GASSER PARTNER

Summary judgements in international arbitration

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Agenda

1. Definition

2. Admissibility

3. Enforcement

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Definition

"A judgment granted on a claim or defense about which there is no genuine issue of material fact and upon which the movant is entitled to prevail as a matter of law." – Black's Law Dictionary (2009)

English Civil Procedure Code (Rule 24.2):

„The court may give summary judgment against a claimant or defendant on the whole or a claim or on a particular issue if –

a) it considers that (i) claimant has no real prospect of succeeding on the claim or issue; or (ii) that defendant has no real prospect of successfully defending the claim or issue; and

b) there is no other compelling reason why the case or issue should be disposed of at a trial."

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Definition

Elements of a summary judgement:

– *dispute that does not concern a question of fact*

– *there is no need for additional evidence taking or a trial*

– *purely based on documentary evidence*

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Definition

Summary judgements and expedited proceedings:

Summary Judgements:	**Expedited proceedings:**
– no agreement needed	– agreement of both parties (Art 48 LAR; Art 45 Vienna Rules)
– no evidence taking needed	
– no trial needed	– shorter time limits
– does not concern time, but substance	– usually one arbitrator

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2. Admissibility

Admissibility depends on four variables:

– *lex arbitri*

→ Does the *lex arbitri* allow for summary disposal of a case?
→ Tribunal's duty to determine facts?
→ Parties' right to be heard?
→ Duty to render an enforceable award?

– *And the lex fori?*

3. Enforcement acc. to NYC

Article V NYC

Enforcement may be refused, if:

(b) The party against whom the award is invoked was […] otherwise <u>unable to present his case</u>;

→ **determined by lex fori**

(d) The […] arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was <u>not in accordance with the law of the country where the arbitration took place</u>;

→ **determined by lex arbitri**

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