**MIAMI INTERNATIONAL ARBITRATION SOCIETY (MIAS)**

# REPORT OF THE TASK FORCE ON ISSUES RELATED TO EXPEDITED ARBITRATION IN CONNECTION WITH THE UNCITRAL RULES TO BE CONSIDERED AT THE SEVENTY-FIRST SESSION OF UNCITRAL WORKING GROUP II

The MIAS Task Force on Expedited Arbitration under the UNCTIRAL Arbitration Rules has prepared the following comments on the draft provisions for an Appendix to the UNCITRAL Rules that contains Expedited Arbitration Provisions. The MIAS Task Force prepared a report dated August 26, 2019 that was provided to the delegates at the Seventieth Session of Working Group II in Vienna in which it proposed an Appendix to house Expedited Arbitration Provisions along with proposed rules text and explanatory notes. Referring to that work product, and considering the Secretariat's Note on draft provisions for expedited arbitration, the MIAS Task Force has prepared the following table. The first column contains the draft provisions. The second column contains the relevant paragraphs from the Secretariat Note relating to the draft provision. The third column presents the MIAS Task Force's views of each draft provision.

We hope that these comments are helpful to the Working Group and look forward to a continuing dialogue that will lead to an expeditious implementation of Expedited Procedures within the UNCITRAL Rules.

Respectfully Submitted this 23rd day of January 2020,

**The Miami International Arbitration Society Task Force on Expedited Procedures in connection with the UNCITRAL Rules**

**John M. Barkett, Shook, Hardy & Bacon LLP, Chairperson**

**Carlos Conception, Shook, Hardy & Bacon LLP**
**Judith Freedberg, Consultant, ICCA Publications**
**Manuel Gomez, Florida International University College of Law**
**Daniel Gonzalez, Hogan Lovells US LLP**
**Adolfo Jimenez. Holland & Knight**
**Luis O'Naghten, Baker McKenzie**
**Joan Stearns Johnson, University of Florida Levin College of Law**

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| Draft article 1(5) of the UNCITRAL Arbitration Rules<br><br>5. These Rules include the Expedited Arbitration Provisions contained in the Appendix, subject to provision 1. | With the inclusion of this additional paragraph, parties' agreement, after the effective date of the expedited arbitration provisions, to refer their dispute to the UNCITRAL Arbitration Rules would also include an agreement to the applicability of the expedited arbitration provisions. In other words, the parties would not need to explicitly consent to the applicability of the expedited arbitration provisions, but simply consent to the applicability of the UNCITRAL Arbitration Rules, which contain those provisions in the appendix (A/CN.9/1003, para. 25). The Working Group may wish to confirm that this reflects the understanding that the parties' agreement to expedited arbitration should be the determining factor in their applicability (A/CN.9/969, para. 95) and that express consent of the parties is necessary for the expedited arbitration provisions to apply (A/CN.9/969, para. 27; A/CN.9/1003, paras. 21 and 22). | The MIAS Task Force supports this provision.<br><br>*This is a necessary amendment.* |
| Draft provision 1 (Scope of application) | | |
| 1. Unless otherwise agreed by the parties, the Expedited Arbitration Provisions shall [apply][be applicable] to arbitration initiated under the UNCITRAL Arbitration Rules pursuant to an arbitration agreement concluded on or after [the effective date of the Expedited Arbitration Provisions]. | 14. Draft provision 1(1) reflects the understanding of the Working Group that the expedited arbitration provisions should apply only after their entry into force and where the parties have agreed to their applicability (A/CN.9/1003, para. 23). The words "be applicable" could be used instead of the word "apply" if the Working Group determines that the application of the expedited arbitration rules would depend on a determination by the arbitral tribunal (see paras. 27–31 below). | The MIAS Task Force recommends "apply" over "be applicable."<br><br>Because of the phrase "Unless otherwise agreed by the parties," the word "apply" is the better formulation. The second bracket should be part of the text since under 1(3) parties can always decide to opt in if their |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | 15. The phrase "unless otherwise agreed by the parties" gives flexibility to the parties in the application of the expedited arbitration provisions. For example, when agreeing to refer their dispute to arbitration under the UNCITRAL Arbitration Rules, parties may agree that the expedited arbitration provisions would not apply (opt-out). On the other hand, parties that have concluded an arbitration agreement before the effective date of the expedited arbitration provision may agree to apply the expedited arbitration provisions (opt-in, A/CN.9/1003, para. 31). This flexibility is further reinforced in draft provision 1(3) (see paras. 17–19 below). | agreement was executed before the effective date of the Expedited Arbitration Provisions.<br><br>If it is the design of the Provisions to require party agreement before the Expedited Arbitration Provisions will apply, the first clause might not achieve this result. "If agreed to by the parties" would clearly state the principle. |
| 2. The presumption under article 1(2) of the UNCITRAL Arbitration Rules does not apply to the Expedited Arbitration Provisions, where the arbitration agreement was concluded before [the effective date of the Expedited Arbitration Provisions]. | **No presumption.**<br><br>16. The expedited arbitration provisions in an appendix to the UNCITRAL Arbitration Rules along with the new article 1(5) will result in a new version of the UNCITRAL Arbitration Rules. Article 1(2) of the UNCITRAL Arbitration Rules contains a presumption regarding the application of the "rules in effect on the date of the commencement of the arbitration".[1] If an arbitration commences after the new version comes into effect, the parties would thus be presumed to have referred to the new version of the Rules which include the expedited arbitration provisions, whereas the parties might not have been aware of the existence of the | This provision seems unnecessary. The parties still control the decision to use Expedited Arbitration Provisions so whether or not there is a presumption should not matter. |

[1] Article 1 (Scope of application)
2. The parties to an arbitration agreement concluded after 15 August 2010 shall be presumed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules. That presumption does not apply where the arbitration agreement has been concluded by accepting after 15 August 2010 an offer made before that date.

