

Rules of procedure

of the Civil and Mercantile Court of Arbitration

Approved by the Extraordinary General Meeting of 17 June 2010



C I M A
CORTE CIVIL Y MERCANTIL
DE ARBITRAJE

General provisions

Article 1

The Civil and Mercantile Court of Arbitration (hereinafter referred to as “the Court”) will administer disputes that have been referred to it for arbitration, whether national or international in scope, in accordance with the Spanish legislation in force at the time the request for arbitration is filed and with the provisions of the Rules in force on the aforementioned date.

Article 2

The Court shall determine whether the dispute is domestic or international, according to the legislation in force at the time the request for arbitration is filed.

Article 3

1. The parties shall be deemed to have submitted the dispute to the Court if they have entered into arbitration clause beforehand, or both parties have expressly given their consent, or one of the parties has submitted a request in writing or by means of telex, fax or other electronic communication or similar, that is accepted by any of these means by the other party. This means not only that the parties entrust the Court with the administration of the arbitration and expressly undertake to comply with all interim decisions and the final award, but also that they undertake to act in good faith during the proceedings, at all times, and abstain from any conduct that may hinder or obstruct arbitral proceedings or frustrate or impair the efficacy of the award.
2. The Court will not administer those disputes if it deems that it has been requested to participate for reasons that run counter to the code of professional conduct on which it was founded.

Article 4

Arbitral proceedings shall be guided by the inalienable rights to attend hearings, counter to the other party’s evidence and be treated impartially.

Appointment of the Arbitrators

Article 5

1. The parties are free to choose the number of Arbitrators composing the Arbitral Tribunal, provided that it is an uneven number. If they fail to agree upon a number, a sole Arbitrator or an Arbitral Tribunal composed by three Arbitrators shall be nominated by the Court, considering the circumstances of the specific case.
2. Arbitration of law shall be applied unless the parties request equity arbitration.
3. If a sole Arbitrator is to be appointed, the parties may agree to nominate a sole Arbitrator from the Court list. If the parties fail to agree, the sole Arbitrator shall be appointed by the President of the Court.
4. If three Arbitrators are to be appointed, either party has the right to nominate one Arbitrator, provided that they appear on the Court list: if they both exercise this right, the two Arbitrators thus nominated shall choose the third Arbitrator from the same list, who will act as President of the Arbitral Tribunal.

If one of the parties fails to nominate an Arbitrator within fifteen days after the notice to nominate an Arbitrator, the Arbitrator shall be nominated by the President of the Court. In the same way, if the nominated Arbitrators fail to agree to nominate the third Arbitrator within fifteen days after the last nomination, the Arbitrator shall be nominated following the same proceedings.

5. If more than three Arbitrators are to be appointed, they shall be nominated by the President of the Court, at the request of either of the parties.
6. Notwithstanding the provisions set forth by the preceding paragraphs, the Board of Administration of the Court may, exceptionally and at the request of the parties, authorize the nomination of an Arbitrator or Arbitrators who do not appear on the Court list, under article 18.4 of the Statutes of the Court.
7. In the case of international arbitration procedures, unless otherwise agreed by the parties, the nomination procedure shall be conducted the same way as abovementioned for national arbitration. However, Arbitrators shall be nominated from the International Arbitrators of the Court list.

Article 6

If the Court agrees to administer the arbitration, it shall nominate an Arbitrator or Arbitrators and confirm those appointed by the parties. The Court shall deal with any issues that may arise regarding substitutes and interpretation of the rules of procedures, whether in general or for a specific case, in the event of the parties or the Arbitrator or Arbitral Tribunal requesting it.

All actions shall be performed in accordance with the Spanish legislation in force regarding arbitration, as well as the Statutes of the Court.

The decisions of the Court as to the appointment, confirmation, challenge or replacement of an Arbitrator shall be final.

Article 7

The Secretary of the Court shall administer the arbitrations in accordance with its Statutes, except for article 46.e).

Article 8

Unless otherwise agreed by the parties, the Arbitrator or Arbitrators are responsible for the overall organisation and management of the proceedings, in accordance with the general principles set forth in the Spanish Arbitration Act and the provisions of these Rules. Furthermore, they shall determine the place where the Arbitration is to be held, the language to be used, and set the periods of time, which may be fixed or extended, having regard to the circumstances of the arbitration, considering that the aforementioned period shall be taken to be five days, unless otherwise provided.

