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UNITED NATIONS
COMMISSION ON INTERNATIONAL TRADE LAW

UNCITRAL Arbitration Rules (2021)

UNCITRAL Expedited Arbitration Rules

UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration

UNITED NATIONS

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UNCITRAL Arbitration Rules

(with article 1, paragraph 4, as adopted in 2013 and article 1, paragraph 5, as adopted in 2021)

UNCITRAL Expedited Arbitration Rules

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Contents

Resolution adopted by the General Assembly on 9 December 2021

76/108. Expedited Arbitration Rules of the United Nations Commission on International Trade Law

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recalling also its resolution 31/98 of 15 December 1976 recommending the use of the Arbitration Rules of the United Nations Commission on International Trade Law[1] and its resolution 65/22 of 6 December 2010 recommending the use of the Arbitration Rules as revised in 2010,[2]

Mindful of the value of arbitration as a method of settling disputes that may arise in the context of international commercial relations,

Noting the value of expedited arbitration as a streamlined and simplified procedure for settling disputes that arise in the context of international commercial relations within a shortened time frame, and its increased use in international and domestic commercial practice for parties to reach a final resolution of the dispute in a cost- and time-effective manner,

[1] *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17* (A/31/17), chap. V, sect. C.

[2] Ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), annex I.

Aware of the need to balance the efficiency of the arbitral proceedings and the rights of the disputing parties to due process and fair treatment,

Noting that the preparation of the UNCITRAL Expedited Arbitration Rules and the accompanying explanatory note benefited greatly from consultations with Governments and interested intergovernmental and international non-governmental organizations,

Noting also that the Expedited Arbitration Rules were adopted by the United Nations Commission on International Trade Law at its fifty-fourth session, after due deliberations,[3]

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for having formulated and adopted the Expedited Arbitration Rules, the text of which is contained in annex IV to the report of the United Nations Commission on International Trade Law on the work of its fifty-fourth session[4] and which came into effect on 19 September 2021;

2. *Recommends* the use of the UNCITRAL Expedited Arbitration Rules in the settlement of disputes arising in the context of international commercial relations;

3. *Requests* the Secretary-General to make all efforts to ensure that the UNCITRAL Expedited Arbitration Rules become generally known and available.

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[3] Ibid., *Seventy-sixth Session, Supplement No. 17* (A/76/17), chap. VII.

[4] Ibid., annex IV.

UNCITRAL Arbitration Rules

(with article 1, paragraph 4, as adopted in 2013 and article 1, paragraph 5, as adopted in 2021)

Section I. Introductory rules

*Scope of application**

Article 1

1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.

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.

3. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

4. For investor-State arbitration initiated pursuant to a treaty providing for the protection of investments or investors, these Rules include the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration ("Rules on Transparency"), subject to article 1 of the Rules on Transparency.

5. The Expedited Arbitration Rules in the appendix shall apply to the arbitration where the parties so agree.

*A model arbitration clause for contracts can be found in the annex to the Rules.

Notice and calculation of periods of time

Article 2

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.

2. If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorized.

3. In the absence of such designation or authorization, a notice is:

(a) Received if it is physically delivered to the addressee; or

(b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.

4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.

6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Notice of arbitration

Article 3

1. The party or parties initiating recourse to arbitration (hereinafter called the "claimant") shall communicate to the other party or parties (hereinafter called the "respondent") a notice of arbitration.

2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

3. The notice of arbitration shall include the following:

(a) A demand that the dispute be referred to arbitration;

(b) The names and contact details of the parties;

(c) Identification of the arbitration agreement that is invoked;

(d) Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;

(e) A brief description of the claim and an indication of the amount involved, if any;

(f) The relief or remedy sought;

(g) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.

4. The notice of arbitration may also include:

(a) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;

(b) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;

(c) Notification of the appointment of an arbitrator referred to in article 9 or 10.

5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

Response to the notice of arbitration

Article 4

1. Within 30 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall include:

(a) The name and contact details of each respondent;

(b) A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3 *(c)* to *(g)*.

2. The response to the notice of arbitration may also include:

(a) Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;

(b) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;

(c) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;

(d) Notification of the appointment of an arbitrator referred to in article 9 or 10;

(e) A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;

(f) A notice of arbitration in accordance with article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

Representation and assistance

Article 5

Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may

at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine.

Designating and appointing authorities

Article 6

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 (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.

3. Where these Rules provide for a period of time within which a party must refer a matter to an appointing authority and no appointing authority has been agreed on or designated, the period is suspended from the date on which a party initiates the procedure for agreeing on or designating an appointing authority until the date of such agreement or designation.

4. Except as referred to in article 41, paragraph 4, if the appointing authority refuses to act, or if it fails to appoint an arbitrator within 30 days after it receives a party's request to do so, fails to act within any other period provided by these Rules, or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party's request to do so, any party may request the Secretary-General of the PCA to designate a substitute appointing authority.

5. In exercising their functions under these Rules, the appointing authority and the Secretary-General of the PCA may require from any party and the arbitrators the information they deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority and the Secretary-General of the PCA shall also be provided by the sender to all other parties.

6. When the appointing authority is requested to appoint an arbitrator pursuant to articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.

7. The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

Section II. Composition of the arbitral tribunal

Number of arbitrators

Article 7

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.

2. Notwithstanding paragraph 1, if no other parties have responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with article 9 or 10, the appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, paragraph 2, if it determines that, in view of the circumstances of the case, this is more appropriate.

Appointment of arbitrators (articles 8 to 10)

Article 8

1. If the parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.

2. The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:

(a) The appointing authority shall communicate to each of the parties an identical list containing at least three names;

(b) Within 15 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;

(c) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;

(d) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

Article 9

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.

2. If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the appointing authority to appoint the second arbitrator.

3. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under article 8.

Article 10

1. For the purposes of article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.

2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.

3. In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

*Disclosures by and challenge of arbitrators** (articles 11 to 13)*

Article 11

When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

Article 12

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

3. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

Article 13

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified

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**Model statements of independence pursuant to article 11 can be found in the annex to the Rules.

of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in articles 11 and 12 became known to that party.

2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.

3. When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority.

Replacement of an arbitrator

Article 14

1. Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.

2. If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views: *(a)* appoint the substitute arbitrator; or *(b)* after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

Repetition of hearings in the event of the replacement of an arbitrator

Article 15

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

Exclusion of liability

Article 16

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the appointing authority and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

Section III. Arbitral proceedings

General provisions

Article 17

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, 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.

2. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.

3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

4. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.

5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted

because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

Place of arbitration

Article 18

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.

2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

Language

Article 19

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Statement of claim

Article 20

1. The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within

a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this article.

2. The statement of claim shall include the following particulars:

(a) The names and contact details of the parties;

(b) A statement of the facts supporting the claim;

(c) The points at issue;

(d) The relief or remedy sought;

(e) The legal grounds or arguments supporting the claim.

3. A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.

4. The statement of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

Statement of defence

Article 21

1. The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in article 4 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this article.

2. The statement of defence shall reply to the particulars *(b)* to *(e)* of the statement of claim (art. 20, para. 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.

3. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.

4. The provisions of article 20, paragraphs 2 to 4, shall apply to a counterclaim, a claim under article 4, paragraph 2 *(f)*, and a claim relied on for the purpose of a set-off.

Amendments to the claim or defence

Article 22

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

Pleas as to the jurisdiction of the arbitral tribunal

Article 23

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

Further written statements

Article 24

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

Periods of time

Article 25

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

Interim measures

Article 26

1. The arbitral tribunal may, at the request of a party, grant interim measures.

2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:

(a) Maintain or restore the status quo pending determination of the dispute;

(b) Take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself;

(c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or

(d) Preserve evidence that may be relevant and material to the resolution of the dispute.

3. The party requesting an interim measure under paragraphs 2 *(a)* to *(c)* shall satisfy the arbitral tribunal that:

(a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

4. With regard to a request for an interim measure under paragraph 2 *(d),* the requirements in paragraphs 3 *(a)* and *(b)* shall apply only to the extent the arbitral tribunal considers appropriate.

5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.

8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Evidence

Article 27

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.

2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.

4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Hearings

Article 28

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.

3. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.

4. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

Experts appointed by the arbitral tribunal

Article 29

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it,

in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.

3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.

5. At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of article 28 shall be applicable to such proceedings.

Default

Article 30

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:

(a) The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining

matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;

(b) The respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

2. If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Closure of hearings

Article 31

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

Waiver of right to object

Article 32

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

Section IV. The award

Decisions

Article 33

1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.

2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

Form and effect of the award

Article 34

1. The arbitral tribunal may make separate awards on different issues at different times.

2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

5. An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.

6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

Applicable law, amiable compositeur

Article 35

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.

2. The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized the arbitral tribunal to do so.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

Settlement or other grounds for termination

Article 36

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 34, paragraphs 2, 4 and 5, shall apply.

Interpretation of the award

Article 37

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.

2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 34, paragraphs 2 to 6, shall apply.

Correction of the award

Article 38

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.

2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.

3. Such corrections shall be in writing and shall form part of the award. The provisions of article 34, paragraphs 2 to 6, shall apply.

Additional award

Article 39

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.

2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The

arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.

3. When such an award or additional award is made, the provisions of article 34, paragraphs 2 to 6, shall apply.

Definition of costs

Article 40

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.

