

ICC仲裁実務の特徴

Feature of ICC Arbitration Practice

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2025年4月18日

April 18, 2025

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1

ICC仲裁手続の2大特徴

Two Main Features of ICC Arbitration Proceedings

- 付託事項書(Terms of Reference)の作成
Drawing up Terms of Reference
 - 規則23条
Article 23
 - 仲裁廷に記録が送られてすぐ(多くの場合申立書と答弁書のみ提出)の段階で作成
Drawing up the TOR as soon as the file is transmitted to the arbitral tribunal
(in many cases, only the RfA and the Answer to the RfA are filed)
 - 求める判断、請求の要旨等を記載
In TOR, the judgment sought, the summary of the parties' respective claims,
etc. are set out.
 - TORサイン後は、仲裁廷の許可なく新主張の提出不可
After the TOR is signed, new claims cannot be submitted without the Arbitral
Tribunal's authorization.
 - プロコン
Pros and Cons
- 仲裁判断の精査(Award Scrutiny)
 - 本日のメインピック(次のスライド以下)
Main topic of this presentation (see the following slides)

2

2

仲裁判断の精査 根拠条文

Scrutiny of arbitral awards
Legal Basis

- 規則34条
Article 34
- Before signing any award, the arbitral tribunal shall submit it in draft form to the Court. The Court may lay down modifications as to the form of the award and, without affecting the arbitral tribunal's liberty of decision, may also draw its attention to points of substance. No award shall be rendered by the arbitral tribunal until it has been approved by the Court as to its form.

3

3

仲裁判断の精査 タイミングと目的

Scrutiny of arbitral awards
Timing and objectives

- タイミング
Timing
 - 仲裁廷が仲裁判断のドラフトを作成してから確定版としてサインするまでの間 (規則34条)
From the arbitral tribunal's preparation of the draft award to it's signing on the draft to make it final (Article 34)
- 目的
Objectives
 - 質の高い仲裁判断
Arbitral awards of high quality
 - 執行可能性の高い仲裁判断 Enforceable arbitral award
(Notes to the Parties and Arbitral Tribunals on the Conduct of Arbitration under the ICC Rules of Arbitration, para.163)
 - Notesの意義
"Notes": a useful tool

4

4

仲裁判断の精査 精査の主体 Scrutiny of arbitral awards Who scrutinize?

- 国際仲裁裁判所 (International Court of Arbitration)
 - 個別の仲裁事件の中身の判断はしない
ICA does not make any decisions on the substance of individual cases.
 - 手続管理上のさまざまな決定を行う (当事者が仲裁人に合意できないときの仲裁人の選任、仲裁人の忌避、仲裁判断の精査等)
ICA makes various decisions on procedural management (ex. appointment of arbitrators if the parties cannot agree on appointment of arbitrator(s), avoidance of arbitrators, scrutiny of draft awards)
 - 所長(President, 1名)、副所長(Vice-President, 現在19名)、所員(Member, 現在171名)。所員はICC事務所がある国別委員会の推薦、所長推薦により選出。
President (1), Vice-Presidents (currently, 19) and Members (currently, 171). Members are nominated on the recommendation of the national committee where the ICC offices are located and on the recommendation of the President.

5

5

仲裁判断の精査 精査の実情 Scrutiny of arbitral awards Actual practice of Scrutiny

- Committee
 - 3人、原則毎週2つ
Three members, in principle two sessions each week
- Special Committee
 - 7人以上、原則2週間に1回
7 or more members, in principle once every two weeks
 - 反対意見がある件、国家または国有企業等が当事者となっている件を主に扱う
Mainly dealing with cases in which dissenting opinion is issued or in which the state or state entity are parties to the dispute.
- 審議
Deliberation
 - 仲裁判断ドラフトを含む関係資料と、案件の管理を担当したSecretariat作成のAgenda (事案概要とコメント入り書面) が事前に提出され、所員らが議論 ※傍聴可能
Relevant documents, including draft awards, and the Agenda (with a written summary of the case and comments) prepared by the Secretariat in charge of management of the case in hand, are submitted in advance and discussed by the members *Observer may be allowed.
- 結論
Conclusion
 - 承認/コメント付き承認/不承認
Approval / Approval with comments / Disapproval

6

6

Thank you for listening!

Any Questions?



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