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## The 2012 ICC Rules of Arbitration

By Kate Wilford, London, England

The arbitration rules of the International Chamber of Commerce (“ICC”) are the most widely used in the world. In the 2010 International Arbitration Survey on Choices in International Arbitration,<sup>1</sup> 50% of respondents named the ICC as their preferred arbitration institution, followed by the London Court of International Arbitration (“LCIA”) (14%) and American Arbitration Association/International Centre for Dispute Resolution (“AAA/ICDR”) (8%). When asked which arbitration institution they had used most frequently over the past five years, 56% of respondents named the ICC, again followed by the LCIA and AAA/ICDR,

each with 10% of the responses.

Given the popularity of the ICC Rules, there was no immediate need to revise the version in force since 1998. Nevertheless, the ICC decided to revise the 1998 Rules before it became absolutely necessary to do so. Given widespread perception that ICC arbitrations are often more expensive than arbitrations under other institutional rules, one inevitable consideration behind the revisions was to improve the speed and the cost efficiency of the arbitral process. The revisions also sought to bring the ICC Rules up to date. Some revisions were as simple as introducing gender-neutral language (e.g., “President” rather than “Chairman”),

See “2012 ICC Rules of Arbitration,” next page

## Negotiating and Drafting an International Arbitration Clause with a Focus on Latin America: A Primer

By Richard C. Lorenzo and María Eugenia Ramírez, Miami, Florida

Over recent years, international commercial arbitration has gained worldwide acceptance as one of the preferred means of international dispute resolution. Recent advancement in Latin America’s receptivity towards international arbitration, however, requires a new focus on the way businesses and counsel negotiate and draft the arbitration sections of their agreements. These developments warrant a fresh look into the main issues that parties should address when negotiating and drafting an arbitration clause in a transaction connected to Latin America. This article will examine the various aspects of an

arbitration clause that should be understood, analyzed, and considered when negotiating and drafting an international arbitration clause in a Latin American-related transaction involving one or more U.S. parties.

### Institutional vs. Ad Hoc Arbitration

Of primary importance when drafting an arbitration provision is deciding whether the arbitration should be ad hoc (i.e., conducted without any pre-selected institutional administration or supervision) or institutional (i.e.,

See “International Arbitration Clause,” page 60



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## 2012 ICC RULES OF ARBITRATION, *from previous page*

while some revisions introduced new provisions that allowed applications for interim relief to be made to an emergency arbitrator or that facilitated multi-party and multi-contract arbitration.

The 2012 Rules<sup>2</sup> came into force on 1 January 2012 and, with the exception of the emergency arbitrator provisions,<sup>3</sup> apply to all ICC arbitrations commenced after that date unless the parties' arbitration agreement specifies that the parties will submit the arbitration to the rules in force on the date of the arbitration agreement.<sup>4</sup>

### Who Administers Arbitrations Under the New ICC Rules?

Under the 1998 Rules, a practice arose whereby some parties to arbitrations, particularly in Asia, sought to gain the benefit of having the arbitration conducted in accordance with the ICC Rules but without the cost commonly associated with ICC arbitration. They therefore entered into "mix-and-match" arbitration agreements providing that the arbitration would be conducted under the rules of the ICC but administered by another institution. The most well-known example of such a "mix-and-match" clause was *Insignia Technology Co. Ltd. V. Alstom Technology*,<sup>5</sup> where an arbitration clause providing for ICC arbitration to be administered by the Singapore International Arbitration Centre ("SIAC") was upheld by the Singapore courts.

The ICC responded by including a new provision in the 2012 Rules stating that the ICC Court is "the only body authorized to administer arbitrations under the Rules, including the scrutiny and approval of awards rendered in accordance with the Rules."<sup>6</sup> While the ICC's intent is clear, it remains to be seen whether this provision will be effective in practice. Some parties wishing to avoid the cost associated with ICC arbitration may attempt to contract out of this new provision.

