

Alert

International Arbitration & Trade

ICDR Releases Revised Arbitration Rules Geared Towards Expediting the Arbitral Process

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The International Centre for Dispute Resolution (ICDR), the international division of the American Arbitration Association (AAA), has released its revised rules today. The new rules will become effective in May, 2014, and provide mechanisms to facilitate increased efficiency and cost savings in arbitrations conducted under the ICDR Rules, as well as new procedures to ensure arbitrator impartiality. Some of the key revisions are discussed below.

New expedited procedures

One notable feature of the revised rules is the introduction of International Expedited Procedures. These procedures provide parties with the option of a simplified arbitration process designed to reduce the time, cost and complexity of international arbitration. (See Articles E-1-E-10). Under the revised rules, any case with a claim or counterclaim of \$250,000 or less will automatically be expedited. The rules also presume that any case involving disputes valued at \$100,000 or less will be decided on written submissions. Other advantages to the abbreviated process include: an early preparatory conference call with all parties and the arbitrator to determine the procedure of the case; an expedited schedule and an oral hearing limited to just one day; and a 30-day deadline for a final award to be handed down. These new provisions address parties' concerns that arbitration may be too expensive or too slow to provide a practical and effective means of resolving disputes where the claims at issue are of relatively low value.

Greater encouragement of mediation

Article 5 of the revised arbitration rules gives the Administrator discretion to invite the parties to mediate once the answer is submitted. Parties can agree to mediate at any stage of the case, and unless the parties agree otherwise, any mediation will proceed concurrently with the arbitration with a separately appointed mediator. As a result, the arbitration and mediation rules now complement one another and encourage parties to resolve their disputes through mediation even after the arbitration has begun, without the danger of adding time and expense to the arbitration should the mediation not succeed.

Joinder of additional parties

Article 7 of the revised rules now allows parties to join additional parties by submitting a Notice of Arbitration against any additional parties before

the tribunal is constituted. Subsequently, consent is required from all parties, including the party sought to be joined. The rules continue to apply as to any other party; thus, for example, the additional party must submit an answer, and may raise its own claims and counterclaims. This provision is meant to make it easier for all relevant parties to be included in an arbitration, in recognition of the complex business relationships that frequently are involved in international disputes.

Consolidating multiple arbitrations

In addition, Article 8 of the revised rules provides a method for a party to request the consolidation of two or more pending arbitrations administered by the AAA or the ICDR from a consolidation arbitrator, to be appointed by the Administrator. Consolidation may be ordered where the parties have expressly agreed to consolidate, or where all of the claims and counterclaims are made under the same arbitration agreement. If there is more than one arbitration agreement, consolidation may occur where the arbitration involves the same parties and the disputes arise in connection with the same legal relationship. The rule provides that any party may request that a consolidation arbitrator be appointed who will ultimately decide whether or not to consolidate the cases. However, if the consolidation arbitrator orders that the proceedings be consolidated, each party is considered to have waived its right to appoint an arbitrator for the resolution of the dispute. Instead, the consolidation arbitrator or the Administrator appoints the arbitrator(s).

Impartiality and independence of arbitrators

Articles 13 and 14 include additional procedures to help preserve arbitrator impartiality and independence. One notable innovation is established by Article 13, which imposes a duty on parties to disclose any circumstances that may give rise to doubts as to an arbitrator's impartiality. A failure to disclose constitutes a party's waiver of its right to challenge an arbitrator based on those circumstances, preventing parties from waiting to challenge an arbitrator for strategic reasons rather than (arguably) a genuine concern for the integrity of the process. On the other hand, Article 14 preserves the anonymity of any party challenging an arbitrator's impartiality or independence, thus giving comfort to the party raising a challenge that it will not be penalized by any member of the tribunal for having made the challenge.

Expedited award

Finally, in recognition that users of arbitration have become increasingly concerned by delays in the resolution of their disputes, Article 30 requires arbitrators to make final awards no later than 60 days after the close of the proceedings.

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