Communications and notifications

Article 9

1. Communications between the parties and between the Arbitrator or Arbitral Tribunal and the Court will be carried out in accordance with the rules laid down by the Secretary of the arbitration in question, or with those issued by him subsequently. Communications between the Arbitral Tribunal and the parties may also be direct and, if an Arbitral Tribunal has been appointed, communications shall be effected through the

President and only his signature shall be required. However, the parties are free to come to an agreement on notifications, communications and the calculation of periods of time if they so wish.

2. Copies of all written statements and original documents submitted to the Court 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 Secretary of the Court. Additionally, a digital copy may also be required by the Court, considering the circumstances of the specific case.
3. In its first written submission, each party must designate an address to receive communications and notifications. All communications and notifications which must be sent to that party during the course of the arbitration shall be sent to that address. They shall be deemed to have been made if delivered in it, unless a different address is expressly provided on the file through written statement addressed to the Court by each party or parties affected for such change.
4. Any notification or communication shall be deemed to have been received on the day it was physically delivered either to the addressee or at the domicile, habitual residence, place of business, mailing address or e-mail address provided by the interested party. Likewise, any notification or communication by telex, fax or any other means of electronic telecommunications, or similar method by which means written statements and documents can be sent and received and the emission and reception thereof can be recorded shall be deemed valid. In the event that it proves impossible, after reasonable enquiries, to ascertain any of the locations referred to in the preceding paragraph, the communications to that party shall be sent to the last known registered office, habitual residence, place of business or address of the recipient.
5. The claimant shall provide the Court all data required in the preceding paragraphs about the respondent party, as long as they are known by the claimant, until the claimant appears or provides an address to receive such notifications and communications.

Time limits and calculation

Article 10

1. Periods of time specified under these Rules shall start to run on the day following to the date the notification or communication is deemed to have been made.

If the last day of such period is an official holiday or a non-business day at the place where the notification or communication is to be delivered, the period of time shall commence on the first following business day.

2. When a notice must be filed within a period of time, such period will be taken to be complied with if the notice is sent during said period, even though it is delivered after said period has expired.
3. Periods of time that are calculated in days shall be calculated using calendar days. Periods of time calculated in months shall have a starting date and a termination date. If the month in which such period terminates does not have the same date as the starting date, the period of time shall be deemed to terminate on the last day of the month.
4. The time periods established in this Rules may, having regard to the circumstances of the case, be modified, including their extension, reduction or suspension by the Court until the Arbitral Tribunal has been set up, and by the Arbitrators as from that time, unless otherwise expressly agreed by the parties. The period to give award is not included, provided that, notwithstanding the provisions of article 32.2 of these Rules, it shall only be extended by agreement between the parties.
5. Both the Court and the Arbitrators shall at all times procure effective compliance with the stipulated time limits and avoidance of delays.
6. August shall be considered as non-working month, unless otherwise required by each of the parties.

Commencement of the arbitration

Article 11

1. The arbitration proceedings will start upon submission of the request of arbitration to the Court at the Court's head office in Madrid, or at a national branch office, if applicable. The Court shall register the receipt of the request and the date of such receipt in the register set up for this purpose.
2. The request of arbitration should contain, at least, the following information:
 - a) Full name, domicile and relevant data of each of the parties. Specifically, domicile where communications should be addressed to each of the parties must be provided, in accordance with provisions of article 9.

