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on International Trade Law**
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**Settlement of commercial disputes: Revision of the
UNCITRAL Arbitration Rules**

Note by the Secretariat

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I. Introduction

1. This note contains an annotated draft of revised UNCITRAL Arbitration Rules, based on the deliberations of the Working Group at its forty-sixth to fifty-second sessions. This document covers draft articles 20 to 43 of the revised Rules as well as the annex to the draft Rules containing the model arbitration clause and the model statements of independence. Draft articles 1 to 19 are dealt with under document A/CN.9/703.

II. Draft revised UNCITRAL Arbitration Rules

Section III. Arbitral proceedings (*continued*)

2. **Draft article 20**¹ (article 18 of the 1976 version of the Rules)

Statement of claim

1. The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration in article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this article.

2. The statement of claim shall include the following particulars:

- (a) The names and contact details of the parties;
- (b) A statement of the facts supporting the claim;
- (c) The points at issue;
- (d) The relief or remedy sought;
- (e) The legal grounds or arguments supporting the claim.

3. A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.

4. The statement of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

3. **Draft article 21**² (article 19 of the 1976 version of the Rules)

Statement of defence

1. The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be

¹ For discussions at previous sessions of the Working Group, see documents A/CN.9/614, para. 92; A/CN.9/619, paras. 146-155; A/CN.9/669, paras. 19-24; and A/CN.9/688, para. 83.

² For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 93-96; A/CN.9/619, paras. 156-160; A/CN.9/669, paras. 25-33; and A/CN.9/688, para. 83.

determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration in article 4 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this article.

2. The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (article 20, paragraph 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.

3. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.

4. The provisions of article 20, paragraphs 2 and 4 shall apply to a counterclaim and a claim relied on for the purpose of a set-off.

4. **Draft article 22³** (article 20 of the 1976 version of the Rules)

Amendments to the claim or defence

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

5. **Draft article 23⁴** (article 21 of the 1976 version of the Rules)

Pleas as to the jurisdiction of the arbitral tribunal

1. The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an

³ For discussions at previous sessions of the Working Group, see documents A/CN.9/619, para. 161; A/CN.9/669, paras. 34 and 35; and A/CN.9/688, para. 83.

⁴ For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 97-102; A/CN.9/619, paras. 162-164; A/CN.9/641, para. 18; A/CN.9/669, paras. 36-46; and A/CN.9/688, para. 83.

arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

6. **Draft article 24⁵** (article 22 of the 1976 version of the Rules)

Further written statements

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

7. **Draft article 25⁶** (article 23 of the 1976 version of the Rules)

Periods of time

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

8. **Draft article 26⁷** (article 26 of the 1976 version of the Rules)

Interim measures

1. The arbitral tribunal may, at the request of a party, grant interim measures.

2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to, including, without limitation:

(a) Maintain or restore the status quo pending determination of the dispute;

(b) Take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself;

(c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or

⁵ For discussions at previous sessions of the Working Group, see documents A/CN.9/641, para. 19; A/CN.9/669, para. 47; and A/CN.9/688, para. 83.

⁶ For discussions at previous sessions of the Working Group, see documents A/CN.9/641, para. 20; A/CN.9/669, para. 48; and A/CN.9/688, para. 83.

⁷ For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 104 and 105; A/CN.9/641, paras. 46-60; A/CN.9/669, paras. 85-119; and A/CN.9/688, paras. 92-95.

(d) Preserve evidence that may be relevant and material to the resolution of the dispute.

3. The party requesting an interim measure under paragraphs 2 (a) to (c) shall satisfy the arbitral tribunal that:

(a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

4. With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.

5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.

8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

9. Nothing in these Rules shall have the effect of creating a right, or of limiting any right which may exist outside these Rules, of a party to apply to the arbitral tribunal for, and any power of the arbitral tribunal to issue, in either case without prior notice to a party, a preliminary order that the party not frustrate the purpose of a requested interim measure.

10. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

9. **Draft article 27⁸** (article 24 of the 1976 version of the Rules)

Evidence

⁸ For discussions at previous sessions of the Working Group, see documents A/CN.9/614, para. 103; A/CN.9/641, paras. 21-26; A/CN.9/669, paras. 49-51 and 70-75; and A/CN.9/688, paras. 96-99.

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.
 2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.
 3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.
 4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.
10. **Draft article 28⁹** (article 25 in the 1976 version of the Rules)
- Hearings
1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.
 2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.
 3. Hearings shall be held *in camera* unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.
 4. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).
11. **Draft article 29¹⁰** (article 27 of the 1976 version of the Rules)
- Experts appointed by the arbitral tribunal
1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
 2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal

⁹ For discussions at previous sessions of the Working Group, see documents A/CN.9/641, paras. 27-45; A/CN.9/669, paras. 52-71, 73 and 76-84; and A/CN.9/688, para. 83.

¹⁰ For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 106 and 107; A/CN.9/641, para. 61; A/CN.9/684, para. 21; A/CN.9/688, paras. 49-56 and 83.

whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.

3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.

