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Settlement of commercial disputes

Draft provisions on expedited arbitration

Note by the Secretariat

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I. Draft Expedited Arbitration Provisions

The following reproduces the draft expedited arbitration provisions as contained in document A/CN.9/WG.II/WP.214 for ease of reference.

Appendix to the UNCITRAL Arbitration Rules

Draft provision 1 (Scope of application)

Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Expedited Arbitration Provisions, then such dispute shall be settled in accordance with the UNCITRAL Arbitration Rules as modified by these Provisions and subject to such modification as the parties may agree.

Draft provision 2 (General)

1. *The parties shall act in an expeditious and effective manner throughout the proceedings so as to achieve a fair and efficient resolution of the dispute.*
2. *The arbitral tribunal, in exercising its discretion, shall conduct the proceedings in an expeditious and effective manner further taking into account the parties' expectations.*

Draft provision 3 (Non-application of the Expedited Arbitration Provisions)

Agreement of the parties on non-application

1. *At any time during the proceedings, the parties may agree that the Expedited Arbitration Provisions shall no longer apply to the arbitration.*

Request by a party for non-application

2. *At the request of a party, the arbitral tribunal may, in exceptional circumstances, determine that the Expedited Arbitration Provisions shall no longer apply to the arbitration.*

Elements to be taken into account when making the determination

3. *In making the determination pursuant to paragraph 2, the arbitral tribunal shall invite the parties to express their views and take into account, among others, the following:*

- (a) *The urgency and time-sensitivity of resolving the dispute;*
- (b) *At which stage of the proceedings the request is made;*
- (c) *The legal and factual complexity of the dispute, for example, the anticipated volume of documentary evidence and the number of witnesses;*
- (d) *The anticipated amount in dispute (the sum of claims made in the notice of arbitration, any counterclaim made in the response thereto as well as any amendment or supplement) and its proportionality to the expected cost of arbitration;*
- (e) *The terms of the parties' agreement referring their dispute to arbitration under the Expedited Arbitration Provisions and whether the exceptional circumstance could have been foreseeable at the time of agreement; and*
- (f) *The consequences of the determination on the proceedings, including on the procedural fairness.*

Consequences of the non-application

4. *When the Expedited Arbitration Provisions no longer apply to the arbitration pursuant to paragraph 1 or 2, the arbitral tribunal shall remain in place to the extent possible and conduct the arbitration in accordance with the UNCITRAL Arbitration Rules.*

Draft provision 4 (Notice of arbitration and statement of claim)

1. *When communicating the notice of arbitration in accordance with article 3 of the UNCITRAL Arbitral Rules and paragraph 2 of this provision to the respondent, the claimant shall also communicate its statement of claim in accordance with article 20, paragraphs 2 to 4, of the UNCITRAL Arbitration Rules.*
2. *The notice of arbitration shall include the following:*
 - (a) *Unless the parties have already agreed on the choice of an appointing authority, a proposal for the designation of an appointing authority referred to in draft provision 6; and*
 - (b) *A proposal for the appointment of a sole arbitrator referred to in draft provision 8.*
3. *The claimant shall communicate its statement of claim in writing to the arbitral tribunal as soon as it is constituted.*

Draft provision 5 (Response to the notice of arbitration and statement of defence)

1. *Within 15 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration in accordance with article 4 of the UNCITRAL Arbitration Rules and paragraph 2 of this provision.*
2. *The response to the notice of arbitration shall also include the following:*
 - (a) *Unless the parties have already agreed on the choice of an appointing authority, a proposal for the designation of an appointing authority referred to in draft provision 6; and*
 - (b) *A proposal for the appointment of a sole arbitrator referred to in draft provision 8.*
3. *The respondent shall communicate its statement of defence in accordance with article 21 of the UNCITRAL Arbitration Rules within 15 days of the constitution of the arbitral tribunal.*

Draft provision 6 (Designating and appointing authorities)

1. *If all parties have not agreed on the choice of an appointing authority within 15 days after a proposal made in accordance with draft provision 5, paragraph 2 has been received by all other parties, any party may request the Secretary-General of the Permanent Court of Arbitration to designate the appointing authority or to serve as appointing authority.*
2. *If requested to serve as appointing authority in accordance with paragraph 1, the Secretary-General of the Permanent Court of Arbitration would serve as appointing authority unless it determines that in view of the circumstances of the case, it would be more appropriate to designate an appointing authority.*

Draft provision 7 (Number of arbitrators)

Unless otherwise agreed by the parties, there shall be one arbitrator.

