ICC Unveils the 2021 Rules of Arbitration: Adding More Gold to the Pot

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The ICC International Court of Arbitration is without a doubt the most preferred arbitral institution worldwide. The ICC Rules of Arbitration provide the greatest deference to party autonomy – allowing parties to arbitration the opportunity to select the arbitral tribunal – and offers a high level of flexibility, by implementing any procedural option chosen by the parties that are not incompatible with the core principles of the ICC Rules.

The ICC Rules include rigid provisions aimed at ensuring the arbitrations are conducted efficiently and in the utmost compliance with the fundamental principles of due process. They also establish unique standards of transparency, with the decisional practice of the Court aiming to ensure any conflict disclosures are made in a timely and forthcoming manner. When it comes to drafting awards, the ICC scrutiny process – a unique characteristic of ICC arbitration – offers a careful review of each draft award by the ICC Court with the assistance of the ICC Secretariat – a key component to the structure of the arbitration. This ensures the highest quality of the award by avoiding any possible errors and enhancing the likelihood of the award's enforcement.

With the end of the year closing in and thousands of ICC arbitration's having taken place since 2017 (when the ICC Rules were last amended), the ICC has unveiled the 2021 ICC Rules of Arbitration that are set to take effect on 1 January

2021. These new rules include a multitude of new provisions making arbitration under the ICC even more alluring.

With the unveiling of the 2021 Rules, the President of the ICC Court, Alexis Mourre, stated:

"*The amendments to the Rules… mark a further step towards greater efficiency, flexibility, and transparency of the Rules, making ICC Arbitration even more attractive, both for large, complex arbitrations and for small cases.*"

Joindering Additional Parties

The first amendment to the 2021 ICC Rules is the joindering of additional parties. The ICC has acquired a global reputation for its experience in dealing with complex, high-value, multi-party, and multi-contract arbitrations. A new provision allowing for the joinder of additional parties in the course of arbitration under Article 7(5) of the 2021 Rules, as well as an amendment to Article 10(b) of the 2017 Rules, allows for the consolidation of cases in the presence of different parties which will make the ICC Rules even more suitable to these cases.

Enhanced Transparency

As a result of the introduction of a requirement for the parties to disclose third-party funding arrangements under Article 11(7) of the 2021 Rules, transparency will be further increased. The protection of the integrity of the proceedings will be advanced by the introduction of Article 17(2) which empowers the arbitral tribunal to exclude any new counsel, in the presence of a conflict of interest, from the proceedings; furthermore, Article 12(9) allows the ICC Court to disregard unconscionable arbitration agreements that may pose a risk to the validity of the award.

Investment Treaty Arbitrations

The 2021 Rules include two new provisions to be applied specifically to investment arbitrations based on a treaty. The first – Article 13(6) – aims at ensuring the complete neutrality of the arbitral tribunal in cases involving the public interest, by establishing that no arbitrator shall have the same nationality as that of any of the parties; the second – Article 29(6)(c) – codifies the ICC Court's existing practice that emergency arbitrations are not applicable in investor-State disputes.

Expedited Procedure Provisions

The immensely successful expedited procedure provisions found under Article 30 and Annex VI of the 2017 Rules have been expanded by the 2021 Rules with respect to their scope of application. The 2021 Rules increase the threshold for the opt-out application from USD 2 million to USD 3 million.

Remote Hearings

If the COVID-19 pandemic has taught us anything, it's that in most circumstances, remote working can be just as efficient as in-person work. The ICC has taken this into account with the 2021 Rules pursuant to Article 26(1) and the introduction of Article 36(3), regarding additional awards, which confirm that arbitral tribunals may – after proper consultation with the parties – decide to hold hearings by remote means of communication.

Conclusion

Ahead of the 2021 Rules coming into force, the ICC Court will be releasing an updated version of its Note to Parties and Arbitral Tribunals on the Conduct of Arbitration, which was last amended in January 2019. The ICC has a series of events planned between now and 1 December 2020, which will mark the culmination of the flagship launch of the Rules.

In the years that have passed, the ICC has been tremendously

successful in its arbitration procedures and the ICC Rules are a key factor to that success. With the implementation of the 2021 Rules, one can only imagine how much more efficient and fluid the arbitrations will be.

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