2. The term "costs" includes only:

(a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;

(b) The reasonable travel and other expenses incurred by the arbitrators;

(c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;

(d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

(f) Any fees and expenses of the appointing authority as well as the fees and expenses of the Secretary-General of the PCA.

3. In relation to interpretation, correction or completion of any award under articles 37 to 39, the arbitral tribunal may charge the costs referred to in paragraphs 2 *(b)* to *(f)*, but no additional fees.

Fees and expenses of arbitrators

Article 41

1. 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.

2. If there is an appointing authority and it applies or has stated that it will apply a schedule or particular method for determining the fees for arbitrators in international cases, the arbitral tribunal in fixing its fees shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case.

3. 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 necessary adjustments thereto, which shall be binding upon the arbitral tribunal.

4. (a) When informing the parties of the arbitrators' fees and expenses that have been fixed pursuant to article 40, paragraphs 2 *(a)* and *(b)*, the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated;

(b) 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;

(c) 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 upon the arbitral tribunal;

(d) Any such adjustments shall either be included by the arbitral tribunal in its award or, if the award has already been issued, be implemented in a correction to the award, to which the procedure of article 38, paragraph 3, shall apply.

5. Throughout the procedure under paragraphs 3 and 4, the arbitral tribunal shall proceed with the arbitration, in accordance with article 17, paragraph 1.

6. A referral under paragraph 4 shall not affect any determination in the award other than the arbitral tribunal's fees and expenses; nor shall it delay the recognition and enforcement of all parts of the award other than those relating to the determination of the arbitral tribunal's fees and expenses.

Allocation of costs

Article 42

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

Deposit of costs

Article 43

1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in article 40, paragraphs 2 *(a)* to *(c)*.

2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.

3. If an appointing authority has been agreed upon or designated, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority, which may make any comments to the arbitral tribunal that it deems appropriate concerning the amount of such deposits and supplementary deposits.

4. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

5. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Annex

Model arbitration clause for contracts

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules.

Note. Parties should consider adding:

(a) The appointing authority shall be . . . [name of institution or person];

(b) The number of arbitrators shall be . . .. [one or three];

(c) The place of arbitration shall be . . . [town and country];

(d) The language to be used in the arbitral proceedings shall be . . . .

Possible waiver statement

Note. If the parties wish to exclude recourse against the arbitral award that may be available under the applicable law, they may consider adding a provision to that effect as suggested below, considering, however, that the effectiveness and conditions of such an exclusion depend on the applicable law.

Waiver

The parties hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under the applicable law.

Model statements of independence pursuant to article 11 of the Rules

No circumstances to disclose

I am impartial and independent of each of the parties and

intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties and the other arbitrators of any such circumstances that may subsequently come to my attention during this arbitration.

Circumstances to disclose

I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made pursuant to article 11 of the UNCITRAL Arbitration Rules of *(a)* my past and present professional, business and other relationships with the parties and *(b)* any other relevant circumstances. [Include statement.] I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the parties and the other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration.

Note. Any party may consider requesting from the arbitrator the following addition to the statement of independence:

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.

Appendix – UNCITRAL Expedited Arbitration Rules

Scope of application

Article 1

Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Expedited Arbitration Rules ("Expedited Rules"), then such disputes shall be settled in accordance with the UNCITRAL Arbitration Rules as modified by these Expedited Rules and subject to such modification as the parties may agree.***

Article 2

1. At any time during the proceedings, the parties may agree that the Expedited Rules shall no longer apply to the arbitration.

2. At the request of a party, the arbitral tribunal may, in exceptional circumstances and after inviting the parties to express their views, determine that the Expedited Rules shall no longer apply to the arbitration. The arbitral tribunal shall state the reasons upon which that determination is based.

3. When the Expedited Rules no longer apply to the arbitration pursuant to paragraph 1 or 2, the arbitral tribunal shall remain in place and conduct the arbitration in accordance with the UNCITRAL Arbitration Rules.

Conduct of the parties and the arbitral tribunal

Article 3

1. The parties shall act expeditiously throughout the proceedings.

2. The arbitral tribunal shall conduct the proceedings

***Unless otherwise agreed by the parties, the following articles in the UNCITRAL Arbitration Rules do not apply to expedited arbitration: article 3(4)*(a)* and *(b);* article 6(2); article 7; article 8(1); first sentence of article 20(1); first sentence of article 21(1); article 21(3); article 22; and second sentence of article 27(2).

expeditiously taking into account the fact that the parties agreed to refer their dispute to expedited arbitration and the time frames in the Expedited Rules.

3. The arbitral tribunal may, after inviting the parties to express their views and taking into account the circumstances of the case, utilize any technological means as it considers appropriate to conduct the proceedings, including to communicate with the parties and to hold consultations and hearings remotely.

Notice of arbitration and statement of claim

Article 4

1. A notice of arbitration shall also include:

(a) A proposal for the designation of an appointing authority, unless the parties have previously agreed thereon; and

(b) A proposal for the appointment of an arbitrator.

2. When communicating its notice of arbitration to the respondent, the claimant shall also communicate its statement of claim.

3. The claimant shall communicate the notice of arbitration and the statement of claim to the arbitral tribunal as soon as it is constituted.

Response to the notice of arbitration and statement of defence

Article 5

1. Within 15 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall also include responses to the information set forth in the notice of arbitration pursuant to article 4(1)*(a)* and *(b)* of the Expedited Rules.

2. The respondent shall communicate its statement of defence to the claimant and the arbitral tribunal within 15 days of the constitution of the arbitral tribunal.

Designating and appointing authorities

Article 6

1. If all parties have not agreed on the choice of an appointing authority 15 days after a proposal for the designation of an appointing authority has been received by all other parties, any party may request the Secretary-General of the Permanent Court of Arbitration (hereinafter called the "PCA") to designate the appointing authority or to serve as appointing authority.

2. When making the request under article 6(4) of the UNCITRAL Arbitration Rules, a party may request the Secretary-General of the PCA to serve as appointing authority.

3. If requested to serve as appointing authority in accordance with paragraph 1 or 2, the Secretary-General of the PCA will serve as appointing authority unless it determines that in view of the circumstances of the case, it is more appropriate to designate an appointing authority.

Number of arbitrators

Article 7

Unless otherwise agreed by the parties, there shall be one arbitrator.

Appointment of a sole arbitrator

Article 8

1. A sole arbitrator shall be appointed jointly by the parties.

2. If the parties have not reached agreement on the appointment of a sole arbitrator 15 days after a proposal has been received by all other parties, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority in accordance with article 8(2) of the UNCITRAL Arbitration Rules.

Consultation with the parties

Article 9

Promptly after and within 15 days of its constitution, the arbitral tribunal shall consult the parties, through a case management conference or otherwise, on the manner in which it will conduct the arbitration.

Discretion of the arbitral tribunal with regard to periods of time

Article 10

Subject to article 16 of the Expedited Rules, the arbitral tribunal may at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under the UNCITRAL Arbitration Rules and the Expedited Rules or agreed by the parties.

Hearings

Article 11

The arbitral tribunal may, after inviting the parties to express their views and in the absence of a request to hold hearings, decide that hearings shall not be held.

Counterclaims or claims for the purpose of set-off

Article 12

1. A counterclaim or a claim for the purpose of a set-off shall be made no later than in the statement of defence provided that the arbitral tribunal has jurisdiction over it.

2. The respondent may not make a counterclaim or rely on a claim for the purpose of a set-off at a later stage in the arbitral proceedings, unless the arbitral tribunal considers it appropriate to allow such claim having regard to the delay in making it or prejudice to other parties or any other circumstances.

Amendments and supplements to a claim or defence

Article 13

During the course of the arbitral proceedings, a party may not amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it appropriate to allow such amendment or supplement having regard to when it is requested or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

Further written statements

Article 14

The arbitral tribunal may, after inviting the parties to express their views, decide whether any further written statement shall be required from the parties or may be presented by them.

Evidence

Article 15

1. The arbitral tribunal may decide which documents, exhibits or other evidence the parties should produce. The arbitral tribunal may reject any request, unless made by all parties, to establish a procedure whereby each party can request another party to produce documents.

2. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, shall be presented in writing and signed by them.

3. The arbitral tribunal may decide which witnesses, including expert witnesses, shall testify to the arbitral tribunal if hearings are held.

Period of time for making the award

Article 16

1. The award shall be made within six months from the date of the constitution of the arbitral tribunal unless otherwise agreed by the parties.

2. The arbitral tribunal may, in exceptional circumstances and after inviting the parties to express their views, extend the period of time established in accordance with paragraph 1. The extended period of time shall not exceed a total of nine months from the date of the constitution of the arbitral tribunal.

3. If the arbitral tribunal concludes that it is at risk of not rendering an award within nine months from the date of the constitution of the arbitral tribunal, it shall propose a final extended time limit, state the reasons for the proposal, and invite the parties to express their views within a fixed period of time. The extension shall be adopted only if all parties express their agreement to the proposal within the fixed period of time.

4. If there is no agreement to the extension in paragraph 3, any party may make a request that the Expedited Rules no longer apply to the arbitration. After inviting the parties to express their views, the arbitral tribunal may determine to continue to conduct the arbitration in accordance with the UNCITRAL Arbitration Rules

Annex to the UNCITRAL Expedited Arbitration Rules

Model arbitration clause for contracts

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Expedited Arbitration Rules.

