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**Session 5: „Expedited procedures: Yes or no,  
Challenges and Experience“**

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# Arbitration

- Arbitration Rules
- Internationally established way of resolving disputes outside the public court system
- Preferred method of dispute resolution in international business relations



# Expedited Arbitration

- Shortened time frame and a reduced cost
  - Providing for a solo arbitrator
  - Time periods for each step involved in the arbitration proceedings shortened
  - Condensed hearings before the sole arbitrator
- Every international arbitration centre has adopted slightly different special rules for Expedited procedure



# History

- Globalization of trade in 20th century
- Arbitral awards under NYC – easy and efficient enforce
- Arbitration process went through many revisions
  - UNCITRAL Arbitration Rules - (UNCITRAL Model Law revision in(2006))



# History

- Revised arbitration rules adopted in Singapore, Hong Kong, Austria, Malaysia and Korea
- One of revisions – **Fast-track arbitrations**
  - Expedited procedures under CITEAC Rules (1994), then other Asia-pacific arbitration centres



# History

- WIPO (World Intellectual Property Organization)
  - Section entitled „WIPO Expedited Arbitration Rules“ (1994)
  - Statement of claim and defense must accompany the request for arbitration and the answer to it
- ICC
  - First change in 2017
    - Until this change (Article 38 (39 since 1 March 2017))
      - only if both sides agreed to it and arbitral tribunal considered it appropriate



# Special Rules for Expedited Procedures

- Adoption of special rules
  - ICC, ICDR, HKIAC, SIAC and SCC
    - Filled in their rules to include fast track arbitration
  - LCIA
    - Provides only a mechanism for expedited formation of the arbitral tribunal (Article 9 (A))



# The Scope of Application

- Two kinds of approaches for the applicability of Expedited Arbitration
- Opt-out
- Opt-in





# Opt-out

- Product of SCAI (Swiss Chambers Arbitration institutions)
- Below certain monetary threshold - automatic application
  - CIETAC (1994) incorporated those rules
  - Article 56: „*The Summary Procedure shall apply to any case where the amount in dispute does not exceed RMB 5,000,000 unless otherwise agreed by the parties ...*“



# Opt-out

- ICC Arbitration Rules

- If the amount in dispute does not exceed US\$2m
- Article 30(2): „... a) the amount in dispute does not exceed the limit set out in Article 1(2) of Appendix VI at the time of the communication referred to in Article 1(3) of that Appendix“
  - Does not count if the Court thinks it is inappropriate to apply

- ICDR International Arbitration Rules

- Fast track arbitration in claims under US\$250,000
- Article 1(4): „Unless the parties agree or the Administrator determines otherwise, the International Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds USD \$250,000 exclusive of interest and the costs of arbitration.“

- HKIAC Administered Arbitration Rules

- Exceeding threshold
- Untill 2013 – when the amount in dispute did not exceed a certain threshold



# Opt-in

- No value in dispute limit for an automatic application of fast track rules
- Explicit agreement of parties to fast-track procedure
  - Arbitration clause
  - Submission agreement
- ICC International Court of Arbitration
  - Expedited procedure based on an attempt to introduce special rules for small claims procedure – never worked properly (not knowing before when entering an arbitration agreement, what will be a „small claim“)
  - Claims with relatively small value in dispute may be of high importance due to many reasons



# Opt-in

- HKIAC Administered Arbitration Rules
  - Since 2013 – opt-in, threshold raised from US\$250,000 to HK\$25m (over US\$3m)
  - Article 41: „... a) *the amount in dispute representing the aggregate of any claim and counterclaim (or any set-off defence) does not exceed HKD 25,000,000 (twenty-five million Hong Kong Dollars) ...*“
- SIAC
  - The amount in dispute does not exceed certain threshold
  - The parties agree to it
  - In cases of exceptional urgency
  - Rule 5.1: „... a) *the amount in dispute does not exceed the equivalent amount of S\$6,000,000, representing the aggregate of the claim, counterclaim and any defence of set-off; b) the parties so agree; or c) in cases of exceptional urgency. ...*“



# Rules of Expedited Arbitration

- Stand Alone Fast Track Arbitration Rules
  - Nine rules
  - Completely separated from ordinary arbitration procedures – stand-alone set of detailed rules
- Semi Separate Fast Track Arbitration Rules
  - Twelve rules – almost all of them offer opt-out approach
  - Supplementary fast track arbitration rules
- Implicit Fast Track Arbitration Rules
  - Do not offer expedited arbitration expressly, but institutions imply the possibility of fast track arbitration procedures based on their ordinary arbitration rules



