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The International Comparative Legal Guide to:

International Arbitration 2018

15th Edition

A practical cross-border insight into international arbitration work

Published by Global Legal Group, in association with CDR, with contributions from:

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Published by
Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
July 2018

ISBN 978-1-912509-24-9
ISSN 1741-4970

Strategic Partners

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Summary Disposition Procedures in International Arbitration

Charlie Caher

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1. National courts in a number of jurisdictions routinely adopt summary disposition procedures which allow them to make dispositive rulings on clearly meritorious or unmeritorious cases, often based on a more limited hearing of the evidence.[1] A number of international tribunals, including the European Court of Human Rights, are also empowered to summarily dispose of manifestly unfounded claims.[2]

2. By contrast, claims and defences in international arbitration – no matter how manifestly deserving or undeserving – often proceed on the same track without differentiation based on merit. Expedited arbitration procedures can speed up arbitral proceedings, but these mechanisms tend to be limited in scope to disputes below a particular size or to circumstances where parties agree to their application, and are not sensitive to the relative merits of claims and defences.[3] Although arbitral tribunals have broad case management powers, it is not clear whether, in the absence of express provisions, tribunals are permitted to adopt summary disposition procedures similar to those used by national courts.[4] Thus, in many cases, an obviously unmeritorious arbitration claim is likely to be subject to the same procedural timetable as other claims and will go through the full evidentiary process of written submissions, document production, witness evidence, expert evidence and hearings.[5]

3. This can be frustrating for parties faced with a frivolous arbitration claim or defence. Parties in particular industries, particularly the financial services industry, have cited the absence of summary disposition procedures in arbitration as a reason for preferring to litigate their disputes.[6] In recent years, arbitral institutions have increasingly paid attention to these issues and introduced a number of innovations. This chapter focuses on these developments and covers:

a. the features of summary disposition procedures used by national courts and international tribunals;

b. the availability of summary disposition procedures in international arbitration in the absence of express provisions;

c. recent developments in international arbitration rules; and

d. due process concerns and their impact on setting-aside and enforcement proceedings.

A. Summary Disposition Procedures Used by National Courts and International Tribunals

1. National Courts

4. The defining characteristic of summary disposition procedures in the litigation context is that they allow the fast-track disposition of claims, defences or even entire cases, without a full hearing or evidential process. There are two types of summary disposition procedures: early dismissal procedures; and summary judgment procedures.

5. Early dismissal procedures allow parties to apply to dismiss a claim or defence at an early stage in proceedings, usually on the grounds of an obvious and fatal defect in a claim or defence. One example is the motion to dismiss procedure under the U.S. Federal Rules of Procedure ("Federal Rules").[7] Parties typically file motions to dismiss at the outset of U.S. court litigation, usually before discovery, and can do so on several grounds, including lack of jurisdiction, insufficient service of process or a "failure to state a claim on which relief can be granted".[8] The bar is set very high: U.S. courts will construe assertions of facts in the light most favourable to the party advancing the claim, and only dismiss a claim where such party cannot "raise a right to relief above the speculative level".[9]

6. Another example of an early dismissal procedure is the striking-out procedure under the English Civil Procedure Rules ("CPR").[10] Under the striking-out procedure, a court may strike out, either on its own initiative or on the application of a party, a party's statement of case (or part thereof).[11] Grounds for striking out include where the statement of case: discloses no reasonable grounds for bringing or defending the claim; is an abuse of the court's process; or is otherwise likely to obstruct the just disposal of proceedings.[12] English courts have held that striking out is a remedy of last resort and is only appropriate in clear and obvious cases.[13]

7. Summary judgment procedures can take place at a later stage in proceedings and allow parties to obtain judgment on the whole of their claims or on particular issues, without having to conduct a full trial. One example is the summary judgment procedure under the U.S. Federal Rules.[14] Parties typically file motions for summary judgment in U.S. federal courts after discovery and shortly before a case is scheduled to go on trial.[15] To obtain summary judgment, a party needs to show, on the basis of the pleadings and the affidavits filed, that there is no genuine dispute as to any material fact, and that it is entitled to judgment as a matter of law.[16]

8. The summary judgment procedure under the English CPR is similar.[17] English courts can allow summary judgment against a party on the whole of a claim or on a particular issue if it considers that that the party has no real prospect of succeeding on or defending that claim or issue, or there is no other compelling reason why the case or issue should be disposed of at a trial.[18] This is a high threshold: English courts have held that summary judgment is only available where it is clear as a matter of law that, even if a party were to succeed in proving all the facts he offers to prove he will not be entitled to the remedy sought, or where the factual basis for the claim is "entirely without substance".[19]

