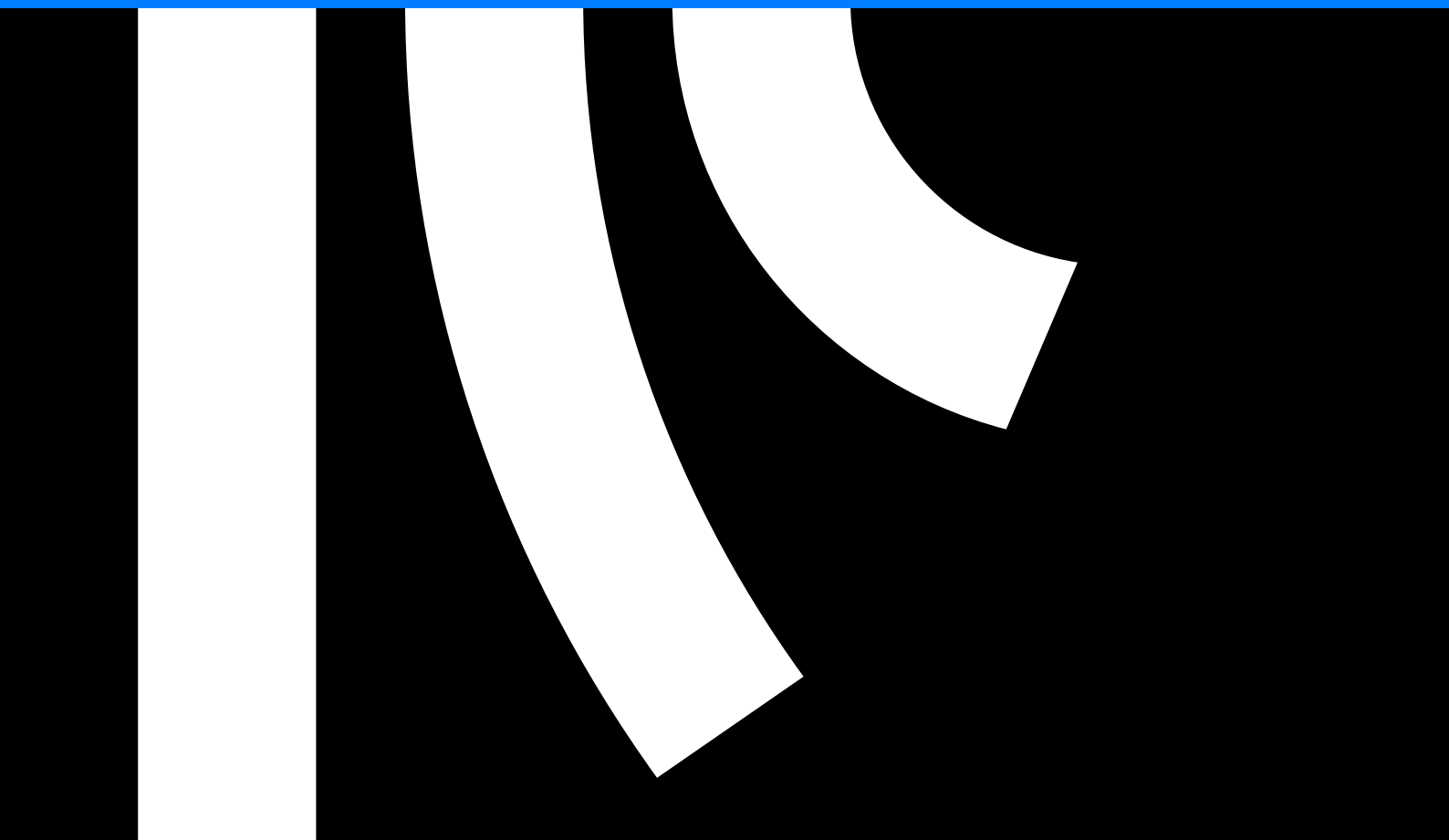
Commission on Arbitration and ADR

Leading Dispute Resolution Worldwide

Report

Expedited Procedure Provisions: Eight Years On



Expedited Procedure Provisions – Eight Years On

ICC Publication DRS002EN
Available at
https://iccwbo.org/news-publications/arbitration-adr-rules-and-tools/expedited-procedure-provisions/
ISBN: 978-92-842-0718-3
Publication date: January 2026

Contents

1. Introduction

1. When the Expedited Procedure Provisions ("EPP") were adopted by the International Chamber of Commerce ("ICC") and entered into force on 1 March 2017, the provisions marked a significant shift in international arbitration and within ICC Arbitration. Expedited procedures offered a model in which ICC applied – for all disputes up to US$2 million where the arbitration agreement was signed on or after 1 March 2017 – default rules in areas where party autonomy had historically been the norm. These procedures expressly invited and mandated arbitral tribunals to make broader use of their discretion and authority to control the proceedings, adapt the procedure to what is necessary and tailored to the dispute and, in doing so, rein in attempts to delay the proceedings or make them unduly burdensome.

2. The EPP are embodied in **Article 30** and **Appendix VI** of the ICC Arbitration Rules ("ICC Rules") as amended on 1 January 2021. In particular, the EPP require that the final award be issued within six months from the date of the case management conference ("CMC"). To do so, **Article 3(4) of Appendix VI** of the ICC Rules grants the arbitral tribunal:

> "… discretion to adopt such procedural measures as it considers appropriate. In particular, the arbitral tribunal may, after consultation with the parties, decide not to allow requests for document production or to limit the number, length and scope of written submissions and written witness evidence (both fact witnesses and experts)".

3. The arbitral tribunal may also decide to do away with a hearing altogether and therefore decide the disputes based on documents only, after consultation with the parties (**Art. 3(5), Appendix VI** of the ICC Rules).

4. To maximise efficiency and control costs, ICC adopted what was at the time considered a solution to expressly give the ICC International Court of Arbitration ("ICC Court") the authority to appoint a sole arbitrator "notwithstanding any contrary provision of the arbitration agreement" (**Art. 2(1), Appendix VI** of the ICC Rules). In addition, no Terms of Reference are required in the EPP.

5. On 1 January 2021, EPP were amended to expand their scope to disputes up to US$3 million where the arbitration agreement was signed after 1 January 2021. While EPP apply by default to such procedures, they contain a safety valve, which allows the ICC Court to decide that EPP shall not or no longer apply to a specific dispute. Moreover, **Article 30** of the ICC Rules expressly contemplates the parties' ability to opt out before or after the dispute arose. Parties may also, and often do, opt in, for example to subject their larger disputes to EPP.

6. Despite many concerns and circumspection expressed at the time of their adoption, and the parties' ability to opt out, the reality is that EPP are a success and work very well. When given the framework for a shortened procedure, users and arbitral tribunals have demonstrated that they can work within a streamlined and simplified procedure, and at the same time, ICC Arbitration has maintained the same quality assurance through scrutiny and otherwise.

7. Because EPP's continued success is a testament to the quality of the process, which may at the same time remain unfamiliar to some practitioners, the ICC Commission on Arbitration and ADR ("Commission") established the Working Group on "Expedited Procedure Provisions and Update of Commission Reports" to examine the current practice of the expedited procedures to date, identify the specific challenges encountered by arbitrators and counsel, and provide recommendations. Drawing on analysis of the cases administered under EPP since 2017, the Report aims to set out the lessons from emerging practices, present main takeaways, and provide guidance to parties and arbitrators in expedited procedures as well as to the wider arbitration community when conducting an expedited procedure or considering adopting EPP for their disputes.

8. While ICC was not the first to adopt expedited rules, it was the first leading and global institution to do so as a default rule at a threshold of US$2 million and then US$3 million.[1] ICC's adoption of the EPP undeniably caused a shift in the market and may have triggered other institutions to offer an even shorter time frame for adjudicating more or less complex disputes of relatively lower value.[2] The change was also prompted by the courts' efforts to offer streamlined or faster proceedings, such as English courts who seek to resolve complex construction disputes in 28 days.[3]

9. Following this introduction in **Section 1**, **Section 2** provides a summary of the Report's key findings, followed by a description of the genesis and rationale of EPP in **Section 3**, which serves as a benchmark for assessing the practice. **Section 4** follows the chronology of an expedited procedure, from the application of EPP to the case, to the constitution of the arbitral tribunal, the expedited procedure itself, time limits, the final award, costs and fees, and concludes with a brief section on interim measures.

10. This Report is supplemented by a Toolkit for Arbitrators in Expedited Procedures, which provides practical guidance to arbitrators in such procedures.

1 The China International Economic and Trade Arbitration Commission (CIETAC) introduced its first set of rules on expedited procedures in 1995, just one year before the Beijing Arbitration Commission did so in 1996.

2 The ICC EPP, established in March 2017, were preceded by the expedited rules of the Swiss Arbitration Centre in 2004, the Singapore International Arbitration Centre (SIAC) in 2010, the Korea Commercial Arbitration Board (KCAB) in 2011, the Lewiatan Court of Arbitration in Warsaw in 2012, the Vienna International Arbitral Centre, the Hong Kong International Arbitration Centre (HKIAC) in 2013, and the Istanbul Arbitration Centre in 2015. They were followed by, among others, the Bahrain Chamber for Dispute Resolution (BCDR), which adopted its first expedited rules in 2017, with amendments in 2022, the Saudi Chamber of Commercial Arbitration in 2018, UNCITRAL in 2021, the International Centre for Dispute Resolution (ICDR) in 2021, Dubai International Arbitration Centre in 2022, the Cairo Regional Centre for International Commercial Arbitration, and the Lebanese Arbitration and Mediation in 2024.

3 See Housing Grants, Construction and Regeneration Act 1996.

2. Summary of key findings

11. **(i) Scope of EPP.** Since their entry into force in 2017, the scope of EPP has been clearly defined in the ICC Rules to apply by default to:

    - All disputes not exceeding US$2 million where the arbitration agreement was signed on or after 1 March 2017; and
    - Pursuant to a 2021 amendment, to all disputes not exceeding US$3 million where the arbitration agreement was signed on or after 1 January 2021.

12. While EPP did respond to a market need – as shown by its application to 865 cases since 2017 – parties are expressly permitted to opt in or opt out of EPP, irrespective of the amount in dispute, and at any time before or after the dispute arises. This offers the parties maximum flexibility and takes into account those who would rather wait and see how the "EPP experiment" unfolds.

13. ICC Standard Arbitration Clauses provide for recommended wording to assist parties to opt in or opt out of EPP. Far from being reticent, the parties affirmatively chose to submit their disputes to EPP where they would not otherwise have applied in 16% of all expedited procedures between 2017 and 2024. Most of those cases concern disputes arising from arbitration agreements signed before the entry into force of EPP, where just 5.5% concern disputes above the cap in force in 2017 (i.e. US$2 million). Parties opted out of EPP in just 31 cases between 2017 and 2024. Moreover, and because some lower value disputes may still be too complex to be resolved in an expedited setting, the ICC Court is empowered to take cases out of the EPP regime. The ICC Court was asked to take the case out of EPP in just 26 cases,[4] and decided to do so in 17 of those cases.

14. Given the findings that EPP work resoundingly well and to the users' satisfaction, the Report invites the parties to give proper consideration to opting into EPP – irrespective of the amount in dispute. Indeed, beyond the label of expedited procedures, six months is, for many, more than sufficient to litigate complex disputes, especially where the parties and the arbitral tribunal adopt proactive case management techniques. In addition, and as discussed immediately above, the ICC Court can decide that EPP shall no longer apply. The Report also notes that EPP is relevant to disputes involving states and state-owned entities, although these remain the exception.

15. **(ii) The arbitral tribunal.** Though not an explicit requirement under the ICC Rules, arbitral tribunals operating under EPP consist by default of just one arbitrator, which is most consistent with time- and cost-effective proceedings. In fact, a key feature of EPP is that the ICC Court can appoint a sole arbitrator "notwithstanding any contrary provision of the arbitration agreement". Though concerns were raised at the time of adoption that this could undermine the validity and enforceability of awards rendered under EPP,[5] these were in the end alleviated as most jurisdictions accept that the parties gave the ICC Court that power when agreeing to the ICC Rules. Moreover, the ICC Court has been prudent not to use that power in arbitrations seated in jurisdictions where there was a concern on the compatibility of that mechanism with the *lex arbitri*.

4 These 26 cases were submitted to the ICC Court either at the request of a party or at the ICC Court's own motion.

5 During the preparation of this Report, only one case in which a court refused to enforce an arbitral award was identified. In this case, the dispute had been resolved by one arbitrator, instead of three as contemplated by the arbitration agreement.

