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# The 2021 ICC Arbitration Rules and Note: Continued Evolution and Smart Adaptations for a New Era

***Georges Affaki, Matthew Rogier, Khadija Ben M'rad***

1. No year may be riper for evolution and looking towards the future than 2021. The first twenty years of this century have witnessed a dramatic shift in the way world settles its disputes. International arbitration, once a niche domain, has become the go-to dispute resolution mechanism for sophisticated businesses, investors, and States alike. Arbitration's reputation for efficiency and fairness has increased during this time and, in many respects, the ICC has led the way as the gold standard in articulating the rules of the game for resolving disputes. The ICC, not comfortable to rest on its laurels, has issued a new set of rules for a new era, one in which users will rightfully expect even greater effectiveness, adaptability, and reliability in an unpredictable world.

2. The 2021 ICC Arbitration Rules (**2021 Rules**) came into force on 1 January 2021 and will apply to all arbitrations conducted under the ICC Rules commenced on or after that date. The 2017 ICC Arbitration Rules (**2017 Rules**) will continue to apply for all cases that were registered with the International Court of Arbitration (**Court**) prior the new Rules' entry into force. The 2021 Rules are accompanied by a revised Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration (**2021 Note**), also dated 1 January 2021.[1] While we await the eventual issuance of the Secretariat's commentary on the 2021 Rules, the 2021 Note provides the most recent insight into the ICC's approach to the changes to the Rules.


AFFAKI

10 Avenue Hoche - 75008 Paris, France
Téléphone : +33 (0) 1 55 73 74 78
Mail : contact@affaki.fr, www.affaki.fr

3. Having announced a record caseload in 2020, the ICC heralds the revision as one seeking "*greater efficiency, flexibility and transparency*."[2] The issuance of a revised set of Rules this year reflects the increasing pace at which the ICC updates its rules and builds on the framework established by the 2012 and 2017 revisions, with the purpose of reflecting current best practices in international arbitration and addressing new issues that have arisen over the recent years.[3]

4. Consequently, the principal changes to the Rules seek to ensure more effective management of multi-party and multi-contract arbitrations, while also expanding the scope for the joinder of parties and the consolidation of cases. The new Rules also account for the growing use of expedited procedures, the ever-increasing digitalisation of arbitration, and the proliferation of virtual hearings. At the same time, the 2021 revision seeks to solidify the attractivity of the ICC Rules for investment arbitration and takes further measures to prevent conflicts of interests. These changes reflect continued steps in the right direction and reflect the ICC's commitment to listening to its users to enhance the Rules' effectiveness.

5. **Efficiency and Flexibility in Multi-Party and Multi-Contract Arbitrations**. Disputes involving multiple parties and multiple contracts are increasing in international arbitration. The 2019 ICC Dispute Resolution Statistics reveal that, out of the 869 cases filed in 2019, approximately one-third of the cases involved multiple parties (31%), of which the majority (59%) involved multiple respondents, 24% involved multiple claimants, and 17% involved both multiple claimants and respondents. Although most multi-party cases involved three to five parties (87% of multi-party cases), cases involving six to ten parties represented 11% of multi-party cases. Three cases involved 10 to 30 parties, while two involved over 100 parties.[4] The updates contained in the 2021 Rules discussed below reflect the ICC's efforts to adapt the Rules to this reality of increasingly complex disputes.

6. **Authority to Join Parties**. Compared to the 2017 Rules, the 2021 Rules provide for added flexibility for Tribunals to join a party to proceedings. Article 7(5) of the 2021 Rules provides that an additional party may be joined, even after the confirmation or appointment of an arbitrator, if two conditions are cumulatively met: (*i*) the arbitral tribunal, if and once constituted, accepts the joinder of the new party; and (*ii*) the party to be joined accepts the constitution of the tribunal and, when applicable, the Terms of Reference. This stands in contrast to the previous edition of the rule on joinder, which required the consent of all parties to the arbitration, resulting in inefficiencies and the unnecessary duplication of proceedings.[5]

7. The revised joinder rule, which effectively eliminates the veto power that parties previously held,[6] gives tribunals added guidance and flexibility to ensure the efficient resolution of complex disputes. The 2021 Note sets out relevant factors for the tribunal's consideration, which include whether a tribunal has *prima facie* jurisdiction over the additional party, the timing of the request for joinder, its impact on the proceedings, as well as the potential for the joined party to create conflicts of interest for the tribunal.[7] The benefits of avoiding a multiplicity of proceedings when a single proceeding suffices will outweigh any potential downsides of the additional flexibility.

