

ACICA ARBITRATION RULES 2021

Key Amendments

The 2021 ACICA Arbitration Rules and Expedited Arbitration Rules came into effect on 1 April 2021. The revised ACICA Rules reflect developments in international best practice and aim to further enhance the arbitration experience for all users.

This document sets out key amendments in this latest edition of the ACICA Rules.

ARTICLE REFERENCE	AMENDMENT
VIRTUAL HEARINGS, PAPERLESS FILING AND ELECTRONIC EXECUTION	
4, 6 ^a and 7 ^b	<p>The default position under the 2021 Rules provides for e-filing of a Notice of Arbitration and Answer to Notice of Arbitration by email or through ACICA's online e-filing system. Notices may also be delivered electronically or by "<i>any other appropriate means that provides a record of its delivery</i>", reflecting evolving practices. The provision on delivery addresses for notices has been extended to include an address "<i>according to the parties' practice in prior dealings</i>".</p> <p>As a practical matter, ACICA encourages parties to contact the Secretariat prior to filing to address any questions in relation to filing and payment requirements.</p>
10 ^c , 25 ^d , 27 ^e , 35 ^f , 36 ^g	<p>The 2021 Rules include timely revisions expressly allowing Tribunals to hold conferences and hearings virtually or in a combined ('hybrid') form. If a hearing is held virtually it will be deemed to be held at the seat.</p>
26.6*	<p>The 2021 Rules explicitly recognise the need to consider the protection of sensitive information given increased movement across borders. The Tribunal may adopt measures to protect information shared in the arbitration and ensure any personal data produced or exchanged in the arbitration is processed and/or stored in light of any applicable law.</p>
42.4 ^h , 42.5 ⁱ	<p>Unless the parties agree otherwise, or the Tribunal or ACICA directs otherwise, any award may be signed electronically and/or in counterparts and assembled into a single instrument. The award may be transmitted by electronic means.</p>

a Previously ACICA Arbitration Rules 2016, Article 5

b Ibid Article 6

c Ibid Article 9

d Ibid Article 21

e Ibid Article 23

f Ibid Article 31

g Ibid Article 32

h Ibid Article 38.4

i Ibid Article 38.5

* Denotes new provisions introduced in the 2021 edition of the ACICA Rules. Where provisions were wholly revised, the equivalent from the 2016 edition has been included in the endnote.

ARTICLE REFERENCE	AMENDMENT
EXPANDED SCOPE FOR CONSOLIDATION AND MULTI-CONTRACT ARBITRATIONS	
16 ^j	<p>The 2021 Rules adopt a more liberal approach to consolidation expanding the power to consolidate proceedings to encompass claims made under more than one arbitration agreement even where the parties to the arbitrations are not the same, subject to satisfaction of all other criteria.</p> <p>ACICA applies its Protocol for decisions on applications for consolidation and joinder and challenges to arbitrators under the ACICA Rules 2021 to consideration of all applications for consolidation, which must satisfy stringent criteria to be successful.</p>
18*	<p>The 2021 Rules provide a streamlined approach for multi-contract arbitration, allowing parties to commence a single arbitration, with a single Notice of Arbitration, in respect of disputes under multiple contracts. The Notice of Arbitration is required to include an application to ACICA addressing the threshold issues for consolidation, together with identifying and providing a copy of each contract and arbitration agreement invoked. The criteria for consolidation applied are those set out in Article 16.</p> <p>In the event ACICA rejects the application for consolidation, the claimant will be required to file a separate Notice of Arbitration for each arbitration that has not been consolidated.</p> <p>The Protocol for decisions on applications for consolidation and joinder and challenges to arbitrators under the ACICA Rules 2021 is similarly applied to applications under Article 18.</p>
19*	<p>The Tribunal, following consultation with the parties, is empowered to exercise its case management powers to conduct related proceedings concurrently, one after the other or suspend a proceeding, where the same Tribunal is constituted in each arbitration and there is a common question of law or fact. This allows Tribunals to manage related proceedings in a time and cost-efficient manner.</p>

