SQUIRE PATTON BOGGS

HEAP and the missing middle: A construction lawyer's reflection on the ICC's new speed rules

August 2026

The 2026 International Chamber of Commerce (ICC) Arbitration Rules, in force since 1 June, introduce the Highly Expedited Arbitration Provisions (HEAP), offering a final award within three months.

It's a genuinely interesting innovation, and understandably one of the most talked-about features of the revision. Looking at it from a construction disputes perspective though, where dispute boards and statutory adjudication have shaped procedure for over two decades by now, it's worth pausing on a question that the ICC's published materials don't seem to address directly: given that construction has already tested a fast, compressed process paired with a revisable outcome (the ability to review the adjudication outcome in court), why does HEAP build its version of speed around finality instead?

Two separate dimensions worth looking at

Dispute resolution design arguably has two independent dimensions, namely, how quickly the process runs and whether the outcome is final or provisional. Full arbitration sits at slow-and-final. HEAP sits at fast-and-final.

Statutory adjudication and International Federation of Consulting Engineers (FIDIC)-style Dispute Avoidance/Adjudication Boards (DAABs) occupy a different space, which is fast and provisional. That combination isn't incidental because it's arguably what makes the compressed procedure commercially workable in the first place. A DAAB can decide a valuation dispute in under three months on a limited record partly because the losing party isn't being asked to treat that decision as the last word. They comply now and, if they still want to, argue the point properly later in arbitration. The rough edges of a fast process are easier to live with when there's a corrective tier sitting above it.

HEAP takes the speed of that model, without the same safety net. A HEAP award is final, and where the parties agree, can even be unreasoned. That's a meaningfully different commercial proposition from a DAAB decision, even where the timetables look similar on paper.

What the ICC's own materials suggest

To be fair to the ICC, this doesn't look like a case of weighing a DAAB-style provisional model against finality and choosing finality for stated reasons. Reviewing the "Unveiling the 2026 Rules" commentary on HEAP, the emphasis is largely procedural; embracing a sole arbitrator, front-loaded submissions, an optional documents-only process and an award within three months. The framing is that HEAP delivers a fast, fully enforceable award, while preserving the quality associated with ICC arbitration generally. There doesn't appear to be a published discussion of why an interim or advisory model wasn't considered as an alternative.

HEAP is also presented as a natural extension of emergency arbitration, which already deals with interim relief, suggesting a continuum running from urgent interim protection through to a rapid final merits decision, without an obvious place on that continuum for a provisional merits determination.

That sequencing is suggestive rather than conclusive, but it points toward HEAP having been developed within a model where speed is the main variable and finality was more or less assumed, rather than one where a provisional alternative was actively weighed and set aside. If that reading is right, it's a slightly different and perhaps more useful criticism than saying the ICC got the trade-off wrong; it's closer to saying the trade-off may not have been fully in view, even though it's one the construction sector has been quietly testing for over 20 years.

Why this might matter in practice?

For construction disputes, which occupy almost 50% of the disputes dealt with in the ICC, there's a mismatch worth thinking through. Adjudication and DAAB determinations are deliberately rough justice, and that's tolerated because a full-merits corrective sits underneath them.

If that corrective process is itself compressed into three months, and largely documents-based, there's a risk that the rough-justice exercise effectively happens twice, with the second version made final.

That could leave parties with something less useful than either extreme on its own, namely, arbitration-priced fact-finding, conducted at something closer to adjudication quality, without a further tier to catch errors that compression tends to produce in factually complex disputes, which of course describes a fair number of delay, defects and final-account disputes.

There's also a practical dynamic around consent worth flagging gently. HEAP only applies where parties agree to it, and post-dispute, the party proposing a compressed timetable is often the one who stands to benefit most. The side holding most of the documents, or the one with a more developed case already? The party for whom HEAP genuinely suits the dispute and the party willing to agree to it won't always be the same. Building HEAP into the arbitration clause before any dispute exists carries a related risk that at drafting stage nobody can really know whether the eventual dispute will be a modest point of valuation or something far larger, and a pre-agreed clause captures both without distinction.

Where HEAP may genuinely fit well.

None of this suggests HEAP is a poor idea across the board – it looks well suited to a fairly specific category of case such as discrete, largely documentary disputes, a point of contractual interpretation, a bond call or a defined final-account line item where the facts are essentially agreed and both parties want a quick, final answer, ideally decided by agreement once the dispute has actually taken shape.

It may also find a more natural home outside construction altogether, in sectors without an existing interim tier such as share-price adjustments, trade disputes and agency terminations where it could genuinely fill a gap rather than sitting alongside, and arguably duplicating, a tier that already exists.

For FIDIC-based contracts specifically, a reasonably cautious approach might be to preserve the DAAB tier for what it already does well, that is to say dispute avoidance and interim cash-flow protection during the works but think very carefully before building HEAP into the arbitration clause itself, particularly for contracts of unpredictable scale.

Treating it instead as an option to consider once a dispute has crystallised, and only where it genuinely fits the narrower profile above, seems the more prudent course.

The broader reflection is about how institutional reform tends to get made. Speed and finality often behave as substitutes rather than complements; meaning gaining one typically means giving up some of the other. A rules revision that borrows the outward form of adjudication without fully engaging with the feature that makes adjudication work is not necessarily wrong, so much as still developing. Construction lawyers, who've lived with that particular trade-off for two decades, are simply well placed to point it out.

Contact

Graeme Bradley
Partner, Birmingham
T +44 121 222 3233
graeme.bradley@squirepb.com

71918/08/26