ATLAS Desk Book 2022

FIFTH EDITION

ATLAS
ATLANTA INTERNATIONAL ARBITRATION SOCIETY

A Continuing Project of the Atlanta International Arbitration Society

A Dispute Resolution Manual for International Lawyers

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A Note From the Editors

ATLAS Desk Book 2022: A Dispute Resolution Manual for International Lawyers - Fifth Edition

A Continuing Project of the Atlanta International Arbitration Society

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The Editors

Shelby R. Grubbs
Kirk W. Watkins

The Atlanta International Arbitration Society

Disclaimer

This book is a continuing project of the Atlanta International Arbitration Society (ATLAS), a Georgia nonprofit corporation.

ATLAS does not administer arbitration proceedings. ATLAS does not sponsor or advocate for any particular clause or set of arbitration rules or the use of any arbitral institution. The purpose of this continuing project is to assemble in one place useful information for the active practitioner in international arbitration (and to share information on the appeal of the Southeastern United States as a venue for international arbitrations).

In the preparation of this manual, ATLAS has tried to reproduce model clauses and rules and other materials accurately. Users of this manual should confirm that language they are using has been incorporated correctly.

The information contained in this manual may not be current, especially since the model arbitration clauses of various arbitration institutions are subject to change. This manual may not reflect recent changes in clauses and rules as of the date of publication and will not reflect changes subsequent to the date of publication. This edition refers readers directly to the administering institutions for information about fees and costs.

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PREFACE

This is the fifth edition of the ATLAS Desk Book, a continuing project of the Atlanta International Arbitration Society. The desk book is a consolidated resource and drafting guide for lawyers and arbitrators in practices related to international commercial arbitration. This edition includes significant revisions.

First, the book contains a new chapter one, prepared by Brent Clinkscale, the society's president. Brent is the principal at Clinkscale Global ADR, lives and practices in Greenville, South Carolina, and is the chair of the South Carolina Bar's International Law Section. He is the first ATLAS president from outside the Atlanta, Georgia metro area. His presidency is but one indication of the society's growing profile in the Southeastern United States and beyond.

As in the past, ATLAS founder Glenn Hendrix has updated his scholarly essay on US law applying to international commercial arbitration in the Southeastern US, including the advantages offered by Atlanta for international commercial arbitration. His essay appears in chapter 2.

As Glenn notes, the Southeast and Atlanta are increasingly attractive venues. Among new enhancements are rules published by Georgia's new State-wide Business Court that went into force on August 1, 2021. These new rules include provisions for expediting international arbitrations. Chapter 5, a new chapter, contains these rules along with an introduction by the business court's senior staff attorney, Lynette Jimenez.

Among other Georgia developments in 2021 is the enactment of the Georgia Uniform Mediation Act, with the assistance of ATLAS members, particularly President-Elect Shelby S. Guilbert, Jr. worked with the Georgia General Assembly and the State Bar of Georgia to revise the uniform act to make it more useful to international practitioners. The revised act incorporates the 2018 UNCITRAL Model Law on International Commercial Mediation and Settlement Agreements Resulting from Mediation. Georgia becomes the first state in the United States to enact the Model Law. The new act and an introduction prepared by Shelby appear in chapter 8.

The enactment of the mediation act builds upon an earlier legislative success, the 2012 enactment of the Georgia International Arbitration Code. Georgia's international arbitration code is based on the UNCITRAL Model Law on International Arbitration as amended in 2006. A new introduction by Georgia State University College of Law Professor Emeritus Doug Yarn, one of the ATLAS members involved in shaping the Georgia law, is included in chapter 7.

Another new chapter includes the 1975 Inter-American Convention on International Commercial Arbitration (more frequently referenced as the "Panama Convention"). It appears in chapter 11 adjacent to separate chapters containing the 1958 New York Convention (chapter 10) and the 2018 Singapore Convention (chapter 12).

During 2021, several institutions updated their rules to address evolving needs of the international arbitration community, including providing more explicit authority and guidance for virtual hearings. Chapter 15 is updated to include the 2020 revision to the influential International Bar Association's Rules on the Taking of Evidence in International Arbitration.

In addition to changes to the IBA's evidence rules, 2021 saw changes and updates to rules from several of the world's prominent administering institutions. Revised procedural rules appearing in this edition include those promulgated by the Australian Centre for International Commercial Arbitration (chapter 23), the British Virgin Islands International Arbitration Centre (chapter 25), the International Chamber of Commerce Court of International Arbitration (chapter 30), the International Centre for Dispute Resolution (chapter 31),

JAMS (chapter 32), the Swiss Arbitration Centre (chapter 36), the Vienna International Arbitral Centre (chapter 38), and the World Intellectual Property Organization (chapter 39).

In connection with its publication of institutional rules, the society invites comments from the institutions themselves in the form of written introductions. Several of these introductions have been updated for the fifth edition.

A few items have been removed from the book. It no longer includes information regarding filing fees and other expenses, because they are subject to change. Users are referred to institutional websites to obtain current information about fees and administrative charges. Of course, users are also encouraged to check the current text of any rules being used to ensure that the most recent iteration is being used.

While the new Georgia Uniform Mediation Act is included along with the Singapore Convention, the book no longer includes mediation rules published by various administrative institutions. Perhaps a separate book containing mediation rules and other materials can be prepared in the future.

As with past editions, the 2022 edition of the ATLAS Desk Book, is the product of the cumulative and coordinated work of several people over the course of several years. This year a special committee was appointed to help promote the book; its members include Chris Campbell, Brent Clinkscale, Shelby Guilbert, and Rebecca Kolb.

In addition, this edition was vastly improved by Tom Oder who, through his firm Worldwide Editing, provided professional copyediting services and made many excellent suggestions regarding the organization and appearance of the book. Tom is a veteran of *The Atlanta Journal-Constitution* where, among other things, he wrote the headline "It's Atlanta" announcing that the 1996 Olympic Games would be in Atlanta.

As in the past, the book benefits from the early contributions of the Honorable Stanley Birch (Judge, US Court of Appeals for Eleventh Circuit – Retired). It was Judge Birch who first came up with the idea for the book and who hosted the early 2015 lunch at which the project took shape. John Sherrill, a now retired partner at Seyfarth Shaw, worked with Judge Birch in the original endeavor and provided critical input and advice in those early days. ATLAS remains grateful to them and all others who have contributed along the way.

The Editors
January 13, 2022

DEDICATION OF FIFTH EDITION

Shelby S. Guilbert, Jr.

From the inception of the Atlanta International Arbitration Society, Shelby S. Guilbert, Jr. has worked to improve the legal infrastructure on offer to lawyers and arbitrators in Georgia and to provide templates for other US jurisdictions. These efforts have achieved two significant milestones: the 2012 Georgia International Arbitration Act and the 2021 Georgia Uniform Mediation Act.

Of course, adopting legislation involves far more than putting a good idea to paper. The constituency for the proposed law, within and outside the legislative bodies, needs to be cultivated and mobilized, often spanning several years. In Georgia the International Arbitration and Mediation Act could not advance in the state's General Assembly without the sanction of the State Bar of Georgia, the Georgia Commission on Dispute Resolution, the business community, and the leadership and relevant committees in the State Senate and the State House of Representatives, among others.

In the case of both laws, Shelby was involved in drafting bills for presentation to the legislature, working with law faculty at Georgia State University, the University of Georgia, and Mercer University as well as other members of ATLAS. He then led efforts to build support for the bills. When the time came for presentations to the State Bar, Shelby again took the lead in answering questions in legislative committees and generating support from the Georgia Commission on Dispute Resolution.

His quiet diligence and patience in this process was an exemplary example for all. He simply never gives up. Nor was Shelby's well-planned and executed development and promotion sidetracked by the Covid pandemic, with all its attendant difficulties and challenges. Shelby persisted in promoting the mediation act in three separate legislative sessions before final success was achieved.

Thanks to Shelby, Georgia now has a modern international arbitration code. While it aligns with the 2006 United Nations Commission on International Trade Law Model Act, the arbitration code includes a number of pro-arbitration features based on the experience of other jurisdictions. (See chapter 8 for a discussion of the act.)

Also, thanks to Shelby, Georgia is the first state in the United States with a mediation act expressly incorporating the UNCITRAL 2018 Model Law on International Commercial Mediation and Settlement Agreements Resulting from Mediation. Among other things, the mediation act makes clear that Georgia recognizes a mediation privilege and provides an easy enforcement mechanism for mediated settlement agreements. (See chapter 9 for a discussion of the act.)

Of course, Shelby has done far more for the society than develop and see to the implementation of legislation. He has been a member of the society's Executive Committee for many years. He is its president-elect and has assisted with its programming, including its annual lecture. And he contributes to the broader community in multiple ways – for example serving as the chair of the Your Leaders Committee of the World Affairs Council of Atlanta – that serve to make Atlanta an increasingly international city.

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The Editors
January 14, 2022

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ADDITIONAL RESOURCE MATERIALS ARE AVAILABLE FROM THE ATLANTA INTERNATIONAL ARBITRATION SOCIETY AT THE FOLLOWING LINK:

https://arbitrateatlanta.org/resources/

SECTION 1

INTERNATIONAL DISPUTE RESOLUTION IN ATLANTA AND THE STATE OF GEORGIA

Chapter 1

Atlanta: A Global Gateway; ATLAS: A Pillar

Brent O. E. Clinkscale[1]

The keynote speaker for the Atlanta International Arbitration Society (ATLAS) 2021 10th Anniversary Conference, **ATLAS at 10: Past, Present and A Bold New Future For International Arbitration**, James Smith, Chief Intellectual Property Counsel for Ecolab and former Chief Administrative Patent Judge of the USTPO, began his address with the thought " One way or another , we were all going to wake up to the realization that we could connect remotely in effective ways with capabilities that we were underutilizing. We live in the 21st Century, and arbitration lives in this century too." Of course, this is also true for ATLAS and the International Gateway that is Atlanta. The realization of the need for and opportunity presented by utilizing capabilities has been a hallmark of ATLAS over the last decade.

2012

From its inception, ATLAS recognized and embraced its role as a 21st century pillar of the Atlanta Gateway with exceptional international programming, which included notable alternative dispute resolution practitioners worldwide. In its first conference in 2012, ATLAS tackled the subject of ***The United States and its place in the International Arbitration system of the 21st century***. The conference headline stated, *as observed by the reporters for a project to restate the U.S. Law of International Commercial Arbitration: "The United States occupies a unique place in the modern international arbitration system and in its historic evolution . . . American lawyers, arbitrators and arbitration specialists have been important contributors to the growth and development of the international commercial arbitration system, from its very inception and within its most venerable institution . . . On the other hand, U.S. parties and lawyers have sometimes taken atypical approaches towards arbitral procedures, particularly when contrasted to see European counterparts, on matters as diverse as arbitrator independence, discovery and the role of lawyers." What will be the role of the United States in international arbitration of the 21st Century, as trendsetter, outlier, or simply one in a crowd?*

The keynote speaker for the 2012 conference was Judith Gill, leader of Allen & Overy's international arbitration group, Director of the LCI, Member of the ICC UK arbitration group, Director of the AAA, and a Director of the Singapore International Arbitration Centre. Ms. Gill took the theme of the conference head-on, stating that the United States could be considered both a trendsetter and an outlier in international arbitration. But much of the same could be said about other Jurisdictions, she said, noting that Switzerland had achieved many developments in the treatment of witnesses, yet many of their civil law techniques, such as the inquisitorial decision-maker, were outliers in the international community.

ATLAS internalized the concept as to the role of the United States would play in international arbitration. It embraced the role as trendsetter by fostering presentations combined with thoughtful debates on the direction of international arbitration trends throughout the world. Not simply focusing on whether the United States could be a trendsetter, ATLAS prompted discussion as to whether, as a part of a trendsetting "movement", ATLAS could offer yearly platforms to discuss cutting edge notions -- both practical and theoretical -- to enhance the growth and sustainability of international dispute resolution globally.

2013

The 2013 Conference considered the theme ***Convergence and Divergence in International Arbitration Practice***. Opening remarks were given by The Honorable Adele Grubbs, Chief Judge of the Superior Court of Cobb County. Keynote remarks were given by the Honorable Dorothy Toth Beasley, Henning Mediation& Arbitration Service, Inc., Chief Judge Court of Appeals of Georgia (ret.) and

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[1] *Brent O.E. Clinkscale of Clinkscale Global ADR, is President of the Atlanta International Arbitration Society and an Independent Arbitrator, Mediator and Litigation Consultant. He is a Panel Member of the Commercial, Complex and Consumer Panels for the American Arbitration Association (AAA) and the International Center for Dispute Resolution (ICDR).* *These rules went in force as of July 1,*

Andrew Young, former U.S. Ambassador to the United Nations, Mayor of Atlanta, and U.S. Congressman. This conference discussed subjects such as, *An Introduction to International Arbitration: what Every Practitioner in Today's Global Economy Should Know; Fighting and (and Defending) the Leviathan: Arbitrations Involving Sovereigns and State-Owed Entities; A Peek Behind the Curtain: A Roundtable Featuring Some of the World's Leading Arbitrators; Third-Party Funding of Arbitration: The Future of Global Dispute Resolution or an Ethical Black Hole?: Arbitration and Asia; Crafting Dispute Resolution Mechanisms in Cross-Border Business Contracts: Leveraging Party Autonomy to Reduce Risk, Improve Outcomes and Lower Costs; What is my Award Worth? And What Can I Do Before, During and After an Arbitration to Make Sure I Get Paid?; Obtaining Evidence in the U.S for Arbitration and How to Use Section 1782; Managing A Procedural Menu With Common Law and Civil Law Offerings- All About "Americanization and "Civilization."*

2014

At the 2014 conference ATLAS highlighted the African Continent with the title, ***Enhancing Business Opportunities in Africa: The Role, Reality and Future of Africa-Related Arbitration***. The keynote address was given by Charles N. Brower of London, Judge of the Iran-US Claims Tribunal in The Hague. The subjects discussed by this conference were, *Doing Deals in Africa: What is Different and What is Not; Africa Rising?; Prospects for the Emerging African Arbitral Venues; Striking the Legitimate Balance between Host-State Sovereignty and Investor Needs: Perspectives from and Regarding Africa; Compensation, Damages and Valuation in International Investment Law and Arbitration; Asia and Africa: Trends in the Developing East-South Dispute Resolution Axis; Resolving Disputes in the Energy and Natural Resources Sectors; Dispute Prevention, Management and Resolution of Infrastructure and Construction Projects; Diversity and Inclusion in International Arbitration Appointments.* Immediately following the ATLAS conference in 2014, the **U.S. Department of Commerce Conference: Discover Global Markets in Sub-Saharan Afric**a convened. This conference and the ATLAS conference shared the same venue, which being combined, afforded a full five days of doing business in Africa and the African economy.

2015

The 2015 conference was a one-day event, commemorating the launch of the Atlanta Center for International Arbitration and Mediation, titled ***Setting Sail with International Arbitration: A one-day conference celebrating the launch of the Atlanta Center for International Arbitration and Mediation***. William W. Park, President of the London Court of International Arbitration and a member of the Governing Board of the ICCA, International Council for Commercial Arbitration, was the Keynote Speaker. The subject matter covered at this conference included, *Outfitting for our Cruise: The ATLAS Story. AXCIAM; Attracting International Arbitration Business to Atlanta; Building an International Arbitration Practice; Smooth Sailing: Negotiating, Drafting, and Revising the Arbitration Clause with a View toward Enforcement Sample Clauses; Selecting the Right Seat and Choosing the Right Rules: Limitations on the Ability to Contract for Arbitration; Rough Weather ahead: Preserving the Right to Arbitrate; Compelling Arbitration, Jurisdictional Challenges, Interlocutory Relief, Third Party Practice; The Storm Breaks and Passes; and The Hearing, the IBA Rules on Taking Evidence, Award Enforcement, Finding and Recovering Assets and Annulment.*

2016

International Arbitration in a Not So "Flat" World: Practical Considerations for Counsel and Their Clients, was the title of the 2016 conference. The Keynote speaker at the conference dinner was Derreck Kayongo, CEO, National Center for Civil and Human Rights. The Center was the venue for the dinner, and it showcased the connection between the American civil rights movement and the contemporary human rights movements around the world. The conference materials quoted the Afar magazine' description of the center as ". . . the newest addition to the Centennial Olympic Park tourism corridor, but it is much more than a museum. While there is certainly an emphasis on the Civil Rights Movement, mostly due to the center's Atlanta location, the center also has exhibits on what's going on in the modern age. The 42,000 square foot facility features artifacts belonging to Martin Luther King Jr. and multimedia clips on rights abuses of other groups like the LGBTQ, female, immigrant and handicapped populations." The conference highlighted and analyzed the most pressing international arbitration issues of the year including, *Does Brexit break it? What Brexit means for dispute resolution in London and beyond; Rules convergence and "flattening" among leading arbitral institutions and venues: To what extent does the choice of institution and seat still matter?; Mediating international commercial disputes—Can we bridge differences in US and non-US approaches?—Multi-step dispute resolution clauses in international business contracts: Stairway to Heaven . . . or Highway to Hell?; Ethics in international arbitration: How far can or should soft law guidance go in flattening the playing field between counsels from different jurisdictions?; The backlash against TPP, TTIP and other manifestations of a flat world: Implications for international arbitration; The rise of third-party funding: Flattening the playing field between haves and have-nots?; Uncommon law? An exploration of differing advocacy styles in common law jurisdictions, and how common law lawyers*

adapt those styles with civil law arbitrators; Roundtable: Recent Developments in International Arbitration.