16. Because the majority of arbitral tribunals constituted under the EPP ("EPP tribunals") are one-member tribunals, mostly nominated by the ICC Court, the arbitral appointment process has generally been spared the challenges (and delays) associated with party-nominated arbitrators. One of the key concerns, however, is that it takes an average of three months from the request for arbitration to constitute an EPP tribunal. As this is comparatively too long in the context of expedited procedures, it is recommended, that this ought to be rectified in order to reduce the time for the Secretariat of the ICC Court and the ICC Court to ask National Committees to identify candidates or ask the parties to clarify as early as possible whether they will want to try to agree on their arbitrator.

17. **(iii) Procedural features.** The most expansive and innovative features of EPP explicitly give the arbitral tribunal the "discretion to adopt such procedural measures as it considers appropriate", including the power to exclude document production and limit the number, length and scope of written submissions and witness evidence. The EPP tribunal may also decide to dispense with a hearing and decide the disputes solely on the basis of documents, after having consulted with the parties. Because arbitral tribunals have historically enjoyed broad discretion for the conduct of the proceedings absent contrary agreement of the parties, the EPP explicit language is a call for EPP tribunals to be proactive and take control of the expedited procedure.

18. This Report examines some of the challenges posed by this procedural regime and outlines how arbitral tribunals operating under the EPP can best embrace their role and status in order to complete an arbitration on the merits, in which:

    - The parties have satisfactorily and efficiently presented their case; and
    - The tribunal has issued a reasoned and enforceable award within six months.

19. Challenges include how to address new claims (and counterclaims) that are made after the appointment of the EPP tribunal, since these must be expressly authorised by the arbitral tribunal. While the Report notes that new claims have been allowed in EPP cases, it is not aware of any awards that have been successfully challenged because a new claim was denied or allowed.

20. Regarding the conduct of the proceeding itself, the Report examines the critical importance of the CMC, to enable the arbitral tribunals to establish a rapport with the parties as well as take control of, and set the tone for, the proceedings. The CMC is the time for the arbitral tribunal and the parties to fashion clear, fair and efficient proceedings and set the timetable to secure the issuance of a final award six months later. Given this time frame, no key procedural features can be left to be discussed later. The Report provides guidance to use the CMC as the forum to tackle document disclosure, if any; expert evidence, if any, in a way consistent with the Expedited Procedure timetable; the number and length of written submissions as well as their form to avoid any misunderstanding or surprises; and the hearing, if any. The Report also specifically discusses the role that lists of issues can play in expedited procedures (although these are not, *per se*, required).

21. **(iv) Awards.** Awards rendered under EPP present specific challenges as they must be issued within the six-month deadline and yet comply with the same requirements under the ICC Rules or national laws as any other awards rendered in proceedings on the merits. Those requirements include first and foremost the general requirement that awards must be reasoned. This generally translates into a tension between a call for concision and the need to ensure that an award allows a reader unfamiliar with the case to understand the procedural, factual and legal aspects of the case relevant to the award, including that a party's due process rights were respected in the event the respondent did not appear or a party raised objections during the arbitration.

22. Despite these challenges, the awards rendered under the EPP are considered to be as good as any ICC award: their scrutiny by the ICC Court lasts 15 days on average, and 63% of the final awards issued until 2024 have been rendered on or around the six-month time limit, while the delayed issuance of an award was significant enough to result in a reduction of the arbitrator's fees in just 33 cases out of 461 total awards issued under EPP between 2017 and 2024.[6]

23. **(v) Costs.** The issue of costs is one of the EPP's *raison d'être*. While the same principles govern the determination and allocation of costs in expedited and regular procedures – save for the 20% reduction in arbitrators' fees – the Report recognises EPP raise specific cost considerations, which the parties and the EPP tribunal should consider and possibly discuss at the CMC. Moreover, as with the conduct of the procedure, the efficiency imperative enables EPP tribunals to strictly review and control costs as well as their allocation.

24. **(vi) Interim measures.** The Report underlines its important starting point that interim measures ought to be available in expedited procedures, because, although expedited, these procedures are like any arbitrations, and should afford the parties the ability to maintain the status quo and/or obtain urgent relief as permitted and needed. Nonetheless, EPP require arbitral tribunals to exercise particular skill and creativity to preserve the overall timetable, balance efficiency and due process and expeditiously dispose of unmeritorious applications, through the various measures and limitations outlined in this Report.

3. Background of EPP

25. This section recalls the genesis and rationale of EPP, the 2021 amendments and examines the statistical data of how EPP have so far worked in practice (including profile of the parties, disputes, regions and average duration).

3.1 Genesis

26. The introduction of EPP stemmed from a widely held assessment that the time and cost associated with arbitration were unduly burdensome. The ICC Court and its Secretariat were, in essence, treating all cases on the same foot – as the same set of rules was conceived to be applied to all disputes, irrespective of their amount and complexity. The ICC Court manages numerous cases of high value, yet a substantial portion of its caseload concerns lower-value cases. Approximately 40% of the aggregate ICC caseload pertains to arbitrations with claims valued at less than US$4 million. Consequently, the same rules have been uniformly applied to cases involving claims ranging from under US$1 million to over US$1 billion, which is quite the opposite from tailor-made proceedings proportionate to the amount in dispute. The ICC Rules provide arbitral tribunals and parties with inherent flexibility to streamline regular proceedings on the merits and encourage them to do so.[7] Yet, parties and tribunals were too often unable to tailor proceedings to the size of the dispute. And default rules, which could put cases on a path to be resolved in a shorter time frame, were missing. EPP filled that void.

---

6 Where the draft award is submitted after the time referred to in para. 159 of the ICC Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration (1 Jan. 2021) ("ICC Note to Parties and Arbitral Tribunals"), the ICC Court may lower the fees unless it is satisfied that the delay is attributable to factors beyond the arbitrators' control or to exceptional circumstances. The timeframe and fee reduction rates for the expedited procedure are set out at para. 161 of the ICC Note.

7 See Art. 30, ICC Arbitration Rules; and para. 184 of the ICC Note to Parties and Arbitral Tribunals, which ties efficiency of conduct of proceedings to arbitrator remuneration.

27. On 1 March 2017, EPP were enacted as part of the revisions of the ICC Rules. Under **Article 30** and **Appendix VI** of the 2017 and then 2021 ICC Arbitration Rules, EPP govern any ICC Arbitration under an arbitration agreement concluded on or after 1 March 2017 where the amount in dispute is US$2 million or less. The ICC Rules further provide, in **Article 30(1)**, that EPP "shall take precedence over any contrary terms of the arbitration agreement".[8]

28. Parties whose arbitration agreement predates 1 March 2017 or whose dispute reflects a value higher than US$2 million can agree to opt in and apply EPP.

29. The main features of EPP include a requirement that the arbitral tribunal must issue the award within six months of the CMC, which must take place within 15 days after the transmission of the file to the arbitral tribunal. In addition, EPP provide for discretion to the arbitral tribunal to adopt measures to simplify the proceedings, including disallowing requests for document production; limiting the number, length and scope of written submissions and written fact and expert witness evidence; and/or deciding the case on the basis of documents only. Terms of Reference, required under **Article 23** for regular arbitration proceedings, are not required under EPP. The ICC Court is also expressly empowered to appoint a sole arbitrator, notwithstanding a contrary agreement of the parties.

3.2 The 2021 amendment

30. The principal amendment since the introduction of EPP in 2017 was the increase of the threshold for the application of EPP from US$2 million to US$3 million in accordance with **Article 30(2)** of the ICC Rules, which entered in force on 1 January 2021. The increased threshold applies if the arbitration agreement was concluded on or after 1 January 2021. Parties whose arbitration agreement does not result in arbitration under EPP (i.e. regular arbitration procedure) notably because the value of their dispute is higher than US$3 million – can agree to opt in and apply EPP to their dispute.

3.3 Statistics

31. The Report captures statistics with respect to expedited procedures, from 1 March 2017, when EPP were introduced, up to and including 2024. Since their introduction, a total of 865 expedited procedures have been conducted, with a record number of cases administered under EPP in 2023.[9]

32. An examination of the 461 cases that resulted in a final award between 2017 and 2024 revealed compelling insights and statistics:

- There were only 96 cases with a document production phase (and 365 cases without one).
- Expert reports were submitted in only 26 cases.
- A hearing took place in only 251 cases, lasting between one and four days, and including 159 remote or hybrid hearings.
- Of the 251 cases where a hearing took place, parties submitted post-hearing briefs in only 139 cases.

---

8 In practice, this general provision is mainly at play in connection with Art. (2)(1) of Appendix VI, which allows the ICC Court to appoint one arbitrator notwithstanding the parties' agreement to have a three-member tribunal, and is not applied to disregard all terms of the arbitration agreement – let alone without consultation of the parties.

9 15 new cases were administered under EPP in 2017, 45 in 2018, 86 in 2019, 97 in 2020, 157 in 2021, 124 in 2022, 189 in 2023, and 152 in 2024. See also ICC 2024 Dispute Resolution Statistics: "Since 1 March 2017, when EPP entered into force, ICC has administered a total of 865 cases. Of these, 127 cases have been administered under EPP following party agreement, demonstrating the efficacy of the expedited procedure".

- More importantly, awards were delivered on time – of the 461 final awards rendered in cases newly-administered under EPP from 2017 to 2024, 63% were delivered on or around the six-month time limit. According to the Secretariat of the ICC Court, their quality has been on par with awards in non-expedited proceedings.

4. Expedited procedure rules and practices

33. This section outlines the practices of the parties, EPP tribunals and the ICC Court, where relevant, for each of the procedural steps under EPP. It discusses the challenges associated with each step, and gives recommendations on how to conduct expedited proceedings.

4.1 Scope and applicability

4.1.1 Opt-out, opt-in and conversion

34. Under **Article 30(2)(a)** of the ICC Rules and **Article 1(2) of Appendix VI**, EPP apply to ICC arbitrations when the amount in dispute does not exceed US$2 million and the arbitration agreement was concluded on or after 1 March 2017, or US$3 million if the arbitration agreement was concluded on or after 1 January 2021.

35. The ICC Rules allow the parties to opt in or opt out of EPP. "Opting out" refers to the parties' ability in their pre- or post-dispute arbitration agreement to exclude the application of EPP where they would normally apply, while opting in refers to the parties' decision to adopt EPP where they would not normally apply.

36. Opting in is an important feature of EPP, which seems responsive to market demand. This is apparent from the fact that since the introduction of EPP, 16% (or 141) of all the ICC expedited procedures are opt-in cases. The vast majority encompasses cases where the arbitration agreement preceded EPP's entry into force while in just 5.5% of the cases, the amount in dispute exceeded the cap provided for in **Article 1(2)(b) of Appendix VI** of the ICC Rules.[10]

37. Opting in or out of EPP may, in principle, be done after the initiation of the arbitration. It is conceivable that parties agree to convert regular arbitration proceedings on the merits into an expedited procedure shortly after initiation of the arbitration.[11] Aside from the amount at stake, some disputes turn out to be too complex to be resolved within six months. Therefore, an expedited procedure may convert into a regular arbitration procedure pursuant to a decision by the ICC Court as contemplated under Article 1(4), Appendix VI of the Rules.[12] Out of the 865 cases administered under EPP between 2017 and 2024, 26 (or 3%) were referred to the ICC Court to

10 The highest amount in dispute in an opt-in case was just above US$400 million. That case was subsequently taken out of EPP.

11 EPP could conceivably be applied in conjunction with regular proceedings on the merits to enable an expedited determination of a particular point in dispute (e.g. adjudication procedures in England and Wales allow the parties to divide their disputes in tranches and seek resolution of limited aspects of their dispute). While this does not seem to have been contemplated at the time of the introduction of the EPP, it may regarded as a form akin to bifurcation or preliminary decision on a pivotal point in contention. There may be a degree of overlap with the expeditious determination of manifestly unmeritorious claims and defences (paras. 109 and *seq*, ICC Note to Parties and Arbitral Tribunals), which is considered within the scope of Art. 22 of the ICC Rules. In such a case, parties and arbitral tribunals must, however, be cautious as there could be (i) justified concerns on whether this would be compatible with the objective of obtaining a final decision resolving the entirety of the parties' dispute under the EPP; and (ii) issues pertaining to claim preclusion and/or issue estoppel under the applicable law that could bar later claims if only some but not all aspects of a dispute are resolved through an expedited procedure.

