

ICDR Enacts New International Arbitration Rules

By

Addressing concerns about the process and cost of international arbitration, the International Centre for Dispute Resolution (ICDR) of the American Arbitration Association(AAA) has issued new rules, effective June 1, 2014, which streamline and enhance international arbitration practice, and greatly limit US litigation-style discovery.

Express exclusion of US litigation procedures (Article 21(10)): Perhaps the most important effort to control the costs of international arbitration is the express statement under the new Rules that depositions, interrogatories, and requests to admit are generally not appropriate procedures for obtaining information in international arbitration. This provision was added to address a concern that U.S. litigation techniques might be incorporated into international arbitrations held in the US.

Avoiding unnecessary delay and expense (Article 20(2) & (7); Article 21(8) & (9)): The new Rules state that the parties are to make every effort to avoid unnecessary delay and expense and that the tribunal may allocate costs, draw adverse inferences and take additional steps to protect the efficiency and integrity of the arbitration.

Joinder (Article 7) and Consolidation (Article 8): The new Rules contain provisions allowing joinder, consolidation, and appointment of a “consolidation arbitrator” who will have the power to consolidate two or more arbitrations pending under the Rules.

Mediation (Article 5): Following the time for submission of an Answer, the ICDR may invite the parties to mediate in accordance with the ICDR’s International Mediation Rules, and the parties may thereafter agree to mediate in accordance with the ICDR’s International Mediation Rules at any stage of the proceedings. Unless the parties agree otherwise, the mediation proceeds concurrently with the arbitration. The mediator may not be an arbitrator appointed to the case.

Exchange of information (Article 21): The new Rules mandate that the tribunal manage the exchange of information among the parties to maintain efficiency and economy, require that the parties exchange all documents upon which each intends to rely in accordance with a schedule set by the arbitrator, and provide the arbitrator with the authority to compel the production of documents

Electronic documents (Article 21(6)): Under new Rules unique to the ICDR, electronic documents are to be made available in the form most convenient and economical for the possessing party, unless the tribunal determines otherwise, and requests for electronic documents must be focused and structured to make searches as economical as possible. The arbitrator has the authority to direct testing or other means of focusing and limiting any search.

These and other changes to the ICDR Rules should help to make international arbitration under the auspices of the ICDR more attractive to both US and non-US based litigants.