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ICC ARBITRATION: WHAT THE 2026 RULES REALLY CHANGE

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The International Chamber of Commerce ("ICC") has adopted a new version of its Arbitration Rules, which entered into force on June 1, 2026 (the "**2026 Rules**"). These Rules apply to proceedings commenced on or after that date, unless the parties agree to apply an earlier version^[1], and represents a significant milestone in the evolution of one of the most widely used arbitration rules in the world.

The reform is designed to enhance procedural efficiency and predictability, and to better meet the expectations of users. The ICC is thus responding to a number of recurring criticisms directed at international arbitration, particularly concerning transparency, cost, duration, and complexity.

Several features of the reform reflect this ambition: the removal of the mandatory Terms of Reference, the enhanced role of the initial case management conference, the increase in the threshold for automatic application of the Expedited Procedure Provisions, the introduction of the Highly Expedited Arbitration Provisions, revised Emergency Arbitrator Provisions, and the creation of an early determination mechanism.

Some of these developments codify practices that were already well established. Others, such as the Highly Expedited Arbitration Provisions, respond to growing demand for faster and more flexible proceedings and reflect an ambition to rethink the pace at which certain disputes can be resolved. This article examines the six principal innovations of the 2026 Rules and their practical implications.

1. Independence and Impartiality of Arbitrators: A More Structured Disclosure Framework

The 2026 Rules codify a principle that had previously emerged primarily from practice: when in doubt, a prospective arbitrator should resolve the doubt in favor of disclosure^[2]. The Rules also clarify that a disclosure does not, by itself, establish a lack of independence or impartiality^[3].

The 2026 Rules also formalize the parties' involvement in identifying potential conflicts of interest. Each party will be required to provide the ICC Secretariat (the "**Secretariat**") with a list of persons and entities it considers relevant for the purposes of the conflict-of-interest analysis^[4]. This information will be included in the materials transmitted to prospective arbitrators, without shifting the responsibility for disclosure, which remains with the arbitrator.

This reform is a welcome development. It does not fundamentally alter the standards governing arbitrator independence and impartiality, but it formalizes practices that are already widespread in international arbitration. For the parties, the practical benefit is tangible: potential difficulties are identified earlier, on the basis of more complete information, and under the oversight of the Secretariat. In practice, this mechanism should reduce the risk of late-stage challenges (which are sometimes deployed tactically) and contribute to the overall robustness of awards.

2. Streamlining Procedure: The End of Mandatory Terms of Reference

The removal of the mandatory Terms of Reference is one of the most visible changes introduced by the 2026 Rules. Under the prior rules, the arbitral tribunal was required to draw up Terms of Reference at an early stage of the proceedings, defining the scope of the dispute and certain procedural parameters (including the names of the parties, the claims and relief sought, the seat of arbitration, and the applicable procedural rules), to be signed by the parties^[5].

While the Terms of Reference historically contributed to the distinctive identity of ICC arbitration, their practical utility had gradually eroded, as their functions came to be fulfilled by the parties' initial submissions, the case management conference, and/or an initial procedural order.

This change appears to have been driven by experience under the Expedited Procedure Provisions introduced in 2017, under which Terms of Reference were already optional: of more than 1,000 cases administered under that regime, fewer than 25 tribunals drew up Terms of Reference^[6].

This change elevates the role of the case management conference ("**CMC**"), which now serves as the primary procedural anchor. The arbitral tribunal must hold an initial CMC within 30 days of receiving the file from the Secretariat and must establish the procedural timetable at that time or as soon as possible thereafter^[7]. The 2026 Rules also provide for further CMCs, as the tribunal deems appropriate to facilitate the efficient conduct of the proceedings^[8].

The initial CMC thus replaces the Terms of Reference as the cut-off point for new claims (which may nonetheless be introduced thereafter with the tribunal's authorization, taking into account the nature of the new claims, the stage of the arbitration, any cost implications, and any other relevant circumstances^[9]).



