



8. Dreiländer-Konferenz der Schiedsvereinigungen ArbAUT, ASA und LIS

1. April 2022, Zürich

Schiedsverfahren in A / CH / FL

**Handout zu
"Early Determination"**

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ICSID Rule 41 (5)

Rule 41 – Preliminary Objections

5. Unless the parties have agreed to another expedited procedure for making preliminary objections, a party may, no later than 30 days after the constitution of the Tribunal, and in any event before the first session of the Tribunal, file an objection that a claim is manifestly without legal merit. The party shall specify as precisely as possible the basis for the objection. The Tribunal, after giving the parties the opportunity to present their observations on the objection, shall, at its first session or promptly thereafter, notify the parties of its decision on the objection. The decision of the Tribunal shall be without prejudice to the right of a party to file an objection pursuant to paragraph (1) or to object, in the course of the proceeding, that a claim lacks legal merit.

SIAC Rule 29

Rule 29: Early Dismissal of Claims and Defences

- 29.1 A party may apply to the Tribunal for the early dismissal of a claim or defence on the basis that:
- a) a claim or defence is manifestly without legal merit; or
 - b) a claim or defence is manifestly outside the jurisdiction of the Tribunal.
- 29.2 An application for the early dismissal of a claim or defence under Rule 29.1 shall state in detail the facts and legal basis supporting the application. The party applying for early dismissal shall, at the same time as it files the application with the Tribunal, send a copy of the application to the other party, and shall notify the Tribunal that it has done so, specifying the mode of service employed and the date of service.
- 29.3 The Tribunal may, in its discretion, allow the application for the early dismissal of a claim or defence under Rule 29.1 to proceed. If the application is allowed to proceed, the Tribunal shall, after giving the parties the opportunity to be heard, decide whether to grant, in whole or in part, the application for early dismissal under Rule 29.1.
- 29.4 If the application is allowed to proceed, the Tribunal shall make an order or Award on the application, with reasons, which may be in summary form. The order or Award shall be made within 60 days of the date of filing of the application, unless, in exceptional circumstances, the Registrar extends the time.

SCC Rule 39

Article 39 – Summary procedure

- (1) A party may request that the Arbitral Tribunal decide one or more issues of fact or law by way of summary procedure, without necessarily 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 manifestly 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) In determining whether to grant a request for summary procedure, the Arbitral Tribunal shall have regard to all relevant circumstances, including the extent to which the summary procedure contributes to a more efficient and expeditious resolution of the dispute.
- (6) If the request for summary procedure is granted, the Arbitral Tribunal shall seek to make its order or award on the issues under consideration in an efficient and expeditious manner having regard to the circumstances of the case, while giving each party an equal and reasonable opportunity to present its case pursuant to Article 23 (2).

HKIAC Rule 43

Article 43 – Early Determination Procedure

- 43.1 The arbitral tribunal shall have the power, at the request of any party and after consulting with all other parties, to decide one or more points of law or fact by way of early determination procedure, on the basis that:
- (a) such points of law or fact are manifestly without merit; or
 - (b) such points of law or fact are manifestly outside the arbitral tribunal’s jurisdiction; or
 - (c) even if such points of law or fact are submitted by another party and are assumed to be correct, no award could be rendered in favour of that party.
- 43.2 Any party making a request for early determination procedure shall communicate the request to the arbitral tribunal, HKIAC and all other parties.
- 43.3 Any request for early determination procedure shall be made as promptly as possible after the relevant points of law or fact are submitted, unless the arbitral tribunal directs otherwise.
- 43.4 The request for early determination procedure shall include the following:
- (a) a request for early determination of one or more points of law or fact and a description of such points;
 - (b) a statement of the facts and legal arguments supporting the request;
 - (c) a proposal of the form of early determination procedure to be adopted by the arbitral tribunal;
 - (d) comments on how the proposed form referred to in Article 43.4(c) would achieve the objective stated in Articles 13.1 and 13.5; and
 - (e) confirmation that copies of the request and any supporting materials included with it have been or are being communicated simultaneously to all other parties by one or more means of service to be identified in such confirmation.

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- 43.5 After providing all other parties with an opportunity to submit comments on the request, the arbitral tribunal shall issue a decision either dismissing the request or allowing the request to proceed by fixing the early determination procedure in the form it considers appropriate. The arbitral tribunal shall make such decision within 30 days from the date of filing the request. This time limit may be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.
- 43.6 If the request is allowed to proceed, the arbitral tribunal shall make its order or award, which may be in summary form, on the relevant points of law or fact. The arbitral tribunal shall make such order or award within 60 days from the date of its decision to proceed. This time limit may be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.
- 43.7 Pending the determination of the request, the arbitral tribunal may decide whether and to what extent the arbitration shall proceed.

ZUSAMMENFASSUNG

	ICC	Singapore	Stockholm	Hong Kong
Summary disposition of	Claims/ Defences	Claims/ Defences	Issues of fact or law	Points of law or facts
Application may pertain to	Merits and jurisdiction	Legal merits and jurisdiction	Merits, jurisdiction and admissibility	Merits, jurisdiction