

TIME AND COST EFFICIENCY UNDER THE 2012 ICC RULES OF ARBITRATION

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International Chamber of Commerce

The world business organization

2012 REFORM: QUICK OVERVIEW

Arbitral Tribunal

- Disclosure of Availability and Impartiality
- Direct appointment by the Court in certain circumstances
- Emergency Arbitrator
- Rules for appointment in complex arbitration

Complex Arbitration

- Joinder
- Consolidation
- Multi-party
- Multi-Contract

Case Management

- General Obligation of Cost-Efficiency
- Case Management Conference
- Case Management Techniques

Costs

- Decision on costs in cases of withdrawal
- Costs orders any time of the proceedings
- Advance on costs for complex arbitration

Miscellaneous

- Exclusive administration by the ICC Court
- Secretary General to decide which matters should be referred to prima facie determination
- Confidentiality
- Proof of representation
- Time Limit for the Award

CONSTITUTING THE ARBITRAL TRIBUNAL

NUMBER OF ARBITRATORS

Number of Arbitrators

- The disputes shall be decided by a sole arbitrator or by three arbitrators. (Article 12(1))

Default

- Where the parties have not agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, save where it appears to the Court that the dispute is such as to warrant the appointment of three arbitrators.
- In such case, the claimant shall nominate an arbitrator within a period of 15 days from the receipt of the notification of the decision of the Court, and the respondent shall nominate an arbitrator within a period of 15 days from the receipt of the notification of the nomination made by the claimant. If a party fails to nominate an arbitrator, the appointment shall be made by the Court. (Article 12(2))

CONSTITUTING THE ARBITRAL TRIBUNAL

Insofar as the parties have not provided otherwise, the arbitral tribunal shall be constituted in accordance with the provisions of Articles 12 and 13

Sole Arbitrator

- Parties may nominate the sole arbitrator
 - Within 30 days from the date when the Request for Arbitration has been received by the other party or within such additional time as may be allowed by the Secretariat
- If not, the Court will appoint (Article 12(3))

Three-Member Arbitral Tribunal

- Each party shall nominate in the Request and the Answer, respectively, one arbitrator for confirmation. (Article 12(4))
 - If a party fails to nominate an arbitrator, the appointment shall be made by the Court
- The Court will appoint the president unless the parties have agreed upon another procedure: (Article 12(5))
 - Should such procedure not result in a nomination within 30 days from the confirmation or appointment of the co-arbitrators or any other time limit agreed by the parties or fixed by the Court, the third arbitrator shall be appointed by the Court

MULTIPLE PARTIES AND THREE ARBITRATORS

Multiple claimants or respondents

- Where there are multiple claimants or multiple respondents, and where the dispute is to be referred to three arbitrators, **the multiple claimants, jointly, and the multiple respondents, jointly, shall nominate an arbitrator for confirmation** pursuant to Article 13. (Article 12(6))

