

## Responses to the UNCITRAL questionnaire on expedited arbitration

At the sixty-ninth session of the Working Group, the Secretariat was requested to collect information on the different roles undertaken by arbitral institutions in administering expedited arbitration (A/CN.9/969, para. 103). Accordingly, the Secretariat circulated a questionnaire to arbitration institutions and related organizations on 26 April 2019 and received responses from 23 institutions as of the seventieth session in Vienna (23-27 September 2019). The questionnaire and the responses are reproduced as annex to this note.

### <List of institutions that have responded and date received>

| Name of Institution  | Date Received     |
|--|-------------------|
| Vienna International Arbitral Centre (VIAC)  | 30 April 2019     |
| Construction Industry Arbitration Council (CIAC)   | 23 May 2019       |
| Russian Arbitration Center (RAC)   | 24 May 2019       |
| Milan Chamber of Arbitration (CAM)   | 28 May 2019       |
| London Court of International Arbitration (LCIA)   | 31 May 2019       |
| Georgian International Arbitration Centre (GIAC)   | 3 June 2019       |
| Arbitration Institute of the Stockholm Chamber of Commerce (SCC)   | 3 June 2019       |
| International Centre for Alternative Dispute Resolution (ICADR)  | 4 June 2019       |
| China International Economic and Trade Arbitration Commission (CIETAC)   | 6 June 2019       |
| Asian International Arbitration Centre (AIAC)  | 7 June 2019       |
| Singapore International Arbitration Centre (SIAC)  | 7 June 2019       |
| Madrid Court of Arbitration (MCA)  | 10 June 2019      |
| German Arbitration Institute (DIS)   | 19 June 2019      |
| Bahrain Chamber for Dispute Resolution (BCDR-AAA)  | 19 June 2019      |
| Hong Kong International Arbitration Centre (HKIAC)   | 20 June 2019      |
| Chartered Institute of Arbitrators (CIArb)   | 20 June 2019      |
| Swiss Chambers' Arbitration Institution (SCAI)   | 25 June 2019      |
| The Belgian Centre for Arbitration and Mediation (CEPANI)  | 2 July 2019       |
| Korean Commercial Arbitration Board (KCAB)   | 26 July 2019      |
| Delos  | 19 August 2019    |
| The Permanent Arbitration Court of the Hungarian Chamber of Commerce and Industry  | 19 September 2019 |
| International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC at the RFCCI) | 19 September 2019 |
| Beijing Arbitration Commission/Beijing International Arbitration Center (BAC/BIAC)   | 26 September 2019 |

## **Annex I: Questionnaire**

1. Does your institution have a procedure or mechanism in place to expedite arbitral proceedings? If so, are the provisions on expedited arbitration included in the institutional rules, or are they presented in a separate set of rules? Was there a particular reason for such an approach? If your institution administers cases under the UNCITRAL Arbitration Rules, does your institution adopt a specific procedure to accelerate arbitral proceedings under those Rules?
  
2. Please share with us your experience in administering expedited arbitration including acceptance and use by parties and how expedited arbitration has resulted in the reduction of cost and duration of the proceedings. Please provide any statistics, if available.
  
3. Under what circumstances does expedited arbitration apply? Is there a set criteria or are the parties free to choose when expedited arbitration would apply? What role does your institution play in determining whether the expedited procedure would apply?
  
4. What role does your institution have in appointing, as well as challenges to, the arbitrator in expedited arbitration? If your institution has functioned as an appointing authority under the UNCITRAL Arbitration Rules, how long and how much does it cost, in average, for such an appointment?
  
5. Do your institutional rules impose timelines for the arbitral proceeding and if so, are they for certain stages of the proceedings or for the overall process? How does your institution ensure compliance with timelines, if any, and does your institution have a role in extending the timelines?
  
6. Can an arbitral award be rendered in summary form or without giving any reason? If so, on what basis? Please indicate any statistics, if available.
  
7. In administering expedited arbitration, does your institutions have a role in ensuring due process and fairness as well as the quality of the award?
  
8. As a procedural tool, can arbitral tribunals dismiss claims and defences that lack merit under your institutional rules? If so, how often is this used?
  
9. If your institution is aware of any court decisions relating to the use of expedited arbitration, please provide us with a short summary or a link to the relevant decision.

## **Annex II: Responses to the questionnaire**

Note. The asterisk symbol (\*) appears where the response is to a sub-question.

## QUESTION 1

Does your institution have a procedure or mechanism in place to expedite arbitral proceedings? If so, are the provisions on expedited arbitration included in the institutional rules, or are they presented in a separate set of rules? Was there a particular reason for such an approach? If your institution administers cases under the UNCITRAL Arbitration Rules, does your institution adopt a specific procedure to accelerate arbitral proceedings under those Rules?

### Vienna International Arbitral Centre (VIAC)

The VIAC Rules 2019 contain rules on expedited proceedings in Art 45. The reason to include them in the rules and not in separate provisions is that apart from shorter time-frames, the rest of the provisions of our rules are applicable and we did not want to duplicate them. The expedited rules are opt-in with no monetary threshold, and can be agreed upon by the parties up to the submission of the answer to the statement of claim.

\*

We administer also proceedings under the UNCITRAL Rules and we have no specific procedure to accelerate proceedings in this case.

### Construction Industry Arbitration Council (CIAC)

Yes. CIAC has a procedure/mechanism in place of expedite arbitral proceedings under the name of “Fast Track Arbitration. These Fast Track Arbitration are included in the manual of CIAC Arbitration Rules, 2013 (Amended up to 31.12.2015) and not in a separate set of Rules.

The “Fast Track Arbitration” has been incorporated in conformity with the Indian Arbitration & Conciliation (Amendment) Act, 2015 (here-in-after known as Amended Act 2015) which is in force with effect from 23.10.2015.

The Amended Act, 2015 has been finalized taking into account the Model Law on International Commercial Arbitration and Conciliation Rules adopted by UNCITRAL. Manual of CIAC- Arbitration Rules are in conformity with the Amended Act, 2015.

### Russian Arbitration Center (RAC)

Russian Arbitration Center at the Russian Institute of Modern Arbitration (RAC at RIMA) has a special mechanism to expedite arbitral proceedings. RAC Arbitration Rules provide Chapter 7 (entitled “Expedited Arbitration”) that sets out the framework for expedited arbitral proceedings. These provisions are included in the institutional rules and this is a general approach of incorporating all types of procedural provisions (e.g., on the arbitration of corporate disputes) in one set of document, rather than adopting a separate document.

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To date, RAC at RIMA has not administered any cases under the UNCITRAL Arbitration Rules.

### Milan Chamber of Arbitration (CAM)

The Milan Chamber of Arbitration (hereinafter, CAM) has no separate set of expedited arbitration rules. When revising its Rules in 2019, CAM amended the 2010 edition by providing new rules on an expedited conduct of the case:

- Article 19 and 20, Para. 1, now provide for the arbitrator to submit his/her statement of acceptance and independence within the time limit set by the Secretariat. Under the 2010 Rules, such a time limit was fixed (ten days), while today the Institution has the power to set a tailor made time limit, so providing for an efficient conduct when possible by setting a shorter one;
- Article 24, Para. 2, provides for the arbitrators to constitute the Arbitral Tribunal as promptly as possible, and in any case within 30 days from receipt of the briefs and documents forwarded by the Secretariat. The previous set of Rules provided for 30 days, while today a clear message for the arbitrators to act promptly is set.

#### *London Court of International Arbitration (LCIA)*

The current version of the LCIA Rules (2014) (*the Rules*) do not contain any specific procedure or provisions in respect to expedited arbitral proceedings as such.

However, arbitral proceedings may be expedited, as appropriate, in accordance with Article 14.4 of the Rules. Article 14.4 imposes on the Tribunal certain general duties, which include, among others, a duty to adopt procedures suitable to the circumstances of the arbitration, avoiding unnecessary delay and expense, so as to provide a fair, efficient and expeditious means for the final resolution of the parties' dispute. As a result of the effect of this provision, an LCIA Tribunal is empowered, and also obliged, to expedite arbitral proceedings where the Tribunal considers that the circumstances of the case require a streamlined and simplified procedure to be adopted.

Also, in case of exceptional urgency, a party to the LCIA arbitration may apply to the LCIA Court for the expedited formation of the Tribunal, pursuant to Article 9A of the Rules. An application under Article 9A, if granted, may significantly shorten the timeframe that would otherwise require in the normal process for constitution of the Tribunal.

Finally, the LCIA also drafted a sample stand-alone fast-track arbitration clause, which is available on request for parties' adoption in contract or post-contractually.

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The LCIA can administer cases under the UNCITRAL Arbitration Rules, if we are requested to do so by the parties. The LCIA has not put in place any specific procedure to accelerate arbitral proceedings under UNCITRAL Rules.

#### *Georgian International Arbitration Centre (GIAC)*

Since 2017, GIAC has facility of the expedite arbitral proceedings, we call it – Fast Track Arbitration Procedure (FTA). The provisions of FTA are integral part of GIAC Arbitration Rules and it is annexed to it. The reason to include the FTA provisions in the Arbitration Rules was the “opt out” approach of the fast track procedures, which means that if the amount in dispute is less than 100,000 USD, the FTA procedure automatically applies. So parties having the dispute under 100,000 USD willing to use regular arbitral rules have to “opt out” from FTA procedures explicitly. Therefore, we wanted to have one whole set of rules.

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Under the Rules, GIAC can administer disputes under the UNCITRAL Rules, however there is no specific expedited procedures.

#### *Arbitration Institute of the Stockholm Chamber of Commerce (SCC)*

The SCC has issued two main sets of rules:

- ARBITRATION RULES

- RULES FOR EXPEDITED ARBITRATION (hereinafter “SCC Rules” for both sets of rules)

In each set of rules, a provision on the possibility for a party to the arbitration to request a summary procedure was included in the 2017 SCC Rules (Article 39; and Article 40 respectively). The summary procedure is a tool with which one or more issues of fact or law may be dealt with and decided on, without necessarily undertaking every procedural step that might otherwise be adopted for the arbitration. Issues of jurisdiction, admissibility or the merits may be subject to a summary procedure in accordance with the rules.

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The SCC also has procedures for the administration of cases under UNCITRAL arbitration rules and procedures as appointing authority under the UNCITRAL arbitration rules:

- SCC PROCEDURES FOR THE ADMINISTRATION OF CASES UNDER THE [2010/1976] UNCITRAL ARBITRATION RULES
- SCC PROCEDURES AS APPOINTING AUTHORITY UNDER THE [2010/1976] UNCITRAL ARBITRATION RULES

#### *International Centre for Alternative Dispute Resolution (ICADR)*

Yes, ICADR has provision for Fast Track Arbitration and the same is included in the ICADR’s Arbitration Rules, 1996 by way of an amendment made in 2016. The ICADR’s Arbitration Rules are based on The Arbitration and Conciliation (Amendment) Act, 2015, enacted by the Parliament. The reason to have Fast Track Arbitration was to resolve dispute expeditiously and at lower cost. ICADR has aligned its relevant Rules to accelerate arbitral proceedings in accordance with the law.

#### *China International Economic and Trade Arbitration Commission (CIETAC)*

Yes. CIETAC has incorporated summary procedure in its institutional rules since 1995. It is also stipulated in Chapter 4 of our latest rules (CIETAC Arbitration Rules effected as from 2015, “CIETAC Rules 2015”).

To include the summary procedure in our institutional rules enables automatic application of such procedure with no need of specific agreement of the parties, provided that the conditions set out in Chapter 4 are met. We believe such approach helps to further improve efficiency of the arbitration proceedings.

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No. Article 4<sup>1</sup> of CIETAC Rules 2015 allows the parties to adopt other arbitration rules including the UNCITRAL Arbitration Rules. In such case, procedural issues shall be strictly arranged in compliance with the UNCITRAL Arbitration Rules, unless otherwise agreed by the parties. However, there are no provisions in the UNCITRAL rules that redirect to the CIETAC arbitration rules and its summary procedure.

#### *Asian International Arbitration Centre (AIAC)*

The AIAC is one of the first institutions to have introduced a variety of time and cost-effective procedures for the expeditious resolution of disputes. These are:

- the AIAC Fast Track Arbitration Rules;
- emergency arbitrator mechanism; and
- adjudication.

### *The AIAC Fast Track Arbitration Rules*

The AIAC Fast Track Arbitration Rules (the “AIAC Fast Track Rules”) are a separate set of rules which are suitable for both domestic and international arbitration, with the 2018 edition being the most recent version. The AIAC Fast Track Rules were designed to meet the niche demand for an expeditious dispute resolution procedure that catered to time-critical (e.g. maritime and admiralty matters) and/or straightforward disputes (e.g. the non-payment for delivered goods or disputes of a small quantum). Despite this underlying purpose, the AIAC Fast Track Rules are suited for both complex and simple disputes, as well as both high and low value claims. The rationale for having the AIAC Fast Track Rules as a separate set of rules is twofold:

- the need to provide a clear distinction from the AIAC Arbitration Rules, which operates as the default set of rules where an arbitration agreement refers to the AIAC as an administrative body;
- the detailed concept of the AIAC Fast Track Rules requires its application from the outset of arbitral proceedings to make the process more time- and cost-efficient (e.g., the Commencement Request under Rule 2 of the AIAC Fast Track Rules 2018 requires the Parties to nominate an arbitrator, the Commencement Request under Article 3 of the AIAC Fast Track Arbitration Rules requires a comprehensive Statement of Case, etc.).

The key feature of the AIAC Fast Track Rules is that they provide for a shorter period in which disputes are to be resolved since proceedings under these rules can be conducted on a “documents-only” basis or through substantive oral hearings.

In a documents-only proceeding, the arbitral is required to render its award with 90 days from its receipt of the final written submission. Unless the arbitral tribunal otherwise determines, this type of proceeding is useful for international arbitrations where the amount in dispute is less than USD75,000 (or equivalent currency). For domestic disputes, the amount in dispute must be below RM150,000.

Where the proceedings require substantive oral hearings, the arbitral tribunal is required to conduct and complete the oral hearings not later than 90 days from the date the AIAC notifies the parties of the commencement of the proceedings. The arbitral tribunal is then required to publish its award within 90 days from the date when the proceedings are declared to have closed.

These features provide for a relatively cheaper and efficient arbitral process for both international and domestic disputes when compared to traditional arbitral proceedings.

### *Emergency Arbitrator Mechanism*

The emergency arbitrator mechanism is found in Schedule 3 of the AIAC Arbitration Rules 2017 and the AIAC Arbitration Rules 2018, the latter being the latest version. The emergency arbitrator mechanism was incorporated as part of the AIAC Arbitration Rules (2017 and 2018 editions).

The emergency arbitrator mechanism permits the Director of the AIAC to appoint an emergency arbitrator prior to the constitution of the arbitral tribunal, in instances where emergency interim measures are sought by either of the Parties (e.g., a temporary injunction or similar mechanism).

The need to develop such a mechanism arose due to the domestic arbitration framework’s silence on references to the Malaysian High Court for urgent interim measures prior to the constitution of an arbitral tribunal. The utility of the AIAC’s emergency arbitrator mechanism has been strengthened by the amendments to the Malaysian Arbitration Act 2005 in 2018 whereby awards made by emergency arbitrators are now capable of recognition and enforcement.<sup>2</sup>

Given the infancy of the recognition of the emergency arbitrator mechanism in Malaysia, the AIAC is yet to receive a request under this procedure.

## *Adjudication*

Since Working Group II also considers adjudication jointly with expedited arbitration<sup>3</sup>, the AIAC provides an overview of the construction adjudication mechanism in Malaysia. In 2014, the Construction Industry Payment and Adjudication Act 2012<sup>4</sup> (the “CIPAA”) came into force to provide a speedy dispute resolution mechanism for the recovery of payments in the construction industry. The AIAC is prescribed as the sole administrative authority under the CIPAA.

As a statutory dispute resolution mechanism, the CIPAA has been highly effective in resolving construction-related payment disputes within a time frame of 3-6 months from the initiation of the adjudication process. As of June 2019, the AIAC has administered over 2,300 adjudication disputes, most of which have been enforced by Malaysian Courts. The unique feature of the adjudication process, however, is that it is considered to have “temporary finality”. This means that the adjudication decision is effective unless it is set aside by a Court, or is overturned by an arbitration or litigation proceeding relating to the subject matter in dispute.

To ensure the smooth implementation of the CIPAA, the AIAC developed the AIAC Adjudication Rules & Procedure, as well as issuing circulars on the administration of adjudication proceedings. The rules and circulars fill in the gaps in the CIPAA by providing template CIPAA forms, detailing the administrative costs in the CIPAA process as well as providing an alternate fee structure for adjudicators and clarifying taxation requirements.

\*

The AIAC administers matters being conducted under the UNCITRAL Arbitration Rules in two cases:

- when the arbitration agreement refers to the AIAC Arbitration Rules, and the UNCITRAL Arbitration Rules apply as Part II of the AIAC Arbitration Rules. However, to the extent that there is a conflict between Part I and Part II of the AIAC Arbitration Rules, the provisions in Part I shall prevail (*cf.* Rule 1(3) of the AIAC Arbitration Rules 2018).
- when the Parties in ad hoc arbitration under the UNCITRAL Arbitration Rules request the AIAC to assist in certain matters (for instance, the collection of deposits). The scope of involvement of the AIAC depends on the agreement between the Parties and Tribunal.

### *Singapore International Arbitration Centre (SIAC)*

SIAC offers an expedited procedure for parties as a time and cost saving device available by application in appropriate cases. Under the SIAC Rules, a party may apply to have the proceedings administered on an expedited basis if: (i) the amount in dispute does not exceed SGD 6 million; (ii) parties so agree; or (iii) in cases of exceptional urgency. SIAC’s expedited procedure is incorporated into the SIAC Rules, and is set out at Rule 5.

The expedited procedure provisions were incorporated into the SIAC Rules (instead of being presented in a separate set of rules) so that all parties in SIAC cases have the option of utilising these provisions in the event of a dispute.

If the expedited procedure provisions were contained in a separate set of rules, parties would need to make express reference to that set of rules in their arbitration clause or reach an agreement for those rules to apply post-dispute. However, it is sometimes difficult at the contract negotiation stage to predict the value or complexity of the disputes that may arise. Post-dispute, a party may refuse to have the matter heard on an expedited basis.

By keeping the expedited procedure in the main set of Rules, in cases conducted in accordance with the expedited procedure, parties may at the same time still take advantage of the full suite of SIAC’s procedural tools (e.g. emergency arbitration, joinder, consolidation, and early dismissal). A single set

of rules with provisions on expedited procedure also avoids any potential jurisdictional/competency issues on the applicable rules.

\*

SIAC also administers cases under the UNCITRAL Arbitration Rules. As the UNCITRAL Arbitration Rules do not have provisions for expedited procedure, SIAC is not able to accelerate arbitral proceedings when administering cases under those rules, and it would be for the parties to agree on the procedural schedule in consultation with the Tribunal. However, even for cases that SIAC administers under the UNCITRAL Arbitration Rules, the efficient conduct of the arbitration remains important to SIAC, and this is done through the default *ad valorem* cost system, where arbitrators are incentivised to conduct the arbitrations with the greatest possible expedition. SIAC also leaves it at the Tribunal's option whether SIAC should scrutinize the award in such cases.

#### Madrid Court of Arbitration (MCA)

Yes we have expedited arbitral proceedings, regulated in article 51 of our Arbitration Rules (the "Rules"). This procedure was included in the Rules with the idea that information on all the procedural options would be together and easily available to the parties.

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We have not yet had the chance to administer cases under the UNCITRAL Arbitration Rules.

#### German Arbitration Institute (DIS)

The 2018 DIS Arbitration Rules (the Rules) provide for Expedited Proceedings in form of an annex (Annex 4), which constitutes an integral part of the Rules (Article 1.3). Annex 4 comes into play through Article 27 of the Rules, which deals with efficient conduct of the proceedings. Article 27.4 of the Rules provides for an obligation of the arbitral tribunal to discuss with the parties during the case management conference whether the provisions of Annex 4 should be applied.

This approach was chosen as a compromise between an Opt-In and Opt-Out option for expedited proceedings. The drafters of the Rules wanted to avoid that proceedings are not expedited due to a lack of choice/Opt-In by the parties at the time of agreeing on the arbitration clause. At the same time, the approach allows parties the flexibility to choose Expedited Proceedings at the time they are completely mindful of all facts of the case without making Expedited Proceedings required if there should be an occurrence of specific criteria, for example, the amount in dispute.

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The DIS offers "The UNCITRAL Arbitration Rules administered by the DIS". This set of rules allows the parties to benefit fully from the advantages of institutional arbitration whilst applying the UNCITRAL Arbitration Rules. Amendments to the UNCITRAL Arbitration Rules were only made to allow for the administration of the arbitral proceedings by the DIS. Consequently, the proceedings under the UNCITRAL Arbitration Rules administered by DIS do not provide for Expedited Proceedings. Up to date, the DIS has, however, not yet administered any case under this set of rules.

#### Bahrain Chamber for Dispute Resolution (BCDR-AAA)

Yes. In addition to the general duty on the tribunal and the parties to avoid unnecessary delay and expense (Articles 16.2 and 16.4 of the BCDR-AAA 2017 Rules of Arbitration ("Rules")), the BCDR-

AAA 2017 Rules provide for expedited procedure (Article 6); emergency arbitrator proceedings (Article 14); and summary procedure (Article 18).

Provisions aimed at achieving expeditious proceedings, including those specifically relating to expedited arbitration are included within the BCDR-AAA 2017 Rules. An electronic version of the BCDR-AAA 2017 Rules is available, including in pdf-format, in English, Arabic and French (with all three languages being equally authoritative) from <https://www.bcdr-aaa.org/2017-arbitration-rules/>.

When drafting the revised version of its Rules, the BCDR-AAA aimed to codify current best practices, which meant including these provisions in the body of the rules.

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When administering under UNCITRAL Rules, the BCDR-AAA will not impose any procedures to expedite proceedings outside the provision of those rules, as chosen by the parties. But it will monitor compliance by the tribunal with its duty, under Article 17.1 of the UNCITRAL Rules to avoid unnecessary delay and expense.

### *Hong Kong International Arbitration Centre (HKIAC)*

The Hong Kong International Arbitration Centre (“HKIAC”) has provisions in its 2018 and 2013 Administered Arbitration Rules (“Rules” or “HKIAC Rules”) that permit a party to request that the arbitration may be conducted in accordance with an expedited procedure (“Expedited Procedure”).

The Expedited Procedure is found at Article 42 of the 2018 HKIAC Administered Arbitration Rules (“2018 Rules”),<sup>5</sup> and at Article 41 of the 2013 HKIAC Administered Arbitration Rules (“2013 Rules”).<sup>6</sup> The Expedited Procedure under the two versions of the Rules is materially the same,<sup>7</sup> with four differences that are explained below at paragraph 0.

The Expedited Procedure was first introduced in the 2013 Rules as part of the revision of the 2008 HKIAC Administered Arbitration Rules.<sup>8</sup> There was no consideration of promulgating the Expedited Procedure as a “separate set of rules.”

Under the Rules, prior to the constitution of the arbitral tribunal,<sup>9</sup> a party may apply to the HKIAC for the arbitration to be conducted as an Expedited Procedure where:

- the amount in dispute representing the aggregate of any claim and counterclaim (or any set-off defence or cross-claim) does not exceed the amount set by the HKIAC, which is currently HK\$25,000,000 (approx. US\$3,200,000); or
- the parties so agree; or
- in cases of exceptional urgency.

When the HKIAC grants an application for Expedited Procedure, the arbitral proceedings shall be conducted in accordance with the Rules, subject to the following changes:

- the case shall be referred to a sole arbitrator, unless the arbitration agreement provides for three arbitrators;
- if the arbitration agreement provides for three arbitrators, the HKIAC shall invite the parties to agree to refer the case to a sole arbitrator. If the parties do not agree, the case shall be referred to three arbitrators;
- the HKIAC may shorten the time limits provided for in the Rules, as well as any time limits that it has set;
- after the submission of the Answer to the Notice of Arbitration, the parties shall in principle be entitled to submit one Statement of Claim and one Statement of Defence (and Counterclaim) and, where applicable, one Statement of Defence in reply to the Counterclaim;
- the arbitral tribunal shall decide the dispute on the basis of documentary evidence only, unless it decides that it is appropriate to hold one or more hearings;

- subject to any lien, the award shall be communicated to the parties within six months from the date when the HKIAC transmitted the case file to the arbitral tribunal. In exceptional circumstances, the HKIAC may extend this time limit;
- the arbitral tribunal may state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons are to be given.<sup>10</sup>

As mentioned, the Expedited Procedure under the 2013 and 2018 Rules is materially the same,<sup>11</sup> with the following four differences:

- the 2013 Rules expressly state the monetary threshold of HK\$25,000,000, whereas the 2018 Rules do not. Rather, the 2018 Rules provide that the amount in dispute must not exceed the amount set by the HKIAC on its website.<sup>12</sup> This allows the HKIAC to adjust the monetary threshold without having to amend the Rules.
- under the 2013 Rules, the consent of all parties is required in order for the Expedited Procedure to apply to consolidated proceedings under Article 28 of the 2013 Rules or to single arbitrations commenced under multiple contracts under Article 29 of the 2013 Rules.<sup>13</sup> Under the 2018 Rules, the Expedited Procedure may apply to such proceedings without the consent of all parties.
- while the 2018 Rules maintain the provision in the 2013 Rules that the award shall be communicated to the parties within six months from the date of transmission by the HKIAC of the case file to the arbitral tribunal,<sup>14</sup> they make the communication of the award subject to any existing liens.<sup>15</sup>
- the 2018 Rules make it express that upon the request of a party and having regard to any new circumstances that have arisen, the HKIAC may decide that the Expedited Procedure shall no longer apply to the case (see also HKIAC’s response to Question 3).<sup>16</sup>

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The HKIAC administers cases under the UNCITRAL Arbitration Rules (“UNCITRAL Rules”) and has been doing so since 1985. It has not adopted a specific procedure to accelerate arbitral proceedings. It has, however, developed special procedures in respect of its administration of cases under the 1976, 2010, and 2013 versions of the UNCITRAL Rules (“UNCITRAL Procedures”).<sup>17</sup>

#### *Chartered Institute of Arbitrators (CI Arb)*

Yes. CI Arb has drafted and implemented a set of optional rules to expedite arbitral proceedings and minimize costs called “CI Arb Cost Controlled Expedited Arbitration Rules (CCEA Rule, effective 1 May 2018). These Rules can be found in the Resources section of the CI Arb website at [www.ciarb.org](http://www.ciarb.org).

To the extent that emergency proceedings could be considered a mechanism in place to expedite arbitral proceedings CI Arb also has drafted and implemented the CI Arb Arbitration Rules, effective 1 December 2015, which include provisions to provide emergency relief and enhance efficiency in domestic and international commercial arbitrations. This mechanism can be found in Article 26 and elaborated in Appendix 1 of the Rules which are also available in the Resources section of our website.

#### *Swiss Chambers’ Arbitration Institution (SCAI)*

Yes, the Expedited Procedure provisions, contained in Article 42 of the Swiss Rules.

The positioning of the Expedited Procedure provisions within the Swiss Rules at “Section V. Other Provisions” indicates that expedited procedures follow the rules for ordinary procedures, subject to the specificities set out in Article 42 (cf. Article 42(1) “*If the parties so agree, or if Article 42(2) is applicable, the arbitral proceedings shall be conducted in accordance with an Expedited Procedure based upon the foregoing provisions of these Rules, subject to the following changes: [...]*”).

Note that the Swiss Rules 2004 were based on the UNCITRAL Arbitration Rules in force at the time, with changes and additions to adapt them to institutional arbitration and reflect modern practices in the field of international commercial arbitration. One of those amendments was the inclusion of an Expedited Procedure.

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The Swiss Chambers Arbitration Institution (“SCAI”) does not administer cases under any other set of rules than the Swiss Rules, but provides services as appointing authority in UNCITRAL and other ad hoc arbitration proceedings, under the [Rules for SCAI as Appointing Authority](#) (see answer to question 4 below).

#### *The Belgian Centre for Arbitration and Mediation (CEPANI)*

CEPANI acts as appointing authority but does not administer cases under the UNCITRAL Arbitration Rules itself. As a preliminary remark, it is further noted that CEPANI is currently reviewing its arbitration rules, which are in force since 2013 (“CEPANI Rules 2013”). The new rules will enter into force as from 1 January 2020 (“CEPANI Rules 2020”). One of the major changes relates precisely to the expedited rules of procedure applicable to disputes of limited financial value.

The CEPANI 2013 Rules provide for expedited procedural rules in a separate Section II, entitled “Arbitration of Disputes of Limited Financial Importance”.<sup>18</sup> The expedited rules in Section II apply to all cases where the total amount in dispute does not exceed the amount of EUR 25,000.00. In the event that the principal claim and the counterclaim together exceed the threshold of EUR 25,000.00 in the course of the proceedings, these expedited rules shall continue to apply, unless otherwise agreed by the parties. The expedited procedural rules in Section II are mainly characterized by the fact that a Sole Arbitrator settles the dispute in all cases, that no terms of reference are established and that the procedural deadlines are shorter than those which apply in Section I of the CEPANI Rules 2013 for disputes over EUR 25,000.

