

AIAC ARBITRATION CIRCULAR 02

CIRCULAR ON THE COLLECTION OF ADVANCE DEPOSITS ON COSTS IN ARBITRATIONS ADMINISTERED BY THE AIAC PURSUANT TO THE AIAC ARBITRATION RULES 2018

This Circular addresses the collection of advance deposits on costs, including the fixing of separate advance deposits on costs, by the Director of the AIAC in administered arbitrations under the AIAC Arbitration Rules 2018 (the "Rules").

i) Overview of the Deposits Collected by the AIAC

Pursuant to Rule 13(7) of the Rules, the collection of advance deposits on costs by the AIAC is based on the value of the claim, as well as the value of any counterclaim and/or set-off (collectively, the "amount in dispute"). The calculation of the advance deposits on costs is based on Schedule 1 of the Rules, unless the Parties and the Arbitral Tribunal have entered into a Fee Agreement (cf. Rule 13(4) of the Rules).

The AIAC typically collects advance deposits on costs in at least three tranches.

Provisional Advance Deposit

The first tranche, known as the Provisional Advance Deposit ("PAD"), is collected upon the commencement of the arbitration and prior to the constitution of the Arbitral Tribunal.

Pursuant to Rule 14(1) of the Rules, the Director of the AIAC shall fix the PAD in an amount intended to cover the costs of the arbitration. Typically, this is 30% of the total deposits to be collected based on the known amount(s) in dispute.

Where the amount in dispute is unquantified, the AIAC will collect PAD in the sum of RM50,000.00 in the case of domestic arbitrations and USD50,000.00 in international arbitrations. If the amount in dispute remains unquantified after the constitution of the Arbitral Tribunal, the Director of the AIAC, in consultation with the Parties and the Arbitral Tribunal, shall settle an appropriate value for the purpose of computing the arbitrator's fees and expenses, and the AIAC Administrative Fee (cf. Rule 13(8) and Rule 14(8) of the Rules).

Any PAD is to be paid by the Parties in equal shares and shall be considered as partial payment towards any advance deposits on costs fixed by the Director under Rule 14 of the Rules. The PAD is payable within 21 days upon receiving the request from the AIAC (cf. Rule 14(2) of the Rules). If any Party fails to remit its respective portion towards the PAD, the Director of the AIAC shall give the other Party an opportunity to make the required payment within a specified period of time (cf. Rule 14(3) of the Rules). In the event the PAD remains outstanding at the time the Arbitral Tribunal is constituted, Rule 14(3) of the Rules provides that the arbitral tribunal shall not proceed with the arbitral proceedings until such PAD is paid in full.

Advance Preliminary Deposit

The second tranche, known as the Advance Preliminary Deposit ("APD") is collected after the issuance of the first procedural order in the proceeding, or upon the quantification of claims (cf. Rule 14(4) of the Rules). Generally, the APD represents the balance 70% or more of the advance deposits on costs payable.

Additional Deposit

A third tranche and any subsequent tranche, known as the Additional Deposit ("AD"), may be collected by the AIAC during the course of the arbitral proceedings (*cf.* Rule 14(5) of the Rules). Such collection is typically necessitated where there is an increase in the amount in dispute or a sum towards the expenses of the Arbitral Tribunal needs to be collected.

Where the APD or the AD are not paid in full, pursuant to Rule 14(7) of the Rules, the Director of the AIAC shall give the other Party the opportunity to make the required payment within a specified period of time. If such payment is not made, the Arbitral Tribunal may, after consultation with the Director of the AIAC, order the suspension or termination of the arbitral proceedings, or any part thereof.

ii) Fixing of Separate Advance Deposits on Costs

In instances where a counterclaim is submitted by the Respondent, or disclosure of the potential filing of such counterclaim(s) is made, pursuant to Rule 14(6) of the Rules, the Director of the AIAC has the discretion to fix separate advance deposits on costs corresponding to the value of the claim filed by each Party (i.e. a Party will be required to bear the costs of the arbitration that relate to its claim or counterclaim, as opposed to the full amount in dispute).

This discretion can be exercised by the Director of the AIAC at either the PAD, APD or AD stage (*cf.* Rules 14(6) and 14(8) of the Rules).

At the PAD stage, the fixing of separate advance deposits on costs will only be considered by the Director of the AIAC upon the request of a party. At the APD and AD stages, the Director of the AIAC may exercise the discretion in Rule 14(6) of the Rules *suo moto*, or upon the request of a party. Parties are put on notice that a request to the Director of the AIAC for the fixing of separate advances on costs will not automatically result in the fixing of separate advances on costs.

Irrespective of the fixing of separate advances on costs, if the required deposits are not paid in full, in accordance with Rule 14(3) or 14(7) of the Rules, the Director shall give the other Party an opportunity to make the required payment within a specified period of time.

Where a Party's PAD remains unpaid, the AIAC may instruct the Arbitral Tribunal to proceed with the arbitration only on the basis of the claim of the Party that has remitted the PAD.

Thereafter, if the PAD, APD or AD remains unpaid, the Arbitral Tribunal may, in consultation with the Director of the AIAC, order the suspension or termination of the arbitration proceedings or any part thereof that relates to the claim of the Party yet to remit its share of the advance deposit on costs (*cf.* Rule 14(7) of the Rules). The Arbitral Tribunal may proceed pursuant to Rule 6 of the Rules which provides that the Arbitral Tribunal may conduct the arbitration in such manner as it deems appropriate.

iii) Determination of Costs of Arbitration

Pursuant to Rule 13(6) of the Rules, the costs of arbitration may, in exceptional, unusual or unforeseen circumstances, be adjusted from time to time at the discretion of the Director. The Director is also authorised to determine the costs of the arbitration, where the arbitral proceedings are settled or disposed of before the issuance of the final award (*cf.* Schedule 2, Cl. 1.1(3) of the Rules).

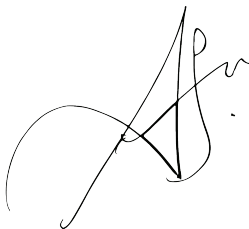
iv) Accounting of Deposits

In accordance with Rule 14(9) of the Rules, the AIAC may apply the deposits it receives towards the administrative fees, fees of the Arbitral Tribunal and the Arbitral Tribunal's out-of-pocket and per diem expenses in such a manner and at such times as the Director deems appropriate.

After issuance of the award, the AIAC shall render an accounting of the deposits received to the Parties and return any unexpended balance to the Parties based on the Parties' respective contributions in line with Rule 14(10) of the Rules, corresponding to the amount in dispute reflecting the value of any counterclaim and/or set off (*c.f.* Rule 13(7) of the Rules). A similar accounting of the deposits will be provided to the Parties where an arbitral proceeding is settled or disposed of before the issuance of the final award.

For enquiries, please write to arbitration@aiac.world.

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Tan Sri Datuk Suriyadi Bin Halim Omar
Director
Asian International Arbitration Centre