MIAMI INTERNATIONAL ARBITRATION SOCIETY (MIAS)

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

The MIAS Task Force on Expedited Arbitration under the UNCTIRAL Arbitration Rules has prepared the following comments on the draft Expedited Arbitration Provisions (EAPs). The MIAS Task Force prepared a report dated August 26, 2019 that was provided to the delegates at the Seventieth Session of Working Group II in Vienna in which it proposed an Appendix to house EAPs along with proposed rules text and explanatory notes. It prepared a report in January 2020 provided to the delegates at the Seventy-First Session of the WGII on proposed EAPs. Referring to these work products, and considering the Secretariat's Note on draft EAPs for the Seventy-Second Session of WGII, the MIAS Task Force has prepared the following table. The first column contains the draft provisions. The second column contains the relevant paragraphs from the Secretariat Note relating to the draft provision. The third column presents the MIAS Task Force's views of each draft provision. We hope that these comments are helpful to the Working Group and look forward to a continuing dialogue that will lead to an expeditious implementation of Expedited Arbitration Procedures as part of or an appendix to the UNCITRAL Rules.

Respectfully Submitted this 17th Day of September 2020,
The Miami International Arbitration Society Task Force on Expedited Arbitration Procedures in connection with the UNCITRAL Arbitration Rules.

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

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

/jmb

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
A. Scope of application		
Draft provision 1 (Scope of application)		
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 Provisions, then such dispute shall be settled in accordance with the UNCITRAL Arbitration Rules as modified by these Provisions and subject to such modification as the parties may agree.	*Consent of the parties* 9. Draft provision 1 reflects the view that express consent of the parties would be required for the application of the EAPs and that it should be the sole criterion (A/CN.9/1010, paras. 21 and 27). It intends to provide a clear and simple guidance on when the EAPs would apply (A/CN.9/1010, para. 23). Draft provision 1 further indicates that the UARs would apply generally to expedited arbitration, unless and as modified by the EAPs (A/CN.9/1010, para. 23). 10. As express consent of the parties is required for the application of the EAPs, draft provision 1 no longer includes a temporal scope (A/CN.9/1010, paras. 22 and 27). Similar to the UARs and other arbitration rules, draft provision 1 does not address the question of who would determine whether there was consent by the parties and on what basis. That determination is left to the arbitral tribunal (A/CN.9/1010, para. 25; see also paras. 47–49 below). 11. Draft provision 1 reflects the view that parties should be free to agree on the application of the EAPs at any time (both before and after the dispute arose) (A/CN.9/1010, para. 24). For example, parties that had concluded an arbitration agreement or had initiated non-expedited	Consent is fundamental to the existence of arbitration. Hence, the MIAS Task Force supports the concept. However, the MIAS Task Force does not see a need to repeat the phrase "in respect of a defined legal relationship, whether contractual or not." This text appears already in article 1(1) of the UAR. The text should read: *Where parties have agreed that disputes between them shall be referred to arbitration under the UNCITRAL Expedited Arbitration Provisions . . . agree.* Better yet, the Task Force supports the proposed text set forth in Paragraph 34. The Secretariat's Note reads: "An additional paragraph in article 1 of the UARs could read as follows: *Where the parties so agree, the Expedited Arbitration Provisions in the appendix shall apply to the*

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	arbitration before the effective date of the EAPs would be free to subsequently refer their dispute to arbitration under the EAPs (A/CN.9/1003, para. 31). 12. In that context, the Working Group may wish to consider whether it would be necessary for the UARs to refer to the possibility of a party proposing to the other party or parties that the EAPs shall apply to the arbitration, even if the EAPs were to appear as an appendix to the UARs. If deemed necessary, the following formulation could be included in articles 3(4) and 4(2) of the UARs: *A proposal for the application of the UNCITRAL Expedited Arbitration Provisions found in the appendix to the Rules.* 13. The Working Group may wish to further consider whether the EAPs need to provide guidance and further elaborate on the consequences of the parties agreeing to apply the EAPs after initiating non-expedited arbitration – for example, how to meet the requirements of draft provision 4 (Notice of arbitration and statement of claim) and how to proceed if a three-member tribunal had already been constituted (A/CN.9/1010, paras. 50 and 54). As a general point, it was suggested that the parties should be alerted of the consequences when changing between expedited and non-expedited arbitration once the proceedings had begun (A/CN.9/1010, para. 32; see also paras. 29–30 below).	*arbitration.* If the latter approach is taken, draft provision 1 may simply state that the UARs as modified by the EAPs would apply to the arbitration." This is the smarter approach. It highlights the existence of the EAPs and eliminates the need to repeat this text from UAR 1. With respect to the suggestion in Paragraph 12, the MIAS Task Force supports the addition of including this text in articles 3(4) and 4(2): *A proposal for the application of the UNCITRAL Expedited Arbitration Provisions found in the appendix to the Rules.* The current draft provisions are non-specific about when the agreement to arbitrate under the EAP might occur (if the arbitration agreement itself is silent on their use versus use of the UAR). Again, the UARs and the EAPs should provide parties with awareness of the existence of the EAPs. Adding this text to articles 3(4) and 4(2) will achieve this goal.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
		The Task Force has urged this change from the outset of these proceedings and continues to believe that a "nudge" is a good idea. As to Paragraph 13, it seems unlikely that a switch to the EAP will occur once a three-member tribunal has been constituted. The more likely scenario is one where the parties' agreement calls for a three-member tribunal, but, objectively, the amount or issue in controversy does not warrant a three-member tribunal. The MIAS Task Force suggested ways to deal with this issue in its January 2020 draft rules but, admittedly, the drafting exercise does add a level of complication to the text. If there is not already an EAP agreement in place, the goal should be to tee up the issue before the parties as soon as practicable in the process before the parties have gone too far down the road of utilizing the UAR with three arbitrators. Having text in the rule as suggested in Paragraph 12 should create the recognition of the option for

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
		the parties to consider. They then can reject it or accept it. If there is later "buyer's remorse" that the EAP option was rejected, and both parties now want to use the EAP, and if a three-member tribunal has already been constituted, it would make sense to have the President of the tribunal handle the matter thereafter unless the parties wanted to keep a three-member tribunal and still utilize the EAP. All procedural issues then could be addressed by the tribunal depending upon where the parties were in the process.
B. General provision on expedited arbitration		
Draft provision 2 (General) *1. The parties shall act in an expeditious and effective manner throughout the proceedings so as to achieve a fair and efficient resolution of the dispute.* *2. The arbitral tribunal, in*	15. Draft provision 2 is based on the understanding that there should be an overarching general provision in the EAPs indicating the objectives of the EAPs and stating that the parties and the arbitral tribunal would be bound by those objectives (A/CN.9/1010, para. 96). 16. The Working Group may wish to note that the General Assembly resolution on the 2010 UARs refers to the UARs contributing to a harmonized framework for the "fair and efficient" settlement of international	The MIAS Task Force supports draft provision 2. It is a "critical path" item to get the appointing authority appointed. Whether that is done with aspirational language as appears in draft provision 2, or with specific time limits, EAPs will not be expedited if there is a long delay in constituting the tribunal. So

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
exercising its discretion, shall conduct the proceedings in an expeditious and effective manner further taking into account the parties' expectations.	commercial disputes [4] and that article 17(1) of the UARs requires the arbitral tribunal to conduct the proceedings so as to provide a "fair and efficient" process for resolving the dispute. 17. Draft provision 2 highlights the need for the parties to act in an expeditious and effective manner and expressly requires the arbitral tribunal to conduct the proceedings in an expeditious fashion taking into account the expectations of the parties (A/CN.9/1003, paras. 78 and 112). The Working Group may wish to consider whether draft provision 2 should be expanded to apply also to designating and appointing authorities (see paras. 62–67 below). *Availability of the arbitrator* 18. In expedited arbitration, arbitrators are usually required to formally confirm their availability and readiness to ensure the expeditious conduct of the arbitration. The Working Group may wish to confirm that draft provisions 2 and 9(3) combined with the model statements of independence pursuant to article 11 of the UARs serves that purpose (A/CN.9/1010, para. 69).	with respect to Paragraph 17, the Task Force supports the goal; it is just a question of how best to achieve it. With respect to Paragraph 18, the MIAS Task Force does not believe that additional text is needed. If the parties have not agreed on the tribunal, the appointing authority should be trusted to select a tribunal that will ensure the expeditious conduct of the arbitration.
C. Non-application of the Expedited Arbitration Provisions		
Draft provision 3 (Non-application of the Expedited	20. Draft provision 3 addresses situations where the EAPs would no longer apply to the arbitration	The MIAS Task Force supports Paragraph 1 and the first paragraph of

