

Mauritius Convention and UNCITRAL Rules on Transparency in SCC cases

22 May 2015

This brief note describes the application of the *Mauritius Convention* and the *UNCITRAL Rules on Transparency* in cases governed by the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (SCC Rules).

I. The Mauritius Convention

The Convention on Transparency in Treaty-based Investor-State Arbitration (Mauritius Convention) was adopted by the General Assembly of the United Nations on 10 December 2014.

The Convention was opened for signature on 17 March 2015, and as of 19 May 2015, eleven countries have signed which consist of Sweden, Canada, Finland, France, Germany, Italy, Mauritius, Syria, Switzerland, the United Kingdom and the United States.

Under the Convention, signatory States agree that the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (UNCITRAL Rules on Transparency) shall apply to investor-State arbitration conducted under treaties concluded before 1 April 2014, regardless the applicable arbitration rules.

As a consequence, the UNCITRAL Rules on Transparency will apply to treaty-based investor-State cases governed by the SCC Rules if one of the following two conditions are fulfilled:

- (1) The respondent State and the home State of the claimant are parties to the Mauritius Convention and they have not made any reservation under the convention¹; *or*
- (2) The respondent State is a party to the Mauritius Convention and has not made a relevant reservation under the Convention² and the claimant agrees to the application of the UNCITRAL Rules on Transparency.³

¹ Article 2 (1) and 3 (1) (a) and (b) of the Mauritius Convention provide that the Convention does not apply if (i) either the claimant home State and the respondent State has carved out the relevant investment treaty from the scope of the Mauritius Convention or (ii) the respondent State has taken a reservation for disputes under specific arbitration rules or procedures other than the UNCITRAL Rules, and which it is a respondent.

² Article 2 (2) and 3 (1) of the Mauritius Convention provide that the Convention does not apply if the Respondent state (i) has carved out the relevant investment treaty from the scope of the Mauritius Convention; (ii) has taken a reservation for disputes under specific arbitration rules or procedures other than the UNCITRAL Rules, and which it is a respondent; and (iii) has taken a reservation that Article 2 (2) of the Mauritius Convention shall not apply to disputes in which it is a respondent.

³ Article 2 (2) of the Mauritius Convention.

II. UNCITRAL Rules on Transparency

The UNCITRAL Rules on Transparency apply to investment treaty arbitration under the SCC Rules only by agreement by the parties, or by the application of the Mauritius Convention (as above).

In absence of such specific agreements, the SCC and the Arbitral Tribunal shall maintain the confidentiality of the arbitration and award in SCC cases, in accordance with Article 46 of the SCC Rules.

III. Repository under the UNCITRAL Rules on Transparency

Information to be made available to the public under the UNCITRAL Rules on Transparency shall be published by a central repository, a function undertaken by the Secretary-General of the United Nations, through the UNCITRAL Secretariat. Information shall be published via the UNCITRAL website.

The SCC does not act as repository under the UNCITRAL Rules on Transparency, but refers parties and Tribunals to the UNCITRAL Transparency Registry.

For more information, see

<http://www.uncitral.org/transparency-registry/en/guidelines.html>.

<http://www.uncitral.org/transparency-registry/registry/index.jspx>.

IV. Conflict of rules provisions

In the event of a conflict between the UNCITRAL Rules on Transparency and the SCC Rules, the UNCITRAL Rules on Transparency prevail.⁴

In case of a conflict between the UNCITRAL Rules on Transparency and the underlying investment treaty, the treaty applies.⁵ However, when the UNCITRAL Rules on Transparency apply because both the respondent State and the home State of the claimant are parties to the Mauritius Convention (and have not made any relevant reservations), if there is a conflict between the UNCITRAL Rules on Transparency and the underlying investment treaty, the UNCITRAL Rules on Transparency apply.⁶

And where there is a conflict between the UNCITRAL Rules on Transparency and a mandatory provision of *lex arbitri*, the applicable arbitration law takes precedence.⁷

⁴ Article 1 (7) of the UNCITRAL Rules on Transparency.

⁵ Article 1 (7) of the UNCITRAL Rules on Transparency.

⁶ Article 1 (7) of the UNCITRAL Rules on Transparency and Article 2 (4) of the Mauritius Convention.

⁷ Article 1 (8) of the UNCITRAL Rules on Transparency.