

coia

court of innovative
arbitration

Arbitration Rules

In force as of 1 October 2015

0. Preamble

- 0.1 Parties wishing to have their dispute(s) decided by COIA recognise that these Arbitration Rules are designed to provide for a simple, quick and inexpensive mechanism to resolve disputes. As a consequence, arbitration under these Arbitration Rules requires cooperation by the parties and their counsel (if any), in particular in view of the limited number of written submissions and the short time limits to be observed. To that end, it is essential that parties only appoint counsel capable of respecting short time limits.
- 0.2 It is recommended that parties wishing to refer their dispute(s) to COIA use the model arbitration clause available on the COIA website.
- 0.3 The Secretariat of COIA (the "COIA Secretariat") shall consist of the President of COIA (the "COIA President"), who heads the COIA Secretariat, and case managers. Responsibilities of the COIA Secretariat can be discharged by a case manager unless these Arbitration Rules specifically require the COIA President to act.
- 0.4 To facilitate reading, these Arbitration Rules use the masculine gender only. Any reference to the masculine gender of course includes the feminine gender.

1. Scope of Application, Jurisdiction

- 1.1 These Arbitration Rules shall apply whenever the parties to a dispute have agreed in writing (including any means of communication which permits the agreement to be evidenced by a text) to have their dispute resolved by COIA and/or in accordance with these Arbitration Rules. If the parties have agreed, prior to the filing of the Request for Arbitration, to conduct the arbitration in German, the German language version of these Arbitration Rules shall apply.
- 1.2 This 1 October 2015 edition of the Arbitration Rules shall apply to all arbitral proceedings in which the Request for Arbitration is received by the COIA Secretariat on or after 1 October 2015 and before a new edition enters into force.
- 1.3 COIA is entitled to refuse to proceed with the arbitration if the COIA President considers that arbitration under these Arbitration Rules is not appropriate to resolve the dispute.
- 1.4 The arbitrator appointed by the COIA Secretariat (hereinafter "the Arbitrator") shall have the power to rule on his own jurisdiction, including on any objection with respect to the existence, scope or validity of the arbitration agreement.

2. Seat

- 2.1 The seat of each arbitration under these Arbitration Rules shall be Zurich (Switzerland), even if hearings, if any, are held elsewhere.
- 2.2 Any legal relationship between COIA, the COIA Secretariat, the COIA Arbitrators and the parties shall be governed by Swiss law without reference to its conflict of law provisions. As between the parties, Article 16 shall remain unaffected.

- 2.3 Arbitration proceedings under these Arbitration Rules are governed by Chapter 12 of the Swiss Federal Act on Private International Law, irrespective of the parties' domicile, including cases where both parties are domiciled in Switzerland. In the latter case, the parties waive the applicability of the Third Part of the Swiss Code of Civil Procedure.

3. Language

- 3.1 The language of the arbitration shall be English unless the parties, the Arbitrator and the COIA Secretariat agree to proceed with the arbitration in another language.
- 3.2 Upon request by any party, the Arbitrator may decide, after consultation with the other party, to accept any or all oral and/or written submissions in a language other than the language of the arbitration.
- 3.3 Exhibits provided in a language other than the language of the arbitration must be accompanied by a certified translation into the language of the arbitration unless the Arbitrator decides otherwise.

4. Representation of the Parties

Each party may be assisted or represented by one or more lawyers or by any other person(s) of their choice (collectively referred to as "counsel" herein).

5. Filing Address, Communications

- 5.1 Requests for Arbitration shall be filed with the COIA Secretariat:

COIA – Court of Innovative Arbitration
Agnesstr. 14
80798 Munich
Germany
E-Mail: info@coia.org

- 5.2 Any communication to and from COIA – including communication to and from the Arbitrator – shall be made by e-mail through the COIA Secretariat. Transmission of exhibits by courier is admissible but should be limited to cases in which transmission by e-mail is not feasible; in such case, the party shall submit copies for every other party, the Arbitrator and the COIA Secretariat. The Arbitrator may order that communication shall be made differently than stipulated in this Article 5.2.
- 5.3 Notifications and communications to the parties or their counsel shall be made to the addresses indicated in the Request for Arbitration (Article 8.1) and the Answer (Article 12.1) or to any other address specified by the parties at a later point in time.
- 5.4 Unless decided otherwise by the Arbitrator, parties and their counsel shall send read receipts for any e-mail from COIA or shall confirm receipt by way of return e-mail without undue delay.
- 5.5 Refusal to accept a communication shall be regarded as successful delivery thereof.

