

What You Need to Know about the AIAC Arbitration Rules 2021

February 2022 | [Malaysia](#)



Introduction

The [Asian International Arbitration Centre](#) ("**AIAC**") published its Arbitration Rules 2021 ("**2021 Rules**") for public consultation in June 2021. The rules took effect on 1 August 2021. With the objective of providing "a wider range of sophisticated and tailored provisions to govern the efficient conduct of arbitration proceedings" and to offer a "comparable and competitive product reflecting contemporary international standards and practices on the global stage", the 2021 Rules are a substantial upgrade to the AIAC Arbitration Rules 2018 ("**2018 Rules**"). Notable features are:

- a. The consolidation of the UNCITRAL Arbitration Rules 2013 with the AIAC Arbitration Rules;
- b. A new Fast Track Procedure;
- c. A new summary determination mechanism;
- d. Provision for the consolidation of multi-contractual disputes under a single Notice of Arbitration;
- e. A new procedure for the appointment of arbitrators;
- f. Provisions regarding the publishing of arbitral awards; and
- g. Provisions regarding third-party funding.

Notable Changes

(A) Consolidation of UNCITRAL Arbitration Rules 2013

The 2021 Rules are consolidated with the UNCITRAL Arbitration Rules 2013 to form a single set of arbitration rules, effectively removing the complexity faced under the 2018 Rules of having two sets of arbitration rules to be read conjunctively. The new consolidated set of rules aims to provide a more comprehensive, efficient, and user-friendly structure.

(B) Introduction of Fast Track Procedure

Justice delayed is justice denied. In response to the demand for quick and effective dispute resolution mechanisms, the 2021 Rules has introduced a Fast Track Procedure.

A request for the operation of the Fast Track Procedure must meet one or more of the following conditions per Rule 8.2:

1. the parties have agreed to adopt the Fast Track Procedure;
2. the amount of the dispute is quantified at less than US\$500,000 for an international arbitration or less than RM2 million for a domestic arbitration; or
3. there is exceptional urgency.

The request will then be determined by the Director of AIAC ("**Director**"), taking into account all relevant circumstances.

An arbitration under the Fast Track Procedure is to be determined by a sole arbitrator (unless otherwise agreed to by the parties). It is to proceed as a documents-only arbitration. Shorter and stricter timelines are prescribed under the Fast Track Procedure, and such timelines will supersede any time limits prescribed in the arbitration agreement. The arbitral tribunal shall declare the closure of proceedings no later than 90 days from the delivery of the first Procedural Order and any oral hearings to be allowed shall not exceed five days and be conducted within the 90-day time limit. The tribunal shall thereafter submit its draft Final Award to AIAC for technical review within 90 days from the date when the proceedings were declared closed.

(C) New Summary Determination Mechanism

The 2021 Rules has introduced a new summary determination mechanism for the purpose of early dismissal of a claim, counterclaim, or defence that is manifestly without merit or falls outside the jurisdiction of the tribunal (Rule 19).

A party may submit a request for summary determination to the tribunal no later than 30 days after the filing of the statement of defence and counterclaim, setting out the legal and factual basis for the request and a statement confirming that a copy of the request has been delivered to AIAC and the other party. Upon receiving the said request, the other party has 15 days to respond to the request.

The tribunal shall then decide whether to allow or dismiss the request, in whole or in part, no later than 45 days from the receipt of the final submission (unless extended by the Director after consulting the parties). A decision made by the tribunal pursuant to the Summary Determination Request shall take the form of an Award.

(D) Consolidation of Multi-Contractual Disputes under Single Notice of Arbitration

Under the 2018 Rules, disputes arising from different arbitration agreements could only be consolidated after having first commenced the respective arbitration proceedings in accordance with the respective arbitration agreements, then making a request to have these arbitrations proceedings consolidated.

Under Rule 5.3 of the 2021 Rules, a party can now request for claims from multiple arbitration agreements to be consolidated while filing a single notice of arbitration which covers the respective disputes. A Consolidation Request has to be submitted concurrently with the filing of the notice of arbitration. This may be done if the following conditions under Rule 22.1 are met:

1. all parties agree in writing to consolidate;
2. the claims and counterclaims in the arbitrations are made under the same arbitration agreement; or
3. the claims and counterclaims are made under different arbitration agreements, provided that the dispute arises from the same legal relationship and the arbitration agreements are compatible.

