UNCITRAL Model Clause on Highly Expedited Arbitration

UNITED NATIONS

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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

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Contents

Decision by the United Nations Commission on International Trade Law on the adoption of the UNCITRAL Model Clauses on Specialized Express Dispute Resolution[1]

The United Nations Commission on International Trade Law,

Recalling its mandate under General Assembly resolution 2205 (XXI) of 17 December 1966 to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recalling also its decision at the fifty-fifth session, in 2022, to entrust Working Group II (Dispute Settlement) with considering the topics of technology-related dispute resolution and adjudication jointly, and with considering ways to further accelerate the resolution of disputes,

Recognizing the value of model clauses on specialized express dispute resolution, which provide parties with a streamlined and simplified procedure for settling disputes that arise in the context of international commercial relations within a shortened time frame,

Recognizing also the need to balance the efficiency of arbitral proceedings with the rights of disputing parties to due process and fair treatment,

Noting that the preparation of the draft model clauses on specialized express dispute resolution and the explanatory notes benefited greatly from consultations with Governments and interested intergovernmental and international non-governmental organizations,

Expressing its appreciation to Working Group II for its work in developing the draft model clauses on specialized express dispute resolution and the explanatory notes and to relevant international intergovernmental and non-governmental organizations for their support and contributions,

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[1] *Official Records of the General Assembly, Seventy-ninth Session, Supplement No. 17* (A/79/17, para. 93).

1. *Adopts* the UNCITRAL Model Clauses on Specialized Express Dispute Resolution, as contained in annex II to the report of the United Nations Commission on International Trade Law on the work of its fifty-seventh session;

2. *Approves* in principle the draft explanatory notes to the UNCITRAL Model Clauses on Specialized Express Dispute Resolution contained in document A/CN.9/1181, as revised by the Commission at its fifty-seventh session, and authorizes Working Group II (Dispute Settlement) to edit and finalize the text at its eightieth session, in 2024;

3. *Recommends* the use of the UNCITRAL Model Clauses on Specialized Express Dispute Resolution by parties and administering institutions in the settlement of disputes arising in the context of international commercial relations;

4. *Requests* the Secretary-General to publish the UNCITRAL Model Clauses on Specialized Express Dispute Resolution and the final text of the explanatory notes, including electronically, in the six official languages of the United Nations, and to make all efforts to ensure that they become generally known and available.

I. Preface

1. This Model Clause is one of the four UNCITRAL Model Clauses on Specialized Express Dispute Resolution (SPEDR) (2024) (the "Model Clauses"). The Model Clauses have been developed as part of UNCITRAL's efforts to achieve three common objectives, namely, expeditious dispute resolution, comprehension of technical matters, and maintaining confidentiality. They are designed as a resource for businesses and practitioners engaging in international dispute resolution.

2. The four Model Clauses are on: Highly Expedited Arbitration, Adjudication, Technical Advisers and Confidentiality.

3. The Model Clauses are contractual texts, flexible enough for users to adapt and adjust them to their circumstances and preferences. Parties can use any of the model clauses individually or combine them as they wish, depending on their specific needs. For this reason, the Model Clauses are presented to potential users in both consolidated and separate formats, in order to accommodate their flexibility and facilitate its use.

4. The Model Clauses are also accompanied by explanatory notes to promote their best possible use. These notes provide guidance to parties on their specific objectives and any associated risks or alternate approaches that can be adopted while including them in contracts.

5. This Model Clause provides an option for a highly expedited arbitration, further shortening the time frames and simplifying certain procedural steps provided in the UNCITRAL Rules on Expedited Arbitration ("Expedited Rules" or "EARs").

II. Model Clause on Highly Expedited Arbitration

Model Clause

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 Expedited Arbitration Rules ("Expedited Rules"), with the following modifications:

(a) The period of time for the parties to reach an agreement on the appointment of a sole arbitrator in article 8(2) of the Expedited Rules shall be [7] days after a proposal has been received by all other parties;

(b) The appointing authority shall be [name of institution or person];

(c) The period of time within which the arbitral tribunal shall consult the parties on the manner in which it will conduct the arbitration pursuant to article 9 of the Expedited Rules shall be [7] days;

(d) The period of time within which the award shall be made pursuant to article 16(1) of the Expedited Rules shall be [45] days;

(e) *Option I:* The extended period of time in article 16(2) of the Expedited Rules shall not exceed a total of [90] days;

OR

Option II: The extended period of time in article 16(2) of the Expedited Rules shall not exceed a total of [90] days. The period of time within which the award shall be made may not be further extended, and article 16(3) and (4) of the Expedited Rules shall not apply;

(f) The power of the arbitral tribunal pursuant to article 2(2) of the Expedited Rules to determine that the Expedited Rules shall no longer apply to the arbitration also extends to the power to determine that the modifications to the Expedited Rules contained herein shall no longer apply.