^j Ibid Article 14

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EFFECTIVE CASE MANAGEMENT	
12 ^k , 13 ^l , 14 [*] , 16.8 ^m , 17.4 ⁿ , 20 ^o , 22.5 ^p , 23 ^q	<p>The 2021 Rules introduce a coherent system of institutional supervision and oversight in the process of constituting the Tribunal. In doing so the Rules recognise the mandate of the Tribunal and settle the timing of its effect, through an administrative decision of ACICA.</p> <p>The process introduce has the benefit of assisting to resolve questions of independence and impartiality before the Tribunal is constituted. Enhanced scrutiny by ACICA of arbitrator statements of availability, independence and impartiality is expected to encourage greater care in disclosures and improved confidence in the process by parties.</p> <p>The confirmation process is expedited in circumstances where candidates have provided unqualified declarations of independence and impartiality or where no objections have been raised by the parties, with power conferred on the ACICA Secretary General to make these confirmations.</p>
25 ^r , 55 [*]	<p>The 2016 edition of the Rules required Tribunals to raise for discussion with the parties, as soon as practicable after being constituted, the possibility of using other techniques to facilitate the settlement of the dispute. The 2021 Rules supplement this mandate by specifying that such other techniques to facilitate the settlement of the dispute include mediation and other forms of alternative dispute resolution (ADR).</p> <p>A new Article 55 requires Tribunals to discuss with the parties the possibility of using mediation, or other forms of ADR, <i>“to facilitate the quick, cost effective and fair resolution of the dispute.”</i> Further, parties can apply for the suspension of the arbitration to allow for mediation or other form of ADR on such terms as the Tribunal considers appropriate, with the arbitration resuming at any time upon the written request of any of the parties.</p>

k Ibid Article 11

l Ibid Article 12

m Ibid Article 14.4

n Ibid Article 15.4

o Ibid Article 16

p Ibid Article 18.5

q Ibid Article 19

r Ibid Article 21

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ARTICLE REFERENCE	AMENDMENT
39.3 [*]	<p>An Arbitral Tribunal is required, absent a shorter period being required by law or the parties, to render an award no later than the earlier of 9 months from the date the file is transmitted to the Tribunal pursuant to Article 7.5, or 3 months from the date the Tribunal declares the proceedings closed.</p> <p>ACICA may extend these time frames following a reasoned request from the Tribunal, or if ACICA otherwise deems it necessary.</p> <p>As a matter of practice, ACICA will consider the procedural timetable developed by the Tribunal in conjunction with the parties and liaise with the Tribunal early in the proceedings and throughout the process as necessary, to confirm any reasonable extensions with reference to the particular requirements of the dispute at hand.</p>
THIRD-PARTY FUNDING DISCLOSURES	
54 [*]	<p>Parties are required to disclose third-party funding and are under a continuing obligation to disclose any changes to a third-party funding arrangement. The Tribunal has the power to order a party to disclose the existence and identity of a third-party funder at any time during the proceedings.</p>
ENHANCED OVERSIGHT OF COSTS	
48 ^s	<p>There are new substantive provisions on deposits for costs and cost decisions by the Tribunal and by ACICA. Article 48 sets out a detailed list of the items comprising the term "<i>costs of the arbitration</i>". The 2016 edition of the Rules included, for the first time, the costs of in-house counsel. In the 2021 edition, this has been expanded to also include non-independent experts and third-party funding costs.</p>
49 ^t	<p>Subsequent Articles govern, in detail, the deposit of costs and the decisions on costs of the arbitration by ACICA and by the Tribunal.</p> <p>These changes provide a transparent, coherent and accountable system for managing the financial aspect of ACICA arbitrations. Under these provisions, ACICA will work closely with Tribunals regarding budgeting for fees and deposit-taking. This greater administrative oversight will assist to appropriately manage time and cost.</p> <p>The Tribunal may not proceed with the arbitration without ascertaining at all times from ACICA that ACICA is in possession of requisite funds. In the event that any deposit of costs directed to be paid by ACICA remains unpaid (in whole or in part), the Tribunal may, after consulting ACICA, order the suspension or termination of the whole or any part of the arbitration.</p>

^s Refer ACICA Arbitration Rules 2016 Articles 44-47

^t Ibid

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50* ^u	<p>The new provisions include a process by which ACICA fixes the costs of arbitration prior to the issuance of an award. ACICA may, having considered the diligence and efficiency of the Tribunal, the time spent, the complexity of the dispute, the stage at which the arbitration concluded and whether the final award was made within the time limit set out in the Rules, determine that the Tribunal's fees will be less than the deposit of costs paid by the parties.</p> <p>Where an order for termination or an award on agreed terms is made, ACICA may also determine, considering the stage attained in the arbitration proceedings and any other relevant circumstance, that the administrative fee payable to ACICA by the parties will be less than the deposit paid for that fee.</p>
51* ^v	<p>This provision states that the Tribunal may make costs decisions at any time during the arbitration, and expressly stipulate the default position that the unsuccessful party shall bear the costs of the arbitration, subject to a Tribunal's discretion to apportion costs having regard to the circumstances of the case.</p> <p>The Tribunal is prohibited from charging additional fees for interpretation, correction, or completion of the award.</p>
EARLY DISMISSAL PROCEDURE	
25.7*	<p>This new provision explicitly recognises the Tribunal's power to make an award granting early dismissal or termination of any claim, defence or counterclaim.</p>

^u Ibid

^v Ibid

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