### Emergency Arbitrator Provisions

One of the most significant changes in the 2012 Rules is the introduction of a procedure allowing applications for urgent

interim or conservatory measures to be submitted to an emergency arbitrator prior to the constituting of the tribunal.<sup>7</sup> This procedure is intended as an alternative to applying to the national courts at the seat of the arbitration.<sup>8</sup> Prior to the introduction of the 2012 Rules, a party to an ICC arbitration requiring urgent interim or conservatory relief could either apply to a national court for that relief or apply to the ICC for the appointment of a pre-arbitral referee. In practice, however, the ICC's pre-arbitral referee procedure was rarely used.<sup>9</sup> In the meantime, other institutions were developing more sophisticated pre-arbitral procedures: the Stockholm Chamber of Commerce ("SCC") introduced emergency arbitrator provisions in its revised arbitration rules that came into force on 1 January 2010,<sup>10</sup> and SIAC followed suit six months later.<sup>11</sup> The 2012 Rules therefore follow a growing trend in international commercial arbitration towards giving parties the option to apply to an emergency arbitrator for urgent interim or conservatory relief.

Applications under the emergency arbitrator provisions are to be submitted to the ICC Secretariat,<sup>12</sup> together with payment of the \$40,000 fee, consisting of \$10,000 for ICC administrative expenses and \$30,000 for the emergency arbitrator's fees and expenses.<sup>13</sup> This amount may be increased at any time during the emergency arbitrator proceedings if so decided by the President of the ICC Court.<sup>14</sup> If the President of the ICC Court is satisfied that the emergency arbitrator provisions apply, a copy of the application will be transmitted by the ICC Secretariat to the responding party.<sup>15</sup> The respondent will therefore be on notice of the application, negating the possibility of an *ex parte* injunction.

These provisions impose a new role on the President of the ICC Court, who effectively becomes a gatekeeper for applications for emergency measures. The President of the ICC Court will also appoint the emergency arbitrator, usually within two days of receipt of the application by the ICC Secretariat.<sup>16</sup> Once the emergency arbitrator has been appointed, he or she will establish a procedural timetable in as short a time as possible, usually within two days. See "2012 ICC Rules of Arbitration," page 65

of transmission of the file to the emergency arbitrator.<sup>17</sup> The emergency arbitrator is then obliged to conduct the proceedings in “the manner which the emergency arbitrator considers to be appropriate, taking into account the nature and the urgency of the Application.”<sup>18</sup> This grants the emergency arbitrator very broad discretion over the conduct of the emergency arbitrator proceedings, including the format and length of any legal submissions, whether a hearing is required, or whether the emergency arbitrator will reach a decision on the papers.

The emergency arbitrator’s decision will take the form of an order,<sup>19</sup> which is to be made no later than fifteen days from the date on which the file was transmitted to the emergency arbitrator.<sup>20</sup> The parties will therefore have a decision in a reasonably swift time frame, although the process is slower than it might be before some national courts. The order will fix the costs of the emergency arbitrator proceedings and will allocate the costs between the parties.<sup>21</sup>

The fact that the emergency arbitrator’s decision will be issued as an order is in itself problematic. There is little alternative to the decision taking the form of an order: it cannot be a final award, because it may be modified, terminated or annulled by the arbitral tribunal appointed to hear the main dispute<sup>22</sup> and because the time frame for issuing the order is incompatible with the scrutiny process to which all ICC awards are subjected before they are issued to the parties.<sup>23</sup> Although the parties undertake to comply with any order of an emergency arbitrator,<sup>24</sup> the fact that it is an order and not a final award has the consequence that it will not be enforceable under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. An emergency arbitrator’s order may be enforceable under national arbitration laws, but this will be the case in only a very limited number of jurisdictions. Principally, these are jurisdictions with arbitration laws based on the 2006 UNCITRAL Model Law, Article 17H of which provides that “[a]n interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the

competent court.” At the date of writing (May 2012), the only jurisdictions to have adopted the 2006 Model Law are Australia, Brunei, Hong Kong, Costa Rica, the republic of Georgia, Ireland, Mauritius, New Zealand, Peru, Rwanda, Slovenia and Florida (in the United States).<sup>25</sup> Additionally, in March 2012 the Singapore Ministry of Law announced its intention to amend the Singapore International Arbitration Act to, *inter alia*, provide for orders of emergency arbitrators (including those of both SIAC and the ICC) to be enforceable in Singapore.<sup>26</sup> In most jurisdictions, however, an emergency arbitrator’s order will be unenforceable. An applicant for interim or conservatory measures may therefore prefer to have a court order for reasons of enforceability.