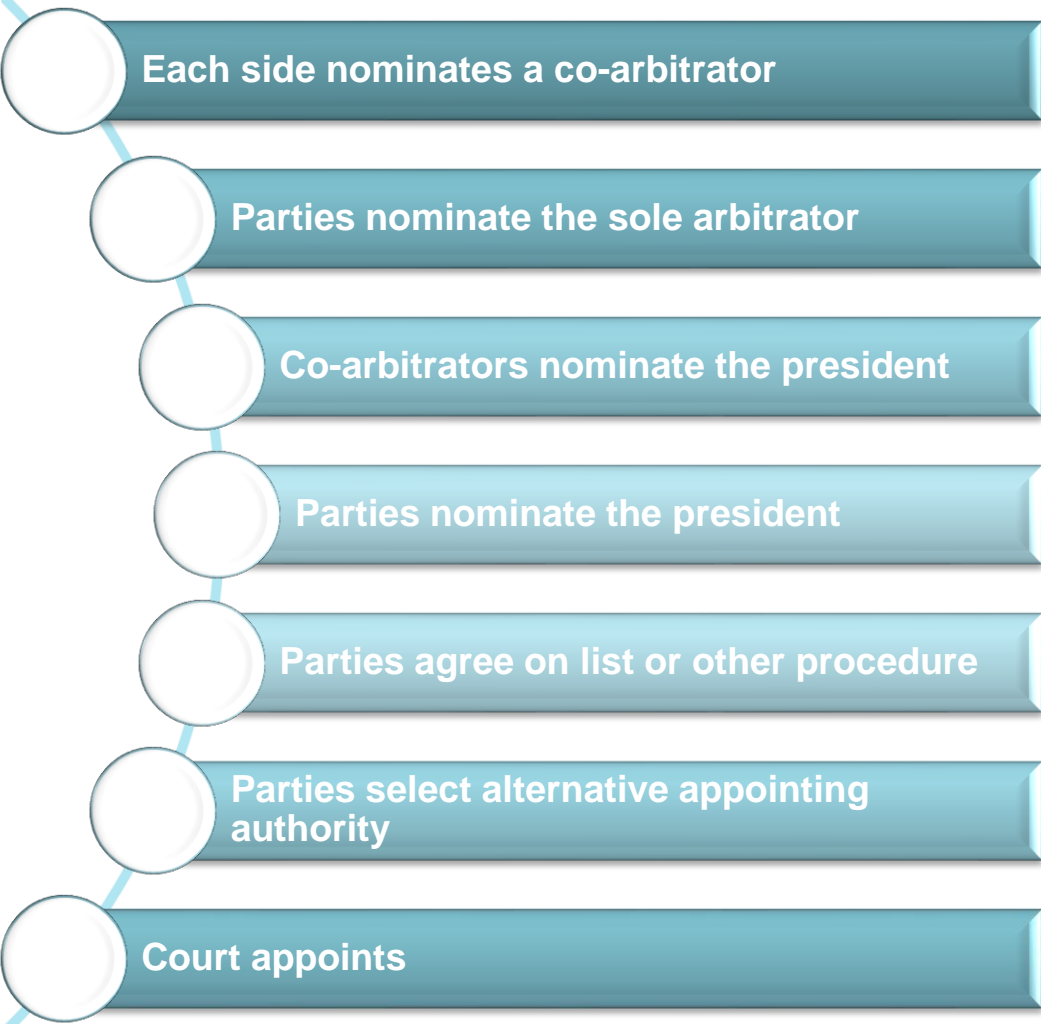
Additional parties

- Where an additional party has been joined, and where the dispute is to be referred to three arbitrators, **the additional party may, jointly with the claimant(s) or with the respondent(s), nominate an arbitrator for confirmation** pursuant to Article 13. (Article 12(7))

When issues arise

- In the absence of a joint nomination pursuant to Articles 12(6) or 12(7) and where all parties are unable to agree to a method for the constitution of the arbitral tribunal, **the Court may appoint each member of the arbitral tribunal and shall designate one of them to act as president.** In such case, the Court shall be at liberty to choose any person it regards as suitable to act as arbitrator, applying Article 13 when it considers this appropriate. (Article 12(8))

CONSTITUTING THE ARBITRAL TRIBUNAL



THE ARBITRATORS

The Forms

- Before appointment or confirmation, a prospective arbitrator shall sign a statement of acceptance, **availability, impartiality** and independence. (Article 11(1))