- b) Full name, domicile and relevant data of claimant's representatives in the process.
 - c) Brief description of the dispute.
 - d) Statement of the relief sought, including, to the extent possible, an indication of any amount(s) claimed.
 - e) The arrangement, contract or transaction out of or in relation to which the dispute has arisen.
 - f) The arbitration clause or arbitration agreement.
 - g) The number of Arbitrators, language and place of arbitration.
 - h) If the arbitration agreement provides the appointment of a Tribunal composed of three Arbitrators, the nomination of the Arbitrator that shall be chosen from the list of Arbitrators.
3. The arbitration request may also indicate the laws and regulations that apply to the points at issue.
4. The request for arbitration must be accompanied by, at least, the following documents:
- a) Copy of the arbitration agreement or copy of the communications evidencing such agreement.
 - b) Copy of the contracts, if applicable, that gave rise to the dispute.
 - c) Documents appointing the persons who will represent the party in the arbitration.
 - d) Evidence of payment of the Court admission or administration expenses.
5. If the request for arbitration is incomplete, copies or attachments are not presented in the required number or the Court admission and administration expenses have not been paid in total or partially, the Court may set a time limit of no more than 10 days within which the claimant can remedy the defect or pay the expense or advance. Once the defect has been remedied or the expense or advance paid, the request for arbitration shall be deemed to have been validly presented on the date of its initial submission.
6. Upon receiving the request for arbitration with all its documents and copies, and after any defects therein have been remedied and the required expenses or advances have been paid, the Court will without further delay forward a copy of the request to the respondent.

7. The respondent or respondents shall be notified of the request of arbitration at one of the following domiciles, in the order specified by the claimant:
 - a) The domicile the respondent gave in the arbitration clause, if applicable.
 - b) The domicile that the claimant stated is the respondent's domicile on the date the notice was filed.
 - c) The domicile obtained from telephone, fax or other numbers.
 - d) The domicile registered in the municipal census list or is officially registered for other purposes.
 - e) The domicile obtained from official registers of professional publications.
 - f) The domicile where the respondent carries out full-time professional work-related activity.

Article 12

1. On receiving the request of arbitration, preliminary proceedings shall be initiated, based on the data therein, which shall be solely deemed as provisional and for purposes of orientation. In the light of the alleged, the President of the Court will accept the arbitration in principle and, if applicable, shall instruct the Secretary to draw up the norms governing about when and where written statements, documents and communications are to be submitted, delivered and received, the periods of time allotted and the advance on costs that are to be applied to the arbitral proceedings in question. None of the above shall affect the rights of the parties and the Arbitrators to make proposals and arrangements.
2. The Court shall determine the provisional amount in dispute and shall require the advance on costs for the arbitration administration, Arbitrator or Arbitrators' fees and proceeding expenses. The payment of the aforementioned provisions shall be proved by the parties on submitting their written statements. Court decisions on the amount or advance on costs shall be final and unappealable.
3. The Secretary of the Court may hold a hearing with the parties, if he deems fit, in order to instruct them on the provisions of the norms in question for the purposes of clarity and efficiency.

Article 13

1. The respondent or respondents shall respond to the request of arbitration within fifteen days after the request was received.
2. The response to the request should contain, at least, the following information:
 - a) Full name, domicile and relevant data of the respondent. Specifically, the respondent shall appoint a person and domicile where communications and notifications should be addressed to during the process.
 - b) Full name, domicile and relevant data of identification and contact all respondent representatives involved in the arbitration process.
 - c) Brief description of the dispute giving rise to the claim(s) provided by the respondent.
 - d) Response to the relief sought in light of the claimant's proposals.
 - e) If the respondent does not accept the arbitration process, a declaration about the validity or enforceability of the arbitral agreement.
 - f) Any comments concerning the number of Arbitrators and any comments as to the place of arbitration and the language of arbitration.
 - g) If applicable, appointment of an Arbitrator from the Court list.
 - h) Any comments as to the applicable rules of law of the arbitration, if the case has been arisen by the claimant.
3. The response shall be supplied together with supporting documents, if applicable, of the respondent's representative in the arbitration.
4. If the response to the request of arbitration is uncompleted or it contains a legal error, the Court shall proceed in accordance with paragraph 5 of article 11. If the response is deemed to be free of legal error, the Court shall submit a copy to the claimant.
5. If the response to the request of arbitration fails to be submitted within the stipulated period of time, the process shall not be terminated.

