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Draft UNCITRAL Expedited Arbitration Rules

Note by the Secretariat

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I. Introduction

1. The Commission, at its fifty-first session in 2018, agreed that Working Group II should be mandated to take up issues relating to expedited arbitration.¹ Accordingly, the Working Group commenced its consideration of issues relating to expedited arbitration at its sixty-ninth session (New York, 4–8 February 2019). From its seventieth (Vienna, 23–27 September 2019) to seventy-third session (New York, Online, 22–26 March 2021), the Working Group continued its deliberations on draft provisions on expedited arbitration.

2. The work aimed at improving the efficiency of the arbitral proceedings and expedited arbitration was described as a streamlined and simplified procedure with a shortened time frame, which made it possible to reach a final resolution of the dispute in a cost- and time-effective manner. The work also aimed to balance on the one hand, the efficiency of the arbitral proceedings and on the other, the rights of the parties to due process and to fair treatment. The draft provisions were eventually approved by the Working Group at its seventy-third session (A/CN.9/1049, paras. 14–66)

3. At the close of that session, the Secretariat was requested to prepare a revised version of the expedited arbitration provisions as well as the model clause and to present them to the Commission (A/CN.9/1049, para. 65). Accordingly, this note presents a draft of the UNCITRAL Expedited Arbitration Rules (the “Expedited Rules”) that would appear as an appendix to the UNCITRAL Arbitration Rules. It also presents a new paragraph to be inserted in article 1 of the UNCITRAL Arbitration Rules as well as annexes to the Expedited Rules (a model arbitration clause for contracts and a model statement).²

4. With regard to the explanatory note to the Expedited Rules, the Secretariat was requested to prepare a revised version based on the comments received and present it to the Commission. Accordingly, the addenda to this note (A/CN.9/1082/Add.1) presents a draft of the explanatory note to accompany the Expedited Rules for consideration by the Commission. The Working Group recommended that it be mandated to finalize the explanatory note at its session in the second half of 2021, should the Commission not be in a position to finalize and adopt the explanatory note (A/CN.9/1049, para. 66).

II. Draft UNCITRAL Expedited Arbitration Rules

A. Text of the additional paragraph in article 1 of the UNCITRAL Arbitration Rules

“5. The Expedited Arbitration Rules in the appendix shall apply to the arbitration where the parties so agree.”

B. Text of the UNCITRAL Expedited Arbitration Rules

Appendix to the UNCITRAL Arbitration Rules

Scope of application

Article 1

Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the

¹ *Official Records of the General Assembly, Seventy-third Session, Supplement No. 17 (A/73/17)*, para. 252.

² At present, the “annex” to the UNCITRAL Arbitration Rules includes: (i) a model arbitration clause for contracts; (ii) a possible waiver statement; and (iii) a model statement of independence pursuant to article 11 of the UNCITRAL Arbitration Rules.

UNCITRAL Expedited Arbitration Rules (“Expedited Rules”), then such disputes shall be settled in accordance with the UNCITRAL Arbitration Rules as modified by these Expedited Rules and subject to such modification as the parties may agree.*

Article 2

1. At any time during the proceedings, the parties may agree that the Expedited Rules shall no longer apply to the arbitration.
2. At the request of a party, the arbitral tribunal may, in exceptional circumstances and after inviting the parties to express their views, determine that the Expedited Rules shall no longer apply to the arbitration. The arbitral tribunal shall state the reasons upon which that determination is based.
3. When the Expedited Rules no longer apply to the arbitration pursuant to paragraph 1 or 2, the arbitral tribunal shall remain in place and conduct the arbitration in accordance with the UNCITRAL Arbitration Rules.

Conduct of the parties and the arbitral tribunal

Article 3

1. The parties shall act expeditiously throughout the proceedings.
2. The arbitral tribunal shall conduct the proceedings expeditiously taking into account the fact that the parties agreed to refer their dispute to expedited arbitration and the time frames in the Expedited Rules.
3. The arbitral tribunal may, after inviting the parties to express their views and taking into account the circumstances of the case, utilize any technological means as it considers appropriate to conduct the proceedings, including to communicate with the parties and to hold consultations and hearings remotely.

Notice of arbitration and statement of claim

Article 4

1. A notice of arbitration shall also include:
 - (a) A proposal for the designation of an appointing authority, unless the parties have previously agreed thereon; and
 - (b) A proposal for the appointment of an arbitrator.
2. When communicating its notice of arbitration to the respondent, the claimant shall also communicate its statement of claim.
3. The claimant shall communicate the notice of arbitration and the statement of claim to the arbitral tribunal as soon as it is constituted.

