The 2026 ICC Arbitration Rules: Key Reforms for Energy and Maritime Counsel

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The ICC's revised Arbitration Rules, entering into force on 1 June 2026, represent a significant overhaul of the institution's procedural framework. The revised Rules apply to all requests for arbitration filed on or after that date. They are accompanied by updated Note to Parties and Arbitral Tribunals on the Conduct of the ICC Arbitration. Key changes include new procedural tools, streamlined processes and a recalibrated balance between efficiency and procedural rigour. This article highlights how ICC arbitrations will differ under the new Rules and helps in-house teams assess whether the ICC remains the appropriate forum for their disputes.

The 2026 Rules enter into force against a backdrop of continued strong demand for ICC arbitration. In 2025, 881 cases were filed, with the total value of pending disputes reaching US$299 billion. These statistics confirm the ICC's position as one of the most widely used arbitral institutions worldwide, demonstrating its willingness to evolve in response to user expectations.

The End of Mandatory Terms of Reference

Perhaps the most consequential change is the removal of mandatory Terms of Reference. A feature of ICC arbitration for over a century, Terms of Reference required the tribunal, under the 2021 Rules, to prepare and transmit them to the ICC Court within 30 days of receiving the file. They included basic details such as the parties' names and contact information, a summary of the parties' respective claims and relief sought, quantified amounts and a list of issues. In practice, extensions were frequently granted, and the process had become time-consuming and costly, with its value increasingly questioned.

Since the introduction of the Expedited Procedure Provisions in 2017, over 1,000 such cases have been administered without mandatory Terms of Reference, and fewer than 25 tribunals elected to draw them up. Under the new Rules, tribunals retain discretion to establish Terms of Reference where appropriate, but the default position is that the initial Case Management Conference (**CMC**), to be held within 30 days of the file being transmitted to the tribunal, now serves as the central procedural milestone (Article 24).

This change has important consequences. Parties must ensure their claims are fully articulated in the Request for Arbitration and the Answer, since no new claims may be introduced after the initial CMC without tribunal authorisation (Article 25). Additionally, the President of the ICC Court now fixes the time limit for rendering the final award (Article 34).

Expedited Procedures and the New Highly Expedited Arbitration Provisions

The 2026 Rules raise the monetary threshold for automatic application of the Expedited Procedure Provisions from US$3 million to US$4 million for arbitration agreements concluded on or after 1 June 2026. As over 40 per cent of ICC cases in 2025 did not exceed US$4 million, this broadens the number of disputes eligible for streamlined proceedings (Appendix V, Article 1(3)). Parties should consider whether to opt in or out depending on the value and complexity of their claim.

The more notable innovation is the Highly Expedited Arbitration Provisions (**HEAP**), an entirely new opt-in mechanism set out in Appendix VI. HEAP targets a final award within three months of the initial CMC, with disputes resolved by a sole arbitrator who has wide discretion to limit submissions, decline document production requests and decide the case on the papers alone. Parties may also agree to an unreasoned award, though it will be important to consider potential enforcement risks. To achieve this pace, the Request for Arbitration must include a Statement of Claim and the Answer must include a Statement of Defence, each supported by evidence and legal authorities.

The ICC has positioned HEAP as suitable for "*lower-complexity commercial disputes, claims with a simple factual matrix, or a distinct aspect of a dispute which requires swift resolution*" including purchase price adjustments.

For energy and maritime contracts, HEAP may prove attractive for discrete, lower-complexity issues such as demurrage and charterparty claims, but is unlikely to be suitable for the complex, multi-party construction or EPC disputes.

Arbitrator Disclosure and Party Engagement

The 2026 Rules strengthen arbitrator disclosure requirements by codifying two long-standing ICC Court practices. Article 12(2) now provides that any doubts a prospective arbitrator may have about whether to make a disclosure "*shall be resolved in favour of disclosure*." Article 12(4) clarifies that "*a disclosure does not, by itself, establish a lack of independence or impartiality*."

A new provision, Article 12(5), requires parties to submit, at the time of filing their Request, Answer or Request for Joinder, a list of persons and entities that prospective arbitrators should consider for disclosure purposes, together with reasons. The obligation to disclose third-party funding arrangements remains (Article 12(6)).