- 5.6 Written submissions shall comply with the formal requirements as set out in the COIA Guidelines on Written Submissions published on the COIA website. In case of non-compliance, the Arbitrator may set a time limit for bringing the submission in compliance with the formal requirements, failing which he may decide not to take such submission into account.

6. Time Limits

- 6.1 In general, time limits for the filing of written submissions and other procedural acts shall be determined by the Arbitrator by reference to a specific date. Absent any indication to the contrary by the Arbitrator, written submissions must be received by the COIA Secretariat until the end of that day (Swiss time); exhibits that are sent by courier in accordance with Article 5.2 must be despatched at the latest on the first business day (at the seat of the respective party or its counsel, if any) following expiry of the time limit.
- 6.2 Upon request, the Arbitrator may, in his sole discretion, extend any time limit or, if the initial time limit has already expired, grant an additional time limit. He may also decide that a time limit is stayed until he has taken a decision on a request for an extension. If a party requests an extension after the time limit has already expired, the Arbitrator shall request that party to submit evidence that it was unable, without fault, to meet the time limit and to request an extension before the time limit expired; the Arbitrator shall consult the other party before deciding upon the request.
- 6.3 Articles 6.1 and 6.2 above shall apply mutatis mutandis to time limits that are set by the COIA Secretariat in accordance with these Arbitration Rules.
- 6.4 Until the Arbitrator has accepted his appointment, the COIA Secretariat shall take any decision on time limits that would otherwise fall within the Arbitrator's responsibility.

7. Arbitrators

- 7.1 Disputes before COIA shall be decided by a sole arbitrator appointed by the COIA Secretariat from the arbitrators listed on the COIA website at the time when the Request for Arbitration is received ("COIA Arbitrators"). If the parties agree on one of those arbitrators prior to an appointment having been made by the COIA Secretariat, the latter shall appoint the arbitrator chosen by the parties; otherwise, it shall select and appoint a COIA Arbitrator taking into account, in particular, the arbitrator's working languages, fields of expertise, docket of cases and apparent conflicts of interest.
- 7.2 If the Arbitrator so appointed is unavailable, declines the appointment, resigns or is successfully challenged (see Article 7.4) or if the appointment is revoked by the COIA President because in the latter's sole discretion the Arbitrator is unwilling or unable to conduct the arbitration in an efficient manner, the COIA Secretariat shall appoint another arbitrator in accordance with Article 7.1.
- 7.3 If the Arbitrator accepts the appointment, he shall do so by sending a declaration of acceptance and independence to the COIA Secretariat. The COIA Secretariat shall inform the parties of any circumstances disclosed by the Arbitrator. The parties shall be provided with a copy of the Arbitrator's declaration upon request.

7.4 An Arbitrator may be challenged if the circumstances give rise to legitimate doubts regarding his independence or impartiality. The challenge shall be brought within seven days after the ground for the challenge has become known to the party bringing the challenge. Challenges shall be decided by the COIA President who shall rule on the challenge after having given to the other party and to the Arbitrator an opportunity to state their positions. Summary reasons for the COIA President's ruling will be communicated to the parties.

8. Request for Arbitration

8.1 A COIA arbitration shall commence on the date of receipt of a Request for Arbitration by the COIA Secretariat. The Request for Arbitration shall contain:

- the name, postal address, telephone and facsimile number and e-mail address of the parties and their counsel (if applicable);
- Claimant's request for relief; and
- a copy of the parties' agreement(s) to have the dispute resolved by COIA arbitration.

8.2 Given that there might not be a further exchange of written submissions, the request should also contain the following:

- a comprehensive statement of all the facts and legal arguments on which the Claimant seeks to rely;
- any documentary evidence on which the Claimant seeks to rely;
- any requests for the examination of witnesses (this term referring to fact witnesses and expert witnesses likewise) together with written witness statements; and
- any request for a hearing (see also Article 14).

