

Kluwer Arbitration Blog

What Do the Updated Arbitration Rules of the Danish Institute of Arbitration Tell Us?

Andrew Poole (Gorrissen Federspiel) · Wednesday, December 15th, 2021

The Danish Institute of Arbitration (the DIA) updated its arbitration rules this year. The [DIA Rules of Arbitration 2021](#) (the DIA Rules 2021) apply to arbitrations commenced on or after 13 April 2021, unless otherwise agreed. The updated rules tell us that the DIA focuses on best practice, pragmatism and efficiency, and that they bolster the Danish position when considering which institution is most suitable to administer a dispute. The updates address a range of matters including disclosure of third-party funders, change of representation and virtual hearings.

Introducing the DIA

The DIA, in its present form, has over forty years' experience and builds upon the cumulative knowledge of institutional arbitration in Denmark since 1894. The DIA Secretariat administers cases and coordinates with the Chair's Committee to ensure the implementation of the rules, including to confirm arbitrators and to set arbitrators' fees. Steffen Pihlblad heads the Secretariat, having previously worked in private practice and for the Ministry of Justice. [Jeppe Skadhauge](#) and [Christian Alsøe](#) constitute the Chair's Committee as chair and vice-chair of the DIA board respectively.

The DIA is known for its considered approach, as demonstrated by its declaration of acceptance, which arbitrators sign when accepting an appointment. While this declaration provides for the standard statement of impartiality and independence it also, among other points, requires disclosure regarding repeat appointments and confirmation of language ability. The declaration further notes that arbitrators may come under the DIA's liability insurance in certain circumstances.

Best Practice

The DIA Rules 2021, following from the previous 2013 version, ensure that the DIA is up-to-date with, and contributes to, arbitration best practice for the benefit of its users. For instance, the rise of third-party funders has prompted concerns regarding conflicts of interest, and the DIA Rules 2021 (see Article 20), similar to the ICC rules 2021 (see Article 11), now expressly provide that a party must inform the Secretariat, tribunal and other parties of the identity of a third party that has entered into a funding arrangement under which it has an "economic interest in the outcome" of the

case. The DIA's wording could be read to cover broader funding arrangements than the ICC's as the DIA's arrangements cover "funding of any costs in relation to the case" whereas the ICC's arrangements cover "funding of claims or defences". The update highlights that even insurers or bankruptcy creditors may have to be disclosed if they have an economic interest in a case's outcome.

Similarly, the DIA Rules 2021 make it clear that a change in a party's representation may be halted if such a change is considered unreasonable (see Article 23). An example would be if a change were deliberately instigated to cause a conflict of interest for the tribunal. This preventative power is similar to that found in the LCIA rules 2020 (see Article 18) but for a noteworthy distinction. Under the DIA Rules 2021, it is the Chair's Committee (the equivalent of the LCIA Court) that decides on whether a change of representation is permitted, rather than the tribunal. Leaving the decision to a body other than the tribunal minimises the risk that a tribunal may prioritise its own constitution over the most appropriate procedure for the resolution of the dispute, particularly considering the general principle that a party is able to choose its own representation.

Further examples include proceedings involving joinder of third parties and multiple contracts. The DIA Rules 2021 clarify what occurs as regards the tribunal once a third party is joined (see Article 16). If a third party is joined at the request of an original party to an arbitration and cannot agree to the tribunal's appointment, the Chair's Committee shall revoke the tribunal's confirmation and, unless all parties agree to another procedure, appoint all subsequent tribunal members. If a third party is joined at its own request, and the case has already been referred to the tribunal, the third party is required to agree to the tribunal's appointment as made by the original parties. The DIA Rules 2021 also clarify that there is not a requirement to commence additional arbitrations if claims come under multiple contracts, subject to the arbitration agreement(s), but there is a requirement of an additional registration fee if there is an additional claim made (see Article 17).

Pragmatism

The DIA Rules 2021 are pragmatic. Document production is a standard practice in international arbitration, and the DIA Rules 2021 reflect this by expressly stating that a tribunal can order a party to produce documents or other evidence (see Article 33). The updated rules support such document production by highlighting the power of the tribunal to draw adverse inferences in case of non-compliance with a document production order.

Moreover, the overview of arbitration costs is now set out in a [Schedule of Fees and Charges](#), available on the DIA website. Having a separate schedule outside of the DIA Rules 2021 allows for easier updates compared to when the overview was contained in an appendix to the 2013 rules. An added description regarding the amount in dispute (see Appendix 2, Article 2) also makes it clearer on what basis the arbitration costs are calculated.

Efficiency

Lastly, the DIA Rules 2021 demonstrate efficiency by providing that: (1) electronic means is the standard for written communication (see Article 3); and (2) virtual hearings are possible, even if a party objects, so long as they are reliable, appropriate and justified by special circumstances (see

Article 37). Both updates reflect the DIA's environmental considerations and are echoed by the [Green Protocol for Arbitral Institutions](#) (see earlier posts on this Blog [here](#) and [here](#) for further discussion regarding green arbitration). The DIA Rules 2021 further add a provision on the language of the Statement of Claim (see Article 5) that again demonstrates efficiency. The Statement of Claim is the first submission of the claimant in DIA arbitrations and it is now expressly required to be in the language of the arbitration agreement, unless otherwise agreed. This can assist in saving time and costs.

Conclusion

The DIA Rules 2021 tell us that the DIA focuses on best practice, pragmatism and efficiency, which build on the institute's decades of arbitration experience and place the DIA in an enviable position among parties' institutional options. Denmark's high rankings for rule of law, lack of perceived corruption, and sustainability, as well as the institute's growing number of cases, reinforce such a position.

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The author is presently seconded to the Danish Institute of Arbitration.

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