

# Kluwer Arbitration Blog

## Fresh Off The Press: The Latest arbitrateAD Rules

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Abu Dhabi's latest foray, the Abu Dhabi International Arbitration Centre, came into effect on 1 February 2024. Branded and referred to as arbitrateAD, its new set of arbitration rules ("**arbitrateAD Rules**") was published on 1 February 2024 and consists of a newly established Board of Directors and Court of Arbitration.

In this post, we provide a commentary on the salient provisions of the arbitrateAD Rules and contrast them with the provisions of other notable arbitral institutions in the region such as the Dubai International Arbitration Centre Rules 2022 ("DIAC Rules") and the Saudi Center for Commercial Arbitration Rules 2023 ("SCCA Rules").

### Clarifying the Application of the arbitrateAD Rules

The arbitrateAD Rules apply to any arbitration commenced on or after 1 February 2024 where the parties have agreed to submit their dispute:<sup>1)</sup>

- under the arbitrateAD Rules;
- to arbitrateAD; or
- to the Abu Dhabi Chamber of Commerce.

For arbitrations that continue to contain references to the Abu Dhabi Commercial Conciliation and Arbitration Centre ("ADCCAC"), Article 53(2) of the arbitrateAD Rules clarifies:

- The ADCCAC Rules 2013 will apply to any pending arbitration commenced before 1 February 2024.
- The arbitrateAD Rules will apply to arbitrations commenced from 1 February 2024, although without the application of the Emergency Arbitrator and Expedited Proceedings provisions, unless those are expressly agreed by the parties.<sup>2)</sup> This is likely because the ADCCAC Rules 2013 did not contain these provisions and therefore the parties would not be deemed to have agreed to their application.

These provisions in the arbitrateAD Rules helpfully clarify their application. This may serve to avoid decisions such as the recent [US Court's ruling](#) which held that the parties' agreement to

arbitrate before the (now abolished) DIFC-LCIA arbitral centre cannot be subsumed under the Dubai International Arbitration Centre; despite the clear language contained in Article 6a of Decree No. 34 in 2021,<sup>3)</sup> the US Court in this case decided that this did not serve to “unilaterally change the arbitration forum agreed to by the parties”.

## **Notable Provisions of the arbitrateAD Rules**

### *Default Seat*

Article 22 of the arbitrateAD Rules provides for the Abu Dhabi Global Market (“ADGM”) to be the default seat of arbitration in the absence of the parties’ agreement. The arbitrateAD Court of Arbitration can decide otherwise. In contrast, Article 20(1) of the DIAC Rules provides for the Dubai International Financial Centre to be the initial seat of the arbitration in the absence of the parties’ agreement, and for the arbitral tribunal, once it is constituted, to finally determine the seat. The SCCA Rules are a hybrid of both the arbitrateAD and the DIAC Rules, in that Article 22 provides for the **SCCA Court** to initially decide the seat (or place) of the arbitration subject to a final determination by the arbitral tribunal within 30 days from its constitution.

### *Streamlined Timeframes*

The arbitrateAD Rules contain streamlined timeframes at various stages of the arbitration.

- At the onset of the arbitration, Article 7 provides for the Answer to the Request for Arbitration to be filed within 21 days from the receipt of the Request for Arbitration. Where counterclaims are filed with the Answer, a reply to the counterclaims is also to be filed within 21 days from the receipt of the Answer. In contrast, both the DIAC Rules and the SCCA Rules provide for Answers to be filed within 30 days from receipt of the Request for Arbitration.
- After the constitution of the arbitral tribunal, Article 25 stipulates that the arbitral tribunal is to hold an initial case management conference within 21 days of receiving the case file. In this respect, the time frame under the arbitrateAD Rules sits in between the DIAC Rules, which provides for the preliminary meeting to be held within 15 days from the transmittal of the case file to the arbitral tribunal and the SCCA Rules which stipulates a 30 day time frame for the case management conference to be conducted from the constitution of the arbitral tribunal.
- After the issuance of the award, Articles 42 and 43 provide that applications to correct, interpret and request for an additional award are to be made within 14 days from the parties’ receipt of the final award. This is less than the equivalent deadline under the DIAC Rules and the SCCA Rules of 30 days.

### *Terms of Reference*

The issuance of a Terms of Reference is not mandatory under the arbitrateAD Rules. Article 24 stipulates that the arbitral tribunal may decide on its own volition, or upon the application of a

party, whether it is appropriate to issue a Terms of Reference.

### ***Amending Claims and Counterclaims***

Article 30 of the arbitrateAD Rules contains provisions for making new claims or counterclaims. In proceedings where no Terms of Reference have been issued, Article 30.1 provides that the parties cannot assert any new claims or counterclaims after the submission of their respective Statement of Claim and Statement of Defence and Counterclaim unless the arbitral tribunal considers it appropriate. Where the arbitral tribunal has decided to issue the Terms of Reference, Article 30.2 provides that no new claims that fall outside the limits of the Terms of Reference are to be asserted, unless authorised by the arbitral tribunal. Notably, Article 30.2 is silent about counterclaims, unlike Article 30.1.

The DIAC Rules, in contrast, contain no express provisions for amending the parties' claims or counterclaims and presumably such requests are to be addressed by the arbitral tribunal. Article 8 of the SCCA Rules, on the other hand, only expressly allows the parties to amend or supplement any claims, counterclaims or defences prior to the constitution of the arbitral tribunal. Once constituted, the arbitral tribunal has discretion to decide any such amendment requests.

