



# General Assembly

Distr.: Limited  
10 December 2009\*

Original: English

**United Nations Commission  
on International Trade Law**  
**Working Group II (Arbitration and Conciliation)**  
**Fifty-second session**  
New York, 1-5 February 2010

## Settlement of commercial disputes: Revision of the UNCITRAL Arbitration Rules

Note by the Secretariat

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\* This document is submitted later than the required ten weeks prior to the start of the meeting because of the need to complete consultations.



## I. Introduction

1. At its thirty-ninth session (New York, 19 June-7 July 2006), the Commission agreed that, in respect of future work of the Working Group, priority be given to a revision of the UNCITRAL Arbitration Rules (1976) (“the UNCITRAL Arbitration Rules” or “the Rules”).<sup>1</sup> In recognition of the success and status of the UNCITRAL Arbitration Rules, the Commission was generally of the view that any revision of the UNCITRAL Arbitration Rules should not alter the structure of the text, its spirit or its drafting style, and should respect the flexibility of the text rather than make it more complex.<sup>2</sup> At its forty-second session (Vienna, 29 June-17 July 2009), the Commission agreed that the time required should be taken for meeting the high standard of UNCITRAL, taking account of the international impact of the Rules, and expressed the hope that the Working Group would complete its work on the revision of the UNCITRAL Arbitration Rules in their generic form, so that the final review and adoption of the revised Rules would take place at the forty-third session of the Commission, in 2010.<sup>3</sup>

2. At its forty-fifth session (Vienna, 11-15 September 2006), the Working Group undertook to identify areas where a revision of the UNCITRAL Arbitration Rules might be useful. At that session, the Working Group gave preliminary indications as to various options to be considered in relation to proposed revisions, on the basis of documents A/CN.9/WG.II/WP.143 and A/CN.9/WG.II/WP.143/Add.1, in order to allow the Secretariat to prepare a draft of revised Rules taking account of such indications. The report of that session is contained in document A/CN.9/614. At its forty-sixth (New York, 5-9 February 2007), forty-seventh (Vienna, 10-14 September 2007) and forty-eighth (New York, 4-8 February 2008) sessions, the Working Group discussed a draft of revised Rules, as contained in documents A/CN.9/WG.II/WP.145 and A/CN.9/WG.II/WP.145/Add.1. The reports of those sessions are contained in documents A/CN.9/619, A/CN.9/641 and A/CN.9/646, respectively. At its forty-ninth (Vienna, 15-19 September 2008), fiftieth (New York, 9-13 February 2009), and fifty-first (Vienna, 14-18 September 2009) sessions, the Working Group carried out its second reading of draft articles 1 to 39 of the revised Rules on the basis of documents A/CN.9/WG.II/WP.151 and A/CN.9/WG.II/WP.151/Add.1. The reports of those sessions are contained in documents A/CN.9/665, A/CN.9/669 and A/CN.9/684, respectively.

3. This note contains an annotated draft of revised UNCITRAL Arbitration Rules, based on the deliberations of the Working Group at its forty-ninth to fifty-first sessions. It has been prepared for the consideration of the Working Group for the third reading of the revised version of the Rules, in replacement of documents A/CN.9/WG.II/WP.154 and A/CN.9/WG.II/WP.154/Add.1, as it seemed clearer to propose a complete draft of revised Rules, instead of adding annotations and comments to such previous documents. This note covers draft articles 1 to 16 of the revised Rules. Draft articles 17 to 32 are dealt with under document A/CN.9/WG.II/WP.157/Add.1 and draft articles 33 to 43, as well as the

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<sup>1</sup> *Official Records of the General Assembly, Sixty-first Session, Supplement No. 17 (A/61/17)*, paras. 182-187.

<sup>2</sup> *Ibid.*, para. 184.

<sup>3</sup> *Ibid.*, *Sixty-fourth session, Supplement No. 17 (A/64/17)*, para. 298.

draft model arbitration clause, draft model statements of independence and the proposed additional draft provision on gap filling are dealt with under document A/CN.9/WG.II/WP.157/Add.2. The Working Group may wish to note that where this note refers to the previous draft revised Rules, it refers to the draft as contained in documents A/CN.9/WG.II/WP.151 and A/CN.9/WG.II/WP.151/Add.1.

