

## What's new in the 2012 ICC Rules?

The new Rules of Arbitration of the International Chamber of Commerce (ICC) took effect on 1 January 2012. They replace the previous Rules which were in use since 1998.

Unless otherwise agreed by the parties, the 2012 Rules apply to all ICC arbitrations commenced on or after 1 January 2012. Set out below are the key changes contained in the 2012 Rules:

<b>Role of ICC Court</b>	<ul style="list-style-type: none"> <li>• The ICC Court becomes the only body authorised to administer ICC arbitrations. By agreeing to arbitrate in accordance with the 2012 Rules, the parties accept that the ICC Court will administer the arbitration - Articles 1(2) and 6(2)</li> <li>• The implication is that an arbitration clause which provides for administration of arbitration under ICC Rules by an institution other than the ICC (such as the clause in <i>Insigma Technology Co Ltd v Alstom Technology Ltd</i> [2009] SGCA 24) will no longer be valid</li> </ul>
<b>New provision on emergency arbitrator</b>	<ul style="list-style-type: none"> <li>• One of the most significant changes is the new provision on the appointment of an emergency arbitrator before a tribunal is constituted. Their role is to deal with applications for urgent interim or conservatory measures - Article 29</li> <li>• An application for an emergency arbitrator must be made before the file has been sent to the arbitral tribunal, and can be made before the filing of the Request - Article 29(1)</li> <li>• The emergency arbitrator will normally be appointed within two days of receipt by the ICC of the application and the arbitrator must make an Order within 15 days from receipt of the file - Articles 2 and 4 of Appendix V</li> <li>• The emergency arbitrator provisions will not apply if:               <ol style="list-style-type: none"> <li>1. the arbitration agreement was concluded before 1 January 2012;</li> <li>2. the parties have agreed to opt out of them; or</li> <li>3. the parties have agreed to another pre-arbitral procedure that provides for conservatory, interim or similar measures - Article 29(6)</li> </ol> </li> </ul>

	<ul style="list-style-type: none"> <li>• The arbitral tribunal is not bound by (and may modify, terminate or annul) any order made by the emergency arbitrator - Article 29(3)</li> <li>• The pre-arbitral referee procedure is not affected by the introduction of the emergency arbitrator provisions</li> </ul>
<b>New provision on joinder of additional parties</b>	<ul style="list-style-type: none"> <li>• A party may make an application to the Secretariat to join an additional party to the arbitration. Unless otherwise agreed by all parties, a joinder application must be submitted before the tribunal is constituted - Article 7</li> </ul>
<b>New provision on multiple parties</b>	<ul style="list-style-type: none"> <li>• Where there are multiple parties to an arbitration, claims may be made by any party against any other party - Article 8</li> </ul>
<b>New provision on multiple contracts</b>	<ul style="list-style-type: none"> <li>• Claims arising out of, or in connection with, more than one contract may be made in a single arbitration - Article 9</li> </ul>
<b>Communication by the Secretariat and the tribunal</b>	<ul style="list-style-type: none"> <li>• To reflect developments in technology, references to telegrams, telex and facsimile transmission are replaced by email and “any other means of telecommunication that provides a record of sending” - Article 3(2)</li> </ul>
<b>Request for Arbitration</b>	<ul style="list-style-type: none"> <li>• A Request can be sent to the Secretariat at any of the offices specified in the Internal Rules - Article 4(1)</li> <li>• The Request must contain additional information specified in Article 4(3), e.g. the amount of any quantified claim, an estimate of the monetary value of any other claims and the claimant’s <i>observations and proposals</i> on the number and choice of arbitrators, place of arbitration etc.</li> </ul>
<b>Filing fee</b>	<ul style="list-style-type: none"> <li>• Advance payment of administrative expenses is replaced by the payment of a filing fee - Article 4(4)</li> </ul>
<b>Answer to the Request and Counterclaim</b>	<ul style="list-style-type: none"> <li>• A Counterclaim must contain the additional information specified in Article 5(5), e.g. the amounts of any quantified counterclaims and an estimate of the monetary value of any other counterclaims etc.</li> <li>• The respondent may submit other documents with its Answer or Counterclaim - Articles 5(1) and 5(5)</li> </ul>
<b>Challenges to the existence, validity and scope of arbitration agreements</b>	<ul style="list-style-type: none"> <li>• Unless the Secretariat refers the matter to the ICC Court, the tribunal will make decisions on jurisdictional issues - Articles 6(3) and 6(4)</li> </ul>