In the CEPANI Rules 2020, expedited procedural rules for claims of limited value will be integrated in the main set of arbitration rules and the threshold for their application will be raised. As from the 1st of January 2020 the expedited arbitration rules will therefore be included in the main framework of the CEPANI Arbitration Rules (Article 29 of the CEPANI Rules 2020<sup>19</sup>) These expedited procedural rules will apply to (i) all disputes of which the total amount in dispute does not exceed EUR 100,000.00 or (ii) on an ‘opt-in’ basis whenever parties agree to apply the expedited procedural rules, even if the amount exceeds EUR 100,000.00. By contrast, the expedited procedural rules will not apply for disputes below EUR 100,000.00 if the parties agreed to opt out or if the CEPANI Appointments Committee or President – at its own request or that of a Party – concludes that the application of expedited procedural rules are inappropriate in the circumstances of the case.

The decision to no longer feature the expedited procedural rules in a separate section of the rules, but to integrate it in the main framework, was made mainly to be in line with the trends and developments in the international commercial arbitration community and to respond to a general concern of clarity, practicality and attractivity.

#### *Korean Commercial Arbitration Board (KCAB)*

Yes, Chapter 6 of the KCAB International Arbitration Rules provide provisions for Expedited Procedures. These provisions are included within the institutional rules as, apart from certain procedures such as the appointment of arbitrator and shorter time-frames, the rest of the provisions are applicable to the expedited arbitral proceedings.

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KCAB does administer cases under the UNCITRAL Arbitration Rules but we do not have specific procedures to accelerate proceedings for these cases.

#### *Delos Dispute Resolution*

The Delos Rules of Arbitration (“Delos Rules”) have been designed with a view to expediting the conduct of arbitral proceedings by default, rather than by way of exception. The Delos Rules use a system of Tiers, based on the amount in dispute. The first Tiers are for lower value cases and provide for shorter deadlines, for instance in relation to the time-limit for parties to nominate an arbitrator or for the tribunal to submit its draft award. The higher Tiers are for higher value cases and provide for longer time-limits. The Delos Rules are available at <https://delosdr.org/index.php/rules/>.

#### *The Permanent Arbitration Court of the Hungarian Chamber of Commerce and Industry*

The Rules of Proceedings 2018 of the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry contain Rules on Expedited Proceedings in Annex 1. (Sub-Rules of Expedited Proceedings) These Rules are not in separate provisions, but apart from shorter time-frames the rest of the provisions of the main Rules apply. There was no reason to duplicate the respective rules. Our institution administers also proceedings under the UNCITRAL Rules. We do not adopt specific procedure to accelerate arbitral proceedings under the UNCITRAL Rules.

#### *International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC at RFCCI)*

The ICAC have a procedure aimed to expedite arbitral proceedings. The provisions on expedited arbitration are included in the institutional rules called the Rules of Arbitration of International Commercial Disputes effective from 27 January 2017 (hereafter referred to as the Rules, The Rules and other ICAC’s documents are available at web-site: [mkas.tpprf.ru](http://mkas.tpprf.ru)). The reason for such an approach as compared to the option to have a separate set of rules is the following. This allows to avoid additional complications relating to the existence of several set of rules and the difficulty for parties to make a proper choice between them when concluding a contract together with an arbitration agreement referring to particular rules. It is not always possible to foresee at such an early stage a complexity and a magnitude (low or high) of a potential dispute. This in turn entails danger of application of the rules on expedited arbitration to cases for which they are not suited.

To sum up the benefits of the taken approach seem to be twofold: first, flexibility of procedure subject to the character of the dispute, second, determination of the type of procedure applicable (expedited or ordinary) when the circumstances of the particular case become more or less clear.

The ICAC administers cases under the UNCITRAL Arbitration Rules but no specific procedure is adopted to accelerate arbitral proceedings under these rules.

#### *Beijing Arbitration Commission/ Beijing International Arbitration Center (BAC/BIAC)*

The BAC/BIAC adopted expedited procedure in its arbitration rules in 1996.

The current BAC/BIAC Arbitration Rules (“the BAC Rules”)<sup>1</sup>, effective as of September 1, 2019, contain provisions on the procedures for expedited arbitral proceedings in Articles 54-60.

There are two reasons for the BAC/BIAC to include the provisions on expedited arbitration in the institutional rules. First, as part of the BAC Rules, expedited procedure will automatically apply when the amount in dispute is below does not exceed CNY 5 million without parties’ further consent, unless otherwise agreed by the parties. Second, it also avoids the repetition of those provisions that apply to both expedited procedure and ordinary procedure, for example notice of arbitration, statement of defense, challenge to arbitrator etc.

The BAC/BIAC administered one case under the UNCITRAL Arbitration Rules, and we do not have specific guidelines for administering cases under UNCITRAL at this moment. We will seek parties’ agreement to refer to some of the BAC/BIAC’s practice to expedite the arbitration such as to conduct the proceedings on the basis of documents only.

## End Notes to Question 1

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<sup>1</sup> Article 4 Scope of Application

1. These Rules uniformly apply to CIETAC and its sub-commissions/arbitration centers.

2. Where the parties have agreed to refer their dispute to CIETAC for arbitration, they shall be deemed to have agreed to arbitration in accordance with these Rules.

3. Where the parties agree to refer their dispute to CIETAC for arbitration but have agreed on a modification of these Rules or have agreed on the application of other arbitration rules, the parties' agreement shall prevail unless such agreement is inoperative or in conflict with a mandatory provision of the law applicable to the arbitral proceedings. Where the parties have agreed on the application of other arbitration rules, CIETAC shall perform the relevant administrative duties.

4. Where the parties agree to refer their dispute to arbitration under these Rules without providing the name of the arbitration institution, they shall be deemed to have agreed to refer the dispute to arbitration by CIETAC.

5. Where the parties agree to refer their dispute to arbitration under CIETAC's customized arbitration rules for a specific trade or profession, the parties' agreement shall prevail. However, if the dispute falls outside the scope of the specific rules, these Rules shall apply.

<sup>2</sup> See amendment to section 2 of the Arbitration Act 2005 pursuant to the Arbitration (Amendment) (No. 2) Act 2018

<sup>3</sup> Report of Working Group II (Dispute Settlement) on the work of its sixty-ninth session (New York, 4-8 February 2019)

<sup>4</sup> Construction Industry Payment and Adjudication Act 2012 [Act 746]

<sup>5</sup> Article 42, 2018 Rules, available at <[http://www.hkiac.org/sites/default/files/ck\\_filebrowser/PDF/arbitration/2018\\_hkiac\\_rules.pdf](http://www.hkiac.org/sites/default/files/ck_filebrowser/PDF/arbitration/2018_hkiac_rules.pdf)>.

<sup>6</sup> Article 41, 2013, available at <[https://www.hkiac.org/sites/default/files/ck\\_filebrowser/PDF/arbitration/2013\\_hkiac\\_rules.pdf](https://www.hkiac.org/sites/default/files/ck_filebrowser/PDF/arbitration/2013_hkiac_rules.pdf)>.

<sup>7</sup> Article 41.1, 2013 Rules; Art. 42.1, 2018 Rules.

<sup>8</sup> The Expedited Procedure was introduced in order to assist arbitration users to enhance the efficiency of the arbitral process in appropriate cases (Michael Moser and Chiann Bao, *A Guide to the HKIAC Arbitration Rules* (OUP 2017) paras 12.02-12.03 (hereinafter “Moser & Bao”)).

<sup>9</sup> Article 41.1, 2013 Rules; Article 42.1, 2018 Rules.

<sup>10</sup> Article 42.2, 2018 Rules.

<sup>11</sup> Article 41.1, 2013 Rules; Art. 42.1, 2018 Rules.

<sup>12</sup> The monetary threshold is found at <<https://www.hkiac.org/content/2018-schedule-fees#Monetary%20Threshold%20for%20Expedited%20Procedure>>.

<sup>13</sup> Article 41.3, 2013 Rules.

<sup>14</sup> Article 42.2(f), 2018 Rules.

<sup>15</sup> Article 42.2(f), 2018 Rules.

<sup>16</sup> Art 42.3, 2018 Rules provides:

*“Upon the request of any party and after consulting with the parties and any confirmed or appointed arbitrators, HKIAC may, having regard to any new circumstances that have arisen, decide that the Expedited Procedure under Article 42 shall no longer apply to the case. Unless HKIAC considers that it is appropriate to revoke the confirmation or appointment of any arbitrator, the arbitral tribunal shall remain in place.”*

<sup>17</sup> These are: (i) the HKIAC Procedures for the Administration of Arbitration under the UNCITRAL Arbitration

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<sup>1</sup> The BAC Rules can be downloaded at <http://www.bjac.org.cn/english/news/view?id=3535>

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Rules 1986 (the “1986 UNCITRAL Procedures”) available at [https://www.hkiac.org/sites/default/files/ck\\_filebrowser/PDF/arbitration/HKIAC\\_Procedures\\_for\\_Arbtiration\\_including\\_the\\_Uncitral\\_Rules.pdf](https://www.hkiac.org/sites/default/files/ck_filebrowser/PDF/arbitration/HKIAC_Procedures_for_Arbtiration_including_the_Uncitral_Rules.pdf); (ii) the HKIAC Procedures for the Administration of Arbitration under the UNCITRAL Arbitration Rules 2005 (the “2005 UNCITRAL Procedures”) available at [https://www.hkiac.org/sites/default/files/ck\\_filebrowser/PDF/arbitration/HKIAC%20Procedures%20for%20International%20Arbitration.pdf](https://www.hkiac.org/sites/default/files/ck_filebrowser/PDF/arbitration/HKIAC%20Procedures%20for%20International%20Arbitration.pdf); and (iii) the HKIAC Procedures for the Administration of Arbitration under the UNCITRAL Arbitration Rules 2015 (the “2015 UNCITRAL Procedures”) available at [https://www.hkiac.org/sites/default/files/ck\\_filebrowser/PDF/arbitration/2015\\_Procedures\\_for\\_the\\_Administrati\\_on\\_of\\_Arbitration\\_under\\_the\\_uncitral.pdf](https://www.hkiac.org/sites/default/files/ck_filebrowser/PDF/arbitration/2015_Procedures_for_the_Administrati_on_of_Arbitration_under_the_uncitral.pdf).

<sup>18</sup> Section II of the CEPANI Rules 2013 can be consulted online at

<https://www.arbitrationbelgium.com/Arbitration%20Rules/reglement2013-en-arbitrageunder25000.pdf>

<sup>19</sup> References to CEPANI Rules 2020 are made to the numbering of the draft rules in their current draft version.

## QUESTION 2

Please share with us your experience in administering expedited arbitration including acceptance and use by parties and how expedited arbitration has resulted in the reduction of cost and duration of the proceedings. Please provide any statistics, if available.

### Vienna International Arbitral Centre (VIAC)

Our rules for expedited proceedings exist since 2013. Due to the fact that they are opt-in and there is no automatic monetary threshold, we only have a handful cases, as parties do not agree on these rules in their arbitration agreement although we have a wording for it in our suggested model clause. We have no explanation for this. Sometimes, one of the parties suggests the application in the statement of claim but this is often rejected by the respondent. The cases that we have seen under the expedited rules went very well (mainly without oral hearing) and were finalized with award within 6 months. The reduction of costs thereby is mainly in relation to the counsel fees and the hearing costs. The administrative and arbitrators' fees remain the same.

### Construction Industry Arbitration Council (CIAC)

Fast Track Procedure for dispute Resolution has been incorporated in the Amended Act 2015 which is effective since 23rd October, 2015. So far none of the parties have requested for adaption of this procedure to the CIAC, because the Fast Track Procedure can be adopted, if agreed by both the parties as per provisions of the said Amended Act 2015. So far none of the party has requested for the "Fast Track Procedure" to the CIAC.

In the absence of any case under "Fast Track Procedure," CIAC has no statistics. However, it is well settled that there would be reduction in cost of Arbitration on account of:

- Appointment of a Sole Arbitrator against the appointment of Arbitral Tribunal Composing of 3,5 or 7 Arbitrators.
- Time restriction/limitation of 6 months against provision of 1 year or so.

### Russian Arbitration Center (RAC)

RAC at RIMA is a relatively young arbitral institution and was established in August 2016. RAC at RIMA started receiving first caseload in the beginning of 2018 and, according to the 2018 Caseload Report (attached), 253 claims were submitted for arbitration in 2018.

Out of 253 claims:

- 21 cases were resolved under expedited arbitration procedure in accordance with Chapter 7 of the Arbitration Rules (amounting to 8%),
- 232 cases were under standard arbitration procedure (amounting to 92%).

### Milan Chamber of Arbitration (CAM)

CAM has no set of Expedited Arbitration Rules.

### London Court of International Arbitration (LCIA)

As explained above, there is not a specific “expedited procedure” as such available under the Rules. However, the LCIA has published a series of reports of Costs and Duration Analysis, which are available via this [link](#). These reports reveal, among others, the costs and duration data regarding LCIA arbitrations.

*Georgian International Arbitration Centre (GIAC)*

As it is mentioned in the first answer, FTA procedures automatically applies on the dispute with the amount less than 100,000 USD. So parties find it very useful and helpful as such disputes are decided quickly and with low costs. In General disputes under 100,000 USD are decided to be easy one (of course there might be exceptions).

*Arbitration Institute of the Stockholm Chamber of Commerce (SCC)*

The SCC Rules for Expedited Arbitration are specifically designed for low value claims or claims of lesser complexity. For instance, labour and franchise disputes regularly appear in SCC expedited proceedings, constituting 4 – 5% of its annual caseload.

The 2017 Rules for Expedited Arbitration contain a significant procedural change to previous rules. The change had a significant impact on the arbitrations administered under the Rules for Expedited Arbitration and shortened the arbitral proceedings as a result. The statistics for the SCC case load show that in 92% of the arbitrations administered under the Rules for Expedited Arbitration in 2017, and which were finalized by an award, the award was rendered within 6 months from the referral of the case to the arbitrator. In 2018, this number was 98%.

*International Centre for Alternative Dispute Resolution (ICADR)*

Since it is a recent development, ICADR has so far not administered any Fast Track Arbitration Case. However, ICADR has appointed Arbitrator in a Fast Track Arbitration and the case has been disposed off within the period prescribed.

*China International Economic and Trade Arbitration Commission (CIETAC)*

If general procedure applies, according to Article 48<sup>1</sup> of CIETAC Rules 2015, the arbitral tribunal shall render an arbitral award within six months from the date on which the arbitral tribunal is formed. For domestic arbitration cases, according to Article 71<sup>2</sup> of CIETAC Rules 2015, the duration will be shortened to four months. If summary procedure applies, according to Article 62<sup>3</sup> of CIETAC Rules 2015, the duration will be further shortened to three months. Other time periods, such as submission of defense or counterclaim, are also shortened correspondingly.

To compare from a statistical perspective, in the year of 2014, the average duration of arbitration proceedings of CIETAC is 143 days (after formation of tribunal), among which the duration of summary procedure is 105 days (after formation of tribunal), and the duration of non-summary procedure is 195 days (after formation of tribunal). In practice, summary procedure applied in about 70% of all the cases accepted by CIETAC since 1995.

According to Appendixes of CIETAC Rules 2015, generally the arbitration fee of cases is based on the amount in dispute, so application of summary procedure will not necessarily reduce the cost. However, if a foreign arbitrator is appointed as the sole arbitrator in a summary procedure, his/her cost is

calculated on an hourly basis, therefore, as the duration of summary procedure is shortened, costs in relation to the sole arbitrator will be reduced accordingly.

*Asian International Arbitration Centre (AIAC)*

To date, the AIAC has administered a total of 11 fast track arbitrations. Of the 11 cases, 4 cases are international arbitrations and 7 are domestic arbitrations.

Taking into account the procedural timeline from the commencement date of the fast track arbitration, to the appointment of the arbitral tribunal, exchange of written submissions, substantive oral hearings (if any), up until any time extension of the proceeding until the rendering of the award, the duration of an AIAC fast track arbitration spans from 3 to 10 months.

The shortest duration of a fast track arbitrations in a domestic context was 87 days, with the longest being 307 days. Whereas for international fast track arbitrations, the shortest was 124 days with the longest being 190 days.

In terms of cost-savings, the arbitral proceedings conducted under the AIAC Fast Track Arbitration Rules are even more affordable than those conducted under the AIAC Arbitration Rules:

| <b>Costs</b>                 | <b>AIAC Fast Track Arbitration Rules</b>   | <b>AIAC Arbitration Rules</b>  |
|------------------------------|--|--|
| 1. Registration fee          | RM530.00 for domestic matters and USD530.00 for international matters <sup>4</sup> | RM1,590.00 for domestic arbitrations and USD795 for international arbitrations <sup>5</sup>                |
| 2. Approximate average costs | Domestic matter:<br>RM62,415.14<br><br>International matter:<br>USD38,083.64       | Domestic matter (sole arbitrator): RM 106,060.00<br><br>International matter (sole arbitrator): USD 44,893 |

*Singapore International Arbitration Centre (SIAC)*

SIAC introduced the expedited procedure in its Rules in 2010. As of 31 May 2019, SIAC has received 499 applications for expedited procedure, and 291 applications have been accepted.

For cases that are heard pursuant to the expedited procedure, the final awards have to be made within 6 months of the constitution of the tribunal. Based on SIAC’s Cost and Duration Study, for cases under both the regular procedure and the expedited procedure, the mean duration of cases before a sole arbitrator is 13.0 months and the median duration of cases before a sole arbitrator is 11.3 months.

SIAC’s fee schedule operates on an *ad valorem* basis, and we do not have a separate fee schedule for expedited arbitrations. However, because expedited procedure typically involves proceedings that are lower in value and less complex, and sometimes heard only on the documents, there would usually be a reduction of costs in SIAC’s administrative fees and the arbitrator’s fees.

*Madrid Court of Arbitration (MCA)*

We have received no negative feedback on the use of expedited proceedings or requests to avoid following it.

It undoubtedly results in a reduction of time (and therefore presumably costs for the parties). The reasons for the reduction in time are explained in point 5 below.

In this table we summarize some statistics relating to expedited proceedings in the last two years:

|  | <b>2017</b>    | <b>2018</b>    |
|--|----------------|----------------|
| Cases channeled through expedited proceedings  | 38             | 19             |
| Percentage of expedited proceedings over the total cases managed by the Court  | 46,34 %        | 38,77 %        |
| Expedited proceedings finalized without extension of the time limit to render the award                                | 26             | 9              |
| Expedited proceedings finalized with an extension of the time limit to render the award                                | 2 <sup>6</sup> | 1 <sup>7</sup> |
| Expedited proceedings finished due to (i) the agreement of the parties or (ii) withdrawal of the claim by the Claimant | 10             | 2              |

*German Arbitration Institute (DIS)*

Since entering into force of the Rules, 150 cases have been registered. In 13 cases, parties have agreed on Annex 4. There are 9 cases still pending and 4 have been terminated prior to the constitution of the arbitral tribunal due to an agreement by the parties (Article 42.4 (i) of the Rules). At this point, the proceedings were still in an early stage. Therefore, the Administrative Fees have been reduced by 30 %. The terminated cases lasted approximately 300 days.

*Bahrain Chamber for Dispute Resolution (BCDR-AAA)*

The BCDR-AAA expedited arbitration procedure has been available only since the end of 2017. Given the usual lead-times, therefore, the BCDR-AAA currently has no useful statistics on take-up.

However, parties – particularly the banking and financial community – have welcomed the introduction of expedited procedure to resolve lower-value disputes, and the option to have these applied irrespective of the sums in dispute.

It is anticipated that the expedited procedure will inevitably result in (potentially-significant) savings in time and cost, given, in particular, provisions that the arbitral tribunal will comprise a sole arbitrator notwithstanding any other agreement to the contrary; that the Request for Arbitration and the Response will stand as Statement of Claim and Defence, respectively; the power to direct papers-only proceedings; and reduced default time limits for written submissions and for the issuance of the final award.

*Hong Kong International Arbitration Centre (HKIAC)*

The Expedited Procedure has been one of the most popular provisions of the Rules. Between 1 November 2014 (the date the 2013 Rules came into effect) and 31 May 2019, the HKIAC received 69 applications for Expedited Procedure. 59 were made under the 2013 Rules and ten under the 2018 Rules. Of these applications, 47 applications were granted, 16 were denied, and two were withdrawn. The remaining four applications are pending as at the date of this report.

The table below shows the grounds invoked for the 69 applications and the number granted:

| <b>Ground</b>                             | <b>Number of Applications</b> | <b>Granted</b> |
|---|-------------------------------|----------------|
| Amount in dispute                         | 38                            | 29             |
| Party agreement                           | 7                             | 7              |
| Exceptional urgency                       | 5                             | 1              |
| Combination of two or more of the grounds | 8                             | 2              |
| Other grounds invoked                     | 1                             | 0              |
| Ground under the Rules not specified      | 10                            | 8              |

In 2017, the HKIAC completed a survey of the costs and duration of 62 HKIAC arbitrations conducted under the 2013 Rules that concluded by way of final award between 1 November 2013 and 31 December 2017. All arbitrations that were concluded by consent award or as a result of settlement were excluded. The costs included the arbitral tribunal's fees<sup>8</sup> and the HKIAC's registration and administrative fees. The duration measured the period between the date of commencement of the arbitration and the date of the final award, inclusive of any stay period.

Of the 62 arbitrations, ten were conducted under the Expedited Procedure. The mean and median<sup>9</sup> costs and duration were as follows:

|                             | <b>Median</b>           | <b>Mean</b>             |
|-----------------------------|-------------------------|-------------------------|
| Duration of arbitration     | 8.1 months (5.8 months) | 8.1 months (5.4 months) |
| Costs of arbitration (US\$) | 19,065                  | 35,056                  |

The number of months in parentheses indicates the duration between the date on which the case file was transmitted to the arbitral tribunal and the date of the final award. Under the Rules, that time period should be six months; the mean and median duration for all Expedited Procedures were less than six months.

As a reference for comparison, the mean and median costs and duration for cases not conducted under the Expedited Procedure were as follows:

|                             | <b>Median</b> | <b>Mean</b> |
|-----------------------------|---------------|-------------|
| Duration of arbitration     | 14.3 months   | 16.2 months |
| Costs of arbitration (US\$) | 62,537        | 117,045     |

#### *Chartered Institute of Arbitrators (CI Arb)*

CI Arb has a Dispute Appointment Service (DAS) which acts as appointing authority in regular, emergency, or expedited proceedings. However, neither CI Arb nor DAS administers cases.

#### *Swiss Chambers' Arbitration Institution (SCAI)*

The experience of SCAI with the Expedited Procedure provisions has been very positive since its implementation in 2004. It is worth noting that prior to the adoption of the Swiss Rules in 2004, an expedited procedure was already included in the 1992 Arbitration Rules of the Chamber of Commerce and Industry of Geneva ("CCIG").

From 2004 to 2018, SCAI has administered over 454 expedited procedures.

Pursuant to Article 42(1)(d) of the Swiss Rules, the award shall be made within six months from the date on which the Secretariat transmitted the file to the arbitral tribunal. This time-limit may be extended

by the Court but only in exceptional circumstances. According to our statistics, the average length of the expedited procedures is of 6 months and 13 days.

### *The Belgian Centre for Arbitration and Mediation (CEPANI)*

Until present, CEPANI has not recorded separate statistics for proceedings governed by the expedited rules in Section II of the CEPANI Rules 2013. Such distinction will be made going forward with the entry into force of the CEPANI Rules 2020.

However, up until today, CEPANI's experience with small claims administered under Section II of the CEPANI Rules 2013 is extremely positive. Generally, parties show no interest in opting out of the expedited procedural rules. Normal proceedings under Section II of the CEPANI Rules 2013 on average last roughly 9 months between the introduction of the file and the issuance of the final award. The average time from the appointment of the arbitral tribunal until the issuance of the final award is 4 months. In practice, most delays therefore relate to the delays in payment of the provision for arbitration costs by the Parties. In CEPANI arbitration proceedings, the Appointment Committee only appoints the arbitral tribunal when the advance on the arbitration costs is paid in full.

Further gains in time and costs are made through the elimination of procedural steps (no terms of reference required) and reduced time limits for the establishment of the procedural calendar. Unless the parties have expressly opted for a three-member tribunal, a sole arbitrator is normally appointed in disputes of limited value. Furthermore, most expedited proceedings are decided on the documentary evidence submitted by parties, with limited additional taking of evidence, if any (i.e. no document production, witness evidence, or expert evidence). Finally, it is not uncommon for disputes of limited value to be decided on the basis of documents only, although parties may request a short hearing (dedicated only to oral submissions and questions from the arbitral tribunal).

These advantages are not expected to change with the increase of the threshold to EUR 100,000.00 in the CEPANI Rules 2020.

### *Korean Commercial Arbitration Board (KCAB)*

Arbitral proceedings conducted under Expedited Procedures constitute on average 50% of our annual caseload.

The main features of the Expedited Procedure are (i) arbitration by a sole arbitrator; (ii) only one hearing; (iii) documents-only arbitration for smaller claims; (iv) shorter time limits for rendering the award; and (v) the award in a summary form. In regards to the duration of the proceedings, the above mentioned features, especially the Secretariat-appointed sole arbitrator and shorter time limit for rendering the award, has allowed for shorter durations of proceedings compared to those not conducted under Expedited Procedures.

As for reduction of costs, Article 1 of Appendix 1 of the Rules allows for exempt payment of filing fee where the claim or counterclaim amount is below KRW 200,000,000.

Our general experience in administering expedited proceedings is that it well suits parties of smaller claims, as they are most often under significant time pressure to resolve their dispute. These parties prefer to have their proceedings conducted under a guaranteed shorter-time frame and have therefore welcomed their case falling within the scopes of the Expedited Procedure.

### *Delos Dispute Resolution*

There has been a steady increase in the number of contracts containing a Delos arbitration clause, which suggests acceptance and use by parties of the Delos approach to the conduct of arbitral proceedings, including by more established and traditional users of arbitration.

In the one case administered to-date by Delos, the proceedings lasted just over three months from commencement through to rendering of the final award. Further information is available at <https://delosdr.org/index.php/2017/04/03/first-award/>.

### *The Permanent Arbitration Court of the Hungarian Chamber of Commerce and Industry*

Since entering into force of the Rules of Proceedings (see also the earlier Rules of 2008), 50 cases have been registered. There is no monetary threshold, the advantage in the cases administered under the Expedited Rules was that they mainly finalised within 100 days. The administrative fees are the same and the cases have not resulted in the reduction of arbitration costs but in the reduction of attorney's fees.

### *International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC at RFCCI)*

Expedited arbitration is used with regard up to approximately 30% of cases referred to the ICAC and resolved under the Rules. Expedited proceedings contribute to reducing the costs. Since a case is as a rule examined by a sole arbitrator the arbitration fee is reduced by 20%. The time period for settlement of a dispute is limited to 120 days from the date of formation of the arbitral tribunal which is considerably shorter compared with 180 days envisaged for ordinary procedure. The time period of 120 days is practically always met and actual time spent is normally less than this period.

### *Beijing Arbitration Commission/ Beijing International Arbitration Center (BAC/BIAC)*

In 2018, the BAC/BIAC administered 4872 cases, among which 2929 cases are administered under expedited procedures. In 2018, the BAC/BIAC concluded 2570 cases under expedited procedure, which accounts for 87.74% of all administered cases under expedited procedures.

For international arbitration cases, according to Article 68 of the BAC Rules, the arbitral tribunal shall render its award within 90 days from the date of its constitution. For domestic arbitration cases, according to Article 59 of the BAC Rules, the duration of issuing an award will be shorten to 75 days. In 2018, the average duration of BAC arbitration cases from the constitution of the arbitral tribunal to the rendering of the award was 82.25 days and the average duration from the case acceptance to the rendering of the award was 108 days.

Under the BAC Rules, the Tribunal shall be composed of a sole arbitrator if the case is administered under expedited procedure. According to the Annex I of Beijing Arbitration Commission Schedule of Arbitration Fees, the arbitration fees will be divided to arbitrator's fees and administration fees, unless parties agreed the arbitrator's fees shall be calculated on the basis of an hourly rate. Either way, arbitrator's fees of a sole arbitrator are expected to be less than a three members tribunal, and thus the cost of the Expedited Procedure is much less than the Ordinary Procedure.

In situation where the parties agreed to apply the expedited procedure even the amount in dispute exceed CNY 5 million, the arbitrator's fee will be reduced by up to 40% percent by virtue of a sole arbitrator Tribunal compared to a three-member Tribunal.

## End Notes to Question 2

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### <sup>1</sup> Article 48 Time Period for Rendering Award

1. The arbitral tribunal shall render an arbitral award within six (6) months from the date on which the arbitral tribunal is formed.

2. Upon the request of the arbitral tribunal, the President of the Arbitration Court may extend the time period if he/she considers it truly necessary and the reasons for the extension truly justified.

3. Any suspension period shall be excluded when calculating the time period in the preceding Paragraph 1.

### <sup>2</sup> Article 71 Time Period for Rendering Award

1. The arbitral tribunal shall render an arbitral award within four (4) months from the date on which the arbitral tribunal is formed.

