ECOVIS®
DOMINICAN REPUBLIC

THE CRC ARBITRATION RULES

By: José de Js. Bergés Martín

Summary

Currently, three arbitration rules coexist in the CR (not counting the Sports Arbitration Rules that are not the subject of this article), the application of which is subject, in principle, to the date on which the arbitration clauses or agreements were signed and, in some cases, to the will of the parties.

Keywords

Regulations, institutional arbitration, arbitration clause, arbitration agreement, procedural rules, complementary rules, mission minutes, counterclaim, new, additional, voluntary and forced intervention, finality of the award, waiver of appeals and nullity action.

I.- Origins and evolution.

1.- Law 50-87 of June 4, 1987 created the Chambers of Commerce and Production in the National District and in each capital city of the province of the country, with the power to establish in them Conciliation and Arbitration Councils and provide them with *"... a code containing the rules that will govern its services of amicable composition and arbitration"* **(1).** Under the aforementioned rule, the Chamber of Commerce and Production of Santo Domingo Inc. approved in November 1998 the "*Arbitration Rules*", which in turn were replaced on May 6, 2005, by the so-called "*Conciliation and Arbitration Rules of the Chamber of Commerce and Production of Santo Domingo Inc.*".

2.- Law 489-08 of December 30, 2008 on *Commercial Arbitration*, applicable to arbitrations initiated after its date**(2),** provided that institutional arbitration: *"is that in which the parties submit to a procedure established by*

an arbitration center..." and " *when a provision of this law refers to the arbitration agreement or any other agreement between the parties,* ***in the case of institutional arbitration, all the provisions of the Arbitration Rules to which the parties have submitted shall be understood to be included***" **(3).**

3.- Subsequently, Law 181-09 of June 6, 2009 intervened, amending Law 50-87 already mentioned, providing, among other aspects, that "*The resolution of disputes submitted to the center* ***shall be governed by the rules and procedures in force at the time of signing the arbitration or arbitration clause, which must be contained in the regulations or regulations prepared for that purpose by the Board of Directors and approved by the Board of Directors of the Chamber*** ***(4).*** Accordingly, the "*Arbitration Rules"* of November 1998 apply to proceedings whose arbitration clauses or arbitration agreements were stipulated as of that date and the "*Conciliation and Arbitration Rules of the Chamber of Commerce and Production of Santo Domingo Inc."* of May 6, 2005, to those whose arbitration agreements or commitments entered into since that date**.**

4.- As a result of the substitution of the rules of May 6, 2005 by the "*Arbitration Rules of the Dispute Resolution Center"* of July 21, 2011, the three (3) rules already mentioned **(5) coexist at present,** their application in each particular case being subject to the date on which the arbitration agreement or commitment has been signed. in accordance with the provisions of the aforementioned Law 181-09. In cases where any of the first two regulations are applicable in principle, the Management Firm, in order to promote and disseminate the last regulation of July 21, 2011, invites the parties to consider their suggestion to adopt it by mutual agreement.

5.- On December 1, 2011, the Board of Directors approved the "*Complementary Rules to the CRC Arbitration Rules"* ***(6),*** applicable to arbitration proceedings initiated on or after January 1, 2012.

II.- Basic differences between the three regulations.

1.- Notifications of claims and briefs: In the 1998 regulations, Articles 30, 31 and 38 mandate the plaintiff to serve his claim and documents by act of

bailiff simultaneously on the defendant and the secretary of the CRC and, on the defendant, to proceed in the same manner with respect to his defense brief and counterclaim. if it were to formulate it. The main plaintiff will also do the same with respect to his defence brief relating to the counterclaim. The CRC Registry and the Arbitral Tribunal have the power to communicate to the parties any communication by act of bailiff or by courier with acknowledgement of receipt, in accordance with the final part of Article 32.

In the 2005 Rules, the CRC Registry and the Arbitral Tribunal retain their prerogative to serve by act of bailiff or courier with acknowledgement of receipt. For his part, the plaintiff must serve his lawsuit and annexes by act of bailiff successively to the defendant and then to the secretary of the CRC. The defendant in turn must only serve the CRC secretary with his defense brief by act of bailiff. If he files a counterclaim together with his defense, he is obliged to serve successively the main plaintiff and the secretary of the CRC by act of bailiff and the main plaintiff must proceed in the same manner with respect to his statement of response to the counterclaim, as established in articles 8.2, 8.3, 8.4 and 8.5.

