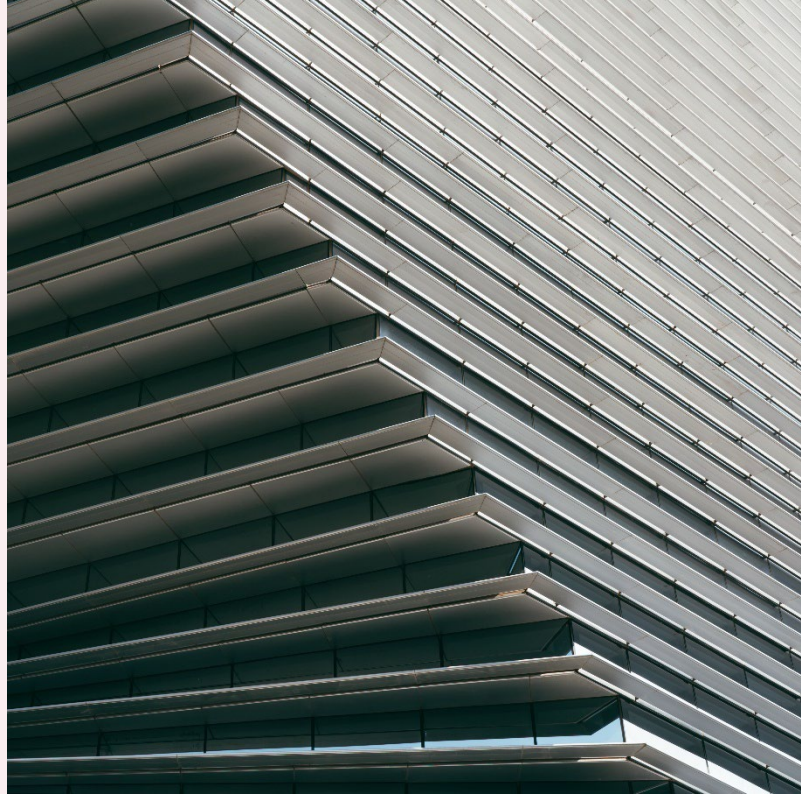


UPDATED 2026 ICC ARBITRATION RULES PROMOTE EARLY DETERMINATION OF CLAIMS, PROCEDURAL EFFICIENCY AND DISPENSE WITH MANDATORY TERMS OF REFERENCE

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The latest Arbitration Rules of the International Chamber of Commerce ("**ICC**") will enter into force on 1 June 2026 (the "**2026 Rules**") and will apply to arbitrations commenced after that date. The updates are aimed at enhancing efficiency, clarity and usability, while ensuring that ICC arbitration continues to meet the needs of users worldwide. Notable features of the 2026 Rules include the removal of Terms of Reference as a mandatory feature of ICC arbitration, the introduction of early determination procedures and highly expedited arbitration, and the expansion of emergency arbitration provisions.

Key issues

- 1 Terms of Reference No Longer Mandatory
- 2 Introduction of Early Determination
- 3 An Increased Focus on Arbitrator Independence and Impartiality
- 4 Emergency Arbitration Expanded
- 5 Introduction of "Highly" Expedited Arbitration
- 6 Other Notable Changes
- 7 Concluding Remarks

Notable Changes introduced into the ICC Rules 2026

- Terms of Reference no longer mandatory
- Early determination procedures now available
- Increased focus on arbitrator independence and impartiality
- Expanded emergency arbitration procedures
- 'Highly Expedited Arbitration Procedure' now available
- Time limit for final award fixed by President
- Electronic signature of awards permitted
- Express confidentiality obligation on arbitrators
- Schedule of Fees introduced
- Virtual tribunal deliberations
- International organisations subject to direct court appointments of arbitrators.
- Prospective arbitrators' expertise and experience now considered
- Added reference to 'investment protection law'

TERMS OF REFERENCE NO LONGER MANDATORY

Under the 2026 Rules, it is no longer mandatory for a tribunal to draw up Terms of Reference. Dispensing with the need for a Terms of Reference marks a significant departure from prior versions of the ICC Rules.¹ Under previous versions of the ICC Rules, Terms of Reference were a defining feature of ICC arbitration. They typically set out the parties' claims, the relief sought and the procedural framework for the arbitration. In practice, however, many users viewed them as adding cost and procedural complexity without materially narrowing the dispute at such an early stage.

