

AIAC Arbitration Rules 2021

The Asian International Arbitration Centre (“**AIAC**”) Arbitration Rules 2021 (“**AIAC Arbitration Rules**”) takes effect on 1.8.2021.

Aside from merging Part I and Part II of the AIAC Arbitration Rules 2018 with modifications, notable highlights in the AIAC Arbitration Rules include:

(1) Summary procedure

Rule 19 of the AIAC Arbitration Rules provides for summary determination of a claim, counterclaim or defence, either in whole or in part.

The tests for summary determination are laid down in Rule 19.1 as follows:

- The claim or counterclaim or defence is manifestly without merit; or
- The claim or counterclaim or defence manifestly falls outside the arbitral tribunal’s jurisdiction.

A party may submit a request for summary determination (“**Summary Determination Request**”) to the arbitral tribunal no later than 30 days after the filing of the statement of defence and counterclaim¹. Upon receiving the Summary Determination Request, the other party only has 15 days to respond to such application².

The arbitral tribunal has to decide whether to allow or dismiss the request, in whole or in part, no later than 45 days (unless extended by the Director of the AIAC after consulting the parties) from the receipt of the final submission³.

(2) Fast track procedure

AIAC Arbitration Rules introduce Fast Track Procedure that governs the expedited conduct of arbitral proceedings in arbitrations administered by the AIAC⁴.

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¹ Rule 19.2

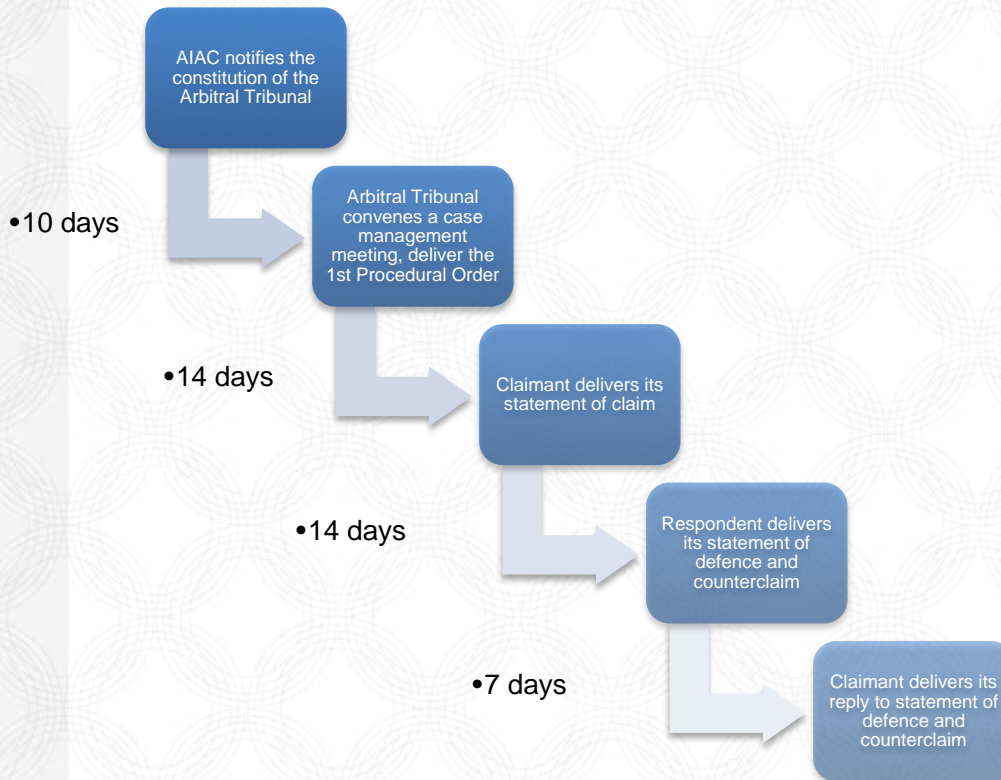
² Rule 19.4

³ Rule 19.5

⁴ Rule 8.1

It is to be noted that a request for the operation of the Fast Track Procedure can only be made if the parties have agreed to adopt the Fast Track Procedure (or any edition of the AIAC Fast Track Arbitration Rules), the amount in dispute is quantified at less than USD500,000 for an international arbitration or less than RM2,000,000 for a domestic arbitration, or there is exceptional urgency⁵.

Under the Fast Track Procedure, the expected timelines for the arbitral proceedings are as follows:



The parties can expect the closure of proceedings no later than 90 days from the delivery of the first Procedural Order.

(3) Clear provisions for virtual hearing

To cope with the recent changes brought by the pandemic and the consequential restrictions in place, the AIAC Arbitration Rules clarify and acknowledge the use of technology to remotely participate in the arbitral proceedings⁶. That would include attending or appearing at meetings, conferences, deliberations or hearings by using a video conferencing platform, telephone or any other appropriate means⁷.