YOUNG ARBITRATORS, TERTULIAS, GAR

At this juncture, ATLAS considered how it could begin to include younger practitioners in its ranks and add to the pipeline of international dispute resolution practitioners locally and globally. ATLAS also realized that it could enhance its conferences by including more conversational and debate-oriented discussions utilizing the incredible international community that descended upon Atlanta each year for the conferences. Finally, ATLAS envisioned a forum dedicated to the mission of ATLAS to promote Atlanta as the place to resolve the world's business disputes and promote the values of cultural openness, hospitality, and innovation in cross-border dispute resolution. With all of this, ATLAS needed to continue to strengthen the worldwide international arbitration brand of Atlanta.

Over the next 5 conferences, ATLAS added the ICC Young Arbitrators Forum (YAF) and ATLAS Young Practitioners Group (YPG) program, The ATLAS Tertulias, The ATLAS Forum and it combined programing with Global Arbitration Review (**GAR**) through **GAR**Live Atlanta. The YAF/YPG program would be organized by young practitioners, and the program included them as presenters on cutting edge panels analyzing international disputes resolution issues. The Tertulias would invite trendsetting ideas and discussions, but also analyze those ideas that were thought to be outliers. The ATLAS Forum would include local and regional perspectives to expand ATLAS's growth locally and strengthen its connections regionally. **GAR**, the leading digital resource on international arbitration news and community intelligence, through **GAR**Live Atlanta, would enhance ATLAS's execution of its mission and expand Atlanta's brand as a Global Gateway.

2017

Ambassador Charles Adams, Former US Ambassador to Finland and partner at Orrick, delivered opening remarks at the 2017 ATLAS conference. The Right Honorable Lord Goldsmith QC, (Debevoise Plimpton LLP, London) was the keynote speaker. The conference dealt with the rise in nationalism and its effect on international arbitration. Titled ***International Business Disputes in an Era of Receding Globalism, Resolving Cross-Border Business Disputes in an Age of Receding Globalism***, the conference considered the queries: *The past year has seen the rise of populist nationalism, skepticism of multilateral trade agreements, and calls to tighten, in some ways, the flow of people across borders-perhaps most visibly in the United States, but with varying manifestations in other parts of the world as well. Some, these developments represent a much-needed course correction to protect their national security and address macroeconomic trends that have hurt working people. Others see them as harbingers of the Demise of the post-World War 11 neoliberal global order or worse. The developments are sparking lively political debate, but they also raise non-partisan, practical questions in the realm of international business dispute resolution - Will the push and pull of nationalist sentiments affect where and how businesses resolve cross border disputes - Might the relationship between nationalist courts and arbitral tribunals shift? - Will the backlash against globalism encompass or impact the world of international arbitration? - What is the future of investor-state dispute resolution? - How might tighter immigration controls impact international arbitration proceedings - Will there be fewer players in the competition among jurisdictions positioning themselves as the most cosmopolitan and friendly to international arbitration?*

This was the first year of the ICCYAF/ATLAS YPG panels and the first year of the AtLAS Tertulias. The ICCYAF/ATLAS YPG presented, ***A Conversation with Arbitration Practitioners from Around the World - Different Perspectives on Common Themes***. The first Tertulias tackled various topics at the forefront of international arbitration in 2017 including, 1) ***Transparency, privacy, and confidentiality in international arbitration***, 2) ***Party selection of arbitrators versus institutional selection in international arbitration***, 3) ***The "Americanization" of international arbitration? Discovery? Advocacy styles?*** and 4) ***The impact of gender diversity in international arbitration***.

2018

Olufunke (Funke) Adekoya SAN, FCIArb, AELEX,Lagos, David W. Rivkin a Partner in the New York office of Debevoise & Plimpton, Ann Ryan Robertson, Locke Lord Houston and Ambassador (ret.) David Huebner, FCIArb (former Ambassador to New Zealand and Samoa) all gave featured Keynote addresses at the 2018 ATLAS conference, ***Skills and Cultures: The Road Ahead for International Arbitration***. This was the first year of the ATLAS GARLive combined programing and the conference coincided with the Chartered Institute of International Arbitrators (CIArb) 104th World Congress in Atlanta. This was also the first time the CIArb's World Congress had convened in the Western Hemisphere in its 104-year history. Since the conference and the Congress overlapped, this provided wonderful opportunities for the delegates to serve as speakers on ATLAS conference programs and the opportunity to have multiple keynote addresses for the delegates and conference registrants. The main program dealt with a diverse yet compelling subject mix including, *A General Counsel Panel (considering various issues in internation-*

al arbitration); Cross-Cultural Approaches When Taking Evidence in International Arbitration —Are Things About to Get More "Civil"sized?; The Art of Persuasion in International Arbitration Hearings; Show me the Money: Cutting Edge Techniques for Presenting Damages and Using Technology in International Commercial Arbitration; and, Ethical Obligations in International Arbitration.

The ICCYAF/ATLAS YPG program delved into practical management issues and featured a panel on, ***Document and Data Management (and Protection) in International Arbitration***. The 2018 Tertulias concentrated on a geographical approach to international arbitration emphasizing institutional and cultural differences. The panels included 1) ***África Tertulia***, 2) ***The Americas Tertulia***, 3) ***Europe & Russia Tertulia*** 4) ***Asia & Australia Tertulia***.

2019

The 2019 ATLAS Conference also combined with **GAR**Live Atlanta. George Berman, Professor of Law Columbia Law School and Reporter & Chief Reporter American Law Institute Restatement (Third) of the US Law of International Commercial Arbitration, was the keynote speaker. Titled, ***Points of View: Multiple Perspectives on International Arbitration***, the conference included the following panels: *The year in review, a guide through the essentials—All the developments in both regional and international arbitration that you need to know about -The Prague Rules, HKIAC rules and others, Their status and development to date - What have recent cases such as Henry Schein v. Archer & White Sales, Vantage Deepwater Company v. Petrobas, USDC sD Tx and Achmea revealed as pressing issues? - Recent trends in arbitration such as transparency and summary disposition; In a twist on the Oxford Union style, we discuss and debate the pros and cons of several motions seeking enforcement of contractual clauses excluding or limiting certain damages and claims including provisions - Prohibiting the recovery of consequential damages - Imposing caps on damages - Shortening periods for asserting claims; Expecting the unexpected, a simulation, a role playing session examining unanticipated problems that can arise during arbitrations, testing the judgement and reflexes of experienced arbitrators with - Unexpected witnesses - Unexpected exhibits - Absent witnesses -Cyberbreaches - Arbitrator misbehavior ; Questions concerning - Cybersecurity - Constructions - Technology and artificial intelligence - Transparency - Judicial and Bureaucratic hostility.*

The ICCYAF/ATLAS YPG panel explored, ***Interviews with Practitioners from Around the World: Different Perspectives on Building a Successful Arbitration Practice***. The Tertulias continued with the same theme dealing with issues of international arbitration advocates and included topics 1) ***When and where to arbitrate and when and where to litigate***, 2) ***Choosing an administering institution***, 3) ***Financing arbitration and litigation and the rise of orders for security for costs***, 4) T***echnology and artificial intelligence in arbitration***.

The ATLAS Forum made its debut in 2019 with, *An interactive discussion regarding award writing in both domestic and international arbitrations and covering among other matters - How counsel can present their claims and defenses to assist arbitrators in writing and efficient award - How counsel and experts can present information pertaining to damages in a way that will assist arbitrators in writing an award - How, if at all, counsel misbehavior figures into award writing - What arbitrators do when they find that information may have been overlooked in the presentation of evidence.*

2020

The COVID pandemic impacted the structure and presentation of the 2020 ATLAS conference. ATLAS pivoted to a totally virtual conference with a half day of programing. ***Recent Global Political Developments and Their Effects on International Arbitration***, headlined the 2020 conference. Christopher Poole, President and Chief Executive Officer, of JAMS gave opening remarks for the conference. The conference subjects included: *Global Political Developments—Europe, Africa, and Asia and India—Recent political developments that are relevant either to regional or to International arbitration that you need to know about covering -The European Commission's effort to end intra-EU investor-State arbitration - Britain's withdrawal from the European Union - Recent developments in Africa - India under the Modi Government; Global Developments—Americas - Recent political developments that are relevant either to regional or to international arbitration that you need to know about - The 2020 U.S. elections - Brazil under the Bolsonaro Government - Recent developments in Peru - The United States-Mexico-Canada Agreement; The Rise of China on the World Stage- Recent political developments relating to Chin's Riis as a global actor and how those developments are likely to affect either regional or international arbitration - The CCP's imposition of increased State control in Hong Kong and Xinjiang, and how this developments may affect the Mainland's relationship with Taiwan and Chin's neighbors - The Belt and Road Initiative - China's territorial claims in the South China Sea - Political and economic confrontation with orate global and regional actors; The Pandemic - Addressing how the COVID - 19 pandemic has affected the arbitration community, and how the arbitration community has responded - Shifting from in-person to virtual hearings and meetings - Legal challenges an practical problems with virtual arbitrations - Other potential long-term effects of the pandemic on the arbitration community; Third Party Funding, Developments in third-party funding in international arbitration - Practical considerations finding the right funder and funding structure - Pandemic impact on third-party funding - Pandemic impact on third-party funding - Third*

party funding global alliance - Developments EU Directive on Collective Redress, UNCITRAL, ICSID, ABA & NY State Bar, ICDR - Ethical and disclosures issues.

2021

The 2021 ATLAS 10th Anniversary Conference, ***ATLAS At 10: PAST, PRESENT AND A BOLD NEW FUTURE FOR INTERNATIONAL ARBITRATION***, as noted earlier featured the Keynote address of James Smith, Chief Intellectual Property Counsel for Ecolab. The conference, originally intended to be a Hybrid format, also pivoted to a completely virtual conference due to COVID concerns. This conference was also the third conference combined with **GAR**-Live Atlanta which, because of the virtual format, became **GAR**CONNECT Atlanta. The theme of the conference was Intellectual Property and International Arbitration.

Subjects included: *The Year in Review, a Guide through the Essentials, All the most important developments in both regional and international arbitration that you need to know about - Overview of the latest developments in commercial and investor state arbitration, new laws, decisions, and changes to institutional rules and soft law - Exploring the latest high profile arbitration cases across the US and internationally - Understanding niche or specific challenges to arbitration e.g. ability to enforce an international arbitration agreement against a non-signatory party and the Forced Arbitration Injustice Repeal (FAIR) Act; IP and Arbitration, Similar to banks, large IP owners have been slower than some to adopt international arbitration. Lately though, that appears to be changing. So, how can international arbitration be of help in the intellectual property sphere? How can international arbitration meet the industry's concerns about its usefulness, and what are the peculiarities of the IP disputes that may require creative thinking? And where will the arbitrators be found? - Reasons IP firms have avoided arbitration, and how many of those are insurmountable - IP owners who have embraced international arbitration and why. Are there any themes? Is there a US-rest of the world divide? - The most common types of IP-related arbitrations - Particular issues in life sciences and molecule development -Compulsory licensing disputes - Quantifying damages in patent infringement cases in Pharma - COVID 19 related IP and life sciences disputes; The* ***GAR*** *Live Question Time with IP In-House Counsel, opportunities to hear directly from in-house counsel from large IP owning companies on their good and bad experiences, what they want to see from external counsel, and their latest challenges;* ***GAR*** *Live: Would You Challenge?*

A panel of esteemed international arbitration practitioners introduce and then discuss intriguing scenarios, loosely based on their own lives, before asking the audience and the panel members to vote on how they would respond before outlining their own solutions. As well as providing lots of food for thought, these sessions offer the chance to benchmark one's own practice and instincts against a group of peers.

Virtually Back to Normal? Takeaways from a Year of Remote Arbitration Hearings and Pathways Forward, the panel title for the ICCYAF/ATLAS YPG 2021 program considered the question of future in-person arbitration and mediation proceedings post COVID. The Tertulias analyzed industries of the 21st Century with the overall title of ***"Tomorrow Land: International ADR in Next Generation Industries"***. The topics included, 1) ***Sustainability & Green Issues in international Dispute Resolution***, 2) ***Entertainment and Media Disputes***, 3) ***Space Law Disputes***, and 4) ***Life Science & Tech. Disputes***.

The second ***ATLAS Forum*** was also a part of the ATLAS 10th Anniversary Conference. The Forum considered the past accomplishments and challenges of ATLAS, regional and global growth, diversity both locally and globally, ATLAS Mission and Values, and all aspects of the conference title, ***ATLAS At 10: Past Present and A Bold New Future for International Arbitration***.

(For more information and a listing of all speakers in the ATLAS conferences please see the ATLAS Archives on the ATLAS website http://arbitrateatlanta.org/).

Chapter 2

International Arbitration in the United States: The Atlanta Option

Glenn P. Hendrix[1]

I. Introduction

The United States is one of a handful of jurisdictions worldwide recognized as global centers of arbitration. American courts follow an "emphatic federal policy in favor of arbitral dispute resolution" that is recognized by the US Supreme Court as applying "special force in the field of international commerce."[2] American parties are also among the world's leading users of international arbitration, topping the tables as consumers of International Chamber of Commerce (ICC) and International Centre for Dispute Resolution (ICDR) arbitrations and ranking near the top at most other major arbitral institutions.[3] Thus, even setting aside the many advantages of arbitrating in the United States – including its transparent and predictable legal system and developed infrastructure – the sheer number of US companies doing business internationally (and, thus, inevitably finding themselves in cross-border disputes) means that many international arbitrations will be seated in the US.

But *where* in the vast geographic expanse that is the United States should a party choose to arbitrate? Of course, there is no single answer to this question because there is no one-size-fits-all arbitral venue. An ideal venue for one dispute or party will be a poor choice for another. One advantage to arbitration in the US is the rich variety of venues, ranging from New York, which boasts a well-developed body of commercial law befitting one of the world's leading hubs for international business; to Miami, with its deep cultural and economic ties with Latin America; to Houston, where the local bar possesses unparalleled expertise in oil and gas disputes; and to Washington, DC, which is the default seat for disputes administered by the International Centre for Settlement of Investment Disputes (ICSID).

While each of these venues has many attractions, the author hails from Atlanta and will focus on the advantages of this particular venue, which include:

- the Atlanta-based Eleventh Circuit United States Court of Appeals, the most international arbitration-friendly court in the United States,
- the most open regime for non-US lawyer practice in the United States,
- a sophisticated legal framework supporting the third largest concentration of Fortune 500 headquarters in the US,
- world-class hearing facilities,
- local legal and business communities and governments that are committed to fostering an international arbitration-friendly environment.

Atlanta also stands out as:

- one of the world's most accessible cities and home to the world's busiest passenger airport by flight count;
- the least expensive major city in the US; and
- a city known for its hospitality and multicultural embrace.

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[1] Glenn P. Hendrix is the Chair of Arnall Golden Gregory LLP and the Founding President of the Atlanta International Arbitration Society. The author thanks Dorothy Toth Beasley, Philip W. "Whit" Engle, Bernard L. "Ben" Greer, Shelby R. Grubbs, Meghan Koransky, Peter "Bo" Rutledge, Kirk W. Watkins, and Douglas H. Yarn for comments on drafts of this chapter. Any errors, of course, remain the author's own.

2 *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 631 (1985).

3 *See, e.g., I*CC 2018 Dispute Resolution Statistics (2019); London Court of Int'l Abritration *2018 Annual Casework Report* (2019) (US parties the top user in 2017 and among the top four users in 2018); *Lacey Yong, SIAC Reports Record Caseload in 25th Year, GLOBAL ARBITRATION REVIEW (Mar. 10, 2017)* (US parties among top threeglob al users at Singapore International Arbitration Centre).

In declaring that he's "obsessed with Atlanta," Canadian bestselling author and journalist, Malcolm Gladwell, explains:

> You know, people always say such and such is the future of America—"Texas is the Future of America" or "Florida is the future of America." No, no, no. Best case scenario for all of us is if Atlanta is the future of America, because Atlanta is the most wonderful mash up of all the most wonderful bits and pieces of this country: birthplace of the civil rights movement, Janelle Monae and Wonderland and Gucci Mane and Magos and basically the entire hip hop world, CNN, Jimmy Carter, Stacey Abrams, the best Indian food in the US out of Queens, Piedmont Park, little tart bakeshop. I could go on. I was once in my favorite coffee shop in Atlanta and realized that around me were a rock band writing lyrics, a couple of folks having a Bible study, someone from the mayor's office, and a handful of moms with kids – all representing, by my count, at least six different ethnicities and an age range of maybe 70 years. How beautiful is that? I love Atlanta.[4]

II. Legal Infrastructure

Of course, the features cited by Malcolm Gladwell in describing Atlanta as "the most wonderful mash up of all the most wonderful bits and pieces" of the United States don't in themselves make the city a choice arbitration venue. Surveys of corporate counsel indicate that the most important factor in selecting an arbitral venue is the legal infrastructure, including the jurisdiction's arbitration law and track record in upholding arbitration agreements and arbitral awards.[5] Here, too, Georgia can be said to offer "the most wonderful mash up of all the most wonderful bits and pieces" of international arbitration law in the United States. Indeed, Georgia can lay justifiable claim as the US's most international arbitration-friendly jurisdiction.