The removal of mandatory Terms of Reference does not, however, provide parties with the unrestricted ability to introduce new claims at any stage of the proceeding. Rather, Article 25 prohibits the introduction of new claims after the initial Case Management Conference without prior authorisation from the tribunal. Additionally, while not mandatory under the 2026 Rules, parties may still agree on a Terms of Reference if considered useful in a particular case.

INTRODUCTION OF EARLY DETERMINATION

The 2026 Rules introduce early determination procedures. Such procedures can assist in both narrowing the scope of issues relevant to parties' disputes and streamlining proceedings. In turn, this enhances procedural efficiency.

Article 30 enables any party to apply to the arbitral tribunal for the early determination of claims or defences that are: manifestly without merit; or manifestly outside the tribunal's jurisdiction.² This is a significant addition to the ICC Rules. While some ICC tribunals had previously adopted summary procedures on a case-by-case basis, the 2026 Rules now expressly permit arbitral tribunals to determine finally and summarily issues of jurisdiction or merits, absent a full evidentiary hearing. This aligns ICC arbitration with many domestic legal systems and other arbitration rules that allow for early determination.³

Article 30 requires a two-step process: the tribunal first decides whether to allow the application, then considers its merits.⁴ This seeks to prevent

¹ This was originally referred to as a "form of submission". See ICC Rules 1922, art. XXXIV. The expression "terms of reference" was first introduced in the 1955 version of the ICC Rules. See ICC Rules 1955, Art. 19.

² This language originated from the ICSID Arbitration Rules 2006. ICSID Tribunals have interpreted the word 'manifest' in this context to mean that applicants must establish their objections 'clearly and obviously, with relative ease of dispatch'. It remains to be seen how ICC tribunals will assess the standard under the 2026 Rules. See *Trans-Global Petroleum, Inc. v. The Hashemite Kingdom of Jordan*, ICSID Case No. ARB/07/25, Tribunal's Decision on Respondent's Objection Under Rule 41(5) (12 May 2008), para 88.

² ICC Rules 2026, Art. 30(1)-(2).

³ The LCIA Rules 2020 empower tribunals to determine that any claim, defence, counterclaim, cross-claim, defence to counterclaim or defence to a cross-claim is manifestly outside the jurisdiction of the tribunal, or is inadmissible or manifestly without merit (Art. 22.1(viii)). In 2022, ICSID amended its rules addressing objections to claims based on 'manifest lack of legal merit' to clarify and elaborate upon the procedure to be applied where such objections are made. Under the 2025 SIAC Rules, a tribunal may quickly dismiss claims or defences that are "manifestly without legal merit" or "manifestly outside the jurisdiction" of the tribunal (Rule 47.1). The HKIAC Early Determination Procedure, under Art. 43 of the HKIAC Administered Arbitration Rules 2018, empowers tribunals to quickly dismiss legally or factually meritless claims or defences.

⁴ ICC Rules 2026, Art. 30(1)-(2).

parties from using early determination as a delay tactic and mitigates against an abuse of process.

Parties seeking the early determination of certain issues are encouraged to file their applications promptly. It is also advisable for parties to detail why a claim or defence is manifestly without merit and/or outside the tribunal's jurisdiction, and how early determination would support the fair and efficient resolution of proceedings.

AN INCREASED FOCUS ON ARBITRATOR INDEPENDENCE AND IMPARTIALITY

The 2026 Rules also introduce new obligations aimed at enhancing the independence and impartiality of arbitrators and tribunal secretaries.

To assist prospective arbitrators and arbitrators in complying with their disclosure obligations, Article 12(5) requires each party to submit to the Secretariat a list of persons and entities for prospective arbitrators and arbitrators to consider, with reasons. Any doubts the prospective arbitrator or arbitrator may have about whether to make a disclosure must be resolved in favour of disclosure.⁵ Disclosure alone does not establish a lack of independence or impartiality.⁶ These added requirements are intended to assist arbitrators in identifying potential conflicts and making appropriate disclosures.

Additionally, under the 2026 Rules, tribunal secretaries must now satisfy the same independence, impartiality and confidentiality requirements as arbitrators and sign a statement of acceptance, availability, impartiality and independence before their appointment.⁷ This aligns the 2026 Rules with other arbitral rules⁸ and the IBA Guidelines on Conflicts of Interest.⁹

EMERGENCY ARBITRATION EXPANDED

Most notably, the 2026 Rules also expressly permit emergency arbitrators to issue preliminary orders¹⁰ designed to prevent a party from frustrating the purpose of the emergency application.¹¹ Significantly, a request for a preliminary order can be made and decided upon without notice to all other parties.¹² The ex parte nature of a preliminary order serves to address situations where advance notice could undermine the effectiveness of the relief sought.

