

New International Chamber of Commerce arbitration rules: expedited procedure

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1. Introduction

On 1 March 2017, the new version of the Arbitration Rules of the International Chamber of Commerce came into force (“**Rules**”). The 2017 Rules supersede the rules that have been in effect since 2012. The aim of the new rules is to increase cost-efficiency, transparency and speed in the procedure and at the same time give the Court of the International Chamber of Commerce (“**ICC Court**”) significant decision-making powers.

On the same day the ICC published the “*Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration*” (“**Note to Parties**”), which is an official guide to the new rules and has a particular importance for the ICC Court.

One of the most important changes introduced by the new Rules is an expedited and simplified procedure, with lower fees, regulated by Article 30 of the rules and its Appendix VI (“**Expedited Procedure**”).

The introduction of the Expedited Procedure – although it is the most important innovation in the Rules - is not an absolute revolution in the world of international arbitration. In fact, from a certain point of view, it can also be considered a revival of the origins of the arbitration, which was created as a more efficient alternative to the ordinary justice system. In recent years, international arbitration has become removed from these original aims (often becoming too expensive and slow) and therefore the introduction of the Expedited Procedure, also by the ICC Court, is to be welcomed by businesses.

2. Application of the Expedited Procedure

The Expedited Procedure is applicable when either

- a. all of the following conditions are met:
 - i. the arbitration agreement was concluded after the date on which the Expedited Procedure Provisions came into force (*i.e.* after 1 March 2017);
 - ii. the amount in dispute does not exceed USD 2 million;
 - iii. the parties have not explicitly agreed to opt out of the Expedited Procedure, or
- b. in the absence of the above conditions but where the arbitration agreement expressly provides for the Expedited Procedure, or the parties opt-in a separate agreement.

It should be noted that even in the presence of the above conditions, the ICC Court, on the request of a party or on its own motion, can decide that it is inappropriate to apply the Expedited Procedure on the basis of the actual facts of a particular case (article 30 (3) c of the Rules).

3. Constitution of the Arbitral Tribunal

The ICC Court may appoint a sole arbitrator even if the parties have agreed in the arbitration agreement that the dispute shall be decided by a panel of three arbitrators¹. According to the Notes to Parties this should not be considered a violation of the will of the parties as, by choosing the Rules, the parties accepted the

¹ Art. 2 of Appendix VI of the Rules

application of the Expedited Procedure for the cases when all the conditions are met. In any event a provision regarding the appointment of a panel of three arbitrators will still be applicable in cases when the amount in dispute exceeds the limit of USD 2 million.

Although a sole arbitrator is the most appropriate for proceedings under the Expedited Procedure, where the particular circumstances of the case require it, the ICC Court may decide to appoint a panel of arbitrators, but will give the parties the opportunity to comment on the appropriateness of doing so (see the Note to Parties). A party may also request the appointment of a panel.

4. Proceedings under the Expedited Procedure

In order to speed up arbitration proceedings, the following provisions have been introduced for the Expedited Procedure:

- a. The arbitral tribunal does not need to draw up a document defining its Terms of Reference (regulated by Article 23 of Rules);
- b. After the arbitral tribunal has been constituted, the parties cannot make new claims, unless authorized to do so by the arbitral tribunal;
- c. The case management conference convened pursuant to Article 24 of the Rules must take place no later than 15 days after the date on which the file was transmitted to the arbitral tribunal.

In conducting the arbitration, while the arbitral tribunal must ensure that each party has a reasonable opportunity to present its case, it may also decide the case on the basis of only the documents provided by the parties, *i.e.* without a hearing, witness evidence or expert opinions. The arbitral tribunal, if it deems it appropriate, may also limit the number, length and scope of written submissions.

The award must be issued within a period of six months starting from the "management meeting of the proceedings", unless the ICC Court grants an extension to a reasoned request. The award should, in any case, be reasoned, but may be more concise.

5. Costs of the Expedited Procedure

One of the undoubted advantages of the introduction of the Expedited Procedure is the significant reduction in costs. Although the administrative costs are the same for both the ordinary and Expedited Procedure, the arbitrators' fees are decreased by 20% for the Expedited Procedure. In addition there should be a significant reduction in legal fees due to the shorter time scales and use of written statements rather than oral evidence, which is usually the most expensive part of arbitration.

The value of the claim, in common with ordinary arbitration, is determined on the basis of all quantified claims, counterclaims, cross-claims and claims against and by third parties.

According to the Note to Parties, "in principle" the Expedited Procedure cannot be used for declaratory or non-monetary claims, unless they merely support a monetary claim or they do not add significantly to the complexity of the dispute. The ICC Court can decide on a case-by-case basis, whether a non-monetary claim has been used as an attempt to avoid the application of the provisions of the Expedited Procedure, and if so, make a costs order accordingly.

6. Conclusions and potential problems

The new Rules give the ICC Court greater decisional powers and, consequently, limits the autonomy of the parties, which is one of the underlying principles of arbitration. However, these innovations are not completely new to the world of international arbitration. An expedited procedure is also provided for by the Rules of the Stockholm Chamber of Commerce, of the Hong Kong International Arbitration Center and of the Singapore International Arbitration Center.

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The idea of expedited arbitration proceedings is also spreading amongst Italian arbitration chambers. For example, the Chamber of Commerce of Rome introduced (although it is currently under review) a simplified procedure with a single arbitrator, and a preliminary conciliation stage, that can be applied to settle disputes with a value of less than Euro 150,000.00.

However, in Italy, in case of ICC arbitrations, difficulties may arise if the ICC Court decides to apply art. 30 of the Rules, according to which the Expedited Procedure provisions take precedence over any contrary terms of the arbitration agreement. This is because the provision seems to be in direct conflict with Art. 832 Code of Civil Procedure according to which: "In case of conflict between the provisions in the arbitration agreement and the provisions of the rules of an arbitration institution, the arbitration agreement prevails." In addition, in the case of foreign awards, pursuant to art. 840, paragraph III, n. 4, Code of Civil Procedure, the Court of Appeal may deny the recognition of the award if one of the parties argues that "the constitution of the arbitral tribunal or the arbitration procedure was not accordance with the agreement of the parties".

In future, therefore, in light of the limitations set out above, parties to an arbitration agreement must carefully consider whether to opt in or opt out of the Expedited Procedure. Similarly, the ICC Court, in exercising its powers, will have to take into consideration the legislation of the country in which the award will probably be enforced.

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