation and arbitration shall be liable for a registration fee of US \$ 50 and no application will be entertained unless accompanied by this deposit.

The registration fee shall also be payable by each party if the ICC is called upon to appoint an arbitrator or arbitrators outside the procedure of its Court of Arbitration.

The registration fee is not recoverable and becomes the property of the ICC.

2. Costs of conciliation

Before a case is considered by the Conciliation Committee, each party shall contribute to the cost of the conciliation procedure by paying half the costs to be calculated in accordance with the table of administrative charges hereinafter set out.

Where the sum in dispute in any such case is not stated, the Secretariat shall fix the costs.

3. Costs of arbitration

The costs of arbitration comprise the fee of the arbitrator (or arbitrators) and the administrative charge and may furthermore include personal expenses of the arbitrator(s) and the cost of any expertise as well as similar expenses.

Before a case (or counterclaim) can be submitted to the arbitrator(s), the parties, or, failing this, the claimant (or counterclaimant, as the case may be), shall pay a deposit covering the fee of the arbitrator(s) and the administrative charge (fixed in accordance with the table hereinafter set out).

The Court shall fix the fee of the arbitrator(s) in accordance with the table hereinafter set out or, where the sum in dispute is not stated, at its discretion.

When a case is submitted to more than one arbitrator, the Court, at its discretion, shall have the right to increase the fee up to a maximum of three times the fee payable to one arbitrator.

When arbitration is preceded by attempted conciliation, half of the administrative charge paid in respect of the said attempt shall be credited to the administrative charge of the arbitration.

Before any expertise can be commenced, the parties, or one of them, shall pay a deposit sufficient to cover the expected fee and expenses as determined by the arbitrator(s).

If a case, not preceded by attempted conciliation, is withdrawn before it reaches the arbitrator(s), any deposit made shall be returned to the parties, after deduction of a sum equal to half the administrative charge.

4. Scale of administrative charge and fees

To calculate the administrative charge and the fee the percentages applied to each successive slice of the sum in dispute are to be added together.

a) Administrative charge

Sum in dispute	Administrative charge (*)
Under \$ 10,000 (US)	3% (min. \$ 150)
from \$ 10,000 to \$ 50,000	2%
from \$ 50,000 to \$ 200,000	1.5%
from \$ 200,000 to \$ 600,000	1%
from \$ 600,000 to \$ 1,500,000	0.5%
From \$ 1,500,000 to \$ 3,000,000	0.2%
from \$ 3,000,000 to \$ 10,000,000	0.1%
over \$ 10,000,000	0.05%

(*) See paras 2, 3(b), 3(e), 3 g).

b) Arbitrator's fees

Sum in dispute	Fees (**)	
	Minimum	Maximum
Under \$ 10,000 (US)	\$ 600	10%
from \$ 10,000 to \$ 50,000	1.5% (min. 600 \$)	6%
from \$ 50,000 to \$ 200,000	0.8%	3%
from \$ 200,000 to \$ 600,000	0.5%	2%
from \$ 600,000 to \$ 1,500,000	0.3%	1.5%
From \$ 1,500,000 to \$ 3,000,000	0.2%	0.6%
from \$ 3,000,000 to \$ 10,000,000	0.1%	0.3%
over \$ 10,000,000	0.1%	0.15%

(**) See paras 3(c), 3(d).