

ICC Releases Revised Arbitration Rules

— hugheshubbard.com —



New rules reflect demand for greater speed and efficiency.

On September 12, 2011, the International Chamber of Commerce (ICC) disclosed highly anticipated revisions to its Rules of Arbitration at a conference in Paris. A special task force of approximately 200 professionals required over 2 ½ years to draft the changes. The ICC World Council adopted the revisions in June of this year, but the full text has not been made public until now. The new Rules will come into force on January 1, 2012.

The ICC Rules of Arbitration are one of the world's most widely used sets of rules for international commercial disputes, so it is expected these changes will have a substantial impact.

General Overview

As anticipated, the new Rules retain the core features of ICC arbitration, but incorporate modifications to address changes in arbitration practice since the last revision in 1998.

According to the Chairman of the ICC Commission on Arbitration, the changes were designed to address, “the growing complexity of today’s business transactions, the needs surrounding disputes involving states, and the demand for greater speed and cost-efficiency.”¹ The revised Rules are still flexible enough to adapt to different types of disputes and legal traditions, yet still contain unique features such as the scrutiny of awards.

Some of the new rules merely codify common practices inferences that are already enforced by the ICC Secretariat in practice. Other additions, however, introduce entirely new elements to the ICC arbitration procedure. These new provisions primarily address disputes involving multiple contracts or parties, the cost and duration of the current process; and the increase in disputes arising under investment treaties.

This e-Alert summarizes some of the more significant changes.

Accommodating Complex Disputes

Multi-Party and Multi-Contract Disputes

The revised Rules provide new guidelines for addressing the reality of disputes that involve more than two parties or more than one contract. Article 8 permits any party to make any claim or counter claim against another party to the arbitration. Claims can even be made after the approval of the Terms of Reference with the tribunal’s authorization. Article 9 expressly permits a single arbitration to address claims arising from more than one contract.

Joinder and Consolidation

Through Article 7, the new Rules allow any party to join the arbitration before the confirmation or appointment of any arbitrator. Even after this time, a request for joinder can be approved with the consent of all parties. Additionally, under certain circumstances (such as agreement of the parties) the ICC Court may consolidate arbitrations where claims arise under the same, or “compatible”, arbitration agreements (Article 10).

Increased Efficiency

Emergency Arbitrator

Parties will now be able to apply for an “emergency arbitrator” to review requests for interim measures that cannot wait for the formation of the arbitral tribunal. Article 29 of the new Rules, in conjunction with Appendix V, authorizes the President of the ICC Court to appoint an emergency arbitrator where the requesting party has demonstrated that urgent relief is needed sooner than a tribunal could be constructed. The emergency arbitrator’s order is binding on the parties (pursuant to their consent), but not on the subsequent tribunal, which may modify or annul the order.

Case Management

The new Rules set forth new measures for implementing case management techniques to streamline the arbitration process. Article 24 requires the arbitral tribunal to hold a case management conference with the parties during, or soon after, the drafting of the Terms of Reference. The arbitral tribunal can also adopt a number of suggested case management measures listed in Appendix IV to the new Rules. To remedy the common complaint of arbitrators' unavailability or over-commitment, Article 11 of the revisions requires arbitrators to sign a Statement of Availability to avoid any conflict of obligations. The tribunal and the parties are also expressly required to conduct the arbitration in an expeditious and cost-effective manner (Article 22).

Dispute-Specific Confidentiality

Under Article 22 of the new Rules, the tribunal may craft orders regarding confidentiality to suit the needs of the case, including measures to protect trade secrets and confidential information.

Codifying Current Practices

Arbitrator Independence and Impartiality

The 1998 Rules require Arbitrators to remain independent from the participating parties - meaning they must not be professionally or personally connected to a party. Similar to independence is the idea that Arbitrators should remain subjectively impartial, or unbiased, toward the parties involved. Impartiality of arbitrators was previously widely assumed, but is now an explicit requirement under the revised Rules. Article 11 to the new Rules requires arbitrators to sign a declaration of impartiality and independence. They must remain under a positive duty throughout the arbitration to inform the Secretariat of any matters affecting their independence or impartiality.

Current Technology

The 2012 Rules encourage the use of current technology. Article 3 expressly permits the Tribunal or Secretariat to deliver communications by email, which is already the normal practice. Outdated references to telegrams and telex have been deleted.

Investment Treaty Disputes

The revisions acknowledge the increasing prevalence of investor-State disputes under the ICC Rules. Under Article 13, the ICC Court will be allowed to appoint whomever it considers suitable to serve as an arbitrator where one or more parties to the dispute is a State or State entity.

Steve Hammond
(212) 837-6253
hammond@hugheshubbard.com

Valerie Sorensen
(212) 837-6542
sorensen@hugheshubbard.com

International Arbitration
September 2011



Hughes Hubbard & Reed LLP
One Battery Park Plaza | New York, New York 10004-1482 | 212-837-6000

Ethics rules require this to be labeled attorney advertising.
Readers are advised that prior results do not guarantee a similar outcome.

This e-ALERT is for informational purposes only and is not intended to be and should not be relied on for legal advice. If you wish to discontinue receiving e-ALERTS, please send an email to opt-out@HughesHubbard.com.

¹ “ICC launches new rules of arbitration”, Int’l Chamber of Commerce (Sept. 12, 2011), <http://www.iccwbo.org/court/arbitration/index.html?id=45664>