2. Upon the request of the arbitral tribunal, the President of the Arbitration Court may extend the time period if he/she considers it truly necessary and the reasons for the extension truly justified.

3. Any suspension period shall be excluded when calculating the time period in the preceding Paragraph 1.

### <sup>3</sup> Article 62 Time Period for Rendering Award

1. The arbitral tribunal shall render an arbitral award within three (3) months from the date on which the arbitral tribunal is formed.

2. Upon the request of the arbitral tribunal, the President of the Arbitration Court may extend the time period if he/she considers it truly necessary and the reasons for the extension truly justified.

3. Any suspension period shall be excluded when calculating the time period in the preceding Paragraph 1.

<sup>4</sup> Including applicable taxes

<sup>5</sup> Excluding applicable taxes

<sup>6</sup> The extension of the time limit in one of these cases was due to the agreement of the parties ex. article 39.1 of the Rules. The second one was by decision of the Arbitral Tribunal ex. Article 51.1 of the Rules.

<sup>7</sup> The extension of the time limit was the result of the Court's decision ex. article 39.3 of the Rules.

<sup>8</sup> Under the HKIAC Rules, parties have the option of paying arbitral tribunals' fees by hourly rate (capped at HK\$6,500 or approximately US\$830) or by reference to an ad valorem fee scale. The vast majority of HKIAC tribunals are paid on an hourly rate basis.

<sup>9</sup> Costs and duration are presented in both median and mean numbers for completeness. The median is the middle number of a set of values. The mean is the sum of all of the values in a set of data, divided by the number of values. Given the distribution of the data concerned, the median value is the more meaningful and robust value, as it minimises the skewing effect of outliers.

### QUESTION 3

Under what circumstances does expedited arbitration apply? Is there a set criteria or are the parties free to choose when expedited arbitration would apply? What role does your institution play in determining whether the expedited procedure would apply?

#### Vienna International Arbitral Centre (VIAC)

As explained above, the expedited rules are opt-in with no monetary threshold, and can be agreed upon by the parties either in their arbitration agreement or later on up to the submission of the answer to the statement of claim. In our standard letters confirming the receipt of the statement of claim and when we forward the statement of claim to the respondent, we draw parties' attention to the fact that they may agree on expedited proceedings even at this stage.

#### Construction Industry Arbitration Council (CIAC)

Under the Amended Act, 2015 there are no set criteria. According to the said Amended Act 2015, the parties to an arbitration agreement, may, at any stage either before or at the time of appointment of the Arbitral Tribunal, agree in writing to have their dispute resolved by "Fast Track Arbitration" through a Sole Arbitrator. CIAC has no jurisdiction in deciding whether the "Fast Track Arbitration" be adopted or not except as an advisory.

#### Russian Arbitration Center (RAC)

There are two prerequisites for the expedited arbitration procedure to apply:

- Expedited arbitration applies if the parties have specified in the arbitration agreement that expedited arbitration shall apply (Paragraph 1 Article 64 of RAC Arbitration Rules); and
- Expedited arbitration may apply if the value of the claim does not exceed thirty million (30,000,000) Rubles for arbitration of domestic disputes, or five hundred thousand (500,000) US Dollars for international commercial arbitration (Paragraph 2 Article 64 of RAC Arbitration Rules).

The expedited procedure under the RAC Arbitration Rules is based only on documents and conducted without oral hearings. Therefore it is important that Russian arbitration law also requires that the parties enter into an express agreement

<sup>1</sup> to dispose of the oral hearings in domestic disputes. In international commercial arbitration, such an express agreement is not required. Thus, the recommended arbitration clause for expedited procedure under the RAC Arbitration Rules also includes this express agreement.

RAC at RIMA checks the compliance with these two prerequisites during the preliminary analysis of the claim and when deciding whether to commence arbitral proceedings. If any of the prerequisites is not complied with (e.g., the amount of claim exceeds thirty million Rubles in a domestic dispute), RAC at RIMA determines the applicable procedure. If the value of the claim increases before the arbitral tribunal's constitution and exceeds the threshold set for the application of expedited procedure, the dispute shall be resolved by means of a standard arbitration procedure. If the value of the claim increases after the arbitral tribunal's constitution and exceeds the threshold set for the application of expedited procedure, the Parties should agree that the dispute shall be resolved by a sole arbitrator by means of a standard arbitration procedure, otherwise the expedited arbitration shall be terminated.

Milan Chamber of Arbitration (CAM)

CAM has no set of Expedited Arbitration Rules.

London Court of International Arbitration (LCIA)

As already mentioned, the current version of the Rules does not contain any specific procedure or provisions in respect to expedited arbitral proceedings as such.

Georgian International Arbitration Centre (GIAC)

Under the GIAC Rules there are two criteria for applying FTA procedures:

- The amount in dispute is less than 100, 000 USD;
- The arbitration agreement is concluded before March 10<sup>th</sup> 2017.

Parties can exclude the application of FTA procedure by their explicit agreement to opt out from it. Pursuantly, since the two criteria are met the GIAC does not play any role in determining the application of FTA procedures.

Arbitration Institute of the Stockholm Chamber of Commerce (SCC)

The Rules for Expedited Arbitration apply if i) the parties specifically have agreed to them, or ii) have agreed on a combination clause,<sup>2</sup> under which the Rules for Expedited Arbitration shall apply under certain designated circumstances or unless the SCC in its discretion determines, taking into account the complexity of the case, the amount in dispute and other circumstances, that the Arbitration Rules shall apply.

International Centre for Alternative Dispute Resolution (ICADR)

Fast Track Arbitration applies where the parties to Arbitration agreement, at any stage either before or at the time of appointment of the arbitral Tribunal agree in writing to have their dispute resolved by fast track procedure. Extracts of the provision made in this regard in the ICADR Arbitration Rules, 1996 is enclosed.

China International Economic and Trade Arbitration Commission (CIETAC)

According to Article 56<sup>3</sup> of CIETAC Rules 2015, the parties are entitled to choose whether summary procedure would apply regardless the amount in dispute. The summary procedure shall apply to cases where one party applies for arbitration under the summary procedure and the other party agrees in writing; or where both parties have agreed to apply the summary procedure.

Absent such agreements, if the amount in dispute does not exceed RMB 5,000,000, summary procedure would automatically apply.

According to Article 56<sup>4</sup> of CIETAC Rules 2015, where there is no monetary claim or the amount in dispute is not clear, CIETAC shall determine whether or not to apply the summary procedure after full consideration of relevant factors, including but not limited to the complexity of the case and the interests involved.

### Asian International Arbitration Centre (AIAC)

The AIAC Fast Track Arbitration Rules apply on the basis of the written agreement between the Parties, while the appointment of an emergency arbitrator is possible on the basis of the request of the Party or Parties provide that they have agreed to arbitrate under the AIAC Arbitration Rules 2018.

\*

There are no set criteria for the application of the expedited arbitration as such. However, the AIAC Fast Track Rules provide for a default criteria to determine whether the arbitration shall be documents-only: pursuant to Rule 16(2) of the Fast Track Rules, where the aggregate amount of dispute in international arbitration is less than or unlikely to exceed USD75,000 or its equivalent in other currencies; or is less than RM150,000 or unlikely to exceed RM150,000 or equivalent in other currencies, the arbitration shall then proceed as a documents-only arbitration. The arbitration can proceed by way of substantive oral hearings if the arbitral tribunal deems it necessary upon consultation with the Parties.

\*

#### **Applicability of the AIAC Fast Track Rules**

The AIAC determines the following upon the receipt of the Commencement Request:

- whether the Parties have agreed to arbitrate under the AIAC Fast Track Rules;
- applicable edition of the AIAC Fast Track Rules.

#### **Decision on the appointment of an emergency arbitrator**

The mechanism for the appointment of an emergency arbitrator is available to the Parties in dispute once they agree on the application of the AIAC Arbitration Rules 2017 or 2018. Hence, once the AIAC confirms the date of commencement of arbitral proceedings under Rule 2(2) of the AIAC Arbitration Rules 2018, the Party or Parties may submit an application to appoint an emergency arbitrator pursuant to Rule 8(2) of the AIAC Arbitration Rules 2018. The Director of the AIAC at his own discretion may seek such information from the Parties as the Director deems appropriate to exercise his power to appoint (*cf.* Rule 4(6) of the AIAC Arbitration Rules 2018).

#### **Applicability of the CIPAA in adjudication proceedings**

Upon receipt of the registration documents, the AIAC determines *prima facie* applicability of the CIPAA, i.e. reviews the following:

- the existence of the construction contract in writing;
- whether construction work was carried out wholly or partly within the territory of Malaysia;
- whether a particular matter falls within one the exceptions (for instance, the CIPAA does not apply to a contract entered into by a natural person for any construction work in respect of any building which is less than four storeys high and which is wholly intended for his occupation).

### Singapore International Arbitration Centre (SIAC)

Under Rule 5.1 of the SIAC Rules, a party may apply to have the proceedings administered on an expedited basis if any of the following criteria is satisfied:

- the amount in dispute does not exceed the equivalent amount of SGD 6 million, representing the aggregate of the claim, counterclaim and any defence of set-off;
- the parties so agree; or
- in cases of exceptional urgency.

Upon application by a party to have the proceedings conducted in accordance with the expedited procedure, the President of the SIAC Court of Arbitration will determine whether, having regard to the views of the parties and the circumstance of the case, the arbitral proceedings shall be conducted in accordance with the expedited procedure.

Rule 5.1 sets out the threshold requirements in order for an application to be made. This construction was preferred over the automatic application of expedited procedure based on the satisfaction of any criterion (e.g. amount in dispute).

#### Madrid Court of Arbitration (MCA)

Pursuant to article 51 of the Rules, the parties may agree to have the arbitration proceedings governed by the expedited procedure rules should they deem it appropriate. Additionally, where the total amount of the proceedings (including the counterclaim, if applicable) does not exceed 100,000 euros, the expedited procedure will apply by decision of the Court, provided there are no circumstances which, in the judgment of the Court, make it advisable to follow the ordinary procedure. This exception is very infrequent, and in the large majority of the cases under 100.000 euros, the Court will apply the expedited procedure.

#### German Arbitration Institute (DIS)

The Expedited Proceedings apply if the parties and the arbitral tribunal agree on their application during the case management conference (Article 27.4 (ii) of the Rules). There are no specific criteria such as a threshold value of the dispute for the application of the Expedited Proceedings.

\*

As to the role of the institution, the DIS Secretariat ensure that the arbitrator(s) fulfil the obligation to discuss the application of Annex 4 during the case management conference. Otherwise, the institution is not involved in deciding on whether to run the proceedings in an expedited manner.

#### Bahrain Chamber for Dispute Resolution (BCDR-AAA)

Pursuant to Article 6.1 of the BCDR-AAA 2017 Rules, if the parties have not agreed in writing otherwise, the expedited procedure automatically applies to quantified monetary claims where the aggregate sum of the claim and any counterclaim does not exceed USD 1 million.

\*

The parties may opt out of the expedited procedure altogether. Conversely, the parties may agree that the expedited procedure will apply irrespective of the value of any claim or counterclaim.

\*

Whether the expedited procedure would apply is determined entirely by the Rules which will not be overridden by the institution. The extent to which the institution itself may affect the applicability of the procedure, therefore, is confined to its authority, under Article 6.7 of the BCDR-AAA 2017 Rules to determine whether a case of which the value rises above the USD 1 million threshold should not continue on an expedited basis and as to which the tribunal may similarly decide, or the parties may agree, that it should not proceed expedited. Absent such ruling or agreement, the case would continue to be expedited notwithstanding the monetary threshold has been exceeded.

## Hong Kong International Arbitration Centre (HKIAC)

As noted in paragraph 0 above, under the Rules, prior to the constitution of the arbitral tribunal, a party may apply to the HKIAC for an arbitration to be conducted as an Expedited Procedure where:

- the amount in dispute representing the aggregate of any claim and counterclaim (or any set-off defence or cross-claim) does not exceed HK\$25,000,000 (approx. US\$3,200,000); or
- the parties so agree; or
- in cases of exceptional urgency.<sup>5</sup>

Each of the grounds is discussed further below.

### **Amount in dispute**

Article 42.1(a) of the 2018 Rules provides that an application may be made where “*the amount in dispute representing the aggregate of any claim and counterclaim (or any set-off defence or cross-claim) does not exceed the amount set by HKIAC, as stated on HKIAC’s website on the date the Notice of Arbitration is submitted.*” At present, that amount is HK\$25,000,000 (approx. US\$3,200,000).<sup>6</sup> To date, 40 applications have been made pursuant to this ground under the 2013 Rules and six have been made under the 2018 Rules.<sup>7</sup>

In case an application under this ground is made before the respondent has filed its Answer to the Notice of Arbitration, the HKIAC typically obtains the respondent’s comments on the monetary value of potential counterclaims or set-off defences. If the aggregate of the claims exceeds the threshold, the application will not be granted under this ground.<sup>8</sup>

In case the parties’ claims and counterclaims or set-off defences are not quantified, the HKIAC will ask the parties to provide an estimate for purposes of deciding the application.<sup>9</sup>

### **Party agreement**

Article 42.1(b) of the 2018 Rules provides that an application may be made where “*the parties so agree.*” In this respect, a subsequent agreement of the parties to the application of the Expedited Procedure takes precedence over any other grounds that may have been invoked initially, e.g. amount in dispute and/or exceptional urgency.<sup>10</sup>

To date, seven applications have been made pursuant to this ground under the 2013 Rules and three have been made under the 2018 Rules.<sup>11</sup>

To support an application on this ground, the applicant must adduce evidence that the parties have agreed to apply the Expedited Procedure. In the absence of documentary verification of the parties’ agreement, the HKIAC will seek confirmation from the other party that the parties have reached an agreement to apply the Expedited Procedure. In the alternative, the applicant may invite the other party to agree to the application for Expedited Procedure.<sup>12</sup>

### **Cases of exceptional urgency**

Article 42.1(c) of the 2018 Rules provides that an application may be made “*in cases of exceptional urgency,*” notwithstanding the fact that the aggregate amount in dispute exceeds the monetary threshold of HK\$25,000,000 (approx. US\$3,200,000) as set by the HKIAC, or the parties have not agreed to the application of the Expedited Procedure.

The Rules do not specify the circumstances which constitute “*exceptional urgency.*” Any application based on this ground will be considered by the HKIAC on a case-by-case basis.<sup>13</sup> The HKIAC considers the relevant circumstances of the case, including any comments by the parties, which must show not only “*urgency,*” but “*exceptional urgency.*” To date, ten applications have been made pursuant to this ground or under this ground in combination with another.<sup>14</sup> Of these applications, only one has been granted.

That involved a corporate dispute in which the Claimants alleged that Respondent had breached a “Right of First Offer Clause” when Respondent sold its shares in First Claimant to a third party, without first offering the shares for sale to Second Claimant. According to Claimants, the sale prevented them from

securing approval from the board of directors of First Claimant to execute a “Buy-out Transaction” and a “Commitment Letter” to secure access to a debt facility, the termination of which was imminent at the time of the application. Claimants asserted that the circumstances amounted to “*exceptional urgency*” on the basis that the execution of the “Buy-out Transaction” and the “Commitment Letter” were vital to First Claimant’s business, and their termination would cause irreparable harm to Claimants.

The HKIAC found that the following circumstances established the exceptionally urgent nature of the case: (i) Claimants stood to suffer irreparable harm, as they had to perform a re-tender for both transactions; and (ii) Claimants’ failure to execute the “Buy-out Transaction” and the “Commitment Letter” would result in Second Claimant losing control over the First Claimant, thereby causing irreparable harm to Claimants.

The HKIAC decides whether the Expedited Procedure shall apply to an arbitration under the Rules. The determination is made either by the Proceedings Committee<sup>15</sup> or by the Secretary-General of the HKIAC.

The Proceedings Committee decides on contested applications under the first and third criteria, i.e., the amount in dispute and cases of exceptional urgency.

Where the parties agree on the application of the Expedited Procedure, generally the Secretary-General determines the applications. In cases where the parties’ agreement is not clear, the Secretary-General raises the matter to the Proceedings Committee for determination.

In one case under the 2013 Rules, the Claimant, after succeeding in its application for the Expedited Procedure under the first criterion (amount in dispute), sought the discontinuance of the Expedited Procedure on the ground that it subsequently expected the amount in dispute to exceed the threshold. The Proceedings Committee determined whether the HKIAC was competent to decide whether to discontinue the application of the Expedited Procedure. It held that while all decisions made by the HKIAC under the Rules are final, the HKIAC retained discretion to revisit a previous decision where new circumstances had arisen. In this case, the new circumstance was the new estimation that the amount in dispute would likely exceed the threshold amount.

This case partially motivated the introduction of Article 42.3 to the 2018 Rules, which provides as follows:

*“Upon the request of any party and after consulting with the parties and any confirmed or appointed arbitrators, HKIAC may, having regard to any new circumstances that have arisen, decide that the Expedited Procedure under Article 42 shall no longer apply to the case. Unless HKIAC considers that it is appropriate to revoke the confirmation or appointment of any arbitrator, the arbitral tribunal shall remain in place.”*

To date, no request has been made to the HKIAC under Article 42.3 of the 2018 Rules.

### Chartered Institute of Arbitrators (CIArb)

The application of the CIArb CCEA Rules is defined in Article 1 of the Rules:

#### Article 1 – Scope of Application

1.1 The provisions of the CIArb Arbitration Rules shall apply except to the extent that the Cost-controlled Expedited Arbitration Rules (CCEA Rules) provide otherwise.

By agreeing to arbitration under the CIArb Arbitration Rules, the parties agree that the CCEA Rules shall apply if the arbitration agreement was concluded after 1 July 2018 and:

- a) the value of the claim does not exceed the equivalent of £2,000,000.00 calculated on the date of the notice of arbitration, served in accordance with Article 3 of the CIArb Arbitration Rules (the Value of the Claim); or

b) the parties have agreed that they will apply the CCEA Rules regardless of the amount in dispute.

1.2 In the event that the total value of the sums in dispute, being the Value of the Claim and the value of any counterclaim or a claim for the purpose of a set-off ('the total amount in dispute'), exceed the equivalent of £2,000,000.00 calculated on the date of the notice of arbitration, served in accordance with Article 3 of the CIArb Arbitration Rules, the arbitrator shall determine whether it is appropriate for the arbitration to proceed under either the CCEA Rules or the CIArb Arbitration Rules excluding Appendix III. Factors to consider when making such a determination include, but are not limited to, considerations as to whether in the interest of the fair and efficient resolution of the dispute it is more appropriate for it to be governed by the CCEA Rules or the CIArb Arbitration Rules, bearing in mind, in particular, the need to treat the parties fairly and to give each party a reasonable opportunity to present its case.

1.3 The CCEA Rules shall not apply if the parties have expressly agreed to opt out of the CCEA Rules.

#### *Swiss Chambers' Arbitration Institution (SCAI)*

The provisions of the Expedited procedure apply where:

- The parties have so agreed; or
- The amount in dispute, representing the aggregate of the claim and the counterclaim (or any set-off defence), does not exceed CHF 1 Million

#### *The Belgian Centre for Arbitration and Mediation (CEPANI)*

As indicated above, the expedited procedural rules set out in Article 29 of the CEPANI 2020 Arbitration Rules shall apply if (i) the aggregate amount in dispute does not exceed the amount of EUR 100,000.00; or (ii) if the parties so agree ("opt-in" mechanism for disputes above EUR 100,000.00). The amount in dispute is determined on the basis of the value of the principal claim(s) and the counterclaim(s).

The expedited procedural rules shall not apply to disputes below EUR 100,000.00 if (i) the parties have agreed to opt out of the expedited procedure; or (ii) if the Appointments Committee or the President, upon the request of a party before the constitution of the arbitral tribunal or on its own motion, determines that it is inappropriate in the circumstances to apply the expedited procedure. In practice, such determination will typically be made on the basis of the relevant facts and circumstances of the case, including its complexity.

In the event that the value of the dispute would exceed the EUR 100,000.00 threshold in the course of the proceedings, the expedited procedural rules shall continue to apply, unless otherwise agreed by the parties.

#### *Korean Commercial Arbitration Board (KCAB)*

Article 43 sets forth that Expedited Procedures apply where the claim amount does not exceed KRW 500,000,000 or where the parties agree to be subject to the procedure. Furthermore, documents-only expedited proceedings apply to claims that are under KRW 50,000,000.

\*

KCAB respects the parties' decision regarding the application of the Expedited Procedures. Even if the claim amount falls within the set criteria, if the parties express an agreement not to be subject to expedited proceedings, the arbitration would be conducted under non-expedited procedures. Vice versa, even if the claim does not fall within the set criteria, or if it falls out of the set criteria due to an increase

in claim amount, the parties would be invited to express their opinion of whether they wish to continue their proceedings under the Expedited Procedure or not.

#### *Delos Dispute Resolution*

The Delos Rules of Arbitration apply to all size disputes, as noted in response to Question 1 above. See, further, Appendix 4 of the Delos Rules, available at <https://delosdr.org/index.php/rules/#App4>.

#### *The Permanent Arbitration Court of the Hungarian Chamber of Commerce and Industry*

Expedited arbitration rules apply if the parties have agreed to apply those in the arbitration agreement. Pursuant to Art. 36. of the Rules of the Proceedings the parties and the arbitral tribunal may agree on the application of the expedited proceedings during the case management conference, as well. There are no specific criteria concerning the threshold of the dispute for the application of the expedited proceedings.

No criteria set for the application of the expedited rules by the parties. Our institution has no power to apply such rules without the consent of all parties involved.

#### *International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC at RFCCI)*

According to the Rules (§33) expedited arbitration apply if the total amount of all claims filed by any parties within the established time period does not exceed 50,000 US dollars (except for claims for interest and reimbursement of arbitration costs). When the total amount of all claims exceeds the above sum as a result of amendments or supplements to the claims filed earlier and the arbitral tribunal permits such amendments or supplements expedited proceedings may continue.

A dispute is resolved by a sole arbitrator. In such a case an arbitration fee is reduced by 20%. One round of submissions is provided (a statement of claim and a statement of defence) and in appropriate instances a counter-claim and statement of defence arising out of a counter-claim.

The arbitral proceedings are conducted on the basis of written materials only, without holding an oral hearing. The proceedings should be finished within 120 days after the date of formation of an arbitral tribunal.

It is important to note that parties may agree otherwise e.g. to fix another monetary limit (higher or lower) for expedited arbitration, to provide for an arbitral tribunal composed of three members. Each party may request for an oral hearing.

Thus there is a set of criteria when expedited arbitration would apply. At the same time parties are free to agree otherwise.

The role of an arbitral tribunal and the institution is vital when assessing complexity of a dispute. Expedited procedure is designed for relatively simple and low-cost disputes.

As stated in the Rules in view of complexity and other particular circumstances of the case, including subsequent amendments or supplements to the claims the arbitral tribunal may deem it inappropriate to conduct the expedited proceedings. The proceedings in such a case shall be carried on in an ordinary way by the same arbitral tribunal which usually consists of a sole arbitrator. Before the arbitral tribunal is formed the ICAC President may decide not to conduct the expedited proceedings being guided by similar considerations.

Given the circumstances of the case the arbitral tribunal may allow the parties to present additional written submissions. Prior to formation of the arbitral tribunal such an opportunity may be afforded to the parties by the Executive Secretary of the ICAC.

An oral hearing might be held upon request of either party or if the arbitral tribunal concludes that an oral hearing would be desirable with the view to the circumstances of the case. In such a situation subsequent hearings, as a rule, are not to be held.

Based on the foregoing it is possible to conclude that expedited arbitration is a procedure which is applied under the Rules with a considerable degree of flexibility. The underlying idea is to use adequate procedural tools most suitable to the circumstances of a particular case.

### Beijing Arbitration Commission/ Beijing International Arbitration Center (BAC/BIAC)

Under the BAC Rules, expedited procedures apply under three situations. First, all parties agree to apply expedited procedure. Second, all parties agree that the Tribunal will be composed of a sole arbitrator. Third, unless otherwise agreed by the parties, the expedited procedure shall apply if the amount in dispute does not exceed CNY 5 million.

At any time during the arbitration, the parties could agree to revert an expedited procedure into an ordinary procedure. In addition, if the Claimant amends its claim, or a counterclaim arises, making the amount in dispute exceeds CNY 5 million, either party could request to revert the proceedings from expedited procedure to ordinary procedure. If the parties cannot reach an agreement regarding the reversion of the procedure, the Chairman of the BAC/BIAC shall decide whether to allow such reversion, having considered the complexity of the cases and the stage of the arbitral proceedings.

Based on the BAC/BIAC's current caseload and trends, the financial threshold to apply expedited procedure was raised from CNY 1 million to CNY 5 million. To meet better the needs of the parties to resolve their disputes efficiently and expeditiously, it is practically necessary to increase the financial threshold applicable under the expedited procedure.

### **End Notes to Question 3**

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<sup>1</sup> The conditions that shall be agreed upon by the parties only within the express agreement (such as an agreement not to hold oral hearings) cannot be included in the Arbitration Rules. It means that the express agreement shall be included into arbitration clause.

<sup>2</sup> <https://sccinstitute.com/our-services/model-clauses/english/>

<sup>3</sup> Article 56 Application

1. The Summary Procedure shall apply to any case where the amount in dispute does not exceed RMB 5,000,000 unless otherwise agreed by the parties; or where the amount in dispute exceeds RMB 5,000,000, yet one party applies for arbitration under the Summary Procedure and the other party agrees in writing; or where both parties have agreed to apply the Summary Procedure.

2. Where there is no monetary claim or the amount in dispute is not clear, CIETAC shall determine whether or not to apply the Summary Procedure after full consideration of relevant factors, including but not limited to the complexity of the case and the interests involved.

<sup>4</sup> *Ibid.*

<sup>5</sup> Article 41.1, 2013 Rules; Article 42.1, 2018 Rules.

<sup>6</sup> See Question 1, Endnote 12.

<sup>7</sup> This number includes cases where the criterion "amount in dispute" is invoked together with another ground. See HKIAC's answer to Question 2.

<sup>8</sup> Moser & Bao, para 12.10.

<sup>9</sup> *Ibid.*, para 12.11.

<sup>10</sup> *Ibid.*, para 12.14.

<sup>11</sup> This number includes cases where the criterion "party agreement" is invoked together with other grounds See HKIAC's answer to Question 2.

<sup>12</sup> Moser & Bao, para 12.13.

<sup>13</sup> *Ibid.*, para 12.16.

<sup>14</sup> This number includes cases where the criterion "exceptional urgency" is invoked together with other grounds

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(see See HKIAC's answer to Question 2).

<sup>15</sup> Proceedings Committee, *available at* <<https://www.hkiac.org/about-us/council-members-and-committees/proceedings-committee>>. The Proceedings Committee is currently comprised of: Nils Eliasson (Chairperson); Sheila Ahuja; Cameron Hassall; Andrea Menaker; Catherine Mun; Promod Nair; Helen Shi; and Briana Young. The Chairperson of HKIAC (currently Matthew Gearing QC) is an *ex officio* member of the Proceedings Committee.

#### QUESTION 4

What role does your institution have in appointing, as well as challenges to, the arbitrator in expedited arbitration? If your institution has functioned as an appointing authority under the UNCITRAL Arbitration Rules, how long and how much does it cost, in average, for such an appointment?

##### Vienna International Arbitral Centre (VIAC)

The time-frame for appointment of arbitrators under the expedited rules is shorter, i.e. 15 days instead of 30 days by parties and co-arbitrators. When the VIAC Board has to make substitute appointments or in case of challenge of arbitrators, no shorter time-limits apply. But in any case, all our Board decisions in relation to arbitrator appointments/challenges are decided very swiftly, usually between 1 – 2 weeks.

##### Construction Industry Arbitration Council (CIAC)

The parties are free to select an arbitrator from the CIAC Panel of Arbitrators for appointment of a sole Arbitrator within a limited period of 10 days, failing which the Chairman, CIAC is empowered to appoint suitable Sole Arbitrator from the CIAC Panel of Arbitrators.

As the appointment of Sole Arbitrator, in general, is made with consent of both the parties so the question of any challenges for an appointment of Arbitrator does not arise.

As referred in reply to question I, the appointment of an arbitrator made as per CIAC – Arbitration Rules from the CIAC- Panel of Arbitrators, there is no cost charged in such appointment except the registration fee from both the parties, which is very nominal ranging from INR 10,000 to 20,000 (\$150 to 300).

It has been made clear in reply to question 1 that the CAIC – Arbitration Rules are in Conformity with the Amended Act, 2015. Therefore, the question of functioning of CIAC- under UNCITRAL Arbitration Rules as appointing authority does not arise.

##### Russian Arbitration Center (RAC)

In expedited arbitration, a sole arbitrator resolves a dispute. Unless the parties have agreed upon the arbitrator or the procedure for his /her electing in the arbitration agreement, the Board of RAC at RIMA shall appoint the arbitrator within 14 days following the date of receipt of the claim by the RAC at RIMA (Paragraph 1 Article 66 of RAC Arbitration Rules).

