

SCC Practice: Arbitration Costs in Settled Cases

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I. Introduction

This article reviews arbitration costs when the parties decide to settle their case, after the case has been referred to the tribunal under Article 18 of the SCC Arbitration Rules (“SCC Rules”). The first section summarizes SCC arbitration proceedings, the second section provides general principles on arbitration costs under the SCC Rules and the third section summarizes a number of different types of case during the period 1 January 2005 – 31 July 2014 where the parties decided to enter into a settlement.

The aim is to illustrate how decisions on final arbitration costs relate to the point in time when the parties reach their settlement.

The settlement awards described in this article were based on different versions of the SCC Rules, depending on when the arbitration was commenced. However, this does not affect the general principles applied.

II. SCC Arbitration Procedure Overview

The SCC Rules apply to both commercial arbitration and investment arbitration.

Arbitration under the SCC Rules commences when a Claimant files a request for arbitration with the Secretariat and ends when the tribunal renders a final award.¹ The Claimant pays the registration fee at the same time as filing a request for arbitration.² The request for arbitration should also include the appointment of an arbitrator.³ The Secretariat will then forward the request for arbitration to the Respondent, which may file an answer.⁴ The Respondent should appoint an arbitrator in its answer.⁵

¹ Art. 4 of the SCC Rules.

² Art. 3 (1) of the SCC Rules.

³ Art. 2 of the SCC Rules.

⁴ Art. 5(1) of the SCC Rules.

⁵ *Ibid.*

The Secretariat will then calculate the Advance on Costs which the parties are to pay in equal shares. After the parties have paid, the Secretariat refers the case to the tribunal.⁶

The SCC Rules provide a general overview of the stages of proceedings once the case has been referred to the tribunal. For instance, the rules require filing of a Statement of Claim by the Claimant and a Statement of Defence by the Respondent.⁷ The tribunal may request additional written submissions when necessary.

The SCC rules do not limit the number of written submissions by the parties. However, it may be noted that the SCC Rules for Expedited Arbitration only allow one additional written submission by each party.⁸ Additional written submissions can be in the form of statements of witnesses, statements of evidence, and so on.

Tribunals may issue procedural orders as they deem fit. While a hearing is not mandatory, it can be held at the request of the parties or as deemed necessary by the tribunal. In practice, tribunals may also call the parties together for a planning or preparatory meeting.

After the tribunal declares closure of the proceedings, it will prepare an award. The tribunal may also render a separate award on a separate issue.

III. SCC Rules on Costs

The general principles of the SCC Rules on costs apply to both commercial arbitration and investment arbitration.

When the Claimant files a request for arbitration with the SCC, it pays a registration fee of EUR 2,000 (under the SCC Rules) and EUR 1,500 (under the SCC Rules for Expedited Arbitration).⁹ The Secretariat will then calculate the Advance on Costs, which is an estimate of the costs of the arbitration.

The arbitration costs consist of the arbitrators' fees, the administrative fee of the Secretariat and the expenses of the arbitrator(s) and the Secretariat.¹⁰

The fee to the arbitrator(s) and to the Secretariat is based on the amount in dispute in accordance with the schedule of costs in the SCC Rules. The amount in dispute includes the amount of all claims, counterclaims and set-offs.¹¹

An arbitrator's reimbursable expenses consist of travel costs, hearing costs (for instance rental of hearing rooms), interpreter and translation services, courier and expert expenses.

⁶ Art. 18 of the SCC Rules.

⁷ Art. 24 of the SCC Rules.

⁸ Art. 19 (3) of the SCC Rules.

⁹ In force as of 1 January 2015.

¹⁰ Art. 43 (1) of the SCC Rules.

¹¹ Appendix III of the SCC Rules, Art. 2 and 3.

When the parties decide to settle at any time during the proceedings, they should notify the tribunal and the SCC.¹² The SCC will then calculate the final arbitration costs to be incorporated in the settlement award made by the tribunal.

In the event of a settlement, the SCC considers a number of circumstances before taking a final decision on the Costs of Arbitration. Fees are set in the form of a certain percentage of the preliminary fees as contained in the Advance on Costs.

A key factor is the point in time at which the settlement occurs. In short, an answer is sought to the question “How large a portion of the initial work foreseen when the case was referred to the arbitrations has been concluded?” An early settlement will thus result in a lower fee, and vice versa. For example, if the parties settle shortly before the main hearing, arbitrators are expected to have quite fully examined the case, which will also influence the size of the fee.

The complexity of the case may also be a factor, for example if there have been procedural issues involving jurisdiction and consolidation, requests for interim measures, and if there has been more than one hearing. As a final factor, the SCC may also take into account the time spent by the arbitrators.

As for the administrative fee, it may happen that the administrative fee of the SCC is set at 100% of the preliminary fee if the parties settle after the case has been referred to the tribunal. This is due to the fact that in many situations the principal tasks of the SCC will not be reduced by the settlement.

The final arbitration costs are drawn from the Advance on Costs. Any surplus due to settlement will be distributed to the parties in the same proportions as they paid at the commencement of the arbitration, to the extent the parties have not agreed otherwise

¹² Art. 39 (1) of the SCC Rules.

