

Construction Industry Model Arbitration Rules (CIMAR)

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Development of the rules

CIMAR is the acronym for the Construction Industry Model Arbitration Rules, published by the Society of Construction Arbitrators (SCA) and the Joint Contracts Tribunal (JCT).

In response to the bill that was to become the [Arbitration Act 1996 \(AA 1996\)](#), the SCA initiated the production of model arbitration rules. These were for adoption by all construction institutions. A series of committees was established under the chairmanship of Lord Justice Auld, including a plenary group, a steering group and a drafting sub-committee which adopted the acronym CIMAR.

The first edition of CIMAR was published in 1998 by the SCA. In 2005 the JCT published its own version of the CIMAR, and a revised version in November 2011.

In essence, the Rules follow [AA 1996](#). Sections of [AA 1996](#) of immediate relevance are printed after the Rule in question, with other sections necessary to the working of the Rule included as Appendix II. Apart from incorporating powers direct from the [AA 1996](#), the CIMAR have two other purposes:

- to extend or amend the provisions of [AA 1996](#) where necessary, and
- to add a general framework to the specific powers and duties set out in [AA 1996](#), in order to provide guidance to users as well as arbitrators

Aim of the rules

The stated objectives of the Rules are to:

- rationalise the process of arbitration, and
- provide fair, impartial, speedy, cost-effective and binding resolution of construction disputes, with each party having a reasonable opportunity to put his case and to deal with that of his opponent

They aim to achieve this by:

- appointing a single arbitrator
- the parties and the arbitrator agreeing to do all things necessary to achieve the objective of the Rules

- the seat of the arbitration being in England and Wales, or Northern Ireland. This means that [AA 1996](#) will apply to the arbitration
- incorporating arbitrators' powers from [AA 1996](#)
- not allowing the parties to amend the Rules once an arbitrator is appointed
- empowering the arbitrator to grant provisional relief, security for claims and make an award of costs
- providing for the joinder of disputes, and
- providing a choice of three procedures, depending on the size and type of dispute, and allowing the arbitrator (rather than the parties) to decide which procedure to adopt

Overview of the rules

The Rules are divided into fourteen sections with two Appendices; definitions of terms and the sections of the Act referred to in the Rules.

In brief, they consist of:

Rule 1—Objective and Application

This Rule is largely declaratory, recalling the express requirements as to the basic rules of arbitration.

Rule 2—Beginning and Appointment

This Rule sets out a uniform procedure for beginning arbitral proceedings. The important question of appointing an arbitrator in two or more related disputes is dealt with under Rules 2.5 to 2.7.

Rule 3—Joinder

This Rule deals with joinder of disputes and joinder of parties in related disputes. It permits either party to raise disputes in addition to the initial dispute which is referred. However, in reality this is not easy. Arbitration, by its nature is consensual. Unless proper consideration is given to joining third parties, and those third parties have given their consent, third parties may not be joined into any arbitration.

Rule 4—Particular Powers

This Rule sets out the powers of the arbitrator to:

- rule on jurisdiction
- appoint experts, advisers or assessors, and

- give directions in relation to property, examination of witnesses and preservation of evidence

Rule 5—Procedure and Evidence

This Rule ensures that the arbitrator has full discretion as to the adoption of rules of evidence, disclosure of documents and the conduct of oral proceedings.

Rule 6—Form and Procedure and Directions

This Rule deals with the initial stages in the arbitration where the form of procedure must be determined. The parties are required initially to submit information relevant to the choice of procedure.

Rule 7—Short Hearing

Rule 7 is a procedure designed for use where there is to be a hearing of short duration with the arbitrator inspecting the relevant work, materials etc.

Rule 8—Documents Only

This is an alternative short procedure involving documents only. The parties are required, either concurrently or sequentially as the arbitrator may direct, to submit full written statements of their case.

Rule 9—Full Procedure

This Rule sets out a full procedure where there is a need for the parties to exchange pleadings. Rule 9.2 sets out guidelines intended to facilitate an efficient exchange of the parties' respective cases.

A statement of defence must include the following to comply with Rule 9.2:

- which of the allegations in the statement of claim are denied
- which allegations the respondent is, for good reason, unable to deny or to admit, but which they required the claimant to prove, and
- which allegations are admitted

Where a respondent denies or does not admit an allegation:

- it must state its reasons for doing so, and
- if it intends to put forward a different version of events from that given by the claimant, it must state its own version

Rule 10—Provisional Relief

A principal intention of this section is to preserve the claimant's cash flow in proceedings which he is bound to win but in which the amount of his entitlement has not been ascertained at the stage of the proceedings at which the provisional relief is considered and/or granted.

Rule 11—Default Powers and Sanctions

This Rule incorporates powers under [AA 1996](#) to dismiss a claim on the grounds of excessive delay or to proceed with the arbitration where one party is in default.

