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A satellite night view of Europe, showing the continent's outline and the dense network of city lights across its landmass. The surrounding oceans are dark, and the sky above the horizon is a deep blue. The lights from the cities create a bright, textured pattern across the land.

Expedited arbitration and the future of international construction disputes

2017

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A large construction crane is visible on the left side of the page, extending from the bottom to the top. The crane's lattice structure is clearly visible, and it appears to be lifting a heavy load. The background is a light, neutral color.

Introduction

International arbitration has become the preferred means of resolving cross-border disputes in the construction industry. However, there have been growing complaints that the process has become more similar to common law litigation, with interim applications, extensive disclosure and lengthy witness examination, resulting in a lack of speed and disproportionate costs. To address such criticisms, many arbitral institutions have introduced expedited procedures in recent years.

In March 2017, the International Chamber of Commerce (ICC), one of the most popular arbitral institution for international construction disputes, introduced an expedited procedure (the ICC Expedited Procedure). In doing so, the ICC joined other institutions with similar procedures including: the International Centre for Dispute Resolution, the Singapore International Arbitration Centre, the Hong Kong International Arbitration Centre, the Stockholm Chamber of Commerce, the Australian Centre for International Commercial Arbitration, the German Institution of Arbitration, the Swiss Chambers' Arbitration Institution and the Istanbul Arbitration Centre.

This article outlines the ICC Expedited Procedure, addresses some of the recent criticisms, takes a comparative look at statutory adjudication and considers the future use of expedited proceedings in international construction disputes.



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ICC Expedited Procedure

Scope of Application

The ICC's Expedited Procedure applies automatically to arbitration agreements concluded after 1 March 2017 if the amount in dispute is less than US\$2 million and the parties have not expressly opted out of it, or the ICC Court decides it is inappropriate in the circumstances to apply it. The parties can also elect voluntarily for the ICC Expedited Procedure to apply.

New Features

The ICC Expedited Procedure introduces a range of new measures.

1. The ICC Court will be able to appoint a sole arbitrator, even if the arbitration agreement specifies otherwise
2. The requirement to agree Terms of Reference has been dispensed with
3. The case management conference ("CMC") must now be held within 15 days of the file being transmitted to the Tribunal and the final award must be rendered within 6 months of the CMC¹
4. The Tribunal will have the discretion to adopt such procedural measures as it considers appropriate, including the ability to decide that document production is not required or that written submissions and evidence should be limited in length and scope.
5. The Tribunal also has the express power, after consultation with the parties, to decide the dispute solely on the basis of the documents, or may decide that any merits hearing should be held by video conference or telephone.
6. The fees for the ICC Expedited Procedure will be calculated on a new scale.

Parties using the ICC Expedited Procedure might expect to receive an award within about 9 months from commencement of an arbitration (i.e. allowing 2 to 3 months to get to the CMC and six months for the award). This contrasts with a likely period of 18 months to 2 years or more for the ordinary procedure.

Impact

These changes are all designed to result in a quicker and cheaper process. However, the precise degree of expedition provided by the new rules deserves closer analysis. The 6 month period for the rendering of a final award is the same as that which now applies to ordinary arbitrations under Article 31 of the ICC Rules, save that the period in expedited proceedings runs from the date of the CMC rather than the agreement of the Terms of Reference. Under the ordinary procedure, Terms of Reference are required to be agreed within 30 days of the file being transmitted to the Tribunal,² whereas under the ICC Expedited Procedure, the CMC is to be held within **15 days** of the file being transmitted to the Tribunal. In both procedures, the need for a Request, Answer, Counterclaim (if any) and Reply (if any) remains prior to the file being transmitted to the Tribunal. On paper, therefore, the ICC Expedited Procedure would appear only to save 15 days (being the difference in start date for the 6 month period for rendering the final award).