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
Arbitration Provisions) Agreement of the parties on non-application *1. At any time during the proceedings, the parties may agree that the Expedited Arbitration Provisions shall no longer apply to the arbitration.* Request by a party for non-application *2. At the request of a party, the arbitral tribunal may, in exceptional circumstances, determine that the Expedited Arbitration Provisions shall no longer apply to the arbitration.* Elements to be taken into account when making the determination *3. In making the determination pursuant to*	(A/CN.9/1010, para. 49). Paragraph 4 provides that in such a case, the UARs would apply to the arbitration without being modified by the EAPs. *Draft provision 3(1) – Agreement of the parties on non-application* 21. Paragraph 1 reflects the understanding that the parties can withdraw from expedited arbitration when they all so agree, even though they had initially referred their dispute to arbitration under the EAPs (A/CN.9/1003, para. 43; A/CN.9/1010, para. 33). The Working Group may wish to confirm that paragraph 1 should be retained in the EAPs (A/CN.9/1010, para. 33). *Draft provision 3(2) – Request by a party for non-application* 22. Paragraph 2 reflects the understanding that the EAPs should provide a mechanism allowing a party that had initially agreed to the application of the EAPs to subsequently request their non-application (i.e., to withdraw from expedited arbitration) (A/CN.9/1010, paras. 34–37 and 49). The mechanism aims at comforting parties entering into an agreement to expedited arbitration but at the same time would only allow parties with persuasive grounds to resort to non-expedited arbitration (A/CN.9/1003, para. 47; A/CN.9/1010, para. 36). The mechanism would be	Paragraph 2. The Task Force does not think that a list of circumstances needs to be provided as set forth in Paragraph 3. The concept of "exceptional" circumstances" should be sufficient to establish an appropriate threshold here. Tribunals have to be trusted to take the facts and make prudent decisions. If individual factors are included, (a) and (b) are plainly appropriate considerations but may be redundant. Subparagraph (c) should not contain an example. One could have several witnesses whose testimony may take very little time. And the volume of documentary evidence may not be predictable with any accuracy. The tribunal can figure out whether expedition may result in unfairness given complexity. (d) If the parties agreed to EAP the amount in controversy did not pose an obstacle. The Task Force does not see

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
paragraph 2, the arbitral tribunal shall invite the parties to express their views and take into account, among others, the following: *(a) The urgency and time-sensitivity of resolving the dispute;* *(b) At which stage of the proceedings the request is made;* *(c) The legal and factual complexity of the dispute, for example, the anticipated volume of documentary evidence and the number of witnesses;* *(d) 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) and its*	useful where, from the perspective of one of the parties, it was not possible to foresee the complexity of the dispute or the dispute evolved in a manner that would make expedited arbitration no longer suitable (A/CN.9/1010, para. 36). 23. The arbitral tribunal would make the determination on whether to uphold the request for withdrawal under paragraph 2 (A/CN.9/1010, paras. 40 and 49). This is because the tribunal would likely be aware of the overall circumstances of the case and could make an informed decision on the most suitable procedure (A/CN.9/1 003, para. 36). If the arbitral tribunal is yet to be constituted, the determination would need to be made after it is constituted in accordance with draft provision 8 of the EAPs (see paras. 47–49 below).[6] This means that the EAPs would apply to the arbitration until a contrary determination is made by the arbitral tribunal. 24. Paragraph 2 does not introduce a time limit when a party can request withdrawal (A/CN.9/1003, para. 49; A/CN.9/1010, para. 39). Nonetheless, the arbitral tribunal would likely consider at which stage of the proceedings the request is being made when making its determination (see paragraph 3(b)). 25. The phrase "in exceptional circumstances" reflects the agreement in the Working Group that the grounds justifying the request for withdrawal should be limited and	why it would represent an exceptional circumstance later. (e) The Task Force does not understand this subparagraph. It should be deleted. (f) Again this subparagraph seems unnecessary. The tribunal can evaluate fairness as part of its determination of exceptional circumstances. The UAR are designed to demand that all parties and the tribunal act fairly. This does not need to be restated here. With respect to Paragraph 4, "to the extent possible" are not words of a Rule. Who decides what this means? If there is a sole arbitrator for the expedited arbitration, that arbitrator should be able to continue under the UAR. If the fear is an arbitrator's inability to continue on a non-expedited basis, the fear seems unfounded. If the arbitrator was available on an expedited basis, the arbitrator should be available on a non-expedited basis.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
proportionality to the expected cost of arbitration; *(e) The terms of the parties' agreement referring their dispute to arbitration under the Expedited Arbitration Provisions and whether the exceptional circumstance could have been foreseeable at the time of agreement; and* *(f) The consequences of the determination on the proceedings, including on the procedural fairness.* Consequences of the non-application *4. When the Expedited Arbitration Provisions no longer apply to the arbitration pursuant to paragraph 1 or 2, the arbitral tribunal shall remain in place to the extent*	that the mechanism should be designed to prevent any misuse (A/CN.9/1010, paras. 37 and 42). The exceptional circumstance should exist both when the party makes the request and when the arbitral tribunal makes the determination. 26. Paragraph 2 only provides for the possibility of the arbitral tribunal determining that the EAPs shall no longer apply in their "entirety". However, the arbitral tribunal may consider that some of the EAPs should continue to apply or that only some should not apply to the arbitration. In such case, it might be more reasonable for the arbitral tribunal to exercise its discretion in accordance with article 17(1) of the UARs as well as draft provision 10 (for example, by managing time frames) rather than determining that the EAPs in their entirety shall not apply (A/CN.9/1010, para. 48). Such modifications could be agreed by the parties and the arbitral tribunal during or after the case management conference. *Draft provision 3(3) – Elements to be taken into account when making the determination* 27. Paragraph 3 first provides that the arbitral tribunal would need to consult the parties in making the determination pursuant to paragraph 2 (A/CN.9/1003, para. 49). Paragraph 3 further contains a non-exhaustive list of elements to be taken into account by the arbitral tribunal in making that determination, including whether	Will the parties be able to move from the EAP to the UAR and have a three-member tribunal? The Task Force believes that allowance should be made for an agreement to this effect. If the arbitrator under the EAP remains as the chair of the three-member tribunal, then selection of the two wing arbitrators will have to be addressed. It may be that as a condition of allowing the transition from expedited to non-expedited by agreement, the tribunal should obtain an agreement from the parties on the mechanism to appoint the wing arbitrators. Alternatively, the appointing authority can be designated to appoint the wing arbitrators, as may be necessary. Or it may be that in a two-party case, each party can appoint the wing arbitrators (time limits would have to be established). The motive behind Model Clause A is a noble one. It avoids the complications that arise when moving from the EAP to the UAR. Practically speaking, if the parties agree to move from EAP to

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
possible and conduct the arbitration in accordance with the UNCITRAL Arbitration Rules.	there exist exceptional circumstances (A/CN.9/1003, paras. 49–50; A/CN.9/1010, para. 46). It would, however, not be necessary for the arbitral tribunal to consider all such elements when making its determination. 28. Differing views had been expressed on whether the EAPs should include a set of criteria to guide the arbitral tribunal (A/CN.9/1010, paras. 44–48). One view was that it was unnecessary and that the arbitral tribunal should have the discretion to determine whether the request of the party was justified. Another view was that it would be useful to include a set of criteria in an objective manner. Accordingly, the Working Group may wish to consider whether to retain the list of elements in paragraph 3 and if so, the appropriateness of the elements therein. *Draft provision 3(4) – Consequences of the non-application* Resorting to non-expedited arbitration after initiating expedited proceedings can pose practical challenges, for example, with regard to the constitution of the arbitral tribunal (A/CN.9/969, para. 100; A/CN.9/1003, para. 44). Paragraph 4 addresses such a consequence, preserving the tribunal as constituted under the EAPs to the extent possible, unless the parties agree to replace any arbitrator or reconstitute the arbitral tribunal (A/CN.9/1010, para. 50). The phrase "to the extent possible" foresees the possibility of the arbitrator(s) withdrawing from office, for example, if not in a position to conduct non-expedited	UAR, they probably will work out all of the issues associated with such a transition. Otherwise, the Task Force believes that there will be very few cases that will result in one side filing a motion for relief from the expedited provisions, and even fewer cases where the tribunal will allow the party to be excused from its agreement to use the EAP. Where there are legitimate due process concerns, the tribunal should be trusted to act ensure fairness. So the Task Force is not troubled by offering Model Clause A.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	arbitration (A/CN.9/1 003, paras. 44 and 51). The Working Group may wish to consider whether to provide further guidance on the consequences of the non-application of the EAPs (for example, that the non-expedited proceedings should commence at the stage where the expedited proceeding was terminated, A/CN.9/1010, para. 50). Model clause A *The parties hereby waive the right to request the non-application of the Expedited Arbitration Provisions.* Model clause A reflects the view that even if a withdrawal mechanism were to be provided in the EAPs, parties could waive in advance their right to request withdrawal from expedited arbitration (A/CN.9/1010, para. 38). The Working Group may wish to consider whether this clause should be presented as a model clause to the EAPs in light of possible due process concerns.	
D. Issues relating to the application and presentation of the Expedited Arbitration Provisions		
1. Incorporation into the UARs	32. While the Working Group has yet to decide whether the EAPs should be presented as an appendix to the UARs or a stand-alone text containing reference to the	The MIAS Task Force believes that placing the EAP in an Appendix is the most appropriate way to incorporate

