ARTICLE

ICC ARBITRATION: THE EXPEDITED PROCEDURE PROVISIONS HAVE COME INTO FORCE

| 29/03/17 | Marie Danis

Contract drafters beware: as the new expedited procedure[1] ("the Expedited Procedure Provisions" or "the Provisions") introduced by the International Chamber of Commerce ("ICC") applies automatically to all claims under US$ 2 million arising out of an arbitration agreement concluded after 1st March 2017[2], parties should specifically exclude the Expedited Procedure Provisions in their arbitration agreement if they do not wish them to apply[3].

An arbitral procedure that only takes 6 months

The ICC has amended its Rules of Arbitration by, most notably, introducing the Expedited Procedure Provisions allowing for the parties to resolve their claims under US$ 2 million in a speedy and cost-effective manner.[4]

In this regard, the ICC Arbitration Court (the "Court") may order that the case be decided by a sole arbitrator nominated by the parties, or, if an agreement cannot be reached, by the Court itself. The Court may exercise this power even if the arbitration agreement provides for more than one arbitrator.[5]

Procedural time-limits are reduced. The case management conference shall be organised within 15 days after the date on which the file was transmitted to the arbitral tribunal ("the Tribunal").[6] The Tribunal does not have to draw up the Terms of Reference[7]. It shall render its final award within six months from the date of the case management conference.[8]

Moreover, the Tribunal has full discretion to adopt any procedural measure that it considers necessary to guarantee the efficiency of the procedure. As such, it is allowed to limit the length and scope of parties' written submissions or to refuse their requests for document production.[9] The Tribunal may, after consulting the parties, decide the dispute solely on the basis of the documents transmitted by the parties, without holding a hearing and examining witnesses.[10]

Details regarding the new Expedited Procedure Provisions are specified in a note to parties and arbitrators which can be found on the ICC website.[11]

Things to take into consideration while drafting an arbitration agreement

The parties can specifically agree in their arbitration clause on the application of the Expedited Procedure Provisions even if the amount in dispute exceeds US$ 2 million or they can modify the amount in dispute under which the Provisions will apply.[12] In this regard, standard clauses are suggested by the ICC.[13]

However, it should be noted that the Court may at any time, on its own motion, or upon the request of a party, decide that the Expedited Procedure Provisions no longer apply, if it considers that they are inappropriate given the circumstances of the particular case.[14]

An initiative that should be welcomed

By amending its Rules of Arbitration, the ICC tries to attract more customers who until now have considered arbitration to be a long and costly procedure, and thus not suitable for solving small disputes. In doing so, the ICC offers a specific procedure applicable to lower value claims, just as many other arbitration institutions such as the Stockholm Chamber of Commerce, the Singapore International Arbitration Centre or the Swiss Chambers' Arbitration Institution already do.

The attractiveness of the Provisions is further enhanced by the significant reduction of arbitration costs for expedited proceedings [15].

[1] https://cdn.iccwbo.org/content/uploads/sites/3/201...

[2] Article 1(2), Appendix VI

[3] Article 30(3)b

[4] Article 30 & Appendix VI

[5] Article 2, Appendix VI

[6] Article 3(3), Appendix VI

[7] Article 3(1), Appendix VI

[8] Article 4(1), Appendix VI

[9] Article 3(4), Appendix VI

[10] Article 3(5), Appendix VI

[11] https://cdn.iccwbo.org/content/uploads/sites/3/201…

[12] Article 30(2)

[13] https://iccwbo.org/dispute-resolution-services/arb…

[14] Article 1(4), Appendix VI

[15] Article 3, Appendix III