Article 14

1. If a party submits a request for arbitration in relation to a legal case with respect to which there already exists an arbitration procedure governed by these Rules and pending between the same parties, the Court may, at the request of either party and after consulting with all of them and with the Arbitrators, join the request to the pending proceeding. The Court shall take into account, amongst other points, the nature of the new claims, their connection to the ones formulated in the procedure already under way and the stage of the latter proceedings. If the Court decides to join the new request to a pending proceeding in which an Arbitral Tribunal has already been set up, the parties shall be presumed to waive their right to appoint an Arbitrator with respect to the new request. The decision of the Court on joinder shall be final.
2. The Arbitral Tribunal may, at the request of any party and after hearing all of them, allow the appearance of one or more third parties as parties to the arbitration, if it is deemed to be relevant for the arbitration process.
3. In the abovementioned cases of joinder and appearance, the Court or the Arbitrators shall determine new time limits in order to terminate the arbitral proceedings.

Advance on costs

Article 15

1. The Court shall fix the advance on costs in an amount likely to cover the fees and expenses of the Arbitrators, including the administrative fees, if applicable.
2. The Court may request the parties to pay a provisional additional advance on costs in an amount intended to cover the costs of arbitration during the arbitral proceedings, ex officio or by requirement of the Arbitrators.
3. In the event that, because a counterclaim is filed or for any other reason, it becomes necessary to request that the parties pay advance on costs at different points in time, the Court shall be solely responsible for determining how to allocate the payments made to the advance of costs.

4. The advance on costs shall be payable in equal shares by the claimant and the respondent, unless otherwise agreed by the parties.
5. If, at any time during the arbitration, the requested advance on costs is not paid in full, the Court shall require the debtor party to make the outstanding payment within ten days. If the payment is not made within that time limit, the Court will so inform the other party so that, if the latter deems fit, it can make the outstanding payment within ten days. If neither party makes the outstanding payment, the Court may, at its discretion, refuse to administer the arbitration or perform the act for which purpose the pending advance was requested. If it refuses the arbitration, the Court will return to each party the amount they deposited, deducting the relevant amount in respect of administration expenses and, if applicable, Arbitrator fees.
6. If one of the parties pays the required advance on costs in the name of the other party, the debt shall be included in the final award.
7. After the award has been issued, the Court will send the parties a statement of settlement in relation to the advances received. The unused balance shall be repaid to the parties in the proportion to which each is entitled.

Continuation of arbitration proceedings

Article 16

On accepting the arbitration the President of the Court and, where applicable, the Board of Administration, on the proposal of the Director, shall nominate the Arbitrator or Arbitral Tribunal for the dispute, although this nomination is not effective immediately, and also notify said Arbitrator or Arbitrators and the parties. The Board of Administration will be informed of the appointments made by the President at the next meeting held by this Organ.

Article 17

1. After the Arbitrators have been nominated they shall, within a maximum period of 15 days after having received the notice of nomination, inform the Court of their acceptance or reasoned refusal.

In his written acceptance of the nomination the Arbitrator shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.

2. The Court shall inform the parties that the Arbitrator or Arbitrators have accepted the nomination, and they may accept or challenge said nomination, in writing, within a maximum period of 15 days. If no written statement is filed on this matter it will be taken to mean acceptance of Arbitrators.
3. Notwithstanding the abovementioned, the parties may challenge the Arbitrator or Arbitrators at any time during the proceedings prior to the award if they learn of any circumstances likely to give rise to justifiable doubts as to the Arbitrator or Arbitrators' impartiality or independence. Said challenge should be filed within a maximum period of 15 days after the circumstances giving rise to the challenge became known to that party.
4. The challenge to the Arbitrators will be regulated by the applicable sections of the Spanish Arbitration Act in force, although if the challenge is rejected the challenging party may present a written appeal to the Board of Administration of the Court which shall include the grounds of the challenge. The Board shall take the procedural decisions that it deems fit and shall rule on the challenge within one month, starting from when the appeal was lodged, having held the hearing between the Arbitrator and the parties.

The main proceedings will continue uninterrupted while the challenge proceedings are underway.

Article 18

1. If the nominated Arbitrator or one of the nominated Arbitrators does not accept, abstains or withdraws, the Court shall nominate a substitute Arbitrator or substitute Arbitrators and notify the Arbitrators who have accepted and all the parties pursuant to article 17.
2. Whatever the reasons for which a substitute Arbitrator has to be nominated, the Court shall act in accordance with the procedure of the above paragraph.
3. After the substitute Arbitrator or substitute Arbitrators have been nominated they shall, subsequent to a hearing with the parties, decide if a repetition of the proceedings is necessary.