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	UARs, the Working Group may wish to consider how to incorporate the EAPs into the UARs. 33. If the EAPs are presented as an appendix to the UARs, they will become part of the revised version of the UARs. An arbitration initiated under the EAPs would be considered an arbitration under that version of the UARs. However, parties' mere referral to arbitration under that version of the UARs would not automatically lead to the application of the EAPs, as the parties need to explicitly refer to arbitration under the EAPs (as reflected in draft provision 1). 34. On how to incorporate the EAPs into the UARs, the Working Group may wish to consider two approaches. One approach would be to simply present the EAPs (including draft provision 1) in the appendix with no indication in the body of the UARs (see paras. 8–13 above). Another approach would be to insert an additional paragraph in the revised version of the UARs to incorporate the EAPs and to alert the parties that they need to explicitly agree in order for the EAPs in the appendix to apply (A/CN.9/1010, paras. 16–18). An additional paragraph in article 1 of the UARs could read as follows: *Where the parties so agree, the Expedited Arbitration Provisions in the appendix shall apply to the arbitration.* If the latter approach is taken, draft provision 1 may simply state that the UARs as modified by the EAPs would apply to the arbitration.	EAP into the UAR. The Task Force also supports the suggestion in Paragraph 34 consistent with the Task Force's earlier submission utilizing similar language in article 1.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
2. The application of the UNCITRAL Rules on Transparency to expedited arbitration	35. The Working Group has yet to assess the relevance of its work on expedited arbitration to investment arbitration. Nonetheless, the following touches upon issues which could impact the presentation of the EAPs and thus necessitates consideration by the Working Group. 36. The Working Group may wish to first confirm that the suitability of the EAPs for investment arbitration is a question to be determined by the disputing parties. For example, it would be left to States to include a reference to the EAPs in their investment treaties and for the claimants to raise a claim under the EAPs. 37. During the Working Group's deliberation, a question was raised on whether the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration ("Transparency Rules") would apply in the context of expedited arbitration (A/CN.9/1010, para. 18). 38. In accordance with article 1(4) of the UARs, the 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". If the EAPs are presented as an appendix to the UARs and an investor-State arbitration is initiated under the EAPs (which would be considered as being initiated under the UARs, see para. 33 above), the Transparency Rules could apply.	The MIAS Task Force agrees with the sentiment expressed in Paragraph 36. The Task Force also believes that the understandings set forth in Paragraphs 38-40 are correct statements of the application of the Transparency Rule. As to Paragraph 41, the Task Force's view is that if the Transparency Rules would not be applicable under the UAR, they should not be applicable under the EAP.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	39. 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 (for example, by referring to the 2010 UARs) and the proceedings would be subject to both the Transparency Rules and the EAPs. 40. 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. Unless these conditions are met, the Transparency Rules would not become applicable to the arbitration under the EAPs. 41. The Working Group may wish to confirm the above understanding and further consider whether it would be necessary for the EAPs to contemplate situations whereby States Parties to investment treaties or disputing parties in investor-State arbitration wish to agree to the application of the EAPs but exclude the application of the Transparency Rules (A/CN.9/1010, para. 18, for example, by referring a dispute to the 2010 UARs as modified by the EAPs). In any case, such flexibility would be limited in investor-State arbitration initiated pursuant to an investment treaty concluded on	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	or after 1 April 2014, as only States Parties to the treaty are able to opt out of the Transparency Rules and not the disputing parties (see article 1(1) of the Transparency Rules). 42. Before submitting the EAPs for finalization and adoption by the Commission, the Working Group may wish to inform Working Group III of the progress made so far and the relevance of the EAPs on investor-State arbitration including the possible application of the Transparency Rules.	
3. Presumption under article 1(2) of the UARs	43. Article 1(2) of the UARs contains a presumption regarding the application of the "Rules in effect on the date of the commencement of the arbitration". Article 1(2) aims to ensure that the most up-to-date version of the UARs are applied to the arbitration. 44. The Working Group concluded that such a presumption would not pose a problem as parties' express consent is required for the application of the EAPs (A/CN.9/1003, para. 25; A/CN.9/1010, para. 28). Even if the introduction of the EAPs results in a revised version of the UARs and that version of the UARs is in effect on the date of the commencement of arbitration, the EAPs would only apply when so agreed by the parties. In other words, parties to an arbitration agreement concluded before the entry into force of the EAPs shall not be presumed to have referred to the EAPs, even if they are part of the UARs in effect on the	The MIAS Task Force agrees with the statements in Paragraphs 43 and 44.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	date of commencement of the arbitration.	
4. Elements to consider when referring a dispute to arbitration under the EAPs	45. It was considered that guidance could be provided to parties on when to refer a dispute to expedited arbitration (A/CN.9/1003, para. 41; A/CN.9/1010, para. 47). Elements to be taken into account by the parties could include those listed in draft provision 3(3) as well as the following: (i) the complexity of the transactions and the number of parties involved; (ii) the need to hold hearings; (iii) the possibility of joinder or consolidation; and (iv) the likelihood of an award being rendered within the time frames provided in the EAPs (A/CN.9/1003, paras. 30 and 40). The Working Group may wish to consider if and where such guidance should be provided. 46. The above-mentioned list can be useful for the administering institution or the arbitral tribunal when suggesting expedited arbitration to the parties (A/CN.9/1003, paras. 28 and 31). The list could also provide a basis for arbitral institutions that model their institutional rules based on the EAPs and wish to include a set of criteria which would automatically trigger expedited arbitration (A/CN.9/1010, para. 26). They may also consider introducing a financial threshold, which has the advantage of providing a clear and objective standard (A/CN.9/1003, para. 38).	The MIAS Task Force refers the Working Group to the Task Force's prior submissions. Party agreement will control the use of EAPs. However, in response to Paragraph 46, the MIAS Task Force continues to believe that introducing a financial "threshold" will focus the parties on the availability of Expedited Arbitration Provisions and the opportunity to utilize expedited process to arbitrate the dispute. The MIAS Task Force suggests US $5 million as a threshold for the reasons set forth in the MIAS Task Force Report dated August 26, 2019: 1. It is set high enough where the amount in controversy can be more easily evaluated to determine whether the Provisions should be considered. 2. It minimizes the ability of parties to exaggerate quantum in order to exceed the threshold.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
		3. The UNCITRAL Rules are not amended that often or that easily so that having a higher threshold anticipates the potential for inflation. With respect to identifying other criteria to focus the parties' attention on agreeing to use the EAP, the Task Force has no objection to introducing them, but does not think that additional criteria need to be expressly stated. Since party agreement is required the only criteria that matter are those that the parties decided to use to motivate them to agree on using the EAP. The Task Force believes that *the point here is to ensure that at the outset of the arbitration there is awareness of the EAP option.* After that, it is up to the parties to decide to take advantage of the option. It may be that there can an educational outreach via the UNCITRAL website to explain the benefits of utilizing the EAP and the types of matters that best fit such utilization. Whether on the

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
		website or as a provision of the UAR or EAP, again, the goal is to create awareness so that the parties are informed before they forego the opportunity to achieve a fair arbitration at a lower cost and in a shorter time period.
5. Resolving a situation where the arbitral tribunal is not in a position to make a determination	47. Draft provision 3(2) requires the arbitral tribunal to make a determination on the non-application of the EAPs. This may pose a challenge when the arbitral tribunal has not been constituted and there is disagreement between the parties on whether the EAPs should apply to the arbitration (A/CN.9/1010, para. 25). The same situation may arise if the parties included a set of criteria in their arbitration agreement, which would trigger the application of the EAPs, and there is disagreement between the parties on whether the criteria are met (A/CN.9/1003, para. 33). The ad hoc nature of arbitration under the UARs amplifies these problems. 48. One way to address those situations is to leave the determination to the arbitral tribunal after it is constituted (see para. 23 above). The parties would therefore need to proceed with the appointment of a sole arbitrator in accordance with draft provision 8 of the EAPs. 49. However, when there is a disagreement between the parties on whether the EAPs apply, it may be	The MIAS Task Force recognizes the concerns expressed in Article 47. The Task Force believes that the subset of cases that might fall into the categories described in Paragraph 47 is small. It seems unlikely that an agreement would call for use of the EAP and when the dispute arises one of the parties argues that the agreement has not been satisfied and, thus, the UAR must be followed. The arbitration is still going to occur. It may take a bit longer. It may be a bit more costly. But it is still going to occur. Nonetheless, the ideas expressed in Paragraph 48 and 49 both have merit and both may need to be incorporated into the EAPs to address the concerns in Paragraph 47.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	practically difficult for the parties to agree on the sole arbitrator. In such a case, the appointing authority may need to be involved in accordance with draft provision 8(2). Unless the arbitration agreement stipulates for three arbitrators, the appointing authority would appoint a sole arbitrator. In making the appointment, the appointing authority will have to make a prima facie determination on whether the arbitration would be conducted under the UARs or the EAPs. The ultimate determination on the application of the EAPs would nonetheless be left to the arbitral tribunal (A/CN.9/1010, para. 41).	
E. Notice of arbitration, response thereto, statements of claim and defence		
Draft provision 4 (Notice of arbitration and statement of claim) *1. When communicating the notice of arbitration in accordance with article 3 of the UNCITRAL Arbitral Rules and paragraph 2 of this provision to the respondent, the claimant shall also communicate its statement of claim in*	51. Draft provision 4(1) read in conjunction with article 3(1) of the UARs would require the claimant to communicate to the respondent a notice of arbitration and the statement of claim at the same time. Draft provision 4(1) reflects the understanding that in expedited arbitration, the notice of arbitration should also serve as the statement of claim (A/CN.9/969, para. 67). It was generally felt that that could effectively accelerate the procedure by eliminating the need for the claimant to produce a separate statement of claim (A/CN.9/1010, para. 51). Instead of listing the particulars to be required in the notice of arbitration and the statement of claim, draft provision 4(1) includes cross references to the relevant	The MIAS Task Force made the same recommendation in its draft Rules submitted in January 2020 and continues to support draft provision 4. It is important that the EAP are designed to get a tribunal in place as soon as reasonably practicable as emphasized in Paragraph 53. The language in draft provision 4(3) may be confusing to some. The Task Force understands the word

