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International Arbitration in Stockholm: Modern, Efficient ADR with Century-Old Roots

By Anja Havedal Ipp

“The aim was to streamline certain arbitral procedures.”

The Arbitration Institute of the Stockholm Chamber of Commerce (SCC) is one of the world’s leading forums for international commercial and investment arbitration. Established in 1917, the SCC gained recognition on the global stage in the 1970s, when the United States and the Soviet Union chose Stockholm as neutral ground for the resolution of East-West trade disputes. Since then, the SCC has emerged as one of the world’s foremost institutions for international commercial arbitration. Today, around half of the SCC caseload comprises international disputes, involving parties from 30-40 countries each year. The SCC also plays a unique role in the international system developed for bilateral and multilateral investment protection worldwide: More than 100 bilateral investment treaties (BITs) refer investor-state disputes to Stockholm, and the SCC Rules are now among those most commonly used for such disputes, second only to the ICSID and UNCITRAL rules.

The SCC launched revised arbitration rules at the beginning of 2017, after a two-year process that involved an international review committee, user consultations and public hearings.¹ The aim was to streamline certain arbitral procedures, respond to user demands for more time- and cost-efficient proceedings, and accommodate global trends and developments in arbitral practice. What follows is a summary of the most significant features and innovations of the revised SCC Rules, and some reflections based on a year and a half of their implementation.

Efficiency as a Guiding Principle

Arbitration users have in recent years voiced concern regarding increasing costs; according to the 2018 Queen Mary Survey, high cost and lack of speed are seen as among arbitration’s worst features.² Heeding these concerns, the SCC made efficiency and expeditiousness the guiding principles of the rules revision process.

A new Article 2 was added, stipulating that the SCC, the tribunal and the parties “shall act in an efficient and expeditious manner” throughout the proceedings. Similarly, Article 23 provides that arbitrators must conduct the arbitration in an efficient and expeditious manner, and Article 28 requires the tribunal and the parties to “adopt procedures enhancing the efficiency and expeditiousness of the proceedings.” The standard of efficiency and expeditiousness is also found in the provisions on

joinder, multiple contracts, consolidation, and summary procedure.

“A party can request the tribunal to decide on one or more issues of fact or law by way of summary procedure.”

To put force behind the references to efficiency and expeditiousness, the SCC Rules also include corresponding cost provisions. This means that, in apportioning the arbitration costs between the parties, the tribunal must consider each party’s contribution to the efficiency and expeditiousness of the arbitration. A winning party may not recover its costs if the party’s litigation tactics have caused delays. Similarly, in determining the costs of the arbitration, the SCC now explicitly considers the extent to which the tribunal acted in an efficient and expeditious manner; for example, repeated or unreasonable requests for extensions of time to render the award may result in decreased fees for the arbitrators.

Summary Procedure

Also in the spirit of efficiency, the 2017 SCC Rules include a summary procedure provision. Under article 39, a party can request the tribunal to decide on one or more issues of fact or law by way of summary procedure, without necessarily undertaking every procedural step that might otherwise be adopted for the arbitration. The request can be made at any point during the arbitration; this differs from similar provisions in other arbitration rules, which typically allow for the *early* dismissal of claims.

SCC’s summary procedure is a case-management tool intended to permit the quick dismissal of frivolous claims or untenable allegations concerning jurisdiction, admissibility or merit. It may be appropriate where an allegation of fact or law material to the dispute is manifestly unsustainable, or in situations where no award could be rendered in favor of a party under the applicable law, even if the facts alleged by that party are assumed to be true.

If the tribunal grants a party’s request for summary procedure, it also determines *how* to proceed. In other words, the rule itself does not specify the procedural steps, but rather allows the tribunal to shape the procedure as it sees fit. To date, the summary procedure provision has seen only very limited use, and no tribunal has so far granted a request to proceed summarily.

Tribunal Size and Secretaries

In previous versions of the SCC Rules, there was a presumption that the dispute should be heard by three arbitrators—two appointed by the parties and the SCC-appointed chair—unless the parties otherwise agreed. In the 2017 Rules, this presumption was abandoned in favor of a more flexible approach, informed by the reasoning that a sole arbitrator will result in lower fees and quicker arbitral proceedings. Now, unless the parties' arbitration agreement stipulates the number of arbitrators, the parties must express their preference in their initial submissions. In most cases registered since the implementation of the new rules, this has led to party agreement on a three-member tribunal. In the few cases where the number of arbitrators has become a question for the SCC, the board has usually decided to appoint a sole arbitrator rather than a tribunal. Overall, including cases where the tribunal makeup is stipulated by the arbitration clause, around 70 percent of cases are heard by a three-member tribunal, and the remainder by a sole arbitrator.

"In 2017, more than one-third of the 200 new cases were registered under the Expedited Rules."

Another way to make arbitral proceedings more efficient is for a secretary to assist the tribunal with administrative tasks. The role of tribunal secretaries has been a hotly debated issue in recent years, and most institutional arbitration rules now regulate how secretaries are to be appointed and what tasks they may perform. Under Article 24 of the 2017 SCC Rules, a tribunal or sole arbitrator may propose that a certain secretary be appointed, but the SCC will appoint that secretary only if the parties approve. This gives the parties an opportunity anonymously to decline the involvement of a secretary. The secretary is also required to sign a statement of impartiality and independence, and can be challenged and removed on the same grounds as an arbitrator. The SCC Rules do not, however, address the secretary's tasks, but leaves this up to the tribunal and the parties.