Article 19

1. After the period of time stipulated in article 17.2 has elapsed, the Arbitrator or Arbitral Tribunal shall decide, on their own initiative or at the request of the parties, the place and language of arbitration, and will allow the claimant or claimants a maximum period of fifteen days to present the statement of claim. This must include identification of the arbitration and the parties and proof that the advance on costs has been paid. If these requirements fail to be met, the Court shall proceed according with article 15.5. It will also include a statement of the facts and the legal grounds of their claim, all documents deemed relevant and the evidence they will submit with instructions as to its use, and they should clearly specify the remedy sought.
2. If, in the statement of claim, the claimant amends the content or amount involved in the claim that were declared in the notice of arbitration, the Court may require a supplementary advance on costs from the parties. Upon failure to pay within the period of time fixed for this purpose the Court shall proceed according with article 15.5 of these Rules.
3. The claimant shall attach the Expert testimony on which he relies to the statement of claim, without prejudice to the right of the arbitral tribunal to appoint one or more Expert witnesses on their own initiative or at the request of either of the parties.
4. The Expert, after having delivered his testimony, at the request of either party or when deemed necessary by the Arbitrator, may be heard at a hearing where the parties and the Arbitrator or Arbitral Tribunal shall have the opportunity to question him as to the contents of his testimony.

Article 20

1. Third parties taking part in the arbitration shall be notified of any statement or statements of claim filed so that, within a period of time specified by the Arbitrator, or within fifteen days, if not specified otherwise, they may file their answer which should comply with all the provisions of the above article.

If the respondent or respondents do not attach evidence of having paid the advance on costs requested, the Court shall proceed according with article 15.5.

2. If pleas as to procedural irregularities or jurisdiction are made, the Arbitrator shall hold a hearing on the matter with the other parties taking part in the arbitration, in a period of five days. In the light of what is alleged, the Arbitrator shall uphold the plea since it clearly concurs with the notices and documents filed, the Arbitrator shall issue a ruling, terminating the proceedings and fixing a three day period of time to calculate the fees referred to in article 37 of these Rules. Subsequently, within ten days the Arbitrator shall issue a ruling, closing the arbitral proceedings. Otherwise, the proceeding shall continue in accordance with the procedures established in these Rules, and the exceptions shall be ruled on in the final award. None of the above will be prejudicial, where applicable, to the provisions of article 22 of these Rules.
3. If the respondent files a counterclaim, the parties shall be required to pay an advance on costs corresponding to the amount involved that should be deposited within a period of ten days, starting from the notification issued to this effect. After it has been deposited, the claimant shall be notified of the respondent's statement of defense and counterclaim so that the claimant may prepare his arguments within a period of ten days. If the respondent does not pay said advance on costs, the Court shall proceed according to the provisions set forth in paragraph 15.5 of these Rules. If it is the claimant who fails to pay the advance on costs for the counterclaim, the Court shall proceed in the same way.

Article 21

1. After the answer has been filed, or after the period of time has expired without the answer being filed, or, if applicable, after the periods of time stipulated in article 20.1 have expired, the Arbitrator shall summon the parties to a hearing within a period of time of ten days after the above periods have expired, specifying the place, date and time. During the mentioned hearing he may question them on all aspects so as to determine the nature of the dispute and the points at issue as well as their respective positions. He shall also specify the norms and set a provisional procedural calendar.
2. In the abovementioned hearing, the parties may supplement their evidence with new, additional evidence, if it is in their interests and the Arbitrator will

rule on the validity of said evidence in accordance with the provisions of article 23 of these Rules.

3. This right shall also apply if the Arbitrator does not summon the parties to appear within the period of time specified in section 1 of this article. The new evidence must be presented within a maximum period of five days, starting from the expiration of said period of time.
4. In case of counterclaims, and on receiving a response, the Arbitrator shall rule and summon the parties to a hearing as referred to in paragraph 1 of this article, or a time limit of five days in order to provide additional evidence shall be provided. The Arbitrator shall perform the same procedure in cases where pleas as to procedural irregularities or jurisdiction are made.
5. Unless otherwise agreed by the parties, during the course of arbitral proceedings either of them may amend or supplement their claim or defense, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 22

Within fifteen days after the hearing has been held or, when applicable, after new evidence has been presented in accordance with article 21.3, the Arbitrator shall rule on his own objective jurisdiction and on the validity of the arbitration or arbitration agreement, irrespective of whether they have been called into question by the parties or not. If the ruling affirms lack of jurisdiction or the arbitration clause or arbitration agreement are ruled null and void, inexistent or to have expired the proceeding will be closed and the process terminated. In this case, if the reasons are not alleged by the parties, the final award shall not include any order to pay costs, unless otherwise agreed by the parties.

