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THE 2026 ICC ARBITRATION RULES: KEY CHANGES AND IMPLICATIONS

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INTRODUCTION: THE 2026 MANDATE

International commercial arbitration has long been regarded as the preferred mechanism for the resolution of cross-border commercial disputes. Unlike litigation before national courts, which may expose parties to jurisdictional uncertainty, procedural unfamiliarity, and difficulties in enforcing judgments abroad, international arbitration affords parties significant autonomy over the dispute resolution process, including the choice of tribunal, seat, and governing procedural rules, while ensuring that arbitral awards are enforceable in more than 170 jurisdictions under the New York Convention.

To ensure that its procedural framework remains responsive to developments in international commerce and dispute resolution practice, the International Chamber of Commerce (ICC) periodically revises its Arbitration Rules. Effective from 1 June 2026, the 2026 ICC Arbitration Rules (2026 Rules) constitute the most significant and structurally consequential reform of the ICC arbitral framework in over a decade. More than a mere procedural update, the 2026 Rules reflect a fundamental shift from a traditioanl approach to one centered on speed and efficiency. As noted in the Foreword, the revisions embody a deliberate transition from "standardised process to tailored speed", recognising that contemporary commercial disputes vary considerably in complexity, urgency, and value, and therefore require procedural mechanisms capable of adapting to the specific needs of the parties. These Rules are accompanied by model dispute resolution clauses, which include both multi-tiered options combining various dispute resolution techniques and simplified clauses designed for less complex commercial relationships. In doing so, the ICC acknowledges that no single procedural template is suitable for every dispute and that parties are best served by a framework that balances procedural fairness with commercial efficiency.

Against this backdrop, this article examines the principal innovations introduced by the 2026 ICC Arbitration Rules and analyses their practical and strategic implications for parties, counsel, and arbitral tribunals. Particular attention will be given to how these reforms seek to enhance transparency, accelerate proceedings, strengthen procedural flexibility, and reinforce the ICC's position as a leading institution in international commercial arbitration.

1. TRANSPARENCY AND CONFLICT SCREENING

THE RULE CHANGE:

The importance of impartiality in the arbitral process cannot be overstated. Arbitration is, in essence, a private court, and awards rendered by an arbitral tribunal are generally final and cannot be appealed except under limited circumstances. Transparency and impartiality are therefore just as important in arbitration as they are in national courts. Article 12 of the 2026 Rules requires an arbitrator to disclose any facts or circumstances that may call the arbitrator's independence or impartiality into question. To assist arbitrators in making these disclosures, Article 12(5) requires parties, at the time of filing their Request for Arbitration, to provide the Secretariat with a list of persons and entities that the arbitrator should consider for conflict-check purposes, together with reasons why those persons or entities may be relevant. A disclosure by an arbitrator does not, in itself, establish either partiality or a lack of independence. Rather, the ICC Court retains the final authority to determine whether an arbitrator or prospective arbitrator should be confirmed or allowed to sit on the tribunal following such disclosure.

THE PURPOSE:

This reform ensures that a proactive transparency regime is maintained from the very beginning of the proceedings. Both parties and arbitrators are involved in the conflict-screening process from the filing of the Request for Arbitration. This reduces the likelihood of conflicts

emerging midway through the proceedings, where parties may seek to challenge an arbitrator on grounds of bias or lack of independence. By requiring relevant persons and entities to be identified at the outset, the Rules enhance the efficiency and integrity of the arbitral process and minimise the risk of delays occasioned by challenges to arbitrators after the constitution of the tribunal.

STRATEGIC IMPACT:

The enhanced disclosure obligations under Article 12(5) require parties to file lists of relevant persons and entities at the time of submitting their initial pleadings. This obligation must be factored into the pre-filing preparation process. Failure to provide comprehensive lists at the appropriate stage may limit the grounds on which a party can subsequently challenge an arbitrator on conflict-of-interest grounds, since the relevant connection may have been discernible from information that the party itself was obliged to provide.

2. ELIMINATION OF THE MANDATORY TERMS OF REFERENCE

THE RULE CHANGE:

The Terms of Reference was a document, signed by the parties and the arbitral tribunal, that fixed the scope of the dispute at the early stage of the proceedings. It identified the parties, described the claims, listed the relief sought, and set out any procedural agreements reached between them. Under the 2026 Rules, the Terms of Reference have been abolished as a default requirement in standard proceedings. In its place, the Initial Case Management Conference (referred to throughout the Rules as the "CMC") now serves as the definitive procedural anchor. Under Article 24(1) of the 2026 Rules, the arbitral tribunal is required to hold an initial CMC within 30 days of receiving the file from the Secretariat, for the purpose of consulting the parties on all procedural measures to be adopted. Article 24(2) provides that the tribunal must establish the procedural timetable during or promptly after that conference and communicate it to the Secretariat and all parties. The timetable is not aspirational; it constitutes the governing procedural framework from that point forward. Article 25 states that no party may make new claims after the initial CMC without the authorisation of the arbitral tribunal.