In practice, however, the degree of expedition provided by the new rules is likely to be greater:

- The requirement that a sole arbitrator is appointed even if the parties have stipulated a three arbitrator Tribunal in their arbitration clause is likely to save time, both in the appointment of the Tribunal and in the subsequent conduct of the arbitration.³
- Dispensing with Terms of Reference is also likely to save considerable time in practice. Whilst the period for agreement of the Terms of Reference is now 30 days from transmittal of the file, this was previously 2 months and tends to be longer in practice.⁴
- The six month period for rendering of the final award in ordinary arbitrations is subject to the proviso that the ICC Court may fix a different time limit based on the procedural timetable established at the CMC and/or may extend the six month time limit pursuant to a reasoned request from the Tribunal. In practice, such extensions are commonly given.⁵ By contrast, the ICC's guidance notes on the ICC Expedited Procedure state that extensions will be granted only in '*limited and justified circumstances*'. The notes also state that the ICC Court considers compliance with the six month time limit to be '*of the essence under the Expedited Procedure Provisions*'. It seems therefore that six months is likely to mean six months as far as the ICC Expedited Procedure is concerned.

- Overall parties using the ICC Expedited Procedure might expect to receive an award within about 9 months from commencement of an arbitration (i.e. allowing 2 to 3 months to get to the CMC and six months for the award). This contrasts with a likely period of 18 months to 2 years or more for the ordinary procedure.⁶

Comment

The ICC Court President Alex Mourre stated that the rules provide *'an entirely new offer to our users... providing an effective answer to the legitimate concerns of the business community as to time and costs.'* He also commented: *'disputes will now be resolved on a very expeditious and cost-effective manner, providing an effective answer to the legitimate concerns of the business community.'*⁷



Criticism of the ICC expedited procedure

One of the main criticisms of the ICC's Expedited Procedure is its automatic application to disputes under US\$2 million, unless the parties opt out or the ICC Court considers they should not apply. In a recent survey, whilst 92% of respondents favoured the introduction of simplified procedures in institutional rules, only 33% wanted them as a mandatory feature.⁸ Underpinning this reluctance are two principal concerns centred around:

1. party autonomy; and
2. the link between the value of a dispute and its suitability for expedited proceedings (i.e. low value disputes are not always simpler and vice versa).

Party autonomy

One of the most strident measures introduced in the ICC Expedited Procedure is the ICC Court's discretion to appoint a sole arbitrator under Appendix VI Article 2. This differs from the position adopted by some other arbitral institutions. For example, the expedited rules under the Japan Commercial Arbitration Association are not applicable if the parties have agreed on more than one arbitrator.⁹

One of the principal advantages of arbitration over litigation is ability of the parties to define the process for the constitution of the arbitral Tribunal and to appoint their own arbitrator where a three person Tribunal has been agreed:

'Once a decision to refer a dispute to arbitration has been made, choosing the right arbitral tribunal is critical to the success of the arbitral process (...) It is, above all, the quality of the tribunal that makes or breaks the arbitration (...)' ¹⁰

The power vested in the ICC Court under the ICC Expedited Procedure to appoint a sole arbitrator, even when the parties have agreed otherwise, seems to run counter to the consensual spirit of arbitration. An argument might be made that by incorporating arbitration rules with provisions for the appointment of a sole arbitrator in certain circumstances, the parties should be taken to have intended an exception to any general provision in the arbitration clause for more than one arbitrator. Equally, however, it could be said that by expressly referring to such rules, the parties must be taken to have been aware of the sole arbitrator provisions and to have intended to reject them by their stipulation for more than one arbitrator.

Recent Cases

The difficulties which arise in this regard are illustrated by two recent cases, both concerning Singapore International Arbitration Centre (SIAC) arbitrations, one enforcing an expedited arbitration award and another refusing enforcement.

1. In *AQZ v ARA*,¹¹ the Singapore High Court considered an objection to the enforcement of an award given under the expedited procedure provided for by the 2010 SIAC Rules. The award was rendered by a sole arbitrator and a challenge was brought on grounds (among others) that the Tribunal had not been constituted in accordance with the terms of the arbitration agreement, which called for the nomination of three arbitrators. The position was particularly stark because the SIAC expedited procedure was not in existence at the time the contract and arbitration agreement had been entered into. Despite these objections, the Singapore High Court refused to set aside the award. References to rules in an arbitration clause were to be taken as references to such rules as apply at the date of the commencement of arbitration (not the date of the contract). The SIAC 2010 Rules were, therefore, incorporated by reference, including the SIAC expedited procedure. Having been incorporated, the expedited procedure was to override the parties' stipulation for a three person Tribunal. In the court's view a '*commercially sensible*' interpretation of the arbitration agreement required recognition of the ability of SIAC to appoint a sole arbitrator where the expedited procedure applied.

