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REVISION TO THE ICC RULES - 2026 EDITION

The International Chamber of Commerce ("ICC") is the latest major arbitral institution in recent years to revise its Rules of Arbitration. This closely follows recent changes by the Hong Kong International Arbitration Centre in 2024, and the Singapore International Arbitration Centre in 2025. The updates are aimed at enhancing efficiency, clarity and usability, with an eye to ensuring that the ICC Rules remain up-to-date and relevant to the needs of its users. This article sets out the key changes to the ICC Rules which will come into force on 1 June 2026 ("2026 Rules"), and practical guidance as to how such changes would impact practitioners and users.

KEY CHANGES

a) No mandatory requirements for the Terms

1. The terms of reference were a defining feature of ICC Arbitration. The terms sought to make clear parties' claims and relief sought, as well as the procedure by which the arbitration would progress. This aimed at confining issues at an early stage and ensuring that parties knew the case it had to meet in the proceedings.

2. In practice however, the terms would be drafted in very general terms, with caveats that it may be amended as the matter progresses. Questions as to whether the terms can be amended would usually be answered in the affirmative in the name of flexibility. The practical value of the terms of reference is therefore limited, and often left users seeking to justify the costs and time spent on it.

3. The new 2026 Rules have now dispensed with this mandatory requirement. That said, this does not equate to a "free-for-all" where new pleadings/ claims can be introduced at any stage. Instead, the ICC has included safeguards in Article 25 which prohibits the introduction of new claims after the initial case management conference ("CMC") unless authorised by the Tribunal (similar to the previous Article 23(4) ICC Rules 2021), and by introducing an early determination mechanism in Article 30 (discussed below).

4. The authors view this as a positive step as it is not possible for an early definitive list of issues to be set down for every case. Instead, the 2026 Rules now allow for the issues list to evolve as the matter progresses, as is the ordinary course of disputes. Practically speaking however, it should be incumbent on parties to be able to articulate their claims (with reasonable

precision) at an early stage as it would then enable them to focus their resources on what matters and mitigate unnecessary costs.

b) Early Determination

5. The 2026 Rules have also introduced a mechanism for early determination which enables parties to weed out "claims or defences [which] are manifestly without merit" or "claims or defences [which] are manifestly outside the arbitral tribunal's jurisdiction" (see Article 30(1)).

6. Any party to the arbitration may apply for early determination, and the application goes through a two-step process: (1) the Tribunal must decide whether it wishes to hear the application, and (2) the Tribunal must decide whether the grounds in the application satisfy the standards set in Article 30(1).

7. The Tribunal's broad discretion as to whether an application for early determination should be heard enables it to prevent parties from using the mechanism as a guerilla delay tactic where multiple applications are filed in a drip-feed manner. Instead, a party seeking early determination should file the application at the earliest opportunity. Additionally, even though the 2026 Rules are silent as to any prescribed criteria to be followed, a party should set out in detail why a claim or defence is manifestly without merit/ outside the Tribunal's jurisdiction, and explain why an early determination of the matter would be fair and expedient.

8. Practical questions arise as to whether this mechanism eschews a fair hearing as the resisting party would (practically speaking) not have had the opportunity to seek disclosure, test or introduce the full range of evidence prior to or during the hearing of an early determination application. However, it is unlikely that such arguments would hold weight when tested in the enforcing courts as the early determination mechanism is similar to the summary judgment or striking out mechanisms in many domestic courts.

c) Expedited Procedure

9. The ICC has now amended the expedited procedure it first introduced in 2017.

10. The first amendment is to increase the monetary threshold of claims suitable for expedited procedure from USD 3 million to USD 4 million (see Article 1(3)(c) of Appendix V). This adjustment means that more parties can avail themselves of the expedited procedure for relatively smaller claims.

11. The second amendment is to introduce Highly Expedited Arbitration Provisions ("HEAP", see Article 33 and Appendix VI to the 2026 Rules). This is aimed at allowing parties to resolve disputes in a super-expedited manner.

12. A dispute heard through HEAP is placed before a sole arbitrator who is then required to render its final award within three months from the date of the initial CMC. The Tribunal may, after consultation with the parties, determine the dispute "solely based on the documents the parties have submitted, with no hearing and no examination of witnesses or experts".

13. HEAP differs from the expedited procedure as it requires both parties to agree to its application. Parties may agree to its application notwithstanding the monetary value in dispute reasons (Article 1(2) of Appendix VI) and may also agree that the award be made without reasons (Article 7(2) of Appendix VI).

14. Practically speaking, HEAP is more suitable to claims with lower complexity, simple factual matrix, or a distinct aspect of a dispute which requires swift resolution. It is less suited for matters which require a careful testing of factual evidence or witnesses. Instead, HEAP may be more appropriate for certain disputes which primarily centre around legal questions (e.g., commodities disputes over pricing adjustments, or issues as to whether a party is entitled to assert force majeure).

d) Other significant changes in the 2026 Rules

15. Arbitral independence and impartiality: Article 12(5) requires parties to now submit "a list of persons and entities which they believe the prospective arbitrators and arbitrators should consider and the reasons thereof" so as to assist (prospective) arbitrators in complying with their disclosure obligations. This is a welcome step as the requirement effectively mitigates any potential challenge a party may raise against an arbitrator on the basis of his relationship with individuals/ entities who may only be tangentially involved in the dispute and whose involvement is not immediately apparent when the nomination is made. This is because parties are now required to assist a prospective arbitrator when embarking on his conflicts checks and .considering disclosure. That said, this does not displace an arbitrator's ongoing disclosure obligations or his fundamental obligation to remain "impartial and independent of the parties involved in the arbitration".

16. Appointment of arbitrator: Article 14(1) now makes clear that expertise and experience will be considered in the context of arbitrator appointments. This avoids unnecessary procedural skirmishes as to the suitability of prospective arbitrators, and ensures that the hearing is conducted in an efficient manner.

17. Place of the arbitration: The Tribunal is now entitled under Article 19(3) to deliberate wherever it considers appropriate. This increases the efficiency of the workings of a Tribunal as they are allowed to now consider and discuss the matter by any electronic medium (e.g., video conference, tele conference etc). That said, the authors consider this new rule as simply a formalisation of an established practice in international arbitration where it is not uncommon for members of the Tribunal to discuss or decide on matters outside of the seat of the arbitration.

CONCLUSION

The announcement of the Bill confirms that we should expect a material reset of the UK nuclear regulatory landscape. If delivered as described, regulatory reforms should increase pace, predictability and proportionality — key determinants of cost and bankability — without diluting safety and environmental protections – protections that make the sector financeable in the first place. For developers and investors, the opportunity is significant. The challenge will be in execution —translating legislative ambition into day-to-day decisions, capacity on the ground and defensible regulatory records. For those outside of the UK, in particular regulators and policy makers considering nuclear energy, the Bill (and the Fingleton Review) may also help them to curate more efficient policies which may engender more foreign investment in the sector.

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