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International Arbitration Focus Team
BE International Arbitration Insights
27 May 2026

The new 2026 ICC Arbitration Rules: what users need to know

Removal of the Terms of Reference – Expedited and highly expedited Arbitration – Early determination – Arbitrators' disclosure obligations – Confidentiality – Tribunal secretary – Time limit for the final award – Written communications and electronic signature of the award – Emergency arbitration and preliminary orders.

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I. Introduction

The International Court of Arbitration ("**Court**") of the International Chamber of Commerce ("**ICC**") has revised its Rules of Arbitration (the "**2026 Rules**"). The 2026 Rules enter into force on 1 June 2026 and apply to all arbitrations commenced on or after that date, unless the parties have agreed to adopt an earlier version.

Four objectives guided the revision: (i) increasing the efficiency of ICC arbitrations; (ii) ensuring the Rules reflect developments in practice and the law; (iii) addressing the evolving needs of arbitration users, including those arising from technological developments; and (iv) improving clarity, readability, and consistency of terminology.

This newsletter provides an overview of the most significant changes in the 2026 Rules.

II. Removal of the Terms of Reference

Summary: The 2026 ICC Rules **eliminate the Terms of Reference**. The Case Management Conference (CMC) becomes the central procedural milestone and serves as the cut-off for new claims.

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One of the most significant procedural changes in the 2026 Rules is the removal of the Terms of Reference ("**ToR**"), which commentators and practitioners had long been calling for.[1]

Historically, the ToR served three main functions: (i) confirming the parties' consent to arbitrate (e.g., in case of imperfections in the original arbitration agreements, or in jurisdictions which may still require post-dispute submission agreements); (ii) recording key procedural agreements at an early stage; and (iii) defining the scope of the dispute by identifying the claims and the issues to be determined. The ICC has recognised that, over time, the practical relevance of the ToR has diminished.[2] Their original rationale — particularly confirming consent to arbitrate — has become less important. Moreover, while the list of issues to be determined was originally intended to facilitate early identification of the matters in dispute, parties were often reluctant to commit to a defined list at the outset. In practice, lists of issues became increasingly generic, often amounting to little more than a reference to "those which arise from the parties' submissions".

Under the 2026 Rules, ToR are no longer required, although tribunals retain discretion to establish them where appropriate.[3] The Expedited Procedure Provisions introduced in 2017 first adopted a similar rule, and of the more than 1,000 cases administered under those provisions, fewer than 25 tribunals chose to draw up ToR.[4]

With this change, the case management conference ("**CMC**"), which remains mandatory, becomes the central procedural milestone for structuring proceedings and ensuring efficiency from the outset.[5] The CMC typically results in the issuance of Procedural Order No. 1 (or "**PO1**"), setting out the procedural timetable and key procedural directions. Some elements traditionally included in the ToR — such as identification of the parties, confirmation of the tribunal's jurisdiction, and the applicable law — may now find their place in PO1. The ICC has announced the forthcoming publication of a model PO1 to assist arbitrators and parties.

The CMC also serves as the cut-off for new claims: under Article 25, no party may introduce new claims after the initial CMC without the tribunal's authorisation. Under the previous rules, the ToR determined the boundaries of the existing claims, beyond which any claim would be considered "new". Without ToR, amendments should be made before or at the CMC.

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[1] Carlevaris, "Who (Still) Needs Terms of Reference?", in Cahiers de l'arbitrage/The Paris Journal of International Arbitration, 2020, p. 369.

[2] ICC, "Unveiling the 2026 ICC Arbitration Rules, part 2: Moving beyond mandatory Terms of Reference", 15 May 2026, available here.

[3] *Ibid.*

[4] ICC, "New ICC Rules of Arbitration enhance efficiency, clarity and usability", 22 May 2026, available here, section 5.

[5] ICC, "Unveiling the 2026 ICC Arbitration Rules, part 2: Moving beyond mandatory Terms of Reference", *supra*.

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III. Expedited and highly expedited arbitration

Summary: The 2026 Rules raise the **Expedite Procedure** threshold to USD 4 million. New opt-in **Highly Expedited Arbitration Provisions** offer a three-month award for low-complexity disputes or matters requiring urgent resolution.

The **Expedited Procedure Provisions** ("**EPP**"), first introduced in 2017, provide a streamlined arbitration process for lower-value disputes. The key features of the EPP remain unchanged under the 2026 Rules, including automatic application below a specified monetary threshold unless the parties opt out. What is new under the 2026 Rules is the increase of this threshold from USD 3 million to USD 4 million for arbitration agreements concluded on or after 1 June 2026. Based on historical case data, the ICC anticipates that this increase will significantly expand the number of disputes eligible for expedited arbitration.[6]

A major innovation is the new **Highly Expedited Arbitration Provisions** ("**HEAP**"), an entirely opt-in mechanism providing for an award within three months before a sole arbitrator. Unlike the EPP, there is no automatic application and no threshold. Parties may opt in regardless of the value of their claims, whether at the drafting stage or after a dispute has arisen. According to the ICC, HEAP is likely to be most suitable for:

- lower-complexity commercial disputes;
- claims with a simple factual matrix; or
- a distinct aspect of a dispute which requires swift resolution.[7]

HEAP features compressed timelines. Parties have 20 days (rather than 30) to nominate the sole arbitrator; failing agreement, the Court will appoint one directly. The initial CMC must take place within seven days of the file being transmitted to the sole arbitrator. The procedure requires parties to frontload their case, with a Statement of Claim filed with the Request for Arbitration and a Statement of Defence with the Answer.