12 Art. 1(4), Appendix VI deals with such conversion through the disapplication of EPP: "The ICC Court may, at any time during the arbitral proceedings, on its own motion or upon the request of a party, and after consultation with the arbitral tribunal and the parties, decide that the Expedited Procedure Provisions shall no longer apply to the case. In such case, unless the ICC Court considers that it is appropriate to replace and/or reconstitute the arbitral tribunal, the arbitral tribunal shall remain in place".

determine whether EPP should continue to apply to the case. Of these, the ICC Court decided that EPP shall no longer apply in 17 cases (65%) but should continue to apply in nine cases (35%).[13] Importantly, under the ICC Rules as currently drafted, this conversion may occur at the initiative of the ICC Court (**Art. 1(4), Appendix VI** of the ICC Rules) or at the request of the parties, but not at the initiative of the EPP tribunal. However, in practice, the Secretariat of the ICC Court monitors and communicates with both the arbitral tribunal and the parties on whether it is appropriate to continue applying EPP to a case.

38. Despite the implied connection between the amount in dispute and its complexity under the EPP, the ICC Rules do not impose an upper financial limit for opting into EPP, thereby giving full room to party autonomy. One of the ICC Standard Arbitration Clauses relating to EPP explicitly provides for such an option to the parties:

> "*The parties agree, pursuant to Article 30(2)(b) of the Rules of Arbitration of the International Chamber of Commerce, that the Expedited Procedure Rules shall apply, provided the amount in dispute does not exceed US$ [specify amount] at the time of the communication referred to in Article 1(3) of the Expedited Procedure Rules*."

39. To the extent parties wish to opt in of EPP irrespective of the potential amount in dispute, they may do so before or after the dispute arises. ICC Standard Arbitration Clauses provides for recommended language for opting in before any dispute arises:

> "Parties wishing to avail themselves of the expedited procedure in higher-value cases should expressly opt in by adding the following wording to the clause above:
>
> *The parties agree, pursuant to Article 30(2)(b) of the Rules of Arbitration of the International Chamber of Commerce, that the Expedited Procedure Rules shall apply irrespective of the amount in dispute.*
>
> If parties wish the ceiling for the application of the Expedited Procedure Rules to be higher than that specified in those Rules, the following wording should be added to the clause above:
>
> *The parties agree, pursuant to Article 30(2)(b) of the Rules of Arbitration of the International Chamber of Commerce, that the Expedited Procedure Rules shall apply, provided the amount in dispute does not exceed US$ [specify amount] at the time of the communication referred to in Article 1(3) of the Expedited Procedure Rules*."

40. Conversely, parties may, pursuant to **Article 30(3)(a)** of the ICC Rules, opt out of EPP. The parties may do so by categorically excluding the applicability of EPP in their arbitration agreement or they may agree to opt out once the dispute arises. Between 2017 and 2024, the parties agreed to opt out of EPP where they would by default apply in 31 cases. As for opt-ins, an ICC Standard Arbitration Clause provides recommended language to opt out of EPP, in any types of disputes or in disputes above a certain amount.

> "The ICC Arbitration Rules provide for use of an expedited procedure in lower-value cases. If parties wish to exclude the application of the Expedited Procedure Provisions, they must expressly opt out by adding the following wording to the clause above:
>
> *The Expedited Procedure Provisions shall not apply*."

13 It is not possible to derive from the available statistics what proportion of the 26 cases came for review as a result of the ICC Court's own motion against those that were at the request of a party.

41. Given that opting out requires the parties' agreement, there is no principled reason to limit its availability. In those cases, parties presumably choose to opt out for the same reasons as the ICC Court may decide to take a dispute out of EPP, namely the complexity of the dispute calls for a longer time frame. The parties may, however, also prefer to place themselves outside the six-month constraint of EPP, for example because they wish to negotiate an amicable resolution of the dispute in parallel, though the parties can also suspend the expedited procedure and achieve the same result. If they wish to do so, it is preferrable for the parties to opt out before the Secretariat of the ICC Court formally places the arbitration under EPP and appoints an arbitral tribunal. After that, taking the case out of EPP would be subject to the ICC Court's authorisation – although the ICC Court is unlikely to reject a joint application by the parties. However, the later the opt out occurs, the more complex its implementation may be, from the reconstitution of the arbitral tribunal to the resetting of the procedure and the timetable.

42. Parties and tribunals in expedited procedures have demonstrated that they can work within a streamlined and simplified procedure – while the institution has maintained the same quality assurance through scrutiny and otherwise.[14] To the extent that cases may exist where, although applicable, EPP are inadequate to a specific dispute, EPP contain a safety mechanism and allow the ICC Court to take a case out of EPP. Therefore, parties should give serious consideration to opting into EPP. In contrast, they need not opt out of EPP unless compelling circumstances argue against the use of an expedited process.

43. Considerations against opting in are in effect the factors that would prevent a fair and comprehensive identification of the evidence and presentation of a party's case within the EPP's shortened time frame. These may include:

    - The need for extensive document production;
    - The primary importance of technical, rather than factual or legal, issues to the resolution of the dispute;
    - The existence of complex factual and technical issues that may not be investigated and analysed in a matter of months;
    - The difficulty accessing relevant evidence;
    - The existence of parallel proceedings; or
    - The implication of several parties or several departments within a party whose coordination requires additional time.

44. Indeed, the EPP's time frame most evidently impacts the parties' ability to gather evidence that is not readily identifiable or available. Conversely, if they wish to make joint requests to convert regular arbitration proceedings on the merits into EPP, the parties are encouraged to highlight the absence of such factors and instead establish their ability to fully present their case within the shorter time frame of EPP. In doing so, they may want to bolster their ability to cooperate among themselves and with the arbitral tribunal in simplifying the number of factual, technical, and legal issues in dispute, and accordingly narrow the scope of their submissions and the number of witnesses.

14 Expedited rules are also gaining recognition by courts. Confronted with an arbitration agreement, which was silent on the applicable rules or procedure, and asked to act as a gap-filler, a state court in Sao Paulo, Brazil, ruled that the arbitration "should preferably be carried out using the 'expedited arbitration' modality, which is less costly and more efficient in resolving less complex conflicts". *São Paulo Justice Gazette*, 22 Nov. 2023, 3rd section, 1st Instance, p. 1609 (Case no. 1129865-50.2023.8.26.0100 – under seal).

4.1.2 Applicability to complex disputes

45. Nonetheless, EPP may be and have been used to resolve complex disputes. The practice suggests that arbitral tribunals in expedited procedures are able to deal with complex disputes in a short time frame and issue awards with no significant delays. A critical element to managing an expedited procedure within the "six-month post CMC" time frame is that the parties are able to rely on an experienced tribunal, including by selecting its member(s). As mentioned above, one-member tribunals are standard practice, but they are not mandatory under EPP. As echoed in the section addressing EPP procedural features (Section 4.3 below), EPP tribunals and parties may resort to various tools to address complex disputes, which all require a proactive conduct from the outset of the arbitration. EPP tribunals and parties might consider the following as early as the CMC:

    - Identifying the actual areas of factual disagreement;
    - Identifying issues that can be resolved by agreement of the parties or their experts, providing for simultaneous submissions;
    - Identifying the expert disciplines for which testimony may be offered, inviting joint expert submissions; and generally
    - Making use of the procedural measures expressly identified in **Article 3(4) of Appendix VI** of the ICC Rules,[15] including limiting the scope and length of written submissions.

46. To the extent that the parties fail to agree, the arbitral tribunal has the legitimacy to implement such procedural devices as a result of the parties' decision to apply EPP.

4.1.3 Expedited procedures involving states and state-owned entities

47. Similarly, EPP may be used for disputes involving states and state-owned entities, although those remain the exception. To date, of the 865 cases administered under EPP between 2017 and 2024, only 23 (or 2,7%) involved a state or state entity. To put this figure in context, according to the ICC Dispute Resolution Services ("ICC DRS") statistics, 19% of the new cases filed in 2024 involved a state or state-owned entity.[16] The low number of expedited procedures involving states is likely due to the fact that these parties are generally involved in disputes with amounts at stake higher than US$2 or 3 million, or they may opt out of EPP. For many, states and state-owned entities require more time than private parties to prepare for and organise their defence, which would *prima facie* exclude the applicability of EPP. In reality, the experience with the ICC Emergency Arbitrator Provisions shows that these concerns have been overstated as proceedings on the basis of the Emergency Arbitrator Provisions have involved states and state-owned entities, and there does not seem to be an indication that states have not been able to appear timely in emergency arbitration:

> "Of the 80 [Emergency Arbitrator] cases, eight cases [i.e. 10%] involved states or state entities and in all cases but one, the state or state entity was the responding party."[17]

15 Art. 3(4) of Appendix VI is quoted and discussed in Section 4.3.4 below.

16 See ICC 2024 Dispute Resolution Statistics.

17 Report on Emergency Arbitrator Proceedings, at p. 37.

4.1.4 Dilatory tactics

48. **Articles 1(3) and 1(4) of Appendix VI** of the ICC Rules[18] provide for multiple angles in which dilatory tactics may be employed. Given the limitation on the applicability of EPP depending on the amount in dispute, there is room for parties to artificially inflate their claims or counterclaims to be outside EPP. Similarly, a party may allege that a dispute is too complex and should be taken out of the EPP regime. However, there is limited evidence of such tactics being employed and, where they have been employed, there has been indications of a firm approach taken by arbitral tribunals and the ICC Court. Some examples starkly demonstrate the limits of such dilatory tactics. Thus, in one case where a respondent only presented their counterclaim with their first memorial in an amount four times the EPP cap, the ICC Court decided to take the case out of EPP but left the arbitral tribunal in place. In the end, the arbitral tribunal enforced the originally agreed timetable with minimal adjustments, which resulted in an award being issued just seven and a half months after the CMC – or just one and a half months later than under EPP. Arbitral tribunals have demonstrated that allowing a late claim (generally in the form of a counterclaim by the respondent) can be handled without jeopardising the integrity of EPP, especially the timetable.[19]

4.1.5 Comparison with other institutions

49. Many of the leading institutions' rules apply the expedited rules by default to all disputes up to a certain amount, unless the parties opt out. Of these institutions, ICC has one of the highest caps at US$3 million with the Abu Dhabi International Arbitration Centre at AED9 million (approx. US$2.4 million[20]), the Swiss Rules of International Arbitration ("Swiss Rules") at CHF1 million (approx. US$1.2 million), and ICDR at US$500,000. CIETAC and the Beijing Arbitration Commission expedited procedures apply by default to disputes up to CN¥5 million (approx. US$700,000). SIAC has the highest known cap as it applies the expedited rules to cases with an amount in dispute up to S$10 million (approx. US$7.7 million), however the condition to the application of the expedited rules is to the discretion of the President of the SIAC Court. Its new set of streamlined procedures apply by default where the amount in dispute does not exceed S$1million.[21]

50. While most rules exclude the application of their expedited rules when the counterclaim causes the amount in dispute to exceed the applicable threshold, the BCDR does not unless the institution or the arbitral tribunal determine otherwise. Similarly, the CIETAC expedited procedures shall continue to apply even if an amended claim or counterclaim increases the amount in dispute above the cap of CN¥5 million, unless the parties agree otherwise or the arbitral tribunal decides that it is necessary to apply the general procedure. The UNCITRAL Rules offer expedited rules but entirely on an opt-in basis.

51. Under the ICC Rules, EPP apply prospectively to arbitration agreements signed after their entry into force whereas other expedited rules do not always provide for such limitation.[22]

---

18 Art. 1(3), Appendix VI provides: "Upon receipt of the Answer to the Request pursuant to Article 5 of the Rules, or upon expiry of the time limit for the Answer or at any relevant time thereafter and subject to Article 30(3) of the Rules, the Secretariat will inform the parties that the Expedited Procedure Provisions shall apply in the case". Art. 1(4), Appendix VI provides: "The Court may, at any time during the arbitral proceedings, on its own motion or upon the request of a party, and after consultation with the arbitral tribunal and the parties, decide that the Expedited Procedure Provisions shall no longer apply to the case. In such case, unless the Court considers that it is appropriate to replace and/or reconstitute the arbitral tribunal, the arbitral tribunal shall remain in place".

19 The Report does not take the view that the late submission of a claim or counterclaim per se constitutes a dilatory tactic in the sense of an attempt to delay the proceedings for no legitimate purpose other than delay.

