

AMENDMENTS INTO THE ICAC RULES 2018

Current version 2018

AMENDMENTS that will be effective from 01.11.2020

Article 3. Disputes that may be referred to the ICAC for arbitration

1. The parties to a dispute may agree to refer to the ICAC:

- disputes arising out of contractual or other civil law relationships connected with foreign trade and other kinds of international economic business, including disputes involving individuals where the place of business of at least one of the parties is located abroad;

The ICAC jurisdiction embraces, in particular:

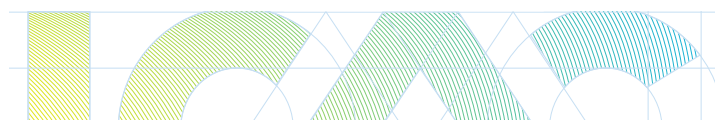
- commercial relationships resulting in disputes that may be referred to the ICAC for arbitration shall include the following transactions and not limited to them, namely: relationships concerning purchase and sale (delivery) of goods, labour and other services; exchange of goods and/or services; carriage of goods and passengers; commercial representation and agency; rent (leasing); scientific and technological exchange; exchange of other intellectual products; construction of industrial and other objects; licensing operations; investment; crediting and settlement operations; insurance; joint ventures; and other forms of industrial and business cooperation.

1. The parties to a dispute may agree to refer to the ICAC:

– disputes arising out of contractual or other civil law relationships connected with foreign trade and other kinds of international economic business between legal entities, including individuals of public law, and/or individuals, if the location/ habitual residence at the time of the conclusion of the arbitration agreement of at least one of the parties or the place of performance of a significant part of the obligation, or the place the subject of the dispute is most closely connected with is located abroad; or the place of arbitration is located outside the state of location/habitual residence of at least one of the parties;

The ICAC jurisdiction embraces, in particular:

– commercial relationships resulting in disputes that may be referred to the ICAC for arbitration shall include the following transactions and not limited to them, namely: relationships concerning purchase and sale (delivery) of goods, labour and other services; exchange of goods and/or services; carriage of goods and passengers; commercial representation and agency; rent (leasing); scientific and technological exchange; exchange of other intellectual products; construction of industrial and other objects; licensing operations; investment; crediting and settlement operations; insurance; joint ventures; and other forms of industrial and business cooperation, concession; disputes arising, inter alia, out of relations regarding the exercise and protection of property rights or other rights in rem, including intellectual property rights; out of corporate relations, including disputes between participants (founders, shareholders, members) of a legal entity or between a legal entity and its participant (founder, shareholder, member), as well as out of agreements regarding shares, interests, other corporate rights or securities.



Article 4. Legal grounds for referring disputes to the ICAC for arbitration

1. [...] The arbitration agreement shall be in writing. This agreement is considered to be entered into in writing, including electronic form, if it is contained in a document signed by the parties or in an exchange of letters, e-mails, provided that the information contained therein is available for further use, or communications by telex, telegrams, fax or other means of telecommunication which provide a record of such agreement, in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is concluded in writing and this reference is such as to make that clause a part of the contract.

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Any inaccuracies in the text of the agreement on the referral of a dispute for consideration to the ICAC and/or doubts as to its validity, force or enforceability shall be interpreted in favor of its validity, force and enforceability.

Article 5. Pleas as to the ICAC jurisdiction

5. If the Arbitral Tribunal rules as a preliminary question that it has jurisdiction, either party may request, within 30 days after having received such order of that ruling, **the General Court of Appeal upon the ICAC's location** to decide the matter, which decision shall be subject to no appeal.

5. If the Arbitral Tribunal rules as a preliminary question that it has jurisdiction, either party may request, within 30 days after having received such order of that ruling, **the Kyiv Court of Appeal** to decide the matter, which decision shall be subject to no appeal.

Article 11. Submission and forwarding of documents in the course of the arbitral proceedings

1. All documents relating to the initiation and conduct of the arbitral proceedings shall be submitted by the parties to the ICAC Secretariat or in the course of the oral hearing to the Arbitral Tribunal no less than in three copies (with a corresponding increase in the number of copies if several claimants, respondents or third parties participate in the dispute).

