

Kluwer Arbitration Blog

The 2024 NAI Arbitration Rules: Better, Faster, Greener!

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Today, concurrent with the 75th anniversary of the Netherlands Arbitration Institute (“NAI”), the new 2024 NAI Arbitration Rules (the “NAI Rules”) will enter into force and be applicable to NAI arbitrations filed on or after 1 March 2024. The new NAI Rules, which had been last revised in 2015, introduce a number of innovative features and aim to provide for more efficient and expeditious dispute resolution, thereby responding to the needs and increased sophistication of users of international arbitration. In this blog post, we will discuss the most important changes to the NAI Rules.

Administering Bodies of the NAI

The first notable adjustment in the NAI Rules is the establishment of an NAI Case Management Committee ([Article A1, paragraph 1 of Appendix A](#)). The NAI Case Management Committee will be entrusted with the administration of arbitrations, taking over such role previously held by the NAI administrator, and consist of at least three members, designated by the Executive Board of the NAI. The NAI Secretariat will support the members of the NAI Case Management Committee in carrying out its duties ([Article A1, paragraph 2 of Appendix A](#)).

Additional safeguards for the independence and impartiality of arbitrators

The revised NAI Rules introduce new safeguards to ensure the independence and impartiality of arbitrators.

First, the new rules introduce a reporting requirement for the use of litigation funding ([Article 9, paragraph 2 under \(f\)](#)). A request for arbitration or short answer, as applicable, will now need to disclose the name of any party, other than the parties to the arbitration, that has made an arrangement with a party to the arbitration for the financing of claims or counterclaims on the basis of which this latter party has a beneficial interest in the outcome of the arbitration. Such a requirement has, for example, also been included as part of the revision of the ICC Rules, the VIAC Rules and the Delos Rules in 2021, as well as the AIAC Arbitration Rules in 2023.

Secondly, the NAI has enhanced the arbitrator’s statement of independence and impartiality, availability, and electronic accessibility, giving the parties and co-arbitrators (if any) a possibility

to submit comments ([Article 13, paragraph 3](#)).

Thirdly, appointed co-arbitrators have to communicate with the responsible member of the NAI Case Management Committee when appointing the chair of the arbitral tribunal ([Article 16, paragraph 2](#)).

Finally, the procedure for challenging arbitrators has been improved. A special Challenge Committee is charged with handling challenge requests and a Challenge Chamber constituted by the chair of the Challenge Committee decides on the merits of a challenge ([Article B1 of Appendix B](#)). Also, the challenge procedure now includes a clause deterring parties from abusing their right to raise a challenge ([Article B3, paragraph 7 of Appendix B](#)).

Efficiency enhancements

The NAI has also made multiple amendments to its arbitration rules to enhance the efficiency of arbitration proceedings.

The first of such changes concerns the arbitrator appointment procedure ([Article 15 paragraph 2, under \(d\)](#)). According to the new NAI Rules, the responsible member of the NAI Case Management Committee can appoint arbitrators directly in case parties fail to do so. This does not mean that the list procedure, a unique selling point of NAI arbitration which has gained popularity internationally, disappears entirely ([G. Fasfalis and B.R. Hoebeke, The Future of International Arbitration, 6 October 2021](#)). Parties can still agree on the application of the list procedure, however, if appointment pursuant to such procedure proves to be impossible, the NAI Case Management Committee will proceed with a direct appointment. This amendment is expected to improve the efficiency of the proceedings as well as contribute to an increased diversity of arbitrators.

Secondly, the new NAI Rules provide for a mandatory case management conference to be held no later than three weeks after submission of the arbitration file to the arbitral tribunal ([Article 26](#)), as well as for a fixed midstream conference to be held after the submission of the statement of defence ([Article 30](#)). Whereas the initial case management conference offers the parties and the tribunal an opportunity to agree on procedural issues and to address, *inter alia*, the production of evidence and suitability of the case for expedited arbitration proceedings, the midstream conference is primarily held for the purpose of providing information, consultation on the further course of the arbitration or for exploring the possibility of a settlement (see also [P. Wilinski, K. Mazoori and G. Fasfalis, NAI Annual General Meeting 2023: A Recap, 23 December 2023](#)).

