

18

ARTICLE 18—NOTICES

<i>I. Introduction</i>	18.01
<i>II. Textual commentary</i>	18.03
A. Method of communication (Article 18(1))	18.03
B. Calculating time periods (Article 18(2))	18.05

ARTICLE 18

1. *Unless otherwise agreed by the parties or ordered by the tribunal, all notices, statements and written communications may be served on a party by air mail, air courier, facsimile transmission, telex, telegram or other written forms of electronic communication addressed to the party or its representative at its last known address or by personal service.*

2. *For the purpose of calculating a period of time under these rules, such period shall begin to run on the day following the day when a notice, statement or written communication is received. If the last day of such period is an official holiday at the place received, the period is extended until the first business day which follows. Official holidays occurring during the running of the period of time are included in calculating the period.*

I. Introduction

The arbitral tribunal and the parties to an arbitration must communicate in an effective and pre-agreed manner to ensure the smooth conduct of arbitral proceedings. **18.01** Article 18(1) addresses the practicalities regarding notification of all communications between the parties. Notably, Article 18(1) addresses the variety of forms of modern communication, paying particular attention to forms of electronic communication. Likewise, Article 18(1) is drafted in sufficiently broad terminology that permits (rather than limits) the parties and the tribunal to communicate in a variety of ways.

Article 18(2) sets forth the calculation of periods of time and time limits to ensure **18.02** that the parties understand the tribunal's procedural orders and other directions.

By specifically defining when notice periods begin to run, and anticipating holiday and other interruptions, Article 18(2) pre-empts possible dilatory tactics and sets the parties' expectations for prompt notification, service of documents, and other communications that are essential to the prompt and effective functioning of an arbitration.

II. Textual commentary

A. Method of communication (Article 18(1))

ARTICLE 18(1)

Unless otherwise agreed by the parties or ordered by the tribunal, all notices, statements and written communications may be served on a party by air mail, air courier, facsimile transmission, telex, telegram or other written forms of electronic communication addressed to the party or its representative at its last known address or by personal service.

18.03 Article 18 allows for a wide range of methods to communicate written submissions and correspondence to the opposing party. It is preferable to use a method that provides a record of transmission, in order to avoid disputes about whether the submission was properly sent, either at all or in time. Tribunals will therefore often order specific methods of delivery in their first procedural order, usually encouraging electronic submission of pleadings, followed by courier delivery of hard-copy documents, including submissions, witness statements, and documentary exhibits.

18.04 Communications can be validly served on both the party and/or the party representative, if such a representative has been communicated pursuant to Article 12. Often, tribunals will order at the outset that communications are only served on the parties' legal representatives. In any case, service must be effected either 'at [the] last known address', protecting the parties from sudden undisclosed changes of address, or 'by personal service', in which case, the submission has been actually handed over in person, and there is no dispute about whether and when it is received.

B. Calculating time periods (Article 18(2))

ARTICLE 18(2)

For the purpose of calculating a period of time under these rules, such period shall begin to run on the day following the day when a notice, statement or written communication is received. If the last day of such period is an official holiday at the place received, the period is extended until the first business day which follows. Official holidays occurring during the running of the period of time are included in calculating the period.

Time periods start to run on the day after a submission is received. If the last day of a period falls on a holiday—importantly, at the place where the submission is received—the period is extended to the next business day. Likewise, when dealing with procedural matters, tribunals are generally limited only by their own discretion to extend deadlines on a case-by-case basis, bearing in mind the overall aim to provide for just and fair determination of the claims before the tribunal. It is also worth drawing attention to Article 31, which deals with the apportionment of costs, because any derogation from procedural time limits set by Article 18(2) and/or the tribunal may inform the tribunal’s decisions regarding cost allocations. **18.05**

This page intentionally left blank