

CIAM's new Arbitration Rules

Entry into force on 1 January 2024

The Plenary of Madrid International Arbitration Center (“CIAM” or the “Center”), following the suggestions of the Good Practices Committee, composed of renown professionals in international arbitration (Alexis Mourre - Committee President -, Filipa Cansado, Andrés Jana, Diana Correa, Sabina Sacco, and José Ricardo Feris), has approved the modification of the new Arbitration Rules (the “Rules”) that will come into effect on 1 January 2024.

The Center has prepared a comparison between the previous 2020 Rules and the Rules that will come into effect in 2024. Moreover, to facilitate understanding of some of the most relevant changes, the Center has also prepared this note detailing, non-exhaustively, some of these changes.

1. Highly Expedited Procedure

The Rules establish a new highly expedited procedure within their article 54.

Many users and sectors, particularly the CIAM Maritime Law Working Group, have requested highly expedited procedure for the resolution of certain disputes. The new expedited procedure seeks to meet this need, providing an agile and 'closed' procedure to conclude with a final award in a reduced and predictable timeframe.

It is important to note that this new procedure will coexist with the ordinary and abbreviated procedures. The highly expedited procedure does not prevent the parties from agreeing on an accelerated ordinary procedure, adapting it to the particularities of their case.

The highly expedited procedure applies only with the express agreement of the Parties (opt-in), which may be stated in the arbitration agreement or in a subsequent agreement, always prior to the answer to the request for arbitration (article 54.2). This distinguishes it from the abbreviated procedure, which is determined by the amount in dispute, it does not require the agreement of the parties but is applied automatically by the Center, unless parties agree to exclude its application.

Once the answer to the request for arbitration or the agreement of the parties is received, the Center is responsible for explicitly deciding to process the arbitration following the highly expedited procedure (article 54.3).

The application of the highly expedited procedure is not limited by the amount in dispute (article 54.2), but the Center reserves the right to deny its application if the envisaged arbitration is not compatible with the rules of the highly expedited procedure at the time of initiation (article 54.3) or subsequently, in case of changes in the dispute that justify it (article 54.4).

The highly expedited procedure will always be resolved by a sole arbitrator, whom the parties may jointly designate within 7 days from the answer to the request for (article 54.6). In the absence of agreement, the Center will proceed with the appointment (article 54.6).

The main innovation of the expedited procedure is the parallel processing of the arbitrator's designation or appointment phase and the written phase of the arbitration. The deadline for filing the statement of claim starts automatically from the Center's resolution agreeing to process the

dispute following a highly expedited procedure (article 54.7), and from there, the deadlines for the statement of defense, counterclaim, and response to the counterclaim begin to run (articles 54.8-10).

To facilitate the accelerated processing of the procedure, the issuance of a first procedural order is not necessary (article 54.12) and no hearing will be held unless the sole arbitrator deems it necessary after consulting with the parties (articles 54.15).

Finally, the deadline for issuing the award is three months from the filing of the statement of claim (article 54.19). This, combined with the parallel designation or appointment process, can lead to an award issued in just over four months from the request for arbitration.

As for the fees of the arbitrators in the highly expedited procedure, the fee schedule will be the same as that applied to ordinary and abbreviated procedures (see point 9 of this note).

2. Plurality of Parties, Involvement of Additional Parties, Accumulation, and Procedural Succession

The new Rules contain detailed regulation is developed on the plurality of parties and contracts, the involvement of additional parties, accumulation, and procedural succession.

For example, the filing of claims arising from or related to more than one contract is allowed without the need for separate requests for arbitration (article 20).

Regarding the involvement of additional parties, in addition to the existing cause of agreement between the parties and the third party, the possibility of admitting intervention requests is added whenever the additional party is *prima facie* a party to the arbitration agreement that underlies the tribunal's jurisdiction (article 19.1).

The Center or the arbitrators (as applicable) may accept intervention requests in that case, considering the circumstances of the case (article 19.6). It is understood that the party requesting intervention in a proceeding in which the arbitrators have already been appointed irrevocably accepts the constituted tribunal (article 19.4).

