



Arbitration Regulations 2015 - Amendment No 1 of 2020



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Date of Enactment: 23 December 2020

The Board of Directors of the Abu Dhabi Global Market, in exercise of its powers under Article 6(1) of Law No. 4 of 2013 concerning the Abu Dhabi Global Market, as amended, issued by His Highness the Ruler of the Emirate of Abu Dhabi, hereby enacts the following Regulations –

Amendments to the Arbitration Regulations 2015

The Arbitration Regulations 2015 are amended as follows:

- (1) The insertion of new sections has required the renumbering of the sections following section 9 and the consequential correction of cross references. The renumbering and correction of cross references are not specifically set out below but have been recorded in the Regulations.
- (2) In section 3, subsection (2), the words “the UAE Civil Procedure Code (“ shall be deleted. The Law No. “11” shall be deleted and replaced by the number “(6)” and the year “1992),” shall be deleted and replaced by the words “2018 on Arbitration,”.
- (3) A new section 9 shall be inserted as follows:

“9. Mandatory and non-mandatory provisions

 - (1) The mandatory provisions of this Part 3 and Part 4 are listed in Schedule 2 and have effect notwithstanding any agreement to the contrary.
 - (2) The other provisions of this Part 3 (the “non-mandatory” provisions) allow the parties to make their own arrangements by agreement but shall apply in the absence of such agreement. For the avoidance of doubt, Part 4 does not contain any non-mandatory provisions.
 - (3) The parties may make such arrangements by agreeing to the application of arbitration rules, including those of any institution, or providing any other means by which a matter may be decided.
 - (4) The choice of law other than the law of the Abu Dhabi Global Market as the applicable law in respect of a matter provided for by a non-mandatory provision of this Part 3 is equivalent to an agreement making provision about that matter. For this purpose, an applicable law determined in accordance with the parties’ agreement, or which is objectively determined in the absence of any express or implied choice, shall be treated as chosen by the parties.”
- (4) Renumbered section 13 shall be amended to read as follows:

“The functions referred to in sections 16, 27, 29, 30, 31, 47, 57, 60 and 61 of these Regulations shall be performed by the Court, while the functions referred to in sections 19(3), 19(4), 19(5), 19(6), 21(2), 22(1), 23(2), 38(2) and 55(5) shall be performed by the Court subject to any process agreed between the parties in the arbitration agreement or by a subsequent written agreement.”

- (5) In renumbered section 14, subsection (2) shall be amended to read as follows:

“An arbitration agreement shall be in writing. This requirement shall be regarded as satisfied if the content of the arbitration agreement is recorded in any written form by one or more of the parties to it or by a third party with the authority of the parties to the agreement. An arbitration agreement which is in writing but has not been signed (whether in hardcopy or electronically) may be made binding orally or by conduct.”

- (6) In renumbered section 14, subsection (3) shall be amended to read as follows:

“For the purposes of subsection 1(1), the requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; an electronic communication is any communication that the parties make by means of data messages; a data message is information generated, sent, received or stored by electronic, digital, magnetic, wireless, optical, electromagnetic or similar means.”

- (7) In renumbered section 14, subsection (6) shall be amended to read as follows:

“An arbitration agreement giving any party a unilateral or asymmetrical right to refer a dispute either to an arbitral tribunal or a court does not contravene these Regulations and shall not be rendered invalid for that reason.”

- (8) In renumbered section 16, subsection (3)(a) the word “; and” shall be inserted at the end of the paragraph and a new subsection 16(6) shall be inserted as follows:

“This section 16 shall also apply where the arbitration is not seated in the Abu Dhabi Global Market, and where no seat has been designated or determined.”

- (9) In renumbered section 18, subsection (2), the number “(1)” shall be inserted at the end of the paragraph after the word “one”.

- (10) In renumbered section, subsection (3)(b), the number “(1)” shall be inserted after the word “one”.

- (11) In renumbered section 19, subsection (4), the number “(1)” shall be inserted after the word “one”. The words “and the” in the penultimate sentence shall be deleted and replaced by “. The” and the word “also” shall be

- (12) A new section 29, previously section 32(3), shall be inserted as follows:

“29. Power of arbitral tribunal to order security for costs

Unless otherwise agreed by the parties, the tribunal has the power to order a claimant to provide security for the costs of the arbitration. This power shall not be exercised on the ground that the claimant is (a) an individual ordinarily resident outside the Abu Dhabi Global Market, or (b) a corporation or association incorporated or formed other than in the Abu Dhabi Global Market, or whose central management and control is exercised outside the Abu Dhabi Global Market.”