In expedited arbitration, the parties may challenge an arbitrator within five days following the date of becoming aware of the arbitrator's appointment or within five days following the date of becoming aware of the circumstances giving rise to the doubts as to the arbitrator's independence or impartiality. In this event, the arbitrator shall either resign or deliver a written response to the challenge to the party within five days following the date of becoming aware of the challenge. The Board shall consider the challenge within 20 days following the date of receipt of the challenge by the RIMA (Paragraphs 2-3 Article 66 of RAC Arbitration Rules).

To date, RAC at RIMA has not functioned as an appointing authority under the UNCITRAL Arbitration Rules.

### Milan Chamber of Arbitration (CAM)

CAM has no set of Expedited Arbitration Rules.

PCA Secretary General once appointed CAM as appointing authority under the UNCITRAL Arbitration Rules in the '90s.

The CAM body in charge of appointing arbitrators is the Arbitral Council, whose meetings take place every 3 or 4 weeks on the basis of a calendar that is published on the official website of the Chamber. An appointment takes, at the latest, this time.

As for the cost, CAM offers a Procedure to run its services under the UNCITRAL Arbitration Rules and an appointment costs EUR 3 000,00 (plus VAT where due). Further information available at: <https://www.camera-arbitrale.it/en/arbitration/uncitral-arbitration.php?id=519>

### London Court of International Arbitration (LCIA)

As already mentioned, the current version of the Rules do not contain any specific procedure or provisions in respect to expedited arbitral proceedings as such.

As our latest costs and duration analysis shows, the median total duration and median arbitration costs of LCIA arbitrations remain low, at only 16 months and USD 97,000 respectively. This is more apparent when you look at the average duration and costs of the appointment cases under UNCITRAL Rules. On average, an appointment made by the LCIA acting only as appointing authority under UNCITRAL Rules will take 55.33 days and costs GBP 3,086.27. When we act as an appointing authority we may be asked to appoint in default of a party or a sole arbitrator and the process often involves a list procedure, which takes a long period of time. Finally, you should note that according to our Schedule of costs the LCIA takes all the steps relating to the appointment and then ask the parties to pay the LCIA charges incurred for the work relating to the appointment. The actual appointment only takes place once the LCIA receives the funds from the parties. Accordingly, the calculation of the average time required for the appointment is affected by the timing of the payment.

### Georgian International Arbitration Centre (GIAC)

Under the GIAC rules the role of the institution in appointing or challenge of arbitrator in FTA procedures does not vary from the regular procedures. In case of failure of the parties to appoint the arbitrator the GIAC Council will appoint the arbitrator. Likewise in case of challenge if the tribunal will not confirm the challenge the issue will be decided by the GIAC Council.

GIAC has not yet made an appointment according to the UNCITRAL Rule, however cost of the appointment is 1000 USD.

### Arbitration Institute of the Stockholm Chamber of Commerce (SCC)

Under the SCC Rules for Expedited Arbitration the parties are given 10 days to jointly appoint a sole arbitrator. If they fail to do so, the appointment is made by the SCC Board. The Board also decides on challenges to arbitrators in SCC proceedings. Challenges in the arbitrations administered under the SCC Rules are not subject to separate fee.

The SCC may also act as appointing authority in UNCITRAL and ad hoc arbitrations, if the parties so agree. Under the SCC Procedures as Appointing Authority under the UNCITRAL Rules, the SCC may

decide challenges under the UNCITRAL Arbitration Rules. The fee under these SCC Procedures amounts to EUR 3 000 for an appointment of an arbitrator and a decision on challenge, respectively.

#### *International Centre for Alternative Dispute Resolution (ICADR)*

On receipt of the request to appoint an arbitrator, ICADR communicates to each party a list containing names, addresses, nationalities and description of qualifications and experience of at least three individuals from the Panel of Arbitrators. Thereafter, within 15 days, the parties have to send their preference of Arbitrators to ICADR. ICADR then appoints an arbitrator from the said list taking into account the order of preference indicated by the parties. In case the appointment cannot be made according to above mentioned procedure, ICADR can appoint the arbitrator from the panel of other arbitrators maintained by it.

ICADR charges non-refundable fees of Rs. 15,000/- plus taxes in Domestic Commercial/Non-Commercial Arbitration and US \$ 1000 plus taxes in International Commercial Arbitration.

#### *China International Economic and Trade Arbitration Commission (CIETAC)*

In accordance with Article 58<sup>1</sup> of CIETAC Rules 2015, unless otherwise agreed by the parties, a sole-arbitrator tribunal shall be formed under the summary procedure. The parties may jointly nominate, or entrust the Chairman of CIETAC to appoint the sole arbitrator. Where the parties have failed to jointly nominate the sole arbitrator, the sole arbitrator shall be appointed by the Chairman of CIETAC.

Pursuant to Article 32<sup>2</sup> of CIETAC Rules 2015, the Chairman of CIETAC shall make a final decision on the challenge to the arbitrator except that both parties agree to the challenge, or the arbitrator being challenged voluntarily withdraws from his/her office.

\*

Except for acting as the appointing authority in cases where CIETAC administers cases under the UNCITRAL Arbitration Rules, currently CIETAC have not functioned as an official appointing authority under the UNCITRAL Arbitration Rule. However, we would like to take this opportunity to express that we are more than happy to do so and we are confident that we are able to act as an appointing authority, taking advantage of our solid experience in management of arbitration proceedings over the past 60 years.

Also, CIETAC Hong Kong Arbitration Center Rules as Appointing Authority in Ad Hoc Arbitration (“Appointing Authority Rules”)<sup>3</sup>, which came into effect on 1 July 2017 and apply in certain circumstances, are designed to address the provision of facilitative arbitration services based on parties’ request in ad hoc arbitrations under the UNCITRAL Arbitration Rules. Time and cost are specified in the Appointing Authority Rules and its appendix.

#### *Asian International Arbitration Centre (AIAC)*

##### **Procedures under the AIAC Fast Track Rules**

With respect to the matter of appointments, Rule 4(1) of the AIAC Fast Track Rules makes it clear that the Director of the AIAC shall be the appointing authority. Rules 4(4)(b), Rule 4(5)(b), and Rule 4(5)(c) of the AIAC Fast Track Rules provides that the Director of the AIAC is to act upon a Party or the Parties’ request to appoint an arbitrator. Where the Parties have agreed that any arbitrator is to be appointed by one or more Parties, or by any authority agreed to by the Parties, including where any arbitrator has been already appointed, that agreement shall be treated as an agreement to nominate an arbitrator under the AIAC Fast Track Rules and shall be subject to confirmation by the Director of the AIAC at his own discretion.

When a Party raises an objection to, or challenges the appointment of an arbitrator due to justifiable doubts as to the latter’s impartiality and/or independence, the challenging Party is required to communicate its written objection to the Director of the AIAC and the other Party/Parties. Upon receiving the other Party’s or Parties’ comment, the arbitrator, whose replacement is sought, is required to consult with the Director of the AIAC on his or her decision to continue with the arbitration or resign (*cf.* Rule 5(3) – Rule 5(6) of the AIAC Fast Track Rules). Here, the Director’s role is of a consultative nature. However, if the challenged arbitrator decides to resign, then the Director of the AIAC shall appoint a new arbitrator within three days from the date of notification of such resignation (*cf.* Rule 6(1) of the AIAC Fast Track Rules). In such case, the Parties shall be deemed to waive their right to nominate the arbitral tribunal.

**Challenge of the appointed emergency arbitrator<sup>4</sup>**

In the event there is any challenge to the appointment of the emergency arbitrator, such challenge application must be made within one day of the notification by the AIAC to the Parties of the appointment of the emergency arbitrator or the date on which the relevant circumstances were disclosed (*cf.* AIAC Arbitration Rules 2018, Schedule 3, para. 8). Rule 5 “Challenge to the Arbitrators” shall apply to the emergency arbitrator, except that the time limits set out in Rules 5(3) and 5(7) are reduced to one day.

\*

No information available.

Singapore International Arbitration Centre (SIAC)

The President of the SIAC Court of Arbitration will appoint a sole arbitrator for expedited arbitrations, unless he determines that a sole arbitrator will not be appropriate for the case. Challenges to the arbitrator in a case conducted under the expedited procedure will follow the general procedure set out at Rules 14 to 16 of the SIAC Rules 2016. Notably, under Rule 15.4 of the SIAC Rules, the Registrar has the discretion to determine whether the arbitral proceedings will be suspended until the challenge is resolved.

In addition to administering cases under the UNCITRAL Arbitration Rules, SIAC has also served as the appointing authority in *ad hoc* cases conducted in accordance with the UNCITRAL Arbitration Rules. For these *ad hoc* cases, SIAC is able to appoint the arbitrator immediately upon receipt of the arbitrator’s signed Code of Ethics. SIAC’s approach and the arbitrator’s subsequent confirmation are usually completed within a few weeks.

Please find below a table showing SIAC’s appointment fees for *ad hoc* cases:

|                   | <b>1 arbitrator</b> | <b>2 arbitrators</b> | <b>3 arbitrators</b> |
|-------------------|---------------------|----------------------|----------------------|
| Singapore Parties | S\$3,210*           | S\$4,280*            | S\$5,350*            |
| Overseas Parties  | S\$3,000            | S\$4,000             | S\$5,000             |

Madrid Court of Arbitration (MCA)

In terms of appointment, there is little difference in the Court’s role between expedited and ordinary proceedings. In both cases, whenever the parties fail to appoint the sole arbitrator or, as the case may be, all the members of the tribunal, the Court will proceed to do so. In the case of expedited procedures, the Court is empowered to reduce the time frame to effect such appointments. The appointment system is transparent and public (the internal rules that govern the process (“Internal Rules”) can be accessed [here](#)). Essentially, it involves three bodies of the Court: the Secretariat makes the appointment proposal,

which is consulted with the President and finally considered by the Arbitrator Appointment Committee, a fully independent group of five people which makes the appointment decision. The composition of the Arbitrator Appointment Committee is also public and can be accessed [here](#).

In expedited procedures where the parties have not agreed the number of arbitrators, the arbitration shall be entrusted to a sole arbitrator. If the parties have agreed a tribunal of three arbitrators, the Court will invite the parties to agree to appoint a sole arbitrator (article 51.1.d) of the Rules). The Court has no authority to impose such arrangement in the absence of an agreement between the parties.

Challenges to arbitrators, unless otherwise agreed by the parties, are decided by the Court (article 15.1 of the Rules). The Internal Rules provides for delivery of a report by the Secretary General to the Arbitrator Appointment Committee, the body who will make the decision on the challenge.

We have acted as appointing authority on a number of occasions, one of them under UNCITRAL Arbitration Rules. The procedure is essentially the same as appointing arbitrators in one of our cases, and timing is monitored to provide an efficient appointment. The cost is small, as the court only charges a flat fee of 2.000 euros for the service.

#### *German Arbitration Institute (DIS)*

Article 1.4 provides that the Rules shall apply in its integrity to Annex 4. There are no specific rules on appointing or challenging an arbitrator in Expedited Proceedings. The following general rules apply:

- The arbitrator(s) are appointed by the DIS (Article 13.1 of the Rules), either following a (joint) nomination by both parties (sole arbitrator) or one party (co-arbitrator) or the co-arbitrators (president).
- The appointment is made by the Appointing Committee of the DIS (Article 13.2 of the Rules), except in cases in which the arbitrators have been nominated by the parties or the co-arbitrators and none of the parties objected to the appointment (Article 13.3 of the Rules).
- The Arbitration Council of the DIS decides on the challenge of an arbitrator (Article 15.4 of the Rules).

The DIS has not yet functioned as Appointing Authority under the UNCITRAL Arbitration Rules.

#### *Bahrain Chamber for Dispute Resolution (BCDR-AAA)*

Pursuant to Article 6.9 of the BCDR-AAA 2017 Rules, as soon as practicable after the Response to the Request for Arbitration has been filed, the Chamber appoints the sole arbitrator who has been jointly nominated by the parties (assuming no disqualifying conflicts) or, absent party agreement, an arbitrator of its choosing.

Challenges to arbitrators appointed in expedited proceedings are dealt with in the same way as challenges to arbitrators appointed in non-expedited proceedings, as set out at Article 11 of the BCDR-AAA 2017 Rules. In essence, an arbitrator may be challenged by a party if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence and, if not agreed, the challenge will be determined by the institution, whose decision is final.

Under Article 12.1(e) of the BCDR-AAA 2017 Rules, the institution may revoke an arbitrator's appointment on its own initiative if the arbitrator is no longer able to fulfill his or her functions, is not acting independently or impartially, or, of particular significance in expedited proceedings, is not acting in accordance with the arbitrator's duty under Article 16.2 to avoid unnecessary delay and expense.

\*

BCDR-AAA has only recently offered its services as appointing authority under the UNCITRAL Rules, so currently it has no useful statistics on this function.

*Hong Kong International Arbitration Centre (HKIAC)*

The HKIAC appoints arbitrators in accordance with the Rules, including in cases under the Expedited Procedure. Under the Rules, designations of arbitrators are subject to confirmation by the HKIAC for an appointment to become effective. This also applies to designations in proceedings conducted under the Expedited Procedure. All appointments are made by the Appointments Committee.<sup>5</sup> In certain circumstances, the Secretary-General confirms designated arbitrators.

What is particular about constituting an arbitral tribunal under the Expedited Procedure is the issue of the number of arbitrators. The default position is that Expedited Procedure cases shall be referred to a sole arbitrator, unless the arbitration agreement provides for three. If the arbitration agreement provides for three, the HKIAC shall invite the parties to agree to refer the case to a sole arbitrator. If the parties do not agree, the case shall be referred to three arbitrators.

The provisions governing the challenge of an arbitrator under the Rules apply whether or not the proceedings are conducted under the Expedited Procedure. In addition, the HKIAC has published a Practice Note on Challenges to Arbitrators (“Practice Note”), the latest version of which came into force on 11 March 2019.<sup>6</sup> The Practice Note outlines the procedure for challenging an arbitrator under the HKIAC Rules, as well as arbitrations administered by the HKIAC under the UNCITRAL Arbitration Rules, and other relevant rules that bring a matter under the HKIAC’s auspices.

\*

The HKIAC has acted as appointing authority under the UNCITRAL Rules on multiple occasions for many years. The HKIAC has not collated actual data from those cases on the amount of time it takes to make an appointment but can give an estimation based on the process and its experience.

### **Duration**

When the HKIAC is to appoint a sole arbitrator or presiding arbitrator, it may use the list procedure under the UNCITRAL Rules, unless the parties agree that the list procedure should not be used or unless the HKIAC determines that the list procedure is not appropriate.<sup>7</sup> The HKIAC may also make a direct appointment.

When the list procedure applies, the appointment process is as follows:

1. After consulting with the parties, the HKIAC identifies appropriate candidates to be included in the list. Once at least three candidates have confirmed their availability, independence, and impartiality to act as the arbitrator if selected, the HKIAC circulates the list to the parties. Accordingly, the time taken to circulate a list to the parties from the date of receipt of the request is generally two to three weeks.
2. Once the HKIAC circulates the list, the parties have 15 days under the UNCITRAL Rules to return their lists to the HKIAC.
3. Upon receipt of the parties’ lists, and if not all candidates are struck from the list, the HKIAC typically appoints within one day.
4. If all candidates are struck from the list, the HKIAC will generally circulate the details of an individual it is minded to appoint directly within one day. The parties will then be given a chance to comment on the candidate within generally one week.

Accordingly, it typically takes approximately five weeks for the appointment of a sole or presiding arbitrator under the list procedure if not all candidates are struck from the list, but where that happens, the process may take approximately six weeks.

When the HKIAC is requested to appoint the co-arbitrator on behalf of a party or parties, it generally takes the HKIAC two weeks which includes the identification of an appropriate individual and a one-week period for the parties to submit any comments on the person the HKIAC is minded to appoint.

## Costs

Under the 2015 Procedures, the HKIAC charges an appointment fee of HK\$8,000.<sup>8</sup> Under the 2005 Procedures, the HKIAC charges an appointment fee of HK\$4,000.<sup>9</sup> Under the 1986 Procedures, the HKIAC charges an Appointment Fee based on the following scale:<sup>10</sup>

| Amount of Claim       | Fee            |
|-----------------------|----------------|
| Up to HK\$5,000,000   | HK\$3,000      |
| Up to HK\$50,000,000  | HK\$8,000      |
| Up to HK\$100,000,000 | HK\$12,000     |
| Over HK\$100,000,000  | As appropriate |

### Chartered Institute of Arbitrators (CIArb)

At the request of the parties arbitrating under the CIArb CCEA Rules, the CIArb's DAS acts as appointing authority and appoints the sole arbitrator if the parties fail to agree on an arbitrator. While this is not expressly stated in the CIArb CCEA Rules, DAS will accept the request of the parties to act as appointing authority in a dispute under those Rules. Note also that the CIArb Arbitration Rules, Article 6, expressly require that DAS be used as the appointing authority for any dispute under those Rules.

DAS has not acted as an appointing authority in a dispute under the UNCITRAL Rules to date but believes that it could and willing to at the request of both parties in such a dispute.

### Swiss Chambers' Arbitration Institution (SCAI)

Regarding the expedited procedures, the SCAI has the same role it has under the rules governing the ordinary procedure. As mentioned in the answer to question 1, unless otherwise indicated in Article 42, the rules governing ordinary procedures apply (*i.e.* the provisions contained in Section II on the Composition of the Arbitral Tribunal).

SCAI offers its services as appointing authority in UNCITRAL and other ad hoc arbitration proceedings, under the [Rules for SCAI as Appointing Authority](#).

According to Article 2.3 of the Rules for SCAI as Appointing Authority, the party that submits a request for SCAI to act as appointing authority shall pay a non-refundable Registration Fee of CHF 4'500.-. Pursuant to Article 6, administrative costs for the services rendered shall be fixed "[...] at SCAI's discretion depending on the tasks carried out by SCAI and the amount in dispute [...] and shall not exceed the maximum sum of CHF 10'000 for an individual service."

### The Belgian Centre for Arbitration and Mediation (CEPANI)

The tasks and responsibilities of the Appointment Committee and the Challenge committee are generally the same for both "standard" and expedited arbitration proceedings.

#### a. Appointments Committee

In both cases (standard and expedited), the Appointments Committee or the President shall appoint or confirm the arbitral tribunal in accordance with the CEPANI rules. It shall take into account, inter alia,

the availability, the qualifications and the ability of the arbitrator(s) to conduct the arbitration in accordance with the Rules. Given the reduced time limits in expedited procedures, particular attention is given to the prospective arbitrator's availability. Moreover, unless the parties agree on a multi-member tribunal, the Appointment Committee will typically appoint a sole arbitrator in expedited proceedings.

#### b. Challenge Committee

With regards to the Challenge Committee, in both cases (standard and expedited) the CEPANI Secretariat shall invite the arbitrator concerned, the other parties and the members of the arbitral tribunal, as the case may be, to present their written observations within a time period fixed by the Secretariat. These observations shall be communicated to the parties and to the arbitrators. The parties and arbitrators may respond to these observations within the time period fixed by the CEPANI Secretariat. The CEPANI Secretariat then transmits the challenge and the observations received to the Challenge Committee. The Challenge Committee decides on the admissibility and on the merits of the challenge. Such decision is not subject to recourse.

#### c. Appointing authority under the UNCITRAL Arbitration Rules

CEPANI acts as appointing authority under the UNCITRAL Arbitral Rules. For this purpose, parties are recommended to add the following provision to their arbitration clause: "The appointing authority shall be the Belgian Centre for Arbitration and Mediation (CEPANI)"

Pursuant to Schedule I of the CEPANI Rules 2020 (Scale of Costs for Arbitration), the CEPANI administrative expenses for acting as an appointing authority under UNCITRAL Arbitration Rules shall be 1.500,00 EUR (VAT excl.), which amount is non-refundable.

No application will be examined before payment of the required amount. When it is requested to render additional services, CEPANI, acting on its own discretion, may determine the amount of administrative expenses, the amount of which shall be proportionate to the services rendered and shall not exceed a ceiling of EUR 6,000.00 (VAT excl.). The administrative expenses are payable by the parties in equal parts.

In general, the appointment of an arbitrator by the CEPANI Appointment Committee does not exceed 2 working days following receipt of the administrative fee.

#### *Korean Commercial Arbitration Board (KCAB)*

Under the Expedited Procedures, pursuant to Article 45, the Secretariat appoints a sole arbitrator without recourse to Article 12 of the Rules unless otherwise agreed by the parties. This provision requires a case to be referred to a sole arbitrator in principle and, even if the parties have agreed otherwise, the Secretariat will invite the parties to agree to refer the case to a sole arbitrator in order to conduct the arbitration in an expeditious manner.

In regards to the Secretariat-appointed sole arbitrator, generally, upon confirming the enquired arbitrator's availability and willingness to accept the case, the Secretariat will notify the parties of the constitution of the tribunal. However, whilst confirming the arbitrator's availability and willingness, if the arbitrator discloses any information regarding his or her impartiality and independence with the case and the involved parties, the Secretariat will invite the parties to comment on the appointment within a specific period following the date of being notified of the circumstances giving rise to the doubts as to the arbitrator's independence or impartiality.

Also, before exercising its appointing authority, the Secretariat generally invites each party to comment on whether they wish to request for the Secretariat-appointed sole arbitrator to be of a nationality different from the nationalities of the parties, within three days from the date the Secretariat may

exercise its appointing authority. If such request is submitted, the Secretariat provides the other party an opportunity to comment on such request, and then proceeds to appoint a sole arbitrator with consideration of the parties' opinions.

\*

To date, KCAB has not functioned as an appointing authority under the UNCITRAL Arbitration Rules.

#### *Delos Dispute Resolution*

In the event that parties are not able to nominate all or part of the tribunal members, Delos will appoint the same. Delos also decides upon challenges to arbitrators. See, further, Article 6 of the Delos Rules, available at <https://delosdr.org/index.php/rules/#Art6>.

#### *The Permanent Arbitration Court of the Hungarian Chamber of Commerce and Industry*

There are no specific rules on appointing or challenging an arbitrator in expedited proceedings. However, for lack of the agreement of the parties on the appointment of the arbitrator(s) our institution shall be the appointing authority pursuant to the regular Rules of Proceedings, appointing the arbitrator(s) within 8 days reckoned from the expiry of the deadline for the defence. Challenges shall be administered by our institution according to the regular Rules of Proceedings.

#### *International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC at RFCCI)*

According to the Rules unless the parties agree otherwise a sole arbitrator in expedited arbitration is appointed by the institution (§16). The institution also decides on challenge of an arbitrator (§17). If the challenged arbitrator does not withdraw voluntary or the challenge is not satisfied by the ICAC there is a further possibility to address the issue to the President of the Chamber of Commerce and Industry of the Russian Federation for a final decision provided that the parties have not excluded such possibility by their agreement.

The ICAC has functioned as an appointing authority under the UNCITRAL Arbitration Rules. An appointment of an arbitrator might take approximately 30 days and costs 1,000 US dollars for each appointment.

#### *Beijing Arbitration Commission/ Beijing International Arbitration Center (BAC/BIAC)*

According to BAC Rules, Article 55 (2), in expedited arbitration, if the parties fail to nominate jointly or request the Chairperson of BAC/BIAC to appoint a sole arbitrator within 10 days of receipt of the Notice of Arbitration by all parties, the Chairperson will appoint the sole arbitrator. According to article 60 and 23, the Chairperson of BAC shall decide on the challenge of the sole arbitrator in expedited arbitration.

The BAC/BIAC is interested in and looking forward to acting as appointing authority under the UNCITRAL rules. The ordinary duration for BAC/BIAC to appoint an arbitrator using list procedure will not exceed 3 weeks since it received the request.

## End Notes to Question 4

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<sup>1</sup> Article 58 Formation of the Arbitral Tribunal

Unless otherwise agreed by the parties, a sole-arbitrator tribunal shall be formed in accordance with Article 28 of these Rules to hear a case under the Summary Procedure.

<sup>2</sup> Article 32 Challenge to Arbitrator

1. Upon receipt of the Declaration and/or the written disclosure of an arbitrator, a party wishing to challenge the arbitrator on the grounds of the disclosed facts or circumstances shall forward the challenge in writing within ten (10) days from the date of such receipt. If a party fails to file a challenge within the above time period, it may not subsequently challenge the arbitrator on the basis of the matters disclosed by the arbitrator.

2. A party having justifiable doubts as to the impartiality or independence of an arbitrator may challenge that arbitrator in writing and shall state the facts and reasons on which the challenge is based with supporting evidence.

3. A party may challenge an arbitrator in writing within fifteen (15) days from the date it receives the Notice of Formation of the Arbitral Tribunal. Where a party becomes aware of a reason for a challenge after such receipt, the party may challenge the arbitrator in writing within fifteen (15) days after such reason has become known to it, but no later than the conclusion of the last oral hearing.

4. The challenge by one party shall be promptly communicated to the other party, the arbitrator being challenged and the other members of the arbitral tribunal.

5. Where an arbitrator is challenged by one party and the other party agrees to the challenge, or the arbitrator being challenged voluntarily withdraws from his/her office, such arbitrator shall no longer be a member of the arbitral tribunal. However, in neither case shall it be implied that the reasons for the challenge are sustained.

6. In circumstances other than those specified in the preceding Paragraph 5, the Chairman of CIETAC shall make a final decision on the challenge with or without stating the reasons.

7. An arbitrator who has been challenged shall continue to serve on the arbitral tribunal until a final decision on the challenge has been made by the Chairman of CIETAC.

<sup>3</sup> See [http://www.cietachk.org/portal/mainPage.do?pagePath=\en\\_US\rules](http://www.cietachk.org/portal/mainPage.do?pagePath=\en_US\rules).

<sup>4</sup> For the appointment procedure, please see AIAC's response to Question 3.

<sup>5</sup> Appointments Committee, available at <<https://www.hkiac.org/about-us/council-members-and-committees/appointments-committee>>. The Appointments Committee is currently comprised of: Jun Hee Kim (Chairperson); Chiann Bao; Timothy Hill; Jing Liu; José-Antonio Maurellet SC; Ronald Sum; Meg Utterback; and Nicolas Wiegand. The Chairperson of HKIAC (currently Matthew Gearing QC) is an *ex officio* member of the Appointments Committee.

<sup>6</sup> Practice Note on Challenges to Arbitrators, available at <[https://www.hkiac.org/sites/default/files/ck\\_filebrowser/PDF/arbitration/20190311\\_Practice\\_Note\\_on\\_Challenges\\_of\\_Arbitrators.pdf](https://www.hkiac.org/sites/default/files/ck_filebrowser/PDF/arbitration/20190311_Practice_Note_on_Challenges_of_Arbitrators.pdf)>.

<sup>7</sup> Article 6.1, 2005 UNCITRAL Procedures; Article 9, 2015 UNCITRAL Procedures.

<sup>8</sup> Article 1, Schedule 1 Fees, 2015 UNCITRAL Procedures in relation to Fees, available at <<https://www.hkiac.org/arbitration/fees>>.

<sup>9</sup> Article 2, Appendix A: Schedule of Fees, 2005 UNCITRAL Procedures.

<sup>10</sup> 1986 UNCITRAL Procedures, p. 2.

## QUESTION 5

Do your institutional rules impose timelines for the arbitral proceeding and if so, are they for certain stages of the proceedings or for the overall process? How does your institution ensure compliance with timelines, if any, and does your institution have a role in extending the timelines?

### Vienna International Arbitral Centre (VIAC)

Acc. to Art 45 para 8 and 9 the tribunal has to render an award within 6 months of transmission of the file. We have a complete mirror file of each case and with that are constantly able to monitor the progress of the case. If necessary, the SG may extend the time-limit but this has not yet been necessary.

### Construction Industry Arbitration Council (CIAC)

Under CIAC- Arbitration Rules, the time limit for disposal of disputes through “Fast Track Arbitration procedure” is from 3-6 months or any other time agreed between the parties according to the “Fast Track Arbitration Procedure”, whereas the maximum time limit for making an award is 6 months.

According to the Amended Act 2015, if the award is not made within a period of 6 months from the date the arbitral tribunal enters upon the reference than the same is dealt under the arbitration proceedings laid down under CIAC- Arbitration Rules, where the time limit is one-year subject to extension of 6 months with mutual consent of both the parties. Thereafter, the arbitration case is referred to the Court for appropriate orders, where the court examine the causes of the delay in finalisation of arbitration proceedings and fix the responsibility of delay on either of the party and/ or the arbitrator before making orders for extension of time for making an award. There is a provision in the Amended Act 2015, where the court can order for reduction of fee of the Arbitral tribunal, if the delay is on its part.

Registrar, CIAC monitors all the arbitration cases registered with the CIAC and issues advisory from time to time, wherever there is any lapse in non- compliance of the CIAC Rules and/ or delay in finalising the arbitration Case.

CIAC does not extend time beyond 6 months in cases where the disputes are dealt under “Fast Track Arbitration”. However, it extends the time for finalisation of award beyond one year up to 6 months with the consent of both the parties.

