INTRODUCTORY NOTE TO UNCITRAL RULES ON TRANSPARENCY IN TREATY-BASED INVESTOR-STATE ARBITRATION

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Introduction

On July 11, 2013, the United Nations Commission on International Trade Law (UNCITRAL)[1] adopted the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration (Transparency Rules).[2] The new Transparency Rules are the product of three years of negotiations in UNCITRAL. The Transparency Rules will be available in two forms: (1) as part of the UNCITRAL Arbitration Rules, for use in arbitrations conducted under those rules, and (2) as a free-standing set of rules, available for use in arbitrations conducted under other arbitral rules, such as the Rules of the International Centre for Settlement of Investment Disputes (ICSID), or in ad hoc proceedings.[3] The Transparency Rules, as well as the new version of the UNCITRAL Arbitration Rules that incorporates the Transparency Rules, will come into effect on April 1, 2014. The Transparency Rules are for use only in treaty-based investor-State arbitration – not in traditional commercial arbitration.

Background

The UNCITRAL Arbitration Rules (Arbitration Rules), originally adopted in 1976,[4] are in wide use internationally. Initially, the Arbitration Rules were used primarily in commercial arbitration. However, with the development in the 1980s and 1990s of bilateral investment treaties (BITs) and free trade agreements (FTAs) (the latter often containing investment chapters),[5] the Arbitration Rules began to be used also in investor-State arbitration to resolve claims brought by investors against host governments under such international agreements, which are referred to below generically as "investment treaties."[6]

In 2006, UNCITRAL initiated work on an updated version of the 1976 Arbitration Rules; those revisions were completed in 2010.[7] During the deliberations, there was discussion of whether new provisions on transparency should be developed for investor-State arbitration. Member States supported such work and decided that, once the revisions to the 1976 Arbitration Rules were completed, UNCITRAL would take up transparency as a priority matter.[8]

UNCITRAL's interest in developing transparency provisions for investor-State arbitration reflects the growing recognition that investor-State arbitration is in some fundamental ways different from commercial arbitration. Confidentiality of the proceedings is generally seen as one of the desirable attributes of commercial arbitration, in which there is generally no direct public interest. By contrast, investor-State arbitration by definition involves the public, because the resolution of disputes between governments and investors can implicate a State's laws and policies, and the outcome can have financial consequences for taxpayers. Accordingly, many argue that there is a public interest in having such arbitration proceedings be transparent and open.[9]

The United States has embraced transparency provisions under the North American Free Trade Agreement (NAFTA)[10] and in BITs and other FTAs negotiated by the United States. Such provisions are included in the Model BIT that U.S. negotiators use.[11] Transparency in investor-State arbitration is new to some other governments, however. As a result, it took six negotiating sessions over three years to arrive at an agreed text.

What the Transparency Rules Do

The new Rules establish a repository that is responsible for publication on a website of information regarding arbitration proceedings. The repository will be the UN Secretary-General (effectively UNCITRAL) or, if UNCITRAL concludes that it does not have adequate resources to carry out those responsibilities, another institution to be named by UNCITRAL.[12]

The information that is subject to such dissemination relates to each stage of the arbitral process:

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- Basic information regarding the investor's claim is made available to the public after the notice of arbitration has been served.[13]
- Key documents submitted to the arbitral tribunal – including but not limited to the notice of arbitration, the response, the statement of claim, the statement of defense, a transcript of the hearing (where available), and orders, decisions and awards of the arbitral tribunal – are made available to the public.[14]
- The arbitral tribunal may allow third persons to make written submissions.[15]
- A non-disputing State party to the relevant investment treaty has the right to make a submission on issues of treaty interpretation, and the arbitral tribunal may allow such a party to make a submission on further matters within the scope of the dispute.[16]
- Hearings are, as a rule, open to the public.[17]

These transparency standards are robust. The Rules contain exceptions for confidential or protected information, as well as for information the disclosure of which would jeopardize the integrity of the arbitral process.[18]

When the Transparency Rules Apply

A difficult issue during the deliberations was determining in which situations the new Rules would apply. This is a rather complex interpretive matter because the Transparency Rules will become part of the UNCITRAL Arbitration Rules, and the use of the Arbitration Rules in investor-State proceedings is generally triggered through a treaty. In a given case where an investor initiating a claim selects the UNCITRAL Arbitration Rules from the menu of alternatives in the governing investment treaty, how will the investor and the respondent State know whether the arbitration will be governed by the Transparency Rules?

