



INTERNATIONAL INSTITUTE FOR CONFLICT PREVENTION AND RESOLUTION (CPR)

Fast Track Rules For Administered Arbitration

(Effective July 1, 2020)

CPR FAST TRACK RULES FOR ADMINISTERED ARBITRATION

The International Institute for Conflict Prevention and Resolution (CPR) Fast Track Rules for Administered Arbitration are intended for parties that desire an accelerated, streamlined arbitral process designed to result in the delivery of an award within a shortened, specified period. These Rules were developed with the goal in mind of facilitating the delivery of an award in a period of between 90 and 180 days after the constitution of the Arbitral Tribunal, but the parties are free to agree on and specify their own time period. If the parties have not agreed on a time period, the default period of 90 days will apply.

These Fast Track Rules are intended to be used in conjunction with the CPR Rules for Administered Arbitration and shall supplement and, where inconsistent with, modify and supersede those Administered Rules.

The Rules were designed to be suitable for disputes regardless of their complexity or the amount in dispute.

Commentary

CPR has prepared a Commentary for CPR's Fast Track Rules for Administered Arbitration that should be consulted when applying these Rules. The Commentary can be found on CPR's website at www.cpadr.org following the text of the Rules.

Model Clauses for CPR Fast Track Rules for Administered Arbitration

CPR's Fast Track Rules for Administered Arbitration may be adopted by parties by using one of the following standard provisions:

A: Pre-Dispute Clause for Fast-Track Administered Arbitration

“Any dispute arising out of or relating to this contract, including the breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution (“CPR”) Rules for Administered Arbitration, as supplemented and modified by the CPR Fast Track Rules for Administered Arbitration (the “Rules”), by [a sole arbitrator] [three arbitrators]. The arbitral tribunal, and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitral tribunal. Subject to any extension granted under Rule 4.5 of the Rules, the arbitration shall be conducted in accordance with a procedural timetable providing for the delivery of an award [within __ days after the constitution of the Tribunal][as provided in the Rules]. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of the arbitration shall be (city, state).”

B: Existing Dispute Submission Agreement for Fast-Track Administered Arbitration

“We, the undersigned parties, hereby agree to submit to arbitration in accordance with the International Institute for Conflict Prevention and Resolution (“CPR”) Rules for Administered Arbitration (the “Administered Rules”), as supplemented and modified by the CPR Fast Track

Rules for Administered Arbitration (the “Rules”), the following dispute:

[Describe briefly]

We further agree that the above dispute shall be submitted to a [sole arbitrator] [three arbitrators]. The arbitral tribunal, and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitral tribunal. Subject to any extension granted under Rule 4.5 of the Rules, the arbitration shall be conducted in accordance with a procedural timetable providing for the delivery of an award [within __ days after the constitution of the Tribunal][as provided in the Rules]. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of the arbitration shall be (city, state).”

C. Optional Clause Limiting Application of Fast Track Arbitration Rules To Claims Below a Financial Threshold

[To be used with CPR Clauses A (Pre-Dispute Clause) or B (Existing Dispute Submission Agreement) of the CPR Rules for Administered Arbitration]

“Provided, however, that where the stated amount of the claim or counterclaim does not exceed [specify amount] exclusive of interest or costs under Rule 19 of the Administered Rules, the CPR Fast Track Rules for Administered Arbitration (the “Fast Track Rules”) shall apply to supplement and modify the CPR Rules for Administered Arbitration (the “Administered Rules”). Furthermore, subject to any extension granted under Rule 4.5 of the Fast Track Rules, the arbitration shall be conducted in accordance with a procedural timetable providing for the delivery of an award [within __ days after the constitution of the Tribunal] [as provided in the Fast Track Rules].”

