

ICC International Arbitration Rules Revised – The New 2012 Rules

Introduction

1. The International Chamber of Commerce (“the ICC”) was established in 1919 to promote international trade and the resolution of commercial disputes by way of international arbitration and alternative dispute resolution (“ADR”). Its arbitral body, the International Court of Arbitration of the ICC (“the ICC Court”), was created in 1923 in Paris. It has since handled more than 16,000 cases.
2. The previous set of rules date back to January 1998. The changes to the ICC rules have been undertaken to reflect the ICC’s experience in administering arbitrations and to improve efficiency in the light of the growing complexity of arbitration.
3. In 2010 there were 793 Requests for Arbitration filed with the ICC Court and 479 awards were rendered, making the ICC one of the leading international institutions for arbitration.

Issues as to the Existence of the Arbitration Agreement

4. The revised Rules in Article 6 allow objections to the existence, validity or scope of an arbitration agreement to be referred directly to the arbitral tribunal rather than necessarily to the ICC Court.

Under which Circumstances can a New Party be Joined?

5. A new party can be joined:
 - a. The party submits a written request to the Secretariat of the ICC Court under Article 7. This must be done before any arbitrator is appointed or confirmed. Once any arbitrator is appointed or confirmed, joinder will require the agreement of all parties, including the additional party.
 - b. Two or more arbitrations are consolidated under Article 10. This is possible if (1) the parties agree; (2) all the claims in the arbitrations are made under the same arbitration agreement; or (3) where the claims are made under multiple arbitration agreements, the arbitrations involve the same parties, the disputes arise in connection with the same legal relationship, and the arbitration agreements are compatible.
6. Joinder of parties was not previously addressed in the 1998 version of the ICC Rules. Requests for joinder of a party are in form similar to Requests for Arbitration.

Summary of Other Changes to the ICC Rules

Multi-Contract Arbitrations

- **Article 8:** Any party in a multi-party arbitration may make claims against any other party.
- **Article 9:** Claims arising out of more than one contract can be made in a single arbitration.

Challenges to Arbitrators, Disclosure

- **Article 11:** Arbitrators must sign a statement disclosing any facts or circumstances which might call into question their independence in the eyes of the parties, as well as anything that could give rise to reasonable doubts as to their impartiality. They must also confirm their availability when accepting an appointment.

Exceptions to Reliance upon National Committees

- **Article 13:** The ICC Court may directly appoint arbitrators in certain circumstances.

Confidentiality

- **Article 22:** The tribunal can make confidentiality orders tailored to the specific needs of the case before them.

Efficiency

- **Article 24:** The tribunal should convene a case management conference when drawing up the Terms of Reference or as soon as possible thereafter.
- **Article 30:** Tribunals are now required to render a final award within six months of the commencement of the dispute.
- **Article 37:** Failure by a party to make every effort to conduct the arbitration expeditiously and cost-effectively can result with in being penalized with costs.

Emergency Arbitrator

- **Article 29:** Parties may now seek the appointment of an emergency arbitrator where urgent relief is required before an arbitral tribunal can be fully constituted.

Conclusion

Most arbitral institutions have sought to respond to suggestions that the arbitral process is becoming more complex, costly and subject to delay by amending their Rules. It remains to be seen whether the arbitrators will adopt the more pro-active case management required to exercise greater control over the arbitral process.

7th February 2012