2. A Chinese court has recently refused enforcement of an award rendered under the SIAC Expedited Procedure in similar circumstances.¹² This time the contract in question was entered into in 2014, well after the introduction of the SIAC expedited procedure. The arbitration clause provided for three arbitrators and again a sole arbitrator was appointed under the expedited procedure. Enforcement was refused under Article V(1)(d) of the New York Convention on the basis that the composition of the Tribunal was not in accordance with the agreement of the parties. The court appears to have placed weight on the fact that the SIAC Rules did not exclude a three person Tribunal under the expedited procedure and nor did it specifically empower SIAC to require the parties to accept a sole arbitrator despite their agreement to the contrary. Although only a decision of the Shanghai No. 1 Intermediate Court, in accordance with Chinese arbitration law, the decision was reviewed by the High People's Court and reported to the Supreme People's Court. The decision is therefore likely to be authoritative in China.



Link between value and suitability

The complexity of a dispute is not a function of the amount in dispute. High value disputes may be straight forward, while low value disputes may be complex. The imposition of a fixed monetary threshold in the ICC's Expedited Procedure has therefore provoked concerns that complex low value disputes may be dealt with in an inappropriately short time frame, preventing the parties from having a full opportunity to present their case.

These concerns are ameliorated to some extent by the ICC Court's power to disapply the ICC Expedited Procedure if circumstances so require. It remains to be seen how readily this power will be applied in practice. The automatic application of expedited procedures to lower value disputes has also been validated by other institutions. For example, the Swiss Chambers' Arbitration Institution introduced a similar opt-out model for disputes below CHF 1m. In 2015, 43% of all new arbitrations filed with the Swiss Chambers were conducted under the expedited procedures.¹³

A recent survey recorded that 94% of respondents thought disputes exceeding US\$1 million should be exempt from simplified arbitration procedures. More than half of the respondents felt that the threshold value should be US\$500,000 or lower. Despite this research, the ICC's decision to fix the threshold at US\$2 million was based on their own statistics, showing that 32% of cases filed in 2015 had an amount in dispute below US\$2 million.

Fixing a monetary threshold

Whilst low value disputes may still be complex, commercial parties generally expect the cost of their resolution to be less (in keeping with their lesser commercial significance). In this regard, the shorter timeframe and curtailed features of the ICC Expedited Procedure may help parties focus their minds on the real issues in dispute from the outset. As Welser and Llausegger point out, in fast track proceedings, the parties must limit themselves to what is really important – a feature increasingly overlooked in ordinary arbitration proceedings.¹⁴

Statutory adjudication: a model for success

In many ways, statutory adjudication, introduced in the UK through the Housing Grants, Construction and Regeneration Act 1996 (the Act) provides a helpful comparator for expedited arbitration proceedings in the construction industry. Its introduction in the UK followed the Latham Report published in 1994 which sketched out the aims of a statutory adjudication scheme:

*'If adjudication is introduced as the normal method of dispute resolution in construction, the courts will perhaps take account of the wishes of the industry to ensure that cash does flow speedily...if a party to an adjudication refused to honour the award of the adjudicator immediately...the party to whom the award had been made should be able to approach the [court] immediately and obtain a judgment for payment under an expedited procedure...The courts should have a role to support the adjudication system ...'*¹⁵

Concerns

In much the same way as the arbitration community has reacted to the introduction of expedited arbitration procedures, there was some level of scepticism surrounding the introduction of statutory adjudication in the UK. Concerns lay around whether vulnerable contracting parties would commence adjudication proceedings against significantly stronger parties.¹⁶ Especially, since during the pre-statutory adjudication era it had been established that the 'negotiating strength' of the parties largely determined whether contractual provisions aiding cash flow were to be included and/or used.¹⁷

Practitioners were also concerned about the suitability of the 28 plus 14-day timeframe¹⁸ and the 'rough justice' which was likely to flow from it. One commentator, writing shortly prior to the commencement of the Act, claimed that:

*'[S]ome disputes are far too complex and important for the type of quick fix for which the statutory adjudication is designed. The statute provides for decisions within 28 days of appointment, which has its attractions for straightforward interim payment disputes but is hopelessly inadequate for, say, a delay and disruption claim or a dispute concerning negligent design. Complex disputes are normal in construction and are not amenable to quick-fix solutions.'*¹⁹

Ultimately, statutory adjudication has proved to be very popular in the UK. In its second year of operation, the number of adjudications rose by 700% to just over 1,300. This figure would exceed 2,000 over the next three years settling at an average of around 1,400 per year.

