

The Express Lane for claims under US\$ 2 Million: The new ICC Expedited Procedure Rules

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On 4 November 2016, the ICC announced an amendment to the 2012 ICC Arbitration Rules to incorporate a set of new Expedited Procedure Rules for smaller claims with effect from 1 March 2017. The Expedited Procedure Rules shall apply to claims that do not exceed US\$ 2,000,000 or to claims for which the parties have agreed that they shall apply. The Rules aim to limit the number of procedural steps, shorten time-limits and introduce a specific fee scale for administrative expenses and arbitrator fees in order to reduce the total duration and cost of the arbitration. In addition, amendments to the ICC Rules will also increase the transparency of the ICC Court by allowing it to communicate certain decisions to the parties. By responding to its increasing caseload of lower-value claims, the ICC has sought to streamline its procedures for the benefit of both the parties and the Court alike.

The catalyst for change

The ICC's 2015 statistics indicated that 8.1% of disputes submitted to the ICC Court in 2015 were for amounts equal to or less than US\$ 2,000,000.¹ With the ICC predicting that this percentage of smaller value claims was set to continue rising alongside greater user demand for expedited procedures, the ICC decided to adapt its rules in order to administer such arbitrations in the most cost and time-efficient manner possible for the benefit of both the Court and the parties.

The new Expedited Procedure Rules

The new Expedited Procedure Rules have been added to the ICC Rules at Appendix VI. Their essential features are that:

- the Rules will not apply to arbitration agreements concluded before 1 March 2017 (Article 30(3)(a));
- parties may opt out of the Rules (Article 30(3)(b)) (but they may also opt-in for cases that have claims greater than US\$ 2 million);
- the Court may on a motion from a party or on its own initiative prior to the tribunal's constitution, determine that the Rules are inappropriate for the circumstances of a case (Article 30(3)(c));

¹ 2015 ICC Dispute Resolution Statistics (2016) 1 ICC Dispute Resolution Bulletin 9, p. 17.

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- the Secretary-General may request the claimant to pay an advance on costs up until the case management conference (Article 37(b));
 - the Court will appoint a sole-arbitrator in the time limit set by the Secretariat or failing such notice, in as short a time as possible (Appendix VI, Article 2);
 - the Article 23 provisions relating to Terms of Reference will not apply to expedited claims (Appendix VI, Article 3(1));
 - neither party is allowed to make a new claim once the tribunal is constituted unless authorized to do so by the tribunal (Appendix VI, Article 3(2));
 - the case management conference will occur no later than 15 days after the date on which the file is sent to the tribunal (Appendix VI, Article 3(3));
 - the tribunal will conduct the proceedings as it sees fit and may decide not to allow requests for the production of documents or limit written submissions following consultation with the parties (Appendix VI, Article 3(4));
 - the tribunal may after consultation with the parties, decide the dispute solely on the documents submitted by the parties, with no hearing and no examination of witnesses and hearings may be held by video or telephone conference (Appendix VI, Article 3(5));
 - the award must be rendered within 6 months from the date of the case management conference, though the Court may extend this pursuant to Article 31(2) of the ICC Rules which requires the tribunal to make a reasoned request to the Court, or the Court may use its own initiative to do so (Appendix VI, Article 4(1)); and
 - the fees of the tribunal shall be fixed at Appendix III of the Rules (Appendix VI, Article 4(2)).

The Expedited Procedures Rules are in line with the fast-track rules used by other institutions.² They reduce the time limits of the arbitration by reducing the evidentiary burden the tribunal relies on. For example, claims are limited to the papers (unless otherwise agreed). Furthermore, the Court safeguards this expedited procedure by providing that the Court may extend the granting of an award beyond 6 months following a reasoned request. It is also tasked with appointing the sole-arbitrator for the proceedings ‘as soon as possible’, reducing the time associated with the parties’ decision-making process in this regard. Furthermore, cost savings will not only be made in the shortened duration of the arbitration but also from the fixed fees set in Appendix III.

Increasing transparency and efficiency

The Rules have also been amended to delete the language in Article 11(4) that previously prevented the Court from communicating its reasons for certain decisions.

This will bring Article 11(4) into line with the well-received practice previously adopted by the Court in October 2015, and will now allow the Court to communicate to the parties its reasons for decisions on the appointment, confirmation, challenge or replacement of arbitrators.

The amendment will increase the Court’s transparency by disclosing its reasoning to the parties and further confirm its commitment to accountability.

Secondly, Article 23(2) has been amended to reduce the time-limit for the establishment of the Terms of Reference from 2 months to 30 days in ordinary ICC arbitration proceedings. The change stems from efforts to curtail the time spent in the initial phases of the arbitration and will encourage parties to avoid unnecessary time loss. Naturally, in more complex arbitrations more than one month may be necessary to complete the Terms of Reference, in which case the Court continues to retain its right to extend the time-limit as needed.

² For example, see the SCC Rules for Expedited Arbitration.

Other amendments

Some other amendments have also been made to the ICC Rules. First, the flat fee for claims in excess of US\$ 500 million has risen from US\$ 113,215 to US\$ 150,000 in Appendix III Article 4(2).

Appendix III Article 1(3) has further omitted the need for the Terms of Reference and the procedural timetable to be finalized before the tribunal may proceed in respect of those claims or counterclaims for which the whole of the advance on costs has been paid.

Article 6(3) is no longer limited to just the party against which a claim is made. It has been amended to provide that if any party raises one or more pleas concerning the existence, validity or scope of the arbitration agreement, the arbitration will still proceed.

The wording of Article 13(4)(a) has also been amended to allow the Court to appoint as arbitrator any person it considers suitable where one of the parties may be considered a state entity.

Lastly, the wording of Article 35(2) of the French version of the Rules has been amended to bring it into conformity with the English version of the ICC Rules and the Article number changed from 35 to 36.

User expectations and benefits to both

The changes to the ICC Rules through the addition of the new Expedited Procedure Rules are reflective of the ICC's responsiveness to its user's expectations that commercial arbitration should be efficient and cost-effective. As smaller claims come to represent a greater portion of the ICC's caseload, it is in the interests of both the parties and the Court itself for the Rules to streamline the procedures related to such claims. In doing so, both time and cost savings can be made, undoubtedly to the benefit of both.

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