

JANUARY 2021



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THE SIMPLIFIED ARBITRATION PROCEDURE OF THE MILAN CHAMBER OF ARBITRATION

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Introduction

On July 1st, 2020, the Milan Chamber of Arbitration ("CAM") enacted its new Arbitration Rules (the "New Rules"), applicable to all proceedings commenced from the same date.

The novelties in the New Rules are mainly inspired by the impact of COVID-19 on business relationships and its potential to increase litigation (it is estimated that such an increase might be of about 25%). More generally, the New Rules aim at helping companies and consumers to solve any dispute, even not related to COVID-19, easily, quickly and with lower costs.

The New Rules introduce a contractual determination procedure (Annex E) and a Simplified Arbitration Procedure (Annex D).

Here, we will focus on the Simplified Arbitration Procedure, describing its features ("*What does Simplified Arbitration Procedure mean?*"), comparing it with the expedited arbitration procedures set forth in the rules of other European arbitral institutions ("*Simplified Arbitration Procedure and expedited arbitration procedures: similarities and differences*") and, finally, making some predictions about the extent of its application ("*A few final considerations*").

What does Simplified Arbitration Procedure mean?

The main distinctive features of the Simplified Arbitration Procedure are: (1) scope; (2) appointment and constitution of the Arbitral Tribunal; (3) procedural rules; (4) costs.

1. Scope

The Simplified Arbitration Procedure applies to a very wide range of disputes. Article 1 of Annex D states that the Simplified Arbitration Procedure shall apply to:

- arbitrations commenced after July 1st, 2020, if the value of the claims does not exceed EUR 250,000 and unless one party opts-out in the request for arbitration or in the reply to the request for arbitration;
- all arbitrations, regardless of the value of the claims, if the parties so agree in the arbitration agreement or opt-in within the filing of the reply to the request for arbitration.

In any event, the Arbitral Council, upon the request of the sole arbitrator or on its own motion before the constitution of the Arbitral Tribunal, may rule that the Simplified Arbitration Procedure is not appropriate because of the complexity of the dispute and that, therefore, the ordinary rules will apply.

2. Appointment and constitution of the Arbitral Tribunal

The appointment and constitution of the Arbitral Tribunal are regulated by Articles 3 and 4 of Annex D, which provide:

- regardless of the arbitration agreement, the Arbitral Tribunal shall consist of a sole arbitrator, appointed by the Arbitral Council (and not by the parties);
- the sole arbitrator designated by the Council is automatically confirmed by the Secretariat if no party has filed any comments on the statement of acceptance and independence. Otherwise, the decision on confirmation will be taken by the Arbitral Council;
- the Arbitral Tribunal shall be constituted by an act dated and signed by the sole arbitrator, within 15 days from the receipt of the parties' submissions forwarded by the Arbitral Secretariat.

The choice for the sole arbitrator intends to facilitate the speed of decision-making and the reduction of the costs. In this connection, according to CAM's statistics, 48% of the arbitrations commenced in 2019 were conducted by a sole arbitrator (see 2019 CAM's statistics [here](#)).

3. Procedural rules

Under Articles 2, 5 and 6 of Annex D, the Simplified Arbitration Procedure will start with the filing of the introductory submissions (*i.e.* request for arbitration and reply), indicating, *inter alia*: (i) a statement of parties' claims, defences and counterclaims and of their value; (ii) a statement of the evidence offered or required to support the parties' claims and counterclaims, setting forth the facts that each party intends to prove, under penalty of rejection.

Then, the arbitrator will allow the parties to submit a supplementary brief containing no new claims, unless otherwise decided for justified reasons, and he will schedule a sole hearing for the taking of evidence and the final oral arguments. It is also possible to hold the hearing by videoconference, telephone or similar means of communication, and the hearing may last for several sessions, should the taking of evidence be time-consuming. The timing for the conclusion of the proceedings, *i.e.*, the filing of the Award, is three months from the constitution of Arbitral Tribunal. However, the Arbitral Secretariat may extend this time-limit.

The New Rules contain further special provisions aimed at the swift conclusion of the Simplified Arbitration Procedure, namely:

- the duty upon the sole arbitrator, the parties and their counsels to act in an expedited manner;
 - the power of the sole arbitrator, after consultation with the parties, to limit the length and scope of briefs, the number of documents and the number of witnesses;
 - the lapse of the party's right due to the expiration of a time-limit set by the sole arbitrator, unless otherwise determined.
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We can summarise the differences between the Simplified Arbitration Procedure and the ordinary arbitrations:

- the introductory submissions (*i.e.* request for arbitration and reply) shall contain a complete statement of defences and evidence required. In the Simplified Arbitration Procedure, failure to indicate in the introductory submissions the facts to be proved leads to the rejection of the claims (Article 2 of Annex D);
- unless the arbitrator decides differently, the parties can file just one brief. Also, the arbitrator has the power to limit the length and scope of the briefs (Article 5 of Annex D);
- after the filing of the introductory submissions, no new claims shall be admitted by the arbitrator, whereas new claims are more likely to be admitted by the Arbitral Tribunal in ordinary arbitrations (New Rules, Article 30 compared with Article 5 of Annex D);
- a single "virtual" hearing is expected to be held, instead of several "physical" hearings, as in ordinary arbitrations (New Rules, Article 27 compared with Article 5 of Annex D);
- the final award must be filed within three months from the constitution of the Arbitral Tribunal, while in ordinary arbitrations the term is six months (New Rules, Article 36 compared with Article 6 of Annex D);
- the expiration of a time-limit shall generally entail the lapse of a party's right, whereas the opposite rule applies to ordinary arbitrations (New Rules, Article 7 compared with Article 5 of Annex D).

