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-THIRD 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 and September 2020 provided to the delegates at the Seventy-First and Seventy-Second Sessions of the WGII on proposed EAPs. Referring to these work products, and considering the Secretariat's Note on draft EAPs for the Seventy-Third 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, including explanatory notes. 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 an appendix to the UNCITRAL Rules.

Respectfully Submitted this 19th Day of March 2021,
The Miami International Arbitration Society Task Force on Expedited Arbitration Procedures in connection with the UNCITRAL Arbitration Rules.

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Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
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 disputes 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.	9. The Working Group may wish to consider the following text for the explanatory note on draft provision 1: *(1) Draft provision 1 provides guidance on when the EAPs apply (A/CN.9/1010, para. 23). It notes that express consent of the parties is required for the application of the EAPs (A/CN.9/1010, paras. 21 and 27).* *(2) Parties are free to agree on the application of the EAPs at any time even after the dispute has arisen (A/CN.9/1010, para. 24). For example, parties that had concluded an arbitration agreement or had initiated arbitration under the UARs before the effective date of the EAPs can subsequently refer their dispute to arbitration under the EAPs (A/CN.9/1003, para. 31). Likewise, a party may propose to the other party or parties that the EAPs shall apply to the arbitration (A/CN.9/1043, para. 18).* *(3) However, parties should be mindful of the consequences when changing from non-expedited to expedited arbitration (A/CN.9/1010, para. 32). For example, a notice of arbitration communicated in accordance with article 3 of the UARs might not meet the requirements of draft provision 4, which requires the claimant to communicate proposals for the designation of an appointing authority and for the appointment of a sole arbitrator. Therefore, it would be prudent for the parties to agree on how such requirements could be met, should they agree to refer*	The MIAS Task Force has no suggested changes to the draft or the proposed explanatory note. It agrees with the insertion of the suggested text in Article 1 of the UARs as proposed in Paragraph 10 of the Secretariat's note. It also agrees with the addition of the text to the explanatory note that is proposed in Paragraph 13.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	their dispute to arbitration under the EAPs after the proceedings had begun. Similarly, if a three-member arbitral tribunal was constituted, the parties need to agree whether to preserve the three-member tribunal (which is possible under draft provision 7) or to appoint a sole arbitrator in accordance with draft provision 8 (A/CN.9/1010, paras. 50 and 54). If the constitution of the tribunal is changed, the parties may also need consider the status of statements and evidence submitted to the former tribunal. *(4) Draft provision 1 indicates that the UARs generally apply to expedited arbitration, unless and as modified by the EAPs (A/CN.9/1010, para. 23). The phrase "as modified by these Provisions" means that rules in the UARs and the EAPs need to be read in conjunction for the proper conduct of the proceedings. In some cases, the rule in the UARs are supplemented by the EAPs. In other cases, the rules in the UARs are replaced by those in the EAPs (see paras. 11–13 below). Similar to the UARs, parties have the flexibility to tailor any of the provisions to their proceedings (A/CN.9/1043, para. 17).* *(5) In relation to article 1(2) of the UARs, parties to an arbitration agreement concluded before the entry into force of the EAPs will not be presumed to have referred their dispute to the EAPs, even if the EAPs are presented as an appendix to the UARs in effect on the date of commencement of the arbitration. The EAPs only apply when so agreed by the parties (A/CN.9/1003, para. 25; A/CN.9/1010, para. 28; A/CN.9/1043, para. 57).*	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	10. The Working Group considered two possible approaches to incorporate the EAPs into the UARs as an appendix. One approach was to present the EAPs as an appendix with no additional paragraph in the UARs and another was to insert an additional paragraph in article 1 of the UARs (A/CN.9/1043, paras. 20–21). Based on the general support expressed for the latter approach (A/CN.9/1043, paras. 22 and 24), **the Working Group may wish to confirm the following formulation for insertion in article 1 of the UARs**: *The Expedited Arbitration Provisions in the appendix shall apply to the arbitration where the parties so agree.* 13. While the explanatory note could provide some guidance on these interactions, it might be difficult to illustrate the various instances, particularly as parties are free to modify any of the rules. Nonetheless, **the Working Group may wish to consider the following formulation for insertion in the EAPs or in the explanatory note to provide some clarity on this interaction**: *For the avoidance of doubt and unless otherwise agreed by the parties, the following rules in the UARs do not apply to arbitration under the EAPs: Article 3(4)(a) and (b) ; Article 6(2); Article 7; Article 8(1); first sentence of Article 20(1); first sentence of Article 21(1); Article 21(3); first sentence of*	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	Article 22; and second sentence of Article 27(2). *The phrase "these Rules" as found in the UARs should be read to include the EAPs in the context of expedited arbitration.*	
Draft provision 2 (Withdrawal from expedited arbitration)		
1. At any time during the proceedings, the parties may agree that the Expedited Arbitration Provisions shall no longer apply to the arbitration. *2. At the request of a party, the arbitral tribunal may, in exceptional circumstances and after inviting the parties to express their views, determine that the Expedited Arbitration Provisions shall no longer apply to the arbitration. [The arbitral tribunal shall state the*	17. The phrase "in exceptional circumstances" reflects the agreement in the Working Group that the grounds justifying the request for withdrawal should be limited and that the mechanism should be designed to prevent any delays or misuse (A/CN.9/1010, paras. 37 and 42; A/CN.9/1043, paras. 40, 41 and 44). It aims to set a high threshold preventing parties from withdrawing from EAPs easily and 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; A/CN.9/1043, para. 49). The arbitral tribunal would also need to consult the parties in making the determination (A/CN.9/1003, para. 49; A/CN.9/1043, para. 41). **The Working Group may wish to confirm that the elements to be taken into account by the arbitral tribunal are better placed in the explanatory note than in the draft provision** (see para. 19(4) below, A/CN.9/1010, paras. 44–48; A/CN.9/1043, para. 49). **Furthermore, the Working Group may wish to consider whether the arbitral tribunal should be required to provide the reasons for its determination** (A/CN.9/1043, para. 42). 19. The Working Group may wish to consider the following text for the explanatory note on draft provision 2 (A/CN.9/1043, paras. 38–55):	The MIAS Task Force does not believe that the elements to be taken into account by the tribunal should be placed in the draft provision. They should remain in the explanatory note. The Task Force believes it is unlikely that a tribunal would decide that the EAP no longer apply without stating reasons. The requirement of "exceptional circumstances" should guarantee that the tribunal set forth those circumstances. There is no recourse from the decision, however, so, to ensure transparency and integrity, the Task Force favors the inclusion of the bracketed language.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
reasons upon which that determination is based.] *3. When the Expedited Arbitration Provisions no longer apply to the arbitration pursuant to paragraph 1 or 2, the arbitral tribunal shall remain in place and conduct the arbitration in accordance with the UNCITRAL Arbitration Rules.*	*(1) Even when the parties had initially agreed to refer their dispute to arbitration under the EAPs, the circumstances may be such that the EAPs are not appropriate to resolve the particular dispute. Draft provision 2 addresses such circumstances, with paragraph 1 allowing parties to agree to withdraw from expedited arbitration.* *(2) In accordance with paragraph 2, a party that had agreed to refer the dispute to arbitration under the EAPs may subsequently request withdrawal from expedited arbitration, particularly when the dispute evolved in a manner that would make expedited arbitration no longer suitable (A/CN.9/1010, para. 36). There is no time limit within which a party can request withdrawal (A/CN.9/1003, para. 49; A/CN.9/1010, para. 39). Nonetheless, the arbitral tribunal should consider at which stage of the proceedings the request is being made (see subpara. (4) below).* *(3) The phrase "in exceptional circumstances" means that the party requesting withdrawal should provide convincing and justified reasons for the request and that the arbitral tribunal should uphold the request only in limited circumstances (A/CN.9/1043, para. 44).* *(4) The arbitral tribunal should consider whether the EAPs are no longer appropriate for the resolution of the dispute (A/CN.9/1043, paras. 41, 46 and 49). When making the determination, the arbitral tribunal may wish to take into account, among others, the following:* *-The urgency of resolving the dispute;*	With respect to the proposed explanatory note, the Task Force does not believe that paragraph (3), defining "exceptional circumstances" is appropriate. If the standard is "convincing and justified reasons," then that phrase should be used in the text. An explanatory note should not define the rule. The list of factors that might be taken into account is already included. The phrase "exceptional circumstances" does not need further definition. As elsewhere in the Rules the Arbitral Tribunal can be expected to decide on its knowledge of the circumstances. In paragraph 4 of the explanatory note, the first sentence seems unnecessary and potentially is confusing