Explanatory notes

Introduction

1. The EARs provide a set of rules for expedited arbitration[2] and parties are free to modify the EARs to address their specific needs, preferences and any unique requirements that the EARs do not accommodate (article 1 of the EARs). The Model Clause on Highly Expedited Arbitration is for parties that wish to have a quicker procedure than what the EARs offer. The Model Clause achieves a more expedited arbitration by modifying some EARs provisions to speed up the procedure and is intended for inclusion in contracts.

2. Highly expedited arbitration procedures can be particularly useful in resolving disputes that arise from technology, construction, financial or other projects where failure to resolve disputes quickly may negatively impact a party's business. Shorter time frames will ensure expeditious resolution of disputes and avoid the risk, for example, that a project may be disrupted if it is suspended by a long and costly proceeding. However, parties should ensure that disputes submitted to highly expedited arbitration are suitable for such streamlined proceedings. While the highly expedited arbitration rules preserve essential procedural rights, the issues in dispute should not be disproportionately complex or extensive, as this could undermine the effectiveness of the expedited process.

3. Highly expedited arbitration, however, might not be suitable for cases with complex legal or technical issues requiring extensive evidence, or where those issues may require more time for presentation and resolution. The parties should thus be fully aware of the consequences involved in further shortening the proceedings beyond the period established in the EARs, which will substantially curtail the time available for the parties to present the disputed issue(s) and for the arbitral tribunal to resolve such issue(s), especially given that the dispute may turn out to involve more complex or unanticipated novel facts or legal issues than the parties anticipated when agreeing to apply the Model Clause. Therefore, parties may want to preserve some flexibility in the time frames.

4. When parties opt for highly expedited arbitration, the arbitral tribunal needs to ensure that the proceedings are conducted with the level of speed and efficiency that the parties have agreed upon and to exercise its discretionary powers under article 3 of the EARs and article 17 of the UARs to meet those expectations. Both the parties and the arbitral

[2] Parties may find further explanations on the EARs in the Explanatory Note that is published with them. See UNCITRAL Arbitration Rules (with article 1, paragraph 4, as adopted in 2013, and article 1, paragraph 5, as adopted in 2021) (United Nations publication 2021), pp. 47–71.

tribunal should be committed to acting expeditiously during the arbitral proceedings. It is recommended to implement the Model Clause in its entirety, as its elements are interconnected. This ensures the effectiveness and integrity of the entire Model Clause.

Selection of an arbitrator– paragraph (a)

5. Parties may jointly agree on a sole arbitrator before (possibly in the arbitration agreement) or after the dispute arises. If the parties have not agreed on a sole arbitrator [7] days after a proposal for the appointment of an arbitrator has been received by all other parties, any party may request an appointing authority agreed by the parties in paragraph *(b)* to appoint a sole arbitrator. Paragraph *(a)* modifies the 15-day period of time in article 8(2) of the EARs.

6. Parties may wish to consider the time-saving benefits of selecting an arbitrator before any dispute arises. If parties decide to agree on an arbitrator in advance of a dispute, they should carefully research their choice to confirm that he or she is qualified and capable of resolving the full range of disputes that might arise under the particular arbitration clause. Moreover, parties should be aware that agreeing on an arbitrator before the dispute arises creates a risk that the agreed arbitrator may need to be replaced. For example, at the time the dispute arises, the pre-agreed arbitrator may have developed a conflict of interest, may no longer be willing to serve as an arbitrator, or be unavailable due to other commitments, illness or even death. It is also necessary to ensure that parties have an arbitrator who is committed to the swift resolution of disputes by conducting a highly expedited arbitration, since the process of replacing an arbitrator can be time-consuming.

Selection of an appointing authority – paragraph (b)

7. To streamline the constitution of the arbitral tribunal, it is recommended that parties agree on an appointing authority. Otherwise, they could rely on the default appointing authority under article 6 of the EARs, that is, the Secretary-General of the Permanent Court of Arbitration at The Hague (PCA). Hence, parties could use the Model Clause even without agreeing on an appointing authority.

Consultation – paragraph (c)

8. Under article 9 of the EARs, the period of time within which the arbitral tribunal should consult the parties on the conduct of the arbitration is 15 days after the constitution of the arbitral tribunal.

Paragraph *(c)* of the Model Clause reduces the number of days to [7] to ensure that consultations take place promptly and still provides parties with sufficient time to prepare for a meaningful consultation.

9. Parties may wish to refer to the Explanatory Notes to the EARs in paragraphs 60 to 65 (Part G) which outline how consultations could be conducted between the parties and the arbitral tribunal. During the consultation, a number of issues could be discussed to expedite the proceedings, for instance: (i) limiting written submissions to one round; (ii) limiting the length of written submissions; (iii) setting the time frame for written submissions; (iv) determining whether to have a documents-only proceeding or to hold a hearing, and if the latter, whether the hearing will be conducted in person or remotely; and (v) agreeing that the arbitral tribunal does not need to provide reasons in the award (see paras. A.17–A.19 below).

