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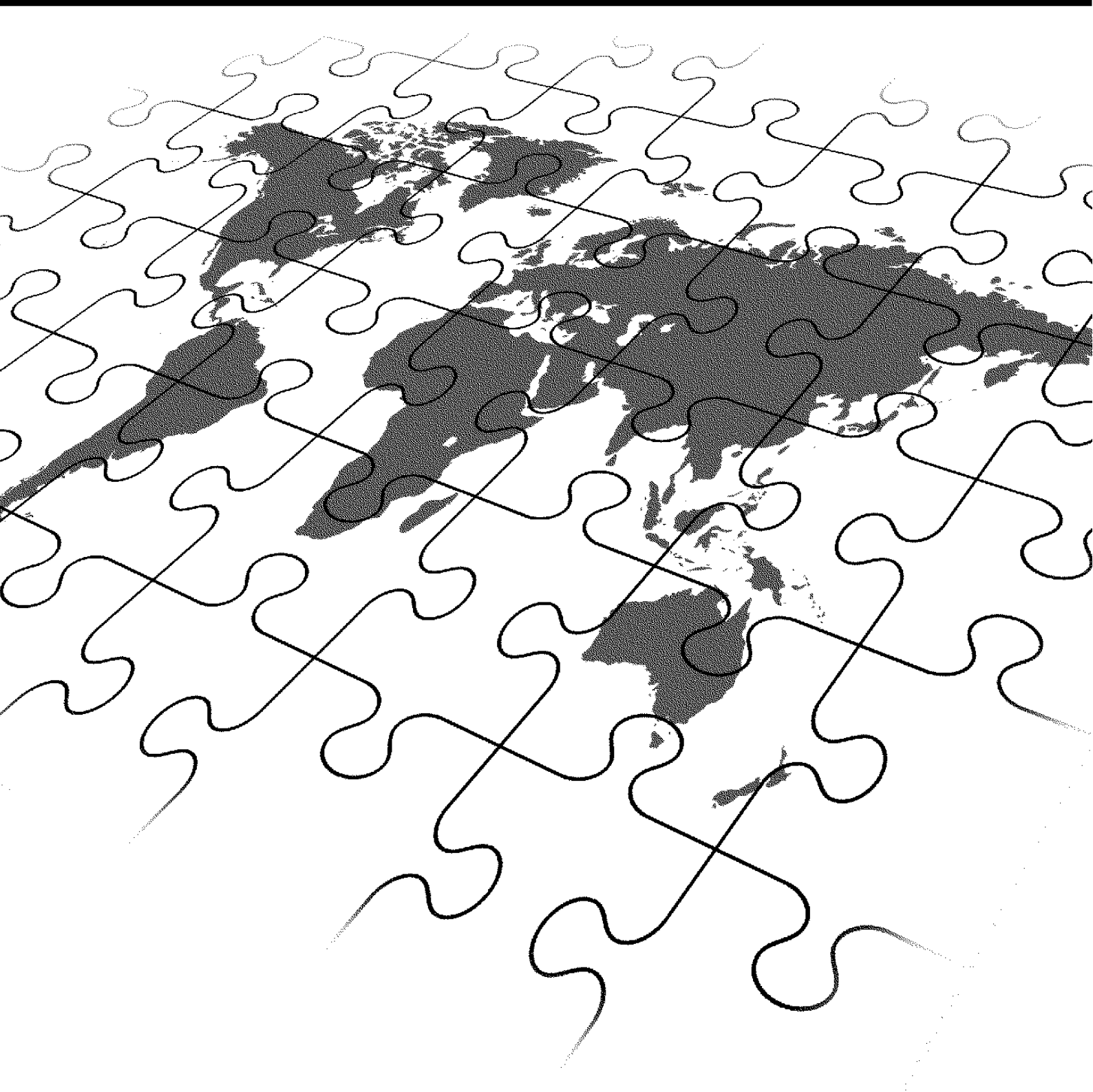
Arbitration News

Newsletter of the International Bar Association Legal Practice Division

VOL 16 NO 2 SEPTEMBER 2011



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Special thanks to Amanda Raymond (associate) and Andrew Kavesh (legal assistant).

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www.hobbs.uk.com

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Continued overleaf

Salient features of the new CRCICA Arbitration Rules

CRCICA

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The Cairo Regional Centre for International Commercial Arbitration (CRCICA) has amended its Arbitration Rules. The new CRCICA Arbitration Rules ('New Rules'), including the revised tables on costs, have entered into force as from 1 March 2011 and shall apply to arbitral proceedings commencing after this date.

Since its establishment, the CRCICA adopted, with minor modifications, the Arbitration Rules of 1976 of the United Nations Commission on International Trade Law (UNCITRAL).

The CRCICA has already amended its Arbitration Rules in 1998, 2000, 2002 and 2007[1] to ensure that they continue to meet the needs of their users, reflecting best practice in the field of international institutional arbitration.

The New Rules are based upon the new UNCITRAL Arbitration Rules, as revised in 2010,[2] with minor modifications emanating mainly from the CRCICA's role as an arbitral institution and an appointing authority.