<p><b>Consolidation of arbitrations</b></p>	<ul style="list-style-type: none"> <li>• The ICC Court’s power to consolidate two or more arbitrations at any stage of the proceedings is broadened to include situations where:             <ol style="list-style-type: none"> <li>1. the parties have agreed to the consolidation;</li> <li>2. all the claims are made under the same arbitration agreement; or</li> <li>3. if the claims are made under more than one arbitration agreement, the arbitrations are between the same parties, the disputes arise in connection with the same legal relationship and the ICC Court finds the arbitration agreements to be “compatible” - Article 10</li> </ol> </li> </ul>
<p><b>Impartiality and disclosure obligations of arbitrators</b></p>	<ul style="list-style-type: none"> <li>• Arbitrators must be impartial and independent (rather than just being independent) and must sign a statement of acceptance, availability, impartiality and independence - Article 11(1)</li> <li>• A party may challenge the appointment of an arbitrator on the ground of a lack of impartiality - Article 14(1)</li> <li>• In addition to the disclosure obligations set out in the 1998 Rules, arbitrators must also disclose any circumstances that could give rise to reasonable doubts as to his impartiality - Article 11(2)</li> </ul>
<p><b>Appointment of arbitrators where one party is a state or state entity</b></p>	<ul style="list-style-type: none"> <li>• Where one or more of the parties is a state or claims to be a state entity, the ICC Court may appoint an arbitrator directly rather than following a proposal by an ICC National Committee or Group - Article 13(4)</li> </ul>
<p><b>New provision on proof of authority</b></p>	<ul style="list-style-type: none"> <li>• The arbitral tribunal or the Secretariat may require proof of the authority of any party representatives - Article 17</li> </ul>
<p><b>New provisions to ensure efficiency and cost-effective case management</b></p>	<ul style="list-style-type: none"> <li>• Both the tribunal and the parties are required to make every effort to conduct the arbitration in an expeditious and cost-effective manner - Article 22(1)</li> <li>• To ensure efficiency and cost-effectiveness, the tribunal:             <ol style="list-style-type: none"> <li>1. may, after consulting the parties, adopt such procedural measures as it considers appropriate - Article 22(2)</li> <li>2. must convene a case management conference with the parties when drawing up the Terms of Reference or as soon as possible after doing so - Article 24(1)</li> <li>3. may conduct further case management conferences or consultation with the parties - Article 24(3)</li> <li>4. is required to inform not only the Secretariat but also the parties of the date by which it expects to submit its draft award to the ICC Court for approval - Article 27</li> </ol> </li> </ul>

<b>Power to make confidential orders</b>	<ul style="list-style-type: none"> <li>The tribunal may, if requested by a party, make orders concerning the confidentiality of the proceedings and take measures for protecting trade secrets and confidentiality - Article 22(3)</li> </ul>
<b>Costs sanction</b>	<ul style="list-style-type: none"> <li>The tribunal is entitled to take into account the parties' conduct when dealing with costs, including the extent to which the parties have conducted the arbitration expeditiously and cost-effectively - Article 37(5)</li> </ul>

## Effects of the 2012 Rules on Dispute Resolution in Hong Kong and Asia

In addition to the new provisions described above, which enhance the efficiency and cost effectiveness of conducting arbitration proceedings pursuant to the ICC Rules, a request for an ICC arbitration can now be submitted to the Secretariat's office in Hong Kong, pursuant to Article 4(1). It is therefore no longer necessary for parties based in Asia (or elsewhere) to file a request for arbitration at the ICC in Paris. This could no doubt encourage Asian based parties to consider prescribing the ICC Rules in their arbitration agreements which will avoid the administrative and logistical disadvantages which existed before the new Rules came into effect. The new Rules will therefore provide contract draftsmen with further options to the Arbitration Rules produced by regional arbitration institutions such as the Hong Kong International Arbitration Centre and the Singapore Arbitration Centre.

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