8.3 If the Request for Arbitration does not comply with Articles 5.6 or 8.1, the COIA Secretariat may set a final time limit for the submission of any missing elements, failing which the Request for Arbitration shall be deemed withdrawn; the Claimant shall be notified about this consequence when such time limit is set.

9. Advance on Costs

9.1 The COIA Secretariat shall fix an advance on the fees and expenses of the COIA President and the Arbitrator ("Advance on Costs"), and may adjust it in the course of the proceedings. In fixing the amount of the Advance on Costs, the COIA Secretariat shall take into consideration the amount in dispute and the complexity of the case, both to be determined by the COIA Secretariat in its discretion.

9.2 The Advance on Costs shall be paid in equal shares by both parties unless decided otherwise by the Arbitrator. It shall be paid into the COIA bank account (Article 18.1) within the time limit set by the COIA Secretariat.

- 9.3 If a party fails to pay its share of the Advance on Costs, the other party may substitute for it.
- 9.4 The Arbitrator may decide not to proceed with the arbitration until the full amount of the Advance on Costs is received.
- 9.5 If the Advance on Costs is not paid in time, the COIA Secretariat may set a final time limit for payment, failing which the Request for Arbitration shall be deemed withdrawn; the parties shall be notified of this consequence at the time when such time limit is set.

10. Provisional and Conservatory Measures

- 10.1 Upon request filed after or together with a Request for Arbitration, the Arbitrator may order any provisional or conservatory measures he deems appropriate, or order that such measures be modified, suspended or terminated. Such orders can be made conditional upon the posting of a security. In cases of extreme urgency, such orders can be made ex parte, in which case the request must be communicated to the other party together with the order for comments.
- 10.2 The applicant shall expressly refer to a request under Article 10.1 in its cover e-mail.
- 10.3 Article 10.1 does not affect the parties' right apply to any state court for interim or conservatory measures, which shall not be deemed to be an infringement or a waiver of the arbitration agreement. Any such application and any measures taken by the state court must be notified without undue delay to the Arbitrator.

11. Initiation of the Arbitral Proceedings

- 11.1 The arbitration will not be initiated until the handling fee provided in Article 18.1 is received in the COIA bank account. The COIA Secretariat may set a final time limit for the payment of the handling fee, failing which the Request for Arbitration shall be deemed withdrawn; the Claimant shall be notified of this consequence at the time when such time limit is set.
- 11.2 After filing of the Request for Arbitration and receipt of the handling fee, and subject to any decision under Article 8.3, the COIA Secretariat shall decide whether the arbitration can be initiated, i.e. whether, *prima facie*, a written arbitration agreement provides for the dispute to be adjudicated under these Arbitration Rules. Any decision not to initiate the arbitration must be taken by the COIA President.
- 11.3 If the COIA Secretariat determines that the arbitration can be initiated, it shall set the Advance on Costs (Article 9), communicate the Request for Arbitration to the Respondent and set time limits for the Answer and for payment of the Advance on Costs. Furthermore, unless the parties have already informed the COIA of an agreement on an arbitrator in accordance with Article 7.1, the COIA Secretariat shall grant them a time limit to notify it accordingly.

12. Answer, Counterclaim

- 12.1 Given that there might not be a further exchange of submissions, the Answer should contain:
- any defence of lack of jurisdiction (any later challenge of jurisdiction will not be heard);
 - any counterclaim;
 - a comprehensive statement of all the facts and legal arguments on which the Respondent seeks to rely;
 - Respondent's request for relief;
 - any documentary evidence on which the Respondent seeks to rely;
 - any requests for the examination of witnesses (this term referring to fact witnesses and expert witnesses likewise) together with written witness statements;
 - any request for a hearing (see also Article 14); and
 - the name, postal address, telephone and facsimile number and e-mail address of the Respondent and its counsel (if applicable).

12.2 Articles 8, 9, 11.1, 18.1 and 18.2 shall apply mutatis mutandis to any counterclaim. The COIA Secretariat may set separate Advances on Costs for a claim and a counterclaim.