## II. General remarks

### *Renumbering of articles*

4. The Working Group may wish to consider whether the articles of the revised Rules should be renumbered as proposed in this note, and if so, whether to include in the revised Rules a table, as proposed in an annex to this note, showing the concordance between the articles of the 1976 version of the Rules and those of the revised version. The Working Group may also wish to decide whether to place the model arbitration clause and statements of independence at the end of the revised Rules (A/CN.9/665, para. 22).

### *Provisions to be considered for the third reading of the revised version of the Rules*

5. The Working Group may wish to note that it decided at its forty-ninth to fifty-first sessions to give further consideration to the following draft provisions of the revised Rules contained in this note: draft article 2, paragraph (2) on the delivery of the notice of arbitration (see below, para. 8); draft article 7, paragraph (2) on the number of arbitrators (see below, para. 23); draft article 14, paragraph (2) on the replacement of an arbitrator in exceptional circumstances (see below, para. 36); and draft article 16 on liability (see below, para. 41).

## III. Draft revised UNCITRAL Arbitration Rules

### Section I. Introductory rules

#### Draft article 1

6. Draft article 1 reads as follows:

##### Scope of application

1. 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 Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.

2. The parties to an arbitration agreement concluded after [date of adoption by UNCITRAL of the revised version of the Rules] shall be presumed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules. That presumption does not apply where the arbitration agreement has been concluded by accepting after [date of adoption by UNCITRAL of the revised version of the Rules] an offer made before that date.

3. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

*Remarks on draft article 1 [article 1 of the 1976 version of Rules]<sup>4</sup>*

7. The Working Group agreed to replace the word “another” by the words “a particular” in the first sentence of paragraph (2), and with that modification, the Working Group approved the substance of draft article 1 at its forty-ninth session (A/CN.9/665, paras. 18 to 20). The Working Group may wish to note that, for the sake of clarity, the words “unless the parties have agreed to apply a particular version of the Rules”, which appeared as the opening words of the first sentence of paragraph (2) in the previous draft, have been placed at the end of that first sentence.

**Draft article 2**

8. Draft article 2 reads as follows:

Notice and calculation of periods of time

1. Any notice, including a notification, communication or proposal shall be delivered by any means of communication that provides a record of its transmission.
2. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at its habitual residence, place of business or designated address, or, if none of these can be found after making reasonable inquiry, then at the addressee’s last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.
3. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

*Remarks on draft article 2 [article 2 of the 1976 version of the Rules]<sup>5</sup>*

9. Paragraphs (1) and (2) seek to reflect the decision of the Working Group at its forty-ninth session to expressly include in the first paragraph language which authorizes delivery of notice by any means of communication that provides a record

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<sup>4</sup> For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 22-34; A/CN.9/619 paras. 18-38; A/CN.9/646, paras. 71-78 and A/CN.9/665, paras. 18-20.

<sup>5</sup> For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 39-47; A/CN.9/619, paras. 44-50; A/CN.9/646, paras. 80-84 and A/CN.9/665, paras. 23-31.

of transmission and to include in the second paragraph provisions addressing the situation where a notice could not be delivered to the addressee in person (A/CN.9/665, paras. 28 and 29).

10. At its forty-eighth session, the Working Group agreed to replace the word “mailing” appearing before the word “address” by the word “designated” in the first sentence of paragraph (2) (numbered paragraph (1) in the 1976 version of the Rules) (A/CN.9/646, para. 82), and this constitutes the only modification to that paragraph compared to its original version. The Working Group may wish to consider whether additional language should be included in paragraph (2) to provide more guidance to parties, and in particular to limit the risk of communication in arbitration being made through general e-mail addresses that would not be expected to be used for such purposes. Such additional language could provide that any notice may also be delivered to any address agreed by the parties, or failing such agreement, according to the practice followed by the parties in their previous dealings.

11. Paragraph (3) (numbered paragraph (2) in the 1976 version of the Rules) is reproduced without any modification from the 1976 version of the Rules, and was approved in substance by the Working Group at its forty-ninth session (A/CN.9/665, para. 31).

