UNCITRAL
UNITED NATIONS
COMMISSION ON INTERNATIONAL TRADE LAW

Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules

(as revised in 2010)

UNITED NATIONS

Further information may be obtained from:
UNCITRAL secretariat, Vienna International Centre
P.O. Box 500, 1400 Vienna, Austria
Telephone: (+43-1) 26060-4060 Telefax: (+43-1) 26060-5813
Internet: www.uncitral.org E-mail: uncitral@uncitral.org

UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules

(as revised in 2010)

UNITED NATIONS
New York, 2013

This publication has not been formally edited.

Publishing production: English, Publishing and Library Section. United Nations Office at Vienna.

Contents

General Assembly resolution 67/90

Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as revised in 2010

Resolution adopted by the General Assembly

[on the report of the Sixth Committee (A/67/465)]

67/90. Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as revised in 2010

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with the purpose of furthering the progressive harmonization and unification of the law of international trade in the interests of all peoples, in particular those of developing countries,

Recalling also its resolutions 31/98 of 15 December 1976 and 65/22 of 6 December 2010, in which it recommended the use of the Arbitration Rules of the United Nations Commission on International Trade Law,[1]

Recognizing the value of arbitration as a method of settling disputes that may arise in the context of international commercial relations,

Noting that the Arbitration Rules are recognized as a very successful text and are used in a wide variety of circumstances covering a broad range of disputes, including disputes between private commercial parties, investor-State disputes, State-to-State disputes and commercial disputes administered by arbitral institutions, in all parts of the world,

Recognizing the value of the 1982 recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the Arbitration Rules as adopted in 1976,[2]

---

[1] Official Records of the *General Assembly, Thirty-first Session, Supplement No. 17 (A/31/17),* chap. V, sect. C; and ibid., *Sixty-fifth Session, Supplement No. 17* (A/65/17), annex I.

[2] Ibid., *Thirty-seventh Session, Supplement No. 17* (A/37/17), annex I.

Also recognizing the need for issuing updated recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the Arbitration Rules as revised in 2010,

Believing that updated recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the Arbitration Rules as revised in 2010 will significantly enhance the efficiency of arbitration under the Rules,

Noting that the preparation of the 2012 recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the Arbitration Rules as revised in 2010 was the subject of due deliberation and consultations with Governments, arbitral institutions and interested bodies,

Convinced that the recommendations as adopted by the Commission at its forty-fifth session[3] are acceptable to arbitral institutions and other interested bodies in countries with different legal, social and economic systems and can significantly contribute to the establishment of a harmonized legal framework for a fair and efficient settlement of international commercial disputes and to the development of harmonious international economic relations,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for having formulated and adopted the recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the Arbitration Rules as revised in 2010;[3]

2. *Recommends* the use of the recommendations in the settlement of disputes arising in the context of international commercial relations;

3. *Requests* the Secretary-General to transmit the recommendations broadly to Governments, with a call for the recommendations to be made available to arbitral institutions and other interested bodies, so that the recommendations become widely known and available;

4. *Also requests* the Secretary-General to publish the recommendations, including electronically, and to make all efforts to ensure that they become generally known and available.

56th plenary meeting
14 December 2012

---

[3] Ibid., *Sixty-seventh Session, Supplement No. 17* (A/67/17), annex I.

Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules (as revised in 2010)

A. Introduction

1. The UNCITRAL Arbitration Rules (as revised in 2010)

1. The UNCITRAL Arbitration Rules were originally adopted in 1976[4] and have been used for the settlement of a broad range of disputes, including disputes between private commercial parties where no arbitral institution is involved, commercial disputes administered by arbitral institutions, investor-State disputes and State-to-State disputes. The Rules are recognized as one of the most successful international instruments of a contractual nature in the field of arbitration. They have also strongly contributed to the development of the arbitration activities of many arbitral institutions in all parts of the world.

2. The 1976 UNCITRAL Arbitration Rules were revised in 2010[5] to better conform to current practices in international trade and to account for changes in arbitral practice over the past 30 years. The revision was aimed at enhancing the efficiency of arbitration under the 1976 UNCITRAL Arbitration Rules and did not alter the original structure of the text, its spirit or its drafting style. The UNCITRAL Arbitration Rules as revised in 2010 have been in effect since 15 August 2010.

2. General Assembly resolution 65/22

3. In 2010, the General Assembly, by its resolution 65/22, recommended the use of the UNCITRAL Arbitration Rules as revised in 2010 in the settlement of disputes arising in the context of international commercial relations. That recommendation was based on the conviction that "the revision of the Arbitration Rules in a manner that is acceptable to countries with different legal, social and economic systems can significantly contribute to the

---

[4] *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17* (A/31/17), para. 57.

[5] Ibid., *Sixty-fifth Session, Supplement No. 17 (A/65/17),* paras. 13-187 and annex I.

development of harmonious international economic relations and to the continuous strengthening of the rule of law".

4. In that resolution, the General Assembly noted that "the revised text can be expected to contribute significantly to the establishment of a harmonized legal framework for the fair and efficient settlement of international commercial disputes".

3. Purpose of the recommendations

5. The present recommendations are made with regard to the use of the UNCITRAL Arbitration Rules. (For recommendations on the use of the 1976 UNCITRAL Arbitration Rules, see the "Recommendations to assist arbitral institutions and other interested bodies with regard to arbitrations under the UNCITRAL Arbitration Rules",[6] adopted at the fifteenth session of UNCITRAL, in 1982.) Their purpose is to inform and assist arbitral institutions and other interested bodies that envisage using the UNCITRAL Arbitration Rules as described in paragraph 6 below.