# Procedure without oral hearing

- Possibility of procedure without oral hearing
- Unless the parties request a hearing/arbitrator considers it necessary
- KLRCA
  - Amount of the claim in dispute less than US\$75,000 – procedure without oral hearing (unless it is considered necessary)
  - Article 9: „Where the aggregate amount of the claim and/or counter claim in dispute is less than USD75,000.00 or is unlikely to exceed USD75,000.00 for an international arbitration ...“ „ ... the arbitration shall proceed as a documents-only arbitration, unless the arbitrator deems it necessary to proceed by way of substantive oral hearing upon consultation with the parties.“



# Statistics

- The Queen Mary Survey
  - <http://www.arbitration.qmul.ac.uk/docs/164761.pdf>
  
- White & Case Research
  - <https://www.whitecase.com/news/arbitral-institutions-respond-parties-needs>



# The Queen Mary Survey

- Queen Mary International Dispute Resolution Survey
  - 2015
- 763 questionnaire responses, 105 personal interviews
  - Respondents ranked total cost and speed of procedure – most respondents wanted simple procedures (92%)
  - Areas which require regulation based on respondents
    - Tribunal secretaries (68%)
    - Third party funding (71%)
    - Conduct of arbitrators (55%)





# White & Case Research

- Published on 10 April 2017
- Comparison of using sole arbitrators
- LCIA
  - 28% of using sole arbitrators (2014) increased in 52% (2015)
- ICC
  - 17% of using sole arbitrators (2014) increased in 19% (2015)
- SIAC
  - 73% of using sole arbitrators (2014) decreased in 68% (2015)



Topic	ICC RULES 2017	VIAC RULES 2013	SWISS RULES 2012	DIS 1998	SCC 2017
<b>Expedited Procedure Rules</b>	Art. 30 Rules, Appendix VI	Art. 45	Art. 42	Supplementary Rules for Expedited Proceedings (2008)	Rules for Expedited Arbitrations of the Arbitration Institute
<b>Recommended Clause</b>	No	Yes	Yes	Yes	Yes
<b>Opt-In or Opt-Out</b>	Opt-Out (Art. 30.3b Rules)	Opt-In (Art. 45.1)	Opt-Out	Opt-In (Art. 1.1)	Opt-In (Art. 11)
<b>Maximum amount of dispute</b>	USD 2,000,000 or greater if agreed  (Art. 30 Rules; Art. 1.2 Appendix VI)	No	CHF 1,000,000 (USD 1,036,000) or greater if agreed  (Art. 6.4)	No	No



Topic	ICC RULES 2017	VIAC RULES 2013	SWISS RULES 2012	DIS 1998	SCC 2017
<b>Mandatory use expedited procedure</b>	Yes (Art. 30.2 Rules; Art. 1.1 Appendix VI)	No	Yes (Art. 6.4)	No	No (Art. 11)
<b>Does the institution have the authority to not apply expedited procedure?</b>	Yes (Art. 30.3c Rules; Art. 1.4 Appendix VI)	No	Yes (Art. 42.2)	No	No
<b>Number of Arbitrators</b>	1 (Art. 2 Appendix VI)	1 unless agreed otherwise (Art. 45.5)	1 unless agreed otherwise (Art. 42.2b)	1 unless agreed otherwise (Art. 3.1)	1 (Art. 17)
<b>Expedited appointment of arbitrators</b>	Yes, time limit fixed by the Secretariat (Art. 2.2 Appendix VI)	Yes (Art. 45.6 + 7)	-	Yes (Art. 3.3)	Yes



