

## **arbitrateAD: NEW RULES PUBLISHED AND NEW CENTRE OPEN FOR BUSINESS**

In December 2023, the Abu Dhabi Chamber of Commerce and Industry announced the launch of the Abu Dhabi International Arbitration Centre (arbitrateAD) to replace the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC). Along with the new arbitration centre, arbitrateAD has published its Abu Dhabi International Arbitration Centre's Arbitration Rules 2024 (arbitrateAD Rules) which came into effect on 1 February 2024.

A new arbitration centre in Abu Dhabi is a welcome development, which will be able to take advantage of the extensive and state-of-the-art arbitration facilities in the Abu Dhabi Global Market (ADGM).

### **Transition Provisions**

The transition provisions have also now been clarified. ADCCAC Arbitrations registered prior to 1 February 2024 will continue to be managed by the existing ADCCAC team until their conclusion. Parties are free to agree to transfer existing arbitrations to be administered by arbitrateAD under the new rules. Furthermore, all new disputes and request for arbitration filed after 1 February 2024 will be administered by arbitrateAD.

### **New arbitrateAD Rules**

The new rules are undoubtedly very different from the previous ADCCAC rules which they now replace, and the arbitrateAD Rules are in line with international best practice.

#### **Article 22 - The Seat of Arbitration**

If the parties do not stipulate the seat of arbitration in their arbitration agreement, the default seat will be the offshore ADGM rather than onshore Abu Dhabi. The ADGM has demonstrated that it is pro-arbitration and its Courts are well equipped to act as the supervisory courts of arbitrateAD arbitrations. The ADGM's legal system is based on English common law and the ADGM Arbitration Regulations 2015 (as amended) are based on the UNCITRAL Model Law.

#### **Article 24 - Terms of Reference**

Article 24 provides an option for the Tribunal to decide on having terms of reference either of its own accord or by application of a party. Unless a tribunal considers it inappropriate the terms of reference are to include a list of issues to be determined. It has long been a point of uncertainty whether or not the terms of reference are a mandatory part of arbitration proceedings under UAE law. The fact that they are not mandatory under the arbitrateAD Rules is a helpful clarification.

#### **Article 36 - Expedited Proceedings**

Another inclusion that ensures arbitrateAD is in line with other institutions is the inclusion of a mechanisms for expedited proceedings. This was a notable omission in the ADCCAC Rules. Unless the parties have agreed otherwise, expedited proceeding procedures will apply where the amount in dispute is less than AED9m (including all claims and counterclaims).

The AED9m monetary cap is more consistent with international centres like the ICC which caps at US\$3m compared to the DIAC Rules cap of AED1m.

Proceedings that are expedited would be decided by a sole arbitrator and the final Award to be made within four months from the date the case file is submitted to the Tribunal and can only be extended by a maximum of a further two months.

### Article 47 – Confidentiality

The arbitrateAD Rules impose tougher confidentiality provisions than the ADCCAC Rules. As well as specifying that all aspects of the proceedings are confidential whether oral or written, the Tribunal has the power to enforce confidentiality obligations and may issue an Order or Award for sanctions, damages or costs and take measures to protect confidentiality and trade secrets.

One of the key attractions of resolving disputes through arbitration, especially for Middle East parties, is the confidentiality of the proceedings. The fact that the arbitrateAD Rule include these provisions will distinguish from others in the region.

### Article 48 - Third Party Funding

Parties must also disclose to all other parties and the Tribunal the existence and identity of third-party funders and Claimant's must include this information in the Request if they have entered into such agreement prior to the initiation of proceedings.

## Challenges ahead

Overall, the arbitrateAD Rules are good and in line with other arbitral institutions and provide useful mechanisms for the effective and efficient conduct of proceedings.

We will wait to see whether parties in the UAE and elsewhere chose now to opt for the arbitrateAD Rules and agree for their arbitrations to be administered by the new centre. It will be challenging especially in the context of ever increasing options both globally and in the region.

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