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ICC Expedited Procedure

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2017 Rules of Arbitration of the ICC

- / In force as from 1 March 2017.
- / New Arbitration rules apply to all arbitration proceedings commenced on 1 March and beyond, with the exception of the Expedited Procedure.
- / Expedited Procedure is a part of the updated rules according to the Rules of Arbitration of the International Chamber of Commerce.
- / It is the most significant amendment introduced in the 2017 Rules.
- / This procedure is intended to speed up and reduce scale of fees in the ICC arbitration proceedings.
- / Furthermore, under the 2017 Rules, ICC arbitrations should become even more transparent, for the Court will now provide reasons for a wide range of important decisions, if requested by one of the parties.



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Scope of Application 1

- / The Expedited Procedure will only apply to arbitration agreements concluded on or after 1 March 2017.
- / If the parties so agree the Expedited Procedure can be applied also in on disputes that arose before 1 March 2017.
- / The Expedited Procedure rules can be classified into two groups:
 - those in which the application of the Expedited Procedure is automatic, or
 - those in which the application of the Expedited Procedure has been selected by the parties.



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Scope of Application 2

- / The Expedited Procedure should be automatically applied in cases where the disputed amount does not exceed USD 2,000,000 (including all claims, counterclaims and cross-claims between the parties, but not interest or costs).
- / 32% of disputes in 2015 were under the USD 2 million limit.
- / The Rules can also apply, where the amount of disputes is greater than USD 2,000,000 if the parties opt in.
- / The parties can also agree to opt out and therefore the Expedited Procedure does not apply.
- / The ICC Court may, however, on its own motion or on the request of a party, override the parties agreement if it would be inappropriate to apply the Rules. The ICC Court may do this at any time during the proceedings but only after consultation with both parties.



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Opt In and Opt Out

- ✓ If the parties wish to exclude the application of Expedited Procedure Provisions, they must expressly opt out by adding the following wording:
 - the Expedited Procedure Provisions shall not apply.

- ✓ If the parties wish to avail themselves of the expedited procedure in higher-value cases, they should expressly opt in by adding the following wording:
 - the parties agree, pursuant to Article 30(2)(b) of the Rules of Arbitration of the International Chamber of Commerce, that the Expedited Procedure Rules shall apply irrespective of the amount in dispute.



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Opt In and Opt Out

- / When deciding whether to opt in or opt out, the parties have to consider factors, such as:
- the complexity and depth of the dispute,
 - importance of an oral hearing,
 - importance of having a three-person tribunal,
 - anticipated costs,
 - importance of a timely award,
 - the way they want to resolve the specific issues at hand.



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Content of the Expedited Procedure 1

- / The Expedited Procedure adjusts parts of the normal ICC arbitration process that can be time consuming or which are best suited to more complex and/or greater value claims.
- / Usually a sole arbitrator shall resolve the dispute.
- / A sole arbitrator may be nominated by the parties within a limited time, otherwise the Court will do so.
- / The Court may decide to appoint three arbitrators if special circumstances occur.
- / A sole arbitrator may be appointed by the court even if the parties have agreed to appoint three arbitrators in the arbitration agreement.
- / No Terms of Reference are required (in standard proceedings the tribunal now has 30 days to sign and return the Terms of Reference to the Court).



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Content of the Expedited Procedure 2

- / The case management conference must take place no later than 15 days from the date when the tribunal receives the file (unless extended by the ICC Court).
- / Once the tribunal is appointed, no new claims may be made without the tribunal's approval.
- / The arbitrators are entitled to:
 - refuse to allow requests for document production,
 - limit the number, length and scope of written submissions and witness evidence, and
 - after consultation with the parties, decide the dispute on the basis of documents, without an oral hearings and examination of witnesses or experts.



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The Final Award

- / The arbitrators must render its award within 6 month of the Case Management Conference.
- / In limited and reasoned circumstances extensions may be granted.
- / This should enhance the quality and enforceability of awards, once issued.
- / Awards render under the Rules should be reasoned in order to avoid decision being challenged and to preserve the manner in which the Court reaches its decisions.
- / The parties may challenge the decision, however the Court have full autonomy to either accept or reject the request.



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Fees

- / The ICC has avoided radical change in this matter.
- / Administrative expenses remain the same for both standard and expedited procedures.
- / Arbitrator's fees are approximately 20% lower.
- / Further savings can be achieved if the dispute is being resolved by one arbitrator and not three.
- / However, the minimum fee of a administrative expenses rose from USD 3,000 to USD 5,000 (if the amount of disputes is not greater than USD 50,000).
- / Additionally, the ICC may lower or increase the arbitrators fees based on the length of the proceeding.
- / This may raise some doubts whether the expedited procedure is truly financially more effective than the standard procedure.
- / This especially applies if the dispute concerns for smaller amounts.



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Scale of Expenses and Fees for the Expedited Procedure

- / Administrative expenses remain the same for both standard and expedited procedures.
- / For example, if the disputed amount is USD 1 million, the Administrative Expenses are USD 15,235 + 1.62% of amt. over USD 500,000.
- / However Arbitrator's fees differs.
- / For example, if the disputed amount is USD 1 million:
 - in the Standard Procedure the Arbitrator's fees are at least USD 9,857 + 0.9540% of amt. over USD 500,000 and no more than USD 43,990 + 4,0280% of amt. over USD 500,000,
 - in the Expedited Procedure the Arbitrator's fees are USD 7,886 + 0,7632% of amt. over USD 500,000 and no more than USD 35,192 + 3,2224% of amt. over USD 500,000.



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Conclusion

- / The new procedure facilitates ICC arbitrations in cases with smaller amounts to disputes held before the ICC.
- / The final award should be rendered by a sole arbitrator within six month from the case management conference and therefore speed up the decision-making process.
- / Speeding up the decision-making process will enable the ICC to resolve more disputes.
- / The parties should carefully consider whether these mechanisms are appropriate for the specific case.



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