The negotiators resolved this issue in the following way. For investment treaties concluded on or after April 1, 2014, a reference in the treaty to the UNCITRAL Arbitration Rules among the arbitration options offered to investors will be deemed to include the Transparency Rules unless the Parties to the treaty specify otherwise.[19] They could do so, for example, by specifying that the arbitration will use the 1976 version of the UNCITRAL Arbitration Rules, which do not incorporate the Transparency Rules. The logic of using this "opt-out" approach for new investment treaties is that, going forward, Parties should be on notice that the Transparency Rules are now part of the UNCITRAL Arbitration Rules for investor-State arbitration. By contrast, for investment treaties concluded before April 1, 2014, a reference in the treaty to the UNCITRAL Arbitration Rules will be deemed not to include the Transparency Rules, unless the treaty Parties agree after that date that the Rules will be included.[20] The logic of using this "opt-in" approach for earlier investment treaties is that, at the time the investment treaty was negotiated, the Transparency Rules were not in force and thus there could be no reasonable expectation that the investment treaty would include them. Thus, under the "opt-in" approach, absent further affirmative steps, the Transparency Rules will not apply when the UNCITRAL Arbitration Rules are selected under any of the approximately 3,000 investment treaties currently in force globally.[21]

There is interest among Member States in having the Transparency Rules apply under existing treaties, but it is recognized that it would be burdensome for States to seek to amend their existing investment treaties individually. Accordingly, UNCITRAL has proposed the negotiation of a multilateral convention wherein States could, on the basis of reciprocity, effectively amend on a blanket basis existing investment treaties (subject to identified exceptions) so that references in them to the UNCITRAL Arbitration Rules will be deemed to include the Transparency Rules.[22] An UNCITRAL Working Group recently met to discuss the text of such an instrument.[23]

Potential Impact of the Transparency Rules

The transparency provisions in the new Rules will constitute the default transparency standard when the UNCITRAL Arbitration Rules are selected under those investment treaties concluded after April 1, 2014. (It is worth re-emphasizing that the Transparency Rules have no relevance to commercial arbitration conducted under the UNCITRAL Arbitration Rules.)[24] The extent of application of the Transparency Rules under existing investment treaties will depend upon the actions of the Parties to those treaties; a multilateral convention providing for blanket amendment of existing investment treaties could provide a significant boost to the use of the Transparency Rules. The Transparency Rules emphasize that

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they are not for use exclusively in conjunction with the UNCITRAL Arbitration Rules, but rather are also available for use in other investor-State arbitration proceedings, whether administered under other arbitration rules or ad hoc.[25] It remains to be seen whether other organizations that administer international investor-State arbitrations, such as ICSID, might adopt the Transparency Rules or similar standards. In any event, UNCITRAL's achievement in concluding the Transparency Rules constitutes an important change in international arbitration practice with regard to the public disclosure of investor-State proceedings, and a significant advance for transparency.

ENDNOTES

1 UNCITRAL, established in 1966, promotes the modernization and harmonization of commercial law. It is composed of 60 Member States elected by the General Assembly. UN Comm'n on Int'l Trade Law [UNCITRAL], *A Guide to UNCITRAL: Basic facts about the United Nations Commission on International Trade Law*, 1-3 (2013), http://www.uncitral.org/pdf/english/texts/general/12-57491-Guide-to-UNCITRAL-e.pdf; *see generally* UNCITRAL,www.uncitral.org (last visited Nov. 19, 2013).

2 Rep. of the United Nations Commission on International Trade Law, 46th Sess., July 8-26, 2013, 81-86, UN Doc A/68/17; GAOR, 68th Sess., Supp. No. 17 (2013), *available at* http://www.un.org/ga/search/view_doc.asp?symbol=A%2F68%2F17&Submit=Search&Lang=E.