CPR Fast Track Rules for Administered Arbitration (2020)

Rule 1: Scope of Application

- 1.1 Where the parties to a contract have provided for arbitration under the International Institute for Conflict Prevention and Resolution (CPR) Rules for Administered Arbitration (the “Administered Rules”), as supplemented and modified by the CPR Fast Track Rules for Administered Arbitration (the ”Rules”), they shall be deemed to have made these Rules a part of their arbitration agreement, except to the extent they have agreed before or at any time during the course of the arbitration proceedings to modify these Rules.
- 1.2 These Rules supplement and, to the extent they are inconsistent with, modify and supersede the Administered Rules.
- 1.3 The parties shall be presumed to have agreed to the version of these Rules in effect at the time of the commencement of the arbitration.
- 1.4 The arbitration shall be conducted in accordance with a procedural timetable providing for the Tribunal’s delivery of an award to CPR, as provided in Administered Rule 15.5, within the period agreed on by the parties. If the parties have not agreed on such a period, the arbitration shall be conducted in accordance with a procedural timetable providing for the Tribunal’s delivery of an award to CPR within 90 days following the constitution of the Tribunal. The foregoing period for delivery of an award may be extended as provided in Rule 4.5.
- 1.5 By agreeing to these Rules, a party commits to cooperate with the Tribunal and the other party to conduct the arbitration in an efficient manner and facilitate the Tribunal’s timely delivery of an award to CPR in accordance with Rule 4.4. The parties agree that the Tribunal shall take the parties’ compliance with this obligation into account when apportioning costs under Rule 8 of these Rules and Administered Rule 19.2.
- 1.6 At any time during the proceedings, the parties may mutually agree that these Rules do not apply to the arbitration and that they will proceed solely under the Administered Rules. Prior to the constitution of the Tribunal, CPR and, after its constitution, the Tribunal, may, in exceptional circumstances and at the request of a party, determine that these Rules shall not apply to the arbitration and that the parties will proceed solely under the Administered Rules. In making that determination, CPR or the Tribunal, as appropriate, may consider any relevant factors, including (i) the factual and legal complexity of the dispute; (ii) the stage of the proceedings when the request was made; (iii) whether the circumstances relied on to support the request were foreseeable when the parties agreed to adopt the Rules; (iv) the urgency of the need to resolve the dispute; (v) the need for efficiency and expedition; and (vi) the need to ensure due process and procedural fairness. Any agreement by the parties or a determination by the Tribunal or CPR that these Rules shall not apply to the arbitration shall not affect (1) the constitution or jurisdiction of the Tribunal, which shall continue to conduct the arbitration under the Administered Rules; or (2) the validity of any award.

Rule 2: Notice of Arbitration, Notice of Defense, Counterclaims and New Claims

- 2.1 The party commencing the arbitration (the “Claimant”) shall simultaneously deliver a notice of arbitration to the other party (the “Respondent”) and an electronic copy to CPR in accordance with Administered Rule 3. The notice of arbitration shall include the information specified in Administered Rule 3.2 and the additional information specified in Rule 2.3.
- 2.2 The Respondent shall simultaneously deliver a notice of defense to the Claimant and an electronic copy to CPR in accordance with Administered Rule 3. The notice of defense shall include the information specified in Administered Rule 3.7 and the additional information specified in Rule 2.3. Such notice shall be delivered by the date notified by CPR, which shall be ten days after the Commencement Date as determined by CPR under Administered Rule 3.4. In exceptional circumstances, the Respondent may request that CPR grant a seven-day extension of the date for delivering a notice of defense. Such extension shall not extend the period(s) for selection of an arbitrator(s) pursuant to Rule 3. Failure to deliver a notice of defense shall not delay the arbitration.
- 2.3 Any notice of arbitration or defense, in addition to the information specified in Administered Rule 3, shall include, to the extent reasonably known at the time:
 - a. a description of each of its claims or defenses and a summary of the facts to be proven in support;
 - b. a description of the relief sought by the party, the reason it is being sought, and the amount and computation of each category of any damages;
 - c. the legal grounds or arguments supporting its claims or defenses;
 - d. the names and addresses of persons whom the party may call as fact witnesses to support its claims or defenses and the issues as to which those witnesses will testify;
 - e. whether the party may call expert witnesses to support its claims or defenses and the issues as to which those witnesses will testify;
 - f. a copy of all documents the party may rely on to support its claims or defenses, including the computation of any damages, or alternatively, to the extent it is not practicable to provide a copy, a reference to and description of such documents; and
 - g. any proposal the party desires to make to permit the arbitration to be conducted in a fair and efficient manner and for an award to be delivered within the period agreed on by the parties or otherwise provided in these Rules.
- 2.4 Any counterclaim shall be asserted with the notice of defense. If a counterclaim is asserted, Claimant shall simultaneously deliver a notice of defense to the counterclaim to the

Respondent and an electronic copy to CPR. Such notice shall be delivered by the date notified by CPR, which shall be ten days after CPR's receipt of the notice of defense and counterclaim unless CPR, in its discretion, extends the date. Failure to deliver a response to the counterclaim shall not delay the arbitration. The counterclaim and notice of defense to the counterclaim shall have the same elements as provided in Rule 2.3.