⁵ Rule 8.2

⁶ Rule 2.4

⁷ Rules 2.4, 13.5(c), 14.3, 18.4, 28.7

(4) Third party funding

The AIAC Arbitration Rules also address third party funding and expressly provide for power of the arbitral tribunal to make necessary enquiries on the existence of third party funding arrangements (including the third-party funder's economic interest in the outcome of the arbitral proceedings) and directing the parties to disclose the existence of such arrangements, as well as any change in circumstances throughout the course of the arbitral proceedings⁸.

Rule 1.4 expressly stipulates that the use of third-party funding to finance a party's share of the costs of the arbitration shall not affect nor preclude the adoption of the AIAC Arbitration Rules in an arbitration, unless provided otherwise by a relevant law or an order of any court of competent jurisdiction.

(5) Provisions for bifurcation of hearings

Rule 13.5 stipulates the powers that may be exercised by the arbitral tribunal, one of which is that it may direct bifurcating proceedings.

Where the arbitral proceedings are bifurcated and the arbitral tribunal intends to issue separate final awards by which each issue subject to bifurcation is to be finally decided, the arbitral tribunal shall declare the closure of proceedings in respect of each final award⁹.

(6) Confidentiality

The AIAC Arbitration Rules expressly stipulate that the duty of confidentiality of an arbitral proceeding extends to the arbitral tribunal, the Director, the AIAC, any tribunal secretary and any witness or expert appointed by the arbitral tribunal¹⁰.

Rule 44.4 further requires the parties to seek the undertaking of confidentiality from all those that they involve in the arbitration, including any authorised representative, witness of fact, expert or service provider.

In the event of any breaches of confidentiality by a party, the arbitral tribunal has the power to take appropriate measures, including issuing an order or award for costs or damages¹¹.

Besides, it is interesting to note that, in order to promote transparency and development of law, Rule 44.6 provides that an award may be published by the AIAC with the express written consent of the parties, whether in its entirety or in the form of excerpts or a summary, subject to the redaction of all reference to the parties' names and other identifying information.

⁸ Rule 13.5(e)
⁹ Rule 32.2
¹⁰ Rule 44.3
¹¹ Rule 44.5

(7) Multiple parties appointment

Rule 9(7) provides for the procedure for the appointment of the arbitral tribunal by multiple parties.

If 2 or more arbitrators are to be appointed, and multiple claimants or respondents expressly agree to act collectively and jointly nominate an arbitrator, the following procedure will apply¹²:

Timeline	Number of arbitrators	Procedure
Within 30 days of the delivery of the notice of arbitration to the last respondent	Even-numbered arbitral tribunal	Each claimant (or group of claimants) and each respondent (or group of respondents) shall nominate half the number of arbitrators for Director's confirmation.
	Odd-numbered arbitral tribunal	Each claimant (or group of claimants) and each respondent (or group of respondents) shall nominate an equal number of arbitrators. The arbitrators then nominate a presiding arbitrator within 30 days of their appointment for Director's confirmation.

If the parties fail to reach an agreement on the abovementioned appointment, the Director will constitute the arbitral tribunal upon request of any party¹³. In such event, any nominated arbitrators will be excluded from consideration and any appointed arbitrators will be released unless the parties agree otherwise¹⁴.

(8) Consolidation of claims arising out of multiple contracts

The claimant shall submit a consolidation request to the AIAC where a single notice of arbitration is delivered to the respondent in respect of claims arising out of multiple contracts between the same parties¹⁵.

Rule 22.5 lays down the factors to be considered by the Director in deciding whether to allow the consolidation request. If the Director dismisses the request, the claimant is required to issue separate notices of arbitration pursuant to each contract and submit separate registration requests (previously known as 'commencement request')¹⁶.

¹² Rule 9.7(b)

¹³ Rule 9.7 (c)(i)

¹⁴ Rule 9.7 (c)(ii)

¹⁵ Rule 22.4

¹⁶ Rule 22.6(b)

(9) Technical review

For the purposes of technical review, the Director will draw the arbitral tribunal's attention to any perceived irregularity, not only as to the form of the draft final award and computational errors, but also include any matters relating to the procedural history and general content issues, without affecting the arbitral tribunal's liberty of decision on merits¹⁷.

(10) Emergency arbitration

Pursuant to Rules 18.4 and 18.9, the emergency arbitrator shall deliver the first procedural order for the conduct of the emergency arbitration no later than 3 days from their appointment, and deliver the emergency award within 15 days of the delivery of the first procedural order (subject to extension by the Director).

Other notable changes:

- Rule 1.1(a)- Where the parties have agreed to refer their dispute to the AIAC arbitration, or to arbitration in accordance with the AIAC Arbitration Rules, the arbitration shall be conducted and administered by the AIAC in accordance with the AIAC Arbitration Rules.
- Rule 7(g)- The registration request shall contain a statement on whether any pre-conditions to arbitration have been satisfied or waived by the parties.
- Rule 27.4- A party or its representative may conduct interviews of actual or potential witnesses prior to such witnesses presenting oral evidence at any hearing.
- Rule 32.3 – Where multiple parties are involved and the arbitral tribunal intends to issue several final awards with respect to the parties, the arbitral tribunal shall declare the closure of proceedings in respect of each final award.

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