- (13) In renumbered section 30(1), the words “subject to subsection (4)” in the last sentence shall be moved to the start of the paragraph, before the word “an”.

(14) Renumbered section 31 shall be amended to read as follows:

- “(1) The existence of an arbitration agreement shall not preclude a party from applying to the Court, before or during arbitral proceedings, for interim measures including in relation to the taking of evidence under section 47 or provisional or conservatory measures under this section.
- (2) The Court shall have the same power of issuing any interim measure in relation to arbitration proceedings as it has in relation to proceedings in the Court.
- (3) The powers conferred by this section apply even if:
- (a) the seat of the arbitration is outside the Abu Dhabi Global Market or no seat has been designated or determined; or
 - (b) the interim measure is sought against a non-party to the arbitration agreement.
- (4) If the case is one of urgency, the Court may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets.
- (5) If the case is not one of urgency, the Court shall act only on the application of a party to the arbitral proceedings upon notice to the other parties and to the arbitral tribunal.
- (6) In any case, the Court shall act only if, or to the extent that, the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, or a court of competent jurisdiction in relation to the matters set out in subsection (3)(a), has no power or is unable for the time being to act effectively.”

(15) In renumbered section 32, a new subsection (6) shall be inserted as follows:

“It is not inconsistent with this section for the Court, on its own initiative, to publish a judgment in anonymised form”.

(16) In renumbered section 33, the word “Equal” in the title shall be deleted and replaced by the word “Fair”, and in the body of the section, directly after the words “The parties shall be treated” the words “with equality” shall be deleted and replaced by the word “fairly”.

(17) Renumbered section 34 shall be amended to read as follows:

“34. Determination of rules of procedure

- (1) The parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
- (2) The parties are free to agree to adopt, in whole or part, the ADGM Arbitration Centre Arbitration Guidelines, regardless of the seat or the applicable rules of procedure.
- (3) In the absence of an agreement on the procedure to be followed, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.
- (4) In all cases, the arbitral tribunal must adopt procedures which are suitable to the circumstances of the particular case, avoid unnecessary delay and expense, and facilitate fair, efficient and expeditious conduct of the arbitration.
- (5) In exercising its discretion under subsection (4), the arbitral tribunal shall consider the use of technology in order to enhance the efficient and expeditious conduct of the arbitration including, as appropriate, for:
- (a) the submission, exchange or communication of documents by electronic means;
 - (b) the use of electronic signatures for documents submitted, exchanged or communicated;

- (c) documents being provided in electronic searchable form;
- (d) the use of an electronic document review system for disclosure or document production;
- (e) the use of an electronic document management system for hearings;
- (f) the use of an online case management platform;
- (g) conducting hearings, in whole or in part, by video conference, telephone or other communication technology; or
- (h) enhancing by the use of any other technology the efficient and expeditious conduct of the arbitration.”

(18) Renumbered section 35 shall be amended to read as follows:

“35. Seat of arbitration

- (1) The parties are free to agree on the seat of arbitration.
- (2) If the parties have agreed that the seat of arbitration shall be the Abu Dhabi Global Market, no other connection with the Abu Dhabi Global Market is required for these Regulations to apply.
- (3) Failing the parties’ agreement on the seat of arbitration, the seat of arbitration shall be determined by (a) any arbitral or other institution or person vested by the parties with powers in that regard, or (b) the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties.
- (4) Notwithstanding the provisions of subsections (1) and (3), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.
- (5) For the purpose of subsection (4), a meeting may take place, in whole or in part, in person or by video conference, telephone or other communications technology (or any combination thereof) in one or more geographical places.

(19) A new section 37 shall be inserted as follows:

“37. Disclosure of a third-party funding agreement

- (1) A party shall notify every other party to the arbitral proceedings and any members of the arbitral tribunal (nominated or appointed) of the existence of any third-party funding agreement and the identity of the third-party funder in accordance with subsection (2).
- (2) Written notice under subsection (1) must be given:
 - (a) where the third party funding agreement was entered into before or upon the commencement of the proceedings, immediately upon their commencement; or
 - (b) where the third-party funding agreement was entered into after the commencement of proceedings, within seven (7) days of the date of the third-party funding agreement. If the notification was made prior to the constitution of the arbitral tribunal, the notice under subsection (1) must be given to any further arbitral tribunal members immediately following their nomination or appointment.
- (3) Unless otherwise agreed by the parties, the arbitral tribunal may, after consulting with the parties, order the disclosure of other details of the third-party funding agreement.”