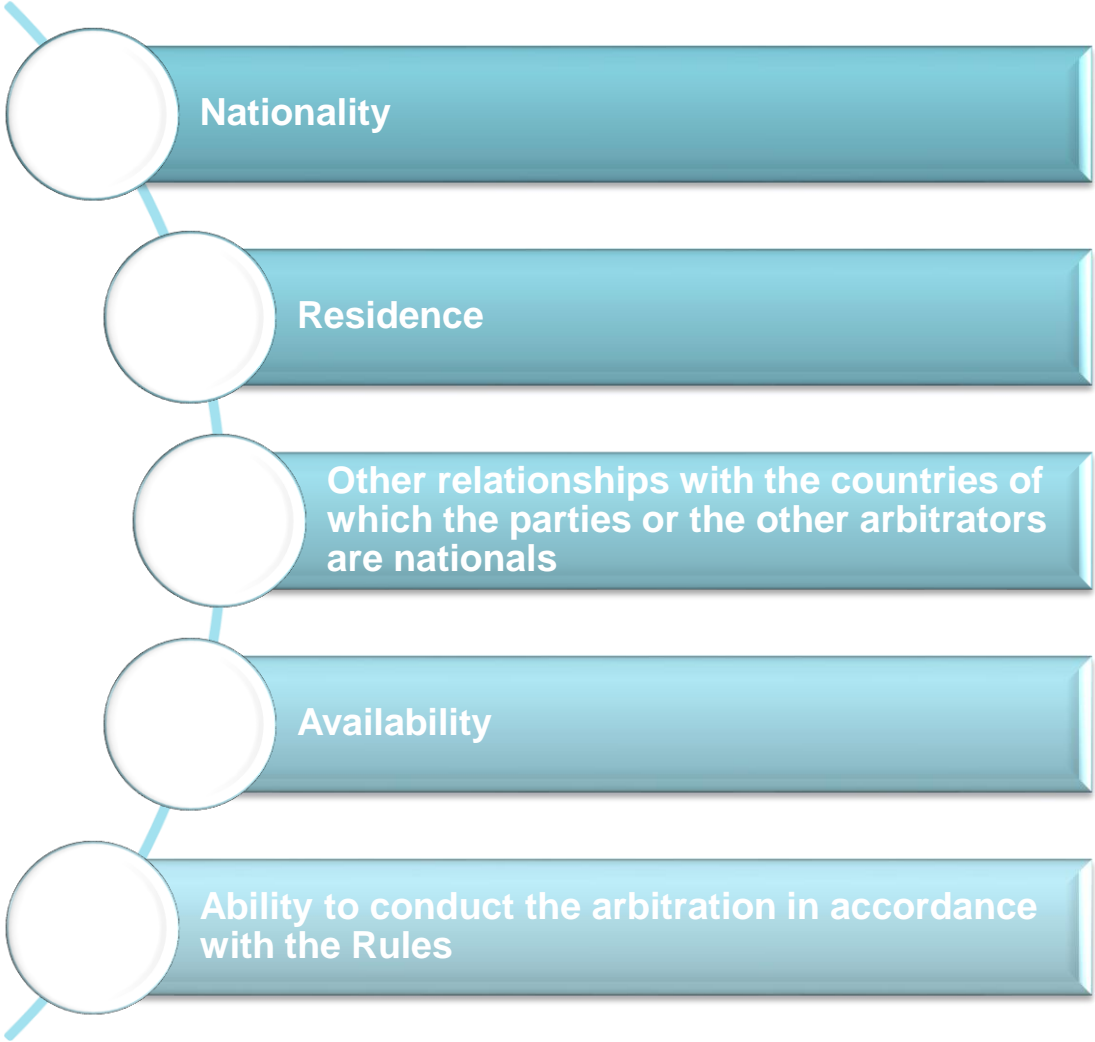
Disclosure by prospective arbitrators

- The prospective arbitrator shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to **call into question 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**.
- The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them. (Article 11(2))

Continuing disclosure

- An arbitrator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature to those referred to in Article 11(2) concerning the **arbitrator's impartiality or independence** which may arise during the arbitration. (Article 11(3))