The revision of the Rules builds on the amendments introduced in 2007 and serves four basic purposes. First, 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. Secondly, it seeks to modernise the Rules and to promote greater efficiency in arbitral proceedings. Thirdly, it fills in a few holes that have become apparent over the years. Finally, it adjusts the original tables of costs to ensure more transparency in the determination of the arbitrators' fees.

The New Rules give expression to the CRCICA's long-standing commitment to offer users an arbitral procedure substantially modelled on the UNCITRAL Arbitration Rules and aim at confirming the CRCICA's position as a leading regional arbitral institution.

Background

The original UNCITRAL Rules of 1976 were the subject of extensive consideration and discussion from July 2006 until July 2010 when the new UNCITRAL Rules were adopted to come into effect on 15 August 2010.

The CRCICA formed a Working Group to revise their Arbitration Rules in light of the new UNCITRAL Rules.[3] The Working Group held eight sessions between 26 August 2010 and 28 October 2010, after which a second reading of the draft amendments was concluded. The draft amendments were then discussed among the members of CRCICA's Advisory Committee, which approved the final draft in its session of 19 January 2011.

Key changes

Communications (Article 2)

The former versions of the Rules required notices to be physically delivered, while under the New Rules notices and other communications can be sent by any means, including electronic ones 'that provides or allows for a record of its transmission'. Delivery by electronic means, such as facsimile or e-mail, may only be made to an address designated by a party specifically for such purposes. A notice transmitted by electronic means is deemed to have been received on the day it reaches the recipient's electronic address.

Notice of arbitration (Article 3)

The notice of arbitration must include certain requirements such as:

- the identification of the arbitration agreement that is invoked;
- the identification of any contract or other legal instrument out of which the dispute arises;
- a brief description of the claim and an indication of the amount involved;
- the relief or remedy sought;
- a proposal as to the number of arbitrators, language and place of arbitration;
- a copy of the arbitration agreement; and
- a copy of any contract or other legal instrument out of which the dispute arises.

These requirements seek to make the notice of arbitration as complete as possible instead

of waiting until the filing of the statement of claim after the full composition of the tribunal. It is to be noted that the term 'legal instrument' employed in this provision is intended to cover disputes arising out of legal instruments other than contracts, such as bilateral investment treaties.

Response to the notice of arbitration (Article 4)

According to this amendment, the respondent must file a response to the notice of arbitration within 30 days of receiving the same. The response must answer the items in the notice of arbitration regarding inter alia the arbitration agreement, the claimant's description of its claims and the sought remedy. The response may also include a notice of arbitration against any other party that is a party to the arbitration agreement.

Decision not to proceed with the arbitral proceedings (Article 6)

Another significant change makes it possible for the CRCICA to decide – upon the approval of the Advisory Committee – not to proceed with an arbitration if it manifestly lacks jurisdiction over the dispute. Such decision will be taken prima facie following the response to the notice of arbitration.

The number of arbitrators (Article 7)

This provision retains the default position of having three arbitrators if the parties fail to agree on the use of a sole arbitrator. However, Article 7.2 now provides more flexibility. Specifically, the CRCICA may now appoint a sole arbitrator if one of the parties requests appointment of a sole arbitrator and any party fails to appoint a co-arbitrator, provided appointment of a sole arbitrator is 'more appropriate' in view of the circumstances of the case.

Rejection of appointment of arbitrators (Article 8/5)

The CRCICA may – upon the approval of the Advisory Committee – reject the appointment of any arbitrator due to the lack of any legal or contractual requirement or past failure to comply with his duties. The arbitrator in question and the parties should be given the opportunity to express their views before this decision is taken.

Multiparty arbitrations (Article 10)

Where multiple parties are unable to agree upon the constitution of the tribunal, any party may ask the CRCICA to constitute the tribunal. In such circumstances, the CRCICA may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

Removal of arbitrators (Article 12)

Pursuant to this provision, 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 CRCICA from amongst the members of the Advisory Committee – be removed in the event that he fails to act or in the event of *de jure* or *de facto* impossibility of performing his functions, or in the event that he deliberately delays the commencement or the continuation of the arbitral proceedings.

Challenge of arbitrators (Article 13)

The New Rules include an innovation according to which a schedule is added for resolving any challenges (the former versions of the Rules had a deadline for raising a challenge but no timetable for resolution). Under the New Rules, if within 15 days the appointing party does not agree to the challenge or the challenged arbitrator does not withdraw, then 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 CRCICA from amongst the members of the Advisory Committee.

Truncated tribunals (Article 14/2)

A particularly noteworthy change is found in Article 14/2 of the New Rules. Under that Article, in exceptional circumstances the CRCICA can deprive a party of its right to appoint a substitute arbitrator and may either appoint the substitute arbitrator itself or, after the closure of the hearings, authorise the other arbitrators to proceed with the arbitration and make any decision or award.

This new provision was direly needed to deal with 'strategic' resignations. It is the first time the Rules have permitted truncated tribunals – the source of much debate in the

Working Group.

