

10 SEPTEMBER 2021**AIAC Arbitration Rules 2021****Contact Persons:**Datuk D P Naban
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On 1 August 2021, the Asian International Arbitration Centre (AIAC) introduced the AIAC Arbitration Rules 2021 (2021 Rules). The 2021 Rules replaces the AIAC Arbitration Rules 2018 (2018 Rules) and will apply to all AIAC arbitrations commenced on or after 1 August 2021 unless parties have agreed otherwise. The 2021 Rules reflect the best international practices in arbitration and is line with contemporary international standards. The 2021 Rules aim to improve the time and cost efficiency of arbitral proceedings as well as transparency in arbitration. The key features of the 2021 Rules are set out below: -

Merging Of AIAC Arbitration Rules And The UNCITRAL Arbitration Rules

The 2018 Rules consist of the AIAC Arbitration Rules in Part 1, the UNCITRAL Arbitration Rules (as revised in 2013) (UNCITRAL Arbitration Rules) in Part 2 and Schedules in Part 3. Where there was any conflict between Part 1 and Part 2 of the 2018 Rules, Part 1 shall prevail.

The 2021 Rules incorporates the UNCITRAL Arbitration Rules into its main body. This results in a comprehensive set of rules and eliminates conflicts between the provisions of the 2021 Rules and the UNCITRAL Arbitration Rules.

Summary Determination (Rule 19)

The new Rule 19 introduces a summary determination procedure into AIAC Arbitrations. It allows any party to submit a request for a summary determination to dismiss, in whole or in part, a claim, counterclaim or defence where it is manifestly without merit or where it manifestly falls outside the jurisdiction of the Arbitral Tribunal's jurisdiction. This is similar to the arbitration rules of other arbitration institutions such as the Singapore International Arbitration Centre and the London Court of International Arbitration. The request for summary determination must be made within 30 days after filing of the statement of defence and counterclaim. The other party has 15 days to respond to the request. Thereafter, the

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Arbitral Tribunal has 45 days from the date of its receipt of the final submission to make a decision to allow or dismiss the request, in part or in whole. If an oral hearing is necessary, it shall be held within the said 45 day period. The Director of the AIAC may extend the said 45 day period if requested by the Arbitral Tribunal.

This Summary Determination proceeding can run concurrently with the main arbitral proceedings. The Arbitral tribunal can decide whether and to what extent the arbitral proceedings are to continue, pending the determination of the Summary Determination Request.

Fast Track Procedure (Rule 8)

Previously, the AIAC Fast Track Arbitration Rules existed as a separate set of rules alongside the 2018 Rules. The 2021 Rules incorporate the Fast-Track Arbitration Rules into its main body, it introduces a Fast-Track Procedure for all AIAC Arbitrations. A party may submit a request for the Fast-Track Procedure where one of the following applies:

- a) The Parties have agreed to adopt the Fast-Track Procedure, or any edition of the AIAC Fast Track Arbitration Rules;
- b) The amount in dispute, as described in Rule 40.3 at the time of registration of the arbitration is quantified at less than US\$500,000 for an international arbitration or less than RM2,000,000 for a domestic arbitration; or
- c) There is exceptional urgency.

The Director of the AIAC will determine any Fast-Track Request submitted pursuant to items (b) and (c) above, having regard to all relevant circumstances considered appropriate. In general, the Arbitral Tribunal will close proceedings within 90 days from the delivery of the first Procedural Order. Thereafter, the Arbitral Tribunal is required to submit its draft Final Award for the AIAC's technical review.

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Virtual Hearings (Rule 28.7)

The 2021 Rules specifically allow the Arbitral Tribunal to direct any witness, including an expert witness to be examined virtually, or after consulting with the Parties, direct that the entire hearing be conducted virtually. Presumably, this addition was made to cope with the difficulties caused by the COVID-19 pandemic.

