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Settlement of commercial disputes: revision of the UNCITRAL Arbitration Rules

Compilation of comments by Governments and international organizations

Contents

	<i>Page</i>
II. Comments received from Governments and international organizations	2
A. Comments received from Governments	2
Greece	2
Lebanon	3

* Submission of this note was delayed because of its late receipt.



II. Comments received from Governments and international organizations

A. Comments received from Governments

Greece

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[Date: 10 June 2010]

Draft Article 2:

“1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is: (a) received if it is physically delivered to the addressee; (b) deemed to have been received if it is delivered at the addressee’s habitual residence or place of business, or is otherwise capable of being retrieved at an address previously designated by the addressee for the purpose of receiving such a notice. 2. If, after reasonable efforts, delivery of the notice under paragraph 1 failed, the notice is deemed to have been received if it is sent to the addressee’s last known place of business or address. 3. Notice under paragraphs 1 (b) and 2 shall be delivered by any means of communication that provides a record of the information contained therein and of delivery thereof. 4. Notice shall be deemed to have been received on the day it is delivered under paragraph 1 or paragraph 2.”

Comments: In paragraph 3, the words “Sending and receipt” are replaced by the word “delivery”, which is in fact the term used in paragraph 1. In paragraph 4: Both paragraph 1 and paragraph 2 envisage methods of delivery (actual delivery in paragraph 1; deemed delivery in paragraph 2). The wording “attempted to be delivered” is incongruous with this fundamental concept, and has therefore been deleted.

Draft Article 34(2)

“2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay. Insofar as they may validly do so by adopting these Rules, the parties waive their right to initiate any form of appeal or review against an award to any court or other competent authority.”

Comments: It will be good to adopt a form of words closely similar to those in other major sets of Arbitration Rules (ICC, LCIA, SIAC, and others). Hence the proposal to keep the wording as simple as possible. Provisions of this type are well known and tried and tested in practice. The salient element is the limitation “insofar as they may validly do so by adopting these Rules”; the particular form of words thereafter (“appeal”, “review”, “recourse”) is less important.

The last sentence in square brackets is to be deleted. It stands in tension with the fundamental rule in this paragraph, that “the parties shall carry out all awards without delay”.

Draft Article 41(4)

“4. When informing the parties of the arbitrators’ fees and expenses that have been fixed pursuant to article 40, paragraphs 2 (a) and (b), the arbitral tribunal shall also

explain the manner in which the corresponding amounts have been calculated. Within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the appointing authority, or if no appointing authority has been agreed upon or designated, the Secretary-General of the PCA. If the appointing authority or, pursuant to article 6, paragraph 4, the Secretary-General of the PCA finds that the arbitral tribunal's determination of fees and expenses is manifestly excessive, taking into account the arbitral tribunal's proposal (and any adjustment thereto) under paragraph 3 or, to the extent that the determination of fees and expenses is inconsistent with that proposal, finds that the determination does not satisfy paragraph 1, the appointing authority or the Secretary-General of the PCA shall, within 45 days of receiving such a referral, make any necessary adjustments to the arbitral tribunal's determination, which shall be binding upon the arbitral tribunal. Any such adjustments either shall be included by the tribunal in its award or, if the award has already been issued, shall be implemented in a correction to the award pursuant to article 38."

Comments: The sentence "pursuant to article 6, paragraph 4" is a useful reminder of the hypothesis dealt with in Article 6(4), namely that the Secretary-General of the PCA may rule on the tribunal's determination of fees and expenses if the appointing authority fails to make that decision. Article 6(4) refers explicitly to Article 41(4), but given the physical distance between the two provisions, an explicit reminder of Article 6(4) will be helpful.

Lebanon

[Original: Arabic]
[Date: 7 June 2010]

The UNCITRAL Arbitration Rules have not been amended since they were adopted in 1976. A special working group has been engaged since July 2006 in developing draft revised UNCITRAL Arbitration Rules that do not alter the structure, spirit or drafting style of the text, while making it more flexible and less complex.

The most salient features of the draft text are as follows:

1. Article 6 is a new one that enables a party, unless the parties have already agreed on the choice of an appointing authority, at any time to propose the name or names of one or more institutions or persons, including the Secretary-General of the Permanent Court of Arbitration at the Hague (hereinafter called the "PCA"), one of whom would serve as appointing authority.

It also enables any party to request the Secretary-General of the PCA to designate the appointing authority.

2. Article 34, which provides in its paragraph 2 that an award shall not be subject to any form of appeal or challenge at any court or other authority, except for an application for setting aside the award for lack of jurisdiction or for contravention of procedural principles.

3. Article 35 on the applicable law.

As a whole, the draft revised UNCITRAL International Arbitration Rules are acceptable.