Period of time for making the award – paragraphs (d) *and* (e)

10. Paragraph *(d)* modifies the period of time provided in article 16(1) of the EARs for making the award (six months) to [45] days from the date of the constitution of the arbitral tribunal, aligning with the goal of expeditious dispute resolution. Parties can choose the appropriate time period for their particular needs, although, in order for the proceedings to be "highly expedited", it is expected that the parties would choose a period less than the six months provided in the EARs.

11. Under paragraph *(e)*, parties are presented with two options.

12. Option I provides for a possible extension of time for the arbitral tribunal to make its award, as provided for in article 16(2) of the EARs, but which in the Model Clause should not exceed a short time limit such as a total of 90 days from the date of the constitution of the arbitral tribunal. This option gives the arbitral tribunal the further authority, in exceptional circumstances, to request additional time and then to invite the parties to express their views, in accordance with article 16(3) and (4) of the EARs. Parties will want to ensure that the extension they permit under paragraph *(e)* remains reasonable in light of the timeline they have chosen under paragraph *(d)*. If parties agreed to 45 days in paragraph *(d)*, they may wish, for example, to specify in paragraph *(e)* that an extension shall not exceed a total of 90 days.

13. Alternatively, Option II also permits an extended period of time referred to in article 16(2) of the EARs not exceeding a total of [90] days, but foresees that the period of time within which the arbitral award should be made cannot be further extended, which means that article 16(3) and (4) of the EARs do not apply.

14. Parties should note that a fixed time frame for making the award, without the safeguards provided for in article 16(3) and (4) of the EARs, may result in an award being issued after the lapse of the agreed time frame, contrary to the agreement of the parties, which may render the arbitral award unenforceable in some jurisdictions under article V(1)*(d)* of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards or may lead to the award being set aside at the seat of arbitration in accordance with the domestic legislation.[3] However, parties should also be aware that the single extension permitted under article 16(3) carries no specific time limit, except as agreed upon by the parties. There is a risk that, in certain circumstances, the parties may find it difficult to object to an extension proposal made by the arbitral tribunal, even if unreasonable. As for article 16(4), which allows the arbitral tribunal to revert to the regular procedure under the UARs, this would result in the parties not receiving the highly expedited arbitration they originally agreed upon.

Revert to EARs or UARs – paragraph (f)

15. The power of the arbitral tribunal provided in paragraph *(f)* is of the same nature as that in article 2(2) of the EARs, and allows, in exceptional circumstances and at the request of a party, the arbitral tribunal to reconsider and potentially revert to the default rules under the EARs if it finds that the modifications in the Model Clause, in whole or in part, were not appropriate for the case. The arbitral tribunal retains the power to revert to the UARs in accordance with article 2(2) of the EARs. Obviously, the parties may agree to revert to the UARs (article 2(1) of the EARs), should they consider that EARs are no longer appropriate. The parties may also agree to revert to the EARs to remove the "hard-stop" limitation on the period of time for granting the award provided for in Option II in paragraph *(e)*.

16. Paragraph *(f)* foresees that circumstances could change or that the nature of the dispute would be more complex than initially anticipated by the parties, despite their initial desire for highly expedited arbitration. It provides a degree of flexibility so that a fair and just resolution may still be achieved and the risk that an arbitral tribunal may not render an enforceable award within the agreed deadline may be minimized.

Reasoning of the arbitral award

17. Article 34(3) of the UARs requires the arbitral tribunal to state reasons in the arbitral award unless the parties agree otherwise. If

[3] For instance, under the UNCITRAL Model Law on International Commercial Arbitration adopted in many jurisdictions, as shown on the status page: https://uncitral.un.org/en/texts/arbitration/modellaw/commercial_arbitration/status.

permissible under the applicable law, parties may agree that no reasons be given in the arbitral award, by including the following additional clause: "The parties agree that the award be made without reasons." This is based on the principle of party autonomy in arbitration and reflects their will for a streamlined procedure. There are circumstances in which reasons may not be needed, for example, in final offer arbitration, where the arbitrator is entrusted to simply choose between two competing offers as provided by the parties. Reducing the time for making the award may thus enhance the efficiency of the arbitral process.

18. When considering whether to agree that no reasons need to be provided in the award, parties should consider that in certain jurisdictions, arbitral awards without a certain level of reasoning may not be enforceable and may be set aside. A non-reasoned award may also make it difficult for parties to comprehend or accept the decision. Additionally, if a court is requested to set aside an award based on particular statutory grounds, it may not be able to make the required assessment if no reasons are provided in the award. Also, requiring an arbitrator to give reasons for an award may lead to a deeper understanding of the dispute. Providing reasons is not always a cause of undue delays in making the award, as the arbitrator can also provide succinct and focused reasoning for the award.

19. If the applicable law permits non-reasoned awards, the parties' preference on whether reasons should be required could be discussed with the arbitral tribunal when it organizes the proceedings, which would allow parties to consider the implications for the completeness and enforceability of the award if reasons are not provided. If the parties have initially agreed to a non-reasoned award, they could, in consultation with the arbitral tribunal, reconsider their initial agreement and engage in discussions to request reasons for the award.

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