⁵ ICC Rules 2026, Art. 12(2).

⁶ ICC Rules 2026, Art. 12(4).

⁷ ICC Rules 2026, Art. 44(2).

⁸ See, for example, LCIA Rules (2020): Art. 14A expressly permits the use of secretaries, requiring a declaration of independence and prohibiting the delegation of the tribunal's decision-making function to a tribunal secretary.

⁹ IBA Guidelines on Conflicts of Interest in International Arbitration (2024), General Standard 5.

¹⁰ This follows from the 2006 modifications to the UNCITRAL Model Law which had first introduced the concept of preliminary orders. See UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as adopted in 2006, Chapter IV (Interim Measures and Preliminary Orders).

¹¹ ICC Rules 2026, Appendix IV, Art. 7(1).

¹² ICC Rules 2026, Appendix IV, Art. 7(1).

Under the 2026 Rules, once the Preliminary Order is granted, the emergency arbitrator must immediately afford all other parties the reasonable opportunity to present their case.¹³ The emergency arbitrator may also modify the Preliminary Order in due course.¹⁴

The 2026 Rules also broaden the scope of emergency arbitration to potentially cover parties for whom the President is satisfied that an arbitration agreement "may exist".¹⁵

These changes strengthen the practical utility of emergency arbitration, particularly in disputes involving urgent asset preservation or other time-sensitive interim measures.

INTRODUCTION OF "HIGHLY" EXPEDITED ARBITRATION

The 2026 Rules introduce a highly expedited arbitration procedure ("**HEAP**") intended to propel the swift resolution of time-sensitive disputes. HEAP is best suited for lower-complexity commercial disputes, claims with a simple factual matrix, or a distinct aspect of a dispute, which necessitates expeditious resolution.¹⁶ HEAP will take the form of an opt-in procedure with a three-month timeframe from the date of the initial Case Management Conference.¹⁷ The three month time limit encompasses the drafting of the award, the scrutiny process and the notification of the award to the parties.¹⁸ HEAP applies irrespective of the amount in dispute.¹⁹

Key features of HEAP include:

- A sole arbitrator;²⁰
- The possibility of a documents-only procedure without hearings or witness examination;²¹
- The possibility for parties to agree to have an award without reasons. This is a striking feature of HEAP which deviates from mainstream arbitral practice. Parties are advised to carefully consider the enforcement implications of entering into such agreements;²²

¹³ ICC Rules 2026, Appendix IV, Art. 7(4).

¹⁴ ICC Rules 2026, Appendix IV, Art. 7(4).

¹⁵ ICC Rules 2026, Appendix IV, Art. 1(2)(c).

¹⁶ ICC, "Unveiling the 2026 ICC Arbitration Rules, part 4: Highly Expedited Arbitration Provisions" (21 May 2026) <<https://iccwbo.org/news-publications/news/unveiling-the-2026-icc-arbitration-rules-part-4-highly-expedited-arbitration-provisions/>> (last accessed 22 May 2026).

¹⁷ ICC Rules 2026, Appendix VI, Art. 7(1). Note that Article 7(1) further provides that the President may extend the time limit pursuant to a reasoned request from the arbitral tribunal or on the President's own initiative, if the President considers an extension necessary.

¹⁸ ICC, "Unveiling the 2026 ICC Arbitration Rules, part 4: Highly Expedited Arbitration Provisions" (21 May 2026) <<https://iccwbo.org/news-publications/news/unveiling-the-2026-icc-arbitration-rules-part-4-highly-expedited-arbitration-provisions/>> (last accessed 22 May 2026).

¹⁹ See ICC, "Unveiling the 2026 ICC Arbitration Rules, part 4: Highly Expedited Arbitration Provisions" (21 May 2026) <<https://iccwbo.org/news-publications/news/unveiling-the-2026-icc-arbitration-rules-part-4-highly-expedited-arbitration-provisions/>> (last accessed 22 May 2026).

²⁰ ICC Rules 2026, Appendix VI, Art. 4(2).

²¹ ICC Rules 2026, Appendix VI, Art. 6(3).

