



## **Legal Alert**

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# **Additional Awards: Notable Additions to the 2021 ICC Arbitration Rules**

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As a significant step to providing greater flexibility, efficiency and transparency in international arbitration, the International Chamber of Commerce ("**ICC**") recently introduced its revised arbitration rules ("**2021 Rules**"). The 2021 Rules became effective for cases filed on 1 January 2021. Cases before 1 January 2021 still use the 2017 ICC Arbitration Rules ("**2017 Rules**") unless parties agree otherwise. One important change among other notable changes is the inclusion of additional award provisions.

### Additional Awards

Under Article 36 paragraph (3) of the 2021 Rules, a party may request the tribunal to issue an additional award if there is a claim that the tribunal "*omit[s] to decide*". Such request shall be made within 30 days from the receipt of the award.

Furthermore, under Article 36 paragraph (4), once the application is transmitted to the tribunal, the tribunal will provide the other party "*a short time-limit, normally not exceeding 30 days*" to comment on the application. In considering the additional award application, the tribunal may decide to allow the production of additional evidence, as appropriate. The tribunal then weighs and compares the value of that evidence for conclusion. Subsequently, the tribunal shall submit its decision in a draft form to the ICC. The omitted claim, if granted, will be the additional award to the final award.

Previously, under the 2017 Rules, rendering additional awards were only possible if the law applicable at the arbitration seat allows it.

The purpose of the additional awards is to ensure that the tribunal may complete its duty if any claim is raised by either party but remains unaddressed in the final award.

### Comparison to other Institutional Arbitration Rules

Although the provision of the additional award is new to ICC arbitration rules, it is not the case for other institutional arbitration rules. Singapore International Arbitration Centre Arbitration Rules ("**SIAC Rules**") and London Court of International Arbitration Rules ("**LCIA Rules**"), for example, expressly provide similar additional award mechanisms.

According to Article 33 paragraph (3) of the SIAC Rules and Article 27 paragraph (3) of the LCIA Rules, a party may request the tribunal to make an additional award for claims presented in the arbitration, but not decide in the award. Under these rules, the tribunal must find it "*justified*" to grant a request for additional awards.

Also, albeit uncommon to be elected, some Indonesian arbitration bodies have tools comparable to additional award mechanisms, as a correction to the final award that does not address claims requested by a party.

Such instances can be observed in procedural rules issued by BANI Arbitration Center (BANI Mampang), Indonesia National Arbitration Body (BANI Sovereign), Indonesia Construction Dispute Arbitration and Alternative Dispute Resolution Center (*Badan Arbitrase dan Alternatif Penyelesaian Sengketa Konstruksi Indonesia – BADAPSKI*), Indonesia Capital Market Arbitration Board (*Badan Arbitrase Pasar Modal Indonesia – BAPMI*). Each of these arbitration bodies' rules provide a similar provision of additional awards.

### Conclusion

While the provision of the additional award itself is known in other institutional arbitration rules, including arbitration bodies in Indonesia, it indeed is a notable development for the ICC arbitration rules. The possibility of issuing additional awards would meet the balance between an award's finality and prevent the award from becoming *infra petita*. Also, the revisions introduced by the 2021 Rules would level ICC playing fields with other arbitration bodies. More importantly, it is expected to cater the ICC court's continued efforts to provide a reliable international arbitration forum.

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