

## APPENDIX 8

# AAA Procedures for Cases Under the UNCITRAL Arbitration Rules

Effective August 1996

To facilitate handling of arbitration cases that the parties have agreed to conduct under the UNCITRAL Arbitration Rules, the American Arbitration Association will:

1. perform the functions of the appointing authority as set forth in the UNCITRAL Arbitration Rules whenever the AAA has been so designated by the parties either in the arbitration clause of their contract or in a separate agreement or
2. perform the administrative services described in this booklet when called for by the contract or when requested by all parties or by the arbitral tribunal.

### Services as the Appointing Authority

#### 1. Appointment of Sole or Presiding Arbitrator

When requested to appoint a sole or presiding arbitrator, the AAA will follow the list procedure set forth in the UNCITRAL Arbitration Rules (Article 6, paragraph 3). The AAA has extensive experience in using the list procedure because it utilizes a similar procedure to conduct cases under various other rules.

In selecting arbitrators, the AAA will use its extensive panel of arbitrators for commercial cases. That panel includes qualified persons of many different nationalities having varied professional and business backgrounds. The AAA will carefully consider the nature of the case, as described in the notice of arbitration, in order to include in the list persons having appropriate professional or business experience and language ability.

When appointing a sole or presiding arbitrator under the UNCITRAL Arbitration Rules, the AAA will follow its usual practice and, upon the request of either party, designate a person of a nationality other than the nationalities of the parties, unless otherwise provided by written agreement of the parties.

#### 2. Appointment of the “Second” Arbitrator in Three-Arbitrator Cases

Under Article 7 of the UNCITRAL Arbitration Rules, when three arbitrators are to be appointed, each party is to appoint one arbitrator but, if a party fails to do so, the other party may request that the appointment of the second arbitrator be made by the appointing authority.

In accordance with the UNCITRAL Arbitration Rules, the AAA, when appointing a second arbitrator, will exercise its discretion and will not use the list procedure. The second arbitrator to be appointed under Article 7, paragraph 2(a), shall be impartial and independent of either party.

#### 3. Decisions on Challenges to Arbitrators

Under Article 10 of the UNCITRAL Arbitration Rules, all arbitrators—including those appointed by one party—are required to be impartial and independent. Article 10 provides that any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts regarding the arbitrator’s impartiality or independence.

Article 12 of the UNCITRAL Arbitration Rules requires that all contested challenges be decided by the appointing authority. When deciding challenges at the request of any party, the AAA will appoint

a special committee to make the decision, consisting of three persons, a majority of whom will be of nationalities different from that of any party.

In deciding challenges, the AAA and any such committee will be guided by the principles set forth in the Code of Ethics for Arbitrators in Commercial Disputes, a code jointly adopted by the AAA and the American Bar Association.

#### **4. Appointment of Substitute Arbitrators**

The UNCITRAL Arbitration Rules provide that a substitute arbitrator will be appointed if an arbitrator dies or resigns during an arbitration proceeding or if a challenge against the arbitrator is sustained (Article 12, paragraph 2, and Article 13). In such cases, the AAA will perform the same function in appointing a substitute arbitrator as earlier described regarding other arbitrators.

#### **5. Consultation on Fees of Arbitrators**

The UNCITRAL Arbitration Rules provide that the fees of arbitrators shall be reasonable in amount, taking into consideration the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators, and other relevant circumstances of the case (Article 39, paragraph 2). The rules provide that parties may request the appointing authority to provide to the arbitrators and the parties a statement setting forth the basis for establishing fees that is customarily followed in cases in which the appointing authority acts (Article 39, paragraph 3). The AAA has no schedule of fees for arbitrators, but it will furnish a statement concerning customary fees based on its experience in administering large numbers of cases.

## **Administrative Services**

Upon the request of all parties or the arbitral tribunal, the AAA will provide the following administrative services:

### **1. Communications**

The experience of major arbitration agencies suggests that arbitrations are best served when communications—except at hearings—are transmitted through the arbitration administrator. Upon request, all oral or written communications from a party to the arbitral tribunal—except at hearings—may be directed to the AAA, which will transmit them to the arbitral tribunal and to the other parties.

Agreement by the parties that the AAA shall administer a case constitutes consent by the parties that, for purposes of compliance with the time requirements of the UNCITRAL Arbitration Rules, any written communication shall be deemed to have been received by the addressee when received by the AAA. When transmitting communications to a party, the AAA will use the address set forth in the notice of arbitration or any other address that has been furnished by a party in writing to the AAA.

### **2. Hearings**

Upon request, the AAA will assist the arbitral tribunal to establish the date, time and place of hearings, giving such advance notice thereof to the parties as the tribunal determines pursuant to the UNCITRAL Arbitration Rules (Article 25, paragraph 1).

### **3. Hearing-Room Rental**

The AAA will provide a room for hearings in the offices of the AAA on a rental basis. If a hearing room is not available in the offices of the AAA, the AAA will arrange a hearing room elsewhere. The cost of hearing rooms will be billed separately and excluded from the fees for administrative services.

### **4. Stenographic Transcripts**

Upon request, the AAA will make arrangements for stenographic transcripts of hearings. The cost of stenographic transcripts will be billed separately and excluded from the fees for administrative services.

**5. Interpretation**

Upon request, the AAA will make arrangements for the services of interpreters at hearings. The cost of interpretation will be billed separately and excluded from the fee for administrative services.

**6. Fees of Arbitrators and Deposits**

Upon request, the AAA will make all arrangements concerning the amounts of the arbitrators' fees, and advance deposits to be made on account of such fees in consultation with the parties and the arbitrators. The AAA does not fix the amount of fees of arbitrators and has no schedule for arbitrators in international commercial cases.

**7. Other Services**

Upon request, the AAA will consider providing other appropriate administrative services.

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