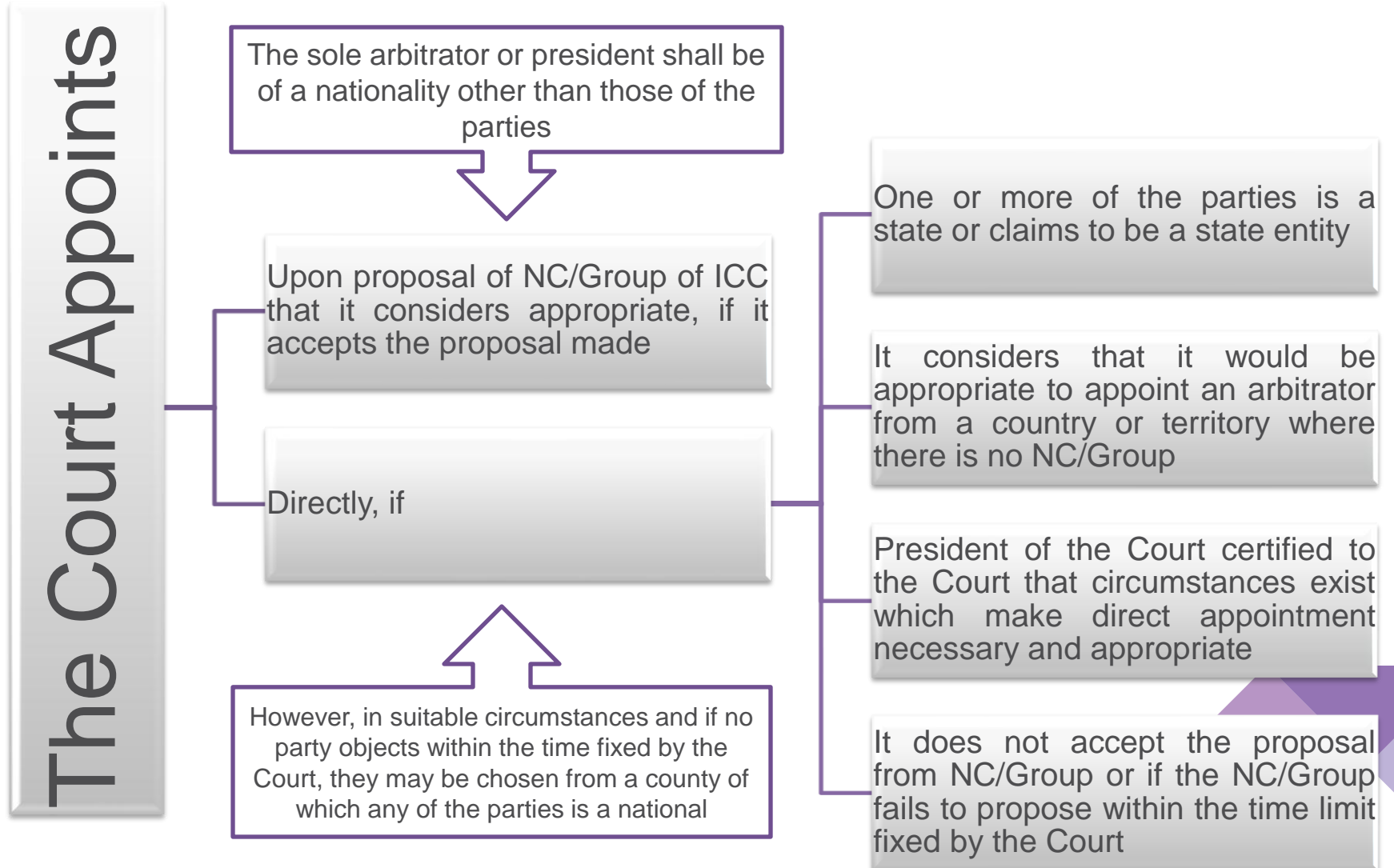
CONSIDERATIONS



Common considerations for decisions on confirmation/appointment

- Independence
- Impartiality
- Availability
- Language ability
- Ability to conduct the proceedings

THE COURT'S OPTIONS REGARDING APPOINTMENT



HIGHLIGHTS

2012

Impartiality

Arbitration involving states

Availability

Efficiency

Impact of multiple parties

Clarification of practice

New options for appointment method

Efficiency

Direct appointment of arbitrators involving states

Arbitration involving states

New default time period for co-arbitrators to nominate the president

Efficiency

Constituting an arbitral tribunal to address costs

Modernisation

Gender neutral terminology

Modernisation

CASE MANAGEMENT

NEW GENERAL OBLIGATION

Article 22(1)

- “The **arbitral tribunal** and **the parties** shall make every effort to conduct the arbitration in a cost-effective manner having regard to the complexity and value of the dispute”

OBLIGATIONS FOR THE ARBITRATORS

Article
11(2)

- Shall sign a declaration of availability

2012

Article
22(4)

- Shall ensure that each party has a reasonable opportunity to present its case

Article 23

- As soon as it has received the file, shall draw up a document defining its Terms of Reference

Article
24(1)

- Shall convene a case management conference

2012

Article
25(1)

- Shall proceed, within as short a time as possible, to establish the facts of the case

Article
26(1)

- Shall be in full charge of the hearings

OBLIGATIONS FOR THE ARBITRATORS

Article 27

- As soon as possible after final hearing or final submission, shall (1) close the proceedings and (2) inform Secretariat and parties of expected date for submission of the award

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Article 30

- Shall render the Final Award within (1) six months or (2) any other time limit fixed by the Court pursuant to the procedural time table

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OBLIGATIONS FOR THE PARTIES

To comply with the Requirements of Articles 3, 4 and 5



To comply with any order made by the Arbitral Tribunal

- Article 22(5)

To pay the advance on costs

- Article 36(2)