Concerns were reflected in the first major case on adjudication under the Act, *Macob Civil Engineering Ltd v Morrison Construction Ltd*,²⁰ with Dyson J noting:

'The timetable for adjudication is very tight...many would say unreasonably tight and likely to result in injustice. Parliament must have been taken to have been aware of this...'

Slow take up

In the first 5 months after the commencement of the Act, only 19 adjudicator appointments had been made.²¹ That changed rapidly, however, following enforcement judgments in *Macob*²² and *Outwing Construction Ltd v H Randell & Son Ltd*²³, where the Technology and Construction Court articulated a clear pro-enforcement approach to adjudications under the Act. By the end of March 1999, a further five months on, a total of 138 adjudication appointments had been made, rising to 187 for the first 12 months since the Act's commencement.²⁴

Progress

Ultimately, statutory adjudication has proved to be very popular in the UK. In its second year of operation, the number of adjudications rose by 700% to just over 1,300. This figure would exceed 2,000 over the next three years settling at an average of around 1,400 per year. On average, 90% of adjudications commenced in the first 12 years after the Act were completed within 28 or 42 days from the date of Referral (despite the parties having the right to extend this timeframe by agreement). In only 10% of cases was additional time agreed beyond 42 days.

In recent years, a greater number of higher value disputes also appear to have been referred to adjudication. Between 2001 and 2008, 3% of percent of disputes referred to adjudication in the UK were for a value of above £1 million. Between 2010 and 2015, however, this percentage doubled to more than 6%.

Another indication of success has been the lack of court proceedings seeking to challenge the merits of adjudication determinations.²⁵ Whilst there has been a steady flow of court challenges as to enforcement issues, once the enforceability of a decision has been confirmed parties have in the vast majority of cases been content to accept the result. Commenting on the first 12 years of adjudication statistics in the UK, the Chair of the Association of Independent Construction Adjudicators, Mark Entwistle, noted that:

*'[T]he popularity of the process can now be said to be secure as the preferred formal dispute resolution mechanism for the construction industry. The relatively few adjudication cases that get referred to courts also bares [sic] witness to its success.'*²⁶

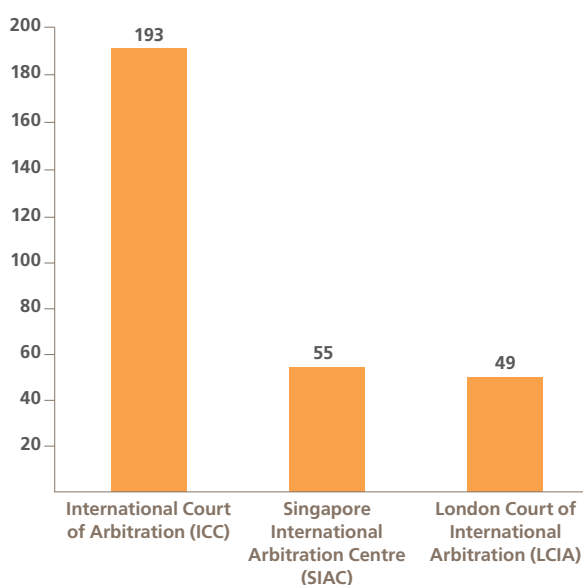
The introduction of statutory adjudication for construction in the UK has also led to similar developments in other jurisdictions. Three years after the introduction of the Act, the Australian state of New South Wales introduced statutory adjudication, but with a slightly different procedure and coverage, confining its scope to progress payment disputes (the NSW Act). Statutory adjudication was then introduced in New Zealand, in other states and territories of Australia (Victoria, Queensland, Northern Territory, Western Australia, Tasmania, the Australian Capital Territory and South Australia), the Isle of Man, Singapore, Malaysia and Ireland. Each of these jurisdictions closely followed either the UK or the NSW model.²⁷



The future use of the ICC Expedited Procedure in international construction disputes

The ICC is the most popular arbitral institution for the resolution of construction and engineering disputes.

