

Association Internationale de Droit des Assurances

**A.R.I.A.S. (UK)**

A.I.D.A. Reinsurance and Insurance Arbitration Society of the UK

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## **A guide to AFTAR**

### **The ARIAS UK Fast Track Arbitration Rules**

#### **Introduction**

The ARIAS UK Fast Track Arbitration Rules offer the insurance and reinsurance user a faster and lower cost dispute resolution alternative to the traditional three person panel for matters where a sole arbitrator is appropriate. The Rules have been drafted by a Committee of market practitioners and experienced solicitors drawing on prior successful *ad hoc* fast track sole arbitrator references and on consultation with market users.

It is not anticipated that use of these Rules will supplant the three person panel for all cases. The Rules simply recognise that disputes of a limited scope, particular urgency, modest value, or of a 'one-off' kind may be more cheaply and swiftly resolved by a sole arbitrator. That being the case, ARIAS UK's Committee considered users of London arbitration should be offered Rules drafted for that purpose.

The Rules came into effect on 3<sup>rd</sup> October 2013. With their accompanying notes they may be found on the ARIAS UK website. This guide seeks to answer the questions which the Committee anticipates users may have about the Rules and their intended operation.

## Frequently Asked Questions

- 1. How may parties adopt the Rules?** The Rules have been drafted to be self-standing so that parties may adopt them on an *ad hoc* basis to resolve differences under existing contracts. The option of incorporating the Rules into a new policy or contract is also available; a specimen AFTAR arbitration agreement clause appears on the ARIAS UK website.
- 2. Are there any thresholds, limits or other restrictions on the type of dispute for which the Rules may be used?** No. The Committee considers that the parties are best placed to judge whether a difference or dispute is apt for resolution by AFTAR.
- 3. How should that choice be made?** The four types of dispute which the Committee had in mind in drafting AFTAR are noted in the Introduction above; that list is not exhaustive. As drafted, the AFTAR process is not suggested to be suitable for issue- or evidence-heavy disputes, nor for those where a three person tribunal's unique value lies in its members' personal market experience of the class of risk in question.
- 4. How is the arbitrator chosen?** Unlike other arbitral rules, AFTAR assumes that the parties, properly advised, will be best placed to choose a suitable sole arbitrator; should agreement not be possible, ARIAS UK acts as the appointing party.
- 5. Can ARIAS assist in that choice?** Yes. The ARIAS UK website lists all active members of the Society and indicates which are ready to serve as a sole arbitrator. These members, who make up nearly half the membership, are not confined to arbitrators with a legal background.
- 6. What qualifications must the arbitrator have?** This will either be determined by the arbitration agreement in the original policy or contract or by *ad hoc* agreement. Since the Rules will usually lead to a reasoned Award an arbitrator who is comfortable with that role would be preferable.
- 7. What law is applicable?** The Rules anticipate that unless otherwise agreed, the seat of the arbitration will be London [Rule 10] so the procedural law of the arbitration will be English. The proper law of the original contract or policy will be as it provides; if that is silent, in default of *ad hoc* agreement, resort will have to be made to private international law to determine the answer.

8. **How are existing time limits protected?** Rule 4.2 ensures that if the original contract or policy contains a different arbitration agreement, a valid appointment under that will also protect time for any AFTAR process. The purpose of this rule is to enable parties to protect time without losing the opportunity to substitute an AFTAR solution.
9. **How are greater speed and lower cost expected to be achieved?** Experience demonstrates that the swift ascertainment of the real issues (i.e. those which most concern the contracting businesses), the early fixing of a final hearing date and the creative use of procedure to meet that date all improve expedition. That in turn curtails cost. The Rules encourage each of these to the fullest extent possible – see Rules 4,5, 9,10, 11 and 12.
10. **What is the contemplated “Fast Track” timescale?** The Rules anticipate proceedings closing within 4 months of the arbitrator’s appointment and the Award following swiftly thereafter, a matter which the Committee recommends be explored with the intended appointee at the outset. The Rules then seek to eliminate ‘foot-dragging’ by providing for the earliest possible procedural hearing [Rule 9] at which point this ‘closing date’ and the necessary timetable to meet that date are fixed. In the usual case, all evidence, submission and argument will be completed by that date. The presumption is that oral argument and evidence will be the exception, not the rule.
11. **What is the position on appeal?** The Rules do not affect rights of appeal. Thus, where London is the seat of the arbitration, AFTAR preserves but does not mandate the current restrictions on appeal set out in the Arbitration Act 1996. Parties wishing to vary that position should refer to the relevant sections of the Act.

## Feedback

The Committee considers the provision of fast and cost efficient dispute resolution to be of considerable importance to the insurance and reinsurance industries and to London’s standing as a dispute resolution centre. AFTAR represents a new initiative hoped to meet that need without jeopardising London arbitration’s reputation for fairness and certainty. The Committee will warmly welcome feedback on the Rules and their operation, in particular from practitioners and contracting parties who have adopted them. If directed to the Administration Secretary, all such feedback will be brought before the Committee for consideration.