

Speed

The need for speed in
arbitration

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Arbitration

- Speed is commonly regarded as one of the advantages of arbitration compared to court litigation
- A distinguishing feature of arbitration compared to court litigation is the parties' influence on the course (and the pace) of the proceedings
- There is a potential conflict between these two assertions
 - corporate users consider the increasing length and costs of proceedings as a disadvantage of arbitration because they 'like speed, are impatient with delay, and abhor unnecessary costs'. (Berger, Private Dispute Resolution In International Business (2015) Part III, para. 16-33)
- Where speed is required such conflict can be resolved by
 - The relevant arbitration law
 - The relevant arbitration rules and by
 - Specific agreements between the parties

Fast track arbitration and arbitral summary proceedings

- Proceedings on the merits
 - final resolution of the dispute

- summary proceedings
 - injunctive relief
 - interim rulings
 - provisional measures
 - emergency rulings
 - etc.

Summary proceedings

- In autonomous proceedings
 - Dutch Arbitration Act (2015) (Arts. 1020 ff. Dutch Code of Civil Procedure (“DCCP”): Art. 1043(b)(2)
 - Art. 36 NAI Rules (2015)
 - Artt. 14(1)(a) Rules of the Arbitration Board for the Building Industry (NL) (“ABBI”) (2015)

- In proceedings linked to proceedings on the merits only
 - Art. 1043(b)(1) DCCP
 - Art. 29 ICC Rules (2012) and Appendix V
 - Art. 9(4) LCIA Rules (2014)
 - Art. 6 ICRD Rules (2014)
 - Art. 35 NAI Rules (2015)
 - Art. 14(1)(a) ABBI (2015)

Summary proceedings; awards, rulings, orders and enforceability

- Is a ruling in summary proceedings an award?
 - As such?
 - Art. 1043(b)(4) DCCP (2015)
 - Following conversion or agreement between the parties
 - Arts. 1043(b)(5) and (6) DCCP

- If so, can it be enforceable under the NY Convention?
 - Awards rendered in autonomous proceedings
 - Awards, linked to proceedings on the merits

See Kröll, NAI Summary Proceedings: Enforceability under the NYC?, TvA 2012/19

Fast track on the merits

- Arts. 1043(b)(5) and (6) DCCP (2015)
- ICRD, Art. 1.4 and Arts. E-1 – E-10
- SAI, art. 5
- Art. 42 of the Swiss Rules
- DIS, Supplementary Rules for Expedited Proceedings (SREP) (2008)
- VIAC, Art. 45
- Art. 14 ABBI and Art. 11 of the ABBI Rules of Procedure
- Netherlands Arbitration Institute (“NAI”): TGV proceedings for small claims

Common features for fast track proceedings on the merits

- Expedited appointment of arbitrator (VIAC, Art. 45(6), NAI-TGV)
- Restricted periods of time for the filing of written statements (ICRD Rules, Art. E-2, ABBI Rules of Procedure, Art. 11)
- Exclusion of hearing (claims up to USD 100,000; Art. 1(4) ICRD Arbitration Rules)
- Aggregate amount of claims can be indicative for appropriateness of expedited proceedings (ICRD, Art. 1(4): USD 250,000; SAI: USD 5 million; NAI TGV: EUR 100,000; Swiss Rules, Art. 42(2): CHF 1 million)
- Duration of proceedings until handing down of award sometimes indicatively fixed (Art. 1(2) SREP: six or nine months; Art. 45(9) VIAC: Art. 5(2)(d) SIAC: six months); ICRD, Art. E-10: closing of hearing + thirty days; Swiss Rules, Art. 42(1)(d): six months)

Common features and differences for summary proceedings

- Rulings
 - In defended actions (as opposed to certain proceedings in State courts)
- Appointment of arbitrator
 - Within a day (NAI, ABBI, ICC)
- Character of the ruling
 - Stand alone
 - Validity linked to proceedings on the merits only
- Enforceability of the ruling (other than within framework of the merits)
 - Under domestic arbitration law
 - Under the NY Convention

Final considerations

- There is a need for fast track arbitration
 - See for instance statistics of
 - SAI (2010-2014: 159 applications of which 107 for expedited proceedings) (source: Kluwer arbitrayion blog 10 of April 2015 (Jonathan Lim))
 - ABBI: in 2014: 26 fast track arbitrations registered; average duration 121 days (minimum: 27 days; maximum 251 days)
- A need is also felt for a regulation of summary proceedings in arbitration
 - See for instance: ICC Rules 2012, LCIA Rules 2014;
 - NAI Rules (from 1998 to 2012): 207 applications and 88 awards (source: Schellaars and Verhoeven); average length: between two and three months (source: Schellaars and Verhoeven, p. 10)
- Enforceability of rulings on stand alone basis may constitute a problem under NYC
- Arts. 1043(b)(5) and (6) DCCP may serve as a remedy for such problem

References

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- Fouchard, Gaillard Goldman, International Commercial Arbitration (The Hague etc. 2000) para. 1248
- Kröll, S., NAI Summary Arbitral Proceedings: Enforceability under the NYC? In TvA 2012/19
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- Schellaars R. and Verhoeven-De Vries Lentsch, M., NAI summary proceedings, “Facts and Figures 1998-2012), March 2013, published on www.elexica.com.