A. The Most International Arbitration-Friendly Court in the United States

The Atlanta-based Eleventh Circuit US Court of Appeals has developed a substantial body of pro-arbitration case law.[6] Eleventh Circuit courts have adopted the philosophy that "arbitration is an alternative to litigation, not an additional layer in a protracted contest."[7] The Eleventh Circuit is especially friendly to international arbitration, as reflected by its track record:

- The Eleventh Circuit is the only US judicial circuit to eliminate domestic arbitration law as a basis for annulment (or, in American parlance, "vacatur") of international arbitration awards rendered in the United States.[8] In the Eleventh Circuit, the grounds for setting aside a US-made international arbitration award are identical to the grounds for refusing recognition and enforcement of foreign arbitral awards, as set forth in the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention").[9]

- Unlike several other US judicial circuits (including the Second Circuit, which includes New York), the Eleventh Circuit precludes challenges to arbitration awards on the basis that the arbitrator(s) "manifestly disregarded the law."[10]

- Recognizing that "[a]rbitration's allure is dependent upon the arbitrator being the last decision maker in all but the most unusual cases," Eleventh Circuit courts sanction parties that bring non-meritorious challenges against arbitration awards.[11]

- Agreements to restrict discovery in arbitration are upheld by the Eleventh Circuit. As stated in a series of decisions, "the fact that certain litigation devices may not be available in an arbitration is part and parcel of arbitration's ability to offer simplicity, informality, and expedition."[12]

- The Eleventh Circuit follows a liberal approach with respect to allowing arbitrators to determine their

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[4] Malcolm Gladwell, *Revisionist History Podcast* ("Druid Hills" episode), Dec. 10, 2020.

[5] Paul Friedland & Loukas Mistelis, *White & Case and Queen Mary Univ. of London, 2010 Int'l Arbitration Survey: Choices in International Arbitration*, at 19 (2010); *see also* Chartered Institute of Arbitrators, *The CIArb London Centenary Principles* (2015), available at http://www.ciarb.org.

[6] Andrew J. Tuck, Kristen Brombererk & Jamie George, *International Arbitration: The Role of the Federal Courts and Strong Support From the Eleventh Circuit*, FEDERAL LAWYER, 61 (Aug. 2017).

[7] *B.L. Harbert Int'l v. Hercules Steel Co.*, 441 F.3d 905, 913-14 (11th Cir. 2006), *overruled on other grounds, Hall Street Associates LLC v. Mattel*, 552 U.S. 576 (2008).

[8] *Industrial Risk Insurers v. M.A.N. Gutehoffnungshutte GmbH*, 141 F.3d 1434 (11th Cir. 1998); *Inversiones Y Procesadora Tropical Inprotsa, S.A. v. Del Monte Int'l GmbH*, 921 F.3d 1291 (11th Cir. 2019); *Earth Science Tech, Inc. v. Impact UA, Inc.*, N809 Fed.Appx. 600 (April 14, 11th Cir. 2020); *Gulfstream Aerospace Corp. v. OCELTIP Aviation 1 Pty. Ltd.*, 451 F.Supp.3d 1370, 1382-83 (S.D. Ga. 2020); *see also* Richard W. Hulbert, *The Case for a Coherent Application of Chapter 2 of the Federal Arbitration Act*, 22 AM. REV. INT'L ARB. 45, 83 (2011).

[9] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T. 2518.

[10] *Frazier v. CitiFinancial Corporation, 604 F.3d 1313 (11th Cir. 2010).*

[11] *World Business Paradise, Inc. v. Suntrust Bank*, 403 Fed.Appx. 468 (11th Cir. 2010); *see also B.L. Harbert*, 441 F.3d at 913-914.

[12] *Caley v. Gulfstream Aerospace Corp.*, 428 F.3d 1359, 1378 (11th Cir. 2005); *Dale v. Comcast Corp.*, 498 F.3d 1216, 1220-21 (11th Cir. 2007).

own jurisdiction.[13] Challenges to an agreement as a whole, as opposed to the arbitration clause specifically, are decided by the arbitrator.1[4]

- The Eleventh Circuit holds that domestic law exclusions with respect to matters that may be subject to arbitration are trumped by the New York Convention.[15] A court "cannot refuse to enforce international commercial arbitration clauses merely because 'a different resolution would be reached in a purely domestic setting.'"[16]

- The Eleventh Circuit holds that "the public-policy defense under the [New York] Convention is very narrow,"17 applying only to violations of an "explicit public policy" that is "well-defined and dominant" and is ascertained "by reference to the laws and legal precedents and not from general considerations of supposed public interests."[18]

- The Eleventh Circuit interprets the New York Convention's defenses for a party seeking to avoid the enforcement of an international arbitration agreement narrowly to include only "standard breach of contract defenses that can be applied neutrally on an international scale."[19] Consistent with that approach, the Eleventh Circuit was the first US judicial circuit to hold that the public policy defense set forth in Article V of the Convention is available only at the "award-enforcement stage;" it cannot be interposed at the "arbitration-enforcement stage" of court proceedings, when a district court is considering an action or motion to compel or stay an arbitration.[20] (At least one other US judicial circuit has ruled to the contrary, holding that the public policy defense can be asserted at both the award-enforcement stage and the arbitration enforcement stage.)[21]

- Unlike some other US judicial circuits, there is no precedent in the Eleventh Circuit applying the common law doctrine of *forum non conveniens* as a basis for refusing to recognize or enforce arbitral awards that are subject to the New York Convention.[22] As stated in an American Bar Association (ABA) resolution and report on this issue, the Second Circuit precedents are problematic because "[d]ismissing an action to enforce a foreign arbitral award on [*forum non conveniens*] grounds permits US litigants to convert a 'procedural' US doctrine into an enforcement bar even though it is not one of the exclusive bases in Article V of the New York Convention. This approach undermines the uniformity sought by member states to multilateral arbitration conventions."[23]

While other US judicial circuits have issued international arbitration-friendly rulings with respect to a number of the foregoing issues, no other circuit has the same consistently positive track record on each of these issues, and only the Eleventh Circuit has eliminated domestic

[13] *See, e.g., Earth Science*, 809 Fed.Appx. at 606 (The parties agreed to submit the issue of arbitrability to the arbitrators by agreeing to proceed under the UNCITRAL rules); *Terminix International Co. LP v. Palmer Ranch Ltd.*, 432 F.3d 1327 (11th Cir. 2005) ("By incorporating the AAA Rules … into their agreement, the parties clearly and unmistakably agreed that the arbitrator should decide whether the arbitration clause is valid").
[14] *Cheruvoth v. SeaDream Yacht Club Inc.*, 2021 WL 4595177 (11th Cir. 2021) ("[B]ecause Mr. Cheruvoth challenges only the Agreements as a whole, instead of the specific arbitration clause contained in them, our inquiry is complete"); *Solymar Invs., Ltd. v. Banco Santander S.A.*, 672 F.3d 981, 998 (11th Cir. 2012) (affirming order compelling arbitration where the parties did "not challenge the formation of the arbitration clause within the [ ] Agreement, but rather the entirety of the Agreement").
[15] *Bautista v. Star Cruises,* 396 F. 3d 1289 (11th Cir. 2005); *Goshawk Dedicated Ltd. v. Portsmouth Settlement Co. I, Inc.,* 466 F. Supp.2d 1293 (N.D. Ga. 2006) (In ordering parties to arbitrate in London, district court in Atlanta observed that "the importance of international comity and ensuring predictability and orderliness in international commerce warrant the enforcement of international agreements to arbitrate, even in contexts where a similar agreement would be unenforceable in the domestic context"); Daniel J. King, Brian A. White & Ryan J. Szczepanik, *International Arbitration in Georgia,* 12 GA. BAR J. 13, 17 (Apr. 2011).
[16] *Escobar v. Celebration Cruise Operator, Inc.*, 805 F.3d 1279, 1286 (11th Cir. 2015).
[17] *Inversiones y Procesadora,* 921 F.3d at 1306; *Indus. Risk Insurers*, 141 F.3d at 1445.
[18] *Indus. Risk Insurers*, 141 F.3d at 1444-45 (Rejecting a party's public-policy defense against enforcement of an arbitral award because the violation alleged—the side-switching of an expert witness during arbitration—was not so "well-defined and dominant" to rise to the level of a "public policy of the sort required to sustain a defense under article V(b)(2) of the New York Convention"); *see also Guarino v. Productos Roche S.A.,* 839 Fed. Appx. 334 (11th Cir. 2020) (Rejecting public policy challenge against Venezuelan arbitral award that ascribed personal liability under Venezuelan law for a corporate debt where there would have been no basis for individual liability under Florida law); *Cvoro v. Carnival Corp.*, 941 F.3d 487 (11th Cir. 2019) (Rejecting public policy challenge based on the arbitrators' application of Panamanian law, which provided for less favorable remedies than the statutory remedies available under U.S. law).
[19] *Singh v. Carnival Corp.*, 2013 U.S. App. LEXIS 22012, n. 5 (11th Cir. 2013); *see also, Bautista,* 396 F. 3d at 1302 (holding that Article II of the New York Convention does not allow a defense to enforcement of an arbitration agreement based on unconscionability).
[20] *See Lindo v. NCL (Bahamas), Ltd.*, 652 F. 3d 1257 (11th Cir. 2011); *see also Brown v. Royal Caribbean Cruises, Ltd.*, 549 Fed. Appx. 861 (11th Cir. 2013) ("A party opposing arbitration pursuant to an international commercial agreement may not seek to avoid arbitration on the basis that it is contrary to public policy").
[21] *See Rhone Mediterranee Compagnia Francese di Assicurazioni E Riassicurazoni v. Lauro*, 712 F.2d 50, 53 (3d Cir. 1983) (an agreement to arbitrate may be challenged at the arbitration-enforcement stage "(1) when it is subject to an internationally recognized defense such as duress, mistake, fraud, or waiver . . . or (2) when it contravenes fundamental policies of the forum state"). The Fourth Circuit, on the other hand, has followed the Eleventh Circuit's lead. *Aggarao v. MOL Ship Mgt. Co., Ltd.*, 675 F.3d 355 (4th Cir. 2012).
[22] *See Monegasque de Reassurances S.A.M. v. NAKNafto-Gaz of Ukraine (Monde Re)*, 311 F.3d 488 (2d Cir. 2002); *Figueiredo Ferraz e Engenharia de Projeto Ltda v. Republic of Peru*, 665 F.3d 384 (2d Cir. N.Y. 2011); *Melton v. Oy Nautor AB*, 161 F.3d 13 (9th Cir. 1998).
[23] ABA Resolution 107C (adopted by the ABA House of Delegates on August 13, 2013).

arbitration law as a basis for annulment of international arbitration awards rendered in the US.[24]

B. International Standards for the Annulment of Arbitral Awards

Why is it important that the Eleventh Circuit, alone among all the US judicial circuits, holds that the grounds for setting aside a US-made international arbitration award are identical to the New York Convention grounds for refusing recognition and enforcement of foreign arbitral awards?[25] After all, the grounds for vacating domestic arbitration awards under the US Federal Arbitration Act ("FAA") are also very narrow.[26] Does it really matter whether the vacatur proceeding is governed by New York Convention standards, as opposed to the FAA standards governing domestic awards?

It does. Non-US parties contemplating arbitration in the United States will generally feel more comfortable having award annulment governed by the international standards to which they are accustomed, rather than domestic American standards. The international standards are also familiar to most US companies and multinationals involved in international business. The Eleventh Circuit approach aligns with the strong international trend toward having the bases for vacatur of a domestically rendered international arbitration award mirror the bases under the New York Convention for non-enforcement of a foreign award. For instance, the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, which has been adopted in whole or in part by eighty countries, unifies the grounds for refusing recognition and enforcement of a foreign award (Article 36) and for vacatur of an award (Article 35), with both sets of grounds essentially tracking the New York Convention standards verbatim.[27]

The Eleventh Circuit approach also avoids some quirks in US domestic arbitration law, including the infamous "manifest disregard of the law" doctrine. A leading US commentator has observed that review of arbitration awards for manifest disregard of the law results in "the very foundations of the institution of arbitration [being] eaten away."[28] Likewise, a prominent French commentator described the manifest disregard doctrine as "seriously endanger[ing] the attractiveness of the US as a venue for international arbitration."[29] A former President of the LCIA has stated that "[t]he prospect of such judicial meddling in the arbitral process [by means of manifest disregard review] can only alarm foreign enterprises contemplating arbitration in the United States."[30] These concerns simply do not apply to arbitrations seated in Atlanta.

Some commentators, especially those based in judicial circuits that continue to apply the manifest disregard doctrine, argue that such concerns regarding manifest disregard review are overwrought, observing that the bar for establishing manifest disregard is high.[31] For instance, the Sixth Circuit US Court of Appeals holds that:

> Manifest disregard of the law is not just manifest error of law. If the arbitrator expressed disagreement with the law, rather than interpretation of the law, that might suggest "disregard." But there is

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[24] *See* Andrew J. Tuck, Kristen Bromberek, & Jamie George, *Int'l Arbitration: The Role of the Federal Courts and Strong Support From the Eleventh Circuit,* 8 THE FEDERAL LAWYER 61 (2017).

[25] Article V of the New York Convention sets forth the following grounds for refusing to recognize and enforce an award: 1) the parties were suffering under some incapacity or the arbitral agreement was invalid; 2) the party against whom the award is invoked was not given proper notice of the arbitrator's appointment or the arbitration proceedings or was unable to present his case; 3) the award decides matters not within the scope of the arbitration agreement; 4) the composition of the arbitral tribunal or the procedure used did not accord with the parties' agreement or applicable law; or 5) the award has not yet become binding or has been set aside or suspended by a competent authority of the country where the award was rendered. Article V(2) provides two further grounds for refusing to enforce an award: 1) nonarbitrability of the subject matter; and 2) the recognition or enforcement of the award would be contrary to public policy. *See* United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, Art. V, June 10, 1958, 21 U.S.T. 2518.

[26] Section 10 of the FAA sets forth four statutory grounds for vacatur of an arbitration award:

1. The award was procured by corruption, fraud, or undue means.
2. There was evident partiality or corruption in the arbitrators, or either of them.
3. The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.
4. The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

[27] *See* UNCITRAL Model Law on International Commercial Arbitration, UNCITRAL, 18th Sess., Annex 1, U.N. Doc. A/40/17 (June 21, 1985), *revised by* Revised Articles of the UNCITRAL Model Law on International Commercial Arbitration, UNCITRAL, 39th Sess., Annex 1, U.N. Doc. A/61/17 (July 7, 2006).

[28] Hans Smit, *Manifest Disregard of the Law in the New York Supreme Court. Appellate Division, First Department*, 15 AM. REV. INT'L ARB. 111, 122 (2004).

[29] *The US Restatement on International Arbitration: First European Reactions,* GLOBAL ARBITRATION REVIEW (Dec. 9, 2010) (quoting Emmanuel Gaillard).

[30] William W. Park, *The Specificity of International Arbitration: The Case for FAA Reform*, 36 VANDERBILT J. TRANSNATIONAL L. 1241 (2003).

[31] New York City Bar, *The "Manifest Disregard of Law" Doctrine and International Arbitration in New York,* Report by the Committee on International Commercial Disputes of the Association of the Bar of the City of New York (Sept. 2012); *see also* Jonathan J. Thompkins, *"Manifest Disregard of the Law": The Continuing Evolution of an Ambiguous Vacatur Standard*, 12 DISP. RES. INT'L, 145 (2018) (noting that the burden for establishing "manifest disregard" is "quite high, almost insurmountable – absent a showing that the arbitrator was both aware of and bound to follow a law that is well-defined, explicit, and clearly applicable, but nevertheless consciously disregarded it without any colourable reason").