Confidentiality (Rule 44)

Rule 44 imposes a duty of confidentiality on the Arbitral Tribunal, the Director of the AIAC, the AIAC, any tribunal secretary, any witness and any expert appointed by the Arbitral Tribunal. It requires the parties to seek an undertaking of confidentiality from all who are involved in an arbitration, including any authorised representative, witness of fact, expert, or service provider.

The Arbitral Tribunal has the power to take appropriate measures against a party which breaches the duty of confidentiality, this includes issuing an order or award for costs or damages.

In particular, the newly inserted Rule 44.6 allows the AIAC to publish arbitration awards in whole or in part, with the written consent of the parties. This will enhance the transparency of arbitration and will help to develop the jurisprudence of arbitration in Malaysia.

Consolidating Disputes Arising Out Of Multiple Contracts (Rule 22)

The Director of the AIAC has the power to consolidate two or more arbitral proceedings where:

- a) All Parties agree to consolidate arbitral proceedings in writing;
- b) The claims and counterclaims in the arbitration are made under the same arbitration agreement; or
- c) The claims and counterclaims are made under different arbitration agreement, provided that the dispute arises

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from the same legal relationship and the arbitration agreements are compatible.

A Party seeking consolidation is required to submit a consolidation request to the AIAC with a copy delivered to the other Parties and the Arbitral Tribunal if already constituted. The 2021 Rules allow a Claimant to file a single notice of arbitration in respect of claims arising from multiple contracts between the same parties together, with a consolidation request.

Parties may agree on the arbitrators to be appointed for the consolidated arbitration and the process of such appointment within 15 days of being notified of the Director of the AIAC's decision to allow the consolidation request. If Parties are unable to agree on the arbitrator to be appointed, the Director of the AIAC shall reconstitute the entire Arbitral Tribunal and release and exclude arbitrators previously nominated or appointed. Where a Consolidation Request is allowed, the Director of the AIAC shall determine a reasonable sum for any fees and expenses payable to any arbitrators released.

Closure Of Proceedings (Rule 32)

The 2021 Rules clarify the position in relation to closure of proceedings. It requires closure of proceedings in respect of each award where the arbitral proceedings are bifurcated and separate awards are to be issued for the bifurcated issues. Where there are multiple parties and the Arbitral tribunal intends to issue several awards, the Arbitral Tribunal shall declare the closure of proceedings in respect of each final award. The declaration of closure of proceedings is essential as it crystallises the timeline for the Arbitral Tribunal to submit its draft Final Award to the AIAC for a technical review.

The Arbitral Tribunal is required to declare the closure of proceedings in writing to the parties and to the AIAC. Parties will not be allowed to file further evidence or submissions in respect of matters to be decided in the Final Award. The Arbitral Tribunal may only re-open the arbitral proceedings at the request of the parties or on its own initiative under exceptional circumstances after a consultation with the Director of the AIAC. The requirements to constitute

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exceptional circumstances are not listed. Where the arbitral proceedings are re-opened, the Arbitral Tribunal is required to re-declare the closure of proceedings.

Emergency Arbitration (Rule 18)

The 2021 Rules maintain the AIAC's emergency arbitration procedures which allows users to seek urgent temporary relief from an emergency arbitrator prior to the formation of the arbitral tribunal that will determine the main dispute. The emergency arbitrator shall deliver the first procedural order for the conduct of the emergency arbitration no later than 3 days from the date of his/her appointment and deliver the emergency award within 15 days of the delivery of the first procedural order (subject to extension by the Director of the AIAC).

The 2021 Rules confirm that an emergency arbitration can be conducted virtually or on a documents-only basis. Emergency arbitrators may proceed with the arbitration in the absence of a non-participating party. The emergency arbitrator can rule on his/her own jurisdiction and the emergency arbitrator may make any order or award that the main arbitral tribunal can make, this includes adjourning all or any part of the claim for emergency measures for determination by the main arbitral tribunal.

Authored by Shaun Tan Cheng Hong, a Senior Associate with the firm's Construction and Arbitration Department.

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