



## UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE ADOPTS REVISED UNCITRAL ARBITRATION RULES

On 25 June 2010, the United Nations Commission on International Trade Law (UNCITRAL) adopted a revised version of its Arbitration Rules, which are widely used in *ad hoc* international arbitrations (i.e., international arbitrations not conducted under the purview of an institution or administering body).

The revised rules replace the 1976 version, which successfully established a comprehensive set of rules for arbitration where no arbitral institution is involved. The success of the UNCITRAL Arbitration Rules is largely attributable to their procedural flexibility and neutrality, which allow for use in different cultures and legal systems. Parties can modify the UNCITRAL Arbitration Rules according to their needs, and the proceedings are not restricted to a particular seat or applicable law.

The UNCITRAL Arbitration Rules have been widely adopted in both commercial and non-commercial arbitrations. International private parties have found them particularly attractive for the resolution of commercial disputes. The Iran-US Claims Tribunal also applied a modified version of the 1976 rules. And many treaties – such as bilateral investment treaties and free trade agreements – allow investors to pursue UNCITRAL arbitration against a host State to resolve disputes concerning their investments.

Given the success of the 1976 rules, it was not until 2006 – three decades after their adoption – that the UNCITRAL Commission formed a working group to consider whether the rules should be revised to meet changes in arbitral practice over the last thirty years. From September 2006 to February 2010, the working group worked in close cooperation with inter-governmental and non-governmental organizations to identify recommended revisions. The Commission adopted the working group's recommended revisions in June 2010.

While remaining faithful to the original structure, text and drafting style of the 1976 version, the revisions seek to enhance the efficiency of UNCITRAL arbitration and to reflect uses of modern technology. Key changes include:

- *No writing required.* Article 1 eliminates the requirement that the parties agree in writing that the UNCITRAL rules will apply to the arbitration; any agreement to be bound by the rules is sufficient.
- *Electronic communication.* Article 2 permits electronic communication, and a communication transmitted electronically is deemed to have been received on the day it is sent, except that a notice of arbitration is deemed to have been received on the day when it reaches the addressee's electronic address.
- *Insufficiency of notice.* Article 3 provides that the constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.
- *Response to the notice.* Article 4 requires the respondent to submit a response to the notice of arbitration within 30 days of receipt of the notice and sets forth the required content of the response.
- *Multiparty arbitration.* Article 10 provides that, when three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, the multiparties jointly shall appoint an arbitrator.
- *Unnecessary delay and expense.* Article 17 makes clear that the tribunal shall conduct the proceedings so as to avoid unnecessary delay and expense and shall establish a provisional timetable as soon as possible.
- *Joinder of third parties.* Article 17(5) allows one or more third persons to be joined in the arbitration as a party, provided such person is a party to the arbitration agreement.
- *Interim measures.* Article 26 outlines what must be demonstrated as part of an application for an interim measure and recognizes tribunal's power to require security, to alter or terminate the interim measure imposed, and to use costs and damages awards to compensate for abuse of the procedure.

- *Video testimony.* Article 28(4) states that the tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).
- *Arbitrator fees.* Article 41 introduces a party's right to external review and correction of arbitrators' fees by the appointing authority.

Absent from the revised rules is a provision imposing a general duty of confidentiality. Article 28(3) of the revised rules – previously Article 25(4) – provides that hearings are to be held in camera unless the parties agree otherwise. Article 34(5) further provides that awards are to be made public only with the consent of both parties or to the extent that disclosure is required by law. Apart from these two provisions, there are no provisions expressly imposing a general duty of confidentiality.

The revised rules are applicable to arbitration agreements concluded after 15 August 2010 where the parties have agreed to arbitrate under the UNCITRAL Arbitration Rules. The 1976 rules will continue to apply to UNCITRAL arbitration agreements concluded before that date, unless the parties agree otherwise.

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