3 Press Release, UNCITRAL, UNCITRAL Adopts Transparency Rules for Treaty-Based Investor-State Arbitration and Amends the UNCITRAL Arbitration Rules, U.N. Press Release UNIS/L/186 (July 12, 2013), *available at* http://www.unis.unvienna.org/unis/pressrels/2013/unisl186.html.

4 UNCITRAL, UNCITRAL Arbitration Rules (1976), http://www.uncitral.org/pdf/english/texts/arbitration/arb-rules/arb-rules.pdf.

5 According to the United Nations Commission on Trade and Development (UNCTAD), as of the end of 2012 there were 2857 bilateral investment treaties worldwide and 339 other types of international investment agreements. United Nations Conference on Trade & Dev., *Global Value Chains: Investment and Trade for Development*, World Investment Report 2013, xix (2013), *available at* www.unctad.org/en/PublicationsLibrary/wir2013_en.pdf [hereinafter *Global Value Chains*].

6 Investment treaties typically offer an investor several arbitration options when a claim is submitted. Use of the UNCITRAL Arbitration Rules is commonly among those options.

7 UNCITRAL, UNCITRAL Arbitration Rules (as revised in 2010), http://www.uncitral.org/pdf/english/texts/arbitration/arb-rules-revised/arb-rules-revised-2010-e.pdf.

8 Rep. of the United Nations Commission on International Trade Law, 41st Sess., June 16-July 3, 2008, UN Doc A/63/17; GAOR, 63rd Sess., Supp. No. 17 (2008), *available at* http://daccess-dds-ny.un.org/doc/UNDOC/GEN/V08/555/08/PDF/V0855508.pdf?OpenElement; Rep. of the United Nations Commission on International Trade Law, 43rd Sess., June 21-July 9, 2010, UN Doc A/65/17; GAOR, 65th Sess., Supp. No. 17 (2010), *available at* http://daccess-dds-ny.un.org/doc/UNDOC/GEN/V10/556/48/PDF/V1055648.pdf?OpenElement.

9 *See, e.g.*, CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW & INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT, "ENSURING TRANSPARENCY" IN INVESTOR-STATE DISPUTE RESOLUTION UNDER THE UNCITRAL ARBITRATION RULES (October 8, 2010), *available at* http://www.iisd.org/pdf/2010/unicitral_ensuring_transparency.pdf.

10 North American Free Trade Agreement, U.S.-Can.-Mex., Dec. 17, 1992, 32 I.L.M. 289 (1993). Transparency provisions are found in (1) Free Trade Comm'n, Interpretation of the Free Trade Commission of Certain Chapter 11 Provisions (July 31, 2001), www.state.gov/documents/organization/38790.pdf, and (2) Free Trade Comm'n, Statement of the Free Trade Commission on Non-Disputing Party Participation (October 7, 2003), www.state.gov/documents/organization/38791.pdf.

11 U.S. DEP'T OF STATE, 2012 U.S. MODEL BILATERAL INVESTMENT TREATY, art. 29, http://www.state.gov/documents/organization/188371.pdf.

12 UNCITRAL, UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration, art. 8, *adopted* July 9, 2013, http://www.uncitral.org/pdf/english/texts/arbitration/rules-on-transparency/pre-release-UNCITRAL-Rules-on-Transparency.pdf (effective on Apr. 1, 2014) [hereinafter *Transparency Rules*].

13 *Id.* art. 2.

14 *Id.* art. 3.

15 *Id.* art. 4.

16 *Id.* art. 5.

17 *Id.* art. 6.

18 *Id.* art. 7.

19 *Id.* art. 1(1).

20 *Id.* art. 1(2)(b). The Transparency Rules may also apply where the disputing parties agree to their use. *Id.* art. 1(2)(a).

21 *See Global Value Chains*, *supra* note 5.

22 Rep. of the United Nations Commission on International Trade Law, *supra* note 2, at 20-22. Note that some existing investment treaties, including the more recent ones of the United States, already contain transparency provisions.

23 United Nations Commission on International Trade Law, Rep. of Working Group II (Arbitration and Conciliation) on its 59th Sess., U.N. Doc. A/CN.9/794 (Sept. 26, 2013), http://www.un.org/ga/search/view_doc.asp?symbol=A%2FCN.9%2F794&Submit=Search&Lang=E.

