

on applicable law, language to be used in the process and the place of arbitration.

Under the new rules, the Secretary General of the Court may now confirm the appointment of arbitrators provided that they have filed unqualified statements of independence and no-one has objected to them. The nominations will not have to be confirmed by the Court in session, allowing for a more rapid transmission of the file to the tribunal.

The new rules contain provisions for the appointment of arbitrators in the case of multiple parties. This amendment responds to the well-known *Dutco* case of the French Cour de Cassation, which held that equal treatment of the parties was a matter of public policy. In cases where multiple claimants or respondents cannot agree on a common arbitrator, the ICC Court may appoint all three arbitrators. The Court will also have more latitude in nominating, confirming or replacing arbitrators, taking into account nationality, any relationship to the parties, linguistic abilities, availability and ability to conduct the proceedings.

The Claimant may be asked to pay a provisional advance for the costs of the drawing up of Terms of Reference. This measure will allow the case to go to the tribunal even if the Respondent is refusing to pay its share of the costs. Once the Court fixes the advance on costs, the provisional amount already paid by the Claimant will be credited to it. Where a party refuses to pay its share, the Court, after a period of not less than fifteen days, may consider that party's claim or counterclaim withdrawn.

The Terms of Reference - long regarded by some as the "soul" of ICC arbitration, and by others as a "damned nuisance" - remain mandatory. Under the new rules, however, the arbitral tribunal has the discretion to omit the list of issues to be determined where it deems such list "inappropriate." It is also important to note that while under the old rules, the addition of new issues subsequent to the signing of the Terms of Reference required the written consent of all parties, in future the tribunal will have the discretion to authorize the addition of new claims or counterclaims.

One particularly important innovation is the total liberty of the tribunal to "apply the rules of law which it deems appropriate" in the absence of an applicable law agreed upon by the parties. The arbitral tribunal will also have explicit power to make interim orders, and to protect intellectual

## INTERNATIONAL

### New ICC Court of Arbitration Rules Approved: Will Enter Into Force January 1st, 1998

The ICC Council, governing body of the International Chamber of Commerce, formally approved new procedural rules at its 32nd World Congress at Shanghai in April. This is the first major revision of the ICC rules in over 20 years. While the new procedures retain the unique character of ICC arbitrations, the changes go a long way towards improving the flexibility, transparency and efficiency of the process.

Following are some highlights from the amended rules.

Requirements for the Request and Answer have been relaxed. Instead of a statement of claim or defence, a party must include a "description of the nature and circumstances of the dispute", or "comments as to the nature and circumstances of the dispute." Parties will, however, be required to comment

property. It will have a new obligation to declare the proceedings closed, and to inform the Secretariat of the date it intends to submit the draft award for scrutiny. Any postponement of that date must be communicated to the Secretariat. New provisions will also cover truncated tribunals as well as correction and interpretation of the award.

Any party which proceeds with the arbitration without complaining about any failure to comply with the rules or other requirements shall be deemed to have waived their right to object.

The new rules will apply to arbitrations commenced on or after 1st January 1998, unless the parties have agreed that the rules in force at the time the arbitration agreement was signed shall apply. Currently, official versions of the rules are in French and English, and a Korean translation is also available. Other translations will be released before the end of 1997.

The 1998 Rules are the fruit of two years of multi-lingual and multi-cultural discussions, correspondence and debate in the working group and with the ICC's national committees. They represent a balanced compromise whose efficiency, completeness and transparency complement and reinforce the universality of the ICC's arbitral process. It is now up to the Court, the counsel and the arbitrators to assimilate the changes and to use the new Rules wisely in order to produce the best arbitration possible for the parties who have chosen it.

*[Contributed by Louise Barrington, Director of International Chamber of Commerce ASIA, Hong Kong.]*