

UNCITRAL Expedited Arbitration Rules come into force

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Introduction

Expedited arbitration is a form of arbitration that accelerates the arbitration process, thereby reducing costs. It achieves this by shortening time limits (such as time frames to constitute the tribunal, hold a case management conference, and render an award), restricting the number of submissions (with some variants of the procedures allowing for documents-only arbitration), and requiring that a sole arbitrator (rather than a three-member tribunal) hear the dispute.

Expedited arbitration procedures are widely used in institutional arbitration, with leading arbitral institutions such as the ICC, SIAC, SCC, HKIAC, AIAC, CIETAC, and MCIA each offering their respective version.

Beginning in February 2019, the United Nations Commission on International Trade Law (“**UNCITRAL**”) deliberated issues relating to expedited arbitration, including circulating a questionnaire to 23 arbitral institutions on expedited arbitration themes, in order to determine how the existing UNCITRAL Arbitration Rules could be modified to include expedited arbitration procedures.

This process culminated on 19 September 2021 with the UNCITRAL Expedited Arbitration Rules (“**Expedited Rules**”) entering into force. The Expedited Rules are set out in an appendix to the UNCITRAL Arbitration Rules. An updated version of the UNCITRAL Arbitration Rules containing the Expedited Rules will be published early this year, after the updated rules have been translated into all UN official languages. In the meantime, parties may expressly agree to apply the Expedited Rules.

We set out a summary of the key provisions of the Expedited Rules and discuss key factors that parties should consider when opting for the Rules.

A- Key Features of the Expedited Rules

• Scope of Application

Pursuant to Article 1, the Expedited Rules apply by express agreement, i.e., the parties must “opt in” to have access to the Expedited Rules. This is in contrast to the expedited rules of some arbitral institutions, such as the ICC and CIETAC, where small-claim threshold amounts are used as a yardstick for the automatic application of the expedited arbitration procedures (commonly referred to as an “opt-out” system).

• Fallback provision

Article 2 of the Expedited Rules provides a fallback provision to revert to the standard UNCITRAL Arbitration Rules. Fallback provisions typically cater to scenarios where the arbitration appears to be more complex than initially anticipated when the parties opted in for the expedited arbitration procedures.

Under the Expedited Rules, parties may agree at any time that the Expedited Rules will no longer apply to the arbitration. In a scenario where there is a unilateral request of a party to withdraw from the Expedited Rules, the tribunal is empowered to determine the request provided there exist “exceptional circumstances”. The draft explanatory note to the Expedited Rules explains that “exceptional circumstances” require the requesting party to provide convincing and justified reasons for the withdrawal request and that the tribunal should uphold the request only in limited circumstances.

- **Expeditious conduct of the parties and the tribunal**

Article 3 of the Expedited Rules mandates the parties to act expeditiously throughout the proceedings and the tribunal to conduct the proceedings expeditiously in accordance with the time frames in the Expedited Rules. Article 3 also allows the tribunal to utilise technology to conduct the proceedings and consultations and hearings to be held without the physical presence of the parties.

The success of videoconferencing technologies, especially during the Covid-19 pandemic, should empower tribunals to easily transition to virtual hearings while conducting proceedings under expedited arbitration procedures. Virtual hearings will further save time and reduce costs.

- **Permanent Court of Arbitration (PCA) as the appointing authority**

Appointing authorities are individuals or institutions selected by the parties to a dispute, or determined by applicable arbitration rules, to select the arbitrator or arbitrators who will preside over the matter in circumstances where the parties or the party-appointed arbitrators as the case may be are unable to do so. Pursuant to Article 6 of the Expedited Rules, if the parties have not agreed on an appointing authority 15 days after the receipt by all parties of a proposal for an appointing authority, any party can request the Secretary-General of the PCA to designate the appointing authority or to serve as one. This period of time is shortened from the 30 days set forth in Article 6.2 of the UNCITRAL Arbitration Rules.

Therefore, the process is accelerated under the Expedited Rules. In practice, this would enable a claimant that has included a proposal for an appointing authority in its notice of arbitration to be able to make the request to the Secretary-General of the PCA just 15 days after the receipt of the notice by the respondent.