4. Different usages by arbitral institutions and other interested bodies

6. The UNCITRAL Arbitration Rules have been used in the following different ways by arbitral institutions and other interested bodies, including chambers of commerce and trade associations:

(a) They have served as a model for institutions drafting their own arbitration rules. The degree to which the UNCITRAL Arbitration Rules have been used as a drafting model ranges from inspiration to full adoption of the Rules (see section B below);

(b) Institutions have offered to administer disputes under the UNCITRAL Arbitration Rules or to render administrative services in ad hoc arbitrations under the Rules (see section C below);

(c) An institution (or a person) may be requested to act as appointing authority, as provided for under the UNCITRAL Arbitration Rules (see section D below).

---

[6] Ibid., *Thirty-seventh Session, Supplement No. 17* and corrigenda (A/37/17 and Corr.1 and 2), annex I.

B. Adoption of the UNCITRAL Arbitration Rules as the institutional rules of arbitral institutions or other interested bodies

1. Appeal to leave the substance of the UNCITRAL Arbitration Rules unchanged

7. Institutions, when preparing or revising their institutional rules, may wish to consider adopting the UNCITRAL Arbitration Rules as a model.[7] An institution that intends to do so should take into account the expectations of the parties that the rules of the institution will then faithfully follow the text of the UNCITRAL Arbitration Rules.

8. This appeal to follow closely the substance of the UNCITRAL Arbitration Rules does not mean that the particular organizational structure and needs of a given institution should be neglected. Institutions adopting the UNCITRAL Arbitration Rules as their institutional rules will certainly need to add provisions, for instance on administrative services or fee schedules. In addition, formal modifications, affecting very few provisions of the UNCITRAL Arbitration Rules, as indicated below in paragraphs 9-17, should be taken into account.

2. Presentation of modifications

(a) A short explanation

9. If an institution uses the UNCITRAL Arbitration Rules as a model for drafting its own institutional rules, it may be useful for the institution to consider indicating where those rules diverge from the UNCITRAL Arbitration Rules. Such indication may be helpful to the readers and potential users who would otherwise have to embark on a comparative analysis to identify any disparity.

10. The institution may wish to include a text, for example a foreword, which refers to the specific modifications included in the institutional rules as compared with the UNCITRAL Arbitration Rules.[8] The indication of the modifications could also come at the

---

[7] See, for example, the Arbitration Rules of the Cairo Regional Centre for International Commercial Arbitration in force as from 1 March 2011 (available from www.crcica.org.eg) or the Arbitration Rules (as revised in 2010) of the Kuala Lumpur Regional Centre for Arbitration (available from www.klrca.org.my).

[8] For example, in the introduction to the Arbitration Rules of the Cairo Regional Centre for International Commercial Arbitration in force as from 1 March 2011, it is provided that those rules "are based upon the new UNCITRAL Arbitration Rules, as revised in 2010, with minor modifications emanating mainly from the Centre's role as an arbitral institution and an appointing authority". The Arbitration Rules (as revised in 2010) of the Kuala Lumpur Regional Centre of Arbitration provide that the rules for arbitration of the institution shall be the "UNCITRAL Arbitration Rules as modified in accordance with the rules set out below".

end of the text of the institutional rules.[9] Further, it might be advisable to accompany the institutional rules with a short explanation of the reasons for the modifications.[10]

(b) Effective date

11. Article 1, paragraph 2, of the UNCITRAL Arbitration Rules defines an effective date for those Rules. Obviously, the institutional rules based on the UNCITRAL Arbitration Rules will have their own specific date of application. In the interest of legal certainty, it is recommended to refer in the arbitration rules to the effective date of application of the rules so that the parties know which version is applicable.

(c) Communication channel

12. Usually, when an institution administers a case, communications between the parties before the constitution of the arbitral tribunal would be carried out through the institution. Therefore, it is recommended to adapt articles 3 and 4 of the UNCITRAL Arbitration Rules relating to communication before the constitution of the arbitral tribunal. For example, in relation to article 3, paragraph 1:

(a) If the communications take place through the institution, article 3, paragraph 1, could be amended as follows:

1. The party or parties initiating recourse to arbitration (hereinafter called the "claimant") shall communicate to [name of the institution] a notice of arbitration. [Name of the institution] shall communicate the notice of arbitration to the other party or parties (hereinafter called the "respondent") [without undue delay] [immediately].

---

[9] See, for example, the Permanent Court of Arbitration Optional Rules for Arbitration between International Organizations and Private Parties, effective 1 July 1996 (based on the 1976 version of the UNCITRAL Arbitration Rules); available from www.pca-cpa.org/showfile.asp?fil_id=201.

[10] For example, in the text of the Permanent Court of Arbitration Optional Rules for Arbitrating Disputes between Two Parties of Which Only One Is a State, effective 6 July 1993 (available from www.pca-cpa.org/showfile.asp?fil_id=194), the following note is inserted: "These Rules are based on the [1976] UNCITRAL Arbitration Rules, with the following modifications: … Modifications to indicate the functions of the Secretary-General and the International Bureau of the Permanent Court of Arbitration: Article 1, para. 4 (added) …".