B. Summary Disposition Procedures Used by International Courts and Tribunals

9. International courts and tribunals have also adopted a number of summary disposition procedures to deal with manifestly unfounded claims. One example is the European Court of Human Rights, whose constituent treaty, the European Convention on Human Rights, provides for the Court to "declare inadmissible" any application that is "incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application".[20] This is a claims-filtering mechanism that is intended to sift out the weakest cases that come before the Court.[21]

10. Similarly, courts or tribunals with compulsory jurisdiction under the United Nations Convention on the Law of the Sea ("UNCLOS") can decide, either at the request of a party or on its own initiative, whether a claim "constitutes an abuse of legal process" or whether "*prima facie* it is unfounded".[22] This mechanism covers claims that are unfounded as to merits or jurisdiction,[23] and is intended to filter out the "most blatant cases of abuse and the most evident cases of unfoundedness".[24]

C. Availability of Summary Disposition Procedures in International Arbitration in the Absence of Express Provisions

11. There are few arbitration rules that expressly address the availability of summary disposition procedures. The question thus arises whether summary disposition procedures are available in these circumstances.

12. On one view, arbitrators enjoy broad case management powers expressly conferred upon them by provisions in arbitration rules and applicable arbitration legislation, which would, in appropriate cases, include the power to employ summary disposition. A number of these provisions make specific reference to the conduct of the arbitration in an "expeditious" manner and the avoidance of "unnecessary delay or expense".[25] Commentators have noted that such provisions may provide the basis for an arbitral tribunal to use summary disposition procedures.[26]

13. Moreover, it is well-established that arbitral tribunals have the power to bifurcate the issues in dispute and make more than one award, and can thereby make an early determination of certain issues that might be dispositive of the case or avoid the need to determine other issues.[27] Such case management powers, combined with provisions that permit a tribunal to decide a case without holding an oral hearing,[28] could arguably justify, in certain circumstances, the adoption of summary disposition procedures.

14. On the other hand, a number of commentators and arbitrators have expressed reservations about the availability of summary disposition procedures absent an express manifestation of the parties' intentions for such procedures to apply.[29] Indeed, despite their advantages, parties and tribunals have only very infrequently in practice adopted summary disposition procedures in the absence of express provisions allowing their use.[30]

15. This risk aversion is sometimes justified on the view that summary disposition procedures are incompatible with international arbitration; for example, a 2007 ICC Task Force Report stated that it was "likely a summary judgment vehicle would not work in the ICC context and culture".[31] Some commentators have likewise noted that summary disposition procedures are "arguably incompatible with the right of parties to have their case heard and to deal with the case against them".[32]

16. These reservations find some support in provisions of arbitration rules that require tribunals to hold a hearing if parties so request,[33] which might explain the reluctance by arbitrators to adopt procedures that would summarily dispose of the case without holding a hearing. This is linked to another reason for such reluctance; namely, the potential for due process objections in post-award setting aside or enforcement proceedings, which are addressed in greater detail below.[34] Others regard the use of summary disposition procedures as generally inappropriate in international arbitration because arbitrators' decisions are not subject to appellate review, unlike first instance court decisions.[35]

17. Despite these reservations, summary disposition procedures have been used in two reported arbitral decisions:

a. In ICC Case No. 11413, an arbitration seated in London where the substantive issues were governed by New York law, the respondent included a motion to dismiss with its answer, on the basis that the claim was "utterly without any legal basis" and "should be dismissed as a matter of law".[36] The tribunal noted that neither the ICC Rules nor the English Arbitration Act specifically permitted such motions. However, it held that it was empowered to adopt such a procedure "if it [was] reasonable in the circumstances of a case", and that such motions were compatible with the tribunal's general powers under Article 15 of the ICC Rules and Section 33 of the Arbitration Act to adopt procedures suitable to the resolution of the case before it.[37]

b. In ICC Case No. 12297, an arbitration seated in Geneva where the substantive issues were governed by Canadian law, the respondent filed an "application to dismiss" the claimant's claims as a matter of law.[38] Noting that the ICC Rules were silent in relation to this question, the tribunal held that it could decide the procedure in accordance with Article 15 of the ICC Rules. The tribunal then noted that the parties had chosen to subject their contractual relationship to Canadian law and thus proceeded to consider the application to dismiss "by way of analogy … to Canadian practice" regarding summary disposition procedures.[39]

18. In both cases, the tribunals ultimately held that the standards for summary disposition under the applicable rules were not met, and therefore did not summarily dispose of any of the claims. However, these cases confirm that, although rare, some arbitral tribunals are willing to adopt and consider summary disposition procedures notwithstanding the absence of express provisions in arbitration rules or the parties' arbitration agreement.

