

The Paris Arbitration Rules: A New Generation of Rules?

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On the 15th of April in the prestigious venue of the Hotel de Ville in Paris, the non-profit organization Paris Place d'Arbitrage introduced its new *ad hoc* "Paris Arbitration Rules", in front of 200 law practitioners from the arbitration community. These *ad hoc* rules present themselves as an alternative to the UNCITRAL rules, often considered as too heavy and as such, not satisfactory for the Parties. In light of the ever growing dissatisfaction of arbitration users with the cost and length of international arbitration proceedings, this initiative should be welcomed by the arbitration community as a positive effort to address the concerns of arbitration users.

The past few years have seen other major international arbitration institutions seeking to answer the needs of the users for faster and more efficient arbitration proceedings by introducing new sets of rules, sometimes as an alternative to their already existing ones. This new generation of rules tries to address the needs of the users, by rethinking the role of the actors of the procedure, giving more control over the procedure either to the institution, the tribunal or the Parties, fixing time limits, limiting submissions or allowing for emergency arbitrators: in its 2012 Rules, the ICC included the possibility for "emergency arbitrators", a duty of efficiency and of disclosure of availability for the arbitrators as well as a duty of collaboration for the Parties; in 2012, the Swiss Rules also included a duty of efficiency for the Parties and amended its procedures for expedited arbitrations by focusing on the limited number of submissions; similarly, SIAC included in its 2013 Rules provisions for "expedited procedures", while in 2010 the SCC drafted specific "expedited rules" – all expedited procedures being however designed for "small" claims.

If this diversification of rules reflects the undeniable success of international arbitration, it might also suggest that arbitration has become a product of mass consumption, further away from its original purpose of providing the Parties with a flexible, tailor-made dispute resolution method.

With the Paris Arbitration Rules, Paris Place d'Arbitrage takes a new turn, focused rather on the lightness of the Rules than the speed of the process. These Rules present themselves as a short set of rules addressed essentially to experienced international arbitration users, therefore relying on party autonomy and the trust in arbitrators empowered with a wide measure of discretion and authority. With efficiency in their center, the Paris Rules introduce a number of novel provisions.

Firstly, the Paris Rules require the Parties to evacuate from the debate all issues relative to the jurisdiction of the tribunal and the admissibility of the claim as early in the procedure as possible. Thus, the Parties are required to submit such objections in their Reply (articles 6.3, 6.4, and 8.2). Comparatively, neither institutional rules (ICC, SCC, SIAC or AAA) nor the UNCITRAL Rules segment the procedure as the Paris Arbitration Rules do.

By segmenting the proceedings, the Paris Rules prevent an ill-intentioned party from slowing down the process by submitting late objections and encourage the Parties to prepare their case upstream. The effect of provisions segmenting the procedure should be interpreted as a practical solution to a better organized resolution of the dispute, but also as a pedagogical tool towards efficiency as a common interest – if not, the premise of a new obligation to *front load arguments* [ie. as in the French doctrine of “*concentration des moyens*”] in international arbitration.

Secondly, the Paris Rules rely strongly on the authority of the Tribunal, more strongly it may seem, than any rule so far. In recent years, international Arbitration users have showed their concern with the lack of transparency when choosing arbitrators which has been weakening the already fragile trust between the average arbitration user and the well-established arbitrators. Hence, similarly to other recent Rules (ICC 2012, article 11.3; AAA 2009, article 7; SCC 2010 for expedited arbitration, article 14.3; or UNCITRAL 2010, article 11), the Paris Rules provide for a continuous duty of disclosure on the part of the arbitrators, one of the essential guarantees of the legitimacy of the arbitral process, especially in *ad hoc* proceedings where there is no institution overseeing it.

It is indeed the balance of powers between the Parties and the Arbitrators around which the Paris Rules are built, that make the originality of the Paris Rules. As they neither impose terms of references, nor do they set a stringent time limit for rendering an award (18 months), it is understandable that when the representatives of Paris Place d’Arbitrage underlined on April 15th that the Paris Rules were addressed to “refined” or “experienced” Parties, one should understand “to Parties able to remain in control of the procedure”.

These experienced Parties will need to keep in mind the provisions of article 1.2 which make the rules fully amendable, and always remember their ability – if not their obligation – to remain the masters of their fate. The Paris Rules expressly rely on the Parties ‘common purpose to reach an efficient and time effective solution while their very first article imposes on the Parties an express duty of cooperation – a goal which can only be achieved by shaping the dispute further upstream from the arbitration stage, by the claimant specifically.

As reminded on April 15th, the Rules suggest that Parties are invited to not simply rely on the “bare” rules, but use them to their advantage, and improve them according to their needs. This means, that Parties will necessarily have to address a number of questions **prior** to leaving them in the hands of the arbitrator(s).

In order to reach the objective of efficiency set in the Paris Rules, it would certainly be advisable for the Parties, like with any other set of Rules, to include an escalation clause in order to reach the contentious/arbitral stage with a precise definition of the then (hopefully) purely legal dispute; also, to include in the arbitration clause a number of preventive requirements such as the requirement to set up terms of references, the requirement from the arbitrator(s) to submit a statement of availability. Finally, efficiency of an arbitration procedure being contingent on the Tribunal’s responsiveness, and since the Paris Rules provide for a three members tribunal, Parties should consider opting for a sole arbitrator.

Notwithstanding the Appointing Authority’s power to remove or replace arbitrators when they fail to render a timely decision, trust in the Tribunal remains an essential condition of the success of the

Paris Rules. The Paris Rules go so far as to allow truncated tribunals to proceed with the rendering of the award if an arbitrator from a panel of three were to fail to participate in the Tribunal's deliberation (article 7.5); therefore avoiding the responsibility of building a trustful relationship with the arbitrator(s) would be a leap of faith no Party should be ready to make.

Thirdly, by simplifying the discovery process and limiting the content of the submissions of the Parties, the Paris Rules seem to characterize their duty of collaboration and efficiency. With the Paris Rules, the discovery process excludes metadata from the scope of discovery (article 6.8.h) and require that the submissions of the Parties be both "concise" and "focused" (article 6.7). Although the arbitrators are left with the discretion to appreciate this requirement, these provisions set a behavioral standard and a strong pedagogical message.

Fourthly, in order to add to the efficiency of the process, the Paris Rules allow for interim or emergency arbitrators, and for tribunals to grant *ex parte* relief. The growing trend for emergency arbitrators responds to the difficulties that may arise prior to the appointment of the Tribunal. Thus, the Paris Rules appear much more responsive to situations of emergency than the UNCITRAL Rules, therefore providing for a substantial innovation in the arbitration market. They appear to be the only *ad hoc* rules which provide with solutions usually found in institutional rules, making them competitive to institutional rules as well.

If one word were to characterize the Paris Rules, it would be the word "Responsibility": these Rules should not be considered as solely addressed to so-called "refined" Parties, but equally, to "refined" Arbitrators.