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	-The stage of the proceedings at which the request is made; *-The complexity of the dispute (for example, the anticipated volume of -documentary evidence and the number of witnesses);* *-The anticipated amount in dispute (the sum of claims made in the notice of arbitration, any counterclaim made in the response thereto as well as any amendment or supplement);* *-The terms of the parties' agreement to expedited arbitration and whether the current circumstance could have been foreseeable at the time of agreement; and* *-The consequences of the determination on the proceedings.* *(5) The above is a non-exhaustive list of elements that can be taken into account (A/CN.9/1003, paras. 49 and 50; A/CN.9/1010, para. 46; A/CN.9/1043, para. 43) and it would not be necessary for the arbitral tribunal to consider all the elements therein.* *(6) When making the determination, the arbitral tribunal, in accordance with article 17(1) of the UARs, may decide that the EAPs in their entirety would no longer apply or that certain provisions would no longer apply to the arbitration (see also para. 46(3) below, A/CN.9/1010, para. 48; A/CN.9/1043, para. 39).* *(7) If the arbitral tribunal is not yet constituted, the determination would need to be made after it is constituted. However, if the parties are not able to reach an agreement on the arbitrator or if there is a*	(since it suggests that the tribunal can decide on withdrawal without a party requesting it). It should just say, "When making the determination on a party's request to withdraw from the EAP, the arbitral tribunal …." Paragraph (6) of the explanatory note is substantive. The possibility of keeping some of the EAPs is not contained in the draft provision's text. The reference to Article 17(1) of the UAR does not cure this concern since that provision is focused on conducting the arbitration in a manner that is appropriate and might not be read to say that the tribunal can pick and choose which part of the UAR or EAP will be used. The Task Force supports the concept set forth in paragraph (6) but believes that the draft provision needs to say something like "…

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	disagreement between the parties on (i) whether the EAPs apply or (ii) whether the criteria triggering the application of the EAPs are met, the appointing authority may need to be involved (A/CN.9/1003, para. 33; A/CN.9/1010, para. 25). In constituting the arbitral tribunal in accordance with article 10(3) of the UARs, the appointing authority will make a prima facie decision on whether the arbitration would be conducted under the EAPs. However, the ultimate determination on the application of the EAPs would be left to the arbitral tribunal (A/CN.9/1010, para. 41). *(8) When the EAPs no longer apply to the arbitration pursuant to paragraph 1 or 2, the arbitral tribunal shall conduct the arbitration in accordance with the UARs. However, this does not mean that the arbitral tribunal, if already constituted, would have to be re-constituted in accordance with the UARs (A/CN.9/1043, para. 54). Instead, the arbitral tribunal shall remain in place in accordance with paragraph 3. There may, however, be instances where the parties agree to replace any arbitrator or reconstitute the arbitral tribunal (A/CN.9/1003, paras. 44 and 51; A/CN.9/1010, para. 50; A/CN.9/1043, paras. 51 and 52). There may also be instances where an arbitrator resigns, for example, if the arbitrator appointed under the EAPs believes his schedule of future commitments does not allow him to conduct non-expedited arbitration (A/CN.9/1043, para. 53).* *(9) Unless the arbitral tribunal decides otherwise, the non-expedited proceeding should resume at the stage where the expedited proceeding was when the parties agreed to withdraw or the arbitral tribunal made*	the Expedited Arbitration Provisions shall no longer apply **in whole or in part** to the arbitration." Does explanatory note (9) cover both procedural and substantive prior decisions? The second sentence should be deleted. The tribunal can make appropriate determinations with respect to prior decisions. This sentence tries to do too much.

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	the determination (A/CN.9/1010, para. 50). Decisions made during the expedited proceeding should remain applicable to the non-expedited proceedings, unless the arbitral tribunal decides to depart from its earlier decisions or from a decision made by the previous tribunal (A/CN.9/1043, para. 54).	
Draft provision 3 (Conduct of the parties and the arbitral tribunal)		
1. The parties shall act expeditiously throughout the proceedings. *2. The arbitral tribunal shall conduct the proceedings expeditiously taking into account the fact that the parties agreed to refer their dispute to expedited arbitration and the time frames in the Expedited Arbitration Provisions.* *3. In conducting the proceedings, the arbitral tribunal may, after inviting the parties to express their views and*	24. The Working Group may wish to consider the following text for the explanatory note on draft provision 3: *(1) Considering that a fair and efficient resolution of the dispute is a common goal of both arbitration under the UARs and the EAPs, draft provision 3 highlights the expeditious nature of the proceedings under the EAPs and emphasizes the obligation of the parties and the arbitral tribunal to act expeditiously (A/CN.9/1003, paras. 78 and 112; A/CN.9/1043, para. 27).* *(2) Paragraph 1 is a reminder to parties that when referring their dispute to arbitration under the EAPs, they are agreeing to cooperate in ensuring the efficiency of the proceeding as well as for a swift resolution of the dispute, particularly in ad hoc setting where there is no administering institution to expedite the process (A/CN.9/1043, paras. 27 and 29).* *(3) Paragraph 2 should be read along with article 17(1) of the UARs which states: "…, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are*	The MIAS Task Force supports draft provision 3. It supports the explanatory note, although it believes that the explanatory note could be shortened. For example, are both (1) and (2) needed? The Task Force also supports the suggestion in Paragraph 26 of the Secretariat's Note.

