

## Introduction

On 1 June 2026, the International Chamber of Commerce “**ICC**” introduced a new version of its Arbitration Rules, replacing the 2021 edition. As one of the most widely used arbitral institutions globally, with over 30,000 cases registered since 1923, changes to the ICC Rules are always closely monitored.

While the 2021 Rules addressed specific developments such as multi-party arbitration, third-party funding disclosure, and pandemic-related practices, the 2026 revision goes further. The focus this time is clear: improving efficiency and flexibility, while keeping ICC arbitration aligned with the practical expectations of commercial users.

This article highlights the key changes and what they mean in practice i.e., how these changes will impact the parties from the drafting of an arbitration agreement to the conduct of the whole proceedings; from the very first submission until the final award.

### 1. The End of the Mandatory Terms of Reference

The **Terms of Reference “TOR”** – one of the most distinctive features of ICC arbitrations since its inception, has now been eliminated as a mandatory procedural detail. This document, which typically summarized the party’s claims, issues & reliefs sought in accordance with Art. 23 of the 2021 Rules,

was primarily used as a procedural gateway barring new claims from being introduced post signing of the TOR & without tribunal’s approval. The process to agree on the TOR was a strenuous one; often employed as a guerilla tactic to delay the proceedings pending the execution of TOR. Further, it offered parties an avenue to improve their initial claim retrospectively.

Under the 2026 Rules, the TOR is no longer mandatory. A tribunal may still retain its discretion to prepare one where it is genuinely useful, but the default position is to proceed directly to a **Case Management Conference “CMC”** - the early meeting at which the tribunal and the parties decide how the case will be conducted.

Two mechanics are significant. First, the CMC must be held within 30 days of the tribunal receiving the file (Article 24), although the Secretary General may extend that deadline on a reasoned request. Second, and importantly, Article 25 ties the cut-off for new claims to that initial CMC rather than to the TOR, preserving one of the TOR’s most valuable functions through a different mechanism but at a very early stage.

The change is grounded in experience. The Expedited Procedure, in place since 2017, has never required a TOR: the ICC has administered well over 1,000 cases without one, and fewer than 25 tribunals elected to

prepare one voluntarily. This is strong evidence that the step could be dispensed with without any loss of rigor. In practice, the TOR had become a formality that could consume several weeks at precisely the moment a case ought to be gaining momentum, and a step that an uncooperative party could exploit to generate delay.

### **Looking ahead**

The reform will deliver its intended benefits only if the CMC is treated as a substantive case-design exercise rather than a routine scheduling call. Parties should also note a significant practical consequence: because the deadline for introducing new claims now falls at the initial CMC (earlier than under the former TOR timetable), a party must arrive with its case fully developed.

## **2. Codification of the Early Disposal of Weak Claims**

Article 30 of the 2026 Rules now codifies the existing guidance on case practice by introducing a formal mechanism for the early determination of claims or defenses that are “*manifestly without merit*” or “*manifestly outside the arbitral tribunal’s jurisdiction*”.

National courts have long had summary-judgment and strike-out procedures; similar disposition mechanisms also exist under a number of leading arbitral institutional rules such as SIAC and HKIAC – ICC arbitration now has its own equivalent.

It is pertinent to note however that the 2026 Rules do not define or interpret the “*manifestly without merit*” standard. Parties and tribunals would thus have to look at past cases for the treatment of such claims and in general have to view the threshold as a

demanding one for a claim that is *prima facie* devoid of any merit.

Having said that, any party may apply at any stage. The tribunal first decides whether to allow the application to proceed at all and, if so, adopts a suitable procedure after consulting the parties.

It is worth being precise about the nature of the change. This is less the creation of a new power than the formalisation of an existing one. Tribunals already had broad procedural discretion, and early determination featured in the ICC’s guidance *Note to Parties*. What the 2026 Rules does is, elevate it from soft guidance to a binding provision of the Rules, conferring greater authority and predictability.

### **Looking ahead**

The decisive question is uptake. Arbitrators have historically been cautious about dismissing claims early, concerned that an unsuccessful party may later challenge the award for denial of a fair hearing. Whether Article 30 shifts that practice and whether early-determination decisions withstand set-aside and enforcement challenges will determine whether the tool fulfils its potential. However, if employed well, it can certainly allow the efficient and cost-effective conduct of the proceedings. Nonetheless, the change itself entails the ingredients of delaying the proceedings courtesy belated unsuccessful requests to strike off the claims.

## **3. Expedited and Highly Expedited Arbitration Procedures**

The 2026 Rules make two changes to the framework for expedited arbitration. The first is an increase in the monetary threshold for

the automatic application of the **Expedited Procedure Provisions “EPP”** from USD 3 million to USD 4 million, applicable to arbitration agreements concluded on or after 1 June 2026.

