



ARBITRATION INSTITUTE
OF THE STOCKHOLM CHAMBER OF COMMERCE

I. 2017 SCC Rules – Key changes

The Arbitration Institute of the Stockholm Chamber of Commerce continues to innovate in international arbitration by introducing a number of changes to its Arbitration Rules and Rules for Expedited Arbitrations. The changes include the introduction of a summary procedure and general amendments to streamline its proceedings. Some of the key changes introduced to its Arbitration Rules are highlighted below:

1. Cutting through - Summary procedure

SCC has introduced a unique and innovative provision for the determination of factual or legal issues without necessarily undertaking every procedural step that may otherwise be adopted for the arbitration. Summary procedure aims at saving time and costs, in cases such as when a party has made an allegation that is manifestly unsustainable, or when a claim is unfounded as a matter of law, i.e. even when assuming the facts to be true, no award could be rendered in favour of a party.

Summary procedure has been designed as a case management tool available at any time during the arbitration. This makes summary procedure unique in comparison to similar provisions of other institutions which only allow for early dismissal of claims.

The provision balances efficiency and due process. The party requesting summary procedure shall indicate the grounds for its request, the form in which it proposes to proceed summarily and demonstrate that such procedure is efficient and appropriate for that particular case. The other party shall be given the opportunity to submit comments on the request.

Summary procedure is flexible, giving the tribunal the tools necessary to structure the proceedings, recognizing that arbitrations may come in all shapes and sizes. If the tribunal grants a request for summary procedure, the tribunal is not given a set deadline to determine the issues. Instead, the tribunal shall seek to determine the issues in an efficient and expeditious manner, while giving each party a reasonable opportunity to present its case.

2. Multiple parties, multiple claims – Multiple solutions

2.1. Joinder and Multiple contracts

A key new provision is Article 14 Multiple contracts, which allows a party to bring claims under more than one arbitration agreement in one single arbitration - i.e., without having to commence separate arbitrations on the basis of each arbitration agreement, and without having to pay separate registration fees.

Under Article 14, the general rule is that such claims may proceed and be determined in a single arbitration, unless the other party objects. If there is an objection, the claims may be determined in a single arbitration, provided that:

- (1) the SCC finds that it has prima facie jurisdiction over the dispute,¹ and
- (2) if the Board considers that the arbitration agreements are compatible, if the relief sought arises out of the same transaction or series of transactions, and having regard to the efficiency and expeditiousness of the proceedings and other relevant circumstances.

Article 14 explicitly states that the Board's decision does not affect the tribunal's power to decide on its own jurisdiction over the claims. Article 14 is a key innovation in the SCC Rules that introduces a new standard contained as well in Article 13 on joinder of additional parties ("Joinder") and Article 15 on the consolidation of arbitrations ("Consolidation"). For example, if a party to the arbitration² wants to join an additional party, bringing multiple claims against that additional party on the basis of more than one arbitration agreement, the standard of Article 14 will be applied by the Board. Importantly, the Board's decision to join an additional party is independent from the tribunal's decision on its own jurisdiction over the parties.

2.2. Consolidation

The possibilities to consolidate arbitrations under the SCC Rules have been broadened. A party may request that a newly commenced arbitration be consolidated into a pending arbitration under the SCC Rules, provided that the relevant criteria are met.

The SCC Board decides whether or not to consolidate the arbitrations. The scenarios where consolidation is possible are not limited to those cases where all parties agree to consolidate, nor to cases where the claims are made on the basis of the same arbitration agreement. Article 15 also allows for consolidation of arbitrations where claims have been made under more than one arbitration agreement, provided that the relief sought arises out of the same transaction or series of transactions, and the Board considers that the arbitration agreements are compatible. Also, in deciding whether or not to consolidate the Board will have regard to the stage of the arbitrations, the efficiency and expeditiousness of the proceedings and other relevant circumstances.

