

**Foire aux questions sur l'édition 2010
Florida International Commercial Arbitration Act, F.S. 684.0001**

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Arbitration, generally

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What is arbitration?

Arbitration is the process of resolving of a dispute between two or more parties outside of the traditional legal system. In order to avoid the expense, uncertainty, and publicity associated with the public court system, businesses often times agree to have their disputes determined privately by a neutral third party or parties. This agreement usually occurs when the parties enter into the contract that is the subject of the dispute.

The primary benefits of arbitration over traditional litigation is:

- a. It is usually less expensive than ordinary litigation;
- b. The procedures can be streamlined;
- c. The parties have greater predictability and certainty as to the outcome since there are no juries; and
- d. It is private.

Arbitration, as a form of dispute resolution, is very popular among parties involved in international trade. Since there isn't a jury in an arbitration proceeding, the proceedings are private, and the parties have a hand in selecting the person or people who will decide the dispute, they tend to be more confident about the process.

Why should contracting parties engage in international arbitration in Florida?

In 2010, Florida enacted the "Florida International Commercial Arbitration Act," (hereinafter referred to as the "FICAA"). This landmark legislation makes Florida a choice venue for international parties who seek a fair, independent, and expeditious resolution of their disputes without the necessity of formal court proceedings.

If there are disputes under the FICAA, the legislation is interpreted "with regard to its international origin and to the need to promote uniformity in its application and the observance of good faith." If there are questions about matters of the law which are not expressly settled, then the act directs the issues to be "settled in conformity with the general principles on which the [law] is based."

Where is the appropriate place to arbitrate the case?

More often than not, the arbitration provision will set forth the location of

the arbitration. If the agreement is silent or the parties are unable to agree on a venue for the arbitration, then the FICAA states “the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.”

The FICAA does not preclude the arbitral tribunal from meeting at an appropriate place in order to consult its members, take testimony, or inspect of tangible items.

Is Florida a popular venue for conducting arbitrations?

Florida is the second most popular U.S. venue for arbitration. Only New York ranks ahead of it. Houston and Chicago are ranked third and fourth, respectively.

Can the court interfere with an international arbitration proceeding in Florida?

The expressed intent of the FICAA is to limit any circuit court intervention to specified, but limited, circumstances delineated within the act.

When is an international arbitration in Florida deemed to have commenced?

The parties can agree on a date and time. However, in the absence of an agreement, “the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to an arbitration is received by the respondent.”

The Arbitrators

How many arbitrators will decide a dispute for an international arbitration in Florida?

The parties may determine the number of arbitrators. However, under the FICAA, if the agreement is silent or the parties cannot agree, then three arbitrators will preside over the dispute. The law clothes each arbitrator with the same immunity to the same extent as a judge.

How are the arbitrators selected for an international arbitration in Florida?

Under the FICAA, the parties to an arbitration agreement are empowered to agree upon the procedure for selection of the arbitrator(s). The parties may even agree to have a third party, including an institution, make the determination. Should the parties fail to reach an agreement and assuming they have not otherwise agreed on the manner in which to address this issue, either party may request the circuit court to make the

selection. Should that occur, the circuit court must take into consideration the independence, impartiality, and the nationality (under specific limited circumstances) of the prospective arbitrator.

A person is not precluded from serving as an arbitrator because of his or her nationality, unless the parties agree otherwise.

What can be done if the parties to an international arbitration in Florida cannot agree on the selection of the third arbitrator?

If the arbitration panel must consist of three arbitrators, each party selects one arbitrator. The FICAA mandates that the two arbitrators must then select the third panelist. If within 30 days after the request to appoint is made or the two arbitrators are unable to agree on the third arbitrator, the circuit court will make the selection upon the request of either party.

Must all the arbitrators to an international arbitration in Florida be impartial, independent, and possess the qualifications agreed upon by the parties?

Each prospective arbitrator must disclose any circumstances “likely to give rise to justifiable doubts as to [his/her] impartiality or independence.” This is a continuing responsibility. It commences from the time of appointment and throughout the proceedings. An arbitrator must disclose those circumstances to the parties “without delay.”