Note: Parties should consider adding:

(a) The appointing authority shall be . . . [name of institution or person];

(b) The place of arbitration shall be . . . [town and country];

(c) The language to be used in the arbitral proceedings shall be ...;

Model statement

Note. Parties should consider requesting from the arbitrator the following addition to the statement of independence pursuant to article 11 of the UNCITRAL Arbitration Rules:

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, expeditiously and in accordance with the time limits in the UNCITRAL Arbitration Rules and the UNCITRAL Expedited Arbitration Rules.

UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration

Article 1. Scope of application

Applicability of the Rules

1. The UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration ("Rules on Transparency") shall apply to investor-State arbitration initiated under the UNCITRAL Arbitration Rules pursuant to a treaty providing for the protection of investments or investors ("treaty")* concluded on or after 1 April 2014 unless the Parties to the treaty** have agreed otherwise.

2. In investor-State arbitrations initiated under the UNCITRAL Arbitration Rules pursuant to a treaty concluded before 1 April 2014, these Rules shall apply only when:

(a) The parties to an arbitration (the "disputing parties") agree to their application in respect of that arbitration; or

(b) The Parties to the treaty or, in the case of a multilateral treaty, the State of the claimant and the respondent State, have agreed after 1 April 2014 to their application.

Application of the Rules

3. In any arbitration in which the Rules on Transparency apply pursuant to a treaty or to an agreement by the Parties to that treaty:

(a) The disputing parties may not derogate from these Rules, by agreement or otherwise, unless permitted to do so by the treaty;

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*For the purposes of the Rules on Transparency, a "treaty" shall be understood broadly as encompassing any bilateral or multilateral treaty that contains provisions on the protection of investments or investors and a right for investors to resort to arbitration against Parties to the treaty, including any treaty commonly referred to as a free trade agreement, economic integration agreement, trade and investment framework or cooperation agreement, or bilateral investment treaty.

**For the purposes of the Rules on Transparency, any reference to a "Party to the treaty" or a "State" includes, for example, a regional economic integration organization where it is a Party to the treaty.

(b) The arbitral tribunal shall have the power, besides its discretionary authority under certain provisions of these Rules, to adapt the requirements of any specific provision of these Rules to the particular circumstances of the case, after consultation with the disputing parties, if such adaptation is necessary to conduct the arbitration in a practical manner and is consistent with the transparency objective of these Rules.

Discretion and authority of the arbitral tribunal

4. Where the Rules on Transparency provide for the arbitral tribunal to exercise discretion, the arbitral tribunal in exercising such discretion shall take into account:

(a) The public interest in transparency in treaty-based investor-State arbitration and in the particular arbitral proceedings; and

(b) The disputing parties' interest in a fair and efficient resolution of their dispute.

5. These Rules shall not affect any authority that the arbitral tribunal may otherwise have under the UNCITRAL Arbitration Rules to conduct the arbitration in such a manner as to promote transparency, for example by accepting submissions from third persons.

6. In the presence of any conduct, measure or other action having the effect of wholly undermining the transparency objectives of these Rules, the arbitral tribunal shall ensure that those objectives prevail.

Applicable instrument in case of conflict

7. Where the Rules on Transparency apply, they shall supplement any applicable arbitration rules. Where there is a conflict between the Rules on Transparency and the applicable arbitration rules, the Rules on Transparency shall prevail. Notwithstanding any provision in these Rules, where there is a conflict between the Rules on Transparency and the treaty, the provisions of the treaty shall prevail.

8. Where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the disputing parties cannot derogate, that provision shall prevail.

Application in non-UNCITRAL arbitrations

9. These Rules are available for use in investor-State arbitrations initiated under rules other than the UNCITRAL Arbitration Rules or in ad hoc proceedings.

Article 2. Publication of information at the commencement of arbitral proceedings

Once the notice of arbitration has been received by the respondent, each of the disputing parties shall promptly communicate a copy of the notice of arbitration to the repository referred to under article 8. Upon receipt of the notice of arbitration from the respondent, or upon receipt of the notice of arbitration and a record of its transmission to the respondent, the repository shall promptly make available to the public information regarding the name of the disputing parties, the economic sector involved and the treaty under which the claim is being made.

Article 3. Publication of documents

1. Subject to article 7, the following documents shall be made available to the public: the notice of arbitration, the response to the notice of arbitration, the statement of claim, the statement of defence and any further written statements or written submissions by any disputing party; a table listing all exhibits to the aforesaid documents and to expert reports and witness statements, if such table has been prepared for the proceedings, but not the exhibits themselves; any written submissions by the non-disputing Party (or Parties) to the treaty and by third persons, transcripts of hearings, where available; and orders, decisions and awards of the arbitral tribunal.

2. Subject to article 7, expert reports and witness statements, exclusive of the exhibits thereto, shall be made available to the public, upon request by any person to the arbitral tribunal.

3. Subject to article 7, the arbitral tribunal may decide, on its own initiative or upon request from any person, and after consultation with the disputing parties, whether and how to make available exhibits and any other documents provided to, or issued by, the arbitral tribunal not falling within paragraphs 1 or 2 above. This may include, for example, making such documents available at a specified site.

4. The documents to be made available to the public pursuant to paragraphs 1 and 2 shall be communicated by the arbitral tribunal to the repository referred to under article 8 as soon as possible, subject to any relevant arrangements or time limits for the protection of confidential or protected information prescribed under article 7. The documents to be made available pursuant to paragraph 3 may be communicated by the arbitral tribunal to the repository referred to under article 8 as they become available and, if applicable, in a redacted form in accordance with article 7. The repository shall make all documents available in a timely manner, in the form and in the language in which it receives them.

5. A person granted access to documents under paragraph 3 shall bear any administrative costs of making those documents available to that person, such as the costs of photocopying or shipping documents to that person, but not the costs of making those documents available to the public through the repository.

Article 4. Submission by a third person

1. After consultation with the disputing parties, the arbitral tribunal may allow a person that is not a disputing party, and not a non-disputing Party to the treaty ("third person(s)"), to file a written submission with the arbitral tribunal regarding a matter within the scope of the dispute.

2. A third person wishing to make a submission shall apply to the arbitral tribunal, and shall, in a concise written statement, which is in a language of the arbitration and complies with any page limits set by the arbitral tribunal:

(a) Describe the third person, including, where relevant, its membership and legal status (e.g., trade association or other non-governmental organization), its general objectives, the nature of its activities and any parent organization (including any organization that directly or indirectly controls the third person);

(b) Disclose any connection, direct or indirect, which the third person has with any disputing party;

(c) Provide information on any government, person or organization that has provided to the third person (i) any financial or other assistance in preparing the submission; or (ii) substantial assistance in either of the two years preceding the application by the third person under this article (e.g. funding around 20 per cent of its overall operations annually);

(d) Describe the nature of the interest that the third person has in the arbitration; and

(e) Identify the specific issues of fact or law in the arbitration that the third person wishes to address in its written submission.

3. In determining whether to allow such a submission, the arbitral tribunal shall take into consideration, among other factors it determines to be relevant:

(a) Whether the third person has a significant interest in the arbitral proceedings; and

(b) The extent to which the submission would assist the arbitral tribunal in the determination of a factual or legal issue related to the arbitral proceedings by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties.

4. The submission filed by the third person shall:

(a) Be dated and signed by the person filing the submission on behalf of the third person;

(b) Be concise, and in no case longer than as authorized by the arbitral tribunal;

(c) Set out a precise statement of the third person's position on issues; and

(d) Address only matters within the scope of the dispute.

5. The arbitral tribunal shall ensure that any submission does not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

6. The arbitral tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by the third person.

Article 5. Submission by a non-disputing Party to the treaty

1. The arbitral tribunal shall, subject to paragraph 4, allow, or, after consultation with the disputing parties, may invite, submissions on issues of treaty interpretation from a non-disputing Party to the treaty.

2. The arbitral tribunal, after consultation with the disputing parties, may allow submissions on further matters within the

scope of the dispute from a non-disputing Party to the treaty. In determining whether to allow such submissions, the arbitral tribunal shall take into consideration, among other factors it determines to be relevant, the factors referred to in article 4, paragraph 3, and, for greater certainty, the need to avoid submissions which would support the claim of the investor in a manner tantamount to diplomatic protection.

3. The arbitral tribunal shall not draw any inference from the absence of any submission or response to any invitation pursuant to paragraphs 1 or 2.

4. The arbitral tribunal shall ensure that any submission does not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

5. The arbitral tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by a non-disputing Party to the treaty.

Article 6. Hearings

1. Subject to article 6, paragraphs 2 and 3, hearings for the presentation of evidence or for oral argument ("hearings") shall be public.

2. Where there is a need to protect confidential information or the integrity of the arbitral process pursuant to article 7, the arbitral tribunal shall make arrangements to hold in private that part of the hearing requiring such protection.

3. The arbitral tribunal shall make logistical arrangements to facilitate the public access to hearings (including where appropriate by organizing attendance through video links or such other means as it deems appropriate). However, the arbitral tribunal may, after consultation with the disputing parties, decide to hold all or part of the hearings in private where this becomes necessary for logistical reasons, such as when the circumstances render any original arrangement for public access to a hearing infeasible.

Article 7. Exceptions to transparency

Confidential or protected information

1. Confidential or protected information, as defined in paragraph 2 and as identified pursuant to the arrangements referred

to in paragraphs 3 and 4, shall not be made available to the public pursuant to articles 2 to 6.

