

A Chance to Discuss Proposed or Published Changes to Key Arbitration Rules

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The International Chamber of Commerce Court of Arbitration (the ICC) is the largest arbitral institute. In addition, its Rules of Arbitration (the Rules) greatly influence the practice of arbitration, resulting in several commentaries. Over the course of 2011, these Rules are continuing to undergo revision and changes to continue to reflect current practices and trends in international commercial arbitration as well as to enhance their usage in investor-state arbitrations premised on bilateral investment treaties. The latter is actually far less common for the ICC – investor state arbitrations being traditionally dominated by either ad hoc proceedings or ICSID proceedings. Ad hoc proceedings, although not always, frequently rely on the PCA to act as appointing authority and use the UNCITRAL Arbitration Rules, making the PCA staff frequent representative experts on the changes and growth these rules have taken.

In the past year or so, many of the influential arbitration rules have undergone close scrutiny to see how well they still reflect current practice and whether revisions are necessary. As others on this blog have already mentioned, many rule changes (such as those pertaining to the influential IBA publications) have already been released and commented upon. The UNCITRAL Arbitration Rules were also already published in 2010, reflecting their first revision since being released in 1976. Key changes included updating the rules to greater reflect technological changes in actual practice, essentially streamlining the arbitrator appointment process. The UNCITRAL Arbitration Rules also explicitly provided for multiple party proceedings and disputes which may arise amongst the parties. One key change resulted in greater powers to the Appointing Authority under the UNCITRAL Arbitration Rules. These are just a few examples of the changes incorporated into the 2010 UNCITRAL Arbitration Rules.

However, the ICC Rules are still being considered and have not yet released their changes. Some of the proposed changes that are being considered involve keeping up with the technological advances as well. This includes possible electronic notifications for parties, online/electronic submissions, and other ways to more efficiently manage the cases. Moreover, more substantive areas are under consideration, including how arbitrators will be appointed, cases involving multiple parties, withdrawal of claims and issues pertaining to consolidation of claims.

In the American Bar Association International Law Sections Spring Meeting (being held from April 5-9, 2011 in Washington D.C.), there will be a program dedicated to considering these types of rule changes. The program will include changes already published to the IBA Rules on the Taking of Evidence and the release of the new IBA Guidelines on the Drafting of International Arbitration Clauses. The program will also consider the changes made to the UNCITRAL Arbitration Rules,

providing the chance to find out why some changes were not made in addition to considering those which were made. We will have a chance to hear from a representative of the Permanent Court Arbitration on the UNCITRAL Arbitration Rules and a representative from the ICC on the proposed changes being considered to the ICC Rules. A unique opportunity to compare and contrast these rule changes and consider how well they truly reflect the changes and new trends occurring in international commercial arbitration and possibly even BIT related proceedings. The program is scheduled for Friday April 8, 2011 from 2:30 - 4:00 pm EST. Questions welcome!