If a party to an international arbitration in Florida does not trust the arbitrator selected by the opposing party, may that arbitrator be challenged?

Only if there are circumstances that “give rise to justifiable doubts as the arbitrator’s impartiality or independence” or “the arbitrator does not possess qualifications agreed to by the parties,” can the arbitrator be challenged.

If a party to an international arbitration in Florida believes that the arbitrator he/she selected is neither impartial, independent nor has the agreed upon qualifications, may that arbitrator be challenged?

If a party selected an arbitrator and later finds out that the arbitrator is neither impartial, independent nor possess the agreed upon qualifications, the party may challenge the selected arbitrator, but “only for reasons of which the party became aware after the appointment was made.”

How can a party to an international arbitration in Florida challenge an arbitrator that is not impartial, independent or has the agreed upon qualifications?

The parties may agree to the method of challenging prospective or

selected arbitrators. In the absence of an agreement, a challenging party has 15 days after the panel is constituted or after becoming aware basis for the challenge to send a “written statement of the reasons for the challenge to the arbitral tribunal.”

Who decides whether a challenge to an arbitrator should be granted or denied during an international arbitration in Florida?

If the challenged arbitrator does not voluntarily withdraw from service or the selecting party does not agree to the challenge, the decision to grant or deny a challenge is made by the arbitral tribunal.

What can a party to an international arbitration in Florida do if there is a disagreement with the panel’s decision regarding a challenge to an arbitrator?

If the panel denies your challenge, then the FICAA gives you 30 days from the denial of the challenge to seek relief in circuit court. Regardless of what decision the circuit court makes, the outcome is not appealable. The court’s decision is final. Even though an arbitrator is in the midst of being challenged in court, that process will not delay the arbitration proceedings. The arbitral panel may continue with the arbitration and even render an award.

How does the arbitration panel render its decisions during an international arbitration in Florida?

Unless the parties agree otherwise, if there is more than one arbitrator, decisions are made by a majority of the panel. The presiding arbitrator will be empowered to decide all procedural questions, but only if there is unanimous agreement of all the parties or all the arbitrators.

What can a party to an international arbitration in Florida do if it is of the opinion the arbitration clause is invalid?

The arbitration panel has the power to rule on its own jurisdiction. It even has the power to decide on “the existence or validity of the arbitration agreement.” While the arbitration provision represents a portion of the entire contract, an invalid contract will not necessarily make the arbitration clause void. The “arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract.”

What can a party to an international arbitration in Florida do if a party believes the arbitration panel does not have jurisdiction over my case?

A challenge to the arbitration tribunal’s jurisdiction “must be raised not later than the submission of the statement of defense.” If the panel

ultimately finds that it does have jurisdiction to proceed and gives notice of its ruling, then the objecting party has thirty days to ask the circuit court to decide the issue. Whatever decision the circuit court makes is non-appealable. While the matter is pending before the court, the arbitration proceedings will not be delayed.

What can a party to an international arbitration in Florida do if the arbitration panel is exceeding the scope of its authority?

If the panel is doing more than the arbitration clause or the law permits, then you must raise an objection “as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.”

What substantive laws are applicable to an international arbitration in Florida?

F.S. Sec. 684.0039, provides,

- (1) The arbitral tribunal shall decide the dispute pursuant to the rules of law chosen by the parties to apply to the substance of the dispute. Any designation of the law or legal system of a state or country shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state or country and not to its conflict-of-laws rule.
 - (2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict-of-laws rules that it considers applicable.
 - (3) The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur, only if the parties have expressly authorized it to do so.
 - (4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade which apply to the transaction.
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What if a party to an international arbitration in Florida proceeds to arbitration, even though the party has the right to litigate the case in the circuit court?

Under the FICAA, with limited specified exceptions, “[a] party waives its right to object if the party proceeds with the arbitration and fails to object without undue delay....”