The sole arbitrator has broad procedural discretion, including the power to decide the dispute solely on the documents, and may impose tighter limits on submissions and exclude document production.

A notable feature is that parties may agree to receive an award under HEAP without reasons to save time and costs. However, this raises enforcement risks in jurisdictions where the absence of reasons may provide grounds to set aside the award or refuse enforcement, notwithstanding the parties' agreement.

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[6] ICC, "Unveiling the 2026 ICC Arbitration Rules, part 3: Expedited Procedure Provisions and Emergency Arbitration", 19 May 2026, available here.
[7] ICC, "Unveiling the 2026 ICC Arbitration Rules, part 4: Highly Expedited Arbitration Provisions", 21 May 2026, available here.

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IV. Early determination

Summary: The 2026 Rules introduce an express **early determination mechanism** for claims or defences that are manifestly without merit or outside the tribunal's jurisdiction.

Article 30 introduces an express mechanism for early determination, envisaging that any party may apply to the tribunal for prompt determination of one or more claims or defences on the grounds that they are manifestly without merit or manifestly outside the tribunal's jurisdiction.

Early determination is not entirely new: arbitral tribunals have always had authority to render partial awards on key issues, including those capable of deciding the entire case or disposing of individual claims or defences. As the ICC itself has noted,[8] its 2021 Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration ("**Note to Parties**") already envisaged the possibility of early determination of unmeritorious claims or defences as an efficient case management measure in appropriate cases.[9]

However, the inclusion of an express provision in the 2026 Rules is likely to encourage more frequent use of this mechanism. If properly applied, early determination can streamline proceedings by focusing the parties' resources on claims and defences that genuinely warrant them.

V. Arbitrators' disclosure obligations

Summary: The 2026 Rules codify two principles for **arbitrators' disclosure obligations**: when in doubt, disclose; and disclosure alone does not establish a conflict. Parties must now submit lists of persons and entities to assist arbitrators with conflict checks.

The 2026 Rules introduce significant amendments to arbitrators' obligations to disclose circumstances that may call into question their independence or impartiality.

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[8] ICC, "New ICC Rules of Arbitration enhance efficiency, clarity and usability", 22 May 2026, *supra*, section 7.

[9] ICC, "Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration", 2021, available for download here, section VII(D), "Expeditious Determination of Manifestly Unmeritorious Claims or Defences".

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First, while the underlying standard for arbitrator independence and impartiality remains unchanged, Article 12 now codifies principles previously found only in the Note to Parties:[10]

- any doubt about whether to disclose should be resolved in favour of disclosure; and
- disclosure does not, by itself, establish a lack of independence or impartiality.

Second, the 2026 Rules introduce a new obligation on parties to assist arbitrators with conflict checks. When filing their Request or Answer or any request for joinder, each party must submit a **list of persons and entities** that it believes arbitrators should consider, together with reasons. This requirement is intended to facilitate early identification of potential conflicts and formalises the Secretariat's existing practice of identifying relevant entities from case documents. The parties' lists do not shift the disclosure obligation away from arbitrators, who remain responsible for making disclosures under Article 12(2).

VI. Confidentiality

Summary: The 2026 Rules introduce an express **confidentiality obligation for arbitrators**, codifying what was previously implied.

Although confidentiality is a fundamental feature of arbitration, arbitrators' confidentiality obligations have traditionally been implied rather than expressly stated in the rules. Under the new Article 12(8), arbitrators must keep confidential all matters relating to the arbitration unless otherwise in the public domain, agreed by the parties, required by applicable law, or necessary to protect a legal right or comply with disclosure obligations.

VII. Tribunal secretary

Summary: The 2026 Rules formalise the **tribunal secretary role**, requiring the same independence and impartiality standards as arbitrators. Decision-making may not be delegated, and secretaries must be paid from the tribunal's own fees.

Tribunal secretaries were previously addressed only in the Note to Parties, which has regulated their appointment, duties, and remuneration since 2012.[11] The 2026 Rules now expressly provide that, after consulting the parties, the tribunal may appoint a secretary to work under its direction and control. Tribunal secretaries must satisfy the same independence,

[10] ICC, "Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration", *supra*, section III(A).
[11] ICC, "Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration", *supra*, section XX.