20 The conversions are approximate at the time of completion of this document.

21 SIAC Rules, 7th Ed., 1 Jan. 2025.

22 See e.g. SIAC Rules.

4.2 The arbitral tribunal appointed under EPP

52. This section focuses on issues concerning the number of arbitrators, as well as appointments, challenges, and reconstitution of arbitral tribunals.

4.2.1 Number of arbitrators

53. **Article 2(1) of Appendix VI** of the ICC Rules provides:

> "The Court may, notwithstanding any contrary provision of the arbitration agreement, appoint a sole arbitrator."

In the context of expedited procedures, the reasons for imposing a sole arbitrator include

- reducing costs;
- reducing the parties or the ICC Court's time to appoint an EPP tribunal;
- reducing the logistical complexity associated with three-member tribunals when compared to sole arbitrators; and
- maximising the flexibility to schedule and potentially postpone hearings.

54. The rationale behind this rule is multi-faceted. In addition to the obvious fact that sole arbitrators are well-equipped to decide such smaller disputes, the rule was intended to tailor an arbitral tribunal to the size of the dispute where the parties did not necessarily contemplate smaller disputes when agreeing to a three-member tribunal in their arbitration agreement, whereas a three-member tribunal may be disproportionate for smaller disputes.

55. When EPP were adopted, many questioned the provision granting the ICC Court the power to appoint a sole arbitrator in the face of a clause calling for a three-member tribunal. A primary concern was that this might be a cause for rejection by users and present grounds to challenge the award and/or jeopardise its recognition and enforcement. However, such concerns appear to be unjustified as users have not rejected EPP, and the ICC Court has applied this provision on repeated occasions without significant challenges. Up to and including 2024, the ICC Court has appointed a sole arbitrator notwithstanding a provision in the arbitration agreement providing for a three-member arbitral tribunal in 61 cases. Indeed, the ICC Court has appointed an arbitral tribunal comprising three arbitrators in only 37 expedited procedures.

56. Far from resorting to this mechanism systematically (**Art. 2(1) of Appendix VI** reads "may"), the ICC Court has only exercised this option after having ascertained that it is in fact permissible under the applicable law(s).[23] In a case under the Singapore International Arbitration Centre (SIAC)'s applicable expedited rules, a court in Shanghai refused to enforce a foreign award on the ground that the institution opted for one arbitrator whereas the arbitration agreement called for three, but this is the exception.[24] In a case in which a party challenged an award at the seat on procedural grounds, the court in Singapore noted in dictum that by agreeing to the SIAC rules, the parties had agreed to confer on the institution the power to appoint a sole arbitrator

23 For example, in Italy, Art. 2(1) of Appendix VI may be viewed in direct conflict with Sect. 832 of the Italian Code of Civil Procedure, which provides that "[i]n case of conflict between the provisions of the arbitration agreement and the provisions of the rules of an arbitration institution, the arbitration agreement prevails". As such, an Italian court could deny recognition of the award under Art. V(1)(d) of the New York Convention as implemented in Sect. 840(3) of the Italian Code of Civil Procedure, which provides that a court may deny recognition of a foreign award if "the constitution of the arbitral tribunal of the arbitration procedure was not in accordance with the agreement of the parties".

24 *Noble Resources International Pte. Ltd v. Shanghai Good Credit International Trade Co., Ltd.* (2016). Notably, the applicable version of the rules (2013 SIAC Rules) did not explicitly provide that the institution's power to appoint a sole arbitrator applied notwithstanding a contrary agreement of the parties.

for expedited proceedings .[25] In another case, the People's Intermediate Court of Ningbo in China rejected a challenge against the enforcement of an award based on the same argument that the constitution of the one-member tribunal violated the parties' agreement for a three-member tribunal.[26] According to the People's Intermediate Court of Ningbo, when the parties selected the SIAC rules, they had implicitly agreed to reduce the number of arbitrators from three to one if the expedited rules applied.

4.2.2 Appointments

57. It is crucial to expedite the appointment process for arbitral tribunals under EPP. Under the ICC Rules, the time between the submission of a request for arbitration and transmission of the file to the appointed tribunal may take up to three months. Such duration results, notably, from the requirement to allow time for the parties to agree on the arbitrator (**Art. 2(2), Appendix VI** of the ICC Rules),[27] from the practice of the Secretariat of the ICC Court to wait for the answer and potential counterclaim before formally placing the case under EPP and initiating the search for an arbitrator.[28] However, such agreement is less likely once a dispute has arisen.

58. Parties may consider the following to shorten the timespan:

- **Set a strict time-limit to nominate a sole arbitrator** (Art. 2(2), Appendix VI). In this respect, experience from other institutions indicates that this is feasible.
- **Forego their right to select the arbitrator and give that power to the ICC Court in the first instance**. The claimant may also pre-emptively indicate in their request for arbitration or shortly thereafter that there will be no agreement on a joint nomination with the respondent and that the ICC Court and its Secretariat may proceed to select the EPP tribunal.

59. The appointment of an experienced arbitral tribunal, which is familiar with the subject matter of the dispute is particularly critical when applying EPP to unusually complex disputes. Therefore, if the parties are unable to agree on a tribunal, they should at a minimum agree on its composition by providing joint guidance to the ICC Court and its Secretariat, either in their arbitration agreement or subsequently. That said, the ICC Court and its Secretariat typically identify the needs of a case when looking for arbitral tribunals.

4.2.3 Challenges

60. With respect to challenges against arbitrators, the general rule in Article 14 of the ICC Rules applies. In expedited procedures, challenges against arbitrators have occurred infrequently, i.e. only in 12 instances (1.4% of cases administered under EPP) between 2017 and 2024. This low figure can be explained by the appointment process of EPP tribunals where (i) most appointments are institutional appointments, and (ii) the fact that expedited procedures mostly involve one-member arbitral tribunals.

---

25 *BXS v. BXT* [2019] SGHC(I) 10. According to Art. 5.2(b) of the 2016 SIAC Rules, "the case shall be referred to a sole arbitrator, unless the President determines otherwise".

26 *Hyundai Glovis vs Zhejiang Qiying* ("Glovis Case"), 13 Jan. 2017.

27 Art. 2(2), Appendix VI provides: "The parties may nominate the sole arbitrator within a time limit to be fixed by the Secretariat. In the absence of such nomination, the sole arbitrator shall be appointed by the Court within as short a time as possible".

28 There are many institutional and practical reasons for this practice, including that a key criterion for the search is the arbitrator's availability to issue an award within six months.

4.2.4 Comparison with other institutions

61. The vast majority of the other institutions' rules examined contemplate a one-member tribunal, though some allow the parties to agree otherwise or allow the institution to impose a three-member tribunal.

62. Most rules contemplate an appointment by agreement of the parties, including through a list method like with ICDR, failing which the appointment will be made by the institution. Some institutions impose a deadline for the appointment of the arbitral tribunal. For example, the Swiss Rules apply the same timeline as for standard arbitrations, namely joint designation by the parties or appointment by the institution if parties cannot agree within 30 days from the date respondent received the notice of arbitration. The HKIAC rules give the parties 30 days from the Respondent's receipt of the Notice of Arbitration to jointly designate the sole arbitrator.[29] The Cairo Regional Centre for International Commercial Arbitration provides that where the parties agreed to jointly appoint the sole arbitrator, they must do so within 15 days after a proposal has been received by all other parties, failing which the institution shall make the appointment.

4.3 Procedural features – How to conduct an effective expedited procedure?

63. **Article 3 of Appendix VI** of the ICC Rules sets out the specific procedural issues raised by EPP and provides arbitrators and parties with guidance on balancing the efficient conduct of the arbitration with the strict time limits under EPP, while also allowing the parties to present their case. Article 3 of Appendix VI gives the EPP tribunal considerable discretion to adopt the appropriate procedural measures for expedited procedures, in consultation with the parties.

64. Given this broad grant of discretion, a threshold issue for consideration is whether an EPP tribunal ought to conduct itself differently than an arbitral tribunal in a non-expedited procedure. Under **Article 22(1)** of the ICC Rules, arbitral tribunals have the responsibility of ensuring the efficient conduct of any proceeding. However, an expedited procedure allows for a more proactive approach and greater control over the proceedings. This additional control is generally accepted, if not expected, by the parties and counsel involved, who are operating within a framework that specifically requires strict time limits and a streamlined procedure. In other words, EPP provide arbitral tribunals with both the discretion and the legitimacy to implement the most suitable measures, thereby enhancing their authority and control over the conduct of the proceedings.

65. In exercising its discretion under Article 3 of Appendix VI, the EPP tribunal is guided by **Article 4(1) of Appendix VI**, which provides:

> "The time limit within which the arbitral tribunal must render its final award is six months from the date of the case management conference."

29 Where they have agreed before the arbitration commences to a sole arbitrator (Art. 7.1). Where the arbitral tribunal comprises three arbitrators, each party designates an arbitrator in the notice and the answer respectively, and the two arbitrators appointed jointly designate the third and presiding arbitrator within 30 days of the confirmation of the second arbitrator (Art. 8.1(a)). Where the parties have agreed after the arbitration commences to refer the dispute to three arbitrators, the claimant shall designate an arbitrator within 15 days from the date of that agreement, and the respondent shall designate an arbitrator within 15 days from receiving notice of the claimant's designation. If a party fails to designate an arbitrator, HKIAC shall appoint the arbitrator (Art. 8.1(b)). Where the parties or the two arbitrators fail to designate an arbitrator, HKIAC shall appoint such arbitrator (Art. 7.2 (sole), 8.2(d) (three)).

66. Further, under **Article 22(4)** of the ICC Rules, in exercising its discretion, an arbitral tribunal must:

> "act fairly and impartially and ensure that each party has a reasonable opportunity to present its case".[30]

67. The latter is, of course, also a general due process standard. In practice, an EPP tribunal must balance the timely resolution of an expedited procedure with various due process considerations.[31] To achieve this balance, the tribunal must have some familiarity with, or be briefed on, the applicable procedural requirements, notably the law of the seat. While this is also the case in regular arbitration proceedings, an EPP tribunal will have less or no time to familiarise itself with such standards once appointed. The EPP tribunal should therefore not hesitate to control the expedited procedure (if need be, by using its mandate expressed in **Art. 30(1)** of the ICC Rules [32] and **Arts. 3(4) and 3(5) of Appendix VI**[33] to deviate from the arbitration agreement subject to provisions of mandatory law[34]), proactively suggesting adjustments to the procedure as the case progresses, resisting dilatory tactics, and steering the process to a conclusion within six months.

4.3.1 Exclusion of Terms of Reference ("TOR")

68. **Article 3(1), Appendix VI** of the ICC Rules provides:

> "Article 23 of the Rules shall not apply to an arbitration under the Expedited Procedure Rules."

69. It can reasonably be assumed that the rationale for excluding the TOR is to control time and costs in expedited procedures, given the six-month time frame for the final award to be rendered from the CMC and the fact that arbitrators' fees are reduced by 20% compared to the fees under the general scales.[35] Although parties and tribunals are not required to establish TOR, they should consider adopting some of its components as useful tools to enhance the efficiency and expeditiousness of the expedited procedure. At the same time, this would assist less experienced and younger arbitrators appointed in expedited procedures by ensuring that all relevant procedural elements of the proceedings have been recorded and/or agreed upon. In particular, it would be good practice to record certain particulars set out in **Article 23(1)** of the ICC Rules, such as the summaries of the parties' positions, a list of issues, and an express reference to the arbitration agreement and its inherent procedural elements.

---

30 See also the ICC Note to Parties and Arbitral Tribunals, at para. 148: "In conducting the arbitration under the Expedited Procedure Provisions, the arbitral tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case".

31 Indeed, these matters are indeed tested by state courts in annulment issues. For example, a federal court in Virginia, the United States, rejected a challenge against an expedited procedure on due process grounds, citing, among other reasons, the arbitrator's decision to decide the case based on written submissions without holding a hearing. The ICC Court had rejected this challenge and found the arbitrator's authority to decide the case in this manner was both proper, and properly exercised, notably in view of the parties' decision to apply the ICC's Expedited Rules, *Afghan Growth Fin. LLC v. Ghafoor*, No. 114CV0669AJTJFA, 2021 WL 1306416, at *5 (E.D. Va. Mar. 8, 2021). In another example before the Paris Court of Appeal (No 19/11695, 29 Sep. 2020), a party sought to annul an award on the ground that the arbitral tribunal had violated due process when it denied a late request for the production of a witness statement. The Paris Court of Appeal upheld the arbitral tribunal's decision, which was based on the procedural deadlines under EPP, noting that both parties had equal opportunities to present evidence.

