

United Nations Framework Convention on Climate Change

Questionnaire

Answers

1. We have been fortunate not to have many disputes, that have escalated to the level of a dispute requiring formal adjudication. We have had differences with our service providers, with who we have commercial contracts. We have also had a few instances when private individuals have sought damages from us for having inadvertently violated their intellectual property rights.
2. With commercial contractors and individuals, we have resorted to settling our differences amicably, through negotiations.
3. We have only resorted to amicable settlement, through negotiations.
4. Amicable settlement, through negotiations.
5. As aforementioned, we have been fortunate to not have many disputes. There is no discernable trend. Two or three instances of settling intellectual property violation claims, cannot be termed as a trend.
6. Amicable settlement, through negotiations is very flexible. One can adapt, as one moves forward.
7. We have not encountered such disputes.
8. Yes, we have a provision on settlement of disputes in all binding legal instruments the secretariat concludes.
9. Yes, in contractual practice. This is the provision we have in our template for Host Country Agreements:

“Any dispute between the Parties arising out of, or relating to this Agreement, which is not settled by negotiation or another agreed mode of settlement, shall, at the request of either Party, be submitted to a Tribunal of three arbitrators. Each Party shall appoint one arbitrator, and the two arbitrators so appointed shall appoint a third, who shall be the chairperson of the Tribunal. If either Party does not appoint an arbitrator within three months of the other Party having notified the name of its arbitrator, or if the first two arbitrators do not within three months of the appointment or nomination of the second one of them appoint a Chairperson, then such arbitrator shall be nominated by the President of the International Court of Justice at the request of either party to the dispute. Except as otherwise agreed by the Parties, the tribunal shall adopt its own rules of procedure, provide for the reimbursement of its members and the distribution of expenses between the Parties, and take all decisions by a two-thirds majority. Its decision on all questions of procedure and substance shall be final and, even if rendered in default of one of the parties, be binding on both of them.”

This is the provision we have in our template for Memorandum of Understanding:

“Amicable Settlement. The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of this MoU or the breach, termination or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then obtaining, or according to such other procedure as may be agreed between the Parties.

Arbitration. Any dispute, controversy or claim between the Parties arising out of this MoU, or the breach, termination or invalidity thereof, unless settled amicably under Section XX within sixty (60) days after receipt by one Party of the other Party’s request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.”

This is the provision from the United Nations General Conditions of Contract, which we use in our commercial contracts:

“Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article XX, above, within sixty (60) days after receipt by one Party of the other Party’s written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 (“Interim measures”) and Article 34 (“Form and effect of the award”) of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate (“LIBOR”) then prevailing, and any such interest shall be simple interest only. Should LIBOR no longer be available, the United States Federal Reserve Bank of New York’s Secured Overnight Financing Rate (SOFR) then prevailing shall be used, and any such interest shall be simple interest only. In light of the privileges and immunities of the United Nations, references in the UNCITRAL Arbitration Rules and this provision to the place of arbitration shall connote only the actual location for the arbitral proceedings but shall not mean the “seat” or “juridical seat” or “juridical place” for such proceeding. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.”

10. We have amicably settled claims through negotiations, where the secretariat has clearly caused damage due its actions. There have only been a few claims.
11. We have not encountered such situations.