This reorientation is a sensible one. Mandatory Terms of Reference were a distinctive feature of ICC arbitration not shared by other major institutional rules. Moreover, when parties were unable to agree on their content, the outstanding issues were typically resolved by procedural order in any event. Centering the process on the initial CMC and the procedural timetable should save time, reduce costs, and strengthen the tribunal's role in managing the proceedings.

3. Expedited Procedure Provisions and Emergency Arbitration: Strengthened Tools

The 2026 Rules raise the EPP Threshold Amount for automatic application of the Expedited Procedure Provisions from USD 3 million to USD 4 million for arbitration agreements concluded on or after June 1, 2026[10]. This change is likely to expand the reach of this mechanism considerably. ICC statistics show that more than 40% of cases administered in 2025 involved amounts below USD 4 million[11], compared to only 36% falling below the prior USD 3 million threshold [12]. More specifically, 5.1% of cases registered in 2025 involved amounts between USD 3 million and USD 4 million. This gap suggests that a significant number of cases that previously fell outside the Expedited Procedure Provisions will now be subject to them as a matter of course[13].

This development reflects the established position of the Expedited Procedure Provisions since their introduction in 2017, having been applied in more than 1,000 cases and giving rise to several hundred awards[14]. A greater number of disputes will thus be able to benefit from a faster procedure without any compromise to the fundamental guarantees of arbitration.

The Emergency Arbitrator Provisions also undergo significant changes. Emergency arbitration proceedings may now be initiated not only against signatories to the arbitration agreement and their successors, but also against any party for whom the President of the ICC International Court of Arbitration (the "**Court**") is satisfied, based on information in the application, that an arbitration agreement binding such party may exist. This change presumably reflects the reality of corporate groups and the complex contractual structures frequently encountered in international disputes. The Emergency Arbitrator Provisions remain unavailable, however, where the parties have expressly opted out of them or where the arbitration agreement relied upon arises from a treaty or an investment protection law[15].

The most notable innovation is the express recognition of Preliminary Orders. At any stage of the emergency arbitrator proceedings, a party may request a Preliminary Order directing another party not to frustrate the purpose of the application for Emergency Measures. Such a request may be made and decided upon without notice to the other parties (i.e., ex parte). Procedural safeguards are nonetheless preserved: the emergency arbitrator must immediately afford all other parties a reasonable opportunity to present their case once the Preliminary Order has been decided, and the emergency arbitrator may modify the Preliminary Order[16].

These developments respond to a concrete user need: the ability to obtain effective protection quickly without having to resort to national courts. It remains to be seen, however, how emergency arbitrators will exercise these new powers, particularly in cases where a Preliminary Order has been granted ex parte.

4. Highly Expedited Arbitration Provisions: An Ambitious Innovation

The Highly Expedited Arbitration Provisions are arguably the most ambitious innovation in the 2026 Rules. Unlike the Expedited Procedure Provisions, they never apply automatically: they require the agreement of all parties and may be opted into regardless of the amount in dispute[17].

The procedure is tightly compressed. The dispute is decided by a sole arbitrator[18]. Within 20 days of receiving the Request and Statement of Claim from the Secretariat, the respondent must provide observations on certain procedural matters, including the appointment of the sole arbitrator, the seat, the language, and the applicable law. The Answer and Statement of Defence, together with any Statement of Counterclaim, must be filed within the following 30 days[19]. The initial CMC takes place within 7 days of the file being transmitted to the arbitral tribunal, and the final award must be rendered within 3 months of that conference, subject to any extension granted by the President where necessary[20].

The promise is an attractive one. In sectors where time is of the essence, such as technology, sports, supply chains, and M&A transactions, the prospect of an enforceable final award on the merits within a few months is a compelling proposition.

That ambition nonetheless calls for caution. Three months is a tight timeframe in which to conduct adversarial proceedings on the merits, address any jurisdictional objections, draft an award, and submit it for scrutiny by the Court. In practice, respondents will often have only a matter of weeks to organize their defense. The tribunal may of course limit written submissions, exclude document production, or dispense with a hearing, but these powers may prove more difficult to exercise in particularly complex disputes.

