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Update on the 2012 ICC Rules of Arbitration

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Introduction

What is “really” new?

1. New / explicit test for *prima facie* jurisdiction and specified rules for complex arbitrations - Art. 6, 7 – 9
2. Duty of arbitrators and arbitral tribunals to conduct proceedings efficiently (Art. 22) and Annex IV
3. Emergency Arbitrator (Art. 29 and Annex V)

Revised Structure and Content of Article 6

- > Arbitral Tribunal to decide “directly” on jurisdiction even when no answer or objections have been raised – Art. 6(3)
- > Exception: Secretary General refers the matter to the Court – Art. 6(3)
- > Principles of *prima facie* test in complex arbitration for the Court – Art. 6(4)
 - > One arbitration agreement with multiple parties– Art. 6(4)(i)
 - > Multiple arbitration agreements (Art. 9) – Art. 6(4)(ii)
 - Compatibility of arbitration agreements (a), and
 - Constructive / hypothetical consent of the parties (b)

Joinder / Multiple Parties / Multiple Contracts: procedural framework - Art. 7 – 9

Art. 7 = joinder of additional party

- > No intervention by a third party
- > Requirement to make a claim against the Additional Party
- > Only permitted prior to confirmation or appointment of any arbitrator

Art. 8 = any claim between any of multiple parties possible

- > Background: acceptance of cross-claims

Art. 9 = multiple contracts

- > Background: clarification of acceptance of single arbitration under multiple contracts (if specific conditions are met)
- > One or more arbitration agreement(s)

In all these cases, decision on *prima facie* jurisdiction → Art. 6(4)

Emergency Arbitrator Rules: Background

- > Objectives of new emergency arbitrator provisions in the revised ICC Rules
- > What is an emergency arbitrator?
- > Basic powers
- > Other similar institutional rules:
 - > *AAA-ICDR (2006)*
 - > *CPR (2007)*
 - > *SCC (2010)*
 - > *SIAC (2010)*
 - > *ACICA (2011)*
 - > *Swiss Rules (2012)*

Key Principles of the ICC Emergency Arbitrator Provisions

1. **Opt-out System** = the emergency arbitrator proceedings are applicable when the parties have submitted to ICC Arbitration, i.e. no specific consent necessary, “automatic application” – Art. 29(1)
2. In principle, **additional option** to the parties to ICC Arbitration, i.e. state courts maintain parallel competence prior to the filing of an application – Article 29(7)
3. Definition of “**urgency**” as “measures that cannot await the constitution of an arbitral tribunal” – Art. 29(1)
4. The scope of application is limited to either “**signatories**” or “**successors to signatories**” of the arbitration agreement – Art. 29(5)

Thank you for your attention.

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