

31 May 2024

ICC Global Commission
on Arbitration & ADR

ICC Sweden Comments on ICC Arbitration and ADR Rules

On behalf of ICC Sweden and our Committee on Arbitration, please find below our response to the call for comments on the ICC Arbitration and ADR Rules respectively.

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4. Comments on Arbitration Rules - Introductory provisions (Articles 1-3)

In the interest of enhanced speed and efficiency, consider adding, with respect to the EP Rules, a paragraph in Article 3 which stipulates that Periods of time specified in or fixed under the Rules should be complied with and requests for extensions should be reasoned and accepted only in case a valid cause is at hand.

5. Comments on Arbitration Rules - Commencing the arbitration (Articles 4-6)

See comment on question 16 concerning proposal to stipulate a shorter deadlines for some initial steps (e.g. 21 days instead of 30 days, with an opportunity for the ICC to grant extensions).

Article 4.4(b) and Article 5.3 – In the interest of efficiency, consider requesting only one copy of the Request/Answer in EP cases.

6. Comments on Arbitration Rules - Multiple parties, multiple contracts and consolidation (Articles 7-10)

Consolidation – Article 10.3 – Consider adding “... same legal relationship or same transaction or series of transactions and the Court find ...”. It is sometimes difficult to assess whether there is the same legal relationship and this would increase the opportunity to consolidate.

7. Comments on Arbitration Rules - The arbitral tribunal (Articles 11-15)

Article 12.5 – Consider first giving the parties the opportunity to jointly agree on a Chair and the ICC stepping in only if parties do not agree.

Article 13.5 – Consider taking into account not only nationality but also permanent residence of the Sole Arbitrator.

8. Comments on Arbitration Rules - The arbitral proceedings (Articles 16-30)

Article 22 (3) – An observation is that orders concerning confidentiality are of doubtful value. There are questions in which remedies are available in case of breach of such orders, enforceability of such orders, their duration in time, i.e. after the rendering of the award, etc. Similar as to measures. The preferable solution is to have parties enter into a separate agreement regarding such matters, unless the contract already contains provisions on these subjects.

Article 24 (4) – In case of telephone or video conferencing or similar means of communications, it is advisable that a protocol is entered into where the specifics are regulated: remote participation, access to documents, use of audio-visual platform, conduct during proceedings, witnesses, interpreters, etc.

Article 30 (1) – Same as above regarding Article 24 (4).

The issues arising when telephone or video conferencing or similar means of communications are to be used could be dealt with in Appendix IV with details.

9. Comments on Arbitration Rules - Awards (Articles 31-36)

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10. Comments on Arbitration Rules - Costs (Articles 37-38)

Allocation of costs – Article 38.5 – Consider listing more factors (not exhaustively) that the Tribunal may take into account. Consider if one such factor may be settlement offer from a party, similar to the Part 36 of the English Civil Procedure Rules. This would offer some “defence” against frivolous claims.

Consider adding a specific rule concerning the right to obtain a separate award for reimbursement of payment for the Advance on Cost in cases where one party has paid the whole advance.

11. Comments on Arbitration Rules - Miscellaneous provisions (Articles 39-43)

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12. Comments on Arbitration Rules - Statutes and Internal Rules (Appendices I and II)

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13. Comments on Arbitration Rules - Costs and fees (Appendix III)

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14. Comments on Arbitration Rules - Case Management Techniques (Appendix IV)

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15. Comments on Arbitration Rules - Emergency Arbitrator (Appendix V)

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16. Comments on Arbitration Rules - Expedited Procedure Rules (Appendix VI)

As these EP Rules have become so popular and widely used, consider making a separate (complete) set of EP Rules so that users don't have to co-read the Rules and the EP Rules.

Or at least consider somehow clearly marking in the ordinary Rules which Articles/subsections that differ for the EP Rules (e.g. with *).

In expedited arbitrations, the time for “initial steps” such as Answer to RfA, agreeing on a sole arbitrator or making the advance payments take relatively long time compared to the actual proceedings (from referral of file to award). Parties often get repeated extensions. To make the rules more competitive by shortening the time from RfA to award, consider setting concrete deadlines and/or shorter deadlines for these initial steps (e.g. 21 days instead of 30, with an opportunity for the ICC to grant extensions).

17. Comments on Rules of ICC as Appointing Authority

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18. Comments on Mediation Rules

We believe they provide a good base for initiating and implementing a mediation. Even though they allow more than one mediator, experience suggests that a mediation becomes more efficient if there are two mediators who jointly handle the mediation.

19. Comments on Expert Rules (Rules for Proposal, Rules for Appointment of Experts and Neutrals, Rules for the Administration of Expert Proceedings)

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20. Comments on Dispute Board Rules

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21. Other not covered by the above

The potential use of AI should be addressed. For example, consider the need for rules and guidance in terms of safeguarding confidentiality, transparency on the use of AI and responsibility for the output, and ensuring that decision-making responsibility remains firmly with the arbitrators etc.

While outside the scope of a revision of the rules, a more active promotion of both mediation and DRB in Sweden would be appreciated, as there is interest, but no one seems willing to really take the first step to try this out.