> little evidence of that in the arbitrator's decision. … Moreover, the very idea that an arbitral decision is not appealable for legal error leads to the conclusion that the arbitrator is not necessarily bound by legal holdings of this court. If an arbitrator relies on a colorable meaning of the words of the statute — as the arbitrator did here — the fact that there is Sixth Circuit precedent to the contrary is not necessarily determinative.[32]

Similarly, in New York, which also adheres to the manifest disregard doctrine, "an arbitrator's decision is entitled to substantial deference, and the arbitrator need only explicate his reasoning under the contract in terms that offer even a barely colorable justification for the outcome reached in order to withstand judicial scrutiny."[33]

Thus, even in those judicial circuits in which it holds sway, the manifest disregard doctrine is applied sparingly. A review of cases decided by the federal courts in New York concluded that out of 367 manifest disregard challenges, the district courts vacated or partially vacated awards in only 17 cases and remanded in five (or in six percent of all cases in which an arbitral award was challenged on manifest disregard grounds). Of these 22 cases, the Second Circuit US Court of Appeals (which includes New York) reversed six on the ground that the standard for manifest disregard had not been satisfied.[34]

The doctrine is applied even more rarely in international cases. Indeed, in the entire United States, there appear to be only four instances in which the doctrine has been applied to vacate a US-made international arbitration award: a 2017 decision by a New York state court partially vacating a $100 million ICC award in favor of a Korean company that was subsequently reversed on appeal;[35] a 2013 decision by the US Court of Appeals for the Fourth Circuit (which covers Maryland, Virginia, West Virginia, North Carolina, and South Carolina);[36] and two federal district court cases in Pennsylvania.[37]

Yet while manifest disregard challenges almost never succeed, they are nevertheless the most commonly asserted basis for a vacatur proceeding in the United States.[38] The mere availability of a right to attack awards for manifest disregard of the law gives losing parties the opportunity to cause mischief in the courts, regardless of whether the challenge is successful. Manifest disregard challenges "add[] to the cost of arbitration …, as well as delaying the result of it, perhaps for several years, even if the challenge to the award is ultimately rebuffed."[39] Even a party that fully expects to ultimately lose a manifest disregard challenge may nonetheless bring one in hopes of securing leverage to negotiate a settlement for less than the amount of the award. For instance, in the *Daesang v. Nutrasweet* case, a New York appellate court overturned a lower court decision vacating an ICC award in favor of a Korean company on manifest disregard grounds, but the appeal consumed 16 months (from May 15, 2017, when the lower court vacated the award, until September 28, 2018, when the appellate court issued its decision).[40] "Even if costly appellate briefing and argument yields a happy ending for the arbitration's prevailing party, the very existence of 'manifest disregard' hangs like a sword of Damocles to be grasped by award debtors who understandably seek relief from costly damages."[41] Such concerns have "cast a shadow over American arbitration law and over the U.S. as an arbitral venue."[42]

The "shadow" cast by manifest disregard does not reach the Eleventh Circuit. Courts in Atlanta apply the New York Convention standards, which leave no room for review of an arbitral award on the merits. The refusal of courts in the Eleventh Circuit to even entertain requests for merits-based review of arbitral awards means that in Atlanta, to quote the Eleventh Circuit, "arbitration is an alternative to litigation, not an additional layer in a protracted contest."[43]

Of course, for some parties, the possibility of some form of merits-based review of an arbitral award by a US court will be a plus, even at the cost of efficient and timely resolution of the dispute. In that regard, the finality of

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[32] *Schafer v. Multiband Corp.*, 2014 WL 30713 (6th Cir. 2014).
[33] *Millicom Int'l N.V. v. Motorola, Inc.*, 2002 U.S. Dist. LEXIS 5131, at 8 (S.D.N.Y. 2002); *see also Wallace v. Buttar*, 378 F.3d 182, 190 (2d Cir. 2004).
[34] New York City Bar, *supra* note 31, at 6.
[35] *Daesang Corp. v. The NutraSweet Co., et al.*, No. 655019/2016, 2017 BL 164971 (N.Y. Sup. Ct. May 15, 2017), reversed by *Daesang v. NutraSweet Co.*, 85 N.Y.S.3d 6 (N.Y.A.D. 1st Sept. 27, 2018).
[36] *Walia v. Dewan*, 2013 WL 5781207 (4th Cir. 2013).
[37] New York City Bar, *supra* note 31, at 12.
[38] Christopher R. Drahozal, *Codifying Manifest Disregard,* 8 NEV. L.J. 234, 237 (2007).
[39] Harbert, *supra* note 8, at 47-48 (Manifest disregard of the law "remains an issue that can be, and predictably will be, raised in post-award efforts by the losing party to reverse the result of the arbitration, or at least to postpone enforcement of it. This of course adds to the cost of arbitration in the United States, as well as delaying the result of it, perhaps for several years, even if the challenge to the award is ultimately rebuffed. In addition, it imposes a substantial burden on the courts to deal with the points assertedly 'manifestly disregarded' by the arbitrators").
[40] *Daesang Corp. v. The NutraSweet Co., et al.*, No. 655019/2016, 2017 BL 164971 (N.Y. Sup. Ct. May 15, 2017), reversed by *Daesang v. NutraSweet Co.*, 85 N.Y.S.3d 6 (N.Y.A.D. 1st Sept. 27, 2018).
[41] WILLIAM W. PARK, ARBITRATION OF INT'L BUS. DISPUTES 20 (2006); *see also* William W. Park, *The International Currency of Arbitral Awards*, 770 PLI/Lit 359 (2008) (stating that the manifest disregard doctrine "give[s] the United States a competitive disadvantage compared to arbitral venues where judicial intervention is limited to matters related to fundamental procedural integrity").
[42] Leo Szolnoki, *Practitioners and Academics Fight "Manifest Disregard" Doctrine*, GLOBAL ARBITRATION REVIEW (Jan. 22, 2014) (quoting George Bermann).
[43] *B.L. Harbert*, 441 F.3d at 913-14.

arbitration "can be a universally positive quality in dispute resolution only if … arbitrators, unlike distinguished judges, never made mistakes."[44] In a report defending New York as an arbitral venue in light of the manifest disregard doctrine, the New York City Bar has observed that certain other leading international arbitral venues also offer "safety valves" allowing for the annulment of arbitral awards that are egregiously wrong on the merits.[45] For example, under Section 69 of the English Arbitration Act of 1996, English courts may vacate an arbitral award for any legal error caused by the arbitrator's misapprehension or misapplication of the applicable law (although unlike review for manifest disregard, recourse to Section 69 may be waived by the parties, which commonly occurs through the choice of institutional arbitration rules, such as the rules of the LCIA and ICC, that contain a waiver provision).[46]

There is no universally right or wrong answer as to whether a party should choose to arbitrate in a venue that allows some level of review of the award on the merits. This is where arbitration in the United States offers choices. Parties wanting the possibility of such review – albeit under a very narrow standard – will feel more comfortable arbitrating in New York or one of the other venues recognizing the manifest disregard doctrine than in Atlanta.

But most parties choose international arbitration to avoid litigating the merits of a dispute in a national court. Non-US parties will generally prefer to avoid the possibility of re-litigating in an American court the substantive issues already decided by the arbitrators – even under a very narrow standard of review. As stated by a leading German arbitration practitioner: "Even though the [manifest disregard] doctrine is rarely successfully invoked, the sheer legal possibility of challenging an award under this doctrine is problematic because US litigation is expensive and the question as to whether or not an arbitral award is based on a 'manifest disregard of the law' might drag on over three instances."[47] This means that American parties seeking to persuade a non-US counterparty to agree to arbitrate in the US may have an easier time selling an Atlanta venue, where the courts do not have the authority to substitute their decision on the merits for the decision of the arbitral tribunal, than other US venues.

The manifest disregard doctrine is not the only potential trap lurking in the domestic provisions of US arbitration law. For instance, in a California case decided in 2012 – *Swissmex-Rapid S.A. v. SP Systems, LLC*[48] – the prevailing Mexican party in a Los Angeles-based arbitration was compelled to defend its award against a challenge premised on 9 U.S.C. § 9, an archaic provision in the domestic FAA dating to 1925. The court interpreted the statute to mean that an award may be enforced in court only where the parties' agreement expressly provides for judicial confirmation of the award.[49] The Mexican party won on a procedural point, but the appellate court decision upholding the March 14, 2011 award was not handed down until December 28, 2012. Thus, while the arbitration award was upheld (as is virtually always the case in US courts, regardless of the venue), its implementation was delayed by litigation over an arcane provision in the domestic chapter of the FAA that would not have been applicable in the Eleventh Circuit, and the prevailing party in the arbitration was compelled to incur additional costs.

Because annulment in the Eleventh Circuit is governed by the universally familiar New York Convention standards, parties need not fear unpleasant surprises in post-award proceedings. No other US judicial circuit applies the New York Convention grounds as the sole bases for annulment of US-made international arbitration awards, which makes the Eleventh Circuit a uniquely safe and comfortable environment for international arbitration.

C. Why Does the Eleventh Circuit Take a Different Approach?

The foregoing discussion might arouse curiosity as to how this situation arose, with the Eleventh Circuit taking the position that the Convention standards govern vacatur of US-made international arbitration awards, while other US appellate courts take the contrary position that vacatur of such awards is governed solely by the domestic chapter

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[44] William H. Knull, III & Noah D. Rubins, *Betting the Farm on International Arbitration: Is it Time to Offer an Appeal Option?* 11 AM. REV. INT'L ARB. 531 (2000).

[45] New York City Bar, *supra* note 31, at 12.

[46] *See* Matt Marshall, *Section 69 Almost 20 Years On….*, KLUWER ARB. BLOG (June 24, 2015), available at http://kluwerarbitrationblog.com/blog/2015/06/12/section-69-almost-20-years-on (Observing that the right of appeal under Section 69 "has been marginalised by standard waiver provisions that appear in many institutional rules"). Even with this opt-out provision, "section 69 contributes (rightly or wrongly) to the misconception that English law is not as arbitration friendly as other jurisdictions. This, in turn, may adversely affect the popularity of London and English Law as the seat and governing law of an arbitration, respectively." *Id.*

[47] Stephan Wilske, *The Global Competition for the "Best" Place of Arbitration for International Arbitrations – A More or Less Biased Review of the Usual Suspects and Recent Newcomers*, CONTEMP. ASIA ARB. J. 21, 44 (2008).

[48] 2012 Cal. App. LEXIS 1313 (CA Dist. 2 Ct. App., 2012).

[49] Section 9, which is the provision in the domestic FAA providing for judicial confirmation of arbitration awards, begins with a conditional "if": "If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration ...." 9 U.S.C. § 9. Other US courts have held that the requirements of the statute are met by implication, even in the absence of an express provision in the parties' agreement providing for entry of judgment on the award. *See, e.g., Daihatsu Motor Co. v. Terrain Vehicles, Inc.*, 13 F.3d 196, 199–203 (7th Cir. 1993).

of the FAA (Chapter 1).[50] We will digress here for an explanation. Readers less interested in "why" than in "what" can skip to the next section.

The leading case for the proposition that petitions to vacate US-made international awards are governed solely by the domestic chapter of the FAA is *Yusuf Ahmed Alghanim & Sons v. Toys "R" Us*,[51] decided by the Second Circuit US Court of Appeals (which covers New York, Connecticut and Vermont). The court in *Toys "R" Us* relied on Article V(1)(e) of the New York Convention, which is generally understood to mean that the state in which, or under the law of which, an award is "made" is free to "set aside or suspend[]" that award in accordance with its domestic arbitral law. Accordingly, the Second Circuit reasoned that the defenses to recognition and enforcement of a foreign arbitral award differ from the grounds for annulling an award, that the New York Convention can be applied only to the former and not the latter, and that FAA Chapter 1 thus governs the vacatur of all arbitration awards made in the United States. Other federal appellate courts taking the same approach include the Third[52] (Delaware, New Jersey, Pennsylvania, US Virgin Islands), Fifth[53] (Texas, Louisiana, Mississippi), and Sixth[54] (Kentucky, Michigan, Ohio, Tennessee) Circuits.

The Eleventh Circuit starts with the same interpretation of Convention Article V(1)(e), recognizing that the Convention standards do not *directly* apply to the vacatur of awards at the seat of arbitration and that instead such proceedings are governed by domestic arbitration law; however, the Eleventh Circuit departs from the other circuits in the determination of what constitutes US domestic arbitration law in the context of an international arbitration that is seated in the United States. Whereas the other circuits hold that US domestic arbitration law in this context means the FAA Chapter 1 standards, the Eleventh Circuit decided in 1998 that the Convention grounds for refusing recognition and enforcement of foreign arbitral awards have been incorporated *into* US domestic law as the standards also governing the set-aside of US-made international arbitration awards.[55]

To understand this split between the circuits, one must start with Article I(1) of the New York Convention, which invites signatories to apply the terms of the Convention not only to "foreign" awards, but also "arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought." The US legislation implementing the New York Convention—Chapter Two of the FAA—accepted that invitation, providing that the New York Convention applies in the United States not only to foreign awards, but also to awards made in this country, provided they have an international character. Specifically, FAA Section 202 provides that:

> An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial … falls under the [New York] Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is incorporated or has its principal place of business in the United States.

Thus, FAA Section 202 effectively creates three classes of awards in the United States: 1) **foreign** awards made on the territory of another country; 2) **purely domestic** awards; and 3) **non-domestic** awards that are neither purely domestic nor foreign. Non-domestic awards are those made in the United States, but that involve one or more non-citizens or foreign property, or involve an underlying agreement which envisions performance outside of the United States.[56]

The courts following the *Toys "R" Us* approach hold that actions to recognize and enforce US-made,

[50] Chapters 2 and 3 of the FAA implement the New York Convention and the Inter-American Convention on International Commercial Arbitration (the "Panama Convention"), respectively, and are thus considered the "international" chapters of the FAA. Chapter 1 is the "domestic" chapter of the FAA, but has residual application to international arbitrations to the extent that it "is not in conflict with" FAA Chapters 2 or 3 or the New York or Panama Conventions. See 9 U.S.C §208.

[51] 126 F.3d 14 (2d Cir. 1997).

[52] *Ario v. Underwriting Members at Lloyds*, 618 F.3d 277, 292 (3rd Cir. 2010) ("When both the arbitration and the enforcement of an award falling under the Convention occur in the United States, there is no conflict between the Convention and the domestic FAA because Article V(1)(e) of the Convention incorporates the domestic FAA and allows awards to be 'set aside or suspended by a competent authority of the country in which. . . that award was made.' Here, because the arbitration took place in Philadelphia, and the enforcement action was also brought in made.' Here, because the arbitration took place in Philadelphia, and the enforcement action was also brought in Philadelphia, we may apply United States law, including the domestic FAA and its vacatur standards.").

[53] *Gulf Petro Trading Co. Inc. v. Nigerian National Petroleum Corp.*, 512 F.3d 742 (5th Cir. 2008). It should be noted that while the Fifth Circuit does not apply the Convention standards in vacatur actions, it does interpret the domestic FAA to exclude manifest disregard as a basis for vacatur. *See Citigroup Global Markets, Inc. v. Bacon*, 562 F.3d 349 (5th Cir. 2009).

[54] *Jacada (Europe), Ltd. v. Int'l Mktg Strategies*, 401 F.3d 701, 709 (6th Cir. 2005) *cert. denied*, 546 U.S. 1301 (2005) ("The Convention provides that an award may not be enforced when 'the award . . . has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.' …. Because this award was made in the United States, we apply domestic law, found in the FAA [Chapter 1], to vacate the award.").

[55] *Industrial Risk Insurers*, 141 F.3d at 1441.

[56] *See, e.g., Bergesen v. Joseph Muller Corp.*, 710 F.2d 928 (2nd Cir. 1983); *Lander Company, Inc. v. MMP Investments, Inc.*, 107 F.3d 476, 477 (7th Cir.), *cert. denied*, 522 U.S. 811 (1997); *Jacada*, 401 F.3d at 706.

non-domestic awards are governed by the New York Convention, but vacatur actions with respect to such awards are governed by the domestic standards set forth in Chapter 1 of the FAA. These courts observe that FAA Chapter 2, which implements the New York Convention in the United States, does not expressly address the vacatur of awards, thereby leaving a gap to be filled by the vacatur standards in Chapter 1, which governs domestic arbitrations, but which also applies to international and non-domestic arbitrations to the extent that its provisions are "not in conflict with" FAA Chapter 2 or the Convention.[57] Thus, in these courts, a petition to enforce a US-made, non-domestic award will be governed by the Convention standards, and yet the losing party's cross-petition to set aside that award will be governed by the FAA Chapter 1 standards, even though both the petition to enforce and the cross-petition to vacate are filed in the same case.