### Russian Arbitration Center (RAC)

Under Article 26 of RAC Arbitration Rules, the arbitral tribunal shall ensure that the arbitral award is rendered within a reasonable period of time after the last oral hearing or the last exchange of written documents in the case, but no later than 70 days from the date of the arbitral tribunal’s constitution in case of expedited arbitration.

The Board of RAC at RIMA may, acting based on a well-founded request of the arbitral tribunal, extend the terms, but for no longer than 30 days.

The main mechanism how RAC at RIMA aims to ensure compliance with the set timelines is by means of the interaction between tribunal’s assistants and arbitrators: the assistants to the arbitral tribunal are appointed from the members of the RAC secretariat.

### Milan Chamber of Arbitration (CAM)

CAM Rules provide for:

- 30 days for respondent to file its answer to the request for arbitration (Art. 11.1);
- 10 days to file observations or challenge an arbitrator (Art. 21.1);
- 6 months to file the final award from the constitution of the arbitral tribunal (Art. 36.1).

Members of the Secretariat attend hearing, receive and peruse the parties' briefs and the arbitrators' orders, in order to keep an eye on the evolution of the case and monitoring the pace. Such a control is then reported to the Arbitral Council, which may request for clarifications from the arbitrators in case of undue slowdown. In this case, a reduction of the arbitrators' fee may be considered.

According to Art. 36, Para. 2, the Secretariat and the Arbitral Council may extend the time limit set to render the final award.

### London Court of International Arbitration (LCIA)

Under Article 15.10 of the Rules, the Tribunal has a duty to make its final Award as soon as reasonably possible following the last submission from the parties, in accordance with a timetable notified to the parties and the LCIA and inform the LCIA and the parties, as soon as it establishes a time for what it contemplates shall be the last submission from the parties, of the time the Arbitral Tribunal has set aside for deliberations. The LCIA secretariat monitors that tribunals comply with these requirements and chase them if needed.

### Georgian International Arbitration Centre (GIAC)

There are several deadlines for various stages of the proceedings, such as providing the answer to the request, composition of the arbitral tribunal, payment of advance of costs etc. Those deadlines can be extended by the Secretariat in case of providence of a legitimate reason by the party.

Additionally, there are deadlines with respect to signature of the Terms of Reference by the tribunal and the parties.

Finally, the Rules include the time for rendering of an award, which could be extended by the Arbitration Council if it considers necessary and there are legitimate reasons for that.

### Arbitration Institute of the Stockholm Chamber of Commerce (SCC)

The SCC Rules stipulate timelines for the rendering of the award (Article 43) and that the SCC Board may extend any timeline set by the SCC for a party to comply with a particular direction (Article 4). The SCC is generally restrictive in granting extensions, especially where one or more of the parties oppose to the extension.

The parties and the arbitrators are obliged under the 2017 SCC Rules to act in an efficient and expeditious manner (Article 2). The SCC Rules further stipulate that the SCC, in finally determining the costs of the arbitration, shall have regard to the extent to which the arbitrators have acted in an efficient and expeditious manner (Article 49 (3)). There is also a possibility for the arbitrators to consider each party's contribution to the efficiency and expeditiousness of the arbitration in relation to the allocation of costs between the parties (Article 49 (6)).

*International Centre for Alternative Dispute Resolution (ICADR)*

ICADR Arbitration Rules specify time line for fast track arbitral proceedings. The arbitral tribunal shall make an award within a period of six months from the date the arbitral tribunal enters upon the fast track arbitration reference.

Within 15 days from the receipt of the award, a party with notice to the other party, may request the arbitral tribunal to correct any computation errors, any clerical or typographical errors or any other errors of a similar nature occurring in the award or if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award. A party, with notice to the other party, may request within 15 days from the receipt of the arbitral award, the arbitral tribunal to make an additional award which will be made within 30 days from receipt of request.

*China International Economic and Trade Arbitration Commission (CIETAC)*

Yes. There are rules not only for certain stages, but for the overall process as well. Such rules, included in CIETAC Rules 2015, are listed below.

Acceptance of a case: For domestic arbitration cases, according to Article 66<sup>1</sup>, upon receipt of a Request for Arbitration, where the Arbitration Court finds the Request to meet the requirement specified in Article 12<sup>2</sup> of these Rules, the Arbitration Court shall notify the parties accordingly within five days from its receipt of the Request.

Statement of Defense: According to Article 15<sup>3</sup>, the Respondent shall file a Statement of Defense in writing within forty-five days from the date of its receipt of the Notice of Arbitration. When summary procedure applies, the period is shortened to twenty days according to Article 59.<sup>4</sup>

Counterclaim: According to Article 16<sup>5</sup>, the Respondent shall file a counterclaim, if any, in writing within forty-five days from the date of its receipt of the Notice of Arbitration. The Claimant shall submit its Statement of Defense in writing within thirty days from the date of its receipt of the Notice. When summary procedure applies, the period is shortened to twenty days according to Article 59.<sup>6</sup>

Formation of Tribunal: According to Article 27<sup>7</sup>, within fifteen days from the date of receipt of the Notice of Arbitration, the Claimant and the Respondent shall each nominate, or entrust the Chairman of CIETAC to appoint, an arbitrator, failing which the arbitrator shall be appointed by the Chairman of CIETAC. Within fifteen days from the date of the Respondent's receipt of the Notice of Arbitration, the parties shall jointly nominate, or entrust the Chairman of CIETAC to appoint, the third arbitrator, who shall act as the presiding arbitrator. When summary procedure applies, the period remains the same according to Article 28<sup>8</sup>.

Challenge to Arbitrator: According to Article 32<sup>9</sup>, upon receipt of the Declaration and/or the written disclosure of an arbitrator, a party wishing to challenge the arbitrator on the grounds of the disclosed facts or circumstances shall forward the challenge in writing within ten days from the date of such receipt. A party may challenge an arbitrator in writing within fifteen days from the date it receives the Notice of Formation of the Arbitral Tribunal. Where a party becomes aware of a reason for a challenge after such receipt, the party may challenge the arbitrator in writing within fifteen days after such reason has become known to it, but no later than the conclusion of the last oral hearing.

Replacement of Arbitrator: According to Article 33<sup>10</sup>, in the event that an arbitrator is unable to fulfil his/her functions due to challenge or replacement, a substitute arbitrator shall be nominated or appointed within the time period specified by the Arbitration Court according to the same procedure that applied to the nomination or appointment of the arbitrator being challenged or replaced. If a party fails to nominate or appoint a substitute arbitrator accordingly, the substitute arbitrator shall be appointed by the Chairman of CIETAC.

Notice of Oral Hearing: For cases that follows general procedure, according to Article 37<sup>11</sup>, where a case is to be examined by way of an oral hearing, the parties shall be notified of the date of the first oral

hearing at least twenty days in advance of the oral hearing. A party having justified reasons may request a postponement of the oral hearing. However, the party shall communicate such request in writing to the arbitral tribunal within five days of its receipt of the notice of the oral hearing.

For domestic arbitration cases under general procedure and cases under summary procedure, according to Article 61<sup>12</sup> and Article 69<sup>13</sup> of the arbitration rules, the parties shall be notified of the date at least fifteen days in advance of the oral hearing, and the party having justified reason shall communicate the request of postponement in writing to the arbitral tribunal within three days of its receipt of the notice of the oral hearing.

Evidence: According to Article 41<sup>14</sup>, the arbitral tribunal may specify a time period for the parties to produce evidence and the parties shall produce evidence within the specified time period. The arbitral tribunal may refuse to admit any evidence produced after that time period. If a party experiences difficulty in producing evidence within the specified time period, it may apply for an extension before the end of the period. The arbitral tribunal shall decide whether or not to extend the time period. If a party bearing the burden of proof fails to produce evidence within the specified time period, it shall bear the consequences thereof.

Time Period for Rendering Award: When general procedure applies, according to Article 48<sup>15</sup>, the arbitral tribunal shall render an arbitral award within six months from the date on which the arbitral tribunal is formed. Upon the request of the arbitral tribunal, the President of the Arbitration Court may extend the time period if he/she considers it truly necessary and the reasons for the extension truly justified. For domestic arbitration cases, the period is shortened to four months as per Article 71<sup>16</sup>. When summary procedure applies, the period is shortened to three months according to Article 62<sup>17</sup>.

Correction of Award: According to Article 53<sup>18</sup>, within a reasonable time after the award is made, the arbitral tribunal may, on its own initiative, make corrections in writing of any clerical, typographical or calculation errors, or any errors of a similar nature contained in the award. Within thirty days from its receipt of the arbitral award, either party may request the arbitral tribunal in writing for a correction of any clerical, typographical or calculation errors, or any errors of a similar nature contained in the award.

Additional Award: According to Article 54<sup>19</sup>, where any matter which should have been decided by the arbitral tribunal was omitted from the arbitral award, the arbitral tribunal may, on its own initiative, make an additional award within a reasonable time after the award is made. Either party may, within thirty days from its receipt of the arbitral award, request the arbitral tribunal in writing for an additional award on any claim or counterclaim which was advanced in the arbitral proceedings but was omitted from the award.

CIETAC has more than 90 highly qualified case managers. In each arbitration case, one case manager shall be appointed for assisting the tribunal in procedural issues and shall keep focused on the conformity with timelines. Since each arbitrator is deemed to guaranteed that he/she would handle the case as efficient as possible once he/she accepted the offer of CIETAC, the case managers shall remind the tribunal of the timelines and report to the arbitration supervision division once any unreasonable delay may occur.

CIETAC has a series of inside administrative regulations for the improper behaviours of arbitrator. If an arbitrator continues in failing to fulfil his/her functions in accordance within the time period specified in the rules, he/she will not be appointed as the arbitrator of new case and the case payment will be reduced accordingly. Also, the Chairman of CIETAC shall have the power to replace the arbitrator according to Article 33<sup>20</sup> of CIETAC Arbitration Rules 2015.

\*

Yes. Before the tribunal is formed, extension of certain timelines shall be decided by the arbitration court. See Article 15<sup>21</sup> and 16<sup>22</sup> of the CIETAC Rules 2015 mentioned above. Also, According to Paragraph 2, Article 62<sup>23</sup> of CIETAC Rules 2015, upon the request of the arbitral, the president of the arbitration court may extend the time period for rendering the arbitral award if he/she considers it truly necessary and the reasons for the extension truly justified.

### Asian International Arbitration Centre (AIAC)

The AIAC Arbitration Rules 2018 and AIAC Fast Track Rules impose strict timelines for certain stages of the proceedings, as well as overall process to ensure efficiency of the proceedings conducted under the AIAC Rules. For instance:

- a challenge to an emergency arbitrator shall be made by sending a notice of challenge within one (1) day after having received the notice of appointment of the challenged emergency arbitrator (*cf.* AIAC Arbitration Rules 2018, Schedule 3, para. 8);
- any Party and any Additional Party that receives a Request for Joinder shall, within 15 days of receipt, submit to the arbitral tribunal or, prior to the constitution of the arbitral tribunal, to the Director of the AIAC, a Response to the Request for Joinder indicating their consent or objection to the Request for Joinder (*cf.* Rule 9(4) of the AIAC Arbitration Rules 2018);
- shortened time limits are given to the Parties at the following stages:
  - nomination of an arbitrator in a consolidated matter (*cf.* Rule 10(4) of the AIAC Arbitration Rules 2018);
  - nomination of an arbitrator in a default appointment procedure under the AIAC Fast Track Rules 2018, i.e. 10 days after the other Party’s receipt of the notice of arbitration (*cf.* Rule 4(4)(b) of the AIAC Fast Track Rules 2018);
  - service of the Statement of Claim and Statement of Defence and other periods of time under Rule 21 of the AIAC Fast Track Rules 2018.
- the arbitral tribunal has three (3) months to submit a draft Final Award for the technical review to the Director of the AIAC following the closure of the arbitral proceedings (*cf.* Rule 12(2) of the AIAC Arbitration Rules 2018).

Finally, the definition of days has been modified in the AIAC Arbitration Rules 2018 and AIAC Fast Track Rules 2018: “days” means calendar days and includes weekends and public holidays.

\*

In traditional arbitration proceedings, the AIAC does not impose strict timelines save for the 30-day period within which the arbitral tribunal and the Parties may agree on a fee agreement, and the three-month deadline for the technical review process and the delivery of the final award from the close of the proceedings (*cf.* Rule 12 of the AIAC Arbitration Rules 2018).

The situation is different under the Emergency Arbitrator mechanism and the Fast Track Rules. In both scenarios, the AIAC imposes strict timelines at certain stages of the proceedings as well as for the overall process. However, these timelines are subject to any subsequent revisions as agreed to between the Parties and the arbitral tribunal.

Under the Emergency Arbitrator mechanism, the Director of the AIAC is required to appoint an emergency arbitrator within two (2) calendar days after the AIAC has received the complete set of application documents (*cf.* AIAC Arbitration Rules 2018, Schedule 3, para. 4). Challenges to an emergency arbitrator’s appointment are to be made within one (1) day of the AIAC’s notification to the Parties of the appointment (or the day on which the relevant circumstances were disclosed) (*cf.* AIAC Arbitration Rules 2018, Schedule 3, para. 8). Within two (2) days of appointment, the emergency arbitrator is required to establish a schedule for consideration of the application for emergency interim relief (*cf.* AIAC Arbitration Rules 2018, Schedule 3, para. 10). Any order or award of the emergency arbitrator is to be made within 15 days from the date of notification of appointment to the Parties. This time period may be extended either by agreement of the Parties or by the Director if deemed appropriate (*cf.* AIAC Arbitration Rules, Schedule 3, para. 12).

Some examples of the timelines prescribed under the AIAC Fast Track Rules include the following :-

| No. | Timelines   | Reference                    |
|-----|---|------------------------------|
| 1.  | Submission of Respondent's response to Claimant's notice of arbitration is within 10 days from the date when the notice of arbitration was received by the Respondent.  | Rule 21(1)(a)                |
| 2.  | The arbitral tribunal and the parties may agree on a Fee Agreement within 10 days from the appointment of the arbitral tribunal.  | Rule 24(4)                   |
| 3.  | Case Management meeting or issuance of directions on the conduct of arbitration shall be convened by the arbitral tribunal no later than 10 days from the date when the AIAC notified the Parties of commencement of the arbitration.   | Rule 21(1)(b)                |
| 4.  | The parties are required to remit the provisional advance deposit within 14 days upon receiving the request from the AIAC.  | Rule 25(2)                   |
| 5.  | Claimant's submission of its Statement of Claim shall be within 14 days from the date when the AIAC notified the Parties of commencement of the arbitration.  | Rule 21(1)(c)                |
| 6.  | Respondent's submission of its Statement of Defence shall be within 28 days from the date when the AIAC notified the Parties of commencement of the arbitration.  | Rule 21(1)(d)                |
| 7.  | Further written submission(s), if allowed and/or requested by the arbitral tribunal, shall be served within 14 days from the dates set out by the arbitral tribunal.  | Rule 21(1)(e)                |
| 8.  | Party's comment to the other party's objection to the arbitral tribunal in case of justifiable doubts of his or her impartiality and independence shall be communicated within three days of receipt of the said objection.   | Rule 5(4)                    |
| 9.  | The Director of the AIAC shall appoint a new arbitrator within three days from the date the challenged arbitrator notifies his or her decision to resign.   | Rule (6)(1)                  |
| 10. | The tribunal shall publish the award for both documents-only arbitration and in an arbitration which involves substantive oral hearings within 90 days from the date when the proceedings were declared closed.   | Rule 21(1)(g)                |
| 11. | In an arbitration that is not document-only arbitration, the arbitral tribunal shall conduct and complete the substantive oral hearings not later than 90 days from the date when the AIAC notified the Parties of commencement of the arbitration and provided that the substantive oral hearings shall not exceed a period of six days. | Rule 18(1) and Rule 21(1)(f) |
| 12. | Any party may request arbitral tribunal to correct any errors of computation, any clerical or typographical errors, slips or omissions in the award within 14 days of receipt of award.   | Rule 20(1)                   |
| 13. | The tribunal may correct the award on any party's request within 14 days of the receipt of such request.  | Rule 20(2)                   |
| 14. | The arbitral tribunal shall no later than 14 days before the lapse of the said time limit under Rule 21(1)(g) notify the Director and the Parties in writing explaining and justifying the reasons for the delay,   | Rule 22(2)                   |

| No. | Timelines   | Reference |
|-----|---|-----------|
|     | state the revised estimated date of publication of the award and seek the Director's prior consent for such an extension of time for the publication of the award |           |

Save for the power and discretion of the Director of the AIAC to set timelines for the remittance of deposits by the Parties and in respect of the granting or refusing an arbitrator's request(s) for an extension of time in the rendering of an award pursuant to Rule 25 and Rule 22(2) of the AIAC Fast Track Rules, respectively, the AIAC does not have any further roles in so far as extending the timeline of the proceedings are concerned.

#### *Singapore International Arbitration Centre (SIAC)*

The SIAC Rules impose timelines for certain stages of the proceedings, such as the filing of the Response to the Notice of Arbitration (see Rule 4.1 of SIAC Rules 2016), timeline for parties to nominate arbitrators (see Rules 10.2, 11.2, 12.1 of SIAC Rules 2016), timeline for challenging an arbitrator (see Rule 15.1 of SIAC Rules 2016), timeline for making an objection that the tribunal does not have jurisdiction or is exceeding the scope of its jurisdiction (see Rule 28.3 of SIAC Rules 2016), or the timeline for submission of the draft award to Registrar for scrutiny (see Rule 32.3 of SIAC Rules 2016).

A member of the SIAC Secretariat is assigned to each case to supervise and monitor the progress of the case under the supervision of the Registrar, the President and the SIAC Court of Arbitration.

Rule 2.6 of the SIAC Rules 2016 provides that the SIAC Registrar may at any time extend any time limits prescribed under the rules.

#### *Madrid Court of Arbitration (MCA)*

Yes. The arbitrators shall render the award within four months after the statement of defence is filed (or the term to submit it has expired), or the reply to the counterclaim is filed (or the term to submit it has expired). In general, the policy of the Court is to monitor proceedings to avoid unnecessary delays, and to contact tribunals whenever the normal flow of the proceedings seems to be affected. The Court is entitled to take into account any delays in the issuance of the award when determining the arbitrators' fees.

Regarding extension of timelines, the Court has the authority to extend the award timeline if exceptional circumstance but has an extremely restrictive policy in that regard (see statistics in point 2 above).

#### *German Arbitration Institute (DIS)*

The Rules impose timelines for every important stage of the proceedings, and the DIS may extend them (Article 4.9).

- Article 5.2: Supplementation of the Request for Arbitration by Claimant. If not complied by, DIS may close the file (Article 6.2).
- Article 7.1: Respondent's Notification regarding the nomination of an arbitrator, proposals regarding the seat and language of arbitration, and the rules of law applicable to the merits, if required.
- Article 7.2: Respondent's Answer to the Request for Arbitration.

- Article 27.2: Holding of a case management conference in principle within 21 days after the constitution of the tribunal.
- Article 37: Rendering of the final award in principle within three months after the last hearing or the last authorized submission. The Arbitration Council of the DIS, in its discretion, may reduce the fee of one or more arbitrators based upon the time taken by the arbitral tribunal to issue its final award. In case of expedited proceeding prescribed in Annex 4, the final award shall be made at the latest six months after conclusion of the case management conference (Article 1 of Annex 4).

The arbitral tribunal may ensure compliance with its timelines and orders by taking into account all circumstances that it considers to be relevant when making decisions regarding the costs of the arbitration (Article 33.3).

### *Bahrain Chamber for Dispute Resolution (BCDR-AAA)*

The BCDR-AAA 2017 Rules do not impose any timeline for the overall process. They do, however, impose timelines for stages in the proceedings.

Prior to the appointment of the tribunal, there are time limits imposed by the BCDR-AAA 2017 Rules for the filing of the Response to the Request for Arbitration; for party nomination of arbitrators; and for any emergency arbitrator proceedings.

Following the appointment of the tribunal, there are time-limits imposed by the BCDR-AAA 2017 Rules for the challenge process; for the issuance of the final award; for the interpretation and correction of awards; and, at the institution's discretion, for the lodging of party funds.

The remainder of the conduct of the proceedings is largely in the hands of the parties and the tribunal. Thus, Article 16.1 of the BCDR-AAA 2017 Rules provides that the tribunal may conduct the arbitration in any manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

Article 16.3 of the BCDR-AAA 2017 Rules requires the tribunal to convene an early preliminary meeting with the parties to seek to agree and to schedule the procedures to be followed. Only in default of such agreement (or directions of the tribunal) does the timetable set out at Article 17 of the BCDR-AAA 2017 Rules for further written submissions, for example, come into effect.

There is, however, an overriding duty on the tribunal to ensure that proceedings are conducted in a timely fashion (Article 16.2) and on the parties to make every effort to avoid unnecessary delay and expense (Article 16.4). There is a parallel obligation, at Article 21.4(e) of the BCDR-AAA 2017 Rules, on the parties' legal representatives, with related sanctions available to the tribunal at Article 21.5(c).

\*

It is a key function of the BCDR-AAA to monitor the proceedings and compliance with the procedural timetable. The BCDR-AAA will, as and if required, notify the parties and the tribunal of any slippage. In the unlikely event of an arbitrator failing to meet its obligations to conduct the proceedings expeditiously, the BCDR-AAA may move to revoke that arbitrator's appointment (Article 12.1(e) of the BCDR-AAA 2017 Rules).

The BCDR-AAA may also extend certain timelines; namely, the time-limits for a respondent to file its Response to the Request for Arbitration and for the issuance of the final award.

### *Hong Kong International Arbitration Centre (HKIAC)*

The HKIAC Rules contain timelines that govern various stages of the arbitral proceedings. For a table that sets out those timelines under the 2018 Rules (and distinguishes between regular proceedings, expedited proceedings, early determination proceedings, and emergency arbitration proceedings),

please refer to Appendix 1. [Note by the UNCITRAL Secretariat: In reproducing the response from HKIAC in the current format, the appendix was not included.]

In respect of the rendering of the award, Article 31.2 of the 2018 Rules provides as follows:

*“Once the proceedings are declared closed, the arbitral tribunal shall inform HKIAC and the parties of the anticipated date by which an award will be communicated to the parties. The date of rendering the award shall be no later than three months from the date when the arbitral tribunal declares the entire proceedings or the relevant phase of the proceedings closed, as applicable. This time limit may be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.”* (Emphasis added.)

In addition, the Rules contain general provisions that require the expeditious resolution of disputes. Article 13.1 of the 2018 Rules provides that:

*“[T]he arbitral tribunal shall adopt suitable procedures for the conduct of the arbitration in order to avoid unnecessary delay or expense, having regard to the complexity of the issues, the amount in dispute and the effective use of technology, and provided that such procedures ensure equal treatment of the parties and afford the parties a reasonable opportunity to present their case.”*

\*

HKIAC case managers, who are lawyers specialised in arbitration, monitor timelines in HKIAC cases.

Article 3.6 of the 2018 Rules provides that:

*“If the circumstances of the case so justify, HKIAC may amend the time limits provided for in these Rules, as well as any time limits that it has set, whether any such time limits have expired. HKIAC shall not amend any time limits agreed by the parties or set by the arbitral tribunal or emergency arbitrator unless the parties agree or the arbitral tribunal or emergency arbitrator directs otherwise.”*

Under the Expedited Procedure, Article 42.2(c) of the 2018 Rules provides that the *“HKIAC may shorten the time limits provided for in the Rules, as well as any time limits that it has set.”* In respect of the rendering of the award, Article 42.2(f) provides that *“the award shall be communicated to the parties within six months from the date when HKIAC transmitted the case file to the arbitral tribunal”* subject to extension by the HKIAC in exceptional circumstances.

#### Chartered Institute of Arbitrators (CI Arb)

Yes. Under the CI Arb CCEA Rules, Article 6, the sole arbitrator is required to issue an award within 180 days of appointment with an opportunity to extend the time for an additional 30 days. If any additional time is required beyond that, the tribunal must make a written request with the reason for the request to the President of the CI Arb who has the discretion to allow or deny the extension. The CCEA Rules also note in Article 6.3 that the timeline will be suspended if a challenge to the arbitrator is in process.

#### Swiss Chambers' Arbitration Institution (SCAI)

The Swiss Rules provide for time-limits at certain key stages of the proceedings such as the filing of the Answer to the Notice of Arbitration (Art. 3(7), 30 days from the date of receipt of the Notice of Arbitration). Pursuant to Article 2(3), the Swiss Chambers Arbitration Court *“may extend or shorten any time-limit it has fixed or has the authority to fix or amend.”*

Once the arbitral tribunal has been constituted, it has the discretion to conduct the proceedings in a manner it considers appropriate. For instance, Article 23 of the Swiss Rules sets a 45-day time limit to the Parties for the communication of written statements. However, it is also provided that *“the arbitral*

*tribunal may extend the time-limits if it considers that an extension is justified.”* The parties and the arbitral tribunal are therefore free to agree on longer or shorter time-limits.

Regarding the expedited procedure, except for the 6 months for the issuance of the final award (which, as mentioned in the answer to question 2, can be extended by the Court in exceptional circumstances), the same time-limits provided for ordinary procedures will apply.

### *The Belgian Centre for Arbitration and Mediation (CEPANI)*

#### *Procedural time limits*

The CEPANI arbitration rules contain certain procedural time limits that govern the proceedings, both with regard to specific stages and with regard to the overall process. These time limits are binding on the parties and the arbitral tribunal and may only be extended by the institution upon reasoned request.

First, within one month of transmission of the file to the tribunal, the arbitral tribunal must transmit terms of reference to the CEPANI Secretariat. (Article 23(2) CEPANI Rules 2020).

The Secretariat shall transmit the file to the Arbitral Tribunal as soon as the latter has been constituted, provided that the advance on arbitration costs set out in article 38 of the Rules has been fully paid.

The terms of reference must contain certain information regarding the parties and the dispute (Article 23(1) CEPANI Rules 2020), be signed by the parties and the members of the arbitral tribunal and will serve as the basis for the examination of the case by the arbitral tribunal. This one-month time limit may be extended pursuant to a reasoned request of the arbitral tribunal or on its own motion by the Secretariat (Article 23(1) CEPANI Rules 2020).

Second, Article 30(1) of the CEPANI 2020 Arbitration Rules requires the arbitral tribunal to render its arbitral award within six months after the signing of the terms of reference.

This time limit may be extended by the CEPANI Secretariat pursuant to a reasoned request from the arbitral tribunal or upon its own motion.

The expedited procedural rules contain separate shorter time limits.

Under the expedited arbitration rules, the arbitral tribunal is not required to draw up terms of reference (Article 29(3) CEPANI Rules 2020). By contrast, the arbitral tribunal is required to establish a procedural timetable, within **15** days after the date of transmission of the file, after consultation with the parties. The Secretariat may extend this time limit pursuant to a reasoned request from the arbitral tribunal or on its own motion.

Furthermore, under the expedited rules, the arbitral tribunal shall render the final Award within **four months** from the date of the establishment of the procedural timetable. This time limit may be extended by the Secretariat pursuant to a reasoned request from the arbitral tribunal or upon its own motion (Article 29(4) CEPANI Rules 2020).

#### *CEPANI's role in ensuring compliance with procedural time limits*

CEPANI takes an active role throughout the arbitration proceedings to ensure compliance by the parties and the arbitral tribunal with the procedural time limits discussed in the previous section. This includes not only close case management and the power to take decisions on extension requests, but also proactively raising awareness of the importance of compliance with such time limits.

First, from the moment they are considered or proposed as arbitrators, CEPANI draws the (prospective) arbitrator's attention to the fact that parties have recourse to arbitration specifically because this is a means of settling a dispute more quickly than would be possible in ordinary court proceedings. As the length of arbitration proceedings is a recurring complaint in practice, arbitrators are therefore reminded

from the outset to ensure that the procedural timetable contains short time limits as appropriate under the circumstances and that the stated limits are strictly observed.

Second, at the outset of the arbitration proceedings, when drawing up the terms of reference (if any) or as soon as possible thereafter, the CEPANI arbitration rules envisage for the arbitral tribunal to organise a case management meeting between the arbitral tribunal and all parties involved in the proceedings. One of the main purposes of such hearing is for the arbitral tribunal to consult the parties on the time limits. It is recommended that the parties not only send their counsel to attend this meeting but that they be present themselves. This may positively influence the time limits agreed upon. In any case, through their presence, the parties themselves are likely to have a better understanding of the history of the dispute and be in a better position to estimate which time limits are realistic. To ensure efficient proceedings, it is crucial that the parties agree on short yet realistic deadlines for submitting memoranda and exhibits, organising the hearing(s), the closing of the debates and any other procedural steps deemed necessary, such as e.g. the production of documents or the hearing of witnesses.

Third, the CEPANI Secretariat decides on requests for extension of the applicable time limits. Such a request for extension of time limits must set out the reasons for the request, failing which the request shall be inadmissible. While the CEPANI Secretariat will give extensions in appropriate circumstances, it will typically not grant lengthy or repeat extensions, unless all parties agree.

Fourth, the CEPANI Secretariat informs the parties on a regular basis about any actions of the arbitral tribunal that have an effect on the length of the proceedings (requests for additional time or extension).