What procedural and evidentiary rules must the parties follow during an international arbitration in Florida?

In Florida, the arbitrating parties may agree on the rules that will be used during the arbitration, i.e. JAMS International rules. If the parties cannot agree, then the arbitration panel is empowered to conduct the proceedings in a manner that it sees fit and may “determine the admissibility, relevance, materiality, and weight of evidence.”

How can the parties to an international arbitration in Florida expect to be treated by the arbitrators?

The FICAA requires the arbitrators to treat each party “with equality” and must afford each side the “full opportunity to present its case.”

What language will be used during an international arbitration in Florida?

In the event the parties cannot agree on the language or languages to be used at the arbitration, the arbitrators must make the selection. Unless the parties agree otherwise, the chosen language(s) will apply to “any written statement by a party, any hearing, and any award, decision, or other communication by the arbitral tribunal.” The panel may also direct documentary evidence to be translated.

Making a claim or asserting a defense

What allegations must a claimant make during an international arbitration in Florida?

Unless otherwise agreed to by the parties, when making an arbitration claim, the claimant (the party asserting the claim) must set forth “the facts supporting your claim, the points at issue, and the relief or remedy sought.” When submitting a claim, the claimant may include “all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.”

What defenses must a respondent make when defending against a claim during an international arbitration in Florida?

Unless otherwise agreed, the respondent (the party defending the claim) must “state its defense to the claim.” When submitting a defense, the respondent may include “all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.”

What happens if a claimant fails to provide a statement of claim or respondent to fails to present a statement of defense during an international arbitration in Florida?

Unless the parties otherwise agree, should a claimant fail to provide a statement of claim, the arbitral panel is obligated to “terminate the proceedings.” On the other hand, should the respondent fail to communicate a statement of defense, the panel “shall continue the proceedings without treating such failure in itself as an admission of the claimant’s allegations.”

Can a claim or defense presented be amended or supplemented during an international arbitration proceeding in Florida?

Unless the parties have otherwise agreed, the FICAA permits either party to supplement or amend a claim or defense. Notwithstanding, the arbitral tribunal can disallow it if it “considers it inappropriate to allow such amendment having regard to the delay in making it.”

Will the arbitral tribunal set hearings and meetings during an international arbitration in Florida?

Unless it is otherwise agreed, the arbitration panel will decide on whether hearings will be held and the purpose of those hearings. Hearings may be in person when evidence is introduced and oral arguments are presented. Proceedings may also be conducted on the basis of documents and other materials. The parties can even agree that no hearings shall be held.

How much notice will the arbitral tribunal give to the parties prior to a hearing or meeting during an international arbitration in Florida?

The FICAA requires that the arbitral tribunal give the parties “sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property, or documents.”

If one party to an international arbitration in Florida provides the arbitral tribunal with written information, can I get a copy of it?

Yes. The FICAA requires the arbitral tribunal to provide you with “all statements, documents, or other information supplied to” it. It must also give you “any expert report or evidentiary document” on which it relies upon in making its decision.

What will the arbitral tribunal in an international arbitration in Florida do if either party fails to appear at a hearing or produce documentary evidence?

The arbitral panel “may continue the proceedings and make the award on the evidence before it.”

Experts

Can the arbitration panel during an international arbitration proceeding in Florida appoint its own expert(s)?

Unless otherwise agreed to by the parties, the answer is “yes.” The FICAA empowers the panel to “appoint one or more experts to report to it on specific issues to be determined....” Should the panel appoint an expert, the parties if directed, shall cooperate with the expert by providing “any relevant information or produce or provide access to any relevant documents, goods, or other property for inspection....”

Can the parties to an international arbitration in Florida require the panel's expert to appear at a hearing for questioning?

Unless otherwise agreed to by the parties, the answer is "yes." If a party requests it or the panel deems it necessary, "the expert shall, after delivery of a written or oral report, participate in a hearing in which the parties have the opportunity to question the expert and to present expert witnesses in order to testify on the points at issue."