### ***Expedited Proceedings***

Article 36 of the arbitrateAD Rules provides that expedited proceedings apply to any case where the value of the claims and counterclaims do not exceed AED 9 million, unless the parties expressly agree otherwise. This is much higher than the threshold for expedited procedures under the DIAC Rules of AED 1 million and under the SCCA Rules of SAR 4 million (AED 3.9 million).

The final award, in expedited proceedings under the arbitrateAD Rules, is to be rendered within four months from the arbitral tribunal's receipt of the case file. This sits in between the six months' time period stipulated in the SCCA Rules and the three months provided for in the DIAC Rules.

### ***Multiple Parties, Multiple Contracts, Joinder and Consolidation***

Articles 9 to 12 of the arbitrateAD Rules address instances where: (a) there are more than two parties to an arbitration (Multiple Parties), (b) there is a single arbitration with claims arising out of or in connection with multiple contracts (Single Arbitration under Multiple Contracts), (c) additional parties are being requested to join an ongoing arbitration (Joinder), and (d) two or more arbitrations pending under the arbitrateAD Rules are being requested to be consolidated under a single arbitration (Consolidation).

In contrast, neither the DIAC Rules nor the SCCA Rules contain express provisions for multiple parties (i.e., claims or counterclaims being asserted between more than two parties).

### ***Court of Arbitration to Appoint Arbitrators in the Absence of Parties' Agreement***

In the absence of the parties' agreement, the arbitrateAD Court of Arbitration is tasked with the responsibility of appointing the sole arbitrator, the presiding arbitrator or any co-arbitrator that a party has been deemed to have waived its right to nominate pursuant to Article 13 of the arbitrateAD Rules. This is unlike the SCCA Rules or the DIAC Rules which introduce a method for the appointment of the arbitrators by the respective SCCA Court of Arbitration and DIAC Court of Arbitration by circulating a list of names and asking the parties to rank them in order of preference.

### ***Early Dismissal***

As with other major arbitration rules, Article 45 of the arbitrateAD Rules provides for the early dismissal of any claim, defence, counterclaim or reply to a counterclaim that is (a) manifestly without legal merit, or (b) manifestly inadmissible or outside of the arbitral tribunal's jurisdiction. A similar provision was also introduced in Article 26 of the SCCA Rules. However, unlike the SCCA Rules, there is no express provision in the arbitrateAD Rules for:

- the timeframe of such applications to be made within 30 days from the filing of the concerned claim or defense; and
- the arbitral tribunal to order costs against the unsuccessful party where it is of the view that any such request was made frivolously (although the arbitral tribunal has broad discretion to allocate costs under Article 41.6(viii) of the arbitrateAD Rules).

### ***Waiver of Right***

Article 37 of the arbitrateAD Rules provides that where a party becomes aware of any non-compliance with the provisions of the arbitrateAD Rules and does not promptly object to such non-compliance, such party is deemed to have waived its right to object. This provision in the arbitrateAD Rules is akin to Article 34 of the SCCA Rules. The arbitrateAD Rules, however, do not implement a standard of reasonable knowledge nor does it stipulate a seven-day time period for the parties to raise any objection before it is deemed to have waived its right to object in the slightly nuanced Article 42 of the DIAC Rules.

### ***Other Notable Provisions***

- **Hearings:** Article 33 of the arbitrateAD Rules provides the arbitral tribunal with the authority to conduct the hearings in the form and mode it considers appropriate (remote, physical or a combination of both).
- **Emergency Arbitrator:** Article 35 of the arbitrateAD Rules contain provisions for emergency arbitrators, where parties are seeking urgent preliminary measures prior to the constitution of the arbitral tribunal. This is akin to the DIAC Rules and the SCCA Rules.
- **Electronic Signature of Awards:** Like the DIAC rules, Article 41.4 of the arbitrateAD Rules allows the arbitral tribunal to electronically sign and digitally verify the award. Interestingly, Article 41.9 provides for the delivery of the award in digital form to be the default position, while the arbitrateAD can, if requested, transmit a physical copy of the award to each party.

- **Third Party Funding:** Article 48 of the arbitrateAD Rules provides that the parties must disclose, as soon as reasonably possible, the identity and existence of any non-party who has entered into an agreement to fund any claims or defences. Where a claimant has entered into a funding agreement prior to the initiation of the arbitration, this information is to be included in the Request for Arbitration. Similar obligations are contained in the SCCA Rules and the DIAC Rules which provide for the prompt obligation of disclosure for third-party funders.

## Concluding Remarks

The arbitrateAD Rules are modern, streamlined and in line with provisions of renowned arbitral institutions. By prioritising efficiency, arbitrations under the arbitrateAD Rules are intended to bring dual benefits of time and cost savings to the parties.

The operation of the newly published arbitrateAD Rules along with the [recent expansion of the ADGM jurisdiction to Al Reem Island](#) will certainly serve to enhance the prominence of Abu Dhabi and the ADGM in the arbitration echelon.

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## References

?1 Article 1(1)

?2 Article 1(2)

Article 6a of Decree No. 34 provides: “All agreements to resort to arbitration at the Abolished Arbitration Centres, concluded by the effective date of this Decree, are hereby deemed valid. The  
?3 DIAC will replace the Abolished Arbitration Centres in considering and determining all Disputes arising out of the said agreements unless otherwise agreed by the parties thereto.”

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