Finally, pursuant to Article 37(3) of the CEPANI Rules 2020, the CEPANI Secretariat may fix the arbitration costs at a higher or lower figure than that which would result from the application of the Scale of Arbitration Costs under exceptional circumstances of the case. CEPANI draws the arbitral tribunal's attention to the fact that an unreasoned and unjustified delay in the rendering of the Award may be seen as such an exceptional circumstance that may cause the CEPANI Secretariat to lower the arbitration costs, and therefore the arbitral tribunal's fees, taking into account the length of, and the circumstances surrounding, the delay.

#### *Korean Commercial Arbitration Board (KCAB)*

Under Article 38, unless all parties agree otherwise, the arbitral tribunal is required to make its Award within 45 days from the date on which final submissions are made or the hearings are closed, whichever is later. For Expedited Procedures, under Article 48, the award is required to be made within 6 months from the date of constitution of the arbitral tribunal.

\*

With all stages of the proceedings, the Secretariat closely monitors each case and the given time limits to ensure that both the tribunal and the parties comply with the requirements. In particular, with the rendering of the award, the Secretariat informs the tribunal in advance the expected due date of the award according to either Article 38 or 48, and provides necessary reminders. Overall, the Secretariat ensures compliance with timelines by keeping a close interaction with the tribunal.

Pursuant to Article 54, the parties may modify any time limits set out in the Rules by written agreement. The arbitral tribunal may extend any time limits in the Rules as it deems appropriate except the period for rendering an award. The extension of time limit for the award is only granted through the Secretariat. Pursuant to Article 38.2, the Secretariat extends such time limit upon the reasonable request of the Tribunal or on its own initiative if it decides it is necessary to do so.

## Delos Dispute Resolution

Delos sets timelines for:

- (i) the initial exchange of pleadings prior to the constitution of the tribunal. These are known as the Notices of Arbitration and of Defense (and Counterclaim), and may include a Notice of Response to Counterclaim. The applicable time limits are set out at Article 4 of the Delos Rules, available at <https://delosdr.org/index.php/rules/#Art4>;
- (ii) the constitution of the tribunal. The applicable time limits are set out at Article 6 of the Delos Rules, available at <https://delosdr.org/index.php/rules/#Art6>;
- (iii) tribunals to submit their draft award (be it interim, partial or final). The timeline varies according to the value of the dispute and the indicative time limits are set out at Appendix 4 of the Delos Rules, available at <https://delosdr.org/index.php/rules/#App4>.

Delos can extend the timelines: see Articles 2 and 8.3 of the Delos Rules, available respectively at <https://delosdr.org/index.php/rules/#Art2> and <https://delosdr.org/index.php/rules/#Art8>.

Delos actively monitors compliance with the timelines, including in the following ways:

- (i) the availability of appointed arbitrators. See the answer to Question 8.4 of the [Delos FAQs](#):

*Before appointing an arbitrator or confirming the appointment of an arbitrator nominated by the parties, Delos will ask him or her to confirm that they have the availability, within the indicative time-limit (see Q7.6 above), to conduct all or part of an arbitration, hold a hearing and prepare a draft award. If they don't have such availability, Delos will ask the parties to nominate another arbitrator, or Delos will itself nominate another arbitrator.*

*Delos thus requests arbitrators to take position on the basis of objective deliverables, whereas other arbitration institutions are limited to accepting the subjective view of the potential arbitrator. This is because the indicative time-limit feature is specific to Delos; other institutions only apply this technique as part of their expedited rules, meaning that they only address efficiency by way of exception for lower-value disputes.*

- (ii) financial incentives/disincentives for arbitrators. See the answer to Question 8.5 of the [Delos FAQs](#):

*Unlike the fee schedules of other institutions, Delos's Time and Costs Schedules do not differentiate between the share of the institution to administer the dispute, and the share of the arbitrators for their fees and expenses. This is because, in a Delos arbitration, the final split will depend on the efficiency of the arbitrator in the circumstances and on how much Delos has had to get involved due to a lack of efficiency of the arbitrator.*

For a fuller account of the incentives/disincentives and tools used by Delos to ensure compliance with its timelines, see the chapter on Delos arbitration by Ank Santens and Hafez Virjee in the forthcoming update to *International Commercial Arbitration Practice: 21st Century Perspectives*, edited by Paul E Mason and Horacio A. Grigera Naón (LexisNexis).

*The Permanent Arbitration Court of the Hungarian Chamber of Commerce and Industry*

The sole arbitrator or the tribunal shall, if possible, close the expedited proceeding within 3 (three) months from receipt of the nomination or appointment. If necessary, the Board may extend the time limit for rendering the award but this has never been the case yet. Sect. 52.3 of the Sub-Rules of Expedited proceedings provide that the time limit set for the Claimant to remedy defects of the statement of claim shall not exceed 15 days from receipt of the request to do so. The respondent shall submit its statement of defence within 15 days from receipt of the statement of claim from the Arbitration Court. This time limit may be extended upon request of the representative of the respondent by max. 8 days. The parties may be allowed to submit one further submission each within a time limit of 15 days. When an oral hearing is held, summons shall be sent to the parties so that they have at least 8 days prior to the hearing. The sole arbitrator shall present the award within 15 days from the closing of the proceedings.

*International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC at RFCCI)*

The Rules establish time limits for overall duration of arbitral proceedings (§35 ). Arbitral proceeding should be completed within 180 days from the date of formation of an arbitral tribunal, unless another time period is provided by the Rules. In case of expedited procedure this time period is reduced to 120 days (subparagraph 5 of §34 of the Rules). If necessary, the ICAC Presidium may, at the request of the arbitral tribunal or in its discretion, extend the time period of duration of the proceedings. Arbitral tribunals are under duty to observe the prescribed time limits. Compliance with them is also checked by the ICAC Secretariat. When applying with a request to extend the time period of duration of the proceedings the arbitral tribunal is expected to state grounds for its motion. The ICAC Presidium determines to what extent such grounds are justified when making its decision.

*Beijing Arbitration Commission/ Beijing International Arbitration Center (BAC/BIAC)*

Yes. BAC Rules include time limits. The timelines are both detailed in the specific proceedings and general for the overall process. BAC does establish internal management measures to ensure the compliance with its timelines. These timelines could be generally distinguished by subjects as three categories—for the institution, the arbitral tribunals, and the parties (see below).

Timelines for the institution are enforced strictly by the case managers/BAC/BIAC's secretariat. The case managers must maintain current records in BAC/BIAC's Online Administration system ("OA") to manage the proceedings. The case managers are able to, at the end of a proceeding, file a feedback and performance evaluations of the arbitral tribunal to the BAC/BIAC. This will help the BAC/BIAC to determine the renewal, appointment, compensation, and other interests of the arbitral tribunal in long-run practice. In extreme situations, the BAC/BIAC's OA system will alert unusual prolonged proceedings to the Steering Committee. The Steering Committee is able to suggest the Chairman to replace the arbitrators in such circumstances.

Some time limits for the parties are recommended and some are imposed. Parties may choose to follow the recommended timelines in order to serve the ends of efficient dispute resolution. For the imposed timelines, the Arbitration Rules adopted two measures, a) the default waiver; b) the adversarial distribution of arbitration fees & cost. In general, it is the arbitral tribunals' discretion to decide the specific violation of the imposed timelines and the consequences for the offending parties.

| Rules/Categories | For institution | For arbitral tribunals | For parties | Specific | General |
|------------------|-----------------|------------------------|-------------|----------|---------|
| Art. 9.1         | ✓               |                        |             | ✓        |         |
| Art. 10          | ✓               |                        |             | ✓        |         |
| Art. 11.1        |                 |                        | ✓           | ✓        |         |
| Art. 11.2        | ✓               |                        |             | ✓        |         |
| Art. 20.2        | ✓               |                        | ✓           | ✓        |         |
| Art. 20.3        | ✓               |                        | ✓           | ✓        |         |
| Art. 20.5        | ✓               |                        | ✓           | ✓        |         |
| Art. 20.8        | ✓               |                        | ✓           | ✓        |         |
| Art. 21          | ✓               |                        |             | ✓        |         |
| Art. 22.3        |                 |                        | ✓           | ✓        |         |
| Art. 23.3        |                 |                        | ✓           | ✓        |         |
| Art. 24.4        | ✓               | ✓                      | ✓           | ✓        |         |
| Art. 31.1        |                 | ✓                      | ✓           | ✓        |         |
| Art. 48          |                 | ✓                      |             |          | ✓       |
| Art. 43.4        |                 | ✓                      | ✓           | ✓        |         |
| Art. 53.2        |                 |                        | ✓           | ✓        |         |
| Art. 55.2        | ✓               |                        | ✓           | ✓        |         |
| Art. 56          |                 |                        | ✓           | ✓        |         |
| Art. 57.1        |                 | ✓                      |             | ✓        |         |
| Art. 58.4        |                 |                        | ✓           | ✓        |         |
| Art. 59          |                 | ✓                      |             |          | ✓       |
| Art. 63.3        | ✓               |                        |             | ✓        |         |
| Art. 63.7        |                 | ✓                      |             | ✓        |         |
| Art. 63.8        |                 |                        | ✓           | ✓        |         |
| Art. 64.3        | ✓               |                        | ✓           | ✓        |         |
| Art. 65          |                 |                        | ✓           | ✓        |         |
| Art. 66.1        |                 | ✓                      | ✓           | ✓        |         |
| Art. 68          |                 | ✓                      |             |          | ✓       |
| Art. 70.4        |                 |                        | ✓           | ✓        |         |

## End Notes to Question 5

### <sup>1</sup> Article 66 Acceptance of a Case

1. Upon receipt of a Request for Arbitration, where the Arbitration Court finds the Request to meet the requirements specified in Article 12 of these Rules, the Arbitration Court shall notify the parties accordingly within five (5) days from its receipt of the Request.

Where a Request for Arbitration is found not to be in conformity with the requirements, the Arbitration Court shall notify the party in writing of its refusal of acceptance with reasons stated.

2. Upon receipt of a Request for Arbitration, where after examination, the Arbitration Court finds the Request not to be in conformity with the formality requirements specified in Article 12 of these Rules, it may request the Claimant to comply with the requirements within a specified time period.

### <sup>2</sup> Article 12 Application for Arbitration

A party applying for arbitration under these Rules shall:

1. Submit a Request for Arbitration in writing signed and/or sealed by the Claimant or its authorized representative(s), which shall, *inter alia*, include:

- (a) the names and addresses of the Claimant and the Respondent, including the zip code, telephone, fax, email, or any other means of electronic telecommunications;
- (b) a reference to the arbitration agreement that is invoked;
- (c) a statement of the facts of the case and the main issues in dispute;
- (d) the claim of the Claimant; and
- (e) the facts and grounds on which the claim is based.

2. Attach to the Request for Arbitration the relevant documentary and other evidence on which the Claimant's claim is based.

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3. Pay the arbitration fee in advance to CIETAC in accordance with its Arbitration Fee Schedule.

<sup>3</sup> Article 15 Statement of Defense

1. The Respondent shall file a Statement of Defense in writing within forty-five (45) days from the date of its receipt of the Notice of Arbitration. If the Respondent has justified reasons to request an extension of the time period, the arbitral tribunal shall decide whether to grant an extension. Where the arbitral tribunal has not yet been formed, the decision on whether to grant the extension of the time period shall be made by the Arbitration Court.

2. The Statement of Defense shall be signed and/or sealed by the Respondent or its authorized representative(s), and shall, inter alia, include the following contents and attachments:

(a) the name and address of the Respondent, including the zip code, telephone, fax, email, or any other means of electronic telecommunications;

(b) the defense to the Request for Arbitration setting forth the facts and grounds on which the defense is based; and

(c) the relevant documentary and other evidence on which the defense is based.

3. The arbitral tribunal has the power to decide whether to accept a Statement of Defense submitted after the expiration of the above time period.

4. Failure by the Respondent to file a Statement of Defense shall not affect the conduct of the arbitral proceedings.

<sup>4</sup> Article 59 Defense and Counterclaim

1. The Respondent shall submit its Statement of Defense, evidence and other supporting documents within twenty (20) days of its receipt of the Notice of Arbitration. Counterclaim, if any, shall also be filed with evidence and supporting documents within such time period.

2. The Claimant shall file its Statement of Defense to the Respondent's counterclaim within twenty (20) days of its receipt of the counterclaim and its attachments.

3. If a party has justified reasons to request an extension of the time period, the arbitral tribunal shall decide whether to grant such extension. Where the arbitral tribunal has not yet been formed, such decision shall be made by the Arbitration Court.

<sup>5</sup> Article 16 Counterclaim

1. The Respondent shall file a counterclaim, if any, in writing within forty-five(45) days from the date of its receipt of the Notice of Arbitration. If the Respondent has justified reasons to request an extension of the time period, the arbitral tribunal shall decide whether to grant an extension. Where the arbitral tribunal has not yet been formed, the decision on whether to grant the extension of the time period shall be made by the Arbitration Court.

2. When filing the counterclaim, the Respondent shall specify the counterclaim in its Statement of Counterclaim and state the facts and grounds on which the counterclaim is based with the relevant documentary and other evidence attached thereto.

3. When filing the counterclaim, the Respondent shall pay an arbitration fee in advance in accordance with the Arbitration Fee Schedule of CIETAC within a specified time period, failing which the Respondent shall be deemed not to have filed any counterclaim.

4. Where the formalities required for filing a counterclaim are found to be complete, the Arbitration Court shall send a Notice of Acceptance of Counterclaim to the parties. The Claimant shall submit its Statement of Defense in writing within thirty (30) days from the date of its receipt of the Notice. If the Claimant has justified reasons to request an extension of the time period, the arbitral tribunal shall decide whether to grant such an extension. Where the arbitral tribunal has not yet been formed, the decision on whether to grant the extension of the time period shall be made by the Arbitration Court.

5. The arbitral tribunal has the power to decide whether to accept a counterclaim or a Statement of Defense submitted after the expiration of the above time period.

6. Failure of the Claimant to file a Statement of Defense to the Respondent's counterclaim shall not affect the conduct of the arbitral proceedings.

<sup>6</sup> See Endnote 4.

<sup>7</sup> Article 27 Three-Arbitrator Tribunal

1. Within fifteen(15) days from the date of receipt of the Notice of Arbitration, the Claimant and the Respondent shall each nominate, or entrust the Chairman of CIETAC to appoint, an arbitrator, failing which the arbitrator shall be appointed by the Chairman of CIETAC.

2. Within fifteen(15) days from the date of the Respondent's receipt of the Notice of Arbitration, the parties shall jointly nominate, or entrust the Chairman of CIETAC to appoint, the third arbitrator, who shall act as the presiding arbitrator.

3. The parties may each recommend one to five arbitrators as candidates for the presiding arbitrator and shall each submit a list of recommended candidates within the time period specified in the preceding Paragraph 2. Where there is only one common candidate on the lists, such candidate shall be the presiding arbitrator jointly nominated by the parties. Where there is more than one common candidate on the lists, the Chairman of CIETAC shall choose the presiding arbitrator from among the common candidates having regard to the circumstances of the case, and he/she shall act as the presiding arbitrator jointly nominated by the parties. Where there is no common candidate on the lists, the presiding arbitrator shall be appointed by the Chairman of CIETAC.

4. Where the parties have failed to jointly nominate the presiding arbitrator according to the above provisions, the presiding arbitrator shall be appointed by the Chairman of CIETAC.

<sup>8</sup> Article 28 Sole-Arbitrator Tribunal

Where the arbitral tribunal is composed of one arbitrator, the sole arbitrator shall be nominated pursuant to the procedures stipulated in Paragraphs 2, 3 and 4 of Article 27 of these Rules.

<sup>9</sup> See Question 4, Endnote 2.

<sup>10</sup> Article 33 Replacement of Arbitrator

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1. In the event that an arbitrator is prevented *de jure* or *de facto* from fulfilling his/her functions, or fails to fulfill his/her functions in accordance with the requirements of these Rules or within the time period specified in these Rules, the Chairman of CIETAC shall have the power to replace the arbitrator. Such arbitrator may also voluntarily withdraw from his/her office.

2. The Chairman of CIETAC shall make a final decision on whether or not an arbitrator should be replaced with or without stating the reasons.

3. In the event that an arbitrator is unable to fulfill his/her functions due to challenge or replacement, a substitute arbitrator shall be nominated or appointed within the time period specified by the Arbitration Court according to the same procedure that applied to the nomination or appointment of the arbitrator being challenged or replaced. If a party fails to nominate or appoint a substitute arbitrator accordingly, the substitute arbitrator shall be appointed by the Chairman of CIETAC.

4. After the replacement of an arbitrator, the arbitral tribunal shall decide whether and to what extent the previous proceedings in the case shall be repeated.

<sup>11</sup> Article 37 Notice of Oral Hearing

1. Where a case is to be examined by way of an oral hearing, the parties shall be notified of the date of the first oral hearing at least twenty (20) days in advance of the oral hearing. A party having justified reasons may request a postponement of the oral hearing. However, the party shall communicate such request in writing to the arbitral tribunal within five(5) days of its receipt of the notice of the oral hearing. The arbitral tribunal shall decide whether or not to postpone the oral hearing.

2. Where a party has justified reasons for its failure to submit a request for a postponement of the oral hearing in accordance with the preceding Paragraph 1, the arbitral tribunal shall decide whether or not to accept the request.

3. A notice of a subsequent oral hearing, a notice of a postponed oral hearing, as well as a request for postponement of such an oral hearing, shall not be subject to the time periods specified in the preceding Paragraph 1.

<sup>12</sup> Article 61 Notice of Oral Hearing

1. For a case examined by way of an oral hearing, after the arbitral tribunal has fixed a date for the first oral hearing, the parties shall be notified of the date at least fifteen(15) days in advance of the oral hearing. A party having justified reasons may request a postponement of the oral hearing. However, the party shall communicate such request in writing to the arbitral tribunal within three(3) days of its receipt of the notice of the oral hearing. The arbitral tribunal shall decide whether or not to postpone the oral hearing.

2. If a party has justified reasons for failure to submit a request for a postponement of the oral hearing in accordance with the preceding Paragraph 1, the arbitral tribunal shall decide whether to accept such a request.

3. A notice of a subsequent oral hearing, a notice of a postponed oral hearing, as well as a request for postponement of such oral hearing, shall not be subject to the time periods specified in the preceding Paragraph 1.

<sup>13</sup> Article 69 Notice of Oral Hearing

1. For a case examined by way of an oral hearing, after the arbitral tribunal has fixed a date for the first oral hearing, the parties shall be notified of the date at least fifteen (15) days in advance of the oral hearing. A party having justified reason may request a postponement of the oral hearing. However, the party shall communicate such request in writing to the arbitral tribunal within three(3)days of its receipt of the notice of the oral hearing. The arbitral tribunal shall decide whether or not to postpone the oral hearing.

2. If a party has justified reasons for failure to submit a request for a postponement of the oral hearing in accordance with the preceding Paragraph 1, the arbitral tribunal shall decide whether to accept such a request.

3. A notice of a subsequent oral hearing, a notice of a postponed oral hearing, as well as a request for postponement of such oral hearing, shall not be subject to the time periods specified in the preceding Paragraph 1.

<sup>14</sup> Article 41 Evidence

1. Each party shall bear the burden of proving the facts on which it relies to support its claim, defense or counterclaim and provide the basis for its opinions, arguments and counter-arguments.

2. The arbitral tribunal may specify a time period for the parties to produce evidence and the parties shall produce evidence within the specified time period. The arbitral tribunal may refuse to admit any evidence produced after that time period. If a party experiences difficulties in producing evidence within the specified time period, it may apply for an extension before the end of the period. The arbitral tribunal shall decide whether or not to extend the time period.

3. If a party bearing the burden of proof fails to produce evidence within the specified time period, or if the produced evidence is not sufficient to support its claim or counterclaim, it shall bear the consequences thereof.

<sup>15</sup> See Question 2, Endnote 1.

<sup>16</sup> See Question 2, Endnote 2.

<sup>17</sup> See Question 2, Endnote 3.

<sup>18</sup> Article 53 Correction of Award

1. Within a reasonable time after the award is made, the arbitral tribunal may, on its own initiative, make corrections in writing of any clerical, typographical or calculation errors, or any errors of a similar nature contained in the award.

2. Within thirty (30) days from its receipt of the arbitral award, either party may request the arbitral tribunal in writing for a correction of any clerical, typographical or calculation errors, or any errors of a similar nature contained in the award. If such an error does exist in the award, the arbitral tribunal shall make the correction in writing within thirty (30) days of its receipt of the written request for the correction.

3. The above written correction shall form a part of the arbitral award and shall be subject to the provisions in Paragraphs 4 to 9 of Article 49 of these Rules.

<sup>19</sup> Article 54 Additional Award

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1. Where any matter which should have been decided by the arbitral tribunal was omitted from the arbitral award, the arbitral tribunal may, on its own initiative, make an additional award within a reasonable time after the award is made.

2. Either party may, within thirty (30) days from its receipt of the arbitral award, request the arbitral tribunal in writing for an additional award on any claim or counterclaim which was advanced in the arbitral proceedings but was omitted from the award. If such an omission does exist, the arbitral tribunal shall make an additional award within thirty (30) days of its receipt of the written request.

3. Such additional award shall form a part of the arbitral award and shall be subject to the provisions in Paragraphs 4 to 9 of Article 49 of these Rules.

<sup>20</sup> See Question 5, Endnote 10.

<sup>21</sup> See Question 5, Endnote 3.

<sup>22</sup> See Question 5, Endnote 5.

<sup>23</sup> See Question 2, Endnote 3.

## QUESTION 6

Can an arbitral award be rendered in summary form or without giving any reason? If so, on what basis? Please indicate any statistics, if available.

### Vienna International Arbitral Centre (VIAC)

Acc. to Art 36 para 1 awards shall be in writing and shall state the reasons on which they are based unless all parties have agreed in writing or in the oral hearing that the award may exclude reasons. So far, I have not seen any award without reasoning. We had recently had a (regular, non-expedited) case where the parties had waived the reasoning for a partial award but the arbitrators had provided them nevertheless because they deemed it useful for settlement negotiations.

### Construction Industry Arbitration Council (CIAC)

Award is made on the basis of the written pleadings, documents and written submissions filed by the parties without oral hearings or on the basis of oral hearing where both parties make a joint request or where the Arbitral Tribunal considers its necessity. The award is made as a reasoned award irrespective of The “Fast Track Arbitration”.

According to the CIAC – Arbitration Rules, “Fast Track Arbitration” is as under: -

- The arbitral tribunal will be authorized to decide the dispute on the written pleadings, documents and written submissions filed by the Parties without any oral hearings.
- The arbitral tribunal shall have power to call for any further information/clarification from the parties in addition to the pleading and documents filed by them.
- An oral hearing may be held if both the parties make a joint request or if the Arbitration tribunal considers an oral hearing necessary in any particular case.
- If an oral hearing is held, the arbitral tribunal may dispense with any technical formalities and adopt such procedure as it deems appropriate and necessary for economic and expeditious disposal of the case.

### Russian Arbitration Center (RAC)

Under the Russian arbitration law, an arbitral award can be rendered in summary form or without giving any reason only if the parties have agreed so, and only in domestic arbitration (Paragraph 2 Article 34 of the Federal Law No 382-FZ “On Arbitration (Arbitral Proceedings) in the Russian Federation”). In international commercial arbitration, with a seat of arbitration in Russia, unreasoned arbitral awards cannot be rendered, even if the parties have agreed so (Paragraph 2 Article 31 of the Law of the Russian Federation “On International Commercial Arbitration”).

To date, RAC at RIMA has not rendered any arbitral awards in summary form or without giving any reason.

### Milan Chamber of Arbitration (CAM)

Art. 33, para. 2, let. e, provides that the award shall indicate the reasons upon which the decision is based, even in summary.

An award without any reason would be contrary to the Rules, as well to Italian law on arbitration where the seat is here. No statistics are available on this point.

*London Court of International Arbitration (LCIA)*

It is possible that the Tribunal in an LCIA arbitration issues an award without reasons, provided that the parties agree so. We do not maintain any statistics in this regard.

*Georgian International Arbitration Centre (GIAC)*

According to the Article 37(1) of the GIAC Arbitration Rules, the award has to include reasons upon which the tribunal's decisions are based.

*Arbitration Institute of the Stockholm Chamber of Commerce (SCC)*

Under the SCC Rules for Expedited Arbitration, the arbitrator is not expected to provide reasons in the award. However, following article 42(1), a party may request a reasoned award no later than during its closing statement.

*International Centre for Alternative Dispute Resolution (ICADR)*

No. The arbitral award cannot be rendered in summary form or without giving any reason. An arbitral award shall be made in writing as early as possible but not later than 10 days after the case is closed for making the award and it shall be signed by the members of the arbitral tribunal shall state the reasons upon which it is based, unless

- the parties have agreed that no reasons are to be given, or
- the award is an arbitral award on agreed terms.

*China International Economic and Trade Arbitration Commission (CIETAC)*

Yes. According to Article 49<sup>1</sup> of CIETAC Rules 2015, in general, the arbitral tribunal shall state in the award the claims, the facts of the dispute, the reasons on which the award is based, the result of the award, the allocation of the arbitration costs, and the date on which and the place at which the award is made. However, the facts of the dispute and the reasons on which the award is based may not be stated in the award if the parties have so agreed, or if the award is made in accordance with the terms of a settlement agreement between the parties.

In practice, most of the awards rendered in such summary form are consent awards, which are rendered in accordance with the settlement agreement between the parties.

*Asian International Arbitration Centre (AIAC)*

There is no prohibition in Malaysia on rendering an award in summary form. However, standard practice signifies that it is more common for awards to be rendered with reasons.

Under the AIAC Fast Track Rules, the arbitral tribunal is required to render a reasoned award (*cf.* Rule 19(2) of the AIAC Fast Track Rules).

However, for an arbitration conducted pursuant to the AIAC Arbitration Rules, it is permissible for an arbitral tribunal to render an award without giving any reason if the Parties have agreed that no reasons are to be given (*cf.* Article 34 of the AIAC Arbitration Rules 2018). This provision needs to be read in

conjunction with Section 33 of the Arbitration Act 2005 [Act 646] which requires an award to state the reasons upon which it is based, unless— a) the Parties have agreed that no reasons are to be given; or b) the award is an award on agreed terms under section 32.

Statistics on awards without any reason are not available.

#### Singapore International Arbitration Centre (SIAC)

Yes. Rule 5.2(e) of the SIAC Rules 2016 provides that the tribunal may state the reasons upon which the final award is based in summary form. Rule 5.2(e) further envisions that the tribunal can render an award in summary form without giving any reasons if ‘*parties have agreed that no reasons are to be given*’.

#### Madrid Court of Arbitration (MCA)

No, except in the case of an arbitral award on agreed terms (i.e. reflecting a settlement agreement between the parties), under article 41 of the Rules.

Spanish arbitration law forbids awards without giving any reasons (with the above exception).

#### German Arbitration Institute (DIS)

An award may not be reasoned in case the parties agree that reasons need not to be given or in case of an award by consent (Article 39.1.).

So far, there has not been any award rendered without a reasoning under the 2018 DIS Arbitration Rules.

#### Bahrain Chamber for Dispute Resolution (BCDR-AAA)

Article 18 of the BCDR-AAA 2017 Rules empowers the tribunal to determine on a summary basis any legal or factual issue material to the outcome of the arbitration. Such determination is to be made by an Order or an Award of the tribunal.

However, Article 35.2 of the BCDR-AAA 2017 Rules provides that awards shall be in writing and that the tribunal shall state the reason upon which the award is based, unless the parties have agreed in writing that no reasons need to be given.

\*

The rule on summary procedure has been available only since the end of 2017 and the BCDR-AAA currently has no useful statistics on take-up.

#### Hong Kong International Arbitration Centre (HKIAC)

Under the Rules, the default position is that “*an award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given.*”<sup>2</sup>

In respect of consent awards, Article 37.2 of the 2018 Rules provides that:

“*If, after the arbitral tribunal is constituted and before the final award is made: (a) the parties settle the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitration or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.*” (Emphasis added.)

For awards rendered in proceedings conducted under the Expedited Procedure, Article 42.2(g) of the 2018 Rules provides that the arbitral tribunal “*may state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons are to be given.*” Based on the records of the HKIAC, to date, there have been no awards expressly described as having been rendered in “*summary form*” under the Expedited Procedure; all awards have been issued with non-summarised reasoning.

The 2018 Rules introduced a new procedure known as the Early Determination Procedure (“EDP”).<sup>3</sup> Under the EDP, the arbitral tribunal shall, upon the request of a party and after consulting with all other parties, have the power to decide one or more points of law or fact by way of early determination procedure, on the following grounds:

- such points of law or fact are manifestly without merit; or
- such points of law or fact are manifestly outside the arbitral tribunal’s jurisdiction; or
- even if such points of law or fact are submitted by another party and are assumed to be correct, no award could be rendered in favour of that party.<sup>4</sup>

Article 43.6 of the 2018 Rules provides that:

*“If the request is allowed to proceed, the arbitral tribunal shall make its order or award, which may be in summary form, on the relevant points of law or fact. The arbitral tribunal shall make such order or award within 60 days from the date of its decision to proceed. This time limit may be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.”* (Emphasis added.)

