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## **THE NEW ICC RULES OF ARBITRATION**

**(EFFECTIVE AS OF 1 JANUARY 2012)**

On 12 September 2011 the ICC launched revised arbitration Rules (the “New Rules”) that are aimed at **improving the current framework of ICC arbitration** without altering its key features, such as the drawing up of Terms of Reference, the flexibility in the organisation of the proceedings by the arbitral tribunal and the scrutiny of the award by the ICC.

The New Rules will apply to any arbitration proceedings commenced **after 1 January 2012** and are intended to reflect current practices in international arbitration, to address concerns about efficiency and costs, as well as situations involving several parties or contracts. The most significant changes are as follows:

### **1. Clear rules for multi-party and multi-contract disputes**

The New Rules provide for **three main procedural options** in the context of multi-party and multi-contract disputes, including that to:

- **join additional parties** to existing arbitral proceedings, where such parties were not named in the initial request for arbitration, such as third parties under the same or related contracts or parent companies also bound by an ICC arbitration agreement, although, unlike under the Swiss Rules of International Arbitration, such joinder can normally take place only before the constitution of the arbitral tribunal;
- bring claims arising out of **multiple contracts**, and under several compatible ICC arbitration agreements, in **a single proceeding**; and
- request the **consolidation of two or more pending arbitrations** where there is sufficient connectivity between them, including compatible ICC arbitration agreements and disputes arising out of the same legal relationship.

Some, though not all, of the above mechanisms coincide with a practice developed internally by the ICC in recent years. In addition, what has not changed is that the arbitral tribunal must have jurisdiction to decide each specific claim against each party under an agreement to arbitrate under the Rules. Nonetheless, the New Rules **clarify** an area which can give rise to much difficulty in practice.

## 2. New procedure for “emergency arbitrators”

The ICC has decided to follow a trend started by other arbitral institutions and enable the parties to request “**urgent interim or conservatory measures**” from an **emergency arbitrator**, appointed by the ICC before the constitution of the arbitral tribunal, normally within **two days** of a request.

The emergency arbitrator must render an order within no later than **15 days**, which must be complied with by the parties, but can be re-examined by the arbitral tribunal once constituted.

This is a true novelty and, unlike most of the other provisions of the New Rules, the emergency arbitrator procedure will only apply where the arbitration agreement was entered into **after 1 January 2012**. It is also specifically open for Parties to opt out of such procedure.

## 3. Increased efficiency of the arbitral proceedings

Several new mechanisms are designed to increase the efficiency of ICC Arbitration, including:

- Provisions allowing for a **quicker internal process at the ICC** for the constitution of the arbitral tribunal and for dealing with preliminary jurisdictional objections;
- Provision for a **mandatory case management conference** between the arbitral tribunal and the parties at the outset of the proceedings;
- Suggestions of specific **case management techniques** to be considered by the arbitral tribunal, such as bifurcation, identification of preliminary issues, management of document disclosure, information on other ADR process for the settlement of the parties’ dispute; and
- The **option for the ICC to reduce the arbitral tribunal’s fees** if the proceedings are not conducted in an efficient manner.

## 4. Confidentiality

The New Rules provide for the express **power of the arbitral tribunal to render orders** concerning the confidentiality of the arbitration proceedings and to take measures to protect trade secrets and confidential information.

However, this provision will **only apply where the parties have first agreed on confidentiality** (e.g. in the contract or in the Terms of Reference) **or** where such confidentiality is **imposed by the applicable law**. Parties wishing to ensure the full confidentiality of their arbitration, including the submissions and documents filed therein, cannot rely on the ICC Rules alone - unlike for arbitration administered under the Swiss Rules of International Arbitration.

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<p><b>For more information</b> please contact us at <a href="mailto:info@lalive.ch">info@lalive.ch</a> or visit <a href="http://www.lalive.ch">www.lalive.ch</a></p>
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