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taking into account the circumstances of the case, utilize any technological means as it considers appropriate to communicate with the parties and to hold consultations and hearings remotely.	*treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute."* *(4) Arbitral tribunals, when conducting arbitration under the EAPs, should be mindful of the objectives of the EAPs, of the parties' intentions and expectations when they chose expedited proceedings and of the time frames in the EAPs, in particular that in draft provision 16 for the rendering of the award.* *(5) Designating and appointing authorities as well as arbitral institutions administering arbitration under the EAPs should also be mindful of the objectives of the EAPs as well as any applicable time frames (A/CN.9/1043, para. 31, 33 and 35). For example, when appointing an arbitrator for expedited arbitration, the appointing authority shall have regard to such considerations as are likely to secure an arbitrator who would be available and ready to conduct the arbitration expeditiously (see article 6(7) of the UARs).* *(6) Paragraph 3 emphasizes the discretion provided to the arbitral tribunal to make use of a wide range of technological means to communicate with the parties and to hold consultations and hearings without requiring physical presence at any stage of the proceedings. The inclusion of such a rule in the EAPs does not imply that the use of technological means is available to arbitral tribunals only in expedited arbitration (A/CN.9/1043, para. 96). The rule aims to assist the arbitral*	

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	tribunal in streamlining the proceedings and avoiding unnecessary delay and expense, both of which are in line with the objectives of expedited arbitration. However, the arbitral tribunal should be mindful that the use of technological means is subject to the rules in the UARs as well as the EAPs to provide for a fair proceeding and to give each party a reasonable opportunity to present its case. In that light, the arbitral tribunal should give the parties an opportunity to express their views on the use of such technological means and consider the overall circumstances of the case. 26. **The Working Group may wish to consider whether draft provision 3(2) and the text in the explanatory note (see para. 24(4) above) would suffice for this purpose (A/CN.9/1043, para. 32). Otherwise, it may wish to revise the note to the model statement of independence as follows for expedited arbitration**: *Note: Parties should consider requesting from the arbitrator the following addition to the statement of independence:* *I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently, expeditiously and in accordance with the time limits in the Rules and the Provisions.*	
Draft provision 4 (Notice of arbitration and statement of claim)		
1. A notice of arbitration shall also include:	28. The Working Group may wish to consider the following text for the explanatory note on draft provision 4:	The MIAS Task Force supports draft provision 4 and the

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(a) A proposal for the designation of an appointing authority, unless the parties have previously agreed thereon; and *(b) A proposal for the appointment of an arbitrator.* *2. When communicating its notice of arbitration to the respondent, the claimant shall also communicate its statement of claim.* *3. The claimant shall communicate the notice of arbitration and the statement of claim to the arbitral tribunal as soon as it is constituted.*	*(1) Draft provision 4 addresses the initiation of recourse to arbitration by the claimant and modifies certain rules in articles 3(4) and 20(1) of the UARs.* *(2) Two elements, which are optional under article 3(4) of the UARs, are required in the notice of arbitration. This is to facilitate the speedy constitution of the arbitral tribunal in expedited arbitration. In accordance with paragraph 1, the claimant is required to propose an appointing authority (unless the parties have previously agreed thereon) and the arbitrator. It is important for the claimant to include such information in its notice of arbitration because the 15-day time frames in draft provisions 6 and 8 both begin with the receipt by the respondent of the respective proposals.* *(3) A proposal for the appointment of the arbitrator does not mean that a party needs to put forward the name of the arbitrator; rather, a party may suggest a list of suitable candidates/qualifications, or a mechanism to be used by the parties for agreeing on the arbitrator. This would also cater for cases where the parties agreed to more than one arbitrator in expedited arbitration (A/CN.9/1043, para. 64).* *(4) To further expedite the process, the claimant is required to communicate its statement of claim along with its notice of arbitration. This modifies the rule in article 20(1) of the*	explanatory note.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	UARs, which provides that the statement of claim should be communicated within a period of time to be determined by the arbitral tribunal. This accelerates the proceedings by eliminating the need for the claimant to produce a separate statement of claim (A/CN.9/969, para. 67; A/CN.9/1010, para. 51). *(5) The claimant may, of course, elect to treat its notice of arbitration as its statement of claim, as long as its notice of arbitration complies with the requirement of paragraphs 2 to 4 of article 20 of the UARs (see second sentence of article 20(1) of the UARs).* *(6) In summary, when initiating recourse to arbitration, the claimant needs to provide the following:* *-A demand that the dispute be referred to arbitration (UARs art. 3(3)(a))* *- The names and contact details of the parties (UARs arts. 3(3)(b) and 20(2)(a))* *- Identification of the arbitration agreement that is invoked (UARs art. 3(3)(c)) and a copy thereof (UARs art. 20(3));* *- Identification of any contract or other legal instrument out of or in relation to which the dispute arises (UARs art. 3(3)(d)) and a copy thereof (UARs art. 20(3)) – in the*	

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	absence of such contract or instrument, a brief description of the relevant relationship (UARs art. 3(3)(d)); *- A brief description of the claim and an indication of the amount involved, if any (UARs art. 3(3)(e));* *- The relief or remedy sought (UARs arts. 3(3)(f) and 20(2)(d));* *- A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon (UARs art. 3(3)(g));* *- A proposal for the designation of an appointing authority, unless the parties have previously agreed thereon (EAPs DP 4(1)(a)); -* *A proposal for the appointment of an arbitrator (EAPs DP 4(1)(b));* *- A statement of the facts supporting the claim (UARs art. 20(2)(b));* *- The points at issue (UARs art. 20(2)(c));* *- The legal grounds or arguments supporting the claim (UARs art. 20(2)(e)); and* *- As far as possible, all documents and other evidence relied upon by the claimant, or references to them (UARs art. 20(4)).*	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	(7) In light of draft provision 7 providing a default rule of a sole arbitrator, the claimant would not need to propose the number of arbitrators in its notice of arbitration, unless it wishes to suggest the constitution of an arbitral tribunal of more than one arbitrator (A/CN.9/1010, para. 57, A/CN.9/1043, para. 75). *(8) With respect to the last item on the above list, the presentation of the complete case is being required for the sake of efficiency. It does not, however, mean that all evidence has to be communicated at this stage, which may be burdensome and counterproductive. This is highlighted by the words "as far as possible" and the claimant may decide to only make reference to the evidence to be relied upon (A/CN.9/1003, paras. 81 and 101; A/CN.9/1043, para. 63). For example, written witness statements need not be submitted with the notice of arbitration. In practice, the claimant would identify in its statement of claim (i) any witness whose testimony it would rely on, (ii) the subject matter of the testimony and (iii) any subject matter for which the claimant intended to submit expert reports (A/CN.9/1043, para. 62). It would be preferable to determine which evidence is to be submitted during the consultation between the arbitral tribunal and the parties (see para. 46(3) below).*	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	(9) Paragraph 3 requires the claimant to communicate its notice of arbitration and statement of claim to the arbitral tribunal as soon as it is constituted. In the case that the arbitral tribunal consists of more than one arbitrator, the claimant would, in practice, communicate its notice of arbitration and statement of claim to each of the arbitrators upon his or her appointment.	
Draft provision 5 (Response to the notice of arbitration 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, which shall also include a response to the information set forth in the notice of arbitration pursuant to draft provision 4, paragraphs (1)(a) and (b). *2. The respondent shall communicate its statement of defence to the claimant and the arbitral tribunal within 15 days of the constitution of the arbitral tribunal.*	30. The Working Group may wish to consider the following text for the explanatory *note* on draft provision 5: *(1) Draft provision 5 addresses the actions required by the respondent upon receipt of a notice of arbitration and a statement of claim from the claimant. It envisages a two-stage reply with a shorter time frame for the response to the notice of arbitration and a longer one for the statement of defence. This is to facilitate the speedy constitution of the tribunal and to provide sufficient time for the respondent to prepare its case (A/CN.9/1043, paras. 67 and 68).* *(2) The respondent is required to communicate a response within 15 days of receipt of the notice. Draft provision 5(1) thus modifies article 4(1) of the UARs, which provides for a 30-day time frame (A/CN.9/1010, paras. 55 and 56; A/CN.9/1043, para. 68). A shorter time frame is imposed on the response, as it addresses procedural issues, in*	The MIAS Task Force supports draft provision 5 and the explanatory note. The Task Force also supports retention of the 15-day time period as discussed in Paragraph 31 of the Secretariat's Note.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	particular those relating to the constitution of the arbitral tribunal. *(3) The response to the notice of arbitration shall include a response to the information set forth in the notice of arbitration (see art. 4(1) of the UARs). As draft provision 4(1) of the EAPs requires the claimant to include in its notice of arbitration proposals on an appointing authority and the appointment of the arbitrator, the respondent is also required to include a response to those proposals. If the respondent disagrees with the proposals, the respondent is free to make its own proposals in accordance with article 4(2)(b) and (c) of the UARs (A/CN.9/1043, para. 70).* *(4) In summary, the respondent would need to provide, within 15 days of the receipt of the notice of arbitration, the following:* *- the name and contact details of each respondent (UARs art. 4(1)(a));* *- A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3 (c) to (g) (UARs art. 4(1)(b)); and* *- A response to the information set forth in the notice of arbitration, pursuant to draft provision 4, paragraphs 1*	

