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## **Possible revisions to the UNCITRAL Model Law on Procurement of Goods, Construction and Services — a revised text of the Model Law**

### **Note by the Secretariat**

#### **Addendum**

This note sets out a proposal for chapter VIII (Review) of the revised Model Law, comprising articles 61 to 66.

The Secretariat's comments are set out in the accompanying footnotes.



## CHAPTER VIII. REVIEW<sup>1</sup>

### Article 61. Right to review

(1) A supplier or contractor that claims to have suffered or claims that it may suffer, loss or injury due to alleged non-compliance with the provisions of this Law may submit a complaint seeking review of the alleged non-compliance in accordance with articles [62 to 66] of this Law or other provisions of applicable law of this State.

(2) A supplier or contractor may appeal any decision taken by a review body in review proceedings initiated pursuant to paragraph (1) of this article, or institute proceedings following the failure of a review body to take a decision within the prescribed time limits or to suspend the procurement proceedings in accordance with article [65 (1)] of this Law.<sup>2</sup>

### Article 62. Review by the procuring entity or the approving authority

(1) A supplier or contractor seeking review shall submit a complaint in writing to the procuring entity or, where applicable, to the approving authority.<sup>3</sup>

(2) Complaints shall be submitted within the following time periods:

(a) Complaints as regards the terms of solicitation,<sup>4</sup> pre-qualification or pre-selection or arising from the pre-qualification or pre-selection proceedings shall be submitted no later than the deadline for presenting submissions;

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<sup>1</sup> The Guide provisions accompanying chapter VIII will note that the chapter contains a minimum set of provisions aimed at ensuring an effective review process, and will encourage enacting States to incorporate all the provisions of the chapter to the extent that the legal system of the enacting State so permits (A/CN.9/690, para. 68). They will also refer to the applicable provisions of the United Nations Convention against Corruption and will contain a discussion of the relevance of other branches of law and of other bodies if a review were triggered for example by fraud or corruption (including the need to alert the relevant authorities to ensure that appropriate action is taken). They will cross-refer in this regard to the relevant discussion in the Guide in conjunction with the provisions of article [19] (A/CN.9/690, para. 93).

<sup>2</sup> The second paragraph was added pursuant to A/CN.9/690, para. 69 (b). The accompanying Guide text will explain that, apart from suppliers or contractors, various State bodies may have the right to initiate review or appeals under chapter VIII (A/CN.9/690, para. 67).

<sup>3</sup> The opening words in the chapeau provisions were deleted pursuant to A/CN.9/690, para. 69 (a). The accompanying Guide text will explain that regulations or other guidance should address the evidentiary support to be provided to substantiate the complaint.

<sup>4</sup> The accompanying Guide text will explain the intended meaning of the phrase “terms of solicitation” as encompassing all issues arising from the procurement proceedings before the deadline for presenting submissions (other than those covered by pre-qualification or pre-selection, separately mentioned in the subparagraph), such as the selection of a method of procurement or a method of solicitation where the choice between open and direct solicitation exists, and the limitation of participation in the procurement proceedings in accordance with article 8. It thus excludes issues arising from examination and evaluation of submissions. It will further explain that the terms of the solicitation, pre-qualification or pre-selection include the contents of any addenda issued pursuant to article 14 (A/CN.9/690, para. 69 (c)).

(b) All other complaints arising from the procurement proceedings shall be submitted:

(i) Within the standstill period applied pursuant to article [20 (2)] of this Law;<sup>5</sup> or

(ii) If no standstill period is applied under circumstances of article [20 (3)] of this Law, within ... working days (the enacting State specifies the period)<sup>6</sup> of when the supplier or contractor submitting the complaint became aware of the circumstances giving rise to the complaint or when that supplier or contractor should have become aware of those circumstances, whichever is earlier, provided that the procuring entity or, where applicable, the approving authority need not entertain a complaint, or continue to entertain a complaint, after the procurement contract has entered into force or the decision to cancel the procurement has been taken, as the case may be.<sup>7</sup>

(3) Unless the complaint is resolved by mutual agreement of the parties, the procuring entity or the approving authority, as the case may be, shall ... working days (the enacting State specifies the period)<sup>8</sup> after the submission of the complaint, issue a written decision. The decision shall:

(a) State the reasons for the decision; and

(b) If the complaint is upheld in whole or in part, state the corrective measures that shall be undertaken.