Construction and engineering cases in 2016²⁹



The volume of construction and engineering cases sent to ICC arbitration means that significantly more construction and engineering arbitrations will be exposed to expedited procedures this year than previously. Of the 966 new ICC cases in 2016, 393 were for values below US\$2 million. 20% of new cases were construction and engineering related, suggesting that approximately 80 of the construction and engineering cases submitted to the ICC in 2016 would now be subject to the ICC Expedited Procedure.

Future outlook

Time will tell whether the added exposure to expedited procedures brought about by the ICC's new rules will encourage a greater voluntary take-up of expedited arbitration procedures beyond the existing monetary thresholds in the construction and engineering sector. The experience of statutory adjudication set out above suggests that initial concerns about the complexity of construction disputes being ill-suited to expedited procedures may fade over time. Many complex construction disputes are satisfactorily resolved through statutory adjudication within a considerably shorter period than the total 8-9 month period applicable to the ICC Expedited Procedure.

Benefits

Party costs should be significantly lower than they would be in an ordinary full length ICC arbitration. The procedure should also result in a final award capable of immediate enforcement in a timeframe not much longer than that needed for a Dispute Adjudication Board (DAB) decision under the standard FIDIC procedure.

Construction and engineering disputes represent the largest proportion of cases submitted to ICC arbitration and in 2016 accounted for 193 new cases.²⁸

Impact on FIDIC

These require a referral to a DAB followed by ICC arbitration in the event of disagreement over the DAB's decision. The period allowed for the DAB decision is 84 days. If the DAB members have not yet been appointed or agreed between the parties an additional month at least is likely to be required to constitute the DAB prior to the referral of a dispute.³⁰

Once the DAB's decision has been published, either party may give a Notice of Dissatisfaction within 28 days, after which a 56 day period for amicable settlement applies before ICC arbitration proceedings can be commenced. A total period of 6 to 7 months is required, therefore, before arbitration proceedings may be commenced. If arbitration proceedings were then to follow the ICC Expedited Procedure a further 8 to 9 months could be expected before a final award (as described above) giving a total minimum period for DAB and arbitration proceedings of 14 to 16 months. An ordinary ICC arbitration after a DAB decision would of course give a much longer total period of around 2 to 3 years.

Second Editions of FIDIC's Red, Yellow and Silver books are released December 2017. In a pre-release version of the Second Edition Yellow Book issued at the FIDIC Users Conference in London last year, the above time periods have been kept roughly the same, save that the period for amicable settlement is now 28 days and there is a requirement to commence arbitration within 6 months of a Notice of Dissatisfaction.

New Clauses

The above timings assume that arbitral proceedings are commenced to contest the DAB's decision. However, arbitral proceedings might also follow to enforce the DAB's decision, whether on a final or temporarily binding basis depending on whether a Notice of Dissatisfaction has been given. The pre-release version of the Second Edition Yellow Book has a new clause dealing with the enforcement of DAB decisions. It provides that any failure to comply with a DAB decision may be referred immediately to arbitration and the Tribunal shall *'have the power, by way of summary or other expedited procedure, to order, whether by an interim or provisional measure or an award (as may be appropriate under applicable law or otherwise), the enforcement of that decision.'*

This clause appears to have been introduced to clarify the process for enforcing DAB decisions in light of the difficulties highlighted by the *Persero* litigation in Singapore among others.³¹ Two attempts were made at arbitration proceedings to enforce a DAB decision in that case, the first by way of a final award taking 9 months, and a second by way of an interim award taking more than a year. Therefore it is expected a total period of between 14 to 16 months to obtain a DAB decision under the FIDIC procedure and a subsequent arbitration award to enforce the decision (whether the arbitration is under the ICC Expedited Procedure or not).³²

Against this background, a number of considerations arise which may favour the parties agreeing to voluntarily use the ICC Expedited Procedure beyond the present £2 million threshold:

- As mentioned above, the ICC Expedited Procedure is considerably longer than the periods applicable to statutory adjudication regimes across the world which have no monetary limit and which often deal with complex 'full blown' construction disputes. Under the FIDIC procedure, however, the parties will also have had the benefit of a three month DAB procedure, followed by 1 or 2 months of amicable discussions. As noted above, the combined period for a DAB decision followed by the ICC Expedited Procedure is likely to be between 14 to 16 months. Viewed in this light, parties may be more comfortable under the FIDIC form at least in agreeing to apply the ICC Expedited Procedure beyond the present US\$2 million threshold.

