A welcome development: SCC announces revision to arbitration rules to include summary judgment procedures

Introduction

The Arbitration Institution of the Stockholm Chamber of Commerce (SCC) has released a draft set of arbitration rules that are intended to take effect in the course of 2017. The draft SCC arbitration rules contain a proposal for summary procedures for international commercial arbitration. Prior to the release of the draft SCC arbitration rules, no other major international arbitration rules contained express provisions for summary judgment procedures (save for the arbitration rules of a number of US arbitration institutions and the ICSID rules).

Relevance of summary procedures to users

This development benefits a variety of businesses across a broad range of sectors. For example, in the oil and gas industry it is vital for dispute resolution procedures to be able to dispose of sham defences quickly because liquidity is important, deadlines are short, and licences are fragile. Similarly, in the banking sector, lenders need to be able to recover simple debts fast without being faced with an unmeritorious defence (or no defence at all), and without having to bear the time and cost burden that follows from having to proceed to a final merits hearing. These are only two examples of what should be a positive initiative.

There is considerable disagreement among arbitration practitioners as to whether tribunals have jurisdiction to adopt summary judgment procedure. This is due in large part to the paucity of national court decisions as to the scope of a tribunal’s jurisdiction to adopt summary judgment procedures. The crux of the debate lies in the balance to be struck between the competing objectives of, on the one hand, allowing a party a reasonable opportunity to present its case, and on the other, adopting procedures that avoid unnecessary delay or expense. The scarcity of judicial guidance creates a risk for commercial parties and tribunals who wish to adopt such procedures. This issue is of particular concern to a commercial parties bound to arbitration agreements in circumstances where their opponent has no defence or claim whatsoever.

For this reason, the adoption of summary judgment procedures in the draft SCC arbitration rules is a welcome development - and one that may preface similar initiatives for major institutional rules and arbitral legislation.

Summary judgment pursuant to the draft SCC arbitration rules

DLA Piper is a global law firm operating through various separate and distinct legal entities. Further details of these entities can be found at www.dlapiper.com. This may qualify as
The draft summary procedures are contained in article 39 of the draft SCC arbitration rules, which provides as follows:

(1) A party may request that the Arbitral Tribunal decide one or more issues of fact or law by way of summary procedure, without undertaking every procedural step that might otherwise be adopted for the arbitration.

(2) A request for summary procedure may concern issues of jurisdiction, admissibility or the merits. It may include, for example, an assertion that:

(i) an allegation of fact or law material to the outcome of the case is, on its face, unsustainable
(ii) even if the facts alleged by the other party are assumed to be true, no award could be rendered in favour of that party under the applicable law, or
(iii) any issue of fact or law material to the outcome of the case is, for any other reason, suitable to determination by way of summary procedure.

(3) The request shall specify the grounds relied on and the form of summary procedure proposed, and demonstrate that such procedure is efficient and appropriate in all the circumstances of the case.

(4) After providing the other party an opportunity to submit comments, the Arbitral Tribunal shall issue an order either dismissing the request or fixing the summary procedure in the form it deems appropriate.

(5) If the request for summary procedure is granted, the Arbitral Tribunal shall seek to make its order or award on the issues under summary consideration within 60 days of the order fixing the summary procedure.

Importantly, the summary procedures:

- provide a mechanism by which the parties agree, in advance, to the adoption of summary procedures in certain circumstances - this will reduce the risk of a party successfully applying to set aside or resist the enforcement of an award on the basis that they have not been afforded a reasonable opportunity to present their case
- allow for summary judgment on a broad range of issues, including jurisdiction, admissibility or the merits - this will allow the parties to utilise the summary procedures to resolve a broad range of issues
- require the tribunal to adopt a two-step procedure whereby the tribunal assesses the application for summary judgment, and if satisfied that the claim or defence is, for example, unsustainable, the tribunal fixes a summary procedure in a form that is appropriate having regard to the facts and circumstances of the case - this allows the tribunal to adapt the summary procedures to the specific circumstances of the case, and
- provides for a limited 60 day period from the date that the tribunal fixes the procedure (ie the second-step) in which the tribunal shall assess the application for summary judgment and deliver its order or award - this allows the tribunal to adhere to its duty to adopt procedures that avoid unnecessary cost and delay.

**DLA Piper's experience**

DLA Piper is acknowledged as a leader in the international arbitration field, consistently ranked in the Global Arbitration Review's GAR30 as one of the leading global practices. We have one of the largest international arbitration practices globally and we pride ourselves on playing as a team and deploying lawyers who understand the business, political and cultural dynamics of resolving cross-border disputes.

We have a proven track record in resolving international arbitration matters for clients involving a wide range of arbitration institutions, seats, and rules. We regularly advise clients in respect of international arbitrations seated in Stockholm under the auspices of the SCC and have worked both with our office in Stockholm as well as with other top-tier Swedish arbitration practices. Notably, we are currently acting for a major Russian gas company in one of the highest value disputes ever submitted to SCC arbitration, and in 2010 we secured the highest ever value arbitration award for our client in SCC proceedings. Our other experience in SCC arbitrations includes, for example, representing a client in a debt arbitration concerning the supply of gas to Hungary, where we obtained a final award in excess of US$ 500 million; representing a Russian city Government in an arbitration concerning an investment dispute; and representing a Russian oil company in an arbitration concerning a multi-million US dollar claim for damages.

In addition, Philip Chong (partner - London) and Blake Primrose (associate - London) have recently written an article...
entitled 'Summary judgments in international arbitrations seated in England'. This paper addresses, in detail, the tribunal's jurisdiction to adopt summary judgment procedures in arbitrations seated in England, and proposes a framework for the adoption of summary judgment procedures (not too dissimilar to the framework proposed in article 39 of the draft SCC arbitration rules). The article is available here.

1 See the English case for example of Travis Coal Restructuring Holdings LLC v Essar Global Fund Limited [2014] EWHC 2510 (Comm) per Blair J and Elinor Thomas and Yasmin Bailey, 'English court - a move towards summary procedures in international arbitration?' (10 December 2014) International Arbitration Newsletter Series, published by DLA Piper UK LLP.

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