

## [CIS Arbitration Forum](#)

### **Ukraine: Revised Rules of Assistance to UNCITRAL Arbitrations**

Recently the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry [published](#) the new Rules of assistance available from this institution under the UNCITRAL Arbitration Rules. The Presidium of the Ukrainian Chamber of Commerce and Industry approved the document on 27 October 2011 (the "2011 Rules of Assistance").

These Rules govern rendering assistance in arbitral proceedings on the basis of the 2010 UNCITRAL [Arbitration Rules](#) by two Ukrainian arbitral institutions: the International Commercial Arbitration Court (ICAC) at the Ukrainian Chamber of Commerce and Industry and the Maritime Arbitration Commission (MAC) at the Ukrainian Chamber of Commerce and Industry.

#### **Rules of Assistance: 2011 vs 2001**

The 2011 Rules of Assistance are rather similar to the older Rules on rendering of assistance adopted on 29 November 2001 (the "2001 Rules of Assistance" or "2001 Rules"). The old rules were elaborated in accordance with the UNCITRAL [Recommendations](#) (the "Recommendations") adopted by UNCITRAL in 1982. The new 2011 Rules of Assistance follow the same approach, but take into account the revision of the UNCITRAL Arbitration Rules.

The 2001 Rules, as well as the 2011 Rules, contain a model arbitration clause as recommended by UNCITRAL. Pursuant to para. 17 of the Recommendations, both versions of the Rules of Assistance clearly distinguish between the functions of an appointing authority as envisaged under the UNCITRAL Arbitration Rules and other administrative assistance of a technical, secretarial nature.

#### **Appointing Authority Functions**

Similarly to the 2001 Rules of Assistance, appointment of a sole, second or presiding arbitrator, other appointments, including those in case of replacement of an arbitrator are entrusted to the ICAC (MAC) President or Vice President, while contested challenges and termination of the mandate of an arbitrator shall be decided by the ICAC (MAC) Presidium.

The appointment shall be made with due regard to

*the requirements made on the qualifications of an arbitrator in the agreement between the parties, and the nature of the dispute to the extent clear from the documents submitted in order to make an appointment from among persons possessing the necessary knowledge in the respective field, and shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.*

#### **Administrative assistance**

Such assistance, labeled as "organizational" in the 2011 Rules, is available to the parties and the arbitral tribunal and includes:

1. sending of documents to the parties and arbitrators;
2. assistance to the arbitral tribunal in determination of the date, time and place of the hearing of the case, as well as sending of the prior notice of the hearing to the parties;
3. hearing and meeting facilities for the arbitral tribunal;
4. typewriting services;
5. interpreting and translating services;
6. certification of the arbitrators' signatures on the arbitral awards with the ICAC's official seal and signature of the ICAC Secretary General;

7. receipt of advance amounts for arbitration costs and further transmission thereof in accordance with the specified distribution of such costs;
8. keeping of the case files; and
9. any other assistance to the extent possible.

The services listed in paras. (1)-(6) are almost identical to those offered in the 2001 Rules of Assistance, while the service under para. (8) is a new one.

Although under the 2010 UNCITRAL Arbitration Rules the appointing authority has additional roles in relation to arbitrators' fees and expenses, the 2011 Rules of Assistance do not specify any of them. Neither do they include "assessment of such expenses" previously offered in para. (7) of the 2001 Rules. However, since the list of the services offered by the ICAC/MAC is not exhaustive, any assistance with regard to those fees and expenses under Article 41 of the 2010 UNCITRAL Arbitration Rules may be sought with reference to the provisions of para. (9) above.

According to the current wording of para. (7) the arbitral tribunal may seek assistance in arranging all basic operations with advance for arbitration costs. In view of peculiarities of Ukrainian foreign currency regulation, this service has high practical importance for *ad hoc* arbitrations seated in Ukraine.

#### **Fees for Assistance**

The amount of the fee chargeable for each case of fulfilling the functions of the appointing authority, and making the decision on challenge or termination of the mandate of an arbitrator, remains the same – USD 1,000.00 regardless of the amount of the claim.

The amount of the fee for providing organizational assistance in arbitration shall be determined depending of the amount of the claim, the character and scope of the functions, of which fulfilment the request of the parties or Arbitral Tribunal was presented. Anyway the amount of the fee cannot exceed the schedule of the administrative expenses, fixed by the Presidium of the Ukrainian Chamber of Commerce and Industry for the similar case to be settled by the ICAC (MAC).

#### **The Role of the Rules**

Although the ICAC has been providing assistance to UNCITRAL arbitrations seated in Ukraine for over a decade, application of the 2001 Rules of Assistance was rather limited, mainly because they were not publicly available and were not actively promoted by the institution itself.

Publication of the new 2011 Rules of Assistance on the ICAC website will definitely contribute to their wider application and promotion of the ICAC's role as an UNCITRAL appointing authority.

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