(20) In renumbered section 39, a new subsection (1) shall be inserted as follows:

“(1) The parties are free to agree on the procedure for joining an additional party to an arbitration, provided always that the party to be joined is party to the arbitration agreement or has consented to joinder.”,

and in subsection (2) the words “Absent such agreement, and before the confirmation or appointment of any arbitrator,” shall be inserted at the beginning of subsection.

(21) In renumbered section 41, the word “the” shall be inserted before the words “written statements” in the first sentence and the words “having regard to the matters set out in section 33(5).” shall be inserted at the end of the last sentence.

(22) A new section 42 shall be inserted as follows:

“42. Summary disposal of claims, counterclaims and defences

- (1) Unless otherwise agreed by the parties, a party may apply to the arbitral tribunal in writing at any time for the summary disposal of part or the whole of a claim, counterclaim or defence, on the basis that any other party has no real prospect of success in respect of the relevant part or whole of the claim, counterclaim or defence.
- (2) The arbitral tribunal shall, in its full discretion, decide whether to allow the application to proceed. If the application is allowed to proceed, the arbitral tribunal shall, after giving the parties an opportunity to make representations, decide the application.
- (3) The arbitral tribunal shall issue any summary determination that is made pursuant to this section in the form of an award.”

(23) Renumbered section 43 shall be amended to read as follows:

- (1) Subject to any contrary agreement by the parties, the following provisions shall apply to hearings and written proceedings.
- (2) The arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument; whether the hearing is to be conducted, in whole or in part, in person, by video conference, telephone or other communication technology; or whether the proceedings shall be conducted on the basis of documents and other materials.
- (3) Unless the parties have agreed that no hearing shall be held, the arbitral tribunal shall hold such hearings (whether in person, or by video conference or telephone or other communication technology) at an appropriate stage of the proceedings, after consulting the parties. If a hearing is held in person, a party shall be free to apply to the arbitral tribunal for one or more of its fact or expert witnesses to attend the hearing by video conference or telephone or other communication technology.
- (4) The parties shall be given sufficient advance notice as the arbitral tribunal shall decide of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.
- (5) All statements, documents, evidence or other information supplied to the arbitral tribunal by one party shall be communicated to the other party at the same time as it is supplied to the arbitral tribunal.
- (6) For the purpose of subsection (4), any statement, document, evidence or other information may be supplied or communicated electronically.
- (7) For the purpose of subsections (2) and (5), evidence includes any factual or expert evidence upon which a party relies.

(24) A new section 44 shall be inserted as follows:

44. Party and Party Representative conduct

- (1) A Party Representative shall:
 - (a) not engage in activities intended to obstruct or delay the arbitral proceedings, jeopardise the integrity of proceedings or the finality of any award;

- (b) not knowingly or recklessly make a false statement to the arbitral tribunal;
 - (c) preserve and not knowingly conceal or destroy documents that are likely, or advise a party to conceal or destroy, documents that are likely to be relevant to the issues in dispute in the arbitration or which the arbitral tribunal has ordered to be produced; and
 - (d) make sure that the party for whom he acts understands at all times that he must preserve and not conceal or destroy such documents.
- (2) If the arbitral tribunal (whether following a complaint by one party against another Party Representative or on its own initiative) and after giving the relevant Party Representative an opportunity to make representations, finds that a Party Representative contravened subsection (1), the arbitral tribunal may impose one or more of the following sanctions:
- (a) a written reprimand or caution to the Party Representative;
 - (b) draw adverse inferences when assessing the evidence relied upon, or legal submissions made by, the Party Representative;
 - (c) make an order or award on costs in relation to the conduct of the Party Representative against the party instructing the Party Representative; and
 - (d) adopt any other appropriate measure that the arbitral tribunal considers necessary to preserve the fairness and integrity of the proceedings.
- (3) The arbitral tribunal's decision under subsection (2) must be in writing, with reasons, and must be communicated to all parties to the arbitration.
- (4) The arbitral tribunal is in all cases entitled to consider the conduct of the parties and the Party Representatives when making any decision allocating the costs of the arbitration between the parties.
- (25)** In renumbered section 46, the last sentence of subsection (a) shall be amended to read as follows:
- “The arbitral tribunal may also terminate the proceedings if it considers it appropriate to do so;”
- (26)** In renumbered section 47, new subsections 47(4) and 47(5) shall be inserted as follows:
- “(4) Any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.
- (5) For the purpose of this section, and subject to any contrary agreement by the parties, any report, document, information or evidence to be delivered or communicated to the arbitral tribunal, an expert, a party or parties may be delivered or communicated electronically.”
- (27)** Renumbered section 48 shall be amended to read as follows:
- “48. Court assistance in taking evidence
- (1) The arbitral tribunal or a party with the approval of the arbitral tribunal may request from the Court, or any competent court, assistance in taking evidence, which shall include assistance with:
- (a) the examination of witnesses, either orally or in writing;
 - (b) the production of documents;
 - (c) the inspection, photographing, recording, preservation, custody or detention of any property; and
 - (d) the taking of samples of any property and the carrying out of any experiment on or with any property.
- (2) The Court, or any competent court, may execute the request under subsection (1) within its competence and according to its rules on taking evidence.