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1. Art. 5 SIAC Rules (2010)
2. Art. 1(4) and Arts. E-1 – E-10 ICRD (2014)
3. Art. 42 Swiss Rules (2012)
4. Art. 14 ABBI Arbitration Rules (2015)
5. Arts. 35 and 36 NAI Arbitration Rules (2015)
6. Art. 45 VIAC Rules

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7. Art. 20 and Appendix V ICC Rules (2012)
8. DIS, Supplementary Rules for Expedited Proceedings (SREP) (2008)
9. Section 1043b DCCP (2015)
10. The NAI TGV Rules
11. Schellaars and Verhoeven 2013 (www.elexica.com)
12. Kröll on NAI summary proceedings
13. Mollema on adjudication, in TBR 2015/26 (translation)



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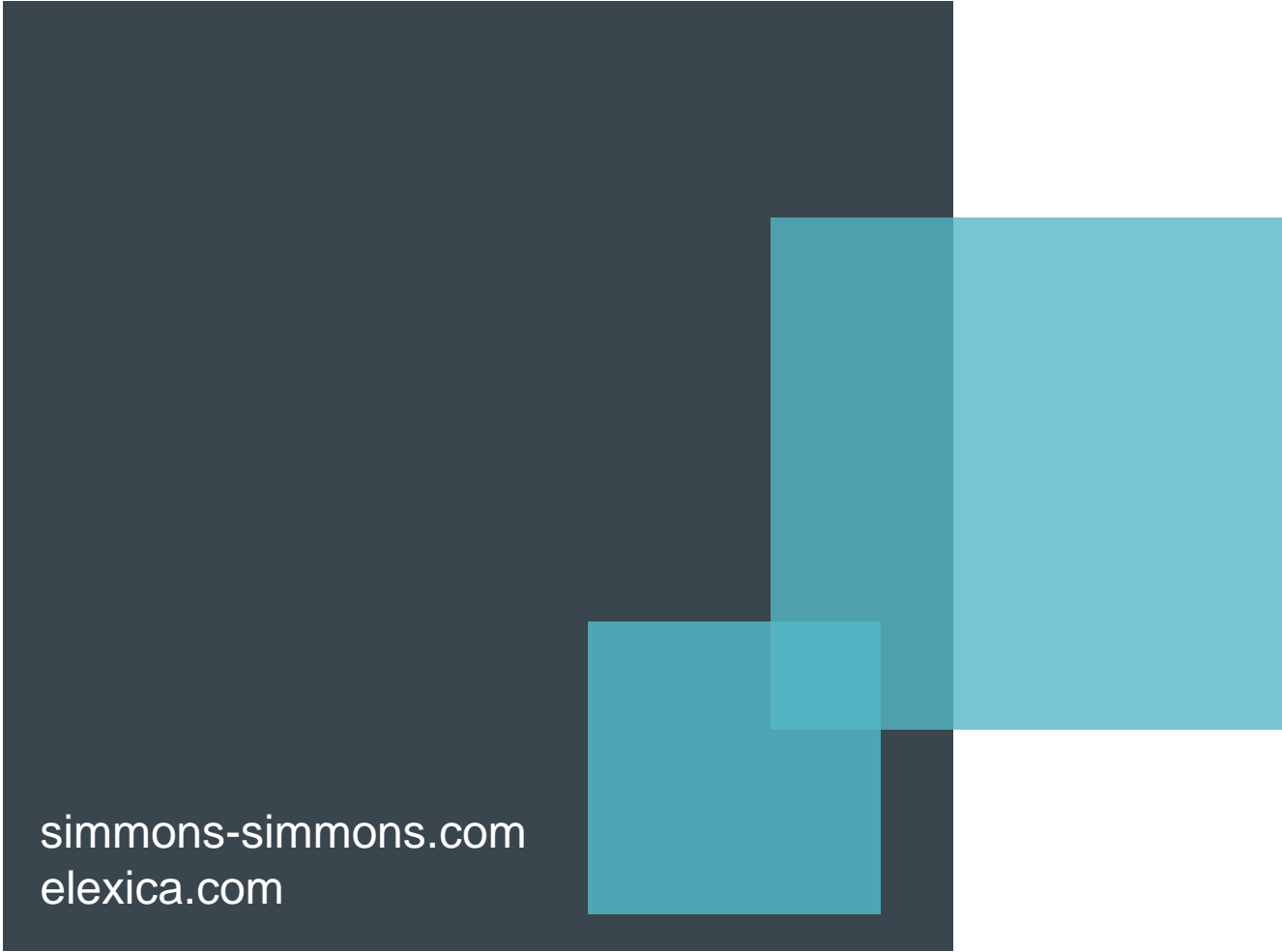
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