The revised 2026 ICC Arbitration Rules

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Key takeaways

- **Terms of Reference are no longer mandatory.**
- **Express competence for early determination.**
- **Emergency relief expanded to non-signatories and possible on an ex parte basis.**
- **Expanded scope for expedited procedure for disputes up to USD 4 million.**
- **Introduction of Highly Expedited Arbitration provisions – target award within three months from the case management conference.**
- **Express confidentiality obligation imposed on arbitrators.**

Introduction

Today, on 1 June 2026, the revised ICC Rules of Arbitration have entered into force (the "2026 ICC Rules"). They apply to arbitrations commenced on or after 1 June 2026 unless the parties have agreed to an earlier version.

The 2026 revision introduces targeted procedural adjustments to further streamline proceedings and enhance flexibility.[1]

This update focuses on five changes that are most likely to matter in practice for counsel.

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Terms of Reference: no longer mandatory

The 2026 ICC Rules remove the requirement for arbitral tribunals to prepare Terms of Reference ("ToR"). Historically, ToR served to record the parties' claims and relief sought, to capture procedural agreements, and to define the scope of the dispute. In practice, however, their function had already evolved. Detailed lists of issues were rarely developed at such an early stage, and much of the procedural coordination had shifted to case management conferences and procedural orders.

The 2026 ICC Rules reflect this development: ToR are no longer mandatory but remain available at the tribunal's discretion. At the same time, procedural discipline is preserved. After the initial case management conference, new claims may only be introduced with the authorization of the arbitral tribunal (Article 25 of the 2026 ICC Rules).

In practical terms, the reform reinforces the role of early case management. Matters previously addressed in the ToR are likely to be captured in Procedural Order No. 1, with the case management conference becoming the central procedural step.

From a counsel perspective, the change reduces formality but does not fundamentally alter practice. Without ToR, somewhat more weight shifts to the initial submissions and the case management conference, but parties retain flexibility to develop their case as the proceedings progress.

Early determination: codifying existing practice

Article 30 of the 2026 ICC Rules expressly incorporates early determination, confirming the tribunal's power to dispose of claims or defenses that are manifestly without merit or manifestly outside its jurisdiction. The tribunal retains discretion as to whether to entertain the application and, if so, how to structure the procedure. While this mechanism was already recognized in ICC practice and reflected in the Note to Parties and Arbitral Tribunals, its inclusion in the 2026 ICC Rules removes any remaining uncertainty and may lead to more consistent use.

The threshold remains deliberately high. Early determination will generally be confined to cases involving clear legal issues or obvious deficiencies in the pleadings. It will rarely be appropriate where resolution requires a substantive evidentiary assessment. The underlying premise is that a claim must fail as a matter of law, assuming the pleaded facts to be correct. The mechanism therefore remains exceptional.

Timing is critical. Applications are expected to be made promptly after the relevant claim or defense is introduced. Tribunals are likely to refuse applications brought at a later stage where they would disrupt the procedural timetable or undermine efficiency.

From a counsel perspective, Article 30 of the 2026 ICC Rules primarily codifies existing practice. It confirms that manifestly untenable claims may be addressed at an early stage. Claimants should be mindful of this when framing their case, while respondents have a clearer basis to raise targeted objections where appropriate.

Emergency arbitration: expanded scope and increased flexibility

The 2026 ICC Rules refine the emergency arbitration framework in Appendix IV in two respects: they broaden its scope and introduce additional flexibility.

The scope of emergency arbitration proceedings is expanded. In addition to signatories and their successors, applications may now be directed at parties where, based on the information available, it appears that an arbitration agreement may bind them. This reflects the ICC practice and acknowledges the realities of multi-party and multi-contract disputes.

Importantly, this does not amount to a determination of jurisdiction. It enables access to urgent relief at an early stage where the existence of a binding arbitration agreement is arguable, while preserving the tribunal's authority to decide jurisdiction subsequently.