Further, there is an argument that the availability of interim or conservatory measures from an emergency arbitrator would adversely impact a party’s ability to obtain similar relief from a national court. Although Article 29(7) provides that “[t]he Emergency Arbitrator Provisions are not intended to prevent any party from seeking urgent interim or conservatory measures from a competent judicial authority,” it is for the court in question to decide on its own jurisdiction to grant interim or conservatory measures. In the case of England and Wales, the relevant statutory provision is s.44(5) of the Arbitration Act 1996, which states that “in any case the court shall only act if or to the extent that the arbitral tribunal, and any arbitral or other institution vested by the parties with power in that regard, has no power or is unable for the time being to act effectively.” Future respondents to applications under s.44(5) may argue that the English court has no power to act because the ICC is able to act effectively by appointing an emergency arbitrator.

Once the emergency arbitrator proceedings are complete, the emergency arbitrator may not act as arbitrator in the same dispute.<sup>27</sup> This may have its advantages, in that it avoids the possibility of the emergency arbitrator pre-judging the dispute. There may also be the disadvantages of a lack of continuity and some duplication of cost. In this respect, the emergency arbitrator

provisions may be contrasted with Article 9 of the LCIA Rules,<sup>28</sup> which provide for expedited formation of the arbitral tribunal—rather than appointment of an emergency arbitrator—in cases of extreme urgency.

In view of these issues, parties entering into an arbitration agreement under the ICC Rules may not wish to apply those provisions if it is likely the parties can obtain interim or conservatory measures from a national court within a reasonable time frame. In most instances, the national court route is likely to be quicker and cheaper than the emergency arbitrator route, and the resulting order will be more readily enforceable. The emergency arbitrator provisions may be beneficial where the national courts at the seat of the arbitration are unlikely to grant effective interim relief. This will need to be considered when entering into the arbitration agreement.

## The Jurisdictional Threshold

Under the 1998 Rules, Article 6(2) contained a threshold test on jurisdiction. If a party disputed that it was bound by an arbitration agreement, the ICC Court was empowered to decide whether or not the arbitration should proceed, based merely on whether the Court was satisfied that a *prima facie* arbitration agreement under the ICC Rules may have existed.

In contrast, under Article 6(3) of the 2012 Rules, the default position is that the arbitration will proceed and the arbitral tribunal will determine its own jurisdiction unless the Secretary General refers the matter to the ICC Court for a determination under Article 6(4). As was the case under the 1998 Rules, the relevant test is whether the ICC Court is *prima facie* satisfied that an arbitration agreement under the ICC Rules may exist, which is a low threshold. Article 6(4) provides further guidance as to how the ICC Court may make that decision in certain circumstances (emphasis added in the following):

- Where there are more than two parties to the arbitration, the arbitration shall proceed between those parties with respect to which the ICC Court is *prima facie* satisfied that an arbitration agreement

under the ICC Rules that binds them all *may* exist.<sup>29</sup>

- Where claims are made under more than one arbitration agreement, the arbitration shall proceed as to those claims with respect to which the ICC Court is *prima facie* satisfied (a) that the arbitration agreements under which those claims are made *may* be compatible, and (b) that all parties to the arbitration *may* have agreed that those claims can be determined together in a single arbitration.<sup>30</sup>

The threshold test is therefore still a low one. The decision is likely to be referred to the ICC Court only in circumstances where there is serious doubt that the party contesting jurisdiction is in fact bound by the arbitration clause, thereby removing a potential obstacle to the arbitration proceeding in many cases where a jurisdictional challenge would previously have been brought under Article 6(2) of the 1998 Rules. The effect of this change should be to speed up constituting the arbitral tribunal in many cases because, as a matter of practice, the ICC would not take steps to form the tribunal until any jurisdictional objection under Article 6(3) had been handled.

