

Model clause on [adjudicator] [technical] [neutral] [third-party] expert determination procedure

Draft model clause

The parties wish to have their disputes finally settled by arbitration if necessary. However, they might consider that certain disputes arising over the course of their contractual relationship can be rapidly and efficiently resolved by an adjudicator. They undertake to comply with the decision of such adjudicator and agree to the enforcement of this undertaking, while preserving their right to commence arbitration proceedings. With these considerations in mind, the parties agree as follows:

1. Any dispute, controversy or claim arising out of or relating to this contract, or breach, termination or invalidity thereof (“Dispute”), shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules [or UNCITRAL Expedited Arbitration Rules].
2. A party may also submit a Dispute to an [adjudicator] for rapid decision pursuant to the following subparagraphs.
 - (a) A party shall communicate a request for adjudication containing a detailed description of the factual basis of the dispute and an indication of the decision being requested to all other parties and to the adjudicator agreed or appointed pursuant to paragraph 2(b).
 - (b) Option: (i) The adjudicator shall be [name of a person]. If for any reason [he/she] fails to accept the appointment within [xx] days of receipt of the request for adjudication and the parties are unable to reach agreement on an alternative adjudicator within [xx] days, either party may request that [name of the appointing institution or person] appoint the adjudicator as promptly as possible.

Option: (ii) The impartial and independent adjudicator shall be appointed jointly by the parties. If the parties have not reached agreement on the appointment of the adjudicator within [xx] days after a proposal has been received by all other parties, an adjudicator shall, at the request of a party, be appointed by [name of the appointing institution or person] as promptly as possible.
 - (c) The adjudicator shall consult with the parties promptly and within 3 days of [his/her] acceptance of the appointment.
 - (d) Within [10 days] of the consultation, the other party or parties shall respond to the request. (A/CN.9/1159, para. 55)
 - (e) The adjudicator may conduct the proceedings as he/she considers appropriate, provided that the parties are treated with equality and that each party is given a reasonable opportunity to present its case within the time frame agreed by the parties.
 - (f) The adjudicator may request additional consultations with the parties or additional information he/she deems necessary on short notice.
 - (g) Option (i): The adjudicator may determine that some or all of the issues raised are inappropriate for adjudication.

Option: (ii) If the adjudicator determines that the issue can only be resolved by providing an irreversible relief (or determines that such a relief sought by the parties) he/she shall inform the parties that such a relief cannot be granted under the adjudication procedure [expert determination] or request a guarantee [security] from the party requesting the adjudication [expert determination] procedure.

(h) The adjudicator shall render his/her decision within [30 days] from [the date of appointment] [the date fixed for receipt of the respondent's response]. [In exceptional circumstances and after having consulted the parties, the adjudicator may extend such time by a maximum of [30] days]. (A/CN.9/1159, paras. 56-58)

(i) The decision of the adjudicator is binding on the parties and the parties expressly undertake to comply with the decision.

3. Any failure to comply with the parties' undertaking to comply with the adjudicator's decision pursuant to paragraph 2 shall be settled by arbitration in accordance with the UNCITRAL Expedited Arbitration Rules, with the following modifications:

[Note: the parties to include some or all of the following, as appropriate]

(a) Option: (i) The sole arbitrator shall be [name of a person].

The claimant shall communicate the notice of arbitration to the arbitrator, upon which he/she shall confirm the appointment as soon as possible and within [x] days upon receipt.

If for any reason the arbitrator does not confirm his/her appointment within this time period, and the parties cannot reach agreement on a new arbitrator within [7] days from its expiry, then at the request of a party, the arbitrator shall be appointed by the appointing authority defined below as promptly as possible in accordance with article 8(2) of the UNCITRAL Expedited Arbitration Rules.

Option: (ii) If the parties cannot reach agreement on a sole arbitrator within [7] days, then at the request of a party, the arbitrator shall be appointed by the appointing authority defined below as promptly as possible in accordance with article 8(2) of the UNCITRAL Expedited Arbitration Rules.

(b) The appointing authority shall be [name of institution or person].

(c) Consultation in accordance with article 9 of the UNCITRAL Expedited Arbitration Rules shall take place within [7 days] of the constitution of the arbitral tribunal and shall address any issues proposed by the parties prior to the consultation.

(d) The period of time for making the award in accordance with article 16 (1) of the UNCITRAL Expedited Arbitration Rules shall be [a short period of time, for example, 21-30 days].

Option (i): The extended period of time for the making of the award in the sense of article 16(2) and (3) of the UNCITRAL Expedited Arbitration Rules shall not exceed a total of [30 days].

Option (ii): The extended period of time for the making of the award in the sense of article 16(2) of the UNCITRAL Expedited Arbitration Rules shall not exceed a total of [30 days]. Article 16(3) and (4) shall not apply.

Option (iii): Article 16(2) to (4) shall not apply.

(e) The parties may agree, in consultation with the arbitral tribunal, that the arbitral tribunal shall not be required to state the reasons upon which the award is based.

(f) In accordance with article 2(2) of the UNCITRAL Expedited Arbitration Rules, the arbitral tribunal may decide to apply the UNCITRAL Expedited Arbitration Rules or the UNCITRAL Arbitration Rules without modification.

(g) The place of the arbitration shall be.... [town and country].

(h) The language to be used in the arbitral proceedings shall be....

4. A party's submission of a Dispute to rapid adjudication does not prevent the same Dispute from being submitted to arbitration pursuant to paragraph 1, nor do the proceedings before the adjudicator or the arguments and evidence presented therein bind or otherwise limit the ability of an arbitral tribunal acting pursuant to paragraph 1 to perform a full and de novo assessment of any Dispute submitted to it, both in fact and in law.