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The Cairo Regional Centre for International Commercial Arbitration (CRCICA) Newly Revised Arbitration Rules: Incorporating the New UNCITRAL Model Rules of 2010 and Expanding the Centre's Role as an Appointing Authority
by S.A.F. Haridi, M.N. Alrashid and A. Bouhabib

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**The Cairo Regional Centre for International Commercial Arbitration (CRCICA)
Newly Revised Arbitration Rules: *Incorporating the New UNCITRAL Model Rules of 2010
and Expanding the Centre’s Role as an Appointing Authority***

By Samaa Haridi, Meriam Alrashid and Amal Bouhabib¹

Notwithstanding the political events that Egypt has witnessed in the early part of 2011, on 1 March 2011, the Cairo Regional Centre for International Commercial Arbitration (“CRCICA” or “the Centre”) adopted a new set of arbitration rules emulating the recently revised UNCITRAL Arbitration Rules (“Model Rules”), which entered into force on 15 August 2010. The Centre is the second institution to do so, coming in right after the Kuala Lumpur Regional Centre for Arbitration in Malaysia, which adopted the new Model Rules very shortly after they were released.

The CRCICA, which is widely considered as one of the leading arbitral institutions in the Arab world, is an independent non-profit international organization based in Cairo, Egypt, and was established in 1979 under the auspices of the Asian African Legal Consultative Organization.

Incorporating both substantive and procedural revisions, the new CRCICA rules promise to provide a more streamlined and efficient experience for parties choosing to arbitrate under them.

Procedural Streamlining

Overall, the rules have been streamlined to clarify and modernize procedural requirements, and to simplify requirements for party submissions and appearances. For example, Article 2 eschews the outdated requirement that notice be physically delivered to an addressee’s home or business in favor of the more modern option of sending an email. Likewise, Article 28(4) of the new rules allows the arbitral tribunal to authorize witnesses to be examined through means of telecommunication rather than require their physical presence at the hearing.

The new rules also clarify old provisions, providing a more comprehensible roadmap for party submissions and obligations. By way of example, a respondent’s obligations with respect to submitting its response were couched almost indiscernibly within the notice of arbitration provision in Article 3 of the old rules. The new rules, however, provide an article exclusively pertaining to the response to a notice of arbitration.² Similarly, where the old rules allowed a party to include its statement of claim within the notice of arbitration, Article 20 of the new rules specifies that a party may elect to treat its notice of arbitration *as* a statement of claim.

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² CRCICA Arbitration Rules, Article 4. Article 4 also expands a respondent’s options with regard to what it can include in a response. For example, a plea that the arbitral tribunal lacks jurisdiction; a proposal for the appointment of a sole arbitrator; a brief description of counterclaims or claims for the purpose of a set-off; or a notice of arbitration against a party to the arbitration agreement other than the claimant. *Id.* at 4(a)-(e).

Moreover, Article 21 allows a respondent to elect to treat its response to the notice of arbitration as a statement of defense, a provision absent from the old rules, arguably allowing for a speedier process.

Perhaps most usefully, the new rules provide a much clearer stipulation on interim measures in Article 26, which clarifies what constitutes an interim measure and imposes standards that must be met in order for a tribunal to grant one. It also provides contours for the tribunal's authority in modifying, suspending or terminating an interim measure at its own initiative.

Strengthening the Centre's Role as an "Arbitral Institution and Appointing Authority"

In addition to simplifying the arbitration procedure for the convenience of the parties, the new rules also strengthen the role of the Centre, expanding its jurisdiction and its ability to host complex arbitrations. At the outset, the new rules increase the Centre's jurisdiction to include *any* legal dispute that the parties have agreed in writing shall be referred to the Centre, not just those based in contracts.³ And in what is perhaps the most notable expansion, Article 17(6) allows one or more third persons to be joined in the arbitration provided such person is a party to the arbitration agreement.⁴

The new rules also ensure that the Centre plays a more collegial role in decision-making, as new provisions call for the formation of an ad hoc committee composed of members of the Centre's Advisory Committee to decide matters of rejection, removal and challenging of arbitrators.⁵

Costs

Some of the most significant revisions of the old rules relate to the determination of costs. Section V provides for a more didactic matrix of cost allocation than that provided by the old rules, including a specific list of what constitutes "Costs."⁶ It also abandons the antiquated distinction between fees for domestic and international cases with regards to the registration fee.⁷ Perhaps most importantly, the rules significantly increase the arbitrators' fees.⁸

³ See e.g., CRCICA Arbitration Rules, Articles 1, 3(3)(d) and 17.