### **Draft article 3**

12. Draft article 3 reads as follows:

#### Notice of arbitration

1. The party or parties initiating recourse to arbitration (hereinafter called the “claimant”) shall give to the other party or parties (hereinafter called the “respondent”) a notice of arbitration.
2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.
3. The notice of arbitration shall include the following:
  - (a) A demand that the dispute be referred to arbitration;
  - (b) The names and contact details of the parties;
  - (c) Identification of the arbitration agreement that is invoked;
  - (d) Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
  - (e) A brief description of the claim and an indication of the amount involved, if any;
  - (f) The relief or remedy sought;
  - (g) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.
4. The notice of arbitration may also include:
  - (a) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;

(b) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;

(c) Notification of the appointment of an arbitrator referred to in article 9 or article 10.

5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

*Remarks on draft article 3 [article 3 of the 1976 version of the Rules]<sup>6</sup>*

13. The Working Group agreed that the decision by the claimant that its notice of arbitration would constitute its statement of claim should be postponed until the stage of proceedings reflected in draft article 20 (corresponding to article 18 of the 1976 version of the Rules). It therefore agreed to delete from paragraph (4) the words: “The statement of claim referred to in article 18” (A/CN.9/665, para. 36). With that modification, the substance of draft article 3 was approved by the Working Group at its forty-ninth session (A/CN.9/665, paras. 33-42).

14. The Working Group may wish to note that, as a result of the proposal to insert the provision on the response to the notice of arbitration in a separate article (A/CN.9/665, para. 32), the provision formerly numbered article 3, paragraph (7), dealing with the consequences of an incomplete notice of arbitration or incomplete or missing response thereof, has been split into two paragraphs: draft article 3, paragraph (5) deals with the consequences of an incomplete notice of arbitration, and draft article 4, paragraph (3) deals with the consequences of a missing, incomplete or late response thereof (see below, para. 17). The phrase “the arbitral tribunal shall proceed as it considers appropriate”, which appeared in the previous draft of that paragraph, has been deleted as that discretionary power of the arbitral tribunal is a principle of general application which is already provided for under draft article 17, paragraph (1).

**Draft article 4**

15. Draft article 4 reads as follows:

Response to the notice of arbitration

1. Within 30 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall include:

(a) The name and contact details of each respondent;

(b) A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3 (c) to (g).

2. The response to the notice of arbitration may also include:

(a) Any plea that an arbitral tribunal constituted under these Rules lacks jurisdiction;

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<sup>6</sup> For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 48-55; A/CN.9/619, paras. 51-57 and A/CN.9/665, paras. 32-37 and 42.

(b) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;

(c) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;

(d) Notification of the appointment of an arbitrator referred to in article 9 or article 10;

(e) A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought.

3. The constitution of the arbitral tribunal shall not be hindered by failure of the respondent to communicate a response to the notice of arbitration, or by an incomplete or late response to the notice of arbitration.

*Remarks on draft article 4 [new article — numbered article 3, paragraphs (5) to (7) in the previous draft revised Rules]<sup>7</sup>*

16. In the previous draft revised Rules, the provisions on response to the notice of arbitration were included in draft article 3. The Working Group noted that it might be preferable to insert those provisions in a separate article (A/CN.9/665, para. 32). Paragraphs (1) and (2) (numbered article 3, paragraphs (5) and (6) in the previous draft revised Rules) take account of the decisions made in the Working Group to include in paragraph (1) (b) a reference to article 3, paragraph (3) (g) (A/CN.9/665, para. 67); and to provide that any plea that an arbitral tribunal lacks jurisdiction be part of optional items under paragraph (2) (A/CN.9/665, para. 39). With those modifications, the provisions of draft article 4 were approved in substance by the Working Group at its forty-ninth session (A/CN.9/665, paras. 38-42).

17. The Working Group may wish to note that the provision formerly numbered article 3, paragraph (7) dealing with the consequences of an incomplete notice of arbitration or incomplete or missing response thereto has been split into two paragraphs, and paragraph (3) deals with the consequences of a missing, incomplete or late response to the notice of arbitration (see above, para. 14).

#### **Draft article 5**

18. Draft article 5 reads as follows:

##### **Representation and assistance**

Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine.

<sup>7</sup> For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 56 and 57; A/CN.9/619, paras. 58-60 and A/CN.9/665, paras. 32, 38-42 and 67.

