



International Distribution Institute

The conditions for an effective expedited procedure. A comparison of different experiences

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Scope of Application

ICC ARBITRATION RULES 2017	2018 DIS ARBITRATION RULES	SWISS RULES OF INTERNATIONAL ARBITRATION (JUNE 2012)
<p>Art. 30.2: Expedited Procedure applies (a) to disputes not exceeding USD 2 million, and arbitration agreement signed after 1 March 2017; or (b) if the parties so agree.</p> <p>Art. 30.3: Expedited Procedure does not apply (a) if the arbitration agreement was concluded before 1 March 2017; (b) if the parties have opted out; or (c) if the Court, upon the request of a party before the constitution of the arbitral tribunal or on its own motion (also after the constitution of the arbitral tribunal), decides that it is inappropriate (see also Art. 1(4) Appendix VI).</p>	<p>Whether the arbitration shall be conducted as an expedited procedure shall be discussed in every case, not only low value cases. Obligation to discuss at the CMC whether a procedure shall be conducted as an expedited procedure</p> <p>Expedited Procedure applies if the parties agree to it. Absent such agreement, and as the Rules are silent thereon, the Arbitral Tribunal has discretion to determine, pursuant to Article 21.3, that some or all of the provisions of Annex 4 apply.</p> <p>Note that Annex 3 provides “Measures for Increasing Procedural Efficiency” (limiting the lengths or rounds of submission, bifurcation, restriction on document production), which must be discussed at the CMC (Art. 27.4).</p> <p>Note also that the 2018 DIS Rules have shortened a number of time limits (nomination of arbitrators; filing of Answer; holding of CMC).</p>	<p>Art. 42(1): Expedited Procedure applies if the parties so agree; or if the amount in dispute does not exceed CHF 1 million, unless the Court decides otherwise.</p>



Constitution of the Arbitral Tribunal

ICC ARBITRATION RULES 2017	2018 DIS ARBITRATION RULES	SWISS RULES OF INTERNATIONAL ARBITRATION (JUNE 2012)
<p>Art. 2.1 Appendix VI: the Court may appoint a sole arbitrator notwithstanding any provision to the contrary in the arbitration agreement.</p> <p>Art. 2.1 Appendix VI: the parties may nominate the sole arbitrator within a time limit to be fixed by the Secretariat, failing what the sole arbitrator shall be appointed by the Court within as short a time as possible.</p> <p>While usually the Court will tend to nominate young arbitrators for cases with such a limited amount in dispute (less than USD 2 mio), in EP cases the sole arbitrator might be obliged to take difficult procedural decisions – so the choice of a junior profile is not always preferred by the Court.</p> <p>What happens to the arbitral tribunal if, during the life of the case, the Court decides to no longer apply the EP rules? Possible solution: the sole arbitrator becomes the president of the three-member new arbitral tribunal (but this circumstance did not happen in practice yet).</p>	<p>Whether or not the arbitration will be conducted as an expedited procedure is determined after the constitution of the Arbitral Tribunal.</p> <p>A three-member Tribunal can conduct an expedited procedure. Sole Arbitrator is not a condition for conducting an expedited arbitration.</p> <p>Party autonomy concerning the number of arbitrators. Express agreement on three will be respected by DIS (no paternalistic approach).</p>	<p>Art. 42(1)(a): the file shall be transmitted to the arbitral tribunal only upon payment of a Provisional Deposit.</p> <p>Art. 42(2)(b) and (c): for disputes not exceeding CHF 1 million, the case shall be referred to a sole arbitrator, unless the arbitration agreement provides for more than one arbitrator. In such instance, the Secretariat invites the parties to agree to a sole arbitrator.</p>



Terms of Reference

ICC ARBITRATION RULES 2017	2018 DIS ARBITRATION RULES	SWISS RULES OF INTERNATIONAL ARBITRATION (JUNE 2012)
<p>Art. 3(1) Appendix VI: art. 23 of the Rules (Terms of Reference) shall not apply.</p> <p>What is the content of the PO1 then? Does it have to include a list of issues? No, because it is an order issued by the AT, and not a document signed by the parties and the AT.</p>	n/a	n/a



