

Kluwer Arbitration Blog

Abu Dhabi Arbitration Centre Issues its New List of Arbitration Rules

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On 27 August 2013, the Abu Dhabi Centre for Conciliation and Commercial Arbitration (the “Centre”), based in Abu Dhabi Chamber of Commerce and Industry, presented its new list of arbitration rules (the “Rules”) effective as of 1st October 2013, following an extension of one month from the date that was initially perceived under the Rules based on information provided by the Centre.

The previous rules were considered in many aspects as outdated and unable to cope with the latest arbitration developments taking place in the United Arab Emirates (“UAE”), i.e. court decisions applying the provisions of the New York Convention in force since 2006, highly recognised arbitration centres such as the Dubai International Arbitration Centre (“DIAC”) and Dubai International Financial Centre (“DIFC”). The Rules will undoubtedly upgrade the level of arbitration proceedings taking place in the Centre, noting that most transactions with governmental entities based in Abu Dhabi apply arbitration clauses referring to the Centre as their most preferred dispute resolution hub.

The Rules present a significant renovation of the prior version of the Centre’s list of arbitration issued pursuant to the Centre’s resolution No. (7) of 3rd January 1993, and bring changes that should be taken into account by the legal community.

Scope of Application

The Rules shall apply if the parties agree in writing to refer their current or future disputes to arbitration at the Centre (Article 2). The form of arbitration clause under the Rules is consistent with the regulatory approach under UAE Civil Procedures Code codifying the mandatory requirement of arbitration agreements being concluded only in writing and signed by contracting parties (Article 203(2)). The parties may agree to hold their arbitration proceedings at the Centre in accordance with any other procedural rules e.g. the arbitration rules of the International Chamber of Commerce (“ICC”). In this case the Rules shall be complementary to those agreed upon between the parties.

Party Representatives

The Rules allow the parties to select their representatives at any stage of the proceedings from among legal practitioners or any other representatives, without providing for a requirement to

submit any proof of authority (Article 3). Thus, confirming the principle of party autonomy in allowing the parties to choose their own representatives.

Effect of Arbitration Agreement

In an entirely new provision, the Rules create a two step procedure for addressing challenges to the jurisdiction of the Centre, similar to the rules of arbitration recently implemented by various other international arbitral institutions. A committee in the Centre is now in charge of administering commercial arbitration cases (the “Committee”), and is empowered to conduct a prima facie review of the arbitration agreement and decide on preliminary jurisdictional objections raised by one of the parties regarding the existence or validity of the arbitration agreement, or in relation to its content or its scope of application.

The decision of the Committee to either continue the arbitration proceedings and formation of the arbitration tribunal, or decide not to proceed with arbitration can be appealed by a decision of the court originally competent to hear the case. In this event, the court will adjudicate upon the issue of whether arbitration can take place (Article 7).

Appointment, Challenge and Objection to Arbitrators

The new Rules provide for the appointment of one or more arbitrators depending on the agreement of the parties. In the absence of such agreement on the number of arbitrators, the Centre shall appoint a sole arbitrator unless the amount in dispute or the circumstances thereof entail the appointment of multiple arbitrators (Article 8).

The Committee shall issue a decision concerning any challenge or objection raised by one of the parties against an arbitrator’s neutrality and independence, or if the arbitrator proves to be lacking in qualifications required and jointly agreed upon by the parties (Article 11). In case the challenge is accepted by the Committee, the arbitrator shall be replaced by another in the course of arbitration proceedings.

Language of Arbitration

Similarly to the old rules applied at the Centre, the default language of arbitration proceedings shall be Arabic, unless the parties agree otherwise. The Rules now provide that in case the arbitral tribunal is entirely composed of arbitrators who are not fluent in Arabic and they don’t reach a consensus on the language of arbitration, the arbitration shall take place in Arabic (Article 18).

In all cases, the Rules provide that arbitral awards shall be issued in Arabic and in the other language adopted in the arbitration proceedings.

Interim and Conservatory Measures

The Rules expressly allow the arbitral tribunal to issue on its own motion, or upon a request made by one of the parties, a provisional or a precautionary measure related to the subject-matter of the dispute (Article 25). Such measures will depend on the tribunal’s evaluation of whether they are appropriate depending on the circumstances of the case.

The Rules further provide that provisional or conservatory measures shall be issued in the form of interim awards, thus submitting their issuance to certain formalities, notably the requirement of a

reasoned decision.

Time Limits

Changes brought on the arbitrator(s) powers to extend the time limit for rendering the award are also important. The Rules explicitly allow the arbitration tribunal to extend by its own motion, or upon the request of one of the parties, the initial time period of 6 months for rendering the award up to a maximum additional period of 3 months. Any additional extension of the aforesaid time limit shall be decided by the Committee based upon a reasoned application by either the tribunal or the disputing parties (Articles 27.2 and 27.3).

Publication of Arbitral Awards and Confidentiality of the Proceedings

The Rules now specifically prohibit the publication of an award by the Centre without the consent of all the parties in dispute (Article 28.8). The principle of confidentiality of the entire proceedings is further stressed on by the requirement to maintain the confidentiality of awards, records, materials and documents, expert reports as well as witness statements submitted to arbitration, including the deliberations of the tribunal, unless disclosure is required by law or agreed upon in writing by the parties (Article 33).

Costs

Another entirely new addition is the schedule of costs that the Rules provide, allowing the determination of the arbitrator(s) fees depending on the amount in dispute (Article 37). Under the previous rules, the arbitrator(s) fees were to be negotiated on an ad hoc basis. The fees of the arbitration panel, in addition to a proportional fee of 15% collected by the Centre and calculated on the basis of the arbitrator(s) fees, shall be deposited by the parties with the Centre prior to the commencement of the arbitration proceedings (Articles 38 and 39). In addition, a none refundable lump-sum fee for registering an arbitration case is collected by the Centre upon the submission of the request for arbitration.

Based on information provided by the Centre, the table of fees listed under the Rules is not mandatory, and the parties can agree with the arbitration tribunal to apply a different scheme for calculating the costs of arbitration.

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