

Indo-French Mediation and Arbitration Centre

RULES of ARBITRATION

ARTICLE 1: IMPLEMENTATION OF ARBITRATION

The arbitration shall be implemented either further to:

1/ An arbitration agreement

This is the written agreement whereby the parties agree to refer their dispute to arbitration.

The arbitration agreement may take the form either of an arbitration clause in a contract or an independent contract.

The existence of an arbitration agreement, that refers to the rules of arbitration of the "*Indo-French Mediation and Arbitration Centre*", implies the unreserved acceptance of the said rules.

When the parties have already agreed to submit to arbitration under the Indo-French arbitration agreement they shall be bound to submit to arbitration. Should any party refuses or fail to submit, the arbitral bench shall order that the arbitration be proceeded with, notwithstanding such refusal or absence.

2/ A written application to refer a dispute to arbitration

The parties may jointly refer the said application for arbitration either to the *F.A.C.T. or C.I.M.A.*

Failing a joint application, the party that wishes to organise an arbitration shall contact the *F.A.C.T. or the C.I.M.A.*

The institution that receives the application first then becomes the "*Referral Institution*"

The "*referral institution*" shall immediately inform the other institution.

If there is no joint application, the referral institution shall immediately inform the other party, by requesting the latter to accept the principle of arbitration.

The lack of response by other party to the said request for acceptance within one month at most shall be deemed to constitute a refusal of the arbitration.

In any event, all the applications submitted to the "*Referral Institution*" must specify the precise identity and contact details of the parties involved, the summary purpose of the dispute (Statement of Claim and a brief summary of the dispute), the amount of interest at stake and the wish to have the dispute referred to a sole arbitrator or to three arbitrators.

If there is no arbitration agreement that refers to the rules of arbitration of the "*Indo French Mediation and Arbitration Centre*", the rules of the Center shall be referred to the parties who shall return them within fifteen days from their receipt, with their signatures to formalise their acceptance.

The official referral of the application for arbitration shall be recorded on a written document that shall be sent to the parties by the quickest means.

Said correspondence shall include:

- The rules of arbitration
- The Panel of arbitrators

The date of commencement of the arbitration shall be the date on which the request for arbitration was received by the "*Referral Institution*".

All said documents ("official document of implementation of the arbitration", "rules of arbitration", "Panel of arbitrators", "Details of fees to be deposited" and "Statement of Claim"), which shall mention the parties' individual identities, must be expressly authenticated by the signature of the officer of the "*Referral Institution*" handling the case or the person he has delegated this authority to.

ARTICLE 2: APPOINTMENT AND REPLACEMENT OF THE ARBITRATOR(S)

The parties may agree to refer their dispute to a sole arbitrator or to a bench of arbitrators comprised of three arbitrators.

1/ Appointment procedure

Sole Arbitrator

In arbitration proceedings with one arbitrator, the parties shall endeavour to reach agreement on the name of a sole arbitrator. They may, however, jointly provide unto three names in the order of preference, to facilitate appointment of the next preferred arbitrator in the event of a refusal by the one nominated

Where the parties are unable to reach an agreement, the "*Referral Institution*" shall appoint the Sole arbitrator from the Panel of Arbitrators.

The "*referral institution*" is responsible for informing the arbitrator thus chosen and for obtaining his consent to holding the said office as quickly as possible. The parties shall be informed of the results of the said formality and its consequences.

The parties may at any time by mutual agreement choose an arbitrator not on the Panel but which the F.A.C.T. and C.I.M.A. have expressly approved.

Three Arbitrators

In arbitration proceedings with 3 arbitrators, each party shall appoint one arbitrator and the two arbitrators, so nominated by the parties shall endeavour to reach agreement on the name of the third arbitrator. If the parties incidentally nominate the same individual as arbitrator, they shall be immediately informed of this so that they may consider the possibility of organising a sole arbitrator procedure.

Where the two arbitrators are unable to reach an agreement on the name of the third arbitrator, the "*Referral Institution*" shall appoint the third arbitrator from the Panel of Arbitrators. The third arbitrator shall as far as possible belong to a third nationality.

The "*Referral Institution*" is responsible for informing the arbitrator(s) thus chosen and for obtaining his/their consent to holding the said office as quickly as possible. The parties shall be informed of the results of the said formality and its consequences.

The parties and the arbitrators designated by the parties, may at any time by mutual agreement choose an arbitrator not on the Panel but it must be an arbitrator that the F.A.C.T. and C.I.M.A. have expressly approved.

Arbitrator's integrity

The arbitrator must be impartial and independent of the parties.

The arbitrator must immediately and at all times inform each party and the "*referral institution*" of facts and circumstances that are liable to effect his impartiality and independence.

In accordance with the applicable public order rules, said facts and circumstances may be liable to cause him to withdraw from his assignment.