*Remarks on draft article 5 [article 4 of the 1976 version of the Rules]<sup>8</sup>*

19. Draft article 5 includes the drafting modifications agreed by the Working Group (A/CN.9/665, paras. 43-44), and was approved in substance by the Working Group at its forty-ninth session (A/CN.9/665, para. 45).

**Draft article 6**

20. Draft article 6 reads as follows:

Designating and appointing authorities

1. Unless the parties have already agreed on the choice of an appointing authority, a party may at any time 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.
2. If all parties have not agreed on the choice of an appointing authority within 30 days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request the Secretary-General of the PCA to designate the appointing authority.
3. If the appointing authority refuses to act, or if it fails to appoint an arbitrator within 30 days after it receives a party's request to do so, any party may request the Secretary-General of the PCA to designate an appointing authority. If the appointing authority refuses or fails to make any decision on the fees of the arbitrators under article 41, paragraph 4, any party may request the Secretary-General of the PCA to make that decision.
4. In exercising their functions under these Rules, the appointing authority and the Secretary-General of the PCA may require from any party and the arbitrators the information they deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority and the Secretary-General of the PCA shall also be provided by the sender to all other parties.
5. When the appointing authority is requested to appoint an arbitrator pursuant to articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.
6. The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

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<sup>8</sup> For discussions at previous sessions of the Working Group, see documents A/CN.9/619, paras. 63-68 and A/CN.9/665, paras. 43-45.

*Remarks on draft article 6 [new article — numbered article 4 bis in the previous draft revised Rules]<sup>9</sup>*

21. Paragraphs (1) and (4) include the drafting modifications agreed by the Working Group (A/CN.9/665, paras. 51 and 54). With those modifications, the substance of draft article 6 was approved by the Working Group at its forty-ninth session (A/CN.9/665, paras. 51-56).

22. The Working Group may wish to note that in the first sentence of paragraph (4), a reference has been added to “the Secretary-General of the PCA” and to “the arbitrators”, as there are instances (such as a challenge procedure) in which the Secretary-General of the PCA and the appointing authorities, in exercising their functions, may require information from the arbitrators (and not only from the parties).

## **Section II. Composition of the arbitral tribunal**

### **Draft article 7**

23. Draft article 7 reads as follows:

Number of arbitrators

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.

2. Notwithstanding paragraph 1, if no party has responded to a proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with article 9 or article 10, the appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, paragraph 2 if it determines that, in view of the circumstances of the case, this is more appropriate.

*Remarks on draft article 7 [article 5 of the 1976 version of the Rules]<sup>10</sup>*

24. Paragraph (1) reflects the decision of the Working Group to maintain the three-arbitrator default rule, as contained in article 5 of the 1976 version of the Rules, with the adjustment that such default rule would apply if the parties failed to reach an agreement on the number of arbitrators, and did not agree that there should be only one arbitrator within the 30-day time limit provided for responding to the notice of arbitration under draft article 4, paragraph (1) (A/CN.9/665, paras. 57-61, 65-67).

<sup>9</sup> For discussions at previous sessions of the Working Group, see documents A/CN.9/619, paras. 69-78 and A/CN.9/665, paras. 46-56. For discussions on the designating and appointing authorities at the forty-second session of the Commission, see *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 17* (A/64/17), paras. 292-297.

<sup>10</sup> For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 59-61; A/CN.9/619, paras. 79-83 and A/CN.9/665, paras. 57-67.

25. At its forty-ninth session, the Working Group agreed to further consider paragraph (2), which provides for a corrective mechanism involving the appointing authority in case a party, more likely the respondent, does not participate in the determination of the composition of the arbitral tribunal, and the arbitration case does not warrant the appointment of a three-member arbitral tribunal (A/CN.9/665, paras. 62-64).

**Draft article 8**

26. Draft article 8 reads as follows:

Appointment of arbitrators (articles 8 to 10)<sup>11</sup>

1. If the parties have agreed that a sole arbitrator is to be appointed, and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator, the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.

