

Egypt: 2024 Cairo Regional Centre for International Commercial Arbitration Rules released

In brief

The Cairo Regional Centre for International Commercial Arbitration (CRCICA) recently published its new CRCICA Arbitration Rules, which have entered into force with effect from 15 January 2024 (the "**2024 CRCICA Rules**").

The CRCICA Arbitration Rules were last updated in 2011 and have now been revised to meet the needs of the evolving arbitration landscape in the MENA region, as well as internationally. The 2024 CRCICA Rules, which remain based on the UNCITRAL Arbitration Rules with modifications, have introduced provisions on consolidation of arbitrations, early dismissal of claims, Emergency Arbitrator Rules, Expedited Arbitration Rules, online arbitration filing, multiple contracts, and third party funding. The Table of Administrative Fees and Fees of the Arbitral Tribunal have also been updated, as set out in Annex 1 of the 2024 CRCICA Rules.

We highlight some of these newly introduced provisions below.¹

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In more detail

Emphasis on electronic / technological efficiency

Article 2(6) of the 2024 Rules (Notice and calculation of periods of time) allow parties to utilize electronic means of communication (that provide for a record of transmissions) for purposes of filing any notice, submission, proposal, including initiating arbitral proceedings with CRCICA. In this regard, Article 3(6) provides that the notice of arbitration may be submitted to the Centre using the Centre's form according to the conditions for filing a notice of arbitration online per CRCICA's website.

Article 17 (Conduct of arbitration and joinder) further empowers an arbitral tribunal, in consultation with the parties and taking into account the particular circumstances of the case, to utilize any technological means as it considers appropriate to conduct the proceedings, and Article 28 (Hearings) specifically provides for hearings to be held in person, remotely or in hybrid format as decided by the tribunal, in consultation with the parties.

Change in and potential exclusion of counsel

Article 5 of the 2024 CRCICA Rules (Representation and assistance) is supplemented with provisions that:

1. Require the parties to inform promptly the other parties, the arbitral tribunal and the Centre of any change in counsel.
2. Allow the arbitral tribunal to take any measures necessary to avoid a conflict of interest of an arbitrator arising from a change or addition in party representation, including the exclusion of new party representatives from participating in whole or in part in the arbitral proceedings.

¹ CRCICA published a helpful comparison between the 2011 and 2014 Arbitration Rules indicating the amendments that have been applied. The comprehensive comparison can be found here: https://crica.org/rules/arbitration/cr_arb_rules_comp_en24.pdf

Law applicable to the arbitration agreement

The 2024 CRCICA Rules now provide that the law applicable to the arbitration agreement will be law of the place of arbitration / seat, unless "the parties agree in writing on the application of other laws or rules of law" (Article 36(4)). This will assist in limiting potential disputes that may arise as to the law applicable to the arbitration clause. The inclusion of such a provision in the arbitration rules may however raise questions as to how it will be read together with the provisions regarding the governing law in a contract. As the rules form part of the parties' arbitration agreement, Article 36(4) may be interpreted as an agreement between the parties to apply the law of the seat to the arbitration agreement when they agree to the 2024 CRCICA Rules, and where the parties do not agree to the application of another law in writing. However, for purposes of Article 36(4), a question may arise regarding whether the parties' choice of the governing law in a written contract would amount to an agreement "in writing on the application of other laws or rules of law" leading to the application to the arbitration agreement of such governing law, instead of the law of the seat.

Review of awards by the Centre

Article 34(5) of the 2024 CRCICA Rules (Form and effect of the award) requires the tribunal to send a draft of the award to the Centre for review as to its form. This mirrors Article 34(5) of the Dubai International Arbitration Centre (DIAC) Rules which require the tribunal to submit the draft of the award to the arbitration court for review of the form to ensure that the formalities required by the DIAC Rules have been complied with. The 2024 CRCICA Rules therefore limit any review to the form of the award, in contrast with, for example the scrutiny process of the International Court of Arbitration under the International Chamber of Commerce (ICC) Arbitration Rules (Article 34), which allows the Court to lay down modifications as to the form of the award as well as draw the tribunal's attention to points of substance (without affecting the arbitral tribunal's liberty of decision).