Additional criteria are established for the acceptance of the accumulation of procedures by the Center, such as: all parties in all procedures have agreed to their accumulation; all claims are made under the same arbitration agreement; or that the agreements are compatible, and the disputes are related, or it is convenient to resolve them in a single arbitration (article 21.1).

Other optional circumstances are also established for the Center to consider (article 21.4). While the general rule is the accumulation of procedures in the first procedure (article 21.5), the Center has the authority to, considering the circumstances, appoint a new tribunal (article 21.6).

Finally, specific rules on procedural succession due to the extinction or death of a party are introduced (article 22).

3. Correction, Clarification, Rectification, and Complement of the Arbitration Award

Correction, clarification, rectification, and complement of the award could entail, with the previous Rules, up to three months of additional duration in an arbitration procedure. For this reason, the deadlines have been modified, ensuring a more efficient procedure: the deadline for submitting the request is reduced from one month to fifteen days, and the deadline for issuing the resolution resolving these issues is reduced from two months to thirty days (articles 44.1 and 44.3).

On the other hand, it is established that the correction, clarification, and rectification of the award will be resolved as an addendum to the original award, being incorporated into it, while the

complement will be resolved as an additional award (article 44.2).

4. Reduced Regulation in the Procedure Instruction

The new Rules eliminate the previous regulation on the need terms of reference to be issued and specific deadlines the statement of claim, statement of defense, and other milestones in the procedure. They are eliminated because it is considered unnecessary for the Rules to contain such a detailed instruction of the procedure, leaving it to the parties and arbitrators to decide according to the characteristics of each dispute.

However, a new Annex 3 has been introduced, which contains a reference procedure guide that can serve parties and arbitrators who want to use it.

5. Statutory Arbitration

Article 68, which regulated statutory arbitration as a specific procedure, is eliminated. The reason is that, while the Center supports this type of procedure, it believes that with the regulation provided in the new Rules, there is no need for specific regulation for this procedure. The new Rules adopt specific procedures from a procedural perspective, and, in principle, not based on the subject matter. Under the general rules of the Rules and the possibility for parties and arbitrators to design the procedure according to their needs, statutory arbitration can be regulated efficiently and satisfactorily.

6. Emergency Arbitration

Although the emergency arbitration procedure undergoes no substantial changes, a relevant modification is introduced: the emergency arbitrator's decision may be issued in the form of an award or a procedural order, at the discretion of the emergency arbitrator, after hearing the parties (article 61.1). This provides more flexibility for the arbitrator and the parties to choose the form of the decision without a prior limitation imposed by the Center.

7. Publication of Awards

The general rule in an arbitration subject to the Center's Rules is confidentiality. Transparency in arbitration and the development of an arbitral legal framework are also important values actively promoted by the Center, always while safeguarding the confidentiality.

The Rules introduce new provisions regarding the publication of awards, which, while not constituting a substantial change, are expected to lead to the publication of awards (article 50.4). Under the previous wording, publication required a request from one of the parties or an appreciation of 'doctrinal interest' by the center. Now, any award can be published (after anonymizing the content, always consulted with the parties before publication) as long as none of the parties object to it.

8. Rules for the Designation, Confirmation, and Appointment of Arbitrators – Amendment to Annex 1

Annex 1 of the Rules, concerning the procedures for the designation, confirmation, and appointment of arbitrators, is adapted to clarify the operation of the processes of designation, appointment, and confirmation followed by the Center.

In the new Rules, the term "designation" is used to refer to the proposal of an arbitrator by the parties. Arbitrators proposed by the parties must always be confirmed by the Center. When the Center appoints arbitrators (either directly or following the list system), the Rules refer to it as "appointment" (article 1).

The appointment of arbitrators can follow one of two systems, depending on the circumstances of the case: (i) appointment by the list system, or (ii) direct appointment. The list system applies as a general rule, as it is the procedure that gives more participation to the parties in the selection of arbitrators, even when the Center makes the appointment.

The list system consists of three phases (article 3). First, the General Secretariat prepares a list of candidates. Next, the Arbitrator's Appointment Committee prepares a list that is sent to the parties. Finally, the parties can strike out up to one-third of the proposed names, ranking the rest in order of preference. The candidate preferred by the majority of the parties is appointed as an arbitrator.

