

RECOMMENDED GOOD PRACTICES FOR THE CONDUCT OF ARBITRATION PROCEEDINGS AND DRAFTING OF AWARDS IN ARBITRATIONS ADMINISTERED UNDER THE AIAC ARBITRATION RULES 2021

INTRODUCTION

These are recommended good practices, save where the recommendations made are specifically set out as procedural requirements under the AIAC Arbitration Rules 2021 (“AIAC Rules”). This document serves as a guide to arbitrators appointed under the AIAC Rules towards the conduct of the arbitration proceedings, the subsequent drafting of arbitral awards and the process culminating thereto.

Please note that the AIAC Rules incorporate the UNCITRAL Model Law (as revised in 2013) with AIAC’s own provisions to ensure a comprehensive, harmonious and coherent set of procedural rules as well as a self-contained Fast Track Procedure within the AIAC Rules.

There are two parts to this guide. Part I of the guide deals with the conduct of arbitration proceedings commencing prior to the constitution of the Arbitral Tribunal to the close of the arbitration proceedings. Part II of the guide deals with the drafting of an arbitral award.

This guide shall in no way constitute nor be treated as an exhaustive, mandatory or otherwise binding document between the AIAC, the Director of the AIAC (“Director”) and the Arbitral Tribunal *inter se*. Any future reliance placed by the Arbitral Tribunal herein and decisions made arising therefrom is through no compulsion of the AIAC and shall not serve as a ground to invalidate or set aside an arbitral award or be relied upon to institute, commence or maintain any civil action and/or any other complaint. Neither the AIAC nor the Director shall be liable for any reliance placed on this guide whether through any act and/or omission of any Party or the Arbitral Tribunal.

PART I - CONDUCT OF ARBITRATION PROCEEDINGS

Throughout the conduct of arbitration proceedings, the Arbitral Tribunal shall, at all times treat all parties equally and ensure that each party is given a fair, efficient and reasonable opportunity of presenting its case.¹ As a matter of good practice, it is recommended that the Arbitral Tribunal provides Parties a timely notice prior to the convening of any hearing or meeting and to proactively engage with the Parties, via written correspondence and meetings, to avoid unnecessary delays and expenses.² The Arbitral Tribunal is also strongly reminded to avoid *ex parte* communications and ensure compliance to confidentiality requirements.³

¹ AIAC Rules 2021, Rule 13

² AIAC Rules 2021, Rule 13

³ AIAC Rules 2021, Rule 44.1

| No. | Item | √ |
|--|---|---|
| 1. | Conducting a conflict check upon being nominated as an arbitrator by a Party or multiple Parties ⁴ | |
| 2. | Confirming availability and competence to serve as arbitrator in the proposed arbitration within the timelines stipulated by the AIAC | |
| 3. | Setting out any disclosures to the Declaration in the Letter of Acceptance concerning a Party or multiple Parties | |
| 4. | Initiate correspondence with the Parties to discuss proposed terms of appointment and procedural timetable to govern the conduct of arbitration proceedings | |
| 5. | Keeping the Director informed of any Fee Agreement between the Arbitral Tribunal and the Parties, and where required, for the necessary approvals to be obtained ⁵ | |
| 6. | Confirming the collection of deposits with the AIAC to continue with proceedings ⁶ | |
| 7. | Scheduling a Preliminary Meeting ⁷ or Case Management Meeting ⁸ and drafting the first Procedural Order | |
| 8. | Where there is a replacement of the Arbitral Tribunal, the re-constituted Arbitral Tribunal to determine whether and to what extent any previous hearing or other procedural steps in the arbitration remain effective ⁹ | |
| First Procedural Order¹⁰ | | |
| 9. | <ul style="list-style-type: none"> i) Establish a Procedural Order for the arbitral proceedings as soon as practicable after Arbitral Tribunal constitution;¹¹ ii) In the case of a Fast Track Procedure, to convene a case management meeting and deliver the first Procedural Order within 10 days from the date AIAC notifies the Parties of the constitution of the Arbitral Tribunal;¹² or iii) In the case of Emergency Arbitration Proceedings to deliver the first Procedural Order no later than 3 days from the date AIAC notifies the Parties of the constitution of the Emergency Arbitrator.¹³ | |
| 10. | Inviting suggestions from the Parties on their availability and timetabling preferences for the conduct of the arbitration proceedings, having regard to the circumstances of the dispute and business practice of the Parties – including means of communication for the arbitration proceedings, free dates for the fixing of meetings and hearings as well as mode of such meetings and hearings i.e. whether teleconference, in-person / physical meetings or virtual / online meetings | |

⁴ AIAC Rules 2021, Rule 9.7

⁵ AIAC Rules 2021, Rule 40.5

⁶ AIAC Rules 2021, Rule 41.3 (c)

