ABU DHABI CHAMBER OF COMMERCE LAUNCHES NEW INTERNATIONAL ARBITRATION CENTRE WITH UPDATED SET OF RULES

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UAE Litigation and Dispute Resolution Alert

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On 29 January 2024, the Abu Dhabi Chamber of Commerce launched a new arbitral institution called the Abu Dhabi International Arbitration Centre (Centre), branded as “arbitrateAD,” to replace the Abu Dhabi Commercial Conciliation and Arbitration Centre (ADCCAC). The Centre's new arbitration rules (Rules), which came into force on 1 February 2024, replace the previously applicable 2013 ADCCAC Arbitration Rules (ADCCAC Rules). The Rules introduce a number of welcome developments more in line with other modern arbitration rules.

APPLICATION OF RULES

The Rules shall apply in circumstances where the parties have agreed to submit their disputes to the Centre or the Abu Dhabi Chamber of Commerce (Article 1(1)) or have agreed to arbitration under the Rules (Article 1(2)). The Rules shall also apply where parties have agreed to submit to arbitration under the ADCCAC Rules; however, Article 35 (Emergency Arbitrator) and Article 36 (Expedited Proceedings) shall not apply unless the parties expressly agree (Article 1(4)). The Rules shall apply to cases registered after 1 February 2024, with ADCCAC cases commenced prior to 1 February 2024 continuing to be administered under the ADCCAC Rules (Article 53).

NEW COURT OF ARBITRATION

Article 3 creates an independent court of arbitration (Court) to act as an independent administrative body of the Centre. The Court's role includes appointing and replacing arbitrators, resolving challenges against arbitrators or arbitration agreements, considering requests for joinder or consolidation, and reviewing awards (Article 3(3)). Generally, the reasoning of the Court will not be shared with the parties, except in cases where the appointment of an arbitrator is challenged, and then the Court will (save in exceptional circumstances) provide a summary of its reasoning (Article 3(4)).

A tribunal shall submit a draft of its award for scrutiny by the Court before it is issued (Article 40(1)). The Court may suggest changes to the draft award to the tribunal, such as required changes to the form of the award, clerical errors, inconsistencies or omissions, or items on the Centre's “Award Checklist” (Article 40(2)).

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COSTS OF THE ARBITRATION

Unlike the ADCCAC Rules, the Rules now expressly provide that, unless otherwise agreed by the parties, the tribunal shall, at the request of a party, apportion the costs of the arbitration and the parties' legal costs and expenses between the parties (Article 50(6)). This is an important change given the recent jurisprudence of onshore United Arab Emirates (UAE) courts that the power to award legal costs must be explicitly provided to the arbitral tribunal. When allocating costs, the tribunal is required to have regard to the outcome of the case, each party's contribution to the efficiency and expeditiousness of the arbitration, and any other relevant circumstances (Article 50(6)).

DEFAULT SEAT OF ARBITRATION

If the parties do not agree on a seat (or legal place) of the arbitration, the Abu Dhabi Global Market shall be the default seat, unless the Court, after giving the parties a reasonable opportunity to be heard, decides otherwise (Article 22(2)). Tribunals can hold hearings and deliberate outside the seat, but the award shall be deemed to be issued from the seat of arbitration (Article 22(3)).

LANGUAGE OF THE ARBITRATION

Unlike in the ADCCAC Rules, the default language is not Arabic. If the parties do not agree on the language of the arbitration, the Case Management Office shall decide the initial language of the arbitration. Once appointed, the tribunal shall decide on the language of the arbitration (Article 23). This change may reduce the likelihood of parties being required to arbitrate in Arabic and receiving awards in Arabic when the contractual framework and relevant documentation is in another language.

MULTIPLE PARTIES, MULTIPLE CONTRACTS, JOINDER, AND CONSOLIDATION

Articles 9–12 introduce rules regarding the circumstances in which:

- A case may be filed against multiple parties (Article 9).
- A single arbitration may be commenced arising out of or in connection with more than one contract or more than one arbitration agreement (Article 10).
- A party to the arbitration or a third party may request that the Court join one or more additional parties to an arbitration (Article 11).
- A party seeks to consolidate multiple arbitrations into a single proceeding (Article 12).

These rules ought to assist in the efficient determination of disputes in multiparty or complex contractual situations.

EMERGENCY ARBITRATOR

Article 35 allows a party seeking urgent preliminary measures before the constitution of the tribunal to file an application for the appointment of an Emergency Arbitrator (Article 35(1)). An Emergency Arbitrator has the same

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powers as the tribunal (Article 35(10)). An Emergency Arbitrator may order any preliminary measures that they consider appropriate on an interim basis, pending the parties' written submissions or a hearing, and they may subsequently vacate or modify their orders (Article 35(12)). When making an order, an Emergency Arbitrator shall issue a summary of the reasons for their decision (Article 35(12)). Generally, an Emergency Arbitrator must decide on an application for Preliminary Measures within 10 days of being appointed (Article 35(13)). Given the difficulties in obtaining interim relief in the onshore UAE courts, this may provide parties with a viable mechanism by which to secure urgent interim relief.

EXPEDITED PROCEEDINGS

Article 36 introduces Expedited Proceeding procedures aimed at streamlining the resolution of lower-value disputes (where the aggregate amounts of all claims and counterclaims do not exceed AED9 million (c. US$2.5 million at current rates)). The award must be issued no later than four months after the case file is submitted to the tribunal. A tribunal can request an extension of up to two months (Article 36(2)).

CONCLUSION

The Rules appear to have made a series of significant improvements to the old ADCCAC Rules, which will likely make the Centre more attractive for contracting parties. Time will tell if this modernization will be sufficient to encourage parties to select the Centre over other arbitral institutions.

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