(4) If the procuring entity or the approving authority, as the case may be, does not issue a decision by the time specified in paragraph (3) of this article, the supplier or

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<sup>5</sup> Amended pursuant to A/CN.9/690, para. 69 (f).

<sup>6</sup> The accompanying Guide text will note that the determination of the specific deadline is left to enacting States as is done with respect to the standstill period, and that the enacting States should ensure that all the relevant time limits left for their determination should be aligned throughout the Model Law (A/CN.9/690, para. 86). It will also bring to the attention of enacting States the time period specified in the 1994 and 2006 versions of the GPA to assist in inserting the requisite number of days.

<sup>7</sup> Differing views were expressed during the Working Group's eighteenth session on whether this article should allow submission of complaints after the entry into force of the procurement contract. The Working Group did not finalize the consideration of this issue as well as the suggestion to include a provision to prevent suppliers from disrupting the entry into force of the procurement contract by filing a complaint immediately before the contract is to be signed (A/CN.9/690, para. 69 (d) and (e)). The Working Group may consider that the wording "need not entertain a complaint, or continue to entertain a complaint," used in this subparagraph, is sufficiently flexible to address both concerns. In order to mitigate risks of abuse of the discretion given to the procuring entity under such flexible wording, the accompanying Guide text will need to refer to provisions of article 65 (1) on automatic suspension of the procurement proceedings. The Working Group may wish to consider that it is unlikely that complaints about procurement proceedings after the entry into force of the procurement contract will be submitted to the procuring entity or the approving authority; most likely that they will be submitted directly to the administrative review body or to the court, taking into account that these bodies will most certainly have the prerogative to overturn the award of the contract (the administrative review body has such a prerogative under article 63 (3) (f) of the current draft). The prerogative of the procuring entity or the approving authority to that effect may differ from jurisdiction to jurisdiction.

<sup>8</sup> Amended pursuant to A/CN.9/690, para. 69 (g).

contractor submitting the complaint<sup>9</sup> is entitled immediately thereafter to institute proceedings under article [63 or 66]. Upon the institution of such proceedings, the competence of the procuring entity or the approving authority, as the case may be, to entertain the complaint, ceases.<sup>10</sup>

(5) The procuring entity or the approving authority, as the case may be, shall communicate its decision to all participants in the review proceedings in accordance with article 64 (5).<sup>11</sup>

### **Article 63. Review before an independent administrative body\*,<sup>12</sup>**

(1) A supplier or contractor seeking review shall submit a complaint or an appeal in writing to ... (the enacting State inserts the name of the independent administrative body) within the following time periods:<sup>13</sup>

(a) Complaints as regards the terms of solicitation, pre-qualification or pre-selection or arising from the pre-qualification or pre-selection proceedings shall be submitted no later than the deadline for presenting submissions;

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<sup>9</sup> The words “or the procuring entity” taken from the 1994 text (see article 53 (5)) were deleted in the current draft. Although they intended to cover possible appeal by the procuring entity of the decisions by the approving authority taken against it, the Secretariat’s understanding is that issues related to possibility of appeals by the procuring entity are outside the scope of the chapter and the Model Law.

<sup>10</sup> The accompanying Guide text will draw a clear distinction between review proceedings under this article and debriefing proceedings.

<sup>11</sup> The accompanying Guide text will explain that the term “participants in the review proceedings” could include a different pool of participants depending on the timing of the review proceedings and subject of the complaint. In this respect, it will cross-refer to the provisions of article 64 (1) and (2).

