

The new ADCCAC Arbitration rules

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The Rules are published in a slim booklet, similar in format to the rules published by the ICC, DIAC and the DIFC-LCIA. The Rules contain 42 Articles which cover all stages of the ADCCAC arbitration process, including the initiation process, the formation of the arbitration panel, arrangements for the issue of an Award and the fees and remuneration of the Panel and the administration centre at ADCCAC (“the Centre”).

Important features of the Rules include the following:

Initiation of proceedings (Article 2)

The matters to be included in the Arbitration Request broadly follow modern arbitration practice, as exemplified by the equivalent rules of the ICC. Allowance is made for the service of a statement of case at the same time (here called a “Memorandum”). A registration fee of AED 1,000 is payable on lodgment.

The Respondent is then required to submit its response within 21 days, extendable by a maximum period of 14 days. These time limits are a little tighter than those of DIAC and the ICC.

Appointment of Arbitrators (Article 9)

Sole arbitrator

The Respondent has 14 days from receipt of the Request either to agree the arbitrator nominated by the Claimant in that document or to nominate its own and reach agreement with the Claimant. Save for an unspecified grace period which the Director of the Centre may allow, if the parties cannot agree the arbitrator the Director will make an appointment.

Three arbitrators

For the appointment of a three-arbitrator panel, the Respondent will again have 14 days to nominate his own appointee. The Rules then allow for the two selected arbitrators to appoint a “presiding arbitrator” within 14 days from the appointment of the second arbitrator, failing which (again possibly allowing for a grace period) the Director of the Centre will make an appointment.

Again these time limits are a little tighter than those of DIAC or the ICC and the parties will need to be alert to the need to progress this stage of the proceedings with urgency.

Objections to an Arbitrator and replacement (Articles 11 and 12)

Detailed provisions govern the procedure to be applied in the event that either party wishes to challenge an appointment or to apply at any stage for the replacement of an arbitrator. These generally follow modern practice.

Arbitration language (Article 18)

In a late amendment to the rules, the proceedings are to be conducted in Arabic unless the parties agree

otherwise. As to the award, if the arbitration is conducted in a language other than Arabic, the award must be given in the language of the arbitration along with an Arabic translation, unless the parties agree otherwise.

Pleadings (Articles 19 and 20)

The DIAC rules provide a period of 30 days from notification of the establishment of a Tribunal for a Claimant to file a Statement of Case and the Respondent is given a similar period for his Statement of Defence. The Rules do not set such default provisions, but state that the Claimant's Memorandum and the Respondent's Defence Memorandum are to be provided within the periods fixed by the Panel.

Case management conference

Whilst the ICC and DIAC rules provide for a preliminary meeting or case management conference, neither the Rules, not those of the DIFC-LCIA expressly do so. If such a meeting is considered to be desirable, then the parties should seek to agree this.

Burden of Proof and Evidence (Article 23)

The Rules follow modern arbitration practice. Each party is required to bear the burden of proof in relation to the establishment of the facts on which it relies. As to evidence, the Tribunal has a discretion as to the rules of evidence that should apply.

Hearings (Article 24)

Whereas the ICC, DIAC and DIFC-LCIA rules each specify that if either party requests a hearing, the Tribunal will hold one, under the Rules the panel has a discretion whether or not to hold a "pleading session".

Provisional and precautionary measures (Article 25)

An important new measure is a set of provisions providing for the Tribunal to order a party to take provisional or precautionary measures. Recourse to judicial bodies for such measures will not be regarded as contradicting the terms of the arbitration agreement. Bearing in mind the frequency with which such measures are taken in litigation proceedings in the UAE, we anticipate that the application of these measures will in future be closely considered by parties involved in arbitration under the Rules.

Waiver of Right to invoke rules (Article 26)

This Article provides that "a party who becomes aware that a given provision, a procedural rule or any of the Panel's orders, had not been complied therewith and yet continues the arbitration without objecting within a reasonable time, shall be deemed to have waived his right to object". As with similar clauses in other modern rules, the challenge remains for an opposing party to demonstrate that the party seeking to object on the basis of an irregularity actually had been "aware" of the lack of compliance at the time.

Exclusion of liability (Article 32)

A provision that will be much welcomed by all who sit as arbitrators, Article 32 provides that the panel "...shall not be held responsible towards any of the parties or to third parties for any action, act or inadvertence related to the arbitration taken or arising in good faith."

Confidentiality (Article 33)

The earlier rules did not provide a confidentiality provision, so that the parties to an arbitration were recommended to cover this in the terms of reference. However, the Rules now include a provision covering confidentiality both in relation to (a) the Award and the documents and evidence generated

during the proceedings and (b) in relation to the deliberations of the Tribunal.

Fees and Remuneration

In the Rules, an approach has been adopted for the calculation of the fees of the panel and the administrative expenses of the Centre that is similar to those of the ICC and DIAC. Two tables are provided which respectively specify the fees of a sole arbitrator and a three arbitrator panel in accordance with the value of the claims in the arbitration. The administrative fees of the Centre are 15% of the fees that are calculated for the panel.

It should be noted that pursuant to Article 37.3 of the Rules, the Director of the Centre has an over-riding discretion “to modify the Panel’s fees in accordance with the circumstances of the arbitration case and any complexities that may arise in connection with it”.

These provisions will provide much-needed transparency to potential parties and arbitrators alike as to the costs likely to be incurred as a consequence of embarking on an ADCCAC arbitration.

Generally

Good modern arbitration practice has been introduced to key elements of the management of the arbitration process. Arbitrations which are administered in accordance with the Rules are likely to run more smoothly in the future to the benefit of parties and practitioners. The introduction of the Rules is accordingly warmly welcomed.