What In-house Counsel Should Know About the 2026 ICC Arbitration Rules

Commercial and Contracts

Litigation and Dispute Resolution

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Cheat Sheet:

- **What's new?** The new rules are a mix of cosmetic updates, formal implementation of already-common practices, and developments that try to streamline the process.
- **Check older clauses.** Existing ICC arbitration clauses now point to the 2026 Rules unless they clearly refer to an earlier version.
- **Prepare earlier.** The new rules shift more work to the start of the case, requiring parties to identify arbitrators and articulate claims or defenses sooner.
- **Opt in for time savings.** The new Highly Expedited Procedure may offer the biggest time and cost savings, but it applies only if the parties expressly agree to use it.
- **Confidentiality remains conditional.** If you use ICC and want full confidentiality, spell it out explicitly.

The Court of Arbitration of the International Chamber of Commerce — usually referred to simply as "the ICC" — is one of the oldest arbitration providers, or arbitral institutions, in the world (or a "legacy" arbitration institution). Headquartered in Paris, it is one of the very few arbitration providers that are universally considered global, without a strong perceived tether to any one country or region.

Clauses requiring ICC arbitration have historically been common in cross-border contracts in most areas of international trade. Although today we have a very different environment compared to the mid-20th century and international business is now much more than just trade in goods, the ICC is still a common arbitration provider with one of the larger workloads globally.

Corporate counsel that enjoy an international element to their work will have almost certainly found themselves negotiating or inserting an ICC arbitration clause into a contract at some point in their career. In 2026, the ICC revised its arbitration rules, with effect in cases that started on June 1, 2026, and later.

The changes are not all dramatic, but they matter for contract drafting and dispute planning. This article explains how the 2026 Rules affect existing ICC clauses, early case preparation, expedited procedures, and confidentiality — and what in-house counsel should consider before using ICC arbitration in future cross-border agreements.

How ICC arbitration works

ICC arbitration is a type of arbitration that is called "administered" or "institutional." This means that the arbitration provider is a full participant in the arbitration process.

The involvement of the arbitration provider usually peaks at two points in the life of a case:

- first, between the start of the case up to the formation of the tribunal,
- and then after the production of the arbitral award.

Throughout the entire length of the case, the provider will handle the purely administrative elements of the process: the fees, the files, the certifications. The constitution of the tribunal is also done by the provider: in the case of the ICC, the ICC Court is the body that, as a legal matter, appoints the arbitrators, even party-nominated. As a practical matter, where the ICC is the body that chooses the arbitrator, this choice is outsourced to ICC National Committees.

This is different from *ad hoc* arbitration, which is arbitration without a dedicated provider to handle the administrative workload. This workload is distributed between the parties and, once appointed, the arbitrators. This form of arbitration is purer but as a practical matter is much harder and work-intensive to run compared to administered arbitration. The parties and the arbitrators have to do everything themselves. This (i) increases workload and legal spend, and (ii) makes the process reliant on party cooperation and thus easy to disrupt unless the chosen procedure or ruleset has strong safeguards against disruption. Impasses and blockers that, in administered cases, are resolved by the arbitration provider, often require court intervention in *ad hoc* cases.

The last big difference between ad hoc and administered arbitration is that in administered cases, many providers will support tribunals (and, by proxy, the parties) with award compliance with the procedural law governing the arbitration. The extent of this support varies from provider to provider.

In the case of the ICC, this involvement is possibly the strongest among all major providers. It takes the form of award *scrutiny* (see page 21 of the [ICC notes on the conduct of proceedings]()). Once the tribunal produces a draft award, it goes to the ICC first, requires ICC approval, and the tribunal only gets to finalize the award and release it to the parties after this approval. It is important to note here that ICC awards and international arbitration awards in general are almost universally *reasoned* awards. Unreasoned awards are unusual because they do not travel well: they are usually unenforceable overseas. The reasons are what judiciaries sometimes scrutinize at enforcement, along with procedural fairness, and this process is partly mirrored by the ICC scrutiny.

No Terms of Reference

Terms of Reference is a standalone document setting out the scope and basic parameters of arbitration. Most modern arbitration rules do not require Terms of Reference. The ICC was the last major arbitration provider that had mandatory Terms of Reference, and even that was only true in non-expedited settings.

