

Kluwer Arbitration Blog

P.R.I.M.E. Finance Launches Revised Arbitration Rules

Camilla Macpherson (P.R.I.M.E. Finance) · Friday, January 7th, 2022

On 15 November 2021, P.R.I.M.E. Finance launched its revised P.R.I.M.E. Finance Arbitration Rules (the **Rules**). A launch event was held on 6 December at which Georges Affaki, Martin Doe of the Permanent Court of Arbitration (PCA) and Secretary-General of P.R.I.M.E. Finance Kasper Krzeminski gave an overview of the Rules. A recording is available [here](#). P.R.I.M.E. Finance stands for the “Panel of Recognised International Market Experts in Finance”.

The Rules offer arbitrators and users a comprehensive, clear, and straightforward set of procedural rules specially designed for the arbitration of a broad range of financial and banking disputes. Non-bank parties and financial institutions conducting ordinary business transactions, with no distinctive credit component, can also choose to submit their disputes to P.R.I.M.E. Finance.

The Rules came into effect on 1 January 2022 and can be downloaded [here](#).

Introduction to P.R.I.M.E. Finance

P.R.I.M.E. Finance was [established](#) in the wake of the 2008 global financial crisis to help resolve disputes concerning complex financial products. From the outset, P.R.I.M.E. Finance recognised the need for a specialised forum to hear such disputes. As a result, the P.R.I.M.E. Finance Arbitration Rules were developed and designed to offer a framework containing features of particular interest to the financial industry.

Concurrently, P.R.I.M.E. Finance has also kept expanding its Panel of Experts. This group of international finance, legal and regulatory experts now numbers close to 250 individuals. This coincides with the [needs](#) of financial institutions which have consistently ranked technical expertise in banking and finance of sitting arbitrators as key when considering an alternative dispute resolution mechanism.

In 2015, the PCA joined forces with P.R.I.M.E. Finance. Arbitrations brought under the P.R.I.M.E. Finance Arbitration Rules (and mediations brought under its Mediation Rules) would henceforth be administered by the PCA. The PCA is the world’s oldest arbitral institution, with over a century of experience in administering complex international proceedings. The aim of the co-operation is to combine the PCA’s

efficiency in administering arbitral proceedings with the subject-matter expertise of P.R.I.M.E. Finance's Panel of Experts.

Overview of Review Process

The [review](#) of the Rules, which were last updated in 2016, began in 2020. The guiding aim was to ensure that the Rules were fit-for-purpose for users, reflected current best practice in arbitration and contained features of particular interest to financial market participants. A two-tier rule structure for the review was established, comprising a Drafting Group and a Consulting Group. The Drafting Group was chaired by Professor Georges Affaki. The Consulting Group was chaired by Carolyn Lamm, Senior Partner and Co-Chair International Disputes Americas, White & Case LLP, and Heikki Cantell, General Counsel of the Nordic Investment Bank.

The following distinguished arbitrators and finance experts all contributed their time and experience: Yas Banifatemi, Chiann Bao, Paula Costa e Silva, Whitney Debevoise, Felix Dasser, Martin Doe, Grant Hanessian, Bernard Hanotiau, Arthur Hartkamp, Ulf Koping-Hoggard, Kasper Krzeminski, George Liakopoulos, Camilla Macpherson, Ali Malek QC, Romina Martinez, Wendy Miles QC, Loukas Mistelis, Philippe Pinsolle, Kathryn Sanger, Hon. Elizabeth Stong, Gaetan Verhoosel and Marcus van Bevern.

A comprehensive draft set of revised Rules was issued for public comment in January 2021. Three virtual public consultations were held, aimed at audiences in Asia, the Americas and EMEA. Comments were received from many leading law firms and practitioners around the world, ensuring the geographical and sectoral representation that is essential to global rule-setting.

Key Features of the Revised Rules

1. The PCA and the P.R.I.M.E. Finance Panel

The PCA plays a greater role throughout the arbitral process than in the previous version of the Rules. It enjoys all the customary prerogatives of an administering institution, with particular discretion in relation to the fixing of time limits. Particular new features of interest include a confirmation procedure, whereby in exceptional situations, the PCA is granted the power to decline the confirmation of arbitrators nominated by the parties or a tribunal president nominated by co-arbitrators, such as when the agreed nominee and/or nomination process creates a risk of unfairness and endangers the enforceability of the award. The PCA will also henceforth undertake a limited review of draft awards.

