



UNCITRAL 2021 Expedited Arbitration Rules Entered Into Force

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Introduction

UNCITRAL adopted the expedited arbitration provisions (“**Expedited Rules**“) on July 2021. The EAPs entered into force on 19 September 2021. UNCITRAL has also published a detailed draft explanatory note regarding the Expedited Rules.

According to the draft Explanatory Note, an expedited arbitration is a "streamlined and simplified procedure with a shortened time frame, which makes it possible for the parties to reach a final resolution of the dispute in a cost – and time – effective manner".

Expedited arbitration proceedings already exist in various arbitration rules, which usually provide for the appointment of a sole arbitrator, a simplified procedure (e.g. no terms of reference or oral pleadings), and a limited timeframe for the arbitrator to render an award (usually six months).

The Expedited Rules, which aim at striking a balance between the efficiency of the arbitral proceedings and the rights of the parties to due process and to fair treatment, reflect a broad international consensus concerning expedited proceedings in international arbitration. Indeed, the sessions of the UNCITRAL’s Working Group No. II (“**Working Group II**“) were attended by more than fifty member States, as well as other observers including States and major arbitral institutions (ICSID, ICC, CEPANI, the Chartered Institute of Arbitrators, the American Bar Association and many more).

Therefore, the Expedited Rules constitute an important additional step towards unifying and broadening the use of expedited procedures in international arbitration.

Recent Developments

The key provisions of the Expedited Rules concern the following:

- (i) Scope of application to the Expedited Rules,
- (ii) Procedure for initiating arbitral proceedings and appointing arbitrator,
- (iii) Arbitrator's/arbitral tribunal's discretion on hearings and evidence,
- (iv) Time period for rendering the award and arbitral tribunal's discretion with regard to periods of time.

Overview of the key provisions of the Expedited Rules

1. Scope of application of the Expedited Rules

The Expedited Rules should be applied only when the parties agree to it; there is no automatic application pursuant to Article 1.

In connection with this, there are no additional requirements such as certain monetary value thresholds to apply the Expedited Rules unlike other arbitration institutions. For instance, the 2021 International Chamber of Commerce Rules of Arbitration stipulate that expedited procedure rules will be automatically applicable when the amount in dispute does not exceed USD 2 million, if the arbitration agreement was concluded on or after 1 March 2017 and before 1 January 2021, or USD 3 million, if the arbitration agreement was concluded on or after 1 January 2021, unless otherwise agreed between the parties. Similarly, Istanbul Arbitration Centre Expedited Arbitration Rules stipulate that expedited procedure rules will be automatically applicable if the total amount of the claims and counterclaims in the dispute as of the date of initiation to the arbitration is less than TRY 300,000, unless otherwise agreed between the parties. Nevertheless, it is not the case for the Expedited Rules and it will not be applicable if the parties do not agree.

Furthermore, although the parties may have decided to apply the Expedited Rules when they drafted their agreements, they may waive this during the arbitration proceedings pursuant to Article 2 of the Expedited Rules, which explicitly states that the parties may agree that the Expedited Rules will no longer apply at any time during the proceedings. In addition, the arbitral tribunal may decide, at the request of one of the parties, not to apply the Expedited Rules only in exceptional circumstances, after inviting the parties to express their opinions.

The Expedited Rules also provide a model arbitration clause, which the parties may adopt and use if they believe applying the Expedited Rules is appropriate to settle their dispute: Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Expedited Arbitration Rules.

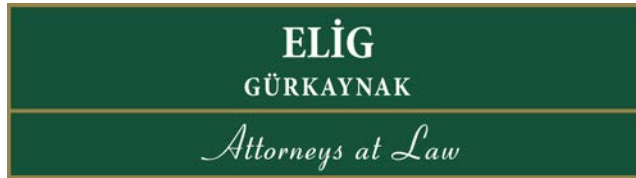
2. Initiating arbitral proceedings in an efficient way

The main objective of any expedited procedure is the ability to obtain an award in a short time frame and in a cost-effective manner without entirely disregarding the judicial quality of the proceedings. In this regard, the Expedited Rules provide the parties and the arbitral tribunal with several means to achieve these important goals.

Conduct of the parties and the arbitral tribunal: Article 3 of the Expedited Rules enables consultations and hearings to be held remotely and the subsequent articles greatly speed up the initiation phase of the arbitration, including Article 6 regarding designating authorities which will be explained below in detail. This approach is also aligned with the new developments in the arbitration community, which have occurred due to the impact of COVID-19.

Notice of arbitration and statement of claim: The submission exchange processes have also been stipulated in a way that will serve the purpose of the effective, faster and cost-efficient progress of the arbitration proceedings. Article 4 of the Expedited Rules stipulates that the notice of arbitration will include a proposal regarding the designation of an appointing authority, and a proposal for the appointment of an arbitrator. Additionally, the claimant will communicate the statement of claim simultaneously with the notice of arbitration to the respondent.

Response to the notice of arbitration and statement of defense: Pursuant to Article 5 of the Expedited Rules, the respondent will also communicate to the claimant its responses to the notice of arbitration and proposals of the claimant regarding the designation of appointing authority and appointment of arbitrator within 15 days of receipt of the notice of arbitration and the statement of defense within 15 days of the constitution of the arbitral tribunal.



Simultaneous submissions of notice of arbitration and statement of claim as well as the responses to them may not be deemed very cost-effective depending on the level of details used in simultaneous submissions, as there will be a need to work on the two different submissions at the same time, however, there are no reasons to suspect its time effectiveness. Still, this should be an issue that needs to be considered by the parties and counsels representing the parties in arbitration proceedings under the Expedited Rules.

