

Note from the General Editor

The BCDR-AAA Arbitration Rules were originally adopted in 2010 and were closely modeled on the ICDR International Arbitration Rules in force at the time. During the ensuing years, several institutions, including the ICDR, substantially revised their rules, and BCDR-AAA was naturally alert to those developments. It was thus felt that some changes were needed to bring the 2010 BCDR-AAA Arbitration Rules into line with evolving practices.

Further impetus for the revision of the rules came from the enactment by Bahrain in 2015 of arbitration legislation that adopted the UNCITRAL Model Law on International Commercial Arbitration for both domestic and international disputes. This set a standard to which BCDR-AAA also needed to adjust by modernizing its own rules.

At the end of 2015, BCDR-AAA's Board of Trustees (the 'Board') entrusted a three-member Rules Review Committee (the 'Committee'), composed of Dr. Antonio R. Parra, former ICSID Deputy Secretary-General, Mr. Adrian Winstanley, OBE, former LCIA Director General, and the author of this note, with the task of drafting revised arbitration rules for consideration by the Board.

The Committee took the 2010 BCDR-AAA Arbitration Rules as its base, enhancing and augmenting these, while also referring to the latest rules of leading international and regional arbitration institutions, as well as to the 2010 UNCITRAL Arbitration Rules. The Committee was thus able to submit to the Board a set of draft rules embodying what it considered to be the best standards in international arbitration, suitably tailored to local and regional needs.

The draft rules were made public in September 2016 at a meeting on the sidelines of the International Bar Association (IBA) Annual Conference in Washington, DC. At the same time, they were made available for review on the BCDR-AAA website, and invitations were sent to a number of practitioners for review and feedback. Written comments on the draft rules were received by BCDR-AAA in the fall of 2016.

The Committee carefully considered all observations made by commentators and incorporated amendments that it believed would further enhance the rules. The revised rules were subsequently adopted by the Board.

The new BCDR-AAA Arbitration Rules came into effect on 1 October 2017. They are available in English, French, and Arabic, all three versions being

equally authoritative. The French version of the rules was prepared by Mr. Fady E. Béchara (attorney-at-law, Lebanon) and by the author of this note, and the Arabic version by Mr. Ahmed Husain (BCDR-AAA's Chief Operating Officer), Dr. Faris K. Nesheiwat (attorney-at-law, Jordan), and the author of this note. Readers will find the English and French versions in this issue. The Arabic version will be published in the next issue, which will be a continuation of this issue, as mentioned below.

The adoption of the rules was the culmination of two years of collective work involving current and former institutional leaders with considerable experience in the drafting of rules and the administration of cases, leading practitioners in the region and elsewhere who generously provided feedback on the draft, and distinguished lawyers who worked on the translations. The undertaking was a great example of international teamwork bridging cultural, linguistic, and legal traditions.

The rules introduce changes that enhance arbitration procedure, as well as a significantly amended fee schedule incorporating features used widely by arbitration centers and a new model arbitration clause. Some of the most significant additions and amendments to the rules include:

- a new screening provision that gives BCDR-AAA authority to refuse to register a request for arbitration if, *prima facie*, there appears to be no agreement between the parties to refer the dispute to arbitration under the rules (Article 3);
- a new provision on expedited procedure, whereby a sole arbitrator will be appointed for smaller claims (i.e., those not exceeding USD 1 million), regardless of whether the parties have agreed elsewhere to a three-member tribunal (Article 6);
- an amended procedure for the appointment of arbitrators, which, while still allowing parties to nominate arbitrators, requires the arbitrators to be formally appointed by BCDR-AAA (Article 9);
- a new provision allowing the tribunal to appoint an administrative secretary, subject to the written approval of BCDR-AAA and of all the parties (Article 13);
- an amended emergency arbitrator procedure that increases efficiency and enhances the independence of the arbitrator (Article 14);
- a new summary procedure, which allows the tribunal summarily to determine any legal or factual issue that it decides may be suitable for summary proceedings (Article 18);

- a new provision regulating the conduct of party representatives, which draws on the IBA Guidelines on Party Representation in International Arbitration (Article 21);
- a new procedure that permits the joinder of parties (Article 28);
- a new provision allowing consolidation of two or more arbitrations (Article 29);
- an amended provision on confidentiality, which provides that, unless otherwise agreed by the parties, BCDR-AAA may publish selected awards and decisions in redacted form (Article 40); and
- an amended provision on limitation of liability, which applies to the arbitrators, to any secretary or expert to the tribunal, and to BCDR-AAA, including its officers and employees (Article 41).

The *BCDR International Arbitration Review* is devoting this issue and the next one to commentaries on the new BCDR-AAA Arbitration Rules by leading arbitration specialists. All the authors were encouraged to express their forthright views, in the expectation that any recommendations or suggestions for improvement they offered would be considered in future revisions of the rules.

Nassib G. Ziadé