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ICC Arbitration rules 2026: a measured reform with far-reaching effects

1. Evolutionary in Form, Transformative in Effect: Introduction

When the ICC adopted its 2021 Arbitration Rules, the arbitration community welcomed a focused, targeted reform. The 2026 revision, generally applicable to all arbitrations commenced on or after 1 June 2026 (unless agreed otherwise by the parties), follows the same philosophy, but its cumulative impact is considerably greater than a first reading might suggest.

The 2026 Rules do not reinvent ICC arbitration, yet several amendments stand out decisively: the mandatory Terms of Reference are abolished; a new ultra-fast track drastically compresses the entire arbitral process; the emergency arbitrator regime now reaches any party for which the President is satisfied that an arbitration agreement may bind them; finally, the Rules impose new obligations on the parties. This Alert sets out what has changed, why it matters, and what parties should consider when drafting an arbitration clause now.

2. Abolition of the Mandatory Terms of Reference

The Terms of Reference ("**ToR**") constituted the defining - and most criticised - procedural feature of ICC arbitration. Unique to the ICC framework, the obligation to sign a joint document framing the dispute was intended to bring rigour and clarity. In practice, it generated cost, delay, and tactical manoeuvring, particularly in complex, multi-party cases.

The ICC had already dispensed with the mandatory ToR under the Expedited Procedure in 2017: of more than 1,000 cases administered under those provisions, very few tribunals chose to draw one up. The 2026 Rules apply that lesson universally, the ToR is no longer mandatory, though tribunals retain discretion to use it, where genuinely useful.

The Case Management Conference ("**CMC**") replaces the ToR as the central procedural milestone. The tribunal must convene an initial CMC within 30 days of receiving the file. The procedural timetable is established either at the initial CMC or in any case as soon as possible thereafter and later communicated to the ICC Secretariat. The cut-off rule now operates at that point: no new claims may be introduced thereafter without the tribunal's authorisation.

The longstanding six-month time limit for the award - previously running from the last signature of the ToR - is replaced by a deadline fixed by the President of the ICC Court based on the actual procedural timetable, yielding lower early-stage costs and greater predictability.

3. Early Determination of Claims: from *Ad Hoc* Practice to Codified Mechanism

Until now, the ICC had no dedicated mechanism for disposing of manifestly unmeritorious claims at an early stage. Tribunals improvised, relying on the broad case management powers under Article 22 of the 2021 Rules; without a formal procedural basis, early determination remained unpredictable and underused.

Other institutions - LCIA and SIAC - had introduced early dismissal mechanisms, but practical uptake remained limited absent clear institutional authority. The 2026 Rules now provide that authority.

The new Article 30 expressly empowers any party to apply for the early determination of claims or defences that are manifestly without merit or manifestly outside the tribunal's jurisdiction. The tribunal retains full discretion as to admissibility and conduct. The principal significance lies not in the demanding substantive standard but in its formal codification: a tribunal acting under Article 30 exercises clear institutional authority. Respondents facing unmeritorious claims now have a credible tool for early dismissal; claimants must ensure every claim can withstand scrutiny from the outset.

4. The Expanded Expedited Procedure and the New Highly Expedited Arbitration

4.1 Further Elevation of the Expedited Procedure Threshold

The Expedited Procedure - a sole arbitrator, a compressed timetable, and the possibility of deciding on documents alone - has been one of the ICC's most successful innovations since its introduction in 2017. Between 2017 and 2024, 1,034 cases were administered under its provisions. The procedure consistently resolves disputes faster and at lower cost and the ICC's response has been to extend its reach.

The 2026 Rules raise the automatic threshold for the Expedited Procedure from USD 3 million to USD 4 million for arbitration agreements concluded on or after 1 June 2026.

The higher threshold means that more disputes will be channelled into the expedited track by default. Corporate clients should audit their standard-form arbitration clauses: where the nature of likely disputes demands greater procedural depth, an explicit opt-out should be incorporated before a dispute arises.

4.2 The Highly Expedited Arbitration: An Entirely New Track

The most structurally innovative feature of the 2026 revision is the Highly Expedited Arbitration, governed by the new Appendix VI. Unlike the Expedited Procedure - which applies automatically below the threshold - the Highly Expedited Arbitration is available exclusively by agreement, either in the arbitration clause or after the dispute has arisen.

The timelines are extraordinary. The claimant's full statement of claim - including legal grounds, facts, and in principle all evidence available *to the extent possible* at that stage - must be included in the Request itself. The respondent has 30 days to submit its complete Answer, Defence, and any Counterclaim, with all available evidence. The initial CMC must be held within 7 days of the tribunal receiving the file, and the final award should be rendered within three months from the date of the initial CMC (rather than within six months as provided for in the Expedited Procedure). Joinder and consolidation are excluded; parties may also agree to an unreasoned award.

The Highly Expedited procedure is a genuine strategic tool for straightforward, primarily legal, and document-intensive disputes. It is wholly unsuitable for technically complex, multi-party matters or cases requiring significant expert evidence. The compressed timeline demands that parties present all available evidence to the greatest extent possible at the point of filing - a requirement that must be factored into dispute escalation processes from the outset.