2. Confidential or protected information consists of:

(a) Confidential business information;

(b) Information that is protected against being made available to the public under the treaty;

(c) Information that is protected against being made available to the public, in the case of the information of the respondent State, under the law of the respondent State, and in the case of other information, under any law or rules determined by the arbitral tribunal to be applicable to the disclosure of such information; or

(d) Information the disclosure of which would impede law enforcement.

3. The arbitral tribunal, after consultation with the disputing parties, shall make arrangements to prevent any confidential or protected information from being made available to the public, including by putting in place, as appropriate:

(a) Time limits in which a disputing party, non-disputing Party to the treaty or third person shall give notice that it seeks protection for such information in documents;

(b) Procedures for the prompt designation and redaction of the particular confidential or protected information in such documents; and

(c) Procedures for holding hearings in private to the extent required by article 6, paragraph 2.

Any determination as to whether information is confidential or protected shall be made by the arbitral tribunal after consultation with the disputing parties.

4. Where the arbitral tribunal determines that information should not be redacted from a document, or that a document should not be prevented from being made available to the public, any disputing party, non-disputing Party to the treaty or third person that voluntarily introduced the document into the record shall be permitted to withdraw all or part of the document from the record of the arbitral proceedings.

5. Nothing in these Rules requires a respondent State to make available to the public information the disclosure of which it considers to be contrary to its essential security interests.

Integrity of the arbitral process

6. Information shall not be made available to the public pursuant to articles 2 to 6 where the information, if made available to the public, would jeopardize the integrity of the arbitral process as determined pursuant to paragraph 7.

7. The arbitral tribunal may, on its own initiative or upon the application of a disputing party, after consultation with the disputing parties where practicable, take appropriate measures to restrain or delay the publication of information where such publication would jeopardize the integrity of the arbitral process because it could hamper the collection or production of evidence, lead to the intimidation of witnesses, lawyers acting for disputing parties or members of the arbitral tribunal, or in comparably exceptional circumstances.

Article 8. Repository of published information

The repository of published information under the Rules on Transparency shall be the Secretary-General of the United Nations or an institution named by UNCITRAL.

Explanatory Note to the UNCITRAL Expedited Arbitration Rules

1. Expedited arbitration is a streamlined and simplified procedure with a shortened time frame, which makes it possible for the parties to reach a final resolution of the dispute in a cost- and time-effective manner. The UNCITRAL Expedited Arbitration Rules (hereinafter the "Expedited Rules") provide a set of rules which parties may agree for expedited arbitration. The Expedited Rules balance on the one hand, the efficiency of the arbitral proceedings and on the other, the need to preserve due process and fair treatment.

2. Article 1(5) of the UNCITRAL Arbitration Rules (hereinafter the "UARs") incorporates the Expedited Rules, which are presented as an appendix to the UARs. The phrase "where the parties so agree" in that paragraph emphasizes the need for the parties' express consent for the Expedited Rules to apply to the arbitration.

3. In the following, any reference to "article(s)" is to that in the Expedited Rules, unless otherwise expressly indicated.

A. Scope of application

Article 1

4. Article 1 provides that express consent of the parties is required for the application of the Expedited Rules.

5. Parties are free to agree on the application of the Expedited Rules at any time even after the dispute has arisen (see model arbitration clause in the annex to the Expedited Rules). For example, parties that had concluded an arbitration agreement or had initiated arbitration under the UARs before the effective date of the Expedited Rules (19 September 2021) can subsequently agree to refer their dispute to arbitration under the Expedited Rules. Likewise, a party may propose to the other party or parties that the Expedited Rules shall apply to the arbitration.

6. However, parties should be mindful of the consequences when changing from non-expedited to expedited arbitration. For

example, a notice of arbitration communicated in accordance with article 3 of the UARs might not meet the requirements in article 4 of the Expedited Rules, whereby the claimant has to communicate proposals for the designation of an appointing authority and for the appointment of a sole arbitrator. Therefore, it would be prudent for the parties to agree on how such requirements could be met, should they agree to refer their dispute to arbitration under the Expedited Rules after the proceedings had begun. Similarly, if a three-member arbitral tribunal was constituted in accordance with the UARs, the parties may wish to consider appointing a sole arbitrator in accordance with article 8. If the constitution of the arbitral tribunal is changed, the parties may also need consider the status of statements and evidence submitted to the former tribunal.

7. Article 1 provides that the UARs generally apply to expedited arbitration, unless and as modified by the Expedited Rules. The phrase "as modified by these Expedited Rules" means that rules in the UARs and the Expedited Rules need to be read in conjunction for the proper conduct of the proceedings. The rules in the UARs are either supplemented or replaced by those in the Expedited Rules. For the avoidance of doubt, the footnote to article 1 provides a list of articles in the UARs that would not apply in the context of expedited arbitration. However, parties retain the flexibility to tailor the rules to their proceedings.

8. As the Expedited Rules are presented as an appendix to the UARs, reference to "the Rules" or "these Rules" in the UARs (see articles 1(2), 1(3), 1(4), 2(6), 4(2), 6(3), 6(4), 6(5), 10(3), 17(1), 17(2), 30(1), 30(2), 32 and 41(4)*(b)* of the UARs) include the Expedited Rules in the context of expedited arbitration.

9. In relation to article 1(2) of the UARs, parties to an arbitration agreement concluded before the entry into force of the Expedited Rules will not be presumed to have referred their dispute to the Expedited Rules, even though the Expedited Rules are presented as an appendix to the UARs. This is because the Expedited Rules only apply when so expressly agreed by the parties. On the other hand, if a subsequent version of the Expedited Rules were to be prepared, article 1(2) of the UARs would apply, which means that the Expedited Rules in effect on the date of commencement of the expedited arbitration would apply, unless the parties have agreed on the current or any other version of the Expedited Rules.

10. Even when the parties had initially agreed to refer their dispute to arbitration under the Expedited Rules, the circumstances may be such that the Expedited Rules are not appropriate to resolve the particular dispute. Article 2 addresses such circumstances, with paragraph 1 allowing parties to agree to withdraw from expedited arbitration.

11. In accordance with paragraph 2, a party that had agreed to refer the dispute to arbitration under the Expedited Rules may subsequently request withdrawal from expedited arbitration, when the circumstances evolved in a manner that would make expedited arbitration no longer suitable for resolving the dispute (see also para. 91 below). While there is no time limit within which a party can request withdrawal, the arbitral tribunal should consider at which stage of the proceedings the request is being made.

12. The phrase "in exceptional circumstances" means that the party requesting withdrawal should provide convincing and justified reasons for the request and that the arbitral tribunal should uphold the request only in certain circumstances. It introduces a high threshold for allowing a unilateral withdrawal from expedited arbitration.

13. When making the determination, the arbitral tribunal should consider whether the Expedited Rules are no longer appropriate for the resolution of the dispute. It may wish to take into account, among others, the following:

– The urgency of resolving the dispute;

– The stage of the proceedings at which the request is made;

– The complexity of the dispute (for example, the anticipated volume of documentary evidence and the number of witnesses);

– The anticipated amount in dispute (the sum of claims made in the notice of arbitration, any counterclaim made in the response thereto as well as any amendment or supplement);

– The terms of the parties' agreement to expedited arbitration and whether the current circumstances were foreseeable at the time of the agreement; and

– The consequences of the determination on the proceedings.

14. The above is a non-exhaustive list of elements that can be taken into account and it would not be necessary for the arbitral tribunal to consider all the elements therein.

15. When making the determination, the arbitral tribunal, in accordance with article 17(1) of the UARs, may decide that the Expedited Rules in their entirety would no longer apply or that certain articles would no longer apply to the arbitration. When deciding that certain articles of the Expedited Rules would no longer apply, the arbitral tribunal should make clear to the parties how the arbitration would be conducted and on the basis of which articles.

16. If the arbitral tribunal is not yet constituted, the determination would need to be made after it is constituted. However, if the parties are not able to reach an agreement on the arbitrator or if there is a disagreement between the parties on (i) whether the Expedited Rules apply or (ii) whether the criteria in the arbitration agreement triggering the application of the Expedited Rules are met, the appointing authority may be involved in constituting the arbitral tribunal in accordance with article 10(3) of the UARs. The appointing authority will make a prima facie decision on whether the arbitration would be conducted under the Expedited Rules. However, the ultimate determination on the application of the Expedited Rules would be left to the arbitral tribunal.

17. When the Expedited Rules no longer apply to the arbitration pursuant to paragraph 1 or 2, the arbitral tribunal shall conduct the arbitration in accordance with the UARs. However, this does not mean that the arbitral tribunal, if already constituted, would have to be re-constituted in accordance with the UARs. Instead, the arbitral tribunal shall remain in place in accordance with paragraph 3. There may, however, be instances where the parties agree to replace an arbitrator or reconstitute the arbitral tribunal. There may also be instances where the arbitrator resigns, for example, if the arbitrator appointed under the Expedited Rules believes that his or her schedule of future commitments does not allow for the conduct of non-expedited arbitration.

18. Unless the arbitral tribunal decides otherwise, the non-expedited proceeding should resume at the stage where the expedited proceeding was when the parties agreed to withdraw or the arbitral tribunal made the determination. Decisions made during the expedited proceeding should remain applicable to the non-expedited proceedings, unless the arbitral tribunal decides to depart from its earlier decisions or from a decision made by the previous tribunal.

