CORE ISSUES IN INTERNATIONAL ARBITRATION: KEY CHANGES TO ARBITRATION RULES

In the first of a series of publications on a number of core issues relevant to the world of international arbitration, members of HFW's Asia Pacific arbitration team consider the key changes to the arbitral rules of a number of international arbitration institutions.

New Arbitration Rules

During the past year, a number of international arbitration institutions have amended their arbitration rules:

New Arbitration Rules	Effective Date
London Court of International Arbitration (**LCIA**)	1 October 2020
International Chamber of Commerce (**ICC**)	1 January 2021
American Arbitration Association's International Centre for Dispute Resolution (**ICDR**)	1 March 2021
Australian Centre for International Commercial Arbitration (**ACICA**)	1 April 2021
Asian International Arbitration Centre (**AIAC**).	1 August 2021

In this publication we have summarised the key changes that have been made in these arbitration rules and considered the reasons for the changes and compared the different approaches taken.

Early dismissal or determination of claims

Summary proceedings in court

One benefit of litigation that is often highlighted is that a party may request the court to deal with the claim on a summary basis.

For example, a plaintiff or claimant may for some claims, including payment claims, apply for summary judgment if the defendant or responding party does not submit a defence or response within the prescribed time period. Typically the court will order that the payment claimed be made to the plaintiff.

Correspondingly, the defendant or responding party may apply to the court for an early dismissal of the case in certain circumstances. A "strike out application" may be made on the basis that the claim is unmeritorious or no reasonable cause of action is disclosed or the claim is frivolous or vexatious or an abuse of process.

There has been much debate as to whether arbitral tribunals do have or should have similar powers. Whilst it may improve the cost and time efficiencies of the arbitral process, there are legitimate concerns that it may prevent a party (usually the claimant) from being given a fair opportunity to be heard. A lack of procedural fairness may be a ground for setting aside an award or preventing its enforcement.

Nonetheless, there now appears to be some consensus that there is benefit in empowering arbitral tribunals to dismiss or determine a claim at its early stages in certain circumstances.

Distinguish from Tribunal's jurisdictional powers

Before discussing the changes that have been introduced, we emphasise that a tribunal's power with respect to early dismissal or early determination of a case is different to the tribunal's power to determine its own jurisdiction. The latter relates to whether the tribunal has jurisdiction under the arbitration agreement or otherwise to hear the case. The tribunal may have jurisdiction but may determine that the case should be dismissed summarily on the basis of the merits or indeed, the lack of merits of the case.

SIAC and HKIAC Arbitration Rules

Until recently, ICSID was one of the few arbitral institutions that permitted a party to apply for early dismissal of a claim on the basis that it was "manifestly without legal merit" (ICSD Arbitration Rules 41(5)).

In 2016, SIAC introduced a summary dismissal procedure in the SIAC Rules that came into force on 1 August 2016. Article 29.1 provides that a party may apply for the early dismissal of a claim or defence on the basis that it is "manifestly without legal merit" or "manifestly outside the jurisdiction of the tribunal". The tribunal has a discretion to proceed with the application. If it does then it must give the parties the opportunity to be heard on the application (Article 29.3).

Similarly, in 2018, the HKIAC Arbitration Rules adopted an early determination procedure (Article 43). The tribunal has the power to decide by way of early determination on the following basis:

- such points of law or fact that are manifestly without merit;
- such points of law or fact are manifestly outside the arbitral tribunal's jurisdiction; or
- even if such points of law or fact are submitted by another party and are assumed to be correct, no award could be rendered in favour of that party.

An application for early determination must be made as promptly as possible after the relevant factual or legal points are submitted in the arbitration. Article 43 sets out a detailed procedure for such application.

ICC Arbitration Rules

Interestingly, the ICC has not included an express provision permitting the early dismissal or determination of claims. However, in 2017, at the same time as updating its Arbitration Rules, the ICC updated its *"Practice Note to Parties and Tribunals on the Conduct of Arbitrations under the ICC Rules of Arbitration"* (**ICC Practice Note**). The ICC Practice Note explained that the Tribunal's general case management powers under Article 22 permitted the early dismissal of unmeritorious claims or defences.

