Traditionally, arbitration has been hailed by some as a faster, cheaper, and therefore preferable method of dispute resolution than, for example, court litigation. However, in matters where less is at stake, costs can often become disproportionate.

Recognising this, some arbitration institutions have recently introduced summary procedures in international arbitration. This article explores the procedures available, which institutions have grasped the nettle, and what the pros and potential cons are in practical terms.

What it is, and what it is not

A summary procedure in international arbitration essentially allows both claimant and respondent the opportunity to obtain a quick and early determination on the merits, without going through the entire arbitral process of submitting full evidence and arguments.

To be clear, summary procedure should not be confused with the following related concepts, where there may be some areas of practical overlap:

a. Expedited procedure – this is a different mechanism that effectively compresses the full arbitral process, or an agreed modified version thereof.

b. "Documents only" proceeding – sometimes as part of an expedited procedure or generally, and depending on the nature of the dispute, parties may agree to a "documents only" proceeding where the issues are decided solely by way of documents and written submissions without an oral hearing.

c. Bifurcation – this involves parties choosing to determine certain parts of a case first, with the agreement that a decision one way may dispose of the case as a whole. The classic example is a bifurcation of liability and quantum.

It is of course also possible to get a case summarily dismissed on the grounds of lack of jurisdiction, but that is not the focus of the present article. The type of summary dismissal that we are concerned with here is essentially the early substantive dismissal of claims or defences on the merits (or rather lack thereof), very much like the summary judgment and striking out procedures in common law court litigation. The scope of such procedure is limited and is only really appropriate where a claim or defence is, in broad terms, clearly unmeritorious, unsustainable or abusive.

Latest developments

There has been ongoing debate for some time about whether arbitral tribunals already have the implicit powers to issue summary awards under existing broadly drafted statutory provisions and rules which expressly permit tribunals
wide discretion over how arbitral procedures are carried out.

Rightly or wrongly, most tribunals take the conservative view that they do not have the power to do so. This is in essence because of the absence of an explicit basis to issue summary awards, and, in the case of arbitrations conducted under English law, the cornerstone obligation enshrined in statutory terms in s.33 of the Arbitration Act 1996 to allow each party "a reasonable opportunity of putting his case and dealing with that of his opponent". Failure on the part of the tribunal to discharge this duty sufficiently may form the basis of a challenge to the tribunal's award (including at enforcement).

A few major arbitral institutions have since taken the bull by the horns to expressly provide for (or, in some people's views, reinforce) an arbitral tribunal's power to issue summary awards. We will highlight some details of the key recent developments below.

**Singapore International Arbitration Centre (SIAC)**

The first major institution to spearhead an express summary procedure in international arbitration was the SIAC. It did so in the 6th edition of its rules (SIAC Rules), which came into force on 1 August 2016.

Under Rule 29.1a, any party may apply for the early dismissal of a claim or defence on the basis that it is "manifestly without legal merit". Upon receiving the application, the tribunal has the discretion to decide whether to allow it to proceed. This gate-keeping function helps strike the balance between flexibility (as there is no stipulated deadline within which an application must be made) and the need to prevent any potential abuse of process (for example, if a party tries to engineer a vacation of the evidentiary hearing dates under the guise of an eleventh hour application for summary dismissal).

If the tribunal gives the green light for the application to proceed, it is then expressly required under Rule 29.3 to decide the application "after giving the parties the opportunity to be heard". Pursuant to Rule 29.4, a reasoned order or award must be made swiftly within 60 days of the date on which the application was filed unless, in exceptional circumstances, the Registrar extends the time.

**Stockholm Chamber of Commerce (SCC)**

The SCC's latest revised arbitration rules (SCC Rules), which came into force on 1 January 2017, also include an express summary procedure under Article 39.

