

International Court of Arbitration

What is the procedure for appointing arbitrator as per the ICC Rules?

The ICC Rules provides for arbitral tribunal provisions under Article 11 to 15. The section provides for general provisions laying down the requirements for appointment of arbitrator. As per Article 11, any person can be appointed as arbitrator based on his expertise in specific field of work, nationality, and language, so on and so forth as agreed by the parties to the dispute. However, the arbitrator **must be independent and impartial.** The Court's role is to ensure that prospective arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The prospective arbitrator shall **disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to raise doubt on the arbitrator's independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality.**

If the Parties have not provided otherwise in contract, the arbitral tribunal shall be appointed under article 12 and 13 which states about constitution of the arbitral tribunal and appointment and confirmation of the arbitrators.

Can the appointment of arbitrator be challenged?

The **appointment can be challenged as per article 14 for an alleged lack of impartiality or independence,** or otherwise, shall be made by the submission to the Secretariat of a written statement specifying the facts and circumstances on which the challenge is based.

The **challenge is admissible only if it is made within 30 days from receipt by that party of** the notification of the appointment or **confirmation of the arbitrator,** or **within 30 days from the date when the party was informed of**

the facts and circumstances on which the challenge is based, if such date is subsequent to the receipt of such notification.

The Arbitrator can be replaced under article 15 of the ICC Rules upon death, upon acceptance by the ICC Arbitration Court of the arbitrator's resignation, upon acceptance by the court of a challenge, or upon acceptance of a request of all the parties. The ICC Arbitration Court can also replace the arbitrator on its own initiative when it decides that the arbitrator is prevented de jure or de facto from fulfilling the arbitrator's functions, or that the arbitrator is not fulfilling those functions in accordance with the ICC Rules or within the prescribed time limits.

What is the time limit for rendering final award?

Article 30 directs that the award must be passed in six months from the date of last signature by the arbitral tribunal or by the parties of the Terms of Reference or, in the case of application of Article 23(3), the date of the notification to the arbitral tribunal by the Secretariat of the approval of the terms of reference by the court. The court may fix a different time limit based upon the procedural timetable established pursuant to Article 24(2).

The Court may extend the time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so. [Article 30(1)]

Whether awards granted by arbitral tribunal binding on parties and enforceable?

Article 34 (6) of ICC Rules provides that the award shall be binding on the parties as by submitting to the arbitration under the ICC Rules the parties waive their right to any form of recourse insofar as the waiver can be validly made.

However, the enforceability of the awards remains to be major concern and many courts around the world have cast doubts about its enforceability. The matter of enforceability is decided on case to case basis by the state/national courts and the practice defers based on the considerations in each case and country. The enforcement is not automatic and depends on the legal system wherein the parties seek to enforce the judgment. The UK's Court of Appeal in *Dallah Estate and Tourism Holding Co. v. The Ministry of Religious Affairs, Government of Pakistan [2009] EWCA Civil 755* highlighted the limitations of tribunal's authority to rule on its own jurisdiction. It upheld the view that courts enforcing the awards have final word on the issue of tribunal's jurisdiction to grant award. It further emphasizes that the consideration on contracting party being state entity can change the approach of the judiciary.

Considering the doubts on enforceability of awards granted by arbitral tribunals under ICC clause under supervision of ICC Arbitration Court, ICC has released a new edition of its guide to national procedures for recognition and enforcement of awards under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).