- 2.5 After the initial pre-hearing conference as provided in Rule 4, no new claims or counterclaims may be asserted without the consent of the Tribunal, which should be given only in exceptional circumstances.

Rule 3: Number and Selection of Arbitrator(s)

- 3.1 As soon as practicable after the Commencement Date, CPR shall jointly convene the parties by video conference, telephone or other means of communication for an Administrative Conference to discuss the selection of the arbitrator(s) and other administrative matters.
- 3.2 The number of arbitrators shall be in accordance with the agreement of the parties. Absent the parties' agreement on the number of arbitrators, a Tribunal shall consist of a sole arbitrator; provided that, at the request of a party, CPR may determine that three arbitrators shall be appointed. The factors that may be taken into consideration by CPR include (i) the legal or factual complexity of the dispute; and (ii) the total amount in dispute (the sum of both claims and counterclaims).
- 3.3 *Procedures for Selection of Sole Arbitrator.* Where the Tribunal is to consist of a sole arbitrator, the parties shall attempt jointly to agree on and designate a sole arbitrator within 15 days of the Commencement Date.
- 3.4 If the parties have not jointly designated an arbitrator within 15 days of the Commencement Date, CPR shall appoint an arbitrator in accordance with the procedure provided in Administered Rule 6.2 (Selection Through CPR List Procedure).
- 3.5 *Procedures for Selection of Three-Person Tribunal.* Where a Tribunal is to consist of three arbitrators, CPR shall appoint the arbitrators in accordance with the procedure provided in Administered Rule 5.4 (Screened Selection By the Parties).
- 3.6 *Availability.* The arbitrator(s) designated by the parties or appointed by CPR shall affirm in writing their availability, taking into account that the parties have agreed to an expedited arbitration to be conducted in accordance with a procedural timetable providing for the Tribunal's delivery of an arbitral award within a specified time period, and their willingness and ability to manage the proceedings efficiently in order to meet that objective.
- 3.7 Unless the parties agree otherwise, the provisions of Rule 3 shall apply to the number and selection of arbitrators regardless of whether CPR or the Tribunal decides that the arbitration will proceed solely under the Administered Rules pursuant to Rule 1.6.

Rule 4: Pre-hearing Conference

- 4.1 Within five days of its constitution or as soon thereafter as practicable, the Tribunal shall hold an initial pre-hearing conference as provided in Administered Rule 9.
- 4.2 During the conference, the Tribunal shall discuss with the parties the matters set forth in Administered Rule 9.3.a-h and, in addition, the adoption of procedures to accelerate and streamline the arbitral process with the objective of facilitating the Tribunal's timely delivery of an award. Such procedures include the possibility of:
 - a. determining issues solely on the basis of documents and written submissions;
 - b. identifying and narrowing the issues that are relevant and material to the determination of the dispute and so limiting the issues that would be addressed at any hearing;
 - c. limiting the number, length and scope of any pre-hearing memoranda;
 - d. providing that the direct testimony of fact witnesses and expert witnesses shall be in written form;
 - e. limiting the number of fact witnesses;
 - f. limiting the number of expert witnesses; and
 - g. conducting any hearing by video conference.
- 4.3 The Tribunal shall discuss with the parties the production of documents and other information, including:
 - a. the information required to be provided under Rules 2.3.a, b, c, d, e and f;
 - b. to the extent such documents were not provided in the notice of arbitration, defense or counterclaim under Rule 2.3.f, the documents that a party may rely on to support its claims or defenses; and
 - c. the possibility of limiting the number and scope of any document requests as provided in Rules 5.1 and 5.2.
- 4.4 As soon as practicable following the pre-hearing conference, the Tribunal shall issue a procedural order and timetable governing the arbitration. As appropriate, the procedural timetable shall set dates for:
 - a. the exchange of any document discovery requests, to the extent authorized by the Tribunal;
 - b. the completion of the production of documents and other information required by Rule 2.3;