D. Recent Developments in International Arbitration Rules

19. Until recently, there were no international arbitration rules that provided expressly for the use of summary disposition procedures.[40] However, this has changed in recent years, as a number of international arbitral institutions have introduced express summary disposition procedures, while others have published guidelines clarifying that summary disposition procedures are available under their existing rules. Generally, these procedures require an initial application by the parties – they do not expressly empower the tribunal to take a proactive decision to summarily determine an issue or dispute.

1. The ICSID Rules

20. In 2006, ICSID revised its Rules to include a new Rule 41(5) which provided for the early dismissal of a claim where it was "manifestly without legal merit".[41] An application for a claim had to be made "no later than 30 days after the constitution of the Tribunal, and in any event before the first session of the Tribunal".[42] This was intended to

address a gap under the previous ICSID Rules, under which a recurrent complaint by respondent states was that there was no procedure to dismiss "patently unmeritorious claims" at an early stage.[43]

21. Since 2006, there has been considerable use of the early dismissal procedure under ICSID Rule 41(5) by respondent states, and a relatively stable jurisprudence has developed regarding its interpretation. Although ICSID Rule 41(5) refers to the manifest lack of "legal merit", ICSID tribunals have consistently held that objections under Rule 41(5) may be brought as to either jurisdiction or the merits.[44]

22. The threshold for early dismissal under ICSID Rule 41(5) is set very high: in order to obtain early dismissal, the respondent needs to establish its objection "clearly and obviously, with relative ease and dispatch".[45] Applications for early dismissal rarely succeed. According to ICSID statistics, as of 2017, parties had sought an early dismissal under Rule 41(5) in 25 cases, out of which three have resulted in a complete summary dismissal of the claims and three have resulted in a partial summary dismissal of some claims.[46]

2. The SIAC Rules

23. After 2006, revisions to international commercial arbitration rules did not follow ICSID and incorporate summary disposition provisions.[47] This changed only in 2016, when the SIAC published revised arbitration rules with a new Rule 29, which is a summary disposition procedure modelled after ICSID Rule 41(5). The first of its kind amongst rules for international commercial arbitration, Rule 29 has been regarded as a "game-changer".[48]

24. The use of language similar to ICSID Rule 41(5) is intended to allow parties and tribunals to take into consideration existing ICSID jurisprudence.[49] At the same time, Rule 29 expands upon ICSID Rule 41(5) in several ways:

a. It specifies that the grounds for early dismissal include both the manifest lack of jurisdiction and the manifest lack of merits.[50]

b. It permits the early dismissal of both "claims" and "defences".[51] It remains to be seen, however, how SIAC tribunals will interpret the reference to "defences" in Rule 29, and in particular whether they will limit its application to affirmative "defences" or whether they will apply it to potentially all issues raised by the respondent in a statement of defence.

c. It does not impose any time limit on an application for early dismissal of claims or defences.[52] An application can be filed, in theory, after the exchange of written submissions or after document production. Thus, although styled as an "early dismissal" provision, Rule 29 is in practice capable of broader application as either an early dismissal or summary judgment procedure.

25. Rule 29.3 also provides that the arbitral tribunal has complete discretion in deciding whether or not to allow the early dismissal application to proceed.[53] Thus, the tribunal is empowered to prevent abuse of the summary disposition procedure. Any such abuse can also be sanctioned by adverse costs orders.[54]

26. In circumstances where the tribunal decides to proceed with an application, it has to give the parties an opportunity to be heard, before deciding whether to grant, in whole or in part, the application.[55] The tribunal has to make an order or award with reasons, which may be in summary form, within 60 days of the date of the filing of the application, unless the Registrar grants an extension.[56]

3. The 2017 SCC Rules

27. The 2017 SCC Rules also introduced a "summary procedure" for the disposition of issues of fact of law. Article 39 of the SCC Rules permits a party to 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".[57] Unlike the ICSID or SIAC Rules, Article 39 of the SCC Rules does not specify the form the SCC summary procedure will take, leaving tribunals to adopt the procedure they deem appropriate in each case.[58]

28. Article 39 can apply to "issues of jurisdiction, admissibility or the merits".[59] Article 39(2) contains a number of examples of "assertions" that parties could make under the procedure, namely that:

a. an allegation of fact or law material to the outcome of the case is manifestly unsustainable;

b. 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

c. any issue of fact or law material to the outcome of the case is, for any other reasons, suitable for summary determination.[60]

