

1975 ICC RULES OF ARBITRATION

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
Action taken by 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 failing settlement

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.

Arbitration

Article 1 Court of Arbitration

The Court of Arbitration of the International Chamber of Commerce is the international 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.

In principle, the Court meets once a month. It draws up its own internal regulations.

The Chairman of the 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.

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.

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

Article 2 Choice of arbitrators

The 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.

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.

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.

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.

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 15 days within which to nominate an arbitrator.

Where the Court is to appoint a sole arbitrator or the chairman of an arbitral tribunal, it shall choose a National Committee of the International Chamber of Commerce from which it shall request a proposal. The sole arbitrator or the chairman of an 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, the sole arbitrator or the chairman of the arbitral tribunal may be chosen from a country of which any one of the parties is a national.

Where the Court appoints an arbitrator on behalf of a party which has failed so to do, it shall request a proposal from the National Committee of the country of which that party is a national. If the country of which such party is a national has no National Committee, the Court is at liberty to choose any person whom it regards as suitable.

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

If an arbitrator dies or is prevented from carrying out his functions or has to resign consequent upon a challenge or for any other reason, or if the Court, after having considered the arbitrator's observations, decides that the arbitrator is not fulfilling his

functions in accordance with the Rules or within the prescribed time limits, he shall be replaced. In all such cases the procedure indicated in the preceding paragraphs 3, 4 and 6 shall be followed.

Article 3 Request for arbitration

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 Court, 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,

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,

all relevant particulars concerning the number of arbitrators and their choice in accordance with the provisions of Article 2 above.

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

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 Court, which shall proceed with the arbitration in accordance with these Rules.

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

Article 5 Counterclaim

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

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

Article 6 Pleadings and written statements, notifications or communications

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.

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.

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.

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

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.

If one of the parties refuses or fails to take part in the arbitration, the arbitration shall proceed notwithstanding such refusal or failure.

Should one of the parties raise one or more pleas concerning the existence or validity of the agreement to arbitrate, and should the Court 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.

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.

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 Court of Arbitration. The Secretariat shall inform the arbitrator thereof.

Article 9

Deposit to cover costs of arbitration

The Court shall fix the amount of the deposit 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 counterclaims are submitted, the Court may fix separate deposits for the principal claim and the counterclaim or counterclaims.

As a general rule, the deposits shall be paid in equal shares by the Claimant or Claimants and the Defendant or Defendants. However, any one party shall be free to pay the whole deposit in respect of the claim or the counterclaim should the other party fail to pay a share.

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 deposit to the International Chamber of Commerce.

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 deposit 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 deposit 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 the arbitration.

Article 12

Place of arbitration

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

Article 13
Terms of reference

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 Court of Arbitration or the arbitrator.

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. Upon the arbitrator's request, the Court may, in exceptional circumstances, extend this time limit.

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.

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.

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

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

Article 14
The arbitral proceedings

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.

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

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

Article 15

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 Court.

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.

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.

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.

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 counterclaims 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 Court.

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 awards

The arbitrator shall make his award within six months of the date of signing the document mentioned in Article 13.

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

Where no such extension is granted and, if appropriate, after application of the provisions of Article 2(8), the Court shall determine the manner in which the dispute is to be resolved.

Article 19

Awards 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

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.

The costs of the arbitration shall include the arbitrator's fees and the administrative costs fixed by the Court 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.

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 Court. 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

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.

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

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

The arbitral award shall be final.

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 Court.

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 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.

Statutes of the Court

Article 1
Appointment of members

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

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 and powers

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 Commission 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 and 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.

Internal Rules of the Court of Arbitration

In force from 1 March 1980

Role of the Court of Arbitration

The Court of Arbitration may accept jurisdiction over business disputes not of an international business nature, if it has jurisdiction by reason of an arbitration agreement.

Confidential character of the work of the Court of Arbitration

The work of the Court of Arbitration is of a confidential character which must be respected by everyone who participates in that work in whatever capacity.

The sessions of the Court of Arbitration, whether plenary or those of a Committee of the Court, are open only to its members and to the Secretariat.

However, in exceptional circumstances and, if need be, after obtaining the opinion of members of the Court, the Chairman of the Court of Arbitration may invite honorary members of the Court and authorize observers to attend. Such persons must respect the confidential character of the work of the Court.