13. Procedure before the Arbitrator, Further Submissions, Settlement, Waiver

- 13.1 To the extent not provided otherwise herein, the Arbitrator shall determine in his sole discretion the procedure in the arbitration before him.
- 13.2 In principle, there will be no document production phase, unless decided otherwise by the Arbitrator in his sole discretion due to exceptional circumstances.
- 13.3 After the filing of the Request for Arbitration and the Answer, further submissions will not be taken into account unless the Arbitrator determines in his sole discretion that further submissions are necessary. The Arbitrator may also order the production of evidence or the parties' responses to specific questions.
- 13.4 After consulting the parties and if neither party objects, the Arbitrator is authorized to attempt to bring about a settlement to the dispute.
- 13.5 Any party that fails to object without undue delay to any of the following shall be deemed to have definitely waived its right to object in that respect:
- any failure to comply with any provision of these Arbitration Rules, or with any other rules applicable to the proceedings;
 - any direction given by the Arbitrator; or

- any other aspect of the conduct of the proceedings.

14. Hearing

- 14.1 No hearings are held unless both parties so request or the Arbitrator decides, after consultation with the parties, to hold a hearing.
- 14.2 If a hearing is held, the Arbitrator shall determine in his sole discretion, after consultation with the parties, whether the hearing is held by telephone or video conference or in person. In case of a hearing in person, the Arbitrator shall also determine the venue of the hearing after consultation with the parties. Hearings shall be in private.
- 14.3 The Arbitrator may make the holding of a hearing dependent on the payment of an additional Advance on Costs set by the COIA Secretariat in accordance with Article 9.
- 14.4 If a witness is heard, the Arbitrator shall admonish the witness to tell the truth and draw the witness's attention to possible consequences of false testimony.
- 14.5 Each party is responsible for the availability and any costs of its witnesses. Article 18.4 remains unaffected.

15. Default of Respondent, Failure to abide by directions or to appear at a hearing

If the Respondent fails to submit an Answer, or to submit it in accordance with Article 12.1 above, the Arbitrator may nevertheless proceed with the arbitration and deliver an award. The same applies if any party fails to abide by directions given by the Arbitrator or fails to appear at a hearing although duly summoned.

16. Law Applicable to the Merits

- 16.1 The Arbitrator shall decide the dispute according to the rules of law expressly chosen by the parties.
- 16.2 In the absence of any such express choice of law, the Arbitrator shall consult with the parties to see whether they wish to find an agreement on the applicable rules of law. If no such agreement can be reached, the parties herewith authorize the Arbitrator to decide the dispute *ex aequo et bono*, unless in his sole discretion he deems it more appropriate due to exceptional circumstances to apply those rules of law that he deems most closely connected to the dispute.
- 16.3 If the Arbitrator is authorized by the parties to decide the dispute *ex aequo et bono* (including under Article 16.2), he shall apply general considerations of justice and fairness instead of any particular national or international law. When deciding *ex aequo et bono*, the Arbitrator shall be authorized to depart from the agreement(s) between the parties if he deems that justice and fairness so require.

