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**The Streamlining of International Rules: Changes aimed at improving efficiency, transparency**

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Important amendments to the Rules of Arbitration of the International Chamber of Commerce (“ICC Rules”) will take effect on March 1, 2017. The amendments seek to enhance the efficiency and transparency of the current version of the ICC Rules that have been in force since January 2012.

In addition to making available the decisions of the ICC Court of Arbitration (an independent body from the ICC) and shortening the time period for establishing the Terms of Reference, the most significant change is the addition of expedited procedures (“Expedited Procedure Provisions”). With the advent of expedited procedures, the ICC joins other arbitral institutions offering similar provisions, including the International Centre for Dispute Resolution (ICDR) and the Singapore International Arbitration Centre (SIAC).

**Expedited Procedure Provisions**

The Expedited Procedure Provisions will apply to all arbitration agreements concluded after March 1, 2017 (Art. 30(3)(a)) in which the dispute is less than US \$2 million (Art. 30(2)(a); Appendix VI Art. 1(2)) or where the parties so agree (Art. 30(2)(b)). However, parties can agree to opt out of the Expedited Procedure Provisions (Art. 30(3)(b)), or the ICC Court can, upon request or on its own motion, determine that their application would be inappropriate (Art. 30(3)(c)). Other notable Expedited Procedure Provisions include:

- A sole arbitrator will normally be appointed by the ICC Court irrespective of the terms of the arbitration agreement regarding the composition of the arbitral tribunal (Appendix VI Art. 2(1));
- The requirement to establish Terms of Reference under Article 23 does not apply (Appendix VI Art. 3(1));
- The Case Management Conference must be held no later than 15 days after the file is sent to the arbitral tribunal (Appendix VI Art. 3(3));
- The arbitral tribunal will have the discretion to adopt such procedural measures as it deems appropriate, including excluding requests for document productions or limiting the number, length and scope of written submissions and written witness evidence (Appendix VI Art. 3(4));



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- The arbitral tribunal can determine the dispute based solely on the submissions of the parties, with no hearing and no examination of witnesses or experts (Appendix VI Art. 3(5));
- Where hearings are to be held, they can be conducted by videoconference, telephone or similar means (Appendix VI Art. 3(5));
- The time limit to render final awards is six months from the date of the cases management conference, with extensions only granted in limited circumstances (Appendix VI Art. 4(1)); and,
- The fees of the arbitral tribunal are fixed according to a reduced scale (approximately 20 percent less than regular fees) for expedited procedures (Appendix VI Art. 4(2)).

The amendments listed above seek to decrease the total duration and cost of arbitration by limiting the number of procedural steps, curtailing time-limits and introducing a specific cost scale for arbitrator fees. Nonetheless, awards will still be subject to scrutiny from the ICC Court and its Secretariat – the hallmark of ICC Awards.

It is important to note that the Expedited Procedure Provision will apply by default unless the parties expressly opt out of their application. In order to do so, the ICC suggests adding the following language to the arbitration agreement: “The Expedited Procedure Provisions shall not apply.”

### **Increased Transparency at the ICC Court of Arbitration**

Another noteworthy change to the ICC Rules is the increased transparency and accountability for the ICC Court. Besides scrutinizing awards, the ICC Court of Arbitration administers the resolution of disputes by arbitral tribunals including determining arbitrator appointments and challenges, *prima facie* jurisdictional decisions, and consolidations. The current version of the ICC Arbitration Rules prevent the ICC Court from communicating its reasons for certain decisions (Art. 11(4)). With the new amendments, the decisions of the ICC Court will be available upon the request of a party.

Lastly, the time period to establish the Terms of Reference under Article 23(2) has been amended from 2 months to 30 days in “non-expedited” proceedings in order to accelerate the initial phases of proceedings.

The amendments to the ICC Rules aim to provide users with faster and more cost-effective arbitration. The Expedited Procedure Provisions will provide parties with greater flexibility to adapt their arbitration in proportion to their dispute. However, given their default application, parties will have to be mindful when drafting ICC arbitration agreements whether to exclude the Expedited Procedure Provisions from the outset in light of the nature of disputes that may arise.

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