### Multi-Party and Multi-Contract Arbitrations

The 1998 Rules did not expressly provide for multi-party and multi-contract arbitration, except for addressing the question of the appointment of arbitrators in multi-party situations<sup>31</sup> (although the ICC's practice developed to fill some of these gaps). One of the most notable features of the 2012 Rules is therefore the incorporation of express provisions to facilitate multi-party and multi-contract arbitrations.

### Joinder of Additional Parties

The first of these new provisions is Article 7, which provides for the joinder of additional parties to an arbitration. The 1998 Rules did not provide for the joinder of additional parties, but a practice developed allowing such joinder (typically at the request of a respondent, given that a

claimant is able to specify the parties to an arbitration), where certain requirements were met.<sup>32</sup> Those requirements were:

- The party or parties to be joined must have signed the arbitration agreement that is the basis of the arbitration.
- The respondent must have claims against the party that it seeks to have joined.
- The request for joinder must be made before any arbitrators have been appointed or confirmed by the ICC Court, in order to ensure that any parties that are joined have the opportunity to participate in constituting the arbitral tribunal.

The new Article 7 is not a straightforward codification of these requirements. Article 7 applies to joinder at the request of either party, not just a respondent, and there is no requirement that the party requesting the joinder have claims against the party that it wishes to join. Instead, Article 7(1) simply requires a party wishing to join an additional party to the arbitration to submit a Request for Joinder to the ICC Secretariat. The only guidance provided in Article 7 as to the criteria that will be applied in considering such a request is that any such joinder will be subject to the provisions of, *inter alia*, Article 6(4). As referred to above, Article 6(4)(i) provides that the arbitration shall proceed between those parties with respect to which the ICC Court is *prima facie* satisfied that an arbitration agreement may exist under the ICC Rules that binds them all. Given that Article 7 applies only before the arbitral tribunal is constituted, it appears that requests for joinder will routinely be referred to the ICC Court for determination, and the *prima facie* test set out in Article 6(4) will apply. The requirements to be met when applying for joinder under the 2012 Rules are therefore less demanding than under the ICC Secretariat's previous practice.

This low threshold may be of concern to some parties, particularly claimants, who do not wish an otherwise straightforward claim to be complicated by the involvement of additional parties and subsequent juris-

dictional battles. The risk is not as great as might be feared: the effect of Article 6(4) is that for joinder to be granted, an arbitration agreement that binds that third party must exist. This requirement is likely to be satisfied only where the third party has either signed the contract in dispute or has signed an umbrella agreement containing an arbitration clause. Further, if the ICC Court grants a request for joinder, the matter is not finally determined; the decision as to whether the arbitral tribunal has jurisdiction over the additional party rests with the arbitral tribunal itself.<sup>33</sup>

The stipulation that no joinder may occur after the arbitral tribunal has been constituted may restrict the application of Article 7 in practice, as in some cases it may not be apparent in the early stages of the arbitration that liability in fact rests with a third party and, by the time that becomes clear, it may be too late to file a Request for Joinder.

### Claims Among Multiple Parties

Article 8 of the 2012 Rules allows for any party in a multi-party situation to make claims against any other party, provided that no new claims may be made after the Terms of Reference are signed or, in circumstances where a party refuses to sign, are approved by the ICC Court.<sup>34</sup> This provision facilitates multi-party arbitration by allowing for cross-claims by one respondent against another. In contrast, under the 1998 Rules, cross-claims were permitted in practice if the tribunal determined that the parties' arbitration agreement gave it jurisdiction over cross-claims,<sup>35</sup> although this was not stated in the rules.

### Multiple Contracts

Similarly, the 1998 Rules were silent on the question of whether a single request for arbitration could be filed on the basis of two or more contracts. As a matter of practice, however, such Requests for Arbitration were allowed to proceed where certain criteria were met:<sup>36</sup>

- All contracts must have been signed by the same parties.<sup>37</sup>

- All contracts must have been related to the same economic transaction.
- The dispute resolution clauses contained in the contracts must be compatible.

