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Fast-Track Arbitration: The Rules and Laws Available

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ASA Below 40

Geneva, 10 October 2008

What Is Fast-Track Arbitration?

Albert Jan van den Berg, The WIPO Expedited Arbitration Rules: Fast-Track Arbitration (WIPO Conference on Rules for Institutional Arbitration and Mediation, Geneva, 20 January 1995)

(<http://www.wipo.int/amc/en/events/conferences/1995/denberg2.html>)

„There are at least three persons in this world who believe firmly that a fast-track international arbitration is a very bad concept. That is my wife, my daughter and my son. The experience was a rather complex energy dispute between an American and Asian party, where the place of arbitration was, unfortunately from my perspective, in the Asian country. The award, according to the arbitration agreement, had to be rendered within three months after the commencement of the arbitration. There was no possibility of an extension of time provided for. [...]“

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„The hearings took place on New Year’s Day. Then, an interim award was to be rendered [...]. I drafted the award on the airplane back. [...] The next award was indeed issued within the time limit prescribed, the three months. The problem, of course, was the that I had one co-arbitrator who took his function as a party arbitrator rather literally. Anyway, we made it, but the consequence was no Christmas turkey, no New Year’s Eve parties, three months out of practice and clients wondering whether I still existed.“

What Is Fast-Track Arbitration?

- Resolution of disputes which require expedited resolution under particular rules
 - Specific branch requirements
 - Highly sophisticated parties
 - Highly sophisticated counsel and arbitrators
 - Common intent to resolve certain kinds of disputes in an expedited manner in order to allow business
 - ⇒ Requires rules which are shaped to the requirements of the individual case
- Simplified and shortened procedure for “small” claims
 - ⇒ Allow for general institutional rules

Arbitration Rules

Important arbitration rules which contain specific provisions on fast-track arbitration:

- Swiss Rules (Art. 42)
- WIPO Expedited Arbitration Rules
- Stockholm Chamber of Commerce Rules for Expedited Arbitrations (SCC)
- AAA Commercial Arbitration Rules (Part E)
- CIETAC Arbitration Rules (Art. 50 ss)

No specific provisions are contained in:

- ICC Rules
- LCIA Rules

Overriding Goals of Fast-Track Procedures

- Speeding up the dispute resolution process
- Reducing the costs for the resolution of small claims

Features: Overview

- Initiation of proceedings
- Composition of arbitral tribunal
- Constitution of arbitral tribunal
- Written submissions
- Hearing
- Shortened time limits
- Time limit for rendering award
- Reasoning of award

Initiation of proceedings

- Application of normal rules:
 - Art. 42 Swiss Rules
 - Art. 2 and 5 SCC
 - AAA Commercial Arbitration Rules
 - CIETAC (which provides initiation with Statement of Claim and Statement of Defence; Art. 10 and 12)
- Initiation of proceedings with the Statement of Claim and the Statement of Defence
 - Art. 10 and 20 WIPO: The Statement of Claim must be submitted with Request for Arbitration, the Statement of Defence with Answer to the Request

Composition of Arbitral Tribunal

- Sole arbitrator:
 - Art. 14 WIPO
 - Art. 12 SCC
 - Art. 50 CIETAC
 - Art. E-4 AAA (out of a list of five)
- Number of arbitrators as agreed by the parties
 - Art. 42 Swiss Rules (appointment of sole arbitrator will be proposed by the chamber if amount in dispute is less than CHF 1 m)

Constitution of Arbitral Tribunal

- Short time-limit for joint appointment, empowerment of institution:
 - Art. 14 WIPO (15 days)
 - Art. 13 SCC (10 days)
 - Art. E-4 AAA (7 days)
- Normal procedure
 - Art. 42 Swiss Rules (chamber may shorten the time-limits)
 - Art. 52 CIETAC

Written Submissions

- Reduction of number of written submissions
 - One Statement of Claim, one Statement of Defence (and Counterclaim) and one Statement of Defence to Counterclaim Counterclaim
 - Art. 42 Swiss Rules
 - Art. 35-37 WIPO
 - One written statement in addition to the Statement of Claim/Defence (Art. 19 SCC)
- Normal procedure applies
 - AAA Commercial Arbitration Rules
 - CIETAC

Hearing

- Hearing upon request of parties
 - Art. 47 WIPO (hearings may not exceed three days; arbitral tribunal may order hearing)
 - Art. 27 SCC (arbitral tribunal may refuse hearing)
- Hearing, unless the parties waive
 - Art. 42 Swiss Rules (one hearing only)
- Hearing in the full discretion of the arbitral tribunal
 - Art. 54 and 55 CIETAC (one hearing only)
 - AAA Commercial Arbitration Rules (to be held within 30 days of confirmation of the arbitrator's appointment, Art. E-7; may not exceed one day, Art. E-8)

Shortened Time Limits

- Specific provisions
 - 10 working days for written submissions (Art. 19 SCC)
 - 20 days for written submissions (Art. 53 CIETAC)
 - WIPO (20 days for written submissions (instead of 30), hearing within 30 days after receipt of Answer to the Request, closure of proceedings within three months of Statement of Defense or establishment of tribunal (whichever is later), final award within one month of closure of proceedings, Art. 11, 37, 47 and 56)
- No specific provisions
 - Swiss Rules
 - AAA Commercial Arbitration Rules

Time Limit for Rendering Award

- Six months from the file submission (Art. 42 Swiss Rules)
- Final award within one month of closure of proceedings (Art. 56 WIPO)
- Three months from the date on which the arbitration was referred to the arbitrator (Art. 36 SCC)
- Three months from the formation of the arbitral tribunal (Art. 56 CIETAC)
- 14 days from the date of the closing of the hearing (Art. E-9 AAA)

An extension is possible under all rules

Reasoning of Award

- Full reasoning
 - Art. 55 WIPO (waiver possible)
 - AAA Commercial Arbitration Rules
 - CIETAC
- Summary reasoning
 - Art. 42 Swiss Rules (full waiver possible)
- No reasoning unless requested
 - Art. 38 SCC

Risks Associated With Fast-Track Procedures

- Difficulty of finding experienced arbitrators
- Difficulty of finding available arbitrators
- Unsatisfactory decision due to pressures of time
- Limits to work intensity (in particular on the side of the arbitral tribunal)
- Non-compliance with deadlines
- Risk of surprise for respondent
- Unfair time-limits imposed on respondent for the preparation of the defence (possibly in the absence of a full statement of claim)
- Lack of responsiveness in the exchange of submissions

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