The documents submitted to the Court of Arbitration or drawn up by it in the course of the proceedings it conducts are communicated only to the members of the Court and to the Secretariat.

The Chairman or the Secretary General of the Court may nevertheless authorize researchers undertaking work of a scientific nature on international trade law to acquaint themselves with certain documents of general interest, with the exception of memoranda, notes, statements and documents remitted by the parties within the framework of arbitration proceedings.

Such authorization shall not be given unless the beneficiary has undertaken to respect the confidential character of the documents made available and to refrain from any publication in their respect without having previously submitted the text for approval to the Secretary General of the Court.

Participation of members of the Court of Arbitration in ICC arbitration

Owing to the special responsibilities laid upon them by the ICC Rules of Arbitration, the Chairman, the Vice-Chairmen and the Secretariat of the Court of Arbitration may not personally act as arbitrators or as counsels in cases submitted to ICC arbitration.

The members of the Court of Arbitration may not be directly appointed as co-arbitrators, sole arbitrator or Chairman of an arbitral tribunal by the Court of Arbitration. They may however be proposed for such duties by one or more of the parties, subject to confirmation by the Court.

When the Chairman, a Vice-Chairman or a member of the Court of Arbitration is involved, in any capacity whatsoever, in proceedings pending before the Court, he must inform the Secretary General of the Court as soon as he becomes aware of such involvement.

He must refrain from participating in the discussions or in the decisions of the Court concerning the proceedings and he must be absent from the Court room whenever the matter is considered.

He will not receive documentation or information submitted to the Court of Arbitration during the proceedings.

Relations between the members of the Court and the ICC National Committees

By virtue of their capacity, the members of the Court are independent of the ICC National Committees which proposed them for nomination by the ICC Council.

Furthermore, they must regard as confidential, vis-à-vis the said National Committees, any information concerning individual disputes with which they have become acquainted in their capacity as members of the Court except when they have been requested, by the Chairman of the Court or by its Secretary General, to communicate that information as representative of their respective National Committees.

Committee of the Court

In accordance with the provisions of Article 1(4) of the ICC Rules of Arbitration, the Court of Arbitration hereby establishes a Committee of the Court composed as follows, and with the following powers.

The Committee consists of a Chairman and two members. The Chairman of the Court of Arbitration acts as the Chairman of the Committee. He may nevertheless designate a Vice-Chairman of the Court to replace him during a session of the Committee.

The other two members of the Committee are appointed by the Court of Arbitration from among the Vice-Chairmen or the other members of the Court. At each meeting of the

Court it appoints the members who are to attend the meetings of the Committee to be held before the next plenary session of the Court.

The Committee meets when convened by its Chairman, in principle twice a month.

a) The Committee is empowered to take any decision within the jurisdiction of the Court of Arbitration, with the exception of decisions concerning challenges of arbitrators (Art. 2 (7) of the ICC Rules of Arbitration), allegations that an arbitrator is not fulfilling his functions (Art. 2 (8) of the ICC Rules of Arbitration) and approval of draft awards other than awards made with the consent of the parties.

b) The decisions of the Committee are taken unanimously.

c) When the Committee cannot reach a decision or deems it preferable to abstain, it transfers the case to the next plenary session of the Court of Arbitration, making any suggestions it deems appropriate.

d) The Committee's proceedings are brought to the notice of the Court of Arbitration at its next plenary session.

Absence of an arbitration agreement

Where there is no "prima facie" arbitration agreement between the parties or where there is an agreement but it does not specify the ICC, the Secretariat draws the attention of the claimant to the provisions laid down in Article 7 of the Rules of Arbitration. The claimant is entitled to require the decision to be taken by the Court of Arbitration.

This decision is of an administrative nature. If the Court decides that the arbitration solicited by the claimant cannot proceed, the parties retain the right to ask the competent jurisdiction whether or not they are bound by an arbitration agreement in the light of the law applicable.

If the Court of Arbitration considers "prima facie" that the proceedings may take place, the arbitrator appointed has the duty to decide as to his own jurisdiction and, where such jurisdiction exists, as to the merits of the dispute.

Nomination and confirmation of arbitrators

When the Court of Arbitration is called upon to nominate or to confirm an arbitrator by virtue of the provisions of Article 2 of the ICC Rules of Arbitration, the reasons for its decision are confidential and are not communicated.