Or as follows:

1. The party or parties initiating recourse to arbitration (hereinafter called the "claimant") shall file with [name of the institution] a notice of arbitration and [name of the institution] shall communicate it to the other party or parties (hereinafter called the "respondent").[11]

(b) If the institution receives copies of the communications, article 3, paragraph 1, would remain unchanged, and the following provision could be added:

All documents transmitted pursuant to articles 3 and 4 of the UNCITRAL Arbitration Rules shall be served on [name of the institution] at the time of such transmission to the other party or parties or immediately thereafter.[12]

13. To address the matter of communications after the constitution of the arbitral tribunal, the institution may either:

(a) Modify each article in the UNCITRAL Arbitration Rules referring to communications, namely: article 5; article 11; article 13, paragraph 2; article 17, paragraph 4; article 20, paragraph 1; article 21, paragraph 1; article 29, paragraphs 1, 3 and 4; article 34, paragraph 6; article 36, paragraph 3; article 37, paragraph 1; article 38, paragraphs 1 and 2; article 39, paragraph 1; article 41, paragraphs 3 and 4; or

(b) Include in article 17 of the UNCITRAL Arbitration Rules a provision along the lines of:

(i) If the institution decides to receive all communications for the purpose of notification:

"Except as otherwise permitted by the arbitral tribunal, all communications addressed to the arbitral tribunal by a party shall be filed with the [name of the institution] for notification to the arbitral tribunal and the other party or parties. All communications addressed from the arbitral tribunal to a party shall be filed with

[11] For example, this is the approach adopted in the Arbitration Rules of the Cairo Regional Centre for International Commercial Arbitration in force as from 1 March 2011.

[12] For example, a similar approach can be found in Rule 2, paragraph 1, of the Arbitration Rules (as revised in 2010) of the Kuala Lumpur Regional Centre for Arbitration.

the [name of the institution] for notification to the other party or parties.";[13] or

(ii) If the institution decides to receive copies of all communications for the purpose of information:

"Except as otherwise permitted by the arbitral tribunal, all communications between the arbitral tribunal and any party shall also be sent to [name of the institution]."

14. In the interest of procedural efficiency, it might be appropriate for an institution to consider whether to require receiving copies of communications only after the constitution of the arbitral tribunal. If such requirement is adopted by the institution, it would be advisable to refer to the receipt of the copies in a manner that is technology-neutral, in order not to exclude new and evolving technologies. To receive copies of communications through new technologies could also result in a desirable reduction of costs for the institution.

(d) Substitution of the reference to the "appointing authority" by the name of the institution

15. Where an institution uses the UNCITRAL Arbitration Rules as a model for its institutional rules, the institution typically carries out the functions attributed to the appointing authority under the Rules; it therefore should amend the corresponding provisions of the Rules as follows:

(a) Article 3, paragraph 4 *(a)*; article 4, paragraph 2 *(b)*; article 6, paragraphs 1-4; and the reference to the designating authority in article 6, paragraph 5, should be deleted;

(b) The term "appointing authority" could be replaced by the name of the institution in the following provisions: article 6, paragraphs 5-7; article 7, paragraph 2; article 8, paragraphs 1 and 2; article 9, paragraphs 2 and 3; article 10, paragraph 3; article 13, paragraph 4; article 14, paragraph 2; article 16; article 43, paragraph 3; and, if the arbitral institution adopts the review mechanism to the extent compatible with its own institutional rules, article 41, paragraphs 2-4. As an alternative, a rule clarifying that reference to the appointing authority

[13] For example, a similar provision is included in article 17, paragraph 5, of the Arbitration Rules of the Cairo Regional Centre for International Commercial Arbitration in force as from 1 March 2011.

shall be understood as a reference to the institution could be added, along the following lines: "The functions of the appointing authority under the UNCITRAL Arbitration Rules are fulfilled by [name of the institution]."

16. If the functions of an appointing authority are fulfilled by an organ of the institution, it is advisable to explain the composition of that organ and, if appropriate, the nomination process of its members, in an annex, for example. In the interest of certainty, it may be advisable for an institution to clarify whether the reference to the organ is meant to be to the function and not to the person as such (i.e. in case the person is not available, the function could be fulfilled by his or her deputy).

(e) Fees and schedule of fees

17. Where an institution adopts the UNCITRAL Arbitration Rules as its own institutional rules:

(a) The provisions of article 40, paragraph 2 *(f)*, would not apply;[14]

(b) The institution may include the fee review mechanism as set out in article 41 of the Rules (as adjusted to the needs of the institution).[15]

C. Arbitral institutions and other interested bodies administering arbitration under the UNCITRAL Arbitration Rules or providing some administrative services

18. One measure of the success of the UNCITRAL Arbitration Rules in achieving broad applicability and in demonstrating their ability to meet the needs of parties in a wide range of legal cultures and types of disputes has been the significant number of independent institutions that have declared themselves willing to administer (and that do administer) arbitrations under the

[14] An arbitral institution, may, however, retain article 40, paragraph 2 *(f)*, for cases in which the arbitral institution would not act as appointing authority. For example, the Qatar International Center for Conciliation and Arbitration states in article 43, paragraph 2 *(h)*, of its Rules of Arbitration 2012 (effective 1 May 2012), which are based on the UNCITRAL Arbitration Rules as revised in 2010: "Any fees and expenses of the appointing authority in case the Center is not designated as the appointing authority."

[15] Such an approach has been adopted by the Cyprus Arbitration and Mediation Centre, which based its Arbitration Rules on the UNCITRAL Arbitration Rules.