CASE MANAGEMENT CONFERENCE: NEW ARTICLE 24



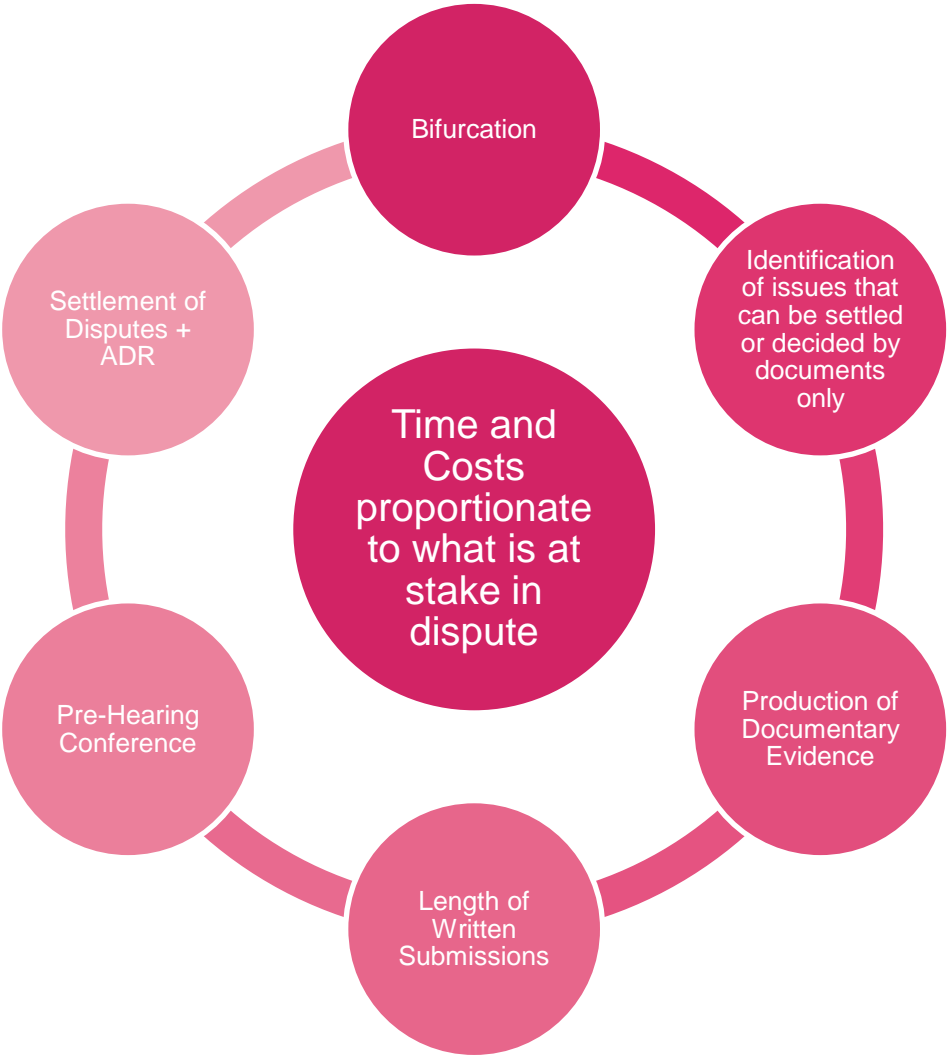
Objectives: to (1) consult the parties on procedural measures to achieve general obligation of cost-efficiency, and (2) establish the procedural time table

Timing: (1) when drawing up the Terms of Reference or as soon as possible thereafter, and (2) at other appropriate stages to ensure continued effective case management

Means: meeting in person or by electronic means

Participants: Arbitral Tribunal and parties' representatives. The Arbitral Tribunal can request the attendance of the parties (in person or through internal representative) and may request the parties to submit proposals

CASE MANAGEMENT TECHNIQUES: NEW APPENDIX IV



SANCTIONS FOR THE PARTIES

Article
37(5)

- In making decisions on costs, the Arbitral Tribunal may take into account the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner



SANCTIONS FOR THE ARBITRATORS

Article
15(2)

- An arbitrator shall be replaced on the Court's own initiative when it decided that the arbitrator is not fulfilling his/her functions in accordance with the Rules or within the prescribed time limits

Article 2(2)
App.III

- In setting the arbitrator's fees, the Court shall take into consideration the diligence and **efficiency** of the arbitrator, the time spent, the rapidity of the proceedings, the complexity of the dispute **and the timeliness of the submission of the draft award**



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THANK YOU!

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