2. The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:

(a) The appointing authority shall communicate to each of the parties an identical list containing at least three names;

(b) Within 15 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;

(c) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;

(d) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

*Remarks on draft article 8 [article 6 of the 1976 version of the Rules]*<sup>12</sup>

27. Draft article 8 includes the drafting modifications adopted by the Working Group, and with those modifications, the substance of draft article 8 was approved by the Working Group at its forty-ninth session (A/CN.9/665, para. 68).

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<sup>11</sup> Corresponding to articles 6 to 8 of the 1976 version of the Rules.

<sup>12</sup> For discussions at previous sessions of the Working Group, see documents A/CN.9/619, para. 84 and A/CN.9/665, para. 68.

**Draft article 9**

28. Draft article 9 reads as follows:

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.
2. If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the appointing authority to appoint the second arbitrator.
3. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under article 8, paragraph 2.

*Remarks on draft article 9 [article 7 of the 1976 version of the Rules]*<sup>13</sup>

29. The Working Group approved the substance of draft article 9 at its forty-ninth session (A/CN.9/665, para. 69).

**Draft article 10**

30. Draft article 10 reads as follows:

1. For the purposes of article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.
2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.
3. In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal, and in doing so, may revoke any appointment already made, and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

*Remarks on draft article 10 [new article — numbered article 7 bis in the previous draft revised Rules]*<sup>14</sup>

31. The Working Group approved the substance of draft article 10 at its forty-ninth session (A/CN.9/665, para. 71). The Working Group may wish to note that the words “under paragraphs 1 and 2” appearing after the phrase “In the event of any failure to constitute the arbitral tribunal”, in the previous draft of paragraph (3),

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<sup>13</sup> For discussions at previous sessions of the Working Group, see documents A/CN.9/619, para. 85 and A/CN.9/665, para. 69.

<sup>14</sup> For discussions at previous sessions of the Working Group, see documents A/614, para. 62, A/CN.9/619, paras. 86-93 and A/CN.9/665, paras. 70 and 71.

have been deleted and replaced by the words “under these Rules” as that provision may find application in any instances of failure to constitute the arbitral tribunal under the Rules.

**Draft article 11**

32. Draft article 11 reads as follows:

Disclosures by and challenge of arbitrators (articles 11 to 13)<sup>15</sup>

When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

*Remarks on draft article 11 [article 9 of the 1976 version of the Rules]<sup>16</sup>*

33. The Working Group agreed to add the words “disclosures by and” in the title of draft article 11 and the words “and the other arbitrators” after the word “parties” in the second sentence of draft article 11. With those modifications, the Working Group approved draft article 11 in substance at its forty-ninth session (A/CN.9/665, paras. 73 and 74).

**Draft article 12**

34. Draft article 12 reads as follows:

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator’s impartiality or independence.
2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.
3. In the event that an arbitrator fails to act or in the event of de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

**Draft article 13**

35. Draft article 13 reads as follows:

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in articles 11 and 12 became known to that party.

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<sup>15</sup> Corresponding to articles 9 to 12 of the 1976 version of the Rules.

<sup>16</sup> For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 64 and 65, A/CN.9/619, para. 95 and A/CN.9/665, paras. 73 and 74.

2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.
3. When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall either seek a decision on the challenge by the appointing authority or, if no appointing authority has been agreed upon or designated, initiate the procedure for agreeing on, or designating an appointing authority and then, within 15 days of such agreement or designation, seek a decision on the challenge.

**Draft article 14**

36. Draft article 14 reads as follows:

**Replacement of an arbitrator**

1. Subject to paragraph (2), in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.
2. If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) if the same occurs after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

*Remarks on draft articles 12,<sup>17</sup> 13<sup>18</sup> and 14<sup>19</sup> [articles 10, 11, 12 and 13 of the 1976 version of the Rules]*

37. The Working Group may wish to note that, according to its decision at its forty-ninth session, the 1976 version of articles on challenge to arbitrators (articles 10 to 12) and their replacement (article 13) have been restructured. Draft article 12 deals with the reasons for the challenge or instances in which a challenge procedure would apply. Draft article 13 deals with the procedure for challenge. Draft article 14 deals with the replacement procedure. The Working Group may wish to consider whether the proposed draft provisions properly reflect the decisions made by the Working Group.