Draft provision 8 (Appointment of the sole arbitrator)

1. *The sole arbitrator shall be appointed jointly by the parties.*
2. *[Option A: If within 30 days after receipt by the respondent of the notice of arbitration][Option B: If within 15 days after receipt by all other parties of the response to the notice of arbitration] the parties have not reached an agreement on the arbitrator, the arbitrator shall, at the request of a party, be*

appointed by the appointing authority in accordance with article 8(2) of the UNCITRAL Arbitration Rules.

Draft provision 9 (Consultation with the parties and provisional timetable)

1. *Promptly after and within 15 days of its constitution, the arbitral tribunal shall consult the parties, including through a case management conference, on the manner in which it will conduct the arbitration.*
2. *Such consultations may be conducted through a meeting in person, in writing, by telephone or videoconference or other means of communication. In the absence of an agreement of the parties, the arbitral tribunal shall determine the appropriate means by which the consultations will be conducted.*
3. *In establishing the provisional timetable in accordance with article 17(2) of the UNCITRAL Arbitration Rules, the arbitral tribunal shall take into account the time frames in the Expedited Arbitration Provisions.*

Draft provision 10 (Discretion of the arbitral tribunal with regard to time frames)

In conducting arbitration under the Expedited Arbitration Provisions, the arbitral tribunal may, at any time, after inviting the parties to express their views: (a) fix the period of time for any stage of the proceedings; (b) subject to draft provision 16, extend or abridge any period of time prescribed under the UNCITRAL Arbitration Rules and the Expedited Arbitration Provisions; and (c) extend or abridge any period of time agreed by the parties.

Draft provision 11 (Hearings)

1. *In the absence of a request by any party to hold hearings for the presentation of evidence by witnesses (including expert witnesses) or for oral argument, the arbitral tribunal may, after inviting the parties to express their views, decide that hearings shall not be held and that the proceedings shall be conducted only on the basis of documents and other materials.*
2. *Any party may object to that decision [within 15 days of receipt]. In that case, the arbitral tribunal shall hold hearings.*

Draft provision 12 (Counterclaims or claims for the purpose of set off)

1. *A counterclaim or a claim for the purpose of a set-off shall be made in the statement of defence provided that the arbitral tribunal has jurisdiction over it.*
2. *The respondent may not make a counterclaim or rely on a claim for the purpose of a set-off at a later stage in the arbitral proceedings, unless the arbitral tribunal considers it necessary to allow such claims having regard to the delay in making such claim, prejudice to other parties and any other circumstances.*

Draft provision 13 (Amendments and supplements to a claim or defence)

1. *Amendments and supplements to a claim or defence, including a counterclaim or a claim for the purposes of set-off, shall be made no later than 30 days after the receipt of the statement of defence.*
2. *After the period of time in paragraph 1, a party may not amend or supplement its claim or defence, including a counterclaim or a claim for the purposes of set-off, unless the arbitral tribunal considers it appropriate to allow such amendment or supplement having regard to the delay in making it, prejudice to other parties and any other circumstances.*

Draft provision 14 (Further written statements)

The arbitral tribunal may limit the presentation of further written statements in addition to the statement of claim and the statement of defence.