The 2026 ICC Rules expressly recognize the possibility of preliminary orders, including on an ex parte basis, where prior notice would risk frustrating the requested relief. Such situations may arise, for example, in cases involving potential asset dissipation or destruction of evidence. Any such measures are temporary and subject to immediate procedural safeguards, including the right of the affected party to be heard and the possibility of modification or revocation.

From a counsel perspective, these developments make emergency arbitration more readily available in complex settings. At the same time, they require careful handling. Applications involving non-signatories or ex parte relief raise heightened due process and enforcement considerations and will remain fact-specific.

Expanded scope for expedited procedure and introduction of highly expedited procedure

The 2026 ICC Rules maintain the established opt out framework of the Expedited Procedure Provisions but broaden their potential application by increasing the monetary threshold for automatic application to USD 4 million for arbitration agreements concluded on or after 1 June 2026. This will extend expedited proceedings to a larger share of ICC disputes. Parties remain free to opt out for disputes at or below USD 4 million, and to opt in for higher-value disputes.

The change is primarily relevant at the contract drafting stage. When agreeing on an ICC arbitration clause, counsel and parties should consider whether the automatic application of expedited proceedings is suitable for the types of disputes the parties are most likely to face. While the procedure may offer real efficiencies in more straightforward cases, it may be less suitable for disputes involving extensive evidence, multiple parties, or more complex issues.

In addition, the 2026 ICC Rules introduce a new procedure for Highly Expedited Arbitration under Article 33 and Appendix VI. This mechanism is available on an opt-in basis and is intended for non-complex disputes that can be resolved within a very compressed timetable. Joinder and consolidation are not available under the Highly Expedited Arbitration. It provides, in principle, for a sole arbitrator and targets a final award within three months from the case management conference (Article 7(1) of Appendix VI), compared with six months under the ordinary expedited procedure.

Overall, the revision is evolutionary rather than fundamental. However, by raising the threshold for the existing expedited procedure and adding a further ultra-fast option, the 2026 ICC Rules make expedited arbitration a more important consideration for counsel both at the drafting stage and, where appropriate, once a dispute has arisen.

Confidentiality: express obligation for arbitrators

Article 12(8) of the 2026 ICC Rules introduces an express confidentiality obligation for arbitrators. While confidentiality is often assumed in arbitration practice, it is not uniformly anchored in all legal frameworks. For example, Swiss arbitration law does not provide for a comprehensive statutory duty of confidentiality for arbitrators, and the issue remains subject to debate.

Against this background, the new provision is a useful clarification. It establishes a clear baseline within ICC proceedings without the need for tailored arrangements in each case and aligns the ICC framework with other institutional rules (such as the Swiss Rules).

From a practical perspective, the provision is unlikely to change day-to-day practice, but it strengthens expectations regarding the handling of confidential information. In sensitive cases, parties may still want to address confidentiality expressly.

Other points to note

Other notable changes under the 2026 ICC Rules include:

- The 2026 ICC Rules clarify arbitrators' disclosure obligations: in case of doubt, disclosure should be made. Disclosure, however, does not imply a lack of independence or impartiality (Articles 12(2) and 12(4) of the 2026 ICC Rules).
- The fixed six-month time limit for rendering the final award is removed. In practice, this time limit was rarely applied. Under the 2026 ICC Rules, the President of the ICC Court will set and, if necessary, extend the time limit, taking into account the procedural timetable (Article 34 of the 2026 ICC Rules).
- Electronic communications and awards further normalized: written communications are now electronic by default (Article 3(1) of the 2026 ICC Rules), and the 2026 ICC Rules expressly allow electronic signature and electronic notification of awards where appropriate (Article 38(1) of the 2026 ICC Rules).
- Article 44 of the 2026 ICC Rules explicitly addresses the role of tribunal secretaries. They may not perform decision-making functions and must meet the same independence requirements as arbitrators.

Links to ICC material

ICC Arbitration Rules 2021 and 2026 compared version

Unveiling the 2026 ICC Arbitration Rules, parts 1-6

[1] For an introduction to the 2021 ICC Rules (the "2021 ICC Rules") see our previous update here.

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No legal or tax advice

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