Death or resignation of arbitrator

In the event of the death or resignation of the arbitrator or his inability to fulfil his assignment, the proceedings shall be suspended until a new arbitrator has been appointed in the same conditions as for the appointment of the arbitrator that he replaces.

The Arbitral Bench so reconstituted shall proceed with the arbitration with liberty to act on the basis of the elements previously presented as and the existing evidence, if any, then taken in the arbitration or to commence proceedings de novo.

The persons who have attained the age of 75 years will automatically cease to be members on the panel of the Centre. In case of a member, who has been appointed as arbitrator before attainment of the age of 75 years, his panel membership will continue till the pronouncement of the award in the pending arbitration matters referred to him.

ARTICLE 3: DUTY OF CONFIDENTIALITY OF F.A.C.T. AND C.I.M.A

In general, F.A.C.T. and C.I.M.A. shall be bound by the utmost confidentiality and may not make the existence of an arbitration or even the attempt to organise an arbitration public. More specifically, said duty of confidentiality covers, including with regard to the arbitrators on the Panel, the process of appointment and prohibits, in particular, the disclosure of the content of the choice (refusal or preference) made by the parties.

ARTICLE 4: ASSISTANCE AND REPRESENTATION OF THE PARTIES

Each party may be assisted and represented at the arbitration proceedings by any one of its choice. In the event of dispute on this matter, the arbitrator or the bench of arbitrators may request that a written power of representation be presented to it.

ARTICLE 5: ORGANISATION OF THE ARBITRATION

After the sole arbitrator or Bench of Arbitrators has been appointed, each party shall provide the other party and the arbitrator (or Bench of arbitrators) with the names and addresses of the individuals authorised to commit it legally and shall specify any limits to the said mandate as well as the names and addresses of the individuals who will represent it during the arbitration.

Unless it is pre-existing in the contract between the parties, the parties shall set all rules relating to the organisation of the bench of arbitrators, in consultation with the arbitrator or the chairman of the bench of arbitrators.

Said information shall be recorded in a written document named “memorandum of arbitration” drawn up by the arbitrator or the chairman of the bench of arbitrators and signed by all parties and by the arbitrator(s).

The rules mentioned in said document concern, in particular:

- The venue where meetings are held
- The language(s) used
- The applicable law and procedure
- The timetable and methods of holding the proceedings
- The methods of disclosure of papers and documents
- The time limit for arbitration
- The conditions of notification of decisions and the award
- The fee of the arbitrator(s) shall be ascertained as per the schedule of fees drawn up by the Centre, as mentioned in Article 10 and any other provisions or procedures deemed to be necessary.

The parties may by mutual agreement specify to the arbitrator or the bench of arbitrators, the facts or law on which they wish to obtain a ruling.

Insofar as an agreement is not possible between the parties on such or such a clause of the “memorandum of arbitration”, the arbitrator or bench of arbitrators shall settle the points at issue by a final decision.

ARTICLE 6: PROTECTIVE AND PROVISIONAL MEASURES

At the request of either of the parties or as a matter of course, the arbitrator or bench of arbitrators may order any protective or provisional measure.

Said decision may be set out in a provisional award.

If the parties submit a request for a protective and provisional measure to a judicial authority, they must inform the arbitrator or bench of arbitrators thereof immediately and this circumstance may not be deemed to be incompatible with or a waiver of the arbitration proceedings.

ARTICLE 7: DECISION OF THE ARBITRATOR OR THE BENCH OF ARBITRATORS

Any decision or award made by the arbitrator or bench of arbitrators must be reasoned, dated and signed.

If the decision is made by a bench of arbitrators, it shall be taken by a majority vote and must be signed by the three arbitrators or, where applicable, mention one of the arbitrators' refusal to sign.

The arbitrator or Bench of arbitrators can at their discretion or on the request of one or more parties, order any investigation or consult an expert on any technical or legal question. The related expenses will be borne by the relevant party or parties.

The timetable and time frames provided for in the “memorandum of arbitration” shall be modified by final decision of the arbitrator or the bench of arbitrators to take account of the time needed to carry out the investigation or appraisal ordered.

The conditions in which the decision shall be taken are set in the “memorandum of arbitration”.

As a rule, the decision must be taken as quickly as possible in line with the nature of the dispute.

Except by joint and express request of the parties, all decisions shall be final, without appeal.

If the parties reach agreement during the arbitration proceedings, they may request the arbitrator or the bench of arbitrators, if he/it consents thereto, to ensure the said agreement reached is mentioned in his/ its decision.

The arbitrator or the bench of arbitrators may correct the material mistakes or failure to rule and interpret its decision.

Requests made for said purposes must be submitted within thirty days at most after the date of notice of the award.

By agreeing to submit the dispute to the arbitration proceedings, the parties undertake to immediately enforce the award in good faith.

ARTICLE 8: CONFIDENTIALITY OF THE ARBITRATION

The arbitration shall be strictly confidential.