The 2011 regulations provide for a more suitable form: it dispenses with notifications by means of a bailiff, except in special circumstances **(7)** and uses courier with acknowledgement of receipt, e-mail with acknowledgement of receipt, facsimile or any other means of telecommunication that provides proof of its delivery, as established in article 2.3:

> *"2.3.- All communications from the secretariat and the Arbitral Tribunal* ***shall be deemed to have been validly served if they are made*** *to the last address of the addressee party or its representative, as notified to the secretariat,* ***by delivery against receipt, certified mail, e-mail with acknowledgement of receipt, facsimile, or by any other means of telecommunication that provides proof of their dispatch.*** *A notice or communication is deemed to have been given on the day on which it was received by the addressee or its representative, or on which it should have been received according to the means of service chosen."*

It is important to note here that Articles 4., 5.3, 5.5 and 5.6 use the term "*notify*" as a synonym for depositing with the CRC secretariat. In fact, in article 4.4 regarding the way in which the plaintiff must present his claim, it indicates that he will do so: *"... in accordance with the provisions of Article 2.2..."*:

> *"2.2.- All documents and annexed documents must* ***be deposited in the secretariat*** *in as many copies as there are parties, plus one for each arbitrator and another for the secretariat.* ***It may also be submitted digitally*** *according to the Digital Document Deposit Standard established for this purpose by the CRC. A copy of all communications addressed by the Arbitral Tribunal to the parties shall be sent to the registry."*

Consequently, the claimant shall deposit his claim and documents with the CRC clerk who shall in turn communicate them to the respondent, who shall deposit his defence and documents, together with the counterclaim, if any, with the CRC clerk, and the CRC clerk shall in turn communicate them to the main claimant. who will deposit his response brief with the CRC secretariat, which, in turn, communicates them to the main defendant, as prescribed by Articles 4.1, 5.3, 5.4, 5.5 and 5.6.

1.- Determination of the procedure: Both the 1998 regulations in their article 36 and the 2005 regulations in article 22.3 confer on the parties the power to establish the applicable procedure:

> "*Article 36.- Before beginning the investigation of the case, the Arbitral Tribunal shall prepare,* ***on the basis of the documents provided or in the presence of the parties,*** *a record specifying its mission. The mission report shall contain mainly the following statements:(...) g)* ***Applicable rules of procedure****."*
>
> *"Art. 22.3.- The Arbitral Tribunal shall be governed by the stipulations of the contract, if any, and additionally by the customs of commerce that are applicable* ***unless the***

> ***parties indicate otherwise in the arbitration clause or the commitment.***"

However, in the 2011 regulation the parties lack such prerogative, they can only make up for what is not contemplated by it:

> *"Art. 21.1.- The procedure before the Arbitral Tribunal shall be governed by these rules and,* ***in the event of silence thereof, by the rules determined by the parties*** *or, in their absence, by the Arbitral Tribunal whether or not with reference to a national procedural law applicable to the arbitration."*

2.- Counterclaims, new, additional, intervention of third parties: The 1998 regulation only provides for the counterclaim of the defendant filed before the signing of the Certificate of Mission, since the claims of the parties must be recorded in said record and the defendant is obliged to formulate it together with his statement of defense to the main claim:

> ***"****Art. 38.- The defendant who wishes to file a counterclaim must notify the principal plaintiff and the secretary of the CCA Management Office.* ***Such an application must also state their means of defence****."*

The 2005 regulations also provide for new demands from both parties, prior to the signing of the Mission Act:

> *"Art.24.1.- Once the Mission Act has been approved and signed, none of the parties may formulate any claim or introduce* ***new,*** *principal or counterclaim claims, other than those stipulated in the Mission Act."*

The 2011 regulations allow the parties, not only new or additional counterclaims by both parties before and after the signing of the Mission Act, but also the voluntary and forced intervention of third parties:

> *"24.-* ***Unless otherwise agreed by the parties,*** *none of them may formulate or introduce* ***new,*** *main or*

ECOVIS VS+B
C/ Federico Geraldino 47, Plaza Jenika, 401, Piantini
Santo Domingo, Dominican Republic
Phone: +1 809 563 3610
Email: j.bergesm@ecovis.do - **Web:**www.ecovis.com/dominicanrepublic

*counterclaim claims or **modify existing ones**, after the signing of the mission certificate or its approval by the Management Firm, unless authorized by the Arbitral Tribunal, which, when deciding on the matter, must take into account the nature of the new claims, the stage of the arbitral process and any other relevant circumstances."*

*"9.1.- The Arbitral Tribunal may, **at the request of one of the parties,** accept the intervention in the arbitral proceedings of one or **more third parties as a party,** provided that the third party is a party to the arbitration agreement, specific claims are made against it and there is a direct and legitimate interest in the outcome of the arbitration."*