⁷ AIAC Rules 2021, Rule 41.4

⁸ AIAC Rules 2021, Rule 8.8(f) and Rule 13.5(c)

⁹ AIAC Rules 2021, Rule 12.6

¹⁰ AIAC Rules 2021, Rule 13.2

¹¹ AIAC Rules 2021, Rule 13.2

¹² AIAC Rules 2021, Rule 8.8(f)

¹³ AIAC Rule 2021, Rule 18.4

| No. | Item | √ |
|---|---|---|
| 11. | Consideration for the appointment of a tribunal secretary ¹⁴ , if necessary, and utility of other facilities of the AIAC for the purposes of the arbitration proceedings ¹⁵ | |
| 12. | Identification of all individuals relevant to the arbitration proceedings who are to be kept in communication including names, affiliation, postal and email addresses | |
| 13. | Setting out the appropriate procedure and timetable for filing of documents, dates of hearings and meetings including the mode of such hearings and meetings, as well as any directions for discovery of documents, the method of and calling of witnesses and experts, filing of submissions, etc. ¹⁶ | |
| Issuance of Subsequent Procedural Orders | | |
| 14. | Ensuring that where circumstances warrant or where appropriate, procedural orders containing the determinations and directions of the Arbitral Tribunal are issued for the efficient conduct and management of the arbitration proceedings ¹⁷ | |
| 15. | Where there is a challenge to the Arbitral Tribunal ¹⁸ | |
| 16. | Where there is an interlocutory application or a request for an interim measure ¹⁹ | |
| 17. | Where there is a Summary Determination Request ²⁰ | |
| 18. | Where there is a Joinder Request ²¹ | |
| 19. | Where adjustments are made to the costs of the arbitration due to a change in the amount in dispute including claims and/or counterclaims made ²² | |
| Communications with AIAC²³ | | |
| 20. | Ensure that correct subject line is used in all email and physical correspondence | |
| 21. | AIAC Case Counsel and AIAC Arbitration to be copied to all correspondence | |
| 22. | Confirming the collection of all remaining deposits with the AIAC ²⁴ | |
| Close of Proceedings²⁵ | | |
| 23. | Upon the conclusion of hearings and the submission of the final or last oral / written submission, the Arbitral Tribunal shall declare the arbitration proceedings closed ²⁶ | |

¹⁴ AIAC Rules 2021, Rule 13.4

¹⁵ AIAC Rules 2021, Rule 43

¹⁶ AIAC Rules 2021, Rule 28

¹⁷ AIAC Rules 2021, Rule 13.3

¹⁸ AIAC Rules 2021, Rule 11

¹⁹ AIAC Rules 2021, Rule 16

²⁰ AIAC Rules 2021, Rule 19

²¹ AIAC Rules 2021, Rule 21

²² AIAC Rules 2021, Rule 40.3 and Rule 41.5

²³ AIAC Rules 2021, Rule 3

²⁴ AIAC Rules 2021, Rule 41

²⁵ AIAC Rules 2021, Rule 32

²⁶ AIAC Rules 2021, Rule 32.1

| No. | Item | √ |
|---|---|---|
| 24. | In the case of the bifurcation of arbitral proceedings and the Arbitral Tribunal intends to issue separate Final Awards, the Arbitral Tribunal shall declare the closure of proceedings in respect of each Final Award ²⁷ | |
| 25. | In the case of the arbitral proceedings involving multiple Parties 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 ²⁸ | |
| 26. | Declaration to be communicated in writing to the Parties and the Director | |
| 27. | Declaration to identify the date in which the proceedings are declared closed | |
| 28. | To ensure that no further evidence or submissions are conveyed by the Parties | |
| 29. | In the case of the re-opening of arbitral proceedings where exceptional circumstances exist, a declaration for such re-opening of arbitral proceedings ²⁹ and a subsequent declaration of the re-closure of the proceedings ³⁰ | |
| Technical Review of Draft Final Award³¹ | | |
| 30. | To submit draft Final Award in Word.doc or Word.docx format to the Director via email within 90 days from the date the proceedings were declared closed ³² | |
| 31. | Resubmitting a revised draft Final Award to the Director within ten (10) days from the date on which the Arbitral Tribunal is notified by the Director of any irregularities in the draft Final Award ³³ | |
| Delivery of Final Award³⁴ | | |
| 32. | Arbitral Tribunal to ensure that Final Award is not delivered directly to the Parties | |
| 33. | Arbitral Tribunal to deliver sufficient physical copies of the signed Final Award to the Director with one (1) copy for each of the Parties and one (1) copy for each member of the arbitral tribunal and two (2) copies for the AIAC ³⁵ | |
| 34. | Release of the Final Award to the Parties to be undertaken by the AIAC following confirmation of full settlement of the costs of the arbitration by the Parties ³⁶ | |

