

AIAC Arbitration Rules 2023 – what’s new?

The Asian International Arbitration Centre (“AIAC”) has recently published the all-new AIAC Arbitration Rules 2023 (“2023 Rules”) which take effect from 24 August 2023, replacing all previous editions of the AIAC Arbitration Rules. In this article, we set out some notable features of the 2023 Rules.

Structure

The 2023 Rules have departed from the merged structure seen in the previous AIAC Arbitration Rules 2021 (“2021 Rules”), and revert to a three-part structure, similar to the AIAC Arbitration Rules 2018 (“2018 Rules”). Part I sets out the AIAC Arbitration Rules, Part II sets out the UNCITRAL Arbitration Rules (as revised in 2021) and the Schedules are found in Part III.

The 2023 Rules are streamlined, containing only 24 rules (as opposed to the 47 rules in the 2021 Rules). Many of the provisions make direct reference to the UNCITRAL Arbitration Rules in Part II.

Rule 9 — Joinder of Parties

The 2023 Rules are silent on the deadline for submitting a Joinder Request, suggesting there is none. In comparison, the 2021 Rules require the Joinder Request to be made no later than the filing of the statement of defence and counterclaim¹. Furthermore, the 2023 Rules permit the submission of a Joinder Request on the sole ground that the proposed Additional Party is a party to the arbitration agreement, provided the joinder does not cause prejudice to the parties².

Rule 10 — Consolidation of Proceedings

The six relevant circumstances the Director of the AIAC needs to consider under Rule 22.5 of the 2021 Rules in deciding whether to grant the Consolidation Request, are reduced to two in Rule 10.2 of the 2023 Rules, namely (i) the stage of the pending arbitrations; and (ii) the efficiency and expeditiousness of the proceedings.

¹ Rule 21.1 of the 2021 Rules.

² Article 17.5 of the UNCITRAL Arbitration Rules in Part II of the 2023 Rules.

Arbitration Update

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Rule 12 — Third-Party Funding

In contrast to the 2021 Rules which empowered the arbitral tribunal to make enquiries and direct the parties to disclose the existence of third-party funding arrangements³, the 2023 Rules render it mandatory for the party that is funded by a third party to disclose the existence of the funding and the identity of the funder.

Rule 14 — Settlement Negotiations

The 2023 Rules introduce a new provision allowing the Arbitral Tribunal, with the parties' agreement, to take steps in facilitating the settlement of the dispute before it. Any such agreement by a Party shall constitute a waiver of its right to challenge an arbitrator's impartiality based on the arbitrator's participation and knowledge acquired in taking the agreed step.

Rule 16 — Technical Review

The 2023 Rules expand the scope of technical review to include all arbitration awards rendered prior to the Final Award⁴. This differs from the 2021 Rules which exclude the Emergency Award, and the interpretation and correction of the arbitral award⁵. Additionally, the Director of the AIAC has the discretion to waive the technical review of any award, a discretion absent in the 2021 Rules⁶.

Commencement Date for Arbitration

The 2023 Rules reinstate Rule 2.2 of the 2018 Rules which provides that the arbitration is only deemed to be commenced when the notice of arbitration along with all accompanying documentation are submitted to the Director of the AIAC⁷. This differs from the 2021 Rules where the date of commencement of arbitration is when the notice of arbitration is delivered to the respondent⁸.

Overall, the 2023 Rules are a welcome update and revision to the 2021 Rules. The 2023 Rules offer a more comprehensive, streamlined, and time-tested guidance for arbitrators, lawyers, and disputing parties.

³ Rule 13.5(g) of the 2021 Rules.

⁴ Rule 16.7 of the 2023 Rules.

⁵ Rule 34.7 of the 2021 Rules.

⁶ Rules 16.8 of the 2023 Rules.

⁷ Rule 2.2 of the 2023 Rules.

⁸ Rule 7.4 of the 2021 Rules.

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