Topic	ICC RULES 2017	VIAC RULES 2013	SWISS RULES 2012	DIS 1998	SCC 2017
<b>Reduced time limits for</b>					
<b>a) payment of the advance on costs</b>	-	Yes, 15 days (Art. 45.3)	Yes, in addition to the registration fee, Claimant has to pay a provisional deposit of CHF 5,000 (USD 5,200) (Art. 1.1.4 of Appendix B)	Yes, Claimant shall cover the full amount  (Art. 2)	-
<b>b) counterclaims or set-off-claims or introduction of new claims</b>	No new claims after constitution of the Tribunal (Art. 3.2 Appendix VI)  Counterclaims have to be submitted with the answer to the request (Art. 5.5 Rules)	Yes, until the time-limit for submission of the answer to the statement of claim	No separate rule; until the time limit for the answer to the notice of arbitration	Only admissible with consent of all parties and the tribunal (Art. 4.4)	Yes, until the answer, which constitutes the statement of defence (Art. 9.1.IV)
<b>c) nomination of arbitrators</b>	Within a time limit fixed by secretariat (Art. 2.2 Appendix VI)	Yes, 15 days (Art. 45.6+7)	-	Yes, sole arbitrator must be agreed by the parties prior to the filing of the statement of claim (Art. 3.2.)	Yes, 10 days unless agreed otherwise (Art. 15.3)



Topic	ICC RULES 2017	VIAC RULES 2013	SWISS RULES 2012	DIS 1998	SCC 2017
<b>Reduced number of</b>					
<b>a) submissions</b>	Yes (Art. 3.4 Appendix VI)	Yes (Art. 45.9.1)	Yes (Art. 42.1b)	Yes (Art. 5.2)	Yes (Art. 30)
<b>b) hearings</b>	Yes	Yes (Art. 45.9.3)	Yes (Art. 42.1c)	Yes (Art. 5.2)	Yes (Art. 33)



Topic	ICC RULES 2017	VIAC RULES 2013	SWISS RULES 2012	DIS 1998	SCC 2017
<b>Case Management Conference required?</b>	Yes (Art. 3.3 Appendix VI)	No	No	No	Yes (Art. 29)
<b>No Oral Hearings/ Documents only</b>	Possible (Art. 3.5 Appendix VI)	Possible (Art. 45.9.3)	Possible (Art. 42.1c)	Oral hearing shall be held  (Art. 4.3)	Possible (Art. 33)
<b>Post Hearing Brief</b>	-	No (Art. 45.9.4)	No (Art. 42.1b)	No (Art. 5.2)	No, unless the arbitrator allows (Art. 30.1)
<b>Deadline for award</b>	6 months from the case management conference (Art. 4.1. Appendix VI)	6 months from transmittal of file to arbitrator(s) (Art. 45.9)	6 months from transmittal of file to arbitrator(s) (Art. 42.1d)	6 months (sole arbitrator) or 9 months (three member tribunal) after the statement of claim (Art. 1.2 and 4.3)	3 months from transmittal of file to arbitrators (Art. 43)
<b>Must award provide reasons?</b>	Yes (Art. 32.2. Rules; Art. 1.1 Appendix VI)	Yes, unless parties agree otherwise (Art. 36.1 and 45.2)	Summary form unless parties agree that no reasons needed to be given (Art. 42.1e)	Yes, the tribunal may abstain from stating the facts of the case (Art. 7)	Optional (Art. 42.1)



# Expedited Procedure

1. Swift appointment of a sole arbitrator
  - Potential exposure to danger the main right of the parties in arbitration, namely to select and to appoint its arbitrator
2. Time limits and overall time frame
  - Potential risk to be qualified as insufficient to be properly heard in the proceedings a part of international ordre-public
3. Limitations on types of procedures
4. Submission of evidence, witness testimony and discovery
  - In fact suitable for proceedings without oral hearing and with a limited involvement of witness experts
  - May be understood as rather suitable for continental civil law proceedings, which's standards do rely especially on documentary evidence rather than on witness/expert witness hearings, or oral pleadings
5. Fees and costs



# Noble vs. Xintai

*Case number: (2016) HU 01 XIE WAI REN No.1*

- „Agreement incorporated by the parties into their contract provided for SIAC arbitration of disputes by a three-member tribunal.“
- „Despite the respondent's opposition to both the expedited procedure requested by the applicant and to a single-member arbitral tribunal, the SIAC appointed a sole arbitrator to hear the claim in expedited procedure.“
- „The Court found that **party autonomy is the foundation of arbitration**, and the appointment of the sole arbitrator was not in accordance with the parties' arbitration agreement.“
- <http://www.kluwerarbitration.com/document/kli-ka-icca-yb-xlii-505-n?q=%22expedited%20procedure%22%20OR%20%22fast%20track%20arbitration%22>





The clients expect me not  
to waste the time and  
money,

the clients expect me to  
win the case.



# Your questions?

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