- c. the submission of any pre-hearing memoranda;
 - d. the submission of any fact witness statements;
 - e. the submission of any expert reports;
 - f. the holding of any hearing for the presentation of evidence or oral argument; and
 - g. the delivery of the award by the Tribunal to CPR in accordance with Rule 15.5 of the Administered Rules and within the time period agreed on by the parties or otherwise provided in Rules 1.3 and 4.5.
- 4.5 Following the issuance of the procedural order and timetable under Rule 4.4, the date for the Tribunal's delivery of the award to CPR may be extended only (i) by agreement of the parties; (ii) by CPR upon a reasoned request by the Tribunal after obtaining views of the parties; or (iii) by CPR on its own initiative. In determining whether to grant a request by the Tribunal for an extension, CPR may convene the Tribunal and the parties by telephone to discuss factors relevant to such request. If it grants the extension, CPR shall state the reasons, and the extended period shall be no longer than 90 days. In no event shall the Tribunal's failure to deliver an award to CPR within the period agreed on by the parties or otherwise provided in these Rules affect the constitution or jurisdiction of the Tribunal or the validity of any award.
- 4.6 Following the issuance of the procedural timetable in accordance with Rule 4.4, the Tribunal shall monitor the pre-hearing process and shall convene the parties by video conference, telephone or other means of communication as necessary to discuss disputes regarding document discovery and other matters as they arise and assist the parties in complying with its procedural order(s) and timetable.

Rule 5: Document Exchange and Discovery

- 5.1 The scope of any document discovery authorized by the Tribunal should generally be narrower than what might otherwise be appropriate under the Administered Rules. Rules 5.2, 5.3, 5.4 and 5.5 are meant to be illustrative, and not limitative, of the Tribunal's authority to manage document discovery.
- 5.2 The Tribunal may require that any discovery requests for documents contain:
- a. a description of each requested document or category of documents, or an identification of search terms sufficient to identify the requested documents;
 - b. a statement explaining how the requested documents are relevant and material to the outcome of the dispute; and
 - c. a statement that the requested documents are not in the possession, custody, or control of the requesting party and are reasonably believed to be in the possession, custody, or control of another party.

- 5.3 The Tribunal may require that any document discovery requests (a) be proportional to the amount in controversy, the complexity of the issues, and the importance of the matter to the parties' relationship; and (b) seek only documents that are relevant and material to the outcome of the dispute and for which the requesting party can demonstrate a substantial need.

Rule 6: Evidence and Hearings

- 6.1 The Tribunal may adopt any of the procedures described in Rule 4.2 as it may determine 6.is appropriate to achieve an expeditious, cost-effective proceeding.
- 6.2 Following consultation with the parties, the Tribunal may determine issues solely on the basis of documents and written submissions and without a hearing for the examination of witnesses or oral argument.
- 6.3 Any hearing may be held in person or by video conference, telephone or similar means of communication, as the Tribunal may determine is appropriate.

Rule 7: The Award

- 7.1 All awards shall be succinct and shall ordinarily be shorter in length than in a non-expedited proceeding.

Rule 8: Fixing and Apportionment of Costs

- 8.1 In apportioning costs pursuant to Rule 19.2 of the Administered Rules, the Tribunal shall take into account the extent to which each party conducted the arbitration in an efficient manner and in accordance with its obligations under Rule 1.5, including whether a party asserted any claims or defenses that were frivolous or manifestly without legal merit.

Commentary for CPR FastTrack Rules for Administered Arbitration

A. Objective of Rules

CPR's Fast Track Rules for Administered Arbitration (the "Rules" or "Fast-Track Rules") are designed for parties that want an accelerated, streamlined arbitral process with the objective of having the Tribunal deliver an award within a shortened, specified time frame. The Rules were developed with the goal in mind of facilitating the delivery of an award within a period of between 90 to 180 days after the constitution of the Tribunal, but the parties are free to agree on and specify their own time period. If the parties have not agreed on a time period, a default period of 90 days will apply. The Rules are intended to reduce the time and cost of the proceedings while observing the requirements of due process and procedural fairness.

