

The ICC Launches New Expedited Procedure Rules

The International Chamber of Commerce offers a new procedure to provide faster, easier and streamlined arbitration for smaller disputes.

On 1 March 2017, the revised International Chamber of Commerce Arbitration Rules (the ICC Rules) entered into force. Following a trend set by other leading arbitration institutions such as the Stockholm Chamber of Commerce (SCC), the Singapore International Arbitration Centre (SIAC), and the International Centre of Dispute Resolution (ICDR), the ICC Rules introduce an expedited procedure (the Expedited Procedure) for smaller claims. Under the Expedited Procedure:

- The ICC Court may appoint a sole arbitrator to decide the dispute, notwithstanding any contrary provision in the arbitration agreement.
- The requirement for the Terms of Reference is eliminated.
- The tribunal has the power to decide the case without an oral hearing, “*solely on the basis of documents.*”
- The tribunal has the discretion to limit the requests for document production or the number, length and scope of written submissions and written evidence.
- The tribunal must render the award within six months of the case management conference.
- A reduced scale of administrative fees will apply.

Scope of Application of the Expedited Procedure

The Expedited Procedure of the ICC Rules apply automatically to cases with amounts in dispute of less than US\$2 million. The Expedited Procedure is also available for disputes of a greater amount if the parties agree. Notably, the Expedited Procedure applies to arbitration agreements concluded after 1 March 2017 only.

The Expedited Procedure will not apply if the parties opt out in their arbitration agreement or if the ICC Court determines, upon request of one of the parties or on its own initiative, that applying the Expedited Procedure is inappropriate in the circumstances of the dispute.

Key Features of the Expedited Procedure

Appointment of a sole arbitrator

The constitution of the arbitral tribunal is often one of the most time-consuming stages of the arbitral process, and typically, arbitrations involving three-member tribunals last longer than arbitrations with a sole arbitrator. Thus, in order to streamline the arbitral process, the ICC Court is empowered to appoint a sole arbitrator to hear the dispute “notwithstanding any contrary provision of the arbitration agreement.”

No Terms of Reference

The Terms of Reference are widely regarded as a distinctive feature of ICC arbitration. However, the effort involved in agreeing to them often results in considerable delays. Accordingly, the Expedited Procedure dispenses with the Terms of Reference. The absence of the Terms of Reference will thus require the parties to narrow the core issues of the dispute upfront.

Possibility to decide without an oral hearing

Under the Expedited Procedure, the tribunal has the express power, after consultation with the parties, to decide the dispute solely on the basis of documents. Furthermore, even when the tribunal considers holding a hearing appropriate, the arbitral tribunal may conduct it “*by videoconference, telephone or similar means of communication.*”

The exercise of the tribunal’s power to dispense with the hearing must be carried out in accordance with due process considerations at the seat of arbitration or the place of enforcement. Therefore, tribunals must ensure that the decision not to have an oral hearing does not affect the parties’ opportunity to present their respective cases. Failure to accord such opportunity may render the award subject to the risk of being set aside at the seat of the arbitration, or refused recognition and enforcement elsewhere, particularly in jurisdictions where the right to an actual oral hearing cannot be waived.

Limited submissions and document production

The Expedited Procedure also accords the tribunal the power to decide — after consultation with the parties — whether to allow document production requests, or to limit the length and scope of written submissions, witness statements and expert reports. Typically, under the Expedited Procedure, written submissions will be limited to a single exchange of written submissions following the initial case management conference.

Six months to render the final award

As a measure to complete the arbitration in the shortest time possible, the final award must be rendered within six months, running from the date of the Case Management Conference. However, the ICC Court may extend the time limit pursuant to a reasoned request from the tribunal or on its own initiative, if the particular circumstances of the arbitration so require. In practice, the six-month time limit will be one of the most significant challenges under the Expedited Procedure.

What are the new trends in other arbitral institutions?

As arbitral institutions compete with each other to attract parties, the ICC's Expedited Procedure is consistent with innovations introduced in the procedural rules of other leading arbitral institutions.