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | expedited arbitration provisions. Draft provision 1(2) is based on the understanding of the Working Group that there should be no such presumption (A/CN.9/1003, para. 25). | |
| 3. At any time during the proceedings, the parties may determine whether the Expedited Arbitration Provisions shall apply to the arbitration. | **Determination by the parties of the application of the Expedited Arbitration Provisions**<br><br>17, Draft provision 1(3) reaffirms the flexibility provided to the parties to determine whether the expedited arbitration provisions would apply to the proceedings (A/CN.9/1003, para. 35). It reflects the understanding of the Working Group that parties should be entitled to resort to non-expedited arbitration when they all so agree (A/CN.9/1003, para. 42). It thus addresses a situation where the expedited arbitration provisions would no longer apply even though the parties had initially agreed to their applicability. For instance, the complexity of the case or the introduction of additional claims and counterclaims could make non-expedited arbitration more appropriate.<br><br>18. The Working Group may, however, wish to take into consideration the suggestion that such a provision would not be necessary, if sufficient flexibility were provided to the parties in the expedited arbitration provisions. The Working Group may wish to consider which aspects of the expedited arbitration provisions (particularly those that cannot be modified by the parties) would make it necessary for the parties to determine to not apply the provisions as a whole (A/CN.9/1003, para. 51). | The MIAS Task Force supports this provision but suggest that "may determine" be changed to "may determine by agreement confirmed in writing" or "may determine by a joint submission to the arbitration tribunal."<br><br>The Task Force supports the flexibility provided by draft provision 1(3). However, where the parties have agreed to the use of the Provisions and then discuss exiting from the Provisions, the concern is that one party may claim that the other party agreed when the other party had not actually agreed. A mechanism to confirm the "determination" is the basis for the suggested modification. Para. 18 does not change the Task Force's thinking here. |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | 19. Draft provision 1(3) also addresses situations where the set of criteria in draft provision 1(5) are not met or where a third party determines that the expedited arbitration provisions would not apply to the proceedings in accordance with draft provision 1(6). Even in those circumstances, parties would be free to agree that the expedited arbitration provisions should apply. And in that case, the arbitral tribunal would not be allowed to proceed with non-expedited arbitration as that would be contrary to party autonomy (A/CN.9/1003, para. 52), although the arbitrator may possibly withdraw. | |
| 4. In exceptional circumstances, a party may request the arbitral tribunal to determine that the Expedited Arbitration Provisions shall not apply to the arbitration. | **Request by a party for the non-application of the Expedited Arbitration Provisions**<br><br>20. Draft provision 1(4) addresses a situation where a party that had agreed to the applicability of the expedited arbitration provisions later wishes to withdraw from expedited arbitration. Such a party should seek the agreement of the other parties to resort to non-expedited arbitration in accordance with draft provision 1(3). However, once a dispute arises, it is less likely that all the parties would reach such an agreement (A/CN.9/969, para. 96). Draft provision 1(4) thus provides the mechanism for a party to request the non-application of the expedited arbitration provisions.<br><br>21. Diverging views were expressed whether such possibility should be provided for in the expedited arbitration provisions. One view was that a party should not be able to withdraw | The MIAS Task Force supports the proposed text.<br><br>We do not think that a list of circumstances needs to be provided. The concept of "exceptional" circumstances should be sufficient to establish an appropriate threshold here. There is a concern that this provision can be a path to mischief and delay. But the tribunal has to be trusted to move with expedition if a request is made.<br><br>As for the timing of the request, if it is made too late in the process, the tribunal can take that into account in deciding that exceptional circumstances have |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | unilaterally as that party has already agreed to expedited arbitration and as it would be contrary to the expectation of the other parties wishing to resolve the dispute in an expeditious manner (A/CN.9/1003, para. 46). It was further said that allowing such withdrawal might result in the limited use of the expedited arbitration provisions. Another view was that while a party should not have a unilateral right to withdraw from expedited arbitration, the expedited arbitration provisions should cater for exceptional circumstances where it would be justifiable to resort to non-expedited arbitration. It was also suggested that providing that mechanism would comfort parties (including States) entering into an agreement on expedited arbitration, as they could retain the opportunity to resort to non-expedited arbitration after the dispute arose (A/CN.9/1003, para. 47). It was suggested that the party making such a request should be required to provide persuasive grounds for the need to resort to non-expedited arbitration (A/CN.9/1003, para. 47).<br><br>22. Draft provision 1(4) is based on the preference expressed by the Working Group that it should be the arbitral tribunal that determines whether it would be appropriate to resort to non-expedited arbitration. In making the determination the arbitral tribunal would need to consult with the parties (A/CN.9/1003, para. 49) and be guided by the criteria set forth in draft provision 1(5). Draft provision 1(4) does not include a time frame on when a party can make the request, as it was generally felt that a party should be able to make the request at any time (A/CN.9/1003, para. 49). | not been met. So there is not necessarily a need to set a deadline on such a request. |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | The Working Group may wish to confirm this understanding.<br><br>23. The Working Group may wish to consider the following: (i) whether draft provision 1(4) should set forth an exhaustive list of circumstances which would justify such a request and the arbitral tribunal making the determination; (ii) if so, what those circumstances would be (for example, change of facts which could not have been foreseen when the parties agreed to expedited arbitration, A/CN.9/1003, para. 49); and (iii) other elements that the arbitral tribunal would need to take into account (for example, at which stage of the proceeding the request was made, A/CN.9/1003, paras. 49–50). | |
| 5. In determining whether the Expedited Arbitration Provisions shall apply to the arbitration, consideration should be given to the overall circumstances of the case, including:<br><br>(a) The amount in dispute (the sum of claims made in the notice of arbitration, any counterclaims made in the response thereto as well as additional claims);<br><br>(b) The nature and complexity of the dispute;<br><br>(c) The urgency of the resolution of the dispute; and | **Criteria for determining the application of the Expedited Arbitration Provisions**<br><br>24. At its seventieth session, the Working Group agreed that a set of criteria for determining the application of expedited arbitration could possibly be developed (A/CN.9/1003, para. 41). Draft provision 1(5) reflects the understanding of the Working Group that: (i) those criteria could include both quantitative and qualitative factors; (ii) those criteria should be objective; and (iii) consideration should be given to the overall circumstances of the case (A/CN.9/1003, para. 28). The Working Group may wish to consider whether to include such set of criteria in the expedited arbitration provisions and for what purpose (see para. 29 below). | The MIAS Task Force supports the text and the identification of criteria.<br><br>In response to Paragraph 25, the MIAS Task Force continues to believe that introducing a financial “threshold” will focus the parties on the availability of Expedited Arbitration Provisions and the opportunity to utilize expedited process to arbitrate the dispute.<br><br>The MIAS Task Force suggests US $5 million as a threshold for the reasons set forth in the MIAS Task Force Report dated August |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| (d) The proportionality of the amount in dispute to the estimated cost of arbitration. | 25. Subparagraph (a) notes that the amount in dispute should be one of the criteria to be taken into account. The Working Group may wish to consider whether to introduce a financial threshold, which has the advantage of providing a clear and objective standard (A/CN.9/1003, para. 38) and if so, what the amount should be. However, setting a fixed amount might be difficult as that amount might not necessarily reflect whether the dispute is suitable for expedited arbitration. Considering the different levels of economic development, setting a fixed amount that would be applicable in all jurisdictions might also be challenging. It also raises questions about the currency in which the amount should be expressed and how the amount could be updated or revised afterwards (A/CN.9/969, paras. 92 and 93; A/CN.9/1003, paras. 29 and 39). The Working Group may, however, wish to take into account the view that a financial threshold could provide a starting point for the parties to discuss and agree on whether the expedited arbitration provisions would apply, as they would be free to opt-in or opt-out from those provisions regardless of whether the financial threshold was met (see draft provision 1(3), A/CN.9/1003, para. 38). The phrase in parentheses in draft provision 1(5)(a) states the elements to be considered in calculating the "amount in dispute" (see para. 83 below).<br><br>26. Subparagraphs (b) to (d) introduce other criteria that could be considered in determining the application of the expedited arbitration provisions (A/CN.9/1003, para. 41). The Working | 26, 2019:<br><br>1. It is set high enough where the amount in controversy can be more easily evaluated to determine whether the Provisions should be considered.<br><br>2. It minimizes the ability of parties to exaggerate quantum in order to exceed the threshold.<br><br>3. The UNCITRAL Rules are not amended that often or that easily so that having a higher threshold anticipates the potential for inflation.<br><br>With respect to Para. 26, the Task Force does not think that the potential additional criteria need to be expressly stated. If party agreement is required, the number of parties will take care of itself (if they all do not agree, the Provisions will not be applicable and if they all agree that suggests the Provisions will be suitable). The other items will be accounted for in the "nature and complexity of the dispute" in draft provision 1(5)(b). |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | Group may wish to consider whether their inclusion is appropriate and whether any of the following would need to be mentioned as additional criteria: (i) the number of parties; (ii) the need for, and the number of, witnesses; (iii) the need to hold hearings; (iv) the possibility of joinder or consolidation; and (v) the likelihood of the dispute being resolved in the time frames provided in draft provision 7 and 13 (A/CN.9/1003, paras. 30 and 40). In considering the criteria to be included, the Working Group may wish to note that it might not be possible to ascertain certain aspects at an earlier stage of the proceedings when the determination needs to be made. | |
| 6. The arbitral tribunal, [option A: after inviting the parties to express their views, shall determine whether the Expedited Arbitration Provisions apply to the arbitration] [option B: upon request of a party and after inviting the parties to express their views, may determine that the Expedited Arbitration Provisions shall not apply to the arbitration]. In case the arbitral tribunal has not been constituted, the appointing authority will make that determination upon request by a party and after inviting the parties to express their views. | **Determination by the arbitral tribunal or the appointing authority of the application of the Expedited Arbitration Provisions**<br><br>27. Express consent of the parties is a pre-condition for the application of the expedited arbitration provisions as reflected in draft provision 1(1). If the parties' consent is the sole criterion that determines the application of the expedited arbitration provisions, a third party would not need to be involved in the determination (A/CN.9/1003, para. 27). However, if the expedited arbitration provisions were to include a set of criteria determining or triggering their application, the involvement of a third party would be necessary (A/CN.9/1003, paras. 29 and 34),[2] though this | Where the parties have not agreed to application of the Provisions, it is appropriate to allow for the intervention of the tribunal or the appointing authority. The tribunal, if constituted, or the appointing authority if the tribunal has not been constituted, *should* weigh in on the procedures suitable to the circumstances to resolve the dispute in a fair but frugal and fast manner. Some parties may need that "boost" or "assistance" to get them to focus on the benefits that the Provisions may |

[2] This would also be the case if the parties included a set of criteria in their arbitration agreement that would trigger the application of the expedited arbitration provisions or agreed that a third party would determine the application of the expedited arbitration provisions (A/CN.9/969, para. 95). In ad hoc arbitration, the absence of such a third party poses inherent limitations (A/CN.9/969, para. 94).

