

20/03/2017

Expedited Procedure Rules part of the new ICC Rules

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Dispute Resolution

Publisher: Bojović &
Partners

On March 1, 2017, the amendments to the ICC Rules entered into force. Among different changes, maybe the most noticeable ones relate to the introduction of the Expedited Procedure Rules (hereinafter: the Rules), now contained in the new Article 30 of the ICC Rules and the new Appendix VI. The intention behind the enforcement of these Rules lies within the aim to expedite the proceedings where the amount in dispute does not exceed US\$2 million, as well as to improve the efficiency of the ICC arbitral proceedings. At the same time, their overall cost should be lowered. Annually, approximately one third of all cases filed with the ICC Court of Arbitration (hereinafter: the Court) concern such “small” claims.

The Rules automatically apply to arbitration agreements concluded after March 1, 2017. However, the Rules can also be applied to arbitration agreements concluded before this date if the parties choose to opt in.

Alternatively, it is also possible to opt out of the new Rules, even if the dispute is worth less than US\$2 million. In addition, the Rules can be applied to disputes worth more than US\$2 million, if the parties agree to do so.

The Rules will not be applied if the Court determines that they are inappropriate for the circumstances of a case based on a motion from a party or on its own initiative. The Court can act accordingly at any time during the arbitral proceedings.

Moreover, the Court can appoint a sole arbitrator even if the individual arbitration agreement provides for a three-member tribunal. This rule, however, is not mandatory. If the parties expressly agree to a tribunal consisting of three arbitrators, the Court may deviate from the general rule and not appoint a sole arbitrator.

Furthermore, the Rules also stipulate that Terms of Reference are excluded from the Expedited Procedure, and the case management conference must be held no later than 15 days after the tribunal receives the file. Therefore, the award must be given within six months of the case management conference, instead of within six months of the Terms of Reference being agreed upon, which is the case in non-expedited proceedings. Extensions are allowed only in certain circumstances.

In addition, in order to provide for greater efficiency, the arbitral tribunal has the discretion to adopt certain procedural measures as it considers appropriate. For example, after consultation with the parties, the arbitral tribunal may decide not to allow requests for document production or to limit the number, length and scope of written submissions and written fact and expert witness evidence.

Also, after consulting with the parties, the dispute may be decided solely based on the documents submitted by the parties, without hearings and examination of witnesses or experts. In case of a hearing, it may be conducted by videoconference, telephone or similar means of communication. The fees, in comparison to non-expedited cases, are expected to be reduced, since they will be calculated on a new scale.