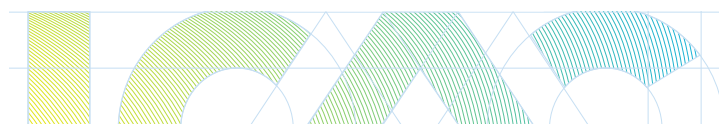
The ICAC Secretariat may invite the parties to submit these documents in electronic form.

4. The Statement of Claim, the Statement of Defence, additional submissions of documents, the Notice of the hearing, the Arbitral Award, the Order or Ruling shall be sent to the party by registered mail with an advice of delivery or by courier mail, **as well as may be handed over personally to the representative of a party against receipt.**

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In addition, all of the above documents shall be submitted by the parties to the ICAC Secretariat in electronic form.

4. The Statement of Claim, the Statement of Defence, additional submissions of documents, the Notice of the hearing, the Arbitral Award, the Order or Ruling shall be sent to the party by registered mail with an advice of delivery or by courier mail, **or may be handed over in the ICAC Secretariat personally to its authorized representative against receipt.**



Apart from the paper form, these documents may be sent to the party by e-mail. Other documents and communications may be sent by ordinary mail, by facsimile message, wire, e-mail, or otherwise, provided that a record is made of the communication sent, and also may be handed over personally to the representative of the party against receipt.

5. Any written notification or communication shall be deemed to have been received if it is handed over to the party personally (or its authorized representative) in the ICAC Secretariat or if it is delivered at its commercial place of business, habitual residence (location) or mailing address. If none of these can be found after making a reasonable inquiry, a written notification or communication is deemed to have been received by the party if it is sent to the addressee's last-known commercial place of business, habitual residence or mailing address by registered letter or any other means which provide a record of the attempt to deliver this notification. A written communication is also deemed to have been received if the person did not appear for receiving the communication or refused to receive it. A written communication shall be deemed to have been received on the day it is so delivered or the recording of a delivery attempt.

Apart from the paper form, these documents may be sent to the party by e-mail to the address/addresses that the party has provided to the ICAC. Other documents and communications may be sent by ordinary mail, by facsimile message, wire, e-mail, or otherwise, provided that a record is made of the communication sent, and also may be handed over personally to the representative of the party against receipt.

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6. A written communication sent to a party by electronic means of communication shall be deemed to have been received on the day it is so sent (the time is determined by reference to the recipient's time zone).

Article 22. Participation of third parties

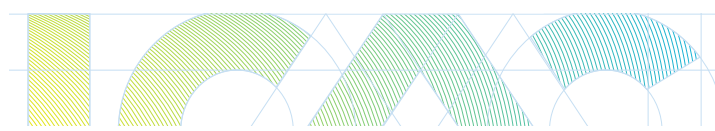
1. A third party is allowed to join or to be involved in the arbitral proceedings provided that:
- all parties and a third party are bound by one arbitration agreement; or [...]

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Article 31. Procedure of constitution of the arbitral tribunal

1. [...] if a party fails to appoint the arbitrator within 30 days after a notice receipt from the ICAC or if two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, an arbitrator shall be appointed by the President of the Ukrainian Chamber of Commerce and Industry in accordance with Article 11 (Part 3) of the Law of Ukraine «On International Commercial Arbitration»;
- in an arbitration with a sole arbitrator, if the parties are unable to agree on a sole arbitrator, he shall be

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appointed by the President of the Ukrainian Chamber of Commerce and Industry in accordance with Article 11 (Part 3) of the Law of Ukraine «On International Commercial Arbitration».

4. If a candidate appointed by a party refused to perform the duties of an arbitrator or within 10 days of a notice of his appointment received from the ICAC he did not sign a declaration of his consent to accept an arbitrator's functions, the ICAC Secretariat shall immediately offer this party within 5 days after receiving a notice of it, to appoint the other arbitrator. If the party fails to do so, the arbitrator shall be appointed by the President of the Ukrainian Chamber of Commerce and Industry.

