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Procedimiento

A diferencia de otras instituciones, monitoreamos todo el proceso arbitral, desde la solicitud inicial de arbitraje hasta el escrutinio del borrador final de laudo. Si es necesario hacer cumplir un Premio ICC, también podemos ayudar a las partes a cumplir con las formalidades requeridas.

La versión actual de las Reglas de arbitraje de la ICC entró en vigor el 1 de enero de 2012 y se revisó el 1 de marzo de 2017.

Solicitud de arbitraje, respuesta a la solicitud, árbitro de emergencia, anticipo provisional y reunión de partes adicionales

La fecha en la que la Secretaría de la Corte Internacional de Arbitraje de la CPI recibe la "Solicitud de arbitraje", incluida la Sede Mundial de la CPI en París o nuestras oficinas regionales en Hong Kong o Nueva York (SICANA Inc.), se considerará el comienzo de la Fecha del arbitraje.

- **Artículo 4: Solicitud de arbitraje.**

La " **Solicitud de arbitraje (<https://iccwbo.org/dispute-resolution-services/arbitration/filing-a-request/>)** " se registra el día que llega a una de las oficinas de la Secretaría de la Corte Internacional de Arbitraje®. Las "solicitudes" pueden presentarse en la sede de ICC en París o en nuestras oficinas regionales en Hong Kong o Nueva York (SICANA Inc).

El Secretario General acusa recibo de la "Solicitud" e indica al Demandante los nombres y detalles de contacto del abogado y otros miembros del equipo dedicado a cargo del archivo.

• **Artículo 5: La Respuesta**

Tan pronto como se complete la "Solicitud de arbitraje" y se paguen los honorarios de presentación, el abogado al que se le ha asignado el caso transmitirá la "Solicitud" a la otra parte o partes. Es la parte o partes las que deben enviar la "Respuesta" (o Respuestas) a la "Solicitud", junto con cualquier contrademanda, dentro de los 30 días.

• **Motivos de Jurisdicción**

El arbitraje continuará y el Tribunal Arbitral decidirá sobre esta cuestión, a menos que el Secretario General remita la cuestión a la Corte para una decisión (Artículos 6 (3) y 6 (4)) donde cualquiera de las partes:

- no presenta una respuesta;
- plantea uno o más motivos relativos a la existencia, validez o alcance del acuerdo de arbitraje; o
- cuestiona si todas las reclamaciones se pueden determinar juntas en un solo arbitraje.

Si el Secretario General remite el caso a la Corte, decidirá si el arbitraje se llevará a cabo y en qué medida. Se procederá a un arbitraje en la medida en que, en la medida en que el Tribunal esté a primera vista, compruebe que puede existir un acuerdo de arbitraje conforme a las Normas (artículo 6 (4)).

• **Artículo 30: Disposiciones de procedimiento acelerado**

Al aceptar el arbitraje conforme a las Reglas, las partes acuerdan que las Disposiciones de Procedimiento Acelerado tendrán prioridad sobre cualquier término contrario al acuerdo de arbitraje.

Las Disposiciones de Procedimiento Acelerado se aplican si el monto en disputa no excede los US \$ 2,000,000 o si las partes así lo acuerdan.

Las Disposiciones de Procedimiento Acelerado no se aplican si:

- el acuerdo de arbitraje correspondiente se celebró antes del 1 de marzo de 2017;
- si las partes han optado por excluirse de las Disposiciones de Procedimiento Acelerado; o
- si el Tribunal, a solicitud de una parte antes de la constitución del Tribunal Arbitral o de su propia moción, determina que no es apropiado en la circunstancia de aplicar las Disposiciones de Procedimiento Acelerado.

The Court may at any time during the arbitral proceedings, on its own motion or upon the request of a party, and after consultation with the Arbitral Tribunal and the parties, decide that the Expedited Procedure Provisions shall not longer apply to the case.

- **Article 29: Emergency Arbitrator Provisions**

A party that needs urgent interim or conservatory measures and cannot await the constitution of an Arbitral Tribunal may apply for emergency relief in accordance with the Emergency Arbitrator Provisions. The application can be submitted at the same time, before or after the “Request for Arbitration.” However, no emergency arbitrator shall be appointed after the file has been transmitted to the Arbitral Tribunal.

