

IV. INTERNATIONAL COMMERCIAL ARBITRATION

A. Draft prepared by the Secretary-General: revised draft UNCITRAL Conciliation Rules (A/CN.9/179)*

APPLICATION OF THE RULES

Article 1

(1) These Rules apply to conciliation of disputes arising out of or relating to a contractual or other legal relationship where the parties seeking an amicable settlement of their dispute have agreed that the UNCITRAL Conciliation Rules apply.

(2) The parties may agree to any modification of these Rules.

COMMENCEMENT OF CONCILIATION PROCEEDINGS

Article 2

(1) The party initiating conciliation sends to the other party a written invitation to conciliate, briefly identifying the subject of the dispute.

(2) Conciliation proceedings commence when the other party accepts the invitation to conciliate.

(3) If the other party refuses conciliation, there will be no conciliation proceedings.

(4) If the party initiating conciliation has not received a reply within thirty days from the date on which he sent the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate. If he so elects, he informs the other party accordingly.

NUMBER OF CONCILIATORS

Article 3

There shall be one conciliator unless the parties have agreed that there shall be two or three conciliators.

APPOINTMENT OF CONCILIATOR(S)

Article 4

(1) (a) In conciliation proceedings with one conciliator, the parties shall endeavour to reach agreement on the name of a sole conciliator;

(b) In conciliation proceedings with two conciliators, each party appoints one conciliator;

(c) In conciliation proceedings with three conciliators, each party appoints one conciliator. The parties shall endeavour to reach agreement on the name of the presiding conciliator.

(2) Parties may enlist the assistance of an appropriate institution or person in connexion with the appointment of conciliators. In particular,

(a) A party may request such an institution or person to recommend the names of suitable individuals to act as conciliator;

or

(b) The parties may agree that the appointment of one or more conciliators be made directly by such an institution or person.

In recommending or appointing individuals to act as conciliator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial conciliator and, with respect to a sole or presiding conciliator, shall take into account the advisability of appointing a conciliator of a nationality other than the nationalities of the parties.

SUBMISSION OF STATEMENTS TO CONCILIATOR

Article 5

(1) Upon the appointment of the conciliator,* each party submits to the conciliator a brief written statement describing the general nature of the dispute and the points at issue. Each party sends a copy of his statement to the other party.

(2) The conciliator may request each party to submit to him a further written statement of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party sends a copy of his statement to the other party.

(3) At any stage of the conciliation proceedings the conciliator may request a party to submit to him such additional information as he deems appropriate.

REPRESENTATION AND ASSISTANCE

Article 6

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons are to be communicated in writing to the other party and to the conciliator; such communication is to specify whether the appointment is made for purposes of representation or of assistance.

* 7 February 1980. A commentary on these Rules may be found in document A/CN.9/180, reproduced as B, below.

* In this and all following articles, the term "conciliator" applies to either a sole conciliator, two or three conciliators, as the case may be.

ROLE OF CONCILIATOR

Article 7

(1) The conciliator assists the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

(2) The conciliator will be guided by principles of fairness, equity and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices of the parties.

(3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may have expressed and the need for a speedy settlement of the dispute.

(4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

ADMINISTRATIVE ASSISTANCE

Article 8

In order to facilitate the conduct of the conciliation proceedings, the parties, or the conciliator after consultation with the parties, may arrange for administrative assistance by a suitable institution.

COMMUNICATION BETWEEN CONCILIATOR AND PARTIES

Article 9

(1) The conciliator may invite the parties to meet with him, or may communicate orally or in writing with the parties, or with a party alone.

(2) Unless the parties have agreed upon the place where meetings with the conciliator are to be held, such place will be determined by the conciliator, after consultation with the parties, having regard to the circumstances of the conciliation proceedings.

DISCLOSURE OF INFORMATION

Article 10

The conciliator, having regard to the procedures which he believes are most likely to lead to a settlement of the dispute, may determine the extent to which anything made known to him by a party will be disclosed to the other party; provided, however, that he shall not disclose to a party anything made known to him by the other party subject to the condition that it be kept confidential.

