

# ICC Expands Automatic Application of Expedited Procedure

**Minding Your Business Blog** on April 14, 2021

ICC arbitrations based on agreements entered into in 2021 and beyond will follow an expedited procedure if the amount in dispute is \$3 million or less – up from the previous \$2 million or less.

This expansion of the automatic applicability of the Expedited Procedure is one of the most significant amendments made to the revised ICC Arbitration Rules 2021, which entered into force on January 1, 2021. It is thus important for parties agreeing to ICC arbitration to be acquainted with the key features of that procedure *and* with their ability to either opt in or opt out of it.

The Expedited Procedure will apply automatically to disputes up to \$3 million *unless* the parties agree to **opt out**. Just as importantly, parties are free to **opt in** to the Expedited Procedure even if the amount in dispute exceeds \$3 million. As a practical matter, parties are likely to be able to agree to opt in or out only at the time they are negotiating the arbitration agreement: whether to do so should thus be considered at that time.

The following five key features of the ICC's Expedited Procedure should be borne in mind when deciding whether to extend or, on the contrary, exclude its application:

1. *Time limit of 6 months to render the final award*: the arbitral tribunal must render its award within 6 months from the date of the first procedural case management conference. This time limit is at the heart of this special procedure. The ICC Court can extend this time limit, but the vast majority of awards since the creation of the Expedited Procedure in 2017 have been rendered within that time limit. ([Appendix VI, Article 4.1 of the 2021 ICC Rules](#))
2. *Sole arbitrator*: importantly, even where parties have agreed to three arbitrators, the application of the Expedited Procedure will usually entail the appointment of a sole arbitrator. The objective is to expedite the constitution of the tribunal, promote the tribunal's ability to decide on both procedure and merits swiftly and reduce arbitrator fees. ([Appendix VI, Article 2 of the 2021 ICC Rules](#))

3. *No Terms of Reference and an early Case Management Conference (“CMC”)*: the Terms of Reference, usually the foundational document of an ICC arbitration, is dispensed with in the interest of time, and the first CMC must take place within 15 days of the date on which the file was transmitted to the arbitral tribunal. ([Appendix VI, Articles 3.1 and 3.3 of the 2021 ICC Rules](#))
4. *Document production and submissions are limited*: to ensure efficiency, the arbitral tribunal may, after consultation with the parties, decide not to allow requests for document production at all, and to limit the number, length and scope of written submissions, witness statements and expert reports. ([Appendix VI, Articles 3.4 of the 2021 ICC Rules](#))
5. *There may be no hearing*: the arbitral tribunal may, after consulting the parties, decide that there is no need for a hearing, in which case neither witnesses nor experts are examined and the dispute is decided solely on the basis of documents submitted by the parties. ([Appendix VI, Article 3.5 of the 2021 ICC Rules](#))

According to statistics published by the ICC, of the 869 registered cases in 2019, 146 cases were conducted under the Expedited Procedure – thus representing approximately 17% of ICC arbitration proceedings. The 2021 Rules revision is expected to drive that percentage up further. With parties becoming increasingly knowledgeable about the existence of this procedure, it is also likely that they will more often make an affirmative choice on whether – and in which cases – they want the Expedited Procedure to apply.

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