\* States where hierarchical administrative review of administrative actions, decisions and procedures is not a feature of the legal system may omit this article and provide only for judicial review (article [66]), on the condition that in the enacting State exists an effective system of judicial review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the procurement rules and procedures of this Law are not followed, in compliance with the requirements of the United Nations Convention against Corruption. [States may provide for the system of appeal judicially, or administratively, to reflect the legal system in the jurisdiction concerned.]

<sup>12</sup> The accompanying Guide text will clarify the meaning of the term “independent administrative body”, in particular whether the body should be composed of outside experts, independent from the Government. It was noted that the Guide might highlight the disruptions to the procurement proceedings if decision-taking at the review stage lacked independence since decisions might be challenged in the court and this would cause further delays. The Guide will note that the Model Law establishes the principle of independence of the administrative review body, but does not prescribe the manner in which that independence should be achieved, with the understanding that there would be various ways of so doing in various jurisdictions depending on their prevailing conditions (A/CN.9/690, para. 71 (o)).

<sup>13</sup> Amended pursuant to A/CN.9/690, para. 71 (a) and 69 (b). The accompanying Guide text will note that judicial review at any level may also be available as an alternative to proceedings before an administrative body in some States, as provided for in article [66]. It will also note that regulations or other guidance should address the evidentiary support to be provided to substantiate the complaint or appeal.

(b) All other complaints arising from the procurement proceedings shall be submitted no later than ... (the enacting State specifies the period of time)<sup>14</sup> after the entry into force of the procurement contract or the decision to cancel the procurement, as the case may be, provided that the review body need not entertain the complaint:<sup>15</sup>

(i) If it was submitted after the expiry of the standstill period applied pursuant to article [20 (2)] of this Law; or if no standstill period has been applied pursuant to article [20 (3)] of this Law;

(ii) If it was submitted later than ... working days (the enacting State specifies the period) of when the supplier or contractor submitting the complaint became aware of the circumstances giving rise to the complaint or when that supplier or contractor should have become aware of those circumstances, whichever is earlier;<sup>16</sup>

(c) Appeals shall be submitted within ... working days (the enacting State specifies the period) after the issuance of the decision in accordance with article [62 (3)] of this Law or, if no decision was issued or the procurement proceedings was not suspended in accordance with article [65 (1)], proceedings shall be instituted within ... working days (the enacting State specifies the period)

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<sup>14</sup> The accompanying Guide text will note that the determination of the specific deadline is left to enacting States as is done with respect to the standstill period (A/CN.9/690, para. 86) and will note that the period here will most likely be expressed in months or year(s) than calendar or working days since the provisions intend to provide for the absolute maximum (see the explanation in the relevant footnote below).

<sup>15</sup> Amended pursuant to A/CN.9/690, paras. 69 (d) to (g), 85 and 86.

<sup>16</sup> Amended to reconcile differing views in the Working Group and during the intersessional consultations on whether the supplier should be able to submit complaints after the entry into force of the procurement contract, regardless of whether the standstill period was applied or not. The provisions would allow suppliers to do so but would impose (i) in the chapeau the absolute maximum time limit after expiry of which no complaints can be entertained and (ii) an additional time limit equal to the duration of the standstill period if it was applied or an additional time limit to be determined by the enacting State if no standstill period was applied. The provisions would also give the review body discretion to decide on whether to entertain complaints submitted after those additional time limits. The provisions also intend to cover situations where, although the complaint was submitted on time, the procurement contract entered into force (e.g. due to the failure to suspend the procurement proceedings or due to the decision to lift the suspension). With respect to provisions in (ii), the accompanying Guide text would cross-refer to article 20 (3) that sets out grounds for exceptions to application of the standstill period, including on the ground of urgency/emergency. The Guide in this respect will stress that, although in such cases the notice of the procurement contract award to be published under article 21 would most likely serve as the time point when the supplier or contractor submitting the complaint will become aware of the circumstances giving rise to the complaint or when that supplier or contractor should become aware of those circumstances, this would not necessarily be always the case. For example, the urgency/emergency ground would most likely justify the exemption from publication of the procurement contract award for reasons of confidentiality (e.g. protection of essential national interests of State). Hence the provisions as drafted do not link the time point to the notice of the procurement contract award but take more flexible approach, which is necessary in order to allow review in situations where transparency safeguards of the Model Law do not apply.