*"9.2.- In the event that the **intervention of the third party occurs voluntarily,** the Arbitral Tribunal may only accept it **if there is the consent of all the parties.**"*

3.- Finality of the award: In the 1998 regulations, the award is *"... definitive and immediately binding on the parties..."*. By not expressly ruling out the means of appeal, it is subject to appeal, unless the parties expressly agree in the arbitration clause or commitment to waive it and attribute to the award to intervene the irrevocable nature of what has been judged in the last instance: *(SCJ, 1ra, Cam, No.11, March 11, 2009, BJ 1180)*.

The appeal filed against an award issued on July 15, 2004, prior to the entry into force of the 2005 regulations, was judged inadmissible, because it did not emanate from a court of the judicial order and there was no legal provision that provided for it (*SCJ, 1ra, Cam, no. 9, January 11, 2006, B. J. 1142, pp. 108-113)*.

Article 36.3 of the regulations of May 6, 2005 provides that *"the award is final, unappealable and immediately binding on the parties..."*

The 2011 regulation establishes that "*the awards issued are binding, of immediate compliance and issued in the sole and final instance."*

4.- Early waiver of appeals and action for nullity. -

ECOVIS VS+B
C/ Federico Geraldino 47, Plaza Jenika, 401, Piantini
Santo Domingo, Dominican Republic
Phone: +1 809 563 3610
Email: j.bergesm@ecovis.do - **Web:**www.ecovis.com/dominicanrepublic

The 1998 regulations do not contain any provision in this regard.

Both the 2005 and 2011 regulations enshrine in their respective articles 1.4 and 1.9 that "Such *a decision to submit to arbitration shall be deemed to imply a waiver of any of the remedies that may be validly waived",* which is in line with the provisions of the final part of article 23.1 and article 40.1 of Law 489-08 on Commercial Arbitration and paragraph II of article 17 of Law 181-09:

> *"Art. 23.1.- In the case of* ***institutional arbitration*** *and if the corresponding rules provide for any mandatory procedure****, this shall govern.****"*
>
> *"Art.40.1.-* ***If the parties have not previously waived the right to exercise any remedy against the awards,*** *the court competent to hear the nullity of an arbitral award issued in the Dominican Republic is the Court of Appeal of the Department corresponding to the place where the award was issued."*
>
> ***"****Paragraph II.-* ***They are final and not subject to any appeal, ordinary or extraordinary****, except for the main action for annulment of an award before the Court of Appeal that corresponds to the domicile of the Chamber of Commerce to which the Center in which the award was issued belongs,* ***provided that the parties have not waived such action in the arbitration agreement."***

By judgment number 6 issued by the United Chambers of the Supreme Court of Justice, on February 4, 2015 **(8),** on the occasion of an appeal filed against the final Arbitral Award number 060465, of February 26, 2008, of the Conciliation and Arbitration Council of the Chamber of Commerce and Production of Santo Domingo, admitted the validity of the early waiver of the appeal, which was endorsed by the Constitutional Court in its decision TC/0543/17, dated October 24, 2017. **(9)**

ECOVIS VS+B
C/ Federico Geraldino 47, Plaza Jenika, 401, Piantini
Santo Domingo, Dominican Republic
Phone: +1 809 563 3610
Email: j.bergesm@ecovis.do - **Web:**www.ecovis.com/dominicanrepublic

Bibliography

(1) Articles 1, 3, 15 and 16. Official Gazette No. 9712 of June 15, 1987.

(2) "Article 46. Transitional provision. Proceedings initiated prior to its entry into force shall not be governed by this law."

(3) Article 4, Official Gazette No. 10502 of December 30, 2008

(4) Official Gazette No. 10291 of 2009

(5) There is a *"Sports Arbitration Rules"* approved on March 10, 2015, which is not the subject of study in this article.

(6) These are: *"CRC Internal Procedural Rule", Guidelines for Arbitrators in the Conduct of an Arbitral Process* and the *"International Bar Association (IBA) Rules on the Taking of Evidence in International Arbitration Proceedings", "Qualifications of Arbitrators and President of the Arbitral Tribunal", "Standard for the Preparation of CRC Arbitrators' Lists and Arbitral Tribunal Selection Procedure" are annexed. "Code of Ethics for Arbitrators and Mediators and Conciliators and Rules for the Determination of Conflict of Interest", "Practice Standards Developed by the International Bar Association (IBA) for Evaluating Circumstances Likely to Create Conflicts of Interest", "Standard for Setting Arbitral Fees and Administrative Expenses" and "Standard on the Use of E-mail for the Submission of Documents, Electronic Briefs and Notifications in Arbitration Proceedings before the CRC*."

