client alert

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ICC Arbitration Rules 2026: What has changed and What it means in Practice

I. Introduction

The International Chamber of Commerce has revised its arbitration rules with effect from June 1, 2026 (**2026 Rules**). The 2026 Rules apply to any arbitration commenced on or after June 1, 2026, unless the parties have agreed to submit to the rules in effect on an earlier date. The previous iteration of the rules, i.e., the 2021 Rules, will continue to govern arbitrations already underway.

The 2026 Rules represent a significant structural overhaul of the ICC framework. The substantive provisions have been renumbered throughout and a number of provisions previously buried in appendices have been elevated into the main body of the rules. Some of the major consequential changes are the abolition of the mandatory Terms of Reference, the introduction of an early determination mechanism, the creation of a new Highly Expedited Arbitration procedure, ex parte preliminary orders before an Emergency Arbitrator, and a more flexible framework for fixing the time limit for the final award. Each of these is considered in detail below.

1. Terms of Reference: Abolished

The Terms of Reference (**ToR**) was the defining procedural feature of ICC arbitration. Under the 2021 Rules, the arbitral tribunal was required to draw up a document recording the parties' details, a summary of their respective claims, a list of issues to be determined, the arbitrators' details, the seat, and the applicable procedural rules - within 30 days of receiving the file. The ToR had to be signed by both the parties and the tribunal, or approved by the ICC International Court of Arbitration (**Court**) if a party refused to participate.

The ToR has been removed entirely from the 2026 Rules. Tribunals are no longer required to prepare ToRs, which has long been a hallmark of ICC arbitration. This removal appears to be directed at saving time and cost since the ToR process involved substantial work resulting in front-loaded expenditure of time and cost.

The most significant procedural consequence is the shift in the cut-off date for new claims. Under the 2021 Rules, no new claims could be made after the ToR was signed or approved. Under the 2026 Rules, no party may make new claims after the initial Case Management Conference unless authorised by the arbitral tribunal (*Article 25*). In determining whether to allow new claims the tribunal shall consider the nature of the new claims, the stage of the arbitration, any cost implications and any other relevant circumstances.

2. Case Management Conference: Greater Role

With the ToR gone, the initial Case Management Conference (**CMC**) takes on a more central procedural role.

Timing and Convening

The arbitral tribunal must hold an initial CMC to consult the parties on procedural measures within 30 days of receiving the file from the Secretariat (*Article 24(1)*). The Secretary General may extend this time limit on a reasoned request from the tribunal or on the Secretary General's own initiative if considered necessary.

Procedural Timetable

During the initial CMC, or as soon as possible thereafter, the arbitral tribunal shall establish the procedural timetable it intends to follow for the efficient conduct of the arbitration, and the procedural timetable and any modifications thereto shall be communicated to the Secretariat and the parties (*Article 24(2)*).

The arbitral tribunal may conduct further CMCs to facilitate the efficient conduct of the proceedings. This is a new provision, and it signals a shift towards ongoing active case management rather than a single early conference (*Article 24(4)*). Please note that though the 2021 Rules permitted the arbitral tribunal to "*adopt further procedural measures or modify the procedural timetable*" by way of a CMC or otherwise, the 2026 Rules allow higher flexibility to the arbitral tribunal in this regard.

New Claims After the CMC

After the initial CMC, no party may make new claims unless authorised by the arbitral tribunal. (Article 25). In determining whether to allow such new claims, the tribunal shall consider the nature of the new claims, the stage of the arbitration, any cost implications and any other relevant circumstances. The reference to "cost implications" as a specific factor is a new addition and reflects the growing emphasis across institutional rules on cost-consciousness.

3. Early Determination: A New Mechanism

Article 30 introduces, for the first time in the ICC Rules, a formal early determination procedure. Any party may apply to the arbitral tribunal for the early determination of one or more claims/defences on the grounds that such claims/defences are (i) manifestly without merit, or (ii) manifestly outside the arbitral tribunal's jurisdiction.

The mechanism is broadly similar to early dismissal procedures found in the SIAC Rules and the LCIA Rules.

4. Highly Expedited Arbitration: A New Track

Article 33 read with Appendix VI of the 2026 Rules introduces a Highly Expedited Arbitration (**HEA**) procedure, which is entirely new to the ICC framework.