32 Art. 30(1), ICC Rules: "By agreeing to arbitration under the Rules, the parties agree that this Article 30 and the Expedited Procedure Rules set forth in Appendix VI (collectively the "Expedited Procedure Provisions") shall take precedence over any contrary terms of the arbitration agreement".

33 Arts. 3(4) and 3(5) are quoted and discussed in Sections 4.3.4 and 4.3.5 below.

34 In some jurisdictions, including Italy, this provision must be applied with utmost care. The Italian Code of Civil Procedure provides, in its Art. 832: "In case of conflict between the provisions in the arbitration agreement and the provisions of the rules of an arbitration institution, the arbitration agreement prevails".

35 Art. 4(2), Appendix VI refers to the expedited procedure specific scale in Appendix III "Arbitration costs and fees".

70. In order to keep the benefits of the TOR while saving time and expediting proceedings, the appropriate document in which to record such procedural elements for expedited proceedings is usually Procedural Order No. 1, which is issued by the EPP tribunal in consultation with the parties shortly after the CMC, as required under the EPP (**Art. 3(3), Appendix VI**).[36]

4.3.2 New claims

71. **Article 3(2) of Appendix VI** of the ICC Rules prohibits new claims after the arbitral tribunal is constituted, unless authorised by the arbitral tribunal, and provides as follows:

> "After the arbitral tribunal has been constituted, no party shall make new claims, unless it has been authorized to do so by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration, any cost implications and any other relevant circumstances."

72. In requiring the rendering of the final award within six months from the date of the CMC, the EPP aim to provide a speedy resolution of disputes. Therefore, introducing new claims, without proper consideration of the consequences on the proceedings, can put this important objective at risk.

73. Given the potentially significant impact of new claims in expedited procedures, this Report examines the extent of guidance provided by the ICC Arbitration Rules and the ICC Note to Parties and Arbitral Tribunals on admitting new claims. Beyond the criteria set out in **Article 23(4)** of the ICC Rules[37] for regular arbitration proceedings and **Article 3(2) of Appendix VI** for expedited proceedings, the ICC Note to Parties and Arbitral Tribunals does not provide additional guidance on how arbitral tribunals may exercise their discretion regarding new claims. Expedited proceedings raise their own set of challenges, especially for less experienced arbitrators asked to admit new claims.

74. **Article 3(2) of Appendix VI** requires EPP tribunals to consider the following circumstances when deciding whether to authorise new claims:

- The nature of such new claims;
- The stage of the arbitration;
- Any cost implications; and
- Any other relevant circumstances.

75. When taking into account those circumstances, EPP tribunals may reflect on:

- The extent to which the new claims arise out of, or are connected with, the claims already before them and, in particular, what potential risk of *res judicata* and claim preclusion exists under the applicable law if some claims are left out;[38]
- The amount in dispute under the new claims and its effect on the continuation of the arbitration under EPP given the applicable US$2 or 3 million cap;
- The prejudice that allowing the new claim will cause to the other side and whether there are means to mitigate such prejudice within EPP, including whether the new facts or legal issue can be addressed in a subsequent filing or at the hearing;
- The rationale and real intention of the party requesting the new claim; and

36 These points of guidance are also found in the EPP Toolkit in Sections 3.2 and 3.3.

37 Art. 23(4), ICC Rules: "After the Terms of Reference have been signed or approved by the Court, no party shall make new claims which fall outside the limits of the Terms of Reference unless it has been authorized to do so by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances".

38 These points of guidance are also found in the EPP Toolkit in Section 3.6.

- The implications on time and procedural efficiency if a party is allowed to make the new claims, including their impact on the continuation of the arbitration under EPP, especially the arbitral tribunal's ability to issue the award within the six-month time limit.

76. In other words, EPP tribunals should be mindful of the specific nature and objective of EPP and should adopt a higher threshold for authorising new claims under EPP than they would under **Article 23(4)** of the ICC Rules, which sets out the conditions for allowing new claims in ordinary proceedings.

4.3.3 Case management conference ("CMC")

77. **Article 3(3) of Appendix VI** of the ICC Rules contains specific provisions on the CMC required under **Article 24** of the ICC Rules, in relation to expedited procedures, and provides as follows:

> "The case management conference convened pursuant to Article 24 of the Rules shall take place no later than 15 days from the date on which the file was transmitted to the arbitral tribunal. The ICC Court may extend this time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so."

78. Subject to the ICC Court's power to extend this time limit (upon a request from the arbitral tribunal or on its own initiative), the CMC must be convened within 15 days from transmission of the file to the EPP tribunal. The CMC is critical to the functioning of EPP as it triggers the six-month time limit for the EPP tribunal to render its final award.[39]

79. The reference in **Article 3(3) of Appendix VI** to the CMC being convened "pursuant to Article 24" of the ICC Rules also underlines the requirement under **Article 24(2)** for the arbitral tribunal to:

> "establish the procedural timetable that it intends to follow for the efficient conduct of the arbitration".

Article 24(2) requires the arbitral tribunal to establish the procedural timetable during the CMC "or as soon as possible thereafter". Overall, the requirement for the mandatory CMC to be convened within 15 days is a key component of the overall objective of EPP to provide a speedy resolution of disputes.

4.3.4 Procedural measures

80. **Article 3(4), Appendix VI** of the ICC Rules provides:

> "The arbitral tribunal shall have discretion to adopt such procedural measures as it considers appropriate. In particular, the arbitral tribunal may, after consultation with the parties, decide not to allow requests for document production or to limit the number, length and scope of written submissions and written witness evidence (both fact witnesses and experts)."

81. As explained above, an EPP tribunal exercising its discretion under **Article 3(4) of Appendix VI** is guided by the need to render the final award within six months of the CMC, act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.

39 Art. 4(1), Appendix VI: "The time limit within which the arbitral tribunal must render its final award is six months from the date of the case management conference".

82. To balance the efficient resolution of disputes with due process, an arbitral tribunal must deploy appropriate procedural measures. To date, EPP tribunals have succeeded in adopting procedural measures that achieve this balance. Between 2017 and 2024, 63% of the final awards rendered in EPP cases were delivered on or around the six-month time limit. Furthermore, no recourse to set aside an award rendered under EPP for due process violations was reported during the preparation of the Report.

83. The paragraphs that follow provide guidance on how to address three key procedural measures, namely (i) document production, (ii) expert witnesses, and (iii) written submissions.

84. **(i) Document production.** Document production is infrequently deployed in expedited procedures. There was no document production in 79% (365 out of 461) of the expedited procedures between 2017 and 2024. The infrequent use of document production confirms the reality that six months is generally insufficient to use it. This also confirms that a large portion of disputes can be resolved in international arbitration without document production.

85. That said, there may very well be scope for requesting limited production of documents. The parties may preserve their right for limited document production in an expedited procedure by agreeing that it should be proportional to the size and complexity of the dispute. While such proportionality is implicit under EPP and an explicit basis to deny production under Article 9(2)(g) of the 2020 International Bar Association Rules on the Taking of Evidence (the "IBA Rules"), parties can refer to it out of an abundance of caution to ensure that the EPP tribunal does not exercise their authority to simply deny disclosure requests.

86. Should the production of documents be required, EPP tribunals can tailor the document production phase such that it can be completed within the six-month time frame. The various adjustments to the document production procedure that may be considered include:

- Limiting the scope or number of document requests; and
- Allowing document production to proceed in parallel with written submissions.

87. For example, each party can submit its document requests together with its first written submission, and the procedural timetable can provide for the subsequent steps to be completed in advance of the second round of written submissions or the hearing, as is appropriate. EPP tribunals may also consider limiting the number of exchanges concerning each request, encouraging meet-and-confers between the parties to engage in a practical discussion on the document production or hearing any objections orally. The *modus operandi* with respect to document production in a specific matter may also be addressed at the CMC. In that respect, the parties and the EPP tribunal may consider tying their discussion of a potential list of issues to the scope of any document production, as a means to expedite the identification of documents that are relevant to the dispute and material to its outcome (as required under Art. 3(3), IBA Rules).

88. **(ii) Experts.** Expert evidence is frequently used in international arbitration, particularly in complex disputes in the construction or energy sectors. By contrast, expert evidence is not frequently used in expedited procedures, with experts having been appointed in only 18 of the 341 expedited procedures filed between 2017 and 2023 in which final awards were rendered.

89. Nonetheless, EPP recognise that affording a party a reasonable opportunity to present its case in an expedited procedure may, as a matter of due process, require the presentation of expert evidence. When used, it did not seem to have an adverse impact on the issuance of the award within the required time limit.

90. With a view to ensuring that the presentation of expert evidence does not jeopardise the timely conclusion of an expedited procedure, parties and EPP tribunals may wish to deploy the following practices:

- **Early agreement on the number of experts and their disciplines** (e.g. at the CMC). Early identification of witnesses and experts can limit the total number of experts as well as provide the respondent with the opportunity to identify and even to engage appropriate experts prior to the receipt of the claimant's submission, which could in turn shorten the required intervals.
- **Strict time limits**. Setting strict time limits for the submission of expert evidence, including any joint reports, can impose discipline on the expert (and the appointing party) to limit the scope of submissions to key disputed issues.
- **Joint reports and joint examination** (the latter technique is sometimes also referred to as "hot-tubbing"). Joint reports and examinations can improve efficiency by narrowing the issues in dispute and highlighting any areas of disagreement. The parties and the EPP tribunal may wish to consider the preparation of joint reports at the outset of the proceedings. Identifying areas of agreement and disagreement at an early stage of the proceedings may significantly narrow the issues to be addressed in expert reports (and written submissions).

91. Further, tribunal-appointed experts in lieu of party-appointed experts may be appropriate in certain circumstances, for example to prepare damages calculations on the basis of an agreed model. By contrast, the use of tribunal-appointed experts in addition to party-appointed experts may make it difficult, if not impossible, to conclude an expedited procedure in the time available.

92. **(iii) Written submissions.** As set out above, **Article 3(4) of Appendix VI** of the ICC Rules provides an EPP tribunal with discretion to limit the number, length, and scope of written submissions. They may consider various best practices to ensure that an expedited procedure concludes within six months as required:

- EPP tribunals may provide for a single round of submissions, page limits, or the simultaneous (not sequential) exchange of pleadings.
- A well-considered list of issues may provide a basis for EPP tribunals to issue specific directions to the parties on matters that they wish to be briefed on, such as threshold issues, and issues that do not seem to be pertinent.
- EPP tribunals may wish to consider which approach between pleadings or memorial style would be more appropriate to an expedited procedure.
- Strict deadlines with extensions of time permissible in only a narrow range of circumstances are particularly recommended in an expedited procedure to curtail dilatory tactics. EPP tribunals may also consider tying an extension of time for a specific procedural step to a reduction of a time limit applicable to a subsequent procedural step for the party seeking such extension.
- Assuming a hearing is held, consideration should be given to whether the timetable should provide for the submission of post-hearing briefs, a common feature in international arbitration.[40] Instead of providing for carefully delineated written post-hearing briefs, EPP tribunals may wish to allow time for oral closing statements or for its questions at the end of a hearing.

40 In practice, a hearing was conducted in 251 of the 461 cases administered under EPP in which an award was issued between 2017 and 2024, and post-hearing briefs were filed in 139 of these cases. This is not surprising given the six-month time frame for an expedited procedure.

4.3.5 Hearings

93. **Article 3(5) of Appendix VI** of the ICC Rules provides:

> "The arbitral tribunal may, after consulting with the parties, decide the dispute solely on the basis of the documents submitted by the parties, with no hearing and no examination of witness or experts."

94. In practice, between 2017 and 2024, EPP tribunals decided to hold a hearing in 251 of the 461 expedited procedures in which a final award was rendered (or 54,4% of the cases). The remaining 210 cases (46%) were decided solely on the basis of documents.

95. Unless a hearing is mandatory under the law of the seat, tribunals in expedited procedures should retain decision-making power to dispense with an oral hearing where appropriate in the circumstances of the case – considering that the hearing remains by default available. While they can be expensive and time-consuming, well-organised hearings are a hallmark of international arbitration and are often required as a matter of due process, as a party may otherwise not have an opportunity to be heard.

96. There is not one factor that is determinative of whether an EPP tribunal should hold a hearing under EPP. The absence of witness statements or expert reports may indicate that a dispute can be decided based on the documents submitted. Conversely, even where there are witness statements or expert reports, the written submissions may have rendered cross-examination moot, either because the testimony is no longer relevant or has been accepted as common ground. Even where there are no witness statements or expert reports, the dispute may raise complex questions of law or factual interpretation (of documentary evidence or otherwise) that lend themselves to oral argument. In certain circumstances, the EPP tribunal may also consider it helpful or necessary to have the opportunity to question the parties and their counsel about aspects of the written submissions or the evidentiary record.

