

**BRIEFING NOTE**

**ICC Rules 2021 – What are the Key Changes?**

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**Introduction**

The International Chamber of Commerce (the “**ICC**”) recently revised its arbitration rules, which will come into force on 1 January 2021 (the “**ICC Rules 2021**”). Arbitrations commenced after this date will be governed by the ICC Rules 2021.

The ICC Rules 2021 make several key changes to the previous set of arbitration rules (the “**ICC Rules 2017**”). This briefing note discusses the key updates and shares views on how these developments will impact arbitration users.

**Consolidation and Joinder**

Under the ICC Rules 2021, arbitration users will have more clarity on the consolidation of multiple arbitrations, as well as more opportunities for the joinder of additional parties.

**Consolidation**

- The ICC Rules 2017 had consolidation provisions, but the scope was not entirely clear.
- The ICC Rules 2021 amended Articles 10(b) and 10(c) to clarify the scope of the consolidation provision. Arbitrations arising under the same arbitration agreement(s) can be consolidated. Even if the arbitration agreements are not identical, so long as they are compatible, arbitrations arising out of the same legal relationship may be consolidated.

To facilitate consolidations, arbitration users should ensure that all contracts relating to, for example, the same construction project, contain compatible arbitration agreements.

**Joinder**

- The ICC Rules 2017 did not permit additional parties to be joined after the confirmation or appointment of any arbitrator unless all parties consented to the joinder.
- The ICC Rules 2021 introduce Article 7(5), which allows an additional party to be joined after the confirmation or appointment of an arbitrator. So long as the additional party consents to the constitution of the tribunal and the terms of reference, the arbitral tribunal may permit the joinder (even if other parties do not consent to the joinder).

Arbitration users concerned about securing the consent of additional parties may consider pre-dispute methods for obtaining the consent of parties to be joined to arbitrations.

### **Independence & Impartiality**

Under the ICC Rules 2021, Article 11(7) is introduced to require disclosure of the identities of third-parties having an economic interest in the outcome of the arbitration. This facilitates impartiality and independence of the arbitral tribunal in hearing the dispute.

Whilst not often sighted (the HKIAC Rules being another set of rules with a similar provision), it is definitely a positive addition given the growing interest in litigation funding. Arbitration users should note, however, that not all funding agreements need to be disclosed. Only those where third parties have an 'economic interest' need to be disclosed.

Under the ICC Rules 2021, Article 17(2) is introduced to empower arbitral tribunals to disallow changes to the legal representation of any party insofar as the change in legal representation may give rise to a conflict of interest with an arbitrator. Again, this facilitates impartiality and independence of the arbitral tribunal in hearing the dispute.

Whilst changes in legal representation may be uncommon, arbitration users should still note that this provision may prevent them from switching to more suitably experienced lawyers.

### **Modern Conduct of Proceedings**

Due to the global pandemic, the conduct of international arbitration has to evolve to facilitate modern preferences for conducting proceedings. Similar to the other arbitration rules (for e.g., the revised LCIA Rules), the ICC Rules 2021:

- at Articles 3, 4 and 5, provide that pleadings and written communications may be served electronically (instead of physical hard copies in the ICC Rules 2017); and
- at Article 26(1), provides that after consulting the parties and considering the nature of the dispute, arbitral tribunals are empowered to decide whether hearings ought to take place physically or remotely.

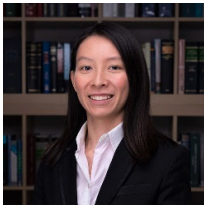
These changes were expected. Nonetheless, they are welcomed at a time when arbitration users and practitioners have embraced modern practices.

### **How We May Assist**

Overall, we applaud the additions and amendments made to the ICC Rules 2021. The revised rules will certainly improve the cost and time efficiency of arbitrations, whilst preserving the sanctity of the arbitration process and the arbitral award.

As arbitration specialists, we assist clients with drafting arbitration clauses and acting as lead counsel in arbitrations. We focus on achieving a cost-effective result that advances our clients' commercial objectives. To find out how we may assist with the process of referring disputes to arbitration, or the arbitration process itself, feel free to contact any member of our team.

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