We can now expect most ICC cases to not use Terms of Reference. The arbitrations will now usually be scoped out through the parties' filings, arbitrators' orders, and the final award.

Front-loading

International arbitration, especially for larger cases, has somewhat converged on the structure that largely mimics English civil litigation: claims and defenses are developed in phases over the duration of the proceedings, while the first filings only chart out the party's case at a high level.

This is not a feature of arbitration as such, but rather the way in which parties and their counsel tended to run cases, often importing habits from litigation. Over the last decade or so, a parallel trend in the opposite direction was taking shape in the form of front-loading cases. This took mostly the form of distinction between memorial and pleadings-based procedural structures.

The new ICC Rules shuffle around some of the case workload to the earlier stages of the case:

- The parties must now identify their proposed arbitrators at the time of their first filing (Article 5(3) for claimants, Article 6(1) for respondents);

- The parties must raise their claims by the first Case Management Conference (Article 25), while in the past the cut-off date was the signing of the Terms of Reference.

What this means is that the filing of a claim, or an initial response on receipt of a claim, now requires more effort in the beginning.

“Go faster” tools

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Early Determination is a tool that was in theory always available to tribunals under their general case management powers. It was also a tool that was notoriously underused.

As a reaction to that underuse, updated arbitration statutes and updated arbitration rules are now explicit that early determination (or sometimes early dismissal) is a tool that tribunals can use to complete cases faster.

Expedited Procedure is the ICC’s default “compressed” procedure. This procedure has been available since the 2021 edition of the ICC Rules. It is available on opt-in or where the disputed amount is under a threshold amount.

The Expedited Procedure dispensed with the mandatory Terms of Reference (now also reproduced in the “full” procedure) and require the tribunal to render its award within six months from the first Case Management Conference, unless extended. This puts the total length of the proceedings from start to finish at around eight to nine months, assuming no delays.

The change is that the threshold amount has been raised from US$3 million to US$4 million meaning that more cases would now qualify for the Expedited Provisions.

Highly Expedited Procedure is new to the 2026 Rules. The timelines for filings and responses are compressed (on the scales of days and weeks). The default time limit for the award is three months from the CMC, unless extended.

Unlike the Expedited Procedure, the Highly Expedited Procedure is *opt-in only*. It cannot be ordered by the tribunal or the ICC, and it does not apply by default regardless of the claim amount. It only exists where the arbitration clause is drafted to opt into the HEP or there is a subsequent agreement.

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Finally, it should be noted that either level of expedited procedure can be disapplied by the ICC (not by the tribunal) on an application by a party or the tribunal. This means that ICC tribunals cannot force a compressed ruleset onto the parties but they can, if supported by the ICC Court, force a longer procedure. Since tribunals still have inherent powers to set deadlines and structure the procedure as they consider appropriate (even within the “longer” ruleset), the reason for this apparent restriction is not clear.

Confidentiality — still conditional

Confidentiality is normally listed as a feature of arbitration. In promotional materials, it is listed as an advantage.

Different arbitration rulesets have different setups in terms of which participants are and are not required to maintain confidentiality of the proceedings. Usually, the arbitration provider/institution and the tribunal are *required* to maintain confidentiality, while the parties and other participants are often exempt.

In ICC arbitration, confidentiality has been conditional in the sense that the only participant required to maintain it was the ICC itself. There was no built-in obligation on the tribunals or the parties. Since 2019, the ICC also publishes some of its awards through its partnership with Jus Mundi. Although the published awards are anonymized and hidden behind a paywall, this is still a departure from the standard assumption of full confidentiality.

For this reason, the standard ICC model clause does not provide for confidentiality. Where the model clauses are used as a reference, the draftsman needs to scroll down to the middle of the page to find the clause without publication of awards that has, as an add-on, the following language: “*No award or procedural order made in the arbitration shall be published.*”

The 2026 Rules have introduced an explicit obligation of confidentiality on the *arbitrators* (new Article 12(8)). This means that in cases started from June 1, 2026, and onwards the participants that are, by default, required to maintain confidentiality, are the ICC [Court] and the tribunal.

If your line of business requires full confidentiality and you opt for ICC arbitration, then the arbitration clause should reflect that. Consider adding language along the following lines: “*No award or procedural order made in the arbitration shall be published. The Parties shall at all times treat all matters relating to the arbitration and any arbitral award as confidential.*”

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