

3C

Length of arbitration proceedings:
Why so long and can anything be done?

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Baltic Arbitration Days

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Length of arbitration proceedings - overview

- Rules and their limits
 - LCIA and ICC Rules – theory and practice
 - ICSID
- Sources of Delays
- Case Management Options

LCIA Rules (2014) – in theory

- Expedited Formation of Tribunal (Art. 9A)
- Time Limits
 - Response to Request - 28 days (Art. 2.1)
 - LCIA default appoint of respondent’s arbitrator – 35 days (Art. 5.6)
 - Initial contact with Tribunal – 21 days from formation (Art. 14.1)
 - Statement of Case – 28 days from formation (Art. 15.2)
 - Statement of Defence – 28 days from Statement of Case (Art. 15.3)
 - Statement of Reply – 28 days from Statement of Defence (Art. 15.4)
 - Deliberations - Tribunal “*shall set aside adequate time for deliberations as soon as possible after that last submission and notify the parties of the time it has set aside*” (Art. 15.10)
 - Award – “*as soon as reasonably possible following the last submission from the parties*” (Art. 15.10)

LCIA Rules – in practice

- In practice
 - Time limits in Article 15 apply only “*Unless the parties have agreed or jointly proposed in writing otherwise or the Arbitral Tribunal should decide differently...*”
 - Final Award within 12 months of Request in about 50% of LCIA cases*
 - Final Award within 18 months of Request in about 75% of LCIA cases*

* Source: http://www.lcia.org/Frequently_Asked_Questions.aspx#Length

ICC Rules (2012) – in theory

- Time Limits
 - Answer to Request – 30 days (Art. 5.1)
 - Response to Counterclaim – 30 days (Art. 5.6)
 - Terms of Reference – 60 days from transmission of file to Tribunal, but may be extended (Art. 23.2)
 - Case Management Conference / Procedural Timetable – with Terms of Reference or “*as soon as possible thereafter*” (Art. 24)
 - Deliberations – “*as soon as possible*” after last hearing or submission, the Tribunal shall (a) declare proceedings closed, and (b) set a date for submitting draft award to ICC Court (Art. 27)
 - Award – six months from signature of Terms of Reference, but may be extended by ICC Court (Article 30)

ICC Rules (2012) – in practice

- In practice
 - Nine months from Request to Final Award is aspirational
 - Six month deadline from TOR to Final Award is routinely extended
 - Example: Request for Arbitration in December 2008, final hearing currently scheduled for December 2016, Award ???

ICSID – how long is too long?

- Awards
 - Average time to Award (A&O 2014*): 3.8 years
 - Longest: 10.5 years (*Pey Casado v Chile*)
 - Shortest: 1.2 years (*Cable TV v St Kitts and Nevis*)
 - Average time between hearing and award (GAR 2009[†]): 1.2 years
- Annulment
 - ICSID Study (2010-2012): average duration: 1.5-2 years

* Source: <http://www.allenoverly.com/publications/en-gb/Pages/Investment-Treaty-Arbitration-How-much-does-it-cost-How-long-does-it-take-.aspx>

[†] Source: <http://globalarbitrationreview.com/journal/article/19164/icsid-arbitration-long-does-take>

Sources of delays

1. Procedural steps
 - Challenges to arbitrators
 - Jurisdictional objections
 - Counterclaims
 - Bifurcation (jurisdiction / merits / quantum)
2. Complexity of case
3. Availability of arbitrators / counsel
 - Sole arbitrator vs panel of three
4. Dilatory tactics
 - Can include any of the above
 - Expedited proceedings only work if both parties want them to

Tools for Reducing Time and Costs

1. Commit to expedited process in arbitration agreement
2. Case Management Conferences / Case Review Conferences
 - How much can/should be decided at first CMC?
 - CRC as a tool for greater efficiency – may also save time
3. Breaking down the case
 - Bifurcation(s): jurisdiction / merits / quantum
 - Preliminary issues / ordering of issues
 - Can some topics be addressed on documents only (no hearing)?
4. Document production – can it be limited or excluded?
5. Written submissions
 - Page/time limits
 - Simultaneous vs sequential submissions

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Thank you

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