Article 22 provides that the arbitration is to be conducted in "an expeditious and cost-effective manner, having regard to the complexity and value of that dispute". The practice note explained that a party may apply under Article 22 for the "expeditious determination of one or more claims or defences, on grounds that such claims or defences are manifestly devoid of merit or fall manifestly outside the arbitral tribunal's jurisdiction". Such application must be made "as promptly as possible" after the filing of the claim or defence.

The tribunal has "full discretion" to decide whether or not to allow the application. The tribunal also has a discretion on how to proceed with the application as long as the responding party is given a fair opportunity to be heard. The tribunal is then to decide on the application as promptly as possible and may state reasons for its decision. The decision can be in the form of an order or award.

Changes to the LCIA, ICDR, ACICA and AIAC Arbitration Rules

The LCIA, ICDR, ACICA and AIAC have adopted an approach similar to the SIAC Arbitration Rules. These rules now expressly provide that the tribunal has the power to determine any claim or defence or counterclaim at an early stage of the arbitration.

Also similar to the SIAC Rules, the LCIA and AIAC Arbitration Rules expressly empower the tribunal to dismiss a claim, defence, counterclaim or cross claim where the claim or defence is:

- "manifestly outside the jurisdiction of the Arbitral Tribunal"; or
- "inadmissible or manifestly without merit". (LCIA, Article 22.1(viii) and AIAC Rule 19)

The ACICA Rules refer to the broad power without specifying the grounds on which such an application can be made (Article 25.7).

Similarly, the ICDR Rules provide a broad power to the tribunal and set out a detailed procedure in which that power may be exercised (Article 23). In particular, the tribunal may proceed with an early dismissal application if it determines that the application has a reasonable possibility of succeeding, will dispose of, or narrow, one or more issues in the case and consideration of the application is likely to be more efficient or economical than leaving the issue to be determined with the merits.

Relevant changes to the Arbitral Rules

ICC Rules: Article 22

LCIA Rules: new Article 22.1(viii)

ACICA Rules: Article 25.7

AIAC Rules: Rule 19

ICDR Rules: Article 23

Multi-parties, multi-contracts and consolidation and joinder

Many projects involve multiple parties with multiple contracts. Parties may agree to an umbrella dispute resolution clause to enable a "one stop shop" or at least promote a more time and cost effective regime to resolve

disputes. However, it is more common that each contract contains its own dispute resolution clause, which may refer disputes to expert determination, arbitration or the courts.

Arbitral institutions have sought to provide a more efficient and effective mechanism to resolve disputes involving multiple parties and/or multiple contracts that relate to the same project or similar projects.

Joinder and consolidation provisions are now prevalent in all major arbitral rules, as summarised below and in our publication on "*Consolidation of Proceedings*".

Joinder and consolidation

One of the criticisms that has been made of arbitration is that the tribunal has limited powers to join parties and/or to consolidate related disputes. These challenges may result in multiple arbitrations for related disputes particularly where the arbitrations are under different contracts and between different parties. Not only does this result in increased time and costs for resolving the disputes but it may also result in different tribunals reaching different and conflicting decisions.

The issues and challenges in addressing joinder and consolidation in arbitrations, such as balancing party autonomy and the equality of the parties with the efficient resolution of related disputes, is considered at length in our publication on *"Consolidation of Proceedings"*.