3. Administrative secretary

The new SCC Rules regulate the relationship between secretaries, parties and the tribunal. Who acts as secretary and the role of the secretary, are questions that have been widely discussed in the arbitration community. Article 24 is a novel provision in the SCC Rules that addresses these questions in a flexible way. The tribunal has to request the parties' approval to appoint a specific candidate as secretary, who shall be impartial and independent. The provision does not specify the role of the secretary. Instead, the tribunal shall consult the parties regarding the tasks of the secretary.

The provision safeguards the tribunal and the continued development of the proceedings, by allowing the removal of the secretary through a challenge proceeding and explicitly stating that a party's request for removal does not prevent the arbitration from proceeding. In case a secretary is removed, the tribunal may propose the appointment of another secretary.

4. Number of arbitrators – 1 or 3

The default provision on the number of arbitrators has changed, abandoning the presumption in favour of a three-member tribunal and opting for a more flexible approach. New Article 16 provides that if the parties fail to agree on the number of arbitrators, the Board shall decide the number, which may be one or three, depending on the complexity of the case, the amount in dispute and other relevant circumstances.

5. Case management conference

The new SCC Rules encourage tribunals to be more hands-on. Under new Article 28, after the referral of the case tribunals shall promptly hold a case management conference with the parties to establish procedures for the conduct of the arbitration that enhance efficiency and expeditiousness.

Immediately following the case management conference, the tribunal shall establish a timetable for the conduct of the entire arbitration, including the date for the making of the award.

6. Security for costs

Tribunals may order a claimant or counterclaimant to pay security for costs. The provision governs the criteria the tribunal shall have regard to when determining whether to order security for costs and gives tribunals discretion to deal with the consequences of a party's non-compliance. Tribunals are allowed to stay or dismiss the party's claims in whole or in part, if the party fails to provide the security.

7. Efficiency and expeditiousness – a meaningful standard

A new Article 2 describes the expectation on the conduct of the participants to the arbitration, be it the tribunal, the parties, or the SCC; all of whom shall act in an efficient and expeditious manner. The standard of efficiency and expeditiousness can be found in a number of provisions throughout the new SCC Rules, such as joinder, multiple contracts, consolidation, case management conference, summary procedure, and importantly, in the provisions regulating costs.

Article 49 and Article 50 now explicitly state that the tribunal shall apportion between the parties the costs of the arbitration as well as party costs, having regard to each party's contribution to the efficiency and expeditiousness of the arbitration. Similarly, the SCC Board shall determine the costs of the arbitration having regard to the extent to which the tribunal has acted in an efficient and expeditious manner. Another novelty of the new SCC Rules in this regard is Article 10 Appendix II. This new provision states that the emergency arbitrator shall apportion the costs of the emergency proceedings between the parties applying the principles of Article 49 of the Arbitration Rules.

8. Appendix III Investment treaty disputes

The SCC has a strong presence in investment arbitrations, with over 90 of them having been brought to the SCC over the past 20 years. The SCC recognizes that investment arbitrations may touch upon the interests of actors who are not parties to the arbitration, but who can bring a perspective of importance to the decision-making of the tribunal. Having this in mind and in consideration of the desire of some users to have greater transparency, the SCC has introduced Appendix III Investment treaty disputes. Appendix III consists of 4 new provisions that supplement the Arbitration Rules and that apply to cases based on a treaty providing for arbitration of disputes between an investor and a state.

Under Article 3 and Article 4, third parties³ may request or be invited by the tribunal to make a written submission in the arbitration. For a written submission to be allowed, it shall meet the relevant criteria, and the tribunal will take into account relevant circumstances, such as the nature and significance of the interest of the third party in the arbitration and whether the submission assists the tribunal in determining an issue by bringing a perspective or knowledge distinct from that of the disputing parties. These provisions do not change the SCC's nor the tribunal's duty of confidentiality.

The new provisions balance due process. They recognize the desire of third parties to intervene, while the parties to the dispute may test the submission of the third party. The parties to the dispute shall be given an opportunity to comment on any submission made and they may request further details regarding the written submission or request the third party to attend a hearing to elaborate or be examined on its submission.