(7) "2.4.- ***The parties may choose by common agreement the way in which the notifications*** *regarding the arbitration process in which they are involved will be made. Likewise,* ***the secretary may request the parties to be notified by means***

of an act of bailiff of the documents that she deems relevant." For example, in cases where a person with no known address must be served or when the person refuses to receive the communication.

*"2.5.- **In the case of an arbitration in which the Dominican State is a party, the notification of the arbitration claim shall be made in the hands of the Office of the Attorney General of the Republic and the Office of the Comptroller General of the Republic,** which shall immediately inform the Legal Counsel of the Executive Branch thereof. If the respondent is a decentralized or autonomous institution of the State, the claimant shall also notify the arbitration claim to the institution in question, in accordance with Law No. 489-08 on Commercial Arbitration."*

*"2.6.- In the case of an arbitration in which the Dominican State is a party, **derived from free trade agreements and investment agreements, the notification shall be made to the coordinating national authority, which is the Directorate of Foreign Trade and Administration of International Trade Treaties (DICOEX) of the Ministry of Industry and Commerce.** In accordance with Law No. 489-08 on Commercial Arbitration, it is the responsibility of said Directorate to notify the Legal Counsel of the Executive Branch of all the claims received in these cases."*

*(8) BJ No. 1251 February 2015: "CONSIDERING: that the foregoing is further justified, as this Appeal also verifies that the arbitration held on the occasion of the original dispute arising between said parties that gave rise to the arbitral award now challenged**, was held in accordance with the provisions of the aforementioned arbitration rules, to which the parties agreed to submit in this case as expressed in the arbitration clause of their contract, which in its articles 1.4 and 36.3 provides that***

"The parties who decide to submit their differences to institutional arbitration governed by these Rules, undertake to comply without delay with any award issued or agreement that is reached. Such a decision to submit to arbitration shall be deemed to imply a waiver of any of the remedies to which they may validly waive. The awards issued are executory, of immediate compliance and issued in the sole and final instance." "The Award disempowers the arbitrators of the controversy they have resolved. The award shall be final, unappealable and immediately binding on the parties..." as indicated by said arbitration award now challenged when it states that it will not be subject to any ordinary or extraordinary appeal; which means that by submitting to the provisions of said Rules, the parties have waived the remedies of said arbitration decision, which is why by virtue of said contractual commitment the parties attributed absolute jurisdiction to the special jurisdiction created by the aforementioned Law 50-87 and the aforementioned Arbitration Rules, so that an arbitral tribunal would be in charge of settling their differences governed by a Conciliation and Arbitration Council dependent on the Chamber of Commerce and Production of Santo Domingo, Inc., as happened in the species;"

(9) "cc. In proceedings of this nature, the legislator is compelled to regulate the procedure that governs this dispute resolution mechanism, under the premise that although access to arbitral justice is voluntary, the function of administration of justice by arbitrators must be carried out in the formal and procedural terms determined by law. ***that in this case Law No. 50-87 of June 4, 1987, and the aforementioned Arbitration Rules issued by the Conciliation Council of the Chamber of Commerce and***

Production of Santo Domingo, of May 6, 2005, apply, provided that the parties have agreed to it, as is the case in this case. *Dd. In effect, when the appellant lodged the appeal before the ordinary jurisdiction, it is clearly a procedural error, which does not translate into a violation of the fundamental guarantee of effective judicial protection with respect to due process, specifically the right of defense as alleged by said party; Rather, what would constitute an error would be not to recognize the principle of autonomy of the will that must prevail between the contracting parties, in the kind manifested through the contracts of promise to sell shares, of November 19, 2004 USA. Certainly****, as established by the Plenary of the Supreme Court of Justice, contractual stipulations are binding both for the parties and for the courts, when they have been agreed and accepted by the parties, as a result of the freedom of contract and under equal conditions, since in accordance with the terms of the contract and by application of the rules in force, In this case, the decision given by the arbitrators was not subject to appeal before the ordinary jurisdiction****. Therefore, in accordance with what has been developed above and given the very nature of arbitration,* ***which in the present case has been duly consented to by the parties, it can be verified that in the species there is no violation of public order,*** *rather the object of the conflict or the process itself is of a purely particular essence, where the interest pursued by both parties is private, without it being possible to establish that the general interest is contrary to or affected in any way."*