

## Major amendments to the ICC Rules have entered into force

After the announcement made by the ICC in November last year, the amended ICC Rules of Arbitration have just entered into force on 1 March 2017.

The changes in the ICC Rules can be grouped into two main axes: Firstly, the ICC Court intends for increasing the efficiency and transparency of ICC arbitrations. Secondly, the Rules have incorporated the Expedited Procedure Rules, which will automatically apply to all arbitrations with amounts in dispute below US\$2 million and to cases involving higher amounts on an opt-in basis. Finally, it is worth noting that some modifications have been made concerning the costs of ICC proceedings, which apply since 1 January 2017.

### 1. Increasing the transparency and efficiency of ICC arbitrations

With respect to the transparency of ICC arbitrations, the modification of the Rules followed an established practice to provide reasons on certain decisions made by the Court. Henceforth, upon request of all parties, the Court may communicate reasons for certain decisions related to the constitution of the arbitral tribunal (challenges, decisions to initiate replacement proceedings and subsequently to replace an arbitrator), consolidation of arbitrations and *prima facie* decisions on jurisdiction.

On the other hand, with respect to efficiency, the modification to the Rules impose from now on the obligation for arbitral tribunals to establish the Terms of Reference in a period of 30 days, as opposed to two months, as previously provided by the Rules. It would seem that an extension to establish the Terms of Reference will no longer be automatically granted, and the Court might be more reluctant to provide an extension of this time limit.

### 2. Expedited Procedure Rules

The ICC as a leading institution in dispute resolution services has followed initiatives from other arbitral institutions (such as the ICDR, SIAC, SCC, HKIAC, IICA, among others) to establish an expedited procedure for small claims. The Expedited Procedure Rules have the following characteristics:

- it applies to cases in which the amount in dispute does not exceed US\$2 million;
- it applies to arbitration agreements concluded after the entry into force of such Rules, *i.e.*, 1 March 2017, unless the parties expressly opt out for the application of the Expedited Procedure Rules;
- the parties have the possibility to jointly opt in for the application of the Expedited Procedure Rules in cases in which the amount in dispute exceeds US\$2 million;
- before the constitution of the arbitral tribunal, the Court has the power to decide that it is inappropriate in the circumstances of the case to apply the Expedited Procedure Rules, either by its own initiative or upon request from one of the parties;
- the Secretary General has the power to request the Claimant the payment of a provisional advance to cover the costs of the arbitration until the case management conference;
- the Court may appoint a sole arbitrator, notwithstanding any contrary provision in the arbitration agreement;
- the parties and the arbitral tribunal have no obligation to establish the Terms of Reference. Consequently, the time limit for the parties to make new claims is the constitution of the arbitral tribunal, unless otherwise authorized by the arbitral tribunal;
- the Case Management Conference has to take place within 15 days after the date on which the file is transmitted to the arbitral tribunal;

- the arbitral tribunal has discretion to adopt the procedural measures it deems necessary to conduct the arbitration in an efficient manner, such as to limit the production of documents, the number, length and scope of written submissions, the convenience of conducting a hearing, among others;
- the arbitral tribunal must render the award within 6 months after the case management conference;
- the Court maintains the power to extend such time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative, if it decides it is necessary to do so; and
- the costs of the arbitration (including the arbitrators' fees and the administrative expenses of the ICC) are to be calculated according to the scales for the Expedited Procedure.

### 3. Costs of ICC proceedings

Finally, two modifications related to the costs of ICC arbitrations have been made, effective as from 1 January 2017. The first, concerns the increase in the filing fee from US\$ 3 000 to US\$ 5 000. The amount of the filing fee is the same for cases conducted under the ICC Rules and cases conducted under the Expedited Procedural Rules. The second change concerns the modification of the scales for ICC administrative expenses, including reduced scales for arbitration proceedings conducted under the Expedited Procedure Rules.

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