

Expedited Arbitration - ICSID Convention Arbitration (2022 Rules)

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Overview

Parties to an ICSID Convention arbitration proceeding may agree to expedite the arbitration under Chapter XII of the ICSID Arbitration Rules.

To do so, they must expressly consent to apply Chapter XII (Arbitration Rule 75(1)), in addition to their consent to ICSID Convention arbitration.

Consent to expedited arbitration may be given before the dispute arises in the relevant instrument of consent, or anytime thereafter on an *ad hoc* basis (see ICSID's basic model consent clauses). Parties may agree to use expedited arbitration even after the registration of the request for arbitration or constitution of the Tribunal. Similarly, if the parties have consented to expedited arbitration, they may agree to opt out of it at any time (Arbitration Rule 86).

Expedited arbitration aims to expedite the overall proceeding by reducing the time taken for the main steps in the process:

- selection and appointment of Tribunal members
- the first session
- the procedural schedule
- the Tribunal's Award.

If followed fully, expedited arbitration would conclude within 470-530 days after the date of registration in a single proceeding without bifurcation.

Expedited arbitration is also available for post-Award remedy proceedings.

Consenting to and Opting Out of Expedited Arbitration

If the parties consent to expedited arbitration in their arbitration agreement, the agreement will be notified to ICSID with the filing of the Request for arbitration, and expedited arbitration will apply immediately from the date of registration of the Request.

If the parties consent to expedited arbitration after the dispute has arisen, they must notify the Secretary-General of their agreement, and Chapter XII will apply from the date of such notice (Arbitration Rule 75(1)). It is recommended that the Request for arbitration contain any proposal with regard to the use of expedited arbitration (Institution Rule 3(a)(iii)).

If the parties consent to expedited arbitration after the constitution of the Tribunal, the provisions in Chapter XII on selection and appointment of Tribunal Members do not apply. However, the Tribunal members must confirm their availability to participate in the expedited procedure, and if any member cannot do so, he or she should inform the parties and offer to resign (Arbitration Rule 75(3)).

The parties may jointly request to opt out of expedited arbitration at any time after they have consented to it (Arbitration Rule 86(1)) by notifying the Tribunal and the Secretary-General in writing of their agreement to opt out. If only one party requests that the arbitration no longer be expedited, the Tribunal will decide, taking into account the complexity of the issues, the stage of the proceeding and all other circumstances.

If the Tribunal (or Secretary-General if there is no Tribunal) decides not to continue expediting the arbitration, it determines the further procedure.

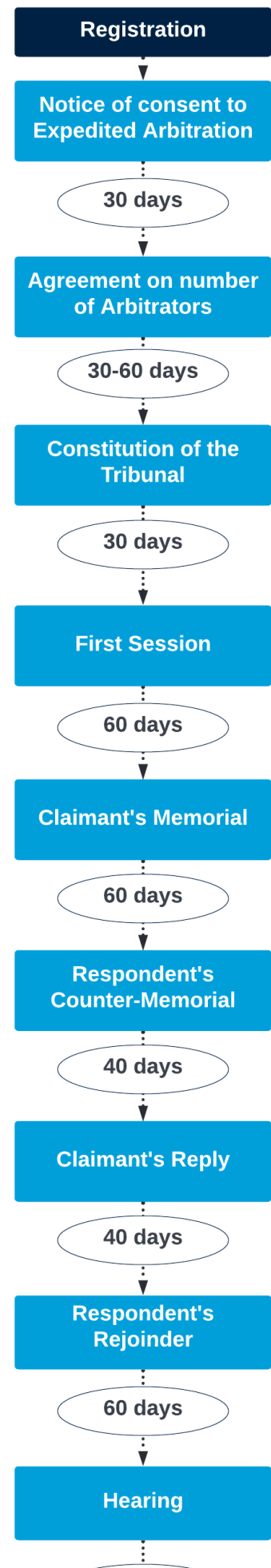
Excluded and Modified Provisions in the Arbitration Rules

Since expedited arbitration remains an arbitration under the ICSID Convention, the framework established by the Convention and its mandatory provisions continue to apply. However, some of the provisions in Chapters I-XI of the Arbitration Rules do not apply and some are modified (Arbitration Rule 75(2)).