8. In addition, and importantly, new Article 7(5) clarifies that "*any decision to join*

*an additional party is without prejudice to the arbitral tribunal's decision as to its jurisdiction with respect to that party.*" This new provision aligns with the unchanged Article 6(4), which similarly provides that an arbitration may proceed in situations in which an arbitration agreement containing the required consent of the parties *prima facie* exists, subject to the tribunal's subsequent determination as to its jurisdiction.

9. Importantly, Article 7(5) sets no cut-off date after which a party cannot be joined. While it appears more convenient to join an additional party early in the life cycle of a case, the benefits of joining a party may also become apparent as a case progresses. The party to be joined may well have access to evidence that is central to the resolution of the dispute, as well as a vested interest in its outcome. In this respect, joining an additional party at any stage of the proceedings may well provide for a more effective award, as the inclusion of all parties on whom the dispute impacts reduces the possibility of parallel national court proceedings that may disrupt the arbitration.

10. **Expanded Scope for Consolidation.** Article 10 of the 2021 Rules broadens the scope of the Court's power to consolidate claims into the same proceeding. Under the 2017 Rules, consolidation was possible under Article 10 in three circumstances: (*i*) when the parties agree (Article 10(a)); (*ii*) when all of the claims in the arbitrations are made under the same arbitration agreement (Article 10(b)); and (*iii*) when the claims are not made under the same arbitration agreement, in cases in which the parties are the same, the disputes arise in connection with the same legal relationship, and the Court finds the arbitration agreements to be "*compatible*" (Article 10(c)).

11. The 2021 revision of Article 10 innovates in important respects. While Article 10(a) remains unchanged, Article 10(b) expands the possibility for consolidation with the simple addition of the plural "*agreements*" to the scope of the rule. Thus, whereas the earlier Rules only permitted for the consolidation of cases not between the same parties if the claims were brought under the same contract, the revised Rules expand the Court's power to consolidate in instances in which claims were made under multiple contracts, provided that the arbitration clause is the same. The simplicity of this change belies its impact, as it makes the ICC Rules significantly more suitable for complex multi-party and multi-contract disputes, while at the same time assuaging the fears expressed by the construction industry by not automatically opening the door to the consolidation of owner-versus-main contractor and main contractor-versus-subcontractor disputes.[8]

12. To illustrate new Article 10(b), the 2021 Note provides the example in which Parties A, B, C, and D have all signed the same Share Purchase Agreement and the same Shareholders Agreement. In the first arbitration, A and B are parties to a dispute under the Share Purchase Agreement; in the second, the dispute between A, C, and D arises out of the Shareholders Agreement. In this scenario, provided that both contracts contain the same arbitration agreement, the arbitrations can be consolidated,[9] a solution that was not envisioned under the 2017 iteration of Article 10(b).

13. Article 10(c), as revised, allows for the consolidation of a third category of cases in situations in which the parties in the arbitrations are the same, but the claims are not made under

the same arbitration agreement(s).[10] The innovation of this rule is that separate arbitration agreements between the same parties may be considered together as a group of agreements which, provided that they are "*compatible*", will allow disputes arising under these separate agreements to be consolidated into one arbitration.

14. The revisions found in Article 10 are the result of work over years conducted by commentators such as Professor Bernard Hanotiau, who has catalogued the types of multi-party and multi-contract disputes that may give rise to considerations of consolidation.[11] While greater leeway for the consolidation of disputes by the Court is certainly a positive step, the importance of the parties' intent in concluding the separate arbitration agreements must not be forgotten. In particular, when the parties to these agreements manifest their intention to enter into separate contractual relationships, disputes arising thereunder should not be subject to consolidation. By way of example, letters of credit and demand guarantees are often issued by financial institutions in consideration of an underlying transaction, but these separate undertakings are intended to be separate from the underlying transaction. In such a scenario, a dispute arising out of a letter of credit and another arising out of the underlying transaction should not be subject to consolidation, even when the parties are the same and arbitration agreements are on their face "*compatible*".