after the expiry of the prescribed time limit for issuance of such a decision or for suspension.<sup>17</sup>

(2) Upon receipt of a complaint or an appeal, the ... (the enacting State inserts the name of the independent administrative body) shall give notice thereof promptly to the procuring entity and to the approving authority where applicable.

(3) The [insert name of administrative body] may declare the legal rules or principles that govern the subject matter of the complaint or appeal and shall be empowered to take one or more of the following actions:<sup>18</sup>

(a) Prohibit the procuring entity, or the approving authority as the case may be, from acting or deciding unlawfully or from following an unlawful procedure;

(b) Require the procuring entity, or the approving authority as the case may be, that has acted or proceeded in an unlawful manner, or that has reached an unlawful decision, to act or to proceed in a lawful manner or to reach a lawful decision;

(c) Overturn<sup>19</sup> in whole or in part an unlawful act or decision of the procuring entity, or the approving authority as the case may be, [or a decision of the procuring entity or the approving authority on a complaint submitted to that entity or authority];<sup>20</sup>

(d) Revise an unlawful decision by the procuring entity, or the approving authority as the case may be, or substitute its own decision for such a decision, [other than any act or decision bringing the procurement contract into force] or confirm a lawful decision by the procuring entity or the approving authority;<sup>21</sup>

(e) Order that the procurement proceedings be terminated;

(f) Overturn the award of a procurement contract or the framework agreement that has entered into force unlawfully and, if notice of the award of the procurement contract or the framework agreement has been published, order the publication of notice of the overturning of the award;<sup>22</sup>

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<sup>17</sup> The accompanying Guide text will explain that article [65 (1)] prescribes a very short time limit for suspension to take place as it refers to “prompt” action.

<sup>18</sup> Amended pursuant to A/CN.9/690, paras. 71 (b) and (d) and 72. The accompanying Guide text will emphasize the importance of ensuring that the administrative body can exercise any of these remedies in any combination, as appropriate, in order to ensure an effective and independent administrative system of review (A/CN.9/690, para. 73).

<sup>19</sup> The accompanying Guide text will explain that this term does not carry any particular consequences (it is not to be treated as declaring the decision of no effect), so that the enacting State may provide for the consequences appropriate in the light of the legal tradition in the jurisdiction concerned (A/CN.9/690, paras. 71 (f) and 72).

<sup>20</sup> The Working Group may wish to consider the need for this additional wording in square brackets to allow for appeals. The decision on a complaint is not necessarily unlawful decision (it may be wrong on merits but taken in accordance with law) and when it is not, then it is not covered by this subparagraph.

<sup>21</sup> The accompanying Guide text will explain that this text may be omitted in those enacting States where administrative review body may impose its own decision as to the award of the contract.

<sup>22</sup> See the relevant footnote above as regards the term “overturn” used in the current draft. At the Working Group’s eighteenth session, the point was made that all other remedies were linked to stages of the procurement proceedings before the entry into force of the procurement contract or

(g) Dismiss the complaint or appeal;<sup>23</sup> and

(h) Require the payment of compensation for any reasonable costs incurred by the supplier or contractor submitting the complaint or appeal as a result of an unlawful act or decision of, or procedure followed by, the procuring entity or the approving authority in the procurement proceedings, and for any loss or damages suffered, which shall be limited to costs for the preparation of the submission, or the costs relating to the complaint and the appeal where applicable, or both;<sup>24</sup> and the [insert name of administrative body] shall take the decision appropriate in the circumstances.<sup>25</sup>

(4) The [insert name of administrative body] shall within [...] days after receipt of the complaint or appeal issue a written decision concerning the complaint or appeal, stating the reasons for the decision and the action taken.