97. Finally, and importantly, the EPP tribunal should, of course, take due note of the parties' views. It follows that, when deciding whether to proceed with an oral hearing or to decide the matter solely based on the documents submitted, An EPP tribunal should consider all the circumstances of the case, including the requirements under the law of the seat and due process, in consultation with the parties.

98. Should a hearing be necessary, care should be taken in its organisation, having regard to the six-month time limit for rendering the award. Factors for consideration include:

- **Length**. The 251 hearings in expedited procedures between 2017 and 2024 lasted between one and four days long. In addition to being consistent with the six-month time frame for rendering an award, a shorter hearing is likely to be easier to schedule. It may also encourage the parties and the tribunal to focus only on the key issues.
- **Format/location**. Of the 251 hearings in expedited procedures between 2017 and 2024, 150 were held by videoconference, one was held by teleconference, eight in a hybrid format, and 92 in person. The fact that most hearings were held remotely was originally likely attributable, perhaps in large part, to the COVID-19 pandemic and its aftermath. That said, remote hearings continue to be common in expedited procedures, given that such proceedings may be easier to schedule within the six-month time frame.

- **Schedule**. The EPP tribunal and the parties should agree on a schedule that takes into account the limited time available. For example, the EPP tribunal could provide the parties with a list of questions to be addressed in lieu of opening statements. Direct examination of fact or expert witnesses could also be eliminated and time allowed for cross-examination limited.
- **Placeholder**. It seems wise for an EPP tribunal to reserve dates for a potential hearing, even if the organisation thereof is not decided upon early in the proceedings – for example, at the CMC. It will be easier to cancel the hearing if the EPP tribunal and the parties decide against it, than to schedule one too close to the desirable time.

99. Consistent with the above, and as described under **Appendix IV(g)** of the ICC Rules,[41] the EPP tribunal may wish to schedule a pre-hearing conference to discuss and agree the arrangements, and to provide the parties with an indication of the issues that it would like the parties to focus on during the hearing. In addition, a pre-hearing order should be considered to provide, for example, for a hearing protocol to govern the organisation of the hearing, whether online or in person.

4.3.6 List of issues

100. In addition to the procedural features specifically contemplated in **Article 3 of Appendix VI** of the ICC Rules, arbitral tribunals and parties to an expedited procedure may wish to consider establishing a list of the issues to be determined.

101. According to **Article 23(1)(d)** of the ICC Rules, a list of the issues to be determined is one of the particulars to be included in the TOR, unless the arbitral tribunal considers it is inappropriate to do so. Although the TOR are not required under EPP, the preparation of a list of issues could be appropriate for the orderly conduct of an expedited procedure. It may focus or even narrow the issues to be determined by the arbitral tribunal, or assist the parties in organising their written submissions or oral presentation at any hearing. It may also assist the arbitral tribunal in maintaining due process by ensuring that each party has had a reasonable opportunity to present its case on the key issues, avoid last-minute surprises, inform its decisions on document production, and be conducive to the preparation of the final award. When preparing a list of issues, there are at least two key factors to consider: (i) timing and (ii) the method for preparing the list of issues.

102. **(i) Timing**. Where the nature of the dispute is such that the issues for determination can be easily identified, the parties or the arbitral tribunal may consider the preparation of a list of issues at the outset, for example in connection with the CMC and the preparation of Procedural Order No. 1, making allowance for such list to be amended at a later stage of the proceedings, if necessary. Where the issues for determination cannot readily be determined at the outset of the proceeding, for example, where the nature of any counterclaims is unknown, requiring the preparation of a list of issues may be impractical and risk delays. In such cases, the parties and the arbitral tribunal could agree that such a list be prepared at a later stage of the proceeding, for example, following the exchange of the first round of submissions, or in advance of any hearing.

41 Appendix IV of the ICC Rules on "Case Management Techniques" provides in para. (g): "Organizing a pre-hearing conference with the arbitral tribunal at which arrangements for a hearing can be discussed and agreed and the arbitral tribunal can indicate to the parties issues on which it would like the parties to focus at the hearing".

103. **(ii) Method for preparing the list of issues**. Their preparation must not delay or otherwise disrupt an expedited procedure. In particular, it is often unrealistic to ask the parties to agree on a list of issues, as that exercise often gives rise to its own set of disputes. To avoid such disputes, the arbitral tribunal may consider preparing its own list of issues, subject to caveats to avoid giving the impression of being predisposed and ask for the parties' comments, or asking each party to submit a list of issues.

4.3.7 Comparison with other institutions

104. Other expedited rules seek to constrain procedural autonomy and affirm the arbitrator's power to use their discretion to conduct efficient proceedings. While most rules leave it to the arbitral tribunal and the parties to adopt a suitable procedure, some are more prescriptive: the Swiss Rules provide for one round of submissions "in principle"; the Istanbul Arbitration Centre's rules do away with the request for arbitration and the answer, as the arbitration must start with a statement of claim and be followed by a statement of defence; and the 2018 HKIAC Rules provide that after the submission of the answer to the notice of arbitration, the parties shall in principle be entitled to submit one statement of claim and one statement of defence (and counterclaim) and, where applicable, one statement of defence in reply to the counterclaim.

105. Similarly, most rules expressly contemplate the possibility of documents-only arbitrations, either as the default rule or subject to a decision by the arbitral tribunal. The ICDR rules require documents-only arbitrations for disputes below US$100,000, unless the tribunal determines otherwise. Under SIAC's 2025 Streamlined Procedures, the case management conference must take place five days from the constitution of the tribunal. In addition, document production as well as fact or expert evidence are excluded, as are applications for preliminary determination and early dismissal not allowed. Finally, the arbitral tribunal may limit interlocutory applications.

4.4 Awards – Time frame, reasoning, modification, and interpretation

106. The issuance of awards is subject to stringent timelines set out in **Article 4 of Appendix VI** of the ICC Rules, which requires the EPP tribunal to issue their award no later than six months after the CMC. The statistics, up to and including 2024, show that a total of 461 final awards were approved by the ICC Court. The scrutiny of the ICC Court, which occurs on average within 15 days of the award being transmitted to the Secretariat of the ICC Court, does not appear to cause delays. Unjustified delay in the rendering of final awards only occurred in 33 cases.[42]

4.4.1 Time frame

107. There is nothing in EPP that would, in principle, prevent the parties from shortening the six-month time frame, where appropriate. When doing so, parties should be cautious to set a deadline commensurate with the nature of the dispute. Otherwise, their failure to adhere to that timeline may give rise to challenges. In the alternative, parties should perhaps not impose a shorter time frame in their arbitration agreement but instead incorporate aspirational language inviting the arbitral tribunal to abide by a shorter time frame if appropriate once the contours of the dispute

42 See para. 22 above and EPP Factsheet. Most of the other institutional rules examined contemplate a six-month time limit from the transmission of the file to the arbitral tribunal to issue a final award, though a few shorten it to three months like OAC, DIAC, ISTAC or the Lewiatan Court of Arbitration, while the Abu Dhabi International Arbitration Centre sets a four-month deadline, which the institution can extend by up to two months. CIETAC imposes a three-month deadline, and BAC a 75-day deadline, which in both cases runs from the date of the constitution of the arbitral tribunal. Most rules allow the institution to extend the time limit. Under the SIAC's 2025 Streamlined Procedures, the arbitral tribunal must issue an award within three months – unless the term is extended by the registrar. The Stockholm Chamber of Commerce offers SCC Express Dispute Assessment, in which a neutral legal expert, appointed by the parties or the SCC, gives their opinion on the merits of the case within three weeks. Unlike EPP and other expedited proceedings, which result in a final award, the expert's opinion issued under the SCC Express mechanism is neither enforceable nor binding on the parties.

are clear. If need be, the arbitral tribunal should make sure that expectations on timing are realistic and refer to their mandate to deviate from party agreement on such timing, if included in the arbitration agreement (**Art. 30(1)**, ICC Rules) and subject to provisions of mandatory law.

108. Such a shorter deadline can make sense where the expedited procedure follows a binding and substantive determination of the issue by an expert or other neutral. In particular, EPP may be used solely to turn a prior determination of the merits of the dispute, for example a final and binding determination by an engineer or DAB under a FIDIC contract, into an enforceable title, without any review of the merits. For those, the parties may decide that a six-month period is too long.

109. Regarding modified time limits under the parties' agreement, the ICC Court and its Secretariat make their best efforts to comply with the arbitration agreement and ensure that the arbitral tribunal complies with the modified timeline. However, where necessary, and in order for the arbitral tribunal or the ICC Court to fulfil their responsibilities, the ICC Court may, on its own initiative under **Article 39(2)** of the ICC Rules,[43] extend any time limit that has been agreed by the parties.

4.4.2 Reasoning

110. The quality of awards rendered in expedited procedures is considered to be as good as any ICC award. This pertains to the detail and level of reasoning of such awards, which is not considered to be inferior to the awards rendered and scrutinised in regular arbitration proceedings.[44]

111. Time and cost efficiency concerns have prompted EPP-specific guidance in the ICC Note to Parties and Arbitral Tribunals,[45] which provides the following:

> "Any award under the Expedited Procedure Provisions must be reasoned. In such arbitrations, it is particularly appropriate to keep the factual and/or procedural sections of the award to what the arbitral tribunal considers necessary for the understanding of the award, and state the reasons of the award **in as concise a fashion as possible**."[46]

112. This message may be reinforced by additional communications to arbitral tribunals upon their appointment, also with a view to prevent the expedited procedure from gradually evolving to a point where the reasoning in awards is comparable to that in regular arbitration proceedings on the merits.

113. In particular, arbitral tribunals in non-expedited procedures often devote a significant amount of time and a portion of their awards to lengthy sections detailing the arbitration's procedural history, even though these offer limited value and could therefore be shortened. As such, procedural summaries can be short – subject to the need in case of non-participating respondents to include details on attempts to ensure or enable their participation and to comply with other mandatory requirements.

---

43 Art. 39 "Modified Time Limits": "... (2) The Court, on its own initiative, may extend any time limit which has been modified pursuant to Article 39(1) if it decides that it is necessary to do so in order that the arbitral tribunal and the Court may fulfil their responsibilities in accordance with the Rules".

44 All the rules require, explicitly or implicitly, that the awards be reasoned, though some such as the UNCITRAL, SIAC, Netherlands Arbitration Institute and ICDR rules allow the parties to dispense with a reasoning. Also, many rules that require a reasoning allow the arbitral tribunal to do so in summary form like the Swiss Rules of International Arbitration, Abu Dhabi International Arbitration Centre, Oman Commercial Arbitration Centre, SIAC, KCAB or HKIAC.

45 For example, in 2022, the average length of awards was 58 pages.

46 At para. 151, emphasis added.

114. While EPP tribunals can dispense with the summary of the procedure, they must, however, include a meaningful summary of the facts as drafting that alone assists tribunals in their understanding and resolution of the case and the parties in accepting the outcome of the proceedings. In their efforts to tailor the size and style of the awards to the needs of the expedited procedure, EPP tribunals should consider, and consult with the parties on, sector-specific expectations, if any, with respect to the reasoning of their award should they consider to be very concise. Also, it may assist EPP tribunals to be concise if the parties agree on a chronology and list of:

    - Issues for determination by the EPP tribunal;
    - Agreed/disputed facts;
    - Agreed legal principles.

115. Notwithstanding the call for concision, awards in expedited procedures must be appropriately reasoned. Unreasoned awards would not only require a change to EPP (because awards under the ICC Rules must be reasoned), but some applicable arbitration laws do not permit final awards to be unreasoned[47] or explicitly require that reasons must be given.[48] Parties and arbitrators in expedited procedures should consider the following:[49]

    - **Awards in expedited procedures should not be of a lesser quality**, in shape or form, or be suspected as such (i.e. less well-reasoned or otherwise). After all, awards granting or dismissing claims made are final and binding on the merits and without appeal. Such decisions should bear the quality mark of an ICC award and thus not go without reasons, irrespective of the parties' preferences on that topic.
    - **Rendering an enforceable award** is a primary objective of arbitral proceedings in general and in ICC Arbitration in particular as expressed by **Article 42** of the ICC Rules, which states that: "the arbitral tribunal … shall make every effort to make sure that the award is enforceable at law". Consequently, and bearing in mind considerations of enforceability under the New York Convention and applicable arbitration law, the reasoning of an arbitral award cannot be dispensed with.
    - **Courts need to be in a position to exercise control over arbitral decision making**, in particular with respect to jurisdiction, due process, and public policy.
    - **Parties need to be able to understand the arbitral tribunal's reasoning** underpinning the dispositive. Awards need to be understandable to persons who have not been privy to the arbitral proceedings, such as outside advisors or the central management of a party.