24 Rep. of the United Nations Commission on International Trade Law, *supra* note 2, at 87.

25 *Transparency Rules*, *supra* note 12, art. 1(9).

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UNCITRAL RULES ON TRANSPARENCY IN TREATY-BASED INVESTOR-STATE ARBITRATION*

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I. UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration

Article 1. Scope of application

Applicability of the Rules

1. The UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration ("Rules on Transparency") shall apply to investor-State arbitration initiated under the UNCITRAL Arbitration Rules pursuant to a treaty providing for the protection of investments or investors ("treaty")* concluded on or after 1 April 2014 unless the Parties to the treaty** have agreed otherwise.

2. In investor-State arbitrations initiated under the UNCITRAL Arbitration Rules pursuant to a treaty concluded before 1 April 2014, these Rules shall apply only when:

(a) The parties to an arbitration (the "disputing parties") agree to their application in respect of that arbitration; or

(b) The Parties to the treaty or, in the case of a multilateral treaty, the State of the claimant and the respondent State, have agreed after 1 April 2014 to their application.

Application of the Rules

3. In any arbitration in which the Rules on Transparency apply pursuant to a treaty or to an agreement by the Parties to that treaty:

(a) The disputing parties may not derogate from these Rules, by agreement or otherwise, unless permitted to do so by the treaty;

(b) The arbitral tribunal shall have the power, besides its discretionary authority under certain provisions of these Rules, to adapt the requirements of any specific provision of these Rules to the particular circumstances of the case, after consultation with the disputing parties, if such adaptation is necessary to conduct the arbitration in a practical manner and is consistent with the transparency objective of these Rules.

Discretion and authority of the arbitral tribunal

4. Where the Rules on Transparency provide for the arbitral tribunal to exercise discretion, the arbitral tribunal in exercising such discretion shall take into account:

(a) The public interest in transparency in treaty-based investor-State arbitration and in the particular arbitral proceedings; and

(b) The disputing parties' interest in a fair and efficient resolution of their dispute.

5. These Rules shall not affect any authority that the arbitral tribunal may otherwise have under the UNCITRAL Arbitration Rules to conduct the arbitration in such a manner as to promote transparency, for example by accepting submissions from third persons.

6. In the presence of any conduct, measure or other action having the effect of wholly undermining the transparency objectives of these Rules, the arbitral tribunal shall ensure that those objectives prevail.

Applicable instrument in case of conflict

7. Where the Rules on Transparency apply, they shall supplement any applicable arbitration rules. Where there is a conflict between the Rules on Transparency and the applicable arbitration rules, the Rules on Transparency shall

* This text was reproduced and reformatted from the text available at the United Nations Commission on International Trade Law Web site (visited November 16, 2013), http://www.uncitral.org/pdf/english/texts/arbitration/rules-on-transparency/pre-release-UNCITRAL-Rules-on-Transparency.pdf.

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prevail. Notwithstanding any provision in these Rules, where there is a conflict between the Rules on Transparency and the treaty, the provisions of the treaty shall prevail.

8. Where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the disputing parties cannot derogate, that provision shall prevail.

Application in non-UNCITRAL arbitrations

9. These Rules are available for use in investor-State arbitrations initiated under rules other than the UNCITRAL Arbitration Rules or in ad hoc proceedings.

Footnotes to article 1, paragraph 1:

* For the purposes of the Rules on Transparency, a "treaty" shall be understood broadly as encompassing any bilateral or multilateral treaty that contains provisions on the protection of investments or investors and a right for investors to resort to arbitration against Parties to the treaty, including any treaty commonly referred to as a free trade agreement, economic integration agreement, trade and investment framework or cooperation agreement, or bilateral investment treaty.

** For the purposes of the Rules on Transparency, any reference to a "Party to the treaty" or a "State" includes, for example, a regional economic integration organization where it is a Party to the treaty.

