

EXPEDITED PROCEDURE IN INTERNATIONAL ARBITRATION

While international arbitration has become the preferred means of resolving international commercial disputes throughout the world, complaints about delays and costs have become common. Various arbitral institutions have responded to this by offering an option to conduct arbitrations on an expedited or "fast-track" basis.

However, while expedited procedures have been taken up with enthusiasm, they are not suitable for every type of dispute, as **Ben Giaretta** and **Michael Weatherley** explain.

THE EXPEDITED PROCEDURE

An expedited procedure in arbitration is one which imposes strict limits on the time in which the arbitral tribunal must hear and dispose of the case. Under the Singapore International Arbitration Centre (**SIAC**) Rules (2013) for instance, where the expedited procedure applies, the tribunal must make an award within six months from the date when the tribunal is constituted. The timetable for the arbitration is then tailored to fit this time-limit, which leads to cost savings.

Institutions which have incorporated an expedited procedure into their rules include the SIAC, the HKIAC, ACICA, the JCAA and the KLRCA. This briefing focusses on the expedited procedure under the SIAC Rules, which has been one of the most regularly used and tested of the expedited processes.¹

WHEN DOES IT APPLY AND WHAT ARE ITS FEATURES?

A party may apply for the expedited procedure under the SIAC Rules where:

- the amount in dispute does not exceed S\$ 5,000,000 (approximately US\$ 4 million);
- all parties agree; or
- in cases of exceptional urgency.²

After receiving an application and considering the views of the parties, the President of the Court of Arbitration of SIAC will decide if the expedited procedure is appropriate. If the President considers that it is suitable, the following will apply to the arbitration:

- the case shall be referred to a sole arbitrator (unless the President determines otherwise);³
- the tribunal will hold a hearing to examine witnesses and to hear legal arguments, although the parties can agree that the dispute be decided on a "documents only" basis;⁴
- the award must be made within six months from the date when the tribunal was constituted (unless extended by the Registrar of the SIAC for "exceptional circumstances"); and
- the tribunal is required to provide its reasons in summary form (unless the parties agree that no reasons are to be given).

ISSUES WITH THE EXPEDITED PROCEDURE

Extensions of time

There is a tension between, on the one hand, the need to finalise the arbitration within the strict time-limit imposed by the rules, and, on the other, the tribunal's duty to allow the parties a full opportunity to present their cases. A failure to comply with that duty may make the award unenforceable under Article V(1)(b) of the New York Convention.⁵

A cautious approach to this dilemma can mean it is resolved in favour of allowing parties more time to present their cases, and more opportunities to make submissions. The result can be an extension of an expedited arbitration, sometimes (in exceptional cases) resulting in almost the same length and cost as a full-scale arbitration.

Summary awards

Regardless of how long an expedited arbitration has lasted for, the product is a summary award.

A summary award is concise and is delivered quickly. However, there is little guidance about how arbitrators should approach drafting such awards. A tribunal may summarize its findings on each argument raised; alternatively, it may only focus on the point which it considers is determinative.

Parties may find an award unsatisfactory if it does not address every aspect of a case, while it may be difficult for them to challenge the award if the parties have agreed to it being in summary form, but the tribunal's reasoning has not been set out in full.

WHEN THE EXPEDITED PROCEDURE SHOULD BE USED

Expedited arbitration can be a valuable tool in dealing with disputes quickly and cost-effectively. It is commonly used in certain industries, such as shipping, to good effect. Trade usage aside, however, parties should consider using the expedited procedure only if:

- the dispute is low-value and/or has little impact on the ongoing business of the parties;
- the case is straightforward and can be dealt with on a documents-only basis and in a summary award; and
- the other side is agreeable to using the expedited procedure, and unlikely to employ delaying tactics.

- 1 Between 1 July 2010 and 31 October 2013, 115 applications for Expedited Procedure were received by the SIAC, with 81 applications being granted.
- 2 Rule 5.1 of the SIAC Rules (2013).
- 3 In contrast, the HKIAC Rules provide that if the arbitration agreement provides for three arbitrators, the HKIAC will invite the parties to agree to refer the case to a sole arbitrator. If the parties do not agree, the case will be referred to three arbitrators (Article 41.2(b)).
- 4 The HKIAC Rules provide for a default "documents only" arbitration, unless the HKIAC decides that it is appropriate to hold one or more hearings.
- 5 Article V(1)(b) of the New York Convention allows enforcement of an award to be refused if "*the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case.*"

Further information

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