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	(a) and (b) (EAPs DP 5(1)). *(5) To provide the respondent with sufficient time to prepare its statement of defence and to ensure equality of the process, the respondent has 15 days from the constitution of the arbitral tribunal to communicate its statement of defence (A/CN.9/969, para. 71; A/CN.9/1003, para. 81; A/CN.9/1010, para. 56). It introduces a fixed time frame in contrast to article 21(1) of the UARs, which provides that the statement of defence shall be communicated within a period of time to be determined by the arbitral tribunal. The respondent may, of course, elect to treat its response to the notice of arbitration as its statement of defence, as long as the response complies with the requirement of article 21(2) of the UARs (see second sentence of article 21(1) of the UARs).* *(6) The 15-day time frame for the statement of defence could be extended by the arbitral tribunal, for example, if the respondent requests for more time to prepare its statement of defence (see draft provision 10). The extended period should generally not exceed 45 days as stipulated in article 25 of the UARs.* 31. Concerns had been expressed that the 15-day time frame beginning with the constitution of the tribunal could result in the respondent tactically delaying the constitution of the arbitral tribunal (A/CN.9/1043, para.	

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	69) and thus, one suggestion was that the time frame could instead begin on the date of receipt of the notice of arbitration with a longer time period (for example, 30 days). However, this may result in the respondent being required to communicate its statement of defence prior to the constitution of the arbitral tribunal as there is no fixed time frame for its constitution in the EAPs. Furthermore, draft provision 8(2) provides a mechanism for a party to request the involvement of the appointing authority quite early in the proceedings, which will limit the ability of the respondent to delay the constitution of the arbitral tribunal. **In light of the above, the Working Group may wish to confirm that the 15-day time frame for communicating the statement of defence shall begin with the constitution of the arbitral tribunal.**	
Draft provision 6 (Designating and appointing authorities)		
1. If all parties have not agreed on the choice of an appointing authority 15 days after a proposal for the designation of an appointing authority has been received by all other parties, any party may request the Secretary-General of the Permanent Court of Arbitration (hereinafter called the "PCA") to designate the appointing authority or to serve as appointing authority.	38. The Working Group may wish to consider the following text for the explanatory note on draft provision 6: *(1) The appointing authority has a significant role in expediting the proceedings, especially with regard to the constitution of the arbitral tribunal. Therefore, it is important that the parties agree on the choice of an appointing authority. When the parties have not agreed on that choice, draft provision 6 provides a mechanism for the Secretary-General of the Permanent Court of Arbitration (PCA) to designate an appointing authority or to serve as*	The MIAS Task Force supports draft provision 6 and the explanatory note with this comment. Explanatory note (5) provides: *(5) Similar to draft provision 6(1), paragraph 2 modifies article 6(4) of the UARs and allows a party to request the*

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
2. When making the request under article 6, paragraph 4 of the UNCITRAL Arbitration Rules, a party may request the Secretary-General of the PCA to serve as appointing authority. *3. If requested to serve as appointing authority in accordance with paragraph 1 or 2, the Secretary-General of the PCA will serve as appointing authority unless it determines that in view of the circumstances of the case, it is more appropriate to designate an appointing authority.*	*one, both of which would lead to an earlier engagement of the appointing authority.* *(2) Draft provision 6(1) simplifies the process provided for in article 6(2) of the UARs by allowing a party to request the Secretary-General of the PCA to serve as the appointing authority. It provides a streamlined and flexible process, while providing a level of discretion to the Secretary-General of the PCA.* *(3) The overall process is accelerated by allowing any party to engage with the Secretary-General of the PCA any time after 15 days have lapsed from the receipt by all parties of a proposal on an appointing authority. In practice, this means that a claimant that has included in its notice of arbitration a proposal for an appointing authority (in accordance with draft provision 4(1)) is able to make the request to the Secretary-General of the PCA 15 days after the receipt of the notice by the respondent.* *(4) It should, however, be noted that draft provision 5(1) provides the respondent 15 days to respond to the notice of arbitration, which should also include a response to the proposal for an appointing authority. Therefore, it would be prudent for the claimant to consider such response before engaging the Secretary-General of the PCA. In any case, the Secretary-General of the PCA in exercising its functions*	*Secretary-General of the PCA to designate a substitute appointing authority or to serve as one, where the appointing authority refuses to or fails to act. However, this would not be possible when the Secretary-General of the PCA is already serving as the appointing authority.* It may be appropriate to add the phrase "*or to designate a substitute appointing authority*" at the end of draft provision 6(2) to provide clarity to the phrase "*When making the request under article 6, paragraph 4 of the UNCITRAL Arbitration Rules.*"

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	under draft provision 6(1) would be required to give the parties an opportunity to present their views, including any proposals on the appointing authority. *(5) Similar to draft provision 6(1), paragraph 2 modifies article 6(4) of the UARs and allows a party to request the Secretary-General of the PCA to designate a substitute appointing authority or to serve as one, where the appointing authority refuses to or fails to act. However, this would not be possible when the Secretary-General of the PCA is already serving as the appointing authority.* *(6) Paragraph 3 provides a level of discretion to the Secretary-General of the PCA to address practical questions that could arise, for example, (i) when a party has previously rejected or rejects a proposal for the Secretary-General of the PCA to serve as appointing authority; (ii) when a party requests the Secretary-General of the PCA to serve as appointing authority and the other party requests it to serve as designating authority; and (iii) when a party requests the Secretary-General of the PCA to either designate an appointing authority or to serve as an appointing authority.* *(7) Paragraphs 1, 3, 5, 6 and 7 of article 6 of the UARs continue to apply to expedited arbitration unchanged (A/CN.9/1043, para. 73).*	
Draft provision 7 (Number of arbitrators)		
Unless otherwise agreed by the	40. The Working Group may wish to consider the following	The MIAS Task Force supports