The option for the parties to agree to an award without reasons is also noteworthy. While this may reduce costs and time, it warrants careful consideration in jurisdictions where the absence of reasoning could give rise to challenges at the annulment or enforcement stage.



The Highly Expedited Arbitration Provisions thus represent a bold innovation, the success of which will depend on practitioners' ability to reconcile speed, quality of decision-making, and due process.

5. Early Determination: A Useful Innovation, a Source of Complexity, or a Gadget?

Article 30 of the 2026 Rules expressly introduces an early determination mechanism[21]. A party may now apply to the arbitral tribunal for the early determination of one or more claims or defenses on the grounds that they are manifestly (a) without merit or (b) outside the arbitral tribunal's jurisdiction[22]. The tribunal retains discretion as to whether to allow the application to proceed and, if so, how to organize the process[23].

The mechanism is reminiscent of motions to dismiss in U.S. litigation and belongs to a broader family of tools already present in several international arbitration rules. It is not, however, a genuine novelty in the ICC context: as early as 2017, the Note to Parties and Arbitral Tribunals already recognized the possibility of early determination of certain claims or defenses[24]. The 2026 reform therefore expressly codifies a pre-existing practice.

In theory, the rationale is straightforward: to prevent a party from bearing the cost of full proceedings in response to a manifestly unmeritorious claim or a jurisdictional objection with no realistic prospect of success. The mechanism appears particularly well suited to cases where the difficulty is primarily one of law.

Behind this pursuit of efficiency, however, the practical effectiveness of the early determination mechanism in ICC arbitration remains to be demonstrated.

First, its introduction could produce a paradoxical effect. The party applying for early determination may be tempted to develop its arguments at length in order to persuade the tribunal that the opposing claims are "manifestly" without merit. Conversely, the party opposing the application will have every incentive to demonstrate that the issues raised call for a more thorough examination, developing a sufficiently robust defense to foreclose any summary assessment of the dispute. In some cases, the preliminary debate over the early determination application may therefore add to, rather than simplify, the procedural exchanges.

Furthermore, the "early" nature of the mechanism could itself become a source of collateral disputes. A party whose application is rejected may be tempted to argue, at the annulment or enforcement stage, that the tribunal ruled prematurely on issues that required more thorough examination.

The ICC presents this mechanism as a tool for efficiency and early filtering, yet its statistics do not establish that a significant number of cases are currently burdened by manifestly unmeritorious claims. The innovation is therefore welcome, but its impact may remain limited. It will likely serve more as a deterrent than as a transformative force on the duration or cost of arbitrations.

6. Digitalization, Confidentiality, and Award Deadlines: A Welcome Modernization

The 2026 Rules update several provisions to reflect practices now widely established in international arbitration: the generalization of electronic communications, a clearer confidentiality framework, and revised timelines for the rendering of awards.

Written communications with the Secretariat must now be made by email or other means of electronic communication, except in certain circumstances justifying the use of paper copies[25]. This change codifies a practice that was already widespread and reflects the development of the ICC's digital tools, including the ICC Case Connect platform.

The 2026 Rules also introduce an express duty of confidentiality on arbitrators[26], who must, unless otherwise in the public domain, agreed by the parties, required by applicable law, or necessary to protect a legal right or comply with disclosure obligations, maintain the confidentiality of all matters relating to the arbitration. The ICC has, however, chosen not to impose a general confidentiality obligation on the parties themselves, preferring to preserve their freedom to address this point contractually based on the specific circumstances of the dispute.

Finally, the ICC has eliminated the theoretical six-month period within which an award was to be rendered, previously running from the signing of the Terms of Reference. Under the new rules, the President fixes the time limit for rendering the final award, taking into account the procedural timetable established at the initial CMC or a reasoned request from the arbitral tribunal[27]. The former deadline was rarely applied as drafted and frequently gave rise to extensions; while the new mechanism therefore appears better suited to the particularities of each set of proceedings, it raises questions about its practical implementation, including how the time limit will be set and what consequences will follow if it is not met.

