



Dispute Resolution

Beijing Arbitration Commission Makes a Breakthrough Revision to Arbitrator's Fee Schedule, Further Aligns with International Practices

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On July 19, 2019, the Beijing Arbitration Commission (“**BAC**”) issued a new version of the *Beijing Arbitration Commission Arbitration Rules* and an appendix “Fee Schedule” (which will be effective on September 1, 2019, the “**New Rules**”). The New Rules introduce revisions or formulate new provisions, including with respect to the fee schedule, the administration of arbitration procedures, and multi-contract arbitrations. Among them, the revision of the arbitrator's fee schedule is considered to be groundbreaking and of great significance.

How arbitrator's fees are charged is a significant issue in international and domestic arbitrations

Arbitrator's fees are of importance because:

- First, they determine to a certain extent the cost of the parties to participate in arbitration proceedings.
- Second, they relate to and influence the arbitrators' commitment to the case in terms of time and energy.
- Third, a reasonable fee schedule can effectively improve the specialization and professionalism of arbitrators, and provide assurance as to the independence and impartiality of arbitrators.

There have long been substantial differences in the arbitrator's fee schedule between domestic and international arbitration institutions

These differences mainly include:

- First, in domestic arbitration, the arbitrator's fee charging standards and amounts are not transparent. Domestic arbitration institutions typically publish the fee schedule, which mainly includes a case acceptance fee and a case handling fee. However, the percentage of the fees which will be paid to

the arbitrator is unclear to the parties, nor is such percentage specified in the arbitral award. This differs from international arbitrations, where the calculation and amount of the arbitrator's fee is disclosed and clear to the parties.

- Second, in domestic arbitration, the parties have no right to decide the arbitrator fees charging rules. The arbitrator fee charging rules are essentially determined by the arbitration institution, while the parties and arbitrators have no say in that process. However, in international arbitrations, the parties may negotiate with the arbitrators regarding their fees.
- Third, in most cases, domestic arbitration institutions do not charge arbitrator fees on an hourly basis (especially for domestic arbitrators). However, in the course of international arbitrations, hourly billing is a widely adopted and accepted charging method for arbitrators.

The New Rules make breakthrough revisions to the arbitrator's fee schedule, further aligning with international arbitration practices

The revisions mainly include:

I. Giving transparency to arbitrator fees by clearly dividing arbitration fees into arbitrator's fees and administration fees

According to the 2015 edition of the *Beijing Arbitration Commission Arbitration Rules* (the "**Current Arbitration Rules**"), like most domestic arbitration institutions, the fees BAC charges are divided into two parts: the case acceptance fee and the case handling fee.

The New Rules divide the fees charged by the BAC into "arbitrator's fees" and "administration fees", to replace the previous "case acceptance fees" and "case handling fees", which improves the transparency of BAC arbitrator fees.

II. Setting minimums and maximums for arbitrator's fees and administration fees

■ Appropriately raising minimum fees

According to the Current Arbitration Rules, the minimum fee is RMB 14,550 for arbitration cases involving amounts in dispute of up to RMB 250,000. Since the current charging standards are insufficient to cover the arbitrator's fees and administration costs, the New Rules provide that for cases involving amounts of RMB 250,000 or less, the minimum arbitrator's fee is RMB 12,000 and the minimum administration fee is RMB 5,000, a total of RMB 17,000.

■ Setting a maximum fee amount

In addition to raising minimum fees, the New Rules also set capped fees to reduce arbitration costs of parties when administering cases involving large amounts in dispute. Specifically, the arbitrator's fee may not exceed RMB 18 million (for three arbitrators), which corresponds to an amount in dispute of RMB 8.682 billion. The administration fee may not exceed RMB 8.761 million, which corresponds to an amount in dispute of RMB 5 billion. This means that the total fee cannot exceed these capped

amounts for arbitrator's fees and administration fees, even if the amount in dispute in an arbitration case exceeds RMB 8.682 billion or RMB 5 billion, respectively.

Compared with the fee schedule in the Current Arbitration Rules, the use of these capped amounts will effectively control the arbitration costs of the parties.

III. Allowing parties the option to pay arbitrator fees on an hourly basis

It is common in international arbitration for arbitrators to bill at hourly rates. Hourly billing has its advantages, for example, it may encourage arbitrators to invest adequate time and effort in the case and ensure quality case handling. In addition, the arbitrator's fees will be proportionate to his or her efforts and therefore better reflect the value of the arbitrator's professional skills and service.

According to the New Rules, arbitrators may charge fees on an hourly basis, provided it is so provided in an agreement between the parties. However, the hourly rate cannot in principle exceed RMB 5,000, in order to control the parties' arbitration costs.

IV. Implementing a new fee schedule for emergency arbitrator procedures

According to the Current Arbitration Rules, the fee schedule for emergency arbitrator procedures are as follows: RMB 10,000 for a single interim measure and an additional RMB 2,000 for each interim measure thereafter.

The New Rules revise the original charging method and divide the fees into administration and emergency arbitrator's fees. Generally, the administration fee is fixed at RMB 10,000 and the emergency arbitrator's fees are a minimum of RMB 20,000. The fees may be increased appropriately depending on the specific circumstances of the case. The parties may also agree that the emergency arbitrator's fees be calculated at an hourly rate, which should be determined by the parties and the emergency arbitrator through negotiations.

V. Expedited procedures are now available for cases involving amounts not exceeding RMB 5 million, rather than the previous RMB 1 million

According to the Current Arbitration Rules, expedited procedures generally apply to cases in which the amount in dispute does not exceed RMB 1 million. The New Rules increase this amount to RMB 5 million. The parties may, however, continue to apply the ordinary procedures in cases not exceeding RMB 5 million if they so agree.

The primary differences between the expedited procedure and the ordinary procedure are that the expedited procedure is tried by a sole arbitrator and the timing of the arbitration is more compact. Handling cases with amounts in dispute of not more than RMB 5 million through the expedited procedure, can effectively improve the efficiency of resolving such cases. At the same time, however, greater requirements are placed on the professional competence of the arbitrator.

Overall review of the breakthrough revisions to the arbitrator's fee schedule in the New Rules

In general, the BAC's latest revisions to the arbitrator's fee schedule are of great significance for promoting the integration of domestic institutional arbitration with international arbitration practices and promoting the professionalism of domestic arbitrators, which are reflective of BAC's efforts to promote the internationalization of Chinese arbitration.

How arbitrators charge their fees is, of course, only one of the main aspects of arbitration. It is necessary to ensure that these revisions can actively promote the overall development of the arbitration system and ensure that arbitration, as the primary method for dispute resolution, achieves the dual value objectives of fairness and efficiency, which still relies on the advancement of other elements.

Important Announcement

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