

1986

Rules for the ICC Court of Arbitration

Recommended Citation

Rules for the ICC Court of Arbitration, 4 INT'L TAX & BUS. LAW. 422 (1986).
Available at: <http://scholarship.law.berkeley.edu/bjil/vol4/iss2/17>

This Article is brought to you for free and open access by the Law Journals and Related Materials at Berkeley Law Scholarship Repository. It has been accepted for inclusion in Berkeley Journal of International Law by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.

Rules For The ICC Court Of Arbitration†

STANDARD ICC ARBITRATION CLAUSE

The ICC recommends all parties wishing to make reference to ICC arbitration in their foreign contracts to use the following standard clause:

All disputes arising in connection with the present contract shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.¹

Attention is called to the fact that the laws of certain countries required that parties to contracts expressly accept arbitration clauses, sometimes in a precise and particular manner.

The parties may—if they so desire—stipulate, in the arbitration clause itself, the national law applicable to the contract. The parties' free choice of the place of arbitration is not limited by the ICC.

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.

† Reprinted with permission of the International Chamber of Commerce—Court of Arbitration.

1. French, German, Spanish, and Arabic versions of this clause are available—Ed.

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 dispute 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.

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

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

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—Counter-claim

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

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

Article 6—Pleadings and written statements, notifications or communications

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 in-existent provided that he upholds the validity of the agreement to arbitrate. He shall continue to have jurisdiction, even though the contract itself may be in-existent 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 counter-claims are submitted, the Court may fix separate deposits for the principal claim and the counter-claim or counter-claims.

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 counter-claim 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 counter-claims before the arbitrator on condition that these remain within the limits fixed by the Terms of Reference provided for in Article 13 or that they are specified in a rider to that document, signed by the parties and communicated to the 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 or 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.