5. At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of article 28 shall be applicable to such proceedings.

12. **Draft article 30**¹¹ (article 28 of the 1976 version of the Rules)

Default

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:

(a) The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;

(b) The respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

2. If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time,

¹¹ For discussions at previous sessions of the Working Group, see documents A/CN.9/641, paras. 62-64; A/CN.9/684, paras. 22-33; and A/CN.9/688, para. 83.

without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

13. **Draft article 31**¹² (article 29 of the 1976 version of the Rules)

Closure of hearings

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

14. **Draft article 32**¹³ (article 30 in the 1976 version of the Rules)

Waiver of right to object

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

Section IV. The award

15. **Draft article 33**¹⁴ (article 31 of the 1976 version of the Rules)

Decisions

1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.

2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

16. **Draft article 34**¹⁵ (article 32 of the 1976 version of the Rules)

Form and effect of the award

1. The arbitral tribunal may make separate awards on different issues at different times.

¹² For discussions at previous sessions of the Working Group, see documents A/CN.9/641, para. 65; A/CN.9/684, paras. 34-40; and A/CN.9/688, para. 83.

¹³ For discussions at previous sessions of the Working Group, see documents A/CN.9/641, paras. 66 and 67 and A/CN.9/684, paras. 41-51; and A/CN.9/688, paras.100-101.

¹⁴ For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 108-112; A/CN.9/641, paras. 68-77; A/CN.9/684, paras. 52-62; and A/CN.9/688, para. 102.

¹⁵ For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras 113-121; A/CN.9/641, paras. 78-105; A/CN.9/684, paras. 63-90; and A/CN.9/688, paras. 103-111.

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 [or recourse] against an award to any court or other competent authority [, except for an application requesting the setting aside of an award, and proceedings regarding execution and enforcement of an award].
3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.
5. An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.
6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

Remarks on draft article 34, paragraph (2)

17. The Commission may wish to note that the Working Group agreed on the principle to include in paragraph (2) a provision whereby the award would be subject to no appeal or other recourse before any court or other authority. The effect of that provision would be to make it impossible for parties to use those types of recourse that could be freely waived by the parties (for example, in some jurisdictions, an appeal on a point of law), but not to exclude challenges to the award (for example, on matters such as lack of jurisdiction, violation of due process or any other ground for setting aside the award as set out under article 34 of the UNCITRAL Model Law on International Commercial Arbitration), insofar as the parties could not exclude them by contract. At the fifty-second session of the Working Group, diverging views were expressed regarding the manner in which the scope of the waiver should be determined and the third sentence of paragraph (2) contains bracketed language for further consideration by the Commission.

18. **Draft article 35**¹⁶ (article 33 of the 1976 version of the Rules)

Applicable law, amiable compositeur

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.

¹⁶ For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 122-124; A/CN.9/641, paras. 106-113; A/CN.9/684, paras. 91-100; and A/CN.9/688, para. 102.

2. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the arbitral tribunal to do so.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

19. **Draft article 36**¹⁷ (article 34 of the 1976 version of the Rules)

Settlement or other grounds for termination

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 34, paragraphs 2, 4 and 5 shall apply.

20. **Draft article 37**¹⁸ (article 35 of the 1976 version of the Rules)

Interpretation of the award

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.

2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 34, paragraphs 2 to 6, shall apply.

21. **Draft article 38**¹⁹ (article 36 of the 1976 version of the Rules)

Correction of the award

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error

¹⁷ For discussions at previous sessions of the Working Group, see documents A/CN.9/641, para. 114; A/CN.9/684, paras. 101-103; and A/CN.9/688, para. 112.

¹⁸ For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 125 and 126; A/CN.9/641, para. 115; A/CN.9/684, paras. 104 and 105; and A/CN.9/688, para. 102.

¹⁹ For discussions at previous sessions of the Working Group, see documents A/CN.9/614, para. 127; A/CN.9/641, para. 116; A/CN.9/684, paras. 106-112; and A/CN.9/688, para. 102.

in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.

2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.

3. Such corrections shall be in writing, and shall form part of the award. The provisions of article 34, paragraphs 2 to 6, shall apply.

22. **Draft article 39**²⁰ (article 37 of the 1976 version of the Rules)

Additional award

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.

2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.

3. When such an award or additional award is made, the provisions of article 34, paragraphs 2 to 6, shall apply.

23. **Draft article 40**²¹ (article 38 of the 1976 version of the Rules)

Definition of costs

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.

2. The term "costs" includes only:

(a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;

(b) The reasonable travel and other expenses incurred by the arbitrators;

(c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;

(d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

²⁰ For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 128 and 129; A/CN.9/641, paras. 117-121; A/CN.9/684, paras. 113-116; and A/CN.9/688, para. 113.

²¹ For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 130-132; A/CN.9/646, paras. 18 and 19; A/CN.9/684, paras. 117-121; A/CN.9/688, paras. 16-19 and 102.

(f) Any fees and expenses of the appointing authority as well as the expenses of the Secretary-General of the PCA.

3. In relation to interpretation, correction or completion of any award under articles 37 to 39, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

24. **Draft article 41**²² (article 39 of the 1976 version of the Rules)

Fees and expenses of arbitrators

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.

