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Settlement of commercial disputes: Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules, as revised in 2010

Note by the Secretariat

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I. Introduction

1. At its forty-third session (New York, 21 June-9 July 2010), the Commission had before it a note by the Secretariat on possible recommendations to arbitral institutions and other interested bodies with respect to the UNCITRAL Arbitration Rules, as revised in 2010 (A/CN.9/705). The Commission recalled that, at its fifteenth session, in 1982, it had adopted "Recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules".¹ The preparation of the Recommendations had been undertaken by the Commission to facilitate the use of the 1976 UNCITRAL Arbitration Rules in administered arbitration and to deal with instances where the Rules were adopted as institutional rules of an arbitral body or when the arbitral body was acting as appointing authority or provided administrative services in ad hoc arbitration under the Rules. After discussion, the Commission agreed that similar recommendations to arbitral institutions and other relevant bodies should be issued with respect to the UNCITRAL Arbitration Rules, as revised in 2010, in view of the extended role granted to appointing authorities. It was said that the recommendations would promote the use of the Rules and that arbitral institutions in all parts of the world would be more inclined to accept acting as appointing authorities if they had the benefit of such guidelines. The Commission also agreed that the recommendations on the revised Rules should follow the same pattern as the Recommendations adopted in 1982. The Commission entrusted the Secretariat with the preparation of that document, for consideration by the Commission at a future session.²

2. At its forty-fourth session (Vienna, 25 June-8 July 2011), the Commission was informed that the recommendations were under preparation and the Secretariat was requested to prepare draft recommendations for consideration by the Commission at a future session, preferably as early as 2012.³

3. The present note contains under section II the text of draft recommendations to assist arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules, as revised in 2010. The text has been prepared by the Secretariat after consultation with arbitral institutions, which included circulation to arbitral institutions in various parts of the world of a questionnaire on the use of the UNCITRAL Arbitration Rules, prepared in cooperation with the International Federation of Commercial Arbitration Institutions (IFCAI).⁴

¹ *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 17* and corrigenda (A/37/17 and Corr.1 and 2), paras. 74-85 and annex I.

² *Ibid.*, *Sixty-fifth Session, Supplement No. 17* (A/65/17), paras. 188 and 189.

³ *Ibid.*, *Sixty-sixth Session, Supplement No. 17* (A/66/17), para. 204.

⁴ The following institutions have been involved in the overall consultation process: the American Arbitration Association (AAA), the Arbitration Court attached to the Commerce and Agricultural Chamber of the Czech Republic, the Arbitration Court attached to the Hungarian Chamber of Commerce and Industry, the Arbitration Institute of the Stockholm Chamber of Commerce (SCC), the Australian Centre for International Commercial Arbitration (ACICA), the Belgian Center for Arbitration and Mediation (CEPANI), the Board of Arbitration of the Central Chamber of Commerce of Finland, the Cairo Regional Centre for International Commercial Arbitration (CRCICA), the Centro de Arbitraje y Conciliación Cámara de Comercio de Bogotá,

II. Draft recommendations to arbitral institutions and other interested bodies with regard to arbitration under the UNCITRAL Arbitration Rules, as revised in 2010

Introduction

The UNCITRAL Arbitration Rules, as revised in 2010

1. The UNCITRAL Arbitration Rules were originally adopted in 1976⁵ 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. They 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 arbitration activities of many arbitral institutions in all parts of the world.
2. The UNCITRAL Arbitration Rules have been revised in 2010⁶ to better conform to current practices in international trade law and to meet changes in arbitral practice over the last thirty years. The revision was aimed at enhancing the efficiency of arbitration under the Rules and did not alter the original structure of the text, its spirit and drafting style. The UNCITRAL Arbitration Rules, as revised, have been effective since 15 August 2010.

