

ALERTS AND UPDATES

International Chamber of Commerce Introduces Its New Rules for Arbitration

September 13, 2011

The International Chamber of Commerce (ICC) introduced its new [Arbitration Rules](#) on September 12, 2011, in Paris, to be effective on January 1, 2012. The purpose of the revised version, with new provisions, is to respond to developing practical issues, among them disputes involving multiple contracts and parties and emergent procedures, and to eliminate certain causes of delay and excessive costs.

One key set of changes involves multiple parties, claims and arbitration agreements. In the request for arbitration, parties now must articulate not only all relevant agreements, but also "where claims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each claim is made" (Article 4(3)(f)). New Article 9 provides that subject to certain jurisdictional and scope determinations, claims "arising out of or in connection with more than one contract may be made in a single arbitration" Joinder of additional parties, now addressed in Article 7 and also subject to jurisdictional and scope determinations, as well as Article 9, is made to the Secretariat. Unless the parties agree, no joinder of additional parties shall occur following confirmation or appointment of any arbitrator. Article 8 governs claims between multiple parties and sets forth timing restrictions and requirements for the information to be provided. Article 10 provides for consolidation of multiple arbitrations, and permits the International Court of Arbitration (the "Court") to consider "relevant" circumstances. Article 12(6) adds that each set jointly nominates an arbitrator for purposes of appointment and confirmation in cases of multiple claimants or respondents, and where a party has been joined, it participates in the nomination process (Article 12(7)). Whereas the current rules have the Court determining prima facie jurisdiction, under the new rules, the arbitrators will decide that unless the Secretariat refers it to the Court (Article 6(3)).

Another change is modification of the required disclosure of impartiality. Article 11(2) of the general provisions adds to current Article 7(2) of the general provisions to include not only "facts and circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties," but also "any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality." The new rules also permit, in specified

situations, direct appointment by the Court, including in investor treaty arbitrations where a state is a party (Article 13(3) and (4)). Arbitrations must also set forth their availability.

Rules relating to the conduct of the arbitration have been revised. Current Article 15(2) providing that the arbitral tribunal act "fairly and impartially" and "ensure that each party has a reasonable opportunity to present its case" has been folded into an expanded Article 22, titled "Conduct of the Arbitration." In addition to that provision, Article 22(1) instructs parties to proceed expeditiously and cost-effectively relative to the "complexity and value" of the matter. The tribunal, following party consultation, can set forth such procedural measures it deems appropriate, and take steps to ensure confidentiality of trade secrets and other such information. The tribunal's standard is that it acts "fairly and impartially" and provides the parties "reasonable opportunity" to present their cases. The tribunal sets forth the procedural timetable, including when it expects to have a draft award to the Court, and logistically, flexibility is written into the rules for conduct of case-management conferences, and a new Appendix IV provides examples of case-management techniques.

While current Article 23, relating to conservatory and interim measures, remains in the newly renumbered Article 28, new Article 29 provides for an emergency arbitrator, pursuant to an application made in accordance with a new Appendix V that details the logistics of the application. The parties "undertake to comply with" any order the emergency arbitrator issues. These emergency arbitrator provisions do not preclude resort to courts at any time (Article 29(7)).

The ICC is one of various arbitration regimes. This *Alert* does not compare its new rules to other regimes or discuss the new rules extensively. The changes are meant to reflect realities of international arbitration practice and provide flexibility and accommodation to that reality.

For Further Information

If you would like more information about the ICC's revised rules, please contact [Steven M. Richman](#), any [member](#) of the [Trial Practice Group](#), any [member](#) of the [International Arbitration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

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