29. These examples illustrate that Article 39 is broad enough to encompass both early dismissal and summary judgment procedures. It does not set out any specific timeline within which the tribunal has to make its order or award. Article 39(6) of the SCC Rules merely provides that the arbitral tribunal "shall seek to determine the issues in an efficient and expeditious manner, while giving each party a reasonable opportunity to present its case".[61]

4. The 2017 SIAC Investment Arbitration Rules

30. In 2017, SIAC released new Investment Arbitration Rules (the "SIAC IA Rules") which are intended to be a specialised set of rules for investment disputes involving states, state-controlled entities or intergovernmental organisations. The SIAC IA Rules incorporate a summary disposition procedure at Rule 26. It is substantially similar to the early dismissal provision at Rule 29 of the 2016 SIAC Rules, with only two differences: "manifestly inadmissibility" is an additional ground for early dismissal; and, if the application is allowed to proceed, tribunals are required to decide on early dismissal within 90 rather than 60 days from the date of application.

5. The 2017 CIETAC Investment Arbitration Rules

31. CIETAC also released new Investment Arbitration Rules ("CIETAC IA Rules") in 2017. Article 26 of the CIETAC IA Rules allows the parties to "apply to the arbitration tribunal for early dismissal of claims or counterclaims in whole or in part on the basis that such a claim or a counterclaim is manifestly without legal merit, or is manifestly outside the jurisdiction of the arbitral tribunal".[62]

32. Article 26 is modelled closely after ICSID Rule 41(5). It does not follow the SIAC Rules or the SIAC IA Rules in extending the early dismissal procedure to "defences". It specifies that an early dismissal application should be made "as early as possible" and "no later than the submission of the Statement of Defences or the Counterclaim".[63] Article 26 also states that tribunals have to decide on the application within 90 days.[64]

33. Article 26 has also adopted a similar mechanism to the SIAC Rules for preventing abuse of the summary disposition procedure. Article 26(4) grants tribunals the full discretion to decide "whether to accept and consider an application for early dismissal".

6. The ICC Practice Note

34. On 30 October 2017, the ICC published a "Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the

ICC Rules of Arbitration" (the "ICC Practice Note") that affirmed the availability of summary disposition procedures as part of the tribunal's case management powers under Article 22. This appears to be a significant shift from the position taken in the 2007 ICC Task Force Report, which stated that summary disposition procedures "would not work in the ICC context and culture".[65]

35. In its Practice Note, the ICC explained how an application for the "expeditious determination of manifestly unmeritorious claims or defences" may be dealt with "within the broad scope of Article 22".[66] It set out a procedure for applying for such "expeditious determination" on the grounds that "such claims or defences are manifestly devoid of merit or fall manifestly outside the arbitral tribunal's jurisdiction".[67] This appears similar to Rule 29 of the 2016 SIAC Rules.

36. The ICC expeditious determination procedure also follows the SIAC Rules in affirming that the tribunal has "full discretion to decide whether to allow the application to proceed".[68] Unlike the SIAC Rules, however, and somewhat similar to the SCC summary procedure, the ICC expeditious determination procedure does not fix a timeline for decision on the arbitral tribunal, which merely has to decide the application "as promptly as possible".[69] The ICC Practice Note also does not prescribe the consequences that flow from determining that particular claims or defences are "manifestly devoid of merit" or "manifestly outside the arbitral tribunal's jurisdiction", and states only that the tribunal "shall promptly adopt the procedural measures it considers appropriate".[70]

37. ICC Practice Note also states that the ICC Court will scrutinise any award made on an application for expeditious determination; in principle, within one week of receipt by the ICC Secretariat.[71] This provision for expeditious scrutiny is not found in any of the other arbitration rules that have addressed summary disposition.

E. Due Process Concerns and Their Impact on Setting Aside and Enforcement Proceedings

38. Summary disposition procedures involve, by definition, some trade-off between efficiency and a party's right to a full evidentiary process or hearing. One of the key questions that parties and arbitrators must therefore consider is whether the adoption of summary disposition procedures might make an award liable to be set aside or unenforceable.

