International Chamber of Commerce to update Rules of Arbitration in January 2021

October 14, 2020

The International Chamber of Commerce (ICC) in Paris is one of the leading international arbitration institutions in the world, with an ever-increasing caseload. In 2019, the ICC administered a record 869 cases with nearly all of those cases progressing under the ICC Rules of Arbitration (ICC Rules).

The ICC periodically updates the ICC Rules following broad consultations with users and other stakeholders, with the last version released in 2017. The next version will come into force on January, 1 2021. While many of the amendments are minor and are intended to improve the ICC Rules' practical operation, a few changes are substantive and merit closer examination. In particular, users of the ICC Rules should be aware of the following key changes, which are directed at assisting in navigating conflicts issues, improving the balance between efficiency and party autonomy, and modernizing certain procedural rules and practices.

Assisting with conflicts

- **1. Third Party Funding**: the new version of the ICC Rules expressly anticipates the possibility of funded parties and, for the purposes of assisting arbitrators in navigating their ethical obligations, introduces a requirement for parties to disclose the existence and identity of funders with an economic interest in the outcome of the case (Article 11(7)).
- **2. Nationality of arbitrators**: to avoid the semblance of a conflict arising from nationality, the new ICC Rules indicate that, as a default rule, sole arbitrators and tribunal presidents will not share a nationality of one of the parties. In treaty-based cases, the ICC Rules preclude any arbitrator from sharing the nationality of a party, unless the parties agree otherwise (Article 13(5)-(6)).
- **3. Exclusion of party representatives**: the new version of the ICC Rules empowers the arbitral tribunal to exclude certain party representatives from participating in whole or in part in the proceedings in order to avoid a conflict of interest arising from a change in representation (Article 17(2)). A change in representation can be disruptive in any event; the addition of this provision aims to minimize the disruption in cases where it introduces a potential conflict.

Rebalancing party autonomy

- **1. Tribunal Appointments**: the new version of the ICC Rules permit the ICC Court to appoint the full arbitral tribunal in exceptional circumstances to avoid a significant risk of unequal treatment and unfairness that may affect the validity of the award (Article 12(9)).
- **2. Joinder**: multiparty arbitrations can pose challenges when the consent to arbitration among the parties is inconsistent or based upon incompatible agreements. The ICC is unable to amend the parties' consent to arbitrate. However, under the new Article 7(5), the tribunal may join third parties to the proceedings at a later stage, provided that the third party consents to the arbitration (and Terms of Reference) and that the tribunal has given due consideration to a number of potentially relevant factors, including its jurisdiction, possible conflicts, the timing of the joinder, and the impact on the arbitral procedure.

Updating procedural rules

- **1. Hearings by videoconference**: in response to improved technology and the COVID-19 pandemic, the updated rules make it clear that tribunals may hold any hearings (including final hearings) remotely by videoconference or teleconference (Article 26(1)). As a cautionary note, this development provides welcome confirmation of the procedural options available to tribunals but does not necessarily ensure the enforceability of awards in all jurisdictions worldwide.
- **2. Additional Awards**: to balance the need for finality in arbitration and the need for an additional award in certain circumstances (even after the issuance of a final award), the new version of the ICC Rules allows a party to apply for an additional award. In these circumstances, the tribunal may issue an additional award to address an issue that it may have omitted in the final award before the tribunal becomes *functus officio* and no longer has the jurisdiction to resolve the relevant dispute (Article 36(3)-(4)).
- **3. Application of Expedited Rules**: the ICC Expedited Procedure Rules were an important addition to previous iterations of the ICC Rules. They have been updated in the recent version to be applicable to disputes under US$3 million and to be inapplicable to treaty-based arbitrations, where states or state-controlled entities are likely to be involved.

Overall, the new version of the ICC Rules should improve the operation of the ICC Rules in certain circumstances without significantly revising their overall content or purpose. ICC arbitration will continue to provide a dispute resolution procedure that offers a trusted international standard process, while retaining the tribunal's significant discretion to tailor the procedure to the specific circumstances of the case.

For further information, please contact:

By

Hugh A. Meighen, Robert J.C. Deane, Craig Chiasson

Expertise

Disputes, International Arbitration

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.