#### Chartered Institute of Arbitrators (CI Arb)

The CI Arb CCEA Rules do not expressly provide for summary dispositions. However, the same Rules do not contain any requirement that the tribunal give a reasoned award, which in contrast is an express requirement for a reasoned award under the CI Arb Arbitration Rules.

#### Swiss Chambers’ Arbitration Institution (SCAI)

Yes, according to Article 42(1)(e) of the Swiss Rules, in the context of expedited procedure the arbitral tribunal shall state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons be given in order to further accelerate the procedure.

Pursuant Article 32(3), the parties may also agree that the award be rendered without reasons in the context of the ordinary procedure.

There is no available data in this respect.

#### The Belgian Centre for Arbitration and Mediation (CEPANI)

Arbitral awards without reasons are not valid under Belgian law. Pursuant to Article 1713, § 4 of the Belgian Judiciary Code (“B.J.C.”), arbitral awards shall state the reasons on which they are based. This requirement is part of Belgian (national) public policy, and hence, applies to all arbitral awards rendered by an arbitral tribunal seated in Belgium. A failure to provide reasons is an express ground for setting aside arbitral awards under Article 1717, § 3(a)(iv) B.J.C. Similarly, Belgian courts may refuse to recognize and grant enforcement of arbitral awards which fail to provide reasons (article 1721, §1(a)(iv) B.J.C.). As an exception, Belgian courts may still enforce foreign arbitral awards without reasons if a duty to provide reasoning is not prescribed by the (foreign) rules of law applicable to the arbitral proceedings under which such an award was rendered.

For the reasons set out above, awards in summary form should be approached with caution. While it is generally considered that the duty to provide reasons does not require the arbitral tribunal to reply to every single argument, the arbitral tribunal must reply to all grounds raised by the parties. Failing to do so exposes it to the same risks of annulment and refusal of enforcement as an award that does not provide for reasons at all.

In light of the foregoing, as the majority of cases administered by CEPANI is seated in Belgium, the CEPANI arbitration rules do not contain rules permitting for arbitral awards to be issued without reasons or in summary format. Moreover, the question has not arisen in practice.

#### *Korean Commercial Arbitration Board (KCAB)*

Pursuant to Article 36, all awards are required to state the reasons upon which it is based. The arbitral tribunal must give reasons for its decision in the award unless the parties have otherwise agreed.

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An arbitral award may be rendered in summary form, pursuant to Article 48.2, which applies to Expedited Procedures. Therefore, for arbitral awards of expedited proceedings, an award may be rendered in a summary form, but the tribunal is still required to state the reasons upon which the award is made, unless otherwise agreed by the parties.

#### *Delos Dispute Resolution*

Pursuant to Article 8.2 of the Delos Rules (see <https://delosdr.org/index.php/rules/#Art8>), “*The Tribunal shall provide written reasons for the outcome in the Award unless the parties have agreed otherwise.*”

This should be read in conjunction with Delos’s emphasis on the selection of a ‘safe seat’ of arbitration in the parties’ arbitration agreement. See, further, the answers to Question 6 of the [Delos FAQs](#).

#### *The Permanent Arbitration Court of the Hungarian Chamber of Commerce and Industry*

All awards shall be in writing and state the reasons on which they are based. The only exception is if the parties agreed in a settlement and they waive detailed reasoning. In such case it is enough that the reasoning contains that the award is based on the settlement of the parties.

#### *International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC at RFCCI)*

According to the Russian Law on International Commercial Arbitration of 1993 (as amended) any arbitral award must be reasoned (Art. 31). Therefore an arbitral award cannot be rendered without reasons. At the same time neither the said law nor the Rules (§37 ) do not provide how detailed these reasons should be. They should be sufficient given the nature of the case. The award shall contain, in particular, circumstances of the case established by the arbitral tribunal, evidence on which the tribunal’s conclusions are based, and legal norms applied by it when making an award.

Beijing Arbitration Commission/ Beijing International Arbitration Center (BAC/BIAC)

Pursuant to Article 49 of the BAC Rules, arbitral awards should state reasons upon which the award is based, unless otherwise agreed by both parties, or the award is made in accordance with a settlement agreement between parties.

There were 36 arbitral awards made in accordance with a settlement agreement between parties from January 1, 2015 to December 31, 2018.

## QUESTION 7

In administering expedited arbitration, do your institutions have a role in ensuring due process and fairness as well as the quality of the award?

### Vienna International Arbitral Centre (VIAC)

We administer all proceedings with the same diligence and care and ensure that due process and fairness are respected. Chairpersons of the arbitral tribunal and sole arbitrators shall submit to the Secretariat an electronic version of the draft award for review. The Secretariat may point out to the arbitral tribunal possible mistakes of form and propose other non-binding amendments. The arbitral tribunal remains solely responsible for the content of the award. There is no difference in the review process for awards rendered in expedited proceedings. This process takes less than a week, usually 1-2 days.

### Construction Industry Arbitration Council (CIAC)

For “Fast Track Arbitration”, CIAC has an effective role in ensuring the process & fairness as well as the quality of the award through CIAC Arbitration Rules, which provides the following mechanism: -

- List of empanelled arbitrators, who are empanelled after 3 days rigorous training on all the relevant issues in making a reasoned award.
- Guidelines for Arbitrators & the Parties for expeditious conduct of Arbitration Proceedings
- Code of Ethics for Arbitrators, Parties & their Counsel
- Arbitrator’s Declaration & Acceptance of Appointment & statement of Independence.
- Model Agreement for “Fast Track Arbitration” by both the Parties.
- CIAC- Registrar monitors the arbitration cases to ensure proper arbitration proceedings and issues advisory from time to time, if so required.
- CIAC – High Power committee comprising of the Chairman, Member Secretary & the Registrar of CIAC to review the Award made by the Arbitral Tribunal before issue to ensure that there is no illegality in the award finalised by the Arbitral Tribunal, if so, the award is return to the Arbitral Tribunal with advisory. The Review Committee does not make any comments/ observations on the merit of the case decided by the Arbitral Tribunal. By such review, CIAC ensures to maintain the quality of Award.

### Russian Arbitration Center (RAC)

The main mechanism how RAC at RIMA aims to ensure due process and fairness, when administering expedited arbitration, is by means of the interaction between tribunal’s assistants and arbitrators: the assistants to the arbitral tribunal are appointed from the members of the RAC secretariat. RAC at RIMA asks the arbitrators to submit the drafts of arbitral awards to check them for the compliance with the formal requirements imposed by the Russian arbitration law with an aim to ensure the quality and enforceability of the award.

### Milan Chamber of Arbitration (CAM)

CAM has no set of Expedited Arbitration Rules.

*London Court of International Arbitration (LCIA)*

As already mentioned, the current version of the Rules do not contain any specific procedure or provisions in respect to expedited arbitral proceedings as such.

*Georgian International Arbitration Centre (GIAC)*

Our role is to ensure that the party was duly informed and had the full opportunity to present the case in both standard and fast track arbitration. Additionally, the mandatory review of the award by the Arbitration Council is also applicable to the awards rendered under the fast track arbitration in order to ensure the quality of the award.

*Arbitration Institute of the Stockholm Chamber of Commerce (SCC)*

In accordance with the Rules, the SCC, the Arbitrator and the parties shall act in the spirit of these Rules and shall make every reasonable effort to ensure that any award is legally enforceable. Any decision or procedural measure, taken by the SCC's Secretariat and the Board, rests on equal, impartial and independent treatment of the parties and the arbitral tribunal.

*International Centre for Alternative Dispute Resolution (ICADR)*

ICADR has its Arbitration Committee. The said Committee may examine the arbitration case file, from time to time to evaluate the progress of the proceedings and to ascertain whether the arbitrators have granted adjournments only on reasonable grounds.

*China International Economic and Trade Arbitration Commission (CIETAC)*

The summary procedure is aimed at and reducing procedural time period and costs as well as improving efficiency without undermining due process and the quality of the award. Thus, all rules and measures designed to ensure due process and the quality of the award for CIETAC general procedure cases are also applied to the summary procedure cases.

Besides the above-mentioned related rules, CIETAC ensures the due process and fairness in various ways. For example, according to Article 31<sup>5</sup> and 32<sup>6</sup> of CIETAC Rules 2015, the arbitrator must sign a statement before handling the case to ensure his/her independence and impartiality, and the Declaration and/or the disclosure of the arbitrator shall be submitted to the Arbitration Court to be forwarded to the parties. In the written notice of formation of the tribunal, the parties will be reminded of their right to challenge the tribunal, which will be reviewed seriously under strict procedure once raised by the parties. Article 35<sup>7</sup> of the Arbitration Rules provides that the arbitral tribunal shall examine the case in any way it deems appropriate unless otherwise agreed by the parties. Under all circumstances, the arbitral tribunal shall act impartially and fairly and shall afford a reasonable opportunity to both parties to present their case.

According to Article 49<sup>8</sup> of CIETAC Rules 2015, the tribunal is required to render the award independently and impartially in accordance with the law and with reference to international practices. Article 51<sup>9</sup> of the Arbitration Rules also provides that the arbitral tribunal shall submit its draft award to CIETAC for scrutiny before signing the award. CIETAC may bring to the attention of the arbitral tribunal issues addressed in the award on the condition that the arbitral tribunal's independence in rendering the award is not affected. Such mechanism is proved to be an highly effective way to ensure the quality of the award by plenty of practice.

### Asian International Arbitration Centre (AIAC)

In administering fast track arbitrations and all other ADR proceedings under the auspices of the AIAC, individual Case Counsels are assigned to each matter. The designated Case Counsel not only has responsibility for the day-to-day carriage of the matter, but they are also the primary liaison officer between Parties and/or the arbitral tribunal and the Centre, for their respective files. All AIAC Case Counsels are responsible for and monitor the timeline of proceedings, ensuring procedural compliance with the AIAC Fast Track Rules. This is often done through e-mail communication which is copied to all Parties and the arbitral tribunal.

In relation to due process and fairness, Rule 5(1) of the AIAC Fast Track Rules emphasises the importance of independence and impartiality throughout the proceedings. Rule 5(2) of the AIAC Fast Track Rules also imposes a continuing duty and obligation of disclosure, requiring the tribunal to disclose any circumstances, which are likely to give rise to justifiable doubts as to his or her impartiality and independence at any time.

Although a technical review is implemented under the AIAC Arbitration Rules, no such review is undertaken under the AIAC Fast Track Rules. Be that as it may, a 14-day timeline is availed to the arbitral tribunal to correct “*any errors of computation, any clerical or typographical errors, slips or omissions in the award*” upon the request from any party (*cf.* Rule 20(1) of the AIAC Fast Track Rules).

Additionally, as part of the AIAC’s compliance services, awards rendered pursuant to both the AIAC Fast Track Rules and the AIAC Arbitration Rules are reviewed to ensure that the award has been signed correctly, and that the seat and the venue of the arbitration have been specified in the award. The AIAC also certifies originals of an award before they are collected by the Parties and the AIAC also certifies copies of an award for enforcement purposes.

### Singapore International Arbitration Centre (SIAC)

Yes, abbreviation of time limits for proceedings conducted under the expedited procedure is subject to the Registrar’s approval (Rule 5.2(a) of SIAC Rules 2016). In deciding whether the time limits under the SIAC Rules should be abbreviated, the Registrar will have regard to, among others, due process and fairness considerations.

Awards that are rendered in expedited arbitrations are also scrutinised by the Registrar before they are issued.

### Madrid Court of Arbitration (MCA)

The Court does not have specific role in ensuring due process and fairness. However, it does monitor the proceedings; it receives all communications between the parties and keeps an eye on timelines. Any complaints arising from any party are swiftly considered by the secretariat.

Any substantial breach by the arbitrators may give rise to removal of arbitrators. Under article 16.2 of the Rules, the Court is entitled to dismiss an arbitrator if the arbitrator fails to perform his or her functions according to the Rules or within the timelines provided, or whenever any circumstance arises that could seriously hinder the performance of these obligations.

In general, article 11.4 of the Rules provides that the arbitrators undertake to render their services diligently and pursuant to the terms of the Rules.

Regarding quality of the award, article 42 of the Rules provide for a prior examination of the award by the Court. According to that provision: “*1. Before signing the award, the arbitrators shall submit it to*

*the Court, which may, during the following ten days, make strictly formal modifications. 2. Without affecting the freedom of decision of the arbitrators, the Court may also call their attention to certain matters relating to the merits of the case, as well as to the determination and apportionment of costs. 3. The Court's prior examination shall in no event imply assumption of any responsibility by the Court as to the terms of the award."*

#### *German Arbitration Institute (DIS)*

There are no specific provisions in Annex 4 that address due process and fairness in expedited arbitration. According to Article 1.4, the safeguards under the regular set of rules will also apply to the Expedited Proceedings.

As under the regular DIS Arbitration Rules, the quality of the award is ensured by obliging the arbitral tribunal to send a draft of the award to the DIS for review, and the DIS may make observations with regard to form and may suggest other non-mandatory modifications to the arbitral tribunal (Article 39.3.).

#### *Bahrain Chamber for Dispute Resolution (BCDR-AAA)*

The BCDR-AAA imposes an obligation on the arbitrators it appoints (whether in expedited or non-expedited arbitrations) to conduct the proceedings in a manner that ensures due process (Article 16.1 of the BCDR-AAA 2017 Rules).

As the administering institution, it has, itself, a vital role in monitoring the proceedings, including expedited arbitrations, to ensure that the arbitrator fulfills all his or her obligations under the BCDR-AAA 2017 Rules, and may revoke the appointment of an arbitrator who it determines is no longer able to do so (Article 12.1(e)).

By these means the BCDR-AAA has an important role in ensuring due process and, in so doing, the quality of the award, as to which the provisions on the time, form and effect of the award, at Article 35 of the BCDR-AAA 2017 Rules, provide additional quality assurances.

#### *Hong Kong International Arbitration Centre (HKIAC)*

Article 13 of the 2018 Rules contains general provisions in respect of arbitrations conducted under the HKIAC Rules:

*"13.1 Subject to these Rules, the arbitral tribunal shall adopt suitable procedures for the conduct of the arbitration in order to avoid unnecessary delay or expense, having regard to the complexity of the issues, the amount in dispute and the effective use of technology, and provided that such procedures ensure equal treatment of the parties and afford the parties a reasonable opportunity to present their case.*

*13.5 The arbitral tribunal and the parties shall do everything necessary to ensure the fair and efficient conduct of the arbitration."* (Emphasis added.)

While the HKIAC does not formally scrutinise awards, HKIAC case managers assist arbitral tribunals to ensure awards comply with the form requirements under the Rules. HKIAC case managers also monitor the proceedings and may raise matters internally if they have concerns about due process in a particular arbitration.

The HKIAC also provides a Tribunal Secretary Service, whereby HKIAC case managers are appointed as tribunal secretaries in cases under the HKIAC's auspices. This provides an additional layer of institutional oversight of the arbitral process.

Chartered Institute of Arbitrators (CI Arb)

Neither CI Arb nor DAS administers arbitrations.

Swiss Chambers' Arbitration Institution (SCAI)

At all stages and in the context of both, ordinary and expedited procedures, it is for the arbitral tribunal, once it has been constituted, to ensure that due process and fairness is observed.

The Swiss Rules do not provide for the scrutiny of the award. However, pursuant to Article 40(4) of the Swiss Rules, the SCAI Court plays a very important role prior to the issuance of the award, as it reviews and approves the section related to the determination on costs made by the arbitral tribunal (*i.e.* the arbitral tribunal fees and expenses). This is a counterbalance to the power of the arbitral tribunal to determine its own fees under the Swiss Rules.

The Belgian Centre for Arbitration and Mediation (CEPANI)

CEPANI places great importance on ensuring that arbitral proceedings conducted under the expedited arbitration rules are not only conducted efficiently but meet every standard of due process and fairness.

Requirements of due process and fairness underpin CEPANI arbitration as a whole. Many examples can be found in the CEPANI Rules 2020, which equally apply to expedited proceedings

In addition, any CEPANI arbitrator (whether in standard or expedited proceedings) must – in addition to the usual statements of availability, independence and impartiality – declare that he/she shall abide by the “Rules of good conduct for procedures requiring the intervention of CEPANI” enclosed as Schedule II to the CEPANI Rules 2020. Schedule II contains a number of specific undertakings, which includes a duty to ensure due process and fairness.

Next, CEPANI also adheres particular importance to the quality of the awards rendered. In this connection, the CEPANI Rules 2020 will codify an existing practice within the CEPANI Secretariat to conduct a limited formal scrutiny of CEPANI arbitral awards. Article 33 of the CEPANI Rules 2020, which is applicable both to standard and expedited arbitration proceedings, will require the arbitral tribunal to submit the award in draft form to the CEPANI Secretariat. The Secretariat may, without affecting the arbitral tribunal’s liberty of decision, suggest modifications as to the form of the award.

Korean Commercial Arbitration Board (KCAB)

All our cases are conducted under the declaratory general rule of Article 6 which sets forth that the Secretariat and the arbitral tribunal shall act in the spirit of the Rules and shall make every effort to ensure the award is enforceable at law. Expedited proceedings, as well as normal proceedings, are ensured due process and paid careful attention to ensure that no prejudice is caused to any party of the case. The Secretariat also consistently guides the parties to ensure all conducts are in compliance with the rules.

As for the quality of the award, our institute interacts with the tribunal closely regarding the review of the draft award. The Secretariat is mainly responsible for formatting of the document and checking dates and errors in order to ensure that the award complies with international standards. Often, the Secretariat may point out or enquire to the tribunal certain ambiguity found within the award and suggest certain edits to strengthen the clarity of the award.

### Delos Dispute Resolution

Articles 1.2-1.4 of the Delos Rules provide as follows (see at <https://delosdr.org/index.php/rules/#Art1>):

*1.2. The principal purpose of the Rules is to enable the Tribunal, the parties to the dispute and DELOS to deal with cases fairly, expeditiously and at proportionate cost. This includes:*

*a. ensuring that the parties' due process rights are respected, including by giving each party a reasonable opportunity to put its case and deal with that of its opponent; and*

*b. dealing with the dispute efficiently and in a manner proportionate to: (i) the value of the dispute; (ii) the complexity of the issues in dispute; and (iii) the importance of the dispute to any ongoing relationships between the parties.*

*1.3. In relation to any matters not expressly provided for herein, the Tribunal, the parties and DELOS shall act in accordance with the principal purpose of the Rules and make every effort to ensure that any Award is enforceable at law.*

*1.4. The parties, and all counsel of record, witnesses and experts, are required to act in good faith and assist the Tribunal to further the principal purpose of the Rules.*

### The Permanent Arbitration Court of the Hungarian Chamber of Commerce and Industry

Our institution has no influence on construing the awards, no possibility for quality check. The Secretariat assists the arbitrators in order to keep the due process.

### International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC at RFCCI)

It is for the arbitral tribunal after it has been constituted to ensure due process and fairness of proceedings (either ordinary or expedited) as well as the quality of the award. According to the Rules before the award is signed the arbitral tribunal shall deliver the draft award to the ICAC Secretariat. The Secretariat may, without affecting the independence of the arbitrators to make the award, direct the attention of the tribunal to discrepancies found, if any, between the draft award and formal requirements provided by the ICAC regulations and rules (subparagraph 1 of §40 of the Rules).

### Beijing Arbitration Commission/ Beijing International Arbitration Center (BAC/BIAC)

First, the BAC expedited procedure itself ensures the due process and fairness because it does not diminish any procedure rights of the parties as they will have in an ordinary procedure, only to set a shorter time limitation to exercise these rights. For example, the parties will have to right to appoint arbitrator, submit documents and submissions, hold oral hearings and present their evidences. The Tribunal is subject to the same standard to remain independent and impartiality, and to disclose any facts that may give rise to justifiable doubts.

Second, the institution will monitor each case through the OA system to guarantee the time limitation are observed and the Secretary General has the right to decide whether to extend the time limitation for the Tribunal to render the award.

Third, to ensure the quality of the award, the BAC scrutinizes every award rendered under its administration, including the ones administered under the expedited procedures.

## End Notes to Question 7

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### <sup>1</sup> Article 49 Making of Award

1. The arbitral tribunal shall independently and impartially render a fair and reasonable arbitral award based on the facts of the case and the terms of the contract, in accordance with the law, and with reference to international practices.

2. Where the parties have agreed on the law applicable to the merits of their dispute, the parties' agreement shall prevail. In the absence of such an agreement or where such agreement is in conflict with a mandatory provision of the law, the arbitral tribunal shall determine the law applicable to the merits of the dispute.

3. The arbitral tribunal shall state in the award the claims, the facts of the dispute, the reasons on which the award is based, the result of the award, the allocation of the arbitration costs, and the date on which and the place at which the award is made. The facts of the dispute and the reasons on which the award is based may not be stated in the award if the parties have so agreed, or if the award is made in accordance with the terms of a settlement agreement between the parties. The arbitral tribunal has the power to fix in the award the specific time period for the parties to perform the award and the liabilities for failure to do so within the specified time period.

4. The seal of CIETAC shall be affixed to the arbitral award.

5. Where a case is examined by an arbitral tribunal composed of three arbitrators, the award shall be rendered by all three arbitrators or a majority of the arbitrators. A written dissenting opinion shall be kept with the file and may be appended to the award. Such dissenting opinion shall not form a part of the award.

6. Where the arbitral tribunal cannot reach a majority opinion, the arbitral award shall be rendered in accordance with the presiding arbitrator's opinion. The written opinions of the other arbitrators shall be kept with the file and may be appended to the award. Such written opinions shall not form a part of the award.

7. Unless the arbitral award is made in accordance with the opinion of the presiding arbitrator or the sole arbitrator and signed by the same, the arbitral award shall be signed by a majority of the arbitrators. An arbitrator who has a dissenting opinion may or may not sign his/her name on the award.

8. The date on which the award is made shall be the date on which the award comes into legal effect.

9. The arbitral award is final and binding upon both parties. Neither party may bring a lawsuit before a court or make a request to any other organization for revision of the award.

<sup>2</sup> Article 34.4, 2013 Rules; Article 35.4, 2018 Rules.

<sup>3</sup> Article 43, 2018 Rules.

<sup>4</sup> Article 43, 2018 Rules.

<sup>5</sup> Article 31 Disclosure

1. An arbitrator nominated by the parties or appointed by the Chairman of CIETAC shall sign a Declaration and disclose any facts or circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence.

2. If circumstances that need to be disclosed arise during the arbitral proceedings, the arbitrator shall promptly disclose such circumstances in writing.

3. The Declaration and/or the disclosure of the arbitrator shall be submitted to the Arbitration Court to be forwarded to the parties.

<sup>6</sup> See Question 4, Endnote 2.

<sup>7</sup> Article 35 Conduct of Hearing

1. The arbitral tribunal shall examine the case in any way it deems appropriate unless otherwise agreed by the parties. Under all circumstances, the arbitral tribunal shall act impartially and fairly and shall afford a reasonable opportunity to both parties to present their case.

2. The arbitral tribunal shall hold oral hearings when examining the case. However, the arbitral tribunal may examine the case on the basis of documents only if the parties so agree and the arbitral tribunal consents or the arbitral tribunal deems that oral hearings are unnecessary and the parties so agree.

3. Unless otherwise agreed by the parties, the arbitral tribunal may adopt an inquisitorial or adversarial approach in hearing the case having regard to the circumstances of the case.

4. The arbitral tribunal may hold deliberations at any place or in any manner that it considers appropriate.

5. Unless otherwise agreed by the parties, the arbitral tribunal may, if it considers it necessary, issue procedural orders or question lists, produce terms of reference, or hold pre-hearing conferences, etc. With the authorization of the other members of the arbitral tribunal, the presiding arbitrator may decide on the procedural arrangements for the arbitral proceedings at his/her own discretion.

<sup>8</sup> See Question 7, Endnote 1.

<sup>9</sup> Article 51 Scrutiny of Draft Award

The arbitral tribunal shall submit its draft award to CIETAC for scrutiny before signing the award. CIETAC may bring to the attention of the arbitral tribunal issues addressed in the award on the condition that the arbitral tribunal's independence in rendering the award is not affected.

## QUESTION 8

As a procedural tool, can arbitral tribunals dismiss claims and defences that lack merit under your institutional rules? If so, how often is this used?

### Vienna International Arbitral Centre (VIAC)

No, there is no early dismissal of claims.

On the procedural level, although the arbitration agreement itself does not need to be enclosed with the Statement of Claim under the Vienna Rules 2018 (as had been provided for by Art 9 para 4 Vienna Rules 2006), particulars regarding the arbitration agreement and its content are required (Art 7 para 2.2.6). The Secretary General will therefore still examine whether the particulars contain any indication of the VIAC's jurisdiction or (at least) whether jurisdiction of the VIAC is not obviously excluded.

The former president of VIAC, Werner Melis, has described a negative test that is to be performed by the institution (Melis, 'Function and Responsibility of Arbitral Institutions' (1991) XIII Comparative Law Yearbook of International Business 113): '[VIAC should] refuse to accept a case if the claimant is unable to produce a document which is, at least, of such nature as to indicate that the jurisdiction of the institution is not impossible.'

Thus, if the claimant fails to provide any jurisdictional basis and the institution's jurisdiction seems 'impossible', it is the practice of the Secretary General to inform the claimant that it intends to refuse to accept the case. If the claimant insists, it may still forward the case to the arbitral tribunal at the claimant's risk to be liable for costs (cf. Rechberger/Pitkowitz, Handbook Vienna Rules (2019), Art. 7 mn. 18).

VIAC itself does not have the power to finally determine the jurisdiction of the institution; this lies within the competence of the arbitral tribunal (Kompetenz-Kompetenz) and is subject to judicial control.

Where the Secretary General considers this to be necessary, she will present the case to the Board, which may reject the arbitration in exceptional cases pursuant to Art 1 para 3

### Construction Industry Arbitration Council (CIAC)

Yes. During the Arbitration Proceedings, the Arbitral Tribunal is competent to dismiss claims and defences on merit if they are not supported with documents, & not acceptable under the Amended Act, 2015 and /or against the Law of the Land and /or against Public Policy of India, which has been well defined under the amended Act, 2015.

As referred in question No 1, the CIAC Arbitration Rules are in conformity with the Amended Act, 2015.

In general, all the cases referred for arbitration may contain certain claims which are not acceptable. Therefore, such claims are rejected on the basis of merits.

### Russian Arbitration Center (RAC)

The mechanism of early dismissal of claims is not available under the RAC Arbitration Rules.

### Milan Chamber of Arbitration (CAM)

No specific provision is contained in the Rules. Nevertheless, Art. 37 expressly provides the Arbitral Tribunal with the possibility to render interim or partial awards, so this rule covers the situation. No statistics are available on this point.

London Court of International Arbitration (LCIA)

The Rules do not provide the Tribunal with express power to decide an early dismissal of claims. However, the Tribunal's general case management power under Articles 14.4 and 14.5 may enable it to dismiss claims and defences on a summary basis, provided the parties are offered a fair opportunity to present their cases, and it is in compliance with the due process principle.

Georgian International Arbitration Centre (GIAC)

Under Article 28 of the GIAC Rules, there are requirements of including the facts and legal argument in the Statement of Claim and Statement of Defence. However, in our practice these requirements have never been used by the arbitral tribunals for dismissing the claims and/or defences.

Arbitration Institute of the Stockholm Chamber of Commerce (SCC)

This is possible under the summary procedure (Article 39; Article 40). Given that the procedure has been introduced quite recently (2017), the use and effect of the procedure is yet to be evaluated.

International Centre for Alternative Dispute Resolution (ICADR)

All arbitral awards are given by the Arbitral Tribunal on the basis of the evidence/documents produced before it and supported with submissions of the parties.

China International Economic and Trade Arbitration Commission (CIETAC)

No. CIETAC does not have such procedural tool under CIETAC Rules 2015.

Asian International Arbitration Centre (AIAC)

None of the AIAC suite of rules specifically provide for such summary procedures of dismissal. Be that as it may, both the AIAC Fast Track Rules and the AIAC Arbitration Rules contain the following provisions which form part of the arbitral tribunal's scope of power and jurisdiction:

Rule 7(4)(b) of AIAC Fast Track Rules

*"[T]he arbitral tribunal may conduct the arbitration in such manner as it deems appropriate. In particular, the arbitral tribunal may, unless otherwise agreed by the Parties: ...[b] conduct such enquiries as may appear to the arbitral tribunal to be necessary or expedient, including whether and to what extent the arbitral tribunal shall itself take the initiative in identifying relevant issues applicable to the dispute."*

Rule 6(b) of AIAC Arbitration Rules

*"[T]he arbitral tribunal may conduct the arbitration in such manner as it deems appropriate. In particular, the arbitral tribunal may, unless otherwise agreed by the Parties: ... (b) conduct such enquiries as may appear to the arbitral tribunal to be necessary or expedient, including whether and to what extent the arbitral tribunal shall itself take the initiative in identifying relevant issues applicable to the dispute."*

One may deduce that the above-mentioned provisions empower the arbitral tribunal to consider the parties' position before deciding whether claims and defences lack merit which may potentially lead to a dismissal.