PARTY SUGGESTIONS FOR SETTLEMENT OF DISPUTE

Article 11

The conciliator may invite the parties, or a party, to submit to him suggestions for settlement of the dispute. A party may do so upon his own initiative.

CO-OPERATION OF PARTIES WITH CONCILIATOR

Article 12

The parties will in good faith endeavour to comply with requests by the conciliator to submit written materials, provide evidence, attend meetings and otherwise co-operate with him.

SETTLEMENT AGREEMENT

Article 13

(1) When it appears to the conciliator that there exist elements of a settlement which would be acceptable to the parties, he may formulate the terms of a possible settlement and submit them to the parties, for their observations. After receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

(2) If the parties reach agreement on a settlement of the dispute, they draw up and sign a written settlement agreement.* Upon request of the parties, the conciliator draws up, or assists the parties in drawing up, the settlement agreement.

(3) The parties by signing the settlement agreement accept it as a final and binding settlement of their dispute.

CONFIDENTIALITY

Article 14

Unless otherwise agreed by the parties or required by law, the conciliator and the parties must keep confidential all matters relating to the conciliation proceedings. Confidentiality extends also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

TERMINATION OF CONCILIATION PROCEEDINGS

Article 15

The conciliation proceedings are terminated:

(a) By the signing of the settlement agreement by the parties, on the date of the agreement; or

(b) By a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or

(c) By a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) By a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

* It is recommended that the settlement agreement contain a clause that any dispute arising out of or relating to the interpretation and performance of the settlement agreement shall be submitted to arbitration.

RESORT TO ARBITRAL OR JUDICIAL PROCEEDINGS

Article 16

The parties undertake not to initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings, except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

COSTS

Article 17

(1) Upon termination of the conciliation proceedings, the conciliator fixes the costs of the conciliation and gives written notice thereof to the parties. The term "costs" includes only:

- (a) The fee of the conciliator which shall be reasonable in amount;
- (b) The travel and other expenses of the conciliator;
- (c) The travel and other expenses of any witnesses requested by the conciliator with the consent of the parties;
- (d) The cost, travel and other expenses of any expert advice requested by the conciliator with the consent of the parties;
- (e) The cost of any administrative assistance provided pursuant to article 8 of these Rules.

(2) The costs, as defined above, are borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party are borne by that party.

DEPOSITS

Article 18

(1) The conciliator, upon his appointment, may request each party to deposit an equal amount as an advance for the costs referred to in article 17, paragraph (1).

(2) During the course of the conciliation proceedings the conciliator may request supplementary deposits in an equal amount from each party.

(3) If the required deposits under paragraphs (1) and (2) of this article are not paid in full by both parties within thirty days, the conciliator may suspend the proceedings or may make a written declaration of termination to the parties, effective on the date of that declaration.

(4) Upon termination of the conciliation proceedings, the conciliator renders an accounting to the parties of the deposits received and returns any unexpended balance to the parties.

ROLE OF CONCILIATOR IN SUBSEQUENT PROCEEDINGS

Article 19

Unless the parties have agreed otherwise, a conciliator may not act as an arbitrator in subsequent arbitral proceedings, or as a representative or counsel of a party, or be presented as a witness by a party, in any arbitral or judicial proceedings in respect of a dispute that was the subject of the conciliation proceedings.

ADMISSIBILITY OF EVIDENCE IN OTHER PROCEEDINGS

Article 20

The parties undertake not to rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that was the subject of the conciliation proceedings:

- (a) Views expressed by the other party in respect of a possible solution of the dispute;
- (b) Admissions made by the other party in the course of the conciliation proceedings;
- (c) Proposals made by the conciliator;
- (d) The fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator.

MODEL CONCILIATION CLAUSE

Variant A:

Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by conciliation, conciliation shall take place in accordance with the UNCITRAL Conciliation Rules as at present in force.

Variant B:

In the event of a dispute arising out of or relating to this contract, a party, before resorting to the courts or, if so provided for, to arbitration, shall invite the other party to seek an amicable settlement of that dispute by conciliation in accordance with the UNCITRAL Conciliation Rules as at present in force.