

Update on UNCITRAL Working Group II (Arbitration and Conciliation/Dispute Settlement)

71st Session on 3-7 February 2020 in New York

As reported earlier in the year the then recent session of Working Group (69th Session – February 2019, New York) considered issues relating to expedited arbitration and this work continued at the 70th Session of the Working Group in Vienna in September 2019 and will continue in New York in February 2020.

The purpose of considering expedited arbitration

The goal of expedited arbitration is to improve the efficiency of arbitral proceedings by reducing their cost and duration. More and more arbitral institutions have adopted rules to expedite arbitral proceedings.

Issues relating to expedited arbitration

In its preliminary discussion the Working Group considered the characteristics of expedited arbitration comprehensively:

- whether a sole arbitrator is sufficient and how arbitrators are to be appointed;
- how and when shorter procedural timelines (and permissible extensions) ought to be imposed;
- the tribunal's procedural discretion and the flexible use of case management conferences;
- a limited ability for parties to file additional claims, counterclaims and late submissions;
- restrictions on the evidence beyond that which is submitted with the notice of arbitration;
- party agreement or default rules on having no hearing, and limited or remote hearings;
- awards with summary reasons or without reasons, or final offer selection arbitration;
- criteria for applying expedited arbitration and resort to non-expedited arbitration;
- enforcement of awards resulting from expedited arbitrations; and
- the role of institutions and other appointing authorities in expedited arbitration.

In many of these areas the Working Group noted that time and cost-effective dispute resolution ought not be pursued at the expense of flexibility and, perhaps more importantly, due process.

The Working Group has decided that its work should take the form of a set of rules as an addition to the existing UNCITRAL Arbitration Rules, in the course of which guidance documents and model clauses may also be developed.

In anticipation of the deliberations in New York in February 2020 a draft set of provisions to be contained in an Appendix to the UNCITRAL Arbitration Rules has been published (A/CN.9/WG.II/WP.212/Add.1). In summary, this draft seeks to address the characteristics of expedited arbitration as set out above. The draft provisions are too detailed for meaningful discussion in this publication, so reference is encouraged to www.uncitral.un.org

The Hon Dr Clyde Croft AM SC
Chair, UNCCA Expert Advisory Committee to support UNCITRAL Working Group II
10 December 2019