²² ICC Rules 2026, Appendix VI, Art. 7(2).

- Compressed procedural timelines;²³
- Front-loaded submissions;²⁴
- No joinder or consolidation.²⁵

OTHER NOTABLE CHANGES

- **Time limit for final award fixed by President:** The 2021 ICC Rules had prescribed a six-month time limit for the rendering of awards. In practice, this was usually extended by the ICC at the tribunal's request or on the initiative of the Court. Under the 2026 Rules, the President of the Court is now empowered to fix the time limit, or subsequently extend the limit, for rendering the final award, taking into account the procedural timetable or a reasoned request from the arbitral tribunal.²⁶
- **Electronic signature of awards permitted:** Tribunals can sign awards electronically after consulting with the parties and considering all relevant circumstances.²⁷
- **Increased threshold for expedited arbitration:** The threshold for expedited arbitration is increased to USD 4m for claims brought under arbitration agreements concluded on or after 1 June 2026.²⁸
- **Express confidentiality obligation on arbitrators:** Arbitrators must keep confidential all matters relating to the arbitration unless otherwise in the public domain, agreed by the parties, required by applicable law, or necessary to protect a legal right or comply with disclosure obligations.²⁹
- **Schedule of Fees introduced:** All references to specific fees in the Rules have been removed, and are included in a Schedule of Fees.
- **Virtual tribunal deliberations:** The arbitral tribunal may deliberate wherever it considers appropriate or by videoconference or other electronic means, or a combination of these methods.³⁰

²³ See ICC, "Unveiling the 2026 ICC Arbitration Rules, part 4: Highly Expedited Arbitration Provisions" (21 May 2026) <<https://iccwbo.org/news-publications/news/unveiling-the-2026-icc-arbitration-rules-part-4-highly-expedited-arbitration-provisions/>> (last accessed 22 May 2026).

²⁴ ICC Rules 2026, Appendix VI, Art. 3.

²⁵ ICC Rules 2026, Appendix VI, Art. 3. Note that the prohibition on joinder and consolidation is intentional and reflects the ICC's view that HEAP is not intended for procedurally complex disputes. See ICC, "Unveiling the 2026 ICC Arbitration Rules, part 4: Highly Expedited Arbitration Provisions" (21 May 2026) <<https://iccwbo.org/news-publications/news/unveiling-the-2026-icc-arbitration-rules-part-4-highly-expedited-arbitration-provisions/>> (last accessed 22 May 2026).

²⁶ ICC Rules 2026, Art. 34.

²⁷ ICC Rules 2026, Art. 38(1).

²⁸ ICC, "Unveiling the 2026 ICC Arbitration Rules, part 3: Expedited Procedure Provisions and Emergency Arbitration" (19 May 2026) <<https://iccwbo.org/news-publications/news/unveiling-the-2026-icc-arbitration-rules-part-3-expedited-procedure-provisions-and-emergency-arbitration/>> (last accessed 22 May 2026).

²⁹ ICC Rules 2026, Art. 12(8).

³⁰ ICC Rules 2026, Art. 19(3).

- **International organisations subject to direct court appointments:** Direct court appointments of arbitrators have been expanded to apply where a party may be considered to be an international organisation.³¹
- **Additional considerations when appointing arbitrators:** Expertise and experience are now considered in the context of arbitrator appointments.³²
- **Added reference to investment protection law:** Arbitrators cannot have the same nationality as an arbitrating party if the arbitration agreement arises from a treaty or investment protection law (unless the parties otherwise agree).³³

CONCLUDING REMARKS

The 2026 Rules should help make ICC arbitration more streamlined and clearer for both parties and arbitrators. The updates reflect the continuing demand for efficiency, flexibility, and transparency in international arbitration. While the core characteristics of ICC arbitration are largely retained, the 2026 Rules offer parties greater flexibility to tailor procedures to the specific needs of their dispute. This is likely to be welcomed by users. As always, careful consideration of the new provisions and their practical implications will be essential both for parties and their counsel and the utility of some of these changes will be put to the test over time.

³¹ ICC Rules 2026, Art. 14(4).

³² ICC Rules 2026, Art. 14(1).

³³ ICC Rules 2026, Art. 14(6).

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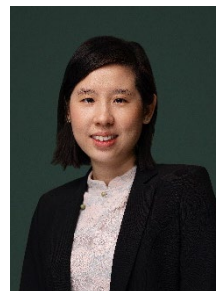


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