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | would not mean that the expedited arbitration provisions could be imposed on the parties (A/CN.9/1003, paras. 27 and 31).<br><br>28. Draft provision 1(6) is based on the suggestion that if a set of criteria for determining the application is included in the expedited arbitration provisions, the arbitral tribunal would be best placed to make the determination on their application, as it would be best informed about the overall circumstances of the case and could make an informed decision on whether expedited arbitration was suitable for the dispute (A/CN.9/1003, para. 36). The Working Group may wish to consider whether this approach should be taken (see also para. 30 below).<br><br>29. Draft provision 1(6) contains options, which largely depend on whether the set of criteria developed would be additional criteria to be met for the application of the expedited arbitration provisions (option A) or criteria to be used to determine their non-application (option B). In option A, the arbitral tribunal would determine their application regardless of whether there is a request by a party. In option B, the arbitral tribunal may, upon the request by one of the parties, determine that the expedited arbitration provisions are not suitable for the dispute. In both cases, the arbitral tribunal would be required to consult with the parties, but not obtain their consent, in making the determination (A/CN.9/1003, para. 28). The Working Group may, however, wish to consider the involvement of the parties in making the determination. The Working Group may also wish | provide taking into account the criteria in 1(5).<br><br>The MIAS Task Force suggests that option A is a better formulation, with the understanding that party agreement remains the touchstone for the application of the Provisions.<br><br>The MIAS Task Force expects that the tribunal naturally would discuss the determination with the parties and would provide reasoning (since the goal is agreement, the reasoning should provide the parties with the basis for agreeing to utilize the Provisions), Hence, it does not believe that additional text is necessary in this regard.<br><br>In response to Para. 30, the MIAS Task Force supports the flexibility provided by allowing the appointing authority to weigh in if the tribunal has not been constituted.<br><br>There are cost implications here but if the parties are not aware of, or familiar with, the Provisions, they should enjoy a net cost savings by the end of |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | to consider whether the determination by the arbitral tribunal would need to be accompanied by reasoning (A/CN.9/1003, para. 49).<br><br>30. The second sentence of draft provision 1(6) foresees the possibility that the arbitral tribunal might not have been constituted and would therefore not be in a position to make the determination. In that case, the appointing authority would make the determination upon request by a party and after hearing the views of the parties. The Working Group may wish to confirm whether this approach is appropriate or whether such determination should be left to the arbitral tribunal after it is constituted.<br><br>31. Whatever the circumstances may be, the administering institution, the arbitral tribunal or the appointing authority would be free to suggest the application of expedited arbitration provisions to the parties (A/CN.9/1003, paras. 28 and 31). The Working Group may wish to consider whether this possibility needs to be reflected in the expedited arbitration provisions (on a party's proposal to apply the expedited arbitration provisions, see para. 36 below). | the process. |
| 7. When it is determined that the Expedited Arbitration Provisions shall not apply to the arbitration pursuant to paragraphs 3 or 6, the arbitral tribunal shall remain in place, unless the parties agree to replace any arbitrator or reconstitute the arbitral tribunal. | Consequences of non-application of the Expedited Arbitration Provisions<br><br>32. Resorting to non-expedited arbitration after the expedited proceedings had begun can pose practical challenges, for example, with regard to the constitution of the arbitral tribunal (A/CN.9/969, para. 100; A/CN.9/1003, para. 44). Draft provision 1(7) attempts to preserve the | The MIAS Task Force supports this provision. |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | tribunal as constituted under the expedited arbitration provisions in such circumstances, unless otherwise agreed by the parties. The Working Group may wish to consider whether other aspects need to be addressed, for example, the availability of arbitrators for a longer period as well as at which stage the non-expedited arbitration would commence (A/CN.9/1003, paras. 44 and 51). | |
| Draft provision 2 (Notice of arbitration) | | |
| 1. The notice of arbitration shall comply with the requirements of article 3, paragraph 3 and article 20, paragraphs 2 to 4 of the UNCITRAL Arbitration Rules. | 34. Draft provision 2 addresses the treatment of a notice of arbitration as the statement of claim in expedited arbitration, possibly eliminating the need for the claimant to produce the statement of claim and thus expediting the proceedings. It should be read in conjunction with articles 3 and 20 of the UNCITRAL Arbitration Rules. Paragraph 1 reflects the understanding that in expedited arbitration, the notice of arbitration should serve as the statement of claim and that all evidence should be submitted with the notice of arbitration to the extent possible (A/CN.9/969, paras. 67 and 71). The notice of arbitration thus needs to meet the requirements of a statement of claim and, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant or contain references to them (article 20(4) of the UNCITRAL Arbitration Rules). Paragraph 1 reflects the views that: (i) requiring all evidence to be submitted with the notice of arbitration might be burdensome and counterproductive; (ii) it would be preferable to determine when evidence is to be submitted during the consultation between the | Draft provision 2(1) is ambitious but the MIAS Task Force supports it. It is unlikely that a claimant would utilize draft provision 2(1) unless the claimant was motivated to utilize the Provisions. And Article 20, Paragraph 4 only requires that a claimant submit documents and other evidence relied upon "as far as possible."<br><br>In response to Para. 36, the MIAS Task Force suggested that reference to the Provisions be made in the notice of arbitration and response to the notice in order to focus the parties on the Provisions and initiate the discussion to attempt to achieve agreement on the application of the Provisions (see the MIAS Task Force Report dated August |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | arbitral tribunal and the parties; and (iii) accompanying documents could be referenced by the claimant and produced at a later stage (A/CN.9/1003, paras. 81 and 101).<br><br>35. The Working Group may wish to confirm that a similar requirement would not apply to a response to the notice of arbitration. While a claimant may have sufficient time to produce a notice of arbitration complying with the requirements of a statement of claim, a respondent may not necessarily have the time to produce a response complying with the requirements of a statement of defence within 30 days required in article 4(1) of the UNCITRAL Arbitration Rules (A/CN.9/1003, para. 81). Moreover, it would not be reasonable to expect the respondent to provide all documents and other evidence it relies upon or to include references to them in the response (A/CN.9/969, para. 71). The Working Group may wish to consider the appropriate time frame within which the respondent would be required to react to a notice of arbitration that fulfils the requirements of a statement of claim in accordance with paragraph 1.<br><br>36. If the parties have not agreed to the applicability of the expedited arbitration provisions, a party may suggest to other parties that the provisions should apply to the arbitration. In that context, the Working Group may wish to consider adding the possibility of the notice of arbitration and the response thereto containing a proposal that the dispute should be settled in | 26, 2019 for proposed text). It continues to support this approach. It believes that the draft provisions are still a bit tentative on this point and that it would advance the goal of "expedition" by focusing on the notice and response to the notice as the Task Force has previously suggested. |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | accordance with the expedited arbitration provisions. This could be done by including in article 3(4) and article 4(2) of the UNCITRAL Arbitration Rules, the following formulation: *A proposal for the application of the Expedited Arbitration Provisions contained in the Appendix.* | |
| Draft provision 3 (Number of arbitrators) | | |
| Unless otherwise agreed by the parties, there shall be one arbitrator. | 38. Draft provision 3 is based on the understanding of the Working Group that an arbitral tribunal composed of a sole arbitrator should be the rule in expedited arbitration (A/CN.9/969, para. 37; A/CN.9/1003, para. 55). This is based on the assumption that arbitration with a sole arbitrator permits cost-savings, makes it easier for the arbitrator to handle the proceedings in a time-efficient manner, and removes scheduling difficulties that could arise in three-member tribunals (A/CN.9/969, para. 38). A sole arbitrator was described as a key characteristic of expedited arbitration, and one that would clearly differentiate expedited from non-expedited arbitration (A/CN.9/1003, para. 53). Draft provision 3 should be read in conjunction with article 7 of the UNCITRAL Arbitration Rules.<br><br>39. The phrase “unless otherwise agreed by the parties” is included to allow parties to agree on more than one arbitrator in expedited arbitration, in light of the particulars of the dispute and the preference for collective decision-making (A/CN.9/969, para. 40). While views were expressed that having a sole arbitrator should be mandatory in expedited arbitration, it was generally felt that the parties | The MIAS Task Force supports this text.<br><br>With respect to Para. 40, the MIAS Task Force does not believe that it is prudent to open the process up to change in the number of arbitrators after the parties have agreed to one arbitrator. It is likely that most disputes under the Expedited Arbitration Provisions will have manageable amounts in controversy suitable for resolution by a sole arbitrator in relation to the additional costs of resolution by a tribunal of three arbitrators. |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | could agree otherwise; a number of arbitral institutions permitted expedited arbitration with more than one arbitrator, which did not create difficulties in conducting expedited arbitration (A/CN.9/1003, para. 53).<br><br>40. Draft provision 3 reflects the Working Group's understanding that an appointing authority should not have any role in determining the number of arbitrators (A/CN.9/1003, paras. 54–55). The Working Group may wish to consider whether a request by a party that had initially agreed to a sole arbitrator to constitute a tribunal of more than one arbitrator should be considered along the same lines as a request for the non-application of the expedited arbitration provisions (see draft provision 1(4)). | |
| Draft provision 4 (Appointment of the arbitrator) | | |
| 1. The sole arbitrator shall be appointed jointly by the parties.<br><br>2. If within [a short time period to be determined, for example, 15 or 30 days] after [option A: receipt by the respondent of the notice of arbitration][option B: receipt by all other parties of a proposal for the appointment of a sole arbitrator] the parties have not reached agreement thereon, the arbitrator shall, at the request of a party, be appointed by the appointing authority in accordance with article 8(2) of the UNCITRAL Arbitration | 42. Draft provision 4 provides the appointment mechanism in expedited arbitration and should be read in conjunction with articles 8 to 14 of the UNCITRAL Arbitration Rules.<br><br>43. Paragraph 1 is based on the understanding that the parties should jointly agree on the arbitrator (A/CN.9/1003, para. 57). While it may be difficult for the parties to agree on the sole arbitrator, they should be encouraged to do so and they would themselves expect to be involved in the appointment process A/CN.9/1003, para. 57).<br><br>44. Paragraph 2 introduces a short time frame during which the parties shall agree on the sole | The MIAS Task Force supports draft provisions 4(1) and 4(2). With respect to 4(2), in its August 26, 2019 Report, the MIAS Task Force proposed 20 days after the designation of the appointing authority as the allowed time frame to reach agreement.<br><br>However, with the caveat below, it supports option B on the assumption that the notice of arbitration will satisfy draft provision 2(1) and the further assumption that the Provisions will be applicable by the terms of |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| Rules. | arbitrator and further provides an appointment mechanism in the absence of an agreement by the parties. This is based on the understanding of the Working Group that shortening that time frame and envisaging the involvement of an appointing authority thereafter could sufficiently expedite the process (A/CN.9/1003, para. 58).<br><br>45. The Working Group may wish to address a few aspects with regard to paragraph 2, in relation to article 8(1) of the UNCITRAL Arbitration Rules. The first aspect relates to the period of time during which the parties could agree on the sole arbitrator and when that period would commence; either upon the receipt by the respondent of the notice of arbitration (option A) or upon the receipt by the parties of the proposal for the sole arbitrator (option B) (A/CN.9/1003, para. 62). A short period after that point in time would be provided to the parties to agree on the sole arbitrator (A/CN.9/1003, para. 61). Parties would be free to request the intervention of the appointing authority even before the lapse of that time period, if they are confident that no agreement would be reached (A/CN.9/1003, para. 62).<br><br>46. The second aspect relates to how the appointing authority would become involved in the process. The phrase “at the request of a party” reflects the view that the appointing authority shall begin to be involved upon the request of one of the parties, as the appointing authority would likely not have any knowledge about the dispute (unless it is the administering institution) | the arbitration agreement or by the agreement of the parties. Option B is also consistent with Article 8(1) of the Rules.<br><br>The caveat mirrors Para. 47. The MIAS Task Force had proposed similar text in its August 26, 2019 Report and supports the concept that the appointing authority will appoint the sole arbitrator in accordance with Article 8(2) if the parties do not reach an agreement.<br><br>Article 8(2) gives the appointing authority sufficient discretion to use the list system or if “not appropriate” to eschew it and thus with respect to Para. 48, the MIAS Task Force does not believe a change is needed.<br><br>With respect to Para. 49, the MIAS Task Force does not believe that the intervention of a court needs to be envisaged in the Provisions. In the rare circumstance where this may be the case, the parties should be able to navigate the appointment process, just as they, presumably do now under the Rules in such a circumstance. |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | (A/CN.9/1003, para. 60). This is based on the understanding that even if the time frame has lapsed, one of the parties would need to request the intervention of the appointing authority, since the parties might, for example, still be negotiating an agreement on the sole arbitrator (A/CN.9/1003, para. 62).<br><br>47. If the Working Group considers that the appointing authority should be automatically involved after the lapse of the time frame without the request from any party, it may wish to consider the following formulation for draft provision 4:<br><br>*Within [a short time period to be determined, for example, 15 or 30 days] after [option A: receipt by the respondent of the notice of arbitration][option B: receipt by all other parties of a proposal for the appointment of a sole arbitrator], the parties shall jointly agree on the sole arbitrator, failing which the appointing authority would appoint the arbitrator in accordance with article 8(2) of the UNCITRAL Arbitration Rules*.<br><br>48. The third aspect relates to how the appointing authority would appoint the arbitrator. In this regard, the Working Group may wish to confirm that the list procedure in article 8(2) of the UNCITRAL Arbitration Rules would also apply to expedited arbitration and that the time frame of 15 days in subparagraph (b) is appropriate.<br><br>49. The last aspect relates to whether the intervention of a third party other than the appointing authority should be envisaged in the | |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | expedited arbitration provisions. This is based on the view that in *ad hoc* arbitration, the appointment of the arbitrator could in some States be equally carried out by a judge of a domestic court (A/CN.9/969, paras. 44–45; A/CN.9/1003, para. 68).[3] The Working Group may wish to consider whether this possibility needs to be reflected in draft provision 4 and if so, how. | |
| Appointment of more than one arbitrator | 50. When more than one arbitrator is to be appointed in expedited arbitration, the appointment mechanism in articles 9 and 10 of the UNCITRAL Arbitration Rules would apply (A/CN.9/1003, para. 64). The Working Group may wish to consider whether the time frame of 30 days in article 9 should be shortened, considering however that all parties should be given sufficient time to engage in the appointment process (A/CN.9/1003, paras. 61 and 64). | In its August 26, 2019 Report, the MIAS Task Force suggested the following text to address Para. 50:<br><br>1. If three arbitrators are to be appointed as provided in App. Article 4., the arbitrators shall be selected as under Article 9 except as follows:<br><br>(a) The parties must select one arbitrator within thirty (30) days after appointment of the appointing authority.<br><br>(b) If subparagraph (a) does not result in the appointment of one or both arbitrators, the appointing authority shall promptly appoint one or both arbitrators, as the case may be, |