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
accordance with article 20, paragraphs 2 to 4, of the UNCITRAL Arbitration Rules. *2. The notice of arbitration shall include the following:* *(a) Unless the parties have already agreed on the choice of an appointing authority, a proposal for the designation of an appointing authority referred to in draft provision 6; and* *(b) A proposal for the appointment of a sole arbitrator referred to in draft provision 8.* *3. The claimant shall communicate its statement of claim in writing to the arbitral tribunal as soon as it is constituted.*	provisions of the UARs (A/CN.9/1010, para. 52). 52. With regard to documents and other evidence relied upon by the claimant, views were expressed that: (i) requiring all evidence to be submitted with the notice of arbitration might be burdensome and counterproductive; (ii) it would be preferable to determine when evidence is to be submitted during the consultation between the arbitral tribunal and the parties; and (iii) accompanying documents could be referenced by the claimant and produced at a later stage (A/CN.9/1003, paras. 81 and 101). Therefore, it was considered sufficient to require the claimant to provide documents and other evidence to the extent possible in line with article 20(4) of the UARs (A/CN.9/1010, para. 51). 53. Under article 3(4) of the UARs, a proposal for the designation of an appointing authority and a proposal for the appointment of a sole arbitrator are both optional elements to be included in the notice of arbitration (similarly in the response thereto, see article 4(2) of the UARs). While some caution was expressed that requiring those proposals in the notice of arbitration and response thereto might be overly prescriptive and that the parties might prefer not to include such a proposal (A/CN.9/1010, para. 60), both proposals would likely facilitate the appointment of the arbitrator in expedited arbitration (see also para. 68 below). Furthermore, a proposal for a sole arbitrator should not be understood as requiring the	"communicating" to mean "transmitting." If that is right, then "shall transmit" may be preferable to "shall communicate."

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	claimant to put forward the name of the proposed arbitrator, but rather to suggest a list of suitable candidates/qualifications, or a mechanism to be used by the parties for agreeing on the arbitrator. Accordingly, draft provision 4(2) requires that both proposals be included in the notice of arbitration. 54. Draft provision 4(3) would require the claimant to communicate its statement of claim to the arbitral tribunal as soon as it is constituted. This time frame could be extended by the arbitral tribunal in accordance with draft provisions 10 and 13, for example, if the claimant needs time to amend or supplement its statement of claim (A/CN.9/1010, para. 56). *Interaction with the UARs* 55. Draft provision 4 would replace the first sentence of article 20(1) of the UARs as the claimant would be required to communicate its statement of claim along with the notice of arbitration and not "within a period of time to be determined by the arbitral tribunal." Article 3 of the UARs, the second sentence of article 20(1) and the remaining paragraph of article 20 will apply unchanged to expedited arbitration. Subparagraphs (a) and (b) of article 3(4) of the UARs would no longer be applicable in light of draft provision 4(2).	
Draft provision 5 (Response to the notice of arbitration	56. Draft provision 5 reflects the view that in expedited arbitration, the respondent should also be required to	The MIAS Task Force supports draft provision 5.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
and statement of defence) *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 in accordance with article 4 of the UNCITRAL Arbitration Rules and paragraph 2 of this provision.* *2. The response to the notice of arbitration shall include the following:* *(a) Unless the parties have already agreed on the choice of an appointing authority, a proposal for the designation of an appointing authority referred to in draft provision 6; and* *(b) A proposal for the appointment of a sole arbitrator referred to in draft provision 8.*	produce a response to the notice of arbitration in a shorter time frame (15 instead of 30 days as provided in article 4(1) of the UARs) as the respondent agreed to expedited arbitration and would be aware of the requirements in the EAPs (A/CN.9/1010, para. 55). A shorter time frame is imposed on the response, which addresses procedural issues, in particular those relating to the constitution of the arbitral tribunal, which would then be able to make a number of procedural decisions, including time frames of the proceedings (A/CN.9/1010, para. 56). 57. Similar to draft provision 4(2), draft provision 5(2) requires the response to a notice of arbitration to include a proposal for the designation of an appointing authority and a proposal for the appointment of a sole arbitrator to facilitate the appointment of the arbitrator (see para. 53 above). 58. With regard to the statement of defence, it was emphasized that sufficient time should be provided to the respondent to produce its statement of defence to ensure the equality of the parties in the proceedings. While a claimant would have sufficient time to produce a notice of arbitration and a statement of claim, a respondent may not necessarily be in a position to produce a response and a statement of defence within a short period of time (A/CN.9/1003, para. 81). Moreover, it would not be reasonable to expect the respondent to provide all documents and other evidence it relies upon	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
3. The respondent shall communicate its statement of defence in accordance with article 21 of the UNCITRAL Arbitration Rules within 15 days of the constitution of the arbitral tribunal.	or to include references to them in the response (A/CN.9/969, para. 71). 59. Therefore, draft provision 5(3) does not require the statement of defence to be submitted with the response to the notice of arbitration, rather that it be communicated to the claimant and to the arbitral tribunal within 15 days of the constitution of the tribunal. The 15-day time frame could be extended by the arbitral tribunal in accordance with draft provision 10 in case the respondent requires more time for preparing its statement of defence (A/CN.9/1010, para. 56). *Interaction with the UARs* 60. Draft provision 5(1) would modify the time frame in article 4(1) of the UARs. Subparagraphs (b) and (c) of article 4(2) of the UARs would no longer be applicable in light of draft provision 5(2). The remainder of article 4 would apply unchanged to expedited arbitration. 61. Draft provision 5(3) would replace the first sentence of article 21(1) of the UARs as the respondent would be required to communicate its statement of defence within 15 days of the constitution of the tribunal and not "within a period of time to be determined by the arbitral tribunal." The second sentence of paragraph 1, and paragraphs 2 and	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	4 of article 21 will apply unchanged to expedited arbitration. Article 21(3) would be replaced by draft provision 12 (see paras. 110 and 113 below).	
F. Designating and appointing authority		
Draft provision 6 (Designating and appointing authorities) *1. If all parties have not agreed on the choice of an appointing authority within 15 days after a proposal made in accordance with draft provision 5, paragraph 2 has been received by all other parties, any party may request the Secretary-General of the Permanent Court of Arbitration to designate the appointing authority or to serve as appointing authority.* *2. If requested to serve as appointing authority in accordance with paragraph 1, the Secretary-General of the Permanent Court of*	63. Draft provision 6 is based on the Working Group's agreement that article 6(2) of the UARs (which provides that any party may request the Secretary-General of the Permanent Court of Arbitration (PCA) to designate the appointing authority) should be modified to indicate that a party may request the Secretary-General of the PCA to either designate the appointing authority or to serve as an appointing authority in expedited arbitration (A/CN.9/1010, para. 78). In other words, when there is no agreement among the parties, a party may go ahead and designate the Secretary-General of the PCA as the appointing authority. 64. Draft provision 6(1) introduces a shorter time frame (15 instead of 30 days in article 6(2) of the UARs) for the parties to agree on an appointing authority (A/CN.9/1010, para. 78). The time frame begins to run from the date of receipt of the proposal for the designation of an appointing authority, which is required to be included in the response to the notice of arbitration under draft provision 5(2). 65. Modelled on article 8(2) of the UARs, draft provision 6(2) provides a level of discretion to the Secretary-General	While the MIAS Task Force believes that the goal of tribunal formation in an expeditious manner is best served by providing that the Secretary-General of the PCA serve as the appointing authority, the approach in draft provision 6 can also work. What happens if one party requests that the Secretary-General serve as the appointing authority and the other party seeks to designate a different appointing authority? It perhaps should be made clear that if so requested, the Secretary-General has the discretion to decide how to proceed if one of the parties has a different view. That seems to be what Paragraph 64 is saying and the Task Force agrees. Whether the circumstances in Paragraph 67 need to be addressed beyond the UAR is a judgment call that