The arbitrator(s), the parties and any individual involved in one way or another in the arbitration must, under their responsibility, strictly respect the said confidentiality.

ARTICLE 9: THE ARBITRATOR'S OR BENCH OF ARBITRATOR'S OBLIGATION TO PROVIDE INFORMATION

The arbitrator or the bench of arbitrators must inform the “*referral institution*” in writing of the progress of the proceedings, any difficulties encountered and the foreseeable date on which the award is to be made at least every three months as from the start of the arbitration proceedings.

ARTICLE 10: COSTS, EXPENSES AND FEES OF THE ARBITRATION

The “administrative costs” of the arbitration and the fees of the arbitrator(s) are set by reference to a scale drawn up by mutual agreement between *F.A.C.T.* and *C.I.M.A.*

A registration fee shall be paid along with the request for Arbitration. The registration fee will not be refunded and shall become the property of the “*referral institution*”.

No arbitration proceedings can be started or continued until the totality of advance payments of fees required have been deposited by the parties.

The “*referral institution*” determines, by applying the schedule of fees, the amount of advance payment to be made on the administrative fees and the honorary fees, travelling and stay expenses of arbitrators if any to be charged and also determines the conditions for payment of these advance payments.

If, in relation to the progress of the proceedings, it appears that the advance payment of fees is inadequate, the “*referral institution*” of its own initiative or on information from the arbitrator or the bench of arbitrators may determine the amount of additional advance payments and the methods of its collection.

In any event, if one of the parties does not deposit the amount of the sums claimed within fifteen days following a reminder of the initial request, the other party, duly informed by the “*referral institution*”, may stand in for the defaulting party for the said payment.

If the payment of all or part of the amount due is paid by the other party, the procedure can carry on, and such fact shall be taken into consideration by the arbitrator or the bench of arbitrators in the final apportioning of costs and expenses related to arbitration.

In the event the fees are not paid by the Claimant within thirty days as from the aforementioned date of information, the arbitration proceedings shall be deemed to have been abandoned and the "referral institution" shall immediately inform the parties, the arbitrator or the bench of arbitrators and the other institution that they have been closed in writing.

Unless agreed or decided otherwise by the arbitrator or the bench of arbitrators, if the parties gave it the power, all of the aforementioned "administrative costs", other costs and expenses and fees shall be shared equally by the parties.

All deposits towards costs and expenses shall be made with the "Referral Institution" and no payment shall be released to the arbitrators directly by the parties. The Arbitrator's fee shall be paid at the time of award i.e. after the conclusion of case proceedings.

The deposit made shall be taken into account by the Arbitral Bench in apportioning the cost while making the award. Any deposit made in excess shall be refunded to such of parties as the Bench may direct. The Tribunal shall have a lien for the arbitral award on any unpaid cost of the arbitration.

FEE SCHEDULE FOR ARBITRATION: 2008

Institution	Registration	Arbitrator fee	Administrative fee
CIMA and FACT (EUROS)	1000 Euros	300 Euros per hour (with a minimum of 3000 Euros) for each arbitrator	10% of arbitrator(s) fee

The parties and the arbitrator(s) can, after consultation with the "Referral Institution", agree to fix a different remuneration for the arbitrator(s).

The arbitrator's fee shall not cover the possible expenses of his travel, stay, etc .

Travelling, stay and other miscellaneous expenses for the arbitrator(s) shall be refunded on production of supporting documents.

Administrative Fee: 10% of the fees of the arbitrator (s), regardless of whether the fees of the arbitrator(s) is based on the above fee schedule or is based on any other method of agreed remuneration.

The amounts mentioned above are not inclusive of tax that may be levied.

ARTICLE 11 : DIFFICULTIES OF APPLYING the RULES

Any difficulty that could arise in the application of these rules of arbitration and which do not fall within the scope of the powers of the arbitrator or bench of arbitrators must be submitted by the parties or the most diligent party to the chairmen of the two institutes i.e. "*FICCI Arbitration and Conciliation Tribunal*" and "*Centre Interprofessionnel de Médiation et d'Arbitrage*" (or to a person(s) designated by the 2 chairmen), which undertakes to give a suitable reply thereto as quickly as possible.

ARTICLE 12 : INDEMNITY OF ARBITRATORS AND F.A.C.T. /C.I.M.A. SECRETARIAT

- (i) No party shall bring or prosecute any suit or proceedings whatever against the Bench, or any member thereof, for or in respect of any matter or thing purporting to be done under these rules nor any suit or proceeding in respect thereof (save for the enforcement of the award against the other party).
- (ii) The F.A.C.T., the C.I.M.A. and officers of the Tribunal shall not be liable for any act or omission in whatever capacity they may have acted in connection with or in relation to an arbitration under these Rules. Parties are themselves required to contest the proceedings regarding the validity of the arbitration agreement before the court.