The tribunal shall ensure that the submission does not disrupt the arbitration and it may require, as a condition to make the submission that the third party⁴ provides security for the costs expected to be incurred by the disputing parties as a result of the submission.

Importantly, Article 2 of Appendix III replaces Article 16 of the Arbitration Rules (Number of arbitrators). In practice this means that in investor-state disputes, when there is no agreement on the number of arbitrators, the tribunal shall be composed of three arbitrators, unless the Board decides that a sole arbitrator shall decide the dispute, having regard to the complexity of the case, the amount in dispute and other relevant circumstances.

II. 2017 Rules for Expedited Arbitrations - Key changes

For over 20 years the SCC has had a separate set of rules designed for smaller sized disputes that are appropriate for a quicker procedure. These are the Rules for Expedited Arbitrations (“Expedited Rules”). The Expedited Rules mirror to a great extent the Arbitration Rules, but for some basic features that distinguish them from each other. For example, under the Expedited Rules it is always a sole arbitrator who decides the dispute; the award is to be made within three months from the referral of the case; the number of submissions and deadlines to exchange them are limited; an award does not have to be reasoned; and a different (lower) table of costs applies.

Many of the amendments now introduced to the Arbitration Rules are also introduced to the Expedited Rules (multi-party and multi-claim provisions, administrative secretary, security for costs, etc.). Whereas other amendments which are not suitable for cases administered under the Expedited Rules have been excluded (like Appendix III Investment Treaty Disputes), or have at least been adapted to the reality of the Expedited Rules.

Key amendments introduced only to the Expedited Rules include:

1. Frontloading the case

Under the new Expedited Rules, the submission of the request for arbitration (Article 6) and the answer (Article 9) will also constitute the submission of the statement of claim and the statement of defence, respectively. With this amendment, the time used before and after the referral of the case to the sole arbitrator will be optimized. The main submissions will already be in place when the arbitrator receives the case file from the Secretariat, facilitating the management of the case for the arbitrator early on in the procedure.

2. Case management conference – timetable within 7 days

New Article 29 mirrors to a great extent the new Article 28 of the Arbitration Rules, with the caveat that under the Expedited Rules the sole arbitrator shall seek to establish a timetable not later than 7 days from the referral of the case. The same as in Article 28 of the Arbitration Rules, the timetable shall be for the conduct of the entire arbitration, including the date for making the award.

3. Rules swap

The right case under the right rules. Over the years the SCC has seen some cases for which the parties had agreed on the Expedited Rules but, considering the complexity and size of the case, were more appropriate for administration under the Arbitration Rules. Until now, the SCC has lacked explicit support in the Rules to offer or to invite the parties to reconsider what rules should be applied.

A new provision, Article 11, introduced to the Expedited Rules allows the SCC to invite the parties to agree on changing the rules applicable to their dispute from the Expedited Rules to the Arbitration Rules. The SCC may do this prior to the appointment of the sole arbitrator, and having regard to the complexity of the case, the amount in dispute and other relevant circumstances.

III. Costs

Cost-efficient proceedings while ensuring fair compensation. The last time that the tables of costs were subject to a comprehensive revision was in 2006, although some slight adjustments were made in 2014. The tables of costs have been revised to reflect a balance between our users' interest for cost-efficient proceedings with the arbitrators' interest for a fair compensation. The ad-valorem system to calculate the arbitrators' and the administrative fee is maintained but the fees have been increased under both the Arbitration Rules and the Rules for Expedited Arbitrations. The registration fees as well as the costs of the emergency proceedings have also been increased.

1. Same jurisdictional standard as in Article 12 (i), where the Board shall dismiss a case in whole or in part if the SCC manifestly lacks jurisdiction over the dispute.
2. Only a party to the arbitration may request joinder. But, a third (additional) party may not request to be joined to the arbitration.
3. Article 3, Appendix III regulates third persons, while Article 4, Appendix III regulates non-disputing treaty parties.
4. Applicable only to third persons.



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