

IOGINALITY

IOGINALITY Conciliation Rules

Last Updated: 15 December 2022

APPLICATION OF THE RULES

Article 1

- 1) These Rules apply to conciliation of disputes arising out of or relating to a contractual or other legal relationship where the parties seeking an amicable settlement of their dispute have agreed that IOGINALITY Conciliation Rules apply.
- 2) The parties may agree to exclude or vary any of these Rules at any time.
- 3) Where any of these Rules is in conflict with a provision of law from which the parties cannot derogate, that provision prevails.

COMMENCEMENT OF CONCILIATION PROCEEDINGS

Article 2

- 1) The party initiating conciliation sends the other party a written invitation to conciliate under these Rules, briefly identifying the subject of the dispute.
- 2) Where the contact details of the other party are unknown to the party initiating conciliation but is known to IOGINALITY (as defined in IOGINALITY Terms of Service), the invitation to conciliate can be sent to IOGINALITY.
- 3) Conciliation proceedings commence when the other party accepts the invitation to conciliate. If the acceptance is made orally, it is advisable that it be confirmed in writing.
- 4) If the other party rejects the invitation, there will be no conciliation proceedings.
- 5) If the party initiating conciliation does not receive a reply within thirty days from the date on which it sends the invitation, or within such other period of time as specified in the invitation, it may elect to treat this as a rejection of the invitation to conciliate. If it so elects, it informs the other party (or, if Article 2(1) applies, – IOGINALITY) accordingly.

NUMBER OF CONCILIATORS

Article 3

There shall be one conciliator unless the parties agree that there shall be two or three conciliators. Where there is more than one conciliator, they ought, as a general rule, to act jointly.

APPOINTMENT OF CONCILIATORS

Article 4

1.

- (a) In conciliation proceedings with one conciliator, the parties shall endeavor to reach agreement on the name of a sole conciliator;
- (b) In conciliation proceedings with two conciliators, each party appoints one conciliator;
- (c) In conciliation proceedings with three conciliators, each party appoints one conciliator. The parties shall endeavor to reach agreement on the name of the third conciliator.

2. Parties may enlist the assistance of IOGINALITY with the appointment of conciliators. In particular,

- (a) A party may request IOGINALITY to recommend the names of suitable individuals to act as conciliator; or
- (b) The parties may agree that the appointment of one or more conciliators be made directly by IOGINALITY.

In recommending or appointing individuals to act as conciliator, IOGINALITY shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or third conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

SUBMISSION OF STATEMENTS TO CONCILIATOR

Article 5

- 1) The conciliator (in this and all following articles, the term "conciliator" applies to a sole conciliator, two or three conciliators, as the case may be), upon the conciliator's appointment, requests each party to submit to the conciliator a brief written statement describing the general nature of the dispute and the points at issue. Each party sends a copy of its statement to the other party.
- 2) The conciliator may request each party to submit to the conciliator a further written statement of that party's position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party sends a copy of its statement to the other party.
- 3) At any stage of the conciliation proceedings the conciliator may request a party to submit to the conciliator such additional information as the conciliator deems appropriate.

REPRESENTATION AND ASSISTANCE

Article 6

The parties may be represented or assisted by persons of their choice. The names and contact details of such persons are to be communicated in writing to the other party and to the conciliator; such communication is to specify whether the appointment is made for purposes of representation or of assistance.

ROLE OF CONCILIATOR

Article 7

- 1) The conciliator assists the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
- 2) The conciliator will be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.
- 3) The conciliator may conduct the conciliation proceedings in such a manner as the conciliator considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.
- 4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

ADMINISTRATIVE ASSISTANCE

Article 8

In order to facilitate the conduct of the conciliation proceedings, IOGINALITY provides the parties with administrative assistance in their conciliation.

COMMUNICATION BETWEEN CONCILIATOR AND PARTIES

Article 9

- 1) The conciliator may invite the parties to a videoconference with the conciliator or may communicate with them orally or in writing. The conciliator may communicate with the parties together or with each of them separately.

DISCLOSURE OF INFORMATION

Article 10

When the conciliator receives factual information concerning the dispute from a party, the conciliator discloses the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which that party considers appropriate. However, when a party gives any information to the conciliator subject to a specific condition that it be kept confidential, the conciliator does not disclose that information to the other party.

CO-OPERATION OF PARTIES WITH CONCILIATOR

Article 11

The parties will in good faith co-operate with the conciliator and, in particular, will endeavor to comply with requests by the conciliator to submit written materials, provide evidence and attend meetings.

SUGGESTIONS BY PARTIES FOR SETTLEMENT OF DISPUTE

Article 12

Each party may, on its own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the settlement of the dispute.

SETTLEMENT AGREEMENT

Article 13

- 1) When it appears to the conciliator that there exist elements of a settlement, which would be acceptable to the parties, the conciliator formulates the terms of a possible settlement and submits them to the parties for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.
- 2) If the parties reach agreement on a settlement of the dispute, they draw up and sign a written settlement agreement. If requested by the parties, the conciliator draws up, or assists the parties in drawing up, the settlement agreement.
- 3) The parties by signing the settlement agreement put an end to the dispute and are bound by the agreement.

CONFIDENTIALITY

Article 14

The Conciliator and the parties must keep confidential all matters relating to the conciliation proceedings. Confidentiality extends also the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

TERMINATION OF CONCILIATION PROCEEDINGS

Article 15

The conciliation proceedings are terminated:

- (a) By the signing of the settlement agreement by the parties, on the date of the agreement; or
- (b) By a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or
- (c) By a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
- (d) By a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

RESORT TO ARBITRAL OR JUDICIAL PROCEEDINGS

Article 16

The parties undertake not to initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of the dispute that is the subject of the conciliation proceedings, except that a party may initiate arbitral or judicial proceedings where, in its opinion, such proceedings are necessary for preserving its rights.

COSTS

Article 17

1. Upon termination of the conciliation proceedings, the conciliator fixes the costs of the conciliation and gives written notice thereof to the parties. The term "costs" includes only:
 - (a) The fee of the conciliator, which shall be reasonable in amount;
 - (b) The travel and other expenses of the conciliator;
 - (c) The travel and other expenses of witnesses requested by the conciliator with the consent of the parties;

- (d) The cost of any expert advice requested by the conciliator with the consent of the parties;
 - (e) The cost of any assistance provided pursuant to articles 4(2)(b), and 8 of these Rules.
2. The costs, as defined above, are borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party are borne by that party.

DEPOSITS

Article 18

- 1) The conciliator, upon their appointment, may request each party to deposit an equal amount as an advance for the costs referred to in article 17, paragraph (1) which the conciliator expects will be incurred.
- 2) During the course of the conciliation proceedings the conciliator may request supplementary deposits in an equal amount from each party.
- 3) If the required deposits under paragraphs (1) and (2) of this article are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination to the parties, effective on the date of that declaration.
- 4) Upon termination of the conciliation proceedings, the conciliator renders an accounting to the parties of the deposits received and returns any unexpended balance to the parties.

ROLE OF CONCILIATOR IN OTHER PROCEEDINGS

Article 19

The parties and the conciliator undertake that the conciliator will not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings. The parties also undertake that they will not present the conciliator as a witness in any such proceedings.

ADMISSIBILITY OF EVIDENCE IN OTHER PROCEEDINGS

Article 20

The parties undertake not to rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the conciliation proceedings;

- (a) Views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- (b) Admissions made by the other party in the course of the conciliation proceedings;
- (c) Proposals made by the conciliator;
- (d) The fact that the other party had indicated its willingness to accept a proposal for settlement made by the conciliator.

Published on 15 December 2022.