Article 2. Publication of information at the commencement of arbitral proceedings

Once the notice of arbitration has been received by the respondent, each of the disputing parties shall promptly communicate a copy of the notice of arbitration to the repository referred to under article 8. Upon receipt of the notice of arbitration from the respondent, or upon receipt of the notice of arbitration and a record of its transmission to the respondent, the repository shall promptly make available to the public information regarding the name of the disputing parties, the economic sector involved and the treaty under which the claim is being made.

Article 3. Publication of documents

1. Subject to article 7, the following documents shall be made available to the public: the notice of arbitration, the response to the notice of arbitration, the statement of claim, the statement of defence and any further written statements or written submissions by any disputing party; a table listing all exhibits to the aforesaid documents and to expert reports and witness statements, if such table has been prepared for the proceedings, but not the exhibits themselves; any written submissions by the non-disputing Party (or Parties) to the treaty and by third persons, transcripts of hearings, where available; and orders, decisions and awards of the arbitral tribunal.

2. Subject to article 7, expert reports and witness statements, exclusive of the exhibits thereto, shall be made available to the public, upon request by any person to the arbitral tribunal.

3. Subject to article 7, the arbitral tribunal may decide, on its own initiative or upon request from any person, and after consultation with the disputing parties, whether and how to make available exhibits and any other documents provided to, or issued by, the arbitral tribunal not falling within paragraphs 1 or 2 above. This may include, for example, making such documents available at a specified site.

4. The documents to be made available to the public pursuant to paragraphs 1 and 2 shall be communicated by the arbitral tribunal to the repository referred to under article 8 as soon as possible, subject to any relevant arrangements or time limits for the protection of confidential or protected information prescribed under article 7. The documents to be made available pursuant to paragraph 3 may be communicated by the arbitral tribunal to the repository referred to under article 8 as they become available and, if applicable, in a redacted form in accordance with article 7. The repository shall make all documents available in a timely manner, in the form and in the language in which it receives them.

5. A person granted access to documents under paragraph 3 shall bear any administrative costs of making those documents available to that person, such as the costs of photocopying or shipping documents to that person, but not the costs of making those documents available to the public through the repository.

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Article 4. Submission by a third person

1. After consultation with the disputing parties, the arbitral tribunal may allow a person that is not a disputing party, and not a non-disputing Party to the treaty ("third person(s)"), to file a written submission with the arbitral tribunal regarding a matter within the scope of the dispute.

2. A third person wishing to make a submission shall apply to the arbitral tribunal, and shall, in a concise written statement, which is in a language of the arbitration and complies with any page limits set by the arbitral tribunal:

(a) Describe the third person, including, where relevant, its membership and legal status (e.g., trade association or other non-governmental organization), its general objectives, the nature of its activities and any parent organization (including any organization that directly or indirectly controls the third person);

(b) Disclose any connection, direct or indirect, which the third person has with any disputing party;

(c) Provide information on any government, person or organization that has provided to the third person (i) any financial or other assistance in preparing the submission; or (ii) substantial assistance in either of the two years preceding the application by the third person under this article (e.g. funding around 20 per cent of its overall operations annually);

(d) Describe the nature of the interest that the third person has in the arbitration; and

(e) Identify the specific issues of fact or law in the arbitration that the third person wishes to address in its written submission.

3. In determining whether to allow such a submission, the arbitral tribunal shall take into consideration, among other factors it determines to be relevant:

(a) Whether the third person has a significant interest in the arbitral proceedings; and

(b) The extent to which the submission would assist the arbitral tribunal in the determination of a factual or legal issue related to the arbitral proceedings by bringing a perspective, particular knowledge or insight that is different from that of the disputing parties.

4. The submission filed by the third person shall:

(a) Be dated and signed by the person filing the submission on behalf of the third person;

(b) Be concise, and in no case longer than as authorized by the arbitral tribunal;

(c) Set out a precise statement of the third person's position on issues; and

(d) Address only matters within the scope of the dispute.

5. The arbitral tribunal shall ensure that any submission does not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

6. The arbitral tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by the third person.

Article 5. Submission by a non-disputing Party to the treaty

1. The arbitral tribunal shall, subject to paragraph 4, allow, or, after consultation with the disputing parties, may invite, submissions on issues of treaty interpretation from a non-disputing Party to the treaty.

