

SCC Express

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This Practice Note concerns the dispute resolution procedure colloquially known as SCC Express, which is governed by the SCC Rules for Express Dispute Assessment (the SCC Express Rules).

What is SCC Express?

The Stockholm Chamber of Commerce (SCC) Arbitration Institute launched the SCC Rules for Express Dispute Assessment (SCC Express) in May 2021. The SCC developed SCC Express to provide clients more avenues for resolving disputes without the need of traditional forms of dispute resolution, based on client and market research indicating a demand for such proceedings.

SCC Express is a novel hybrid between arbitration and mediation. As with commercial arbitration and mediation, SCC Express is a consent-based and confidential process. Notably, SCC Express is confidential by default, extending to any future arbitration, litigation or other legal proceedings. SCC Express should be distinguished from traditional arbitration in that the findings are not legally binding or enforceable. SCC Express further differs from mediation in that the final product of the procedure is normally an assessment of the merits of the dispute, rather than a mediator's recommendation for an amicable settlement of the dispute.

How does SCC Express distinguish itself from other forms of dispute resolution?

SCC Express should be distinguished from traditional arbitration in that the findings are not legally binding or enforceable and the procedure takes only a month from start to finish. SCC Express further differs from mediation in that the final product of the procedure is normally an assessment of the merits of the dispute, rather than a mediator's recommendation for an amicable settlement of the dispute.

Parties considering participating in SCC Express proceedings should bear in mind that they will not be participating in conventional arbitration proceedings. Perhaps most notably, the neutral's inquisitorial role and extensive control over the proceedings will generally lead to parties having less control than expected. For example, the neutral is empowered to decide on which issues and disputes shall be the focus of the proceedings and may instruct parties only to focus on these issues.

References:

SCC Express Rules

Guidelines to the SCC Rules for Express Dispute Assessment

SCC model clauses

How do I start an SCC Express proceeding?

Filing a request to appoint a neutral

The SCC Express proceeding is commenced by filing a request to appoint a neutral.

The request, which does not have a prescribed form, shall include (Article 4):

- the names, addresses, telephone numbers and email addresses of the parties and their counsel
- a summary of the issue(s) to be assessed by the neutral, the factual and legal basis relied upon, and any relief sought
- a copy or description of any agreement between the parties to consent to the SCC Express, and
- proof of payment of the administrative fee of €4,000

The request must contain sufficiently detailed information for the responding party to formulate a response and is intended to expedite the proceedings (since additional submissions to clarify the nature of the dispute are reduced or eliminated), and assist the SCC in the process of appointing a Neutral with the necessary expertise.

The SCC has not provided further guidance on the required content of the summary. However, the SCC Express Rules grant the neutral the power to limit the number of written submissions of the parties. Since the procedure is meant to take no longer than three weeks from the appointment of the neutral, parties are encouraged to walk a fine line between submitting a sizeable request that might extend the scope of the procedure further than the allocated time permitted, and

submitting an insufficient summary of the dispute and therefore delaying the appointment of the neutral.

Parties are advised to email (arbitration@sccarbitrationinstitute.com) or call the SCC Secretariat for further information about payment instructions.

Who do I send the request to?

One of the disputing parties contacts the SCC Arbitration Institute electronically (via email at arbitration@sccarbitrationinstitute.com).

Once the SCC has received the request, they will contact the other party to afford an opportunity to respond to the request and seek their consent to the SCC Express proceeding, if this remains outstanding (Article 5 of the SCC Express Rules).

What is the total cost of an SCC Express proceeding?

The cost of an SCC Express proceeding comprises the administration fee (€4,000) and the fee of the neutral (€25,000), totaling €29,000.

Unless the parties agree otherwise, or Article 5(3) of the SCC Express Rules applies, the costs and reasonable expenses of the neutral shall be paid by the parties in equal shares (Article 11(2) of the SCC Express Rules).

The parties shall bear their own costs for legal representation and other incurred costs (Article 11(5) of the SCC Express Rules).

How do I respond to a request to appoint a neutral?

The responding party is granted an opportunity to respond to the request (Article 5 of the SCC Express Rules). The response should focus on the points of disagreement between the parties and include the legal and factual basis for the responding party's position. The responding party is permitted to extend the scope

of the procedure by filing a counterclaim or raising further issues not included in the request. This will however require further written submissions as the applicant must reasonably be allowed to respond to a counterclaim. For this reason, the SCC recommends the responding party to only include issues or counterclaims directly related to the dispute brought by the applicant (see Guidelines to the SCC Rules for Express Dispute Assessment).

The SCC envisions a timeframe of five days for the responding party to file the response (see Guidelines to the SCC Rules for Express Dispute Assessment). The limited time afforded and the recommendations mentioned above are intended to serve parties who are considering using the SCC Express.

If the response does not include clear and expressed consent from the responding party, the SCC will contact the responding party to confirm their consent to the proceedings (Article 5 of the SCC Express Rules). Consent to participation in SCC Express proceedings can be given at any time by the parties. In case a party, which has previously consented to participating in the SCC Express proceedings, withdraws its consent during the proceedings or otherwise declines to participate, the remaining party may choose to proceed with SCC Express proceedings and bear the non-participating party's share of the fees (Article 5.3 of the SCC Express Rules). In this case, the communications and the findings will be sent to the non-participating party throughout the proceedings.

