



International Chamber of Commerce

*The world business organization*

**International Court of Arbitration • Cour internationale d'arbitrage**

## **Key aspects of ICC arbitration and guidance regarding the impact of the 2012 Rules**

### **ICC International Court of Arbitration ("Court")**

The Court is an administrative body which ensures that ICC arbitrations are conducted in accordance with the Rules. It does not itself resolve disputes (Article 1(2)).

The Court is the only body authorized to administer arbitrations under the Rules, including the scrutiny and approval of all awards rendered in accordance with the Rules (Article 1(2)).

The Court is assisted day-to-day by its Secretariat (Article 1(5)) which, under the direction of the Secretary General, acts as a neutral interface between the parties, their representatives and the Court. Should any questions arise relating to the Rules or ICC procedures, please contact the team in charge of your arbitration at your convenience.

Disputes are resolved by arbitral tribunals, the members of which will either be confirmed, in the case of arbitrators nominated by the parties or the co-arbitrators (Articles 13(1) and 13(2)) or appointed by the Court (Articles 13(3) and 13(4)).

The Court's administration of arbitrations includes closely monitoring the progress of the proceedings.

### **Where Requests for Arbitration can be Submitted**

ICC arbitration is commenced upon the Secretariat's receipt of a Request for Arbitration at any of its offices (Article 4(1) and Article 5(3) of Appendix II), including its Hong Kong office, which opened in 2008. ([How to submit a Request for Arbitration and list of offices](#))

### **Pleas on Jurisdiction**

In order to expedite proceedings where any party:

- (i) does not file an answer,
- (ii) raises one or more pleas concerning the existence, validity or scope of the arbitration agreement, or
- (iii) questions whether all of the claims may be determined together in a single arbitration,

the arbitration will proceed and the arbitral tribunal shall decide such issue, unless the Secretary General refers the matter to the Court for a decision (Articles 6(3) and 6(4)).

If the Secretary General refers the case to the Court, it will then decide whether and to what extent the arbitration shall proceed. An arbitration will proceed if and to the extent that the Court is *prima facie* satisfied that an arbitration agreement under the Rules may exist (Article 6(4)).

**ICC International Court of Arbitration • Cour internationale d'arbitrage de la CCI**

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## **Joinder of Additional Parties, Claims between Multiple Parties and Multiple Contracts**

For the first time, the Rules expressly provide for a transparent procedure in relation to (i) requests to join additional parties to an arbitration (Article 7); (ii) claims made in an arbitrations involving multiple parties (Article 8); and (iii) claims arising out of more than one contract in a single arbitration (Article 9).

Requests for joinder of a party are similar to Requests for Arbitration (Article 7). When a request for joinder is submitted, the additional party becomes a party to the arbitration and may raise pleas pursuant to Article 6(3) of the Rules. It is important to be aware of the timing for such joinder, as no additional party may be joined after the confirmation or appointment of an arbitrator, unless the parties and the additional party agree otherwise. Thus, a party to an arbitration wishing to join an additional party must file its Request for Joinder before any arbitrator is confirmed or appointed under the Rules.

## **Consolidation of Arbitrations**

The Court may consolidate two or more pending arbitrations at the request of a party, provided that any of the three situations set out in Article 10 of the Rules exist. Factors that the Court may take into account include whether any arbitrator has been confirmed or appointed in any of the arbitrations and if so, whether the same persons have been confirmed or appointed in the arbitrations.

## **Arbitral Tribunal**

The Court requires all potential arbitrators to complete and sign a Statement of Acceptance, Availability, Impartiality and Independence (Article 11(2) of the Rules). Recent additions to this Statement concern arbitrators' availability and impartiality.

Since 2010, potential arbitrators must indicate the number of arbitrations in which they currently act, specifying whether they act as president, sole arbitrator, co-arbitrator or as parties' counsel, as well as their availability over the next 12 to 18 months. This is intended to encourage prospective arbitrators to focus on their duty to conduct arbitrations in an expeditious and costs-effective manner (Article 22).

Furthermore, arbitrators are obliged to act at all times in an impartial and independent manner pursuant to Article 11 of the Rules.

## **Case Management Techniques**

In 2007, the ICC Commission on Arbitration produced a Report on the Techniques for Controlling Time and Costs in Arbitration ("**Report**"), which has been widely acknowledged as a compilation of useful suggestions to effectively control time and costs in a manner proportionate with the value and/or complexity of an arbitration.

Articles 22 and 24 of the Rules and Appendix V thereto include provisions to encourage the effective management of the arbitration. The parties must comply with directions issued by arbitral tribunals.



## **Costs of Arbitration**

Arbitral tribunals may make decisions as to costs, except for those to be fixed by the Court, and order payment thereof at any time during the proceedings (Article 37(3)).

In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in expeditious and cost effective manner (Article 37(5)).

Should the parties withdraw their claims or the arbitration terminates before the rendering of a final award, the Court shall fix the fees and expenses of the arbitrators and the ICC administrative expenses. If the parties have not agreed upon the allocation of the costs of the arbitration or other relevant issues with respect to costs, such matters shall be decided by the arbitral tribunal (Article 37(6)). In case the arbitral tribunal is not yet constituted at the time of the withdrawal, any party may request the Court to proceed with the constitution of the arbitral tribunal so that it may make decisions as to costs.

## **Closing of the Proceedings and Scrutiny of Awards**

An arbitral tribunal should declare the proceedings closed as soon as possible after the last hearing or the last authorized submission filed in relation to matters to be decided in an award, whether final or otherwise (Article 27). Upon doing so, the arbitral tribunal must inform the Secretariat and the parties of the date by which it expects to submit the draft award for the Court's scrutiny (Article 33).

The scrutiny process carried out by the Court with the assistance of its Secretariat is a unique and thorough procedure designed to ensure that all awards are of the best possible quality and are more likely to be more enforced by state courts. All draft awards undergo a three-step review process, starting with the counsel of the team in charge of the arbitration that has followed the proceedings since the inception of the arbitration, followed by review by the Secretary General, the Deputy Secretary General, the General Counsel, or the Managing Counsel, before being submitted for the Court's scrutiny. For certain arbitrations, generally those involving state parties or dissenting opinions, a Court member will draft a report with recommendations on the draft award.

## **Representation**

If the parties foresee being represented by counsel, they must inform the Secretariat of the name and address of such counsel.