– in an arbitration with a sole arbitrator, if the parties are unable to agree on a sole arbitrator, he shall be appointed by the President of the Ukrainian Chamber of Commerce and Industry.

4. If a candidate appointed by a party or by two arbitrators refused to assume the duties of an arbitrator or within 10 days of a notice of his appointment received from the ICAC he did not sign a declaration of his consent to accept an arbitrator's functions, the ICAC Secretariat shall immediately offer this party or the arbitrators within 5 days after receiving a notice of it, to appoint the other arbitrator. If the party or the arbitrators fail to do so, the arbitrator shall be appointed by the President of the Ukrainian Chamber of Commerce and Industry.

Article 35. Changes in the composition of the arbitral tribunal

1. If an arbitrator has declined to assume his duties, or he has been challenged, or his authorities have been terminated under Article 34 of the present Rules, or he cannot participate in the case proceedings for any other reasons, a new arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

1. If an arbitrator has refused to perform the duties of an arbitrator, or he has been challenged, or his authorities have been terminated under Article 34 of the present Rules, or he cannot participate in the case proceedings for any other reasons, a new arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

Article 36. General principles of the arbitral proceedings

2. The parties may deal with the ICAC and participate in the arbitral proceedings directly or through their duly authorized representatives.

2. The parties may deal with the ICAC and participate in the arbitral proceedings directly or through their duly authorized representatives whom they appoint at their discretion, in particular from among foreign citizens and organizations.

After the composition of the Arbitral Tribunal is formed, a party has the right to replace its representative only on the condition that such replacement does not entail the emergence of grounds for challenging an arbitrator or for setting aside or refusing to recognize and enforce the arbitral award.

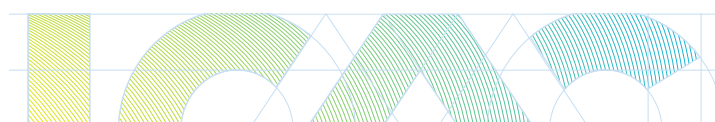
4. If the Arbitral Tribunal concludes that in the course of the arbitral proceedings the party behaved in bad faith, violating the provisions of these Rules or abusing procedural rights, the Arbitral Tribunal may take into account this behavior in the apportionment the arbitration costs.

4. If the Arbitral Tribunal concludes that in the course of the arbitral proceedings the party and/or its representative behaved in bad faith, violating the provisions of these Rules or abusing procedural rights, the Arbitral Tribunal may take into account this behavior in the apportionment the arbitration costs, issue a warning or invite a party to appoint a different representative.

Article 43. Procedure of the arbitral proceedings

[...] However, unless the parties have agreed that no oral hearings shall be held, the Arbitral Tribunal shall

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hold such hearings at an appropriate stage of the arbitration, if so requested by any party.

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The Arbitral Tribunal has all the powers to establish the procedure for conducting oral hearings, including the date, duration, form, content, procedure, deadlines and place, as well as regarding the form of oral hearings (in person, online or in a combined way).

Article 47. Oral hearing

2. A party may request the Arbitral Tribunal to participate in an oral hearing via the video-conferencing systems. Such request shall be considered by the Arbitral Tribunal with regard to the case circumstances and the opinion of the other party.

The Arbitral Tribunal has the right to hear witnesses or experts via the video-conferencing systems.

3. A party may request the Arbitral Tribunal of a case hearing in its absence.

2. The Arbitral Tribunal has the right to conduct an oral hearing of the case or an arbitrator has the right to take part in such a hearing via video conference outside the premises of the ICAC, whereof the parties are notified in the notice or ruling of the Arbitral Tribunal.

3. A party, no later than 10 days before the date of the oral hearing, may submit to the Arbitral Tribunal a motion to participate in an oral hearing via the video-conferencing systems. Such request shall be considered by the Arbitral Tribunal with regard to the case circumstances and the opinion of the other party. Based on the results of the consideration, the Arbitral Tribunal issues a ruling.

