

Some Suggestions based on  
Text Uncitral Rules November 7, 1975.

Article 7

Article 7 para. 4.

The last paragraph could be completed in the following manner:

— "The claimant's application for the designation of an appointing authority is accompanied by a copy of his notice of arbitration (Article 4). The designating authority mentioned under (a) or (b) may require from either party any further information as it deems necessary to fulfil its function. It shall communicate to both parties the name of the appointing authority designated by it."

Article 7, para. 5

This paragraph should be completed by the last sentence of para. 6.

Para 5. then reads:

"5. The claimant shall send to the appointing authority a copy of the notice of arbitration (Article 4), a copy of the contract out of or in relation to which the dispute has arisen, and a copy of the arbitration agreement if it is not contained in the contract. The appointing authority may require from either party such information as it deems necessary to fulfil its function.

Article 7, para. 6

The last sentence could be deleted. Its place seems to be in para. 5, but not in para. 6.

Article 8

Article 8, para. 3

— This paragraph deals with the appointment of the second arbitrator, when the respondent fails to do so in time. Paragraphs 4 - 8 deal with the appointment of the presiding arbitrator. I therefore suggest to complete para. 3 in the following manner:

..... the claimant shall

- (a) If the parties have previously designated an appointing authority request that authority to appoint the second arbitrator;
- (b) If the appointing authority previously designated is unwilling or unable to act as such, or if no such authority has been designated by the parties apply, in accordance with article 7, paragraph 4 to either of the authorities mentioned in that paragraph for the designation of an appointing authority.

The appointing authority previously designated by the parties (a) or designated pursuant to article 7, paragraph 4 (b) may exercise its discretion in appointing the second arbitrator. Article 7, paragraph 5, applies accordingly.

Commentary

These modifications are suggested in order to make it clear what information is given to the designating authority mentioned under b. (therefore a complete reference to article 7, para. 4) and what information the appointing authority will get (reference to article 7, para. 5).

Article 8, paragraphs 6 and 7

Two modifications are suggested here.

1. First of all the last sentence of para. 6 could, in my opinion, be better transferred to para. 7 and added at the end of para. 7. After this para. 7 will correspond with para. 5 of Article 7 after the change as proposed above (see Article 7). The information an appointing authority will get or may require is then contained in one paragraph.
2. Para. 6 may then be restricted to one (the first) sentence with the following slight modifications:  
"If on the expiration of this period of time, the parties have not reached agreement on the designation of the appointing authority, the claimant shall apply, in accordance with art. 7, paragraph 4, to either of the authorities mentioned in that paragraph for the designation of an appointing authority."

The underlined words make it superfluous, in my opinion, to repeat (in the actual second and third sentence of para. 6) what is already stated in para. 4 of Article 7. Reference to para. 4 of Article 7 in its entirety includes what is said in the second and third sentence (and also the notice of arbitration if my suggestion under Article 7, para. 4, above is followed).

Article 27

I Article 27, para. 2

2. An award shall be binding upon the parties. It shall be made in writing and shall state the place where and the date at which the award was made. An award shall state the reasons upon which it is based, unless both parties have expressly agreed that no reasons are to be given.

(I thought we decided to add place and date).

Article 27, para. 6

6. Copies of the award signed by the arbitrators shall be promptly communicated to the parties.

(Here again, according to my recollection, we decided to add this indication of speed needed in communicating the award to the parties or do you deem this to be "perfectionism"?)

II For reasons of reference to Article 27, made in Articles 30 and 31, it is perhaps advisable to split up article 27, para. 2:

2. An award shall state the reasons under which it is based, unless both parties have expressly agreed that no reasons shall be given.
3. An award shall be binding upon the parties and be made in writing. It shall state the place where and the date at which the award was made.

Article 27 then contains 6 paragraphs.

Article 29

Article 29, para. 3

I First sentence

In case we add "promptly" in article 27, para. 6, it should be added here as well. Should we also add that the order for discontinuance and the arbitral award on agreed terms should be dated and indicate the place where given? The first sentence would then read:

"Copies of the order for discontinuance of the arbitral proceeding, or of the arbitral award on agreed terms, shall be promptly communicated by the arbitrators to the parties and state the date at which and the place where they are made."

II Second sentence

Article 29 already contains for the arbitral award on agreed terms the following provisions:

- no reasons
- how costs will be apportioned
- communication to the parties
- signed by all the arbitrators
- place and date

What still should be added for this award on agreed terms is:

- (a) binding
- (b) filing or registering.

It seems to me preferable to make article 29 self-supporting and not to refer to article 27 at all. The second sentence could then read:

"Where an arbitral award is made on agreed terms the award shall be binding upon the parties and be filed or registered according to the arbitration law of the country where the award is made."

It seems superfluous to state that the award on agreed terms should not be made public. A settlement never is. If you nevertheless prefer to say so expressly it should be added:

"It shall not be made public".

Recommendation: Make Article 29 self-supporting.

Article 30

In case my suggestions under Article 27 are followed the last sentence of para. 1 could be deleted and para. 2 could refer to paragraphs 3 to 8 of Article 27. It may even be considered to make three paragraphs:

1. Within 30 days after receipt of the award, either party, with notice to the other party, may request that the arbitrators give an interpretation of the award.
2. The interpretation shall be given within 45 days after receipt of the request.
3. The provisions of article 27, paragraphs 3 to 8, shall apply.

Article 31 (correction)

Here reference is only made to paragraphs 6 and 7 (7 and 8 according to my suggestion under II of Article 27). Should para. 2 not read:

2. The provisions of Article 27, paragraphs 3 to 8, shall apply?

Article 32 (additional award)

Here, according to my suggestion under II of Article 27, reference should be made to Article 27, paragraphs 2 to 8. In this case only para. 2 (reasons) is included. No reasons need to be given for correction and interpretation.