4. Costs

The costs of the Simplified Arbitration Procedure (*i.e.* the fees of the institution and of the sole arbitrator) are about 30% lower than in ordinary arbitrations. The reduction of the costs intends to make the Simplified Arbitration Procedure more attractive for small and medium-sized companies, which are often parties in low-value disputes.

The Simplified Arbitration Procedure of CAM vs the expedited arbitration procedures of other institutions: a comparison

The International Arbitration Survey carried out by Queen Mary University and School of International Arbitration in 2015 showed that 92% of respondents favoured the inclusion of a simplified procedure in institutional rules for claims under a certain value: 33% of respondents wanted simplified procedure as a mandatory feature, and 59% as an optional feature (see the International Arbitration Survey [here](#)).

We will compare the Simplified Arbitration Procedure of CAM with the expedited procedures of four other institutions: (i) the International Court of Arbitration ("ICC"), which provide for an expedited procedure in Appendix VI to the 2017 ICC Arbitration Rules (the "ICC Rules"); (ii) the Arbitration Institute of the Stockholm Chamber of Commerce ("SCC"), which enacted its "Rules for Expedited Arbitrations" in 2017 (the "SCC Expedited Rules"); (iii) the German Institute of Arbitration ("DIS"), which regulates an expedited procedure in Annex 4 to 2018 DIS Arbitration Rules (the "DIS Rules"); (iv) the Vienna International Arbitral Centre ("VIAC"), which set an expedited procedure in Article 45 of Vienna Rules 2018 (the "VIAC Rules").

1. Scope

Both amount in dispute and parties' will are important to decide whether the Simplified Arbitration Procedure is applicable. It is the same for the ICC expedited procedure, which: (i) automatically applies where the amount in dispute does not exceed US \$ 2,000,000.00, unless the parties decide to opt-out (this threshold will be raised to US \$ 3,000,000 for arbitral agreements entered into since January 1st, 2021); (ii) is also available on an opt-in basis for higher-value cases (see Article 30 of the ICC Rules and Article 1 of Appendix VI to the ICC Rules).

On the contrary, the SCC, DIS and VIAC expedited procedures apply only if the parties so agree (see model clauses for expedited arbitrations in the SCC Expedited Rules and DIS Rules and Article 45 of the VIAC Rules).

In any case, the Arbitral Council, upon a request or on its own motion, may determine that it is inappropriate under the circumstances to apply the expedited procedure. Even if only CAM's New Rules and the ICC Rules expressly provide for such power, the same seems to happen also for all other institutions.

2. Appointment and constitution of the Arbitral Tribunal

In CAM's Simplified Arbitration Procedure, a sole arbitrator is appointed. The same happens with the ICC Rules and the SCC Expedited Rules (see Article 2 of Appendix VI to the ICC Rules and Article 17 of the SCC Expedited Rules); the DIS Rules and the VIAC Rules, on the contrary, state that the Arbitral Tribunal may consist of either a sole arbitrator or a panel of arbitrators (see Model Clause for Expedited Arbitration set out in the DIS Rules and Article 45 of the VIAC Rules).

A peculiarity of CAM is that the sole arbitrator is appointed by the Arbitral Council and regardless of any agreement between the parties. All other institutions contemplate an appointment by the parties (see Article 2 of Appendix VI to the ICC Rules, Article 18 of the SCC Expedited Rules, Articles 1, 11 and 12 of the DIS Rules, Article 45 of the VIAC Rules).

3. Procedure

As to the procedure, CAM's Simplified Arbitration Procedure is similar to the expedited procedures under exam, which are all characterised by: *(i)* a "front-loading approach" that implies introductory submissions containing a complete statement of defences and evidence required; *(ii)* a single hearing (this single hearing may also be dispensed with, if all parties so agree, under Article 4 of the DIS Rules); *(iii)* a limitation in the number and length of briefs; *(iv)* a shorter term for the filing of the final award, which is 3 months for CAM and ICC and 6 months for ICC, DIS and VIAC (see Articles 3 and 4 of Appendix VI to the ICC Rules, Article 6 and Articles 23-48 of the SCC Expedited Rules, Articles 1-5 of Annex 4 to the DIS Rules, Article 45 of the VIAC Rules).

4. Costs

All institutions, except DIS and VIAC (see Annex 2 to the DIS Rules and Annex 3 to the VIAC Rules), provide for a reduction of the costs (see Appendix III to the ICC Rules and Appendix III of the SCC Expedited Rules compared with Appendix IV of the 2017 SCC Arbitration Rules).

A few final considerations

The Simplified Arbitration Procedure will be probably used, also on an opt-in basis, in a large range of cases because of its lower costs, shortened duration and its attitude to ensure each party's right of defence.

This prediction seems confirmed by the 2019 Dispute Resolution Statistics released by ICC and SCC (see ICC Statistics [here](#) and SCC Statistics [here](#)). Indeed: *(i)* out of 869 new cases ICC registered in 2019, 146 cases were conducted under the expedited procedure (*i.e.* about 17%); *(ii)* out of 175 new cases SCC registered in 2019, 107 cases were conducted under the 2017 SCC Arbitration Rules and 52 cases under the SCC Expedited Rules (*i.e.* about 49% of the cases conducted under the rules enacted by SCC).

These figures show that parties often opt for the expedited procedures. No reasons seem to prevent a similar choice in Italy and, accordingly, a good spread of the Simplified Arbitration Procedure.



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*The content of this article is intended to provide a general guide to the subject matter.
Specialist advice should be sought about your specific circumstances.*