B. General provision on expedited arbitration

19. Considering that a fair and efficient resolution of the dispute is a common goal of arbitration under both the UARs and the Expedited Rules, article 3 highlights the expeditious nature of the proceedings under the Expedited Rules and emphasizes the obligation of the parties and the arbitral tribunal to act expeditiously.

20. Paragraph 1 is a reminder to parties that when referring their dispute to arbitration under the Expedited Rules, they are agreeing to cooperate in ensuring the efficiency of the proceeding as well as for a swift resolution of the dispute, particularly in an ad hoc setting where there is no administering institution to further expedite the process.

21. Paragraph 2 should be read along with article 17(1) of the UARs. Therefore, arbitral tribunals in expedited arbitration have the same duty to conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process to resolve the dispute. The arbitral tribunal should also comply with any due process requirements.

22. When conducting arbitration under the Expedited Rules, arbitral tribunals should be mindful of the objectives of the Expedited Rules, of the parties' intentions and expectations when they chose the Expedited Rules and of the time frames therein, particularly those in article 16 with regard to the rendering of the award. The annex to the Expedited Rules includes a model statement which parties could request the arbitrator to add to the statement of independence. The model statement highlights that the arbitrator would conduct the arbitration expeditiously and in accordance with the time frames in the UARs and the Expedited Rules.

23. Designating and appointing authorities as well as arbitral institutions administering arbitration under the Expedited Rules should also be mindful of the objectives of the Expedited Rules as well as any applicable time frames (see para. 58 below).

24. Paragraph 3 emphasizes the discretion provided to the arbitral tribunal to make use of a wide range of technological means to conduct the proceeding, including when communicating with the parties and when holding consultations and hearings. It also mentions that consultations and hearings can be held without the physical presence of the participants and in different locations. The inclusion of such a rule in the Expedited Rules does not imply that the use of technological means is

available to arbitral tribunals only in expedited arbitration. The rule aims to assist the arbitral tribunal in streamlining the proceedings and avoiding unnecessary delay and expense, both of which are in line with the objectives of expedited arbitration. The arbitral tribunal should be mindful that the use of technological means is subject to the rules in the UARs to provide for a fair proceeding and to give each party a reasonable opportunity to present its case. Thus, the arbitral tribunal should also be mindful of any due process requirements. In that light, the arbitral tribunal should give the parties an opportunity to express their views on the use of such technological means and consider the overall circumstances of the case, including whether such technological means are at the disposal of the parties.

C. Notice of arbitration, response thereto, statements of claim and defence

Article 4

25. Article 4 addresses the initiation of recourse to arbitration by the claimant and modifies articles 3(4) and 20(1) of the UARs.

26. Two elements, which are optional under article 3(4) of the UARs, are required in the notice of arbitration under the Expedited Rules. This is to facilitate the speedy constitution of the arbitral tribunal in expedited arbitration. In accordance with paragraph 1, the claimant is required to propose an appointing authority (unless the parties have previously agreed thereon) and the appointment of the arbitrator. It is important for the claimant to include such information in its notice of arbitration because the 15-day time frames in articles 6 and 8 begin with the receipt by the respondent of the respective proposals.

27. A proposal for the appointment of the arbitrator does not mean that a party needs to put forward the name of the arbitrator; rather, a party may suggest a list of suitable candidates or qualifications, or a mechanism to be used by the parties for agreeing on the arbitrator. This would also cater for cases where the parties agreed to more than one arbitrator in expedited arbitration.

28. To further expedite the process, paragraph 2 requires the claimant to communicate its statement of claim along with its notice of arbitration. This modifies the rule in article 20(1) of the UARs, which provides that the statement of claim should be communicated within a period of time to be determined by the arbitral tribunal.

29. In summary, when initiating recourse to expedited arbitration, the claimant needs to include the following in its notice of arbitration and the statement of claim:

– A demand that the dispute be referred to arbitration (UARs art. 3(3)*(a)*);

– The names and contact details of the parties (UARs arts. 3(3)*(b)* and 20(2)*(a)*);

– Identification of the arbitration agreement that is invoked (UARs art. 3(3)*(c)*) and a copy thereof (UARs art. 20(3));

– Identification of any contract or other legal instrument out of or in relation to which the dispute arises (UARs art. 3(3) *(d)*) and a copy thereof (UARs art. 20(3)) – in the absence of such contract or instrument, a brief description of the relevant relationship (UARs art. 3(3)*(d)*);

– A brief description of the claim and an indication of the amount involved, if any (UARs art. 3(3)*(e)*);

– The relief or remedy sought (UARs arts. 3(3)*(f)* and 20(2) *(d)*);

– A proposal as to the language and place of arbitration, if the parties have not previously agreed thereon (UARs art. 3(3)*(g)*);

– A proposal for the designation of an appointing authority, unless the parties have previously agreed thereon (Expedited Rules art. 4(1)*(a)*);

– A proposal for the appointment of an arbitrator (Expedited Rules art. 4(1)*(b)*);

– A statement of the facts supporting the claim (UARs art. 20(2)*(b)*);

– The points at issue (UARs art. 20(2)*(c)*);

– The legal grounds or arguments supporting the claim (UARs art. 20(2)*(e)*); and

– As far as possible, all documents and other evidence relied upon by the claimant, or references to them (UARs art. 20(4)).

30. In light of article 7 which provides a default rule of a sole arbitrator, the claimant would not need to propose the number of arbitrators in its notice of arbitration, unless it wishes to suggest the constitution of an arbitral tribunal of more than one arbitrator.

31. With respect to the last item on the above list, the objective is to require the presentation of the complete case for the sake of efficiency. It does not, however, mean that all evidence has to be communicated at this stage, which may be burdensome and counterproductive. This is highlighted by the words "as far as possible" and the claimant may decide to make reference to the evidence to be relied upon. For example, witness statements need not be submitted at this stage. The claimant could instead identify in its statement of claim: (i) any witness whose testimony it would rely on; (ii) the subject matter of the testimony; and (iii) any subject matter for which the claimant intends to submit expert reports. It would be preferable to determine which evidence is to be submitted during the consultation between the arbitral tribunal and the parties (see para. 62 below).

32. The claimant may elect to treat its notice of arbitration as its statement of claim, as long as the notice of arbitration complies with the requirement of the statement of claim (see second sentence of article 20(1) of the UARs). In that case, the claimant would be communicating a single document combining its notice of arbitration and statement of claim.

33. Paragraph 3 requires the claimant to communicate its notice of arbitration and statement of claim to the arbitral tribunal as soon as it is constituted. In the case that the arbitral tribunal consists of more than one arbitrator, the claimant would, in practice, communicate its notice of arbitration and statement of claim to each of the arbitrators upon his or her appointment.

Article 5

34. Article 5 addresses the actions required by the respondent upon receipt of a notice of arbitration and a statement of claim from the claimant. It envisages a two-stage reply with a shorter time frame for the response to the notice of arbitration (hereinafter the "response") and a longer one for the statement of defence. This is to facilitate the speedy constitution of the arbitral tribunal and to provide sufficient time for the respondent to prepare its case.

35. The respondent is required to communicate a response within 15 days of the receipt of the notice. Article 5(1) thus modifies article 4(1) of the UARs, which provides for a 30-day time frame. A shorter time frame is imposed on the response, as it addresses procedural issues, in particular those relating to the constitution of the arbitral tribunal.

36. The response shall respond to the information set forth in the notice of arbitration. As article 4(1) of the Expedited Rules requires a claimant to include in its notice of arbitration proposals on an appointing authority and on the appointment of the arbitrator, the respondent is required to include a response to those proposals. If the respondent disagrees with the proposals, the respondent is free to make its own proposals in accordance with article 4(2)*(b)* and *(c)* of the UARs.

37. In summary, the respondent would need to provide, within 15 days of the receipt of the notice of arbitration, the following in the response:

– The name and contact details of each respondent (UARs art. 4(1)*(a)*);

– A response to the information set forth in the notice of arbitration, pursuant to article 3(3)*(c)* to *(g)* of the UARs (UARs art. 4(1)*(b)*); and

– A response to the information set forth in the notice of arbitration, pursuant to article 4(1)*(a)* and *(b)* of the Expedited Rules (Expedited Rules art. 5(1)).

38. To provide the respondent with sufficient time to prepare its statement of defence and to ensure equality of the process, the respondent has 15 days from the constitution of the arbitral tribunal to communicate its statement of defence. Article 5(2) introduces a 15-day time frame in contrast to article 21(1) of the UARs, which provides that the statement of defence shall be communicated within a period of time determined by the arbitral tribunal. If the respondent requests for additional time, the arbitral tribunal may extend the 15-day time frame in accordance with article 10.

39. The respondent may elect to treat its response to the notice of arbitration as its statement of defence, as long as the response complies with the requirement of article 21(2) of the UARs (see second sentence of article 21(1) of the UARs).

D. Designating and appointing authorities

40. The appointing authority has a significant role in expediting the proceedings, especially with regard to the constitution of the arbitral tribunal. Therefore, it is important that the parties agree on the choice of an appointing authority (see model arbitration clause, paragraph *(a)*). When the parties have not agreed on that choice, article 6 of the Expedited Rules provides a mechanism for the Secretary-General of the Permanent Court of Arbitration (PCA) to designate an appointing authority or to serve as one, both of which would lead to an earlier engagement of the appointing authority.

