

# Kluwer Arbitration Blog

## Technology and 2021 Rules of Arbitration of the Tashkent International Arbitration Centre (TIAC) at the Chamber of Commerce and Industry of Uzbekistan

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Since its establishment in 2018 by the Chamber of Commerce and Industry of Uzbekistan, the Tashkent International Arbitration Centre (the “**TIAC**”) has kept abreast the evolution of the global social and economic climate and modern international arbitration practices, and sought to modernize its administration of international arbitrations to meet current and future challenges faced by parties in dispute.

As part of this general effort, the TIAC has introduced a new set of [Rules of Arbitration](#) (the “**2021 TIAC Rules**”), which adopts a number of amendments to the 2019 TIAC Rules. These amendments in the 2021 TIAC Rules are designed to meet the rising importance of technology globally, and in particular, the reality that technology has become an ingrained feature of international arbitration proceedings (see also the Blog’s [Arbitration Tech Toolbox](#) series).

Notably, 100% of the caseload at TIAC so far – which is 24 Requests for Arbitration, including 1 sports arbitration case – was administered virtually. While initially virtual case administration was introduced by the centre as a tool to dramatically reduce operational costs (TIAC does not charge an administrative fee – it’s 0%) and engage top talent particularly for its [TIAC Court of Arbitration](#) (“**Court**”) to remove the need to travel, the COVID-19 pandemic has further reinforced the TIAC’s drive to move most of the operational and case administration matters online. All of the Court sessions have been and will remain virtual, and TIAC is also actively promulgating the use of technology for its future arbitral hearings.

Separately, with [Uzbekistan’s growth attracting foreign investment](#), its tech industry has been named as one of the country’s rising sectors. Amongst the recent government initiatives is the establishment of the IT Park with tax exemptions and the large scale government-led programme titled “*One million Uzbek coders*”.

Furthermore, interviews with stakeholders and companies engaged in the technology sector reveal that conflicts are indeed commonplace but do not always crystallize into the disputes, with cost and uncertainty surrounding the resolution procedure of the technology disputes being the most frequently cited constraints.

To cope with these and other constraints inherent in, and arising from the increased use of, the

technology, the 2021 TIAC Rules introduce mechanisms addressing, amongst other things, (a) the treatment of documents and data; (b) the use of experimental evidence; and (c) cybersecurity concerns.

### **Treatment of Documents and Data**

The new Article 20 of the 2021 TIAC Rules on documents and data reflects the most advanced practices in international arbitration with respect to document production, and provides tools to prevent attempts to abuse the document production process.

In line with generally accepted international arbitration practice:

- Article 20.1 empowers a tribunal to order document production on its own motion or upon a party's request;
- Article 20.2 sets out the commonly accepted grounds for parties to object to production (i.e., confidentiality, commercial or technical sensitivity, and any legal or ethical impediment, including any applicable privilege); and
- Article 20.3 endorses the use of a third party advisor to review and determine whether privileged and/or confidential document or data should be produced.

Further, Article 20.4 empowers tribunals to condition any document production order to a showing of *prima facie* case of a breach or infringement, which addresses the rising concerns of commercial parties (including those operating in the technology sectors) that their competitors or opponents might use documents or information obtained as part of the arbitration process for purposes other than the arbitration, including to access proprietary documents or data, or trade secrets.

Lastly, the non-mandatory drafting of Articles 20.1 to 20.4 maintains the inherent flexibility of international arbitration and is a reflection of tribunals' duties under Clause 12.1 to adopt procedures best suited to facilitate "*the fair, expeditious, economical and final*" resolution of disputes. Tribunals and parties therefore remain free to adopt other guidelines or procedures for document production, or elect not to have a document production process.

### **Use of Experimental Evidence**

The new Article 21 of the 2021 TIAC Rules on experimental evidence is introduced to address the increasing complexity of subject matters in international commercial arbitrations. In particular, modern technology-based disputes often concern highly technical codes and/or algorithms where in-depth analysis of each constituent part may not be feasible. In such disputes, the subject matter may therefore only be capable of demonstration by way of an experiment. The mechanism contemplated in Article 21 ensures that references to any experimental evidence would be done on a level playing field, and prevents a party from being "ambushed" with the introduction of substantial experimental evidence without prior notice or an opportunity to input or observe the experiment in question.