²⁷ AIAC Rules 2021, Rule 32.2

²⁸ AIAC Rules 2021, Rule 32.3

²⁹ AIAC Rules 2021, Rule 32.5

³⁰ AIAC Rules 2021, Rule 32.6

³¹ AIAC Rules 2021, Rule 34

³² AIAC Rules 2021, Rule 34.1

³³ AIAC Rules 2021, Rule 34.5

³⁴ AIAC Rules 2021, Rule 35

³⁵ AIAC Rules 2021, Rule 35.1

³⁶ AIAC Rules 2021, Rule 35.2

PART II – DRAFTING OF ARBITRAL AWARD

An arbitral award shall, as a general rule, be made in writing and shall state the reasons upon which it is based unless the Parties have agreed that no reasons are to be given. Whilst the form and contents of an arbitral award may vary stylistically from one Arbitral Tribunal to another, the following are recommended good practice inclusions when drafting an award:

A. Overview

| No. | Item | √ |
|-----|--|---|
| 1. | AIAC case reference number written in full on cover page | |
| 2. | Indication of the application of the AIAC Arbitration Rules 2021 on cover page | |
| 3. | Award clearly identified as Interim, Partial, Final Award, Consent Award, Emergency Award, or Award on Costs or Interest ³⁷ | |
| 4. | Indication of the date and seat of the award on the cover page | |
| 5. | Identification of the parties and the arbitral tribunal on the cover page | |
| 6. | Insertion of table of contents and table of abbreviations, where applicable | |
| 7. | All paragraphs numbered | |
| 8. | All pages numbered | |
| 9. | All abbreviations defined and used consistently | |

B. Details of the Parties, Parties' Representative, Arbitral Tribunal and Tribunal Secretary

| No. | Item | √ |
|-----|---|---|
| 1. | Identification and full particulars of the Parties | |
| 2. | Identification and full particulars of the Parties' representatives | |
| 3. | Identification and full particulars of the Arbitral Tribunal ³⁸ including any Emergency Arbitrator ³⁹ | |
| 4. | Identification and full particulars of the tribunal secretary, if any | |

C. Arbitration Agreement and Applicable Laws

| No. | Item | √ |
|-----|---|---|
| 1. | Quotation and reproduction of the full excerpt of the arbitration agreement or submission agreement | |
| 2. | Particulars and details of any agreed amendments to the arbitration agreement or submission agreement | |

³⁷ AIAC Rules 2021, Rule 2.4

³⁸ AIAC Rules 2021, Rule 9

³⁹ AIAC Rules 2021, Rule 17

| No. | Item | √ |
|-----|--|---|
| 3. | Identification of the parties to and/or signatories of the arbitration agreements or submission agreements | |
| 4. | Indication of the applicable substantive and procedural laws | |

D. History of the Arbitral Proceedings

| No. | Item | √ |
|---|--|---|
| Summary of documents exchange and procedural steps | | |
| 1. | Filing of the Notice of Arbitration ⁴⁰ and Response to the Notice of Arbitration ⁴¹ | |
| 2. | Filing of the Registration Request ⁴² and the date of commencement as confirmed by the AIAC ⁴³ | |
| 3. | Chronology on the constitution of the Arbitral Tribunal including confirmation of appointment process and the Director's appointment of the Arbitral Tribunal | |
| 4. | Date of meetings and the issuance of the procedural orders/directions | |
| 5. | Indication of any preliminary objections raised as to jurisdiction | |
| 6. | Indication on the filing of Pleadings such as the Statement of Claim, Statement of Defence and/or Counterclaim, Statement of Reply and any amendments made thereto including such amendment applications | |
| 7. | Indication on the filing of any Summary Determination Request ⁴⁴ and related submission by the Parties | |
| 8. | Indication on the filing of additional documents such as List of Witnesses, Witness Statements, Redfern Schedule, etc | |
| 9. | Indication on the filing of any interlocutory applications or interim measures | |
| 10. | Filing of Written Submissions and Bundles of Authorities by the Parties | |
| 11. | Indication of any other procedural matters including changes to the time table such as postponement of hearings, etc. | |
| Indication of Decisions made by the Director | | |
| 12. | Number of Arbitrators ⁴⁵ | |
| 13. | Fast Track Request ⁴⁶ | |
| 14. | Challenge Request ⁴⁷ | |