P.R.I.M.E. Finance's Panel of arbitrators is to be referenced, when appropriate, for the purpose of nominations or appointments. This recognises that finance disputes are often complex and can benefit from specialised arbitrators. The combination of the PCA's efficiency in administering arbitral proceedings and the Panel's subject-matter expertise brings significant advantages for users in the banking and finance sectors.

2. Transparency

There is a focus on transparency throughout the Rules. By way of example, parties are required to disclose the identity of any third party with a significant interest in the outcome of the dispute. This is a new element to the Rules.

The provisions on *amicus curiae* have also been updated, with arbitral tribunals sitting under the Rules having the power to invite or grant leave to an industry body to appear before it as *amicus curiae* and make submissions on relevant issues. This reflects the fact that banking is a highly standardised sector, with syndicated lending generally following the template of bodies such as the [Loan Market Association \(LMA\)](#) or the [Loan Syndications and Trading Association \(LSTA\)](#) and derivatives using the International Swaps and Derivatives Association ([ISDA](#)) Master Agreement. Such bodies might well have an interest in making submissions in certain cases.

Finally, the rules on publication of awards have been clarified, with awards to be published in anonymised form (subject to party agreement), to permit the emergence of a body of jurisprudence similar to the case law of courts in major financial centres. This will increase predictability and transparency of the arbitral process and further P.R.I.M.E. Finance's mission to reduce legal uncertainty and systemic risk, and to foster stability and confidence in, and a more settled and authoritative body of law for, world finance.

3. Complex arbitrations

Complex financial transactions may involve many parties, sometimes with adverse interests, and multiple contracts. One of the pitfalls in the arbitral process is that expediency often requires that all claimants, on the one hand, and all respondents, on the other, be treated alike regardless of their interests. The previous version of the Rules dealt only in passing with joinder. The new Rules include detailed provisions not only on joinder but also on consolidation, as well as a provision enabling separate arbitrations that are not eligible for consolidation to be coordinated in certain cases.

4. Emergency and expedited rules

The Rules comprehensively address emergency situations both before and after the tribunal is constituted, with updated provisions on emergency arbitration and a new provision on interim measures. As to expedited proceedings, the previous version of the Rules simply noted that the parties might agree to shorten any time lines. Now, in response to financial institutions' requests for efficiency in the rendering of awards, there is a very complete process for expedited proceedings. The new expedited rules will apply automatically to arbitrations with an amount in dispute of EUR 4 million or less, with a sole arbitrator expected to render the final award within 180 days of the constitution of the tribunal.

5. Efficiency

The Rules introduce a range of new provisions designed to create efficiency. By way of example, tribunals are expected to convene a case management conference with the parties within 30 days of their constitution. The convening of additional procedural

conferences is encouraged throughout the proceedings. Tribunals are also given deadlines to ensure the rendering of final awards in a timely fashion. Tribunals with three or more members are required to render the final award within 90 days of the closing of the hearing (or the receipt of the last submissions authorised by the tribunal); for sole arbitrators, the time limit is 60 days. Tribunals are also explicitly empowered to assist the parties in discussing a settlement when appropriate.

One concern raised by financial institutions is the need for tribunals to be decisive in dismissing evidently unmeritorious claims or defences, without having to go through the full procedure on the merits. Early determination is a power expressly conferred upon tribunals in the Rules.

Last but not least, parties can choose whether fees are calculated on a time-based system or in proportion to the value of the dispute. Absent agreement, the Rules default to a time-based fee system.

Conclusion

The Rules offer a highly [attractive](#) arbitration mechanism to financial institutions, their customers, and counterparties. It is hoped that all finance parties, and those advising them, consider arbitration in accordance with the P.R.I.M.E. Finance Arbitration Rules, and adopt P.R.I.M.E. Finance's [model clause](#) in their contracts accordingly.

The author, Camilla Macpherson, is Head of Secretariat of P.R.I.M.E. Finance and a member of the P.R.I.M.E. Finance Arbitration Rules Review Drafting Group. For more information, contact secretary@primefinancedisputes.org.

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