If the abovementioned causes have been alleged by either of the parties, the Arbitrator shall fix a time limit of three days, in order to determine the fees as provided in article 37 of these Rules, after this period the Arbitrator shall give award terminating the arbitral proceeding.

Examination period

Article 23

The Arbitrator will immediately rule on the evidence presented within a maximum period of time of five days

and arrange the schedule and place as he deems fit. The parties will be notified of the mentioned arrangements by the Secretary, who will require them to pay the advance on costs required to put the arrangements into effect. Failure to comply with said requirements will result in the arrangement procedure being discontinued.

Article 24

1. The examination period will last for a maximum of sixty days. The parties may attend the examination of evidence.
2. The examination shall be made following the principle that each party has the right to receive notification beforehand on the evidence that the statements of the other party is based on.
3. During the process, the arbitral tribunal may require the parties any documents or other evidence, which may be within the stipulated period of time.
4. If a means of evidence is in possession or under the control of one of the parties and the party refuses to present it without valid excuse, the Arbitral Tribunal may deduce the conclusions that they deem relevant on the facts of evidence.
5. The Arbitral Tribunal shall examine the evidence freely, according to the principles of the sound judgement.

Article 25

1. For the purposes of these Rules any individual giving evidence, not being a party in the arbitration process, shall be considered a witness.
2. The Arbitrators may provide that witnesses give their testimony in writing, although they shall also be able to provide that a witness be examined before the Arbitrators and in the presence of the parties, orally or by any other means of communication that makes their physical presence unnecessary. Oral statements by a witness must always be obtained whenever requested by one of the parties and the Arbitrators so decide.
3. If a witness called to appear in a hearing for examination does not appear and does not give evidence of a valid excuse, the Arbitrators may take such failure into account in their assessment of the evidence and, if applicable, regard the written statement as not having been submitted, as they deem appropriate considering the circumstances.

4. All parties may submit to the witness the questions they deem appropriate, under the control of the Arbitrators as to their relevance and utility. The Arbitrators may also submit questions to the witness at any time.
5. Oral hearings shall be registered under surveillance of the Secretary and copies of them will be subsequently provided to the parties and Arbitral Tribunal.

Article 26

1. The Arbitrators, on their own initiative or at the request of any of the parties, and after consulting the parties, may appoint one or more Expert witnesses to report on concrete matters. Such Expert witnesses must be and remain independent of the parties and impartial during the course of the arbitration.
2. The Arbitrators shall also have authority to order any of the parties to make available to the Experts appointed by the Arbitrators all relevant information or any other documents, items or evidence that they must examine.
3. The Arbitrators shall forward to the parties the report of the Expert they appointed, in order for them to make such pleadings as they deem fit regarding the report in the conclusions stage. The parties shall have the right to examine any document the Expert cites in his/her report.
4. After presenting his/her report, every Expert, appointed by the parties or by the Arbitrators, must appear if so requested by the parties and provided the Arbitrators deem appropriate, in a hearing at which the parties and the Arbitrators may examine the Expert on the content of his/her report.
5. The examination of Experts may be done successively or simultaneously in a confrontation hearing, as decided by the Arbitrators.
6. The fees and expenses of all Experts appointed by the arbitral tribunal shall be considered costs of the arbitration.

Conclusions

Article 27

After the evidence has been examined, the Arbitrator shall grant a time limit of fifteen days for all the parties

so that they may examine and critically assess the results of the evidence and express their conclusions in writing.

The Arbitral Tribunal may replace the written conclusions procedure with conclusions presented orally in a hearing, which must be held if so requested by the parties. The Arbitral Tribunal shall agree the oral conclusions in a hearing, if it is so requested by all the parties.

