

## Briefing November 2016

# Modification of the ICC Rules of Arbitration

Commercial arbitration is constantly trying to improve in order to meet the needs of its users and to address the challenges of a changing world.

The Commission on Arbitration and ADR of the International Chamber of Commerce (ICC) has announced on 4 November 2016 a revision of its Arbitration Rules (the ICC Rules).

This revision will enter into force on 1 March 2017, and the revised rules will be applicable to all ICC arbitration proceeding commenced after that date.

The modifications to the rules were extensively discussed within the ICC Commission on Arbitration and among the members of the ICC Court. While they do not bring fundamental changes, they contain elements which are intended to increase transparency and efficiency in ICC arbitration.

### Reasoned Decisions on Procedural Issues

Article 11(4) of the ICC Rules is deleted, which so far prevented the ICC Court from providing reasons for decisions on challenges, replacement of arbitrators, and in the context of its prima facie jurisdictional decisions, and consolidations of arbitrations. This has the effect that the Court can now communicate the reasons for its decision which so far required the agreement by all parties. The Court can now do so whenever it considers it appropriate. The aim of this change is increased transparency regarding the Court's decisions which is an important step that should further strengthen confidence in the integrity of the ICC arbitration process.

### Shortening of Time Limits

The second amendment to the rules is a reduction of the time limit provided by Article 23 for the establishment of the Terms of Reference from two months to one. The expectation is that this reduction will effectively shorten the time until an arbitral tribunal can take up its work. In this context and as indicated by several practitioners during the establishment of the revision, one should point out that in many instances this time limit will not be sufficient, for example due to the unavailability of the parties' counsel. In that case the arbitral tribunal can ask for an extension. In reality, this change is primarily an encouragement to everybody involved in an arbitration to act expeditiously and efficiently.

### Expedited Procedural Rules

Finally, and this is probably the most important change, the introduction of Expedited Procedural Rules (new Article 30c of the ICC Rules and Appendix IV) will make sure that cases with a relatively limited amount

in dispute (below USD 2 million) are administered in a more cost efficient manner both for the parties and also for the Court. The essential features of these Expedited Procedural Rules are

- the expedited appointment of a sole arbitrator by the Court, regardless of the arbitration agreement's provisions;
- the requirement to establish Terms of Reference does not apply;
- the possibility to limit the number and volume of written submissions;
- the procedure can be based on documents only, with no document production phase and no hearing unless the tribunal decides otherwise;

- a mandatory six months time limit to render the final award; and
- the fees for these expedited procedures are reduced.

In effect, the ICC follows with this revision the path of other arbitration institutions who have adopted fast track rules. Unfortunately, this procedure only comes into play if the arbitration agreement was concluded after the date of entering into force (unless the parties voluntarily choose it). Moreover, the parties have the possibility to opt-out, and the Court (upon the request of a party or on its own motion) can determine that it is inappropriate in the circumstances of the case.

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