

Kluwer Arbitration Blog

AFSA Launches New International Arbitration Rules for Public Comment

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On 1 July 2020, the Arbitration Foundation of Southern Africa (“AFSA”), a leading arbitral institution in South Africa, launched its new draft International Arbitration Rules for public comment. The International Arbitration Rules were launched via a webinar co-hosted by Professor Dr. Maxi Scherer, chairperson of AFSA’s Drafting Committee and Advisory Board, and Patrick Lane SC, a member of the Advisory Board. They were joined by other members of the drafting committee, Ndanga Kamau, Chiann Bao, Remy Gerbay and Jonathan Ripley-Evans. (The webinar is available to view [here](#))

AFSA first announced in October 2019 that it would revise its international arbitration rules to meet the needs of its increasingly international users. This was a timely announcement, given the dramatic increase in AFSA’s international case load, which more than doubled since the enactment of South Africa’s International Arbitration Act (“IAA”) based on the UNCITRAL Model Law in late 2017. In order to facilitate this growth and to continue to provide a high level of service based on international best practices, AFSA decided to review its international rules. To this end, AFSA assembled an international Drafting Committee and Advisory Board comprising leading individuals from the region and all over the world, including senior members of the South African bar, prominent arbitrators from the African continent, senior in-house practitioners and practitioners with extensive experience in leading global arbitral institutions. Further details regarding AFSA’s drafting committee and advisory board are available [here](#).

The published draft International Arbitration Rules are a collective labour of love and aim to set the standard for arbitral institutions in the African continent and beyond. It reflects recent developments and best practices in international arbitration globally, while introducing a number of innovations targeting issues of emerging concern to arbitration users, such as the use of administrative secretaries, multi-party arbitrations, the availability of fast-track procedures, the flexibility to have fully electronic arbitration filings and remote hearings, and provisions striking a balance between confidentiality and transparency.

Key features include:

- A new structure with the establishment of an AFSA International Board, an AFSA International Court and an AFSA International Secretariat led by the AFSA Secretary-General. This structure will allow AFSA to benefit from even more international expertise, while dedicating resources to

the close supervision and support of arbitrations administered by AFSA under its rules. The AFSA International Court will play an important role in the confirmation, appointment, challenge and replacement of arbitrators, as well as in some decisions regarding joinder and consolidation.

- Express provisions enabling fully electronic submissions (without the need for paper filings) and permitting hearings in any form the arbitral tribunal considers appropriate, including remote hearings conducted entirely by video or telephone conference.
- Provisions expressly empowering arbitral tribunals to appoint administrative tribunals and specific guidance on the functions, duties and fees of administrative secretaries appointed by arbitral tribunals.
- Provisions setting forth a new expedited procedure for cases where the amount of dispute does not exceed US\$500,000 or where the parties agree, as well as a new procedure for the appointment of an emergency arbitrator to grant urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal.
- Provisions on interim measures (including security in connection with such interim measures and the cost consequences of an application for interim measures) and security for costs.
- Provisions on the early dismissal of claims or defences that are manifestly without legal merit or manifestly outside the jurisdiction of the arbitral tribunal.
- Provisions on the parties' right to representation, guidelines on the conduct of party representatives (in the form of Annex 2), and sanctions for the breach of guidelines.
- Provisions on disclosure obligations relating to the existence of a third-party funding arrangement and the involvement of a third-party funder.
- Provisions on multiple contracts, joinder and consolidation, which address the availability of such procedures both prior to the constitution of an arbitral tribunal and after the constitution of an arbitral tribunal.
- Provisions on confidentiality, exceptions to confidentiality and the publication of awards by default (either where there is no objection in writing within 30 days of the notification of the award or, where there is such an objection, publication in an anonymised or pseudonymised form).

The new rules have been uploaded onto AFSA's website and can be found [here](#). Arbitration practitioners are encouraged to consider the draft new International Arbitration Rules and to provide feedback to AFSA by **31 August 2020**. Comments can be emailed to comments@arbitration.co.za.

In the interests of full disclosure, the authors are the Secretaries to AFSA's Drafting Committee.

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This entry was posted on Thursday, July 23rd, 2020 at 7:00 am and is filed under [Africa](#), [Arbitration institution](#), [Arbitration Institutions and Rules](#)

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