Thirdly, the NAI Rules introduce the possibility of expedited arbitration proceedings ([Article 42](#)), following an increased demand for simplified and tailor-made proceedings to resolve less complex or low value disputes ([B. Wanders, The Envisaged 2022 NAI Arbitration Rules, 9 November 2021](#)). The rules on expedited arbitration apply when: (i) the arbitration agreement(s) providing for arbitration under the auspices of the NAI or in accordance with the NAI Rules was (were) entered into on or after 1 March 2024; (ii) the total amount claimed by the claimant in the request for arbitration does not exceed EUR 1 million; and (iii) the parties have not ruled out the application of the rules on expedited arbitration. Such expedited proceedings allow the parties to obtain an award within six months. If the responsible member of the NAI Case Management Committee decides that the case is not suitable to be decided in expedited arbitration, the case will be moved forward

as an arbitration on the merits.

Fourthly, the NAI Rules provide for the possibility of early determination ([Article 45](#)), which is designed to streamline proceedings and throw out manifestly inadmissible or unfounded claims at an early stage (M. Han and A. Solanki, [Early Determination: A Secret Recipe for Arbitral Efficiency?](#), 12 May 2023). As such, at the request of a party, the arbitral tribunal may, with respect to one or more issues of law and/or fact, decide by way of early determination whether a claim, counterclaim or defence is: (i) manifestly inadmissible; (ii) manifestly outside the jurisdiction of the arbitral tribunal; or (iii) manifestly legally unfounded.

Fifthly, the NAI Rules allow claims relating to disputes arising from multiple contracts to be dealt with in one single arbitration ([Article 11](#)). This requires that such disputes are between the same parties and are subject to arbitration under the auspices of the NAI or in accordance with the NAI Rules.

Finally, the new NAI Rules provide for Amsterdam as the default place of arbitration if the parties have not agreed otherwise ([Article 27](#)). This will allow parties to opt for post-award litigation in English before the Netherlands Commercial Court, even after the award is rendered.

Quality improvements

The NAI Rules have also been amended to improve the quality of the arbitration proceedings. For example, the NAI has introduced the possibility to scrutinise draft arbitral awards ([Article 50, paragraph 4](#)). This scrutiny will, however, be more light touch than that of the ICC. The responsible member of the NAI Case Management Committee may make recommendations to the arbitral tribunal with regards to the requirements of the arbitral award and may point out to the tribunal obvious computational or clerical errors or any omission to decide on any (counter)claims. Furthermore, the new NAI Rules provide arbitrators with the option to impose cost sanctions on any party for improper procedural behaviour ([Article 4 paragraph 2](#)).

Sustainability, diversity and inclusivity

In order to enhance the sustainability, diversity and inclusivity of arbitrations, the new NAI Rules provide that all communications during the proceedings must be made by email or through the NAI arbitration platform ([Article 50, paragraph 4](#)). Furthermore, All relevant actors in the arbitration must take into account: (i) aspects of sustainability when conducting the proceedings; and (ii) the benefits of diversity and inclusivity when nominating prospective arbitrators and when appointing arbitrators under the Rules ([Article 25 paragraph 5](#)).

Conclusion

The 2024 NAI Rules introduce a considerable number of new features and amendments, thereby addressing the needs of international arbitration users as well as aligning the rules with current global trends in international arbitral practice. The new rules will undoubtedly facilitate more

efficient and faster dispute resolution, not least through the introduction of expedited proceedings and early determination, as well as a more streamlined arbitrator appointment procedure (see also [M. Hetterscheidt, LinkedIn post, February 2024](#)). The balanced scrutiny of arbitral awards may be expected to improve the quality of awards, without prejudice to the discretion of the arbitral tribunal. Finally, one should welcome the explicit inclusion of sustainability, diversity and inclusivity provisions. All in all, the drafters must be commended for a much-improved set of arbitration rules, which will hopefully attract more disputes to the Netherlands and encourage even more (international) users to opt for NAI arbitration.

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