

Expedited, Emergency and Interim,
Relief in International Commercial
Arbitration:
A Brief Overview

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Expedited Procedures – Contours

- Party agreement required:
 - Yes, Stockholm, Vienna
 - No, either party may apply, CIETAC, Hong Kong, Singapore
 - No, but opt out is possible – ICDR,
 - No, but opt out in agreement to arbitrate is possible – ICC
 - No, Swiss Chambers
- Decision within:
 - Thirty days – ICDR (from closing of hearing)
 - Three months– Stockholm (from date of referral), CIETAC (from date tribunal is formed)
 - Six months – Hong Kong (from date of transmittal), ICC (from date of conference), Singapore (from date tribunal is constituted); Vienna (from date of transmittal)
- Ceiling for amount in controversy:
 - Not mentioned– Stockholm, Vienna.
 - ICDR - US \$25,000. ICC - US \$ 2 million, CIETAC - RMB 5 million, Singapore - \$S 5 million, Swiss Chambers – 1 million Swiss Francs.
- Hearing required:
 - Yes – if requested and deemed necessary – Stockholm, Singapore, Vienna
 - No – CIETAC, Hong Kong, ICDR, ICC

Expedited Procedures – Yes or No - General considerations:

- Will typically require specification of amount and less flexibility changing
- Be prepared to move quickly
- Be prepared to forego some or all document production
- Be prepared to attach documents upon which rely
- Be prepared to stick to theory – amendments may be difficult

Expedited Procedures – Pro/Con

- Pro

- Savings in time and money. (Arbitrators' fees with ICC are 20% less and, of course, time is money.)
- Better for small money disputes where just need a quick disposition and can bear risk of adverse outcome
- Better for simple disputes which will not need a lot of factual development
- Perhaps catch respondent napping

- Con

- Hard to know how comfortably will fit when the time comes
- Demanding deadlines
- Less time to organize and accommodate witnesses
- One arbitrator – if he/she likes you good, if not...
- Unexpected complication of issues or logistics

Expedited Procedures – ICC Drafting

- ICC Rule 30 (2017)

By agreeing to arbitration under these Rules the parties agree that this Article 30 and the Expedited Procedure Rules set forth in Appendix VI (collectively the “Expedited Procedure Provisions”) shall take precedence over any contrary terms of the arbitration agreement.

- Opt out in agreement.

- Use recommended language:

“The Expedited Procedure shall not apply.”

Emergency Procedures – Contours

- Appointment
 - One day – Stockholm, CIETAC, ICDR, Singapore
 - Two days – ICC
- Generally one or two days for challenge arbitrator appointment, but three days under Swiss Rules
- Generally two days to establish schedule
- Decision within:
 - Not stated: Hong Kong, ICDR, Singapore
 - Five days from referral to arbitrator - Stockholm
 - 15 days – ICC (from transmission of file), CIETAC (from appointment). Swiss Rules (from transmission of file).
- Hearing required:,
 - Not generally – although both parties should be given opportunity to be heard.
- Required showing – generally:
 - Irreparable harm
 - Substantially outweighing
 - Probability of success
- Choice of forum

Emergency Procedures – Yes or No – General

- General considerations
 - Same as with any effort to obtain emergency relief
 - Similar to expedited relief
 - Where to enforce

Emergency Procedures – Pros

- If win, maintain the status quo and prevent steps which would frustrate relief
- May have an easier time enforcing, notwithstanding questions and limitations.
- Claimant/applicant can control timing and may catch respondent unprepared
- Can seek immediate relief without going before a potentially hostile court at the respondents domicile
- Likely to have more flexibility regarding presentation of evidence by video or telephone
- May have more flexibility in scheduling
- Likely to have a better chance of maintaining confidentiality

Emergency Procedures – Cons

- Cons

- Some jurisdictions do not allow arbitrators to issue injunctions (Italy, Quebec and Greece).
- Possible to get tied up on jurisdiction/scope of agreement problems
- Enforceability issues: Final award? Covered by convention?
- No ex parte
- Relief will almost certainly not extend beyond actual signatories to arbitration agreement
- One arbitrator
- Little time to organize and accommodate witnesses
- May be unable to develop proof fully
- In fact, quite likely there will be no evidentiary hearing
- May have to disclose more of case at an earlier stage than you wish.

Interim Relief

- Evolving nature of interim relief
- Increasing use and pursuit of interim relief
- UNCITRAL's leadership – Model Rule 26
 - Required showing
 - Irreparable harm
 - Substantially outweighing
 - Probability of success
- Choice of forum
- Enforcement