Designating and appointing authorities: Another provision that ensures the time efficient conduct and integrity of proceedings is regarding the designation of the appointing authority. Article 6 of the Expedited Rules provides that if the parties cannot agree on the appointing authority within 15 days after the receipt of the proposal to designate an appointing authority by all parties, any party can request that the secretary-general of the Permanent Court of Arbitration either designates or serves as the appointing authority. Since there is no need to apply to the domestic court in favor of this provision, the parties can avoid procedural issues.

Number of arbitrators and appointment of a sole arbitrator: The number of arbitrators and the appointment of the arbitrator are also foreseen with the aim of ensuring a cost-effective and faster arbitration. In principle, unless the parties agree otherwise, there will be a sole arbitrator pursuant to Article 7 of the Expedited Rules. Pursuant to Article 8 of the Expedited Rules, the parties will, in principle, jointly appoint a sole arbitrator. However, if the parties fail to agree on the appointment of a sole arbitrator 15 days after a proposal of any party has been received, the appointing authority will appoint a sole arbitrator upon the request of a party.

3. Arbitral tribunal's discretion on hearings and evidence

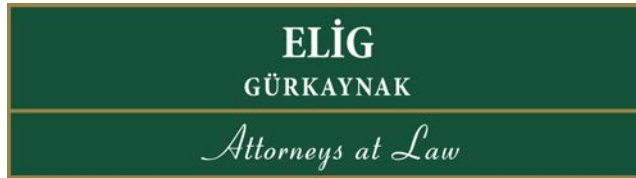
Pursuant to Article 11 of the Expedited Rules, the arbitral tribunal has the authority to decide not to hold hearings after the parties are invited to express their views and if no party requests hearing. In addition to this, Article 15 of the Expedited Rules states that the arbitral tribunal also has discretion on which evidence the parties should produce and may equally reject any request to establish a procedure whereby each party can request another party to produce documents unless such request is made by all parties. These provisions give broad discretion to the arbitral tribunal regarding the procedure of the arbitration proceedings and, therefore,

aim to ensure expeditiousness. However, this broad discretion may cause some enforceability issues depending upon the applicable law to the dispute and the country where the enforcement of the arbitral award is sought. In this respect, the arbitral tribunal may be hesitant to use such a broad discretion on evidence. It is understood from the Explanatory Notes that while the Expedited Rules were being negotiated in the Working Group II, they considered the risks of challenges at the enforcement and set-aside stages, however, there may still be enforcement and set-aside issues.

4. Provisions on time periods

The time determined by Article 16 of the Expedited Rules for rendering the arbitral award is six months from the constitution of the arbitral tribunal, unless the parties agree otherwise. Importantly, the arbitral tribunal, upon its discretionary power, may extend the time limit up to nine months in exceptional circumstances and after inviting the parties to express their views. Furthermore, if the arbitral tribunal concludes that an award may not be rendered within nine months, it will propose a final extended time limit that will only be adopted if all parties agree to it within the time limit set by the arbitral tribunal. If, however, no such agreement can be reached, any party may request that the Expedited Rules no longer apply. In such case, the arbitral tribunal will invite the parties to express their views and then may determine to continue in accordance with the Arbitration Rules.

Some procedural concerns are stated under Explanatory Notes regarding changing the arbitral proceedings from non-expedited to the expedited. First of these concerns is regarding appointment of the arbitral tribunal. Pursuant to the Explanatory Notes, changing the procedure does not mean that the arbitral tribunal, if already constituted, would have to be re-constituted in accordance with the Arbitration Rules. Instead, the arbitral tribunal shall remain in place, however, there may be instances where the parties agree to replace any arbitrator or reconstitute the arbitral tribunal and/or where the arbitrator resigns due to their schedule etc. In addition, Explanatory Notes explicitly state that *“unless the arbitral tribunal decides otherwise, the non-expedited proceeding should resume at the stage where the expedited proceeding was when the parties agreed to withdraw or the arbitral tribunal made the determination. Decisions made during the expedited proceeding should remain applicable to the non-expedited proceedings, unless the arbitral tribunal decides to depart from its earlier*



decisions or from a decision made by the previous tribunal.” Although evaluated in the Explanatory Notes, this may also give rise to certain discussions during the proceedings and thereafter in enforcement or set aside proceedings.

Additionally, except for the provisions stipulated under Article 16 of the Expedited Rules, the arbitral tribunal has wide discretion about the periods of time pursuant to Article 10, empowering them to alter any time limit set out under the Arbitration Rules or the Expedited Rules after inviting the parties to express their views.

Conclusion

The Expedited Rules aim to provide the parties with a simplified, cost-effective and time efficient procedure to resolve their disputes. There are some key provisions, such as Article 1 of the Expedited Rules, stipulating that the Expedited Rules will only apply upon the agreement of the parties as well as provisions enabling a much faster initiation of arbitral proceedings and constitution of the arbitral tribunal.

Another significant aspect of the Expedited Rules is that they grant broad discretion to the arbitral tribunal on hearings and evidence as well as time periods for procedural matters. However, the default time limit prescribed under Article 16 is only six months and the arbitral tribunal may extend that up to nine months in exceptional circumstances.

Finally, the Expedited Rules also enable the arbitral tribunal to set out a final extended time limit if all parties agree to it in due time, which again points to two important and repeated ideas in the Expedited Rules: the agreement of the parties and the broad discretion of the arbitral tribunal. Although there seems to be some controversial aspects in terms of cost-efficiency and evidence submission, these can be dealt if diligently considered by the counsels and arbitrators leading the expedited arbitration proceedings.

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(First published by Mondaq on October 25, 2021)