

The Expedited Procedure under the Swiss Rules of International Arbitration

BÄR
& KARRER

IDArb: Facilitating Arbitration for International Distribution Disputes

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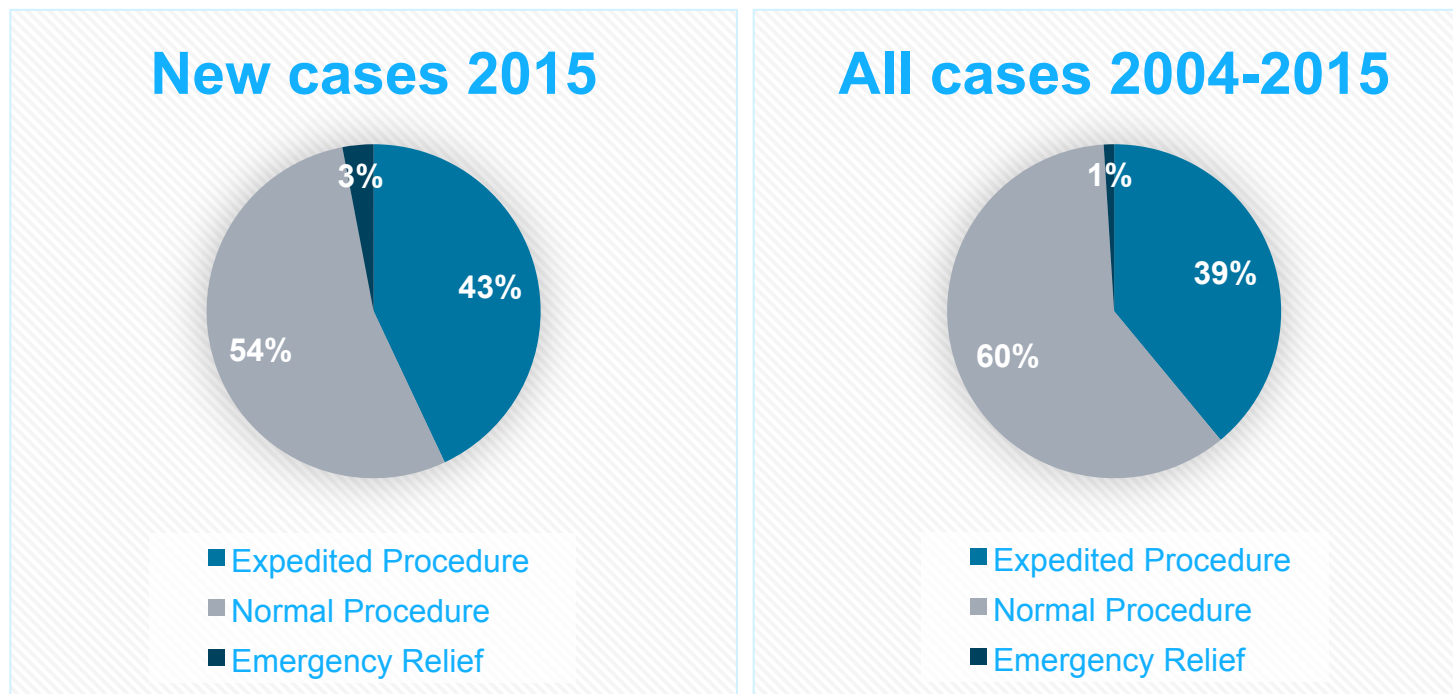
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Geneva, 7 November 2017

- I. Introduction: Statistics
- II. Applicability of the Expedited Procedure
- III. Procedural Rules
 - Framework
 - Specific Procedural Features
- IV. Practical Challenges

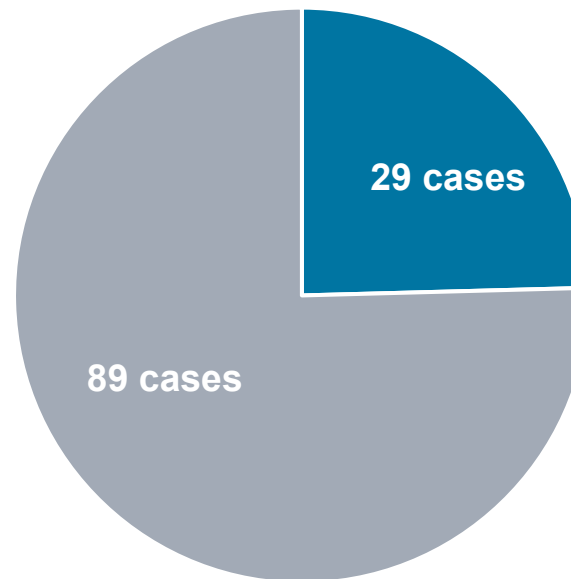
I. Introduction (1/3)