The Rules are to be used in the context of administered arbitration, and more specifically, in conjunction with the CPR Rules for Administered Arbitration (the "Administered Rules").

B. Form of the Rules

These are a special set of rules that supplements the standard Administered Rules and, where inconsistent with the Administered Rules, modifies and supersedes them. *See* Rule 1.3.

This approach avoids the need to repeat the provisions that apply to both the standard Administered Rules and the Fast-Track Rules. And it allows parties to use the same standard rules for both regular and fast-track proceedings depending on the circumstances, and makes clear the linkage between the two. It also allows parties easily to identify the rules specific to fast-track proceedings that supersede the standard rules.

The Rules may be adopted using either of the Model Clauses included in the Rules (one for pre-dispute agreement and the other for existing dispute submission).

Scope of Application

The Rules are applicable only where the parties have expressly agreed to them and not by default. This approach ensures that the parties will not have inadvertently opted for fast-track arbitration. Thus, their applicability does not depend on whether the amount in dispute falls below a financial threshold. Nor does the arbitral institution (CPR) or the Tribunal have discretion to trigger the application of the rules based on their assessment of the circumstances of the dispute.

There are two Model Clauses. Model Clause (A) allows parties to agree in advance to resolve their disputes through fast-track arbitration by incorporating the Fast Track Rules into their arbitration clause. Model Clause (B) offers, as an alternative, a provision by which the parties may agree to fast-track arbitration after the dispute has

arisen.

The Rules are suitable for claims of any size or complexity and not just smaller or simpler claims. Of course, nothing prevents the parties from making the rules applicable only in the event the amount of the claim is below a financial threshold or only when other criteria are met. To facilitate such a preference, the Rules offer an optional Model Clause (C) providing that they apply will only when the case involves claims below a financial threshold specified by the parties.

Modification and Opt Out. The Rules contain provisions expressly recognizing that at any time during the proceedings the parties may mutually agree to modify the Rules (Rule 1.1) or opt out of them entirely and proceed solely under the Administered Rules (Rule 1.6). In addition, prior to the constitution of the Tribunal, CPR, in exceptional circumstances and at the request of a party, may determine that the Rules should not apply. After it has been constituted, the Tribunal may also make that deamination. In doing so, CPR or the Tribunal, as applicable, may consider any relevant factors, including (i) the factual and legal complexity of the dispute; (ii) the stage of the proceedings when the request was made; (iii) whether the circumstances relied on to support the request were foreseeable when the parties agreed to adopt the Rules; (iv) the urgency of the need to resolve the dispute; (v) the need for efficiency and expedition; and (vi) the need to ensure due process and procedural fairness. Under Rule 1.6, any agreement by the parties or determination by the Tribunal or CPR that the Rules will not affect the constitution or jurisdiction of the Tribunal, which will continue to resolve the dispute pursuant to the standard Administered Rules. Nor will it affect the validity of any award.

Modification of Time Period for Delivery of the Award. The Rules also give flexibility for extending the specified period for the Tribunal's delivery of the award, which can be done by agreement of the parties, by CPR upon a reasoned request by the Tribunal after consultation with the parties, or by CPR on its own initiative. *See* Rule 4.5. This provision should lessen the need for the parties to resort to the opt-out provision. CPR is required to state the reasons for granting the extension, and the extended period is limited to no longer than 90 days. The Rules make clear that the jurisdiction of the Tribunal or the validity of any award shall not be affected by any failure by the Tribunal to deliver the award within the time period agreed by the parties or otherwise provided for in the Rules.

C. Duration of Proceeding -- Specific Choice of the Parties or By Default under the Rules

The Model Clause allows the parties to specify in their arbitration agreement the period within which the Tribunal must deliver the arbitral award to CPR under Rule 15.5 of the Administered Rules. The Rules are designed to facilitate the delivery of the award within a period of between 90 and 180 days after the constitution of the Tribunal, but the parties are free to specify any time period the mutually choose. If the parties have not agreed on a specific period, the Rules provide for a default period of 90 days.