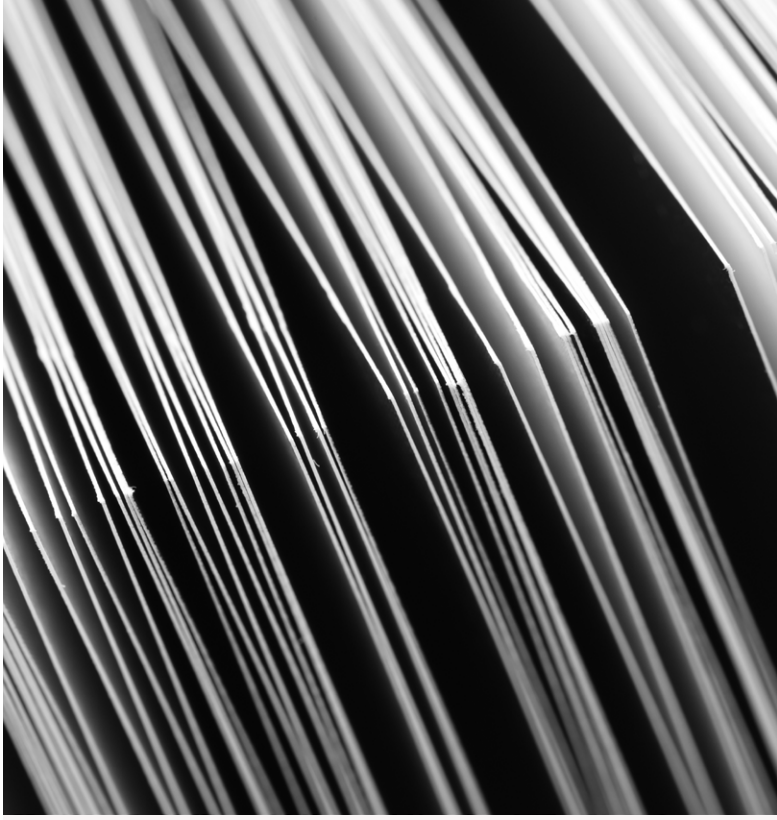
Arbitration institutions have sought to expand the powers of the tribunal to permit joinder of parties and consolidation of related disputes in appropriate circumstances. Whilst many arbitration institutions already included joinder and consolidation provisions, the recent changes have extended these powers.

For example, the ICC Arbitration Rules have been amended to clarify that two or more arbitrations may be consolidated where claims are made under the same or similar arbitration agreements. The claims do not need to be made under the same arbitration clause, they can be made under a similar arbitration clause in multiple contracts. The ICC Practice Note updated as of 1 January 2021 also provides more detailed guidance on how the ICC may decide an application for consolidation.

The ICC Arbitration Rules have also been amended to permit the joinder of a party after the confirmation or appointment of an arbitrator even without the agreement of the parties. The tribunal will decide such applications.

Similarly, the LCIA Arbitration Rules have broadened the consolidation powers to encompass compatible arbitration agreements between "the same disputing parties or arising out of the same transaction or series of related transactions" (Article 22.7(ii)). The tribunal now has an express power to order consolidation or the concurrent conduct of arbitrations (Article 22A).

The ICDR Arbitration Rules now permit the consolidation of arbitrations between "related" parties as opposed to the "same" parties (Article 9).



Claims under Multi-Contracts: Summary of Arbitral Rules

- **ICC Rules 2021:** a claimant(s) may commence one arbitration relating to claims arising out of more than one contract (Article 9). The ICC Court must be prima facie satisfied that the arbitration agreements are compatible and all the parties to the arbitration have agreed that the claims be determined in a single arbitration (Article 6(4)).
- **SIAC Rules 2016:** a claimant may file multiple notices of arbitration and request consolidation under Article 8 or one single notice of arbitration and demonstrate that the criteria for consolidation in Article 8 are satisfied (Article 6).
- **HKIAC Rules 2018:** claims relating to multiple contracts may be made in one arbitration provided there is a common question of law or fact, the rights to relief claimed arise out of the same or a series of transactions and the arbitration agreements are compatible (Article 29).
- **LCIA Rules 2020:** a claimant may serve a composite request of more than one arbitration (Article 1.2). Article 22A provides for consolidation of arbitrations and for the concurrent hearing of two or more arbitrations by the same arbitral tribunal.
- **ACICA Rules 2021:** a claimant may file one notice of arbitration in respect of two or more arbitration agreements and an application for consolidation to be decided by ACICA (Article 18).
- **AIAC Rules 2021:** a claimant may file one notice of arbitration in respect of claims arising from multiple contracts between the same parties together with a consolidation request (Rule 22.4).

The amendments to the ACICA Arbitration Rules have expanded the consolidation powers even further. Consolidation may be permitted for claims under more than one arbitration agreement even where the parties to the arbitration are not the same, subject to the satisfaction of certain criteria. ACICA has also published a "*Protocol for decisions on applications for consolidation and joinder and challenges to arbitrators under the ACICA Rules 2021*" to be followed by ACICA when deciding on such applications.

In addition, the ACICA Arbitration Rules empower a tribunal to conduct relating proceedings concurrently, one after the other or to suspend a proceeding, where the same tribunal is constituted in each arbitration and there is a common question of law or fact. As a result, the tribunal may manage related proceedings in a time and cost efficient manner.