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impartiality, and confidentiality requirements as arbitrators and must sign a statement of acceptance, availability, impartiality, and independence before their appointment.

Article 44 expressly provides that the tribunal may **not delegate** its decision-making authority to the secretary. This principle was previously set out only in the Note to Parties.[12] Its inclusion in the 2026 Rules suggests that, in formalising the role of tribunal secretaries, the ICC considered it appropriate to include an explicit reminder of this prohibition.

Regarding costs, Appendix III, Article 7 provides that the tribunal may claim reimbursement of a secretary's justified **expenses**. However, the tribunal must pay any remuneration due to the secretary out of its own fees, and direct arrangements between the tribunal and the parties regarding the secretary's fees are expressly prohibited.

VIII. Time limit for the final award

Summary: The 2026 Rules replace the former six-month default with a pragmatic approach: the President of the Court fixes – and may extend – the **time limit for the final award** based on the procedural timetable.

Under the former Article 31(1), the final award had to be rendered within six months from the last signature of the ToR — a time limit that was often unrealistic, given that the Court typically fixed a longer period aligned with the procedural timetable and frequently had to extend it.

The 2026 Rules adopt a more pragmatic approach. Under Article 34, the President of the Court — rather than the Court itself — now fixes the time limit for rendering the final award, and may subsequently extend it, taking into account the procedural timetable established under Article 24(2) or a reasoned request from the tribunal. This shift of authority to the President is intended to enhance efficiency and strengthen oversight of proceeding timelines.[13]

IX. Written communications, hybrid hearings, and electronic signature of the award

Summary: The 2026 Rules make **electronic communications** with the Secretariat the default standard and authorise tribunals to sign awards electronically, embedding digital practices into the ICC arbitration framework.

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[12] *Id.*, paragraph 223.

[13] ICC, "New ICC Rules of Arbitration enhance efficiency, clarity and usability", 22 May 2026, *supra*, section 8.

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The 2026 Rules reflect the shift — accelerated during the pandemic — towards electronic communication. Article 3 establishes that written communications with the Secretariat should, by default, be sent by email or other **electronic means** that create a transmission record. Hard copies of the Request, Answer, and Request for Joinder need only be submitted when a party requests transmission against receipt, registered post, or courier, or when electronic transmission is impracticable.

As to awards, Article 38(1) provides that, after consulting the parties and considering all relevant circumstances, the tribunal may **sign the award electronically**. These changes provide flexibility and formally recognise practices now common in international arbitration.

X. Emergency arbitration and preliminary orders

Summary: The 2026 Rules enable **emergency arbitration** to proceed where it appears that an arbitration agreement "may exist", introduce ex parte **preliminary orders** to prevent frustration of relief, and confirm the tribunal's authority to revisit emergency arbitrator findings.

The revised Emergency Arbitrator Provisions in Appendix IV introduce several clarifications and enhancements.

First, the 2026 Rules clarify that emergency arbitrator proceedings may be initiated whenever the **President of the Court** is satisfied, based on the application, that an arbitration agreement binding the parties to the proceedings "**may exist**". This does not expand the scope of the arbitration agreement; rather, it permits the proceedings to be set in motion notwithstanding doubts as to arbitral jurisdiction, without prejudice to the emergency arbitrator's power and duty to determine jurisdiction.[14] The arbitral tribunal retains authority to make a final determination on jurisdiction in the main proceedings.

Second, the 2026 Rules expressly acknowledge **preliminary orders** within emergency arbitrator proceedings:[15] at any stage of such proceedings, a party may request a preliminary order directing another party not to frustrate the purpose of the application. Where circumstances so require, such requests may be made and decided **without notice to other parties**, addressing situations where prior notification could undermine the effectiveness of the relief sought — for example, asset dissipation or destruction of evidence. The Rules include procedural safeguards: if a preliminary order is granted, the emergency arbitrator must immediately afford all other parties a reasonable opportunity to present their case, and the emergency arbitrator may modify or revoke the preliminary order in light of subsequent submissions.

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[14] ICC, "Unveiling the 2026 ICC Arbitration Rules, part 3: Expedited Procedure Provisions and Emergency Arbitration", *supra*.
[15] *Ibid.*

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The 2026 Rules also clarify that **the arbitral tribunal is not bound** by any findings of fact, question, issue, or dispute determined by the emergency arbitrator, or by the reasons given by the emergency arbitrator. The tribunal may modify, terminate, or annul the order, or any modification made by the emergency arbitrator.

XI. Conclusion

The 2026 revision of the ICC Arbitration Rules represents a carefully considered modernisation of the ICC arbitration framework. The removal of the Terms of Reference, the introduction of early determination, the formalisation of the tribunal secretary role, and the new Highly Expedited Arbitration Provisions are among the most impactful changes, each responding to calls from the arbitration community. The revisions also reflect the technological evolution of dispute resolution, with electronic communications and signatures now firmly embedded in the Rules.

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