17. Award and Termination Order

- 17.1 Subject to Article 17.3 and absent any agreement of the parties to the contrary, the Arbitrator shall give a written, dated and signed award with concise reasons. Before signing the award, the Arbitrator shall transmit a draft to the COIA Secretariat which may make suggestions as to the form of the draft. Without affecting the Arbitrator's freedom of decision-making, the COIA Secretariat may also draw the attention of the Arbitrator to points of substance.
- 17.2 In the interest of the development of consistent COIA case law, the COIA President may authorize the Arbitrator to consult with other COIA arbitrators on issues of principle raised by an award, provided that the anonymity of the parties is preserved.
- 17.3 If a party fails to pay its share of the Advance on Costs, the Arbitrator may decide, upon request by the other party, to issue an award without reasons. In such case, the Arbitrator shall deliver reasons only if a party
 - a) files a request to that effect at any stage from the point in time when the Request for Arbitration is filed until no later than ten (10) days after the notification of the award without reasons, and
 - b) pays and bears the additional Advance on Costs as fixed and within the time limit set by the COIA Secretariat, failing which the request under Article 17.3 a) shall be deemed withdrawn.
- 17.4 Unless the matter is exceptionally complex, the Arbitrator shall endeavour to render the final award no later than six months after payment of the initial Advance on Costs set in accordance with Article 9. If a request is made under Article 17.3 a) after the last written submission was received by COIA, the Arbitrator shall endeavour to render the reasons (and, if no final award has been rendered already, the final award) within two months of receipt of the additional Advance on Costs under Article 17.3 b), provided that this is later than six months after payment of the initial Advance on Costs, otherwise within the latter period.
- 17.5 In the interest of contributing to arbitral jurisprudence, the COIA Secretariat may publish an award (or summaries or extracts thereof) in anonymized form, provided that no party has objected to such publication within 30 days of notification of the award and provided that the COIA Secretariat has drawn the parties' attention to this Article 17.5 when serving the award on them. Before any publication, the COIA Secretariat shall submit the anonymized version to the parties and grant the parties the opportunity to suggest further redactions that they deem necessary to safeguard their reasonable interests. This Article 17.5 applies mutatis mutandis to decisions under Article 7.4, which however may be published only after the arbitration has ended.
- 17.6 COIA awards shall be deemed to have been made at the seat of COIA and shall be final and binding upon communication to the parties by e-mail. The parties will receive original copies of the signed award thereafter.
- 17.7 If the parties reach a settlement after the Arbitrator has been appointed, the settlement shall be recorded in the form of a Consent Award if the parties so request and if the Arbitrator agrees to do so.
- 17.8 After notification of the award, the Arbitrator may, upon request by a party or on his own motion, correct any clerical, typographical or computational error in the award.

- 17.9 The Arbitrator shall issue a written, dated and signed termination order if the Claimant withdraws its Request for Arbitration before an Answer is filed or if the parties agree that the arbitration shall be terminated. Articles 17.6, 17.8, 18.3, 18.4 and 18.5 shall apply mutatis mutandis.

18. Costs of Arbitration

- 18.1 Along with the filing of the Request for Arbitration, the Claimant shall pay a non-reimbursable handling fee to the following bank account in accordance with the scale set forth in the COIA Cost Schedule in force at the time when the Request for Arbitration is filed:

Beneficiary: COIA GmbH
IBAN: DE72 5002 0200 0055 0050 37
BIC/Swift: BHFBDEFF500

Bank: BHF-BANK AG, Bockenheimer Landstraße 10, 60323 Frankfurt am Main

This handling fee covers the fees and expenses of the COIA Secretariat except for those of the COIA President.

- 18.2 In case of monetary claims, the amount in dispute on the basis of which the handling fee is calculated shall be identical to the amount sought. If the claim is amended at a later point in time, the handling fee shall be increased accordingly. If the relief sought is not or not entirely monetary in nature, the COIA Secretariat shall preliminarily determine the amount in dispute and request payment of the handling fee based thereon, subject to any later adjustment of the amount in dispute which the Arbitrator deems appropriate.
- 18.3 At the end of the proceedings, the COIA Secretariat shall determine the final amount of the arbitration costs, comprising the handling fee as per Article 18.1 and 18.2 as well as the fees and expenses of the COIA President and the Arbitrator. The fees of the COIA President and the Arbitrator shall be calculated on the basis of time spent at the rates fixed in the COIA Cost Schedule in force at the time the Request for Arbitration is filed. The final account of the arbitration costs may either be included in the award or communicated separately to the parties.
- 18.4 The Arbitrator shall determine in the award in his sole discretion which party shall bear the arbitration costs and in which proportion, and whether a party shall partially or fully reimburse the other party for its reasonable legal fees and expenses incurred in connection with the proceedings (including the costs of witnesses and interpreters). In making this decision, the Arbitrator shall take into account at least the relief(s) granted compared with the relief(s) sought as well as the conduct of the parties and their counsel (if any).
- 18.5 Unless agreed otherwise by the parties, the maximum reimbursement of a party's reasonable legal fees and expenses shall be as set forth in the COIA Cost Schedule in force at the time the Request for Arbitration is filed.

19. Limitation of Liability

COIA, COIA Arbitrators, the COIA Secretariat (including the COIA President and the case managers), and all other personnel involved in COIA arbitration cannot be held liable for any act or omission in connection with arbitral proceedings hereunder except in cases of grossly negligent or wilful acts or omissions. Any further-reaching limitation of liability regarding the COIA Arbitrators' decision-making shall remain unaffected.