[3] At the sixty-ninth session, a suggestion was made that, following article 11 of the UNCITRAL Model Law on International Commercial Arbitration, such appointment could be made by the court or competent authority at the place of arbitration. In response, it was noted that not all jurisdictions had enacted legislation based on the Model Law and that providing national courts or competent authorities with such a role might raise difficulties with regard to disputes of an international nature.

| Draft Provision | Secretariat Notes | MIAS Task Force Comment |
|---|---|---|
| | | without utilizing the list procedure in Article 8.<br><br>(c) After the two arbitrators are appointed if they do not agree on the choice of the presiding arbitrator within fifteen (15) days after the expiration of the period set forth in App. Article 4.3(a), the appointing authority shall appoint the presiding arbitrator pursuant to Article 8.2. |
| Availability of the arbitrator and disclosures by the arbitrator | 51. In expedited arbitration, arbitrators are usually required to formally confirm their availability to ensure the expeditious conduct of the arbitration and to give due regard to the expedited nature of the proceedings (see draft provision 8(2)). The Working Group may wish to consider whether the phrase provided for in the model statements of independence pursuant to article 11 of the UNCITRAL Arbitration Rules[4] would serve that purpose or should be further elaborated (for example, requiring the disclosure of all pending cases where the person serves as an arbitrator). The Working Group may wish to further consider the consequences of non-compliance by the arbitrator in this regard (see para. 106 below). | In its August 26, 2019 Report, the Task Force addressed Para. 51 and 52 in this manner:<br><br>"The appointing authority should obtain written commitments from the arbitrator candidates to comply with the timeline established in the Expedited Arbitration. That may shrink the pool of candidates, but as the field of arbitration continues to grow, and as training opportunities continue to exist for arbitrators, the number and quality of arbitrators should also continue to grow. There is no |

[4] The phrase reads: "I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules".

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | 52. The Working Group may also wish to confirm that article 11 of the UNCITRAL Arbitration Rules on disclosure by arbitrators also applies to expedited arbitration. | text proposed stating this; the assumption is that the appointing authority will obtain such commitments."<br><br>Hence, the Task Force supports whatever mechanism is adopted to achieve this commitment. |
| Challenges of arbitrators and replacement of an arbitrator | 53. The Working Group may wish to confirm that articles 12 and 13 of the UNCITRAL Arbitration Rules on challenges of arbitrators would also apply to expedited arbitration (A/CN.9/1003, para. 65) and further consider whether the time frame of 15 and 30 days in article 13 would need to be shortened. The Working Group may also wish to confirm that article 14 of the UNCITRAL Arbitration Rules regarding the replacement of the arbitrator would apply to expedited arbitration. | In its August 26, 2019 Report, the MIAS Task Force wrote:<br><br>"The Task Force acknowledges that Articles 12 and 13 on challenges to, and Article 14 on replacement of, an arbitrator may need to be reviewed but regards that exercise as one that can be easily addressed as needed once the appointment process is otherwise agreed upon."<br><br>It maintains this view and supports a slight shortening of the time frame of 15 and 30 days in Article 13 to 10 and 20 days. |
| Draft Provision 5 (Designating and appointing authorities) | | |
| 1. Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, including the Secretary-General of the Permanent Court of Arbitration at The Hague | This is the current text of Article 6 of the UNCITRAL Arbitration Rules (Designating and appointing authorities). There is no need to make a change in the Appendix. | |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| (hereinafter called the "PCA"), one of whom would serve as appointing authority. | | |
| 2. If all parties have not agreed on the choice of an appointing authority within [30] days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request the Secretary-General of the PCA to designate the appointing authority.<br><br>[2. If all parties have not agreed on the choice of an appointing authority within [30] days after a proposal made in accordance with paragraph 1 has been received by all other parties,<br><br>Option A: any party may request the Secretary-General of the PCA to | Current text of Article 6 of the UNCITRAL Arbitration Rules (Designating and appointing authorities).<br><br>*2. If all parties have not agreed on the choice of an appointing authority within 30 days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request the Secretary-General of the PCA to designate the appointing authority.*<br><br>Secretariat's Note (continued):<br><br>55. The Commission, at its forty-second session, in 2009, agreed that the existing mechanism of designating and appointing authorities, as designed under the 1976 version, should not be altered.[5] In light of policy principles enunciated by the Commission,[6] it was | In its August 26, 2019 Report, the MIAS Task Force proposed this text:<br><br>"The appointing authority is determined under Article 6 of the Rules except that if all parties have not agreed on the choice of an appointing authority within 30 days after a proposal made in accordance with Article 6.1, the appointing authority shall be the Secretary-General of the PCA."<br><br>It continues to support this proposed text.<br><br>With respect to Para. 58, the Task Force supports the |

[5] *Official Records of the General Assembly, Sixty-fourth session, Supplement No. 17* (A/64/17), para. 293.

[6] Ibid, paras. 292–297. Excerpts are as follows: "It was recalled that the mechanism regarding designating and appointing authorities under the 1976 version of the Rules was not considered to be a problematic area by the Working Group, …. That mechanism was generally not reported as having created delays for the parties or difficulties in the functioning of the Rules. It was further said that since the provision on designating and appointing authorities under the 1976 version of the Rules did not cause any significant burden and offered benefits, there was no need to alter the structure of the Rules in that respect. In the context of that discussion, the Commission recognized the expertise and the sense of accountability of the PCA, as well as the quality of the services it rendered under the UNCITRAL Arbitration Rules. The two-stage process defined under the 1976 version of the Rules was said to offer flexibility (by allowing the designation of a wide range of appointing authorities to suit the needs of particular cases) that a default appointing authority would preclude. It was observed that the Rules could easily be adapted for use in a wide variety of circumstances covering a broad range of disputes and that one measure of the UNCITRAL Arbitration Rules'

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| designate the appointing authority or to serve as appointing authority.<br><br>Option B: the Secretary-General of the PCA [or any other organization to be determined] would serve as appointing authority.<br><br>Option C: and no request has been made by any party to the Secretary-General of the PCA to designate the appointing authority, the Secretary-General of the PCA [or any other organization to be determined] would serve as appointing authority.]] | emphasized that the UNCITRAL Arbitration Rules should not contain a default rule to the effect that one institution would be singled out as the default appointing authority and would be identified in the UNCITRAL Arbitration Rules as a provider of direct assistance to the parties.[7]<br><br>56. At the seventieth session of the Working Group, the Secretariat was requested to prepare options with regard to designating and appointing authorities in expedited arbitration, including what was currently provided for in article 6 of the UNCITRAL Arbitration Rules and possible adaptations thereto (A/CN.9/1003, para. 69). The Working Group may, however, wish to consider whether it wishes to revisit the conclusion it reached in 2010 in the context of expedited arbitration. | proposed dialogue to confirm that the approach proposed by the Task Force is still the most sensible one.<br><br>The Task Force respects the interest in utilizing the services of a domestic court as long as there is some assurance that there will not be delays in formation of the tribunal.<br><br>The issue of prompt but fair formation of the tribunal is a "critical path" item to achieve the goals of expedited arbitration provisions. That is the performance standard. So |

success in achieving broad applicability and in their ability to meet the needs of parties in a wide range of legal cultures and types of disputes had been the significant number of independent arbitral institutions that had declared themselves willing to administer (and that, in fact, administered) arbitrations under the UNCITRAL Arbitration Rules, in addition to proceedings under their own rules. It was also said that the proposal to expand the role of the PCA under the Rules, if adopted, would constitute not a mere technical adjustment, but a change in the nature of the Rules and would run contrary to the guiding principles set by the Commission, that any revision of the Rules should not alter the structure of the text, its spirit or its drafting style and should respect the flexibility of the text rather than make it more complex. It was further said that the PCA had been established … to deal with disputes involving States and not to handle disputes arising in the context of commercial relations among private parties, which were said to be the primary focus of the UNCITRAL Arbitration Rules. Expanding the role of the PCA, it was said, would appear as favouring the PCA over other arbitral organizations, despite the PCA having little experience in the area of private commercial disputes, as compared with other arbitration organizations that had jurisdiction over such cases. The Commission was of the view that the establishment of any central administrative authority under the Rules would create a need for providing (in the Rules or in an accompanying document) guidance on the conditions under which such a central authority would perform its functions. The Commission agreed that the work on the revision of the Rules should not be delayed by additional work that would need to be done in that respect if the proposal to expand the role of the PCA were to be pursued".

[7] Ibid., para. 297.

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | 58. In relation to draft provision 5, the Working Group may wish to consider the suggestion that the appointment of an arbitrator could be carried out by a judge of a domestic court in some States (see para. 49 above). Also considering the global reach of the UNCITRAL Arbitration Rules, it may wish to seek whether other institutions would be in a position and willing to take the role of default appointing authority under draft provision 5. | whatever appointing authority is decided upon, that needs to be the goal. |
| Need for the parties to agree on an appointing authority | 59. The model arbitration clause for contracts found in the Annex to the UNCITRAL Arbitration Rules already highlights the importance of the parties agreeing on an appointing authority (see paragraph (a) therein). The Working Group may wish to consider whether similar wording would be sufficient to highlight the same need in expedited arbitration (A/CN.9/1003, para. 68). | The MIAS Task Force supports the concept expressed in Para. 59 with whatever mechanism the Working Group thinks would achieve the goal of party agreement on the appointing authority in a timely manner. |
| Draft provision 6 (Case management conference and provisional timetable) | 61. Draft provision 6 is based on the understanding of the Working Group that the arbitral tribunal should consult with the parties on how to organize the proceedings, possibly through a case management conference and other means (A/CN.9/1003, para. 75). Draft provision 6 should be read in conjunction with article 17 of the UNCITRAL Arbitration Rules.<br><br>62. A case management conference can be an important procedural tool, which permits an arbitral tribunal to give parties a timely indication as to the organization of the proceedings and the manner in which it intends to proceed (A/CN.9/969, para. 56).[8] A case management | The MIAS Task Force addressed this topic in its proposed Appendix Article 6 and supports the view expressed in Paras. 61 and 62. |

[8] See Note 1 of the UNCITRAL Notes on Organizing Arbitral Proceedings (2016, hereinafter "the 2016 UNCITRAL

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | conference and procedural timetables can also be useful tools for arbitrators and parties to manage the key time frames of the proceedings (A/CN.9/969, para. 51). The Working Group may wish to confirm whether the use of the term "case management conference" is appropriate.[9] | |
| 1. As soon as practicable after its constitution, the arbitral tribunal [may] [shall] convene a case management conference to consult the parties on the manner in which the arbitral tribunal would conduct the arbitration in accordance with article 17(1) of the UNCITRAL Arbitration Rules. | 63. With respect to paragraph 1, the Working Group may wish to further consider whether the arbitral tribunal should be required to hold a case management conference. During the previous deliberations, diverging views were expressed. One view was that as a case management conference would contribute to streamlining the overall procedure, it should be an essential element of expedited arbitration. Another view was that flexibility should be left to the tribunal whether to hold a case management conference, as that would largely depend on the circumstances of the case. A case management conference might not be appropriate or not even be necessary in certain types of disputes, which could be decided in a rather short time period (A/CN.9/969, para. 58). Requiring a case management conference may burden the tribunal and allow parties to raise due process issues, if not held (A/CN.9/1003, para. 70).<br><br>64. Regardless of whether a case management conference would be required or not, it would be useful to holding one at the very early stages of | The MIAS Task Force supports this text but believes that "shall" and not "may" is appropriate. If "expedited" is to have any meaning, the tribunal has to be engaged with the parties early. The use of "shall" supports the importance of early engagement.<br><br>If there is a serious concern that flexibility is the greater good here, the text could be modified to say "shall" but with the caveat, "unless the arbitration tribunal decides that a case management conference is not needed in the circumstances of the case."<br><br>A case management conference can be held over the telephone or though other electronic means. And even where the parties have already agreed on the case management terms |

Notes"), available at: www.uncitral.org/pdf/english/texts/arbitration/arb-notes/arb-notes-2016-e.pdf. Note 1 highlights the importance of holding case management meetings at which the parties and the arbitral tribunal can establish strict time limits.