(5) The [insert name of administrative body] shall communicate its decision to all participants in the review proceedings in accordance with article 64 (5).

#### **Article 64. Certain rules applicable to review proceedings under articles [62 and 63]**

(1) Promptly after the receipt of a complaint under article [62 or 63] of this Law, or appeal under article [63] of this Law, the review body shall notify all suppliers or contractors participating in the procurement proceedings<sup>26</sup> to which the complaint or appeal relates as well as any governmental authority whose interests are or could be affected about the submission of the complaint or appeal and its substance.

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framework agreement, and thus were limited in time, while the possibility of overturning the procurement contract or framework agreement appeared to be open-ended (A/CN.9/690, para. 71 (m)). The Working Group may wish to consider that the amendments made in paragraph (1) of this article as regards the absolute maximum timeframe for submission of complaints will address this concern.

<sup>23</sup> Amended pursuant to A/CN.9/690, paras. 71 (c) and 72.

<sup>24</sup> The accompanying Guide text will discuss that unlike the 1994 Model Law, the revised Model Law prefers only one approach towards compensation of costs, which will support a speedy and effective administrative review process. It will also note that this approach does not exclude the possibility of seeking anticipatory losses through court action (or in proceedings before administrative review bodies where the legal system in an enacting State so permitted, or in an action under a contract that has been executed and where performance has commenced) (A/CN.9/690, para. 71 (j)).

<sup>25</sup> Amended pursuant to A/CN.9/690, para. 72. The accompanying Guide text will emphasize the list of measures in paragraph (3) is a minimum set of measures that the administrative review body should be able to take according to the circumstances, in order to ensure an effective and independent administrative review, and the enacting State will therefore be directed to incorporate all of the measures listed except when so doing would be in violation of the constitution or other laws of the State. The Guide text will also state that the last phrase in this paragraph (3) is aimed at ensuring an effective review process (A/CN.9/690, para. 73).

<sup>26</sup> The Guide will explain that the term “participating in the procurement proceedings” could include a different pool of participants depending on the timing of the review proceedings and subject of the complaint, and will specify that those suppliers who were disqualified as a result of pre-qualification proceedings may not become participants in the review proceedings that concern subsequent stages of the procurement proceedings (e.g. examination and evaluation of submissions).

(2) Any such supplier or contractor or governmental authority has the right to participate in the review proceedings. A supplier or contractor or the governmental authority that fails to participate in the review proceedings is barred from subsequently making the same type of complaint or appeal.<sup>27</sup>

(3) The participants to the review proceedings shall have access to all proceedings and shall have the right to be heard prior to a decision of the review body being made on the complaint or appeal, the right to be represented and accompanied, the right to request that the proceedings take place in public<sup>28</sup> and the right to present evidence, including witnesses.<sup>29</sup>

(4) In the cases of review by the approving authority or the [insert name of administrative body], the procuring entity shall provide to the review body all documents pertinent to the complaint, including the record of the procurement proceedings, in timely fashion.<sup>30</sup>

(5) A copy of the decision of the review body shall be communicated to the participants in the review proceedings within ... working days (the enacting State specifies the period) after the issuance of the decision. In addition, after the decision has been issued, the complaint and the decision shall promptly be made available to the public.

(6) No information under paragraphs (3) to (5) of this article shall be disclosed and no public proceedings shall take place if so doing would be against the protection of essential security interests of the State<sup>31</sup> or contrary to law, would impede law enforcement, would prejudice the legitimate commercial interests of the suppliers or contractors or would impede fair competition.