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
Arbitration would serve as appointing authority unless it determines that in view of the circumstances of the case, it would be more appropriate to designate an appointing authority.	of the PCA to address practical questions that could arise in the operation of draft provision 6(1) (A/CN.9/1010, para. 78). This would allow for both a streamlined and flexible process. For example, the Secretary-General of the PCA would have the discretion to designate an appointing authority instead of serving as one in the following scenarios: (i) when a party had 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. *Interaction with the UARs* 66. Article 6(1) of the UARs would continue to apply to expedited arbitration unchanged, although draft provision 4(2) and 5(2) would require the parties to include such a proposal in the notice of arbitration or response thereto. Article 6(2) of the UARs would be modified by draft provision 6. Paragraphs 3, 5, 6 and 7 of article 6 would continue to apply to expedited arbitration unchanged. 67. With regard to article 6(4) of the UARs, the Working Group may wish to note that the Secretary-General of the PCA has a role of designating a substitute appointing authority, when the appointing authority refuses or fails to	needs to be made. The performance standard should be tribunal formation in an expeditious manner. Whatever roadblocks may exist to achieve this standard need to be addressed. And the suggestion expressed in Paragraph 68 is reasonable.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	act. In light of draft provision 6(1), the Working Group may wish to consider whether a party should be able to request the Secretary-General of the PCA to serve as appointing authority in those circumstances. The Working Group may also wish to consider the consequences where the Secretary-General of the PCA, as the appointing authority, refuses to act or fails to appoint an arbitrator within the time frame. *Need for the parties to agree on an appointing authority* 68. The Working Group may wish to note that the model arbitration clause found in the annex to the UARs already highlights in paragraph (a) the importance of the parties agreeing on an appointing authority (A/CN.9/1003, para. 68; A/CN.9/1010, para. 79). This is further reflected in draft provisions 4(2) and 5(2) of the EAPs (see paras. 53 and 57 above). The Working Group may wish to confirm that paragraph (a) of the model arbitration clause would continue to apply in the context of expedited arbitration.	
G. Number of arbitrators		
Draft provision 7 (Number of arbitrators) *Unless otherwise agreed by the parties, there shall be one arbitrator.*	70. Draft provision 7 is based on the understanding of the Working Group that: - An arbitral tribunal composed of a sole arbitrator should be the rule in expedited arbitration (A/CN.9/969, paras. 37–38; A/CN.9/1003, paras. 53 and 55);	The MIAS Task Force agrees with draft provision 7.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	- Parties should be able to agree on more than one arbitrator in expedited arbitration, in light of the particulars of the dispute and the preference for collective decision-making (A/CN.9/969, para. 40; A/CN.9/1003, para. 53); and - An appointing authority should not have any role in determining the number of arbitrators (A/CN.9/1003, paras. 54–55). 71. The Working Group had approved draft provision 7 in substance (A/CN.9/1010, para. 57). The Working Group also agreed that the request by a party that had agreed to the application of the EAPs and a sole arbitrator to constitute a tribunal of more than one arbitrator should be considered along the same lines as a request for the non-application of the EAPs as provided for in draft provision 2(2) (A/CN.9/1010, para. 57). The Working Group may also wish to confirm that in a case where there is disagreement between the parties on the number of arbitrators under the EAPs, the parties would be deemed to have agreed to a sole arbitrator in accordance with draft provision 7. *Interaction with the UARs* 72. Draft provision 7 (combined with draft provision 8) would replace article 7 of the UARs in its entirety.	
H. Appointment of the	*Appointment of the sole arbitrator*	The MIAS Task Force proposed similar

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
arbitrator *Draft provision 8* *(Appointment of the sole arbitrator)* *1. The sole arbitrator shall be appointed jointly by the parties.* *2. [Option A: If within 30 days after receipt by the respondent of the notice of arbitration]* *[Option B: If within 15 days after receipt by all other parties of the response to the notice of arbitration]* *the parties have not reached an agreement on the arbitrator, the arbitrator shall, at the request of a party, be appointed by the appointing authority in accordance with article 8(2) of the UNCITRAL Arbitration Rules.*	74. Draft provision 8 provides for the appointment mechanism in expedited arbitration. Paragraph 1 is based on the understanding that the parties should jointly agree on the arbitrator (A/CN.9/1003, para. 57). While it may be difficult for the parties to agree on the sole arbitrator, they should be encouraged to do so and would themselves expect to be involved in the appointment process (A/CN.9/1003, para. 57). The Working Group approved paragraph 1 in substance (A/CN.9/1010, para. 58). Paragraph 2 provides an appointment mechanism in the absence of an agreement by the parties. *A short time frame for the agreement of a sole arbitrator* 75. Paragraph 2 introduces a short time frame during which the parties shall agree on the sole arbitrator (A/CN.9/1003, para. 61). This is based on the understanding of the Working Group that shortening that time frame and envisaging the involvement of an appointing authority thereafter could sufficiently expedite the process (A/CN.9/1003, para. 58; A/CN.9/1010, para. 59). 76. On the time frame and when that time frame would commence, paragraph 2 contains two options, both of which provide a simple and quick mechanism to engage the appointing authority in the appointment of the sole	language in its January 2020 submission and supports draft provision 8 and prefers Option A over Option B. Option A provides certainty. Option B is controlled by when a response is made.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	arbitrator. 77. Under option A, the 30-day time frame commences when the respondent receives the notice of arbitration, which should include a proposal for the appointment of a sole arbitrator (see draft provision 4(2)(b)). This would be early in the proceedings and could ensure a speedy constitution of the arbitral tribunal (A/CN.9/1003, para. 62; A/CN.9/1010, para. 60). In accordance with draft provision 5, the respondent has 15 days to communicate a response to the notice, upon which the 15-day time frame in draft provision 6 for the designation of the appointing authority would commence. 78. Under option B, the 15-day time frame commences when the claimant receives the response to the notice of arbitration, which should include a proposal for the appointment a sole arbitrator (see draft provision 5(2)(b)). The time frame would be the same as that provided for in draft provision 6 with regard to the designation of the appointing authority. Thus, in case the parties are not able to agree on both the appointing authority and the sole arbitrator, it would be possible for one of the parties to request the Secretary-General of the PCA to serve as appointing authority and to appoint the sole arbitrator. The phrase "receipt by all other parties" would tailor for multi-party arbitration as is foreseen in article 8(1) of the UARs.	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	The involvement of the appointing authority 79. Paragraph 2 is based on the understanding that the involvement of the appointing authority should be based on the request by one of the parties and that it would not be automatic. It was also noted that the parties would be free to request the involvement of the appointing authority even before the lapse of the time period, if it was obvious that an agreement would not be reached (A/CN.9/1003, paras. 60 and 62; A/CN.9/1010, para. 61). 80. The Working Group considered whether the EAPs should include a reference to the possibility of domestic courts functioning as an appointing authority (A/CN.9/969, paras. 44–45; A/CN.9/1003, para. 68) and concluded that it would not be necessary (A/CN.9/1010, paras. 63–66). 81. With regard to how the appointing authority would appoint the arbitrator, the Working Group agreed that the list procedure in article 8(2) of the UARs would apply to expedited arbitration unchanged (A/CN.9/1010, para. 62). Interaction with the *UARs* 82. Draft provision 8 would replace article 8(1) of the UARs. Article 8(2) of the UARs would apply to expedited arbitration unchanged. The Working Group also confirmed that articles 9 to 14 of the UARs would apply to expedited	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	arbitration unchanged (A/CN.9/1003, paras. 64–65; A/CN.9/1010, para. 67). As to the time frames in articles 9 and 13 of the UARs, the Working Group agreed that they need not be shortened in expedited arbitration but agreed to revisit them once it had considered other time frames in the EAPs (A/CN.9/1003, paras. 61 and 64; A/CN.9/1010, para. 68).	
