



LITIGATION AND DISPUTE RESOLUTION

New expedited procedure introduced for efficient and cost-effective ICC Arbitration

by **Íde O'Neill**

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A new expedited procedure contained in the International Chamber of Commerce (ICC) Arbitration Rules 2017 came into force on 1 March 2017.

It aims to provide a swift, efficient and cost-effective manner of resolving disputes and allows for a sole arbitrator acting without Terms of Reference.

Under Article 30 of the 2017 Rules, by agreeing to arbitration under the Rules, the parties agree that Article 30 and the Expedited Procedure Rules in Appendix VI (collectively known as the "Expedited Procedure Provisions") will take precedence over any contrary terms of the arbitration agreement.

The Expedited Procedure Rules automatically apply if:

- the arbitration agreement was concluded after 1 March 2017, and;
- the amount in dispute does not exceed US\$2,000,000, and
- the parties have not opted out of the Expedited Procedure Rules.

For cases involving higher amounts, or where the agreement was concluded before 1 March 2017, the Expedited Procedure Provisions will apply if the parties have agreed to opt in.

The International Court of Arbitration of the ICC (the Court) may, upon the request of a party or on its own motion, determine that it is inappropriate in the circumstances to apply the Expedited Procedure Provisions.

The Expedited Procedure Provisions contain a number of provisions aimed at increasing efficiency and reducing costs.

- The Court may, and normally will, appoint a sole arbitrator notwithstanding any contrary provision of the arbitration agreement.
- There will be no Terms of Reference.
- The arbitral tribunal may, after consulting the parties, decide the case on a documents-only basis with no hearing and no examination of witnesses or experts.
- The arbitral tribunal has discretion to adopt such procedural measures as it considers appropriate. It may, after consultation with the parties, decide not to allow requests for document production or to limit the number, length and scope of written submissions and written witness evidence.
- A case management conference must take place no later than fifteen days after the date on which the file was transmitted to the arbitral tribunal.
- After the arbitral tribunal has been constituted, no party can make new claims, unless it has been authorised to do so by the arbitral tribunal. The arbitral tribunal will consider the nature of such new claims, the stage of the arbitration, any cost implications and any other relevant circumstances.
- When a hearing is to be held, the arbitral tribunal may conduct the hearing by videoconference, telephone or similar means of communication.

- The final award must be made by the arbitral tribunal within six months of the case management conference. The Court may extend this time limit in certain circumstances.
- Significantly reduced scales of fees apply under the Expedited Procedure Provisions.

The new Expedited Procedure Provisions are a welcome development and reflect the demand for faster and cheaper arbitration. It remains to be seen whether parties will opt to apply the expedited procedure in higher value claims and whether a sole arbitrator will be appointed for all claims under US\$2,000,000 notwithstanding the complexity of the matter.

The nuances between different arbitration rules mean that care should be taken when inserting arbitration clauses into commercial agreements to ensure that the most appropriate clause for the particular set of circumstances is used.

For further information on this topic, please contact Íde O'Neill at ioneill@lkshields.ie.

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