

LECTURE EIGHTEEN

Conduct of arbitration proceedings under the Model Law

UNCITRAL MODEL LAW ON INTERNATIONAL COMMERCIAL ARBITRATION

MODEL LAW

ARBITRATION ACT 1996

Chapter V. Conduct of arbitral proceedings

- Article 18. Equal treatment of parties
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CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

UNCITRAL Commentary

27. Chapter V provides the legal framework for a fair and effective conduct of the arbitral proceedings. It opens with two provisions expressing basic principles that permeate the arbitral procedure governed by the Model Law. Article 18 lays down fundamental requirements of procedural justice and article 19 the rights and powers to determine the rules of procedure.

Article 18 Model Law. Equal treatment of parties	
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The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.	
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UNCITRAL Commentary

28. Article 18 embodies the basic principle that the parties shall be treated with equality and each party shall be given a full opportunity of presenting his case. Other provisions implement and specify the basic principle in respect of certain fundamental rights of a party.

Article 19. Model Law. Determination of rules of procedure	
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| 19(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the Proceedings. | |
| 19(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence. | |

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UNCITRAL Commentary

30. Article 19 guarantees the parties' freedom to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings, subject to a few mandatory provisions on procedure, and empowers the arbitral tribunal, failing agreement by the parties, to conduct the arbitration in such a manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.
31. Autonomy of the parties to determine the rules of procedure is of special importance in international cases since it allows the parties to select or tailor the rules according to their specific wishes and needs, unimpeded by traditional domestic concepts and without the earlier mentioned risk of frustration. The supplementary discretion of the arbitral tribunal is equally important in that it allows the tribunal to tailor the conduct of the proceedings to the specific features of the case without restraints of the traditional local law, including any domestic rules on evidence. Moreover, it provides a means for solving any procedural questions not regulated in the arbitration agreement or the Model Law.
32. In addition to the general provisions of article 19, there are some special provisions using the same approach of granting the parties autonomy and, failing agreement, empowering the arbitral tribunal to decide the matter. Examples of particular practical importance in international cases are article 20 on the place of arbitration and article 22 on the language of the proceedings.

Article 20 Model Law. Place of arbitration	
<p>20(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.</p> <p>20(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.</p>	

Article 21. Model Law. Commencement of arbitral proceedings	
<p>Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.</p>	

Article 22. Model Law. Language	
<p>22(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.</p> <p>22(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.</p>	

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Article 23. Model Law. Statements of claim and defence	
<p>23(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.</p> <p>23(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.</p>	

Article 24. Model Law. Hearings and written proceedings	
<p>24(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.</p> <p>24(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.</p> <p>24(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.</p>	

UNCITRAL Commentary

- 28 Article 24(1) provides that, unless the parties have validly agreed that no oral hearings for the presentation of evidence or for oral argument be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party. It should be noted that article 24(1) deals only with the general right of a party to oral hearings (as an alternative to conducting the proceedings on the basis of documents and other materials) and not with the procedural aspects such as the length, number or timing of hearings.
- 29 As another provision aimed at ensuring fairness, objectivity and impartiality, article 24(3) provides that all statements, documents and other information supplied 'to the arbitral tribunal by one party shall be communicated to the other party, and that any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties. In order to enable the parties to be present at any hearing and at any meeting of the arbitral tribunal for inspection purposes, they shall be given sufficient notice in advance (article 24(2)).

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Article 25. Model Law. Default of a party	
<p>Unless otherwise agreed by the parties, if, without showing sufficient cause,</p> <p>(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;</p> <p>(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;</p> <p>(c) evidence, award on any party fails to appear at a hearing or to produce documentary the arbitral tribunal may continue the proceedings and make the evidence before it.</p>	

UNCITRAL Commentary

<p>33. Only if due notice was given, may the arbitral proceedings be continued in the absence of a party. This applies, in particular, to the failure of a party to appear at a hearing or to produce documentary evidence without showing sufficient cause for the failure (article 25(c)). The arbitral tribunal may also continue the proceedings where the respondent fails to communicate his statement of defence, while there is no need for continuing the proceedings if the claimant fails to submit his statement of claim (article 25(a), (b)).</p> <p>34. Provisions which empower the arbitral tribunal to carry out its task even if one of the parties does not participate are of considerable practical importance since, as experience shows, it is not uncommon that One of the parties has little interest in co-operating and in expediting mailers. They would, thus, give international commercial arbitration its necessary effectiveness, within the limits of fundamental requirements of procedural justice.</p>
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Article 26. Model Law. Expert appointed by arbitral tribunal	
<p>26(1) Unless otherwise agreed by the parties, the arbitral tribunal</p> <p>(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;</p> <p>(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.</p> <p>26(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.</p>	

UNCITRAL Commentary

<p>29. Another fundamental right of a party of being heard and being able to present his case relates to evidence by an expert appointed by the arbitral tribunal. Article 26(2) obliges the expert, after having delivered his written or oral report, to participate in a hearing where the parties may put questions to him and present expert witnesses in order to testify on the points at issue, if such a hearing is requested by a party or deemed necessary by the arbitral tribunal.</p>
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PRIVATE INTERNATIONAL LAW

Article 27. Model Law. Court assistance in taking evidence	
The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.	

EXAM QUESTION

Identify the principal differences between the Model Law and the Arbitration Act 1996, and,

Consider whether or not the provisions of the Model Law provide a more or less advantageous regime for the governance of international arbitral proceedings. Than that provided by the Arbitration Act 1996 in the United Kingdom

ADDITIONAL READING