

# LAW & POLICY UPDATE

## DISPUTE RESOLUTION & ARBITRATION



### ICC Arbitration Rules 2021

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The Revised Rules of Arbitration (**2021 Rules**), which were proposed in December 2020 by the International Chamber of Commerce (**ICC**), prospectively come into force on January 1, 2021. The ICC Arbitration Rules 2017 (**2017 Rules**) will continue to apply to cases registered prior to January 1, 2021. The ICC Court President Alexis Mourre highlighted that the amendments in the 2021 ICC Rules are a step towards greater efficiency, flexibility and transparency in ICC arbitrations.<sup>1</sup>

The following are the prominent revisions that will be incorporated vide the 2021 ICC Rules:

▪ **Article 1 – Reporting to the Court**

The 2021 Rules mandate strict reporting of the decisions of the following authorities in the next session of ICC Court (unlike the 2017 Rules which provided a liberal approach of reporting in any of the future sessions):

- President of the ICC Court
- Committee appointed by the Court
- Secretary General with respect to the impartiality of the Arbitrator

▪ **Article 5 – Time to respond to the request of Arbitration**

A party is now given one day more to respond to the request of Arbitration, since the words '*within 30 days from the receipt*' have been replaced by '*within 30 days from the following day of the receipt of the request*'.

▪ **Article 7(5) – Joinder of parties' post-constitution of Arbitral Tribunal**

This article empowers an Arbitral Tribunal to decide on any request made by a party for adding further parties to the arbitration, subject to additional party(s) consent to the constitution of the Tribunal. The discretion would be in the hands of the Arbitral Tribunal, which will have to consider various factors as mentioned in the said provision, including ruling on its jurisdiction over the proposed additional party, timing of the request made, possible conflict of interests and the impact on the arbitration proceedings, if any.

▪ **Article 10 – Consolidation of arbitration proceedings**

Article 10(b) has been amended and now provides much needed clarity with respect to consolidation being allowed in the following cases:

- Where all parties agree to consolidation
- Where all claims are made under the same arbitration agreement or agreements between different parties
- Claims involving different parties which may not be under same arbitration agreement, provided that the dispute arises in connection with the same legal relationship and the arbitration agreements are compatible

Thus, the 2021 Rules now clarify that claims that are made under same arbitration agreement(s) can now be consolidated into a single arbitration proceeding.

<sup>1</sup> ICC Court President Alexis Mourre, available at: <https://iccwbo.org/media-wall/news-speeches/icc-unveils-revised-rules-of-arbitration/>

- **Article 11(7) – Mandatory disclosure of third-party funding**

In order to make the Tribunal more independent and impartial, parties are now under a duty to immediately inform the Arbitral Tribunal, Secretariat of the Court (Secretariat) and the other party(s) to the arbitration proceedings about a non-party who is funding the claims or defences in the proceedings and has a vested interest in the outcome of the arbitration proceedings. The procedure to be followed is laid down in Article 11(2) and (3).

- **Article 12(9) – Powers of the ICC court to appoint Arbitrators**

This article empowers the Court to appoint members of the Arbitral Tribunal and provides a procedure for constitution of an Arbitral Tribunal consisting of either a sole Arbitrator or three Arbitrators. Such discretionary power may be used, notwithstanding any agreement between the parties, in exceptional circumstances in order to avoid any risk of ‘unequal treatment’ and ‘unfairness’.

- **Article 13(6) – Provisions for Investment Treaty arbitrations**

This provision has been inserted in the 2017 Rules to ensure that no Arbitrator of the same nationality as any party to the arbitration is appointed in Investment Treaty arbitrations. This would facilitate and promote unbiased investment arbitrations involving disputes arising and revolving around treaties. However, Emergency Provisions as contained in Article 29(6)(c) are no longer applicable to the such arbitrations.

- **Article 26(1) – Remote hearing**

Under the 2017 Rules, videoconference and telephonic communications were only allowed for case management conferences and expedited arbitration proceedings. However, under the 2021 Rules, the aforesaid modes have been allowed to be used for conducting regular arbitration hearings as well.

- **Article 36(3) – Additional awards**

A provision has been added for filing an application by a party to the Secretariat for an additional award on the aspects that were raised but were omitted by the Arbitral Tribunal while passing the award.

- **Appendix VI – Increase in threshold for expedited arbitrations**

Under the new 2021 Rules, cases in which disputed amount is less than USD 3,000,000 (earlier USD 2,000,000) can now be referred for expeditious adjudication.

- **Article 43 – Governing law and settlement of disputes**

This provision provides for adjudication of the administration of the arbitration proceedings by the Court. Any such claim will now be governed by French law and would be settled by the Paris Judicial Tribunal (Tribunal Judiciaire de Paris) in France, which will have exclusive jurisdiction.

## Conclusion

The 2021 Rules are a welcome step towards modernizing and easing the international arbitration proceedings. The provisions pertaining to nationality of Arbitrators, use of electronic communications, virtual and remote hearings will significantly bolster the ‘efficiency, flexibility and transparency’ of arbitral proceedings. The impact of the 2021 Rules will become apparent over the coming days as these start being used in new matters.