15. With this in mind, the fact that the revised Rules contain permissive ("*may*" consolidate) rather than mandatory ("*shall*") language when it comes to the Court's ability to consolidate is essential. The parties' common intent in the treatment of their disputes as expressed in their agreement or agreements should be the lodestar of a determination to consolidate or not. Parties would be wise to always make their intent as clear as possible when drafting the arbitration agreements, particularly in multi-contract relationships.

16. **Increased Threshold for Expedited Rules**. An important innovation made in the 2017 Rules was the introduction of an expedited arbitral procedure, including a reduced fee scale and an accelerated schedule in which the final award was to be rendered within six months of the first case management conference. Article 30 of the 2017 Rules provided that the expedited procedure rules in Appendix VI shall apply if the amount in dispute did not exceed US$ 2,000,000 (from which the parties could opt out). In a move designed to further reduce the time and cost borne by parties to arbitral proceedings, the threshold below which the expedited procedure rules apply by default is now US$ 3,000,000 for arbitration agreements concluded from 1 January 2021 onwards. Article 30 itself remains unchanged, allowing parties still to opt out of the expedited procedure and, if they so desire, to opt in to the expedited rules for disputes above the threshold as well.

17. This change reflects the increasing demand for the ICC's expedited procedure. In 2019, the expedited procedure provisions applied by default in 65 cases, and parties to only 5 of these 65 cases decided to opt out of the expedited procedure. The expedited procedure is effectively executed as well: also in 2019, of the 50 final awards rendered in expedited proceedings, 37 (74%) were rendered within the six-month time limit under Appendix VI, Article 4(1).[12]

18. Recent statistics show that use of the expedited procedure continues to increase: by

the third quarter of 2020, ICC tribunals had issued 98 awards under the expedited rules, of which 71 awards (72%) were rendered within the six-month time limit.[13]

19. The readers of this *Insight* who participated in the revision of the ICC Rules will recall that the US$ 3,000,000 threshold was a compromise between the original US$ 2,000,000 amount and the US$ 4,000,000 to 5,000,000 average that resulted from the consultation process that the ICC conducted.[14] The decision not to double the original threshold reflects the ICC's pragmatic approach of slow and steady evolution of its rules in response to user needs rather than abrupt, radical changes. Such an approach strikes an appropriate balance between reasonable adaptations over time and predictability for parties who choose the ICC Rules for their disputes.

20. **Increased Use of Remote Hearings**. No year has demonstrated the importance of remote hearings than this past year. Thanks to high-speed internet connections and user-friendly video and telecommunications technology, the international arbitration community was able to ensure the continued resolution of complex disputes worldwide almost seamlessly. The success of remote hearings in 2020 ensures that the method will remain as an option for users even post-pandemic.

21. The 2021 Rules provide for the needed flexibility to adapt hearings to any set of circumstances. The previous version of the Rules provided at Article 25(2) that "*the arbitral tribunal shall hear the parties together in person*", either upon the request of one of the parties or on the tribunal's own initiative. In response to the then-nascent crisis, the ICC issued a Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic in April 2020. In the note, the ICC offered an interpretation of Article 25(2), stating that its purpose was simply to ensure a "*live adversarial exchange*", which could be satisfied even if hearings were held "*by virtual means.*"[15] This interpretation was certainly correct, as confirmed by the fact that the "*in person*" requirement in the English version of the Rules was drafted in the French and Spanish versions as "*contradictoirement*" and "*contradictoriamente*"; in other words, requiring an adversarial exchange of arguments, rather than a physical hearing.[16]

22. The 2021 revision has done away with any need for interpretation of "*in person*" hearings. The 2017 iteration of Article 25(2) has been deleted altogether, and Article 26(1) has amended the requirement of the holding of a hearing at a party's request to requiring simply "[a] *hearing*", with no "*in person*" language. A new sentence at the end of Article 26(1) provides tribunals with the flexibility of determining the modalities of a hearing which, after consultation with the parties and taking into account the relevant facts and circumstances, may be conducted "*by physical attendance*" or "*remotely by videoconference, telephone or other appropriate means of*

*communication*."[17] Such flexibility is surely most welcome by both tribunals and parties to arbitrations, providing for a full range of options to account not only for exceptional circumstances such as the still-ongoing pandemic, but also monetary and temporal expenditures that are often associated with hearings.