Conclusion



The 2026 Rules modernize ICC arbitration without altering its foundations: they offer users a more flexible procedural toolkit and strengthen the Court's role, while preserving the essential hallmarks of ICC arbitration.

The 2026 Rules contain several notable innovations, the most ambitious of which are undoubtedly the Highly Expedited Arbitration Provisions. The promise of a final award within three months is compelling, but its success will depend on practitioners' ability to reconcile speed, quality of decision-making, and due process.

Fundamentally, the reform offers greater flexibility to users. It remains to be seen to what extent these new tools will be adopted in practice and whether they will succeed in addressing the recurring criticisms directed at international arbitration with respect to cost and duration.

[1]Article 1(2) of the 2026 Rules.

[2]Article 12(2) of the 2026 Rules.

[3]Article 12(4) of the 2026 Rules.

[4]Article 12(5) of the 2026 Rules.

[5]Article 23 of the 2021 Rules; "ICC Arbitration Rules 2021 and 2026 compared version," available at: <https://iccwbo.org/dispute-resolution/dispute-resolution-services/arbitration/rules-procedure/2026-arbitration-rules/>.

[6]"Unveiling the 2026 ICC Arbitration Rules, part 3: Expedited Procedure Provisions and Emergency Arbitration," May 19, 2026, available at: <https://iccwbo.org/news-publications/news/unveiling-the-2026-icc-arbitration-rules-part-3-expedited-procedure-provisions-and-emergency-arbitration/>

[7]Articles 24(1) and 24(2) of the 2026 Rules.

[8]Article 24(4) of the 2026 Rules.

[9]Article 25 of the 2026 Rules.

[10]2026 Rules, Appendix V – Expedited Procedure Provisions, Article 1(3)(c). The previous thresholds continue to apply to earlier arbitration agreements.

[11]"Unveiling the 2026 ICC Arbitration Rules, part 3: Expedited Procedure Provisions and Emergency Arbitration," May 19, 2026, available at: <https://iccwbo.org/news-publications/news/unveiling-the-2026-icc-arbitration-rules-part-3-expedited-procedure-provisions-and-emergency-arbitration/>

[12]ICC, "ICC Dispute Resolution 2025 Statistics," Publication No. DRS004EN, 2026, p. 5.

[13]ICC, "ICC Dispute Resolution 2025 Statistics," Publication No. DRS004EN, 2026, p. 23, Annex - Table 01 "Amounts in dispute."

[14]"Unveiling the 2026 ICC Arbitration Rules, part 3: Expedited Procedure Provisions and Emergency Arbitration," May 19, 2026, available at: <https://iccwbo.org/news-publications/news/unveiling-the-2026-icc-arbitration-rules-part-3-expedited-procedure-provisions-and-emergency-arbitration/>

[15]2026 Rules, Appendix IV – Emergency Arbitrator Provisions, Article 1(3).

[16]2026 Rules, Appendix IV – Emergency Arbitrator Provisions, Article 7(4).

[17]2026 Rules, Appendix VI – Highly Expedited Arbitration Provisions, Article 1.

[18]2026 Rules, Appendix VI – Highly Expedited Arbitration Provisions, Article 4.

[19]2026 Rules, Appendix VI – Highly Expedited Arbitration Provisions, Article 2.

[20]2026 Rules, Appendix VI – Highly Expedited Arbitration Provisions, Article 7(1).

[21]Article 30 of the 2026 Rules.

[22]Article 30(1) of the 2026 Rules.

[23]Article 30(2) of the 2026 Rules.



[24]"ICC Court revises note to include expedited determination of unmeritorious claims or defences," October 30, 2017, available at: <https://iccwbo.org/news-publications/news/icc-court-revises-note-to-include-expedited-determination-of-unmeritorious-claims-or-defences/>.

[25]Article 3 of the 2026 Rules.

[26]Article 12(8) of the 2026 Rules.

[27]Article 34 of the 2026 Rules.
