

Annex

UNCITRAL Notes on Organizing Arbitral Proceedings

Note 21. Early dismissal and preliminary determination

1. *Many arbitration rules provide discretion to the arbitral tribunal to conduct the arbitration in a manner it considers appropriate provided that the parties are treated with equality and that each party is given a reasonable opportunity to present its case. In exercising the discretion, the arbitral tribunal should conduct the proceedings in a manner that avoids unnecessary delay and expense and provide a fair and efficient process for resolving the parties' dispute. One such discretionary power is the ability of the arbitral tribunal to dismiss a claim or defence on the ground that it is manifestly without merit or that it manifestly lacks jurisdiction, or to make a preliminary determination to that effect (referred to below as "early dismissal"). This includes the early dismissal of a counterclaim and a claim for the purposes of set-off.*
2. *The exercise of such discretionary power for early dismissal depends on the circumstances and the applicable arbitration rules. One possible approach is to implement an early dismissal process. Under an early dismissal process, if early dismissal of any claim or defence is sought by a party, it should be raised as promptly as possible. In considering such a request or in initiating the process on its own initiative, the arbitral tribunal shall invite the parties to express their views.*
3. *When determining whether to proceed with the early dismissal process, the arbitral tribunal should take into account a number of factors including the stage of the proceedings. For example, if the early dismissal process may lead to unnecessary delay and expense or may undermine a fair and efficient process, the arbitral tribunal may decide not to proceed with early dismissal. The arbitral tribunal would usually require the party making the request to provide justifying grounds and may require that party to demonstrate that the early dismissal process will expedite the overall proceeding. This could prevent a request for early dismissal from being misused by the parties to delay the proceedings.*
4. *Provisions of the applicable arbitration laws or arbitration rules usually recognize the arbitral tribunal's authority to rule on its own jurisdiction and allow parties, during a proceeding, to raise any objection on jurisdiction. The standard and timing for considering the objection under those provisions are not affected by the arbitral tribunal's ability to decide that it manifestly lacks jurisdiction as a matter of early dismissal.*
5. *Upon determining that the early dismissal process would proceed, the arbitral tribunal should invite the parties to express their views and indicate the procedure it will follow (which should ensure that parties have a reasonable opportunity to prepare and present their case), possibly indicating a period of time within which it will make a ruling. Such a period should be reasonably short.*
6. *The arbitral tribunal should make a ruling as soon as practicable and within the indicated period of time. Depending on the nature of the ruling and its impact on the proceeding, the arbitral tribunal may not need to continue the proceedings or examine all other issues of the case.*
7. *A ruling on early dismissal may take the form of an order or an award depending on the circumstances. For example, if the arbitral tribunal decides to deny the request, it may issue an order to that effect. If the arbitral tribunal decides that a claim or a defence is manifestly without merit and there are other claims or defences remaining, the arbitral tribunal may issue a partial award. The arbitral tribunal would then continue with the proceedings to consider the remaining claims. If the arbitral tribunal decides that all the claims are manifestly without merit, the arbitral tribunal may issue a final award to that effect or may order the termination of the proceeding.*

8. *The arbitral tribunal should provide reasons when making a ruling. If such reasoning is not required under the applicable arbitration law, parties may agree that no reasons are to be given.*
