



ICC Court to issue reasons for procedural decisions

by Nicholas Gould, Partner, October 2015

On 8 October 2015, the Court of the International Chamber of Commerce (ICC) announced that it would now set out reasons for its procedural decisions. An arbitral tribunal should always give reasons in its award. However, the ICC Secretariat is the procedural administrative organisation that follows the arbitration proceedings, keeps track of timing, makes procedural decisions and scrutinises the final award before it is issued. It might also be called upon to appoint an arbitral tribunal, or replace one.

It is important to remember that the ICC Secretariat does not decide any aspect of the substantive dispute between the parties. However, it can make procedural decisions such as reviewing a challenge of an arbitrator or replacing an arbitrator on its own motion. It might be called upon to make a decision about the impartiality of an arbitrator and the question as to whether two arbitration proceedings should be consolidated. These are just some examples.

Such decisions are deliberated very carefully internally at the ICC. A written decision has always been issued. However, the reasons for the decisions have never been made public. The simple reason for this is to avoid a debate between the parties and the Secretariat about its reasoning. In reality, it allows the arbitration and the dispute between the parties to progress without a procedural debate that would simply cost the parties more money. However, some have argued that the issuing of reasons would make it easy for parties to understand how and why the decision was made.

It is not just about understanding what happened in their case, but also about having an appreciation of how procedural decisions are made, thus allowing parties to predict more accurately in the future what the outcome might be. There has, therefore, been a growing demand placed on the ICC to issue decisions. As a result, they will now communicate the reasons for administrative decisions as from 8 October 2015.

In particular, the ICC Court will issue reasons when it is called upon to make a decision in relation to the challenge of an arbitrator and a decision to initiate proceedings to replace an arbitrator on its own motion. However, the ICC Court might also issue reasons for consolidation and decisions raised in the arbitrator's jurisdiction. This is an additional service from the ICC, and an additional administrative burden upon them. As a result, they may levy a further charge of not more than US\$5,000 for the issuing of reasons.

The new President of the Court, Alexis Mourre, who was appointed in July, is a strong proponent of the new policy. At the ICC Court annual working session in Paris in the first week of October 2015 he said:

"Providing reasons as to Court decisions will further enhance the transparency and clarity of the ICC arbitration process. The new service is a sign of our commitment to ensuring that ICC arbitration is fully responsive to the needs of their users the world over."

The new policy of giving reasons is welcomed. The ICC is a world renowned and excellent arbitration centre, and this further enhances its reputation.