

Madrid International Arbitration Center issues Arbitration Rules

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In this Article, the authors consider the new Arbitration Rules of the Madrid International Arbitration Centre (MIAC).

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In 2019, the Madrid International Arbitration Centre (MIAC) was formally established through the merger of the international sections of Spain's most prominent courts of arbitration: the Madrid Court of Arbitration, the Civil and Commercial Arbitration Court and the Spanish Court of Arbitration. The MIAC aims to become the leading Spanish arbitral institution in the international field, ensuring a direct flow of cases from its three founding courts, which will continue to autonomously administer national arbitrations.

In recent months, the MIAC has publicly announced the composition of its key bodies, including the appointment of Mr José Antonio Caínzos as Chairman and Ms Melanie Riofrío as Secretary General. In January 2020, the MIAC formally began operations and in April 2020 it published its Statute and Arbitration Rules. These documents are currently drafted in Spanish, although the English version should be available soon.

The MIAC Statute and Arbitration Rules show that the newly created centre aims for the highest efficiency, flexibility, transparency and professional standards. The rules are comparable to those of the most reputable international courts and they also include a number of relevant innovations.

Jurisdiction

The main focus of MIAC is the administration of international arbitrations.

According to the MIAC Statute and Arbitration Rules, the centre has jurisdiction to administer cases arising from:

- Arbitration agreements in which the parties directly appoint the MIAC as the administrative court.
- Arbitration agreements in which the parties appoint any of the three arbitration courts which merged their international activity into the MIAC.
- In both cases, this applies to arbitration agreements signed as of 1 January 2020.

For arbitration agreements made prior to 2020, the MIAC and the pre-existing courts will offer an opt-in system for international cases that commence after 1 January 2020.

Internal functioning of the centre

The MIAC Statute and Arbitration Rules offer a detailed description of the internal functioning of the MIAC. They regulate both the composition and powers of the centre's bodies and the specific procedures that will be followed by the centre when performing its duties, such as the appointment, challenge and replacement of arbitrators.

As well as the usual bodies (such as Chairman, Secretary General, Plenary and Appointment Committee) the MIAC Statute adds two novel bodies. The Chairman will be assisted by a specific committee when deciding on arbitrator challenges. If this committee does not reach a unanimous decision, the challenge will be finally decided by the Plenary. The Secretary General will be assisted by a committee composed of the three secretary-generals of the pre-existing courts for the preparation of proposals for the appointment of arbitrators, which are subsequently submitted to the Appointment Committee.

Appointment of arbitrators

The MIAC Arbitration Rules contain Annex 1 on the Rules for Appointment and Confirmation of Arbitrators. These rules provide information for users about the procedure to be followed by the centre when appointing arbitrators in the absence of agreement between the parties. The preferred method is appointment through a list system, fostering active roles for the parties thanks to the "strike and rank" method, similar to the one used by the [International Centre for Dispute Resolution](#) (ICDR).

Notably, the MIAC will not operate a closed list of arbitrators but will monitor the international market in order to propose the most suitable and diverse candidates for each case. Article 5 of Annex 1 to the MIAC Arbitration Rules offers a detailed description of the criteria that will be followed by the centre when selecting arbitrators, which include experience, knowledge, nationality, language skills, technical or specific knowledge and availability. The centre will also take into account the following criteria related to a candidate: date of last appointment, age, gender and the convenience of involving new professionals in the arbitration activity of the centre.

Time and cost control

Users will find that the MIAC Arbitration Rules demand proactive case handling at the early stages of an arbitration in order to shorten the time for the constitution of the arbitral tribunal. In this sense,

for example, claimants are required to pay the provision for costs and to obtain the party appointed arbitrator's acceptance and disclosure before filing the request for arbitration.

Arbitrators are specifically instructed to avoid any unnecessary delay or costs when conducting the proceeding. The same requirement is established with regard to the parties and their representatives in the arbitration, along with the express warning that their behaviour will be taken into account when allocating costs.

The MIAC Arbitration Rules also offer an expedited procedure which reduces time and costs for less complex cases. This expedited procedure will be an opt out option for disputes below one million euro and an opt in option beyond that threshold.

Interim measures

The MIAC Arbitration Rules offer a robust set of options to the parties and tribunals regarding interim relief.

First, urgent interim measures may be requested from an emergency arbitrator before the commencement of arbitration.

Second, once the arbitral tribunal is in place, the rules empower arbitrators to issue preliminary orders *ex parte*, whereas the opposing party must refrain from any action that could frustrate the interim measure requested. This is a ground-breaking novelty for arbitrations seated in Spain.

Third, the Arbitration Rules regulate the requirements that any interim measure must meet in order to be agreed by the arbitrators. In consequence, it provides very useful guidance both to parties preparing a request for interim relief and to arbitrators when deciding on the matter.

Arbitrator powers

The powers granted to the arbitrators are set out in article 24(2) of the MIAC Arbitration Rules. This list includes the classic powers for the conduct of the arbitration and the admissibility and assessment of evidence. However, it also includes some additional and not commonly regulated matters, such as the arbitrators' power to:

- Order a party to make movable and immovable property available to the arbitrators or to other parties (including documents, samples and goods).
- Admonish lawyers.
- Protect industrial secrets or confidential information.
- Determine the applicable rules even if they are not alleged by the parties.

Notably, arbitrators are specifically empowered to issue an award declaring the amount owed by a respondent to a claimant where the claimant has effected payment of the respondent's share of the advance of costs on its behalf. The rules do not specify whether this can be done in the form of a partial award, but it certainly provides for a strong incentive for recalcitrant respondents to pay their share of the advance on costs.

Third-party funding

The MIAC Arbitration Rules are innovative with regard to third-party funding. Indeed, MIAC has become the first Spanish institution, and one of the first institutions in the world, to specifically regulate this matter.

Parties must communicate at the earliest stage of the arbitration (this is, the filing of the request or answer to the request) the existence of any third-party funding and the identity of the third-party funder. The arbitrators are entitled to request any additional information they deem appropriate regarding the funding, although, when doing so, they must observe any applicable rules regarding professional secrets. This regulation is in line with the proposal included in the Code of Best Practices in Arbitration of the Spanish Arbitration Club issued in June 2019.

Other procedural innovations

The MIAC Arbitration Rules include a number of additional innovations. For example, they expressly provide for the possibility that arbitrations are conducted in more than one language, which is not an option usually available in the context of commercial arbitration. Though necessary only in a very reduced number of cases, this option shows a clear willingness to meet particular needs in each case.

The MIAC Arbitration Rules also include detailed regulation of the appointment and duties of tribunal secretaries, which includes strict duties regarding independence and impartiality, and direct management of their performance and the scope of their tasks by the arbitrators. The rules also specify that the appointment of tribunal secretaries should not result in any additional costs for the parties.

Finally, the MIAC Arbitration Rules specifically address the widely debated matter of dissenting opinions. Although specifically permitted, dissenting opinions are limited by forcing the dissenting arbitrator to issue its particular view at least seven days prior to the submission of the award for review by the centre. This measure is intended to either obtain a new decision from the majority or a justification for the rejection of the dissenting argument. Therefore, it will reduce the potential harm that a dissenting opinion may have on the validity of the award.

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