(7) The decision by the review body and the reasons and circumstances therefor shall be made part of the record of the procurement proceedings.<sup>32</sup>

### **Article 65. Suspension of the procurement proceedings, the framework agreement or the procurement contract<sup>33</sup>**

(1) Promptly after the timely submission of a complaint under article [62 or 63] of this Law or an appeal under article [63] of this Law, the review body shall suspend<sup>34</sup> the procurement proceedings, the framework agreement or the

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<sup>27</sup> Amended pursuant to A/CN.9/690, para. 75.

<sup>28</sup> Retained without square brackets pursuant to A/CN.9/690, para. 75. The accompanying Guide text will note that these provisions are to be read together with those in paragraph (6) permitting the review body to refuse a request to hold public proceedings on the grounds of confidentiality.

<sup>29</sup> Amended pursuant to A/CN.9/690, para. 75.

<sup>30</sup> The accompanying Guide text will refer to the need for practice directions or similar guidance on time periods.

<sup>31</sup> Aligned in the relevant part with articles 22 (1) and 23 (4).

<sup>32</sup> The accompanying Guide text will refer to the need for practice directions or similar guidance on time periods. It will explain the importance of this provision to ensuring transparency and that the record of the procurement is complete.

<sup>33</sup> This article has been redrafted to reflect the Secretariat's understanding of the Working Group's decisions in A/CN.9/690, para. 79. The accompanying Guide text will note that the article does not purport to address the question of court-ordered suspension.

<sup>34</sup> The accompanying Guide text would explain which steps will be involved for the suspension to

procurement contract, for a period to be determined by the review body, except as provided for in paragraphs (2) of this article.

[deleted]<sup>35</sup>

(2) The review body need not suspend the procurement proceedings if it decides that the complaint or appeal is manifestly without merit.<sup>36</sup>

(3) The review body may lift the suspension applied in accordance with paragraph (1) of this article if it decides that the suspension will cause or has caused disproportionate harm to the procuring entity or to other suppliers or contractors, or that urgent public interest considerations require the procurement, or the procurement contract or framework agreement, to proceed. The review body's decision is conclusive with respect to all levels of review except judicial review.<sup>37</sup>

(4) Where the procuring entity is not the review body, it may request in writing the review body to lift the suspension on the grounds referred to in paragraph (3) of this article.<sup>38</sup>

(5) The review body may extend the originally determined period of suspension in order to preserve the rights of the supplier or contractor submitting the complaint or appeal or commencing the action pending the disposition of the review proceedings, provided that the total period of suspension shall not exceed the period required for the review body to take a decision in accordance with article [62 or 63] as applicable and the sufficiently long period thereafter for a supplier or contractor to file any appeal against a decision of a review body.<sup>39</sup>

(6) (a) The fact of the suspension and the duration of the suspension or the decision by the review body not to suspend the procurement proceedings or the procurement contract or the framework agreement, as the case may be, shall be included in the notification of the submission of the complaint or appeal issued in accordance with article [64 (1)] of this Law and shall in addition be promptly communicated by the review body to the supplier or contractor submitting the complaint or appeal;

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take place depending on the body reviewing the complaint. In particular, it will draw a distinction between steps that the procuring entity will have to take if it is the review body and steps that it has to take (and may in addition take) if it receives a notice of the suspension from the review body. A cross-reference in this context will be made to article 64 (1).

<sup>35</sup> The provisions referring to the declaration to be submitted by suppliers or contractors (A/CN.9/690, para. 79 (b). See also article 56 (1) of the 1994 Model Law) were deleted. The Secretariat's understanding is that the complaint or the appeal itself would demonstrate the likelihood of its success, and a declaration is no longer necessary as the suspension is automatic.

<sup>36</sup> Redrafted pursuant to A/CN.9/690, para. 79 (a).