Multiple contracts

The disputes that arise between parties may involve multiple contracts. Recent amendments to some of the arbitration rules allow a claimant to commence one arbitration for claims under multiple contracts. For example, the claimant may bring multiple claims against one respondent under separate contracts which contain the same or similar arbitration agreements. Other cases may be more complex or difficult to address, especially where there are different parties as well as different contracts.

The ICC was the first arbitral institution to introduce this mechanism in 2012, followed by SIAC in 2016 and the HKIAC in 2018. More recently, the LCIA in 2020 and ACICA and the AIAC in 2021 have introduced new provisions allowing for multi-contract arbitrations and expanded their provisions relating to consolidation or concurrent hearings. The ICDR has not introduced express provisions addressing multi-contracts arbitrations.

The institutions have adopted similar approaches to determining whether such an arbitration should proceed, which involves consideration of the criteria for consolidating arbitrations. The criteria commonly considered is whether the parties have agreed to consolidation; whether the claims are made under the same arbitration agreement; or whether the claims are made under arbitration agreements that are compatible and that relate to the same legal relationship or transaction or a series of transactions.

It may be worthwhile considering when commencing an arbitration involving multiple parties and/or multiple contracts, whether there are any costs and time benefits to commencing one arbitration rather than later applying for consolidation of two or more arbitrations.

Relevant changes to the Arbitral Rules

LCIA Rules: Article 22.7 and 1.2 and 22A

ICC Rules: Article 7(5), 10

ACICA Rules: Article 16, 18, 19

AIAC Rules: Rule 21.1, 22

ICDR Rules: Article 9

Effective Case Management

Effective case management is increasingly becoming the focus of all parties involved in arbitration proceedings. Clients are demanding a more cost and time efficient process that meets their needs and results in a final and binding outcome.

Using the procedural flexibility of arbitration, a more time and cost effective process can be achieved with the assistance of the tribunal and the parties. Many arbitration institutions have amended their arbitration rules or adopted practice notes or guidance to assist tribunals and the parties. Tribunal are also empowered to take steps with respect to parties who adopt tactics to delay or distract the proceedings.

ICC Guidance

The ICC Arbitration Rules provide the tribunal with broad powers to "conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute" (Article 22.1). The tribunal is required to "ensure the effective case management" of the arbitration and "may adopt such procedural measures as it considers appropriate" to do so, after consultation with the parties (Article 22.2). At the same time, the tribunal is to "act fairly and impartiality and ensure that each party has a reasonable opportunity to present its case" (Article 22.4).

The ICC has published detailed guidance and practice notes to assist tribunal and the parties to ensure the effective case management of the arbitration, including the ICC Practice Notice (which was updated on 1 January 2021) and the *"Effective Management of Arbitration: A Guide for In-House Counsel and Other Party Representatives"*.

LCIA Arbitration Rules

The LCIA Arbitration Rules have been amended to provide more detailed guidance on the effective management of arbitrations. The provisions relating to the conduct of the proceedings in Article 14 have been reordered. In addition, the new Article 14.5 expressly provides that the tribunal has a discretion to "make any procedural order it considers appropriate with regard to the fair, efficient and expeditious conduct of the arbitration".

The new Article 14.6 spells out some examples of the procedural orders that may be made by the tribunal such as limiting the length or content of written submissions or oral testimony, employing technology, deciding the stage of the arbitration at which an issues may be determined, dispensing with a hearing, setting time periods and abridging a time period where appropriate.

Further, the tribunal is to issue its final award "as soon as reasonably possible" and no later than three months after the last submission from the parties (Article 15.10).

ACICA Arbitration Rules

A number of amendments have been made to the ACICA Arbitration Rules to assist with the effective resolution of the dispute. For example, the tribunal is required to discuss with the parties the "possibility of using

mediation or other forms of alternative dispute resolution to facilitate the timely, cost effective and fair resolution of the dispute" (Article 55). The tribunal has an express power to suspend the arbitration to allow for a mediation or other form of ADR.

Further, the tribunal is required to render an award within 9 months from the date it receives the file or 3 months from the date the tribunal declares the proceedings closed (Article 39.3). ACICA will work with the tribunal to develop a procedural timetable that to assist with meeting these time requirements or granting an extension if required in the specific circumstances.