23. Importantly, Article 26(1) does not express a preference for any form of hearing over the other,[18] signalling that hearings held remotely (and awards issued thereafter) are no less legitimate than those conducted in person. Naturally, even though it appears clear that some users will favour remote hearings even post-pandemic, other factors, such as parties' access to the necessary technical equipment and internet speeds, will likely result in in-person hearings remaining the preferred medium in certain circumstances. As the world sees the light at the end of the tunnel from Covid-19 and its mutations, it will be interesting to observe what proportion of users will continue to favour remote hearings and those which will go back to traditional in-person affairs.[19]

24. Even with this amendment to the Rules, the April 2020 Guidance Note provides useful information on factors for tribunals to consider when choosing between an in-person, virtual, or hybrid hearing. In particular, the Note recognises the need for appropriate cyber protocols to ensure data privacy, identifies important considerations for the organisation of virtual hearings, flags the ICC's already published materials on the subject, and discusses the pros and cons of the digital platforms that may be used for the holding of virtual hearings and sharing documents.[20] The 2021 Note reiterates these considerations and recalls that ensuring the equal treatment of parties and their ability to fully present their respective cases should guide tribunals when planning remote hearings.[21]

25. Finally, while the option to hold remote hearings contains distinct advantages, certain concerns must not be dismissed. It is, regrettably, easier for a dishonest party to coach a witness off-screen during a remote hearing, and some parties have raised concerns regarding the inherent difficulties associated with person-to-person communication via a screen, particularly during cross-examination and without the benefit of the other members of one's legal team at one's side.[22]

26. **No Need for Hardcopy Filings**. The days of expensive printing of thousands of pages of memorials and exhibits along with shipping dozens of boxes to a tribunal and opposing counsel are, fortunately, numbered. 21st century arbitral casefiles are now read on computer screens as a routine rather than printed paper. The 2021 Rules acknowledge the increased use of digital means of submitting written communication in international arbitration, and the reality that many arbitrators and users no longer require hard copies of communications.

27. In an effort to create a more cost-effective and environmentally conscious arbitration process,[23] the 2021 Rules make pragmatic adjustments to their text accommodate the increased exchange of pleadings and correspondence in electronic copies and the decreased use of hard copies. Consequently, Articles 3(1), 4(4)(b) and 5(3) have been modified to accommodate the now-standard use of electronic forms of written communication and require hard copies only when they are requested. The 2021 Note specifies that "[a]*s a general rule, the Request*

*for Arbitration, the Answer and any counterclaims and any Request for Joinder must be sent to the Secretariat by email.* […] *Hard copies should not be sent to the Secretariat, even when the arbitral tribunal has asked to be provided with hard copies.*"[24] Similarly, Articles 4(4)(b) and 5(3) now only require a party to provide the ICC with a "*sufficient number of copies*" of requests for arbitration, responses, and counterclaims where the sending party requests that the ICC provides "*delivery against receipt, registered post or courier*" to the other parties.[25]

28. In addition, these amendments take into account the upcoming introduction of the Secretariat's much-anticipated online case management platform, which will also be welcomed by the ICC user community as a further means of making the arbitral process run more smoothly.

29. **Attractivity of the Rules for Treaty-Based Arbitration**. In 2019, approximately 20% of cases administered by the ICC involved States and/or State-owned parties, a 67% increase over the past five years. However, only two investor-State cases were filed in the same year.[26] Thus, while State and State entities are becoming increasingly familiar with ICC arbitration, the ICC Rules are not nearly as widely adopted for treaty-based disputes as other arbitral rules. To increase the attractivity of the ICC Rules to resolve these types of cases, the 2021 ICC Rules include two new provisions which apply to treaty-based arbitrations specifically.