Third party joinder (Article 17/6)

Paving the way for the administration of complex arbitrations, the New Rules permit the joinder of third parties to arbitrations if they are parties to the arbitration agreement. The discussions over this provision gave rise to an extremely interesting debate regarding the possibility of the tribunal making *sua sponte* decisions about joinder, but that option was rejected by the Working Group.

Interim measures (Article 26)

Under the New Rules, the tribunal's powers relating to interim measures are amplified so as to include injunctive relief/preservation of evidence, set out the test for the grant of interim measures, and highlight costs/damages consequences in the event that interim measures are subsequently found to have been unjustified.

Applicable law (Article 35)

Article 35 regarding the law applicable to the merits now refers 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. The tribunal shall apply the law having the closest connection to the dispute in case the parties fail to designate the applicable law.

Costs of the arbitration (Section V – Articles 42-48)

In the New Rules, the CRCICA has implemented a significant change in the way it determines arbitrators' fees. Fees under the previous versions of the Rules were regarded as low.[4] They have been increased to show more respect to the legitimate expectations of parties and arbitrators.

The New Rules abolish the impractical distinction between fees in international and domestic cases. They also clarify that the sum in dispute, based on which both administrative and arbitrators' fees are determined, shall be the aggregate value of all claims, counterclaims and set-offs. They also fix ascending flat rate fees for disputes under US$3m in value, and allow the CRCICA more discretion to determine fees for disputes of greater value, within certain boundaries.[5]

The CRCICA hopes the new Section on costs will help to attract more cases of all sizes, while not depriving the parties of their right to select the best international arbitrators.[6]

Notes

1 These amendments became effective as from 1 January 1998, 1 October 2000, 1 November 2002 and 1 June 2007, respectively.

2 The new UNCITRAL Arbitration Rules entered into force as from 15 August 2010 and are available at: **www.uncitral.org/pdf/english/texts/arbitration/arb-rules-revised/arb-rules-revised-2010-e.pdf**.

3 The Working Group was composed of the following arbitration experts: Dr Mohamed Salah Abdel Wahab, Yasser Mansour, Dr Karim Hafez and Dr Mohamed Gomaa, in addition to Dr Mohamed Abdel Raouf, Laila El Shentenawi, Heba Ahmed, Inji Fathalla and Nassimah Francis from CRCICA.

4 In their study comparing the costs of various arbitral institutions published in GAR in 2010 (**www.globalarbitrationreview.com/news/article/28915/arbitration-costs-compared**), Louis Flannery and Benjamin Garel found CRCICA to be by far the most affordable of six worldwide institutions for cases of various values. In that study, CRCICA was compared with the DIAC, HKIAC, ICC, MKAS, SCC and the arbitration courts of the Swiss Chambers of Commerce.

5 An arbitration costs calculator is now available on the CRCICA's website, available at: **www.crcica.org.eg/feescalc.html**.

6 It is worth noting that one of the two authors of the abovementioned study calls the adoption by the CRCICA of the new costs schedules a 'smart move' that will not deter current users of the CRCICA and 'will certainly persuade more arbitrators to accept appointments, which, in the mid- and long-term, will help the Centre's image and reputation.' After updating his costs comparisons tables to factor in the changes to CRCICA's costs regime, he concludes that the CRCICA remains the least expensive institution for smaller disputes (from US$100,000 to US$1m in value) and that it is also the least expensive institution for cases in the US$500m to US$1bn range, although significantly more expensive than it used to be. He also considers the costs in mid-size cases to be 'in the same range as its most affordable competitors.' Available at: **www.globalarbitrationreview.com/news/article/29328/all-change-cairo**.

I B A P U B L I C A T I O N

IBA E-Book: **Mediation Techniques**

Editor: Patricia Barclay, Co-Chair of the IBA Mediation Techniques Subcommittee

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Although there are many books about mediation, most of them concentrate on a single topic or have a bias towards the theoretical or philosophical. This book aims to take a different approach. The Mediation Techniques Subcommittee of the International Bar Association felt that there was a need for a practical collection of tips from and for practising mediators of different styles, facing different sorts of issues and still be usable by mediators at an early stage in their career but also to contain sufficient variety to still be interesting to more experienced mediators.

The format of this e-book is a series of short essays by practitioners covering the topic from pre-mediation planning through to post mediation follow through, interspersed with pages of short hints and tips to which we hope users will add their own points as their practice develops. The final section of the book deals with the use of mediation in different fields and is intended to provoke debate as to how mediation could be advanced into new areas as well as providing information about topics with which many readers will be unfamiliar. You will find some duplication and much contradiction of advice throughout the book as what works for one person in one situation will be inappropriate for another. It is this flexibility that makes mediation such an attractive form of dispute resolution and this book a valuable resource.

This book is available as a PDF download (to mobile devices, to PCs or to print off) and a more interactive version of the book is available on the website. A discussion area for people who buy/subscribe to the e-book is also available.

PUBLISHED OCTOBER 2010

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