

## New and Revised 2021 ICC Rules

Rule	Status	Topic	Description
Art. 3(1)	Revised	Paperless filing; Efficiency	Removes the presumption of paper filing by providing that all submissions, notifications, and communications “shall be sent,” replacing “supplied in a number of copies.” Several provisions within the 2021 ICC Rules have been revised to require parties to expressly request transmission by hard copy if so desired ( <i>See</i> Arts. 3(2), 4(4)(b), 5(3), and Appx. V).
Art. 7(5)	New	Joinder	Permits joinder of additional parties after the constitution of the tribunal and without universal consent, so long as the tribunal has considered all relevant circumstances and the additional party accepts the constitution of the tribunal and agrees to the Terms of Reference, where applicable.
Art. 10(b) and (c)	Revised	Consolidation; Efficiency	Allows the court to order consolidation even where the claims in the arbitrations are not made under the same arbitration agreement(s), as long as the arbitrations are between the same parties, the disputes arise in connection with the same legal relationship, and the court finds that the arbitration agreements are compatible.
Art. 11(7)	New	Conflict of Interest; Third Party Funding	Requires the parties to promptly disclose the existence and identity of any non-party funding claims or defenses and that has an economic interest in the outcome. The disclosure should be made to the tribunal, parties, and ICC Secretariat.
Art. 12(9)	New	Validity; Enforcement; Fairness	Permits the court, in ‘exceptional circumstances,’ to override the parties’ agreement and to appoint each member of the arbitral tribunal to avoid a significant risk of unequal treatment and unfairness that may affect the validity of the award.
Art. 13(6)	New	ISDS; Conflict of Interest; Neutrality; Impartiality; Independence	Introduces a neutrality requirement in treaty-based disputes by barring all arbitrators forming the tribunal from holding the same nationality as any other parties, unless the parties agree otherwise. The previous rule concerned only chairs and sole arbitrators, and did not extend to co-arbitrators.
Art. 17(1)	New	Representation; Conflicts of Interest	Mandates parties to notify the court, tribunal, and other parties in a timely way of any change in their representation.
Art. 17(2)	New	Representation; Conflicts of Interest	Permits the tribunal to prevent the addition or substitution of a party’s counsel after the constitution of the tribunal as necessary to prevent a conflict of interest with a sitting member of the tribunal.
Art. 22(2)	Revised	Efficiency; Case Management	Confers a positive duty upon arbitrators to ensure effective case management by revising language from “may” to “shall.” It provides that such measures ‘may’ include one or

			more of the case management techniques described in Appx. IV.
Art. 26(1)	Revised	Efficiency; Virtual Format	Expressly empowers the tribunal to decide whether a hearing should be conducted in person or remotely by videoconference or telephone.
Art. 29(6)(c)	New	ISDS; Treaty; Emergency Provisions	Expressly provides that emergency arbitration provisions are <u>not</u> available when the arbitration agreement upon which the application is based arises from a treaty. Emergency proceedings remain available to contract-based arbitrations involving a state or state entity.
Art. 36(3)	Revised	Awards; Omitted Claims	Allows a party to request that the tribunal issue an award to rule upon claims raised during the proceedings but left unaddressed in the award, provided that the request is made within 30 days of receipt of the award.
Art. 43	New	Governing Law; Claims re Administration	Provides that any claims arising out of or in connection with the administration of the arbitration proceedings by the court under the rules shall be governed by French law and settled by the Paris Judicial Tribunal ( <i>Tribunal Judiciaire de Paris</i> ) in France, which shall have exclusive jurisdiction.
Appx. I (Arts. 3, 4, 5, 6)	Revised	Appointment Process; Term Limits; Internal Running; Transparency	Revises the appointment process for the president of the court (Art. 3(1)), two consecutive term limits for all members of the court (Art. 3(5) and (6)), a clear work division between committees, newly created special committees and single-member committees (Arts. 4, 5, and 6). The Internal Rules are modified to provide detail on the constitution, quorum, and decision-making of the court.
Appx. II, Art. 5	New	Reasoning; Transparency	Confirms that upon any party's request, the court may communicate its reasoning behind its decisions on the existence and scope of a prima facie arbitration agreement. The court retains discretion to decline disclosure of its reasons "in exceptional circumstances."
Appx. VI, Art. 1(h)	Revised	Settlement; Efficiency	Revises the language of the example case management technique regarding the settlement of disputes to "encouraging the parties to consider settlement" from "informing the parties that they are free to settle." Such encouragement may aid in reducing the time and costs associated with the dispute for all parties.
Appx. VI, Art. 1(2)	Revised	Efficiency; Expedited Arbitration	Increases the threshold value of disputes to be sent to expedited arbitration on an 'opt-out' basis to \$3 million (from \$2 million).