(3) Sections 30(2), (3) and (6) apply to this section mutatis mutandis.

(28) Renumbered section 55 shall be amended to read as follows:

“55. Form and contents of award

- (1) The award shall be made in writing.
- (2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under section 52.
- (3) The award shall state its date and the seat of the arbitration as determined in accordance with section 33(1). The award shall be deemed to have been made at the seat of the arbitration, irrespective of where it is written or signed, and regardless of the method whereby it is signed, whether it is signed by the members of the arbitral tribunal in person, it is sent to be signed by each member separately, or it is signed by electronic means.
- (4) An award signed by electronic means shall have the same legal validity and enforceability and constitute the original award for the purposes of section 60(2)(a) of these Regulations, as an award with manually executed signatures of arbitral tribunal.
- (5) After the award is made, an electronic copy shall be delivered to each party. An original hard copy of the award shall be delivered on request of a party.
- (6) The arbitral tribunal shall fix the costs of the arbitration in its award or as provided for in subsection (8) below. Unless the arbitral tribunal determines otherwise, the recoverable costs of the arbitration shall be determined on the basis that they are reasonable and proportionate. The term “costs” includes:
 - (a) the fees of the arbitral tribunal to be stated separately as to each arbitrator;
 - (b) the travel and other expenses incurred by the arbitrators;
 - (c) the costs of expert advice and of other assistance required by the arbitral tribunal;
 - (d) the travel and other expenses of witnesses;
 - (e) other costs for the conduct of the arbitration, including those for meeting rooms, technological solutions such as electronic document management and virtual hearing platforms, interpreters and transcription services;
 - (f) the costs for legal representation and assistance of the successful party if such costs were claimed during the arbitration;
 - (g) the costs of any party-appointed experts if such costs were claimed during the arbitration; and
 - (h) any fees and expenses of any arbitral institution or appointing authority.
- (7) In fixing the costs of the arbitration, the arbitral tribunal may direct to whom, by whom, and in what manner, the whole or any part of the costs shall be paid.
- (8) If the arbitral tribunal does not fix the costs of the arbitration in its award, a party to the arbitral proceedings may, within 30 days of receiving the award, apply to the arbitral tribunal for a further award on costs. After giving the parties an opportunity to make representations, the arbitral tribunal shall make a further award on costs.
- (9) Subject only to sections 57 and 61, all awards made by the arbitral tribunal shall be final and binding on the parties.”

(29) In renumbered section 57, new subsections (1) and (2) shall be inserted as follows:

- “(1) The parties are free to agree on the powers of the arbitral tribunal to correct, interpret an award or make an additional award.
- (2) If, or to the extent there is no such agreement, the following provisions shall apply.”

