A NEWSLETTER FROM
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Dispute Resolution

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New SCC Arbitration Rules

The Arbitration Rules and the Expedited Rules of the Arbitration Institute of the Stockholm Chamber of Commerce have recently undergone a number of significant changes. The revisions came into force on 1 January 2017 and have been prepared by a committee consisting of 18 Swedish and international arbitration practitioners. Mannheimer Swartling partner Jakob Ragnwaldh has been chairing the committee.

The overall aim of the rules revision committee has been to make the arbitration procedure more time and cost efficient by increasing the possibilities for multicontract and multi-party claims and by introducing various mechanisms throughout the proceedings allowing for a more efficient procedure.

Some of the key changes to the Arbitration Rules and the Expedited Rules are presented below:

SCC has introduced a unique and innovative summary procedure in Article 39, providing 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 and may, for example, be used when a party has made an allegation that is manifestly unsustainable or when a

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claim is manifestly unfounded as a matter of law. The summary procedure is primarily a case management tool available at any time during the arbitration. This makes summary procedure unique in comparison to similar provisions of other institutions. The party requesting summary procedure shall explain why a particular issue should be heard by way of summary procedure and demonstrate that such a procedure would be efficient and appropriate under the circumstances.

Article 13 introduces a possibility for a party to request that a third party be joined to an existing arbitration. In the event that the third party objects to the request, the Board of the SCC will decide whether the third party should be joined to the arbitration. The final decision as to whether the Arbitral Tribunal has jurisdiction over a third party joined to the arbitration is taken by the Arbitral Tribunal.

Another new provision is Article 14, which allows a party to bring claims under more than one arbitration agreement in a single arbitration (without having to commence separate arbitrations on the basis of each arbitration agreement and without having to pay separate registration fees). If the other party objects, the claims may be determined in a single arbitration upon the decision of the Board.

Under the new Article 15, 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. Consolidation is possible not only under the same arbitration agreement but also 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 the arbitration agreements to be compatible.

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

The SCC has administered over 90 investment treaty arbitrations. Under a new Appendix III on investment treaty disputes, third parties may request, or be invited by the Arbitral Tribunal, to make a written submission to the Arbitral Tribunal. For a written submission to be allowed, the Arbitral Tribunal will consider the nature and significance of the interest of the third party in the arbitration and

whether the submission will assist the Arbitral Tribunal in determining an issue by bringing a perspective or knowledge distinct from that of the disputing parties. The parties 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 Arbitral Tribunal shall ensure that the submission does not disrupt the arbitration and may require that the third party provides security for the costs expected to be incurred by the disputing parties as a result of the submission. Appendix III also provides that when there is no agreement on the number of arbitrators, the Arbitral 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.

Since 1995, the SCC has had a separate set of rules for arbitrations of smaller value or complexity. Under the Rules for Expedited Arbitrations, there will always be a sole arbitrator and the award is to be made within three months from the referral of the case to the sole arbitrator. Moreover, the number of submissions are limited and an award does not necessarily have to be reasoned. Most of the amendments made to the Arbitration Rules are also included in the revised Rules for Expedited Arbitrations. The most important amendment to the Rules for Expedited Arbitrations is that the request for arbitration will also constitute the statement of claim and that the answer to the request for arbitration will constitute the statement of defence. The amendment has been made to ensure that the case proceeds on the merits also before the case is referred to the sole arbitrator, making the procedure more efficient and balanced.

What is the take away for users of the SCC system?

The SCC is one of the most efficient arbitral institutions. The improvements made to the Rules will make it possible for parties to make use of an even more efficient process going forward, whilst at the same time maintaining full flexibility for the parties and the Arbitral Tribunal to tailor-made the procedure to the circumstances of the case.

Contract drafters should in particular bear in mind the new provisions on joinder, consolidation and multicontract claims. For the clear majority of all contracts and contractual relationships, it is unnecessary, and in most cases ill-advised, for parties to draft elaborate arbitration agreements providing for arbitration in a multicontract/multiparty context. Rather, the parties should be able to take comfort from and rely on the SCC model clause and the multicontract/multiparty mechanisms provided for in the revised Rules.