Resolution

What happens if the parties settle their dispute during an international arbitration in Florida?

If the dispute is settled during the arbitration, the panel terminates the proceedings. If one party requests to record the settlement in the form of an arbitral award consistent with the agreed upon terms, so long as there is no objection, the panel is obligated to do it. If an award is entered, it "has the same status and effect as any other award on the merits of the case."

What are the contents of an international arbitration award in Florida?

All arbitration awards must be in writing and signed the arbitrator. If the panel consisted of three arbitrators, a majority of the panel must sign it. The award must also set forth the date and place of the arbitration.

How are international arbitration proceedings terminated in Florida?

The entry of a final arbitration award will terminate the proceedings. However, proceedings may also be terminated if the claimant withdraws the claim (unless the respondent objects and the tribunal determines the respondent has "a legitimate interest" in having the dispute settled); the parties agree to terminate them; or the panel determines that continuing the proceedings is "unnecessary or impossible."

Can an error be corrected or an ambiguity clarified in an international arbitration award in Florida?

Unless the parties agree otherwise, the FICAA provides each party with 30 days after the receipt of the award document to ask the arbitration panel (with notice to the other party) to "correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. A party may also request the tribunal "to make an additional award

as to claims presented in the arbitral proceedings but omitted from the award.” Should the panel deems this particular request worthy, it will have 60-days from the date of the request in which to amend the award. If necessary, the panel may extend the time constraints.

Additionally, within the initial 30-day time period, upon agreement and notice to the opposing party, a request may be made to “the arbitral tribunal to give an interpretation of a specific point or part of the award....” The panel, too, has the power to correct any error, *sua sponte*, but only within 30-days after the date of the award.

Any correction or interpretation of the award must also satisfy the same content and form requirements as for the original award.

Under what circumstances can an international arbitration award be set aside in Florida be set aside?

There are certainly going to be times when a party disagrees with the decision of the arbitration panel. The FICAA recognizes this and provides for it. The law authorizes a party to go directly before a circuit court judge and make an application to set aside the award.

The act specifies the only basis upon which an international arbitration award can be set aside. The parties have no other recourse against the award. Moreover, the circumstances that will justify a court setting aside an award are limited. In order for the applying party to prevail, that party has the burden of making the appropriate allegations and presenting proof that:

Additionally, the circuit court can set aside the award if it finds that the dispute was incapable of being settled by arbitration under the law of Florida or if the award conflicted with Florida’s public policy.

When must an aggrieved party file its application to set aside an award in an international arbitration in Florida?

The aggrieved party has no more than three months after receiving the arbitration award in which to file its application to set aside the award with the circuit court. However, if the party made a request of the arbitration panel to correct or clarify the award, the three-month period will commence running once the panel has disposed of the request.

If an application to set aside the award in an international arbitration in Florida is pending

before the circuit court, may a party request the court to suspend the proceedings?

After an application to set aside the award has been filed before the circuit court, either party may request the judge to suspend the proceedings in order to afford the arbitration panel the opportunity to resume the arbitral proceedings or take such action, in the panels opinion, that would eliminate the grounds upon which the application is based.

Is an international arbitration award in Florida enforceable in the United States or other countries?

Yes. Arbitration awards are enforceable under several multi-national agreements, including the United Nations Convention on Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”). More than 120 nations have ratified the New York Convention, including the United States. Though there are some limited exceptions, the convention mandates that member states recognize and enforce both international commercial arbitration agreements and awards.

Additionally, the United State’s Federal Arbitration Act (“FAA”) governs all arbitration and provides for the enforcement of foreign arbitration awards. This Act preempts any state laws in the area of enforceability.

The FICAA recognizes all arbitral awards, irrespective of the country in which the award was rendered, as binding. A party seeking to enforce a foreign award in Florida need only make an application to the circuit court. The court will enforce it, so long as it is not contrary to Florida law (see, F.S. 684.0048). The party must supply the circuit court with the original or a copy of the award. In the event the award is not in English, it is within the court’s purview to have the party submit an translated copy.

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