Statistics



Source: <https://www.swissarbitration.org/Statistics>

Arbitration cases pending: 31.12.2015



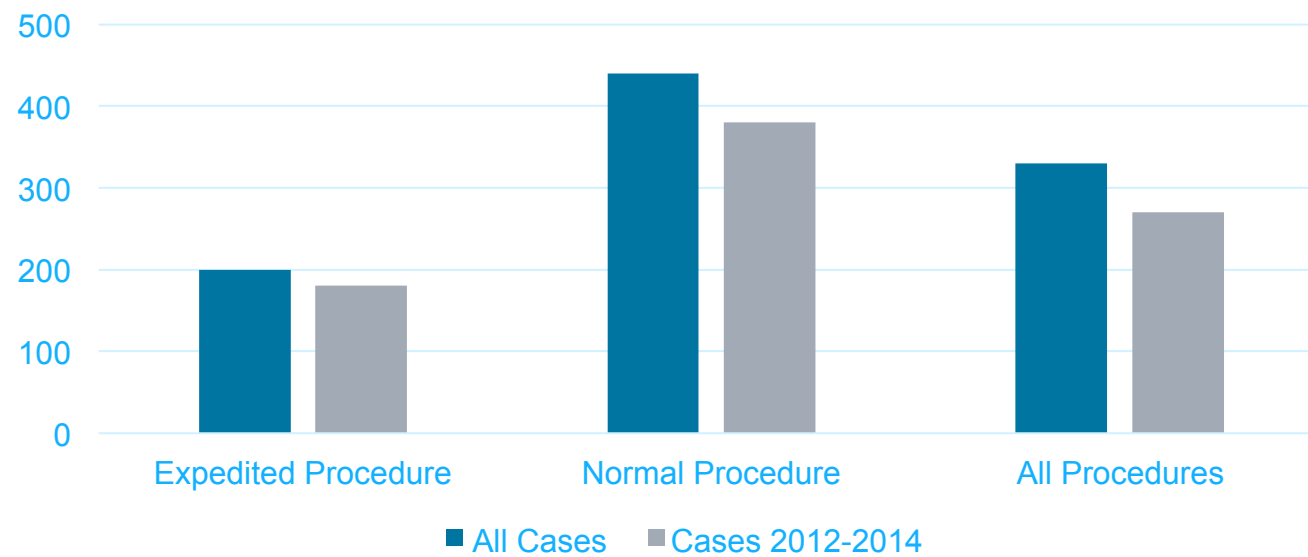
- Expedited Procedure
- Ordinary Procedure

Source: <https://www.swissarbitration.org/Statistics>

I. Introduction (3/3)

Statistics

Duration before Tribunal (Days)



Source: <https://www.swissarbitration.org/Statistics>

II. Applicability

Voluntary application vs. mandatory application

Art. 42 (1) Swiss Rules: agreement of the parties

- The *parties can agree* that the arbitral proceedings be conducted in accordance with the Expedited Procedure
- *Agreement* can be made at any time *before or after the dispute* arises, but before the commencement of the arbitral proceedings, i.e. *until* the constitution of the *arbitral tribunal* has been *confirmed*; after constitution, the decision is subject to the consent of the arbitrators

Art. 42 (2) Swiss Rules: mandatory application (*subject to the Court deciding otherwise*)

- The Expedited Procedure applies *automatically* to all cases in which the *amount in dispute* does *not exceed CHF 1'000'000*, unless the Court decides otherwise, taking into account all relevant circumstances
- The *amount in dispute* is determined by *adding* the amounts of the *claim* and the *counterclaim* and/or any *set-off defence*
- *Opting out* is *possible* even if the amount in dispute is below the threshold of CHF 1 Mio. In this case, however, Art. 42 (2) (c) regarding the arbitrator's minimum compensation should remain applicable

III. Procedural Rules (1/2)

Framework

- The proceedings shall be based "*upon the forgoing provisions of there Rules*", subject to the changes set out in Art. 42 (1)
- Thus, arbitrations conducted under the Expedited Procedure follow *most of the provisions applicable to any other arbitration* under the Swiss Rules, such as those concerning
 - initiation of the arbitration and initial submissions
 - constitution and composition of the arbitral tribunal
 - arbitral proceedings (award, costs etc.), with specific exceptions

III. Procedural Rules (2/2)

Specific Procedural Features

<ul style="list-style-type: none">• Only one exchange of written submissions	<ul style="list-style-type: none">– <i>if Respondent files counterclaim: Claimant can file a statement of defence</i>– <i>further submissions upon decision of arbitral tribunal (Art. 22 and 23 apply)</i>
<ul style="list-style-type: none">• Only one single hearing	<ul style="list-style-type: none">– <i>includes examination of witnesses, expert witnesses and oral arguments (Art. 25 applies)</i>– <i>additionally, there can be pre-hearings and/or phone/video-conferences</i>– <i>parties can agree that the decision shall be based on documentary evidence only</i>
<ul style="list-style-type: none">• Award within 6 months	<ul style="list-style-type: none">– <i>Award shall be made within 6 months from the date the arbitral tribunal received the file (transmission to tribunal only if provisional deposit/registration fees are paid)</i>– <i>the 6 months, thus, do not include the time needed for the constitution of the arbitral tribunal</i>– <i>in exceptional circumstances the Court may extend this time-limit (e.g. to protect right to be heard and to be treated equally, or in complex cases where an expert is needed and deadlines can't be respected)</i>
<ul style="list-style-type: none">• Reasons in the award in summary form	<ul style="list-style-type: none">– <i>parties can agree that no reasons must be given in the award</i>– <i>award must still decide on all claims</i>– <i>aim: limitation of time consuming drafting – not limitation of review of files, analysing disputed issues and decision making!</i>
<ul style="list-style-type: none">• For amounts of dispute up to 1 Mio: sole arbitrator	<ul style="list-style-type: none">– <i>Should the arbitration agreement provide for more than one arbitrator, the Secretariat invites parties to agree on one arbitrator only; if parties don't agree: fees of the arbitrators shall not be less than (currently) CHF 350/h</i>

IV. Practical challenges

From the counsel's perspective:

- Managing a heavy workload within a short time → having enough resources
- Managing experts under time pressure
- Counsel must consider that everybody will have to strictly follow and comply with the time schedule agreed as there is not much room for requests of extension of deadlines
- Claimant's counsel: early start

From the arbitrators' perspective:

- Reserve a sufficient time slot for deliberations and drafting of the award
- Tight planning to abide by the 6 months deadline
- Limit work product to an "expedited-procedure award"

Thank you
for your attention