UNCITRAL Arbitration Rules, in addition to proceedings under their own rules. Some arbitral institutions have adopted procedural rules for offering to administer arbitrations under the UNCITRAL Arbitration Rules.[16] Further, parties have also turned to institutions in order to receive some administrative services, in contrast to having the arbitral proceedings fully administered by the arbitral institution.[17]

19. The following remarks and suggestions are intended to assist any interested institutions in taking the necessary organizational measures and in devising appropriate administrative procedures in conformity with the UNCITRAL Arbitration Rules when they either fully administer a case under the Rules or only provide certain administrative services in relation to arbitration under the Rules. It may be noted that institutions, while offering services under the UNCITRAL Arbitration Rules as revised in 2010, are continuing to also offer services under the 1976 UNCITRAL Arbitration Rules.[18]

---

[16] For example, the Permanent Court of Arbitration (PCA) indicates on its website (www.pca-cpa.org) that "in addition to the role of designating appointing authorities, the Secretary-General of the PCA will act as the appointing authority under the UNCITRAL Arbitration Rules when the parties so agree. The PCA also frequently provides full administrative support in arbitrations under the UNCITRAL Arbitration Rules." The London Court of International Arbitration (LCIA) indicates on its website (www.lcia.org) that "the LCIA regularly acts both as appointing authority and as administrator in arbitrations conducted pursuant to the UNCITRAL arbitration rules. Further information: Recommended clauses for adoption by the parties for these purposes; the range of administrative services offered; and details of the LCIA charges for these services are available on request from the Secretariat". See also the UNCITRAL Arbitration Rules Administered by the German Institution of Arbitration (available from www.dis-arb.de); the Administrative and Procedural Rules for Arbitration under the UNCITRAL Arbitration Rules as amended and effective on 1 July 2009 of the Japan Commercial Arbitration Association (JCAA) (available from www.jcaa.or.jp); and the Hong Kong International Arbitration Centre (HKIAC) Procedures for the Administration of International Arbitration, adopted to take effect from 31 May 2005 (available from www.hkiac.org). (The Administrative and Procedural Rules for Arbitration under the UNCITRAL Arbitration Rules of JCAA and the HKIAC Procedures for the Administration of International Arbitration are both, at the date of the present recommendations, based on the 1976 UNCITRAL Arbitration Rules.)

[17] For example, the HKIAC Procedures for the Administration of International Arbitration state in their introduction: "Nothing in these Procedures shall prevent parties to a dispute under the UNCITRAL Rules from naming the HKIAC as appointing authority, nor from requesting certain administrative services from the HKIAC without subjecting the arbitration to the provisions contained in the Procedures. Neither the designation of the HKIAC as appointing authority under the Rules nor a request by the parties or the tribunal for specific and discrete administrative assistance from the HKIAC shall be construed as a designation of the HKIAC as administrator of the arbitration as described in these Procedures. Conversely, unless otherwise stated, a request for administration by the HKIAC will be construed as a designation of the HKIAC as appointing authority and administrator pursuant to these Procedures."

[18] For an illustration, see the services offered under both versions of the UNCITRAL Arbitration Rules by the Arbitration Institute of the Stockholm Chamber of Commerce (www.sccinstitute.com).

1. Administrative procedures in conformity with the UNCITRAL Arbitration Rules

20. In devising administrative procedures or rules, the institutions should have due regard to the interests of the parties. Since the parties in these cases have agreed that the arbitration is to be conducted under the UNCITRAL Arbitration Rules, their expectations should not be frustrated by administrative rules that would conflict with the UNCITRAL Arbitration Rules. The modifications that the UNCITRAL Arbitration Rules would need to undergo to be administered by an institution are minimal and similar to those mentioned above in paragraphs 9-17. It is advisable that the institution clarify the administrative services it would render by either:

(a) Listing them; or

(b) Proposing to the parties a text of the UNCITRAL Arbitration Rules highlighting the modifications made to the Rules for the sole purpose of the administration of the arbitral proceedings; in the latter case, it is recommended to indicate that the UNCITRAL Arbitration Rules are "as administered by [name of the institution]" so that the user is notified that there is a difference from the original UNCITRAL Arbitration Rules.[19]

21. It is further recommended that:

(a) The administrative procedures of the institution distinguish clearly between the functions of an appointing authority as envisaged under the UNCITRAL Arbitration Rules (see section D below) and other full or partial administrative assistance, and the institution should declare whether it is offering both or only one of these types of services;

(b) An institution which is prepared either to fully administer a case under the UNCITRAL Arbitration Rules or to provide certain administrative services of a technical and secretarial nature describe in its administrative procedures the services offered; such services may be rendered upon request of the parties or the arbitral tribunal.

---

[19] See, as an illustration of such an approach, the UNCITRAL Arbitration Rules Administered by the German Institution of Arbitration.

22. In describing the administrative services, it is recommended that the institution indicate:

(a) Which services would be covered by its general administrative fee and which would not (i.e. which would be billed separately);[20]

(b) The services provided within its own facilities and those arranged to be rendered by others;

(c) That parties could also choose to have only a particular service (or services) rendered by the institution without having the arbitral proceedings fully administered by the institution (see para. 18 above and paras. 23-25 below).

2. Offer of administrative services

23. The following list of possible administrative services, which is not intended to be exhaustive, may assist institutions in considering and publicizing the services they may offer:

(a) Maintenance of a file of written communications;[21]

(b) Facilitating communication;[22]

(c) Providing necessary practical arrangements for meetings and hearings, including:

(i) Assisting the arbitral tribunal in establishing the date, time and place of hearings;

(ii) Meeting rooms for hearings or deliberations of the arbitral tribunal;

(iii) Telephone conference and videoconference facilities;

(iv) Stenographic transcripts of hearings;

(v) Live streaming of hearings;

(vi) Secretarial or clerical assistance;

---

[20] For example, in the Bahrain Chamber for Dispute Resolution (BCDR) Arbitration Rules, it is stated: "The fees described above do not cover the cost of hearing rooms, which are available on a rental basis. Check with the BCDR for availability and rates." The BCDR Arbitration Rules are from 2009 and based on the 1976 UNCITRAL Arbitration Rules.