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
parties, there shall be one arbitrator.	text for the explanatory note on draft provision 7: *(1) Draft provision 7 provides that an arbitral tribunal composed of a single arbitrator is the default rule in expedited arbitration (A/CN.9/969, paras. 37–38; A/CN.9/1003, paras. 53 and 55; A/CN.9/1043, para. 75). As such, article 7(1) of UARs is replaced by draft provision 7. Parties, however, can agree on more than one arbitrator, in light of the particulars of the dispute and if collective decision-making is preferred (A/CN.9/969, para. 40; A/CN.9/1003, para. 53).* *(2) When the parties have referred their dispute to arbitration under the EAPs and there is no separate agreement on the number of arbitrators, the appointing authority should not have any role in determining that number (A/CN.9/1003, paras. 54 and 55) and should appoint a sole arbitrator in accordance with draft provisions 7 and 8. While the appointing authority may make a prima facie decision on whether the arbitration is to be conducted under the EAPs, the ultimate determination on the application of the EAPs would be left to the arbitral tribunal (see para. 19(7) above, A/CN.9/1010, para. 41).* *(3) Article 7(2) of the UARs would continue to apply in the context of expedited arbitration when the parties agreed to constitute the arbitral tribunal with more than one*	draft provision 7 and the explanatory note.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	arbitrator. Accordingly, if no other parties responded to a party's proposal to appoint a sole arbitrator and the party or parties concerned have failed to appoint a second arbitrator, the appointing authority may, at the request of a party, appoint a sole arbitrator.	
Draft provision 8 (Appointment of a sole arbitrator)		
1. A sole arbitrator shall be appointed jointly by the parties. *2. If the parties have not reached agreement on the appointment of a sole arbitrator 15 days after a proposal has been received by all other parties, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority in accordance with article 8(2) of the UNCITRAL Arbitration Rules.*	43. The Working Group may wish to consider the following text for the explanatory note on draft provision 8: *(1) Draft provision 8 addresses how a sole arbitrator is to be appointed in expedited arbitration. If the parties agreed on more than one arbitrator, articles 9 and 10 of the UARs apply (A/CN.9/1003, paras. 64–65; A/CN.9/1010, para. 67).* *(2) Paragraph 1 encourages the parties to reach an agreement on the sole arbitrator (A/CN.9/1003, para. 57).* *(3) Paragraph 2 provides a mechanism in the absence of an agreement by the parties on a sole arbitrator. Any party may request the engagement of the appointing authority 15 days after a proposal for the appointment of a sole arbitrator has been received by all other parties. This is shorter than the 30-day time frame in article 8(1) of the UARs. The involvement of the appointing authority can only be triggered by a request by one of the parties.* *(4) Considering that the claimant is required to include such*	The MIAS Task Force supports draft provision 8 and the explanatory note and agrees with the sentiment expressed in Paragraph 44 of the Secretariat's Note.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	a proposal in the notice of arbitration, if there is no agreement within 15 days after the respondent's receipt of the notice of arbitration, the claimant would be able to make a request to the appointing authority. If a proposal is not included in the notice, the 15-day time frame would commence when a proposal is made. *(5) It should, however, be noted that draft provision 5(1) provides the respondent 15 days to respond to the notice of arbitration, which should also include response to the claimant's proposal of a sole arbitrator. Therefore, it would be prudent for the claimant to consider such response before engaging with the appointing authority (if previously agreed by the parties). If the respondent foresees that an agreement cannot be reached (A/CN.9/1003, paras. 60 and 62; A/CN.9/1010, para. 61), it could engage with the appointing authority at the same time it communicates the response to the notice of arbitration.* *(6) In practice, if there is no agreement by the parties on the appointing authority and the sole arbitrator 15 days after the receipt of the notice by the respondent, any party may request the Secretary-General of the PCA to designate the appointing authority or to serve as appointing authority in accordance with draft provision 6(1). In the latter case, a party can also request the appointment of a sole arbitrator in accordance with draft provision 8(2), which would likely*	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	facilitate a speedy constitution of the arbitral tribunal. *(7) Article 8(2) of the UARs, which mentions a list-procedure for the appointment of a sole arbitrator, applies to expedited arbitration unchanged (A/CN.9/1010, para. 62).* *(8) In exercising the functions under the EAPs, the appointing authority and the Secretary-General of the PCA should be mindful of article 6(5) of the UARs, which requires them to give the parties and, where appropriate, the arbitrators an opportunity to present their views (A/CN.9/1043, para. 73). Any proposal made by the parties on the appointment of a sole arbitrator should thus be taken into account.* *(9) When appointing an arbitrator for expedited arbitration, the appointing authority shall make an effort to secure not only an independent and impartial arbitrator in accordance with article 6(7) of the UARs but also an arbitrator who is available and ready to conduct the arbitration expeditiously in accordance with draft provision 3(2).* 44. **The Working Group may wish to confirm that the time frames in articles 9 and 13 of the UARs would apply unchanged to expedited arbitration** (A/CN.9/1003, paras. 61 and 64; A/CN.9/1010, para. 68;	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	A/CN.9/1043, para. 79).	
Draft provision 9 (Consultation with the parties)		
Promptly after and within 15 days of its constitution, the arbitral tribunal shall consult the parties, through a case management conference or otherwise, on the manner in which it will conduct the arbitration.	46. The Working Group may wish to consider the following text for the explanatory note on draft provision 9: *(1) Consultation between the arbitral tribunal and the parties at an early stage of the proceedings is particularly key to an efficient and fair organization of expedited arbitration (A/CN.9/1043, para. 81). Draft provision 9 provides guidance to the arbitral tribunal on how to implement article 17 of the UARs in the context of expedited arbitration.* *(2) Draft provision 9 requires the arbitral tribunal to "consult" the parties on how to organize the proceedings and mentions that one way would be through a case management conference (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).* *(3) A number of issues could be discussed during a case management conference. If there is disagreement between the parties on the application of the EAPs or if the arbitral*	The MIAS Task Force supports draft provision 9 and the explanatory note, although in paragraph 3 of the explanatory note "electronic means" might be preferable to "technological means." ("Technological" is used elsewhere and the Working Group should consider using "electronic" in those places as well. So this comment is not repeated. But even if left in elsewhere, electronic seems to fit better here.)

