

## **Mauritius Convention and UNCITRAL Rules on Transparency in SCC cases**

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 opened for signature on 17 March 2015, and as of 6 November 2017, twenty-two countries have signed which consist of Australia, Belgium, Benin, Cameroon, Canada, Congo, Finland, France, Gabon, Gambia, Germany, Iraq, Italy, Luxembourg, Madagascar, Mauritius, Netherlands, Sweden, Switzerland, Syrian Arab Republic, United Kingdom of Great Britain and Northern Ireland and United States of America.

As of 18 April 2017, Canada, Mauritius and Switzerland have ratified the Convention. The Convention [entered into force on 18 October 2017](#) and is therefore applicable to the countries that have ratified it.

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 convention<sup>1</sup>; *or*

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<sup>1</sup> Article 2 (1) and 3 (1) 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) The respondent State is a party to the Mauritius Convention and has not made a relevant reservation under the Convention<sup>2</sup> and the claimant agrees to the application of the UNCITRAL Rules on Transparency.<sup>3</sup>

## **II. UNCITRAL Rules on Transparency**

UNCITRAL maintains [a non-exhaustive list](#) of investment treaties concluded after 1 April 2014 where the UNCITRAL Transparency Rules, or provisions modelled on UNCITRAL Transparency Rules, are applicable in some instances of investor-State arbitration.

The UNCITRAL Rules on Transparency apply to investment treaty arbitration under the SCC Rules only by express 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.<sup>4</sup>

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<sup>2</sup> 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.

<sup>3</sup> Article 2 (2) of the Mauritius Convention.

<sup>4</sup> Article 1 (7) of the Transparency Rules

In case of a conflict between the UNCITRAL Rules on Transparency and the underlying investment treaty, the treaty applies.<sup>5</sup> However, when the UNCITRAL Rules on Transparency apply because both respondent State and the home State of the claimant are parties to 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.<sup>6</sup>

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.<sup>7</sup>

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<sup>5</sup> Article 1 (7) of the Transparency Rules

<sup>6</sup> Article 1 (7) of the Transparency Rules and Article 2 (4) of the Mauritius Convention.

<sup>7</sup> Article 1 (8) of the Transparency Rules