Article 28

The Arbitrator may agree, in the interests of a fairer ruling, to order an examination of the evidence that he deems suitable. After it has been examined, the Arbitrator shall grant a period of five days for all the parties so that they can summarize and assess the result.

Equity arbitrations

Article 29

In equity arbitrations, the Arbitrator may speed up the proceedings regulated in the above articles and shorten the periods of time, incorporating any suggestions made by the parties in so far as the Arbitrator deems them to be incompatible with the correct performance of his arbitral duties in the case in question.

Interim measures

Article 30

1. Unless the parties agree otherwise, the Arbitrator or Arbitral Tribunal may, at the request of either of the parties, take any interim measures of protection they deem necessary in respect of the subject-matter in dispute and specifically on the likelihood of a valid right, and the hypothetical dangers of delay and the consequences of the acceptance or rejection of those measures, given the circumstances of the case. The remedy should be in proportion to the nature and purpose of the proceedings, and should not prejudice any party from exercising his/her business.
2. The Arbitral Tribunal may require sufficient security from the petitioner of such measures in a manner the tribunal deems sufficient.

3. The Arbitral Tribunal shall decide on the requested measures after hearing all interested parties.
4. The adoption of interim measures or remedies may be done in the form of a procedural order and shall be regulated by the rules governing the annulment and compulsory implementation of awards.

Termination of arbitral proceedings

Article 31

The parties may agree upon a settlement to the dispute up to the time that the award is issued, in which case the Arbitrator or Arbitral Tribunal shall consider the proceedings to be closed and draw up the award in accordance with the terms agreed by the parties, if both parties request it and the Arbitrator or Arbitral Tribunal do not have any reasons to oppose said settlement.

Article 32

1. The ordinary proceedings conclude when the Arbitral Tribunal issues the award in the place where the arbitration has been held.
2. Provided that the parties have not agreed otherwise, the Arbitral Tribunal should rule on the dispute six months after the presentation date of the defense or after the period of time to present the abovementioned defense has expired. Unless otherwise agreed by the parties, this period of time may be extended by the arbitral tribunal for a maximum period of time of two months, by means of a reasoned decision, unless the parties oppose said extension.
3. Failure to issue a definitive award within said period of time will result in the termination of the arbitral proceedings and the cessation of the Arbitral Tribunal. However, this will not affect the validity of the arbitration clause, without prejudice to any responsibility that the Arbitrators may have incurred.
4. The Arbitral Tribunal may resolve the dispute by issuing the award or any partial awards that they deem necessary. All awards shall be deemed to be issued in the place and on the date registered on it.

5. All awards should be recorded in writing and be signed by the Arbitrators, who shall register their dissent, if any. When more than one Arbitrator has been appointed, only the signature of the majority of the Arbitral Tribunal or of the President shall be required, provided that the award states the reason for the absence of one or more signatures.

For the purposes of the provisions of the above paragraph, the award will be understood to be recorded in writing when its contents and signatures are registered in and can be accessed from an electronic, optical or any other type of form, for subsequent consultation.

6. The Arbitral Tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given or the award in question has been drawn up in accordance with the terms agreed upon by the parties pursuant to the provisions of article 31 of these Rules.
7. The award or final awards shall settle the dispute as it was described by the parties; any issues that have been specifically raised may be settled in conjunction with any matters that are consequent to said issues.
8. Subject to what has been agreed upon by the parties, the arbitral tribunal shall award the arbitral costs in the award, including the fees and expenses of the Arbitrators and, if applicable, the fees and expenses of the advocates or representatives of the parties, the cost of services rendered by the Court and any other expenses arising from arbitral proceedings.

The credit right referred to in Article 15.6 of these Rules shall be included, if applicable, in the final award.

9. The Arbitral Tribunal shall notify the parties of the award in the form and period of time agreed upon by the parties or, failing that, copies of the award, signed by the Arbitrators pursuant to the provisions of paragraph 5 of this article, shall be delivered to the parties within the period of time provided in paragraph 2 of this article.
10. The award may be registered by notary. Either of the parties may petition the Arbitrators to register the award prior to notification, at their own expense.