Singapore International Arbitration Centre (SIAC)

Yes, SIAC has an early dismissal procedure for claims or defences that are manifestly without legal merit or manifestly outside the jurisdiction of the tribunal. These rules were introduced in August 2016 in the 6<sup>th</sup> edition of the SIAC Rules.

As of 31 May 2019, SIAC has received 26 applications for early dismissal.

Madrid Court of Arbitration (MCA)

Article 40.1 of the Rules provides that “*The arbitrators shall decide on the dispute in one award or in as many partial awards as they deem necessary.*” This enables arbitrators to bifurcate proceedings (ordinary and expedited) for efficiency reasons, in order to deal at an early point in time with part of the claims. In our experience, bifurcation (whether by decision by the arbitrators or at the request of a party) happens only sporadically, and never in expedited proceedings.

German Arbitration Institute (DIS)

According to Articles 5.2 and 7.4, the Claimant and Respondent have to provide:

- a statement of the specific relief sought,
- the amount of any quantified claims and an estimate of the monetary value of any unquantified claims, and
- a description of the facts and circumstances on which the claims/Answer are based

In case the Claim or Counterclaim does not sufficiently comply with these requirements, the DIS may ultimately terminate the arbitration with regard to the claim or counterclaim (Articles 42.5 and 42.6).

There is no explicit provision in the Rules on dismissal of claims and defences by the arbitral tribunal.

Bahrain Chamber for Dispute Resolution (BCDR-AAA)

Please see our replies to question 6.

Although Article 18 of the BCDR-AAA 2017 Rules does not specify the grounds to be advanced with an application for summary determination, it is expected that these may include an assertion that the issue to be determined on this basis is manifestly without legal merit.

Hong Kong International Arbitration Centre (HKIAC)

It is within the mandate of all arbitral tribunals to dismiss claims and defences that lack merit. If the question is aimed rather at the “early” dismissal or “summary” dismissal of claims and defences, the relevant process is the EDP, found at Article 43 of the 2018 Rules, as referred to above at paragraphs 0 and 0. To date, there has been no case under the 2018 Rules in which a party has sought the EDP.

<sup>1</sup> The 2018 Rules have been in effect for eight months as at the date of this report.

As mentioned, the EDP expressly provides that an arbitral tribunal, at the request of any party and after consulting with all other parties, may decide one or more points of law or fact by way of early determination procedure based on the grounds specified in Article 43.1(a), (b), and (c).

A party requesting the application of the EDP shall communicate the request to the arbitral tribunal, the HKIAC, and all other parties to the case,<sup>2</sup> as promptly as possible after the relevant points of law or fact have been submitted.<sup>3</sup> The request for EDP shall include the following:

- a request for early determination of one or more points of law or fact and a description of such points;
- a statement of the facts and legal arguments supporting the request;
- a proposal of the form of early determination procedure to be adopted by the arbitral tribunal;
- comments on how the proposed form referred to in Article 43.4(c) would achieve the objectives stated in Articles 13.1 and 13.5, i.e., due process and efficiency; and
- confirmation that copies of the request and any supporting materials included with it have been or are being communicated simultaneously to all other parties by one or more means of service to be identified in such confirmation.<sup>4</sup>

Upon receipt of a request, the arbitral tribunal shall invite the parties to comment on the request, following which it shall proceed to issue a decision, within 30 days from the date of the filing of the request, either dismissing the request or allowing the request to proceed by fixing the EDP in the form it considers appropriate.<sup>5</sup>

In case an arbitral tribunal allows a request to proceed, the arbitral tribunal shall make its order or award, which may be in summary form, on the relevant points of law or fact, within 60 days from the date of the decision to proceed.<sup>6</sup>

The HKIAC may extend the periods within which the arbitral tribunal shall decide on the request as well as the period within which the arbitral tribunal shall issue its order or award in appropriate circumstances.<sup>7</sup>

#### *Chartered Institute of Arbitrators (CIArb)*

Neither the CIArb CCEA Rules or the CIArb Arbitration Rules expressly empower the tribunal to dismiss claims and defences that lack merit, nor do they prohibit it. However, a finding of no merit on a claim or defence can be dealt with by the arbitrator in the final award.

#### *Swiss Chambers' Arbitration Institution (SCAI)*

There is no specific provision in the Swiss Rules providing for summary judgement or early dismissal of claims and defences that lack merit. However, both are possible under the general powers the Tribunal has to conduct the proceedings as it deems appropriate. Requests for early dismissal are rare as they are rarely made by parties.

#### *The Belgian Centre for Arbitration and Mediation (CEPANI)*

The CEPANI Rules 2020 do not contain an express provision allowing for a form of summary dismissal. As discussed under point 6 above, Belgian law requires that arbitral awards must contain the reasons on which the decision is based. This requirement would prevent early dismissal without, or with very limited, reasons.

This being said, in light of the arbitral tribunal's general duty to conduct the arbitration proceedings efficiently, an arbitral tribunal which is of the opinion that certain claims and defences clearly lack merit, may reflect this in the procedural timetable and procedural rules drawn up after consultation of the parties.

#### *Korean Commercial Arbitration Board (KCAB)*

An arbitral tribunal will of course dismiss any claims or defences that lack legal merit. As for early dismissals, Article 25 sets forth that the tribunal, in general, should rule on an objection to its jurisdiction as a preliminary question but may proceed with the arbitration and rule on such objection in its final Award. We have had claims dismissed in its early stage due to an objection to the tribunal's jurisdiction that ultimately upheld by the tribunal after reviewing the issue as a preliminary question.

### Delos Dispute Resolution

The Delos Rules do not expressly provide for the dismissal of meritless claims and defences, but do not expressly rule this out either. Tribunals sitting in Delos arbitrations are given broad powers (see Article 7 of the Delos Rules, available at <https://delosdr.org/index.php/rules/#Art7>) and must “take an active role in the resolution of legal and factual issues on the basis of the parties’ submissions.” They are encouraged to take full advantage of the flexibility afforded by arbitration, bearing in mind the principal purpose of the Delos Rules (see the answer to Question 7 above) and Delos’s emphasis on the use of ‘safe seats’ of arbitration (see the answer to Question 6 above).

### The Permanent Arbitration Court of the Hungarian Chamber of Commerce and Industry

No, there is no early dismissal of claim as a procedural tool if the claim and/or defence lack merit.

### International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC at RFCCI)

There are no express provisions in the Rules on early dismissal by arbitral tribunals of claims and defences that lack merit. Nevertheless, arbitral tribunals have some freedom of discretion in this regard. Normally, findings on merits of claims and defences are dealt with in the final award. Arbitral tribunals may make separate awards on individual issues or part of the claims (§38 of the Rules).

### Beijing Arbitration Commission/ Beijing International Arbitration Center (BAC/BIAC)

The BAC Rules do not provide for Early Dismissal, however in practice, if a case is manifestly outside the jurisdiction of the BAC/BIAC or the arbitral tribunal, the BAC/BIAC or the Tribunal, may make a decision to terminate the case.

## QUESTION 9

If your institution is aware of any court decisions relating to the use of expedited arbitration, please provide us with a short summary or a link to the relevant decision.

### Vienna International Arbitral Centre (VIAC)

No.

### Construction Industry Arbitration Council (CIAC)

Prior to Amended Act 2015 applicable w.e.f 23.10.2015 there was no provision for “Fast Track Arbitration”. Hence there may be limited cases of the courts within last 3 years from 2016 to 2018 relating to “Fast Track Arbitration”. CIAC may find out and communicate the same subsequently if any such cases are available.

### Russian Arbitration Center (RAC)

There is a positive track record of enforcing the arbitral awards rendered under RAC expedited procedure, although the state court in those cases did not grapple with the issues related to the use of expedited procedure.

### Milan Chamber of Arbitration (CAM)

CAM is not aware of any court decision.

### London Court of International Arbitration (LCIA)

We are not aware of any court decisions on any LCIA awards or proceedings relating to the use of “expedited procedure”.

### Georgian International Arbitration Centre (GIAC)

As we have adopted the fast track arbitration Rules recently in 2017, there is not a high amount of cases settled under the fast track rules. Additionally, as to our knowledge most of parties complied with the awards voluntarily. Currently, one award is taken to the court for recognition and enforcement.

### Arbitration Institute of the Stockholm Chamber of Commerce (SCC)

Please consult the Swedish Arbitration Portal. <https://www.arbitration.sccinstitute.com/Swedish-Arbitration-Portal/start/>

### International Centre for Alternative Dispute Resolution (ICADR)

No.

### China International Economic and Trade Arbitration Commission (CIETAC)

As provided in The Arbitration Law of the People’s Republic of China (2017 Amendment) and The Civil Procedure Law of the People’s Republic of China (2017 Revision), a people’s court may judge on the validity of

the arbitration agreement, to set aside, enforce or not to enforce an arbitral award, whether or not such award is made under the Summary Procedure.

According to Article 58<sup>8</sup> and 70<sup>9</sup> of Arbitration Law of the People’s Republic of China (2017 Amendment), as well as Article 274<sup>10</sup> of The Civil Procedure Law of the People’s Republic of China (2017 Revision), where the formation of the arbitration tribunal or the arbitration procedure was not in conformity with the statutory procedure, a party may apply for setting aside an arbitral award to the intermediate people’s court in the place where the arbitration commission is located. In practice, the applicant may claim that the application of summary procedure is not in compliance with the law. However, in most cases, the claims are dismissed by the court.

Typical Cases:

- Li Yao v. Ningxia Yuantai Noble Metals Trading Co., Ltd.<sup>11</sup>
- Zhonghai Xinda Guarantee Co., Ltd. v. Tianjin Trust Co., Ltd.<sup>12</sup>
- Zheng Shuxin v. Geng Yujun<sup>13</sup>
- Gao Yunping v. Tianjin Huiying Wealth Mineral Resources Management Co. Ltd.<sup>14</sup>

According to Article 63<sup>15</sup> and 71<sup>16</sup> of Arbitration Law of the People’s Republic of China (2017 Amendment), as well as Article 237<sup>17</sup> of The Civil Procedure Law of the People’s Republic of China (2017 Revision), where the respondent adduces evidence that the composition of the arbitration tribunal or the arbitration procedure has violated the statutory procedures, the people’s court shall, upon examination and verification by a collegial bench, issue a ruling not to enforce the arbitral award. However, in most cases, the claims on misusing the summary procedure are also dismissed by the court.

Typical Cases:

- Zhang Zihao v. Caterpillar (China) Financial Leasing Co., Ltd.<sup>18</sup>
- Beijing Gaswood International Hotel Management Co., Ltd. v. Shenyang Jianhui Grand Hyatt Hotel Co., Ltd. Shenyang Branch<sup>19</sup>

Given the court decisions in the cases, it is reasonable to conclude that the application of expedited arbitration by CIETAC is in compliance with the law.

#### *Asian International Arbitration Centre (AIAC)*

In *Sisma Enterprise Sdn Bhd v Solstad Offshore Asia Pacific Ltd* [2013] MLJU 1625, the High Court of Malaya considered an application to set-aside an arbitration conducted under the KLRCA Fast Track Arbitration Rules 2012. The award was issued in favour of the Defendant and ordered the Plaintiff to make payments. The basis of the setting aside application was over the factual and interpretive findings made by the arbitrator. No objections were raised in relation to the applicability of the Fast Track Rules. The High Court upheld the award as it found no irregularities in form.

In *Food Ingredients LLC V Pacific Inter-Link Sdn Bhd And Another Application* [2012] 8 MLJ 585; [2011] MLJU 1258, the subject matter in dispute was an arbitration over the reduction of freight, which was conducted on “documents-only” basis per parties’ agreement. Enforcement of the award was resisted on the ground that the arbitration agreement did not cover reduction of freight matters. The High Court, agreeing with the objection, held that since there was no arbitration agreement and clause 6 of the contract could not validly incorporate the particular dispute before the tribunal, there was no valid arbitration agreement from which the tribunal could validly render an award.

#### *Singapore International Arbitration Centre (SIAC)*

Please refer to *AQZ v. ARA*, [2015] SGHC 49 and *Noble Resources International Pte. Ltd. v. Shanghai Xintai International Trade Co Ltd*, (Shanghai No. 1 Intermediate People’s Court, 11 August 2017). PDF attachments of these cases are attached for ease of reference.

Madrid Court of Arbitration (MCA)

No.

German Arbitration Institute (DIS)

We are not aware of any such decisions

Bahrain Chamber for Dispute Resolution (BCDR-AAA)

*X v Y (2008), a decision of the Swiss Federal Tribunal*

*X v. Y*, 4A\_294/2008, Decision of the First Civil Law Court, Federal Judge Corboz presiding, with Federal Judge Mrs Liatowitsch Rottenberg, and Federal Judge Jolly, 28 October 2008, ASA Bulletin 309, 2009, p. 144; *Swiss International Arbitration Reports*, 2008, p. 495.

*Mr. RR, Mr. VR and Ukio Banko Investiciné Grupé UAB v Rual Trade Limited (2012), a decision of the Svea Court of Appeal*

Judgment of the Svea Court of Appeal, 24 February 2012, Case No. T 6238-10

*AQZ v ARA (2015), a decision of the High Court of Singapore*

*AQZ v ARA* [2015] SGHC 49, Suit No. 530 of 2014 and No. 3168 of 2014, Decision of Justice Judith Prakash, 13 February 2015.

*Noble Resources International PTE Ltd v Shanghai Good Credit International Trade Co. Ltd (2016), a decision of the Shanghai Municipal No. 1 Immediate People's Court*

*Noble Resources International PTE Ltd v Shanghai Good Credit International Trade Co. Ltd* (2016), Shanghai Municipal No. 1 Immediate People's Court, available from [https://res.cloudinary.com/lbresearch/image/upload/v1504105750/Noble\\_Resources\\_v.\\_Good\\_Credit\\_oqc1di.pdf](https://res.cloudinary.com/lbresearch/image/upload/v1504105750/Noble_Resources_v._Good_Credit_oqc1di.pdf) (in Mandarin). An English transcript of the decision is not publicly available, but there is an English summary of the decision by Douglas Thomson, *Shanghai court refuses to enforce SIAC sole arbitrator's award*, *Global Arbitration Review*, 30 August 2017 available from <https://globalarbitrationreview.com/article/1146936/shanghai-court-refuses-to-enforce-siac-sole-arbitrators-award>, and further commentary by Mohammed Salahudine Abdel Wahab, *Chapter 6: Expedited Institutional Arbitral Proceedings Between Autonomy and Regulation*, Laurent Lévy and Michael Polkinghorne (eds), *Expedited Procedures in International Arbitration, Dossiers of the ICC Institute of World Business Law*, Vol. 16, Kluwer Law International (2017), pp. 133-157, at 142-144.

Hong Kong International Arbitration Centre (HKIAC)

In *Noble Resources International Pte. Ltd v Shanghai Good Credit International Trade Co., Ltd*,<sup>20</sup> the Shanghai No. 1 Intermediate People's Court refused recognition and enforcement of an award of the Singapore International Arbitration Centre ("SIAC") under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 on the ground that the constitution of the arbitral tribunal was not in accordance with the agreement of the parties.<sup>21</sup>

The dispute concerned a contract for the sale and purchase of iron ore, under which Respondent allegedly failed to issue a letter of credit in favour of Claimant. Under the contract, disputes between the parties were to be referred to a three-member arbitral tribunal. Claimant commenced a SIAC arbitration against Respondent and applied for the proceedings to be conducted under the expedited procedure of the 2013 Arbitration Rules of the

SIAC (“2013 SIAC Rules”) before a sole arbitrator. Over the objections of Respondent grounded on the arbitration agreement providing for a three-member arbitral tribunal, SIAC granted Claimant’s application for expedited procedure and appointed a sole arbitrator. The sole arbitrator eventually issued an award in favour of Claimant.

When Claimant sought to enforce the award in the People’s Republic of China, Respondent challenged enforcement invoking, *inter alia*, Article V(1)(d) of the New York Convention.<sup>22</sup> According to Respondent, the appointment of a sole arbitrator was contrary to the parties’ arbitration agreement.<sup>23</sup> The Shanghai court refused enforcement of the award on the grounds that the arbitral tribunal was constituted contrary to the agreement of the parties. *Inter alia*, the court held that:

- the 2013 SIAC Rules do not preclude alternative constitutions of an arbitral tribunal and do not impose a strict requirement of a sole arbitrator. According to the court, the phrase “*unless the President determines otherwise*” in Rule 5.2(b) of the 2013 SIAC Rules does not grant SIAC unlimited discretion regarding the formation of an arbitral tribunal.
- the decision-making power of SIAC should be exercised with sufficient consideration to the parties’ will as to the constitution of the arbitral tribunal.
- the use of expedited proceedings should not preclude the parties’ right to a three-arbitrator tribunal in accordance with the arbitration agreement.

Similar to the 2013 and 2016 SIAC Rules,<sup>24</sup> the 2017 International Chamber of Commerce Arbitration Rules (“2017 ICC Rules”) allow for a sole arbitrator to be appointed in an expedited proceeding notwithstanding that the arbitration agreement provides for three. Article 1 of Schedule VI of the 2017 ICC Rules provides that “[t]he [ICC] Court may, notwithstanding any contrary provision of the arbitration agreement, appoint a sole arbitrator.”<sup>25</sup>

By contrast, the HKIAC Rules expressly provide that where “*the arbitration agreement provides for three arbitrators, HKIAC shall invite the parties to agree to refer the case to a sole arbitrator. If the parties do not agree, the case shall be referred to three arbitrators.*”<sup>26</sup>

#### Chartered Institute of Arbitrators (CI Arb)

##### *Noble Resources International Pte. Ltd v. Shanghai Good Credit International Trade Co., Ltd. (2016, SIAC)*

Arbitration agreement in a contract provided for three arbitrators.

Claimant applied to SIAC for the proceedings to be conducted under the expedited procedure. SIAC accepted and appointed a sole arbitrator for the case. Respondent objected to the expedited procedure and the appointment of a sole arbitrator. Award in favour of Claimant. Recognition and enforcement of the SIAC award in Mainland China refused.

##### *AQZ v. ARA, [2015] SHGC 49*

Dispute arose out of a contract for the sale and purchase of coal (2009). Arbitration Agreement: SIAC, tribunal of 3 arbitrators. Buyer applied for Expedited Procedure under SIAC 2010, which did not exist at the time of conclusion of the contract. Under the Expedited Procedure rules, it has to be conducted by a sole arbitrator. Award issued in favour of the Buyer and Seller applied to set aside the award before the Singapore High Court, in particular due to absence of jurisdiction of the arbitrator and absence of Expedited Procedure in SIAC rules on the moment of conclusion of a contract. The High Court upheld the decision to appoint a sole arbitrator.

##### *Salvano v. Merrill Lynch, 647 NE 2d 1298*

The issue on this appeal is whether NY Supreme Court had the authority to order the parties to proceed absent any provision explicitly authorizing expedited arbitration in the parties' agreements. Conclusion: it did not.

##### *Bell Atlantic Pennsylvania, Inv. v. Communications Workers of America, 164 F.3d 197 (1999)*

Both Claimant and Respondent have been parties to a collective bargaining agreement, under which parties agreed to arbitrate most disputes under the regular arbitration procedure. The dispute revolves around Bell's

reorganization of certain of its administrative units. Notwithstanding the Union's opinion, Bell insisted on the expedited arbitration procedure and sued in the District Court for the Union's refusal to do so. The court upheld Bell's claim. Court of Appeals: the decision will be reversed due to incorrect interpretation of the procedural arbitrability and substantive arbitrability.

*Swiss Chambers' Arbitration Institution (SCAI)*

Swiss Supreme Court's decision no. [4A 188/2016](#) of 11 January 2017 – Motion to set aside an arbitral award rendered in expedited proceedings on the grounds of Article 190(2)(b) PILA.

Among the grounds invoked by the appellant was the fact that the award was allegedly rendered one day after the expiry of the six-month time-limit (*i.e.* after the powers of the arbitrator had expired). Therefore the arbitrator allegedly lacked of jurisdiction *ratione temporis*.

The Swiss Supreme Court found that the sole arbitrator rendered its final award within the deadline as, pursuant to Article 2(2) of the Swiss Rules, the six-month deadline starts running on the day following the day when the file is received by the sole arbitrator, which in the case at hand was observed. The motion was denied.

Swiss Federal Supreme Court's decision no. [4A 294/2008](#) of 28 October 2008 – Motion to set aside an arbitral award rendered in expedited proceedings on the grounds of Article 190(2)(d) PILA

The appellant based its request on various alleged violations of its right to be heard during the proceedings and in the arbitral award (*i.e.* in particular the lack of reasons in the award). The motion was denied. For a summary and comment of the decision, see Matthias Scherer and Domitille Baizeau, "[Swiss Rules of International Arbitration Awards](#)", in Rainer Füeg (ed.) *The Swiss Rules of International Arbitration - Five Years of Experience* at pp. 147-148.

*The Belgian Centre for Arbitration and Mediation (CEPANI)*

To our knowledge, there are no Belgian court judgments which specifically address issues pertaining to the use of expedited arbitration.

*Korean Commercial Arbitration Board (KCAB), Delos Dispute Resolution, The Permanent Arbitration Court of the Hungarian Chamber of Commerce and Industry, International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation (ICAC at RFCCI) and Beijing Arbitration Commission/ Beijing International Arbitration Center (BAC/BIAC)*

Not aware of any such decisions.

## End Notes to Question 9

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<sup>1</sup> Pursuant to Article 1.5 of the 2018 Rules, the parties may seek the EDP only where the underlying contract was concluded on or after 1 November 2018 (*i.e.*, following the 2018 Rules coming into effect), unless they agree otherwise.

<sup>2</sup> Article 43.2, 2018 Rules.

<sup>3</sup> Article 43.3, 2018 Rules.

<sup>4</sup> Article 43.4, 2018 Rules.

<sup>5</sup> Article 43.5, 2018 Rules.

<sup>6</sup> Article 43.6, 2018 Rules.

<sup>7</sup> Articles 43.5 and 43.6, 2018 Rules.

<sup>8</sup> Article 58 of Arbitration Law of the People's Republic of China (2017 Amendment)

A party may apply for setting aside an arbitration award to the intermediate people's court in the place where the arbitration commission is located if he can produce evidence which proves that the arbitration award involves one of the following circumstances:

(1) There is no arbitration agreement;

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- (2) The matters decided in the award exceed the scope of the arbitration agreement or are beyond the arbitral authority of the arbitration commission;
  - (3) The formation of the arbitration tribunal or the arbitration procedure was not in conformity with the statutory procedure;
  - (4) The evidence on which the award is based was forged;
  - (5) The other party has withheld the evidence which is sufficient to affect the impartiality of the arbitration; or
  - (6) The arbitrators have committed embezzlement, accepted bribes or done malpractices for personal benefits or perverted the law in the arbitration of the case.

The people's court shall rule to set aside the arbitration award if a collegial panel formed by the people's court verifies upon examination that the award involves one of the circumstances set forth in the preceding paragraph.

If the people's court determines that the arbitration award violates the public interest, it shall rule to set aside the award.

<sup>9</sup> Article 70 of Arbitration Law of the People's Republic of China (2017 Amendment)

If a party presents evidence which proves that a foreign-related arbitration award involves one of the circumstances set forth in the first paragraph of Article 258 (now Article 274) of the Civil Procedure Law, the people's court shall, after examination and verification by a collegial panel formed by the people's court, rule to set aside the award.

<sup>10</sup> Article 274 The Civil Procedure Law of the People's Republic of China (2017 Revision)

Where the respondent adduces evidence that an arbitration award of an international arbitral institution of the People's Republic of China falls under any of the following circumstances, a people's court shall, upon examination and verification by a collegial bench, issue a ruling not to enforce the award:

- (1) The contract between the parties does not include an arbitration clause or the parties have not reached any written arbitration agreement after a dispute arose.
  - (2) The respondent is not notified to appoint an arbitrator or of the conduct of arbitration procedure or fails to present its case, which is not attributable to the fault of the respondent.
  - (3) The composition of the arbitration tribunal or the arbitration procedure is not in conformity with arbitration rules.
  - (4) The matters arbitrated are outside the scope of an arbitration agreement or the arbitral institution has no arbitration power.
- If a people's court holds that the enforcement of an arbitration award is contrary to the public interest, the people's court shall issue a ruling not to enforce the award.

<sup>11</sup> 京02民特347号 (2017)

<sup>12</sup> 二中民二初字第401号 (2015)

<sup>13</sup> 京02民特62号 (2018)

<sup>14</sup> 津02民特73号 (2017)

<sup>15</sup> Article 63 of Arbitration Law of the People's Republic of China (2017 Amendment)

If the party against whom the enforcement is sought presents evidence which proves that the arbitration award involves one of the circumstances set forth in the second paragraph of Article 213 (now Article 237) of the Civil Procedure Law, the people's court shall, after examination and verification by a collegial panel formed by the people's court, rule to disallow the award.

<sup>16</sup> Article 71 of Arbitration Law of the People's Republic of China (2017 Amendment)

If the party against whom the enforcement is sought presents evidence which proves that the foreign-related arbitration award involves one of the circumstances set forth in the first paragraph of Article 258 (now Article 274) of the Civil Procedure Law, the people's court shall, after examination and verification by a collegial panel formed by the people's court, rule to disallow the enforcement.

<sup>17</sup> Article 237 of The Civil Procedure Law of the People's Republic of China (2017 Revision)

Where a party refuses to comply with an award rendered by a legally established arbitral institution, the opposing party may apply for enforcement to the people's court having jurisdiction. The people's court accepting the application shall enforce the award.

Where the respondent adduces evidence that the arbitration award falls under any of the following circumstances, the people's court shall, upon examination and verification by a collegial bench, issue a ruling not to enforce the arbitration award:

- (1) The contract between the parties does not include an arbitration clause or the parties have not reached any written arbitration agreement after a dispute arose.
- (2) The matters arbitrated are outside the scope of an arbitration agreement or the arbitral institution has no arbitration power.
- (3) The composition of the arbitration tribunal or the arbitration procedure has violated the statutory procedures.
- (4) The evidence for rendering the award is forged.
- (5) The opposing party withholds any evidence to the arbitral institution, which suffices to affect an impartial award.
- (6) When arbitrating the case, any arbitrator commits embezzlement, accepts bribes, practices favoritism for personal gains, or renders the award by bending the law.

If a people's court holds that the enforcement of an arbitration award is contrary to the public interest, the people's court shall issue a ruling not to enforce the award.

Such a ruling shall be served on both sides and the arbitral institution.

Where an arbitration award is not enforced according to a ruling of a people's court, the parties may, according to a written arbitration agreement reached by them, apply again to an arbitral institution for arbitration or institute an action in a people's court.

<sup>18</sup> 辽01执异1161号 (2017)

<sup>19</sup> 辽01执异537号 (2016)

<sup>20</sup> *Noble Resources International Pte. Ltd v Shanghai Good Credit International Trade Co., Ltd*, (2016) Hu 01 Xie Wai Ren No. 1, available at <[https://res.cloudinary.com/lbresearch/image/upload/v1504105750/Noble\\_Resources\\_v\\_Good\\_Credit\\_oqc1di.pdf](https://res.cloudinary.com/lbresearch/image/upload/v1504105750/Noble_Resources_v_Good_Credit_oqc1di.pdf)>.

<sup>21</sup> The decision (in Chinese) is available at <[https://res.cloudinary.com/lbresearch/image/upload/v1504105750/Noble\\_Resources\\_v\\_Good\\_Credit\\_oqc1di.pdf](https://res.cloudinary.com/lbresearch/image/upload/v1504105750/Noble_Resources_v_Good_Credit_oqc1di.pdf)> accessed 19 June 2019. See commentary on the decision at

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<<https://www.hoganlovells.com/en/publications/prc-court-refuses-to-enforce-siac-arbitral-award-arising-out-of-the-expedited-procedure-where-arbitration-agreement-provided-for-three-arbitrators>>.

<sup>22</sup> Article V(1)(d), Convention on the Recognition and Enforcement of Foreign Arbitral Awards, available at <<https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-Convention-E.pdf>>, which provides that recognition and enforcement of an award may be refused where:

“(d) *The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; [...].*”

<sup>23</sup> Based on HKIAC’s informal translation of the decision.

<sup>24</sup> Rule 5.2(b), 2013 SIAC Rules and Rule 5.2(b) of the 2016 SIAC Rules identically provide: “*the case shall be referred to a sole arbitrator, unless the President determines otherwise.*” The 2013 and 2016 SIAC Rules are available at <[http://www.siac.org.sg/our-rules/rules/siac-rules-2013#siac\\_rule5](http://www.siac.org.sg/our-rules/rules/siac-rules-2013#siac_rule5)> and <[http://www.siac.org.sg/our-rules/rules/siac-rules-2016#siac\\_rule5](http://www.siac.org.sg/our-rules/rules/siac-rules-2016#siac_rule5)>.

<sup>25</sup> 2017 ICC Arbitration Rules, available at <<https://cdn.iccwbo.org/content/uploads/sites/3/2017/01/ICC-2017-Arbitration-and-2014-Mediation-Rules-english-version.pdf.pdf>>.

<sup>26</sup> Article 41.2(b), 2013 Rules; Article 42.2(b), 2018 Rules.