Applicability of HEA

Unlike the standard Expedited Procedure, there is no automatic threshold trigger; the HEA procedure requires the consent of all parties.

Pleadings: Filed with Evidence

The HEA procedure front-loads the substantive pleadings. The Request for Arbitration must be filed together with a full Statement of Claim, including the claimant's legal grounds, the supporting facts, and the relief sought (*Article 2(1) of Appendix VI*). To the extent possible, the Request and Statement of Claim shall be accompanied by the evidence relied upon by the claimant (*Article 2(2) of Appendix VI*).

Within 30 days of receipt of the Request and Statement of Claim, the respondent must submit its Answer together with a Statement of Defence and, if applicable, a Statement of Counterclaim (*Article 2(5) of Appendix VI*). The Answer and Statement of Defence must include the facts and legal grounds supporting the defence (*Article 2(5) and 2(6) of Appendix VI*).

Article 2(9) of Appendix VI provides an express bar to unilateral extensions sought by the parties and allows for extensions only with the agreement of the parties.

Joinder and Consolidation Not Permitted

Joinder of additional parties and consolidation of arbitrations are not permitted under the HEA procedure (Article 3 of Appendix VI). Parties should bear this in mind where the dispute involves multiple parties or related proceedings.

Sole Arbitrator

The dispute shall be decided by a sole arbitrator jointly nominated by the parties and failure to do so would result in the Court directly appointing any person it considers suitable as the sole arbitrator.

Proceedings and Award

Within 7 days of receiving the file from the Secretariat, the arbitral tribunal must hold an initial CMC to consult the parties on procedural measures and to establish the procedural timetable (*Article 6(1) of Appendix VI*).

The arbitral tribunal has discretion to adopt such procedural measures as it considers appropriate. The arbitral tribunal may decide the dispute solely on the basis of the documents submitted, with no hearing and no examination of witnesses or experts (*Article 6(3) of Appendix VI*).

The arbitral tribunal must render its final award within three months of the date of the initial CMC, unless the President extends the time limit on a reasoned request from the tribunal or on the President's own initiative (*Article 7(1) of Appendix VI*).

The HEA procedure is an ambitious innovation. Three months from the first CMC to final award is a tight window for any complex commercial dispute. The procedure will be best suited to disputes that are relatively contained in scope, turn on discrete legal or factual questions, and involve parties who are genuinely committed to an expedited resolution.

5. Emergency Arbitrator: Ex Parte Preliminary Orders and Expanded Scope

Ex Parte Preliminary Orders

The most significant change to the Emergency Arbitrator provisions is the introduction of ex parte preliminary orders (*Article 7 of Appendix IV*). If the Preliminary Order is granted, the emergency arbitrator must immediately afford all other parties the reasonable opportunity to present their case, and the emergency arbitrator may modify the Preliminary Order.

This is a material development. The ability to obtain interim relief without notice is particularly valuable where there is a real risk that the respondent, if alerted, would take steps to render any order ineffective. The safeguard is the immediate right to be heard once the order is granted.

Expanded Scope: Parties Not Necessarily Signatories

The Emergency Arbitrator Provisions apply not only to parties that are signatories to the arbitration agreement upon which the Application is based or their successors, but also to any party for which the President

is satisfied, based on information in the Application, that an arbitration agreement binding such party may exist (*Article 1(2) of Appendix IV*). This expands the potential reach of emergency relief to non-signatories in appropriate circumstances.

Investment Treaty Cases Excluded

The Emergency Arbitrator Provisions do not apply where the arbitration agreement on which the Application is based arises from a treaty or an investment protection law (*Article 1(3) of Appendix IV*). The 2021 Rules excluded treaty-based arbitrations from the emergency arbitrator regime, and the 2026 Rules extend this exclusion expressly to investment protection laws.

6. Expedited Procedure: Higher Threshold

The monetary threshold for automatic application of the Expedited Procedure Provisions has been raised. Under the 2026 Rules, the Expedited Procedure Provisions apply automatically where the amount in dispute does not exceed USD 4,000,000 (if the arbitration agreement was concluded on or after 1 June 2026) (*Article 1(3) of Appendix V*). The threshold remains USD 3,000,000 for agreements concluded on or after 1 January 2021 and before 1 June 2026, and USD 2,000,000 for agreements concluded on or after 1 March 2017 and before 1 January 2021.

