

Draft New SCC Rules: What's New?

Kluwer Arbitration Blog

June 15, 2016

Anja Havedal Ipp (Arbitration Institute of the Stockholm Chamber of Commerce)

Please refer to this post as: Anja Havedal Ipp, 'Draft New SCC Rules: What's New?', Kluwer Arbitration Blog, June 15 2016,

<http://arbitrationblog.kluwerarbitration.com/2016/06/15/draft-new-scc-rules-whats-new/>

As part of its centenary celebrations in January 2017, the Arbitration Institute of the Stockholm Chamber of Commerce ("SCC") will be launching updated rules. Drafts of the revised SCC Arbitration Rules and Rules for Expedited Arbitrations are now available on the SCC website. A public hearing was held in Stockholm on June 9 to discuss the drafts.

The draft rules are the product of a Rules Revision Committee ("Committee"), appointed by the SCC board in September 2014. The Committee includes Swedish and international arbitration practitioners and academics, members of the SCC board and the SCC secretariat. It has met regularly to discuss how to codify existing practices, streamline procedures, and respond to users' demands.

Much has happened in the arbitration world since the current SCC Rules went into effect in 2010 – just consider the rise of complex multi-party disputes, the new transparency rules for investor-state disputes, the controversy over the role of tribunal secretaries, and calls for yet more cost-efficient proceedings. Balancing and accommodating these issues and trends has been a central concern for the Committee. The result is a series of improvements and exciting new features.

The draft new SCC Arbitration Rules include, for example, the introduction of a summary procedure and an appendix applicable to investment arbitrations. There are also new provisions regarding security for costs, multiparty and multi-contract disputes, and the use of administrative secretaries.

- Summary procedure. Article 39 of the draft Arbitration Rules and Article 40 of the draft Rules for Expedited Arbitrations allow a party to request the tribunal to decide on one or more issues of fact or law by way of summary procedure. The summary procedure would be conducted without undertaking every procedural step that might otherwise be adopted for the arbitration. This case-management tool is intended to permit the quick dismissal of frivolous claims or untenable allegations. A request for summary procedure may concern jurisdiction, admissibility or the merits, and can be made at any point during the arbitration.
- Investment arbitrations. The SCC Rules are the third most frequently used set of arbitration rules in investment disputes—after the ICSID and UNCITRAL rules. Recognizing that such disputes raise different issues and involve different interests than commercial disputes, the Committee found it appropriate to include in the draft new rules an appendix that applies only in treaty-based disputes between an investor and a state. Most notably, the provisions in this appendix allow third persons and non-disputing treaty parties to apply to an arbitral tribunal for permission to make a written submission in the arbitration. After consulting the parties, the tribunal may also, on its own initiative, invite third persons and non-disputing treaty parties to make a submission on material issues in the arbitration.
- Security for costs. A new provision of the draft rules empowers tribunals to order a claimant or counterclaimant to pay security for costs. If a party fails to comply with such an order, the

tribunal has discretion to stay or dismiss the party's claim(s) in whole or in part.

- Administrative secretaries. Issues related to the involvement of tribunal secretaries in arbitral proceedings have been in the spotlight in recent years, but few institutional rules regulate their appointment and conduct. The draft new SCC rules largely codify existing SCC practice in this regard: Tribunals may submit to the SCC a proposal for the appointment of a secretary, and the SCC will formally appoint that secretary only if the parties approve. The draft rules also require the secretary to sign a statement of impartiality and independence, and allow for the challenge and removal of secretaries on the same grounds as those applicable to arbitrators.
- Multiparty and multi-contract disputes. The draft new rules include provisions designed for more efficient resolution of complex disputes. Article 13 of the draft Arbitration Rules provides for joinder of additional parties under certain circumstances. Article 14 codifies existing SCC practice in multi-contract disputes, by allowing parties to make claims arising out of more than one contract in a single arbitration – provided, of course, that the arbitration agreements are compatible. Decisions by the SCC board on joinder and multi-contract issues would be preliminary, and the tribunal's power to decide on its jurisdiction over parties and claims remains unchanged under the new rules.

For the draft SCC Rules for *Expedited* Arbitrations, the Committee has proposed several revisions aiming to further speed up the proceedings. Most notably, perhaps, under the draft new expedited rules, the Request for Arbitration will also constitute the claimant's Statement of Claim, and the Answer to the Request for Arbitration will constitute the respondent's Statement of Defence. This "front-loading" of the case aims to save time by having the main submissions in place when the arbitrator receives the case file. The draft expedited rules also provide that a case management conference should be held promptly after referral of the dispute to the arbitral tribunal, and that a timetable should be set within seven days.

Finally, on the topic of time efficiency, both sets of draft rules include a provision that expressly requires the SCC, parties and tribunals "to act in an efficient and expeditious manner" throughout the proceedings. Complementary language has also been added to the provisions on costs. Notably, the SCC should consider "the extent to which the tribunal acted in an efficient and expeditious manner" in determining arbitrator's fees. In turn, the tribunal is to consider "each party's contribution to the efficiency and expeditiousness of the arbitration" when apportioning costs in the final award.

The draft rules were discussed at a hearing on 9 June 2016 in Stockholm. The revised SCC Rules are expected to enter into force on 1 January 2017, in connection with the SCC's centennial anniversary.