30. **A New Neutrality Requirement for Arbitrators**. Newly introduced Article 13(6) enshrines the longstanding practice of ensuring that an arbitrator in an investment treaty case not be of the same nationality as one of parties to the dispute. The rule safeguards the neutral application of public international law and a fair assessment of the legitimacy of a State's laws, policies, and regulations.[27] According to the ICC, the new rule ensures "*the complete neutrality of the tribunal in cases involving the public interest*".[28] Article 13(6) is in the same spirit of the approach adopted in other international arbitration rules, notably Article 1.3 of the ICSID Arbitration Rules and Article 6(7) of the UNCITRAL Arbitration Rules.[29] This rule should provide further comfort to States and State entities when opting to include the ICC Rules in their arbitration clauses of any treaties or contracts.

31. **The Non-Availability of Emergency Arbitrator Provisions**. Article 29(6)(c) as revised carves all treaty-based arbitrations out of the Emergency Arbitrator Provisions, which typically allow for parties to seek urgent temporary relief pending the constitution of a tribunal. This provision is consistent with the ICC Court's policy not to apply the Emergency Arbitrator Provisions in treaty-based arbitrations, since these provisions would impose excessively short delays on State parties.[30] However, emergency proceedings remain available in contract-based arbitrations involving a State or State entity.[31]

32. **A New Obligation to Disclose Third-Party Funding**. Reflecting the growing participation of third-party funders in international arbitration and the reality that claims funding may be a source of potential conflicts of interest, a new Article 11(7) requires each party to promptly disclose "*the existence and identity of any non-party which has entered into an arrangement for the funding of claims or defences and under which it has an economic interest in the outcome of the*

*arbitration*." The purpose of this requirement is to ensure transparency and to assist arbitrators in complying with their duties to disclose any issues that may bear on their independence and impartiality.[32]

33. Article 11(7) codifies and expands the ICC's prior approach, as reflected in its 2019 Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration (**2019 Note**), which advised that parties disclose "*relationships with any entity having a direct economic interest in the dispute or an obligation to indemnify a party for the award*." Notably, Article 11(7) takes this a step further by requiring the disclosure of "*an economic interest*", rather than the narrower category of "*direct*" economic interests. The ICC's 2021 Note further specifies that, while broader than "*direct*" interests, Article 11(7) would not capture "*(i) inter-company funding within a group of companies, (ii) fee arrangements between a party and its counsel, or (iii) an indirect interest, such as that of a bank having granted a loan to the parties in the ordinary course of its ongoing activities.*"[33] However, the 2021 Note goes on to advise arbitrators to consider relationships with third-party funders and members of the tribunal, along with experts and witnesses, and also encourages parties and tribunals to adopt or accept the guidance of the IBA Guidelines on Party Representation in International Arbitration, in contrast to earlier wording in which it was merely suggested that they "*draw inspiration from*" those guidelines.[34]

34. **Closer Supervision of Changes in Party Representation**. To avoid conflicts of interest arising after the constitution of an arbitral tribunal,[35] new Article 17(1) requires each party to the arbitration to promptly inform the ICC Secretariat, the arbitral tribunal, and other parties of any changes in its representation. The 2021 Note further specifies that "[o]*nce the arbitral tribunal has been constituted, the parties should refrain from introducing a new representative if a relationship exists between that representative and one of the arbitrators.*"[36]

35. In addition, new Article 17(2) allows an arbitral tribunal, once it has afforded the parties an opportunity to comment,[37] to take any necessary measure to avoid a conflict of interest arising from a change in party representation, including by preventing new counsel from participating in the proceedings in whole or in part. The 2021 Note specifies that, in deciding whether to exclude a newly introduced party representative from the proceedings, Tribunals should consider factors such as (*i*) the ability of the party who seeks the assistance of the new representative to make its case without the new representative, (*ii*) the timing of the proposed addition, and (*iii*) the disruption to the case that may result from the continued participation of the new representative in the event of a successful challenge against one or more arbitrators.[38] These additions codify an existing practice, including those found in the IBA Guidelines on Party Representation in International Arbitration,[39] intended to prevent tribunal members from being conflicted out, and similar provisions have historically been inserted in tribunal-issued terms of reference and/or procedural orders.

36. The rule as drafted strikes a reasonable equilibrium between the competing interests of stability in the proceedings and affording a party the discretion to choose its counsel. Once an arbitral tribunal is constituted, the proper administration of justice requires that a tribunal

be free from worry that a party can disrupt its functioning by an *ex-post* engagement of representatives that would call into question the tribunal's neutrality.