Independence of arbitrators

All arbitrators appointed by the Court of Arbitration, whether directly on the proposal of an ICC National Committee or on the proposal of one of the parties, must be and remain independent of the parties in question.

On their nomination or confirmation by the Court of Arbitration the arbitrators are requested to inform the Secretary General of the Court of any facts which, in their opinion, might be of such a nature as to bring their independence into question in the eyes of the parties.

Challenge of arbitrators

If an arbitrator is challenged by one of the parties (Art. 2 (7) of the ICC Rules of Arbitration), the Secretariat asks the latter to state his point of view as to the grounds for the challenge within a suitable period of time. Depending on the nature of the grounds, the Secretariat may also question the other party and, if need be, the other members of the arbitral tribunal.

The Court of Arbitration is then requested to consider and decide on the challenge in plenary session after hearing a report from one of its members.

The reasons for the decision taken by the Court are confidential and are not communicated.

Replacement of arbitrators

When the question of replacing an arbitrator on the ground that he is not fulfilling his functions arises (Art. 2 (8) of the ICC Rules of Arbitration), the Secretariat asks the arbitrator, the parties and, if need be, the other members of the arbitral tribunal to state their point of view within a suitable period of time.

The Court of Arbitration is then requested to take a decision in plenary session after hearing a report from one of its members.

The reasons for the decision taken by the Court are confidential and are not communicated.

Joinder of claims in arbitration proceedings

When a party presents a request for arbitration in connection with a legal relationship already submitted to arbitration proceedings by the same parties and pending before the Court of Arbitration, the Court may decide to include that claim in the existing proceedings, subject to the provisions of Article 16 of the ICC Rules of Arbitration.

Deposits to cover costs of arbitration

When the Court of Arbitration has set separate deposits for a specific case in accordance with Article 9.1 (para. 2) of the ICC Rules of Arbitration, the Secretariat requests each of the parties to pay the amount corresponding to its claims, without prejudice to the right of the parties to pay the said deposits in equal shares, if they deem it advisable.

When a request for a deposit has not been complied with, the Secretariat may set a time limit, which must not be less than 30 days, on the expiry of which the relevant claim, whether principal claim or counterclaim, shall be considered as withdrawn. This does not prevent the party in question from lodging a new claim at a later date.

Should one of the parties wish to object to this measure, he must make a request, within the aforementioned period, for the matter to be decided by the Court of Arbitration.

The time limit for making the award mentioned in Article 18(1) of the ICC Rules of Arbitration begins to run only when the terms of reference have become operative upon due payment of the deposit as specified in Article 9(4) of the Rules.

If one of the parties claims a right to a set-off with regard to either a principal claim or counterclaim, such set-off is taken into account in determining the deposit to cover the costs of arbitration, in the same way as a separate claim, insofar as it may require the arbitrators to consider additional matters.

Arbitral awards: form

When it scrutinizes draft arbitral awards in accordance with Article 21 of the ICC Rules of Arbitration, the Court of Arbitration pays particular attention to the respect of the formal requirements laid down by the law applicable to the proceedings and, where relevant, by the mandatory rules of the place of arbitration, notably with regard to the reasons for awards, their signature and the admissibility of dissenting opinions.

Arbitrators' fees

In setting the arbitrators' fees on the basis of the scale attached to the ICC Rules of Arbitration, the Court of Arbitration takes into consideration the time spent, the rapidity of the proceedings and the complexity of the dispute, so as to arrive at a figure within the limits specified or, when circumstances require, higher or lower than those limits (Art. 20(3) of the Rules of the Court of Arbitration).

Schedule of Conciliation and Arbitration Costs

In force from 1 March 1980

1. 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 scale of administrative expenses hereinafter set out.

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

2. Costs of arbitration

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

b) 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 expenses (fixed in accordance with the scale hereinafter set out).

c) 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. If exceptional circumstances so require, the Court may fix the administrative expenses at a lower figure than that which would result from application of the following scale.

d) 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.

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

f) 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).

3. Advance on administrative expenses

Each party to a dispute submitted to the conciliation or arbitration procedures of the ICC is required to make an advance payment of US\$ 500 on the administrative expenses. No application for will be entertained unless accompanied by this payment.

This payment is not recoverable and becomes the property of the ICC. It is deductible from the amount of the administrative expenses fixed in accordance with the schedule.

