

UNCITRAL Model Clause on Technical Advisers



UNITED NATIONS

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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

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Technical Advisers



UNITED NATIONS
Vienna, 2024

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This publication has not been formally edited.

Publishing production: Publishing Section, United Nations Office at Vienna.

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Decision by the United Nations Commission on International Trade Law on the adoption of the UNCITRAL Model Clauses on Specialized Express Dispute Resolution¹

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,

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 for independent technical advisers who may assist arbitral tribunals throughout an arbitration involving complex technical matters.

II. Model Clause on Technical Advisers

Model Clause

1. The arbitral tribunal may appoint one or more independent technical advisers to accompany it in the proceedings and, as the need arises, to assist it in the technical understanding of the dispute.
2. In the process of selecting and appointing a technical adviser, the arbitral tribunal shall consult the parties on:
 - (a) The specific area of technical expertise necessary;
 - (b) The terms of reference, including the type of assistance to be provided by the technical adviser and the means and manner in which the technical adviser performs his or her role; and
 - (c) Any additional matters that the arbitral tribunal deems pertinent.
3. Article 29(2) of the UNCITRAL Arbitration Rules shall apply to technical advisers.
4. The arbitral tribunal shall ensure that the parties are given a reasonable opportunity to comment on the explanations provided by the technical adviser.

Explanatory notes

Role of technical advisers – paragraph 1

1. In highly specialized, technical or other types of disputes, arbitral tribunals may benefit from support provided on the technical aspects so as to better understand and evaluate the case. Paragraph 1 sets forth how technical expertise may be provided by technical advisers to accompany the arbitral tribunal in the proceedings. The role of technical advisers is different from that performed by experts appointed pursuant to article 29 of the UNCITRAL Arbitration Rules (“UARs”) (experts appointed by the arbitral tribunal). A technical adviser assists the arbitral tribunal in the technical understanding of the dispute as the

need arises. Whereas experts appointed by the arbitral tribunal prepare written reports which include opinions on issues to be determined by the arbitral tribunal, the role of technical advisers is limited to assisting the arbitral tribunal, primarily by means of explanations, to understand the technical matters that appear in the submissions and evidence received from the parties. For example, a technical adviser may be useful in cases requiring specialized expertise or in cases involving complex calculations based on advanced models and methods. Explanations provided by technical advisers should be based on generally accepted standards in the area of technical expertise.

2. A technical adviser may perform his or her function at any time after appointment and during the proceedings, including in case management conferences and hearings, subject to the requirements of paragraph 4. Having understood the technical aspects of the case with the assistance of the technical adviser, the arbitral tribunal may wish, in some instances, to seek further views on the disputed issues from tribunal-appointed experts. An arbitral tribunal that has appointed a technical adviser is not precluded for that reason from appointing one or more experts in accordance with article 29 of the UARs.

Consultation with the parties – paragraph 2

3. The arbitral tribunal should consult the parties on certain issues relating to the appointment of the technical adviser. Paragraph 2 of this Model Clause lists two key issues, namely the area of technical expertise required and the terms of reference.

4. The parties, especially when they are specialists in the field, may be better placed to identify a relevant individual to be appointed as a technical adviser. If so, the arbitral tribunal may request the parties to provide a list of candidates to be considered by the other party and the arbitral tribunal.

5. The establishment of the terms of reference is essential to safeguard the rights of the parties to be heard, circumscribing the type of assistance to be provided by the technical adviser and the means and manner in which the technical adviser performs his or her role. Ensuring transparency and the rights of the parties to be heard is essential for building confidence in the functioning of the technical adviser. The cost of retaining the technical adviser should be considered costs under article 40(2)(c) of the UARs and may also be stipulated in the terms of reference.

The rights of the parties – paragraphs 3 and 4

6. There is a need to ensure that the parties have the opportunity to exercise their procedural right to raise an objection regarding the technical adviser's qualification, impartiality and independence prior to and after the appointment. Hence, the same process as provided for in article 29(2) of the UARs is followed.

7. There is also a need to ensure that the parties have the opportunity to exercise their right to be heard. In accordance with paragraph 4 of this Model Clause, the arbitral tribunal should ensure that the parties are given a reasonable opportunity to comment on explanations provided by the technical adviser, especially if these explanations introduce considerations that have not been raised by the parties or their experts. The specifics as to how the parties may comment on the explanation should be defined in the terms of reference, which is to be established by the arbitral tribunal in consultation with the parties. The arbitral tribunal may decide that the parties may be present when the technical adviser performs its role orally. When the technical adviser performs its role in writing, the parties should be kept equally informed. The arbitral tribunal may also decide that, in the interest of efficiency, it will seek explanations or assistance from the technical adviser without the presence of the parties but later provide a summary of the explanations to the parties and seek their comments.