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	tribunal considers that certain provisions in the EAPs should not apply to the proceedings, the parties and the arbitral tribunal can discuss and agree which rules would apply to the proceedings. How to conduct further consultations as well as hearings could be discussed, including whether they would be in person or through technological means. The extent to which parties would be allowed to present further written statements or be requested to produce documents, exhibits and other evidence could also be discussed. Similarly, the parties could indicate the witnesses that they will present to testify as well as the content of their testimony. *(4) Draft provision 9 introduces a short time frame within which the tribunal should consult the parties as it is useful for this to be done 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). The arbitral tribunal should conduct the consultation with the parties promptly after and within 15 days of its constitution. In certain cases, the respondent might not yet have communicated its statement of defence as it is to be communicated within 15 days of the constitution of the arbitral tribunal (see draft provision 5(2)). Nonetheless, it would be useful for the arbitral tribunal to consult the parties at an early stage based on the notice of arbitration, response thereto as well as the statement of claim. Upon receipt of the statement of*	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	defence from the respondent, the arbitral tribunal may decide to hold further consultations with the parties, particularly if the provisional timetable requires revision. *(5) Consultations may be conducted through a meeting in person, in writing, by telephone or videoconference or other means of communication as provided for in draft provision 3(3) (A/CN.9/969, para. 63; A/CN.9/1003, para. 74; A/CN.9/1010, para. 85). Considering that sufficient flexibility is provided to the arbitral tribunal, it should not be so burdensome to meet the 15-day time frame (A/CN.9/1003, para. 74).* *(6) In accordance with article 17(2) of the UARs, the arbitral tribunal should establish the provisional timetable after inviting the parties to express their views. In so doing, the tribunal should be mindful of the time frames in the EAPs, in particular that in draft provision 16 (A/CN.9/1003, para. 73; A/CN.9/1010, para. 84), which is highlighted in draft provision 3(2). Following the consultations, the arbitral tribunal may wish to communicate to the parties the outcome of the consultations to ensure that the parties are aware of the time frames and would avoid delays.*	
Draft provision 10 (Discretion of the arbitral tribunal with regard to time frames)		
Subject to draft provision 16, the arbitral tribunal may at any time, after inviting the parties to express	49. The Working Group may wish to consider the following text for the explanatory note on draft provision 10:	The MIAS Task Force supports draft provision 10 and the explanatory note.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
their views, extend or abridge any period of time prescribed under these Provisions or agreed by the parties.	*(1) Draft provision 10 addresses the discretion of the arbitral tribunal with regard to time frames in expedited arbitration. It should be read along with the second sentence of article 17(2) of the UARs, which provides that "The arbitral tribunal may … extend or abridge any period of time prescribed under these Rules or agreed by the parties."* *(2) As such, draft provision 10 clarifies that the arbitral tribunal may extend or abridge any period of time prescribed under the EAPs (for example, the time frame for communicating the statement of defence or for making a counterclaim) (A/CN.9/1003, para. 79). It also reiterates the discretion of the arbitral tribunal to extend or abridge any period of time agreed by the parties in the context of expedited arbitration (A/CN.9/1043, para. 91). Even after a time frame has been fixed in accordance with draft provision 10, flexibility is provided to adjust the time period when the adjustment is justified (A/CN.9/969, para. 52). However, this discretion is subject to a specific rule in draft provision 16 with regard to the time frame for rendering the award, as the extension of that period is only possible in exceptional circumstances.* *(3) Draft provision 10 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; A/CN.9/1010, para. 95). In other words, it provides*	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	the arbitral tribunal with a robust mandate to act decisively without fearing that its award could be set aside for a breach of due process. *(4) Nonetheless, while shorter time frames constitute one of the key characteristics of expedited arbitration, arbitral tribunals should endeavour to preserve the flexible nature of the proceedings and comply with due process requirements (A/CN.9/1003, para. 77).* *(5) With regard to the consequences of non-compliance by the parties with the time frames, article 30 of the UARs on default applies to expedited arbitration unchanged (A/CN.9/1003, para. 80, A/CN.9/1043, para. 92). With regard to late submissions, considering that flexibility is provided to the arbitral tribunal in setting and modifying time frames, the arbitral tribunal has the flexibility to accept such submissions but such discretion should be exercised with care (A/CN.9/969, para. 69; A/CN.9/1043, para. 92).*	
Draft provision 11 (Hearings)		
The arbitral tribunal may, after inviting the parties to express their views and in the absence of a request to hold hearings, decide that hearings shall not be held.	53. The Working Group may wish to consider the following text for the explanatory note on draft provision 11: *(1) Draft provision 11 emphasizes the discretionary power of the arbitral tribunal to "not" hold hearings in expedited arbitration in the absence of a request by any party. It should be read together with article 17(3) of the UARs,*	The MIAS Task Force supports draft provision 11 and the explanatory note except that: - "go ahead and" can be deleted in paragraph (3).

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	which provides that: (i) the arbitral tribunal shall hold hearings if any party so requests at an appropriate stage of the proceedings; and (ii) in the absence of such a request, the arbitral tribunal shall decide whether to hold hearings. Parties themselves may agree to hold hearings, in which case that agreement is binding on the arbitral tribunal. *(2) Considering the short time frame for rendering the award in expedited arbitration, the arbitral tribunal may wish decide at an early stage of the proceedings whether to hold hearings (A/CN.9/1010, para. 110). A request to hold a hearing at a later stage may delay the proceedings and result in the award not being rendered within the time frame. Consequently, an extension of the time frame would need to be sought.* *(3) As parties have a right to request the holding of a hearing, draft provision 11 requires the arbitral tribunal to invite the parties to express their views on whether hearings are to be held. This may also be done during the consultation with the parties. If a party so requests at that stage, the arbitral tribunal would need to hold a hearing in accordance with article 17(3) of the UARs. In the absence of such a request prior to and during the consultation, the arbitral tribunal may go ahead and decide to not hold hearings.*	- Delete the first sentence of paragraph (4). It is superfluous.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	(4) This means that the proceedings shall be conducted on the basis of documents and other materials. A request by a party to hold a hearing after a decision by the arbitral tribunal to not hold one can be denied as the request would no longer be considered as being made at "an appropriate stage of the proceedings" (see article 17(3) of the UARs). Draft provision 11 would thus have the effect of limiting the time frame during which requests for holding hearings can be made. *(5) Article 28 of the UARs applies to the conduct of hearings in expedited arbitration (A/CN.9/1003, para. 97). The arbitral tribunal has a broad discretion on how to conduct the hearings in a streamlined manner (A/CN.9/969, para. 65, A/CN.9/1003, paras. 80 and 99; A/CN.9/1010, para. 111). And efforts should be made to limit the duration of the hearing (A/CN.9/1043, para. 95), the number of witnesses as well as cross-examination in line with draft provisions 3(2) and 15(1) (A/CN.9/969, paras. 75 and 82; A/CN.9/1003, para. 97; A/CN.9/1010, para. 111) and at the same time, to maintain a fair process.* *(6) As provided for in draft provision 3(3) and article 28(4) of the UARs, the arbitral tribunal may utilize any technological means to hold hearings without the physical presence of the parties or witnesses.*	
Draft provision 12 (Counterclaims or claims for the purpose of set off)		

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
1. A counterclaim or a claim for the purpose of a set-off shall be made no later than in the statement of defence provided that the arbitral tribunal has jurisdiction over it. *2. The respondent may not make a counterclaim or rely on a claim for the purpose of a set-off at a later stage in the arbitral proceedings, unless the arbitral tribunal considers it appropriate to allow such 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.*	55. The Working Group may wish to consider the following explanatory note on draft provisions 12 and 13: *(1) Draft provisions 12 and 13 preserve the right of the parties to make (i) counterclaims and claims for the purpose of set-off (hereinafter referred to simply as "counterclaims") and (ii) amendments and supplements to a claim or defence, including a counterclaim or a claim for the purposes of set-off (hereinafter referred to simply as "amendments"). Yet, they introduce limited time frames, which can be lifted by the arbitral tribunal (A/CN.9/1003, para. 88; A/CN.9/1010, para. 97). This is to ensure that counterclaims and amendments do not result in delays in the proceedings (A/CN.9/969, paras. 66 and 67; A/CN.9/1003, para. 88).* *(2) Draft provision 12 replaces article 21(3) of the UARs. Paragraph 1 requires the respondent to make any counterclaim at the latest in its statement of defence (A/CN.9/1010, para. 98), which is to be communicated within 15 days of the constitution of the tribunal in accordance with draft provision 5(2). A counterclaim can be made at a later stage of the proceedings, but only when the arbitral tribunal considers it appropriate under the circumstances. This introduces a higher threshold than that provided in article 21(3), which allows a party to make a counterclaim at a later stage if the arbitral tribunal decides that the delay was justified.*	The MIAS Task Force supports draft provisions 12 and 13 and the explanatory note.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
2. After the period of time in paragraph 1, a party may not amend or supplement its 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.	*(3) Draft provision 13 replaces the first sentence of article 22 of the UARs. It introduces a 30-day time frame within which parties can make amendments.18 The 30-day time frame commences from the receipt of the statement of defence (A/CN.9/1003, para. 90; A/CN.9/1010, para. 99). As this may pose practical challenges, for example, (i) when a claimant's reply to the statement of defence that includes counterclaims requires the respondent to supplement or amend its defence or (ii) when a counterclaim is made to any of the amended claims (A/CN.9/1043, para. 98), paragraph 2 provides discretion to the arbitral tribunal to extend that time frame as long as it considers the amendment appropriate under the circumstances. This is the same threshold for allowing counterclaims in draft provision 12. The second sentence of article 22 of the UARs applies to expedited arbitration unchanged.* *(4) Counterclaims and amendments might result in the expedited arbitration no longer being appropriate for resolving the dispute. In such a circumstance, parties may agree that that the EAPs shall no longer apply to the arbitration or a party may request the arbitral tribunal to determine that the EAPs shall no longer apply in accordance with draft provision 2 (A/CN.9/1010, para. 100).*	
Draft provision 14 (Further written statements)		
The arbitral tribunal may, after	58. The Working Group may wish to consider the following	The MIAS Task Force supports