Consolidation

Article 50 of the 2024 CRCICA Rules (Consolidation) introduces the power of the Centre, upon the approval of the Advisory Committee, to consolidate two or more arbitrations pending under the Rules, provided any of the following criteria are met:

1. All parties have agreed to the consolidation in writing.
2. All of the claims in the arbitrations are made under the same arbitration agreement or agreements.
3. The claims are not made under the same arbitration agreement(s), but the arbitration agreements are compatible, and the disputes in the arbitrations arise (a) in connection with the same legal relationship; (b) out of contracts consisting of a principal contract and its ancillary contract(s); or (c) out of the same transaction or series of transactions.

Where the Centre decides to consolidate two or more arbitrations, the arbitrations will be consolidated into the arbitration that is deemed by the Centre to have commenced first, unless otherwise agreed by the parties or the Centre decides otherwise, taking into account the circumstances of the case.

The decision of the Centre on consolidation is without prejudice to the arbitral tribunal's power to decide any question as to its own jurisdiction (Article 50(7)).

Multiple contracts

Article 51 of the 2024 CRCICA Rules (Multiple contracts) allows parties to make claims arising out of or in connection with more than one contract in a single arbitration. The other party is allowed to raise objections as to whether the claims may be determined in a single arbitration. The claims may proceed in a single arbitration, provided that the Centre prima facie does not lack jurisdiction over the dispute between the parties. The Centre shall also have regard to the following:

1. Whether the arbitration agreements under which the claims are made are the same or compatible.
2. Whether the relief sought arises out of the same transaction or series of transactions.
3. Any other relevant circumstances.

The decision on whether the arbitral tribunal has jurisdiction over the claims remains with the arbitral tribunal (Article 51(4)).

Early dismissal of claims

Article 52 of the 2024 CRCICA Rules (Early dismissal of claims) gives a tribunal the power to decide, after hearing all the parties, that a claim is manifestly without legal merit and dismiss the claim at an early stage of the proceedings. This mirrors to some extent the London Court of International Arbitration (LCIA) Rules, which provide that a tribunal has the power to issue an early determination of claims that are manifestly outside the jurisdiction of the Tribunal, inadmissible, or manifestly without merit.

Third party funding

Article 53 of the 2024 CRCICA Rules (Third party funding) requires parties that are funded by a third party to disclose the existence of the funding and the identity of the funder at the commencement of and throughout the duration of the arbitral proceedings (should the funder be onboarded at a later stage). This provision is essentially in line with the ICC Rules (Article 11(7)) and the DIAC Rules (Article 22).

Emergency Arbitrator Rules

Parties seeking to apply for interim measures (Article 26) in circumstances where the arbitration has not commenced or the arbitral tribunal has not been fully constituted, may avail themselves of the Emergency Arbitrator Rules set out in Annex 2 to the 2024 CRCICA Rules.

The powers of an emergency arbitrator include the power to grant interim measures (whether in the form of an order, award or any other form), i.e., temporary measures by which the emergency arbitrator orders a party, without limitation, to:

1. Maintain or restore the status quo pending determination of the dispute.
2. Take action to prevent, or refrain from taking action that is likely to cause (a) current or imminent harm or (b) prejudice to the arbitral process itself.
3. Preserve assets out of which a subsequent award may be satisfied.
4. Preserve evidence that may be relevant and material to the resolution of the dispute.

Expedited Arbitration Rules

Parties may agree that any disputes that may arise from a defined legal relationship shall be referred to arbitration under the CRCICA Expedited Arbitration Rules ("**Expedited Rules**"). However, parties may also, at any time during the proceedings, agree that the Expedited Rules will no longer apply to the arbitration, in which case the arbitral tribunal will remain in place and conduct the arbitration in accordance with the standard 2024 CRCICA Rules (Article 2).

Some notable features of the Expedited Rules include the following:

1. A notice of arbitration shall include the claimant's full statement of claim, and the response (to be filed within 30 days from the receipt of claimant's notice of arbitration) shall include the respondent's full statement of defence (Articles 4 and 5 of Expedited Rules).
2. Unless otherwise agreed by the parties, there shall be one arbitrator. If parties agree to three arbitrators, the deadlines for their appointments are shortened (Article 6 of the Expedited Rules).
3. The arbitral tribunal may reject any request for a procedure that requires document production (Article 10(1) of the Expedited Rules).
4. Witness statements are submitted in writing, and the arbitral tribunal may decide which witnesses, including expert witnesses, shall testify before the arbitral tribunal if hearings are held (Article 10(2) of the Expedited Rules).

The award must be made within six months of the constitution of the arbitral tribunal, unless otherwise agreed by the parties. The Centre may extend the period of time upon a reasoned request from the arbitral tribunal or on the Centre's own initiative, if necessary (Article 11).

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