IV. Examples of Decisions on Fees after settlement

This section describes eleven cases where the parties settled at different points in time. The aim is to exemplify how the time of settlement affects the percentage decided out of the preliminary fees as included in the Advance on costs.

Settlement after filing of statement of claim

SCC Arbitration (2013/037)

<u>Nationality of the parties:</u>	Swedish
<u>Seat of Arbitration:</u>	Stockholm
<u>Nationality of the arbitrator:</u>	Swedish
<u>Applicable rules:</u>	SCC Rules
<u>Language:</u>	Swedish

BACKGROUND

The dispute arose from failure by the Respondent to deliver goods to the Claimant based on a delivery agreement. The amount in dispute was EUR 368,947.

Within one month after the Claimant filed its Statement of Claim, the parties confirmed that they had reached a settlement.

DECISION ON FEES

After the settlement, the arbitrators' fee was fixed at 25% of the preliminary fee in the Advance on Costs. The administrative fee of the SCC was fixed at 80% of the preliminary fee in the Advance on Costs.

Settlement after filing of Statement of Claim and Statement of Defence (1)

SCC Arbitration (093/2008)

Nationality of the parties: Claimant: Russian
Respondent: Swedish

Seat of Arbitration: Stockholm

Nationality of the arbitrators: English, Russian and Swedish

Applicable rules: SCC Rules

Language: English

BACKGROUND

The parties entered into an agreement on supply of products and services. The dispute arose when problems occurred with the purchased object. The amount in dispute was EUR 2,118,275.

The tribunal had issued the first procedural order. The parties settled after the Claimant had filed its Statement of Claim and the Respondent had filed its Statement of Defence following the first procedural order.

DECISION ON FEES

After the settlement, the arbitrators' fee was fixed at 20% of the preliminary fee in the Advance on Costs. The administrative fee of the SCC was fixed at 80% of the preliminary fee in the Advance on Costs.

Settlement after filing of Statement of Claim and Statement of Defence (2)

SCC Arbitration (086/2005)

Nationality of the parties: Claimant: Swedish
Respondent: English

Seat of Arbitration: Stockholm

Nationality of the arbitrators: Swedish

Applicable rules: SCC Rules

Language : English

BACKGROUND

The dispute arose from a contract where the Respondent agreed to install equipment at the Claimant's production facility. The Claimant asked to terminate the contract. The amount in dispute was EUR 5,000,878.

The parties settled after the Claimant filed its Statement of Claim and the Respondent filed its Statement of Defence with a counterclaim.

DECISION ON FEES

After the settlement, the arbitrators' fee was fixed at 37% of the preliminary fee in the Advance on Costs. The administrative fee of the SCC was fixed at 100% of the preliminary fee in the Advance on Costs.

Settlement after Statement of Claim, Statement of Defence and further submissions (1)

SCC Arbitration (118/2011)

Nationality of the parties: Claimant: Russian
Respondent: Spanish

Seat of Arbitration: Stockholm

Nationality of the arbitrators: American, Norwegian and Swedish

Applicable rules: SCC Rules

Language: English

BACKGROUND

The parties entered into a contract for supply of waste management equipment. The dispute arose from the character and quality of the equipment. The amount in dispute was EUR 1,995,998.

The Claimant had filed its Statement of Claim and the Respondent had filed its Statement of Defence. The Claimant had further filed a Reply to the Statement of Defence. The parties settled following the Statement of Rejoinder filed by the Respondent after the Reply.

DECISION ON FEES

After the settlement, the arbitrators' fee was fixed at 60% of the preliminary fee in the Advance on Costs. The administrative fee of the SCC was fixed at 80% of the preliminary fee in the Advance on Costs.

Settlement after Statement of Claim, Statement of Defence and further submissions (2)

SCC Arbitration (061/2012)

Nationality of the parties: Swedish

Seat of Arbitration: Stockholm

Nationality of the arbitrators: Swedish

Applicable rules: SCC Rules

Language: Swedish

BACKGROUND

The dispute arose from an agreement on supply of district heating. The parties had different views on calculation of electricity prices. The amount in dispute was EUR 9,247,520.

The parties had filed a large number of submissions plus correspondence, including six from the Claimants and five from the Respondent. They decided to settle after holding the first planning meeting following these submissions. The arbitration was complex.

DECISION ON FEES

After the settlement, the arbitrators' fee was fixed at 70% of the preliminary fee in the Advance on Costs. The administrative fee of the SCC was fixed at 90% of the preliminary fee in the Advance on Costs.

Settlement after Statement of Claim, Statement of Defence and further submissions (3)

SCC Arbitration (151/2007)

Nationality of the parties: Swedish

Seat of Arbitration: Stockholm

Nationality of the arbitrators: Swedish

Applicable rules: SCC Rules

Language: Swedish

BACKGROUND

The dispute arose from a delivery agreement where the Claimant was to install equipment at the Respondent's premises. The Respondent alleged an error in the installation and refused to pay for the equipment.

