

ICC revised Rules of Arbitration

2 March 2017

Introduction

The revised Rules of Arbitration of the International Chamber of Commerce (ICC) came into force on 1 March 2017. The ICC Rules are well developed, well established and widely used internationally. Great care is taken by the ICC in considering any amendment in order to avoid upsetting the careful and well-established balance that has been achieved internationally with the ICC's Rules of Arbitration. The amendments are therefore mostly minor and subtle, simply improving and updating some areas of the Rules. However, the most interesting and perhaps innovative change is the addition of an Expedited Procedure.

A trend for many years in international arbitration, and dispute resolution generally, has been the drive towards increased efficiency in the final resolution of a dispute. This is of course measured in terms of how long it takes to deliver the award. Steps have been taken with the ICC Rules in order to provide a tribunal with the power to drive the proceedings forward towards the final resolution. In addition, the Rules require submissions to be made within a limited period of time, and also the award to be issued within a limited period of time.

In this most recent revision, the terms of reference are now required to be submitted to the ICC Court within 30 days of the date on which the file was transmitted to the tribunal. The terms of reference need to be signed by the tribunal and by the parties. This time limit was two months, so the time available has been halved. The ICC Court can extend time if a reasonable request is made by the tribunal or the parties. However, from the outset the message of this revision is very clear: namely, complete the terms of reference, execute them and deliver them to the Court as soon as possible.

Expedited Procedure

New article 30 deals with the new "Expedited Procedure". The detail of the new procedure is set out in Appendix B1 to the Rules, and applies if the amount in dispute does not exceed a limit set out in Article 1(2) of that Appendix. The date for working out the amount is also set out in the Appendix at Article 1(3) and relates to the Request and any Answer received. Alternatively, the parties can simply agree to use the Expedited Procedure regardless.

The Expedited Procedure will not apply if the arbitration agreement was concluded before 1 March 2017, or if the parties agree to opt out. The ICC Court can also determine, on an application, whether it is inappropriate for the expedited procedure to apply.

The Statutes of the International Court of Arbitration have also been amended in light of the Expedited Procedure. The Committee of the Court would normally consist of a President and at least two other members. For the purposes of dealing with Expedited Procedures the Court may exceptionally establish a committee consisting of just one member. This is in order to deal with matters more quickly.

The detail then for the Expedited Procedure is set out at new Appendix VI. Disputes that involve less than US\$2 million may be subject to this procedure. A request for arbitration is issued in the usual way, but once the Answer to the Request for Arbitration has been received (or the deadline of 30 days for its receipt has passed) the Secretariat of the ICC may inform the parties that the Expedited Procedure will apply to the case.

Equally, the Court can decide that the Expedited Procedure no longer applies to the case. The ICC Court is therefore able to decide that the procedure applies, but also to release the tribunal and parties from the Expedited Procedure requirements if the case becomes more complicated, of higher value, or there is some other good reason why the Expedited Procedure is no longer appropriate.

The parties may nominate a sole arbitrator, but in the absence of any nomination a sole arbitrator is to be appointed by the Court under Article 2.2 “within as short a time as possible”. In addition, the Court has the power to appoint a sole arbitrator as the arbitral tribunal notwithstanding any contrary provisions in the arbitration agreement.

Terms of reference are not required. Once the sole arbitrator is in place, no new claims may be issued unless the tribunal authorises the claim. A case management conference must be convened no later than 15 days after the date on which the file has been transmitted to the sole arbitrator. The ICC can extend this time limit, but once again the emphasis is on progressing the dispute as quickly as possible.

In order to help progress matters quickly the sole arbitrator has wide discretion to adopt such procedural measures as he or she considers appropriate. After consultation with the parties the tribunal might decide not to allow a request for document production or to limit the number, length and scope of written submissions and, indeed, witness evidence. That includes witnesses of fact and expert witnesses.

The tribunal may, after consulting with the parties, decide to deal with the dispute solely on the basis of the documents submitted. In other words, dispensing with the hearing and any examination of the witnesses or experts. The tribunal may, therefore, conduct a documents only arbitration. Alternatively, the sole arbitrator may conduct a hearing by video conference, telephone or similar means of communication in order to deal efficiently and quickly with the dispute.

The award should be rendered in its final form within six months from the date of the case management conference. The ICC Court can of course extend this deadline, but the emphasis is very much on a quick resolution of the dispute. As a general rule, the tribunal and the ICC Court shall act in the spirit of the Rules and the procedural appendix. Only time will tell how this is interpreted, but no doubt it will include dealing with matters efficiently, and trying to avoid extending deadlines unless there is no practical alternative.

ICC and tribunal fees

Finally, the administrative ICC fees and the fees of the tribunal can be fixed. The scales of the administrative and arbitration fees are set out in Appendix III to the revised Rules. In effect, the fee range and administrative expenses for disputes of less than US\$2 million have been revised. There is now a greater range, but with an overall reduced administrative expenses scale. This will no doubt be welcomed by many potential users of this service. For example, a claim between US\$500,000 and US\$1 million attracts an administrative expense of 1.62% and the sole arbitrator’s fee would be from 0.7632% to a maximum of 3.2224%. At the top end a claim between US\$1 million and US\$2 million attracts an administrative fee of 0.788% and for the tribunal a fee in the range of 0.5512% to 2.8832%. A claim for US\$150,000 would be subject to an administrative fee of 2.72% and the sole arbitrator’s fee would be between 1.1448% and 6.1480%. So a claim of US\$150,000 might attract a fee of US\$4,050 and tribunal fee of between US\$1,717 and US\$9,222.

The complete fee scale is set out in the revised Rules, including for disputes with a value in excess of US\$2 million for those parties who elect to use the procedure for higher value disputes. There may, of course, be circumstances where the fees could stray outside of this range, but that would relate to particular and perhaps unusual circumstances regarding the dispute.

Overall, the introduction of the Expedited Procedure is an extremely welcome addition to the ICC Rules, and one that many potential users will welcome and seek to benefit from.



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