The ICC has emphasised that this requirement does not shift the disclosure obligation away from the arbitrator, who "*remains, ultimately, responsible for making any necessary disclosure*." The provision is designed to surface potential conflicts early and reduce late-stage challenges. In energy and maritime arbitrations involving special purpose vehicles, joint ventures and subcontracting chains, this will require careful attention to identifying potentially connected persons and entities.

It is also notable that the ICC Court will now consider a prospective arbitrator's experience and expertise, as well as nationality, residence, availability and arbitration abilities, when making appointments (Article 14). These additional criteria could enhance the selection of arbitrators to determine disputes in specialised areas including energy and maritime.

The 2026 Rules also introduce an express confidentiality obligation for arbitrators. Article 12(8) provides that 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. Notably, the 2026 Rules do not impose a

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corresponding confidentiality obligation on the parties, who retain the ability to agree the scope of confidentiality in the arbitration agreement. For energy and maritime disputes, where parallel proceedings, regulatory investigations or disclosure obligations in regulated sectors may arise, parties should consider addressing confidentiality expressly in their arbitration agreements.

Emergency Arbitration and Preliminary Orders

The amendments address two gaps in the previous emergency arbitrator provisions. First, Article 1(2) of Appendix IV now expressly permits emergency arbitrator proceedings to be initiated against nonsignatories where the President of the ICC Court is satisfied that an arbitration agreement binding such a party may exist. This reflects the realities of modern international trade, where disputes frequently involve complex corporate structures.

Second, the 2026 Rules expressly acknowledge preliminary orders for the first time, permitting a party to request an order directing another party not to frustrate the purpose of the application. Critically, such requests may be made and decided on an ex parte basis where prior notification could undermine the effectiveness of the relief, for example, in cases of asset dissipation or destruction of evidence. Procedural safeguards follow: The emergency arbitrator must immediately afford all other parties a reasonable opportunity to present their case and retains power to modify the order.

Early Determination

Article 30 of the 2026 Rules promotes the early determination mechanism from the Note to Parties and Arbitral Tribunals into the Rules themselves, permitting any party to apply for a determination that one or more claims or defences are manifestly without merit or manifestly outside the tribunal's jurisdiction. This is a potentially valuable tool for disposing of unmeritorious claims without the cost of a full hearing. A similar change was made by the LCIA in 2020. According to its most recent Casework Report, five per cent of new LCIA arbitrations include an application for early determination.

Other amendments

Several other amendments merit brief mention.

Electronic communications and awards. Reflecting the changed technological landscape, the 2026 Rules provide that written communications are to be made by electronic means as default and that awards may be signed electronically, in counterparts and notified in electronic format (Articles 3 and 38). The Note encourages parties to use a new platform, ICC Case Connect, for communication and document sharing. Again, parties should consider enforcement before accepting an electronically signed award.

Court scrutiny. The ICC Court will now consider the validity and enforceability of the award in addition to the requirements of mandatory law at the place of arbitration (Article 37(3)).

Tribunal secretaries. Although recognised by the ICC since 1995, Article 44 formally codifies the role of tribunal secretaries, requiring that they satisfy the same independence, impartiality and

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confidentiality requirements as arbitrators and that their appointment does not create any additional financial burden on the parties or involve delegation of decision-making authority.

Fee structure. Administrative expenses for disputes under US$10 million have been reduced, while targeted upward adjustments have been introduced for larger disputes — the first such increase since 2010 (Article III).

Assessing the Overall Significance

The 2026 Rules represent a deliberate recalibration of ICC arbitration towards greater procedural flexibility, reduced formality and enhanced efficiency. The removal of mandatory Terms of Reference aligns the ICC with prevailing practice at other leading institutions. The introduction of HEAP and the formalisation of early determination expand the procedural toolkit available to parties and the strengthened disclosure framework should help reduce arbitrator challenges. The Note also encourages enhanced efficiency and includes an extensive list of case management techniques that can be employed by the tribunal and parties to achieve this.

The practical implications are clear. Arbitration clauses in new contracts should be reviewed in light of the expanded Expedited Procedure threshold and the availability of HEAP, particularly for discrete, lower-value disputes. Case preparation strategies will need to adapt to a world without mandatory Terms of Reference, in which the initial CMC is the key procedural gateway. The new party disclosure list obligation will require careful early coordination across corporate groups.

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