- **Sole arbitrator**

Under Article 7 of the Expedited Rules, a sole arbitrator is the default rule. However, the Expedited Rules do allow parties to agree on having more than one arbitrator. The draft explanatory note to the Expedited Rules clarifies that if parties have agreed on having more than one arbitrator then the relevant provisions of the UNCITRAL Arbitration Rules (i.e. articles 9 and 10) will apply for the purposes of arbitrator appointment only. This approach is in contrast to the approach taken by the ICC, SIAC, and MCIA wherein the respective expedited arbitration procedures provide that a sole arbitrator is to be appointed even if the arbitration agreement stipulates otherwise.

- **Documents-only hearing**

Article 11 of the Expedited Rules grants discretionary power to the tribunal to elect not to have a hearing, after consulting with the parties and in the absence of a request for a hearing from a party. The draft explanatory note to the Expedited Rules explains that Article 11 should be read together with Article 17(3) of the UNCITRAL Arbitration Rules which provides that the tribunal shall hold a hearing if any party so requests, and, in the absence of such a request, the tribunal shall decide whether to hold hearings.

Parties should keep in mind that hearings may cause delays; however, they may be useful, especially when witness and/or expert testimony is critical for the tribunal’s decision-making.

- **Time frames**

Article 16 of the Expedited Rules provides a default six-month time frame for making the award (unless otherwise agreed by the parties) and a mechanism for extending that time frame in exceptional circumstances.

Pursuant to Article 16, the default position is that the award has to be made within six months from the date of the constitution of the tribunal. The tribunal may extend the six-month time limit to a total of nine months if the tribunal considers that there are exceptional circumstances.

In case the tribunal determines that it may not render an award within the extended time period, it shall propose a final extended time limit, state the reasons for the proposal, and invite the parties to express their views. However, the extended time for rendering the award is premised on the parties' agreement. In case there is no agreement on the extended time period proposal, a party may put forward a request for the Expedited Rules to no longer apply. After hearing the parties' views, the tribunal can conduct the arbitration in accordance with the UNCITRAL Arbitration Rules.

B- Key considerations when opting for Expedited Arbitration Procedures

- **Urgency of resolving the dispute**

Expedited arbitration procedures amplify efficiency, and the ability to resolve a dispute and obtain the final award within six to nine months is one of the main advantages of expedited arbitration procedures. In this regard, the Expedited Rules emphasise the discretion provided to the tribunal to utilise a wide range of technological means to conduct the proceedings and equips the tribunal with the power to do away with hearings. The Expedited Rules are thus beneficial to parties looking to obtain a final award through a faster and less expensive arbitration process.

- **Acknowledging the Trade-off**

Expedited arbitration procedures should be acknowledged as an intentional trade-off between a speedier outcome and the scope of the proceedings. Agreeing to the Expedited Rules with expectations of a full scope of proceedings – rounds of document disclosure, expert involvement, detailed witness statements, and hearings, among other procedural steps – is likely to disappoint the parties. Parties should keep this in the back of their minds while agreeing to the Expedited Rules.

- **Suitability of Dispute**

Expedited arbitration procedures are best implemented when the inherent trade-offs are suitable to the issues involved in the dispute and there are no major factual disagreements. Expedited arbitration procedures are thus not suited to high-value and/or complex disputes or multi-party proceedings. In fact, most arbitral institutions only apply expedited arbitration procedures where the amount in dispute is below a certain threshold amount. For example, the expedited arbitration procedures in the ICC Rules apply to disputes with a value not exceeding US\$ 3 million, whereas the expedited arbitration procedures in the SIAC Rules apply to amounts in dispute that do not exceed SG\$ 5 million.

Concluding Remarks

The adoption of expedited arbitration procedures in the UNCITRAL Arbitration Rules and by many of the key arbitral institutions globally, and their increased usage as observed from the existing caseload statistics, demonstrates that such procedures are being embraced by the international arbitration community. The introduction of the Expedited Rules now allows users of *ad-hoc* arbitration to avail and benefit from such procedures.

Parties should be encouraged to expressly opt in to the Expedited Rules when it suits their commercial needs, while paying heed to the trade-off discussed above. Given this trade-off, legal advice should be sought before agreeing to the Expedited Rules.

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