The rationale behind these criteria was that the ICC Court endeavoured to reach a decision that was consistent with the intention of the parties as evidenced in their arbitration agreement.<sup>38</sup>

The 2012 Rules introduced a new Article 9 on multiple contracts. As was the case with Article 7, it is not a straightforward codification of the ICC Court's existing practice. Article 9 now provides that "claims arising out of or in connection with more than one contract may be made in a single arbitration, irrespective of whether those claims are made under one or more than one arbitration agreement under the Rules." As with Article 7, this is subject to, *inter alia*, Article 6(4). As outlined above, Article 6(4)(ii) limits which claims under more than one arbitration agreement can be brought in a single arbitration, namely "those claims with respect to which the Court is *prima facie* satisfied that (a) the arbitration agreements under which those claims are made may be compatible, and (b) that all parties to the arbitration may have agreed that those claims can be determined together in a single arbitration."

The overriding principle is therefore unchanged: claims under multiple contracts may be brought in a single arbitration only where this is what the parties intended. As with Article 7, and consistent with the other amendments to the 2012 Rules to facilitate multi-party arbitration, the test to be applied under the 2012 Rules is less exacting than under the ICC's previous practice.

### Consolidation of Arbitrations

The 1998 Rules did expressly deal with consolidation of arbitrations. Article 4(6) provided that:

When a party submits a Request in connection with a legal relationship in respect of which arbitration proceedings between the same parties are already pending under these Rules, the Court may, at the request of a party, decide to include the claims contained in the

Request in the pending proceedings provided that the Terms of Reference have not been signed or approved by the Court.

In other words, the ICC Court had authority to consolidate a new arbitration with an existing arbitration where the parties were the same and where the two cases related to the same legal relationship (which has been understood to mean the same economic transaction<sup>39</sup>). This was an extremely narrow test, capable of application in only very limited circumstances. In addition, the ICC Court would allow arbitrations to be consolidated where all parties agreed to consolidation.<sup>40</sup>

By contrast, the new test for consolidation under Article 10 of the 2012 Rules is broader and gives the ICC Court more discretion:

The Court may, at the request of a party, consolidate two or more arbitrations pending under the Rules into a single arbitration, where:

- the parties have agreed to consolidation; or
- all of the claims in the arbitrations are made under the same arbitration agreement; or
- where the claims in the arbitrations are made under more than one arbitration agreement, the arbitrations are between

the same parties, the disputes in the arbitrations arise in connection with the same legal relationship, and the Court finds the arbitration agreements to be compatible.

In deciding whether to consolidate, the Court may take into account any circumstances it considers to be relevant, including whether one or more arbitrators have been confirmed or appointed in more than one of the arbitrations and, if so, whether the same or different persons have been confirmed or appointed.

Paragraph "c" essentially reproduces the requirements of the old Article 4(6), and paragraph "a" codifies the Court's practice of allowing consolidation where all parties agreed. The main innovation is therefore paragraph "b": arbitrations may be consolidated where all of the claims in the arbitrations are made under the same arbitration agreement. This is consistent with the principle that multi-party and multi-contract arbitrations should proceed only where this was the intention of the parties.

Consolidation may now be considered at any stage where two arbitrations are pending before the ICC, not just at the time when the second Request for Arbitration is filed. In practice, however, consolidation may be more readily granted before the arbitrators in the second case have been ap-

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pointed or confirmed, as the ICC will wish to ensure that all parties are able to participate in constituting the arbitral tribunal.

## Independence and Impartiality of Arbitrators

Article 11(1) requires arbitrators to be and remain independent and impartial of the parties. This reproduces the wording of Article 7(1) of the 1998 Rules but adds the requirement of impartiality. Arguably, independence may have been previously understood to encompass impartiality in any event,<sup>41</sup> but all room for doubt has now been removed.

Prospective arbitrators in ICC cases are now required by Article 11(2) to sign a statement of acceptance, availability, impartiality and independence. This codifies the requirement that has been in place since 17 August 2009 to sign such a statement<sup>42</sup> and replaces Article 7(2) of the 1998 Rules, which merely required a statement of independence to be completed. The requirement for prospective arbitrators to disclose details of their availability was designed to address concerns that some arbitrators were making unrealistic assessments of their availability to handle new cases, leading to delays in the arbitral process.

## Case Management

Case management assumes increased importance in the 2012 Rules. A series of

new provisions on case management are introduced, intended to improve the way in which ICC arbitrations are run—in particular, the speed and cost efficiency of those proceedings. Most of these provisions are not novel in the broader context but are included in the ICC Rules for the first time.