2. If an appointing authority has been agreed upon by the parties or designated by the Secretary-General of the PCA, and if that authority applies or has stated that it will apply a schedule or particular method for determining the fees for arbitrators in international cases, the arbitral tribunal in fixing its fees shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case.

3. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If, within 45 days of receipt of such a referral, the appointing authority finds that the proposal of the arbitral tribunal is inconsistent with paragraph 1, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal.

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

²² For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 133 and 134; A/CN.9/646, paras. 20-27; A/CN.9/684, paras. 122-126; and A/CN.9/688, paras. 20-36, 114-122.

award has already been issued, shall be implemented in a correction to the award pursuant to article 38.

5. Throughout the procedure under paragraphs 3 and 4, the arbitral tribunal shall proceed with the arbitration, in accordance with article 17, paragraph 1.

6. A referral under paragraph 4 shall not affect any determination in the award other than the arbitral tribunal's fees and expenses.

Remarks on draft article 41, paragraphs (3) and (4)

25. The Commission may wish to note that the Working Group agreed on the principle of providing a more transparent procedure for the determination of the arbitral tribunal's fees and expenses from the outset. The Working Group also considered whether a role should be granted to the appointing authority in respect of review of fees and expenses. Under paragraph (3), at the very early stage of the arbitral procedure, promptly after the constitution of the arbitral tribunal, the parties may request the appointing authority chosen or designated in accordance with draft article 6 to decide whether the proposal of the arbitral tribunal on its fees or expenses is consistent with paragraph (1). In case the appointing authority does not reply to the parties within a period of 45 days, the parties may consider that it constitutes a failure to act and, under draft article 6, either agree on the appointment of a substitute appointing authority or request the Secretary-General of the PCA to make that designation. Under paragraph (4), at the late stage of the procedure, when the arbitral tribunal informed the parties of its fees and expenses, any party may refer such determination to the appointing authority for review. In case there is no appointing authority agreed upon or designated at that late stage of the procedure or if such an appointing authority fails, refuses, or is unable to fulfil its functions, the matter would then be referred to the Secretary-General of the PCA for determination. At the fifty-second session of the Working Group, after discussion, it was felt that a revised draft of that provision should be considered at a later stage and in view of the difficulty of reaching a consensus on that provision, the Working Group decided to submit it to the Commission for further consideration (A/CN.9/688/, paras. 114-122). The Commission may wish to note that further proposals were made at the closing of the session regarding article 41. One proposal was to include a provision either in article 41 or article 6, along the lines of: "The Secretary-General of the PCA may, before designating a substitute appointing authority under article 41, paragraph 3, or making the decision under article 41, paragraph 4, grant the appointing authority a reasonable extension of time for making its determination." Another proposal was to provide that "The appointing authority shall act promptly and, in any event, must make its decision under paragraphs 3 and 4 within 45 days of receiving the referral.", and deleting the reference to the time limit of 45 days where it appears in paragraphs 3 and 4.

26. **Draft article 42**²³ (article 40 of the 1976 version of the Rules)

Allocation of costs

²³ For discussions at previous sessions of the Working Group, see documents A/CN.9/614, para.135; A/CN.9/646, paras. 28-36; and A/CN.9/688, paras. 37, 123 and 124.

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
 2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.
27. **Draft article 43**²⁴ (article 41 of the 1976 version of the Rules)
- Deposit of costs
1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in article 40, paragraphs 2 (a) to (c).
 2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.
 3. If an appointing authority has been agreed upon or designated, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority, which may make any comments to the arbitral tribunal which it deems appropriate concerning the amount of such deposits and supplementary deposits.
 4. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
 5. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

28. **Annex to the Rules**

Draft model arbitration clause for contracts²⁵

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.

Note — Parties should consider adding:

- (a) The appointing authority shall be ... (name of institution or person);
- (b) The number of arbitrators shall be ... (one or three);

²⁴ For discussions at previous sessions of the Working Group, see documents A/CN.9/646, para. 37; A/CN.9/688, paras. 38 and 102.

²⁵ For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 36-38, A/CN.9/619, paras. 39-42; A/CN.9/646, para. 79; A/CN.9/665, paras. 21-22; and A/CN.9/688, para. 57 and 125.

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- (c) The place of arbitration shall be ... (town and country);
 - (d) The language to be used in the arbitral proceedings shall be

Draft model statements of independence pursuant to article 11 of the Rules²⁶

No circumstances to disclose: I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I hereby shall promptly notify the parties and the other arbitrators of any such circumstances that may subsequently come to my attention during this arbitration.

Circumstances to disclose: I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made pursuant to article 11 of the UNCITRAL Arbitration Rules of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances. [Include statement] I confirm that those circumstances do not affect my independence and impartiality. I hereby shall promptly notify the parties and the other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration.

“Note — The parties may consider adding to the statement of independence:

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules.”

²⁶ For discussions at previous sessions of the Working Group, see documents A/CN.9/619, paras. 96-99; A/CN.9/665, paras. 75-80; and A/CN.9/688, paras. 58 and 125.