

DIS BALTIC ARBITRATION DAYS 2015



PRACTICAL TIPS FOR FAST TRACK ARBITRATION

STAMATIOS TSETOS



INTRODUCTION

HOW CAN WE DEFINE “FAST TRACK ARBITRATION”?



- an arbitration with a binding and final award;
 - ad hoc or institutional;
 - based on a predetermined set of rules;
 - more efficient and streamlined than an arbitration under regular arbitration rules;
 - often agreement on a procedural timetable with stringent time-limits.
-
- Not all cases are suitable for a fast-track procedure.

MAIN FEATURES



- One arbitrator (ideally);
- Limitation of procedural steps;
- Limited number of submissions;
- Limited time for filing each submission;
- Limited scope of the submissions;
- An express possibility not to have a hearing;
- An express possibility for the arbitrator not to provide reasons in the award;
- Short time limit for the tribunal to issue the award.



PRACTICAL TIPS FOR FAST TRACK ARBITRATION

1. ARBITRATION AGREEMENT



- Explicitly agree on both the DIS Rules & Supplementary Rules for Expedited Proceedings or any other institutional rules containing fast track arbitration provisions; in case the arbitration agreement itself provides for fast track arbitration and does not refer to any particular rules, the text of the agreement should be carefully drafted in order to cover all practicalities of the fast track arbitration (see the following points);
- Agree on specific conditions that have to be met in order to initiate fast track arbitration (e.g. value at stake);
- At the very least, fix a clear time limit for the arbitration: “the Award shall be rendered within [...] months of the commencement of the arbitration, unless the arbitral tribunal finds that the interest of justice requires that such limit be extended”. It is also extremely useful to provide for the consequences of the failure to comply with the agreed time limits.
- Accelerate nomination procedures for arbitrators in order to have the arbitral tribunal constituted in due time;
- Include or exclude common law style cross-examination and discovery.

2. PLACE OF ARBITRATION



- Choose a place of arbitration where the local courts can be of assistance in hearing applications to extend time limits.

3. ARBITRAL TRIBUNAL



→ Opt for a sole arbitrator:

- Corresponds better to the reduced time limits of the accelerated arbitration;
- Shortens duration of the arbitral proceedings (faster nomination, deliberations, making of the award in a timely manner, etc.);
- Nevertheless, a tribunal composed of a sole arbitrator might not be the ideal solution in certain cases.



→ Select carefully the arbitrator:

- Experienced and familiar with fast-track proceedings ;
 - Arbitrators' availability: being appointed arbitrator in fast track arbitration proceedings is a “full-time” job in order to issue the award very shortly;
 - Strong management and organizational skills (specially in case an oral hearing takes place) ;
 - Ensure the efficiency and rapidity of the arbitration (use of modern communication tools);
 - Guarantee the due process and equality that might be compromised in case of abuse of fast-track proceedings.
- Other arbitrators should be considered in advance in case the initially proposed arbitrator is challenged.

4. PARTIES



- Cooperation between Counsel, failing which fast track proceedings will be undermined; it is possible at every step of the proceedings to make adjustments in order to accelerate the case. These could include:
 - Placing a limit on the length of submissions;
 - Limiting the number of submissions (providing for one round of memorials rather than the usual two rounds or excluding the need for the parties to submit post-hearing briefs);
 - Ruling out a document production phase;
 - Limiting the number of witnesses or experts that the parties may put forward;
 - Providing that the matter be decided on the basis of written submissions only, without the need for a hearing.
- Willingness to “stick” to the tight schedule the rules / the agreement provide/provides for;
- Detailed initial pleadings ;
- Preparation and collection of evidence and affidavits in advance (that is, well before the commencement of the proceedings);
- Reasonable and realistic time limits identified:
 - in the arbitration clause itself; or
 - during the discussion of the arbitration timetable between the parties and the Arbitral Tribunal;
- Consider the utility of “baseball arbitration”, where the powers of the arbitrators related to the award are narrowed down to a choice between two final offers submitted by the parties, after an exchange of written pleadings. The “baseball arbitration” can expedite the dispute resolution process and encourage settlement.



CONCLUSION



- Not all cases are suitable for a fast track procedure. Fast track arbitration is clearly an interesting option (e.g. wider range of party autonomy, no need for interim measures);
- The appropriate procedural tools for a fast track arbitration will definitely depend on the specifics of each case;
- Always bear in mind that expedited arbitration proceedings should not undermine the fair process and the equal treatment of the parties even if the objective of a fast track arbitration is time- and cost-efficiency;
- The successful conduct of any arbitration undoubtedly depends on the parties, their counsel and the arbitral tribunal. If managed in a professional manner by all participants involved, fast-track arbitration can be a successful tool for practitioners and users.



Thank you for your attention!

Stamatios Tsetos

TSETOS & LEBOULANGER LAW FIRM (Athens), Partner

LEBOULANGER & ASSOCIÉS (Paris), Partner

Attorney-at-Law (Paris & Athens Bar Associations)

Solicitor (England & Wales)