The **Emergency Arbitrator (<https://iccwbo.org/dispute-resolution-services/arbitration/emergency-arbitrator/>)** Provisions do not apply if:

- the relevant arbitration agreement was concluded before 1 January 2012;
- the parties have opted out of the Emergency Arbitrator Provisions; or
- the parties have agreed to another pre-arbitral procedure that provides for the granting of conservatory, interim or similar measures.

Furthermore, the Emergency Arbitrator Provisions apply only to parties that are either signatories of the arbitration agreement.

- **Provisional advance**

After receipt of the “Request,” the Secretary General normally requests the Claimant to pay a provisional advance intended to cover the costs of arbitration until the “Terms of Reference” have been drawn up in ordinary cases or until the Case Management Conference when Expedited Procedure Provisions apply.

The Claimant’s payment is then credited towards its share of the advance on costs. Typically, the Court and Secretariat will not take any steps in the arbitration, such as towards setting up the Arbitral Tribunal, until the provisional advance has been paid.

Learn more about **Costs and payments (<https://iccwbo.org/dispute-resolution-services/arbitration/costs-and-payments/>)**.

- **Article 7, 8, 9: Request for Joinder of additional party, Claims between Multiple Parties and Multiple Contracts**

The Rules allow any party to an arbitration to join any other party, prior to the appointment of confirmation of any arbitrator. 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.

Setting up the Arbitral Tribunal and fixing the advance on costs

Following receipt of the “Answer(s)” to the “Request” (or the expiration of the time-limit for its receipt), and the Answer(s) filed by any additional parties joined under Article 7, the Secretary General and/or the Court may need to take certain decisions to set up the arbitral tribunal.

For example, the Rules require that all arbitrators nominated by parties be confirmed by the Court or Secretary General (Articles 13 (1) and 13 (2)).

Furthermore, the Court may be required to appoint a tribunal president, sole arbitrator or a co-arbitrator on behalf of a party that has failed to nominate one (Articles 13 (3) and 13 (4)). The Court may also need to fix the place of arbitration if the parties have not agreed on a location (Article 18).

In some cases, the Secretary General may decide, under Article 6 (3) of the Rules, to refer a *prima facie* jurisdictional question to the Court. This is necessary to consider whether an arbitration agreement under the Rules may exist and between which parties (Article 6 (4)).

- **Advance on costs**

Usually, before transmitting the case file to the Arbitral Tribunal, the Court fixes the advance on costs in an amount likely to cover the fees and expenses of the arbitrators and ICC administrative expenses. The Secretariat transmits the file to the arbitral tribunal—provided the advance on costs requested at this stage (i.e., the provisional advance mentioned above) has been paid. Generally, the Secretariat will invite the parties to pay the full advance on costs when it transmits the case file to the Arbitral Tribunal.

Learn more about **Costs and payments** (<https://iccwbo.org/dispute-resolution-services/arbitration/costs-and-payments/>).

- **General role of the Secretariat and Court**

During this early phase of the arbitration, the Secretariat closely monitors the case. It is always available to assist the parties with a range of preliminary issues that may come up. Sometimes the resolution of such issues will require input in the form of a decision

from the Court. Other times the Secretariat is able to deal with the issue itself.

While maintaining strict neutrality, the Secretariat can always be contacted for any questions concerning the progress of a case. For example, parties may inquire about the status of setting up the Arbitral Tribunal.

Learn more about **ICC International Court of Arbitration** (<https://iccwbo.org/dispute-resolution-services/arbitration/icc-international-court-arbitration/>).

Transmission of File, Terms of Reference, Case Management Conference

The Arbitral Tribunal is responsible for running proceedings and deciding on the merits of the dispute.

- **Transmitting the file to the Arbitral Tribunal**

Once the Arbitral Tribunal has been constituted and the advance on costs requested at this stage has been paid, the Secretariat transmits the file to each member of the Arbitral Tribunal (Article 16). From that time on, general management of the case shifts from the Secretariat to the Arbitral Tribunal. Accordingly, the parties should correspond directly with the Arbitral Tribunal, while sending copies of their correspondence and submissions to the Secretariat and other parties.

