

Ukrainian centre revamps rules

The International Commercial Arbitration Court of Ukraine, or ICAC, in Kiev – which celebrated its 25th anniversary last year – has overhauled its rules, introducing new provisions on interim measures and expedited proceedings.

The new rules took effect on 1 January, marking the first time that ICAC has revamped them since 2007. The court says it was partly inspired to update its rules after Ukraine enacted major legislative reforms to its procedural codes last year.

The latest rules include several new provisions expanding the power of arbitrators. In its provisions for interim measures, arbitrators may modify or terminate interim measures previously granted or require a party to provide security to reimburse possible damages.

Arbitrators have further scope to punish parties and legal counsel for acting in bad faith when ordering costs – a new provision that reflects recent concern over ethical behaviour in arbitration.

Parties also have greater freedom under the 2018 rules. For the first time, they may request expedited proceedings if they have provided for it in their arbitration agreements. Under this new procedure, respondents must file a statement of defence within 10 days and arbitrators must render an award within 20 days (rather than 30) following completion of the proceedings. Parties may also agree to conduct proceedings in any language (a change from the previous rules, which provided that proceedings must be conducted in Ukrainian or Russian) and are no longer prohibited from seeking interim measures from a state court to secure their claims before ICAC.

The applicability of the rules has also expanded, with parties being deemed to have submitted their dispute to the court where they have specified ICAC rules but failed to identify an arbitral institution or incorrectly referred to the name of the court.

The rules contain further provisions for joinder of third parties, case management, and a requirement for parties to indicate the value of their claim, even in cases where the claim or part of it is non-monetary in nature.

The ICAC opened its doors in 1992 and is overseen by a 10-member steering committee led by president Mykola Selivon and vice presidents Tetiana Zakharchenko and Liudmyla Vinokuova, and secretary general Zoia Lytvynenko.

Its drafting committee for the new rules included foreign and local arbitrators, scholars and practitioners as well as the court's officers.

According to a recent report, the court registered 553 new cases in 2016. The cases involve parties from 56 different countries, with 47% coming from Europe and the remaining parties from the Commonwealth of Independent States (27%), Asia (18%), North and South America (7%) and Africa (1%).

In line with other major arbitral institutions, ICAC also released figures on gender diversity. Of the 750 arbitrators appointed in 2016, 40.7% (305) were women.

In a surprising twist, more than half of appointments (52.9%) made by parties went to women – a stark contrast to data from other arbitral institutions, which show that parties are less likely to appoint female arbitrators.

In contrast, only 38.7% of the arbitrators appointed by the president of the Chamber of Commerce and Industry of Ukraine were women. Women were also less likely to chair a tribunal: of the appointments made by co-arbitrators, a mere 20% were women.

On its website, ICAC says it has rendered awards in a total of 10,300 cases over the past 25 years. Its panel of arbitrators include 115 practitioners across 34 countries, including China, India Spain, and the US.