The provisions excluded during expedited arbitration are Arbitration Rules:

- 15 (Method of Constituting the Tribunal)
- 16 (Appointment pursuant to Art. 37(2)(b))
- 18 (Appointment of Arbitrators by the Chair)
- 39 (Tribunal-Appointed Experts)
- 40 (Visits and Inquiries)
- 41 (Manifest Lack of Legal Merit)
- 42 (Bifurcation)
- 44 (Preliminary Objections with a Request for Bifurcation)
- 46 (Consolidation or Coordination of Arbitrations)

The provisions modified during expedited arbitration are Arbitration Rules:



- 19 (Acceptance of Appointment)
- 29 (First Session)
- 37 (Disputes arising from Requests for Production of Documents)
- 43 (Preliminary Objections)
- 49 (Default)
- AR 58 (Timing of the Award)
- AR 61 (Supplementary Decision and Rectification)
- AR 72 (Procedure Applicable to Interpretation, Revision and Annulment)

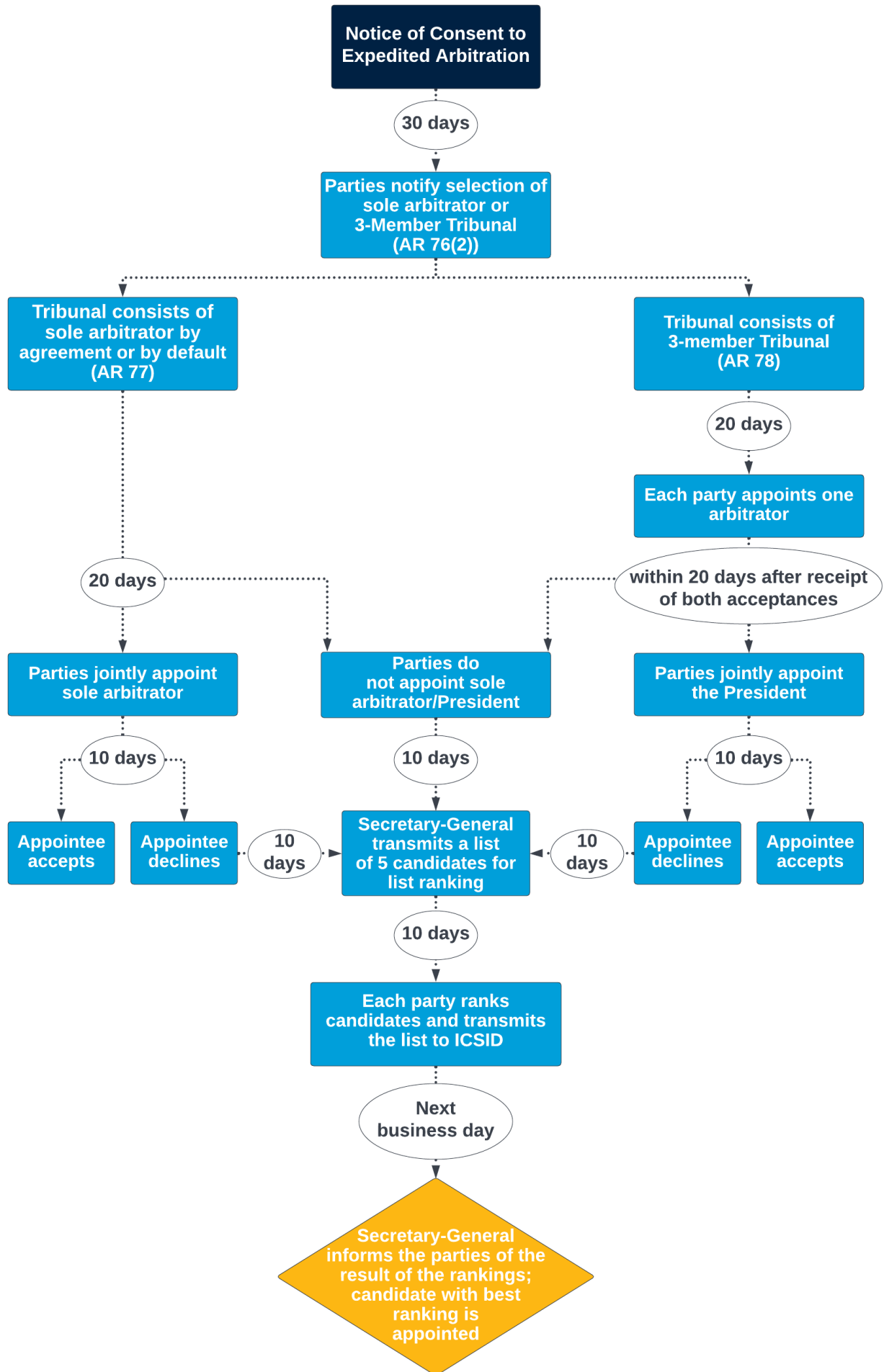


The parties may modify the expedited arbitration by agreement, as long as their agreement does not conflict with the Convention and the ICSID Administrative and Financial Regulations (Arbitration Rule 1(2)). For example, the parties may modify the time limits for written submissions and the hearing.