Similar to the ICC, ACICA has also published a number of resources including a commentary on the ACICA Rules and the ACICA Practice and Procedures toolkit to assist tribunals and parties with the effective management of the arbitral process (see **https://acica.org.au/acica-practice-procedures-toolkit/**).

AIAC Arbitration Rules

The new AIAC Arbitration Rules consolidate the previous versions of the rules, including the main body of the rules which were based on the UNCITRAL Arbitration Rules 2013 and the Fast Track Rules. The streamlined structure of the new rules will assist tribunals and parties in invoking and using the rules. The AIAC has also adopted a new Code of Conduct for Arbitrators.

Relevant changes to the Arbitral Rules

LCIA Rules: Article 14.6, 15.10

ICC Rules: Appendix VI and Article 30; Practice Notice and Effective Management of Arbitration Guidelines

ACICA Rules: Articles 12, 13, 14, 16.8, 17.4, 20, 22.5, 23, 25, 55 and 39.3

AIAC – Fast Track Rules

Data protection

One very important amendment that has been made to some arbitral rules relates to data protection. The introduction of the General Data Protection Regulation (**GDPR**) in the European Union and the United Kingdom has and will continue to have an impact on arbitrations being conducted around the globe, as will the introduction of similar privacy and data protection laws and regulations in other jurisdictions.

For example, Article 30A (30.5 and 30.6) of the LCIA Rules sets out new rules regarding data protection and cybersecurity. Article 30.5 provides that any personal data processed in the arbitration is subject to the applicable data protection legislation and the LCIA's data protection notice. This notice sets out how the LCIA collects and processes personal data, how it is used and protected by the LCIA and in LCIA arbitrations.

Article 30.5 provides that at an early stage in the arbitration, the tribunal is to consult with the parties and if appropriate the LCIA, whether it is appropriate to adopt:

(i) "any specific information security measures to protect the physical and electronic information shared in the arbitration; and

(ii) any means to address the processing of personal data produced or exchanged in the arbitration in light of applicable data protection or equivalent legislation."

In addition, Article 30.6 provides that the LCIA and the tribunal may "issue directions addressing information security or data protection, which shall be binding on the parties" and the tribunal where the directions are issued by the LCIA. These directions are subject to mandatory provisions of applicable law or rules of law.

The ICC has published the ICC Data Privacy Notice for ICC Dispute Resolution Proceedings as part of its compliance with the requirements of the GDPR and other data protection laws and regulations. The ICC Practice Notice

provides guidance on the steps required by the tribunal and the parties to ensure the protection of personal data and compliance with the GDPR and other data protection laws and regulations. The tribunal is to remind parties, representatives, witnesses, experts and other individuals involved in the arbitration about the protection of personal data and the application of the GDPR and other data protection laws and regulations. The tribunal is encouraged to prepare a data protection protocol. The ICC Commission on Arbitration and ADR's Report on the Use of Information Technology in International Arbitration may also assist and provide guidance.

The ACICA Rules already included an express provision protecting the confidentiality of the arbitration. The amended rules now include an express provision requiring the tribunal and the parties to consider the protection of sensitive information (Article 26.6). The tribunal may "adopt any measure to protect any physical or electronic information shared in the arbitration and to ensure any personal data produced or exchanged in the arbitration is processed and/or stored in light of any applicable law". This would include meeting the requirements of the GDPR to the extent that they applied to an ACICA arbitration.

The ICDR Rules require the tribunal to discuss data protection, privacy and cybersecurity issues with the parties in order to ensure an appropriate level of security and compliance is put in place (Article 22). These issues are also covered in the *"AAA-ICDR Best Practices Guide for Maintaining Cybersecurity and Privacy" and the "AAA-ICDR Cybersecurity Checklist"*.

It is also worth noting that the LCIA Rules have set out compliance measures relating to bribery, corruption, terrorist financing, fraud, tax evasion, money laundering and economic or trade sanctions (Article 24A).

Relevant changes to the Arbitral Rules

LCIA Rules: Article 30A

ICC Data Privacy Notice for ICC Dispute Resolution Proceedings

ACICA Rules: Article 26.6

ICDR Rules: Article 22 and guides on data protection and cybersecurity

Modernisation and virtual hearings

Whilst the modernisation and digitalisation of arbitration proceedings was already progressing, it has certainly been accelerated by the COVID-19 pandemic in 2020 and 2021.