In case the motion is satisfied, the party takes part in the oral hearing via video conference outside the premises of the ICAC using its own technical means and electronic digital signature or using another method of identifying the party that is acceptable to the Arbitral Tribunal.

Risks of technical impossibility of participating in a video conference outside the premises of the ICAC, interruption of communication, etc. shall be borne by the participant of the case who has submitted the relevant motion.

4. After an oral hearing is closed, no statements, arguments or evidence can be submitted by the parties, unless they have been claimed or permitted by the Arbitral Tribunal for submission.

4. The Arbitral Tribunal has the right to hear witnesses or experts via the video-conferencing systems.

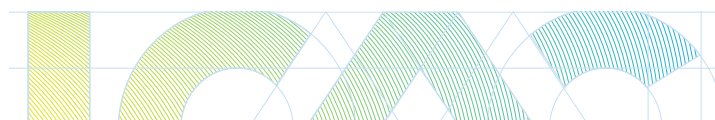
5. A party may request the Arbitral Tribunal of a case hearing in its absence.

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Article 52. Evidence

2. The written evidence shall meet the following requirements:

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[...] 3) the documents that a party maintains in electronic form shall be certified by the electronic digital signature.

A foreign official document subject to diplomatic or consular legalization may be a written proof if duly legalized.

7. Arbitrators shall value the evidence in accordance with their inner conviction.

The admissibility, relevance, credibility and significance of each evidence shall be separately determined by the Arbitral Tribunal as well as the sufficiency and correlation of evidence in the aggregate.

[...] 3) the documents that a party maintains in electronic form shall be duly certified including in a manner acceptable to the Arbitral Tribunal.

A foreign official document subject to legalization may be a written proof if legalized in accordance with the established procedure by consular legalization or apostille.

7. The relevance, admissibility, authenticity and sufficiency of evidence submitted by the parties shall be determined by the Arbitral Tribunal.

Arbitrators shall value the evidence in accordance with their inner conviction.

10. If a party fails to submit evidence at the request of the Arbitral Tribunal, the Arbitral Tribunal, depending on which person evades their filing, as well as the significance of this evidence, may admit a circumstance for the clarification of which the evidence should have been submitted, or to refuse to admit it, or to consider the case on the evidence available in the case file.

Article 54. Party-appointed experts

1. In order to clarify special issues the party may request for joinder of a party-appointed expert. In its request the party shall specify [...]

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Article 60. Rendering of the arbitral award

7. [...] The failing to eliminate such inconsistencies, the General Secretary of the ICAC may inform the ICAC Presidium about it.

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The Arbitral Tribunal does not make a final award until the ICAC Presidium considers the recommendations of the Secretary General of the ICAC.

Section VII. Payment of the additional costs of the arbitral proceedings

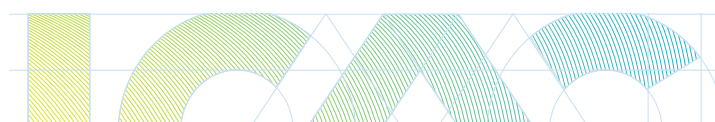
5. [...] The ICAC may require the respective party or both parties to deposit an advance for such costs.

6. If the parties have agreed that the hearings of the case shall be held outside the ICAC location, the parties shall bear solidary all additional costs connected with holding of hearings including travelling and accommodation expenses of arbitrators. [...]

5. [...] The ICAC may require the respective party or both parties to deposit an advance for such costs.

6. If the case is being considered in two or more languages, additional 400 US dollars are paid to the arbitration fee.

7. If the parties have agreed that the hearings of the case shall be held outside the ICAC location, the parties shall bear solidary all additional costs connected with holding of hearings including



travelling and accommodation expenses of arbitrators. [...]

8. The apportionment of additional costs between the parties is carried out taking into account Sections VI and IX of this Schedule.