Response to the notice of arbitration and statement of defence

Article 5

1. Within 15 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall also include responses to the information set forth in the notice of arbitration pursuant to article 4(1)(a) and (b) of the Expedited Rules.
2. The respondent shall communicate its statement of defence to the claimant and the arbitral tribunal within 15 days of the constitution of the arbitral tribunal.

* Unless otherwise agreed by the parties, the following articles in the UNCITRAL Arbitration Rules do not apply to expedited arbitration: Article 3(4)(a) and (b); Article 6(2); Article 7; Article 8(1); first sentence of Article 20(1); first sentence of Article 21(1); Article 21(3); Article 22; and second sentence of Article 27(2).

Designating and appointing authorities

Article 6

1. If all parties have not agreed on the choice of an appointing authority 15 days after a proposal for the designation of an appointing authority has been received by all other parties, any party may request the Secretary-General of the Permanent Court of Arbitration (hereinafter called the “PCA”) to designate the appointing authority or to serve as appointing authority.
2. When making the request under article 6(4) of the UNCITRAL Arbitration Rules, a party may request the Secretary-General of the PCA to serve as appointing authority.
3. If requested to serve as appointing authority in accordance with paragraph 1 or 2, the Secretary-General of the PCA will serve as appointing authority unless it determines that in view of the circumstances of the case, it is more appropriate to designate an appointing authority.

Number of arbitrators

Article 7

Unless otherwise agreed by the parties, there shall be one arbitrator.

Appointment of a sole arbitrator

Article 8

1. A sole arbitrator shall be appointed jointly by the parties.
2. If the parties have not reached agreement on the appointment of a sole arbitrator 15 days after a proposal has been received by all other parties, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority in accordance with article 8(2) of the UNCITRAL Arbitration Rules.

Consultation with the parties

Article 9

Promptly after and within 15 days of its constitution, the arbitral tribunal shall consult the parties, through a case management conference or otherwise, on the manner in which it will conduct the arbitration.

Discretion of the arbitral tribunal with regard to periods of time

Article 10

Subject to article 16 of the Expedited Rules, the arbitral tribunal may at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under the UNCITRAL Arbitration Rules and the Expedited Rules or agreed by the parties.

Hearings

Article 11

The arbitral tribunal may, after inviting the parties to express their views and in the absence of a request to hold hearings, decide that hearings shall not be held.

Counterclaims or claims for the purpose of set off

Article 12

1. A counterclaim or a claim for the purpose of a set-off shall be made no later than in the statement of defence provided that the arbitral tribunal has jurisdiction over it.

2. The respondent may not make a counterclaim or rely on a claim for the purpose of a set-off at a later stage in the arbitral proceedings, unless the arbitral tribunal considers it appropriate to allow such claim having regard to the delay in making it or prejudice to other parties or any other circumstances.

Amendments and supplements to a claim or defence

Article 13

During the course of the arbitral proceedings, a party may not amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it appropriate to allow such amendment or supplement having regard to when it is requested or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

Further written statements

Article 14

The arbitral tribunal may, after inviting the parties to express their views, decide whether any further written statement shall be required from the parties or may be presented by them.

Evidence

Article 15

1. The arbitral tribunal may decide which documents, exhibits or other evidence the parties should produce. The arbitral tribunal may reject any request, unless made by all parties, to establish a procedure whereby each party can request another party to produce documents.
2. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, shall be presented in writing and signed by them.
3. The arbitral tribunal may decide which witnesses, including expert witnesses, shall testify to the arbitral tribunal if hearings are held.

Award

Article 16

1. Unless otherwise agreed by the parties, the award shall be made within six months from the date of the constitution of the arbitral tribunal.
2. The arbitral tribunal may, in exceptional circumstances and after inviting the parties to express their views, extend the period of time in paragraph 1.
3. In any case, the overall extended period of time shall not exceed nine months from the date of the constitution of the arbitral tribunal, unless otherwise agreed by the parties.

C. Text of annexes to the UNCITRAL Expedited Arbitration Rules

Model arbitration clause for contracts

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Expedited Arbitration Rules.

Note. Parties should consider adding:

- (a) The appointing authority shall be . . . [name of institution or person];

- (b) The place of arbitration shall be . . . [town and country];
- (c) The language to be used in the arbitral proceedings shall be ...;
- (d) Article 16(3) of the Expedited Rules shall not apply to the arbitration.

Model statement

Note. Parties should consider requesting from the arbitrator the following addition to the statement of independence pursuant to article 11 of the UNCITRAL Arbitration Rules:

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently, expeditiously and in accordance with the time limits in the UNCITRAL Arbitration Rules and the Expedited Rules.