[21] The maintenance of a file of written communications could include a full file of written correspondence and submissions to facilitate any inquiry that arises and to prepare such copies as the parties or the tribunal may require at any time during the arbitral proceedings. In addition, the maintenance of such a file could include, automatically or only upon request by the parties, the forwarding of the written communications of a party or the arbitrators.

[22] Facilitating communication could include ensuring that communications among parties, attorneys and the tribunal are kept open and up to date, and may also consist in merely forwarding written communications.

(vii) Making available or arranging for interpretation services;

(viii) Facilitating entry visas for the purposes of hearings when required;

(ix) Arranging accommodation for parties and arbitrators;

(d) Providing fund-holding services;[23]

(e) Ensuring that procedurally important dates are followed and advising the arbitral tribunal and the parties when not adhered to;

(f) Providing procedural directions on behalf of the tribunal, if and when required;[24]

(g) Providing secretarial or clerical assistance in other respects;[25]

(h) Providing assistance for obtaining certified copies of any award, including notarized copies, where required;

(i) Providing assistance for the translation of arbitral awards;

(j) Providing services with respect to the storage of arbitral awards and files relating to the arbitral proceedings.[26]

3. Administrative fee schedule

24. The institution, when indicating the fee it charges for its services, may reproduce its administrative fee schedule or, in the absence thereof, indicate the basis for calculating it.[27]

---

[23] Fund-holding services usually consist of the receipt and the disbursement of funds received from the parties. They include the setting up of a dedicated bank account, into which sums are paid by the parties, as directed by the tribunal. The institution typically disburses funds from that account to cover costs, accounting periodically to the parties and to the tribunal for funds lodged and disbursed. The institution usually credits the interests on the funds to the party that has lodged the funds at the prevailing rate of the bank where the account is kept. Fund-holding services could also include more broadly the calculation and collection of a deposit as security for the estimated costs of arbitration. If the institution is fully administering the arbitral proceedings, then the fund-holding services may extend to more closely monitoring the costs of the arbitration, in particular ensuring that fees-and-costs notes are regularly submitted and the level of further advances calculated, in consultation with the tribunal, and by reference to the established procedural timetable.

[24] Providing procedural directions on behalf of the tribunal, if and when required, relates most typically to directions for advances on costs.

[25] The provision of secretarial or clerical assistance could include proofreading draft awards to correct typographical and clerical errors.

[26] Storage of documents relating to the arbitral proceedings might be an obligation under the applicable law.

[27] See, for example, article 42, paragraph 4, on definition of costs, of the Arbitration Rules of the Cairo Regional Centre for International Commercial Arbitration, which entered into force on 1 March 2011, according to which the provisions of its section on the costs of arbitration shall apply by default in case the parties to ad hoc arbitrations agree that the Centre will provide its administrative services to such arbitrations.

25. In view of the possible categories of services an institution may offer, such as functioning as an appointing authority and/or providing administrative services (see para. 21 above), it is recommended that the fee for each category be stated separately (see para. 22 above). Thus, an institution may indicate its fees for:

(a) Acting as an appointing authority only;

(b) Providing administrative services without acting as an appointing authority;

(c) Acting as an appointing authority and providing administrative services.

4. Draft model clauses

26. In the interest of procedural efficiency, institutions may wish to set forth in their administrative procedures model arbitration clauses covering the above services. It is recommended that:

(a) Where the institution fully administers arbitration under the UNCITRAL Arbitration Rules, the model clause should read as follows:

"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 Arbitration Rules administered by [name of the institution]. [Name of the institution] shall act as appointing authority."

(b) Where the institution provides certain services only, the agreement as to the services that are requested should be indicated:

"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 Arbitration Rules. [Name of the institution] shall act as appointing authority and provide administrative services in accordance with its administrative procedures for cases under the UNCITRAL Arbitration Rules."

(c) In both cases, as suggested in the model arbitration clause in the annex to the UNCITRAL Arbitration Rules, parties should consider adding the following note:

"*(a)* The number of arbitrators shall be [one or three];

"*(b)* The place of arbitration shall be [city and country];

"*(c)* The language to be used in the arbitral proceedings shall be [language]".

D. Arbitral institution acting as appointing authority

27. An institution (or a person) may act as appointing authority under the UNCITRAL Arbitration Rules. It is noteworthy that article 6 of the Rules highlights the importance of the role of the appointing authority. Parties are invited to agree on an appointing authority at the time that they conclude the arbitration agreement, if possible. Alternatively, the appointing authority could be appointed by the parties at any time during the arbitration proceedings.

28. Arbitral institutions are usually experienced with fulfilling functions similar to those required from an appointing authority under the Rules. For an individual who takes on that responsibility for the first time, it is important to note that, once designated as appointed authority, he or she must be and must remain independent and be prepared to act promptly for all purposes under the Rules.

29. An institution that is willing to act as appointing authority under the UNCITRAL Arbitration Rules may indicate in its administrative procedures the various functions of an appointing authority envisaged by the Rules. It may also describe the manner in which it intends to perform these functions.

30. The UNCITRAL Arbitration Rules foresee six main functions for the appointing authority: *(a)* appointment of arbitrators; *(b)* decisions on the challenge of arbitrators; *(c)* replacement of arbitrators; *(d)* assistance in fixing the fees of arbitrators; *(e)* participation in the review mechanism on the costs and fees; and *(f)* advisory comments regarding deposits. The paragraphs that follow are intended to provide some guidance on the role of the appointing authority under the UNCITRAL Arbitration Rules based on the *travaux préparatoires*.