Thus, the parties can determine how expeditious a proceeding they desire and match the length of the proceeding to the types of disputes they anticipate may arise. This approach contrasts with that of some expedited rules that flatly prescribe, for example, either a 90 or 180 day deadline and do not allow the parties choose a different period.

D. Parties' Duty to Cooperate and Apportionment of Costs

Each party has a duty to cooperate with the Tribunal and the other party to conduct the arbitration in an efficient manner, comply with the timelines, and facilitate the Tribunal's timely submission of an award to CPR. *See* Rule 1.5.

In apportioning costs under Rule 8 and Administered Rule 19.2, the Tribunal is required ("*shall*") to take into account the extent to which each party conducted the arbitration in an efficient manner and in accordance with its obligations under the Rule 1.5. The Tribunal may also consider whether a party asserted claims or defenses that were frivolous or manifestly without legal merit.

E. Notice of Arbitration and Notice of Defense—Enhanced Disclosure at Inception

Rule 2.3 provides that the notice of arbitration and notice of defense should include more information than is required under the standard rules (Administered Rule 3, 7), including "to the extent reasonable known at the time":

- a description of its claims and defenses and a summary of the facts to be proven in support;
- a description of the relief sought by the party, the reasons it is being sought, and the amount and computation of each category of any damages;
- the legal grounds or arguments supporting its claims or defenses;
- the names and addresses of persons whom the party may call as fact witnesses and the issues as to which they will testify;
- whether the party will call expert witnesses and as to what issues;
- a copy of the documents a party may rely on to support its claims or defenses, including the computation of any damages, or alternatively, to the extent it is not practicable to provide a copy, a reference to and description of such documents;
- any suggestions a party desires to make to permit the arbitration to be conducted in an efficient and timely manner and for an award to be delivered within the time period agreed by the parties or otherwise

provided in the Rules.

The time for the Respondent to respond to the notice of arbitration is shortened to ten days from the usual 20 days. CPR has the discretion to extend that by an additional seven days, but any extension does not affect the timing of arbitrator selection or the initial pre-hearing conference. *See* Rule 2.2.

F. Number and Selection of Arbitrators

Number

As soon as practicable after the notice of arbitration, CPR will convene an Administrative Conference to discuss selection and appointment of the arbitrators *See* Rule 3.1.

Absent party agreement on the number of arbitrators, a sole arbitrator will be appointed unless CPR, in its discretion, decides that three arbitrators shall be appointed due to the factual and legal complexity of the case, the total amount in dispute, or other considerations. *See* Rule 3.2.

A sole arbitrator is usually preferable in expedited proceedings given that it takes longer to constitute a three-member tribunal, which may also find it more difficult to render awards within a shorten timeframe. Nonetheless, some parties favor collective decision-making and feel a higher level of security by not relying on a sole arbitrator. Also, in certain cases three-member tribunals have shown themselves to be capable of rendering awards on expedited schedules.

Sole Arbitrator

The parties have 15 days after the Commencement Date to agree on the sole arbitrator. *See* Rule 3.3.

If the parties do not jointly designate an arbitrator within that period, CPR will appoint the arbitrator pursuant to Administered Rule 6.2 (the list procedure). *See* Rule 3.4.

Three-Person Tribunal

Where a Tribunal is to consist of three arbitrators, Administered Rule 5.4 (Screened Selection by the Parties) shall apply to the selection of the arbitrators. *See* Rule 3.5.

Administered Rule 5.4.b specifies a 10-day period for the parties to designate arbitrators in order of preference after receipt of CPR's list. CPR has the discretion to shorten this period and will do so in fast-track cases.

Availability

The arbitrator(s) designated by the parties or appointed by CPR must affirm in writing their availability, taking into account that the parties have agreed to an expedited arbitration to be conducted under a timetable providing for the delivery of an award within a specified time period, and their willingness and ability to manage the proceedings efficiently to meet that objective. *See* Rule 3.6.

The Tribunal has a specific responsibility to monitor the pre-hearing process and convene the parties by video conference, telephone or other means of communication as necessary to discuss disputes regarding discovery and other-matters and assist the parties in complying with its procedural orders and timetable. *See* Rule 4.6.

