

The 2022 P.R.I.M.E FINANCE Arbitration Rules

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P.R.I.M.E. Finance stands for the Panel of Recognised International Market Experts in Finance. It is intended to help resolve, and to assist judicial systems in the resolution of, disputes concerning complex financial products.

P.R.I.M.E Finance first published a set of arbitration rules in 2016. As noted in the P.R.I.M.E Finance website (<https://primefinancedisputes.org/page/p-r-i-m-e-finance-arbitration-rules>), the arbitration rules

“are designed to be suitable for a wide range of financial disputes, including those arising in relation to derivatives, sovereign lending, investment and advisory banking, financing, private equity, fintech and sustainable finance.”

The 2016 rules have been repealed by an updated set of rules, which came into effect on 1st January 2022. Among other things, the 2022 rules confirm the central role of the Permanent Court of Arbitration (PCA) in administering proceedings conducted under the rules and address a range of contemporary issues, including complex multi-party and multi-contract arbitrations, transparency, and emergency and expedited procedures.

a) The role of the Permanent Court of Arbitration

The PCA, which is headquartered in The Hague, is the world’s oldest arbitral institution and possesses extensive experience in administering complex international arbitration proceedings. It is responsible for administering arbitrations under the 2022 rules (**Article 4**). The PCA also enjoys the power to extend or abridge at its sole discretion any period of time prescribed under the rules or agreed by the parties.

b) Transparency

The theme of transparency is prominent throughout the updated rules. For instance, **Article 5 (3) (g)** requires parties to disclose the identity of any third party with a significant interest in the outcome of the dispute or third parties funding any claim or defence, as well as the nature of their interest in the outcome of the dispute.

Additionally **Article 29** gives the arbitral tribunal power to invite or grant leave to an industry body to appear before it as amicus curiae and make submissions on relevant issues.

Finally, **Article 39 (10)** of the rules allows the PCA to publish an anonymized copy of the award publically within 30 days of receipt of an award or other decision of the arbitral tribunal if there is no objection from any party within that time frame.

These amendments are aimed at making proceedings as transparent as possible.

c) Efficiency

The updated rules aim to achieve efficient, effective and time-saving proceedings. For example, **Article 16** calls for the arbitral tribunal to conduct the proceedings so as to avoid unnecessary delay and expense. The same provision requires a tribunal to convene a case management conference with the parties within 30 days of its constitution.

Article 39 (8) requires that in the case of an arbitral tribunal of three or more arbitrators, the final award shall be rendered within 90 days of the closing of the hearing. The updated rules set a time limit of 60 days (of the closing of the hearing) in case of a sole arbitrator.

Finally, **Article 16 (5)** empowers the tribunal to take steps to facilitate the settlement of the dispute or any specific disputed issues before it. Any such facilitation may not be utilized by any party as grounds for the challenge of any of the arbitrators or for the set aside or refusal of enforcement of any award rendered by the arbitral tribunal.

d) Emergency and Expedited procedure

In the same spirit of enhancing efficiency and save time, the provisions on emergency and expedited proceedings have also been updated.

Article 17 (1) of the updated rules states that notwithstanding any contrary provision of the arbitration agreement, a sole arbitrator shall be appointed in respect of expedited proceedings, unless the PCA determines that it is more appropriate to appoint three or more arbitrators. Additionally, arbitrations involving an amount in dispute of EUR 4 million or less shall automatically be conducted as expedited proceedings

e) Complex arbitrations

As a result of the complexity of financial transactions, there is a possibility of having multiple parties with multiple contracts to a transaction whose interests may not be aligned. The rules have detailed provisions for joinder (the inclusion of additional parties in an arbitration) in **Article 31** and on consolidation (the combination of multiple arbitrations into one proceeding) in **Article 32**.

f) Tax

In **Article 43**, the arbitral tribunal may, after consulting the parties, take into consideration in any award or other decision any tax consequences of any amounts payable thereunder.

Conclusion

The 2022 update to the 2016 the P.R.I.M.E. Finance Arbitration Rules undoubtedly enhances the attractiveness of the rules for use in disputes concerning complex financial products in what is an increasingly competitive market. The updated rules are complemented by access to a panel of arbitrators maintained by P.R.I.M.E. Finance, which, as of the launch of the 2022 Rules, comprised over 200 international specialists with suitable expertise.

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