

ICC unveils revised Rules of Arbitration

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The International Court of Arbitration of the International Chamber of Commerce has unveiled revised Rules of Arbitration due to enter into force in January 2021.

The 2021 ICC Arbitration Rules mark another step towards even more efficient, flexible and transparent ICC Arbitrations offering.

The ICC International Court of Arbitration is the most preferred arbitral institution worldwide. The ICC Rules of Arbitration offer the greatest deference to party autonomy – by allowing parties of an Arbitration the opportunity to select the arbitral tribunal – and offer a high level of flexibility, by accommodating any procedural option chosen by the litigants that is not incompatible with core principles of the Rules.

The ICC Rules of Arbitration include prescriptive provisions aimed at ensuring that ICC Arbitrations are conducted efficiently and in full compliance with the fundamental principle of due process.

The ICC Rules of Arbitration also establish unique standards of transparency, with decisional practice of the Court aiming to ensure any conflict disclosures are made in a timely and forthcoming manner.

The ICC scrutiny process, a unique characteristic of ICC Arbitration, offers a careful review of each draft award by the ICC Court with the assistance of its Secretariat. This ensures the highest quality of the award by avoiding possible errors and enhancing the likelihood of the award enforcement.

The 2021 ICC Rules of Arbitration include a number of new provisions making ICC Arbitration even more attractive.

ICC Court President Alexis Mourre said:

“The amendments to the Rules ... mark a further step towards greater efficiency, flexibility and transparency of the Rules, making ICC Arbitration even more attractive, both for large, complex arbitrations and for smaller cases.”

ICC has acquired a global reputation for its experience in dealing with complex, high-value, multi-party and multi-contract arbitrations. A new provision allowing the joinder of additional parties in the course of the arbitration (Article 7(5)), as well as an amendment allowing the consolidation of cases in presence of different parties (Article 10(b)), will make the ICC Rules even more suitable to these cases.

Transparency will be increased thanks to the introduction of a requirement for the parties to disclose third-party funding arrangements (Article 11(7)). The integrity of the proceedings will be further protected by the introduction of a provision empowering the arbitral tribunal to exclude from the proceedings new counsel in presence of a conflict of interests (Article 17(2)), and allowing the Court to disregard unconscionable arbitration agreements that may pose a risk to the validity of the award (Article 12(9)).

The 2021 ICC Rules also include two new provisions applying specifically to investment arbitrations based on a treaty. The first (Article 13(6)) aims at ensuring the complete neutrality of the tribunal in cases involving the public interest, by providing that no arbitrator shall have the same nationality as that of any party, while the second (Article 29(6)(c)) codifies the ICC Court's established practice that emergency arbitration is not available in investor-State disputes.

The 2021 ICC Rules expand the scope of application of the very successful expedited arbitration provisions (Article 30 and Annex VI) by increasing the threshold for their opt-out application from US\$2 million to US\$3 million.

Finally, the 2021 ICC Rules confirm that tribunals may, after proper consultation with the parties, decide to hold hearings by remote means of communication (Article 26(1)) and introduce a provision on additional awards (Article 36(3)).

Last updated in 2017, the ICC Rules of Arbitration are amended periodically to meet the needs of users and evolving dispute resolution and trade landscapes. The 2021 ICC Rules of Arbitration were formally adopted by a meeting of the ICC Executive Board which took place virtually on 6 October.

The revised ICC Rules of Arbitration will enter into force on 1 January 2021 with text subject to editorial corrections until that time.

Ahead of the entry into force of the Rules, the ICC Court will release an updated version of its Note to Parties and Arbitral Tribunals on the Conduct of Arbitration, last amended in January 2019.

A series of events are being planned to introduce the revised Rules and will culminate with the flagship launch of the Rules on 1 December 2020. Consult ICC's programme of events periodically for further updates.

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