116. A separate issue arises with respect to the issuance of interim or partial awards prior to the final award in expedited procedures. The general timeline providing for the rendering of a final award in **Article 4 of Appendix VI** of the ICC Rules does not easily lend itself to separate awards as a consequence of bifurcation of proceedings or otherwise. It is not inconceivable, however, and may in fact be the consequence of applying a particular arbitration law that obliges the arbitral tribunal to dispose of certain matters through interim or partial awards as opposed to orders – such as for decisions on jurisdiction. However, it is not advisable to give arbitral tribunals under EPP more latitude than tribunals in ordinary proceedings on whether to take decisions in the form of orders rather than awards (under the ICC Rules), since the same considerations regarding the form of decision and its legal consequences would apply in both expedited and regular proceedings.

---

47 See e.g. the observations by J.F. Merizalde and J.P. Gómez in *Expedited International Arbitration, Policies, Rules and Proceedings*, A.M. Anderson, H. Verbist (eds), at p. 179.

48 See e.g. Art. 1057(4), Dutch Arbitration Act, which provides that "awards shall be reasoned … unless, after the arbitration has commenced, the parties agree in writing that no grounds shall be given for the decision".

49 See also G. Bermann, A. Jana, A. Rigozzi, M. van Hooijdonk, N. Kamau, S. Menon, The Bare Minimum: Cost Efficient Awards for Disputes of Small– and Medium–Sized Enterprises, *ICC Dispute Resolution Bulletin* 2024-3

4.4.3 Modification and interpretation

117. With respect to modification and interpretation of awards, it is important to examine the permitted scope for doing so under the applicable arbitration law. After all, not all arbitration laws permit tribunals to issue statements on the interpretation of awards rendered – however this is not an issue specific to expedited procedures.

4.5 Costs and fees

118. The 2015 ICC Report on Decisions on Costs in International Arbitration (the "ICC Report on Decisions on Costs") offers the most comprehensive and authoritative analysis and overview on the issue of costs in international arbitration.

119. The issue of costs is quintessential in expedited procedures, which were created in part to address the perceived uncontrolled rise of costs in international arbitration. Consequently, considerable attention to costs is warranted in this section by firstly providing the relevant framework and explaining the practical relevance of addressing costs in expedited procedures, and secondly, addressing the EPP tribunal's discretion on cost allocation, including as a tool for effective case management.

4.5.1 The relevance of costs in expedited procedures

120. The key provisions on costs are found in **Articles 37 and 38 of the ICC Rules**, respectively governing the advance on costs and giving the basis and guidelines for the exercise of arbitral tribunals' discretion in awarding costs,[50] and governing the ICC Court's determination of the final costs. As the ICC's costs and fees are *ad valorem*, i.e. based on the amount in dispute, **Appendix III** of the ICC Rules sets forth the various scales to assist the ICC Court and its Secretariat and determine the arbitration fees and costs. Costs under EPP are governed by that same framework except for one important caveat: the fees of the arbitral tribunal are discounted by 20%. Therefore, Appendix III contains a scale that specifically governs expedited procedures and applies to any amounts in dispute, even beyond the US$2 or 3 million cap to accommodate the parties who opt in.[51]

121. As stated earlier in this Report, the introduction of EPP responded to a concern that the time and cost associated with arbitration had become unduly burdensome for the parties. While this may not be a pertinent concern in extremely large and complex disputes, there was no reason to treat all the disputes on the same foot, which was inefficient from the perspective of time and inappropriate as a matter of cost. In fact, there is a general need to ensure that arbitration remains cost effective in all cases.[52] Thus, in reducing the arbitrators' fees by 20%, ICC was seeking to do its part to account for the fact that the proceedings are shorter and therefore take less of the arbitrators' time and effort, and in doing so, address the issue of increasing costs in international arbitration. While significant, such reduction was to an extent also symbolic and

50 Art. 38(5), ICC Rules: "In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and *cost-effective* manner". (Emphasis added.)

51 A few institutions contemplate lower fees and costs for expedited procedures such as the SCCA or Lewiatan Court of Arbitration. The HKIAC 2018 Rules cap the hourly fees of the arbitrators and the secretary, while the HKIAC 2024 Rules give the institution discretion to revisit the arbitrators' fees. The Istanbul Arbitration Centre caps the fees of the arbitrator to TRY5,000 (approx. US$150). Under SIAC's 2025 Streamlined Procedure, the arbitrator's fees are capped at 50% of the maximum limits based on the amount in dispute in accordance with schedule of fees, unless the registrar determines otherwise and SIAC's fees are capped at 50% of the maximum limits based on the amount in dispute in accordance with the standard SIAC *ad valorem* fee structure, unless the registrar determines otherwise.

52 ICC Report on Decisions on Costs, at para. 66.

intended to mirror, or encourage, a corresponding reduction in the attorney's fees and other costs of representation, which generally account for the largest proportion of a party's costs in international arbitration.[53]

122. The available statistics reflect a considerable simplification and shortening of the process, which ought to result in lower fees and costs. An examination of the 461 cases that resulted in a final award between 2017 and 2024 revealed compelling statistics, suggesting that factors generally known to drive costs are more controlled in expedited procedures:

- Only 96 expedited procedures out of 461, included a document production phase;
- Expert reports were submitted in 26 cases;
- Hearings were only held in 251 cases and lasted between one and four days, with 159 remote or hybrid hearings; and
- Post-hearing briefs were only submitted in 139 cases.

123. The simplification of the proceedings and the deemed reduction in the costs of representation are highly relevant as, in 94% of the expedited procedures, the amount in dispute did not exceed US$3 million.

4.5.2 EPP tribunal's decision on costs

124. The issues raised by high costs in international arbitration, which are all the more stark when the amount in dispute is relatively low, coupled with the wide discrepancy that may exist between the fees paid on each side, pose particular challenges to arbitral tribunals in expedited procedures. Indeed, since the amount in dispute in expedited procedures normally does not exceed US$2 or 3 million, the arbitral tribunal's assessment of the reasonableness and proportionality of party costs becomes critically important.

125. Arbitral tribunals in expedited procedures, in particular, should not hesitate to encourage parties and counsel to adopt a reasonable behaviour, and to penalise non-compliance when awarding costs, as also expressed in the ICC Report on Techniques for Controlling Time and Costs in Arbitration (2012).[54] These issues are examined in more detail in the following paragraphs.

4.5.3 Specific cost allocation considerations

126. As stated, the ICC Rules give broad discretion to arbitral tribunals when assessing and awarding recoverable costs. Under international arbitration practice, and in the absence of a different agreement between the parties, it is widely accepted that an ICC arbitral tribunal will not award costs unless they are reasonable.[55] This generally means they must be commensurate with the amount in dispute.[56] When assessing reasonableness of party costs, the EPP tribunal needs to

---

53 Id. at para. 2, indicating that 83% of the costs of the proceedings are "party costs" (including lawyers' fees and expenses, expenses related to witness and expert evidence, and other costs incurred by the parties for the arbitration). See also para. 70(ii) on the overall complexity of the case as a relevant factor to assess costs.

54 At para. 82: "The allocation of costs can be a useful tool to encourage efficient behaviour and discourage unreasonable behaviour. … The arbitral tribunal should consider informing the parties at the outset of the arbitration (e.g. at the case management conference) that it intends to take into account the manner in which each party has conducted the proceedings and to sanction any unreasonable behaviour by a party when deciding on costs. Unreasonable behaviour could include: excessive document requests, excessive legal argument, excessive cross-examination, dilatory tactics, exaggerated claims, failure to comply with procedural orders, unjustified applications for interim relief, and unjustified failure to comply with the procedural timetable".

55 ICC Report on Decisions on Costs, para. 63: "[R]easonableness is a standard applied to the allocation of costs under most arbitration rules. This is so even where there is a presumption that costs will be awarded to the successful party, as such a presumption remains subject (at least) to the reasonableness of the legal and other costs incurred by the parties. However, there is no definition of reasonableness in institutional arbitration rules or national arbitration statutes. A common-sense approach is to assess whether the costs are reasonable and proportionate to the amount in dispute or value of any property in dispute and/or the costs have been proportionately and reasonably incurred".

56 Id. at paras. 15, 63-75.

specifically have in mind that the proceedings are conducted under EPP. What this means is that the context of a lower amount in dispute and the policy underlying EPP, which is to lower costs and promote efficiency, implies that tribunals look at party costs even more critically and apply a lower threshold to reasonableness than in "normal" cases. A review of awards issued in 2022 in expedited procedures revealed that in 87% of the cases, the EPP tribunal adopted a "costs follow the event approach" as a starting point; in 54% of the cases, no reimbursement of costs was granted; and the highest reimbursement was 68% of the costs claimed by the party and the lowest was 3%.

127. Similarly, the fact that one party has much higher representation costs than the other is not *per se* unreasonable.[57] That said, the potential disproportionality between the parties' costs may be problematic, especially in cases with a low amount in dispute.

128. Granting ICC arbitral tribunals full discretion to decide whether claimed costs are reasonable and proportional on a case-by-case basis is a key component of the ICC Rules.[58] Thus, no fixed benchmark can be set to consider whether party costs are proportionate and reasonable. However, as the reality is that EPP generally apply to lower amounts in dispute, this creates a presumption that if a party's costs are at or near the amount in dispute and are significantly higher than the other party, these costs are disproportionate and unreasonable. Because of that overarching concern on costs and the implicit deflationary impact that EPP has on what reasonableness means, EPP may call for a larger and more proactive role for arbitral tribunals in managing costs.

4.5.4 Allocation of costs and effective case management techniques

129. There is no uniform approach to the allocation of costs. Hence, arbitrators and parties may wish to set out their expectations on cost-allocation principles early in the proceedings (e.g. at the CMC).[59] Given the pivotal role that costs have in expedited procedures, the arbitral tribunal might want, and may have greater legitimacy, to distinguish between the essential and the optional by pointing out the cost implications of particular phases of an arbitration (document production, a hearing, etc.).

130. Relatedly, and irrespective of whether it so informs the parties at the outset of the proceedings or not, an arbitral tribunal is allowed to assess whether the parties conducted the arbitration in a cost-effective manner when awarding costs.[60] On that basis, excessive document requests, lengthy submissions, numerous or lengthy expert reports, and unjustified delays, can be taken into account when deciding on a party's costs application.[61] While there is less room and seemingly less appetite for excesses in expedited procedures, the threshold for excess will be much lower and be viewed with far more diffidence.

---

57 Or in the words of the ICC Report on Decisions on Costs, Appendix A, (9) Disparity between the costs claimed by each party: "[I]mbalance does not automatically signify unreasonableness".

58 See Art. 38 of the ICC Rules, and ICC Report on Decisions on Costs, paras. 63-75.

59 ICC Report on Decisions on Costs, at para. 32

60 Art. 38(5), ICC Rules, *supra* note 50.

61 ICC Report Techniques for Controlling Time and Costs in Arbitration (2012), at para. 82; ICC Report on Decisions on Costs (2015), at para. 30.

131. However, the issue of reasonableness and proportionality of party costs is a delicate topic for the arbitral tribunal to specifically discuss with the parties at the outset of the proceedings as the parties need to maintain the ultimate authority to do what they think is necessary in order to present their case. Nonetheless, the EPP tribunal might consider discussing the following cost-related topics at the CMC:

- Which cost items are recoverable (e.g. in-house counsel and other staff, etc.);
- When to make cost submissions (e.g. simultaneous submissions near the six-month deadline according to **Art. 4(1), Appendix VI** and comments within one week); and
- The form and substantiation of the cost submissions (e.g. length, whether an affidavit by counsel is sufficient, etc.).[62]

4.6 Interim measures

132. This section clarifies where interim measures must remain available under EPP and provides recommendations when dealing with interim measures in expedited procedures. **Article 28** of the ICC Rules grant arbitral tribunals powers to issue interim measures including in expedited procedures.[63] To date, the use of interim measures in expedited procedures has been limited.[64] However, it is unclear whether parties to these proceedings have applied to national courts for interim relief instead of to the EPP tribunal. The ICC Emergency Arbitrator is a further tool to provide for urgent arbitral interim relief that cannot await the constitution of the arbitral tribunal (**Art. 29**, ICC Rules).