The arbitral tribunal and the parties are now specifically required to make every effort to conduct the arbitration in an expeditious and cost-efficient manner, having regard for the complexity and value of the dispute.<sup>43</sup> In order to achieve this aim, the arbitral tribunal may adopt procedural measures it considers appropriate, provided that they are not contrary to any agreement that the parties may have reached.<sup>44</sup> These measures may include any of the case-management techniques set out in Appendix IV—case-management techniques that are widely employed and likely to be uncontroversial, such as bifurcation, partial awards, limiting the length and scope of written submissions and written or oral witness evidence, and telephone or video conferencing. Other measures in Appendix IV involve the arbitral tribunal taking a role in settlement by informing the parties that they are free to settle the dispute or by taking steps to facilitate the dispute. The involvement of arbitrators in facilitating a settlement, particularly through mediation (or “med-arb”), is a topic that divides legal cultures: it is common in Asia but

approached with caution elsewhere for fear that it may give rise to a perception of bias, which may in turn impede the enforceability of any award. Further, should a mediation phase fail, the arbitrator will have information gained in the role of mediator that he or she may, consciously or otherwise, carry forward to a subsequent arbitration phase.

The tribunal is now specifically required to convene a case-management conference<sup>45</sup> at, or following which, the procedural timetable must be drawn up.<sup>46</sup> Further case-management conferences may be convened “to ensure continued effective case management,”<sup>47</sup> and these may be conducted in person, by video conference or by telephone.<sup>48</sup>

There is also an incentive for the parties to cooperate, as the arbitral tribunal may take into account whether the parties complied with their obligation to conduct the arbitration in an expeditious and cost-efficient manner when making decisions on costs.<sup>49</sup>

Communications have also been brought up to date. References in the 1998 Rules to “fax,” “telex” and “telegram,” have been removed in the 2012 Rules and replaced by the term “email.”<sup>50</sup>

The 2012 Rules also include provisions designed to encourage the arbitral tribunal to render its final award swiftly. The Rules do not go so far as to impose a deadline, but

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there is a new requirement that, as soon as possible after the final hearing, the arbitral tribunal must inform the ICC Secretariat and the parties of the date by which it expects to submit its draft award to the Court for approval.<sup>51</sup>

## Confidentiality and Investment Arbitration

Like previous versions, the 2012 Rules do not contain an express confidentiality provision. Instead, the tribunal is given new authority to make orders, upon the request of any party, concerning the confidentiality of the arbitration proceedings or any other matters in connection with the arbitration, and it may take measures for preserving trade secrets and confidential information.<sup>52</sup>

The absence of a general confidentiality provision is consistent with the aim of making the 2012 Rules more suitable for use in investment treaty claims (as those claims are generally public). Whereas the 1998 Rules stated that the function of the ICC Court was to provide for the settlement of “business disputes,” the 2012 Rules state that it “administers the resolution of disputes by arbitral tribunals,”<sup>53</sup> removing the reference to “business.” In disputes involving states or state entities, an arbitrator may now be directly appointed by the ICC Court,<sup>54</sup> rather than through a national committee, as national committees have been perceived as being too close to their national business communities.

## Conclusion

The 2012 Rules have generally been received favorably. That the ICC has sought to address criticisms of the arbitral process as too slow and expensive has, in particular, been welcomed. The provisions on multi-party and multi-contract arbitration have also met with approval, as they will enable arbitration to meet the demands of modern business transactions more effectively. The emergency-arbitrator provisions, on the other hand, have encountered some scepticism.

The impact of the new rules in practice will inevitably be tested over time. Specifically, it is far from clear that they will reduce the time and cost associated with ICC arbitration, since such outcomes depend more on the conduct of the parties and arbitrators than on the arbitration rules.