- (30)** In renumbered section 58, subsection (2)(a)(vi) shall be deleted.
- (31)** In renumbered section 59, subsection (2) the word “awards” shall be deleted and replaced with the word “award” and the words “awards are” shall be deleted and replaced with the words “award is”.
- (32)** In renumbered section 60, in subsection (a) the word “Awards” shall be deleted and replaced by the words “arbitral awards”.
- (33)** In renumbered section 61, subsections (2), (3), (4) and (5) shall be amended to read as follows:
- “(2) The party seeking the recognition or enforcement of an award within the meaning of subsection 59(1) shall provide to the Court:
- (a) the original or a duly certified copy of the arbitral award in respect of which enforcement is sought; and
 - (b) a copy of the arbitration agreement pursuant to which that arbitral award was rendered.
- If the award or the agreement is not made in English, the Court may request the party to provide a translation thereof.
- (3) Where, upon the application of a party for the recognition or enforcement of an arbitral award, the Court decides that the award shall be recognised or enforced, it shall issue an order to that effect.
- (4) An order recognising or enforcing an arbitral award shall be issued in English, unless the Court shall determine otherwise. If the Court determines that the order should be issued in another language in addition to English, either language version, in its original or certified copy form, shall constitute sufficient proof of the order for recognition or enforcement.
- (5) Subject to Article 13 of the ADGM Founding Law, awards recognised by the Court may be enforced outside the Abu Dhabi Global Market in accordance with the applicable legislation in force and recognition under these Regulations includes ratification for the purposes of any such applicable legislation.”
- (34)** In Schedule 1 section 1, a new subsection (10) shall be inserted as follows:
- “A reference in these Regulations to a hearing, argument or a report being conducted or delivered orally includes a remote hearing, argument or report that allows parties to orally present their case by using technological solutions such as telephone, video conference or other communication technology.”
- (35)** In Schedule 1 section 3, new subsections (b), (j), (m), (p) and (t) shall be inserted as follows:
- “(b) “arbitral tribunal” means a sole arbitrator, a panel of arbitrators or an emergency arbitrator appointed pursuant to the rules of arbitration agreed to or adopted by the parties or pursuant to these Regulations;”
- “(j) “hearing” includes a procedural hearing or a case management conference prior to or after the presentation of evidence or oral argument;”
- “(m) “ADGM Founding Law” means Law No. (4) of 2013 concerning Abu Dhabi Global Market, as amended by Law No. (12) of 2020, issued by His Highness the Ruler;”
- “(p) “Party Representative” means any person, including an employee of a party, who appears in an arbitration on behalf of a party and makes submissions, arguments or representations to

the arbitral tribunal on behalf of such party (other than as a witness or expert), whether or not they hold a legal qualification or are admitted to practice law in any jurisdiction;”

“(t) “third party funding agreement” means an agreement under which a person (“the funder”) agrees to fund (directly or indirectly and in whole or in part) the provision of advocacy or litigation services (by a person other than the funder) to a party in return for a sum payable by the party in specified circumstances; and”

and in renumbered subsection (r), the words “, as amended in December 2020.” shall be inserted at the end of the paragraph.

(36) A new Schedule 2 shall be inserted as follows:

“SCHEDULE 2
MANDATORY PROVISIONS OF THE REGULATIONS

The mandatory provisions referred to in section 9 of the Regulations are the following:

Section 11 (Waiver and loss of right to object);
Section 12 (Extent of court intervention);
Section 14 (Arbitration agreement);
Section 16 (Stay of legal proceedings);
Section 20 (Grounds for challenge);
Section 22 (Failure or impossibility to act);
Section 24 (Liability of arbitral tribunal and others);
Section 26 (Objection to the substantive jurisdiction of tribunal);
Section 27 (Determination of preliminary point of jurisdiction);
Section 29 (Recognition and enforcement of interim measures by the Court);
Section 30 (Power of the Court to order interim measures);
Section 31 (Privacy of arbitration related court proceedings);
Section 32 (Fair treatment of parties);
Section 33(4) and (5) (Determination of rules of procedure);
Section 34(2) (Seat of arbitration);
Section (1) and (2) (Disclosure of a third-party funding agreement);
Section 37(3) (Consolidation orders – limitation periods);
Section (Party and party’s representatives conduct);
Section 44(2) (Confidentiality of arbitral proceedings and awards);
Section 46(3) and (4) (Expert report or evidentiary document);
Section 47 (Court assistance in taking evidence);
Section 48(1) and (3) (Rules applicable to substance of dispute);
Section 53 (Awards on different aspects of matters);
Section 54(1) and (3) to (9) (Form and contents of award);
Section 55(1) to (4) (Termination of proceedings);
Section 58 (Waiver of the right to bring an action for setting aside);

Section 59 (Application of this Part);
Section 60 (Recognition and enforcement of awards); and
Section 61 (Grounds for refusing recognition or enforcement).”

- *End* -