<sup>37</sup> The Working Group may wish to consider significant deviation from the approach in article 56 (4) of the 1994 Model Law that refers in this context to certification by the procuring entity as the only sufficient ground for not applying suspension. The Working Group may also wish to recall its consideration in A/CN.9/690, para. 79 (c), and consider whether the last sentence should be retained, taking into account that the "review body" in this provision cumulatively refers to the procuring entity, the approving authority and the administrative review body, as the case may be.

<sup>38</sup> The accompanying Guide text will elaborate that the approving authority or the administrative body may request the procuring entity to provide to the review body necessary documents to substantiate its request.

<sup>39</sup> Amended pursuant to A/CN.9/690, paras. 80 and 81.

(b) The decision on an extension of the suspension indicating the duration of the extension or the decision to lift the suspension and all other decisions taken by the review body pursuant to this article and the reasons therefor shall be promptly communicated to all participants in the review proceedings.

(7) The fact of the suspension and the duration of the suspension and any decision by the review body under this article and the reasons and circumstances therefor shall be made part of the record of the procurement proceedings.<sup>40</sup>

### **Article 66. Judicial review<sup>\*</sup>, 41**

The [insert name of court or courts] has jurisdiction over actions pursuant to article [61].<sup>42, 43</sup>

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<sup>40</sup> Retained without square brackets pursuant to A/CN.9/690, para. 75.

<sup>\*</sup> States that provide only for judicial review of the decisions of the procuring entity or approving authority, are required to put in place an effective system of judicial review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the procurement rules and procedures of this Law are not followed, in compliance with the requirements of the United Nations Convention against Corruption. Such an effective system of judicial review shall in particular ensure: (i) that deadlines for submission of complaints or petitions for judicial review of decisions of the procuring entity, the approving authority or the administrative body as the case may be shall be appropriate in the procurement context, in particular the provisions of this Law on the standstill period shall be taken into account; (ii) that the court or courts with jurisdiction over actions pursuant to article [61] may take any or any combination of the actions contemplated in article [63(3)] of this Law and to grant interim measures that it considers necessary to ensure effective review, including suspension of the procurement proceedings or performance of the procurement contract or the framework agreement, as applicable; and (iii) that minimum safeguards as regards the participation in the review proceedings, submission of evidence and protection of confidential information in the procurement context, contemplated in article [64] of this Law, are in place.

<sup>41</sup> An accompanying footnote to this article has been inserted pursuant to A/CN.9/690, paras. 90-92. It is the Secretariat's understanding that the footnote will remain in the text of the Model Law.

<sup>42</sup> article has been amended pursuant to the changes made in article 61. In particular, the portion of the text that was based on the text in the 1994 Model Law, reading "and petitions for judicial review of decisions made by review bodies, or of the failure of those bodies to make a decision within the prescribed time limit, under article [62 or 63]" was deleted as being superfluous in the light of the similar provisions added in article 61.

<sup>43</sup> The accompanying Guide text, in particular with reference to the accompanying footnote to this article, will emphasize that the Model Law does not intend to interfere into the prerogatives of courts, which are regulated or are supposed to be regulated in a separate body of law in enacting States. It will further point out that the Model Law neither intends to inadvertently restrict broader powers that most likely exist for courts under legislation of enacting States. Specific mention in this regards will be made of the powers to award compensation for anticipatory losses or to grant interim measures (A/CN.9/690, para. 90). The accompanying Guide text in this context will cross-refer to the provisions of article 63 (3) (h) addressing the issues of compensation for costs incurred by the supplier or contractor submitting the complaint and appeal where applicable. It will note that although the provisions there exclude possibility of seeking in the course of administrative review compensation for anticipatory losses, such possibility may still exist through court action, including under a contract that has been executed and where performance has commenced, if the legal system of the enacting State so permits (A/CN.9/690, para. 71 (j)). The accompanying Guide text will also refer to the provisions of article 65 on suspension and will reiterate that the article did not refer to the court-ordered suspension.