⁴⁰ AIAC Rules 2021, Rule 5

⁴¹ AIAC Rules 2021, Rule 6

⁴² AIAC Rules 2021, Rule 7.1

⁴³ AIAC Rules 2021, Rule 7.5

⁴⁴ AIAC Rules 2021, Rule 19

⁴⁵ AIAC Rules 2021, Rule 9.2

⁴⁶ AIAC Rules 2021, Rule 8.3

⁴⁷ AIAC Rules 2021, Rule 11.9

| No. | Item | √ |
|-------------------------------------|---|---|
| 15. | Fees and expenses of the replaced Arbitrator, if any ⁴⁸ | |
| 16. | In the case of more than one arbitrator, where the appointment of a replacement arbitrator is dispensed with ⁴⁹ | |
| 17. | Appointment of tribunal secretary ⁵⁰ | |
| 18. | Joinder Request ⁵¹ | |
| 19. | Consolidation Request ⁵² | |
| 20. | Adjustment to Costs of Arbitration ⁵³ | |
| 21. | Director's Consultation on Unquantified Amount of Dispute ⁵⁴ | |
| 22. | Separate Advance Deposit ⁵⁵ | |
| Other Procedural Indications | | |
| 23. | Clearance by the AIAC that all required deposits have been duly paid ⁵⁶ | |
| 24. | Indication of the date proceedings are declared closed ⁵⁷ | |
| 25. | If applicable, indication of the date when the arbitral proceedings were re-opened at any time before the Final Award is made ⁵⁸ | |
| 26. | If applicable, indication of the date when proceedings are re-declared closed ⁵⁹ | |
| 27. | Indication of the date the draft Final Award is submitted to AIAC for technical review and re-submission of award to AIAC for technical review, if applicable ⁶⁰ | |

E. Content of Award

| No. | Item | √ |
|-----|---|---|
| 1. | Information on any preliminary objections raised, including on jurisdiction and the decisions rendered thereto by the arbitral tribunal | |
| 2. | Indication of time limit for rendering the award | |
| 3. | Issues and sub-issues clearly headed and numbered with relevant citations to all documents and authorities, where applicable | |

⁴⁸ AIAC Rules 2021, Rule 12.3

⁴⁹ AIAC Rules 2021, Rule 12.7

⁵⁰ AIAC Rules 2021, Rule 13.4

⁵¹ AIAC Rules 2021, Rule 21.1, and Rule 21.6

⁵² AIAC Rules 2021, Rule 22.1

⁵³ AIAC Rules 2021, Rule 41.13

⁵⁴ AIAC Rules 2021, Rule 40.4

⁵⁵ AIAC Rules 2021, Rule 41.8

⁵⁶ AIAC Rules 2021, Rule 41

⁵⁷ AIAC Rules 2021, Rule 32.1 and Rule 32.2

⁵⁸ AIAC Rules 2021, Rule 32.5

⁵⁹ AIAC Rules 2021, Rule 32.6

⁶⁰ AIAC Rules 2021, Rule 34

| No. | Item | √ |
|-----|---|---|
| 4. | Considerations and reasoning set out, unless otherwise agreed to by Parties ⁶¹ | |

F. Costs of Arbitration

| No. | Item | √ |
|-----|--|---|
| 1. | Indication of any Fee Agreement entered into between the Parties and the Arbitral Tribunal and details thereof ⁶² | |
| 2. | Indication of the costs of arbitration fixed by the Director of the AIAC and setting out each party's respective costs in both, the body of the award and in the dispositive section ⁶³ | |
| 3. | Indication of how costs, including the costs of the arbitration, legal costs and other costs are to be borne and allocated as between the Parties ⁶⁴ | |
| 4. | Indication of pre- and/or post-award interest, the rate of interest and period of interest accrual, where applicable | |
| 5. | Indication of method and calculation for interests and costs to be sound ⁶⁵ | |

G. Dispositive Section of the Award

| No. | Item | √ |
|-----|---|---|
| 1. | Award contains a dispositive section addressing all orders including those made on jurisdiction, where applicable | |
| 2. | Award deals and addresses all of the issues and Parties' claims | |
| 3. | Names and signatures of all members of the Arbitral Tribunal | |
| 4. | Indication of the date of the award and seat of the Award | |

CONCLUSION

Please note that the abovementioned recommendations only serve as a guide to the Arbitral Tribunal appointed under the AIAC Rules. These recommendations are not exhaustive, and the Arbitral Tribunal has full discretion to conduct the arbitration proceedings as it deems fit and deliver its Final Award.

⁶¹ AIAC Rules 2021, Rule 33.5

⁶² AIAC Rules 2021, Rule 40.5

⁶³ AIAC Rules 2021, Rule 40.3 and Rule 40.5

⁶⁴ AIAC Rules 2021, Rule 13.5 (I) and Rule 43.3

⁶⁵ AIAC Rules 2021, Rule 34.4 and Rule 38.1