- Alternatively, the ICC Expedited Procedure may pose a viable alternative to DAB proceedings altogether. The need for subsequent arbitration proceedings can make the enforcement of DAB decisions cumbersome and less swift than intended. It remains to be seen whether the amendments currently proposed for the Second Edition will cure all of the enforcement issues which arise with DAB decisions, but in the absence of a final and binding decision, arguments are likely to persist for some time yet as to the validity of enforcement under local arbitration laws and/or the New York Convention. Viewed in this light, those parties wishing for a swifter process with greater certainty of enforcement may well be tempted to apply the ICC Expedited Procedure to disputes beyond US\$2 million.
- The advantages of speed, finality and lower cost might also encourage parties to develop their own bespoke criteria for when the ICC Expedited Procedure is to apply. They could, for example, adopt an approach similar to that taken with statutory adjudication in New South Wales, by removing the monetary threshold but limiting the procedure to interim payment disputes only.

A great deal is likely to depend on initial reactions to the use of the ICC Expedited Procedure in its first year and the developing jurisprudence over the enforcement of DAB decisions and the use of sole arbitrators in expedited proceedings where the relevant arbitration clause provides for more than one arbitrator. However, if the experience of statutory adjudication is anything to go by, it may not be too long before expedited arbitration procedures become the new norm in international construction dispute resolution. Users of international arbitration will no doubt be attracted by anything that offers a viable alternative to spending many years embroiled in a traditional international construction arbitration.

References

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¹ In non-expedited cases, the award is due within 6 months of the Terms of Reference being agreed.

² This period was 60 days in the version of the ICC Rules applicable prior to March 2017.

³ Often the arbitral timetable is driven by the availability of the arbitrators, rather than the needs and wishes of the parties, which in itself can result in higher costs.

⁴ See for example Schafer E., Verbist H. and Imhoos C., *ICC Arbitration in Practice* (The Hague, 2005) at page 92. The ICC Court also has the power to extend this period under Article 23(2) of the ICC Rules.

⁵ See, for example, Craig W., Park W., and Paulsson J., *International Chamber of Commerce Arbitration*, (3rd Edition, 2000, New York) at page 356: '...the six month time limit for rendering of the final award is seldom adequate in major arbitrations. The Court therefore readily extends the time limit.'

⁶ There are no official statistics as to the average length of ICC arbitrations, but in the authors' experience 18 months is comparatively fast for a typical international construction dispute, with 2 years or more being more common. Craig, Park and Paulsson (n 5 above) suggest that the average ICC arbitration takes between 1 to 2 years (page 14), but this is not construction specific.

⁷ ICC Press Release, 'ICC Court amends its Rules to enhance transparency and efficiency', (4 November 2016) <https://iccwbo.org/media-wall/news-speeches/icc-court-amends-its-rules-to-enhance-transparency-and-efficiency/>.

⁸ Queen Mary University of London, 'The 2015 International Arbitration Survey: Improvements and Innovations in International Arbitration', <http://www.arbitration.qmul.ac.uk/research/2015/> accessed 27 September 2017. Cost was regarded the worst feature of international arbitration followed by the lack of speed.

⁹ The expedited procedures automatically apply where the amount of the claimant's claim(s) is below ¥20m (Chapter VI Expedited Procedures Rule 75. Scope 2.) Chapter VI Expedited Procedures Rule 75. Scope 2 (2) provides that the expedited procedures will not apply if 'a party notifies the JCAA in writing of an agreement by the Parties that there will be more than one arbitrator.'

¹⁰ Blackaby N., Partasides C., Redfern A., Hunter M., *Redfern & Hunter on International Arbitration*, (6th Edition, Oxford, 2015), p. 233.

¹¹ [2015] SGHC 49. A copy of the judgment can be accessed at <http://www.singaporelaw.sg/sglaw/laws-of-singapore/case-law/free-law/high-court-judgments/15914-aqz-v-ara-2015-sghc-49>.

¹² No formal case report yet exists, but a summary of the judgment can be accessed on Lexology: Liu J., Tang M. and Zhu Y., 'Case Alert: Chinese Court Refused Recognition and Enforcement of a SIAC Award', 25 August 2017, <https://www.lexology.com/library/detail.aspx?g=412f18a5-f910-4fbc-8055-eb421d1de522>.

