WATSON FARLEY
&
WILLIAMS

BRIEFING

FAST-TRACK ARBITRATION AND EXPEDITED PROCEDURE UNDER THE REVISED ARBITRATION RULES OF THE ICC

MAY 2017

- THE ICC HAS REVISED ITS ARBITRATION RULES
- THE MOST REMARKABLE CHANGES INCLUDE THE INTRODUCTION OF AN EXPEDITED PROCEDURE
- THIS PROCEDURAL INNOVATION WILL BE OF PARTICULAR INTEREST FOR THE RENEWABLE ENERGY SECTOR

The revised Arbitration Rules of the International Chamber of Commerce ("ICC") came into force on 1 March 2017. The most remarkable changes include the introduction of an expedited procedure (*Article 30 du Règlement d'arbitrage, Appendice VI*). This expedited procedure entitles the International Court of Arbitration of the ICC ("the Court"), where a dispute concerns a sum less than US$2m, to appoint a sole arbitrator, even where the arbitration agreement provides otherwise.

This procedural innovation is of particular interest to the renewable energy sector, as many agreements, including maintenance contracts, contain arbitration clauses which would cover amounts in dispute below the US$2m threshold.

Framework

The expedited procedure works as follows:

On receipt of the Response to the Request for Arbitration, the Secretariat of the Court will inform the parties that the expedited procedure applies to their dispute. The Court then takes the lead in the proceedings and may designate a single arbitrator, even when the arbitration clause provided for three (or more).

The procedure is then, as its name indicates, fast-tracked and involves:

- no document defining the tribunal's Terms of Reference;
- a ban on any new claims (except when authorised by the arbitral tribunal);

- a case management conference to take place at the latest within 15 days of the file's submission to the arbitral tribunal;
- appropriate procedural measures, decided at the discretion of the arbitral tribunal;
- a decision on the papers without a hearing, or a hearing by video-conference, telephone or other similar means;
- an award rendered within a maximum period of six months from the date of the case management conference; and
- tribunal fees fixed in accordance with the scale in Appendix III of the Arbitration Rules.

"THIS PROCEDURE AIMS TO INTRODUCE A FAST-TRACK ARBITRATION PROCEDURE THAT IS CHEAPER AND BETTER SUITED TO SMALL CLAIMS."

This procedure aims to introduce a fast-track arbitration procedure that is cheaper and better suited to small claims. This is done by neutralising, as far as possible, the disrupting power of a party seeking to defeat the legitimate demands of another party by using delay tactics or forcing up costs.

Importantly, the expedited procedure provisions will be binding on the parties simply as a result of their reference to the ICC Arbitration Rules in their contract; no special option is required.

Safeguards of the procedure

The procedure applies only to arbitration agreements (clauses or separate agreements) concluded after the Rules came into force, i.e. 1 March 2017. It therefore does not apply to agreements that were in existence on that date.

While no option is required, the parties may exclude the expedited procedure in their agreement with express wording.

The use of the expedited procedure is at the Court's discretion and is not therefore automatic. As such, the Court may itself, at the request of one of the parties and before the arbitral tribunal has been constituted, decide that the expedited procedure is not appropriate for the dispute.

One consequence of the US$2m threshold is that this gives the parties, especially the Respondent, the possibility of preventing (whether tactically or otherwise) the Court from triggering any expedited procedure by filing a counter-claim to increase the amount in dispute above the US$2m cap.

Remaining issues

A question remains as to the validity of this type of proceedings in the absence of relevant case law, other than a judgment by the High Court of Singapore on a comparable procedure introduced by the Singapore International Arbitration Centre (*AQZ v ARA* (2015) SGHC 49) which confirmed the validity of a fast-track arbitration procedure.

There is also some debate amongst practitioners in different jurisdictions as to whether provisions such as these, which can on their face override the express wording of the contract, work. Different legal systems have different approaches. However, the concept of an agreement incorporating extensive provisions through reference to a set of institutional arbitration rules is recognised throughout arbitration centres as the basis for arbitration clauses.

FOR MORE INFORMATION

Should you wish to discuss any of the matters raised in this Briefing, please speak with Lucien Rapp or your regular contact at Watson Farley & Williams.

LUCIEN RAPP
Senior Consultant / Professor of Law
Paris

+33 1 56 88 44 37
lrapp@wfw.com

Publication code number: 59995134v3