Rule 22.5 of the 2021 Rules prescribes that when deciding whether to allow the Consolidation Request, the Director shall consult the parties and the tribunal and consider all relevant circumstances, including (non-exhaustive):

1. the stage of the pending arbitrations;
2. whether the disputes under each arbitration concern the same legal relationship;
3. whether the rights or reliefs claimed are in respect of, or arise out of, the same transaction or a series of related transactions;
4. the compatibility of the arbitration agreements;
5. any prejudice that may be caused to any of the parties; and
6. the efficiency and expeditiousness of the proceedings.

(E) Latest Procedure for Appointment of Arbitrators

Under the 2018 Rules, only procedures for the appointment of a sole arbitrator and an odd number of arbitrators were provided. The 2018 Rules also did not provide a procedure for the appointment of arbitrators in the event there were multiple parties as Claimant or Respondent.

The 2021 Rules have put in place a new procedure for appointment of arbitrators where (a) the parties have agreed to have two or any other even number of arbitrators to be appointed, and (b) where there are multiple Claimants or Respondents (Rule 9).

Even-numbered tribunal

Each party will nominate half the required number of arbitrators. If any party fails to nominate, the entire tribunal shall be constituted by the Director upon request by any party.

Multiple claimants or respondents

The appointment will depend on the number of arbitrators agreed by the parties.

1. *Even-numbered Tribunal* – all claimants and respondents will respectively nominate half the required number of arbitrators.
2. *Odd-numbered Tribunal* – all claimants and respondents will nominate an equal number of arbitrators, who shall thereafter nominate a presiding arbitrator.

In the event that a joint nomination fails, the entire tribunal shall be constituted by the Director.

(F) Confidentiality

Confidentiality is often trumpeted as a unique character of arbitration. Unlike litigation in the civil courts where proceedings and documents are accessible to the public, confidentiality in arbitration ensures that third parties and strangers will not have access to the proceedings and documents filed and exchanged without the consent of the arbitrating parties. The 2021 Rules now make clear that the duty of confidentiality applies to the tribunal, the Director, AIAC, and any secretary, witnesses, and experts appointed by the tribunal (Rule 44.3).

Under the new Rule 44.6, with the express written consent of the parties, AIAC may now publish an arbitration award, or excerpts from or summaries of an award, subject to redaction of all references to the parties' names and other identifying information. This is a significant change which seeks to promote the development of the law, without compromising the confidentiality of the arbitration process.

(G) Third-Party Funding

Third-party funding is a financial arrangement whereby a third party provides funds to a party to an arbitration for an agreed return. The 2021 Rules now make clear that third-party funding is permissible.

Rule 13.5(e) of the 2021 Rules provide that the tribunal has the power to (a) make necessary enquiries on the existence of the third-party funding arrangements, and (b) direct the parties to disclose the existence of such arrangements, as well as any change in circumstances throughout the course of the arbitral proceedings.

This is an interesting development as third-party funding is (a) considered to be against public policy by the Malaysian Courts (see *Amal Bakti Sdn Bhd & Ors v Milan Auto (M) Sdn Bhd & Ors* [2009] 6 CLJ 153), and (b) not expressly permitted under the Arbitration Act 2005 ("**Act**"). Moreover, the Act provides that an award may be set aside under section 37(1)(b)(ii), or refused recognition or enforcement under section 39(1)(b)(ii), if the award is in conflict with the public policy of Malaysia.

As such, it is yet to be seen whether the Malaysian Courts will consider third-party funding permissible, and if not, the effect that might have on awards where a party to an arbitration is funded by a third party.

Concluding Remarks

The 2021 Rules are more streamlined and structured, and have introduced new procedures to better address the needs of arbitrating parties. This increases clarity and efficiency. Overall, the 2021 Rules are a welcome revision to the 2018 Rules.

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