

International Arbitration Update

July 2005

Launch of new ACICA Arbitration Rules

The Australian Centre for International Commercial Arbitration (ACICA) launched its new Arbitration Rules this week. Copies of the rules can be downloaded from ACICA's website at www.acica.org.au

About ACICA

ACICA is a non-profit public company that supports and facilitates international arbitration and promotes Australia as a venue for international commercial arbitration. ACICA maintains a panel of international arbitrators, drawn from Australia and around the world, and can assist with:

- the administration of arbitrations
- nomination of arbitrators
- organising hearing rooms, transcript and IT services and accommodation.

About the new ACICA Arbitration Rules

Where parties choose to adopt the ACICA Arbitration Rules for their arbitration, the rules will guide the arbitration process from beginning to end. The rules make provision for, among other things:

- the appointment of arbitrators and the filling of any vacancies
- the exchange of written submissions (including a statement of claim and defence)
- evidence and hearings
- the tribunal to have power to rule on their own jurisdiction
- the tribunal to have power to order interim measures of protection, including for the preservation of assets and security for costs, in appropriate cases

- the tribunal to fix the costs of arbitration in its award and determine which party shall bear such costs
- ACICA to participate in determining the remuneration of arbitrators where the parties and the arbitrators cannot agree, and
- the tribunal's award to be final and binding on the parties.

Fees and costs

The new ACICA Arbitration Rules provide for a registration fee of \$2,500 to be paid to ACICA when an arbitration is commenced and an administrative fee to be paid to ACICA which varies according to the amount in dispute. ACICA's administrative fee for a \$1 million dispute is \$7,500; for a \$100 million dispute it is \$39,000. These fees are comparable with those of other international arbitration bodies.

In addition to ACICA's fees, the parties need to fund the costs of the arbitrators, hearing and transcript facilities and their own legal and other costs. Generally the costs of the arbitration (which can include costs incurred by the successful party) will eventually be borne by the unsuccessful party.

How to adopt the new ACICA Arbitration Rules for resolving disputes

Arbitration is possible when the parties include an arbitration agreement into

In brief

The new ACICA Arbitration Rules provide an advanced and flexible framework for the conduct of international arbitrations with support and administration by ACICA. The rules are based on rules developed by the United Nations Commission for International Trade Law (UNCITRAL) and have been updated and refined.

their contract at the outset or agree to arbitrate once a dispute has arisen. ACICA has drafted the following model dispute resolution clause which can be incorporated in contracts if the parties wish their disputes to be resolved by arbitration under the ACICA Arbitration Rules:

Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of the arbitration shall be Sydney, Australia **[or choose another city]**. The language of the arbitration shall be English **[or choose another language]**. The number of arbitrations shall be one **[or three, or delete this sentence and rely on Article 8 of the ACICA Arbitration Rules]**.

Article 8 provides for ACICA to determine the number of arbitrators taking into account all relevant circumstances, if the parties cannot agree on the number of arbitrators (i.e. one or three)).

Before signing up to the ACICA Arbitration Rules, parties should read the rules to ensure that all provisions are suitable to their circumstances. If the parties wish to modify the ACICA Arbitration Rules as they will apply to the parties' dispute(s), this can be done by agreement in writing, for example, in the dispute resolution clause in the parties' contract.

Why choose arbitration over court processes?

International arbitration is a favoured method for resolving disputes between parties from different countries for the following reasons:

Ease of enforcement

It is generally much easier and cheaper to enforce an arbitration award in a foreign country than it is a court judgment. Arbitration awards are enforceable pursuant to the New York Convention of 1958 which has 135 signatory countries, including Australia. There is no equivalent multilateral treaty for the enforcement of court judgments.

Confidentiality

In contrast with court hearings, which are generally open to the public, arbitration is a confidential process. The new ACICA Arbitration Rules provide for all hearings to take place in private (unless the parties otherwise agree in writing) and for the parties to treat as confidential all matters relating to the arbitration, including the existence of the arbitration. Disclosure of the confidential information may only be made in limited circumstances, for example, for the purposes of applying to the courts of any State to enforce the arbitration award, or if required by law.

Choice of tribunal

Arbitration gives parties the ability to choose, or participate in the choice of, the tribunal who will decide their dispute.

Where there is to be a sole arbitrator, the ACICA Arbitration Rules provide for the parties to agree upon the identity of the arbitrator, failing which ACICA will nominate the arbitrator. Where there is to be a panel of three

arbitrators, the ACICA Arbitration Rules provide for each party to appoint an arbitrator and for the two arbitrators appointed by the parties to choose a third arbitrator to act as Chairperson, failing which ACICA will make the appointment.

In appointing an arbitrator, ACICA will have regard to considerations that are likely to secure the appointment of an independent and impartial arbitrator, including taking into account appointing an arbitrator of a different nationality than the nationalities of the parties.

Flexibility

Arbitration gives parties and the arbitrators the flexibility to adopt a process best suited to the nature of dispute and the parties' wishes. In this way, it can provide a means for disputes to be resolved quickly and efficiently.

Sonia Tame, Senior Associate
sonia.tame@bdw.com

Alex Baykitch, Partner
alex.baykitch@bdw.com

For further information about the new ACICA Arbitration Rules or arbitration generally, please contact.

Sydney

Alex Baykitch, Partner
t > +61 2 9258 6752 e > alex.baykitch@bdw.com

Mark Buchanan, Partner
t > +61 2 9258 6086 e > mark.buchanan@bdw.com

Chris Davidson, Partner
t > +61 2 9258 6060 e > chris.davidson@bdw.com

John Emmerig, Partner
t > +61 2 9258 6332 e > john.emmerig@bdw.com

Hugh Keller, Partner
t > +61 2 9258 6020 e > hugh.keller@bdw.com

Bill Smith, Partner
t > +61 2 9258 5808 e > bill.smith@bdw.com

Melbourne

Jos Mulcahy, Partner
t > +61 3 9679 3512 e > jos.mulcahy@bdw.com

Chris Quennell, Consultant
t > +61 3 9679 3341 e > chris.quennell@bdw.com

Canberra

Shaun Gath, Partner
t > +61 2 6234 4149 e > shaun.gath@bdw.com

Peter Ward, Senior Associate
t > +61 2 6234 4080 e > peter.ward@bdw.com

Perth

Paul Riethmuller, Partner
t > +61 8 9366 8754 e > paul.riethmuller@bdw.com

Anthony Willinge, Partner
t > +61 8 9366 8165 e > anthony.willinge@bdw.com

Mirina Muir, Senior Associate
t > +61 8 9366 8760 e > mirina.muir@bdw.com

Brisbane

Guy Humble, Partner
t > +61 7 3259 7227 e > guy.humble@bdw.com

Ernest Van Buuren, Partner
t > +61 7 3259 7119 e > ernest.van.buuren@bdw.com

This publication is authorised by Blake Dawson Waldron. The firm can be contacted by emailing marketing@bdw.com

Subscription Maintenance – If you would like to unsubscribe or modify your electronic subscription please go to <http://www.bdw.com/subscriptions>

Privacy Policy – You can find our Privacy Policy on our website at <http://www.bdw.com>

This publication is intended only to provide a summary of the subject matter covered. It does not purport to be comprehensive or to render legal advice. No reader should act on the basis of any matter contained in this publication without first obtaining specific professional advice.

© 2005 Blake Dawson Waldron

www.bdw.com