

Client Alert

March 2017

ICC Revises Arbitration Rules

On March 1, 2017, the International Court of Arbitration for the International Chamber of Commerce (ICC) implemented a revised set of arbitration rules (ICC Rules). The revisions have important implications for those who wish to use ICC arbitration to resolve their disputes.

The ICC's new Expedited Procedure Provisions (Expedited Rules) are intended to make smaller arbitrations cheaper and more efficient. The Expedited Rules automatically apply to all ICC arbitrations valued at \$2 million or less in which an arbitration agreement was concluded after March 1, 2017, unless the parties have expressly opted out of the Expedited Rules.

Several important features distinguish expedited proceedings from regular ICC proceedings:

- The ICC may appoint a sole arbitrator, notwithstanding any provision of an arbitration agreement to the contrary.
- A case management conference must be held within 15 days of the transmission of the case file to the tribunal.
- There are no Terms of Reference.
- The arbitrator may limit the length and scope of written submissions and written testimony.
- The tribunal may decide the dispute solely on the basis of the parties' submissions, with no hearing or examination of witnesses or experts.
- The tribunal must conclude, and a final award must be issued, within six months of the scheduling conference, unless the ICC Court issues an extension.
- The scale of administrative expenses and arbitrator's fees is lower for expedited proceedings than it is for regular ICC proceedings.

Parties may choose to opt out of expedited proceedings. The ICC recommends parties include the following language in their arbitration agreement to do so: "The Expedited Procedure Provisions shall not apply."

The parties may also opt in to the Expedited Rules in arbitrations valued at more than \$2 million, regardless of when they concluded their arbitration agreement. Parties can opt in either through their arbitration agreement or by subsequent agreement. The ICC recommends that parties wishing to opt in to the Expedited Procedure Provisions through their arbitration agreement use the following language: "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."

Arbitration clauses should generally be carefully tailored to the commercial agreements in which they are included. In light of the introduction of the ICC Rules, parties should carefully consider whether expedited proceedings would be the best way to resolve potential disputes that may arise under an agreement. If the truncated nature of the expedited proceedings, or the use of a sole arbitrator, would be counterproductive to the party's goals, careful thought should be given to opting out of the proceedings. On the other hand, if the efficiency of expedited proceedings in arbitrations valued at \$2 million or less is desired, parties should not opt out of the Expedited Rules. Indeed, in some circumstances, parties may

even wish to use the Expedited Rules in arbitrations valued at more than \$2 million, and should include a provision to that effect in their arbitration agreement.

Hunton & Williams LLP has extensive experience drafting international arbitration agreements. The firm is well-positioned to advise clients on arbitration agreements and to represent them in international arbitration proceedings.

Contacts

Thomas C. Goodhue
tgoodhue@hunton.com

Gustavo J. Membiela
gmembiela@hunton.com

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