Rule 12—Awards and Remedies

This Rule deals with a variety of matters leading to the award.

Rule 13—Costs

The general principles to be adopted with regard to the apportionment of costs are set out in Rules 13.1 to 13.3 while reserving the widest discretion to the arbitrator.

Rule 14—Miscellaneous

This Rule incorporates provisions dealing with representation, notifications and reckoning of time. The parties are required promptly to inform the arbitrator of any settlement or application to the Court.

Interpretation and how CIMAR work in practice

There are few reported cases involving CIMAR but there are two particular cases of interest.

In *Price v Carter*, The parties had arbitrated using CIMAR.

Mr Justice Edwards-Stuart faced a challenge to an arbitrator's award under [AA 1996, s 67](#) (lack of jurisdiction), s 68 (serious irregularity) and s 69 (error of law). It was argued that the Notice of Arbitration did not comply with Rule 2.1 of CIMAR because it did not require one of the parties to agree to the appointment of an arbitrator. The judge disagreed. What the Rules require is for the party serving the Notice to name anyone they propose as arbitrator (either in the Notice or separately). In the Notice they may also, although not required by the Rules, invite the other party to respond and propose any other names.

Mr Justice Edwards-Stuart held:

- the Notice of Arbitration (given under Rule 2.1) was not defective. The court confirmed that the Notice of Arbitration only had to invite the defendant to agree to the arbitrator's appointment; it did not have to include the name of the arbitrator. Rule 2.2 provided that this could be included in another document
- if the arbitrator appoints an assessor under Rule 4.2, the Rule does not provide the parties with a right to comment on the assessor's report. [AA 1996, s33](#) 'probably' extends to giving the parties the opportunity to

comment. However, on the facts, if there had been a breach, while it may have been an irregularity, it was not a serious irregularity. There was also no evidence of substantial injustice. For example, the party receiving the notice could not show what they would have done if they had been allowed to comment on the assessor's report

In *Dawes*, the defendant was a contractor who had carried out construction works on the claimant's estate pursuant to a building contract which incorporated the JCT Standard Form of Prime Cost Contract. The contract between the parties provided that all disputes should be dealt with in arbitration governed by CIMAR.

The dispute was subsequently settled, but the parties failed to ask the arbitrator to terminate proceedings, nor was an award reflecting the terms drawn up. Following settlement, the parties referred the issue of costs to the arbitrator, who made a series of costs awards.

The claimant then attempted to commence a new arbitration and to appoint a new arbitrator. The defendant argued that all of the claimant's new allegations were covered by the previous settlement. The original arbitrator ruled that he had jurisdiction to consider the scope of the settlement and that his jurisdiction had not ceased with the settlement agreement. He issued an award finding that the settlement did cover the claimant's new allegations. The claimant appealed to the High Court, challenging the arbitrator's rulings.

It was held that the arbitrator did have jurisdiction to decide whether the settlement agreement between the parties covered all claims for the defects, and he was not 'functus officio' when he decided that issue.

In this case, the parties did not proceed as if the arbitrator's jurisdiction had ceased with the settlement. They clearly considered that he had jurisdiction to deal with costs, and did not think it necessary to draw up a consent award or ask the arbitrator to formally terminate the proceedings. Rule 3 of CIMAR entitles a party a right 'after an arbitrator has been appointed' to refer another dispute to the same arbitrator and they have the right in effect to consolidate it with the existing arbitral proceedings.

The court agreed with the arbitrator's findings that the new claims were covered by the settlement agreement. The judgement confirms that, under CIMAR, an arbitrator will generally retain jurisdiction until they have made a final award disposing of all issues, including costs. CIMAR influenced the outcome of this case, in that they provided for the arbitrator to have jurisdiction over any further disputes referred to him following his initial appointment.

The use of the CIMAR rules

In practice, arbitrations using CIMAR are not widespread. CIMAR is focussed on the domestic market and is suitable for use in relatively straightforward disputes. Its aims, (see [Aim of the rules](#)) make it an attractive supplement to adjudication, but the popularity of adjudication since its inception in 1998 and the fact that most adjudication decisions are not challenged means CIMAR arbitration is not widely used. Further, the use of the courts is now more widespread in the construction industry following improvements in the TCC, with proceedings moving more quickly and the increased expertise of the judges.

In 2005 the JCT made a significant change to the default dispute resolution procedure. In the JCT 2005 and 2011 set of contracts, the default position for dispute resolution has been altered to litigation rather than arbitration. Whilst arbitration still exists as an option for parties, an express entry must be made in the contract particulars. This is in contrast to the JCT 1998 standard contracts where arbitration was the default dispute resolution option.

For more information on dispute resolution in the construction industry see [Litigation in the TCC - Overview](#) (a subscription to Lexis@PSL Construction will be required).