

SCC Arbitration Institute revises its arbitration rules

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Revised rules of the SCC Arbitration Institute entered into force on 1 January 2023. This article sets out the key changes to the SCC Arbitration Rules and SCC Expedited Arbitration Rules.

The SCC Arbitration Institute (SCC) has released revised versions of both its *Arbitration Rules* and *Expedited Arbitration Rules*, along with revised rules for other SCC dispute resolution procedures. The revised rules entered into force on 1 January 2023 and apply to arbitrations commenced on or after that date.

The changes clarify practical issues arising in an arbitration

The revised SCC rules replace the Arbitration Rules and Expedited Arbitration Rules that applied since 2017 (for detailed guidance on the 2017 arbitration rules, see *Practice note, SCC arbitration (2017 Rules): a step-by-step guide*). Most of the changes made are limited to clarifications of practical issues arising in an arbitration. Amendments were also made to reflect the SCC's change of name from the "Arbitration Institute of the Stockholm Chamber of Commerce" to the "SCC Arbitration Institute".

The key changes are:

- The agreement on the number of arbitrators has been removed from recommended additions to the SCC model clause, with the aim to increase opportunities for the Board of the SCC to decide on the number of arbitrators (see *Standard clause, SCC Arbitration Institute (SCC): standard arbitration clauses*). This amendment does not affect the model clause for expedited arbitrations.
- The Arbitration Rules and the Expedited Arbitration Rules include new provisions in articles 32 and 33, respectively, expressly authorising the arbitral tribunal to decide whether hearings shall be conducted in person or remotely. In June 2022, the Svea Court of Appeal generally confirmed the mandate of an arbitral tribunal to hold main hearings remotely, including over an objection of one of the parties, subject to an overall suitability assessment and the use of technology allowing good communication (see *Bergsala SDA AB v ICA Sverige AB (Svea Court of Appeal, Case No. T 7158-20)* discussed in *Legal update, Svea Court of Appeal confirms mandate of arbitral tribunals seated in Sweden to hold main hearings remotely*).
- Where proceedings are terminated before a final award is made, article 45(2) of the Arbitration Rules and the Expedited Arbitration Rules now provides the arbitral tribunal with option to record the termination of the proceedings by way of an order, instead of an award. Termination before the final award can occur when the claim is withdrawn, including due to a settlement, or the claimant fails, without good cause, to submit a statement of claim and the respondent has not filed a counterclaim (*article 35(1), SCC Arbitration Rules*), or a party fails to comply with an order to provide security for costs (*article 38(3), SCC Arbitration Rules*, and *article 39(3)-(4), Expedited Arbitration Rules*), or a party fails to pay the advance on costs (*article 51(5), SCC Arbitration Rules and Expedited Arbitration Rules*), or the parties otherwise abandon the arbitration. This amendment aligns the SCC rules to the arbitral practice under other arbitration rules, including the ICC Arbitration Rules and UNCITRAL Arbitration Rules. Under the Swedish Arbitration Act which applies to all proceedings seated in Sweden, the termination of the proceedings for the

reasons mentioned above should take the form of an order (*section 27, Swedish Arbitration Act*). An order terminating the proceedings may be amended, in whole or in part, upon the application of a party in accordance with the rules applicable to arbitration awards (*sections 27(3) and 36, Swedish Arbitration Act*). If the parties request a consent award recording a settlement, the arbitral tribunal may, as before, make such an award (*article 45(1), SCC Arbitration Rules and Expedited Arbitration Rules*).

- Changes to article 29 of the Arbitration Rules and to articles 6 and 9 of the Expedited Arbitration Rules clarify which information should be included in the statement of claim and the statement of defence under the Arbitration Rules, and in the request for arbitration and the answer under the Expedited Arbitration Rules. Notably, article 29(1)(ii) of the 2017 Arbitration Rules, required a claimant, among other things, to specify in its statement of claim, the "factual and legal basis" on which it relied (the respondent was under the same obligation in respect of its defence (*article 29(2)(ii), 2017 Arbitration Rules*)). The revised Arbitration Rules have broadened this scope and now refer to the "facts and other circumstances" on which the claimant and respondent, respectively, rely.
- Revised article 51(5) of both the Arbitration Rules and of the Expedited Arbitration Rules requires that, after the referral of the case to the arbitral tribunal, a decision to terminate the arbitration in whole or in part due to a failure to pay the advance on costs shall be made by the arbitral tribunal. Previously, this power rested with the SCC Board, which still has authority to dismiss cases where an advance on costs is not paid, but only where the case has not yet been referred to the tribunal.

In addition, the revised Schedules of Costs for standard and expedited arbitrations increase the administrative fees of the SCC while leaving the amounts of the non-refundable registration fees and the arbitrators' fees without change.

Comment

While the revisions to the rules are relatively minor, they are also welcome clarifications. In particular, the change to articles 32 and 33, respectively, of the Arbitration Rules and the Expedited Arbitration Rules regarding remote hearings, is a welcome reflection of current arbitral practice following the pandemic and taking account of many arbitrating parties and counsels' commitments to reduce travel taking account of the impact of climate change.

The other revised sets of rules include the updated SCC Mediation Rules, which were last revised in 2014, and the updated SCC Rules for Express Dispute Assessment and the updated SCC Procedures for UNCITRAL cases. All of the new rules are available on the SCC website (see [SCC Rules](#)).

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