Parties should review whether their existing standard-form arbitration clauses contain an opt-out from the Expedited Procedure Provisions, given the increased threshold. Contracts where the amounts at stake could fall below USD 4,000,000 but which were intended to

proceed on a standard timetable may warrant revision of the arbitration clause.

7. Time Limit for the Final Award: Presidential Discretion

Under the 2021 Rules, the tribunal was required to render its final award within six months of the last signature of the ToR. The 2026 Rules, however, empower the President to fix the time limit for rendering the final award, taking into account the procedural timetable established at the CMC and any reasoned request from the arbitral tribunal (*Article 34*).

The new approach is more flexible and practical as compared to a fixed timeline of six months under the 2021 Rules.

8. Arbitrator Obligations: Disclosure, Independence and Confidentiality

Party-Provided Disclosure Lists

Each party is mandated to submit to the Secretariat a list of persons and entities which they believe prospective arbitrators and arbitrators should consider for disclosure purposes, and the reasons thereof (*Article 12 (5)*). This is a significant new obligation which will assist the arbitrators in complying with their disclosure and minimise imputations of partiality against them.

Arbitrator Confidentiality

Arbitrators are now under an express obligation to keep confidential all matters relating to the arbitration unless the relevant information is otherwise in the public domain, has been agreed by the parties to be disclosed, is required to be disclosed by applicable law, or disclosure is necessary to protect a legal right or comply with disclosure obligations (*Article 12 (8)*). This codifies existing best practice and places it on an express footing.

9. Tribunal Secretary: Codified Rules

The 2026 Rules introduce, for the first time, express provisions governing tribunal secretaries in the main body of the rules. Tribunal secretaries must satisfy the same independence, impartiality and confidentiality requirements as arbitrators under the Rules, and must sign a statement of acceptance, availability, impartiality and independence before their appointment (*Article 44 (2)*).

The arbitral tribunal is allowed to claim reimbursement of a tribunal secretary's reasonable and justified expenses, without creating any additional financial burden on the parties (*Article 7 of Appendix III*). The 2026 Rules expressly bar any direct arrangements between the arbitral tribunal and the parties regarding the tribunal secretary's fees (*Article 7 of Appendix III*).

10. Award Scrutiny: Validity and Enforceability Now Expressly Considered

When the Court scrutinises draft awards, it now expressly considers, to the extent practicable, the validity and enforceability of the award and the requirements of mandatory law at the place of the arbitration (*Article 37*).

Under the 2021 Rules, the Court's scrutiny function was limited to considering "the requirements of mandatory law at the place of the arbitration", a provision contained in Appendix II rather than the main body of the rules. The 2026 Rules elevate this provision to Article 37 and expand it to include an express consideration of validity and enforceability.

II. Practical Implications

Arbitrations commenced on or after June 1, 2026, under ICC Rules would be automatically governed by the 2026 Rules, unless the parties have agreed to submit to the Rules in effect on an earlier date. Where parties are in the process of negotiating new contracts, consideration should be given to whether to incorporate the 2026 Rules by reference or to specify the edition.

Expedited Procedure opt-outs should be reviewed. With the threshold rising to USD 4,000,000 for agreements concluded from June 1, 2026, a greater number of disputes will fall within the automatic application of the Expedited Procedure. Parties for whom an expedited procedure is unsuitable should ensure they include an express opt-out.

The HEA procedure is only available where all parties consent. It is therefore unlikely to be triggered unilaterally after a dispute has arisen. Parties wishing to preserve this option in advance should consider including it in their dispute resolution clauses, though the compressed timetable and restrictions on joinder and consolidation make it unsuitable for many complex commercial relationships.

Disclosure obligations on arbitrators are more demanding under the 2026 Rules. Both the requirement to resolve doubts in favour of disclosure and the obligation on each party to file a list of persons and entities at the outset of the proceedings make the process more transparent, reducing the chance of a challenge on this ground at a later stage.

Early determination will require a party making such an application to carefully calibrate whether its arguments genuinely meet the high threshold of "manifestly without merit" or "manifestly outside jurisdiction". Tactical applications that do not meet this threshold are unlikely to succeed and will incur cost consequences.

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