1. Designating and appointing authorities (article 6)

31. Article 6 was included as a new provision in the UNCITRAL Arbitration Rules as revised in 2010 to clarify for the users of the Rules the importance of the role of the appointing authority, particularly in the context of non-administered arbitration.[28]

(a) Procedure for choosing or designating an appointing authority (article 6, paragraphs 1-3)

32. Article 6, paragraphs 1-3, determines the procedure to be followed by the parties in order to choose an appointing authority,

[28] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 42, and A/CN.9/619, para. 69.

or to have one designated in case of disagreement. Paragraph 1 expresses the principle that the appointing authority can be appointed by the parties at any time during the arbitration proceedings, not only in some limited circumstances.[29]

(b) Failure to act: substitute appointing authority (article 6, paragraph 4)

33. Article 6, paragraph 4, addresses the situation where an appointing authority refuses or fails to act within a time period provided by the Rules or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party's request to do so. Then, any party may request the Secretary-General of the Permanent Court of Arbitration to designate a substitute appointing authority. The failure to act of the appointing authority in the context of the fee review mechanism under article 41, paragraph 4, of the Rules, does not fall under article 6, paragraph 4 ("except as referred to in article 41, paragraph 4") but is dealt with directly in article 41, paragraph 4 (see para. 58 below).[30]

(c) Discretion in the exercise of its functions (article 6, paragraph 5)

34. Article 6, paragraph 5, provides that, in exercising its functions under the Rules, the appointing authority may require from any party and the arbitrators the information it deems necessary. That provision was included in the UNCITRAL Arbitration Rules to explicitly provide the appointing authority with the power to require information not only from the parties, but also from the arbitrators. The arbitrators are explicitly mentioned in the provision, as there are instances, such as a challenge procedure, in which the appointing authority, in exercising its functions, may require information from the arbitrators.[31]

35. In addition, article 6, paragraph 5, provides that the appointing authority shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner the appointing authority considers appropriate. During the deliberations on the revisions to the Rules, it was agreed that the general principle should be included that the parties should be

---

[29] A/CN.9/619, para. 69.

[30] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 49.

[31] A/CN.9/WG.II/WP.157, para. 22.

given an opportunity to be heard by the appointing authority.[32] That opportunity should be given "in any manner" the appointing authority "considers appropriate", in order to better reflect the discretion of the appointing authority in obtaining views from the parties.[33]

36. Article 6, paragraph 5, determines that all such communications to and from the appointing authority shall be provided by the sender to all other parties. That provision is consistent with article 17, paragraph 4, of the Rules.

(d) General provision on appointment of arbitrators (article 6, paragraphs 6 and 7)

37. Article 6, paragraph 6, provides that, when the appointing authority is requested to appoint an arbitrator pursuant to articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.

38. Article 6, paragraph 7, provides that the appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator. To that end, paragraph 7 states that the appointing authority shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties (see also para. 44 below).

2. Appointment of arbitrators

(a) Appointment of a sole arbitrator (article 7, paragraph 2, and article 8)

39. The UNCITRAL Arbitration Rules envisage various possibilities concerning the appointment of an arbitrator by an appointing authority. Under article 8, paragraph 1, the appointing authority may be requested to appoint a sole arbitrator, in accordance with the procedures and criteria set forth in article 8, paragraph 2. The appointing authority shall appoint the sole arbitrator as promptly as possible and shall intervene only at the request of a party. The appointing authority may use the list-procedure as defined in article 8, paragraph 2. It should be noted that the

[32] A/CN.9/619, para. 76.

[33] A/CN.9/665, para. 54.

appointing authority has discretion pursuant to article 8, paragraph 2, to determine that the use of the list-procedure is not appropriate for the case.

40. Article 7, dealing with the number of arbitrators, provides as a default rule that, in case parties do not agree on the number of arbitrators, three arbitrators should be appointed. However, article 7, paragraph 2, includes a corrective mechanism so that, if no other parties have responded to a party's proposal to appoint a sole arbitrator and the party (or parties) concerned have failed to appoint a second arbitrator, the appointing authority may, at the request of a party, appoint a sole arbitrator if it determines that, in view of the circumstances of the case, this is more appropriate. That provision has been included in the Rules to avoid situations where, despite the claimant's proposal in its notice of arbitration to appoint a sole arbitrator, a three-member arbitral tribunal has to be constituted owing to the respondent's failure to react to that proposal. It provides a useful corrective mechanism in case the respondent does not participate in the process and the arbitration case does not warrant the appointment of a three-member arbitral tribunal. That mechanism is not supposed to create delays, as the appointing authority will in any event have to intervene in the appointment process. The appointing authority should have all relevant information or require information under article 6, paragraph 5, to make its decision on the number of arbitrators.[34] Such information would include, in accordance with article 6, paragraph 6, copies of the notice of arbitration and any response thereto.

41. When an appointing authority is requested under article 7, paragraph 2, to determine whether a sole arbitrator is more appropriate for the case, circumstances to be taken into consideration include the amount in dispute and the complexity of the case (including the number of parties involved),[35] as well as the nature of the transaction and of the dispute.

42. In some cases, the respondent might not take part in the constitution of the arbitral tribunal, so that the appointing authority has before it the information received from the claimant only. Then, the appointing authority can make its assessment only on the basis of that information, being aware that it might not reflect all aspects of the proceedings to come.

---

[34] Ibid., paras. 62-63.

[35] For example, if one party is a State, whether there are (or will potentially be) counterclaims or set-off claims.

(b) Appointment of a three-member arbitral tribunal (article 9)

43. The appointing authority may be requested by a party, under article 9, paragraph 2, to appoint the second of three arbitrators in case a three-arbitrator panel is to be appointed. If the two arbitrators cannot agree on the choice of the third (presiding) arbitrator, the appointing authority can be called upon to appoint the third arbitrator under article 9, paragraph 3. That appointment would take place in the same manner that a sole arbitrator would be appointed under article 8. In accordance with article 8, paragraph 1, the appointing authority should act only at the request of a party.[36]

44. When an appointing authority is asked to appoint the presiding arbitrator pursuant to article 9, paragraph 3, factors that might be taken into consideration include the experience of the arbitrator and the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties (see para. 38 above, on article 6, paragraph 7).