¹³ Dr. Schütt P., 'The ICC Expedited Procedure – New Demands for the Drafting of ICC Arbitration Agreements as from March 1, 2017', Lexology, 20 February 2017, <https://www.lexology.com/library/detail.aspx?g=2a774072-c10b-436f-bbb9-5233b343aec1>.

¹⁴ Welser I. and Klausegger C., 'Fast Track Arbitration: just fast or something different?', Austrian Arbitration Yearbook, 2009, http://www.chsh.com/fileadmin/docs/publications/Welser/Beitrag_Welser_2009.pdf.

¹⁵ Sir Latham M., 'Construction the Team: Final Report of the Government / Industry Review of Procurement and Contractual Arrangements in the UK Construction Industry', July 1994, at paragraph 9.13.

¹⁶ Kennedy P., Morrison A. and Milne D., 'Conflict between Main Contractors and Subcontractors: The resolution of disputes arising from the application of Set-Off', *Construction Management and Economics*, (1997) Vol 15(6), pp. 527 to 537.

- ¹⁷ Gaitskell R., 'International statutory adjudication: its development and impact', *Construction Management and Economics*, (2007) Volume 25(6), pp. 777 to 784.
- ¹⁸ The parties can agree to extend this period.
- ¹⁹ Sheridan P., 'English statutory adjudication: an assault on the contractual freedom in the construction industry' (1998) *International Arbitration Law Review* 1(3), p109.
- ²⁰ [1999] BLR 93.
- ²¹ Helps D., 'Adjudication comes of age' (1999) *Construction Law*, Vol 10(4), p13.
- ²² *Macob* (n 24).
- ²³ [1999] EWHC 248 (TCC).
- ²⁴ The statistics quoted in this and the following two paragraphs come from: Mr Helps article quoted above, Dr Trushell J., 'The Adjudication Reporting Centre: Twelve Years in Retrospect' [https://www.gcu.ac.uk/ebe/media/gcalwebv2/ebe/Twelve Years in Retrospect.pdf](https://www.gcu.ac.uk/ebe/media/gcalwebv2/ebe/Twelve%20Years%20in%20Retrospect.pdf), and Milligan J. and Cattanach L., 'Report No. 14: Research analysis of the development of Adjudication based on returned questionnaires from Adjudicator Nominating Bodies (ANBs) and from a sample of Adjudicators', April 2016, <https://www.adjudication.org/sites/default/files/Report%2014%20April%202016%202.pdf>.
- ²⁵ An adjudication decision is temporarily binding subject to any final determination by the court.
- ²⁶ Kennedy P., Milligan J., Cattanach L. and McCluskey E., 'The development of Statutory Adjudication in the UK and its relationship with construction workload', School of the Built and Natural Environment, Glasgow Caledonian University (2010) <http://www.gcu.ac.uk/media/gcalwebv2/ebe/content/COBRA%20Conference%20Paper%202010.pdf>.
- ²⁷ Dr Munaaim M., 'Developing a Framework for the Effective Operation of a Statutory Adjudication Regime in Common Law Jurisdictions', *Construction Law Journal* (2017) Vol 33(2) p77.
- ²⁸ 2016 ICC Dispute Resolution Statistics.
- ²⁹ 2016 SIAC Annual Report (http://www.siac.org.sg/images/stories/articles/annual_report/SIAC_AR_2016_24pp_WEBversion_edited.pdf) and LCIA Facts and Figures - 2016: A Robust Caseload (<http://www.lcia.org/News/lcia-facts-and-figures-2016-a-robust-caseload.aspx>).
- ³⁰ In the authors' experience, this often takes longer.
- ³¹ The litigation is summarised in the final Court of Appeal decision in *PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation* [2015] SGCA 30; 161 Con LR 173. The clause which appears in the Second Edition of the Yellow Book was first proposed in slightly modified form in a FIDIC Guidance Memorandum for users of the 1999 Red Book issued on 1 April 2013 noting that a substantial number of arbitral tribunals had found the existing Clause 20 provisions to be unclear.
- ³² 6 to 7 months for the DAB decision and a further 8 to 9 months for the arbitration. An enforcement award via arbitration earlier than 8 months might be possible if no defence was raised by the Respondent (which might include objections to the validity of the DAB decision or objections to the enforcement procedure under local arbitration law similar to those raised in the *Persero* case).







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