38. The Working Group may wish to note that draft articles 12, 13 and 14 above include the drafting modifications adopted by the Working Group, and that the Working Group approved the substance of those provisions at its forty-ninth session (A/CN.9/665, paras. 81, 83-84, 88, 91-93, 97, 98 and 102). The Working Group also agreed to further consider draft article 14, paragraph (2) addressing the situation where a party, in exceptional circumstances, has to be deprived of its right to appoint the substitute arbitrator (A/CN.9/665, paras. 115-117).

#### **Draft article 15**

39. Draft article 15 reads as follows:

Repetition of hearings in the event of the replacement of an arbitrator

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

*Remarks on draft article 15 [numbered article 14 in the 1976 version of the Rules]<sup>20</sup>*

40. The Working Group approved the substance of draft article 15 at its forty-ninth session (A/CN.9/665, para. 118).

#### **Draft article 16**

41. Draft article 16 reads as follows:

Liability

To the fullest extent permitted under the applicable law, the parties waive any claim against the arbitrators, the appointing authority, the Secretary-General of the PCA and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

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<sup>17</sup> For discussions at previous sessions of the Working Group, see documents A/CN.9/619, para. 100 and A/CN.9/665, para. 81.

<sup>18</sup> For discussions at previous sessions of the Working Group, see documents A/CN.9/614, para. 66, A/CN.9/619, paras. 101-105 and A/CN.9/665, paras. 82-102.

<sup>19</sup> For discussions at previous sessions of the Working Group, see documents A/CN.9/614, paras. 63, 67-74, A/CN.9/619, paras. 106-112 and A/CN.9/665, paras. 103-117.

<sup>20</sup> For discussions at previous sessions of the Working Group, see documents A/CN.9/614, para. 75, A/CN.9/619, para. 113 and A/CN.9/665, para. 118.

*Remarks on draft article 16 (new article)*<sup>21</sup>

42. Draft article 16 on liability seeks to address comments made in the Working Group at its forty-eighth session that the provision establishing immunity should cover the broadest possible range of participants in the arbitration and preserve exoneration in cases where the applicable law allows contractual exoneration from liability, to the fullest extent permitted by such law (A/CN.9/646, paras. 38-45). The Working Group agreed to give further consideration to draft article 16. The Working Group may wish to consider whether draft article 16 should be placed, as proposed, at the end of section II of the Rules.

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<sup>21</sup> For discussions at previous sessions of the Working Group, see documents A/CN.9/614, para. 136, A/CN.9/646, paras. 38-45.

## Annex

## Table of concordance

<i>Revised version of the UNCITRAL Arbitration Rules</i>	<i>1976 version of the UNCITRAL Arbitration Rules</i>
<b>Section I. Introductory rules</b>	<b>Section I. Introductory rules</b>
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Notice and calculation of periods of time (article 2)	Notice, calculation of periods of time (article 2)
Notice of arbitration (article 3)	Notice of arbitration (article 3)
Response to the notice of arbitration (article 4)	-
Representation and assistance (article 5)	Representation and assistance (article 4)
Designating and appointing authorities (article 6)	-
<b>Section II. Composition of the arbitral tribunal</b>	<b>Section II. Composition of the arbitral tribunal</b>
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<b>Section III. Arbitral proceedings</b>	<b>Section III. Arbitral proceedings</b>
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Place of arbitration (article 18)	Place of arbitration (article 16)
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Amendments to the claim or defence (article 22)	Amendments to the claim or defence (article 20)
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Closure of hearings (article 31)	Closure of hearings (article 29)
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Decisions (article 33)	Decisions (article 31)
Form and effect of the award (article 34)	Form and effect of the award (article 32)
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Settlement or other grounds for termination (article 36)	Settlement or other grounds for termination (article 34)
Interpretation of the award (article 37)	Interpretation of the award (article 35)

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*Revised version of the UNCITRAL Arbitration Rules**1976 version of the UNCITRAL Arbitration Rules*

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Correction of the award (article 38)

Correction of the award (article 36)

Additional award (article 39)

Additional award (article 37)

Definition of costs (article 40)

Costs (articles 38 to 40)

Fees of arbitrators (article 41)

Allocation of costs (article 42)

Deposit of costs (article 43)

Deposit of costs (article 41)

- Model arbitration clause for contracts
  - Model statements of independence pursuant to article 11 of the Rules
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