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Settlement of commercial disputes: Revision of the UNCITRAL Arbitration Rules

Compilation of comments by Governments and international organizations

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* Submission of this note was delayed because of its late receipt.



II. Comments received from Governments and international organizations

A. Comments received from Governments

Argentina

[Original: Spanish]

[Date: 11 June 2010]

Draft article 1:

The Argentine Government takes it that, under the proposed text, any dispute involving the right to a choice of jurisdiction contained in a treaty concluded before the entry into force of the revised Rules will not be subject to the new Rules.

Draft article 4, paragraph 2 (b)

It is noted that, in accordance with the proposal for draft article 4, the respondent shall, in response to a request for arbitration, include a response to, inter alia, the identification by the claimant of the legal instrument in relation to which the dispute arises and a description of the claim and the amount involved. This requirement, which does not exist in the current Rules, would appear excessively onerous for the respondent, particularly since such responses must be made within 30 days of the respondent's receiving a request.

Draft article 10

Paragraph 1 refers to the possibility of there being multiple parties as claimants or respondents. The Argentine Government considers that a provision should be added to make it clear that such a possibility exists only if all the parties concerned have agreed to this or express provision is made for it in the relevant arbitral agreement.

Draft article 11

This paragraph should make it clear that any assessment of the circumstances that must be disclosed should be made by an impartial third party and not by the arbitrator in question.

Draft article 26

The provision contained in paragraph 2 (c) is not, in our view, appropriate for investment arbitration. We suggest that it should be deleted or else that it should not apply to cases in which the respondent is a State.

Draft article 27

In paragraph 3 it should be specifically stated that the arbitral tribunal has the authority to require any type of evidence that it considers relevant, not simply that it has the authority to require the parties to produce certain evidence.

Draft article 28

Paragraph 4 should clearly state that, where the arbitral tribunal exercises its authority to direct that witnesses or experts may be examined in ways that do not require their physical presence, this must be justified by the specific circumstances.

Draft article 34

As stated in paragraph 17 of document A/CN.9/703/Add.1, there were diverging views within the Working Group regarding the final wording of the draft article. In the view of the Argentine Government, it is important that the final text of article 34 should explicitly provide that the parties do not waive either their right to request the setting aside of an award or object to implementation under the 1958 New York Convention or the option of insisting on a specific procedure for the execution and enforcement of an award. The end of article 34, paragraph 2, of the draft Rules contains appropriate wording in square brackets concerning these two issues, for which provision must be made. The inclusion of the text in square brackets could well make the proposed amendments to the draft article acceptable to the Argentine Government.

Draft article 41

Paragraph 2 should be slightly amended in such a way as to make it clear that an arbitral tribunal does not have the authority to deviate from the schedule or method for determining fees for arbitrators fixed by the appointing authority, where such schedule or method exists.

Annex to the Rules

With regard to draft model statements of independence pursuant to article 11 of the Rules, we consider that the requirement imposed on arbitrators to declare professional, business or other relations should extend to relations not only with the parties but also with the lawyers and other representatives of the parties, with witnesses and experts, with other arbitrators and with any person who may be associated in any way with the case concerned.