Swiss Rules of International Arbitration (Swiss Rules) (2012)

Expedited Procedure under Swiss Rules is mandatory for cases with amounts in dispute of less than US\$933,000 (CHF1 million). The amount is calculated upon the receipt of the Answer to the Notice of Arbitration, regardless of any subsequent increase of the value of claims or counterclaims in the Statement of Claim or Statement of Defence. Nevertheless, "voluntary" Expedited Procedures are also available for disputes of greater amount if the parties agree.

Cases must be completed within six months from the time of the referral of the file to the arbitrator.

Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC Expedited Arbitration Rules) (2017)

The standalone new SCC Expedited Arbitration Rules entered into force on 1 January 2017 introducing several amendments to the original Expedited Procedure. To this end, under the new SCC Expedited Arbitration Rules, the submission of the Request for Arbitration and the Answer will also constitute the submission of the Statement of Claim and the Statement of Defence, respectively (known as "frontloading the case"). Thus, the number of submissions and deadlines is limited.

In addition, the sole arbitrator shall (i) establish a timetable of the arbitration within seven days from the referral of the case and (iii) must render the award within three months from the date the case was referred to the arbitrator.

A procedure swap from Expedited Procedures to ordinary arbitration is allowed according to the complexity of the case, the amount in dispute and any other relevant circumstances.

Arbitration Rules of the Singapore International Arbitration Centre (SIAC Arbitration Rules) (2016)

On 1 August 2016, the Sixth Edition of the SIAC Arbitration Rules came into force. Unlike the ICC Rules, Expedited Procedure under the SIAC Arbitration Rules is only applicable if a party expressly applies for its application and satisfies one of the following criteria: (i) the amount in dispute shall not exceed the amount of US\$4.28 million (SGD6 million) including the "*claim, counterclaim and any set-off defence*"; (ii) the parties so agree; or (iii) in cases of exceptional urgency.

The new SIAC Arbitration Rules remove the requirement that the arbitral tribunal holds a hearing for the examination of any witnesses and expert witnesses as well as for oral argument as required under the former edition of the SIAC Arbitration Rules (2013). Now, the arbitral tribunal, in consultation with the parties, will decide if a hearing is required or if the dispute shall be decided based on documentary evidence only.

Finally, a "fallback provision" is included allowing a procedure swap, if the SIAC Expedited Procedure is no longer suitable.

ICDR Rules for International Expedited Procedures (ICDR Expedited Procedures Rules) (2014)

The ICDR Expedited Procedures apply to any case with an amount in dispute of less than US\$250,000 or to matters of any size if the parties so agree.

The process to appoint an arbitrator is slightly different from other arbitral institutions. In this regard, a sole arbitrator will be appointed from an experienced pool of arbitrators ready to serve on an expedited basis. The award shall be rendered within 30 calendar days of the close, running from the close of the hearing or the date established for the receipt of the parties' final written submission.

The chart below summarizes the expedited procedures of the various arbitral institutions:

	Swiss Rules	SCC	SIAC	ICDR	ICC
Maximum amount in Dispute (US\$)	US\$993,000 approx. (CHF1 million)	N/A	US\$4.28 million approx. (SGD6 million)	US\$250,000	US\$2 million
Automatic application	Yes	No (Opt-in required)	No (Opt-in required)	Yes	Yes
Power to not apply the expedited procedure	Yes	No*	No, unless requested by a party	No	Yes
Procedure on the basis of documents (No hearing)	Yes, if appropriate	Yes, if appropriate	Yes, if appropriate	Yes, if appropriate	Yes, if appropriate
Timeframe to issue award	6 months from referral of the case to arbitrator	3 months from referral of the case to arbitrator	6 months from constitution of the tribunal	30 calendar days from final hearing or receipt of final written submissions	6 months from case management conference

*However, the SCC Rules allow the SCC to invite the parties to agree on changing the rules if the circumstances so require.

Conclusion

The Expedited Procedure of the ICC is a much welcomed alternative for the efficient and cost-effective resolution of lower value and simple disputes. However, parties incorporating the ICC Rules in their arbitration agreement should be mindful of the automatic application of the Expedited Procedures to cases with amounts in dispute of less than US\$2 million and, accordingly, opt-out of its provisions should they wish to have their lower value disputes decided under the standard procedure.

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