

Kluwer Arbitration Blog

SCC Express: A Shortcut or A Detour?

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In late May 2021, the Swedish Chamber of Commerce (“SCC”) announced its most recent dispute resolution tool – SCC Express, a process conducted under the [SCC Rules for Express Dispute Assessment](#) (the “Rules”). [SCC Express](#) is marketed as “... a fast and simple way to get a neutral, legal assessment of the disputed matter – enabling you and your counterparty to move on faster”. As this blog post shows, this holds true in a limited array of situations.

What is SCC Express?

SCC Express is a confidential consent-based dispute assessment process. In order to initiate it, parties are required to explicitly consent to the same. The consent may be given at any time – in a prior contract between the parties or when the dispute arises (Art 2(2) of the Rules).

Once the presence of consent is confirmed, SCC appoints a legal expert (a “Neutral”) who provides a legal assessment of the parties’ dispute within three weeks for a fixed fee of EUR 29,000. The Neutral is appointed by the SCC Board taking into consideration any proposals made by the parties (Art 6(1) of the Rules). In practice, parties should also be able to agree on the specific type of Neutral when providing their consent to participate in the proceedings.

What Do You Get for EUR 29,000?

SCC Express is a hybrid between mediation and arbitration. The proceedings may therefore be more inquisitorial compared to a typical arbitration. For the same reason, the legal assessment delivered by the Neutral is neither a decision nor an award but consists of the Neutral’s *findings*. These *findings* are not enforceable under the New York Convention and are not binding on the parties unless they contractually agree to make them binding, i.e. through the transformation of the findings into a binding *decision* (Art 2(4) of the Rules) through, for example, a recorded settlement agreement. It should be possible for the parties to agree on this at any time, meaning both before, during, or after the delivery of the Neutral’s *findings*.

As an alternative, and in line with general arbitration principles, the parties may of course agree to appoint the Neutral as an Arbitrator whereby the SCC Express proceeding and resulting *findings* would be transformed into an arbitration proceeding and an arbitral award respectively (Arts 2(4)

and 6(5) of the Rules). Besides consent from the disputing parties, this alternative also requires the consent of the appointed Neutral (Art 2(4) of the Rules).

Where the parties agree to transform the SCC Express proceeding into full-fledged arbitration – and thereby also agree on arbitration rules applicable to such proceeding – the cost for the arbitration proceeding will be in line with those rules. It is currently unclear if in this case the parties would be charged for the initial SCC Express proceedings in addition to the arbitration, especially if the parties agree on one of the available SCC arbitration rules.

In sum, what you get for your EUR 29,000 is either (i) a non-enforceable and non-binding summary of *findings*, (ii) a non-enforceable but binding *decision*, or, at a presumed additional cost, (iii) an *arbitral award*.

Is it Worth it?

In all honesty – and very much *cliché* – it depends. There might be certain situations, for example between two disputing parties with a long-standing relationship, where the sort of “mutual counsel” that the Neutral represents may be respected by both parties and their *findings* or *decision* accepted by both sides. The likelihood of acceptance is of course greater where the parties – before the dispute arises – choose to agree on a contractually binding *decision* rather than mere *findings* of the Neutral. That said, such parties may already be inclined to settle the dispute without the need to pay the SCC Express fee.

However, for most other parties, where a dispute of a certain magnitude arises, it is not a given that both parties will honour the *findings* or agree to make them contractually binding. One reason for this may be the costs attached to such course of action.

With the fee of EUR 29,000, the disputed amount would have to be at least EUR 300,000 for SCC Express to be financially competitive with the costs of a full-fledged arbitration. In comparison, the SCC’s cost for arbitration proceedings (with one arbitrator) under the ordinary SCC arbitration rules would be approximately EUR 32,000 with an amount in dispute of EUR 300,000. The SCC’s cost for proceedings under the SCC expedited rules with the same amount in dispute would only amount to approximately EUR 21,000. In such a case, a party may well ask itself whether it is willing to spend money on a Neutral or simply attempt to obtain a final and enforceable award as soon as possible.

At the cost of EUR 29,000, the dispute that a party seeks to settle must be sizeable to warrant an early additional cost of a Neutral. Alternatively, the dispute must be such that early determination by the Neutral is likely to limit further legal costs. It is hard to imagine that many parties would engage with SCC Express without involving their counsel. In essence, SCC Express proceedings will incur legal fees as well as any other proceedings, albeit for a shorter period than in ordinary or expedited arbitration. The latter costs are harder to control than the costs related to SCC Express and an investment into such costs must be counter-balanced by the likelihood of early settlement.

In considering whether to agree to SCC Express, parties may also want to keep in mind that under SCC expedited arbitration, there is a **50 % chance that the tribunal renders an enforceable award within 3 months from referral and a 90 % chance that the award is rendered within 6 months from referral**.

Other reasons that may tip the balance in favour or against SCC Express can include, e.g. the factual complexity of the dispute, the availability of evidence without a document production phase and the need to obtain a swift decision.

Is SCC Express a Shortcut or an (Expensive) Detour?

On the one hand, the parties may end up spending EUR 29,000 plus legal fees to obtain non-enforceable and non-binding *findings* at the end of three-week-long proceedings. If one party chooses not to adhere to the *findings*, the disputing parties would have no choice but to initiate arbitration at a cost (given above example) of additional EUR 21,000 plus legal fees and lost time resulting from the SCC Express proceedings. On the other hand, the parties may be able to resolve their dispute as a result of the Neutral's *findings*, making the investment worthwhile. This may be the case, for example, where the parties to the dispute are willing to settle but need that little extra nudge in the right direction by a person perceived as more neutral than both parties' counsel.

All things considered, SCC Express may be a shortcut to both parties' satisfaction in a limited number of situations. However, prospective adopters should be aware that – given the obvious alternative of expedited arbitration under SCC rules – starting SCC Express proceedings might simply become a detour entailing higher costs, more time, and additional frustration between the parties.

Considering the cost of SCC Express, it is clear that this innovative tool is targeted at the early resolution of larger disputes. As disputed amounts must be above EUR 300,000 before it is worthwhile to pay the fixed SCC Express fee and still risk going through another process, it becomes evident that parties to smaller disputes are better off resolving their dispute through negotiations or referring the dispute to expedited arbitration.

In case of larger disputes, however, SCC Express may well prove to be efficient. Parties to larger disputes often conduct settlement negotiations in the background and this tool may well assist them in moving those discussions forward, or avoiding them altogether. In such multi-million or billion disputes, the price tag related to the early evaluation of the case is less relevant. What matters in those instances is the authority that the evaluation by a Neutral can provide. That authority is, however, dependent on SCC's ability to find a capable and diligent Neutral to provide her or his findings under the relevant applicable law, and on the diligence and clarity of the Neutral in formulating her or his findings. Time will tell whether SCC can find the right people for the job and whether parties will trust the process and turn this innovative tool into a revolutionary way of precipitating dispute resolution instead of adding yet another step to it.

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This entry was posted on Wednesday, August 4th, 2021 at 8:00 am and is filed under [ADR](#), [SCC](#), [SCC Rules](#)

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