41. Article 6(1) simplifies the process provided for in article 6(2) of the UARs by allowing a party to request the Secretary-General of the PCA to serve as the appointing authority. It provides a streamlined and flexible process, while providing a level of discretion to the Secretary-General of the PCA.

42. The process is accelerated by allowing any party to engage with the Secretary-General of the PCA any time after 15 days have lapsed from the receipt by all parties of a proposal on an appointing authority. In practice, this means that a claimant that has included in its notice of arbitration a proposal for an appointing authority in accordance with article 4(1) is able to make the request to the Secretary-General of the PCA immediately upon the lapse of the 15-day time frame in article 5(1).

43. It should, however, be noted that article 5(1) provides the respondent 15 days to respond to the notice of arbitration, which should also include a response to the proposal for an appointing authority. Therefore, it would be prudent for the claimant to consider such response before engaging the Secretary-General of the PCA. In any case, the Secretary-General of the PCA in exercising its functions under article 6(1) would be required to give the parties an opportunity to present their views, including any proposals on the appointing authority.

44. Similar to article 6(1), article 6(2) modifies article 6(4) of the UARs and allows a party to request the Secretary-General of the PCA to designate a substitute appointing authority or to serve as one, where the appointing authority refuses or fails to act. However, this would not be possible when the Secretary-General of the PCA is already serving as the appointing authority.

45. Paragraph 3 provides a level of discretion to the Secretary-General of the PCA to address practical questions that could

arise, for example, (i) when a party has previously rejected or rejects a proposal for the Secretary-General of the PCA to serve as appointing authority; (ii) when a party requests the Secretary-General of the PCA to serve as appointing authority and the other party requests it to serve as designating authority; and (iii) when a party requests the Secretary-General of the PCA to either designate an appointing authority or to serve as an appointing authority.

46. Paragraphs 1, 3, 5, 6 and 7 of article 6 of the UARs continue to apply to expedited arbitration.

E. Number of arbitrators

47. Article 7 provides that an arbitral tribunal composed of a single arbitrator is the default rule in expedited arbitration. As such, article 7(1) of the UARs is replaced by article 7 of the Expedited Rules. Parties, however, can agree on more than one arbitrator, in light of the particulars of the dispute and if collective decision-making is preferred. However, they should be mindful that proceedings involving an arbitral tribunal composed of more than one arbitrator may be less expeditious (see para. 59 below).

48. When the parties have referred their dispute to arbitration under the Expedited Rules and there is no separate agreement on the number of arbitrators, the appointing authority should not have any role in determining that number and should appoint a sole arbitrator in accordance with articles 7 and 8. While the appointing authority may make a prima facie decision on whether the arbitration is to be conducted under the Expedited Rules, the ultimate determination on the application of the Expedited Rules would be left to the arbitral tribunal (see para. 16 above).

49. Article 7(2) of the UARs continues to apply in expedited arbitration when the parties agreed to constitute the arbitral tribunal with more than one arbitrator.

F. Appointment of the arbitrator

50. Article 8 addresses how a sole arbitrator is to be appointed in expedited arbitration. If the parties agreed on more than one arbitrator, articles 9 and 10 of the UARs apply.

51. Paragraph 1 encourages the parties to reach an agreement on the sole arbitrator.

52. Paragraph 2 provides a mechanism in the absence of an agreement by the parties on a sole arbitrator. Any party may request the engagement of the appointing authority 15 days after a proposal for the appointment of a sole arbitrator has been received by all other parties. This is shorter than the 30-day time frame in article 8(1) of the UARs. The involvement of the appointing authority can only be triggered by a request by one of the parties.

53. Considering that the claimant is required to include a proposal for the appointment of a sole arbitrator in the notice of arbitration (see article 4(1) and para. 27 above), if there is no agreement within 15 days after the respondent's receipt of the notice of arbitration, the claimant would be able to make a request to the appointing authority, if previously agreed by the parties. If a proposal is not included in the notice, the 15-day time frame would commence when the proposal is made.

54. It should, however, be noted that article 5(1) provides the respondent 15 days to respond to the notice of arbitration, which should also include a response to the claimant's proposal for the appointment of a sole arbitrator. Therefore, it would be prudent for the claimant to consider the response before engaging with the appointing authority. If the respondent foresees that an agreement cannot be reached, it could also engage with the appointing authority at the same time it communicates the response to the notice of arbitration.

55. If there is no agreement by the parties on the appointing authority and the sole arbitrator 15 days after the receipt of the notice by the respondent, any party may request the Secretary-General of the PCA to designate the appointing authority or to serve as appointing authority in accordance with article 6(1). In the latter case, a party can also request the appointment of a sole arbitrator in accordance with article 8(2), which would likely facilitate a speedy constitution of the arbitral tribunal.

56. Article 8(2) of the UARs, which mentions a list-procedure for the appointment of a sole arbitrator, also applies to expedited arbitration.

57. In exercising the functions under the Expedited Rules, the appointing authority and the Secretary-General of the PCA should be mindful of article 6(5) of the UARs, which requires them to give the parties and the arbitrators (if appointed and

when appropriate) an opportunity to present their views. Any proposal made and comments thereon by the parties on the appointment of a sole arbitrator should thus be taken into account.

58. When appointing an arbitrator for expedited arbitration, the appointing authority shall make an effort to secure not only an independent and impartial arbitrator in accordance with article 6(7) of the UARs but also an arbitrator who is available and ready to conduct the arbitration expeditiously in accordance with article 3(2) of the Expedited Rules. The appointing authority may wish to require the prospective arbitrator to make a statement as provided in the annex to the Expedited Rules.

59. The time frames in article 9 of the UARs on the constitution of a three-member arbitral tribunal apply to expedited arbitration. However, parties may wish to reduce the time frames therein to expedite the constitution of a three-member arbitral tribunal.

G. Consultation with the parties

60. Consultation between the arbitral tribunal and the parties at an early stage of the proceedings is particularly key to an efficient and fair organization of expedited arbitration. The terms "consult" and "consultation" are used in article 9 to highlight the interactive nature of the engagement between the arbitral tribunal and the parties when discussing how the arbitration would be conducted. In general, the phrase "after inviting the parties to express their views" is used throughout the UARs as well as in articles 2, 3, 10, 11, 14 and 16 of the Expedited Rules to refer to a situation where the arbitral tribunal is required to give the parties an opportunity to express their support, concerns or objections before the arbitral tribunal takes a decision on a certain matter.

61. Article 9 requires the arbitral tribunal to consult the parties on how to organize the proceedings. It thus conveys the expectation that the arbitral tribunal will engage actively with the parties rather than to simply invite them to express their views. A case management conference is one way of conducting such consultation and can be an important procedural tool, particularly in expedited arbitration, as it 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.

62. A number of issues could be discussed during consultations so as to create a basis for a common understanding of the proceedings, for example: (i) a list of points at issue including those that need to be addressed with priority; (ii) the need for further written statements and evidence; (iii) whether and how to conduct further consultations as well as hearings, including whether they would be in person or using technological means, including remotely; (iv) other procedural issues as well as the timetable. Similarly, if the parties indicate that they intend to present witnesses, whether statements by witnesses shall be in writing and the time for the presentation of the witness statements could be discussed during consultations.

63. Article 9 introduces a short time frame within which the arbitral tribunal should consult the parties as it is useful for this to be done at the very early stages of the proceedings. The arbitral tribunal should conduct the consultation with the parties promptly after and within 15 days of its constitution. In certain cases, the respondent might not yet have communicated its statement of defence as it is to be communicated within 15 days of the constitution of the arbitral tribunal (see article 5(2)). Nonetheless, it would be useful for the arbitral tribunal to consult the parties at an early stage based on the notice of arbitration, response thereto as well as the statement of claim. Upon receipt of the statement of defence from the respondent, further consultations may be required, particularly if an agreement on a provisional timetable has been deferred pending the arbitral tribunal's review of the statement of defence or if the agreed timetable requires an update following such review.

64. Consultations may be conducted through a meeting in person, in writing, by telephone or videoconference or other means of communication as provided for in article 3(3). Considering that sufficient flexibility is provided to the arbitral tribunal, it should not be burdensome to meet the 15-day time frame in article 9.

65. In accordance with article 17(2) of the UARs, the arbitral tribunal should establish the provisional timetable. In so doing, the arbitral tribunal should be mindful of the time frames in the Expedited Rules, in particular those in article 16. Similarly, following the consultations, the arbitral tribunal should communicate to the parties the outcome of the consultations to ensure that the parties are fully aware of the time frames and avoid delays.

H. Time frames and the discretion of the arbitral tribunal

66. Article 10 addresses the discretion of the arbitral tribunal with regard to time frames in expedited arbitration. It should be read along with the second sentence of article 17(2) of the UARs.

67. Article 10 clarifies that the arbitral tribunal may extend or abridge any period of time prescribed under the UARs and the Expedited Rules or agreed by the parties. Even after a time frame has been fixed in accordance with article 10, flexibility is provided to adjust the time period when the adjustment is justified. However, this discretion is subject to article 16, which provides a specific rule with regard to the time frames for rendering the award and their extensions (see paras. 84–92 below).

