



## UNCITRAL ARBITRATION RULES AS INSTITUTIONAL RULES: THE EXPERIENCE OF CRCICA

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### INTRODUCTION



2

- CRCICA is an **independent, non-profit**, self-financed **international organization** established in **1979** under the auspices of the Asian African Legal Consultative Organization (**AALCO**) by dint of a Headquarters Agreement between Egypt and AALCO endowing CRCICA with all necessary privileges and immunities ensuring its independent functioning. □
- CRCICA adopted, with minor modifications, the **1976 UNCITRAL Arbitration Rules**. CRCICA Arbitration Rules were amended in **1998, 2000, 2002, 2007** □ and **2011**.
- The present CRCICA Arbitration Rules entered into force in **March 2011** and are based upon the **new 2010 UNCITRAL Arbitration Rules** with minor modifications emanating mainly from the Centre's role as an arbitral institution and an appointing authority. □

## INTRODUCTION



3

- The revision of CRCICA Arbitration Rules serves the following **four basic purposes**:
  - It guarantees **collegial decision-making** with respect to several vital procedural matters, including the rejection of appointment, as well as the removal and the challenge of arbitrators.
  - It seeks to **modernize the Rules** and to **promote greater efficiency** in arbitral proceedings.
  - **It fills in a few gaps** that have become apparent over the years.
  - **It adjusts the original tables of costs** to ensure **more transparency** in the determination of **the arbitrators' fees**.

## 1- ASSESSMENT OF THE JURISDICTION OF THE INSTITUTION

4

- The Centre may, upon the approval of the Advisory Committee (AC), decide **not to proceed** with the arbitral proceedings if it **manifestly lacks jurisdiction over the dispute**. Such decision will be taken *prima facie* following the response to the notice of arbitration (**Article 6**).
- Example: Escrow agent files arbitration under the auspices of the Centre against all parties to an agreement for the sale and purchase of shares to claim his fees, while a separate fees agreement exists referring disputes to national courts.

## 2- CONTROLLING THE IMPARTIALITY AND INDEPENDENCE OF THE ARBITRATORS

5

### □ Rejection of Arbitrators:

- The Centre may-upon the approval of the AC- **reject the appointment** of any arbitrator due to the **lack of any legal or contractual requirement** or **past failure to comply with his/her duties**. The arbitrator in question and the parties should be given the opportunity to express their views before this decision is taken (**Article 8/5**). (*Ex officio*- before acceptance of arbitral mission- Examples: Appointment of an arbitrator from the law firm representing one of the parties or a former counsel of one of the parties).

## 2- CONTROLLING THE IMPARTIALITY AND INDEPENDENCE OF THE ARBITRATORS

6

### □ Removal of Arbitrators:

- An arbitrator may-at the request of a party and by virtue of a decision from an impartial and independent tripartite *ad hoc* committee to be composed by the Centre from amongst the members of the AC-be removed in the event that he/she **fails to act or in the event of *de jure* or *de facto* impossibility of performing his/her functions, or in the event that he/she deliberately delays the commencement or the continuation of the arbitral proceedings (Article 12)**. (not *ex officio*- Examples: arbitrator refuses to attend the hearings in spite of being duly invited or refuses to deliberate with other arbitrators for no valid reasons).

## 2- CONTROLLING THE IMPARTIALITY AND INDEPENDENCE OF THE ARBITRATORS

7

### □ Challenge of Arbitrators:

- If within 15 days from the date of communicating the notice of challenge, the appointing party does not agree to the challenge or the challenged arbitrator does not withdraw, the challenging party may elect to pursue its challenge. In that case, the challenge shall be **finally** decided by an **impartial and independent tripartite ad hoc committee** to be composed by the Centre from amongst the members of the AC (**Article 13/6**). (Example: Re-appointment of an Arbitrator already appointed by the same party in the same case that has resulted in an award declaring the inadmissibility of the claims- the arbitrator is not impartial vis-à-vis the file).

## 3- CONTROLLING THE ARBITRATION COSTS

8

- The New Rules fix **ascending flat rate** fees for disputes under **US\$ 3 million** in value, and allow the Centre more discretion to determine fees for disputes of greater value, within certain boundaries (minimum-average-maximum).
- CRCICA remains the **least expensive** institution for smaller disputes (from **US\$100,000 to US\$1 million** in value) and is also the **least expensive** institution for cases in the **US\$500 million to US\$1 billion** range, although significantly more expensive than it used to be. The costs in **mid-size** cases are in the same range as most other institutions.

## CONCLUSION

9

- Wider Scope of **Party Autonomy**
- More **Flexibility** in the Conduct of the Arbitral Proceedings
- More respect of the Parties' **Legitimate Expectations**
- More Favorable Climate for **Amicable Settlements**



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