I. Consultation with the parties and the provisional timetable		
Draft provision 9 (Consultation with the parties and provisional timetable) *1. Promptly after and within 15 days of its constitution, the arbitral tribunal shall consult the parties, including through a case management conference, on the manner in which it will conduct the arbitration.* *2. Such consultations may be conducted through a meeting in person, in writing, by telephone or videoconference or other means of*	84. Diverging views were expressed on whether the arbitral tribunal should be required to hold a case management conference in expedited arbitration (A/CN.9/969, para. 58; A/CN.9/1003, para. 70; A/CN.9/1010, paras. 80–81). Paragraph 1 is based on the understanding that the EAPs should highlight the need for the arbitral tribunal to "consult" the parties on how to organize the proceedings and that one way would be through a case management conference, when deemed necessary by the arbitral tribunal (A/CN.9/1003, para. 75; A/CN.9/1010, paras. 82 and 85). A case management conference can be an important procedural tool, which permits an arbitral tribunal to give parties a timely indication as to the organization of the proceedings and the manner in which it intends to proceed (A/CN.9/969, para. 56).[10] 85. With regard to when to hold the consultations, the Working Group agreed to consider introducing a short	The MIAS Task Force believes that a case management conference is the label that likely will be used for the consultation contemplated by draft provision 9(1). But labels are just that—what matters is that the tribunal and the parties consult promptly after the tribunal is formed and finalize the "the manner in which" the tribunal will conduct the arbitration. It is essential that such consultation occur promptly and draft provision 9 contains the correct emphasis.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
communication. In the absence of an agreement of the parties, the arbitral tribunal shall determine the appropriate means by which the consultations will be conducted. *3. In establishing the provisional timetable in accordance with article 17(2) of the UNCITRAL Arbitration Rules, the arbitral tribunal shall take into account the time frames in the Expedited Arbitration Provisions.*	time frame within which the tribunal should consult the parties instead of the phrase "as soon as practicable" as it would be useful to holding one at the very early stages of the proceedings (A/CN.9/969, para. 62; A/CN.9/1003, para. 71; A/CN.9/1010, paras. 83 and 85). Therefore, draft provision 9(1) includes the phrase "promptly after and within 15 days of its constitution", while discretion would be provided to the arbitral tribunal to extend the time frame in accordance with draft provision 10. 86. The Working Group further agreed that paragraph 2 should be retained to provide guidance to the arbitral tribunal on how consultations could be conducted (A/CN.9/969, para. 63; A/CN.9/1003, para. 74; A/CN.9/1010, para. 85). It was mentioned that if sufficient flexibility were to be provided to the arbitral tribunal on how to hold the consultations, it would not be so burdensome to meet the requirement in paragraph 1 that consultations should be held and in a short time frame (A/CN.9/1003, para. 74). 87. Paragraph 3 reflects the views that in establishing the provisional timetable, the arbitral tribunal would need to take into account the time frames in the EAPs, for example, those in draft provisions 13 and 16 (A/CN.9/1003, para. 73; A/CN.9/1010, para. 84). The Working Group may wish to consider the paragraph in conjunction with draft provisions 2(2) and 10.	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	Interaction with the UARs 88. Draft provision 9 would supplement article 17 of the UARs (in particular, paragraphs 1 and 2) and provide guidance to the arbitral tribunal on how to implement that article in the context of expedited arbitration.	
J. Time frames and discretion of the arbitral tribunal		
Draft provision 10 (Discretion of the arbitral tribunal with regard to time frames) I*n conducting arbitration under the Expedited Arbitration Provisions, the arbitral tribunal may, at any time, after inviting the parties to express their views:* *(a) fix the period of time for any stage of the proceeding;* *(b) subject to draft provision 16, extend or abridge any period of time prescribed under the UNCITRAL*	92. Draft provision 10 reflects the suggestion that the EAPs should explicitly state that the arbitral tribunal may impose time frames on the parties, as shorter time frames would likely expedite the proceedings. It also reflects the understanding that the arbitral tribunal should have the authority to modify time frames prescribed in the UARs and the EAPs as well as time frames agreed by the parties after consulting them (A/CN.9/1003, para. 79). It was generally felt that even after a time frame had been fixed in accordance with draft provision 10, flexibility should be provided to adjust the time period, but only in exceptional circumstances and when the adjustment was justified (A/CN.9/969, para. 52). 93. The merit of draft provision 10 would be that it clarifies and reinforces the discretionary power of the arbitral tribunal thus limiting the risk of challenges at the enforcement stage (A/CN.9/969, para. 50). In other words, it could help address the so-called "due process paranoia"	The MIAS Task Force supports draft provision 10 and supports the sentiment expressed in Paragraphs 95 and 96. Under article 30 of the UAR, the tribunal has the authority to act when a party fails to comply with time frames.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
Arbitration Rules and the Expedited Arbitration Provisions; and *(c) extend or abridge any period of time agreed by the parties.*	and provide tribunals with a robust mandate to act decisively without fearing that the award would be challenged (A/CN.9/1010, para. 95). Nonetheless, the Working Group may wish to consider whether draft provision 10 is necessary, as such discretion is already provided for in articles 17 (in particular, paragraph 2), 24, 25 and 27 of the UARs (A/CN.9/1003, para. 78; A/CN.9/1010, para. 95) as well as in draft provision 16. If simplified, draft provision 10 could read as follows: In conducting arbitration under the Expedited Arbitration Provisions, 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 Expedited Arbitration Provisions subject to draft provision 16. *Interaction with the UARs* 94. Draft provision 10 would supplement the second sentence of article 17(2) of the UARs. Articles 17, 24, 25 and 27 of the UARs would apply to expedited arbitration unchanged. *Non-compliance of time frames by parties* 95. The Working Group may wish to consider whether the EAPs should provide means for the arbitral tribunal or other authority to strictly enforce time frames. This question is closely related to the consequences for non-	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	compliance by the parties (A/CN.9/1003, para. 80; on the consequences for non-compliance by the tribunal, see para. 128 below). The Working Group may wish to confirm that article 30 of the UARs on default would also apply to expedited arbitration unchanged. 96. With regard to late submissions, considering that flexibility is provided to the arbitral tribunal in setting and modifying time frames, the arbitral tribunal should have the flexibility to accept such submissions but in limited circumstances (A/CN.9/969, para. 69). The Working Group may wish to confirm that it is not necessary to include a provision in the EAPs pertaining to late submissions.	
K. Hearings		
Draft provision 11 (Hearings) *1. In the absence of a request by any party to hold hearings for the presentation of evidence by witnesses (including expert witnesses) or for oral argument, the arbitral tribunal may, after inviting the parties to express their views, decide that hearings shall not be held and that the proceedings shall be conducted only on*	99. Draft provision 11 reflects the view that the limitation on hearings is a key characteristic of expedited arbitration and one that would distinguish it from non-expedited arbitration (A/CN.9/1003, para. 94). It would highlight that in expedited arbitration, hearings are to be held when requested by any party and in exceptional circumstances (A/CN.9/10 10, para. 109). 100. Diverging views had been expressed on whether the arbitral tribunal in expedited arbitration should be required to hold a hearing and under which circumstances (A/CN.9/969, para. 75; A/CN.9/1003, paras. 93–95; A/CN.9/1010, paras. 107–111). 101. One view was that the arbitral tribunal should be	While draft provision 11 could work., the MIAS Task Force believes instead that article 17(3) of the UAR should be followed with just one caveat. Article 17(3) provides: "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