This is illogical, confusing and contrary to a close reading of the FAA. As noted by one commentator: "An intention that inconsistent standards are to be applied to the validity of an award falling under the Convention, by the same court in the same case between the same parties, depending on whether the issue is to confirm the award (at the suit of the winner) or to vacate it (at the suit of the loser), cannot easily (or even plausibly) be imputed to Congress."[58] Indeed, the *Toys "R" Us* approach ignores a number of provisions in FAA Chapter 2, which, while not explicitly providing that the New York Convention standards govern vacatur, logically indicate that result. Most importantly, FAA Section 207 converts the Convention's list of permitted grounds to refuse to give legal effect to an award "falling under the Convention" into a statutory command to the court ("the court shall confirm the award").[59] Read literally, this would preclude any other basis to question the legal effectiveness of the award, including the bases set forth in FAA Chapter 1.[60]

Furthermore, it seems unlikely that Congress would have made non-domestic awards subject to the New York Convention in FAA Section 202 had it intended that domestic vacatur standards would apply to such awards. "Defining nondomestic awards made in the United States as Convention awards, but then treating those awards as subject to the domestic vacatur standards, takes away virtually everything that is conferred by the initial categorization as a Convention award—and it certainly takes away the most important attribute of a Convention award, being the Convention's international recognition standards."[61] Simply stated, why would Congress have subjected non-domestic awards to the New York Convention in FAA Sections 202 and 207 if it intended those awards "to be treated in the same way that they would be if they were not subject to the New York Convention?"[62]

Accordingly, consistent with the Eleventh Circuit approach, the Convention standards should properly govern both the vacatur and the enforcement of US made international arbitration awards.[63]

D. UNCITRAL-Based State Arbitration Law

While federal law governs most matters relating to international arbitration in the United States, it leaves some gaps for state law.[64] For instance, the critical issue of interim relief is not addressed in the Federal Arbitration Act. In Georgia, these gaps are filled by the UNCITRAL model international arbitration law, which has been enacted into state law.[65] Georgia first adopted an UNCITRAL-based international arbitration code in 1988 (becoming only the second US state to do so).[66] That statute was replaced in 2012, when the Georgia General Assembly enacted the UNCITRAL Model Law with most of its 2006 amendments.[67] The Atlanta International Arbitration Society was deeply involved in this legislative initiative, and based on its input, the statute excludes certain provisions in the 2006 model law amendments authorizing arbitrators to issue *ex parte* interim relief.[68] As noted in a leading treatise, "[t]he 2006 revisions to the Model Law were controversial … [A]rbi-

[57] *See* 9 U.S.C §208.
[58] Hulbert, *supra* note 7, at 72.
[59] 9 U.S.C. § 207; *see also Earth Science*, 809 Fed.Appx 605.
[60] *Earth Science*, 809 Fed.Appx 605. Furthermore, both Section 207 (in FAA Chapter Two) and Section 9 (in FAA Chapter One) use the term "confirmed" in connection with the court's entry of judgment on an award, which suggests that these provisions should be construed consistently with each other. Section 9 of the FAA requires an award to be confirmed unless it is vacated. Thus, the same standards govern both vacatur and confirmation. If confirmation has the same meaning in Section 9 and Section 207 (and there is no reason to believe that it does not), then the same symmetry between confirmation and vacatur should apply, with the New York Convention grounds being applied to both the vacatur and the confirmation of non-domestic awards. *See* Hulbert, *supra*, note 8, at 67.
[61] GARY B. BORN, INT'L COMM. ARB. (2ND ED.) 2963-64 (2014).
[62] *Id.* at 2964.
[63] *See, e.g.*, GARY B. BORN, INT'L COMM. ARB. (2ND ED.) 2962-66 (2014); Hulbert, *supra* note 8, at 47-48.
[64] *See* Sebastien Besson, *The Utility of State Laws Regulating International Commercial Arbitration and Their Compatibility with the FAA*, 11 AM. REV. INT'L ARB. 2011 (2000).
[65] O.C.G.A. § 9-9-30 et seq.
[66] For a discussion of the Georgia international arbitration code enacted in 1988, see Daniel J. King, Brian A. White & Ryan J. Szczepanik, *International Arbitration in Georgia*, 12 GA. BAR J. 13, 17 (Apr. 2011).
[67] *See* Stephen L. Wright & Shelby S. Guilbert Jr., R*ecent Advances in International Arbitration in Georgia: Winning the Race to the Top*, 18 GA. BAR J. 16 (June 2013).
[68] *See* UNCITRAL Model Law on International Commercial Arbitration (2006), art. 17(B)-17(C).

tral tribunals are ordinarily unlikely to consider, much less grant, provisional measures on an ex parte basis."[69] The 2012 statute also incorporates a few non-UNCITRAL provisions representing international best practice, including, for instance, a provision allowing non-Georgia parties to opt out of certain grounds for judicial review of an award.[70]

The larger body of Georgia commercial law is also well-developed, in part due to Atlanta's status as one of the world's major corporate headquarters cities. Georgia is also one of the few US states to have codified into statute significant portions of the common law principles of contract law.[71] Thus, Georgia contract law is more accessible to non-local lawyers – including those from the civil law tradition accustomed to working with civil codes – than the contract law of most other US states.

E. Sophisticated, Arbitration-Friendly State Courts

Most judicial proceedings ancillary to an international arbitration are handled in the federal courts. If a party chooses to initiate a state court action relating to an arbitration agreement or award falling under the New York Convention, Section 205 of the FAA provides that the respondent(s) may remove the case to federal court.[72]

As a result, parties arbitrating in Atlanta will rarely find themselves in the local state courts – but if they do, the state judicial system is first-rate. Trial judge salaries are among the highest in the United States, and the caliber of the judiciary is exceptionally high.[73] Like the federal courts, the state courts have a strong track record of arbitration-friendly rulings.[74]

The Georgia State-wide Business Court has jurisdiction, both at-law and in equity, over cases arising under Georgia's UNCITRAL-based International Commercial Arbitration Code, including petitions to enforce awards, compel arbitration, and secure evidence, as well as other petitions for interim relief.7[5] As a specialized commercial court created to promote efficiency and predictability in complex business litigation, the Business Court leverages experience in complicated, multi-party proceedings with active case management tailored to the needs of each case to ensure the timely resolution of disputes.7[6] The Court also issues its rulings in published opinions, advancing the development of business-related case law. The Business Court facilitates the consistent application of the law in complex commercial disputes, yielding more predictable outcomes for businesses resolving their disputes in Georgia. Although its main office is located in the Nathan Deal Judicial Center in Atlanta, the Business Court has statewide jurisdiction and thus can accept cases arising anywhere in Georgia.77

In short, regardless of whether a party is litigating matters ancillary to an arbitration in either federal or state court in Georgia, they will find a judicial system that is efficient, sophisticated, and arbitration-friendly.

III. A Welcoming Environment for Non-US Lawyers and Arbitrators

Georgia allows parties to be represented by counsel of their choice in international arbitration proceedings, including not only lawyers from other states,[78] but also non-US lawyers not licensed in any US jurisdiction.[79] While a small handful of other US states also allow foreign lawyers to participate in international arbitrations,[80]

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[69] GARY B. BORN, INT'L COMM. ARB. (2nd Ed.), 2509-10 (2014); *see also* Victoria M. Fraraccio, *Ex Parte Preliminary Orders in the UNCITRAL Model Law on International Commercial Arbitration*, 10 VINDOBONA J. INT'L COM. L. & ARB. 263, 265 (2006) (observing that "ex parte measures in international arbitration are contradictory to the consensual nature of arbitration; offend the basic arbitral principle of equality between the parties ...; are difficult to enforce; make prejudiced arbitrators; and are unable to meet the timely demands of the parties. As a result of these problems . . . ex parte provisions . . . run[] the risk of adversely affecting the proper development of international arbitration.").

[70] O.C.G.A. §§ 9-9-56(e).

[71] *See* BRIAN H. BIX, CONTRACT LAW: RULES, THEORY, AND CONTEXT, at 12, n. 47 (2012).

[72] The test for removal is whether the "subject matter of [the] action — relates to an arbitration agreement or award falling under the [New York] Convention." 9 U.S.C. § 205. The Eleventh Circuit applies a liberal test in making that determination: "While the link between the arbitration agreement and the dispute is not boundless, the arbitration agreement need only be sufficiently related to the dispute such that it conceivably affects the outcome of the case. Thus, as long as the argument that the case 'relates to' the arbitration agreement is not immaterial, frivolous, or made solely to obtain jurisdiction, the relatedness requirement is met for purposes of federal subject matter jurisdiction." *Outokumpu Stainless USA, LLC v. Converteam SAS*, 902 F.3d 1316 (11th Cir. 2018); *see also Gulfstream Aerospace Corp. v. OCELTIP Aviation 1 Pty. Ltd.*, 451 F.Supp.3d 1370 (S.D. Ga. 2020).

[73] According to the National Center for State Courts the salaries of Georgia trial court judges, as adjusted to account for cost of living, rank fourth among the fifty states plus the District of Columbia. *See* National Center for State Courts, *Survey of Judicial Salaries* (Jan. 1, 2012).

[74] *See, e.g., Triad Health Mgmt. of Ga., III, LLC v. Johnson*, 298 Ga. App. 204 (2009) (upholding pre-dispute arbitration agreements in medical malpractice cases); *Greene v. Hundley*, 266 Ga. 592 (1996) (holding that "a reviewing court is prohibited from weighing the evidence submitted before the arbitrator, regardless of whether the court believes there to be sufficient evidence, or even any evidence, to support the award").

[75] *See* O.C.G.A. § 15-5A-3(a)(1)(A)(ii).

[76] The Court's Rules were approved by the Georgia Supreme Court on May 13, 2021 and took effect on August 1, 2021. *See* Order, Supreme Court of Georgia (May 13, 2021). The Rules contemplate a case management process that encourages "novel and creative" case management techniques that will facilitate the efficient resolution of cases. See Ga. State-wide Bus. Ct. R. 5-1(a).

[77] *See* O.C.G.A. §§ 15-5A-1, 15-5A-2; *see also* Ga. Const. art. VI, § 3, ¶ II.

7[8] *See* Georgia Bar Rule 5.5(c)(3).

[79] *See* Georgia Bar Rule 5.5(e)(3).

[80] Other U.S. jurisdictions allowing non-US lawyers to participate in international arbitrations include California, Delaware, Florida, New Hampshire, New York, Pennsylvania, Virginia, and Washington, DC. *See* David D. Caron & Leah D. Harhay, *A Call to Action: Turning the Golden State into a Golden Opportunity for International Arbitration*, 28 BERKELEY J. INT'L L. 497 (2010); Lacey Yong, *California Open to Business After Signing New Bill into Law*, GLOBAL ARBITRATION REVIEW (July 19, 2018).

Georgia is one of the very few to also allow non-US lawyers to appear in court proceedings on a *pro hac* vice basis.[81] *Pro hac* admission is most useful in judicial proceedings that are ancillary to the arbitration, such as petitions to obtain evidence for use in arbitration, actions for interim relief, and proceedings to enforce arbitration agreements or vacate or confirm arbitral awards.

The ABA Task Force on International Trade in Legal Services notes that "Georgia has assumed a leadership position in adopting rules that specifically address and regulate some of the various means by which lawyers from foreign countries may seek to perform services in that state."[82] Indeed, until recently Georgia was the only US state to tick the box with respect to all five potentially permissible methods of non-US lawyer practice (i.e., bar rules allowing: 1) non-US-educated applicants to sit for the state bar exam; 2) non-US legal consultants; 3) *pro hac vice* admission of non-US lawyers in state courts; 4) employment of in house corporate counsel who are admitted to practice in a non-US jurisdiction, but not the US; and 5) temporary practice by non-US lawyers, also known as "FIFO" or "fly in-fly out").[83]

Should the parties choose to be represented by local talent, there is plenty on hand. With many of the world's largest corporations headquartered in Atlanta, the local bar is experienced in handling sophisticated transactions and disputes. Twenty-six of the world's 100 largest law firms (the "AmLaw Global 100") have offices in Atlanta; for five of them, Atlanta is either their largest office or their largest US office. Forty-eight of the United States' 200 largest firms (the "AmLaw 200") have Atlanta offices; nine of them are homegrown Atlanta-based firms.

IV. UNCITRAL Mediation Act

Should parties elect to mediate their dispute, Georgia's Mediation Act fully incorporates the 2018 UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation.[84] Georgia is the only US state that has adopted the UNICTRAL Model Law.[85] Enactment of the Model Law ensures that mediations will be conducted in accordance with international best practice in terms of the appointment of mediators, commencement and termination of mediation, conduct of the mediation, communication between the mediator and other parties, confidentiality and admissibility of evidence in other proceedings, and the mediator acting as arbitrator.[86] The Georgia Mediation Act provides that communications made during a mediation are privileged,[87] and mediators must make reasonable inquiry and disclose prior to accepting an appointment whether any known facts are likely to affect his or her impartiality.[88] The Act also provides for the enforcement of settlement agreements in accordance with the United Nations Convention on International Settlement Agreements Resulting from Mediation (the "Singapore Convention").

V. One of the World's Most Convenient Crossroads Cities

Prior to the Covid-19 pandemic, more passengers—over 100 million annually– passed through Hartsfield-Jackson Atlanta International Airport than any other airport in the world. Guangzhou Baiyun International Airport in China took the lead in annual passenger traffic in 2020, but Atlanta's airport continues to be the world's busiest in terms of the number of flights (and is expected to retake the lead in annual passenger traffic in 2021). The airport offers direct flights to 70 destinations in 45 countries, with most international destinations served daily and many served twice daily. There are more than 150 US destinations with non-stop service, placing 80 percent of the US population within a two-hour flight of Atlanta. In short, Atlanta is one of the world's most convenient crossroads cities.[89]

VI. World-Class Hearing Facilities

No city offers better arbitration hearing facility options than Atlanta. The following facilities (listed alpha-

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[81] *See* Uniform Rules, Superior Courts of the State of Georgia, Rule 4.4. It bears emphasizing that neither *pro hac vice* admission nor any other form of permission is required with respect to arbitration proceedings, as opposed to proceedings in court.

[82] Memorandum from A Task Force on International Trade in Legal Services to State Supreme Courts and State and Local Bar Associations regarding "*International Trade in Legal Services and Professional Regulation: A Framework for State Bars Based on the Georgia Experience*" (Jan. 8, 2014), available at http://www.americanbar.org. Similarly, in January 2015, the Conference of Chief Justices issued a resolution encouraging all states to consider Georgia "as a worthy guide for their own state endeavors to meet the challenges of ever-changing legal markets and increasing cross-border law practices." *See* Conference of Chief Justices, *Resolution 2 in Support of Regulations Permitting Limited Practice by Foreign Lawyers in the United States to Address Issues Arising from Legal Market Globalization and Cross-Border Legal Practice* (Jan. 28, 2015). Georgia's leadership position in this area owes much to Ben Greer, a former Secretary-General of the International Bar Association (IBA) who has chaired the State Bar's International Trade in Legal Services Committee for many years, and the State Bar's former General Counsel. the late William P. "Bill" Smith. Both are recognized internationally for their expertise regarding the regulation of cross-border legal services.

[83] Laurel Terry, *U.S. Rules Regarding the Five Methods of Foreign Lawyer Practice* (Jan. 6, 2014), available at www.personal.psu.edu/faculty/l/s/lst3/Laurel_Terry_map_foreign_Lawyer_policies_jan2014.pdf.

[84] A O.C.G.A. § 9-17-10.

[85] Caroline Simson, Ga. Hopes To Ride Int'l Mediation Popularity Wave, LAW360 (Oct. 8, 2021).

[86] Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, as approved at the 51st Session of the United Nations Commission on International Trade Law on June 26, 2018.

[87] O.C.G.A. § 9-17-3.

[88] O.C.G.A. § 9-17-8.

[89] Kelly Yamanouchi, *China airport passes Hartsfield-Jackson as world's busiest in passengers: But Atlanta airport took title as busiest in flight counts*, ATLANTA JOURNAL-CONSTITUTION (Apr. 22, 2021).

betically) are all custom-designed for arbitration hearings and mediations and feature the usual full range of amenities (business center services; AV equipment and support; wireless internet access; complimentary coffee, teas, snacks, etc.):

- The American Arbitration Association ("AAA")/ ICDR regional office – located in a pleasant suburban office park setting featuring broad greenbelts – offers two large hearing rooms (seats 18 or 24) and one small hearing room (seats 12), as well as a videoconferencing system through Courtroom Connect, Inc.[90]

- The Georgia State University Law Center for Arbitration and Mediation (formerly known as the Atlanta Center for International Arbitration and Mediation or "ACIAM") is housed in the $82.5 million Georgia State University (GSU) College of Law building, built in 2015.[91] The GSU facility is in a prime location overlooking Woodruff Park in downtown Atlanta, within a five-minute walk of Atlanta's conference hotel district and a metro train station on a direct line to the Atlanta airport. The facility was designed by GSU Professor Douglas Yarn, who was formerly a director of the AAA's Center for International Commercial Disputes (the precursor to the ICDR). Professor Yarn carefully studied and incorporated the best features of other leading international arbitration facilities, including the ICC hearing rooms in Paris, the International Dispute Resolution Centre (IDRC) in London, and Maxwell Chambers in Singapore.[92] The center features seven hearing rooms, the largest seating more than forty people; a neutrals' lounge; and four breakout rooms, as well as state-of-the-art videoconferencing technology (by Polycom, Inc.), and access to the resources of the GSU law library.[93]

- Henning Mediation & Arbitration Service – located in the Galleria office/retail district, within walking distance of the Cobb Energy Performing Arts Centre and Cumberland Mall – offers three large hearing rooms (seats 18 or 24), eight medium hearing rooms (seats 8, 10 or 12), and seven small hearing rooms (seat 6), as well as videoconferencing through its eNeutral system.[94]

- JAMS – located in Midtown Atlanta, a vibrant, walkable urban environment featuring the city's largest concentration of parks and greenspace – offers two large hearing rooms (seats 18 or 24), six medium hearing rooms (seats 8, 10, or 12), and four small hearing rooms (seat 6), as well as the JAMS "Virtual Conference Room," a videoconferencing service through CourtCall Video.[95]

VII. Cost-Effective Dispute Resolution

A KPMG study identifies Atlanta as having the lowest relative business costs of any of the top ten largest metropolitan areas in the United States.[96] This is reflected in the relative cost of a hotel room in Atlanta compared to other major cities. According to the 2015 Hotel Price Index, the average rate for a hotel in Atlanta was only 51 percent of the average rate in New York. Using the same measure, Atlanta also compares favorably to other major non-US arbitral centers, with corresponding figures of 61 percent for Paris, 51 percent for London, 72 percent for Singapore, 64 percent for Dubai, and 77 percent for Hong Kong.[97]

As previously noted, the Eleventh Circuit has consistently held that "the fact that certain litigation devices may not be available in an arbitration is part and parcel of arbitration's ability to offer simplicity, informality, and expedition."[98] Thus, unless otherwise agreed by the parties, arbitration proceedings are not characterized by broad American-style discovery.