68. Article 10 clarifies and reinforces the discretionary power of the arbitral tribunal to adapt the proceedings to the circumstances of the case, further limiting the risk of challenges at the enforcement stage. In other words, it provides the arbitral tribunal with a robust mandate to act decisively without fearing that its award could be set aside for a breach of due process.

69. While shorter time frames constitute one of the key characteristics of expedited arbitration, arbitral tribunals should preserve the flexible nature of the proceedings and comply with due process requirements.

70. With regard to the consequences of non-compliance by the parties with the time frames, article 30 of the UARs on default applies to expedited arbitration. With regard to late submissions, considering that flexibility is provided to the arbitral tribunal in setting and modifying time frames, the arbitral tribunal can reject or disregard such submissions, while such discretion should be exercised with care.

I. Hearings

71. Article 11 emphasizes the discretionary power of the arbitral tribunal to not hold hearings in expedited arbitration in the absence of a request by any party. It should be read together with article 17(3) of the UARs, which provides that: (i) the arbitral tribunal shall hold hearings if any party so requests at an appropriate stage of the proceedings; and (ii) in the absence of such a request, the arbitral tribunal shall decide whether to hold hearings. Parties themselves may agree to hold hearings, in which case that agreement is binding on the arbitral tribunal.

72. A hearing may cause delays particularly if the scheduling of the parties and the arbitral tribunal need to be coordinated. A hearing may be useful, however, when witness testimony and expert opinions are critical for the arbitral tribunal's decision-making. Moreover, a direct exchange between the parties and the arbitral tribunal at a hearing (whether in person or remotely) may facilitate a better understanding of the case and make the proceedings more efficient.

73. Considering the short time frame of six months for rendering the award in expedited arbitration, the arbitral tribunal may wish to decide at an early stage of the proceedings whether to hold hearings. A request to hold a hearing at a later stage may delay the proceedings and may have a negative impact on the arbitral tribunal complying with that time frame.

74. As parties have a right to request the holding of a hearing, article 11 requires the arbitral tribunal to invite the parties to express their views on whether hearings are to be held. This may also be done during the consultation with the parties (see para. 62 above). If a party so requests at that stage, the arbitral tribunal will need to hold a hearing in accordance with article 17(3) of the UARs. In the absence of such a request prior to and during the consultation, the arbitral tribunal may go ahead and decide to not hold a hearing.

75. This means that the proceedings shall be conducted on the basis of documents and other materials. A request by a party to hold a hearing after a decision by the arbitral tribunal to not hold one can be denied as the request might no longer be considered as being made at "an appropriate stage of the proceedings" (see article 17(3) of the UARs). Insofar, article 11 could have the effect of limiting the time frame during which a request for holding a hearing can be made.

76. As provided for in article 3(3) of the Expedited Rules and article 28(4) of the UARs, the arbitral tribunal may utilize any technological means to hold hearings without the physical presence of the parties or witnesses, including remotely. The remaining paragraphs of article 28 of the UARs also apply to the conduct of hearings in expedited arbitration. The arbitral tribunal has a broad discretion on how to conduct the hearings in a streamlined manner. Efforts should be made to limit the duration of the hearings, the number of witnesses as well as cross-examination and at the same time, to maintain due process.

J. Counterclaims and claims for the purpose of set-off

77. Article 12 preserves the right of the parties to make counterclaims and claims for the purpose of set-off (hereinafter referred to as "counterclaims"), but introduces certain qualifications, which can be lifted by the arbitral tribunal. This is to ensure that counterclaims do not result in delays in expedited arbitration.

78. Article 12 replaces article 21(3) of the UARs and introduces a higher threshold for counterclaims. Paragraph 1 requires the respondent to make any counterclaim at the latest in its statement of defence. A counterclaim can be made at a later stage of the proceedings, but only when the arbitral tribunal considers it appropriate under the circumstances.

K. Amendments and supplements to a claim or defence

79. Article 13 replaces article 22 of the UARs. It introduces a higher threshold for parties to make amendments and supplements to a claim or defence, including a counterclaim or a claim for the purposes of set-off (hereinafter referred to as "amendments") in the context of expedited arbitration. Nonetheless, it provides flexibility in its application to different circumstances. Accordingly, a party is not allowed to make amendments unless the arbitral tribunal considers it appropriate to allow such amendments. When determining whether to allow amendments, the arbitral tribunal should take into account at which stage of the proceedings such a request for the amendment is made, prejudice to other parties in allowing the amendment and any other circumstances.

80. Counterclaims and amendments might result in the expedited arbitration no longer being appropriate for resolving the dispute. In such a circumstance, parties may agree that that the Expedited Rules shall no longer apply to the arbitration or a party may request the arbitral tribunal to determine that the Expedited Rules shall no longer apply in accordance with article 2 (see paras. 10–14 above).

L. Further written statements

81. Article 14 emphasises the discretionary power of the arbitral tribunal under article 24 of the UARs to limit further written

statements. It clarifies that the arbitral tribunal may decide that the statement of claim and the statement of defence are sufficient and that no further written statements are required from the parties. It should, however, not be interpreted that arbitral tribunals do not have such discretion under article 24 of the UARs.

M. Evidence

82. Article 15 clarifies the discretionary power of the arbitral tribunal with regard to taking of evidence in expedited arbitration. Article 27(3) of the UARs provides that the arbitral tribunal may require the parties to produce documents and other evidence during the proceedings. The first sentence of article 15(1) clarifies that the arbitral tribunal may decide which documents or other evidence are to be produced by the parties. The second sentence reaffirms the discretionary power of the arbitral tribunal to not provide for a procedure where a party requests another party to produce documents (often referred to as the "document production" phase). The inclusion of article 15(1) in the Expedited Rules should, however, not be interpreted as meaning that arbitral tribunals do not have such discretion under article 27(3) of the UARs.

83. Article 15(2) provides that in expedited arbitration, statements by witnesses shall be presented in written form and signed by them. Paragraph 2 thus replaces the second sentence of article 27(2) of the UARs. While the rules for meeting the requirements of "in writing" and "signature" through electronic communication vary depending on the jurisdiction, it should be noted that article 9(2) and (3) of the United Nations Convention on the Use of Electronic Communications in International Contracts provides a functional equivalence rule.

N. Period of time for making the award

84. Article 16 provides the time frame for making the award, which refers to the final award. Paragraph 1 provides for a six-month time frame for making the award and a mechanism for extending that time frame in certain circumstances. The six-month time frame for rendering the award commences with the constitution of the arbitral tribunal. Parties are free to agree on a time frame different from that in paragraph 1, which may be shorter or longer depending on their needs.

85. The general discretion provided to arbitral tribunals under article 10 to extend or abridge any period of time prescribed

under the Expedited Rules and those agreed by the parties is subject to article 16. The first sentence of article 16(2) specifically authorizes the arbitral tribunal to extend the time frame for rendering the award established pursuant to paragraph 1, but only in exceptional circumstances and after inviting the parties to express their views. It would be up to the arbitral tribunal to determine whether the circumstances are exceptional or not. While the arbitral tribunal should generally indicate the reasons when extending the time frame, paragraph 2 does not require reasons so as to provide flexibility to the arbitral tribunal, particularly when the extended time period is rather short.

86. The second sentence of paragraph 2 provides that the maximum overall time frame, including any extended period, should be no longer than nine months from the date of the constitution of the arbitral tribunal. This responds to the expectations of the parties that an award would be rendered within a short time period, one of the key features of expedited arbitration. Paragraph 2, however, does not impose limitations on the number of extensions within the overall time frame. As parties are free to modify any time frame in the Expedited Rules, paragraph 2 also does not prevent the parties from agreeing on a time frame that is longer than nine months.

87. In case the arbitral tribunal considers that it is at risk of not rendering an award within the time frame provided for in paragraph 2, paragraph 3 provides a mechanism whereby that time period could be extended for one last time. This mechanism intends to address a situation where the arbitral tribunal is at risk of not being able to render an award within the time frame, for example, due to unusual circumstances arising near the end of the time frame or if only a short period of time beyond that time frame is required for rendering the award.

88. Parties and the arbitral tribunal should be mindful of the consequence when the time frame in paragraph 2 lapses without an award being rendered. Depending on the applicable law, this may result in the termination of the proceedings or the award rendered subsequently being the subject of possible annulment. In some jurisdictions, such an award might also be refused enforcement. To avoid such situations, paragraph 3 permits the arbitral tribunal to propose to the parties a final extended time limit, stating the reasons for the proposal. In so doing, it must also fix a time period within which the parties should express their views on the proposal. The proposed extension would only be permitted when all parties agree to the extension within the fixed time period. It will be the responsibility of the arbitral tribunal to ascertain that the agreement to its

proposal is expressed without ambiguity. For example, if in response to the proposal, a party agrees only to a time frame shorter than that proposed by the arbitral tribunal, the arbitral tribunal may invite the other parties to express their agreement to such shorter time frame. In addition, if one party agrees to the proposal within the fixed time period and the other party agrees after the time period has lapsed, the arbitral tribunal may wish to consult the parties to confirm whether it could assume that there was agreement by the parties, thus avoiding a possible application of paragraph 4.

89. Paragraph 3 does not set a maximum time frame that can be proposed by the arbitral tribunal. Nonetheless, to obtain the agreement of the parties, the extended time frame requested by the arbitral tribunal should be reasonable taking into account any concerns of the parties, and be sufficient for the arbitral tribunal to render the award.