4.6.1 Interim measures under EPP

133. Broadly speaking, whether to grant an interim measure requires an evaluation and balancing of competing interests of the parties. One such interest is an expeditious resolution of the dispute itself in expedited procedures. However, if consideration of this interest were to result in a blanket limitation of (certain types of) arbitral interim relief in expedited procedures, the result would likely be that parties would instead choose to file court applications for those types of interim measures, which does not seem desirable.

134. While some types of interim relief are only available or effective if issued by state courts, parties should otherwise not have to go to a state court because arbitration rules limit certain types of interim relief.[65] The final decision on whether to apply for court or arbitral interim measures should be a strategic decision for the parties to make. Moreover, forcing parties to resort to different fora for different types of interim relief seems *prima facie* inconsistent with one of the EPP's objectives, namely the simplification of the procedure. Relatedly, and as discussed below, an EPP tribunal may be better placed to determine the most appropriate form of interim relief in an expedited procedure, including by tying the timing and validity of the relief to the issuance of the final award within six months. Finally, it is important to provide clarity on the fact that interim measures can indeed be issued in expedited procedures, to avoid courts concluding, erroneously, that interim measures are not available in expedited procedures.

---

62 The EPP Toolkit does not provide a template for the cost submissions in expedited procedures because: (i) the need for a template is not EPP-specific; and (ii) the form and requirement of a template will vary depending on the case, the law and the culture of the parties and their counsel. Discussing a template or expectation specific to the case at the CMC may however be useful and align the parties' expectations ahead of the submissions themselves.

63 Art. 28 of the ICC Rules "Conservatory and Interim Measures" is a provision that has not been excluded or modified in Appendix VI. Art. 1(1) of Appendix VI provides: "Insofar as Article 30 of the Rules of Arbitration of ICC (the "Rules") and this Appendix VI do not provide otherwise, the Rules shall apply to an arbitration under the Expedited Procedure Rules".

64 Of the 74 cases administered under EPP that resulted in a final award in 2022, two involved interim measures.

65 This provides efficiency benefits, among other things. Limiting the availability of (certain types of) arbitral interim relief could compel parties to file applications before courts (which are less familiar with the individual case) if interim measures were urgently needed.

135. While some jurisdictions have historically reserved the power to grant interim measures to courts, the power of the arbitral tribunal to order interim measures is now generally accepted either expressly in the arbitration law or considered as part of the arbitral tribunal's inherent power. However, in some jurisdictions, the courts only have jurisdiction to order interim measures if arbitral interim relief is not available or timely available as may be the case in expedited procedures with respect to distinct preliminary evidentiary measures or time constraints.[66] There should be no attempt to limit parties' access to court-ordered interim measures *per se*, as arbitral and curial interim relief may differ in nature, scope and enforceability and may be complementary.

4.6.2 The EPP tribunal's discretion

136. Subject to the framework set by the combination of the applicable arbitral rules, national law, and arbitral practice, the arbitral tribunal retains ultimate discretion as to whether and to what extent interim relief should be granted in any given case., Arbitral tribunals have broad discretion to weigh all relevant considerations and in exercising this discretion, the usual balancing of factors will also apply to interim measures in expedited procedures.

137. **(i) Due process.** Due process and equal treatment of the parties apply to ordinary arbitral proceedings and expedited procedures, including interim measures applications. However, the practical application of these principles is complex and context dependent. For example, EPP tribunals should fashion the briefing on the interim measures to rebalance the fact that the applicant will generally have had more preparation time than its opponent, for whom it may be unduly burdensome (and incompatible with the EPP time frame) to have to respond in writing before conducting a hearing. Similarly, a written response in advance of the hearing would give a de facto reply to the applicant, who can bring up new arguments at the hearing, which the other side may be unable to respond to. Most of the considerations in the rest of this Section are geared towards preserving the parties' due process rights.

138. **(ii) Determination by hearing or on the papers.** EPP tribunals should also retain discretion as to whether the application be heard or determined "on the papers" solely via written submissions. A short electronic hearing, possibly in lieu of a written response, will in many cases be the safest way of preserving the respondent's ability to make their case on interim measures, as they will have had much less time to prepare a response than the claimant. Moreover, where a party requests a hearing and the arbitral tribunal refuses a hearing and instead determines the application on the papers, their decision may be at risk of challenge. To mitigate such risks, the EPP tribunal may, for example, state in its initial procedural order ("PO 1") that applications for interim relief will be determined based on documents only, unless:

- The parties request – and the EPP tribunal agrees to – an oral hearing; or
- The EPP tribunal otherwise orders a hearing.

139. **(iii) Timing and urgency.** While giving effect to the overriding objective of the EPP requires the protection of the arbitral tribunal's ability to close the proceedings and draft the award, imposing a fixed deadline for the application of interim measures would be unwarranted and challenging to administer. Not all interim measures have the same impact on the timetable of the arbitration. For example, interim measures to preserve evidence may impact the timetable, whereas a security for costs measure will not. Conversely, the closer the application is to the end of the proceedings and the issuance of the award, the more hesitant the EPP tribunal should be to entertain that application.

66 E.g. Arts. 1022c and 1074d, Dutch Arbitration Act.

140. While urgency is not necessarily a condition for interim measures (except in the context of emergency arbitrator proceedings), the short timeline of the expedited procedure and the timing of the application are both relevant factors, given the arbitrator's obligation to issue an award within six months. Therefore, urgency is always likely to be a relevant consideration when balancing the interests of the parties. Other considerations may be whether the measure cannot await the issuance of the final award (which occurs faster in an expedited procedure than in regular arbitrations); whether the application has been made promptly by the applicant on becoming aware (or once it ought to have been aware) of the need for the application; and whether the application will delay the issuance of the award beyond the six-month time limit. Overall, the decision as to the latest permissible time for an application for an interim measure should be left to the EPP tribunal's discretion, taking the above factors into consideration at least.

141. **(iv) Types of relief.** As discussed, notwithstanding the expedited nature of the proceedings, all of the usual forms of interim relief should be available in expedited procedures. Other forms of interim relief can also be considered in the context of expedited procedures. For example, under the Dutch emergency arbitration process, interim measures can be used to provide binding determinations of issues, albeit formally subject to a decision by an arbitral tribunal dealing with the case on the merits (including the arbitral tribunal that had issued the interim measure).[67] There are, however, reasons to limit the types of interim relief available in expedited procedures to measures that are compatible with the expedited nature of the proceedings. Therefore, it is unlikely to be feasible to combine an expedited procedure with the preliminary stage of the proceedings – prior to the exchange of written pleadings – during which the arbitral tribunal considers requests for preliminary evidentiary measures, such as access to documents, the hearing of an expert, or a site-visit. These measures are typically used, in some jurisdictions, for parties to assess the strength of their case prior to the commencement of proceedings on the merits.[68] Allowing these preliminary measures in an expedited procedure will cause delay to the tight timeline. Such measures may however be available in state courts, and be sought before the start of an expedited procedure.

142. **(v) Reasons for the decision.** Notwithstanding the need for expeditiousness, if the applicable law requires any decision by an EPP tribunal to be reasoned in order to be enforceable, then the decision awarding an interim measure in expedited procedures must also be reasoned. Where the need for relief is urgent, tribunals could conceivably issue their decision without reason with reasons to follow later. However, this solution should be limited to exceptional situations, such as when the EPP tribunal issues its decision in the form of an order, not an award. That is because if the decision is issued in the form of an award, it may be challenged based on the lack of reasoning or the timing of the subsequent issuance of the reasoning and to do so would be incompatible with the system of arbitration under the ICC Rules, most notably the scrutiny process.

143. **(vi) Threshold review of unmeritorious applications.** In view of the compressed timeframe, the EPP tribunal may consider including in its initial PO 1 provisions that impose a gateway process, focusing on threshold issues for dismissing unmeritorious interim measures applications.

---

67 This follows from the system of the Dutch Arbitration Act. This statute provides, in Art. 1043b(4) that an arbitral award rendered in Dutch-style emergency proceedings is treated as a "regular" arbitral award and, thus, is binding and may be executed. Art. 1059(2) provides that these awards do not have *res judicata* effect.

68 Indeed, this type of measure is also not known to be the subject of Emergency Arbitrator proceedings, given the explicit provision at Art. 29(1) of the ICC Rules, which states that the measure sought must be urgent.

The ICC Report Expedited Procedure Provisions: Eight Years On and supplementary ICC Toolkit for Arbitrators in Expedited Procedures are products of the ICC Commission on Arbitration and ADR ("Commission"). The Report and Toolkit were prepared by the Working Group on "Expedited Procedure Provisions and Update of Commission Reports" and approved at the Commission's meeting of 8 April 2025 in Paris.

Acknowledgements

The Working Group was co-chaired by **Yasmine Lahlou**, **Rogier Schellaars** and **Lara Hammoud**, and its work was carried out under the leadership of **Philippe Cavalieros**, Vice-Chair of the Commission as Steering Committee Liaison, **Melanie van Leeuwen**, Chair of the Commission, and **Dr Hélène van Lith**, Steering Committee Officer and Commission Secretary.

The Working Group was launched on 13 December 2023, and its membership comprised 50 members from 36 jurisdictions.

Working Group Members: Foluke Akinmoladun, Simon Arvmyren, Maxime Berlingin, Victor Bonnin Reyes, María Angélica Burgos, Peter Chow, Mariana Conti Craveiro, Jack Davies, Nadine Debbas Achkar, Ivo Deskovic, Matthew Draper, Peter Durning (Commission Vice-Chair), Jalal El Ahdab, Alain Farhad, Cherine Foty, Kim Franklin, Nilo Sérgio Gaião Santos, Beata Gessel-Kalinowska vel Kalisz, Delphine Ho, Sameer Jain, Julia Jung, Milan Lazić, Sean Marriott, Kamalia Mehtiyeva, Edgardo Muñoz, Anne Marie Mürrle Rojas, Karim J. Nassif (Commission Vice-Chair), Toni Nogolica, Kirsten Odynski, Miloš Olík, Laura Opilio, Bobin Park, Stefanie Pfisterer, Mohan Pillay, Mélanie Riofrio Piché, Kim Rooney, Peter Rosher, Jan Schäfer, Yann Schneller, Julie Spinelli, Periklis Stroumpos, Joaquin Vallebella, Peter Wolrich, Candan Yasan Tepetaş, Alireza Yavari, Félicité Yinda Nkoyok, and Fang Zhao.

International Chamber of Commerce (ICC)

The International Chamber of Commerce (ICC) is the institutional representative of more than

45 million companies in over 170 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and chambers of commerce.

www.iccwbo.org
@iccwbo

ICC Commission on Arbitration and ADR

As a unique think tank in the world of international dispute resolution, the Commission on Arbitration and ADR raises awareness and understanding on practical issues in arbitration and ADR in the form of Commission Reports. The Commission also provides input on proposed modifications of rules applied in ICC Dispute Resolution Services (including the ICC Arbitration Rules, Mediation Rules, Expert Rules and Dispute Board Rules).

This ICC global commission brings together experts and practitioners in the field of arbitration and ADR with currently over 1,300 members from some 100 countries. The Commission holds several plenary sessions per year, at which proposed rules and Commission Reports are discussed, debated, and voted upon. Between these sessions, the Commission's work is often carried out in smaller task forces and working groups. The Commission's products are made available at www.iccwbo.org and in the ICC Dispute Resolution Library.

What the Commission does:

- In its research capacity, produces reports on legal, procedural and practical aspects of dispute resolution and other relevant topics in the field.
- Develops tools for efficient and cost-effective dispute avoidance and settlement by means of arbitration, mediation, expertise and dispute boards and enables ICC dispute resolution to respond effectively to users' needs.
- Creates a link among arbitrators, mediators, experts, academics, practitioners, counsel and users of dispute resolution services from all over the globe and a forum to exchange ideas and experiences with a view to improve dispute resolution services.

www.iccwbo.org/commission-arbitration-ADR

commission.arbitrationADR@iccwbo.org

T +33 (0)1 49 53 30 43

ICC Commission on Arbitration and ADR
www.iccwbo.org/commission-arbitration-ADR
arbitration.commissionADR@iccwbo.org
T +33 (0)1 49 53 30 43

ICC Publication DRS002EN
ISBN 978-92-842-0718-3