



Dispute Resolution for International Distribution

## **RECOMMENDATIONS FOR EXPEDITED ARBITRATION (IDArb Recommendations)**

These IDArb Recommendations for Expedited Arbitration provide suggestions that the parties and the arbitrator are invited to follow, as far as this appears appropriate in the specific case, in the context of the expedited procedure, under the Swiss Arbitration Rules (the "Rules"), for claims up to CHF 1.000.000.

1. If the parties cannot immediately agree on the name of the sole arbitrator, each party may request the assistance of the IDArb Secretariat which will follow the following procedure:
  - IDArb will select a list of names of potential arbitrators, which will be sent by the IDArb Secretariat to the parties;
  - each party will number the names according to its preference (and/or delete the names it does not accept);
  - the parties agree to jointly designate the arbitrator having received the highest preference.

If the parties do not jointly designate the sole arbitrator within 30 days from the notice of arbitration, the sole arbitrator will be appointed by the Court according to Article 10 of the Rules.

2. In order to speed up the procedure the parties will present their statement of claim and of defence in the notice of arbitration and in the respective answer/counterclaim. The notice of arbitration and the answer shall include the documents supporting the claim and defence and possible counterclaim and shall indicate the witnesses to be examined at the hearing which will be convened by the sole arbitrator within 30 days from his appointment. The parties are expected to discuss the relevant issues at the hearing and to present their conclusions at the end of the hearing. However, the arbitrator may authorize further exchanges of briefs or other procedural steps (such as, for instance an expertise) whenever appropriate and compatible with the needs of an expedited procedure.
3. Upon joint request of the parties the sole arbitrator may consider giving his preliminary, non-binding and provisional assessment of the dispute, in order to facilitate an amicable settlement. Such assessment, if any, shall not as such constitute ground for challenging the arbitrator.

## EXPLANATION ON THE IDARB RECOMMENDATIONS

The IDArb Arbitration Clause and Recommendations include, in addition to the Swiss Rules applicable to the expedited procedure, some additional features aiming at providing an even more expedited and cost-effective procedure.

The IDArb Recommendations cover the following issues:

1. Appointment of a sole arbitrator and possible assistance for the choice of the arbitrator.
2. Full statement of claim and defence from the outset.
3. Pro-active role of the arbitrator in view of a settlement.

The Recommendations are not binding: they are simply invitations to take advantage of procedural devices that can expedite the procedure and reduce costs. They imply that a party is authorized to follow them, but the other party is not bound to do the same. Thus, when a claimant makes a full statement of claim already in the Notice of Arbitration, the other party may submit a simple Answer and require that the Statement of Claim and defence be submitted after the appointment of the arbitrator. This may be reasonable under certain conditions (complicated case, need for expertise), but if the respondent wishes to shorten the procedure, he will be in a condition to do so.

### 1. Assistance in the choice of the sole arbitrator

It is of course preferable that the sole arbitrator is selected by agreement between the parties. However, this is not always easy since litigating parties tend by principle to refuse any name proposed by the other party. The possibility of choosing the arbitrator from a list of reputable persons will certainly be an advantage, but the solution can be made even easier by providing a system based on the exchange of names with preferences, such as the mechanism provided in the UNCITRAL rules.

This is proposed in Article 1 of the IDArb Recommendations.

### 2. Full statement of claim and defence in the Notice of Arbitration and in the Answer to the Notice of Arbitration - Hearing

Parties are invited to make a full Statement of Claim and Defence (and counterclaim, where applicable) with all the relevant documents and the indication of the witnesses to be examined at the hearing, in the Notice of Arbitration and respectively the Answer to the Notice, in order to avoid the need of a further exchange of briefs, so that the case can be discussed soon after the appointment of the sole arbitrator at the hearing. The basic idea is that the procedure should be concentrated in the oral hearing, without a further exchange of briefs after the appointment of the arbitrator, and that the parties should in principle submit orally their conclusions at the hearing.

The above solution should however apply only if the parties so agree and if it does not appear, after the appointment of the arbitrator, that further exchanges of briefs are necessary or appropriate. In other words, parties should know that by choosing the IDArb Arbitration Clause, they are invited to consider the above procedure, but only when this appears to be appropriate.

### 3. Pro-active role of the arbitrator regarding settlement

IDI favours the recourse to mediation before getting to arbitration and during the proceedings. However, it is also advisable that, even after the parties have decided to submit the dispute to arbitration, the arbitrator can take steps in order to favour a settlement.

The actual practice regarding this issue is very different in the various legal traditions: in some countries the arbitrator will limit himself to encouraging the parties to find an agreement, in other ones (e.g. Germany) he will have a much more pro-active attitude. The clause in Article 3 of the IDArb Recommendations intends to favour settlement negotiations by authorizing the arbitrator to give, upon joint request of the parties, a non-binding and provisional assessment of the case.