[9] The Notes on Organizing Arbitral Proceedings uses the term "procedural meetings".

| Draft Provision | Secretariat Notes | MIAS Task Force Comment |
|---|---|---|
| | the proceedings (A/CN.9/969, para. 62; A/CN.9/1003, para. 71). It was generally felt that flexibility should be left to the arbitral tribunal on when to hold a case management conference, which would depend largely on the circumstances of the case (A/CN.9/1003, para. 71). The Working Group may wish to consider whether the phrase "as soon as practicable" in paragraph 1, which provides flexibility to the tribunal on "when" to hold a case management conference, is appropriate. | there is still value in case management conference where the tribunal and the parties actually speak with each other even if it is for no purpose other than to confirm the agreed upon process.<br><br>In its August 26, 2019 Report, the MIAS Task Force proposed this text:<br><br>"Promptly after its formation, the arbitral tribunal shall schedule a case management conference and, thereafter issue a procedural order, to address the following:<br><br>a. Identify the issues for resolution.<br><br>b. Establish a strict, not a provisional, timetable, which the arbitral tribunal may modify at the request of any party if necessary to ensure a fair and efficient process.<br><br>c. Determine whether a statement of claim under Article 20, and a statement of defence under Article 21, shall be filed. Neither statement is required unless requested by the arbitral |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | | tribunal.<br><br>d. Decide whether to allow or limit requests for document production.<br><br>e. Decide whether to limit the number, length and scope of written submissions and written witness evidence (both fact witnesses and experts)."<br><br>The MIAS Task Force continues to believe some or all of these topics are appropriate for early discussion with the parties and that a case management conference makes sense as the mechanism for such discussion. |
| 2. Such a conference may be conducted through a meeting in person, by telephone, video conference, or other means of communication. In the absence of an agreement of the parties, the arbitral tribunal shall determine the appropriate means by which the conference will be conducted. | 65. Paragraph 2 deals with the conduct of a case management conference to consult with the parties. It is based on the understanding that a case management conference need not be done in person (A/CN.9/969, para. 63) and that the arbitral tribunal should be able to determine the appropriate means, including the most convenient means of communication (A/CN.9/1003, para. 74). It was further mentioned that if sufficient flexibility were to be provided to the arbitral tribunal in holding a case management conference (for example, through written exchanges which need not be simultaneous for all the parties), it would not be so burdensome to meet the requirement that a case management conference must be held in expedited arbitration (A/CN.9/1003, para. 74, | The MIAS Task Force supports this text. |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | see also para. 63 above). | |
| 3. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish a provisional timetable of the arbitration in accordance with article 17(2) of the UNCITRAL Arbitration Rules. In establishing the timetable, the arbitral tribunal should take into account the time frames in draft provisions 7 and 13. | 66. Paragraph 3 deals with the establishment of a provisional timetable[10] in expedited arbitration. The Working Group may wish to consider whether paragraph 3 is necessary as article 17(2) of the UNCITRAL Arbitration Rules already provides for the establishment of a provisional timetable. If so, the Working Group may wish to consider whether a shorter time frame should be set in the context of expedited arbitration (for example, within [ ] days after the constitution of the arbitral tribunal) (A/CN.9/1003, para. 72). The Working Group may wish to note that the establishment of a timetable would not need to be linked with whether a case management conference was held or its timing. The second sentence of paragraph 3 reflects the views that in establishing the provisional timetable, the arbitral tribunal needs to take into account the overall time frame that would govern the proceedings and/or the time frame for the issuance of the award (A/CN.9/1003, para. 73). | Subject to the language set forth above that was proposed in its August 26, 2019 Report (that the timetable be strict, and not provisional) the MIAS Task Force supports this text. |
| Draft provision 7 (Overall period of time and calculation of the period) | 67. The general understanding of the Working Group was that while shorter time frames constituted one of the key characteristics of expedited arbitration, due consideration should be given to preserving the flexible nature of the proceedings and complying with due process requirements (A/CN.9/1003, para. 77). Furthermore, it was generally felt that specific time | The MIAS Task Force agrees with the sentiment expressed in Para. 67. |

[10] A procedural timetable may serve, for instance, to indicate time limits for the communication of written statements, witness statements, expert reports and documentary evidence, so that the parties may plan early in the arbitral proceedings. A procedural timetable may include provisional dates for hearings. See the 2016 UNCITRAL Notes, Note 1, para. 13.