(c) Multiple claimants or respondents (article 10)

45. Article 10, paragraph 1, provides that, in case of multiple claimants or respondents and unless otherwise agreed, the multiple claimants, jointly, and the multiple respondents, jointly, shall appoint an arbitrator. In the absence of such a joint nomination and if all parties are unable to otherwise agree on a method for the constitution of the arbitral tribunal, the appointing authority shall, upon the request of any party pursuant to article 10, paragraph 3, constitute the arbitral tribunal and designate one of the arbitrators to act as the presiding arbitrator.[37] An illustration of a case in which parties on either side could be unable to make such an appointment is if the number of either claimants or respondents is very large or if they not form a single group with common rights and obligations (for instance, cases involving a large number of shareholders).[38]

46. The power of the appointing authority to constitute the arbitral tribunal is broadly formulated in article 10, paragraph 3, in order to cover all possible failures to constitute the arbitral tribunal under the Rules and is not limited to multiparty cases. Also, it is noteworthy that the appointing authority has the discretion to

---

[36] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 59.

[37] A/CN.9/614, paras. 62-63, and A/CN.9/619, para. 86.

[38] A/CN.9/614, para. 63.

revoke any appointment already made and to appoint or reappoint each of the arbitrators.[39] The principle in paragraph 3 that the appointing authority shall appoint the entire arbitral tribunal when parties on the same side in a multiparty arbitration are unable to jointly agree on an arbitrator was included in the Rules as an important principle, in particular in situations like the one that gave rise to the case *BKMI and Siemens v. Dutco*.[40] The decision in the *Dutco* case was based on the requirement that parties receive equal treatment, which paragraph 3 addresses by shifting the appointment power to the appointing authority.[41] The *travaux préparatoires* of the UNCITRAL Arbitration Rules show that emphasis was given to maintaining a flexible approach, granting discretionary powers to the appointing authority, in article 10, paragraph 3, in order to accommodate the wide variety of situations arising in practice.[42]

(d) Successful challenge and other reasons for replacement of an arbitrator (articles 12 and 13)

47. The appointing authority may be called upon to appoint a substitute arbitrator under article 12, paragraph 3, or article 13 or 14 of the UNCITRAL Arbitration Rules (failure or impossibility to act, successful challenge and other reasons for replacement; see paras. 49-54 below).

(e) Note for institutions acting as an appointing authority

48. For each of these instances where an institution may be called upon under the UNCITRAL Arbitration Rules to appoint an arbitrator, the institution may provide details as to how it would select the arbitrator. In particular, it may state whether it maintains a list of arbitrators, from which it would select appropriate candidates, and may provide information on the composition of any such list. It may also indicate which person or organ within the institution would make the appointment (for example, the president, a board of directors, the secretary-general or a committee) and, in the case of a board or committee, how that organ is composed and/or its members would be elected.

---

[39] A/CN.9/619, paras. 88 and 90.

[40] *BKMI and Siemens v. Dutco*, French Court of Cassation, 7 January 1992 (see *Revue de l'Arbitrage*, No. 3 (1992), pp. 470-472).

[41] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 60.

[42] A/CN.9/619, para. 90.

3. Decision on challenge of arbitrator

(a) Articles 12 and 13

49. Under article 12 of the UNCITRAL Arbitration Rules, an arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence. When such a challenge is contested (i.e. if the other party does not agree to the challenge or the challenged arbitrator does not withdraw within 15 days of the notice of the challenge), the party making the challenge may seek a decision on the challenge by the appointing authority pursuant to article 13, paragraph 4. If the appointing authority sustains the challenge, it may also be called upon to appoint the substitute arbitrator.

(b) Note for institution acting as an appointing authority

50. The institution may indicate details as to how it would make the decision on such a challenge in accordance with the UNCITRAL Arbitration Rules. In that regard, the institution may wish to identify any code of ethics of its institution or other written principles which it would apply in ascertaining the independence and impartiality of arbitrators.

4. Replacement of an arbitrator (article 14)

51. Under article 14, paragraph 1, of the UNCITRAL Arbitration Rules, in the event that an arbitrator has to be replaced in the course of the arbitral proceedings, a substitute arbitrator shall normally be appointed or chosen pursuant to the procedure provided for in articles 8-11 of the Rules that was applicable to the appointment or choice of the arbitrator being replaced. That procedure shall apply even if, during the process of appointing the arbitrator to be replaced, a party failed to exercise its right to appoint or to participate in the appointment.

52. This procedure is subject to an exception pursuant to article 14, paragraph 2, of the Rules, which provides the appointing authority with the power to determine, at the request of a party, whether it would be justified for a party to be deprived of its right to appoint a substitute arbitrator. If the appointing authority makes such a determination, it may, after giving an opportunity to the parties and the remaining arbitrators to express their views: *(a)* appoint the substitute arbitrator; or *(b)* after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

53. It is noteworthy that the appointing authority should deprive a party of its right to appoint a substitute arbitrator only in exceptional circumstances. To that end, the wording "the exceptional circumstances of the case" in article 14, paragraph 2, was chosen to allow the appointing authority to take account of all circumstances or incidents that might have occurred during the proceedings. The *travaux préparatoires* of the UNCITRAL Arbitration Rules show that depriving a party of its right to appoint an arbitrator is a serious decision, one which should be taken based on the faulty behaviour of a party to the arbitration and on the basis of a fact-specific inquiry and which should not be subject to defined criteria. Rather, the appointing authority should determine, in its discretion, whether the party has the right to appoint another arbitrator.[43]

54. In determining whether to permit a truncated tribunal to proceed with the arbitration under article 14, paragraph 2 *(b)*, the appointing authority must take into consideration the stage of the proceedings. Bearing in mind that the hearings are already closed, it might be more appropriate, for the sake of efficiency, to allow a truncated tribunal to make any decision or final award than to proceed with the appointment of a substitute arbitrator. Other factors that might be taken into consideration, to the extent feasible, in deciding whether to allow a truncated tribunal to proceed include the relevant laws (i.e. whether the laws would permit or restrict such a procedure) and relevant case law on truncated tribunals.