Many amendments have been made to formalise practices that have been adopted during this period, including:

- the electronic filing of notices of arbitration and documents in the arbitration proceedings;
- the electronic signing or execution of documents, including the award by the tribunal; and
- holding procedural hearings or conferences and merits hearings virtually or in a hybrid format.

The LCIA Rules have been amended to permit electronic communications as the primary form of communication during the arbitration (Articles 1.3, 2.3, 4). Article 14.3 provides that first procedural hearing can be held virtually. Article 19 expressly provides that a hearing may take place virtually. Article 14.3 provides that a virtual hearing does not have an impact on or change the seat of the arbitration. Article 26.2 provides that any award may be signed electronically.

The ICC Rules provide that all communications are to be sent electronically (Article 3(1)) unless they expressly request transmission of a hard copy (Article 3(1), 4(4)(b) and 5(3)). Article 26 expressly permits virtual hearings at the parties' request or by order of the tribunal (after consultation with the parties and having regard to the relevant facts and circumstances of the case).

The ICC has developed a Virtual Hearing Solution that can be used by the tribunal and the parties for a virtual hearing. The service includes technical support and the IT security required for virtual hearings. The ICC has also published protocols and guidance notes to assist parties with the organisation and attendance of virtual hearings, including the *"ICC Guidance Notice on Possible Measures Aimed at Mitigating Effects of the Covid-19 Pandemic"* and the *"ICC Checklist for a Protocol on Virtual Hearings and Suggested Clauses for Cyber-Protocols and Procedural Order Dealing with the Organisation of Virtual Hearings"*.

ACICA has made a number of changes to its Rules to accommodate electronic filing and communications (Articles 4, 6 and 7) and virtual hearings for both the procedural and merits phases (Articles 10, 25, 27, 35 and 36). If a hearing is held virtually it will be deemed to be held at the seat. An award may be signed electronically unless the tribunal or ACICA directs otherwise (Articles 42.4 and 42.5).

ACICA has also published a *"Guidance Note for Online Arbitration"* and a "*Draft Procedural Order for the Use of Online Dispute Resolution Technologies"*. The Australian Disputes Centre provides virtual hearing service.

The AIAC Rules also permit electronic communications (Rule 3.7) and virtual hearings (Rules 14.3 and 28.7). Awards can be signed electronically (Rule 33.6).

Similarly, the ICDR Rules provide for virtual hearings (Article 22 and 26) and that an award may be signed electronically (Article 32)

Relevant changes to the Arbitral Rules

LCIA Rules: Articles 1.3, 2.3, 4.1, 14.3, 19.2, 26.2;

ICC Rules: Articles 3(1), 4(4)(b), 5(3), 26(1)

ACICA Rules: Articles 4, 6, 7, 10, 25, 27, 35, 36, 42.4, 42.5

AIAC Rules: Rules 3 14.3, 18.4, 28.7, 33.6

ICDR Rules: Articles 22, 26 and 32.

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Third party funding

With the growing use of third party funding in international arbitration, a number of questions have arisen, such as whether the third party funding arrangements should be disclosed, the potential impact of conflicts of interest and whether third party funding should be considered in the allocation of costs of an arbitration.

Some of the arbitration institutions have addressed these issues. For example, the SIAC issued a *"Practice Note on Third Party Funding"* in March 2017. The Practice Note explained that pursuant to the tribunal's power to "conduct such enquiries as may appear to the Tribunal to be necessary or expedient" (Article 27(c)), the tribunal may order the disclosure of the existence of third party funding arrangements, the identity of the funder and whether the funder has agreed to undertake an adverse costs order. The tribunal must disclose any circumstance relating to the funder that may give rise to justifiable doubts as to his or her impartiality or independence. The tribunal may request the parties to inform the tribunal of the involvement of a third party funder at any stage of the arbitration.

Mandatory disclosure by the parties of the existence of third party funding and the identity of the funder was also required by the HKIAC Rules (Article 44) and is now required by the ICC Rules (Article 11(7)) and the ACICA Rules (Article 54). The ACICA Rules require such disclosure to be made when submitting the Notice of Arbitration or as soon as possible after the funding arrangement is entered into.