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | frames applicable to the different stages of the proceedings would be difficult to introduce in the expedited arbitration provisions, as time periods would differ depending on the circumstances of the case (A/CN.9/969, para. 51; A/CN.9/1003, para. 77). Therefore, it was suggested that time frames for different stages of the proceedings should be determined by the parties and the arbitral tribunal in light of the characteristics of the case, for example, during a case management conference (A/CN.9/1003, para. 77). | |
| 1. The overall period of time of the arbitral proceedings under the Expedited Arbitration Provisions shall be no longer than [12 months].<br><br>2. Arbitration proceedings are deemed to commence on the date on which the notice of arbitration is received by the respondent and terminate on the date [the arbitral tribunal makes the award] [the parties receive the award]. | 69. Draft provision 7 is based on the suggestion that the expedited arbitration provisions could include an overall duration rather than establishing time frames for each procedural stage, which would preserve the flexibility in the timing of the individual stages (A/CN.9/1003, para. 77). The Working Group may wish to consider whether establishing an overall period of time would be useful in expedited arbitration, in light of draft provision 13, which provides time frames for the making of the award.<br><br>70. For the purpose of calculating time frames within the expedited arbitration provisions (including the overall period of time in draft provision 7(1)), the Working Group may wish to consider that the time period shall run the day following:<br><br>• The day when a notice of arbitration is received (article 2(6) of the UNCITRAL Arbitration Rules – default rule);<br>• The day when a response to the notice of arbitration is received; | The MIAS Task Force supports this text. As for the time period and the trigger date, there are a number of options available. In its Report dated August 26, 2019, the MIAS Task Force suggested this text:<br><br>"1. The arbitral tribunal shall issue an award no later than [nine (9) months] [seven (7) months] from [the date that the arbitral tribunal receives the notice of arbitration and, if filed, the response to the notice of arbitration] [the date of the case management conference]. [The arbitral tribunal is permitted to extend this time period in exceptional circumstances or where the extension is justified.]<br><br>2. With the approval of the arbitral tribunal, the parties may |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | • The day when the arbitral proceedings commence (deemed to commence on the day on which a notice of arbitration is received – article 3(2) of the UNCITRAL Arbitration Rules);<br>• The day when the proposal for the appointment of a sole arbitrator is received;<br>• The day when the parties agree on a sole arbitrator or the day when the parties are notified of the appointment of a sole arbitrator;<br>• The day when the arbitral tribunal is constituted (in case the parties have agreed on more than one arbitrator);<br>• The day when the case management conference is held (if required);<br>• The day when the provisional timetable is established or agreed upon;<br>• The day when the statement of claim is communicated to the other party and the arbitral tribunal (if different from the notice of arbitration);<br>• The day when the statement of defence is communicated to the other party and the arbitral tribunal; or<br>• The day that the arbitral tribunal declared the hearings closed. | agree on a shorter time period for issuance of an award."<br><br>In the end, if the tribunal has some flexibility, the goal should be one of reasonableness under the circumstances bearing in mind that the provisions are designed to "expedite" without compromising fairness. |
| Shortening time frames within the UNCITRAL Arbitration Rules | 71. The Working Group may wish to consider whether any of the time frames (periods of time) in the UNCITRAL Arbitration Rules need to be fixed or shortened in the context of expedited arbitration (A/CN.9/1003, para. 78, see also paras. 35, 48, 50, 53, 57 above and 109 below). | Without a specific reference to what Rules might be implicated by this suggestion (beyond those addressed above or below), the MIAS Task Force does not have a view yet on Para. 71. |
| Non-compliance with the time frame | 72. The Working Group may wish to consider whether the expedited arbitration provisions should provide means for the arbitral tribunal or other authority to strictly enforce time frames. This | In its Reported dated August 26, 2019, the MIAS Task Force wrote: |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | question is closely related to the consequences for non-compliance by the parties (A/CN.9/1003, para. 80, on the consequences for non-compliance by the tribunal, see paras. 51 above and 106 below). The Working Group may wish to confirm that article 30 of the UNCITRAL Arbitration Rules would also apply to expedited arbitration and consider whether any further elaboration is required.<br><br>73. With regard to late submissions, considering that flexibility is provided to the arbitral tribunal in setting and modifying time frames, it would be reasonable that the arbitral tribunal should also have the flexibility to accept such submissions, but only in exceptional circumstances and when the extension is justified. In accepting late submissions, the arbitral tribunal would be required to consider: (a) the reason why it was not possible for the party to make the submissions within the time frame; (b) at which stage of the proceedings the submissions are being made; (c) the impact of rejecting the submissions on the right of parties to present their case; and (d) the likelihood that the procedure could be continued in an expedited manner (A/CN.9/969, para. 69). | "Article 30.3 of the plenary Rules already allows for making an award if a party fails to produce evidence within an established time period and is unable to show sufficient cause for such failure. Given the lower amounts in controversy in an expedited arbitration, and the parties' agreement to engage in expedited arbitration, one should expect that missing a deadline will be the exception. In that regard, it may be prudent to have client representatives present at the case management conference to discuss the importance of honoring deadlines in relation to controlling the costs of arbitration and producing an award in a timely manner."<br><br>It continues to hold these views.<br><br>It also agrees with the sentiment expressed in Para. 73. |
| Draft provision 8 (Discretion of the arbitral tribunal) | | |
| 1. In conducting arbitration under the Expedited Arbitration Provisions, the arbitral tribunal, after inviting the parties to express their views, may: (a) fix the period of time for any stage of the | 75. It was generally felt that articles 17, 24 and 27 of the UNCITRAL Arbitration Rules would also apply to expedited arbitration and that the discretion of the arbitral tribunal in the conduct of the arbitration should be preserved for the sake of flexibility (A/CN.9/1003, para. 78). For example, | The MIAS Task Force supports this text and supports the use of the bracketed text "extend or."<br><br>It sees no need to add to the text of 8(2) as mentioned in Para. 77. |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| proceedings; (b) [extend or] abridge the overall period of time for the completion the arbitral proceeding provided in draft provision 7 and any other period of time prescribed under the UNCITRAL Arbitration Rules or the Expedited Arbitration Provisions ; and (c) [extend or] abridge any period of time agreed by the parties.<br><br>2. The arbitral tribunal, in exercising its discretion, shall take into account the expeditious nature of the proceedings. | article 17 of the UNCITRAL Arbitration Rules gives broad discretion to the arbitral tribunal: (i) to conduct the arbitration in the manner that it considers appropriate; (ii) to establish a provisional timetable after inviting the parties to express their views; and (iii) at any time, to extend or abridge any period of time prescribed under the UNCITRAL Arbitration Rules or agreed by the parties, after inviting the parties to express their views. Articles 24 and 27 of the UNCITRAL Arbitration Rules further provide that the arbitral tribunal may fix the period of time for written statements and taking evidence.<br><br>76. The existing requirements provided for in article 17(1) of the UNCITRAL Arbitration Rules would continue to apply to expedited arbitration, mainly that:<br><br>(i) the parties are treated with equality; (ii) at an appropriate stage of the proceedings, each party is given a reasonable opportunity to present its case; and (iii) in exercising its discretion, that the arbitral tribunal shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.<br><br>77. Draft provision 8(1) builds on the suggestion that the expedited arbitration provisions should explicitly state that the arbitral tribunal may impose time frames on the parties, including the overall period of the proceedings. One advantage of doing so would be that it would reinforce the discretion of the arbitral tribunal, thus | |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | limiting the risk of challenges at the enforcement stage (A/CN.9/969, para 50). It also reflects the understanding that the arbitral tribunal should have the authority to modify time frames prescribed in the UNCITRAL Arbitration Rules and the expedited arbitration provisions but not the authority to alter time frames agreed by the parties without consulting them (A/CN.9/1003, para. 79). Draft provision 8(2) is based on the suggestion that the expedited arbitration provisions should highlight the need for the arbitral tribunal to take into account the expeditious nature of the proceedings in exercising its discretion (A/CN.9/1003, paras. 78 and 112). The Working Group may wish to consider whether the expectation of the parties to expedited resolution of the dispute would need to be mentioned in that paragraph.<br><br>78. It was generally felt that even after a time frame had been fixed in accordance with draft provision 8(1), flexibility should be provided to adjust the time period, but only in exceptional circumstances and when the extension was justified (A/CN.9/969, para. 52). The Working Group may wish to consider whether any other authority would need to be involved in the granting of an extension (see paras. 104–105 below). | |
| Draft provision 9 (Counterclaims) and Draft provision 10 (Amendments to the claim or defence) | 80. Draft provisions 9 and 10 reflect the views that counterclaims and additional claims could result in delays in the proceedings and the extent to which they should be allowed in expedited arbitration needs to be considered in light of its accelerated nature and due process requirements (A/CN.9/969, paras. 66–67; A/CN.9/1003, para. | The MIAS Task Force agrees with the goals identified in Para. 80. |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | 88). Both provisions reflect the understanding of the Working Group that the right of the parties to make counterclaims and additional claims should be preserved, while limitations could be introduced leaving the discretion of the arbitral tribunal to lift such limitations (A/CN.9/1003, para. 88). | |
| Draft provision 9 (Counterclaims) | | |
| 1. Amendments to the claim or defence provided under article 22 of the UNCITRAL Arbitration Rules shall be made no later than [** days after the receipt of the statement of defence] [a period of time to be determined by the arbitral tribunal].<br><br>2. After the period of time in paragraph 1, a party may not amend or supplement its claim or defence, unless the arbitral tribunal considers it appropriate to allow such amendment or supplement having regard to the delay in making it and prejudice to other parties or any other circumstances. | 81. Draft provision 9 should be read in conjunction with article 21(3) of the UNCITRAL Arbitration Rules, which provide that a respondent may make a counterclaim or rely on a claim for the purpose of a set-off "in its statement of defence", or "at a later stage of the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances". Paragraph 1 requires the respondent to make such counterclaims in its response to the notice of arbitration considering that the claimant would be required to meet the requirements of a statement of claim in its notice of arbitration pursuant to draft provision 2(1). Under paragraph 2, an extension of the time frame can be provided by the arbitral tribunal under justifiable circumstances. For example, during its consultation with the parties, the arbitral tribunal could decide whether it would accept counterclaims at a later stage (A/CN.9/1003, para. 89). | The MIAS Task Force supports the principles underlying draft provision 9(1). In its August 26, 2019 Report, the Task Force envisioned that the tribunal would address completion of the pleadings to the extent that the notice of arbitration and response to the notice had not effectively done so. So it supports the second bracketed text in draft provision 9(1).<br><br>It supports the text of 9(2). |
| Draft provision 10 (Amendments to the claim or defence) | | |
| 1. The response to the notice of arbitration shall contain any counterclaim or claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction | 82. Draft provision 10 should be read in conjunction with article 22 of the UNCITRAL Arbitration Rules, which provides that "during the course of the arbitral proceedings", a party may amend or supplement its claim or defence, unless | The MIAS Task Force supports this text. |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| over it.<br><br>2. The respondent may make a counterclaim or rely on a claim for the purpose of a set-off at a later stage of the proceedings, only if the arbitral tribunal decides that the delay was justified under the circumstances. | the arbitral tribunal considers it inappropriate to allow such amendment or supplement. Paragraph 1 reflects the understanding of the Working Group that the parties should be provided a short time frame during which they could amend or supplement their claim or defence (A/CN.9/1003, para. 90), rather than being entirely restricted from doing so. Paragraph 2 reflects the understanding that the parties would be limited from raising any additional claims after the time period prescribed in paragraph 1, unless the arbitral tribunal considers it appropriate to allow such amendment or supplement. In exercising this discretion, the same standard as provided for in article 22 of the UNCITRAL Arbitration Rules would apply. | |
| Relationship with the set of criteria for determining the application of expedited arbitration | 83. The Working Group may wish to review the impact that counterclaims and additional claims may have on the application of the expedited arbitration provisions. Such claims could result in the dispute no longer meeting the criteria for application of the expedited arbitration (see paras. 24–26 above). | The MIAS Task Force agrees with the sentiment expressed in Para. 83. |
| Cost allocation | 84. A suggestion was made that the expedited arbitration provisions should expressly provide that the arbitral tribunal could apportion the cost related to the counterclaims or additional claims to the party making it, if the claims were found to be frivolous. In that context, the Working Group may wish to consider the following formulation in conjunction with article 42 of the UNCITRAL Arbitration Rules:<br><br>*The arbitral tribunal may allocate such costs with respect to counterclaims and additional claims to* | The MIAS Task Force supports the text suggested in Para. 84. Another formulation would be "if it determines that the claim was frivolous, groundless, or unreasonable, or continued to be pursued after it became apparent that it was frivolous, groundless, or unreasonable." |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | *the party that made such claims, if it determines that those claims were [frivolous] [manifestly without legal merit].* | |
| Draft provision 11 (Further written statements and evidence) | | |
| 1. The arbitral tribunal may limit the parties from presenting further written statements.<br><br>2. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, shall be presented in writing and signed by them.<br><br>3. The arbitral tribunal may limit the production of documents, exhibits or other evidence. | 85. The understanding of the Working Group was that flexibility should be left to the arbitral tribunal on the taking of evidence, also providing the parties sufficient time to present witness statements and expert opinions (A/CN.9/969, para. 73; A/CN.9/1003, para. 99). This understanding was also based on the fact that other rules on expedited arbitration usually do not address how evidence is to be taken (A/CN.9/969, para. 73) and approaches of arbitration laws and practices vary.[11]<br><br>86. Draft provision 11 should be read in conjunction with articles 24 and 27 of the UNCITRAL Arbitration Rules. In relation to article 24 of the UNCITRAL Arbitration Rules, draft provision 11(1) explicitly mentions that the arbitral tribunal may limit the parties from presenting further written statements. If this approach is considered too restrictive, the introduction of a time frame during which further written statements could be made might be considered. In relation to the second sentence of article 27(2) of the UNCITRAL Arbitration Rules, draft provision 11(2) provides that the default rule for witness statements would be that they are to be in writing | The MIAS Task Force Report dated August 26, 2019 contained similar text, and the Task Force supports this text as well. |

[11] The 2016 UNCITRAL Notes, Note 13. See also the IBA Rules on the Taking of Evidence in International Arbitration which have sought over the years to bring a more harmonized approach among various legal traditions and the recent Rules on the Efficient Conduct of Proceedings in International Arbitration ("The Prague Rules").