2. The arbitral tribunal, after consultation with the disputing parties, may allow submissions on further matters within the scope of the dispute from a non-disputing Party to the treaty. In determining whether to allow such submissions, the arbitral tribunal shall take into consideration, among other factors it determines to be relevant, the factors referred to in article 4, paragraph 3, and, for greater certainty, the need to avoid submissions which would support the claim of the investor in a manner tantamount to diplomatic protection.

3. The arbitral tribunal shall not draw any inference from the absence of any submission or response to any invitation pursuant to paragraphs 1 or 2.

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4. The arbitral tribunal shall ensure that any submission does not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.

5. The arbitral tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by a non-disputing Party to the treaty.

Article 6. Hearings

1. Subject to article 6, paragraphs 2 and 3, hearings for the presentation of evidence or for oral argument ("hearings") shall be public.

2. Where there is a need to protect confidential information or the integrity of the arbitral process pursuant to article 7, the arbitral tribunal shall make arrangements to hold in private that part of the hearing requiring such protection.

3. The arbitral tribunal shall make logistical arrangements to facilitate the public access to hearings (including where appropriate by organizing attendance through video links or such other means as it deems appropriate). However, the arbitral tribunal may, after consultation with the disputing parties, decide to hold all or part of the hearings in private where this becomes necessary for logistical reasons, such as when the circumstances render any original arrangement for public access to a hearing infeasible.

Article 7. Exceptions to transparency

Confidential or protected information

1. Confidential or protected information, as defined in paragraph 2 and as identified pursuant to the arrangements referred to in paragraphs 3 and 4, shall not be made available to the public pursuant to articles 2 to 6.

2. Confidential or protected information consists of:

(a) Confidential business information;

(b) Information that is protected against being made available to the public under the treaty;

(c) Information that is protected against being made available to the public, in the case of the information of the respondent State, under the law of the respondent State, and in the case of other information, under any law or rules determined by the arbitral tribunal to be applicable to the disclosure of such information; or

(d) Information the disclosure of which would impede law enforcement.

3. The arbitral tribunal, after consultation with the disputing parties, shall make arrangements to prevent any confidential or protected information from being made available to the public, including by putting in place, as appropriate:

(a) Time limits in which a disputing party, non-disputing Party to the treaty or third person shall give notice that it seeks protection for such information in documents;

(b) Procedures for the prompt designation and redaction of the particular confidential or protected information in such documents; and

(c) Procedures for holding hearings in private to the extent required by article 6, paragraph 2.

Any determination as to whether information is confidential or protected shall be made by the arbitral tribunal after consultation with the disputing parties.

4. Where the arbitral tribunal determines that information should not be redacted from a document, or that a document should not be prevented from being made available to the public, any disputing party, non-disputing Party to the treaty or third person that voluntarily introduced the document into the record shall be permitted to withdraw all or part of the document from the record of the arbitral proceedings.

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5. Nothing in these Rules requires a respondent State to make available to the public information the disclosure of which it considers to be contrary to its essential security interests.

Integrity of the arbitral process

6. Information shall not be made available to the public pursuant to articles 2 to 6 where the information, if made available to the public, would jeopardize the integrity of the arbitral process as determined pursuant to paragraph 7.

7. The arbitral tribunal may, on its own initiative or upon the application of a disputing party, after consultation with the disputing parties where practicable, take appropriate measures to restrain or delay the publication of information where such publication would jeopardize the integrity of the arbitral process because it could hamper the collection or production of evidence, lead to the intimidation of witnesses, lawyers acting for disputing parties or members of the arbitral tribunal, or in comparably exceptional circumstances.

Article 8. Repository of published information

The repository of published information under the Rules on Transparency shall be the Secretary-General of the United Nations or an institution named by UNCITRAL.

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II. Amendment to Article 1 of the UNCITRAL Arbitration Rules

UNCITRAL Arbitration Rules (with new article 1, paragraph 4, as adopted in 2013)

Scope of application

Article 1

4. For investor-State arbitration initiated pursuant to a treaty providing for the protection of investments or investors, these Rules include the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration ("Rules on Transparency"), subject to article 1 of the Rules on Transparency.

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