Once the file has been transmitted to it, the Arbitral Tribunal is responsible for running the proceeding and deciding on the merits of a dispute. However, the Court and Secretariat maintain a role. They monitor the arbitral process from start to finish, making sure that cases run smoothly and correctly. They review the progress of each case to ensure it advances at the right speed and in line with the Rules.

- **Terms of Reference**

In cases where Expedited Procedure Provisions do not apply, as soon as it has received the file from the Secretariat, the Arbitral Tribunal must draw up a document defining its “Terms of Reference” (Article 23). This is done on the basis of documents or in the presence of the parties and in the light of their most recent submissions.

As required in the Rules, the Terms of Reference include:

- the full names and description of the parties and arbitrators;
- the place of arbitration;
- a summary of the parties’ respective claims and relief sought; and
- particulars concerning the applicable procedural rules, etc.

They may also contain a list of issues to be determined.

The Terms of Reference must be completed within two months of the file being transmitted to the Arbitral Tribunal. If one of the parties refuses to take part in drawing up or signing the “Terms of Reference,” the latter are submitted to the Court for approval.

- **Case Management Conference (Article 24)**

Also at this stage, the Arbitral Tribunal is required to convene a Case Management Conference and establish a provisional timetable to be followed in the conduct of the arbitration. The Case Management Conference is designed to discuss and put in place the best procedure for the arbitration—particularly in the interests of ensuring time and costs efficiency. Further case management conferences can be held throughout the case as necessary.

Arbitral Proceedings

The Arbitral Tribunal and the parties shall make every effort to conduct the arbitration in an expeditious and cost-effective manner

- **Article 20: Language of the proceedings**

If not agreed by the parties, the Arbitral Tribunal determines the language or languages of the arbitration.

- **Article 28: Conservatory measures**

The Rules provide that the Arbitral Tribunal can order interim or conservatory measures. This does not affect the parties’ rights, in appropriate circumstances, to apply to any competent judicial authority for such measures.

- **Article 21: Law applicable to the merits**

In the absence of an agreement between the parties as to the applicable rules of law, the Arbitral Tribunal applies the rules of law that it determines to be appropriate. In all cases, the Arbitral Tribunal takes account of the provisions of the contract and the relevant trade usages.

If the parties have agreed to give it such powers, the Arbitral Tribunal may act as *amiable compositeur* or decide *ex aequo et bono*.

- **Articles 19, 22, 25, 26: Rules of procedure**

The ICC Arbitration procedure is very flexible. The parties and arbitrators are free to fix the rules of procedure, subject to any mandatory provisions that may be applicable. The parties may determine, for instance, whether and to what extent document production requests or cross-examination will be allowed. The Arbitral Tribunal proceeds within as short a time as possible to establish the facts of the case by all appropriate means. The parties have the right to be heard. The tribunal may also decide to hear witnesses and experts as well as may summon any party to provide additional evidence.

- **Article 27: Closing of the proceedings**

As soon as the last hearing concerning matters to be decided in an award or the filing of the last authorised submissions has occurred, the Arbitral Tribunal will declare the proceedings closed with respect to the matters to be decided in the award. The Arbitral Tribunal will also inform the Secretariat and the parties of the date by which it expects to submit its draft award to the Court.

- **Article 31: Time limit for the final award**

The Court will, at the outset of a case, fix a time limit for the final award based upon the Arbitral Tribunal's procedural timetable. If no such time limit specific to the procedural timetable is fixed, the time limit for the final award will initially default to six months from the date of approval or last signature of the Terms of Reference. The Court can extend the time limit for the final award.

Awards and Award Scrutiny

Scrutiny is a distinctive feature of ICC Arbitration. No arbitral award is issued without the Court's approval.

- **Submission of the draft Award and scrutiny**

After the closing of the proceedings, the Arbitral Tribunal will draw up a draft "Award" that is submitted to the Court for scrutiny. The Court will scrutinise all awards. In doing so, it may lay down modifications as to form and, without affecting the Arbitral Tribunal's liberty of decision, draw its attention to points of substance. In scrutinising draft awards, the Court considers, to the extent practicable, the requirements of mandatory law at the place of arbitration.

- **Notification of the Award**

Una vez aprobado por el Tribunal, el "Premio" es firmado por los árbitros. Se considera hecho en el lugar del arbitraje en la fecha indicada. Luego es notificado a las partes por la Secretaría.