Draft provision 15 (Evidence)

1. *Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, shall be presented in writing and signed by them.*
2. *The arbitral tribunal may limit requests for the production of documents, exhibits or other evidence.*

Draft provision 16 (Award)

1. *Unless otherwise agreed by the parties, the award shall be made within [six][nine] months from the date of the constitution of the arbitral tribunal.*
2. *The period of time for making the award may be extended by the arbitral tribunal in exceptional circumstances after inviting the parties to express their views.*
3. *[The arbitral tribunal shall state the reason when extending the period of time for making the award.]*
4. *[The period of time for making the award may only be extended once and the extended time period should not be longer than [] months].*

Draft provision 17 (Allocation of costs)

[When allocating the costs of the arbitration in accordance with article 42, paragraph 1, of the UNCITRAL Arbitration Rules, the arbitral tribunal may determine that the costs arising with respect to a claim (including a counterclaim, a claim for the purposes of set-off and any amendment or supplement to the claim) should be borne by the party that made the claim, if it is determined that the claim was manifestly without merit].

Draft provision 18 (Pleas as to the merits and preliminary rulings)

1. *A party may raise a plea that:*
 - (a) *A claim or defence is manifestly without legal merit;*
 - (b) *Issues of fact or law supporting a claim or defence are manifestly without merit;*
 - (c) *An evidence is not admissible;*
 - (d) *No award could be rendered in favour of the other party even if issues of fact or law supporting a claim or defence are assumed to be correct;*
 - (e) *...*
2. *A party shall raise the plea as promptly as possible and no later than 30 days after the submission of the relevant claim/defence, issues of law or fact or evidence. The arbitral tribunal may admit a later plea if it considers the delay justified.*
3. *The party raising the plea shall specify as precisely as possible the facts and the legal basis for the plea and demonstrate that a ruling on the plea will expedite the proceedings considering all circumstances of the case.*
4. *After inviting the parties to express their views, the arbitral tribunal shall determine within [15] days from the date of the plea whether it will rule on the plea as a preliminary question.*
5. *Within [30] days from the date of the plea, the arbitral tribunal shall rule on the plea. The period of time may be extended by the arbitral tribunal in exceptional circumstances.*
6. *A ruling by the arbitral tribunal on a plea shall be without prejudice to the right of a party to object, in the course of the proceeding, that a claim or defence lacks legal merit.]*

II. Time frames in the Expedited Arbitration Provisions

The following provides an overview of the different time frames in the EAPs. In the “time frame” column, “A + number (days(d)/months(m))” indicates “within” the number of days/months from stage A (in certain cases, receipt thereof).

	Time frames	Stages of the proceedings and procedural actions	Relevant provisions
A		Notice of arbitration (including a proposal for the designation of an appointing authority and the appointment of a sole arbitrator) to the respondent	DP 4; UAR 3
	A+0	Statement of claim to the respondent	DP 4; UAR 20
B	A+15d	Response to the notice of arbitration (including a proposal for the designation of an appointing authority and the appointment of a sole arbitrator) to the claimant	DP 5
	B+15d	If no agreement on the appointing authority, any party may request the Secretary-General of PCA to designate appointing authority or to serve as appointing authority.	DP 6
	A+30d	If no agreement on the arbitrator, any party may request the appointing authority to appoint.	DP 8(2)
	B+15d	Option A (receipt of notice of arbitration) Option B (receipt of the response to the notice of arbitration) → Appointing authority to appoint as promptly as possible	UAR 8
C		Constitution of the tribunal	DP 8; UAR 8 & 9
	C+0	Claimant to communicate its statement of claim to the tribunal (as soon as it is constituted) (possible extension)	DP 4; UAR 20
	C+15d	Consultation with the parties including through a case management conference (promptly and within 15 days)	DP 9
	C+	Establishment of a provisional timetable (as soon as practicable)	UAR 17(2)
D	C+15d	Respondent to communicate its statement of defence to the claimant and the tribunal (possible extension)	DP 5; UAR 21
	D+0	Counterclaim or a claim for purposes of set-off to be included in the statement of defence (permitted at a later stage, if tribunal considers it necessary)	DP 12
	D+30d	Amendments and supplement to a claim or defence (permitted at a later stage, if the tribunal considers it appropriate)	DP 13
E		Decision by the tribunal to not hold a hearing	
	E+15d	Party's objection to the decision to not hold a hearing	DP 11
	C+6m or 9 m	Making of the award (with a possible extension)	DP 16