THE PURPOSE:

The Terms of Reference had genuine procedural value. It required the parties to engage with each other and with the tribunal at an early stage and created a shared understanding of the scope of the arbitration. However, it also carried significant costs. The process of negotiating its terms was frequently time-consuming and contentious. In complex commercial disputes, finalising the document could take several months while still at the preliminary phase. Claimants also learned, over time, to use the pre-signature period strategically, treating it as an opportunity to expand or reformulate their claims in ways not apparent from the original Request for Arbitration. The abolition of the Terms of Reference removes these inefficiencies and replaces a document-heavy preliminary process with a structured but leaner Case Management Conference.

STRATEGIC IMPACT:

The replacement of the Terms of Reference by the CMC as the procedural pivot point effects a fundamental change in the relationship between the filing date and case readiness. Under the previous Rules, a claimant retained a meaningful opportunity to develop its case after filing but before the Terms of Reference were finalised. That opportunity no longer exists. The practical consequence is that the factual investigation, legal analysis, and evidence identification that parties previously had months to complete during the preliminary phase must now be completed before the Request for Arbitration is filed. In substance, the 2026 Rules treats the filing date as the commencement of the substantive proceedings, not merely as the initiation of a preparatory process. A tribunal operating under an obligation to manage the proceedings efficiently will be slow to permit claims that ought to have been pleaded from the outset.

3. THE EARLY DETERMINATION POWER

THE RULE CHANGE:

Article 30 of the 2026 Rules introduces a formal early determination procedure. Under Article 30(1), any party

may apply to the arbitral tribunal for the early determination of one or more claims or defences on the grounds that they are either manifestly without merit or manifestly outside the arbitral tribunal's jurisdiction. Two independent grounds of application are accordingly available, and they operate independently of each other. Under Article 30(2), the tribunal has the discretion to decide whether or not to allow the application to proceed and, if it does, it may adopt such procedural measures as it considers appropriate after consulting the parties. Consequently, this raises the possibility that an arbitral tribunal may determine certain issues solely on the basis of the written application, without hearing oral evidence, particularly in less complex disputes. The Guideline accompanying the 2026 Rules identifies early determination as a useful procedural tool for the swift disposal of certain claims, reflecting the institution's expectation that this tool will be utilized.

THE PURPOSE:

A significant distinguishing factor between litigation and International Arbitration has been the procedural tools available to deal efficiently with claims that have no realistic prospect of success. Such claims may be legally unsustainable, factually implausible, or entirely outside the jurisdiction of the decision-maker. National courts have long possessed the power to strike out or summarily dismiss such claims. International arbitral tribunals, however, are more cautious in exercising comparable powers, partly because the absence of a clear textual basis make such exercise legally vulnerable. Though the 2021 ICC Rules did not expressly provide for the summary disposal of manifestly unmeritorious claims, the 2026 Rules resolves this uncertainty by conferring that power in express and unambiguous terms. The procedure is deliberately positioned as a pre-disclosure mechanism, designed to terminate claims that cannot survive substantive scrutiny before the document production phase commences, thereby cutting off the cycle of costly procedural activity that a plainly unmeritorious claim can generate even where the ultimate outcome is not in doubt.

STRATEGIC IMPACT:

For respondents, the introduction of Article 30 alters the economics of defending against weak or speculative claims. In International Arbitration, claimants have sometimes pursued claims of dubious legal foundation not because they anticipate success at a hearing, but because the cost and disruption of defending them creates pressure to settle. The resulting imbalance between the relatively modest cost of pursuing such claims and the substantial cost of defending them conferred on those claims a settlement value bearing no rational relationship to their legal merit. Article 30 directly addresses this imbalance by providing respondents with a formal procedural route to dispose of manifestly unmeritorious claims before the cost curve steepens. For claimants, the reverse consideration applies. Any claim that cannot be expected to withstand an early determination challenge on the law or on the pleaded facts should either be substantially strengthened before filing or not advanced at all.

4. THE EX PARTE EMERGENCY RELIEF

THE RULE CHANGE:

Under the previous rules, parties seeking interim or preservative relief before the constitution of the arbitral tribunal had to approach national courts. These courts were responsible for granting interim or ex parte orders to preserve assets, maintain the status which quo and prevent the destruction of evidence pending the formation of the tribunal. often resulted in delays. The 2026 Rules under Article 31 now provide for Emergency Arbitration, which gives a party the opportunity to apply for and obtain an interim or conservatory order before the arbitral tribunal is constituted. This mechanism allows parties to preserve the status quo and prevent irreparable damage that may occur before an arbitral tribunal is formed. Where a party files an application for emergency measures under Article 31, the ICC Court appoints an Emergency Arbitrator to hear the application. Under the 2026 Rules, particularly Article 7 of Appendix IV, a party is allowed, at any stage of the emergency arbitrator proceedings, to apply for a preliminary order preventing another party from altering the status quo or causing irreparable damage, thereby frustrating the sole purpose of the application. This application can be heard and determined without giving notice to the other party, thereby resulting in the possible grant of ex parte relief to the applicant. This provision, however, does not apply where the parties have expressly

excluded the Emergency Arbitration provisions from the arbitration agreement.