This mechanism is also available in the early stages of a TIAC arbitration. Parties are prompted by Articles 4.1(n) on Request for Arbitration and 5.1(j) on Answer to the Request for Arbitration to

take out any application to rely upon experimental evidence at the outset. It is envisaged that Articles 4.1(n), 5.1(j) and 21 would operate to induce tribunals and parties to discuss whether experimental evidence may be necessary and how such evidence should be dealt with at the first preliminary meeting mandated under Article 12.3 of the 2021 TIAC Rules.

As for the mechanism itself, Articles 21.2 and 21.3 set out the powers of tribunals to request any experiments to be carried out or repeated in its, the parties', and/or an expert's presence. These provisions further empower tribunals to require such experiments to be repeated in accordance with specific technical parameters and procedures, which is of particular importance if the result of an experiment is pivotal to the outcome of an arbitration.

## Cybersecurity Rules

The Cybersecurity Rules in Schedule 2 are an important addition to the 2021 TIAC Rules. They are intended to (a) raise the level of cybersecurity in TIAC arbitrations; and (b) provide the TIAC, tribunals and parties with powers to adopt and enforce baseline cybersecurity measures, which reflects the TIAC's appreciation of how technology has taken center stage in the global economy, as well as the impact of digitization of arbitration which brings about inevitable cyber risks.

Rules 4 to 6 of the Cybersecurity Rules puts forward baseline measures that apply to all arbitration participants, including tribunals which are designed to secure arbitration participants' access to arbitration data,<sup>1)</sup> and ensure that any transfer or use of such data are adequately protected.

In addition to the baseline measures, Rule 8 sets out provisions to address the admissibility, disclosure and parties' reliance upon materials obtained through illicit activities, such as hacking.

Further, Rule 10 on cybersecurity dispute resolution contemplates the possibility for the parties and other arbitration participants to enter into a separate and further arbitration agreement relating to any disputes arising out of a future security breach, which the parties may find to be of particular relevance in highly sensitive arbitrations.

Lastly, the Cybersecurity Rules have been incorporated into the 2021 TIAC Rules on an opt-in basis, which means that their application is subject to an agreement of the parties and other participants, and serves as another example of the TIAC's appreciation of the inherent flexibility in international arbitration. It is envisaged that discussion concerning the application of the Cybersecurity Rules would take place at the first preliminary meeting pursuant to Article 12.3 of the 2021 TIAC Rules.

## Conclusion

In addition to the aforementioned initiatives in the technology sector, Uzbekistan's recent recognition by the UNCITRAL as a model law jurisdiction, its economic growth despite the pandemic and the latest efforts of the government aimed at further internationalising the legal landscape with a potential creation of [the common law enclave on its territory](#), are amongst the recent updates, which contribute to strengthening Uzbekistan's position as a potential arbitration hub for disputes with the nexus to Central Asia and the CIS states.

Interestingly, the recent inaugural Uzbek Arbitration Week held in the hybrid format has triggered interest from the global arbitration community, with a lot of delegates flying in to Tashkent from the United States, Europe, the CIS and the Middle East to learn more about the jurisdiction and the latest developments in the field of ADR. TIAC has been frequently referred to by leading legal practitioners as “*innovative*”, “*very flexible*” with “*distinguished practitioners*” on the panel and “*cost effective*” (see for example video introduction on the TIAC Supervisory Board and the TIAC Court of Arbitration [here](#)).

It is expected that the introduction of the 2021 TIAC Rules will further facilitate the offering of efficient, secure and innovative administration of international arbitrations by TIAC, while maintaining respect for the fundamental privacy and confidentiality rights, and preserving the inherent flexible nature of arbitration.

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*“Arbitration Data” is defined under Rule 1.2 of the Cybersecurity Rules as “any and all sensitive, protected or confidential data, information and IT systems used or provided in connection with the arbitration by any Participant to such arbitration, computer hardware, software, operating systems, data, internet and web sites, firmware, network, peripherals and all associated documentation or other infrastructure equipment or systems”.*

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