37. **The ICC Court's Authority to Demote Nominated Arbitrators and to Appoint the Entire Tribunal**. Article 12, which addresses the constitution of the tribunal, has been revised to add new Article 12(9), which empowers the ICC Court to appoint the entire tribunal in exceptional circumstances where the application of the parties' arbitration agreement would lead to a significant risk of unequal treatment and unfairness. Article 12(9) applies to any arbitration, including bilateral and multi-party arbitrations.

38. This significantly broadens the authority provided for in Article 12(8), which grants the ICC Court the power to appoint each member of the tribunal in multi-party arbitrations where the parties are unable to agree on a method by which to appoint the entire tribunal.

39. In practice, Article 12(9) allows the Court to disregard arbitration agreements that "*may pose a risk to the validity of the award*"[40] and is intended to be consistent with the "*spirit of the Rules*" under Article 42, which provides that the ICC Court "*shall make every effort to make sure that the award is enforceable at law.*"[41]

40. New Article 12(9) is reserved only for exceptional situations in which the strict application of the method of appointment provided under the arbitration agreement would result in the unequal treatment of the parties, and thus risk the enforceability of any award subsequently rendered. In this respect, the rule ensures that arbitrations conducted under the ICC Rules do not create the situation that arose in the 1992 *Dutco* French Cour de cassation case. [42]In *Dutco*, the arbitration at issue involved two respondents with conflicting interests; however, the applicable arbitration agreement required the joint appointment of one arbitrator by these respondents. The ICC Court applied the agreement strictly and required the respondents to jointly appoint an arbitrator. In the context of an application to set aside an award subsequently issued, the Cour de cassation found that the tribunal was constituted in violation of international public policy (*ordre public international*).

41. It is to be expected that the ICC Court will only use this provision in exceptional circumstances, particularly to address pathological situations.[43] The 2021 Note provides additional guidance on the nature and extent of exceptional circumstances that would lead the ICC to appoint the entire tribunal, for instance when the arbitration agreement provides that one of the parties will have the right to constitute the arbitral tribunal unilaterally, and such unilateral right is not admitted by the law of the place of arbitration.[44]

42. During the revision, concerns were expressed that the proposed new Article 12(9) would grant the ICC Court unilateral authority to disregard parties' arbitration agreements simply because of a perceived unfairness. Ultimately, support for the broader empowerment in New Article 12(9) prevailed, as it should. No arbitral institution should rubber stamp manifestly unbalanced agreements for the use of its rules and abdicate its duties in favour of the enforcement courts. Institutions and tribunals sitting under the aegis have the overarching duty to ensure the efficiency of awards rendered in their name. New Article 12(9) is a necessary means towards

that end. The checks and balances within the ICC Court will ensure that the new power is confined to objectively demonstrable exceptional circumstances.

43. **Requiring Effective Case Management**. One relatively compact wording change in the revised version of Article 22(2) emphasises the ICC's continued focus on effective case management. Whereas the previous version of the article provided that the tribunal "*may*" adopt appropriate case management techniques, the revised version of the rule makes this mandatory, providing that the tribunal "*shall*" do so. The 2021 Note specifies that such measures shall be adopted "*provided that they are not contrary to any agreement of the parties.*" Article 22(2) still refers tribunals to Appendix IV of the Rules for suggested techniques to make case management more efficient.[45] The methods in Appendix IV remain virtually unchanged, including the bifurcation of proceedings and the identification of issues that can be resolved on the basis of documents alone. Appendix IV(h) has been slightly amended to provide that tribunals may "*encourage*" the parties to "*consider settlement of all or part*" of their dispute, rather than merely "*inform*[ing]" them of the possibility, as was the case in the 2017 Rules.

44. Article 24(2) as amended also contains rather small wording changes that nonetheless underscore the prominence the 2021 Rules place on the efficient conduct of disputes. Both the revised article and the 2021 Note require a tribunal to establish a procedural timetable during a case management conference or "*as soon as possible thereafter*" (rather than simply "*following*" the case management conference) and adds that the procedural timetable should be drawn up with the "*efficient*" conduct of the arbitration in mind.