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
the basis of documents and other materials. *2. Any party may object to that decision [within 15 days of receipt]. In that case, the arbitral tribunal shall hold hearings.*	obliged to hold a hearing to provide parties with the opportunity to be heard. This would be in line with article 17(3) of the UARs as well as the laws of certain jurisdictions, which provide for the right of the parties to request a hearing. It was further said that depriving a party that right could result in the annulment of the award (A/CN.9/1010, para. 108). That view was supported by the fact that there are certain benefits of holding hearings, which could expedite the process, as they provide the arbitral tribunal and the parties the occasion to communicate as well as the tribunal the opportunity to consider a number of issues in an expeditious fashion (A/CN.9/969, para. 79). According to this view, article 17(3) would apply to expedited arbitration unchanged and there would be no need for an additional provision in the EAPs. This would also address the concern that the EAPs should not contain an assumption that a hearing would not be held in expedited arbitration (A/CN.9/1003, para. 95). 102. Another view was that considering the accelerated nature of expedited arbitration, the arbitral tribunal should be provided the discretion on whether to hold hearings, which would justify a departure from article 17(3) of the UARs. It was observed that in expedited arbitration, the arbitral tribunal should make efforts to not hold hearings to reduce time and cost (A/CN.9/1003, para. 94). In further support, it was stated that the EAPs should emphasize the discretion of	hearings or whether the proceedings shall be conducted on the basis of documents and other materials." The "appropriate stage of the proceedings" needs to be defined. In the Task Force's past submissions, the Task Force has suggested that the case management conference is the "appropriate stage of the proceedings" at which to request a hearing. If no request is made then, then article 17(3) would control.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	the arbitral tribunal to "not" hold hearings as long as the arbitral tribunal invited the parties to express their views and based its decision on the overall circumstances of the case. 103. Draft provision 11 attempts to accommodate both views. Paragraph 1 would emphasize the discretionary power of the arbitral tribunal to "not" hold hearings in the absence of a request by any party. Paragraph 2 would preserve the right of a party to request a hearing, by allowing the party to object to a decision by the arbitral tribunal to not hold one. If a party objects, the arbitral tribunal would need to hold a hearing in line with article 17(3) of the UARs. 104. Paragraph 2 further suggests the introduction of a 15-day time frame during which a party can object to a decision by the arbitral tribunal to not hold hearings. This aims to address potential delays caused by a party objecting to that decision and requesting a hearing at a later stage of the proceedings. The Working Group may wish to consider this time frame in light of its previous understanding that there should be no time frame within which a party has to request a hearing in expedited arbitration (A/CN.9/1010, para. 110). The introduction of a time frame could, however, be justified by the fact that the parties would have been invited to express their views prior to the arbitral tribunal's decision.	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	Conduct of the hearing 105. As to the conduct of hearings in expedited arbitration, article 28 of the UARs would apply to expedited arbitration unchanged (A/CN.9/1003, para. 97). The Working Group agreed that the arbitral tribunal should be given broad discretion on how to conduct the hearings in a streamlined manner and that there would be no need to mention the possibility of limiting the cross-examination of fact and expert witnesses in the EAPs (A/CN.9/969, para. 65, A/CN.9/1003, paras. 80 and 99; A/CN.9/1010, para. 111). The arbitral tribunal should nonetheless make efforts to limit the duration of the hearing, the number of witnesses as well as cross-examination in line with draft provision 2(2) (A/CN.9/1010, para. 111). This would meet the expectation of the parties that expedited arbitration would be less costly (A/CN.9/969, paras. 75 and 82; A/CN.9/1003, para. 97). 106. In conducting hearings, the arbitral tribunal would have the flexibility to determine the most appropriate means and could make use of various means of communication. The Working Group may wish to consider whether the possibility of holding hearings remotely or virtually (thus, not limited to witness and expert witness examinations as provided for in article 28(4) of the UARs) should be expressly mentioned in the EAPs, particularly in light of measures taken by arbitral institutions and tribunals in response to the COVID-19 pandemic as a way	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	to save time and cost of the proceedings.[11] If so, it may wish to consider the wording similar to draft provision 9(2) on the conduct of consultations or the following formulation: *Hearings may be held through means of communication that do not require the physical presence of the parties*. *Interaction with the UARs* 107. Draft provision 11 would replace article 17(3) of the UARs. If included in the EAPs, the formulation in paragraph 106 would supplement article 28 of the UARs.	
L. Counterclaims, claims for the purpose of set-off and amendments to the claim or defence		
Draft provision 12 (Counterclaims or claims for the purpose of set off) *1. A counterclaim or a claim for the purpose of a set-off shall be made in the statement of defence provided that the arbitral tribunal has jurisdiction over it.* *2. The respondent may not*	109. Draft provisions 12 and 13 are based on the understanding that the right of the parties to make (i) counterclaims, (ii) claims for the purpose of set-off and (iii) amendments to a claim or defence should be preserved, while limitations could be introduced in the EAPs leaving the discretion of the arbitral tribunal to lift such limitations (A/CN.9/1003, para. 88; A/CN.9/1010, para. 97). It reflects the view that counterclaims and amendments to claims could result in delays in the proceedings and the extent to which they should be allowed in expedited arbitration needs to be considered in light of its accelerated nature and due process requirements (A/CN.9/969, paras. 66–67;	The MIAS Task Force agrees with draft provision 12. It addresses the need to allow for counterclaims and involves the tribunal in an appropriate way to address timing issues associated with counterclaims. There have to be controls in place to allow the tribunal to avoid gamesmanship but preserve fairness.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
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 necessary to allow such claims having regard to the delay in making such claim, prejudice to other parties and any other circumstances. Draft provision 13 (Amendments and supplements to a claim or defence) *1. Amendments and supplements to a claim or defence, including a counterclaim or a claim for the purposes of set-off, shall be made no later than 30 days after the receipt of the statement of defence.* *2. After the period of time in paragraph 1, a party may not amend or supplement its*	A/CN.9/1003, para. 88). 110. Draft provision 12 requires the respondent to make a counterclaim or a claim for the purpose of a set-off in its statement of defence (A/CN.9/1010, para. 98). It should be noted that under draft provision 5(3), a respondent is required to communicate its statement of defence within 15 days of the constitution of the tribunal. A counterclaim and a claim for the purpose of a set-off can be made at a later stage of the proceedings, but only when the arbitral tribunal considers it necessary. 112. Draft provision 13(1) reflects the understanding of the Working Group that the parties should be provided a short time frame during which they could amend or supplement their claim or defence. Therefore, a 30-day time frame after the receipt of the statement of defence is introduced (A/CN.9/1003, para. 90; A/CN.9/1010, para. 99). Paragraph 2 reflects the understanding that the parties would be limited from raising amendments or supplements after the 30-day period, unless the arbitral tribunal considers it appropriate to allow such amendment or supplement. The discretion provided to the arbitral tribunal in paragraph 2 aims to preserve the flexibility in article 22 of the UARs (for example, (i) when a claimant's reply to the statement of defence, including counterclaims therein, necessitates the respondent to supplement or amend its defence; and (ii) when a counterclaim is made to any of the amended	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
claim or defence, including a counterclaim or a claim for the purposes of set-off, unless the arbitral tribunal considers it appropriate to allow such amendment or supplement having regard to the delay in making it, prejudice to other parties and any other circumstances.	claims). Counterclaims, amendments and supplements might result in the expedited arbitration no longer being appropriate for resolving the dispute (see draft provision 3(3)). It was noted that in such a circumstance, a party would be able to request the non-application of the EAPs in accordance with draft provision 3(2) (A/CN.9/1010, para. 100). *Interaction with the UARs* 113. Draft provision 12 would replace article 21(3) of the UARs (see also, para. 61 above). Draft provision 13 would replace the first sentence of article 22 of the UARs and the second sentence would apply to expedited arbitration unchanged.	
M. Further written statements		
Draft provision 14 (Further written statements) *The arbitral tribunal may limit the presentation of further written statements in addition to the statement of claim and the statement of defence.*	115. Draft provision 14 is based on the understanding that in expedited arbitration, the arbitral tribunal should be able to limit and entirely prohibit the parties from presenting further written statements. While such discretion is provided for in article 24 of the UARs, it was agreed that the EAPs should expressly underline the discretionary power of the arbitral tribunal (A/CN.9/1010, para. 102). The Working Group may wish to consider whether to retain draft provision 14 in the EAPs.	The MIAS Task Force agrees with draft provision 14.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	Interaction with the UARs 116. Article 24 of the UARs would continue to apply to expedited arbitration but would be supplemented by draft provision 14. It should, however, not be interpreted that under article 24 of the UARs, the arbitral tribunal does not have the discretion to limit further written statements.	
N. Evidence		
Draft provision 15 (Evidence) *Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, shall be presented in writing and signed by them. The arbitral tribunal may limit requests for the production of documents, exhibits or other evidence.*	118. The understanding of the Working Group was that flexibility should be left to the arbitral tribunal with regard to the taking of evidence, while the parties should be provided sufficient time to present witness statements and expert opinions (A/CN.9/969, para. 73; A/CN.9/1003, para. 99). Draft provision 15 is based on the agreement of the Working Group that the EAPs should expressly highlight the discretionary power of the arbitral tribunal, even if such discretion is provided for in article 27 of the UARs. Draft provision 15 would make it easier for the arbitral tribunal to impose limitations regarding the taking of evidence and alert the parties that extensive production of documents and other evidence would not be possible under the EAPs (A/CN.9/1003, paras. 80 and 99).[12] 119. Paragraph 1 is based on the understanding that the default rule in expedited arbitration should be "written" witness statements (A/CN.9/1003, para. 100; A/CN.9/1010, para. 105). Paragraph 2 indicates that the tribunal could limit requests for the production of evidence either in part or in its entirety (A/CN.9/1010,	The MIAS Task Force agrees with draft provision 15.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	para. 103). The Working Group had approved draft provision 15 in substance (A/CN.9/1010, para. 106). *Interaction with the UARs* 120. Draft provision 15(1) would replace the second sentence of article 27(2) of the UARs. Draft provision 15(2) would supplement article 27(3) of the UARs. Remaining paragraphs of article 27 would continue to apply to expedited arbitration unchanged. It should, however, not be interpreted that under article 27(3) of the UARs, the arbitral tribunal does not have the discretion to limit the production of documents and other evidence.	
O. Making of the award		
Draft provision 16 (Award) *1. Unless otherwise agreed by the parties, the award shall be made within [six][nine] months from the date of the constitution of the arbitral tribunal.* *2. The period of time for making the award may be extended by the arbitral tribunal in exceptional circumstances after inviting*	122. Draft provision 16 introduces a fixed time frame for making the award and a mechanism for extending that time frame (A/CN.9/969, para. 49; A/CN.9/1003, para. 103). The phrase "unless otherwise agreed by the parties" reflects the view that the parties can agree on a time frame different from that in paragraph 1 (A/CN.9/1003, para. 103). 123. Paragraph 1 is based on the understanding that the time frame for rendering the award should commence upon the constitution of the tribunal (A/CN.9/1003, para. 104; A/CN.9/1010, paras. 85–87, 89, 92, 112 and 116). With regard to the period of time, some preference was expressed for six months as that would sufficiently	The MIAS Task Force supports draft provision 16(1)-(3) as well. It would choose six months from the constitution of the tribunal, not nine months. Paragraph 2 gives the tribunal the ability to extend the time after consultation with the parties. This does not seem to be an appropriate place to use the words "exceptional circumstances." Illness, a death in the family—are these "exceptional" or "extenuating"? Would it be better to