39. Tribunals are generally under a duty to act fairly and impartially towards the parties, and to ensure that each party has a reasonable opportunity to present its case or to deal with its opponent's case.[72] The failure to provide parties with a reasonable opportunity to present their case is, under most arbitration legislation, a ground for setting aside the award or refusing enforcement.[73]

40. Thus, the summary determination of a disputed issue, without allowing parties to put forward evidence or arguments at a hearing, could invite attempts before national courts to set aside the award or resist enforcement. There are, however, a number of reasons why the use of summary disposition procedures should not generally give rise to justifiable grounds for setting aside an award or refusing enforcement:

a. First, the experience of national courts and international tribunals in using summary disposition procedures suggests that the mere fact that such procedures are used should not automatically raise due process concerns.

b. Second, it is well-established that the party attempting to annul an award or refuse enforcement bears the burden of proof, and national courts have required a high threshold of proof for attempts to set aside an award or refuse enforcement on the basis that a party was unable to present its case.[74]

c. Third, national courts frequently adopt a deferential posture towards procedural and evidentiary decisions by arbitrators and tend to avoid substituting their views or procedural preferences for those of the arbitrators.[75] The adoption of summary disposition procedures is arguably a procedural decision entitled to deference.

d. Fourth, under most arbitration legislation, the party seeking to annul an award or resist enforcement has to prove an element of prejudice or injustice, which is usually by showing that the outcome would have been different if the due process issue did not exist. It is difficult to see how this would be the case where summary disposition procedures are used to dispose of patently unmeritorious claims or defences; for example, where a case can be decided on a legal basis against one party – even assuming all of its factual assertions in its favour.

41. In practice, tribunals will tend to exercise caution in applying summary disposition procedures to dispose of a claim, defence or case. Thus, in the rare case where an award is in fact rendered pursuant to summary disposition procedures, some independent and sufficiently compelling showing of procedural unfairness will likely be required for the award to be successfully challenged.

42. This also depends, of course, on the seat of the arbitration and where enforcement proceedings are sited. In the U.S., courts have consistently upheld the validity of the summary disposition of cases by arbitrators in domestic arbitrations under the Federal Arbitration Act.[76] The U.S. courts are therefore likely to dismiss a challenge to an award if it is based on the mere fact that the arbitrators applied a summary disposition procedure.

43. English courts have indicated *obiter* that the use of summary judgment procedures can be consistent with giving each party a fair opportunity to present its case. In *Travis Coal Restructuring Holdings LLC v Essar Global Fund Limited*,[77] the tribunal granted the claimant's application for summary judgment, but also adopted a hybrid procedure involving short oral hearings. The respondent applied to set aside the award before the New York Courts and the claimant sought to enforce the award in England. Although the English court did not have to decide whether to enforce the award pending the setting aside proceedings in New York, it also observed that the tribunal's use of a hybrid summary judgment procedure did not violate the parties' right to a fair opportunity to present its case.[78] This provides some indication of how English courts will treat the use of summary disposition procedures by an arbitral tribunal.[79]

44. There remains a significant amount of uncertainty regarding how national courts other than U.S. or English courts would decide. It is possible that national courts in other common law jurisdictions where summary disposition procedures are frequently deployed, such as Canada or Singapore, will take a similar attitude. It is too early to tell, however, whether there is an emerging consensus. It is even more unclear what approach courts in other civil law jurisdictions, such as Brazil or China, would take with regard to this issue.

45. In light of these uncertainties, it is important for parties who are looking to use summary disposition procedures in their international arbitrations to consider carefully their choice of seat and governing law, as well as the wording of their arbitration agreement and their choice of arbitration rules. The existence of express summary disposition provisions can materially reduce any enforceability and setting aside risks, given that national courts tend to defer to parties' agreed arbitral procedures in assessing questions of procedural unfairness.[80]

F. Conclusion

46. The potential benefits summary disposition procedures can bring to parties in reducing time and costs are significant. At the same time, arbitrators are understandably risk-adverse and

cautious about the use of such procedures in the absence of express authorisation by the parties. Recent developments in the revision of international arbitration rules are encouraging. In the investment arbitration context, ICSID has had summary disposition provisions for some time, and this trend looks set to continue in the SIAC IA Rules and the CIETAC IA Rules. The use of summary disposition procedures looks set to pick up in commercial arbitration as well, with express provisions permitting such procedures in ICC, SCC and SIAC arbitrations. The HKIAC is also considering similar provisions in its ongoing rules revision.[81] Uncertainties remain in terms of how national courts in setting aside and enforcement proceedings will treat the use of summary disposition procedures – but clarity is likely to emerge as the use of such procedures grows and becomes more familiar to parties and arbitrators.