⁴ CRCICA Arbitration Rules, Article 17(6). The Tribunal retains the discretion to refuse joinder due to prejudice to any of the parties.

⁵ CRCICA Arbitration Rules, Articles 12 and 13.

⁶ CRCICA Arbitration Rules, Article 42.

⁷ The old rules provided for a discounted registration fee for domestic cases. See Article 39 of the old rules.

⁸ CRCICA Arbitration Rules, Article 45. The rules also include two annexed Tables that provide the administrative and arbitrators' fees based on the "sum in dispute."

Departures from the New Model Rules

By the Centre's own assessment, its alterations of the new Model Rules are "minor modifications emanating mainly from the Centre's role as an arbitral institution and an appointing authority" in administered arbitrations.⁹ The alterations appear, for the most part, to create specific procedures where the Model Rules left them open to the discretion of the appointing authority or arbitral tribunal.

Article 6 of the Centre's new rules is one of the more radical departures from the Model Rules. It entirely replaces Article 6 of the Model Rules, which mandates the designation and appointment of the appointing authority, whereas designation of an appointing authority is inherent within Article 1 of the Centre's new rules. Similar to other institutional rules, such as those of the International Centre for Settlement of Investment Disputes ("ICSID") and International Chamber of Commerce ("ICC"),¹⁰ Article 6 gives the Centre – upon approval of the Advisory Committee – the power to discontinue an arbitration before a tribunal is even constituted, where "it manifestly lacks jurisdiction over the dispute." Under the Model Rules, however, determinations vis-à-vis jurisdiction are for the consideration of the arbitral tribunal.

Under Articles 12 and 13 of the Centre's new rules regarding the removal and challenge of arbitrators, an *ad hoc* tripartite panel, composed of members from the Centre's Advisory Committee, must decide the removal of an arbitrator. The Model Rules, on the other hand, do not specify a procedure for adjudication, merely leaving it open to the discretion of the appointing authority.

Apart from Article 17, the rules under Section III governing the arbitral proceedings are not significantly different from those of the Model Rules. Article 17 of the Centre's new rules states that each party shall have an "equal and full" opportunity to present their case. This standard could be interpreted to encompass equality in a very broad sense of precisely equal timing for oral examinations in a hearing, and other similar matters. On the other hand, the standard of "reasonable opportunity of presenting its case" under Article 17 of the Model Rules appears more vague than that of the new CRCICA rules and may lead to more due process-related challenges.

⁹ http://www.crcica.org.eg/arbitration_rules.html.

¹⁰ For example, Rule 6(1) of ICSID's Institutional Rules states:

(1) The Secretary-General shall, subject to Rule 5(1)(b), as soon as possible, either:
(a) register the request in the Conciliation or the Arbitration Register and on the same day notify the parties of the registration; or
(b) if he finds, on the basis of the information contained in the request, that *the dispute is manifestly outside the jurisdiction of the Centre*, notify the parties of his refusal to register the request and of the reasons therefore.
(emphasis added)

Articles 34, 40 and 41 of the Centre's new rules, regarding the Form and Effect of an Award, Confidentiality, and Retrieval and Destruction of Documents respectively, come together to create strict privacy requirements *not* directly contemplated under the new Model Rules. Where the Model Rules are silent on these issues, the Centre's rules create the benefit of clearly defined mechanisms to ensure confidentiality. For example, Article 34(5) of the Model Rules, which allows for an award to be made public *with* the consent of the parties, is deleted entirely from the Centre's new rules. As is gleaned from Articles 40 and 41, this is not meant to reduce reference to privacy, but rather to enhance and ensure it. Specifically, paragraphs 1 and 2 of Article 40 clarify and reinforce the point by indicating that all materials pertaining to an arbitration that are not already in the public domain shall remain private unless specifically agreed otherwise. This notion is further bolstered by Article 41, allowing the destruction by the Centre of submitted documents within 9 months of communication of an award.

Article 37 of the Centre's new rules seemingly gives a tribunal the flexibility to reject a request for interpretation of an award, after consideration of the request. Under the Model Rules, however, if a request for interpretation is made within the post-award time-frame, an interpretation appears to be mandatory within 45 days after receipt of the request.

Lastly, Articles 42 to 48 of the new CRCICA rules provide a robust framework on the level of costs involved in bringing a case to the Centre. Significantly, under Article 47 of the Centre's new rules, it appears that the *entire* amount of administrative and arbitrators' fees should be deposited with the Centre before the beginning of proceedings, in equal portions by the claimant and respondent. The Model Rules leave much of this open to the appointing authority.