VIII. Strong Local and Regional Support for International Arbitration

A common element in the rise of all successful arbitration venues is an active collective effort by the local community to brand and promote the city as an international arbitral seat and fend off any developments – legislative, judicial, or otherwise – that might diminish its attractiveness. The coalition behind the initiative to promote Atlanta as a seat of arbitration has pulled together under the umbrella of the Atlanta International Arbitration Society (ATLAS) and includes several dozen law firms, many of them with global practices; a number of southeastern law schools; the major US-based arbitration institutions; the State Bar of Georgia; the Georgia chapter of the Association of Corporate Counsel; the Metro Atlanta and Georgia chambers of commerce; and state and local political leaders. The ATLAS website (www.arbitrateatlanta.org)

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[90] For further information, see www.adr.org.

[91] *See* Benjamin Button-Stephens, *Atlanta Centre Establishes Arbitrator Council*, GLOBAL ARBITRATION REVIEW (June 15, 2017); Meredith Hobbs, *Atlanta Arbitration Center Enlists International Pros To Raise Profile Overseas*, DAILY REPORT (June 29, 2017).

[92] Phil Bolton, *Georgia State's New Law Building to House State-of-the-Art Arbitration Center*, GLOBAL ATLANTA (Sept. 13, 2013).

[93] The Georgia State Arbitration Center does not administer arbitration proceedings or offer a set of arbitration rules, and thus does not compete with any international arbitral institution, but rather seeks to be "friends" with all of them. The facility hosts hearings administered under the auspices of these institutions, as well as ad hoc proceedings using either the UNCITRAL Arbitration Rules or a procedure custom-made by the parties for purposes of their particular transaction or dispute.

[94] For further information, see www.henningmediation.com.

[95] For further information, see www.jamsadr.com/jams-atlanta/.

[96] KPMG, *Competitive Alternatives: KPMG's Guide to International Business Location Costs*, at 51 (2012).

[97] See Hotels.com 2015 Hotel Price Index, available at https://hpi.hotels.com/.

[98] *Caley*, 428 F.3d at 1378; Dale, 498 F.3d at 1220-21.

features supportive quotes from the Governor of Georgia, the Chief Justice of the Georgia Supreme Court, the Mayor of Atlanta, the President of the State Bar of Georgia, the President of the Metro Atlanta Chamber, the Dean of the Consular Corps, former U.N. Ambassador Andrew Young, and others.

Understanding that protectionism will hamper the growth of international arbitration in Atlanta, ATLAS is infused with a "big tent" philosophy and seeks to have lawyers in neighboring states and beyond view a thriving international arbitration platform in Georgia as a business opportunity, not a threat.[99] The ATLAS membership includes lawyers from Birmingham, Charleston, Charlotte, Chattanooga, Columbia, Greenville, and Nashville, among other southeastern cities. The current ATLAS president is a South Carolina lawyer.

ATLAS has presented a series of world-class international arbitration conferences. The inaugural ATLAS conference, in 2012, was organized around the following theme: *"The Role of the United States in the International Arbitration System of the 21st Century: Trendsetter, Outlier or One in a Crowd?"* The faculty of speakers from five continents included the presidents of the AAA, LCIA, and Chartered Institute of Arbitrators (CIArb); the secretaries-general of ICSID and the China International Economic and Trade Arbitration Commission (CIETAC); the chairs of the ICC Court of International Arbitration and the international arbitration committees of the IBA and ABA; three of the four reporters for the ALI's Restatement project on the US Law of International Commercial Arbitration; the Chief Justice of the Georgia Supreme Court; and the President of the Metro Atlanta Chamber. Nearly 200 participants from 17 US states and 19 countries attended the three-day event.[100] The 2013 ATLAS conference explored the theme, *"Convergence and Divergence in International Arbitration Practice,"* and was also a success, again attracting speakers and attendees from around the world.[101] The 2014 ATLAS conference, focused on Africa-related international arbitration and was organized in conjunction with a larger "Africa-Atlanta 2014" initiative, a year-long series of events celebrating the many cultural and economic ties between Atlanta and the African continent.[102] The 2015 ATLAS conference coincided with the opening of the Atlanta Center for International Arbitration and Mediation, which hosted the event in its sparkling new facility.[103] The 2016 conference – conducted two months prior to the US presidential election – presciently covered the theme: *"International Arbitration in a Not So 'Flat' World."*[104] The 2017 conference built upon that theme, addressing *"International Business Disputes in an Era of Receding Globalism."*[105]

In 2018, the city hosted its first ever "GAR Live," the acclaimed conference series organized by *Global Arbitration Review*.[106] The Chartered Institute of Arbitrators (CIArb) – the world's leading qualifications and professional body for arbitrators, with a global network of 16,000 members – held its World Congress in Atlanta, the first time in the Institute's 104-year history that the congress had ever convened in the Western hemisphere. The city also hosted an ICC event, titled *"When ICC Met Atlanta,"* which was capped by a keynote address by the President of the ICC Court of International Arbitration, Alexis Mourre.[107] The College of Commercial Arbitrators (CCA), which is the leading US-based professional association for arbitrators, also held its annual meeting in Atlanta. And, of course, ATLAS held its own annual conference, which covered the theme, *"Skills and Cultures: The Road Ahead for International Arbitration."*

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[99] *See, e.g.*, Shelby R. Grubbs & Glenn P. Hendrix, *International Commercial Arbitration, Southern Style*, TENN. BAR J. (Sept. 2012), available at International Commercial Arbitration, Southern-Style - TBA Law Blog.

[100] For recaps of the conference, see Stephen L. Wright, "*The United States and Its Place in the International Arbitration System of the 21st Century: Trendsetter, Outlier or One in A Crowd*" – *Inaugural Conference of the Atlanta International Arbitration Society*, LES CAHIERS DE L'ARBITRAGE/ PARIS J. INT'L ARB. 741 (2012-13); Sebastian Perry, Coke – *And Arbitration – Are It*, GLOBAL ARBITRATION REVIEW (Apr. 17, 2012); Sebastian Perry, *Atlanta: Restating the Obvious?* GLOBAL ARBITRATION REVIEW (May 10, 2012); Meredith Hobbs, *Panelists Debate Costs and Value of Arbitration*, FULTON CO. DAILY REP. (Apr. 18 2012); Dorothy Toth Beasley, Allen I. Hirsch & Stephen L. Wright (eds.), *Rapporteur Reports on Conference Proceedings*, available at www.arbitrateatlanta.org.

[101] For recaps of the conference, see Leo Szolnoki, *Arbitrators Views Converge and Diverge in Atlanta*, GLOBAL ARBITRATION REVIEW (April 25, 2013); Trevor Williams, *Andrew Young: Atlanta Has "Trump Cards" for Arbitration,* GLOBAL ATLANTA (April 25, 2013); Dorothy Toth Beasley, Allen I. Hirsch & Stephen L. Wright (eds.), *ATLAS Conference Report – Convergence and Divergence in International Arbitration Practice: Rapporteur Reports on Conference Proceedings* (June 27, 2013), available at www.arbitrateatlanta.org.

[102] For recaps of the conference, see Trevor Williams, *Arbitration Society Conference to Highlight Africa*, GLOBAL ATLANTA (Aug. 11, 2014); Meredith Hobbs, *Atlanta's International Arbitration Boosters Look to Africa*, FULTON CO. DAILY REP. (Oct. 31, 2014); Meredith Hobbs, *Conference on Africa Looks for Investment, Disputes, Arbitrations*, FULTON CO. DAILY REP. (Nov. 4, 2014); Meredith Hobbs, *Africa: The Next Frontier for Business Arbitration*, FULTON CO. DAILY REP. (Nov. 5, 2014); Philippa Maister, *Africa Steps Up Dispute Resolution*, SOUTHERN TIMES (Mar. 16, 2016); Dorothy Toth Beasley, Allen I. Hirsch & Stephen L. Wright (eds.), *Rapporteur Reports on Conference Proceedings*, available at www.arbitrateatlanta.org.

[103] *See* Lacey Yong, *Atlanta Hearing Centre Opens for Business*, GLOBAL ARBITRATION REVIEW (Oct. 13, 2015).

[104] *See* Trevor Williams, *Are Big Trade Deals Creating 'Secret Courts' by Pushing Arbitration?* GLOBAL ATLANTA (Oct. 14, 2016).

[105] *See* Meredith Hobbs, *ATLAS Arbitration Conference Draws International Bigwigs*, DAILY REPORT (Oct. 21, 2017); Meredith Hobbs, *International Arbitration Pros See Risks in Trump Era*, DAILY REPORT (Oct. 24, 2017); Christopher Campbell, *Beacon in the American South: International Business Disputes in an Era of Receding Globalism*, KLUWER ARBITRATION BLOG (Dec. 10, 2017), available at http://arbitrationblog.kluwerarbitration.com/2017/12/10/beacon-american-south-international-business-disputes-era-receding-globalism/.

[106] *GAR Live Atlanta – in pictures*, GLOBAL ARBITRATION REVIEW (Mar. 27, 2018); Tom Jones, *Paranoia about paranoia? GAR Live Atlanta looks at due process*, GLOBAL ARBITRATION REVIEW (Mar. 27, 2018).

[107] Tom Jones & Alison Ross, Mourre Calls for Institutions to Join Forces, GLOBAL ARBITRATION REVIEW (March 9, 2018).

In 2019, ATLAS featured the second "GAR Live Atlanta," its eighth annual conference ("Points of View: Multiple Perspectives on International Arbitration"), and the first ever "ATLAS Forum," an interactive roundtable featuring practical tips from experienced arbitrators. The 2020 and 2021 conferences were held virtually due to the Covid-19 pandemic, and addressed "Recent Global Political Developments and Their Effects on International Arbitration" and "Past, Present and A Bold New Future For International Arbitration," respectively. The latter conference was held in conjunction with the third "GAR Live Atlanta."

Law schools in the greater Atlanta area – including the University of Georgia (UGA), Georgia State University (GSU), and Emory – have helped develop and nurture a strong local international arbitration culture.[108] UGA is the home of the Dean Rusk Center for International, Comparative and Graduate Legal Studies, named after former US Secretary of State Dean Rusk, one of many prominent international lawyers who have taught at UGA. The Dean of the UGA School of Law, Peter "Bo" Rutledge, is a noted scholar in the field of international dispute resolution, as well as a founding member of the ATLAS Board of Directors. The UGA team is one of the perennially strong contenders at the Willem C. Vis International Commercial Arbitration Moot held in Vienna, Austria.[109]

The GSU College of Law not only hosts the Georgia State University Law Center for Arbitration and Mediation, but also the Consortium on Negotiation and Conflict Resolution (CNCR), which is headed by Professor Douglas Yarn (also a founding member of the ATLAS board). Founded in 1987, the CNCR's research efforts have focused on establishing a dynamic and vital bridge between theory and practice in conflict management and resolution. GSU also co-sponsors the Summer Academy in International Commercial Arbitration in Linz, Austria, and consistently fields highly competitive teams at the Vienna Vis Moot.

Emory has a unique link to the world – its relationship with The Carter Center, a non-governmental organization founded by former President Jimmy Carter that addresses some of the most pressing and complex issues of our time in the areas of democracy building, conflict resolution, and human rights, among other global issues. Emory's partnership with The Carter Center features in the law school's longstanding program for international advocacy and dispute resolution.[110] Like UGA and GSU, Emory offers a robust LLM program for non-US-trained lawyers.

IX. Other Intangibles

Atlanta's reputation as an outward-looking, internationally oriented city makes it an attractive venue for non-US parties. The 1996 Olympics, Atlanta-based CARE and CNN, and the ethos of "The City Too Busy to Hate" are all part of the city's cosmopolitan global brand.[111] The Martin Luther King Center for Non-Violent Social Change and The Carter Center (each bearing the name of native Georgians who became Nobel Peace Prize Laureates) provide a beacon of hope and support for those struggling for equal rights and democracy all over the world. In the words of former U.N. Ambassador and Atlanta Mayor Andrew Young: "Atlanta is Arbitration Central. The home of Coca-Cola, Martin Luther King Jr. and President Jimmy Carter has a century of experience in conflict resolution of every type. Coming to Atlanta, the world cannot only discuss issues, but experience the result of diverse groups and opinions living and thriving beyond conflict."[112]

Atlanta is also a gateway city for global business. Sixty-five countries are represented in Atlanta by a consulate, trade office, or bi-national chamber of commerce.[113] The metro area is home to approximately 750,000 non-US-born residents,[113] and more than 2,800 international businesses from more than 40 countries have established their US headquarters or operations in Atlanta.[115]

Atlanta is the economic capital of the southeast US, a region that, as a separate country, would have the

[108] Daniel J. King, Brian A. White & Ryan J. Szczepanik, *International Arbitration in Georgia*, 12 GA. BAR J. 13, 21 (Apr. 2011).

[109] *Georgia Law Students Compete in Vis Arbitration Moot in Vienna*, UGA LAW (Apr. 3, 2018; Leighton Rowell, *UGA Law School Finishes in Top Ten at International Moot Court Competition*, THE RED & BLACK (June 14, 2014); Curry Andrews, *Georgia Law Moot Court Team Finishes Among the Top in World*, UGA TODAY (May 3, 2011).

[110] Several dozen law students from these and several other, mostly southeastern, law schools have served as volunteers and rapporteurs for the ATLAS conferences. The conference reports are available on the ATLAS website.

[111] Andy Ambrose, *Four Things You Should Know about Atlanta, American Historical Ass'n* (Dec. 2006) available at http://www.historians.org/ ("Atlanta also gained a reputation as a racially progressive southern city … During the 1960s, the image gained wider national acceptance following … the skillful use of the slogan 'The City Too Busy to Hate' to set Atlanta apart from the racial violence occurring in other southern cities").

[112] Testimonial by Andrew Young on the website of the Atlanta International Arbitration Society, www.arbitrateatlanta.org; see also Trevor Williams, *Andrew Young: Atlanta Has "Trump Cards" for Arbitration*, GLOBAL ATLANTA (Apr. 25, 2013).

[113] Metro Atlanta Chamber, *Global Commerce*, available at www.metroatlantachamber.com/business/global-commerce.

[114] Craig Schneider & Marcus K. Garner, *Foreign-born Population Continues to Grow in Metro Atlanta*, ATLANTA JOURNAL-CONSTITUTION (Dec. 18, 2010).

[110] Based on aggregate U.S. Federal Reserve GDP data for Georgia, Florida, Alabama, Tennessee, North Carolina, South Carolina, and Mississippi (*see http://research.stlouisfed.org/fred2/*) and slotting that total into the World Bank GDP tables. See World Bank GDP Data, available at http://data.worldbank.org/indicator/ny.gdp.mktp.cd.

[115] Metro Atlanta Chamber, *Atlanta Ranks Third in the Nation Among Cities with the Most Fortune 500 Headquarters* (Mar. 20, 2013).worldbank.org/indicator/ny.gdp.mktp.cd.

seventh highest GDP in the world.[116] Many of the world's foremost companies, respected brands and charitable organizations call Atlanta home, including AGCO, CARE, Coca-Cola, Delta Air Lines, First Data, Georgia-Pacific, Home Depot, NCR, Newell Rubbermaid, UPS and ICE (owner of the New York Stock Exchange and Euronext group of stock exchanges, among others).