4. Nomination of arbitrators

A registration fee of US\$ 100 is payable to each party if the ICC is called upon to appoint an arbitrator or arbitrators outside the Rules of Arbitration of the ICC.

5. Scale of administrative expenses and fees

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

a) Administrative expenses

Sum in dispute	Administrative expenses (*)
Under 50,000 (in US dollars)	4.00% (min. \$1,000)
From 50,001 to 100,000	3.00%
From 100,001 to 500,000	1.50%
From 500,001 to 1,000,000	1.00%
From 1,000,001 to 2,000,000	0.50%
From 2,000,001 to 5,000,000	0.20%
From 5,000,001 to 10,000,000	0.10%
From 10,000,001 to 50,000,000	0.05%
From 50,000,001 to 1000,000,000	0.02%
Over 100,000,000	0.01%

(*) See paras 1, 2(b), 2(e), 3

b) Arbitrator's fees

Sum in dispute	Fees (**)	
	Minimum	Maximum
Under 50,000 (in US dollars)		\$ 1,000
From 50,001 to 100,000	1.50%	6.00%
From 100,001 to 500,000	0.80%	3.00%
From 500,001 to 1,000,000	0.50%	2.00%
From 1,000,001 to 2,000,000	0.30%	1.50%
From 2,000,001 to 5,000,000	0.20%	0.60%
From 5,000,001 to 10,000,000	0.10%	0.30%
From 10,000,001 to 50,000,000	0.05%	0.15%
From 50,000,001 to 100,000,000	0.02%	0.10%
Over 100,000,000	0.01%	0.05%

(**) See paras 2(c), 2(d)

Schedule of Conciliation and Arbitration Costs

In force from 1 July 1986

1. 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 scale of administrative expenses hereinafter set out.

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

2. Costs of arbitration

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

b) 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 expenses (fixed in accordance with the scale hereinafter set out).

c) 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. If exceptional circumstances so require, the Court may fix the administrative expenses at a lower figure than that which would result from application of the following scale.

d) 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.

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

f) 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).

3. Advance on administrative expenses

Each party to a dispute submitted to the conciliation procedure of the ICC is required to make an advance payment of US\$ 500 on the administrative expenses.

Each request to open an arbitration procedure of the ICC must be accompanied by an advance payment of US\$ 2,000. No application for conciliation or arbitration will be entertained unless accompanied by the appropriate payment.

This payment is not recoverable and becomes the property of the ICC. It is deductible from the amount of the administrative expenses fixed in accordance with the schedule.

4. Nomination of arbitrators

A registration fee of US\$ 100 is payable to each party if the ICC is called upon to appoint an arbitrator or arbitrators outside the Rules of Arbitration of the ICC.

5. Scale of administrative expenses and fees

To calculate the administrative expenses and the fees, the percentages applied to each successive slice of the sum in dispute are to be added together, except that where the sum in dispute is over US\$ 50 million, a flat amount of US\$ 50,500 shall constitute the entirety of the administrative expenses.

a) Administrative expenses

Sum in dispute	Administrative expenses (*)
Up to 50,000 (in US dollars)	\$ 2,000
From 50,001 to 100,000	3%
From 100,001 to 500,000	1.5%
From 500,001 to 1,000,000	1%
From 1,000,001 to 2,000,000	0.5%
From 2,000,001 to 5,000,000	0.2%
From 5,000,001 to 10,000,000	0.1%
From 10,000,001 to 50,000,000	0.05%
Over 50,000,000	\$ 50,500

(*) See paras 1, 2(b), 2(e), 3

b) Arbitrator's fees

Sum in dispute	Fees (**)	
	Minimum	Maximum
Up to 50,000 (in US dollars)	\$ 1,000	10%
From 50,001 to 100,000	1.5%	6%
From 100,001 to 500,000	0.8%	3%
From 500,001 to 1,000,000	0.5%	2%
From 1,000,001 to 2,000,000	0.3%	1.5%
From 2,000,001 to 5,000,000	0.2%	0.6%
From 5,000,001 to 10,000,000	0.1%	0.3%
From 10,000,001 to 50,000,000	0.05%	0.15%
From 50,000,001 to 100,000,000	0.02%	0.1%
Over 100,000,000	0.01%	0.05%

(**) See paras 2(c), 2(d)