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | (A/CN.9/1003, para. 100). And in relation to article 27(3) of the UNCITRAL Arbitration Rules, draft provision 11(3) explicitly mentions that the arbitral tribunal may limit the production of documentary and other evidence.<br><br>87. Draft provision 11 would make it easier for the arbitral tribunal to impose limitations regarding the taking of evidence and alert the parties that extensive production of evidence would not be possible under the expedited arbitration provisions (A/CN.9/1003, paras. 80 and 99). | |
| Draft provision 12 (Hearings) | 89. Draft provision 12 addresses the holding of hearings in expedited arbitration (A/CN.9/969, para. 75; A/CN.9/1003, paras. 93–95). Draft provision 12 should be read in conjunction with article 17(3) of the UNCITRAL Arbitration Rules, which provides that if any party requests hearings at an appropriate stage of the proceedings, the arbitral tribunal is obliged to hold hearings for the presentation of evidence by witnesses, including expert witnesses or for oral argument. Parties themselves may also agree to hold hearings, in which case the agreement will bind the arbitral tribunal.<br><br>90. Article 17(3) of the UNCITRAL Arbitration Rules foresees the possibility of the arbitral tribunal “not” holding a hearing in the absence of a request from any of the parties and to conduct the proceeding on the basis of documents and other material. It was observed that the arbitral tribunal should make efforts to not hold hearings in expedited arbitration to the extent possible to reduce time and cost (A/CN.9/1003, para. 94). | The MIAS Task Force agrees with the sentiments expressed in Para. 89 and 90. |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | Parties may also agree to not hold hearings, for example, to avoid delay and save costs. While a view was expressed that the arbitral tribunal should still have the discretion to hold hearings in that case, it might not be productive as the parties may be reluctant to take part in the hearings. | |
| 1. A request for hearings may be made only within [ ] days after [the case management conference]. | 91. Article 17(3) of the UNCITRAL Arbitration Rules provides that any party may request hearings "at an appropriate stage of the proceedings". The Working Group may wish to consider draft provision 12(1), which prescribes a time frame during which a party can request a hearing, for example, within a few days after the case management conference is held (for other possibilities, see para. 70 above). | In its Report dated August 26, 2019, the MIAS Task Force had proposed this text:<br><br>"The appropriate stage of the proceeding for a party to request a hearing is during the case management conference and if no such request is made, the matter will be decided on written submissions, including written evidence, unless the arbitral tribunal decides that an oral hearing is appropriate."<br><br>However, the approach proposed here is also reasonable as long as the time frame is relatively short. |
| 2. [option A: Unless otherwise agreed by the parties, the arbitral tribunal may decide to not hold hearing.][option B: The arbitral tribunal, after inviting the parties to express their views, may decide whether to hold hearings based on the document and other materials and the circumstances of the case including the expeditious nature of | 92. Draft provision 12(2) includes two options for consideration by the Working Group (A/CN.9/1003, para. 98).<br>93. Option A provides that the arbitral tribunal may decide to not hold hearings. Option A reflects the view that the limitation on hearings is a key characteristic of expedited arbitration and one that would distinguish it from non-expedited arbitration (A/CN.9/1003, para. 94). While parties retain their right to request hearings as provided for under | It is not clear to the MIAS Task Force that Article 17(3) allows a tribunal discretion not to hold a hearing if a party has requested one under the first sentence of Article 17(3). But if that is the case, the MIAS Task Force supports option B. |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| the proceedings.] | article 17(3) of the UNCITRAL Arbitration Rules, option A would emphasize the discretion of the arbitral tribunal to "not" hold hearings.<br><br>94. Option B reinforces the general rule in article 17(3) of the UNCITRAL Arbitration Rules that the arbitral tribunal has the discretion to decide whether to hold hearings. Option B reflects the views that there are certain benefits of holding hearings, which could also expedite the process, as they provide the arbitral tribunal and the parties the occasion to communicate as well as the tribunal the opportunity to consider a number of issues in an expeditious fashion (A/CN.9/969, para. 79). A hearing could also reduce or avoid the need for written witness statements. Option B also reflects the views that the arbitral tribunal, after taking into account the views of the parties, would be best-positioned to decide on the matter based on document and other materials before it and the overall circumstances of the case. It also reflects the view that the expedited arbitration provisions should not contain an assumption that a hearing would not be held in expedited arbitration (A/CN.9/1003, para. 95). | |
| 3. If the arbitral tribunal decides to not hold hearings pursuant to paragraph 2 and any of the parties object to that decision, [option A: the arbitral tribunal shall hold hearings][option B: the arbitral tribunal may decide not to hold hearings.] | 95. Draft provision 12(3) addresses a situation where the arbitral tribunal decides to not hold hearings pursuant to paragraph 2. It is based on the understanding that the parties should have the right to object to such a decision. The Working Group may, however, wish to consider whether a party that had not requested a hearing would have the right to object to such a decision by the arbitral tribunal. | Consistent with the immediate prior comment, if a party has not requested a hearing, the tribunal should control the decision as provided for in Article 17(3) (second sentence).<br><br>Option A would allow draft provision 8(2) and (3) to give a party greater rights in an |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | 96. The square bracketed texts in paragraph 3 reflects differing views on how the arbitral tribunal should treat such an objection (A/CN.9/1003, para. 96). Option A reflects the view that the arbitral tribunal should be bound by that objection and thus would need to hold hearings (similar to the request for hearings under article 17(3) of the UNCITRAL Arbitration Rules). Option B reflects the view that the arbitral tribunal would still have the discretion to not hold hearings. Option B would be making a distinction between a request for hearings under article 17(3) of the UNCITRAL Arbitration Rules (which the arbitral tribunal is bound) and an objection to a decision not to hold hearing (which the arbitral tribunal would not be bound). Paragraph 3 might not be necessary if the approach in option B of paragraph 2 is taken. | expedited arbitration than exists under Article 17(3) where a party has not requested a hearing "at the appropriate stage of the proceedings." |
| Conduct of hearings | 97. As to the conduct of hearings in expedited arbitration, article 28 of the UNCITRAL Arbitration Rules would also apply to expedited arbitration (A/CN.9/1003, para. 97). The Working Group may wish to consider whether the possibility to limit the cross-examination of fact and expert witnesses should be explicitly mentioned in draft provision 12 (A/CN.9/969, para. 65, A/CN.9/1003, paras. 80 and 99).<br><br>98. In conducting hearings, the arbitral tribunal could make use of various means of communication to hold hearings (including remotely, as provided for in article 28(4) of the UNCITRAL Arbitration Rules) and make efforts to keep the duration of the hearings shorter. Both would meet the expectation of the parties that expedited arbitration would be less costly | The MIAS Task Force agrees with the sentiments expressed in Paras. 97 and 98. As noted above, it proposed text in its draft "App. Article 6" that did not address the tribunal's authority to limit "the number, length, and scope of written submissions and written witness evidence (both fact witnesses and experts)." |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | (A/CN.9/969, paras. 75 and 82; A/CN.9/1003, para. 97). The Working Group may wish to consider whether further guidance on how to organize hearings should be provided in the expedited arbitration provisions (for example, along the lines of draft provision 6(2)). | |
| Draft provision 13 (Award) | 100. Draft provision 13 introduces a fixed time frame for making the award and a mechanism for extending that time frame. Draft provision 13 should be read in conjunction with article 34 of the UNCITRAL Arbitration Rules as well as with draft provision 7 on the overall duration. | The MIAS Task Force supports the sentiment expressed in Para. 100. |
| 1. Unless otherwise agreed by the parties, the award shall be made within [six months] from the date of the constitution of the arbitral tribunal.<br><br>2. If hearings are held, the award shall be made within [three months] from the closure of the hearings, unless otherwise agreed by the parties.<br><br>3. The period of time in paragraph 1 may be extended under exceptional circumstances by [the arbitral tribunal] [the appointing authority] after inviting the parties to express their views.<br><br>4. In granting the extension, the [arbitral tribunal] [appointing authority] shall state the reasons and the extended time period | 101. Paragraph 1 reflects the Working Group's understanding that expedited arbitration could benefit from a fixed time frame for the issuance of the award (A/CN.9/969, para. 49; A/CN.9/1003, para. 103). The phrase "unless otherwise agreed by the parties" reflects the view that the parties can agree on a time frame different from that in paragraphs 1 and 2(A/CN.9/1003, para. 103). The Working Group may wish to consider whether that phrase in paragraph 1 along with the extension mechanism provided in paragraph 3 would cater for other situations which should halt the time period (for example, where the parties agreed on an extension, where the arbitrator was replaced and where the parties are seeking an amicable resolution) (A/CN.9/1003, para. 105).<br><br>102. The Working Group may wish to confirm whether the time frame of six months in paragraph 1 is appropriate for expedited arbitration in light of draft provisions 7 and 8(2) (A/CN.9/1003, paras. 103 and 112). On when the time frame should commence, it was generally felt that it should start | As discussed above, the goal here should be reasonableness. The MIAS Task Force had suggested that an award be rendered no later than 9 months from the date that the tribunal receives the notice of arbitration and if, filed, the response to the notice, or 7 months after the case management conference. But the Task Force's proposal provided that the tribunal could extend the time.<br><br>As long as the tribunal can adjust the schedule where it is appropriate to do so, any reasonable formulation can work.<br><br>As to Para. 106, in its Report dated August 26, 2019, the MIAS Task Force wrote: |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| should be no longer than [** months]. | from an early stage of the proceedings. Some preference was expressed for the time of the constitution of the arbitral tribunal as it would provide certainty and as the arbitral tribunal would have control over the process from then on (A/CN.9/1003, para. 104).<br><br>103. The Working Group may further wish to consider the suggestion to include another time frame as provided for in paragraph 2 (A/CN.9/1003, para. 105), which would commence from when the arbitral tribunal declares the closure of the hearings in accordance with article 31 of the UNCITRAL Arbitration Rules. This additional time frame would only apply if there was a hearing.<br><br>104. Paragraph 3 reflects the Working Group's understanding that the time period for making the award could be extended in case of exceptional circumstances. While it is unlikely that parties could agree on an extension at this late stage of the proceedings, they would be able to do so under paragraph 1. The Working Group may wish to consider when there is no agreement by the parties, whether the arbitral tribunal or the appointing authority should have the authority to extend the time frame (see para. 78 above) and under what circumstances. The Working Group may wish to note that in certain jurisdictions, an arbitral tribunal might not be allowed to extend the time frame without the consent of the parties (A/CN.9/1003, para. 107). It may also wish to note that an appointing authority might not have been involved in the arbitration until this stage of the | "The provisions of Article 41, governing the fees and expenses of the tribunal member(s), in effect, address this concern. Generally speaking, impacts to an arbitrator's compensation should result in a satisfactory enforcement mechanism.<br><br>--Article 41.1 provides that "the fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case."<br><br>--Article 41.3 provides that, "Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If, within 45 days of receipt of such a referral, the appointing authority finds that the proposal of the arbitral tribunal is inconsistent with paragraph 1, it shall make any |