5. Assistance in fixing fees of arbitrators

(a) Articles 40 and 41

55. Pursuant to article 40, paragraphs 1 and 2, of the UNCITRAL Arbitration Rules, the arbitral tribunal fixes the costs of arbitration. Pursuant to article 41, paragraph 1, the fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case. In this task, the arbitral tribunal may be assisted by an appointing authority: if the appointing authority applies or has stated that it will apply a schedule or particular method for determining the fees of arbitrators in international cases, the arbitral tribunal, in fixing its fees, shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case (article 41, paragraph 2).

[43] A/CN.9/688, para. 78, and A/CN.9/614, para. 71.

(b) Note for institutions acting as an appointing authority

56. An institution willing to act as appointing authority may indicate, in its administrative procedures, any relevant details in respect of assistance in fixing the fees. In particular, it may state whether it has issued a schedule or defined a particular method for determining the fees for arbitrators in international cases as envisaged in article 41, paragraph 2 (see para. 17 above).

6. Review mechanism (article 41)

57. Article 41 of the UNCITRAL Arbitration Rules addresses the fees and expenses of arbitrators and foresees a review mechanism for such fees that involves a neutral body, the appointing authority. Notwithstanding that an institution may have its own rules on fees, it is recommended that the institution acting as appointing authority should follow the rules set out in article 41.

58. The review mechanism consists of two stages. At the first stage, article 41, paragraph 3, requires the arbitral tribunal to inform the parties promptly after its constitution of how it proposes to determine its fees and expenses. Any party then has 15 days to request the appointing authority to review that proposal. If the appointing authority considers the proposal of the arbitral tribunal to be inconsistent with the requirement of reasonableness in article 41, paragraph 1, it shall within 45 days make any necessary adjustments, which are binding upon the arbitral tribunal. At the second stage, article 41, paragraph 4, provides that, after being informed of the determination of the arbitrators' fees and expenses, any party has the right to request the appointing authority to review that determination. If no appointing authority has been agreed upon or designated, or if the appointing authority fails to act within the time specified in the Rules, the review shall be made by the Secretary-General of the Permanent Court of Arbitration. Within 45 days of the receipt of such referral, the reviewing authority shall make any adjustments to the arbitral tribunal's determination that are necessary to meet the criteria in article 41, paragraph 1, if the tribunal's determination is inconsistent with its proposal (and any adjustment thereto) under paragraph 3 of that article or is otherwise manifestly excessive.

59. The *travaux préparatoires* of the UNCITRAL Arbitration Rules show that the process for establishing the arbitrators' fees was regarded as crucial for the legitimacy and integrity of the arbitral process itself.[44]

[44] A/CN.9/646, para. 20.

60. The criteria and mechanism set out in article 41, paragraphs 1-4, was chosen to provide sufficient guidance to an appointing authority and to avoid time-consuming scrutiny of fee determinations.[45] Article 41, paragraph 4 *(c)*, by cross-referring to paragraph 1 of that article, refers to the notion of reasonableness of the amount of arbitrators' fees, an element to be taken into account by the appointing authority if the adjustment of fees and expenses is necessary. In order to clarify that the review process should not be too intrusive, the words "manifestly excessive" were included in article 41, paragraph 4 *(c)*.[46]

7. Advisory comments regarding deposits

61. Under article 43, paragraph 3, of the UNCITRAL Arbitration Rules, the arbitral tribunal shall fix the amounts of any initial or supplementary deposits only after consultation with the appointing authority, which may make any comments to the arbitral tribunal it deems appropriate concerning the amount of such deposits and supplementary deposits, if a party so requests and the appointing authority consents to perform this function. The institution may wish to indicate in its administrative procedures its willingness to do so. Supplementary deposits may be required if, in the course of proceedings, it appears that the costs will be higher than anticipated, for instance if the arbitral tribunal decides pursuant to the Rules to appoint an expert. Although not explicitly mentioned in the Rules, appointing authorities have in practice also commented and advised on interim payments.

62. It should be noted that, under the Rules, this kind of advice is the only task relating to deposits that an appointing authority may be requested to fulfill. Thus, if an institution offers to perform any other functions (such as holding deposits or rendering an accounting thereof), it should be pointed out that this would constitute additional administrative services not included in the functions of an appointing authority (see para. 30 above).

[45] A/CN.9/688, para. 23.

[46] *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17* (A/65/17), para. 172.

Note: In addition to the information and suggestions set forth herein, assistance may be obtained from the secretariat of UNCITRAL:

International Trade Law Division
Office of Legal Affairs
United Nations
Vienna International Centre
P.O. Box 500
1400 Vienna
Austria
E-mail: uncitral@uncitral.org.

The secretariat could, for example, if so requested, assist in the drafting of institutional rules or administrative provisions, or it could make suggestions in this regard.

Printed in Austria

V.13-80327—March 2013—750