G. Pre-Hearing Conference—Streamlining the Procedure

Specific provisions reinforce the Tribunal’s wide discretion in managing the arbitration and organizing the hearing with the goal of shortening the length of the proceeding and rendering a timely award.

Guidance is provided as to the matters to be raised by the Tribunal for discussion with the parties at the initial pre-hearing conference. *See* Rule 4.2. These include

- deciding issues solely on the basis of documents and written submissions;
- identifying and narrowing the issues that are relevant and material to the determination of the dispute and that would be addressed at any hearing;
- limiting the number, length and scope of any pre-hearing memoranda;
- requiring that direct testimony of fact witnesses and expert witnesses in written form;
- limiting the number of fact witnesses;
- limiting the number of expert witnesses;
- conducting any hearing by videoconference.

H. Pre-Hearing Conference—Procedural Timetable

The Tribunal is to issue a procedural order and timetable with the objective of the Tribunal delivering an award within the specific period agreed on by the parties. If the parties have not agreed on a specific period, the Rules provide for a default time period of 90 days.

1. The procedural order will also specify dates for interim steps, including
 - exchange of any document requests, to the extent authorized by the Tribunal
 - completion of document production
 - submission of any pre-hearing memoranda
 - submission of any fact witness statements
 - submission of any expert reports
 - beginning of the hearing
 - delivery of the award by the Tribunal to CPR

Following the issuance of the procedural order and timetable under Rule 4.5, the date for the Tribunal's delivery of the award to CPR may be extended only (i) by agreement of the parties; (ii) by CPR upon a reasoned request by the Tribunal after obtaining views of the parties; or (iii) by CPR on its own initiative. In determining whether to grant a request by the Tribunal for an extension, CPR may convene the Tribunal and the parties by telephone to discuss factors relevant to such request. If it grants the extension, CPR shall state the reasons, and the extended period shall be no longer than 90 days. In no event shall the Tribunal's failure to deliver an award to CPR within the period agreed on by the parties or otherwise provided in these Rules affect the constitution or jurisdiction of the Tribunal or the validity of any award.

Rule 4.6 provides for the Tribunal actively to monitor the pre-hearing process and to assist the parties in complying with the procedural timetable.

I. Managing and Limiting the Scope of Document Discovery

The Tribunal may limit discovery as it deems appropriate in the circumstances. Rule 5 contemplates that the scope of any discovery authorized by the Tribunal should generally be narrower than what might otherwise be permissible under the Administered Rules.

The Tribunal may require that any discovery requests for documents contain:

- a description of each requested document or category of documents, or an identification of search terms sufficient to identify the requested documents;

- a statement demonstrating how the requested documents are relevant and material to the outcome of the dispute; and
- a statement that the requested documents are not in the possession, custody, or control of the requesting party and are reasonably believed to be in the possession, custody, or control of another party.

The Tribunal may require that any document discovery requests (a) be proportional to the amount in controversy, the complexity of the issues, and the importance of the matter to the parties' relationship; and (b) seek only documents that are relevant and material to the outcome of the case and for which the requesting party can demonstrate a substantial need. *See* Rule 5.3.

J. Evidence and Hearings

The Rules empower the Tribunal to adopt any of the procedures described in Rule 4.2 to achieve an expeditious, cost-effective proceeding. *See* Rule 6.1.

Provided it consults with the parties beforehand, the Tribunal may proceed to determine issues solely on the basis of documents and written submissions. The Tribunal must, of course, observe the requirements of due process and fundamental fairness and have given the parties a reasonable opportunity to present their respective cases.

Any hearing may be held in person or by video conference, telephone or other means of communication. Thus, the Tribunal may conduct a virtual or remote hearing if it determines that is appropriate.

K. The Award

Any award shall be succinct. *See* Rule 7. It should ordinarily be shorter in length than in a non-expedited case.

L. Fixing and Apportionment of Costs

In apportioning costs under Rule 8 and Administered Rule 19.2, the Tribunal is required (“*shall*”) to take into account the extent to which each party conducted the arbitration in an efficient manner and in accordance with its obligations under the Rule 1.5. The Tribunal may also consider whether a party asserted claims or defenses that were frivolous or manifestly without legal merit.

For information on how to file a matter with CPR, see <https://www.cpradr.org/dispute-resolution-services/file-a-case>.