Atlanta is also simply a wonderful place to visit. As described on the ATLAS website:

> In Atlanta, home of the 1996 Summer Olympic Games, hospitality is more than a catchphrase. Described by *National Geographic Traveler* as one of the top 50 places (and top 20 urban spaces) to visit in a lifetime, Atlanta is a city that loves to play host, sparing no effort to make every visitor feel welcome.
>
> Sample the vibrant culture of this diverse New South metropolis with a visit to such world-class institutions as the Woodruff Arts Center, the High Museum, the Fox Theatre, the Atlanta Symphony Orchestra, the Alliance Theatre and the Atlanta Ballet. Tour the Jimmy Carter Presidential Library and Museum and The Carter Center, the Martin Luther King, Jr. National Historic Site, the National Center for Civil and Human Rights (a recently opened attraction that commemorates and connects the American civil rights movement to today's global human rights movements), the Georgia Aquarium (the largest aquarium in the world), Civil War battlefields, the Margaret Mitchell House, and CNN Center.
>
> Take in a game by the Atlanta Falcons (American football), the Atlanta Braves (baseball), the Atlanta Hawks (basketball), or the Atlanta United Football Club (soccer), which won the US Major League Soccer (MLS) championship in 2018. Atlanta United is among the top 15 soccer (football) clubs for attendances worldwide (higher, for example, than either Chelsea or Everton). A recent feature in a British newspaper, The Daily Mail, described Atlanta United matches as "renowned for their noise, colour, banners, klaxons and the loudest thunderclap you'll ever hear at a sporting venue, accompanied by chants of A-T-L. It's a potent mix of the San Siro, Maracana and old-school English grounds."
>
> Treat yourself to some upscale shopping in Buckhead or browse the bohemian shops of Little Five Points. Play golf on some of the world's top courses. Enjoy the Chattahoochee River National Recreation Area, aptly described by the National Park Service as an "Ancient River in a Modern City." Or simply absorb the beauty of some of the city's lovingly landscaped neighborhoods, many of them connected by the Atlanta BeltLine, a network of public parks and multi-use trails along a historic railroad corridor circling downtown, parts of which are lined with bars and restaurants. Known as a "city in a forest," with more tree cover than any other major city in the US, Atlanta is lush with dogwoods, magnolias, and magnificent oaks.
>
> If parts of Atlanta look familiar during your first visit, perhaps you already saw them in a movie. Georgia was the world's top location for shooting feature films in 2016, with 17 of the 100 top-grossing movies filmed here (ahead of the UK with 16 feature films, Canada with 13, and California with 12). While Georgia slipped to number 2 worldwide in 2017, it continues to lead any other US state (including California) in feature film production.
>
> At the end of the day, enjoy some of Atlanta's award-winning dining – described by the New York Times as a "new kind of sophisticated Southern sensibility centered on the farm but experienced in the city." And if you're still not ready to turn in for the evening, take in some famed "Hotlanta" nightlife and the city's spirited music scene.[117]

X. Designating Atlanta as the Situs of the Arbitration Hearing, While Specifying Another Jurisdiction as the Arbitral Seat

Parties should consider designating Atlanta as the situs of an arbitration hearing, even if another jurisdiction is designated as the "seat" of the arbitration. The arbitral seat is, in effect, the legal domicile or juridicial home of the arbitration. The laws of the seat govern the procedural conduct of the arbitration and also define the relationship between the arbitral proceeding and the courts (including, for instance, the grounds for vacatur of an arbitral award, as discussed *supra* in Sections II.B. and C.). The arbitration hearing need not be – and, indeed, very often is not – conducted in the same jurisdiction that is designated as the legal seat of the arbitration. As noted in a leading treatise, "parties often agree to arbitration in State X, but the arbitral proceedings are physically conducted in other places for reasons of convenience, without any intention to change the arbitral seat or the legal regime applicable to the arbitral

[116] Based on aggregate U.S. Federal Reserve GDP data for Georgia, Florida, Alabama, Tennessee, North Carolina, South Carolina, and Mississippi (see http://research.stlouisfed.org/fred2/) and slotting that total into the World Bank GDP tables. See World Bank GDP Data, available at http://data.

[117] www.arbitrateatlanta.org/a-tradition-of-hospitality/.

proceedings."[118] Given its convenience as a transportation hub, superb (and yet reasonably priced) hearing facilities, and welcoming regulatory environment for non-US lawyers, Atlanta is a logical place to conduct an arbitration hearing, regardless of the legal regime chosen to govern the conduct of the arbitration.

Another option is to designate Atlanta as both the situs of the hearing and as the arbitral seat, but have the contract governed by the substantive law of another jurisdiction, such as New York. The New York State Bar Association (NYSBA) has engaged in a concerted effort to promote New York law in choice of law clauses in non-New York contracts and to make New York law accessible to non-New York lawyers and parties.[119] Using this approach, the merits of the parties' dispute would be decided by New York law, but the procedural law governing the arbitration would be the FAA as applied by the Eleventh Circuit (which, as previously explained, is more international arbitration-friendly than the Second Circuit, which covers New York), with any gaps in the FAA being filled by the UNCITRAL Model Law (which has been adopted by Georgia, but not New York). This option affords the best of both worlds to a party that is comfortable with New York substantive law, but less comfortable with some of the downsides of arbitrating in New York, such as the possibility of manifest disregard review of an arbitral award.

As this chapter is being updated, the world is emerging from the Covid-19 pandemic, but it seems likely that virtual proceedings will continue to occupy a meaningful place in international arbitration. An Atlanta seat is a logical choice for a virtual arbitration, as the proceeding will be governed by the most international arbitration-friendly legal regime in the United States.

X. Conclusion

Georgia offers one of the most supportive legal frameworks for international arbitration in the world, including not only arbitration-friendly courts and legislation, but also the most welcoming environment for non-US lawyers in the United States. Atlanta is a global business crossroads that is home to many of the world's largest corporations and the world's busiest passinger airport by flight count, with direct flights to most major international business centers. Yet, despite its sophistication, Atlanta is one of the world's least expensive major cities. A city known worldwide for its hospitality and multicultural embrace, Atlanta is an ideal venue for international arbitrations.

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[118] GARY B. BORN, INT'L COMM. ARB. (2nd Ed.) 1595 (2014); *see also Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, 364 F.3d 274, 291-92 (5th Cir. 2004) ("In selecting Switzerland as the site of the arbitration, the parties were not choosing a physical place for the arbitration to occur, but rather the place where the award would be 'made.' ... The arbitration proceeding in this case physically occurred in Paris, but the award was 'made in' Geneva, the place of the arbitration in the legal sense."); NIGEL BLACKABY & CONSTANTINE PARTASIDES, REDFERN & HUNTER ON INT'L ARB. ¶¶ 3.55-3.59 at 181-83 (2009).

[119] *See, e.g.*, GLEN BANKS, NEW YORK CONTRACT LAW: A GUIDE FOR NON-NEW YORK ATTORNEYS (2014); NYSBA, *Final Report of the NYSBA's Task Force on New York Law in International Matters*, at 5 (June 25, 2011). New York law ranks second only to English law in being selected to govern international trade contracts. *See* JONATHAN MORGAN, CONTRACT LAW MINIMALISM: A FORMALIST RESTATEMENT *OF COMMERCIAL CONTRACT LAW*, 184-86 (2013); *see also* Theodore Eisenberg & Geoffrey P. Miller, *The Flight to New York: An Empirical Study of Choice of Law and Choice of Forum Clauses in Publicly-Held Companies' Contracts*, 30 CARDOZO L. REV. 2073 (2009).

Chapter 3

Strategies for Establishing an Arbitral Seat: A Roadmap Based on the ATLAS Experience

Shelby Grubbs*

Abstract

During the last quarter century, the number of communities and jurisdictions seeking to attract international arbitrations has proliferated. While each potential arbitral seat and hearing venue has its peculiar advantages, common elements in successful strategies for developing the legal, political, and social infrastructure in North America can be identified. This article notes those strategies with particular emphasis on the experience of the Atlanta International Arbitration Society (ATLAS) and the Greater Atlanta community.

Introduction

While no two jurisdictions are precisely the same, it is possible to identify steps that are necessary (or at least highly advisable) for developing a jurisdiction which, in time, can hope to host arbitrations. These steps include:

1. Mobilizing the local bar by forming an arbitration club or society;
2. Involving the local economic development community;
3. Assessing and improving the local infrastructure supporting arbitration;
4. Assessing and improving the local legal environment;
5. Developing a compelling website, marketing collateral, and "why us" story;
6. Building a brand and staying in the public eye; and
7. Paying close attention to the needs and desires of users of arbitration services.

1. Mobilizing the bar

Because neither North American governments nor NGOs are likely to take on the substantial and sustained efforts needed to bring arbitration business to a particular jurisdiction, a group is needed to spearhead the additional steps noted below. The legal profession is presumably a primary beneficiary of increased arbitration business flowing into a community or jurisdiction. Hence, it is perhaps appropriate that in North America, at least,[1] it will typically fall to a segment of the local bar[2] to organize and pursue efforts

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1 In Asia, governments in Hong Kong and Singapore have been willing to invest in efforts to bring arbitration business to local centers.

2 Of course, an industry-based group or a group based on some other affinity might organize the effort. For example, the Silicon Valley Arbitration and Mediation Center (SVAMC) focuses on tech disputes. While based in Silicon Valley, SVAMC's membership is open to anyone in the world interested in promoting arbitration and alternative dispute resolution in the tech industry. Despite the global membership, this group's activity necessarily increases the Silicon Valley area's profile as a potential arbitration hub for a particular type of dispute. The same could be said for Houston when it comes to energy disputes.

to establish and enhance a jurisdiction's pro-arbitration "chops" through a local arbitration club or society.[3]

In recent years, Toronto took this approach when the Toronto Commercial Arbitration Society (TCAS) assisted in the creation of Arbitration Place, and so did New York, where the International Arbitration Club of New York helped foster the New York International Arbitration Centre (NYIAC). It was also true of Atlanta, where the Atlanta International Arbitration Society (ATLAS) led local efforts, and in Charlotte and Houston, where the Charlotte International Arbitration Society (CIAS) and the Houston International Arbitration Club (HIAC) have organized and led efforts. There are similar organizations in a number of major North American cities.[4]

The local society's or club's first order of business is presumably for members to decide how it will be organized and governed. In this regard, they should determine whether it will be open to all comers, including non-lawyers, or whether it should be a more exclusive (by invitation only) group.[5]

In any event, it is important that the organization's leaders include a core group of arbitration practitioners who are knowledgeable and well regarded, and it is highly desirable that in-house lawyers be an active part of the group. Fostering the creation of young lawyer divisions or sections is likewise important. Involving young practitioners and giving them experience in the field necessarily makes a jurisdiction more "pro-arbitration" as it feeds the pipeline of available and experienced practitioners (both counsel and arbitrators).

Once the organization is in place, it should articulate a purpose. Here is the stated purpose of the Atlanta International Arbitration Society:[6]

To serve the global community in providing world-class quality and efficient service in a highly cost-competitive and value-driven environment by:

- Promoting the use of international arbitration and the selection of Atlanta as the situs for international arbitration proceedings;
- Providing a forum in which practitioners, neutrals, corporate counsel, and others interested in international arbitration can network and exchange ideas and information (including interaction between external and in-house counsel on improving the efficiency of the process);
- Working to enhance local legal infrastructure for international arbitration through legislative and judicial education;
- Enhancing the Georgia bar's knowledge of international arbitration through legislation and judicial education;
- Interacting with and supporting local academic programs on international arbitration at area universities; and
- Promoting and organizing international arbitration conferences in Atlanta.

Next, the organization should conduct an inventory of available resources, including contacts in government, in the economic development community and in academia. At the same time, the group needs to develop a business case for arbitration noting the likely, or at least plausible, return on what is likely to be a significant investment of time and money.[7] The revenue analysis should make an effort to

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[3]Difficult though the effort to develop a pro-arbitration jurisdiction may be, progress is possible. The Atlanta effort began in earnest in 2011. By 2018, a study by the University of Leicester put Atlanta in fifth place among US seats for international arbitration, behind New York City, Miami, Washington, DC, and Chicago. Rounding out the top ten were San Francisco, Houston, Dallas, Seattle, and Los Angeles. Tony Cole, et al., *Arbitration in the Americas: Report on a Survey of Arbitration Practitioners* 6 (2018), https://www2.le.ac.uk/departments/law/research/arbitration/files/arbitration-in-the-americas-report-on-a-survey-of-arbitration-prac-titioners.

[4]*E.g.*, Chicago International Dispute Resolution Association, Miami International Arbitration Society, Western Canada Commercial Arbitration Society (Vancouver).

[5]The International Arbitration Club of New York is an invitation-only group. TCAS in Toronto, ATLAS in Atlanta and the Charlotte International Arbitration Society, by contrast, are open to all interested persons.

[6]SVAMC's mission statement is similar to the one adopted by ATLAS. *See* https://svamc.org.

[7]Like other financial projections, determining whether efforts to establish a community as an arbitral hub will be based, at best, on educated guesses. No guarantees can be made. That said, and while each community will need to develop a separate business case, there are two published studies which can to be used in getting started. We are aware of two studies regarding the value of the international hearings market. A 2011 report from the New York State Bar suggests that the yearly value of internation-al dispute resolution for New York is between $2 billion and $4 billion USD. N.Y. Bar Ass'n, *Final Report of the New York State Bar Association's Task Force on New York Law in International Matters* (2011), https://www.nysba.org/InternationalReport/. Additionally, a 2012 study for Toronto by Charles River Associates puts the value of international arbitration business in Toronto in excess of $200 million USD per year – a figure that includes counsel fees and neutral fees. Charles River Associates, *Arbitra-tion in Toronto: An Economic Study 4* (2012), http://www.crai.com/sites/default/files/publications/Arbitration-in-Toronto-An-Economic-Study.pdf.These figures do not capture the non-legal component of the economic benefits of a hearing center. A single international arbitration in Toronto generates, on average, about $70,000 USD in airfare and non-legal reve-nue. *Id.* Notably, this $70,000 USD number fails to include the value of rents, salaries, etc. when international legal firms and other providers lo-

consider the benefits, which should accrue to the local bar by reason of its providing a service to the local, regional, and national business, which generally tends to regard arbitration as an important technique for resolving disputes.[8]

Also, while anticipated revenues and increased service offerings are, no doubt, a critical item for consideration, there are intangibles which ought also be considered, including the manner in which being an arbitral hub can confer prestige on a community and reinforce other efforts to develop international and domestic business activity.[9]

One final point for consideration pertains to whether the group aspires to foster the creation of an administering institution, such as, the ICC, ICDR, JAMS, CPR, etc., or whether simply establishing the jurisdiction as arbitration friendly with, perhaps, a state-of-the-art hearing center would be sufficient. While administering institutions generate revenue in handling disputes, the resources needed to establish such an institution are very substantial and the competition, particularly for a new institution, is daunting.[10] Moreover, a group which does not foster an administering institution is able to ally with one or more established institutions, rather than compete with them. In North America, recent efforts have mostly focused on establishing hearing centers open to all administering institutions. Arbitration Place in Toronto took this approach, as did NYIAC and ATLAS along with the Atlanta Center for International Arbitration and Mediation,[11] now known as the Georgia State Arbitration Center.[12] A counter-exam-

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cate to a city and local firms expand. (When adjusted for inflation and the higher exchange rate between the US and Canadian dollars, $70,000 USD is nearly the same in 2019 as it was in 2012.) Other commentators have suggested that becoming an arbitral hub is highly lucrative. *See* Lucy Reed, Mark Mangan & Darius Chan, *Follow the Leader – The Rise of Singapore as a World Class Arbitration Centre*, LEGAL WEEK (Nov. 1, 2010), https://www.law.com/legal-week/2012/11/01/follow-the-leader-the-rise-of-singapore-as-a-world-class-arbitration-centre/?slreturn=20190424091127 (Singapore's dispute resolution business may be worth as much as $1 billion USD annually.).

[8]Data and commentary about the general satisfaction of corporate counsel and other users of arbitration suggest that international arbitration is regarded as useful and needed. Edna Sussman and John Wilkerson summarize this information in a paper entitled "Benefits of Arbitration for Commercial Disputes," noting:

- A majority of users believe arbitration is better, cheaper and faster than litigation. Rand Institute for Civil Justice, "Business to Business Arbitration in the United States, Perceptions of Corporate Counsel" (2011).
- Eighty-three percent of business people believe that arbitration is "a more just process" than litigation. *Id.*
- A majority of parties to arbitrations believe arbitrators are more likely to understand the subject of the dispute than judges. *Id.*
- Counsel make fewer errors in predicting arbitration outcomes than judge or jury outcomes. Randall Kizer, *Beyond Right and Wrong* (Springer 2010).
- Eighty-three percent of corporate counsel are satisfied with international arbitration. PriceWaterhouse Coopers, *International Arbitration, Corporate Attitudes and Practices* (2008).
- Three arbitrators are less likely to be influenced by bias than judges in a bench trial. Guthrie, Misjudging, 7 *Nev. L.J.* 420 (2007).
- Voluntary compliance with arbitration awards is more than 90 percent. https://www.americanbar.org/content/dam/aba/publications/dispute_resolution_magazine/March_2012_Sussman_Wilkinson_ March_5.authcheckdam.pdf.