In the case of direct appointment (article 4), the General Secretariat prepares a preliminary list of candidates, which is presented to the Arbitrator's Appointment Committee. The Committee selects the appointed arbitrator and an alternate.

In both cases, the parties have the opportunity to present arguments regarding the impartiality and independence of the candidates before the appointment by the Center. In the list system, during the process of striking out and preference (article 3.7); in the case of direct appointment, at the request of the General Secretariat before the presentation of the list of candidates to the Arbitrator's Appointment Committee (article 4.3).

Moreover, the submission to arbitration under the Rules automatically authorizes the Center to contact arbitrator candidates to verify their availability, conduct a conflict of interest check, and, if necessary, make the required disclosures (article 1.5). Previously, the Center had to wait for the authorization of each party, which could delay the appointment process by up to a month.

9. Costs of the procedure - amendment of Annex 2

Annex 2 of the Rules, relating to the rules on the determination and payment of arbitration costs, is adapted.

Firstly, the distinction of arbitrators' fees between the ordinary and abbreviated proceedings is eliminated, establishing a single schedule of fees for all proceedings regardless of their nature (ordinary, abbreviated or highly expedited). The applicable fee schedule for arbitrators will be, as from the entry into force of the new Rules, that the one established until now for the fees for abbreviated proceedings.

This entails a reduction of the arbitrators' fees with respect to the previous Rules in cases in which the cases in which the ordinary procedure was applied. Likewise, the distinction between the minimum and maximum fee ranges for arbitrators' fees has been eliminated, and a single fee range has been established.

On the other hand, the new Rules establish the power of the Center to increase or reduce the arbitrators' fees by up to 30%, in exceptional circumstances, taking into account the complexity of the case, the tribunal's performance in rendering the award and its efficiency or any delays it may have incurred.

In proceedings with agreements entered before 1 January 2020, in which the parties agree to agree to transfer the arbitration to the Center from one of the Founding Courts,¹ the fees which result most favorable for the parties will be applicable (article 18).

Likewise, clarifying rules are introduced with respect to the conversion of currencies in arbitrations in currencies other than the euro, the collection of value added tax and the rules applicable in the event of the replacement of the arbitrator (article 18).

10. Optional challenge to the award - new Annex 4

A new regulation of the procedure for optional challenges to the award is established, now contained in Annex 4. The main objective of this new regulation is to give legal certainty to the award challenge procedure, avoiding the any parallel situations between challenges and annulment proceeding.

The challenge procedure is voluntary and requires the express agreement of all parties, expressed prior to the appointment of any arbitrator (article 1). The challenge to the award may be based only on a manifest violation of the substantive rules applicable to the merits of the dispute or a manifest error in the assessment of the facts (article 1).

If the parties agree to an annulment procedure, the award prepared by the arbitrators, after the Court's scrutiny, shall be issued to the parties only in draft form, without signature or date (article 8).

If one or more parties file a challenge, the challenge procedure is initiated, the award remains in draft form until the challenge is resolved. The challenge shall always be made before a three-member tribunal, appointed in accordance with the direct appointment system. If the appeal is upheld by the appeal tribunal, the appeal tribunal shall make a new award (article 10).

In the case of a partial challenge, the tribunal shall incorporate verbatim the parts of the draft award that are not challenged (article 10). If the tribunal rejects the challenge, the draft award shall be issued, signed and dated as a final award (article 9).

The appeal procedure shall be expeditious, establishing a forty-five-day time limit for the issuance of the award, counted from the closing the proceedings (article 19).

11. Adaptation of Internal Operating Guidelines to The Changes

The internal operating guidelines published on the website, particularly the "Guide on Quantification of Arbitral Proceedings" and the "Guide on Preliminary Examination of Awards," have been consistently adjusted in accordance with the implemented changes.

¹ The Madrid Court of Arbitration, the Spanish Court of Arbitration and the Civil and Mercantile Court, and the Madrid Bar Association as strategic partner.