Selection and Appointment of Tribunal Members

The parties should agree on a Sole Arbitrator or a three-member Tribunal (Arbitration Rule 76(1)), in the arbitration agreement or within 30 days after the notice of consent to expedited arbitration. If the parties do not agree within 30 days after the notice, the Tribunal will consist of a Sole Arbitrator.

The parties do not need to agree on the method of appointing the Sole Arbitrator or three-member Tribunal, as the method is prescribed by Chapter XII (Arbitration Rules 77 and 78). However, they can modify that method.



Appointment of Sole Arbitrator

If the Tribunal is to consist of a Sole Arbitrator, the parties should jointly appoint the Sole Arbitrator within 20 days after the date when they agreed to a Sole Arbitrator, or within 20 days after the date when the 30-day period to select the number of arbitrators expired (if the parties did not notify their election of a Sole Arbitrator or a three-member Tribunal).

If the parties do not make the appointment within the 20 days; or notify ICSID that they were not able to agree; or the appointee declines the appointment or does not accept in time, the Secretary-General will make the appointment using a list-ranking procedure:

1. The parties will receive a list of 5 candidates within 10 days after the expiry of the 20 days for appointment
2. The parties rank the candidates in the order of preference (1-5, giving the highest number to the most preferred candidate) and return the list to the Secretary-General within 10 days of its receipt
3. The Secretary-General notifies the parties of the results of the list-ranking procedure on the next business day after receiving both parties' lists. The highest ranked candidate is appointed, or, if there is a tie, the Secretary-General selects one of the tied candidates
4. As soon as the appointee is selected, the Secretary-General seeks his or her acceptance (Arbitration Rule 77(3)).

Appointment of Three-Member Tribunal

If the Tribunal is to consist of three members, each party should appoint an arbitrator within 20 days after the date on which they agreed to a three-member Tribunal. The parties notify the Secretary-General of their appointments, and the Secretary-General seeks the appointees' acceptance.

After both co-arbitrators have accepted their appointments, the parties are invited to agree on the President of the Tribunal within 20 days (Arbitration Rule 78(1)).

If an arbitrator or the President of the Tribunal is not appointed within the relevant time limit, or the appointee does not accept or declines the appointment, the Secretary-General will appoint the missing arbitrator(s) (Arbitration Rule 78(3)).

With regard to a missing co-arbitrator, the Secretary-General consults with the parties and uses best efforts to make the appointment within 15 days after the event triggering the default appointment.

With regard to the President of the Tribunal, the Secretary-General follows the same list-ranking procedure as for the appointment of a Sole Arbitrator (see above).

Acceptance of Appointment

In order to expedite constitution of the Tribunal, the time limit for an appointee to accept the appointment and provide a signed declaration is 10 days in expedited arbitration (Arbitration Rule 79(1)).

First session

The first session in an expedited arbitration must be held within 30 days after the constitution of the Tribunal and is held remotely, unless both parties and the Tribunal agree otherwise (Arbitration Rule 80).

All other aspects of a first session are governed by Arbitration Rule 29.

Procedural Schedule

Expedited arbitration contains a fixed procedural schedule (Arbitration Rule 81(1)). The schedule anticipates two rounds of written submissions with page limits, a hearing, and an Award within 120 days after the hearing.

Expedited arbitration joins all matters before the Tribunal in one proceeding. A party may raise preliminary objections but cannot request bifurcation of the objections. The Tribunal deals with all questions in its Award.

The parties may request production of documents and make other procedural applications. These applications run in parallel with the main schedule, except when the proceeding is suspended (e.g., because of a proposal to disqualify an arbitrator). The Tribunal may also extend the time limits for the main submissions by up to 30 days to decide a dispute arising from requests to produce documents (Arbitration Rule 81(3) and (4)).

Post-Award Remedy Proceedings

Expedited arbitration can also be used for post-Award remedy proceedings (Arbitration Rules 83 and 84).

A fixed procedural schedule for interpretation, revision or annulment proceedings anticipates two expedited rounds of written submissions with page limits, a hearing, and a decision within 60 days after the hearing (Arbitration Rule 84(1)).