Endnotes

1. *See* J. Gill, *Applications for the Early Disposition of Claims*, in A. J. van den Berg (ed.), *50 Years of the New York Convention: ICCA International Arbitration Conference*, ICCA Congress Series, Vol. 14, 2009, at p. 516; A. Raviv, *No More Excuses: Toward a Workable System of Dispositive Motions in International Arbitration*, 28(3) Arb. Intl. (2012), at pp. 487–489; J. Waincymer, *Procedure and Evidence in International Arbitration*, 2012, at p. 676.
2. *See* M. Potesta and M. Sobat, *Frivolous Claims in International Adjudication: A Study Of ICSID Rule 41(5) and of Procedures of Other Courts and Tribunal to Dismiss Claims Summarily*, 3 J. Int. Disp. Settl. 137 (2012), at p. 139.
3. *See* Y. Banifatemi, *Chapter 1: Expedited Proceedings in International Arbitration*, in L. Levy and M. Polkinghorne (eds.), *Expedited Procedures in International Arbitration Dossier of the ICC Institute of World Business Law*, Vol. 16, 2017, at pp. 9–13.
4. *See below* at paragraphs 12–20.
5. *See* A. Raviv, *No More Excuses: Toward a Workable System of Dispositive Motions in International Arbitration*, 28(3) Arb. Intl. (2012), at p. 488. ("[T]he more meritless a case, the more likely that submitting it to arbitration will dispose of it less efficiently than resolving it in court".)
6. *See* ICC Commission Report, "Financial Institutions and International Arbitration", 2016, at para. 59; J. Gill, *Applications for the Early Disposition of Claims*, in A. J. van den Berg (ed.), *50 Years of the New York Convention: ICCA International Arbitration Conference*, ICCA Congress Series, Vol. 14, 2009, at p. 521.
7. *See* U.S. Federal Rules of Civil Procedure ("U.S. FRCP"), at Rule 12(b).
8. U.S. FRCP, at Rule 12(b); G. Born and K. Beale, *Party Autonomy and Default Rules: Reframing the Debate over Summary Disposition in International Arbitration*, 21(2) ICC Arb. Bull. (2010), at p. 24.
9. G. Born and K. Beale, *Party Autonomy and Default Rules: Reframing the Debate over Summary Disposition in International Arbitration*, 21(2) ICC Arb. Bull. (2010), at p. 24.
10. *See* English Civil Procedure Rules ("CPR"), at Rule 3.4.
11. *See* CPR, at Rule 3.4.
12. *See* CPR, at Rule 3.4.
13. *See Three Rivers District Council v Bank of England No 3* [2001] UKHL 16, at para. 117.
14. *See* U.S. FRCP, at Rule 56.
15. *See* G. Born and K. Beale, *Party Autonomy and Default Rules: Reframing the Debate over Summary Disposition in International Arbitration*, 21(2) ICC Arb. Bull. (2010), at p. 25.
16. *See* U.S. FRCP, Rule 56(c); G. Born and K. Beale, *Party Autonomy and Default Rules: Reframing the Debate over Summary Disposition in International Arbitration*, 21(2) ICC Arb. Bull. (2010), at p. 25.
17. *See* CPR, at Rule 24.
18. *See* CPR, at Rule 24.2.
19. *Three Rivers District Council v Bank of England No 3* [2001] UKHL 16, at para. 995.
20. European Convention of Human Rights, at Article 35(3).
21. *See* P. Leach, *Taking a Case to the European Court of Human Rights*, 2005, at p. 159.
22. United Nations Convention on the Law of the Sea, at Article 294.
23. See M. Potesta and M. Sobat, *Frivolous Claims in International Adjudication: A Study Of ICSID Rule 41(5) and of Procedures of Other Courts and Tribunal to Dismiss Claims Summarily*, 3 J. Int. Disp. Settl. 137 (2012), at p. 143.
24. T. Treves, *Preliminary Proceedings in the Settlement of Disputes under the United Nations Law of the Sea Convention: Some Observations*, in N. Ando *et al.*, eds., *Liber Amicorum Judge Shigeru Oda*, Vol. I, 749, 2002, at p. 752.
25. English Arbitration Act, at Section 33(1)(b) (the tribunal "shall … adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined"); ICC Rules, at Article 22 (the "arbitral tribunal and the parties shall make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute").
26. *See* A. Raviv, *No More Excuses: Toward a Workable System of Dispositive Motions in International Arbitration*, 28(3) Arb. Intl. (2012), at p. 500; P. Chong and B. Primrose, *Summary Judgment in International Arbitrations Seated in England*, 33(1) Arb. Intl. 63 (2016), at p. 68; J. Gill, *Applications for the Early Disposition of Claims*, in A. J. van den Berg, ed., *50 Years of the New York Convention: ICCA International Arbitration Conference*, ICCA Congress Series, Vol. 14, 2007, at p. 522; J. Waincymer, *Procedure and Evidence in International Arbitration*, 2012, at p. 676.
27. *See* J. Gill, *Applications for the Early Disposition of Claims*, in A. J. van den Berg, ed., *50 Years of the New York Convention: ICCA International Arbitration Conference*, ICCA Congress Series, Vol. 14, 2007, at pp. 514–515.
28. *See* A. Raviv, *No More Excuses: Toward a Workable System of Dispositive Motions in International Arbitration*, 28(3) Arb. Intl. (2012), at pp. 490–491.
29. *See* G. Born and K. Beale, *Party Autonomy and Default Rules: Reframing the Debate over Summary Disposition in International Arbitration*, 21(2) ICC Arb. Bull. (2010), at pp. 21–22.
30. *See*, *e.g.*, G. Born and K. Beale, *Party Autonomy and Default Rules: Reframing the Debate over Summary Disposition in International Arbitration*, 21(2) ICC Arb. Bull. (2010), at p. 21.
31. M.S. Kurleka *et al.*, ICC Task Force on Arbitrating Competition Disputes, *Committee Report on Evidence, Procedure, and Burden of Proof*, 2007, at p. 30.
32. J. Gill, *Applications for the Early Disposition of Claims*, in A. J. van den Berg, ed., *50 Years of the New York Convention: ICCA International Arbitration Conference*, ICCA Congress Series, Vol. 14, 2007, at p. 516.
33. *See*, *e.g.*, ICC Rules, at Articles 25(2), 25(6); A. Raviv, *No More Excuses: Toward a Workable System of Dispositive Motions in International Arbitration*, 28(3) Arb. Intl. (2012), at p. 500.
34. *See below* at paras. 45–51.