The ICDR Rules permit the tribunal to require the parties to disclose third party funding arrangements, the identity of the funder and to describe the arrangements (Article 14(7)). The tribunal may also require the disclosure of the nature of the economic interest in the outcome of the arbitration.

Third party funding is not permitted in some jurisdictions. Singapore and Hong Kong have in recent years introduced legislation to permit third party funding in international arbitrations and related proceedings (in January 2017 and February 2019 respectively). From 28 June 2021, Singapore has extended this to domestic arbitrations and proceedings in the Singapore International Commercial Court.

Even though third party funding is not permitted in Malaysia, the new AIAC Rules provide that third party funding may be used in an arbitration governed by the AIAC Rules (Rule 1.4). The tribunal has the power to ask about the existence of third party funding arrangements and direct the parties to disclose such arrangements (Rule 13.5(e)).

Relevant changes to the Arbitral Rules

ICC Rules: Article 11(7)

ACICA Rules: Article 54

AIAC Rules: Rule 1.4 and 13.5(e)

ICDR Rules: Article 14(7)

Transparency and publication of awards

There has been an increasing tension between the need for confidentiality in arbitration and the need for increased transparency. One of the concerns that has been discussed in common law jurisdictions is that the growing use of confidential arbitration to resolve disputes is inhibiting the development of the common law.

The ICC has long published anonymous extracts of arbitral awards. However, recognising the need for transparency, the ICC has been slowly expanding the scope of information published with these extracts awards. The 2021 ICC Practice Note states:

> "Increasing the information available to parties, the business community at large and academia is key to ensuring that arbitration remains a trusted tool to facilitate trade. Transparency provides greater confidence in the arbitration process, and helps protect arbitration against inaccurate or ill-informed criticism. The Court therefore endeavours to make the arbitration process more transparent without compromising the parties' expectations, if any, of confidentiality" (section IVB).

The ICC Practice Note has expanded the information published about arbitrations on the ICC website. That information now includes: (i) the names of the arbitrators; (ii) their nationality; (iii) their role within an arbitral tribunal; (iv) the method of their appointment; (v) whether the arbitration is pending or closed; (vi) the industry sector involved; (vii) law firms representing the parties; and (viii) the names of administrative secretaries.

Any awards or orders made as of 1 January 2019 may be published in their entirety, including the names of the parties and the tribunal, two years after notification of the award. A party may object to publication and inform the Secretariat that it does not wish any the award or orders to be published. Alternatively, a party may request that the award or orders be anonymised or redacted.

Similarly, the ICDR Rules provide for the publication of redacted awards. Unless a party objects in writing within 6 months of the date of the award, the ICDR is permitted to publish selected awards, orders or decisions which have been redacted to conceal names of parties and other identifying details (Article 40(4)).

Synchronisation of arbitral rules: differences between the institutions

With the multiple revisions of many of the arbitral rules during the past few years, there has been some synchronisation such that there are now very few differences between the arbitral rules.

Nonetheless, there still remain some differences between the arbitral institutions. We have briefly highlight three differences here.

First, the ICC is a global arbitration institution that is not linked to any particular seat or place. The headquarters of the ICC Secretariat is in Paris with offices in the Middle East, Asia and the Americas. Many of the other arbitral institutions are based in one seat, such as the LCIA based in London, SIAC in Singapore and HKIAC in Hong Kong. Whilst the seat of any arbitration can be in any country, the preferred approach is that the seat is consistent with the location of the arbitral institution.

Second, there are different approaches to the role of the institution, including the secretariat and case management teams. A number of institutions have a Court of Arbitration, Users Council or Board where experienced arbitration practitioners are involved in the management of the institution. For example, the ICC Court of Arbitration, which is made up of nearly 200 arbitration practitioners, plays an active role including deciding upon challenges to arbitrators and scrutinising awards.

A third difference is the approach to the costs of the arbitrators and the administration of the arbitration. The ICC and SIAC have a scale of fees to calculate these costs based on the value of the claim and counterclaims brought in the arbitration. The LCIA, ACICA and other arbitral institutions charge administrative fees. The tribunal is charged on an hourly basis for each arbitrator.

Our international arbitration team across the Asia Pacific region has extensive experience of all of the major arbitral rules and can assist with any issues that arise under the new or old arbitral rules.

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