Article 33

The arbitral proceedings will also terminate:

1. When the claimant withdraws its/their claim, unless the respondent opposes such withdrawal and the Arbitrators recognize that they have a legitimate interest in obtaining a definitive legal solution.
2. When the parties agree on a settlement of the dispute.
3. When the Arbitrators conclude that the continuation of the proceedings has become unnecessary or impossible.

Appeals

Article 34

Apart from the clarifications, corrections or complements to the award referred to in the Spanish Arbitration Act, the only appeal against the award shall be an appeal to set aside the award for the reasons established in the abovementioned Act.

A review of the definitive award may be requested in accordance of the provisions of the Civil procedure Rules with respect to definitive rulings.

Article 35

Without prejudice to the provisions of the above article, by submitting the dispute to arbitration to the Court under these Rules, the parties have bound themselves to comply with the award.

Article 36

The award may only be made public with the consent of all the parties.

Fees, costs and expenses

Article 37

The Arbitrator or Arbitral Tribunal shall fix the costs of arbitration in the award under the Spanish Arbitration Act, in accordance with the following criteria:

1. The start up and registration fees and the costs for the administrative proceedings will be calculated according to the tariffs of the Court.
2. The fees of the Arbitrator or Arbitral Tribunal shall be reasonable in amount considering the amount in dispute, as well as the complexity of the subject-matter and the time spend by the Arbitrators. Tariffs of the Court shall be applied.
3. The fees of the lawyers of the parties, if they request them before the final ruling prior to the award settlement, shall also be reasonable in amount, taking into account the amount in dispute, the importance or complexity of the subject-matter, the time dedicated by the lawyers on the case and the fee guidelines of the Bar Association of the place of arbitration.
4. The expenses for the evidence presented and other procedural expenses shall be calculated using the amounts listed in the invoices.

Article 38

1. Unless otherwise agreed by the parties, at any time during the arbitral proceedings, the sole Arbitrator or the Arbitral Tribunal may either order one of the parties to pay all the costs or apportion each of such costs between the parties, if it determines that apportionment is reasonable, considering the circumstances of the specific case.
2. If the Arbitral Tribunal orders all or part of the arbitral costs to be paid by a litigant other than the one who has paid the advance on costs, the amount owned by the former party to the latter party will be specified in the award in accordance with article 15.6 of these Rules.
3. All orders to pay costs shall contain a reasoned decision explaining how the amounts were calculated, as well as the way they are allocated or apportioned.
4. If one of the parties accepts the claim of the other party, instead of opposing them, or withdraws their claim before being opposed by the other party, no costs shall be awarded unless the Arbitrator rules, after reasoned explanation, that the party who has accepted or withdrawn has acted in bad faith.

5. If the abovementioned acceptance or withdrawal occurs after the other party has opposed the suit, the Arbitrator shall be free to decide on the costs, stating the reasons for his decision, and taking into account the criteria contained in these Rules that regulate arbitration that has terminated in an award.

If the acceptance or withdrawal terminating the arbitration is agreed upon by mutual consent, none of the parties shall be ordered to pay costs.

Custody and conservation of the arbitration case file

Article 39

1. The Court shall be responsible for the custody and conservation of the arbitration case file, after the award has been made.
2. One year after the award is made, upon giving prior notice to the parties or to their representatives to request separation and delivery, at their cost, of the documents submitted by them, the obligation to preserve the case file and its documents shall expire, except for one copy of the award and of the decisions and communications of the Court relating to the proceeding, which shall be kept in the archive set up for such purpose by the Court.
3. For so long as the Court's obligation of custody and conservation of the arbitration case file remains in force, either party may request separation and delivery, at its cost, of the original documents it submitted.

Additional provision

These Rules of Procedure will be applied to arbitrations when the notice of arbitration was entered into the Court register after 1 October 2010.

Transitory provision

Proceedings initiated before the effective date of these Rules shall continue to be governed by the previous Rules until their termination.



C I M A
CORTE CIVIL Y MERCANTIL
DE ARBITRAJE

Hermosilla, 8, 2º derecha
28001 Madrid
Tel.: [34] 91 431 76 90
Fax: [34] 91 431 61 38
cima@cima-arbitraje.com
www.cima-arbitraje.com