



ICC Adopts Revised Arbitration Rules

By [Stephen P. Anway](#)

On 12 September 2011, the International Chamber of Commerce (“ICC”) unveiled its much-anticipated revised Rules of Arbitration (the “ICC Rules”). The new ICC Rules replace the 1998 version and contain a number of significant amendments, including new provisions addressing multi-party and multi-contract arbitration and a new emergency procedure that allows parties to seek urgent interim relief before the constitution of the arbitral tribunal.

Created in 1923 in Paris, the International Court of Arbitration (the “Court”) of the ICC is the world’s leading center for international commercial arbitration. The Court is not a “court” in the traditional sense but, rather, an arbitral institution that administers arbitrations under the ICC Rules. The Court has administered more than 17,000 cases in its almost 90-year history. In 2010 alone, it registered 800 new arbitrations, seated in more than 50 countries, and involving parties from nearly 140 countries.

The process to revise the ICC Rules began in 2008 and was undertaken by a small drafting committee, supported by a wider task force of more than 200 members in consultation with ICC national committees around the world and the ICC Commission on Arbitration. Approved by the ICC World Council in June 2011, the revised ICC Rules will come into force on 1 January 2012 and will apply to ICC arbitrations commenced thereafter, unless the parties agree otherwise.

While the new Rules preserve the hallmark aspects of ICC arbitration – including the terms of reference and the ICC Court’s scrutiny of awards – several revisions seek to increase the speed and reduce the cost of ICC arbitration. Key changes include:

- **Basis of the claim and amounts claimed.** Article 4(3) requires that a claimant must include in the request for arbitration the “basis upon which the claims are made” and “a statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims.”
- **Initial jurisdictional challenges.** Article 6(3)-(4) provides that the ICC secretary general will perform an initial screening function of initial jurisdictional objections and only those jurisdictional objections that have a significant chance of success will be referred to the ICC Court; the balance of the objections will be referred to the arbitral tribunal when constituted.
- **Joinder of parties.** Article 7 states that a party to ICC arbitration may request joinder of an additional party, provided that the request is made before the appointment of an arbitrator.

- Multiple contracts. Articles 8 and 9 include rules governing arbitrations involving claims between multiple parties and/or involving multiple contracts.
- Consolidation of arbitrations. Article 10 states that the Court may, at the request of a party, consolidate two or more arbitrations pending under the ICC Rules into a single arbitration, where: (i) the parties have agreed to consolidation; (ii) all of the claims in the arbitrations are made under the same arbitration agreement; or (iii) where the claims in the arbitrations are made under more than one arbitration agreement, the arbitrations are between the same parties, the disputes in the arbitrations arise in connection with the same legal relationship, and the Court finds the arbitration agreements to be compatible.
- Arbitrator Availability. Article 11 requires a prospective arbitrator to sign a statement not only of independence, but also of impartiality and availability.
- Direct appointment. Article 13(4) provides that, where a party does not nominate an arbitrator, the ICC Court can bypass the national committees and make the appointment directly if (i) one or more of the parties is a state or state entity; (ii) the Court considers that it would be appropriate to appoint an arbitrator from a country or territory where there is no national committee or group; or (iii) the president of the Court certifies to the Court that circumstances exist which, in the president's opinion, make a direct appointment necessary and appropriate.
- Confidentiality. Article 22(3) states that upon the request of any party, the arbitral tribunal may make orders concerning the confidentiality of the arbitration proceedings or of any other matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.
- Case management conference. Article 24 directs the arbitral tribunal to convene a case management conference to consult the parties on procedural measures when drawing up the terms of reference or as soon as possible thereafter.
- Timeliness of award. Article 27 requires that, as soon as possible after the last hearing concerning matters to be decided in an award or the filing of the last authorized submissions concerning such matters, the arbitral tribunal shall inform the secretariat and the parties of the date by which it expects to submit its draft award to the Court for approval.
- Emergency arbitrator provision. Article 29 permits an "emergency arbitrator" to issue interim or conservatory relief before the full constitution of the arbitral tribunal.
- Basis for award of costs. Article 37(5) expressly permits the arbitral tribunal, in awarding costs, to take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.

Of these modifications, the emergency arbitrator provision is perhaps the most significant. Although there was a similar provision under the 1998 ICC Rules, parties were required to expressly adopt that procedure in their arbitration clause; if the arbitration clause was silent on the issue, the procedure did not apply. Under the revised ICC Rules, by contrast, the emergency arbitrator procedure applies by default. Appendix V to the ICC Rules sets forth the emergency arbitration procedures. Nevertheless, the new emergency arbitrator provision does not prevent the parties from seeking interim or conservatory relief from national courts prior to the constitution of the arbitral tribunal.

Although the vast majority of ICC cases are commercial disputes, the ICC also administers investment treaty arbitrations in which a foreign investor brings an arbitration claim against a state under a bilateral or multilateral investment treaty. In recognition of the growth of such cases, the revised ICC Rules dropped language that had described the ICC as a center for resolving “business” disputes – thus recognizing the applicability of the revised ICC Rules to both commercial and noncommercial (investment treaty) arbitration.

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