| Draft Provision | Secretariat Notes | MIAS Task Force Comment |
|---|---|---|
| | proceedings (A/CN.9/1003, para. 107).<br><br>105. Paragraph 4 reflects the suggestion that the arbitral tribunal or the appointing authority should be required to provide reasons when granting any extension and that there should be a limit on the extended time period (A/CN.9/1003, para.106).<br><br>106. Draft provision 12 does not address the consequences of non-compliance by the arbitral tribunal of the time frame therein. The Working Group may wish to consider whether such consequences (for example, reduction of arbitrator's fees or replacement of the arbitrator, A/CN.9/969, para. 55; A/CN.9/1003, para. 108) should be included in the expedited arbitration provisions. | necessary adjustments thereto, which shall be binding upon the arbitral tribunal."<br><br>--Article 41.4(b) provides that, "Within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the appointing authority. If no appointing authority has been agreed upon or designated, or if the appointing authority fails to act within the time specified in these Rules, then the review shall be made by the Secretary-General of the PCA."<br><br>--Article 41(c) provides that, "If the appointing authority or the Secretary-General of the PCA finds that the arbitral tribunal's determination is inconsistent with the arbitral tribunal's proposal (and any Adjustment thereto) under paragraph 3 or is otherwise manifestly excessive, it shall, within 45 days of receiving such a referral, make any adjustments to the arbitral tribunal's determination that are necessary to satisfy the criteria in paragraph 1. Any such adjustments shall be binding |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | | upon the arbitral tribunal."<br><br>This text should be sufficient to address unreasonable delays by the arbitral tribunal member(s) in meeting the deadline of the Expedited Arbitration, especially taking into account the commitment discussed above that an arbitrator makes to become a candidate to serve as the sole arbitrator or one of three members of the tribunal if the tribunal consists of more than one arbitrator."<br><br>The Task Force continues to hold these views. |
| Reasoned award` | 107. Based on the Working Group's understanding that article 34(3) of the UNCITRAL Arbitration Rules should generally apply to expedited arbitration, no draft provision is suggested on stating the reasons upon which the award is based. It was considered that requiring the arbitral tribunal to provide a reasoned award could assist its decision-making and would comfort the parties as they would find that their arguments had been duly considered (A/CN.9/969, paras. 85–86; A/CN.9/1003, para. 110). The absence of reasoning in an award might impede its control mechanism, as the court or other competent authority would not be in a position to consider whether there were grounds for setting aside the award or refusing its recognition and enforcement. As the expedited | The MIAS Task Force supports the sentiments expressed in Paras. 107-108.<br><br>In its August 26, 2019 Report, it addressed this topic with the following proposed text:<br><br>"If the parties have requested a reasoned award, the arbitral tribunal may provide the factual and legal basis for the award without having to repeat the arguments of each party, and may describe only so much of the procedural history that is relevant to a demonstrate the |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | arbitration provisions would be geared towards simpler cases, it would be possible for the arbitral tribunal to narrow down key issues that need to be addressed in its award with appropriate reasoning during its consultation with the parties. Article 34(3) of the UNCITRAL Arbitration Rules would also be more compatible with domestic legislations that required reasoned awards, without which the award might be null and void (A/CN.9/1003, para. 110).<br><br>108. In accordance with article 34(3) of the UNCITRAL Arbitration Rules, the parties can always agree that no reasons need to be given in an award or that the reasons can be given in summary form (A/CN.9/1003, para. 112). The Working Group may wish to consider whether the possibility of the latter needs to be emphasized in the expedited arbitration provisions. Another possibility would be to provide guidance to arbitral tribunals that awards in expedited arbitration should state the reasons in a succinct manner yet sufficient to explain the rationale behind the decisions (A/CN.9/1003, para. 111). | fairness of the process followed." |
| Interpretation and correction of the award as well as additional award | 109. The Working Group may wish to consider whether the time frames prescribed in the UNCITRAL Arbitration Rules (article 37 on the interpretation of the award, article 38 on the correction of the award and article 39 on an additional award) should be adjusted for expedited arbitration. | The MIAS Task Force sees no need to adjust the time frames in Articles 37 or 38. |
| Draft provision X (Early dismissal) and Draft provision Y (Preliminary determination) | 110. At its seventieth session, the Working Group considered whether the expedited arbitration provisions should include rules on early | In its August 26, 2019 Report, the MIAS Task Force wrote: |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| | dismissal[12] (a tool for arbitral tribunals to dismiss claims and defences that lacked merit) and preliminary determination[13] (a tool that would allow a party to request the arbitral tribunal to decide on one or more issues or points of law or fact without undergoing every procedural step) (A/CN.9/969, paras. 20 and 21; A/CN.9/1003, paras. 82–87).<br><br>111. While some concerns were expressed (A/CN.9/969, paras. 20 and 116; A/CN.9/1003, paras. 83–84), it was generally felt that, at a later stage of the Working Group's deliberations on expedited arbitration, relevant rules could be examined as providing tools to improve the overall efficiency of arbitral proceedings along with their possible placement in the expedited arbitration provisions (A/CN.9/1003, para. 87).<br><br>112. Accordingly, the Working Group may wish to consider draft provisions X and Y below, particularly in relation to articles 17(1), 23 and 34(1) of the UNCITRAL Arbitration Rules. | "The Task Force does not believe that provisions for early dismissal and preliminary determinations . . . are needed for expedited arbitration. Members of the Task Force have significant experience with the United States procedural tool of "summary judgment." Courts will not rule on a motion for summary judgment unless there are no material issues of fact in dispute and only a legal issues are presented for resolution. Within the context of an expedited arbitration, the Task Force believes that Article 17.1 and 34.1 gives the tribunal sufficient discretion to address before a hearing a pure legal issue presented by agreement of the parties, or one that the tribunal can assess, without consuming excessive time or resources, as ripe for a legal determination." |
| Draft provision X (Early dismissal) | | |
| 1. [Unless otherwise agreed by the parties,] a party may, [no later than 30 days after the constitution of the arbitral tribunal, and in any | 113. In examining draft provisions X and Y, the Working Group may also wish to consider the following aspects: | Outside of the context of expedited arbitration, the MIAS Task Force is generally of the view that a mechanism to |

[12] See ICSID Rules Article 41(5) and Rule 29 of the SIAC Arbitration Rules (2016). The SIAC rule permits early dismissal of both claims and defences.

[13] See article 40 of the SCC Rules for Expedited Arbitrations (2017) and article 43 of the HKIAC Administered Arbitration Rules (2018).

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| event, no later than the case management conference convened by the arbitral tribunal pursuant to draft provision 6(1)], raise a plea that a claim [or defence] is manifestly without legal merit [or outside the jurisdiction of the arbitral tribunal].<br><br>2. The party shall specify as precisely as possible the facts and the legal basis for the plea.<br><br>3. The arbitral tribunal, after giving the parties the opportunity to express their views, shall decide whether to allow the plea to proceed.<br><br>4. The arbitral tribunal, after inviting the parties to express their views on the plea, shall notify the parties of its decision on the plea [through an order/award] stating the reasons [in summary form]. The [order/award] shall be made within [**] days of the plea, unless the [arbitral tribunal] [parties] extends the time.<br><br>5. The decision of the arbitral tribunal shall be without prejudice to | (i) The terminology to refer to such tools and within the draft provisions (for example, "raise a plea"[14], "file an objection" or "apply for early dismissal");<br><br>(ii) Whether the draft provisions should provide for the parties agreeing to not use such tools;<br><br>(iii) Whether there should be a time limit for parties to request the use of such tools;<br><br>(iv) Whether claims and defences should both be the subject of such tools and whether the basis should be limited to manifest lack of merit or also include lack of jurisdiction (see article 23 of the UNCITRAL Arbitration Rules);<br><br>(v) Whether the proceedings should be two-fold, with the arbitral tribunal deciding on whether to proceed with the use of the tools and then deciding on the merits;<br><br>(vi) The form of the decision by the arbitral tribunal (order, award, partial award) and the time frame within which the decision is to be made;<br><br>(vii) Whether providing such tools explicitly in the expedited arbitration provisions would make it easier for the parties as well as the arbitral tribunal to utilize them (A/CN.9/1003, para. 85); and | address pure legal issues is sensible and that if Articles 17.1 and 34.1 do not already provide a tribunal with the discretion to consider pure legal issues before conducting a hearing, amending the Rules to provide such a specific mechanism advances the goals of Article 17.1. |

[14] Article 23 of the UNCITRAL Arbitration Rules uses the phrase "pleas as to the jurisdiction of the arbitral tribunal".

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| the right of a party to file a plea as to the jurisdiction of the arbitral tribunal under article 23 of the UNCITRAL Arbitration Rules or to object, in the course of the proceeding, that a claim [or a defence] lacks legal merit. | (viii) Whether both draft provisions X and Y should be included, as there may be overlap. | |
| Draft provision Y (Preliminary determination) | | |
| 1. [Unless otherwise agreed by the parties,] a party may request the arbitral tribunal to decide one or more issues of fact or law without necessarily undertaking every procedural step that might otherwise be required.<br><br>2. Such a request may concern issues of [jurisdiction,] admissibility or the merits. It may include, for example, an assertion that:<br><br>(i) issues of fact or law [material to the outcome of the case] alleged by the other party are manifestly without legal merit;<br><br>(ii) even if issues of fact or law alleged by the other party are assumed to be correct, no award could be rendered in favour of that party; or<br><br>*(iii) ….* | | It seems unlikely that a tribunal could decide an issue of fact without an evidentiary hearing unless the parties agreed that the tribunal could do so without such a hearing. Having said this, the MIAS Task Force supports the notion that if the parties agree, the tribunal should be allowed to make "preliminary determinations" of factual or legal issues.<br><br>The Task Force would hope that any tribunal formed under the UNCITRAL Rules will take Article 17.1 to heart and where there are pathways to reduce the cost of arbitration by addressing preliminary issues without compromising the fairness of the proceeding, that the tribunal will follow them without the need for more express language in the Rules. Nonetheless, it supports express language if the Working |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| 3. Any request for preliminary determination shall be made [as promptly as possible] [within a time period to be specified] after the relevant issues of law or fact are submitted.<br><br>4. The request shall specify the grounds relied on and the proposed procedure to be applied demonstrating that such procedure is appropriate considering all circumstances of the dispute.<br><br>5. After inviting other parties to express their views, the arbitral tribunal shall decide either to dismiss the request or to fix the procedure it deems appropriate, taking into account all relevant circumstances, including efficient and expeditious resolution of the dispute. The arbitral tribunal shall make the decision within [**] days from the date of the request, unless the [arbitral tribunal] [parties] extends the time.<br><br>6. If the request is granted, the arbitral tribunal shall seek to make its decision [through an order/award] stating the reasons [in summary form], while treating the parties with equality and giving each party a reasonable opportunity | | Group believes that it will advance the goals of Article 17.1. |

| *Draft Provision* | *Secretariat Notes* | *MIAS Task Force Comment* |
|---|---|---|
| of presenting its case. The [order/award] shall be made within [**] days from the date of the decision to proceed with the procedure pursuant to paragraph 5, unless the [arbitral tribunal] [parties] extends the time. | | |