the Centro de Arbitraje y Mediación – Cámara de Comercio de Santiago (CAM Santiago), Chamber of Arbitration of the Milan Chamber of Commerce, China International Economic and Trade Arbitration Commission (CIETAC), the Court of International Commercial Arbitration attached to the Chamber of Commerce and Industry of Romania, the Court of Arbitration at the Polish Chamber of Commerce, the Danish Institute of Arbitration (DIA), the Dubai International Arbitration Centre (DIAC), the Foreign Trade Court of Arbitration of the Chamber of Commerce and Industry of Serbia, the GCC Commercial Arbitration Centre, German Institution of Arbitration (DIS), the Hong Kong International Arbitration Centre (HKIAC), the Indian Council of Arbitration, the International Arbitration Court of the International Chamber of Commerce (ICC), the International Commercial Arbitration Court – Russian Federation Chamber of Commerce and Industry, the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry, the Japan Commercial Arbitration Association (JCAA), the International Centre for Settlement of Investment Disputes (ICSID), the Korean Commercial Arbitration Board, the Kuala Lumpur Regional Centre of Arbitration (KLRC), the London Court of International Arbitration (LCIA), the Madrid Court of Arbitration, the Permanent Court of Arbitration at The Hague (PCA), the Mediation and Arbitration Center (CANACO), the Permanent Arbitration Court at the Croatian Chamber of Economy, the Permanent Arbitration Court of the Mauritius Chamber of Commerce and Industry, the Singapore International Arbitration Centre (SIAC), the Swiss Arbitration Association (ASA), the Tunis Center for Conciliation and Arbitration, the Venice Chamber of Arbitration, the Vienna International Arbitration Centre (VIAC), the Waren-Verein der Hamburger Börse e.V.

⁵ *Official Records of the General Assembly, Thirty-first Session, Supplement No. 17 (A/31/17)*, para. 57; UNCITRAL Yearbook, vol. VII: 1976, part one, chap. II, sect. A.

⁶ *Official Records of the General Assembly, Sixty-fifth Session, Supplement No. 17 (A/65/17)*, paras. 13-187 and Annex 1.

Resolution 65/22 of the General Assembly

3. In 2010, the General Assembly of the United Nations, by its resolution 65/22, recommended the use of the UNCITRAL Arbitration Rules in the settlement of disputes arising in the context of international commercial relations. This 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 development of harmonious international economic relations and to the continuous strengthening of the rule of law.*”

4. The resolution also 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.*”

Purpose of the Recommendations

5. These Recommendations are made with regard to the use of the 2010 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 arbitration under the UNCITRAL Arbitration Rules*”,⁷ 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 Rules as described in paragraph 6 below.

Different usages by arbitral institutions and other interested bodies

6. The UNCITRAL Arbitration Rules have been used in the following different manners by arbitral institutions and other interested bodies, including chambers of commerce and trade associations (“institution(s)”):

(i) 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 below, section I).

(ii) Institutions have offered to administer disputes under the UNCITRAL Arbitration Rules, or to render administrative services in ad hoc arbitrations under the Rules (see below, section II).

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

⁷ Ibid., *Thirty-seventh Session, Supplement No. 17* (A/37/17), annex I. The text of the Recommendations is also available on the Internet at www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1982Recommendations_arbitration.html.

I. 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.⁸ 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 to 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 to the UNCITRAL Arbitration Rules.⁹ The indication of the modifications could also come at the end of the text of the institutional rules.¹⁰ Further, it might be advisable

⁸ For example, see the arbitration rules of the Cairo Regional Centre for International Commercial Arbitration (“CRCICA”), available on the Internet at www.crcica.org or of the Kuala Lumpur Regional Centre of Arbitration (“KLRC”), available on the Internet at www.klrca.org.my.

⁹ For example, in the introduction of the Arbitration Rules of the Cairo Regional Centre for International Commercial Arbitration (CRCICA) in force as from 1 March 2011, it is provided that they “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” available on the Internet at www.crcica.org; the Arbitration Rules (as revised in 2010) of the Kuala Lumpur Regional Centre of Arbitration (KLRC) provide that the rules for arbitration of the institution shall be the “UNCITRAL Arbitration Rules with the modifications as set out in the subsequent rules”, available on the Internet at www.klrca.org.my.