THE PURPOSE:

This new provision was incorporated to prevent parties from destroying evidence or altering the status quo, particularly in circumstances where failing to do so would materially frustrate the arbitration proceedings and hinder the rights of the affected party, or where continued delay may lead to the loss of evidence vital to the arbitration. The common practice that necessitated the incorporation of this provision is that where parties are notified in advance of another party's application, they may use the opportunity to destroy evidence or transfer assets out of the jurisdiction. By implication, parties who usually had to approach national courts to obtain an ex parte order no longer have to do so as new Rules ensure that all processes remain within the ICC framework.

STRATEGIC IMPACT:

This amendment aligns with the ICC's commitment to efficiency and its principle of speed through preparation. It enhances the effectiveness of Emergency Arbitration by ensuring that parties can obtain urgent relief without compromising the confidentiality of the proceedings through recourse to national courts. The new provision also strengthens the ability of parties to preserve evidence and freeze assets before they can be tampered with or removed from the jurisdiction. Furthermore, it brings the ICC into closer alignment with other leading arbitral institutions, such as the London Court of International Arbitration (LCIA) and the International Centre for Dispute Resolution (ICDR) of the American Arbitration Association, both of which recognise the importance of preserving the efficacy of interim relief through urgent and, where necessary, ex parte measures.

5. THE THREE-MONTH HIGHLY EXPEDITED TRACK

THE RULE CHANGE:

This rule is arguably the most significant innovation introduced by the 2026 Arbitration Rules. In addition to the Expedited Procedure Provisions under Appendix V, which provide that the final award must be made within six months from the date of the initial Case Management Conference unless extended, the 2026 Rules introduce Article 33 and Appendix VI, which provide for a Highly Expedited Arbitration Procedure. This provision accommodates an extremely fast mechanism for the delivery of a final award within three months from the initial Case Management Conference. Unlike the Expedited Procedure, which may automatically apply where the dispute falls within a certain monetary threshold, the Highly Expedited Procedure is strictly voluntary, and parties must expressly agree in writing to use it, either when drafting the contract or after the dispute has arisen. There is also an administrative filter to prevent abuse: the relevant party is required to submit its Request and Statement of Claim to the ICC Secretary General, who must be satisfied that a valid agreement between the parties to arbitrate under the Highly Expedited Arbitration Provisions exists before the proceedings are conducted under those provisions. Where the Secretary General is not so satisfied, the arbitration will proceed under the ordinary Expedited Procedure or the standard ICC Rules.

KEY CONSTRAINTS:

To ensure the speedy delivery of a final award, the procedure more or less eliminates the standard processes involved in arbitral proceedings. The dispute is heard and determined by a sole arbitrator, who will be appointed by the ICC where the parties are unable to agree on an appointment within twenty days from the respondent's receipt of the Request and Statement of Claim. Parties are not permitted to join third parties, and the arbitrator has the discretion to determine the dispute entirely on the basis of written submissions, without oral hearings, expert evidence, or witness examination. Additionally, to expedite the issuance of the final award, the parties may elect to receive an award without the arbitrator providing detailed legal reasons for the decision.

STRATEGIC IMPACT:

This provision can be said to have created a small claims court for international commercial disputes, providing an avenue for speed and commercial efficiency which are among the key attractions of arbitration and constitute some of its major advantages over litigation. The procedure is likely to reduce costs, as proceedings are significantly shorter and involve fewer procedural steps. It also offers parties engaged in relatively straightforward commercial

disputes a mechanism for obtaining a final and enforceable award within a remarkably short timeframe, thereby enhancing the attractiveness of arbitration as a dispute resolution mechanism.

CONCLUSION

The 2026 ICC Arbitration Rules represent the most far-reaching revision to the ICC's procedural framework in over a decade, reflecting a coherent institutional strategy that prioritises front-loaded preparation, procedural efficiency, and tailored case management over standardised sequential procedure. For parties, the consequences are direct: claims must be fully developed before the Request for Arbitration is filed, a formal early dismissal mechanism now alters the strategic calculus around weak claims, and a voluntary three-month expedited track is available for parties prepared to accept its constraints. The 2026 Rules apply to all Requests filed on or after 1 June 2026, and parties reviewing existing ICC clauses or negotiating new arbitration agreements should consider the implications of the revised framework carefully.