

Dispute Resolution

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About the author:



Guest Blogger

P.R.I.M.E. Finance, the Hague-based Panel of Recognised International Market Experts in Finance, has published a draft of its revised Arbitration Rules (the Rules) for public comment. Georges Affaki (GA), partner at AFFAKI and chair of the P.R.I.M.E. Finance Rules Review Drafting Group, Kasper Krzeminski (KK), Secretary-General of P.R.I.M.E. Finance and co-head of NautaDutilh's international arbitration practice, and Camilla Macpherson (CM), P.R.I.M.E. Finance's Head of Secretariat, discuss the rules revision project and the draft revised rules for LexisNexis®.

What is the background to the project?

CM: P.R.I.M.E. Finance was founded in 2012 with a mission to ensure that the requisite expertise was available for the resolution of disputes relating to derivatives and other complex financial products. It now offers a specialist forum for banking and financial disputes, including an unparalleled panel of more than 200 leading arbitration and finance experts. The Rules are designed to provide parties with a specialised mechanism for resolving financial disputes. The Rules are currently under review and we have recently launched a draft set of revised rules for public comment. The draft can be downloaded [here](#).

What is the motivation for the review?

KK: The Rules were last reviewed in early 2016, when P.R.I.M.E. Finance joined forces with the Permanent Court of Arbitration (the PCA), with the PCA taking on the role of administering any arbitration brought under the Rules. The purpose of re-visiting the Rules now is to ensure that they are fit for purpose for users, reflect current best practice in arbitration, and still preserve and expand features of particular interest to financial market participants.

GA: Our guiding aim with this review is to offer arbitrators and users a comprehensive, clear, and straightforward set of procedural rules specially designed for the arbitration of complex financial disputes. The draft rules seek to achieve a balance between empowering tribunals to rule on all the situations that may arise in the course of the proceedings, while also ensuring the transparent, fair, and equal treatment of the parties. The Rules are suitable for a wide range of disputes, including those arising in relation to derivatives, sovereign lending, investment and advisory banking, financing, private equity, asset management and smart contracts. Non-bank parties and financial institutions conducting ordinary business transactions can also choose to use the Rules.

CM: Emerging areas such as fintech and sustainable finance are also giving rise to disputes. Again, the Rules are tailored to resolving such disputes quickly and efficiently.

What are the key proposed changes?

KK: Too many to list here! For a full picture of all the changes, readers are advised to take a look at the complete draft. In brief, however, key features include a central role for the PCA, greater transparency, provisions to address complex arbitrations, emergency and expedited rules and an emphasis on efficiency.

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GA: By way of example, the draft revised rules aim to ensure transparency throughout the arbitration process, from disclosure of third party funding arrangements and permitting industry bodies such as ISDA to make *amicus curiae* submissions on issues of interest to financial markets to the publication of awards in anonymised form. We also wanted to grapple with the complexities that arise when disputes involve many parties, often with different interests. With this in mind, the draft Rules include detailed revised joinder and consolidation provisions, and a provision enabling separate arbitrations that are not eligible for consolidation to be coordinated in certain cases.

CM: Efficiency is also a priority. The revised rules include expedited rules which will apply automatically to arbitrations with an amount in dispute of EUR 4 million or less. We have also incorporated various timelines to speed up the process. For example, tribunals with three or more members are required to render the final award within 90 days of the closing of the hearing (or the receipt of the last submissions authorised by the tribunal); for sole arbitrators, the time limit is 60 days.

How are you consulting on the proposed changes?

GA: Our first step was to set up a two-tiered structure for the review, comprising a drafting group and a consulting group, with the latter providing guidance and strategic advice. The consulting group is chaired by White & Case's Carolyn Lamm and Heikki Cantell of the Nordic Investment Bank. Both groups bring together pre-eminent experts with a range of banking and arbitration experience.

CM: We have now moved on to a public consultation, putting the draft revised rules on our website and inviting written comments. We are also holding a series of virtual consultations in coming weeks, in the course of which we will introduce the key features of the revised rules and invite discussion. Our first public consultation takes place on 9 February. Do join us!

KK: We are particularly keen for our ideas to be put to the test by way of a public consultation, to ensure that the final version of the rules meets the expectations of those who will use them.

What are the next steps?

CM: The deadline for comments on the draft is 22 March 2021. After that, we look forward to reviewing all input received within the drafting and consulting groups. We plan to launch the revised rules later in 2021.

The first public consultation on the Rules takes place on 9 February at 12:00 London / 13:00 CET. Register [here](#).

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