Case Management Conference

ICC ARBITRATION RULES 2017	2018 DIS ARBITRATION RULES	SWISS RULES OF INTERNATIONAL ARBITRATION (JUNE 2012)
<p>Art. 3(3) Appendix VI: CMC must take place no later than 15 days after transmission of file to the arbitral tribunal. The Court may extend this time limit.</p>	<p>Art. 27.4: during the CMC (usually within 21 days from transmission of the files – applies to all cases, not only expedited proceedings), the arbitral tribunal shall discuss the provisions of Annex 4 (Expedited Proceedings) in order to determine whether they should be applied.</p>	<p>n/a</p>



Proceedings

ICC ARBITRATION RULES 2017	2018 DIS ARBITRATION RULES	SWISS RULES OF INTERNATIONAL ARBITRATION (JUNE 2012)
<p>Art. 3(2) Appendix VI: no party shall make new claims after constitution of the arbitral tribunal unless authorized by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration, any cost implications and any other relevant circumstances. (Since there is no ToR, there is no article 23(4) limit for new claims)</p> <p>Art. 3(4) Appendix VI: the arbitral tribunal may adopt any procedure measures deemed appropriate. After consultation with the parties, it may, in particular, not allow requests for document production; or limit the number, length and scope of written submissions and written witness evidence.</p> <p>Art. 3(5) Appendix VI: after consultation with the parties, the arbitral tribunal may decide the dispute solely on the basis of the documents submitted by the parties.</p>	<p>Art. 2 Annex 4: the arbitral tribunal shall at all times take into account the parties' specific interest in accelerating the proceedings.</p> <p>Art. 3 Annex 4: in addition to the RfA and the Answer, each party may file only one further set of written submissions. One further set of written submissions may be filed in reply to a counterclaim.</p> <p>Art. 4 Annex 4: unless the parties agree that the dispute shall be decided on the basis of documentary evidence only, the arbitral tribunal shall hold a single hearing.</p>	<p>Art. 42(1)(b): after the submission of the Answer, the parties shall, as a rule, be entitled to submit only a SoC, a SoD (and counterclaim) and, where applicable, a SoRy.</p> <p>Art. 42(1)(c): unless the parties agree that the dispute shall be decided on the basis of documentary evidence only, the arbitral tribunal shall hold a single hearing.</p>



Award

ICC ARBITRATION RULES 2017	2018 DIS ARBITRATION RULES	SWISS RULES OF INTERNATIONAL ARBITRATION (JUNE 2012)
<p>Art. 4(4) Appendix VI: the award must be rendered within six months from the date of the CMC. The Court may extend this time limit.</p> <p>The Court and the Secretariat committed to a shorter period to scrutinize EPP awards. However, it is not because the case is regulated by EPP rules that the awards are less complex in substance – or shorter.</p>	<p>Art. 1 Annex 4: the final award shall be made within six months from the date of the CMC.</p> <p>Art. 5 Annex 4: if the final award cannot be made within this time limit, the arbitral tribunal shall inform the parties and the DIS of the reasons for the delay.</p> <p>If the time limit is exceeded, the arbitral tribunal continues to have jurisdiction and shall render the final award as soon as possible.</p>	<p>Art. 42(1)(d): the award shall be made within six months from the date of transmission of the file.</p> <p>The Court may extend the time limit in exceptional circumstances.</p> <p>Art. 42(1)(e): the arbitral tribunal shall state the reasons in summary form, unless the parties have agreed that no reasons are to be given.</p>



General rules

ICC ARBITRATION RULES 2017	2018 DIS ARBITRATION RULES	SWISS RULES OF INTERNATIONAL ARBITRATION (JUNE 2012)
<p>Art. 5(4) Appendix VI: the Court and the arbitral tribunal shall act in the spirit of the Expedited Procedure Provisions in relation to any issue not expressly covered by them.</p> <p>Art. 30.1: Expedited Procedure Provisions take precedence over any contrary terms of the arbitration agreement.</p>	<p>Art. 1.4: the Rules shall be applied mutatis mutandis.</p> <p>Party autonomy prevails.</p>	<p>n/a</p>



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Thank you!