¹⁰ For example, see the “PCA Optional Rules for Arbitration between International Organizations and Private Parties”, of the Permanent Court of Arbitration at The Hague (“PCA”), (based on the 1976 version of the UNCITRAL Arbitration Rules), available on the Internet at www.pca-cpa.org/upload/files/IGO1ENG.pdf.

to accompany the institutional rules with a short explanation of the reasons for the modifications.¹¹

b. *Effective date*

11. Article 1, paragraph (2), of the 2010 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 2010 UNCITRAL Arbitration Rules relating to communication before the constitution of the arbitral tribunal. For example, in relation to article 3, paragraph (1),

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

Article 3 (Notice of arbitration)

“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].”

Or

“1. The party(ies) 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(ies) (hereinafter called the “respondent”).”¹²

¹¹ For example, in the notes to the text of the “PCA Optional Rules for Arbitrating Disputes between Two Parties of Which Only One Is a State, 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. 1 (added)...” the text of the “PCA Optional Rules for Arbitrating Disputes between Two Parties of Which Only One Is a State” is available on the Internet at www.pca-cpa.org/upload/files/1STATENG.pdf.

¹² For example, this is the approach adopted in the Arbitration Rules of the Cairo Regional Centre for International Commercial Arbitration (CRCICA).

(ii) 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(ies) or immediately thereafter.”¹³

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

- modify each article in the UNCITRAL Arbitration Rules referring to communications; that would concern 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

- include in article 17 a provision along the lines of:

(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(ies). All communications addressed from the arbitral tribunal to a party shall be filed with the [name of the institution] for notification to the other party(ies).”¹⁴*; or

(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.

¹³ For example, a similar approach can be found in Rule 2 (1) of the Rules for Arbitration of the Kuala Lumpur Regional Centre of Arbitration (KLRCa).

¹⁴ For example, a similar provision is included in article 17 (5) of the Arbitration Rules of the Cairo Regional Centre for International Commercial Arbitration (CRCICA).

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, and therefore should amend the corresponding provisions of the Rules, as follows:

- article 3, paragraph (4)(a); article 4, paragraph (2)(b); article 6, paragraphs (1) to (4); and the reference to the designating authority in article 6, paragraph (5) should be deleted;
- the term “appointing authority” could be replaced by the name of the institution in the following provisions: article 6, paragraphs (5) to (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, also article 41, paragraphs (2) to (4). As an alternative, a rule clarifying that reference to the appointing authority 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, for example, in an annex. 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 2010 UNCITRAL Arbitration Rules as its own institutional rules:

- the provisions of articles 40 (f) would not apply;
- 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

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

18. One measure of the UNCITRAL Arbitration Rules’ success 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

¹⁵ For example, such approach has been adopted by the Cyprus Arbitration and Mediation Centre, (“CAMC”), which based its arbitration rules on the 2010 UNCITRAL Arbitration Rules.

independent institutions that have declared themselves willing to administer (and that do administer) arbitrations under the UNCITRAL Arbitration Rules, in addition to proceedings under their own rules. Some arbitral institutions have adopted procedural rules for offering to administrate 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 UNCITRAL Arbitration Rules or only provide certain administrative services in relation to arbitration under the UNCITRAL Arbitration Rules. It may be noted that institutions, while offering services under the 2010 UNCITRAL Arbitration Rules, are continuing to also offer services under the 1976 UNCITRAL Arbitration Rules.¹⁸

