

DISPUTE RESOLUTION SERVICE : A GUIDE TO FCC ARBITRATION

The FCC provides an internationally recognised dispute resolution service. Parties that incorporate the FCC Rules for Cocoa Beans or Cocoa Products into their own contracts use this service to resolve trade disputes in a fast and efficient manner.

The aim of this booklet is to outline the role of FCC's dispute resolution service.

Disclaimer

This Guide is a brief introduction to FCC Arbitration and is published for information only. In the event of a dispute the parties are referred to the applicable Arbitration & Appeal Rules and the FCC Contract Rules.

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ARBITRATION - What is FCC Arbitration?

Arbitration is a process for the resolution of disputes which avoids the cost and complexities of legal action through the law courts. The parties to a dispute refer the matter to the FCC for the appointment of arbitrators (the Tribunal) who adjudicate the matter and whose decision specified on the Award is binding on the parties. Arbitrators appointed to FCC arbitrations are selected from a Panel of experienced cocoa professionals approved by the FCC Council.

FCC arbitrations are conducted under English Law. The provisions of the Arbitration Act 1996, and of any amendment or re-enactment to the Act, apply to every arbitration and appeal.

FCC's internationally respected arbitration service is the foundation of the FCC standard form contracts.

All FCC contracts (for cocoa beans and cocoa products) include an Arbitration clause, which incorporates the FCC Arbitration & Appeal Rules.

FCC arbitration shall be conducted in the English language on the basis of the English language versions of the FCC Rules, unless the parties have agreed and specified in the contract that proceedings are to be conducted in the French language on the basis of the French language versions of the FCC rules.

In general, whenever the two parties to a contract cannot mutually resolve their dispute, rather than going to the courts, the matter will be resolved by arbitration. Where an arbitration award is not accepted by one of the parties, an Appeal may be lodged and a Board of Appeal will issue an Appeal Award with a final and binding decision.

Benefits of FCC Arbitration

- First and foremost arbitration is totally private and confidential. Arbitration meetings and hearings are held in private and the proceedings, decisions and awards are confidential to the two parties involved and the appointed arbitrators.
- Arbitration is inexpensive, and can be a rapid solution even to disputes involving very large sums of money..
- Arbitration is cheaper than having the problem resolved by a court of law. It is faster than litigation. By avoiding unnecessarily lengthy arguments, and by managing the proceedings in an efficient way, arbitration can save the parties both time and expense.
- Arbitration is impartial and conducted by FCC Arbitrators, who are Members of the Federation and active in the trade of cocoa beans and/or products. All arbitrators are required to meet a high standard of professionalism. They must have an in-depth understanding of the contract rules and the problems facing the cocoa trade. They must attend training courses and annual workshops to keep them abreast with current market and arbitration issues.
- The arbitration process is less formal than court procedures. Parties can be assisted by other trade experts with the presentation of their submissions or representation at a hearing. If they wish, parties can appoint lawyers to advise them, however lawyers are not permitted to represent the parties at a hearing unless permitted by the arbitrators.

The Arbitration Process

At its simplest, the arbitration process is as follows:

- The Claimant notifies the Respondent and the Federation of an application for FCC arbitration within the time limits stipulated in the contract rules
- If requested by the Secretary, the Claimant deposits with the Federation a sum specified by the FCC on account of the costs, fees and expenses of the arbitration.
- The dispute is heard by a Tribunal of three arbitrators appointed by the FCC.
- The Claimant draws up submissions detailing his claim and what he expects from the Tribunal and sends to the FCC within the time limits stipulated in the Arbitration & Appeal Rules.
- The Respondent draws up submissions detailing his defence and counterclaim, if any, and sends to the FCC within the time limits stipulated in the Arbitration & Appeal Rules.
- The Claimant draws up submissions detailing his reply to the Respondent's statement of defence and defence to counterclaim, if any.
- The FCC sends each party's submissions to the Tribunal and to the other party.
- The Tribunal has discretion to accept additional submissions and documentary evidence from the parties.
- In general, the majority of arbitrations are determined without an oral hearing which is not compulsory but may be requested either by the Tribunal or the parties.
- The decision of the tribunal shall be made and issued in writing as an Award.
- Either party may appeal against an Award.
- Once an appeal is lodged within the time limits stipulated in the Arbitration & Appeal Rules, a Board of Appeal will be appointed by the Federation to hear the dispute adopting a procedure similar to the first tier arbitration process. The Award of a Board of Appeal, whether confirming, varying, amending or setting aside the Tribunal's Award is final and binding on both parties. There is no right of appeal following an Appeal Award.
- There are clear time limits set out in the FCC Arbitration & Appeal Rules within which a claim for arbitration can be made, arbitrators appointed, submissions lodged, and an appeal against an award entered. The detailed arbitration process is set out in the FCC Arbitration & Appeal Rules available to members from the FCC website.

How does FCC Arbitration work?

- When there is a dispute the party with a claim (Claimant) advises the other party (Respondent) that they are referring the dispute for settlement by arbitration.
- The Claimant then prepares a statement of case with the details of his dispute, together with all supporting documents.
- In reply, the Respondent prepares his statement of defence, and with supporting evidence, sends copies to the FCC.
- The Claimant then has another opportunity to reply to the Respondent's defence and provide further evidence on any new points raised in the Respondent's submissions.
- In order for the arbitration to proceed, the claim and the submission of documents must be made in accordance with the time limits set out in the FCC Arbitration & Appeal Rules.
- The FCC has a two-tier arbitration service – tier one (Arbitration before a Tribunal); tier two (Appeal before a Board of Appeal).

Arbitration before a Tribunal

- The procedure applicable to arbitration before a Tribunal is set out in Part 2 of the FCC Arbitration & Appeal Rules. The FCC appoints all 3 arbitrators from the Arbitration & Appeal Panel list published on the FCC website.
- The Federation aims to have an arbitration decision (“the award”) within 4 to 5 months of the date of the first submissions. Arbitrations are mainly dealt with by the arbitrators on the basis of the written documents submitted without the need for the parties or their representatives to attend an oral hearing. The arbitrators will determine the dispute referred to them and their decision will be made in writing in the Award. Upon payment by the Claimant of the costs, fees and expenses of the Federation and the arbitrators, the award is then published to both parties.

Appeal before a Board of Appeal

- Each party has the right to appeal against the award made by a Tribunal, within the time limits stipulated in the Arbitration & Appeal Rules provided that payment of the fees and expenses of the Federation and the Arbitrators have been paid.
- The FCC appoints 3 members of the Arbitration & Appeal Panel to constitute the Board of Appeal that will determine the dispute referred to them.
- An appeal entails a complete new hearing of a dispute. The parties cannot assume that evidence or information produced at the arbitration stage is available to the Board.
- An appeal is usually more formal than an arbitration but may nevertheless proceed and be determined without a hearing being required. However in more complex cases, it is necessary for the parties or their representatives to present oral evidence and/or oral submissions and the Board of Appeal shall fix one or more dates for a hearing for this

purpose.

- The Award of the Board of Appeal shall be conclusive and binding on the parties.

How are awards enforced?

- Most FCC awards of arbitration are complied with. However, if a party refuses to settle the final award, the FCC Council will inform all of its members worldwide and publish on the website that the party has failed to comply with the award.
- Awards can also be enforced under the 1958 New York Convention which concerns international arbitration matters. At present there are over 145 signatory countries to the New York Convention. This means that in general, arbitration awards rendered in one country will be enforced in another signatory country through their legal system.