The grounds for an application under Article 39 are fairly broad and encompass considerations of both factual and legal issues – it states that a request for summary procedure "may concern issues of jurisdiction, admissibility or the merits" and "may include, for example, an assertion that: (i) an allegation of fact or law material to the outcome of the case is manifestly unsustainable; (ii) even if the facts alleged by the other party are assumed to be true, no award could be rendered in favour of that party under the applicable law; or (iii) any issue of fact or law material to the outcome of the case is, for any other reason, suitable to determination by way of summary procedure".

Unlike Rule 29 of the SIAC Rules, Article 39 of the SCC Rules does not grant the tribunal the discretion to decide whether to even hear such an application. However, it does require the tribunal to consider, amongst other things, the extent to which the summary procedure contributes to a more efficient and expeditious resolution of the dispute, when determining the application.

As with the SIAC Rules, the SCC Rules also expressly require the tribunal to give "each party an equal and reasonable opportunity to present its case" under Article 39(6). The SCC Rules, however, do not specify a deadline by which the tribunal must issue an order or award on the summary application, but Article 39(6) requires the tribunal to do so "in an efficient and expeditious manner having regard to the circumstances of the case".
Pros and potential cons

The benefits of summary procedure in international arbitration are immediately obvious. By providing an avenue for unmeritorious proceedings to be disposed of at an early stage, it represents significant costs savings to parties who would otherwise have to pump in precious time and resources pursuing what are essentially slam-dunk claims, or defending baseless claims. In the context of the SIAC Rules, a successful summary application will, absent exceptional circumstances, throw out an unmeritorious claim or defence within two months of the application being filed. Compare this to the latest available statistics — full SIAC cases take on average about 13.8 months\(^1\), while full cases filed with the London Court of International Arbitration (LCIA) take on average about 20 months\(^2\).

Of course, there is a flipside to this. A party may potentially file a clearly unmeritorious application for summary procedure and end up adding another layer of proceedings to the entire arbitration. This is where costs consequences, the tribunal’s gate-keeping discretion and the imposition of strict timelines for determination such as those provided in the SIAC Rules will be very useful to control and manage any knock-on impact on the rest of the arbitration.

Another potential drawback is the uncertainty surrounding the enforcement of a summary award if the losing party argues it was not given the opportunity to properly present its case. The intuitive argument dismissing such concerns would be that parties had agreed (whether directly or indirectly through the arbitration agreement referring to the relevant rules as may be amended from time to time) to a set of arbitral rules that expressly permit summary procedure on the application of either party. So the losing party really cannot have its proverbial cake and eat it too.

An additional argument on principle is that the heart of the issue is ultimately really "whether the procedure adopted by the Tribunal was within the scope of its powers, and was otherwise fair", as was noted by the English High Court in Travis Coal Restructured Holdings LLC v. Essar Global Fund Limited [2014] EWHC 2510 (Comm). In this regard, as alluded to earlier, the SIAC and the SCC have not only made such powers express; they have also made it expressly clear that the tribunal must in the exercise of such powers give fair opportunity for the parties to present their cases. It is also useful as a matter of precedent that the English High Court in Travis Coal had specifically rejected the argument that a summary judgment process by arbitrators necessarily amounts to a denial of due process.

Hence, it appears that unless there is clear evidence of something more (or less) done by the tribunal which offends the requirements of natural justice, concerns about enforcement of summary arbitral awards, in pro-arbitration England at least, are likely to be overstated. However, if a party foresees having to enforce an arbitral award in less arbitration-friendly jurisdictions, it would certainly be prudent to obtain local law advice.

What's next?

It will not at all be surprising if more arbitration institutions, in particular the other dominant international players such as the LCIA and the International Chamber of Commerce, start to follow in the footsteps of the SIAC and the SCC. Such engagement, in turn, may have practical significance for banks and financial institutions in particular. These entities have traditionally engaged in litigation, rather than arbitration, because of the availability of summary procedures in litigation. With the recent developments and likely trends as described above, the balance for such entities could start tilting towards arbitration.

Finally, these recent developments should go some way towards enhancing arbitration as a faster, cheaper and preferable method of dispute resolution.