Parties may consent to submitting a dispute to SCC Express in an agreement prior to the proceedings, for example in a multi-tier dispute resolution clause in a contract between the parties. Parties considering the use of such a clause should be aware of the fact that the pre-arbitral steps in multi-tier dispute resolution clauses have uncertain legal status as bars to legal proceedings in Sweden. Any such clauses should be crafted with care as to ensure that they are optional and voluntary for the parties and do not constitute any form of barrier to legal proceedings.

Appointment of the neutral

Following the verification of the parties' consent and the payment of the neutral's fee of €25,000, the SCC will appoint the neutral within 48 hours (Article 6(2) of the SCC Express Rules). The selection criteria of the neutral are the same factors that guide the appointment of arbitrators under the SCC Rules (see Practice Note: SCC Rules (2023)—the tribunal under the 2023 SCC Rules here). These include the nature and circumstances of the dispute, the applicable law, the nationality and the language of the parties. The neutral must be impartial and independent, and may be challenged on the same basis as an arbitrator. The challenge procedure provided in the SCC Express Rules is a shortened version of that in SCC arbitrations (Article 6(4) of the SCC Express Rules).

The role of the neutral is akin to the role of a mediator, however the neutral is requested to produce a neutral assessment. The findings of the assessment include the neutral's position and reasoning on the issues presented by the parties. The assessment is neither enforceable nor binding, unless the parties have agreed otherwise.

The conduct of the SCC Express proceeding

Timeline

Following the appointment, the neutral shall hold a case management conference to set out a timetable for the assessment without delay (Article 7(3) of the SCC Express Rules). The proceeding before the neutral shall last no more than 21 days from referral to delivery of the findings (Article 9(1) of the SCC Express Rules), and the SCC has indicated that any extensions will be granted only in exceptional cases (Article 9(2) of the SCC Express Rules). The neutral decides, in consultation with the parties, how to conduct the proceedings. The SCC Express Rules do not

expressly grant the parties any substantial influence on the proceedings, other than requiring the neutral to consult with the parties prior to making certain executive decisions on the nature of the proceedings.

Powers of the neutral

Article 7.2 of the SCC Express Rules illustrates the position and powers of the neutral during the proceeding. The neutral shall conduct the proceeding in such manner as the neutral considers appropriate, balancing the interest of expediency and efficiency with the interests of the parties. The neutral shall further maintain impartiality and efficiency and provide equal opportunity for each party to present their case. The neutral may limit submissions (scope and length) and evidence and appears to have full authority to set up deadlines for the parties' submissions in the proceeding (Article 7(5) of the SCC Express Rules).

The proceedings are marked by the expedited nature of SCC Express, not least in the inquisitorial role the neutral is envisioned to take. While the neutral is required to give both parties equal opportunity to present their case, the role of the neutral is to guide the parties along in the dispute and he or she may provide directions to the parties on how to keep the dispute moving forward and restricting or eliminating the use of oral testimonies. Furthermore, the neutral is authorised to instruct the parties on what issues they are to focus on, and which issues are of vital importance to the dispute, as well as which issues to leave unresolved.

The neutral's assessment

The neutral shall within 21 days of appointment deliver a written assessment to the parties, including a summary of the neutral's conclusions on the issue in dispute (Article 9(1) of the SCC Express Rules). Unless otherwise instructed by the parties, the neutral shall assess the issue or dispute as an arbitrator would—on the merits, weighing the arguments and evidence presented, applying applicable law. The neutral may also, with the parties' authorisation, disregard the applicable law and

base the assessment on other criteria or as an *amiable compositeur* (Article 8(3) of the SCC Express Rules).

Should it not be possible to reach a conclusive position on the issue or dispute within the time and procedure allotted, the neutral should strive to provide an opinion or evaluation that, even if not determinative, still has value for the parties in their efforts to resolve the dispute.

The findings are non-binding, unless the parties have previously agreed otherwise (Article 2(4) of the SCC Express Rules). Upon the delivery of the findings, the parties may also turn the findings into a settlement agreement. Subject to the consent of the neutral, the parties may agree to appoint the neutral as an arbitrator and to confirm the findings in an arbitral award.

Termination of the proceeding

The proceeding shall be terminated (Article 10 of the SCC Express Rules):

- by the neutral's delivery of the findings of the assessment, or
- by a joint request from the parties to terminate the proceedings

When is more suitable to use the SCC Express?

The SCC Express would be suitable to resolve disputes in situations where, inter alia, disputes arise in long-term contractual relationships, when the parties disagree on a single issue or when disputes arise in relation to closing conditions in M&A transactions. It is further envisioned that SCC Express may be relevant to disputes relating to executive level terminations, when a neutral assessment of the dispute could resolve a deadlock between the parties and when parties are willing to forgo certain procedural steps in favor of time and cost efficiency.

The SCC Express could be used by parties to test their case in settlement or mediation discussions. However, considering the costs and the limited control of the proceeding, parties to a dispute may be reluctant to consent to SCC Express with the sole purpose of testing their legal positions.

Given the expedited nature procedure, SCC Express should not be considered an appropriate avenue for resolving legally complex or materially voluminous disputes. Rather, taking into account that the opportunity is expressly stipulated in the rules, SCC Express should rather find its place where parties call for a decision according to what is fair and just given the circumstances, or an *amiable compositeur*. In this regard, larger construction disputes could be identified, such as infrastructure or energy projects, where there is a need to adjudicate a matter of importance, but the ongoing project requires that the work is continued.

Further, SCC Express seems to be suitable when the relationship between the parties, or the need for an expedient resolution of the dispute, is more important to the parties than the sum at stake, eg when a dispute, which would otherwise derail major contract negotiations, could be resolved by use of SCC Express.



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