



Update

Momentum



Litigation and Arbitration

1 August 2017

THE ICC EXPEDITED ARBITRATION

The Arbitration Rules of the International Chamber of Commerce (ICC) are very often used, at a global scale, for solving commercial disputes between parties. For that reason, the modifications to which the Arbitration Rules have recently been subject – applicable since **1 March 2017** – should not be unnoticed, in particular, to companies which have entered into contracts with clients, suppliers and services' providers containing arbitration clauses.

One of such alterations was the setting up of **a more swift, simple and less expensive** arbitration procedure, composed by the so-called «**Expedited Procedure Rules**».

The expedited procedure is characterized by the possibility of the International Court of Arbitration to appoint a **sole arbitrator** to conduct the procedure, **even if the parties agreed otherwise**. The sole arbitrator may also, within the time limit fixed by the Secretariat of the Court, be nominated by the parties.

But more than this prevalence of a sole arbitrator, it is the power vested in the arbitral tribunal by the new rules which simplifies and accelerates the arbitration: **the power of limitation of procedural acts**. Besides providing that the arbitral tribunal has discretion to adopt the procedural measures deemed appropriate, the Rules also specify that it may limit the number, length and scope of written submissions and written witness evidence, as well as **decide the dispute solely on the basis of the documents submitted by the parties, with no hearing and no examination of witnesses or experts**.

The promptness such powers of the arbitral tribunal may confer to arbitration is also revealed by the time limit to carry out the case management conference (15 days after the date on which the files were transmitted to the arbitral tribunal) and by the time limit within which the arbitral tribunal must render its final award (six months counting from the date of that conference).

In addition to the savings in time and costs resulting from the appointment of a sole arbitrator and the possibility of dismissing hearings, the Expedited Procedure Rules accommodate a **reduction of the arbitral tribunal's fees** and administrative expenses, in comparison with the values applicable to ICC common arbitrations.

The Expedited Procedure Rules are **automatically** applicable to arbitration agreements which (i) provide for the **application of ICC Rules** and (ii) have been **entered into after 1 March 2017**, (iii) in case **the amount in dispute does not exceed US\$ 2.000.000**. They are also applicable, regardless the date of the agreement and the value of the dispute, if the parties so agree (opt-in).

The Expedited Procedure Rules may be **excluded** (i) if the parties have agreed to opt out or (ii) if the ICC International Court of Arbitration, upon the request of a party or on its own motion, determines that it is inappropriate to solve the dispute in question with the expedited procedure. In any moment, the Court may also determine, after consulting the arbitral tribunal and the parties, that the Expedited Procedure Rules are no longer applicable to the case.

There is no doubt that this new arbitral procedure – new only in the ICC Arbitration Rules, since other international arbitral institutions, e.g. the ICSID¹, already provided similar rules – has the potential to solve disputes in a prompter and a more economic way.

¹ International Centre for Settlement of Investment Disputes

However, it is up to all participants to prevent the Court and the arbitral tribunal's increased powers from jeopardizing basic rights of reply and of presenting evidence, which no fair and equitable procedure may disregard, neither for efficiency nor for any other reasons.

Alexandra Valpaços
ava@servulo.com