¹⁶ For example, the Permanent Court of Arbitration at The Hague (PCA) indicates on its website that “[I]n 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 that “[t]he 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.”, available on the Internet at www.lcia.org; see also the “UNCITRAL Arbitration Rules Administered by the DIS” (German Institution of Arbitration), available on the Internet at www.dis-arb.de; the “Administrative and Procedural Rules for Arbitration under the UNCITRAL Arbitration Rules” by the Japan Commercial Arbitration Association (“JCAA”), available on the Internet at www.jcaa.or.jp; and the “Hong Kong International Arbitration Centre (“HKIAC”) Procedures for the Administration of International Arbitration”, available on the Internet at www.hkiac.org; (the Administrative and Procedural Rules for Arbitration under the UNCITRAL Arbitration Rules by the JCAA and the HKIAC Procedures for the Administration of International Arbitration are both, at the date of the Recommendations, based on the 1976 UNCITRAL Arbitration Rules).

¹⁷ For example, the Hong Kong International Arbitration Centre (“HKIAC”) adopted the “HKIAC Procedures for the Administration of International Arbitration”, effective from 31 May 2005, which state in their introduction that “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.”, available on the Internet at www.hkiac.org.

¹⁸ For an illustration, see the services offered under both versions of the UNCITRAL Arbitration Rules by the Arbitration Institute of the Stockholm Arbitration Institute (SCC), available on the Internet at <http://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 to 17. It is advisable that the institution clarify the administrative services it would render either by:

- listing them; or
- 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 that 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 to the original UNCITRAL Arbitration Rules.¹⁹

21. It is further recommended that:

- the administrative procedures of the institution distinguish clearly between the functions of an appointing authority as envisaged under the UNCITRAL Arbitration Rules (see below, section III) 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;
- 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.

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

- which services would be covered by its general administrative fee and which would not, i.e., being billed separately;²⁰
- the services provided within its own facilities and those arranged to be rendered by others;
- that parties could also choose to have only particular service(s) rendered by the institution, without having the arbitral proceedings fully administered by the institution (see above, paragraph 18, and below, paragraphs 23 to 25).

¹⁹ See, as an illustration of such an approach, the UNCITRAL Arbitration Rules as administered by DIS (German Arbitration Institution), available on the Internet at www.dis-arb.de.

²⁰ For example, the Bahrain Chamber for Dispute Resolution (“BCDR”) Arbitration Rules state that “The fees described below do not cover the cost of hearing rooms, which are available on a rental basis. Check with the BCDR for availability and rates.” It is to note that the BCDR Arbitration Rules are from 2009 and based on the 1976 UNCITRAL Arbitration Rules.

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 dates, time and place of hearings;
 - (ii) Meeting rooms for hearings or deliberations of the arbitral tribunal;
 - (iii) Telephone- and video-conference facilities;
 - (iv) Stenographic transcripts of hearings;
 - (v) Live streaming of hearings;
 - (vi) Secretarial or clerical assistance;
 - (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;

²¹ The maintenance of a file of written communications could include a full file of written correspondence and submissions to facilitate any inquiry arising 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 file could also 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.

²³ Fund holding services usually consist of the receipt and the disbursement of funds received from the parties. It includes 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 which has lodged the funds at the prevailing rate of the bank where the bank 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 fee 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.

(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, 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

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

(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:

- where the institution fully administers arbitration under the UNCITRAL Arbitration Rules, such model clause 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.”*

²⁴ Providing of 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 for correction of 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 44 on administrative fees and the tables in the annex of the Arbitration Rules of the Arbitration Rules of the Cairo Regional Centre for International Commercial Arbitration (CRCICA) on the administrative fees and the arbitrators' fees, according to which the provisions of its Section on the Costs of Arbitration (including administrative and arbitrators' fees) shall apply by default in case the parties to ad hoc arbitrations agree that CRCICA provides its administrative services to such arbitrations”.

- where the institution provides certain services only, the agreement as to the services which are requested 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”*.
- in both cases, as suggested in the UNCITRAL model arbitration clause in annex to the Rules, the following note be added: *“Note. Parties should consider adding: “(a) The number of arbitrators shall be --- (one or three); “(b) The place of arbitration shall --- (town or country); “(c) The language to be used in the arbitral proceedings shall be ---”*.