35. *See* A. Raviv, *No More Excuses: Toward a Workable System of Dispositive Motions in International Arbitration*, 28(3) Arb. Intl. (2012), at p. 500.
36. *See First Interim Award in ICC Case No. 11413* (Dec. 2001), 21 ICC Intl. Ct. Arb. Bull. 34 (2010).
37. *See First Interim Award in ICC Case No. 11413* (Dec. 2001), 21 ICC Intl. Ct. Arb. Bull. 34 (2010), at para. 47.
38. Procedural Order No. 1 in ICC Case No. 12297 (Aug. 22, 2003), published in *Decisions on ICC Arbitration Procedure: A Selection of Procedural Orders Issued by Arbitral Tribunals Acting Under the ICC Rules of Arbitration (2003–2004)*, ICC Arbitration Bulletin, 2010 Special Supplement (2011), at para. 47.
39. Procedural Order No. 1 in ICC Case No. 12297 (Aug. 22, 2003), published in *Decisions on ICC Arbitration Procedure: A Selection of Procedural Orders Issued by Arbitral Tribunals Acting Under the ICC Rules of Arbitration (2003–2004)*, ICC Arbitration Bulletin, 2010 Special Supplement (2011), at para. 58.
40. Historically, only domestic arbitration rules, particularly those in the U.S., contained express summary disposition provisions. *See* JAMS Comprehensive Arbitration Rules & Procedures, at Rule 18.
41. ICSID Rules, at Rule 41(5).
42. ICSID Rules, at Rule 41(5).
43. A. Parra, *The Development of the Regulations and Rules of the International Centre for Settlement of Investment Disputes*, 22(1) ICSID Rev. 55 (2007), at p. 65.
44. *See Decision on the Respondent's Objection Pursuant to Rule 41(5) of the ICSID Arbitration Rules 2 February 2009 in ICSID Case No. ARB/08/3, Brandes Investment Partners, LP v Bolivarian Republic of Venezuela*, at para. 52; *Award of 1 December 2010 in ICSID Case No. ARB/07/25, Global Trading Resource Corp. and Globex International, Inc. v Ukraine*, at para. 57.
45. *Award of 2 June 2016 in ICSID Case No. ARB/13/28, Translobal Green Energy, LLC and Transglobal Green Panama, S.A. v Republic of Panama*, at para. 88. *See also Decision on the Respondent's Objections under Rule 41(5) of the ICSID Arbitration Rules of 28 October 2014 in ICSID Case No. ARB/13/33, PNG Sustainable Development Program Ltd. v Independent State of Papua New Guinea*, at para. 89. (ICSID Rule 41(5) is "not intended to resolve novel, difficult or disputed legal issues, but instead only to apply undisputed or genuinely indisputable rules of law to uncontested facts".)
46. *See* Extract from ICSID website, at "Decisions on Manifest Lack of Legal Merit" (available at: https://icsid.worldbank.org/en/Pages/process/Decisions-on-Manifest-Lack-of-Legal-Merit.aspx).
47. For example, the HKIAC Rules were revised in 2008 and 2013, the ICC Rules were revised in 2007 and 2012, the SIAC Rules were revised in 2010 and 2013, and the UNCITRAL Rules were revised in 2010. None of these rules incorporate summary disposition provisions. Commentators observed at the time that there did "not seem to be a strong call for arbitration rules generally to adopt powers similar of national courts enabling summary disposition of issues or claims". *See* J. Gill, *Applications for the Early Disposition of Claims*, in A. J. van den Berg, ed., *50 Years of the New York Convention: ICCA International Arbitration Conference*, ICCA Congress Series, Vol. 14, 2007, at p. 525.
48. K.C. Lye and S. Leong, "SIAC Arbitration Rules 2016 come into effect", *Norton Rose Fulbright International Arbitration Report*, dated September 2016; E. Attenborough, M. Secomb and A. Sartogo, "A new dawn for summary determination in international arbitration: the revised SIAC Rules", *White & Case Client Alert*, dated 1 August 2016.
