

International Labour Arbitration and Conciliation Rules

SUMMARY

The International Labour Arbitration and Conciliation Rules (“Rules”) intend to provide speedy and efficient resolution of disputes arising under international labour agreements. As set forth more fully in the Introduction to the draft Rules, attached, this mechanism builds from existing arbitration frameworks but specifically addresses unique features of dispute resolution in this sphere. Namely:

- (1) The Rules are focused on resolving disputes arising under agreements negotiated by multinational corporations and brands, global unions and allied non-profit organizations. The primary task is contract interpretation, bearing in mind that the contracts at issue specifically intend to promote rights as well as commerce.
- (2) The Rules account for the fact that parties to global labour agreements, while negotiating as equals, are not similarly situated in terms of resources or their ability to discover and address contract violations. The Rules also recognize that all parties to international labour agreements share an interest in resolving disputes efficiently, fairly, and effectively.
- (3) The Rules both reflect lessons learned by parties to arbitrations arising from international labour agreements and seek to incorporate progress made in recent years to adapt the tools of international arbitration to serve more stakeholders in the global economy.

These Rules are based on the 2019 Hague Rules on Business and Human Rights (“Hague Rules”). The Rules aim to provide speed and efficiency in resolving labour disputes while still providing the arbitral tribunal with discretion to ensure rights-compatibility and procedural fairness. Throughout the drafting process, we have consulted and negotiated with experts at the Permanent Court of Arbitration (“PCA”) to ensure that we are developing a workable set of rules that addresses our needs without losing the benefit of learning in international arbitration, including learning in the human rights context. Key differences from the Hague Rules include:

(1) **Speedy, Streamlined Process** (timeline attached)

The Rules set the goal of an award within 180 days from the commencement of arbitration.

- a. Notice pleading: Parties set out entire case in the notice of arbitration and the response.
- b. Administrative conference: Parties convene early to address preliminary issues.
- c. Sole arbitrator: The default is a sole arbitrator, saving time on selection and scheduling.
- d. Case management conference: Arbitrator holds early conference and sets strict time limits, including a prompt hearing, and limits on pre-hearing filings and discovery.

(2) **PCA Role**

- a. PCA serves as registry and administers proceedings under these Rules.
- b. PCA convenes early administrative conference to resolve preliminary issues and invite parties to conciliate.

- c. PCA helps to discipline the 180-day limit on arbitral proceedings.
- d. PCA publishes information and documents pursuant to transparency regime.

(3) Sole Arbitrator

- a. Sole Arbitrator Presumption: The Rules default to a sole arbitrator.
- b. Agreement of Parties Controls: PCA implements parties' agreement on selection process, including appointment pursuant to a roster, list, or strike process.
- c. Default Appointment Process: If no party agreement, Rules provide speedy process.
- d. Qualifications of Arbitrators: Rules set qualifications of eligible arbitrators.

(4) Conciliation

The Rules provide early and flexible opportunities to engage in collaborative settlement.

- a. Pre-Arbitration Conciliation: Parties invited to conciliate very early in process.
- b. Arbitrator Role: Arbitrator may facilitate settlement consistent with its role.
- c. Conciliation During Arbitral Proceedings: At any point, the Rules allow conciliation alongside arbitration.

(5) Interim Measures

- a. Serious Harm Standard: As in the Hague Rules, interim relief is available to prevent serious harm, not the stricter standard of irreparable harm.
- b. Guidance on Interim Measures: Within the broad mandate to prevent serious harm, the Rules provide examples of the types of relief the Arbitrator can order.

(6) Transparency and Confidentiality

- a. Publication of Information: PCA can publish names of parties, industry, agreement invoked.
- b. Publication of documents: Public can access notice, response, awards and decisions.
- c. Agreement of Parties Controls: The parties can set their own transparency regime and take steps to protect parties, witnesses and confidential information.