

INTERNATIONAL ARBITRATION PART RULES -- PART 53

These International Arbitration Part Rules supplement the Part 53 Practice Rules, which shall govern any matters not specifically addressed in these rules.

Parties to international arbitration-related matters before this court should familiarize themselves with the following rules and resources:

- a. The Part 53 Practice Rules and Rule 202.5-b of the Uniform Rules for the New York State Trial Courts, which addresses electronic filing.
- b. CPLR Article 75—Arbitration.
- c. The Federal Arbitration Act, (FAA) 9 U.S.C. § 1 et seq.
- d. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("New York Convention"), June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38, if applicable.
- e. The Inter-American Convention on International Commercial Arbitration ("Panama Convention"), Jan. 30, 1975, S. Treaty Doc. No. 97-12, O.A.S.T.S. No. 42, 14 I.L.M. 336, if applicable.

If the parties wish to avail themselves of these International Arbitration Rules, they are strongly advised to include a forum selection clause in their contracts that explicitly waives the right of removal to Federal court, which is otherwise available under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and chapter 2 of the FAA. In this regard, please see *Yakin v Tyler Hill Corp.* (566 F3d 72 [2d Cir 2009] ["Parties are free to bind themselves to forum selection clauses that trump what would otherwise be a right to remove cases to federal courts"]).

It is the policy of New York State to enforce arbitration agreements and awards, as set out in CPLR 7501: "A written agreement to submit any controversy thereafter arising

or any existing controversy to arbitration is enforceable without regard to the justiciable character of the controversy and confers jurisdiction on the courts of the state to enforce it and to enter judgment on an award."

This Court will enforce the parties written agreements and applicable conventions governing international arbitrations with regard to all matters, including restrictions or limitations on the right to discovery, provisional remedies and the rules of evidence.

In all regards, it is preferable that the applicable convention be incorporated by reference in the agreement to arbitrate.

1. A Special Proceeding in accordance with CPLR 7502 shall be used to bring before the Court the first application arising out of an arbitrable controversy which is not otherwise made by motion in a pending action. All subsequent applications shall be made by motion in the special proceeding or in the action in which the first application was made.
2. Any party making an application arising out of an arbitrable controversy, whether or not it is the first such application, shall include with the application the full text of the arbitration agreement and any other contractual provisions that govern the dispute resolution process.
3. Applications for the following relief shall be made by motion on notice or on an expedited basis by Order to Show Cause:
 - a. Orders to compel arbitration or to stay an action. CPLR 7503(a).

- b. Orders to confirm an award. CPLR 7510.
- c. Orders to vacate or modify an award. CPLR 7511.

The following applications should be made only by order to show cause:

- a. preliminary injunction.
 - b. A stay of arbitration.
 - c. Disclosure to aid in arbitration.
 - d. An Order of Attachment.
4. Unless the parties stipulate to the contrary or extraordinary circumstances are present, all motions and applications shall be decided within 60 days of oral argument and any party may for any reason request an expedited decision.
- a. Applications by letter may be on consent for the appointment of an arbitrator and for a direction that the arbitrator proceed promptly with the hearing. Absent consent, a motion is required.
5. In the event the Court appoints an arbitrator, the court will appoint a sole arbitrator unless the parties have agreed otherwise. Arbitrators shall be selected by this Court from a list or source agreed to by the parties or from the Unified Court System's Fiduciary Eligibility List.
6. Counsel should note that The United States is a party to two significant international conventions that promote the enforcement of arbitration agreements and the recognition and enforcement of arbitral awards. They are:

- a. The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2517, 330 U.N.T.S. 38 ("New York Convention"), and the Inter-American Convention on International Commercial Arbitration, Jan. 30, 1975, S. Treaty Doc. No. 97-12, O.A.S.T.S. No. 42, 14 I.L.M. 336 ("Panama Convention").
- b. The New York Convention refers to the laws of its member states to determine whether an arbitration should be considered international. See New York Convention, Art. I(1) (covering "awards made in a territory of a State other than the State where the recognition and enforcement of such awards are sought" and awards "not considered as domestic awards in the State where their recognition and enforcement are sought").

The Federal Arbitration Act sets forth the following test to determine whether a matter falls under the New York Convention:

An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is incorporated or has its principal place of business in the United States.

7. Counsel are reminded that any request to assign or to transfer an action or

proceeding to Part 53 requires that a copy of the Administrative Order of the Administrative Judge for Civil Matters of the First Judicial District must accompany such request. A copy of said order is available from the Commercial Division website at:

http://www.nycourts.gov/courts/comdiv/PDFs/Practices_in_Part_53.pdf.