

Amendments to the ICC Rules: new Expedited Procedure effective March 1, 2017

March 1, 2017

On March 1, 2017, several amendments to the International Chamber of Commerce's (ICC) Rules of Arbitration (ICC Rules) will take effect. The most noteworthy of these amendments is the introduction of a new Expedited Procedure which aims to reduce the length and cost of arbitration for smaller matters. There are, however, a few additional changes to further streamline proceedings and increase transparency.

Expedited Procedure Rules

The new Expedited Procedure under the ICC Rules will automatically apply to all matters arising from arbitration agreements concluded after the amendments come into force where the amount in dispute is under US\$2 million. It is possible for the parties to agree to opt-out and, in certain circumstances, the ICC Court may decide this procedure should not apply. The Expedited Procedure is also available for matters with amounts in dispute over US\$2 million on agreement of the parties.

One critical change under the Expedited Procedure is that, regardless of any express provision in the arbitration agreement to the contrary, the ICC Court may appoint a sole arbitrator to hear the matter. The parties may nominate the sole arbitrator within a specified time frame, however, if the parties cannot agree, the ICC Court will appoint the arbitrator. This is a key feature of the Expedited Procedure Rules, explained in detail in the updated Note to the Parties and Arbitral Tribunals on the Conduct of Arbitration, and one that will reduce costs in comparison to a three-member tribunal. The Expedited Procedure Rules further specify that once a tribunal is constituted, the parties shall not advance new claims without the authorization of the tribunal, and there is a separate fee scale for administrative expenses and arbitrator's fees that contains a slight reduction for arbitrator's fees.

The Expedited Procedure also eliminates the requirement for a tribunal to draw up Terms of Reference. Rather, an initial case management conference is to take place within 15 days of the date the file was sent to the tribunal (unless such time period is extended by the ICC Court on a request from the tribunal or its own initiative) and the tribunal is to render an award within six months of the case management conference (also unless extended by the ICC Court on a request from the tribunal or its own initiative). While arbitrations involving amounts of less than US\$2 million can be small by comparison to the larger matters administered by the ICC Court, these timeframes are something to note for matters that may nonetheless be complex for technical or other reasons. It is possible under the Expedited Procedure Rules for a matter to be decided without a hearing or examination of witnesses, on the documents only, and a hearing may be conducted by videoconference, telephone or similar means. The ICC Court will still maintain its oversight functions with respect to awards.

Additional amendments

Further amendments to the ICC Rules effective March 1, 2017, reduce the time limit for the tribunal to establish Terms

of Reference signed by it and the parties under standard arbitrations to 30 days (formerly two months) from the date the file was sent to the tribunal. The ICC Court may now also provide reasons for its decisions with respect to matters such as the challenge or replacement of an arbitrator.

Takeaways

Simplified and expedited procedures are becoming more common in institutional arbitral rules. The ADR Institute of Canada, Inc. (ADRIC) Arbitration Rules have offered a Simplified Arbitration Procedure for all claims on an opt-in basis for several years. Under this procedure, the tribunal is comprised of a single arbitrator and there are distinct truncated timelines for various steps. Similarly, the International Centre for Dispute Resolution (ICDR) Canada Arbitration Rules contain an Expedited Procedure for all claims under US\$250,000, exclusive of interest and costs (with a further streamlined procedure for matters under US\$100,000, exclusive of interest and costs). Parties may opt-in to these procedures for claims of any amount, and the tribunal is also a sole arbitrator. The nuances between arbitral rules, and within each set of arbitral rules as streamlined or expedited procedures are incorporated, mean that careful consideration should be given to drafting arbitration agreements and to the underlying commercial arrangement insofar as those rules may contain potential monetary thresholds for various procedures. A precedent dispute resolution clause or arbitration agreement from a former matter may no longer function in the same way or there may be a more appropriate set of rules to incorporate.

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