The parties settled after filing of Statement of Claim and Statement of Defence along with two submissions each. The amount in dispute was EUR 409,605.

DECISION ON FEES

After the settlement, the arbitrators' fee was fixed at 75% of the preliminary fee in the Advance on Costs. The administrative fee of the SCC was fixed at 80% the preliminary fee in the Advance on Costs.

Settlement after a pre-hearing conference

SCC Arbitration (017/2006)

Nationality of parties: Claimant: Estonian
Respondent: EU State

Seat of Arbitration: Stockholm

Nationality of the arbitrators: Finnish, Swiss and English

Applicable rules: SCC Rules

Language: English

BACKGROUND

The parties entered into an agreement for infrastructure privatization. The dispute arose from a shareholders agreement regulating the privatization. The amount in dispute was more than EUR 30,000,000.

The parties had filed three submissions and had had a prehearing conference. They requested the tribunal to terminate the proceedings after this conference.

DECISION ON FEES

After the settlement, the arbitrator's fee was fixed at 30% of the preliminary fee in the Advance on Costs. The administrative fee of the SCC was fixed at 75% of the preliminary fee in the Advance on Costs.

Settlement at evidentiary hearing

SCC Arbitration (075/2013)

Nationality of the parties: Claimant: Ukrainian
Respondent: Swedish

Seat of Arbitration: Stockholm

Nationality of the arbitrators: Austrian, Polish and Swedish

Applicable rules: SCC Rules

Language: English

BACKGROUND

The dispute arose from a purchase agreement where the Claimant agreed to purchase a certain machine from the Respondent. The Claimant argued that the machine did not conform to contract specification and the Respondent had failed to remedy the defects. The amount in dispute was EUR 966,554.

The parties had filed Statement of Claim and Statement of Defence along with 11 submissions from the Claimant and 9 submissions from the Respondent. After the last submission, an evidentiary hearing was held where the parties notified their intention to enter into a settlement.

DECISION ON FEES

After the settlement, the arbitrators' fee was fixed at 80% of the preliminary fee in the Advance on Costs. The administrative fee of the SCC was fixed at 100% of the preliminary fee in the Advance on Costs.

Settlement after main hearing (1)

SCC Arbitration (072/2013)

Nationality of the parties: Claimant: Dutch
Respondent: Turkish

Seat of Arbitration: Stockholm

Nationality of the arbitrators: Dutch and German

Applicable rules: SCC Rules

Language: English

BACKGROUND

The dispute arose from an agreement between the Claimant and the Respondent to hold and organize an exhibition. The Respondent claimed that the Claimant had breached the agreement and hence refused to pay the Claimant. The amount in dispute was EUR 620,419.

The parties exchanged correspondence following the Statement of Claim and Statement of Defence. A hearing on jurisdiction and merits had also been held. The parties decided to settle after their Submission on Costs following the hearing.

DECISION ON FEES

The arbitrators' fee and the administrative fee of the SCC were fixed at 100% of the preliminary fee in the Advance on Costs.

Settlement after main hearing (2)

SCC Arbitration (091/2008)

Nationality of the parties: Claimant: British Virgin Islands
Respondent: a CIS country

Seat of arbitration: Stockholm

Nationality of the arbitrators: Dutch, English and Swiss

Applicable rules: SCC Rules

Language: English

BACKGROUND

The Claimant and the Respondent entered into an agreement to extract natural resources. The dispute arose from the Respondent's action related to the permitting of the activity. The amount in dispute was over EUR 50,000,000.

Both parties had filed more than ten submissions each and the Tribunal had issued eight procedural orders. A hearing took place for three days. The parties jointly requested various further postponements of the date for rendering the final award in light of their ongoing settlement negotiations. The parties finally informed the tribunal of their settlement agreement eight months after the hearing.

DECISION ON FEES

The arbitrators' fee and the administrative fee of the SCC were fixed at 100% of the preliminary fee in the Advance on Costs.

Settlement after a separate award on jurisdiction

SCC Arbitration (098/2007)

Nationality of the parties: Claimant: German
Respondent: American

Seat of Arbitration: Stockholm

Nationality of the arbitrators: Swedish and German

Applicable rules: SCC Rules

Language: English

BACKGROUND

The dispute arose from a sale purchase contract under which the Claimant was to deliver parts of equipment for the Respondent's business. The Respondent alleged various problems with the equipment delivered and initiated proceedings in a U.S state court. The Claimant filed a request for arbitration with the SCC seeking a decision affirming that the Respondent had no damages claim against the Claimant and a decision awarding the Claimant payment of the purchase price under the contract. The amount in dispute was EUR 502,049.

The parties had filed a number of pleadings on jurisdictional issues. The submissions were extensive and the case was complicated. The Tribunal issued a separate award declaring that it had jurisdiction over only one of the Claimant's requests for relief but it lacked jurisdiction on other issues. The parties settled after some correspondence following this separate award.

DECISION ON FEES

The arbitrators' fee and the administrative fee of the SCC were fixed at 100% of the preliminary fee in the Advance on Costs.