

THE REVISED UNCITRAL RULES – KEY CHANGES

The UNCITRAL Rules which were adopted on 15th December 1976 have been the subject of extensive consideration since July 2006, so as to “*seek to modernize the Rules and to promote greater efficiency in arbitral proceedings*”. However, the revision process was itself subject to the express limitation that it should not “*alter the structure of the text, its spirit, its drafting style and should respect the flexibility of the text rather than making it more complex*”.

On 12th July 2010, UNCITRAL published the revised Rules which will come into effect on **15th August 2010** and be presumed to apply to arbitration agreements concluded after that date.

For the text of the new Rules see www.uncitral.org. For our recent paper on the background to the revision process see www.mcnairchambers.com/en/publications/.

There are 12 key changes:

Article 1 – “a defined legal relationship, whether contractual or not” can be subject to arbitration pursuant to the Rules. The effective date of the revised Rules is stipulated at Article 1(2).

Article 2 – Notices for the purpose of the arbitral proceedings can be sent “by any means that provides or allows for a record of its transmission” – an email address or fax number must be designated by a party for such purposes.

Article 4 – The Respondent must file a response to the Notice for Arbitration within 30 days of receiving the same. The response may include a notice of arbitration against any other party which is a party to the arbitration agreement.

Article 6 – The time period for parties to seek to agree the appointing authority has been reduced from 60 to 30 days – after which period absence of agreement entitles any party to request the Secretary General of the PCA to designate the appointing authority.

Article 10 – Where multiple parties are unable to agree upon the constitution of the arbitral tribunal, the appointing authority can be requested by any party to constitute the tribunal, and may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

Article 16 – Seeks to effect a waiver of any claim (except for one based upon “intentional wrongdoing”) by the parties against the arbitrators and appointing authority.

Article 17 – Enables any party to the proceedings to request the tribunal to join one or more third party to be joined as a party to the arbitration proceedings, provided that such third party is also a party to the arbitration agreement.

Article 26 – The Tribunal’s powers relating to interim measures are amplified so as to include injunctive relief/preservation of evidence (26(2), set out the test for the grant of interim measures (26(3), and highlight costs/damages consequences in the event that interim measures are subsequently found to have been unjustified (26(8).

Article 35 – The applicable law refers now to “the Rules of Law” and not just “the Law” – which potentially enables the parties to specify, for example, the UNIDROIT Principles of International Commercial Contracts.

Article 41 – Arbitrators fees may be reviewed by the appointing authority (or, if there is none, then the Secretary General of the PCA), and may be adjusted if they are not “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” (41(1).

Annex to the Rules

Waiver Statement – parties may seek to include the Statement whereby they “waive their right to any form of recourse against an award ...insofar as such waiver can validly be made under the applicable law”

Model Statement of Impartiality and Independence for Arbitrators – Continuing obligation to notify the parties if circumstances change in this regard. An additional provision which parties may seek from an arbitrator to the effect that they can devote the time necessary to conduct the arbitration “*diligently and efficiently and in accordance with the time limits in the Rules*”.

21st July 2010