Multiparty and Multi-Contract Disputes

The 2017 SCC Rules also include provisions aimed at complex disputes, in which it may be more efficient to hear in one arbitration all claims related to a particular business transaction or series of transactions. Article 14 specifies the circumstances under which a party may make claims arising out of more than one contract; Article 15 provides for the consolidation of a newly commenced arbitration with a pending one; and Article 13 allows an existing party to "bring in" a third party through joinder.

Previously, these procedural tools were largely dependent on party agreement, but in the 2017 Rules

the SCC may allow multi-contract claims, consolidation of arbitrations, or joinder of additional parties even over the objection of a party. In deciding whether to do so, the SCC Board will take into account whether the arbitration agreements are compatible, whether the claims arise out of the same transaction, and whether it will serve the efficiency and expeditiousness of the proceedings. Decisions by the SCC board on joinder, consolidation and multi-contract issues are preliminary; the tribunal ultimately has to decide whether it has jurisdiction over all parties and claims. So far, most requests for consolidation have been granted, and the sole request for joinder was rejected as untimely. Multi-contract claims usually proceed in one arbitration based on party agreement, except where the arbitration clauses are obviously incompatible.

Rules for Expedited Arbitration

In addition to its Arbitration Rules, the SCC also maintains separate Rules for *Expedited Arbitration* ("Expedited Rules"). Expedited arbitrations make up a growing segment of the SCC caseload: In 2017, more than one-third of the two hundred new cases were registered under the Expedited Rules. The increasing popularity of expedited arbitration may be a reaction to the general trend toward longer, more complex and resource-intensive arbitral proceedings. In an expedited arbitration, the dispute is heard by a sole arbitrator, there is often no hearing, and page and time limitations are imposed on the parties' written submissions. At the SCC, the Expedited Rules apply only where the parties have so agreed. Most commonly, this is by stipulation in the arbitration agreement, but it also happens that the parties agree on an expedited procedure after a dispute has arisen.

The SCC launched revised Rules for Expedited Arbitration in 2017, seeking to offer its users even more streamlined, efficient and cost-effective dispute resolution. One significant change in the 2017 Expedited Rules was that the Request for Arbitration also constitutes the Statement of Claim, and that the respondent's Answer also constitutes the Statement of Defense. This "front-loading" of the case aims to save time by having the main submissions in place when the arbitrator receives the case file. Although some observers were concerned that this would create confusion among users, the new procedure has worked well in practice.

In addition to the Request for Arbitration and the Answer, each party may make only one supplementary written submission. The arbitrator may, of course, request the parties to make additional submissions if necessary. The Expedited Rules also specify that submissions should be brief and, importantly, that the time frame for submission must not exceed 15 working days, unless the arbitrator finds compelling reasons to give a party more time. In the spirit of expediency, the rules also require that a case management conference be held promptly after referral, and that a timetable be set within seven days. In the

SCC's experience, arbitrators, parties and counsel generally comply with these deadlines.

The 2017 Expedited Rules introduced a presumption that no hearing should be held in an expedited case unless a party so requests *and* the arbitrator considers that special reasons exist. In practice, hearings have been held in about one-third of the cases initiated under the revised Expedited Rules. The absence of a hearing typically contributes to a quicker resolution of the dispute: In 2017, 54 percent of awards under the Expedited Rules were rendered within three months of referral, and another 38 percent within six months.

Prior to the 2017 revision of the Expedited Rules, arbitrators voiced concerns that parties' expectations of the proceedings sometimes did not match the procedural framework envisioned by the rules. As a result, the revised rules give the arbitrator a greater mandate to limit the proceedings and reject parties' requests for further submissions or longer hearings. The 2017 Expedited Rules emphasize efficiency, and instruct the arbitrator to "consider at all times the expedited nature of the proceedings."

Looking to the Future

Having celebrated its centennial in 2017, the SCC Arbitration Institute now has its eye on the horizon. The SCC intends to maintain its strong international profile,

and continue to be an active voice speaking for efficient and flexible alternative dispute resolution.

The SCC aims to build on its remarkable history, letting its unique understanding of commercial and investment disputes inform an even better arbitration experience for users. To this end, the Institute is constantly evaluating the services provided by the secretariat and the work performed by the appointed arbitrators. It seeks the parties' views on the costs of the arbitration, and engages in dialogue with companies and counsel regarding dispute resolution needs and preferences. Through this continuous process, the SCC hopes to improve all aspects of the arbitral process. In the near future, this may include the creation of a digital platform for use by tribunals and parties in case management, as well as expanded services provided by the secretariat to tribunals and users.

Endnotes

1. The revised SCC rules went into effect on 1 January 2017, in connection with the SCC's centennial anniversary. The rules are available in several different languages on the SCC website (sccinstitute.com).
2. [http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration-\(2\).PDF](http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2018-International-Arbitration-Survey---The-Evolution-of-International-Arbitration-(2).PDF).

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