K. Wilford

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### Endnotes:

- 1 Available at [http://www.arbitrationonline.org/docs/2010\\_InternationalArbitrationSurveyReport.pdf](http://www.arbitrationonline.org/docs/2010_InternationalArbitrationSurveyReport.pdf), at 23.
- 2 Available at <http://www.iccwbo.org/court/arbitration/id4199/index.html>.
- 3 Art. 29(6) provides that the emergency-arbitrator provisions do not apply to arbitration agreements concluded before 1 January 2012, unless otherwise agreed.
- 4 Article 6(1).
- 5 [2009] SGCA 24.
- 6 Art. 1(2).
- 7 Art. 29(1).
- 8 Art. 29(7).
- 9 YVES DERAÏNS AND ERIC A. SCHWARTZ, A GUIDE TO THE ICC RULES OF ARBITRATION 10 (2005).
- 10 App. II, Arbitration Rules of the Stockholm Chamber of Commerce, 1 Jan. 2010, available at <http://www.sccinstitute.com/skiljedomsregler-4.aspx>.
- 11 Rule 26.2 and sched. 1, SIAC Rules 4<sup>th</sup> Edition, 1 July 2010, available at [http://www.siac.org.sg/cms/index.php?option=com\\_content&view=article&id=210&Itemid=130](http://www.siac.org.sg/cms/index.php?option=com_content&view=article&id=210&Itemid=130).
- 12 App. V, art. 1(1). For a list of practical considerations for submitting an application for emergency measures, see <http://www.iccwbo.org/court/arbitration/index.html?id=46940>.
- 13 App. V, art. 7(1).
- 14 App. V, art. 7(2).
- 15 App. V, art. 1(5).
- 16 App. V, art. 2(1).
- 17 App. V, art. 5(1).
- 18 App. V, art. 5(2).
- 19 App. V, art. 6(1).

- 20 App. V, art. 6(4).
- 21 App. V, art. 7(3).
- 22 Art. 29(3).
- 23 Art. 33.
- 24 Art. 29(2).
- 25 Details of the States that have enacted the 2006 Model Law are available at [http://www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration/1985Model\\_arbitration\\_status.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration_status.html).
- 26 See <http://app2.mlaw.gov.sg/News/tabid/204/Default.aspx?Itemid=634>.
- 27 App. V, art. 2(6).
- 28 Available at [http://www.lcia.org/Dispute\\_Resolution\\_Services/LCIA\\_Arbitration.aspx](http://www.lcia.org/Dispute_Resolution_Services/LCIA_Arbitration.aspx).
- 29 Art. 6(4)(i) (Emphasis added).
- 30 Art. 6(4)(ii) (Emphasis added).
- 31 Art. 10 of the 1998 Rules.
- 32 Anne Marie Whitesell & Eduardo Silva-Romero, *Multiparty and Multicontract Arbitration: Recent ICC Experience*, ICC INT'L CT. ARB. BULL.: SPECIAL SUPP. (2003) 7, 11; DERAÏNS & SCHWARZ, *supra* note 9, at 71.
- 33 Art. 6(5).
- 34 Art. 23(3).
- 35 DERAÏNS & SCHWARZ, *supra* note 9, at 71.
- 36 Whitesell & Silva-Romero, *supra* note 32, at 15; DERAÏNS & SCHWARZ, *supra* note 9, at 100.
- 37 In exceptional circumstances, the ICC Court allowed the dispute to proceed as a single arbitration in a case where it was clear that the signatories belonged to two groups of companies. See Whitesell & Silva-Romero, *supra* note 32, at 15.
- 38 *Id.* at 15.
- 39 *Id.* at 16.
- 40 *Id.* at 16; DERAÏNS & SCHWARZ, *supra* note 9, at 59.
- 41 For details of the debate as to whether “independence” in the 1998 Rules encompassed impartiality, see DERAÏNS & SCHWARZ, *supra* note 9, at 116-20.
- 42 See <http://www.iccwbo.org/court/arbitration/index.html?id=34543>.
- 43 Art. 22(1).
- 44 Art. 22(2).
- 45 Art. 24(1).
- 46 Art. 24(2).
- 47 Art. 24(3).
- 48 Art. 22(4).
- 49 Art. 37(5).
- 50 Art. 3(2) of both the 1998 and 2012 Rules.
- 51 Art. 27.
- 52 Art. 22(3).
- 53 Art. 1(1) of the 1998 Rules; Art. 1(2) of the 2012 Rules.
- 54 Art. 13(4).