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
inviting the parties to express their views, decide whether any further written statement(s) shall be required from the parties or may be presented by them.	explanatory note on draft provision 14: *(1) Article 24 of the UARs provides that the arbitral tribunal shall decide "which further written statements" in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them. The phrase "which further statements" may be understood that the parties have a right to present such further written statements and that more than one round of submissions may be expected in the proceedings. This could delay the process in expedited arbitration.* *(2) Draft provision 14 reinforces the discretionary power of the arbitral tribunal under article 24 of the UARs to limit further written statement (A/CN.9/1010, para. 102). It makes it clear that the arbitral tribunal may decide that the statement of claim and the statement of defence are sufficient for the proceedings and that no further written statements shall be required from the parties. It should, however, not be interpreted that the arbitral tribunal does not have such discretion under article 24 of the UARs.* *(3) As the draft provision reiterates the discretionary power of the arbitral tribunal, the arbitral tribunal would not need to justify its decision to limit further written statements.*	draft provision 14 and the explanatory note except that it recommends deletion of the sentence, "*This could delay the process in expedited arbitration,"* in paragraph (1).
Draft provision 15 (Evidence)		
1. The arbitral tribunal may decide	61. The Working Group may wish to consider the following	The MIAS Task Force supports

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
which documents, exhibits or other evidence the parties should produce. The arbitral tribunal may decide to limit a party from requesting the other party to produce documents, exhibits or other evidence. *2. The arbitral tribunal may decide which witnesses, including expert witnesses, shall testify to the arbitral tribunal. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, shall be presented in writing and signed by them.*	explanatory note on draft provision 15: *(1) Draft provision 15 addresses aspects with regard to taking of evidence in expedited arbitration. Paragraph 1 states a general rule that the arbitral tribunal may decide which documents, exhibits or other evidence the parties would be required to present during the proceedings, if any. This is an aspect that could be discussed with the parties during the consultation (see para. 46(3) above).* *(2) Article 27(3) of the UARs provides that at any time during the proceedings, the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within a determined time period. However, this should not be understood as recognizing that the parties have a right to request to the other party production of documents, exhibits or other evidence nor that the arbitral tribunal is required to resolve disputes arising from such requests. This process, often referred to as the "document production" or "discovery" stage, can cause unjustified delays, unless it is truly necessary for a fair resolution of the dispute (A/CN.9/1043, para. 104).* *(3) The second sentence of draft provision 15(1) reaffirms the discretionary power of the arbitral tribunal under article 27(3) of the UARs to limit the request for the production of documents and other evidence in their*	draft provision 15 and the explanatory note except as follows: 1. The use of "testify" in 15(2) may imply there will be a hearing. One possible reformulation is: *The arbitral tribunal may decide which witnesses, including expert witnesses, shall be allowed by to the arbitral tribunal.* A conforming change would then be needed in explanatory note paragraph (4). 2. Delete "truly" in paragraph (2) of the explanatory note. With respect to paragraph 62 of the Secretariat's Note, the Task Force is comfortable including draft provision 15 as is with the accompanying explanatory note.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	entirety or in part(A/CN.9/1010, para. 103). If a party considers that it needs to request certain documents from the other party, it could indicate this to the arbitral tribunal during the consultation providing the reasons. The arbitral tribunal would then make a decision whether to allow such a request and reflect it in the provisional timetable. The inclusion of draft provision 15(3) in the EAPs should, however, not be interpreted as meaning that the arbitral tribunal does not have such discretion under article 27(3) of the UARs. *(4) Draft provision 15(2) states the general rule that the arbitral tribunal may choose which witnesses (including expert witnesses) presented by the parties can testify. It further provides that the default rule in expedited arbitration is that witness statements are to be in "written" form (A/CN.9/1003, para. 100; A/CN.9/1010, para. 105). Paragraph 2 thus replaces the second sentence of article 27(2) of the UARs. While the rules for meeting the requirements of "in writing" and "signature" through electronic communication vary depending on the jurisdiction, it should be noted that article 9(2) and (3) of the United Nations Convention on the Use of Electronic Communications in International Contracts provides a functional equivalence rule (A/CN.9/1043, para. 103).* *(5) Any witness statements that are to accompany the*	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	statement of claim shall also be in writing. However, draft provision 4(1) does not require that all written witness statements need to accompany the statement of claim and a mere reference to such statement would be sufficient (see para. 28(6) above; A/CN.9/1043, para. 103). 62. **The Working Group may wish to decide whether draft provision 15 should be retained in the EAPs or whether it would be sufficient to provide guidance in the explanatory note. Following that decision, the Working Group may wish to consider combining draft provisions 14 and 15.**	
Draft provision 16 (Award)		
1. Unless otherwise agreed by the parties, the award shall be made within six months from the date of the constitution of the arbitral tribunal. *2. The period of time for making the award may be extended by the arbitral tribunal in exceptional circumstances after inviting 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*	64. The Working Group may wish to consider the following explanatory note on draft provision 16: *(1) Draft provision 16 provides a six-month 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). Parties are also free to agree on a time frame different from that in paragraph 1 (A/CN.9/1003, para. 103). The six-month time frame for rendering the award commences with the constitution of the tribunal (A/CN.9/1003, para. 104; A/CN.9/1010, paras. 85–87, 89, 92, 112 and 116).*	The MIAS Task Force supports draft provision 16(1) and (2) and the explanatory note relating to these paragraphs. The Task Force supports 16(3). It is not burdensome to require a statement of reasons for extending the time frame and promotes transparency. The first sentence of draft provision 16(4) seems unnecessary. The tribunal has