45. **Additional Awards for Omitted Claims.** One of the extolled features of the ICC Rules is the scrutiny applied by the Court to awards. The scrutiny process is described in the 2021 Note as a "*unique and thorough procedure, designed to ensure that all awards are the best possible quality and more likely to be enforceable*."[46] Article 34 of the Rules, which remains unchanged, provides that, prior to issuance of the award, the tribunal sends it in draft form to the Court for review to make modifications to the form of the award and identify points of substance for the tribunal's attention. The Court's scrutiny aims to avoid issues of *infra petita*, in which a tribunal omits to decide a claim raised by the parties.

46. While well-regarded, the ICC has acknowledged that its scrutiny mechanism is not perfect, and that sometimes the need for an additional award from the tribunal arises. To this end, the 2021 Rules introduce new Article 36(3), which provides that a party may make an application to the ICC Secretariat for an additional award "*as to claims made in the arbitral proceedings which the arbitral tribunal has omitted to decide*" within 30 days of receipt of the initial award. The possibility for parties to petition for an additional award is welcome addition to the 2021 Rules, since the issuance of an additional award resolving *infra petita* problems is in the best interest of the parties, as it contributes to minimising the risk that an award issued under the ICC Rules will be set aside.

47. **Clear Governing Law and Forum for Disputes Relating to the Administration of Cases by the Court**. New Article 43 introduces a governing law and forum selection provision

for disputes relating to the ICC Court's administration of the case under the Rules. All claims in this respect are governed by French law and will be settled by the Paris Judicial Tribunal (*Tribunal judiciaire de Paris*), whose jurisdiction is exclusive. This provision seeks to concentrate any proceedings against the ICC Court arising out of or in connection with its management of hundreds of cases each year with tribunals seated all over the world. The legal certainty provided by a single applicable law and a sole forum for the resolution of disputes is most welcome. In addition, French law is particularly appropriate given the ICC's headquarters in Paris and the French legal system's reputation for predictability and neutrality, along with French courts' experience in cases related to international arbitration. The introduction of Article 43 has no impact on the rights of parties to seek recourse against an arbitral award itself, whether in the jurisdiction in which the award was issued or that in which enforcement is sought.

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48. The Revised 2021 ICC Arbitration Rules introduce key features and updates to further respond to ICC arbitration users' needs and bolster efficiency, flexibility, and transparency in case management. Tailored to adapt to new social realities, including the use of technology, and reflect changing approaches in international arbitration, the 2021 Rules reinforce the ICC's position as the world's preferred arbitral institute with a growing portfolio and a record of 946 new cases in 2020.[47]

**Georges Affaki, an author of this *Insight*, is a member of the ICC International Court of Arbitration and a member of the ICC Commission on Arbitration and ADR. All the information on which this *Insight* is based are publicly sourced.**