90. Considering that in certain jurisdictions, extension of the time frame could only be granted upon the agreement or consent of the parties or by an entity other than the arbitral tribunal, paragraphs 2 and 3 underline that parties, by agreeing to the application of the Expedited Rules, are granting the arbitral tribunal the authority to extend the time period established in paragraphs 1 and 2.

91. Paragraph 4 alerts the parties and the arbitral tribunal to the mechanism provided for in article 2(2) of the Expedited Rules in case there is no agreement by the parties to the extension proposed by the arbitral tribunal. In such a case, any party may make a request to the arbitral tribunal that the Expedited Rules no longer apply to the arbitration. Indeed, the arbitral tribunal may wish to suggest this possibility along with its proposal to extend the time period in accordance with paragraph 3 as the consequence. Doing so could avoid a situation where none of the parties makes the request under paragraph 4 despite there being no agreement by the parties on the extension. Paragraph 4 could be particularly useful if one of the parties intentionally delays the proceedings as well as the issuance of the award within the time frame and does not agree to the extension.

92. After inviting the parties to express their views, the arbitral tribunal may determine that the Expedited Rules shall no longer apply to the arbitration, which in effect lifts any time limit for rendering the award in the Expedited Rules including those agreed by the parties. As the arbitral tribunal would have stated the reasons in proposing the extension under paragraph 3, the

arbitral tribunal might consider that exceptional circumstances exist as required under article 2(2) and would not need to repeat the reasons when determining that the Expedited Rules shall not longer apply. Should the arbitral tribunal make the determination under paragraph 4, the arbitral tribunal will remain in place and continue to conduct the arbitration but will do so in accordance with the UARs.

93. Article 16 should also be read together with articles 37 and 38 of the UARs, which respectively provide that the interpretation and the correction form part of the award. If the final award was made within the time frame in article 16, any subsequent interpretation or correction to that award after the lapse of the time frame shall not affect the timeliness of the final award for the purposes of article 16. Similarly, an additional award made in accordance with article 39 of the UARs after the lapse of the time frame in article 16 shall not affect the timeliness of the award made within that time frame.

94. It should be noted that article 16 does not aim to address the instances of de jure or de facto impossibility of the arbitrator to perform his or her functions. In such a situation, articles 12(3), 13 and 14 of the UARs will likely lead to the termination of the arbitrator's services and his or her replacement. In the case of replacement, article 15 of the UARs provides that the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions. In practice, this would have the effect of suspending the time period in article 16 of the Expedited Rules from the time the replaced arbitrator ceased to perform his or her functions to the date of replacement. If the new arbitrator considers that the remaining time would not be sufficient to render an award, he or she could rely on article 16 to extend the time frame. Also, if an arbitrator is temporarily unable to perform his or her functions and is not replaced, the arbitrator as well as the parties could rely on article 16 to extend the time frame and cope with any delay that may have occurred during such a period.

95. A similar solution applies if the arbitral tribunal suspends the proceedings in accordance with article 43(4) of the UARs, due to non-payment of the required deposits. In that case, the time period in article 16 would cease to run during the suspension.

96. Article 16 should be read together with article 34 of the UARs, in particular paragraph 3, which provides that the parties may agree that no reasons need to be given in the award. This could reduce the time required by the arbitral tribunal in

rendering the award and allow the arbitral tribunal to meet the time frame in the Expedited Rules. However, unless the parties have agreed that no reasons are to be given, arbitral tribunals in expedited arbitration shall state the reasons upon which the award is based. Requiring the arbitral tribunal to provide a reasoned award can assist its decision-making and provide comfort to the parties as they will find that their arguments have been duly considered and would be aware of the basis upon which the award was rendered. The absence of reasoning in an award could have an impact on the control mechanism and its scope, as such reasoning might be necessary for the court or any other competent authority to consider whether some of the grounds for setting aside the award or refusing its recognition and enforcement exist.

O. Model arbitration clause for expedited arbitration

97. The annex to the Expedited Rules contains a model arbitration clause for parties to agree to expedited arbitration under the Expedited Rules. The model arbitration clause notes that the parties should consider adding the appointing authority, the place and the language of arbitration.

98. When considering whether to refer a dispute that has arisen or could arise in the future to arbitration under the Expedited Rules, the parties should take into account, among others, the following elements:

– The urgency of resolving the dispute;

– The complexity of the transactions and the number of parties involved;

– The anticipated complexity of the dispute;

– The anticipated amount of the dispute;

– The financial resources available to the party in proportion to the expected cost of the arbitration;

– The possibility of joinder or consolidation; and

– The likelihood of an award being rendered within the time frames provided in article 16 of the Expedited Rules.

P. The Expedited Rules and the Transparency Rules

99. The suitability of the Expedited Rules for investment arbitration is a question left to the disputing parties, as express consent of the parties is required for the Expedited Rules to apply (see paras. 2, 4 and 5 above). States could refer to and consent to the Expedited Rules in their respective investment treaty, based on which an investor claimant may consent to refer a dispute under the Expedited Rules. However, a reference to the UARs in investment treaties (regardless of whether the reference was included prior to or after the effective date of the Expedited Rules) should not be construed as consent by the State Parties to the Expedited Rules as express consent is necessary for the application of the Expedited Rules.

100. According to article 1(4) of the UARs (as adopted in 2013), the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration ("Transparency Rules") form part of the UARs. Article 1 of the Transparency Rules addresses the applicability of the Transparency Rules to "investor-State arbitration initiated under the UNCITRAL Arbitration Rules". As the Expedited Rules are presented as an appendix to the UARs, an investor-State arbitration initiated under the Expedited Rules should be considered as being initiated under the UARs and therefore, the Transparency Rules could apply.

101. If the investor-State arbitration is initiated pursuant to an investment treaty concluded before 1 April 2014, the Transparency Rules would only apply when the disputing parties have agreed to their application or the States Parties to the treaty have agreed to their application after 1 April 2014. Therefore, even if the disputing parties agree to the application of the Expedited Rules, the proceedings would not be subject to the Transparency Rules unless above-mentioned conditions are met.

102. If the investor-State arbitration is initiated pursuant to an investment treaty concluded on or after 1 April 2014, the Transparency Rules would apply unless the States Parties to the treaty have agreed otherwise. In other words, if States Parties to the treaty have not agreed otherwise and the disputing parties agree to the application of the Expedited Rules, the proceedings would be subject to the Transparency Rules.

103. Parties that have agreed to refer an investor-State dispute to arbitration under the Expedited Rules may agree that the Transparency Rules shall not apply to the arbitration. For example, States could include a reference to the Expedited Rules in their investment treaties, while opting out of the Transparency

Rules, for example, by making a reference to (i) the 2010 version of the UARs as modified by the Expedited Rules or (ii) the Expedited Rules without article 1(4) of the UARs.

104. However, the flexibility for the disputing parties to opt out of the Transparency Rules in investor-State arbitration initiated pursuant to an investment treaty concluded on or after 1 April 2014 which includes a reference to the UARs will be restricted, if the States Parties to that treaty have not opted out of the Transparency Rules. For example, if two States conclude a treaty after 1 April 2014 allowing an investor to refer a dispute to the UARs and the States have not opted out of the Transparency Rules, it would not be possible for a claimant investor and the respondent State to agree to the Expedited Rules without being subject to the Transparency Rules.

Q. Time frames in the Expedited Rules

105. The following provides an overview of the different time frames in the Expedited Rules. In the "time frame" column, "A + number (days(d)/months(m))" indicates "within" the number of days/months from stage A (in certain cases, receipt thereof).

	Time frame	*Stages of the proceedings and procedural actions*	*Relevant articles*
A		Notice of arbitration (including a proposal for the designation of an appointing authority (A1) and the appointment of a sole arbitrator (A2)) to the respondent	Expedited Rules 4(1)
	A+0d	Statement of claim to the respondent	Expedited Rules 4(2)
B	A+15d	Response to the notice of arbitration (including responses to A1 and A2) to the claimant	Expedited Rules 5(1)
C	15d after A1 or any proposal	If no agreement on the appointing authority, any party may request the Secretary-General of PCA to designate appointing authority or to serve as appointing authority	Expedited Rules 6(1)
D	15d after A2 or any proposal	If no agreement on the arbitrator, any party may request the appointing authority to appoint the sole arbitrator → Appointing authority to appoint as promptly as possible	Expedited Rules 8(2)
E		Constitution of the arbitral tribunal	Expedited Rules 8; UARs 8 & 9
	E+0d	Claimant to communicate its notice of arbitration & statement of claim to the arbitral tribunal (as soon as it is constituted)	Expedited Rules 4(3)
	E+15d	Consultation with the parties through a case management conference or otherwise (promptly after and within 15 days)	Expedited Rules 9
		Establishment of a provisional timetable (as soon as practicable)	UARs 17(2)
F	E+15d	Respondent to communicate its statement of defence to the claimant and the arbitral tribunal (possible extension)	Expedited Rules 5(2); 10
	F+0d	Counterclaim or a claim for purposes of set-off to be included in the statement of defence (permitted at a later stage, if tribunal considers that it appropriate)	Expedited Rules 12
G	E+6m	Making of the award	Expedited Rules 16(1)
	E+9m	Possible extension of the time period for making of the award (exceptional circumstances)	Expedited Rules 16(2)
	E+9m+final extended time limit	Possible extension of the time period for making of the award (at risk of not rendering an award within nine months)	Expedited Rules 16(3)

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