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
be extended [once]. The additional period of time shall be no longer than [three] months. In any case, the overall extended period of time shall not exceed 12 months from the date of the constitution of the arbitral tribunal.]	*(2) Paragraph 2 provides the possibility for the arbitral tribunal to extend the time period in paragraph 1. 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 the award, but only in exceptional circumstances (A/CN.9/1003, para. 106; A/CN.9/1010, para. 117). Considering that in certain jurisdictions, extension of the time frame could only be granted upon the agreement or consent of the parties or by an entity other than the arbitral tribunal (A/CN.9/1003, para. 107; A/CN.9/1010, para. 120), paragraph 2 underlines that parties, by agreeing to the application of the EAPS, are granting the arbitral tribunal the authority to extend the time period for rendering the award (A/CN.9/1043, para. 107).* *(3) Draft provision 16 should be read together with article 34 of the UARs, in particularly paragraph 3. Unless the parties have agreed that no reasons are to be given, arbitral tribunals in expedited arbitration shall also state the reasons*	to be trusted, especially where the parties have already secured the commitment of availability described in paragraph 26 of the Secretariat's Note. On the "remaining issues," - The Task Force is comfortable with six months, given the ability to extend the time where appropriate. - There is no need to elaborate on "exceptional circumstances." There is enough emphasis already on the importance of expediting that more need not be said. - There is no need to address an unintended lapse of the time frame. It will be rare.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	upon which the award is based. This is because requiring the arbitral tribunal to provide a reasoned award can assist its decision-making and reassure the parties as they will find that their arguments have been duly considered (A/CN.9/969, paras. 85–86; A/CN.9/1003, para. 110; A/CN.9/1010, para. 121). The absence of reasoning in an award may impede any 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. Remaining issue 1 – time frame for rendering the award 65. With regard to the time frame for rendering the award, paragraph 1 reflects the preference expressed for six months as that would sufficiently 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; A/CN.9/1043, para. 106). Others preferred nine months, in light of the likely international and ad hoc	- Regarding non-compliance by the tribunal, the UAR are sufficient as they are now. - Articles 37-39 could be modified for EAP to fifteen (15) without compromising fairness.

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	nature of the proceedings under the EAPs and that a nine-month period would ensure that an extension does not become systematic (A/CN.9/1010, para. 114). The Working Group may wish to confirm that the six-month time frame in paragraph 1 is appropriate. Remaining issue 2 – circumstances for extending the time frame 66. The Working Group may wish to consider whether the words "in exceptional circumstances" in draft provision 16(2) needs to be further elaborated in the EAPs or in the explanatory note (A/CN.9/1010, para. 118). For example, the Working Group may wish to consider whether some of the elements to be considered by the arbitral tribunal upon request by a party to withdraw from expedited arbitration (see para. 19(4) above) could apply in this context. Alternatively, some examples of circumstances which would justify an extension of the time period could be provided in the explanatory note. Remaining issue 3 – unintended lapse of the time frame	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	67. With respect to paragraph 2, a question was raised whether the EAPs should address the situation where the time frame has lapsed against the will of the parties or of the arbitral tribunal. A lapse might result in an unintended termination of proceedings or the annulment of the award if it was rendered after the time frame (A/CN.9/1010, para. 120). The Working Group may wish to confirm that this question does not need to be addressed in the EAPs nor in the explanatory note. Remaining issue 4 – reasons for the extension 68. 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 (A/CN.9/1003, para. 106; A/CN.9/1010, para. 118). On the one hand, such a requirement could delay the process as providing reasons could be time-consuming. On the other, it could limit extensions and be useful for the parties as they would be aware of the reasons for the extension (A/CN.9/1043, para. 108).	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	Remaining issue 5 – limitations on extension 69. Paragraph 4 addresses the questions of whether the number of extensions should be limited and whether there should be a limit on the extended period (A/CN.9/1003, para.106; A/CN.9/1010, para. 119). The general aim is to preserve the expeditious nature of the proceedings and to prevent a prolonged process due to multiple, unlimited extensions. 70. A wide range of views were expressed, including a view that paragraph 4 could be deleted to provide flexibility with regard to the extensions and in light of the various circumstances that could arise. On the other hand, it was pointed out that without such limitations, it would be difficult to ensure that awards are rendered in a short time frame as arbitral tribunals could in practice extend the time frame indefinitely. 71. Differing views were also expressed on the appropriate number of extensions (for example, once or twice) and the maximum time period of an extension (for example, 3 or 6 months). The possibility of limiting the overall extended	

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	period while allowing for multiple extensions was also mentioned. It was also stated that the parties could be involved in determining the terms the extension (A/CN.9/1043, para. 109). Remaining issue 6 – consequences of non-compliance by the arbitral tribunal 72. 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 provided for in article 41(3) of the UARs or (ii) replacement of the arbitrator which may not necessarily ensure efficiency, A/CN.9/969, para. 55; A/CN.9/1003, para. 108) are better mentioned in the explanatory note. Remaining issue 7 – other time frames 73. 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	

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
	article 39 on an additional award) need to be modified in expedited arbitration.	
Draft provision 17 (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) Certain evidence is not admissible;* *(d) No award could be rendered in favour of the 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.*	77. Draft provision 17 is based on suggestions made by 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. 78. 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 along with draft provision 17. 79. 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). 80. Paragraph 2 introduces a time frame within which a party would be able to raise a plea. The	Draft provision may work better in the UAR than in the EAP. However, draft 17(1)(c) seems out of place. The tribunal can always deal with admissibility. As to draft 14(1)(a), (b), and (d), the largest concern is the timing of submissions on the merits of the plea if the tribunal decides to hear the plea. If there is not going to be a hearing in the matter, the Task Force believes that this approach has merit. If there is going to be a hearing, the Task Force still favors the ability for an early resolution of legal issues (i.e., there are no material issues of fact in dispute) but an explanatory

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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 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.]*	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). 81. 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.	note should state that the tribunal has to give due regard to the time and expense of "motion practice" (particularly if it turns out that fact disputes do exist and can only be resolved at a hearing) in evaluating whether to allow the plea. If a hearing is going to held anyway (i.e., the plea will not resolve the case in its entirety), and addressing the issue that is the subject of the plea will not add materially to the time or expense of the hearing, then, again, the tribunal should evaluate whether to permit the plea. In all events, the tribunal should not have 15 days to decide whether to hear the plea. The party opposing the plea should respond within five (5) days, and the tribunal should decide whether to hear the plea within three (3) days.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
		In this regard, the first sentence of 17(4) should refer to the party against which the plea is made. The party making the plea has already expressed its views. Will the parties be permitted to make submissions on the plea? The draft does not appear to so contemplate. The Task Force believes that allowance should be made for such submissions. That may affect the 30-day time period for resolving the plea. Draft provision 17(6) seems unnecessary and as written is confusing. If the tribunal rules on the plea, the claim or defence may have been dealt with already. If the tribunal decides that a plea will not be heard preliminarily, then that is obviously without prejudice to addressing it later in the proceeding.

Draft Provisions	*Pertinent Paragraphs from Secretariat's Note (footnotes omitted)*	*MIAS Comments*
		The Task Force otherwise is comfortable with the standard governing the tribunal's exercise of discretion.
Possible waiver statement		
The parties hereby waive the right to request withdrawal from of expedited arbitration as provided in draft provision 2	82. The statement above reflects a suggestion that even if a withdrawal mechanism were to be provided in the EAPs (see draft provision 2), it should be mentioned that parties could waive in advance their right to request withdrawal from expedited arbitration (A/CN.9/1010, para. 38). However, the inclusion of such a statement in the EAPs may compel parties with less bargaining power to agree to waive their rights in advance. **The Working Group may thus wish to consider whether the above statement should be presented along with a model clause to the EAPs or mentioned in the explanatory note to draft provision 2.**	The Task Force does not believe this waiver statement is needed.