## Endnotes

[1] International Chamber of Commerce, "Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration", 1 January 2021 (**2021 Note**).
[2] International Chamber of Commerce, "ICC unveils revised Rules of Arbitration", 8 October 2020.
[3] S. P. Finizio, D. Prasad, "Revised ICC Arbitration Rules", WilmerHale, 30 December 2020 (**Finizio & Prasad**), p. 5.
[4] S. Menon, C. Tian, "Joinder and Consolidation Provisions under 2021 ICC Arbitration Rules: Enhancing Efficiency and Flexibility for Resolving Complex Disputes", Kluwer Arbitration Blog, 3 January 2021(**Menon & Tian**), p. 1.
[5] M. E. Vega-Gonzalez, K. Gonzalez, "New York Arbitration Week Revisited: The Challenges of Multi-Party and Multi-Contract Issues in International Arbitration and the Anticipated ICC Rules Changes", Kluwer Arbitration Blog, 5 December 2020 (**Vega-Gonzalez & Gonzalez**), p. 2.; Menon & Tian, p. 1.
[6] Vega-Gonzalez & Gonzalez, p. 2.
[7] 2021 Note, ¶ 18.
[8] M. Bühler *et al.*, "The Launch of the 2021 ICC Rules of Arbitration", Orrick, p. 2.
[9] 2021 Note, ¶ 19.
[10] The 2021 Notes provides the following example of arbitrations subject to consolidation as "[A]*rbitration 1 is between parties A and B with claims under an SPA arbitration agreement, and arbitration 2 is between the same parties with claims under a SHA arbitration agreement. In that scenario, consolidation may be possible if the disputes in the arbitrations arise from the same legal relationship and the Court finds these arbitration agreements to be compatible*." 2021 Note, ¶ 19.
[11] B. Hanotiau, *Complex Arbitrations: Multi-party, Multi-contract, Multi-issue – A comparative Study* (Second Edition), International Arbitration Law Library, Volume 14 (Kluwer Law International; Kluwer Law International 2020), Chapter 3.
[12] International Chamber of Commerce, "2019 ICC Dispute Resolution Statistics", 2020.
[13] ICC France, Commission on Arbitration and ADR, Webinar, "Presentation of the 2021 Revised Rules by Mr. Alexis Mourre", 7 October 2020 (**ICC France Webinar**).
[14] International Chamber of Commerce Commission on Arbitration and ADR, "Proposed Modifications to the ICC Arbitration Rules and Explanatory Comments", 15 July 2019 (**Commission on Arbitration and ADR (2019)**), p. 15.
[15] International Chamber of Commerce, "ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic", 9 April 2020 (**2020 Note on COVID-19**).
[16] 2020 Note on COVID-19, ¶ 24.
[17] M. Polkinghorne *et al.*, "New 2021 ICC Arbitration Rules", White & Case, 7 December 2020, p. 5.
[18] ICC France Webinar.
[19] A. Leoveanu, R. Giosan, "The 2021 ICC Arbitration Rules: Changes to the Arbitral Tribunal's Powers", Kluwer Arbitration Blog, 4 January 2021(**Leoveanu & Giosan**), p. 3.
[20] C. Tevendale *et al.*, "New ICC Rules 2021 and New ICC Note to Parties and Arbitral Tribunals come into force", Lexology, 6 January 2021 (**Tevendale *et al.***), p. 3.
[21] 2021 Note, ¶ 102.
[22] G. Wong *et al.*, "Newly Revised ICC Arbitration Rules", Shearman & Sterling, 12 November 2020 (**Wong *et al.***), p. 2.
[23] Polkinghorne *et al.*, p. 6.
[24] 2021 Note, ¶ 10.
[25] Tevendale *et al.*, p. 2.
[26] The ICC, "2019 ICC Dispute Resolution Statistics", 2020.
[27] Leoveanu & Giosan, p. 2.
[28] The ICC, "ICC unveils revised Rules of Arbitration", 8 October 2020.
[29] ICSID Arbitration Rules, Article 1.3; UNCITRAL Arbitration Rules, Article 6.7.
[30] International Chamber of Commerce Commission on Arbitration and ADR, "Report on Arbitration Involving States and State Entities under the ICC Rules of Arbitration", 24 August 2017, ¶¶ 51-52; ICC France Webinar.

[31] Polkinghorne *et al.*, p. 5.
[32] Finizio & Prasad, p. 3.
[33] 2021 Note, ¶ 21.
[34] 2021 Note, ¶ 67.
[35] Commission on Arbitration and ADR (2019), p. 9.
[36] 2021 Note, ¶ 13.
[37] 2021 Note, ¶ 14.
[38] 2021 Note, ¶ 15.
[39] IBA Guidelines on Party Representation in International Arbitration, International Bar Association, 25 May 2013, Guidelines 4-6.
[40] International Chamber of Commerce, "ICC unveils revised Rules of Arbitration", 8 October 2020.
[41] ICC Arbitration Rules, Article 42 ("*In all matters not expressly provided for in the Rules, the Court and the arbitral tribunal shall act in the spirit of the Rules and shall make every effort to make sure that the award is enforceable at law.*").
[42] Cour de Cassation, Chambre civile 1, du 7 janvier 1992, 89-18.708 89-18.726.
[43] Stephanie Cohen, Webinar, "2021 ICC New Rules", December 2020.
[44] 2021 Note, ¶¶ 42-43.
[45] Commission on Arbitration and ADR (2019), p. 9.
[46] 2021 Note, ¶ 63.
[47] International Chamber of Commerce, "ICC announces record 2020 caseloads in Arbitration and ADR", 12 January 2021.

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AFFAKI

10 Avenue Hoche - 75008 Paris, France
Téléphone : +33 (0) 1 55 73 74 78
Mail : contact@affaki.fr, www.affaki.fr