Once again, this change is rooted in experience wherein according to the ICC, more than 40% of its 2025 caseload involved amounts in dispute of USD 4 million or less, so a substantial share of future disputes will fall within the expedited range by default. Parties may still opt out whatever the amount, so the change widens eligibility rather than imposing expedited treatment.

#### ***Looking ahead***

Going forward, for arbitration agreements concluded on or after 1 June 2026, the higher USD 4 million band will apply automatically, drawing a materially larger pool of disputes into expedited treatment. Therefore, the parties whose contracts are likely to generate complex, document-heavy or expert-dependent disputes should decide *at the drafting stage* whether to opt out, because the threshold is effectively fixed when the clause is agreed rather than when the dispute crystallizes.

The second, and truly new provision is the introduction of opt-in **Highly Expedited Arbitration Provisions “HEAP”**, at Article 33 and Appendix VI, designed for disputes of limited procedural complexity that require swift resolution. Such disputes are decided by a sole arbitrator vested with broad procedural discretion, including the power to limit the number of written submissions or to dispense with document production or hearings.

Unlike EPP, HEAP is an entirely consensual procedure; it applies only where all parties agree and provides for a final award within

three months of the initial CMC. Furthermore, since HEAP is designed for disputes of limited procedural complexity, neither joinder nor consolidation is permitted.

#### ***Looking ahead***

HEAP is likely to be attractive for relatively straightforward, document-based disputes; however, it is yet to be seen whether the three-month timeframe which must accommodate the drafting of the award, ICC Court scrutiny and notification to the parties proves workable in practice.

### **5. Stronger Arbitrator Disclosure and Confidentiality**

Disclosure now tilts firmly toward transparency. Under the revised Article 12(2), any doubt as to whether a prospective arbitrator should disclose a potential conflict of interest must now be resolved in favour of disclosure. The 2026 Rules also clarify that making a disclosure does not, by itself, indicate a lack of independence or impartiality it is an important reassurance that encourages transparency without creating unnecessary deterrents to disclosure.

A new obligation under Article 12(5) requires parties to submit to the Secretariat a list of persons and organizations they believe prospective arbitrators should consider when conducting their conflict checks. This draws on the parties’ own knowledge of the relevant commercial relationships, corporate structures and funding arrangements, enabling more targeted conflict checks and reducing the risk of a challenge arising months into the proceedings.

On confidentiality, Article 12(8) now expressly requires arbitrators to keep all matters

relating to the arbitration confidential, subject to the established exceptions where information is already in the public domain, the parties agree otherwise, or disclosure is required by law, with a corresponding duty on tribunal secretaries under Article 44. This express obligation gives the framework greater clarity and legal certainty.

### **Looking ahead**

The new party-list obligation is a welcoming reform, but it shifts part of the conflict-identification burden onto the parties and introduces a strategic dimension. A party that could have identified a connection at the outset, and chose not to, will find it more difficult to raise that point later as a ground for challenge.

## **6. Award Deadlines, Electronic Communications and Other Updates**

The former default of issuing a final award within six months of the TOR has been removed (Article 34). It was extended so routinely in practice that it had ceased to operate as a meaningful constraint. In its place, the President of the ICC Court will fix a deadline for each case by reference to the procedural timetable established at the CMC, or a reasoned request from the tribunal. The objective is realistic, case-specific timelines rather than a single default applied to every dispute.

Electronic communication is now the default. Article 3 confirms that written communications are to be made by electronic means, with hard copies reserved for limited circumstances such as formal service of the Request for Arbitration. This formalises existing practice and supports the ICC's digital case-management platform, Case Connect.

Among the further refinements, the period within which a tribunal may correct its own award for clerical, computational or typographical errors, is extended from 30 to 45 days (Article 39(1)), in part to accommodate a new requirement that the tribunal first seek the parties' comments; and tribunal secretaries are now expressly regulated, including the confidentiality obligation noted above.

### **Looking ahead**

Replacing a fixed deadline with a tailored one should produce more realistic timetables, but it also removes the clear, predictable reference point that parties previously relied on for planning. Much will depend on whether the ICC and tribunals set meaningful deadlines at the outset and then hold firm against dilatory conduct.

## **Conclusion**

The 2026 Rules are best understood as an evolution rather than a revolution. They remove long-standing formalities, expand the range of faster procedures, sharpen emergency relief, and bring transparency and confidentiality into clearer focus. The unifying theme is a clear institutional objective: that ICC arbitration can become faster and more flexible without sacrificing the quality and rigor that have made it a leading forum for international commercial disputes. Whether that objective is realised will be determined in practice, by how tribunals and parties use the new tools, but the direction of the reform is clear, and businesses with ICC arbitration clauses should review their position accordingly.

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