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
the parties to express their views. *3. [The arbitral tribunal shall state the reasons when extending the period of time for making the award.]* *4. [The period of time for making the award may only be extended once and the extended time period should not be longer than [ ] months.]*	highlight the expedited nature of the proceedings and would be in line with the duration provided for in other institutional rules on expedited arbitration (A/CN.9/1003, para. 103; A/CN.9/1010, para. 113). Others preferred nine months, taking into account the likely international and ad hoc nature of the proceedings under the EAPs. In support, it was stated that a nine-month period would ensure that an extension does not become systematic under the EAPs (A/CN.9/1010, para. 114). 124. Paragraph 2 is based on the understanding that the EAPs should provide the possibility to extend the time period for rendering the award. Whereas draft provision 10 provides for a general discretion of the arbitral tribunal to extend or abridge any period of time prescribed under the EAPs, draft provision 16(2) specifically authorizes the arbitral tribunal to extend the time frame for rendering an award, but only in exceptional circumstances (A/CN.9/1003, para.106; A/CN.9/1010, para. 117). The Working Group may wish to consider whether the words "in exceptional circumstances" would need to be further elaborated in the EAPs (A/CN.9/1010, para. 118; see also draft provision 3(2) and para. 25 above). 125. With respect to paragraph 2, it was mentioned 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	say "where the circumstances warrant such extension, after inviting the parties to express their views"? The language in Paragraph 2 means that the tribunal will be stating the reasons for the extension. Paragraph 3 does not seem necessary. The Task Force does not recommend the use of paragraph 4 as written. If a ceiling – say 3 months – was imposed, that would be acceptable. But the number of times to get there should not matter. As to Paragraph 126, there are limits on what rules can do. Tribunals have to be trusted to honor commitments. As to paragraph 131, the Task Force does not see a need to make any adjustments to the UARs.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	(A/CN.9/1003, para. 107; A/CN.9/1010, para. 120). In this regard, the Working Group may wish to confirm the understanding that the parties by agreeing to refer their dispute to the EAPS (in particular, draft provision 16(2)) are explicitly endowing the arbitral tribunal with the authority to extend the time frame for making the award and that this would thus not necessarily conflict with lex arbitri (see article 1(3) of the UARs). In any case, the arbitral tribunal should conduct the proceedings in an expeditious and effective manner and take into account the parties' expectations in accordance with draft provision 2(2). 126. Also with respect to paragraph 2, a question was raised whether the EAPs should address the situation where the time frame might have lapsed against the will of the parties or of the arbitral tribunal. This might result in an unintended termination of proceedings and eventually the annulment of the award if the award was rendered after the lapse of the time frame agreed by the parties (A/CN.9/1010, para. 120). The Working Group may wish to consider whether this question, which could also arise in the context of non-expedited arbitration, would need to be addressed in the EAPs. 127. Paragraph 3 is in square brackets as it reflects differing views expressed with regard to whether the tribunal would be required to provide the reasons for extending the time frame for the rendering of the award	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	(A/CN.9/1003, para.106; A/CN.9/1010, para. 118). Similarly, paragraph 4 addresses the question whether the extension should be allowed only once and whether there should be a limit on the extended period (A/CN.9/1003, para.106; A/CN.9/1010, para. 119). 128. Draft provision 16 does not address the consequences of non-compliance by the arbitral tribunal of the time frame therein. The Working Group may wish to confirm that such consequences (for example, (i) reduction of arbitrator's fees with the possible involvement of the appointing authority or (ii) replacement of the arbitrator which may not necessarily ensure efficiency, A/CN.9/969, para. 55; A/CN.9/1003, para. 108) need not be addressed in the EAPs. *Interaction with the UARs* 129. Draft provision 16 would supplement article 34 of the UARs, which would apply to expedited arbitration unchanged. 130. In particular, the Working Group confirmed that article 34(3) of the UARs would apply to expedited arbitration unchanged (A/CN.9/1010, para. 121). It was considered that requiring the arbitral tribunal to provide a reasoned award could assist its decision-making and would comfort the parties as they would find that their arguments had been duly considered (A/CN.9/969, paras.	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	85–86; A/CN.9/1003, para. 110). The absence of reasoning in an award may also impede its control mechanism, as the court or other competent authority would not be in a position to consider whether there were grounds for setting aside the award or refusing its recognition and enforcement. It was also said that article 34(3) of the UARs would be more compatible with domestic legislations that required reasoned awards, without which the award might be null and void (A/CN.9/1003, para. 110). 131. The Working Group may wish to consider whether the time frames prescribed in the UARs (article 37 on the interpretation of the award, article 38 on the correction of the award and article 39 on an additional award) should be adjusted in expedited arbitration.	
P. Allocation of costs		
Draft provision 17 (Allocation of costs) *[When allocating the costs of the arbitration in accordance with article 42, paragraph 1, of the UNCITRAL Arbitration Rules, the arbitral tribunal may determine that the costs arising with respect to a claim (including a counterclaim, a claim for the purposes of set-off and any*	133. Draft provision 17 is in square brackets as it reflects a suggestion that the EAPs should expressly provide that the arbitral tribunal could allocate the cost related to a claim, a counterclaim, a claim for the purposes of set-off and any amendment or supplement to the claim to the party making it, if the claims were found to be frivolous or manifestly without merit (A/CN.9/1003, para. 91; A/CN.9/1010, para. 101). The Working Group may wish to consider whether the EAPs should provide such a rule in light of article 42 and if so, whether it would need to be expanded to cover defences as well. The Working Group may wish to consider draft provision 17 in conjunction with draft provision 18.	In view of article 42 of the UAR, draft provision 17 is not necessary. Article 42 gives the tribunal sufficient discretion to address claims manifestly without merit.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
amendment or supplement to the claim) should be borne by the party that made the claim, if it is determined that the claim was manifestly without merit.]	*Interaction with the UARs* 134. Draft provision 17 would supplement the second sentence of article 42(1) of the UARs.	
Q. Pleas as to the merits and preliminary rulings		
Draft provision 18 (Pleas as to the merits and preliminary rulings) *[1. A party may raise a plea that:* *(a) A claim or defence is manifestly without legal merit;* *(b) Issues of fact or law supporting a claim or defence are manifestly without merit;* *(c) An evidence is not admissible;* *(d) No award could be rendered in favour of the*	138. Draft provision 18 is based on suggestions made at the Working Group that the two provisions in document A/CN.9/WG.II/WP.212 respectively providing for early dismissal and preliminary determination should be merged to avoid overlap (A/CN.9/1010, para. 125). The Working Group may wish to confirm this approach. 139. The term "pleas as to the merits and preliminary rulings" is used to capture both tools, mirroring article 23 of the UARs on "pleas as to the jurisdiction of the arbitral tribunal". It is assumed that article 23 of the UARs will apply unchanged in expedited arbitration and would be supplemented by draft provision 18. 140. Paragraph 1 lists the type of pleas that a party can raise. The Working Group may wish to develop the list further. As to the standard to be applied, it was considered that the "manifestly without merit" standard provided a sound basis (A/CN.9/1010, para. 127). Paragraph 2 introduces a time frame within which a party would be able to raise a plea.	The MIAS Task Force accepts the value of a preliminary ruling to summarily address legal questions. The emphasis must be on "legal questions." If a fact has to be determined to decide an issue, a hearing will be necessary. Tribunals have to balance the cost of dealing with a preliminary ruling with the efficiency of the process. It is expensive to hear a motion on a preliminary basis. It is also time consuming. The Rules should not encourage the filing of such motions without the tribunal's permission. And it seems necessary that the applicant demonstrate a likelihood of success before the tribunal incurs the time and expense of hearing the motion.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
other party even if issues of fact or law supporting a claim or defence are assumed to be correct; *(e) …* *2. A party shall raise the plea as promptly as possible and no later than 30 days after the submission of the relevant claim/defence, issues of law or fact or evidence. The arbitral tribunal may admit a later plea if it considers the delay justified.* *3. The party raising the plea shall specify as precisely as possible the facts and the legal basis for the plea and demonstrate that a ruling on the plea will expedite the proceedings considering all circumstances of the case.* *4. After inviting the parties to express their views, the*	141. The Working Group may wish to consider whether the time frame is appropriate in light of the time period for rendering the award in draft provision 16 (either six or nine months) and if not, how it should be adjusted (A/CN.9/1010, para. 126). Paragraph 3 requires the party raising the plea to provide grounds justifying the plea. This would address concerns about the possible abuse of the tool by the parties resulting in delays (A/CN.9/1010, para. 124). 142. Paragraphs 4 and 5 provide for a two-stage process with the arbitral tribunal first determining whether to consider the plea and then deciding on the merits. Both paragraphs include a time frame within which a decision (on procedure and on the merits of the plea) needs to be made by the arbitral tribunal. The Working Group may wish to consider whether the two stages should be combined into a single stage with a single time frame.	Hence, the Task Force recommends reordering the paragraphs of draft provision 18 and simplifying it. One approach is to do something like the AAA does in its commercial arbitration rules: "The arbitrator may allow the filing of and make rulings upon a dispositive motion only if the arbitrator determines that the moving party has shown that the motion is likely to succeed and dispose of or narrow the issues in the case." Whatever the approach, it must contain (1) a short and concise application to the tribunal stating the relief sought and why the party is entitled to the relief sought without the need for a hearing; (2) an opportunity to respond; (3) a decision by the tribunal whether to allow the motion; and (4) if allowed, a briefing schedule and time period for resolution of the motion. The Task Force does not see a need to

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
arbitral tribunal shall determine within [15] days from the date of the plea whether it will rule on the plea as a preliminary question. *5. Within [30] days from the date of the plea, the arbitral tribunal shall rule on the plea. The period of time may be extended by the arbitral tribunal in exceptional circumstances.* *6. A ruling by the arbitral tribunal on a plea shall be without prejudice to the right of a party to object, in the course of the proceeding, that a claim or defence lacks legal merit.]*		set forth examples. But example (c) does not fit within the category of the other three examples. Tribunals rule on evidence issues all of the time and this draft provision is not necessary to enable a tribunal to deal with the admissibility of evidence. The words "as possible" are words of contention. They will generate argument. The tribunal can set a deadline for receipt of a dispositive motion and there is no need to use this phrase to describe the contents of the application to the tribunal. If the party does not specify why there are no facts in dispute and the plea addresses a pure question of law, the tribunal will not authorize submission of the plea.