

PREFACE

The main focus of this fifth edition is the application of the amendments to the ICC Rules in 2017 and the introduction of several new provisions in 2021, both under the aegis of Alexis Mourre as President of the ICC Court. These include, in particular, the application of Article 29 with respect to emergency arbitrators introduced in 2012 as well as the application of Article 30 with respect to expedited procedures introduced in 2017. Both provisions have been widely used and have become part of the ICC arbitration landscape. In addition, in 2021 there was another welcome addition to the ICC Rules in Article 43 which provides that claims against the ICC are subject to French law and to the Paris Judicial Tribunal. As discussed in prior editions, ICC arbitration is a particular form of administered arbitration and the ICC has published a revised detailed “Note to the Parties and Arbitral Tribunals on the Conduct of the Arbitration Under the ICC Rules of Arbitration” which deals in detail with the expedited procedures provisions under Article 30 of the Rules.

However, as noted in prior editions, approaching ICC arbitration is much more complex, whether as counsel or arbitrator. The complexity is reflected in procedural orders and Awards issued by Tribunals. It is also reflected in the case law of the courts, whether the courts of the place of arbitration or the courts of the place of enforcement. In scrutinising awards, the ICC Court “considers to the extent practicable, the requirements of the mandatory law at the place of arbitration” (art.6, App.II to the Rules) and the ICC Court and the Tribunal shall “make every effort to make sure that the award is enforceable at law” (art.41). A key element of this Handbook is analysing how Tribunals seek to meet these requirements and how the state courts interpret legal requirements at the place of arbitration or the place of enforcement with respect to arbitration in general. As with the prior editions, this fifth edition focuses on the law applicable in the places where most ICC arbitrations take place: France, Switzerland, England, the US, and the UNCITRAL Model law countries including, in particular, Singapore.

The Handbook also deals with various specific issues that frequently arise in ICC arbitration such as the issue of challenges to arbitrators, jurisdiction with respect to non-signatories of the arbitration agreement, capacity of parties and enforcement of awards that have been annulled at the place of arbitration. In addition to the ICC’s internal material relating to arbitration, various other entities, such as the International Bar Association (IBA) and the International Law Association (ILA), have produced guidelines or recommendations that continue to be discussed and used in international arbitration. The IBA Rules on the Taking of Evidence in International Arbitration as revised in 2010 and now as updated in 2020 have become a standard point of reference for arbitration procedure as is reflected in the IBA Arbitration Guidelines and Rules Subcommittee, “Report on the reception of the IBA Arbitration soft law products, September 2016”. The IBA

Guidelines on Conflict of Interest continue to provide a point of reference in international arbitration as is reflected in the 2016 Report. However, as discussed in the commentary, the ICC has adopted a broader standard for disclosure than that in those Guidelines. This is an issue addressed under art.11.

As with the prior editions, this Handbook is based, in particular, on the arbitrations in which the authors have been, and are currently, involved as arbitrators and counsel. The various procedural issues dealt with in procedural orders, hearings and awards are an essential part of this Handbook and reflect the valuable contributions, in particular, of fellow arbitration practitioners and members of the Secretariat. Particularly when dealing with issues such as applications for admissions of evidence, bifurcation, and the conduct of hearings, this day-to-day practice is a continual reminder of the requirements to deal with issues relating to cost, effectiveness and due process.

The reception to the previous editions of this Handbook has been very gratifying. Without limiting any responsibility for any shortcomings in this fifth edition, it is appropriate to thank various persons. This edition, like the prior editions, reflects the value of discussion of the various legal issues under both the 1998 Rules and the current rules with the ICC Court members and the members of the Secretariat. In addition, the Handbook refers to, and relies on, the considerable work that has been carried out by the ICC ADR Commission with respect not only to the Rules themselves but also with respect to issues such as controlling time and costs. We would like express our warm thanks to Stanislas Walch, a former intern and now associate at Orrick, Herrington & Sutcliffe, as well as our interns Melissa Aourane and Sophie Varenne, for their research and assistance in the preparation of this fifth edition. We also very much appreciate the enthusiastic and effective assistance from the entire team at Thomson Reuters. Finally, since the publication of the fourth edition, the international arbitration community has lost some eminent figures, all closely connected to the ICC. This fifth edition is dedicated to these colleagues who contributed so much to ICC arbitration.

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