49. *See* G. Born, J. Lim and D. Prasad, "2016 SIAC Rules", WilmerHale International Arbitration Alert, dated 29 July 2016.
50. *See* 2016 SIAC Rules, at Rule 29.1.
51. 2016 SIAC Rules, at Rule 29.1.
52. *See* 2016 SIAC Rules, at Rule 29.1.
53. *See* 2016 SIAC Rules, at Rule 29.3.
54. *See* 2016 SIAC Rules, at Rule 37.
55. *See* 2016 SIAC Rules, at Rule 29.3.
56. *See* 2016 SIAC Rules, at Rule 29.4.
57. SCC Rules, at Article 39.
58. *See* SCC Rules, at Article 39(4).
59. SCC Rules, at Article 39(2).
60. *See* SCC Rules, at Article 39(2).
61. SCC Rules, at Article 39(6).
62. CIETAC IA Rules, at Article 26(3).
63. CIETAC IA Rules, at Article 26(1).
64. *See* CIETAC IA Rules, at Article 26(5).
65. M.S. Kurleka *et al.*, ICC Task Force on Arbitrating Competition Disputes, *Committee Report on Evidence, Procedure, and Burden of Proof*, at p. 30.
66. ICC, "Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration", dated 30 October 2018, at para. 59.
67. ICC, "Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration", dated 30 October 2018, at para. 60.
68. ICC, "Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration", dated 30 October 2018, at para. 60.
69. ICC, "Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration", dated 30 October 2018, at para. 63.
70. ICC, "Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration", dated 30 October 2018, at para. 62.
71. *See* ICC, "Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration", dated 30 October 2018, at para. 64.
72. *See*, *e.g.*, ICC Rules, at Article 22(4); UNCITRAL Rules, at Article 17(1); English Arbitration Act, at Section 33(a).
73. For example, under Section 68 of the English Arbitration Act, a tribunal's failure to provide a party a reasonable opportunity to present their case is a "serious irregularity" that could justify setting aside an award. *See* English Arbitration Act, at Section 68. *See also* UNCITRAL Model Law, at Article 34(2)(a)(iii); New York Convention, at Article V(1)(b).
74. *See* G. Born, *International Commercial Arbitration*, 2014, at p. 3229.
75. *See* G. Born, *International Commercial Arbitration*, 2014, at p. 3231.
76. *See* A. Raviv, *No More Excuses: Toward a Workable System of Dispositive Motions in International Arbitration*, 28(3) Arb. Intl. (2012), at p. 501.
77. *See Travis Coal Restructuring Holdings LLC v Essar Global Fund Limited* [2014] EWHC 2510 (Comm), at para. 47.
78. *See Travis Coal Restructuring Holdings LLC v Essar Global Fund Limited* [2014] EWHC 2510 (Comm), at para. 50.
79. *See Travis Coal Restructuring Holdings LLC v Essar Global Fund Limited* [2014] EWHC 2510 (Comm), at paras. 51–54. The parties subsequently settled before any decision was rendered by the New York Courts.

80. *See* G. Born, *International Commercial Arbitration*, 2014, at p. 3230; G. Born and K. Beale, *Party Autonomy and Default Rules: Reframing the Debate over Summary Disposition in International Arbitration*, 21(2) ICC Arb. Bull. (2010), at pp. 31–32.

81. *See* HKIAC, "Public Consultation Process on Proposed Amendments to the 2013 HKIAC Administered Arbitration Rules", dated 29 August 2017 (available at: http://www.hkiac.org/news/revision-2013-administered-arbitration-rules).

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