5. Emergency Arbitrator: Closing a Long-Standing Gap

The ICC Emergency Arbitrator procedure, introduced in 2012, has become well established, with 287 applications filed by the year 2025. However, it carried a significant structural limitation: emergency relief could be sought only against a signatory to the arbitration agreement. Sophisticated parties exploited this by channelling harmful conduct through non-signatory affiliates.

The 2026 Rules close that gap. Under the new Appendix IV, Article 1(2)(c), a request for emergency measures may now be directed against a non-signatory, provided the President of the ICC Court is satisfied on a prima facie

basis that an arbitration agreement binding that party may exist - whether through implied consent, group of companies' doctrine, agency, assignment, or succession. The emergency arbitrator's prima facie assessment does not bind the tribunal, which retains full authority on jurisdiction in the main proceedings.

The 2026 Rules also introduce a Preliminary Order within emergency proceedings: a party may request that the emergency arbitrator direct the opposing party to refrain from actions that would defeat the purpose of the application - such as dissipating assets or destroying evidence. Such a request may be made and decided on an *ex parte* basis, with all parties afforded an opportunity to be heard immediately thereafter.

The expanded regime provides businesses operating through corporate groups, joint ventures, or multi-entity structures with a significantly broader basis for obtaining urgent interim relief. Conversely, businesses that might find themselves on the receiving end of an emergency application should review their internal escalation procedures, as the timelines in emergency proceedings are extremely compressed.

6. Arbitrator Obligations, Party Duties, and Confidentiality: A Strengthened Framework

6.1 Codification of Disclosure Best Practice

Article 12 of the 2026 Rules elevates two clarifications previously confined to the ICC's Note to Parties: any doubts as to whether a disclosure should be made shall be resolved in favour of disclosure; and disclosure does not, of itself, establish a lack of independence or impartiality - making explicit that the duty of transparency and the standard for disqualification are distinct questions.

6.2 A New Obligation on the Parties: The Conflict List

One of the most operationally significant innovations falls on the parties. Under new Article 12(5), each party must submit - at the time of filing its Request, Answer, or Request for Joinder - a list of persons and entities potentially relevant to arbitrator conflict-checking, with reasons for their inclusion. Conflict identification is no longer a matter for arbitrators and the ICC Court alone: parties must have internal processes in place to compile that information under the time pressure of filing.

6.3 Third-Party Funding Disclosure

The obligation to disclose third-party funding arrangements, introduced in the 2021 Rules, is retained and reinforced. Any party whose dispute is funded by a non-party with an economic interest in its outcome must promptly disclose the funder's existence and identity to the Secretariat, the tribunal, and all other parties. The rationale is practical. Where a dispute is financed by a third party on terms that give the funder a significant share of the recovery, the opposing party faces a structural disadvantage: it cannot seek security for costs, cannot properly assess the commercial dynamics of the litigation, and cannot factor the funding arrangement into its strategy. The disclosure obligation now embedded in the Rules is the institutional response to that vulnerability: without early knowledge of a funding arrangement, the opposing party is exposed to precisely that risk.

6.4 A New Arbitrator Confidentiality Obligation

Article 12(8) introduces an express confidentiality obligation for arbitrators requiring them to keep confidential all matters relating to the arbitration, subject to limited exceptions (information in the public domain, party agreement, applicable legal requirements, or the need to protect a legal right). For corporate clients in sectors where the existence of a dispute is commercially sensitive - financial services, pharmaceuticals, energy - this codification provides a meaningful additional layer of protection.

The cumulative effect is clear: parties now bear materially greater responsibility in the early stages of ICC proceedings. Conflict lists must be compiled at the point of filing, funding arrangements disclosed promptly, and pre-filing checklists updated to reflect the new requirements. These are no longer matters of best practice, since they are operational prerequisites under the 2026 Rules.

7. Further Reforms: A Consolidated Overview

Several further reforms complete the picture.

On **tribunal secretaries**, Article 44 introduces for the first time a formal framework: secretaries must meet the same independence, impartiality, and confidentiality standards as arbitrators, and direct fee arrangements between the tribunal and the parties are prohibited.

On **awards**, electronic signature and notification are now permitted, the fixed six-month time limit is abolished in favour of a Court-set deadline, and the period for requesting corrections is extended from 30 to 45 days.

Electronic communications with the Secretariat are now standard, with hard copies required only on specific request. Finally, when scrutinising draft awards, the Court will expressly consider - to the extent practicable - validity, enforceability, and mandatory law requirements at the seat.

8. Conclusion

The 2026 ICC Arbitration Rules are, at their core, a pragmatic reform: each change responds to an identified friction in arbitral practice - mandatory Terms of Reference, the procedural gap around early determination, the demand for an ultra-fast commercial track, the tactical vulnerability in emergency proceedings - without disrupting the broader architecture of a system that continues to attract cases from more jurisdictions than any other.

The underlying imperative is uniform: early and thorough preparation is no longer merely advisable, but a condition of effective participation. For businesses that regularly include ICC arbitration clauses in their contracts, the revised framework warrants three immediate steps: a review of existing clauses; an evaluation of whether internal processes meet the new pre-filing requirements; and an assessment of capacity to operate within the compressed timelines that several of the new mechanisms introduce.

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