[9]Commentators recognize that "much prestige attaches to a country acting as a host of arbitrations." *See, e.g.*, Stephan Wilske, *The Global Competition for the 'Best' Place of Arbitration for International Arbitrators – A More or Less Biased Review of the Usual Suspects and Recent Newcomers*, 1 (1) CONTEMP. ASIA ARB. J. 21, 29 (2008). Similarly, policy makers see the arbitration business as "important from [both] an economic standpoint and for international reputation." Opinion of the Swiss Federal Council of 17 May 2006 on the Report of 17 February 2006 of the Legal Affairs Commission of the Federal Council concerning the parliamentary initiative to amend Article 186 of the Swiss Private International Law Act, ad 02.415, pg. 4483, *cited in* Wilske, *supra*. London has historically been particularly attentive to the benefits of being an arbitral hub, with no less a figure than former Chancellor of Exchequer George Osborne having noted an intention to promote "the UK as the global centre for arbitration." Ian Cruse & Matthew Purvis, *Debate on 21 June: Economic Growth Strategy,* House of Lords Library Note 2012/025, 15 June 2012, 6. As for dedicated hearing facilities, David Adelman, former US Ambassador to Singapore, has advised that "a hearing center is a part of a city's global ecology." Private conversation with Shelby Grubbs, October 15, 2014, Singapore. Certainly, plenty of communities are jumping in. As David Samuels, Managing Editor of Global Arbitration Review, notes: "The impulse to have an arbitration centre is a bit like the impulse to have a stock exchange: fairly universal." GAR's *Guide to Regional Arbitration Centres* 2014, at 2. This is not to say that diligent effort will not pay off. ATLAS started in 2010.

[10]*See, e.g.,* Timothy G. Nelson (2019), *International Arbitration Roundtable*, FINANCIER WORLDWIDE, June 2019 ("The challenge for any putative arbitration venue is, first and foremost, to persuade the users that it has a track record of consistency, that its courts work well and that its local laws and infrastructure will support arbitration"); *see also*, Eric P. Tuchmann (2019) *International Arbitration Roundtable*, FINANCIER WORLDWIDE, June 2019 ("[T]here are tremendous challenges with establishing a viable institution. When you have parties from different parts of the world, they may not want to place their trust in an unfamiliar international institution or arbitrator appointment process. It takes a long time to develop a reputation for neutrality, expertise, and competence in administering cases.")

[11]The Atlanta Center for International Arbitration and Mediation was established at the Georgia State University College of Law in 2014 as a state-of-the-art hearing center with the help and financial support of ATLAS. Effective July 1, 2019, its name changed to the Georgia State Arbitration Center.

[12]A model for the Toronto, New York, and Atlanta arbitration centers is Maxwell Chambers integrated alternative dispuste resoluction complex in Singapore. Maxwell Chambers is on the upper floors of the old customs house in a building owned by the government. The building's lower floors are leased to various institutions in the business of administering arbitrations, including the International Centre for Dispute Resolution, International Chamber of Commerce Court of International Arbitration, Singapore International Arbitration Centre, Singapore International Mediation Centre, and the World Intellectual Property Association. In addition, various law firms and barristers' chambers have offices at Maxwell Chambers. Thus, the Maxwell Chambers' approach seeks to create an arbitration community around a hearing facility and within the local legal profession. This community becomes a kind of ecosystem that supports the hearing facility, enables the hearing facility to attract arbitration work and nurtures and grows an arbitral community. To some extent, this is the approach of Arbitration Place in Toronto. Arbitration Place has resident arbitrators and arbitrators' chambers in space adjacent to its hearing rooms.

ple is the British Virgin Islands International Arbitration Centre, which has adopted rules, maintains a panel of arbitrators, and is otherwise set up to administer arbitration matters.[13]

These efforts have been useful in helping ATLAS gain increased salience in the marketplace.[14]

2. Involving the Economic Development Community

As noted, becoming an arbitral hub brings money and prestige to a community. Moreover, international arbitration helps brand a city as cosmopolitan and as a place with the facilities and capability to conduct global business.

Economic development agencies[15] generally collect and publish data, which are of assistance as well. Plainly, international marketing efforts ought to consider and focus on primary trading partners.[16]

Economic development agencies also offer resources and contacts, which can help in multiple ways, including in convincing a reluctant legislature that international arbitration business benefits extend beyond the legal community.[17] Agencies are also useful partners along with industry organizations for conferences focusing or touching on developments in arbitration as it relates to business in the local community.[18]

3. Assessing/improving "hearing" infrastructure

Hearing infrastructure in this context includes not only transportation facilities and business travel facilities, but also the availability of hearing facilities and translation services. All should be catalogued[19] and compared to available survey data from Global Arbitration Review[20] (GAR). The GAR survey notes the attributes regarded as important in the selection of a location for hearings. These include:

- Location, e.g., city center, accessibility, proximity to airport, etc.;
- Price and perceived value for money;
- Room size and comfort;
- Availability of IT services; and
- Helpfulness of staff.

Of course, other items to be considered might include:

- Breakout and office facilities;
- Proximity to hotels and restaurants;
- Neutral ground; and
- Ease of booking.

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[13] If a center opts to develop as an administrative institution like BVI, additional steps are needed if it is to gain acceptance in the marketplace. *See* Teresa Garcia-Reyes & Michael McIlwrath, *Arbitration Institutions: Five Things Your Website Must Do to Attract Cases,* KLUWER ARBITRATION BLOG (Jan. 17, 2018), http://arbitrationblog.kluwerarbitration.com/2018/01/17/mike/.

[14] *See supra* note 3.

[15] Among the original board members at ATLAS was the Vice President for International Business Development at the Metro Atlanta Chamber (MAC). Moreover, the formation of ATLAS coincided closely with the Brookings Institution making Atlanta a focus of its Global Cities Initiative, a development which was hugely helpful to the efforts of ATLAS. In fact, Brookings has praised ATLAS and economic development agencies for the way they leveraged local assets, in particular Hartsfield-Jackson Atlanta International Airport. *See* Marek Gootman & Rachel Barker, *Atlanta Links International Disputes and Airport as Runway to Global Services Economy*, THE BROOKS INSTITUTE (May 25, 2016), https://www.brookings.edu/blog/the-avenue/2016/05/25/atlanta-links-international-disputes-and-airport-as-runway-to-global-services-economy/.

[16] In Atlanta, efforts were assisted by the knowledge of Georgia's top ten export destinations (Canada, Mexico, China, Germany, Japan, the United Kingdom, Singapore, South Korea, Brazil, and the Netherlands) and the countries of origin for imports (China, Germany, Mexico, South Korea, Japan, Canada, the United Kingdom, India, France, and Italy). Similarly, efforts were informed by knowledge regarding major goods exported (aircraft and aircraft parts, gas turbines, automobiles, wood products and chips, paper and paper board, floor covering, agricultural machinery, poultry, and peanuts) and imported (automobiles, pharmaceuticals, computers, aircraft and aircraft parts, copper, telecommunication goods, chemicals, building materials, construction equipmen, and furniture).

[17] In addition to the Metro Atlanta Chamber, ATLAS worked with the Atlanta Mayor's Office of International Affairs, the International Affairs Unit of the Atlanta airport, the Georgia Department of Economic Development, the Georgia Chamber of Commerce, and the Atlanta Convention & Visitors Bureau. Partly because of the support of these institutions, ATLAS also received publicity from various media, including Global Atlanta (an online business publication), the Atlanta Business Chronicle, and the Daily Report, the local American law media publication.

[18] For example, the AIPN/ICDR Dispute Resolution Conference is a yearly conference hosted by the Association of International Petroleum Negotiators and the International Centre for Dispute Resolution in Houston and other cities generally regarded as hubs for the energy industry.

[19] Atlanta's inventory included its airport and its reputation as a major business headquarters, its sophisticated bar, and, from 2015 forward, the hearing facilities operated at the Georgia State University College of Law.

[20] https://globalarbitrationreview.com/benchmarking/guide-to-regional-arbitration-volume-6-2018/1150108/survey-results.

4. Assessing/improving the legal environment

The Chartered Institute's London Centenary Principles, announced in 2015, posit an excellent checklist for an aspiring community intent on seeing that its legal environment is regarded as appropriately hospitable to international arbitration.[21] These principles, noted below, would appear to be minimally required for a jurisdiction aspiring to be regarded as a suitable arbitral seat.

Law

A clear effective, modern international arbitration law, which shall recognize and respect the parties' choice of arbitration as the method for settlement of their disputes by:

(a) providing the necessary framework for facilitating fair and just resolution of disputes through the arbitration process;

(b) limiting court intervention in disputes that parties have agreed to resolve by arbitration;

(c) striking an appropriate balance between confidentiality and appropriate transparency, including the growing practice of greater transparency in investor state arbitration.

Judiciary

An independent judiciary that is competent, efficient, and has expertise in international commercial arbitration, and is respectful of the parties' choice of arbitration as their method for settlement of their disputes.

Legal Expertise

An independent competent legal profession with expertise in international arbitration and international dispute resolution providing significant choice for parties who seek representation in the courts of the seat or in the international arbitration proceedings conducted at the Seat.

Education

An implemented commitment to the education of counsel, arbitrators, the judiciary, experts, users and students of the character and autonomy of International Arbitration and to the further development of learning in the field of arbitration.

Right of Representation

A clear right for parties to be represented at arbitration by party representatives (including but not limited to legal counsel) of their choice whether from inside or outside the seat.

Accessibility and Safety

Easy accessibility to the seat, free from unreasonable constraints on entry, work, and exit for parties, witnesses and counsel in international arbitration, and adequate safety and protection of the participants, their documentation and information.

Facilities

Functional facilities for the provision of services to international arbitration proceedings including transcription services, hearing rooms, document handling and management services, and translation services.

Ethics

Professional and other norms, which embrace a diversity of legal and cultural traditions, and the developing norms of international ethical principles governing the behavior of arbitrators and counsel.

Enforceability

Adherence to international treaties and agreements governing and impacting the ready recognition and enforcement of foreign arbitration agreements, orders, and awards made at the seat and in other countries.

Immunity

A clear right to arbitrator immunity from civil liability for anything done or omitted by the arbitrator in good faith in his or her capacity as an arbitrator.

Elaborating on these items: Both statutory and common law support for arbitration, and arbitration-friendly courts—including the availability of expeditious hearings

[21] The principles are noted and discussed at https://www.ciarb.org/media/4357/london-centenary-principles.pdf.

[22] A number of jurisdictions have enacted special provisions or rules allowing special business courts to expedite arbitration matters. In Atlanta, the Georgia Supreme Court adopted a rule in May 2015 amending the governing rules for the Fulton County Business Court—a division of the Superior Court—to hear cases subject to the Georgia International Arbitration Code, O.C.G.A §9-9-30 et seq. *See*, Order Supreme Court of Georgia (May 7, 2015).

in local courts and special access to "business courts"[22] — should be considered along with the regime pertaining to whether lawyers from other jurisdictions are allowed to participate in arbitrations and related court proceedings.[23]

In addition, the presence of a modern international arbitration statute is useful.[24] Of course, most of the "traffic" in international arbitration in the United States will invariably and appropriately be handled by federal courts applying Chapters Two and Three of the Federal Arbitration Act. Nevertheless, a state's adoption of a modern law, typically a law based on the UNCITRAL Model Law on international commercial arbitration, sends a signal that the jurisdiction is open for international arbitration business.

Since most court proceedings involving international arbitrations are in federal court (as are many court proceedings involving domestic arbitration), an assessment of the legal environment must include a look at federal jurisprudence in the applicable federal district and circuit.

It is probably not a good idea to over-identify a jurisdiction with international as opposed to domestic arbitration. Steps can be taken to make certain the market is aware that the jurisdiction is friendly to arbitration of all types and that the law is accommodating to both international and domestic cases. Generally, this is done by working to see that the arbitration agreements and the parties' expectations for those agreements are enforced. If the parties want US-style discovery, they get it. If they want to limit discovery or apply, for example, the IBA Rules on the Taking of Evidence in International Arbitration, parties can anticipate enforcement of those limits.

Once this assessment is completed, a memorandum[25] collecting this information is useful in persuading parties and counsel to use a particular jurisdiction and as a basis for well-placed articles regarding the jurisdiction.[26]

5. Developing a compelling website, collateral and story

The foregoing steps will inform the manner in which the local community through its arbitration society develops its website and collateral materials. The website needs to communicate the role and importance of arbitration not only to lawyers but to potential users, especially businesses. It should also provide information about who is involved, events, and press coverage. Critically, it must be kept up to date if it is to be credible.[27]

Separately, collateral marketing material is needed that can be distributed at conferences and be "left behind" after visits to potential users and other interested parties. This collateral will "strut the community's stuff," not only its attractiveness as a legal seat, but also its hotels and amenities, including any favorable cost data.[28] Here again, it is critical that the collateral material be updated.

The website and the collateral need to communicate the story of the society and the community, be interesting to readers, and give them salient messages to remember.[29]

6. Build brand day by day

Much, perhaps most, of what has been noted relates to

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23 ATLAS benefited from work done by the State Bar of Georgia on Foreign Legal Practice, chaired by Ben Greer, who subsequently served as ATLAS' second president. The committee's work resulted in the adoption of measures making clear that lawyers from other countries may represent their clients in arbitration matters in Georgia and may appear in Georgia courts in proceedings related to those arbitrations without violating prohibitions on practicing law without a license. The committee's work also resulted in allowing LLM graduates to take the Georgia bar exam, provided they have completed the prescribed coursework.

24 In Atlanta, ATLAS—along with faculty members from local law schools—took the lead in preparing and advocating for a revised international arbitration code now found at GA. CODE 9-9-20 *et seq*. In this regard, law faculties are also an important part of legal infrastructure. In the case of ATLAS, faculty members serve on its board and speak at its meetings and conferences. Also, conferences generate written materials, which can be offered to student publications (*e.g.*, law reviews).

25 Glenn P. Hendrix, founding president of ATLAS, prepared such a memorandum. *See*, International Dispute Resolution Manual (ATLAS 2020) at Chapter 2. Also, available at https://arbitrateatlanta.org/wp-content/uploads/2014/11/International-Arbitration-in-US_The-Atlanta-Option.pdf.

26 *See, e.g.*, Shelby R. Grubbs & Jorge Fernandez, *Let's Celebrate the Opening of the Atlanta Center for International Arbitration and Mediation*, ATLANTA BUS. CHRONICLE, Oct. 2, 2015; John L. Watkins & Shelby R. Grubbs, *International Arbitration: A business opportunity for Atlanta*, ATLANTA BUS. CHRONICLE, Sept 5, 2014; Stephen L. Wright & Shelby S. Guilbert, Jr., *Recent Advances in International Arbitration in Georgia: Winning the Race to the Top*, 18 (7) GA. BAR J. 18 (June 2013); Shelby R. Grubbs & Glenn P. Hendrix, *International Commercial Arbitration, Southern Style*, 49 (9) TENN. BAR J. (Sept. 2012); Daniel J. King, Brian A. White & Ryan J. Szczepanik, *International Arbitration in Georgia,* 12 GA. BAR J. 13, 21 (Apr. 2011).

27 The aggregate impact of a carefully maintained website is significant. As of the fall of 2017, the ATLAS website had been visited by people from 105 countries ranging from Afghanistan to Yemen, including people from the world's principal arbitral venues—among them Dubai, Hong Kong, London, New York, Sao Paulo, Singapore, Stockholm, Toronto, and Vancouver.

28 ATLAS emphasized the relative cost of business travel to Atlanta and prominent arbitral seats. Using hotel costs as a proxy, this assessment put costs in Atlanta at 26% of Geneva, 47% of New York, 51% of Paris, 52% of London, 58% of Singapore, 63% of Dubai, 74% of Hong Kong, and 79% of Vienna. *See*, 2014 Hotel Price Index https://hpi.hotels.com/.

29 The ATLAS material is built around accessibility (through the Atlanta airport and the historical role of Atlanta as a crossroads), history (particularly the role of Atlanta in the civil rights movement), resources (including local law schools), hospitality, and, most importantly, an arbitration-friendly legal regime.

how a community builds a brand identifying the community as a congenial location for arbitration. By identifying the local arbitration society, law schools, and other institutions as convening agents for arbitration, communities can support and enhance the brand. These efforts should be supported by frequent conferences,[30] by assisting in and augmenting the work of local law faculties,[31] and by publications.[32]

7. Pay close attention to needs and goals of users of arbitration services

Finally, it is important to monitor trends, including the needs and goals of arbitration services. To some extent, this is done by ensuring that inside counsel and representatives of arbitral institutions participate as faculty at conferences and by hosting major events discussing broader topics pertaining to alternative dispute resolution or the administration of justice, for example the Global Pound Conference. By doing so, the jurisdiction signals that it is friendly toward innovation and the efficient administration of justice, including, but not limited to, the use of arbitration.

There is abundant information available on trends and the predilections of businesses frequently involved in arbitration. The annual *White & Case/Queen Mary Survey* collects and publishes information regarding the needs of corporate users of arbitration services.[33] Global Arbitration Review, in addition to publishing a daily newsletter, publishes an annual *Guide to Regional Arbitration* and surveys addressing trends.[34] Other sources are *Law 360 – International Arbitration*, which publishes not only reports regarding cases but also articles pertaining to trends and various blogs, including, in particular, the *Kluwer Arbitration Blog*.[35]

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[30] ATLAS has conducted an annual conference in every year since 2012. Speakers have come from six continents and from most of the world's major arbitral institutions. The aggregate number of speakers now exceeds 170 from six continents and representing most of the world's major institutions. In addition, ATLAS supports CLE offered by the Institute for Continuing Education in Georgia, which hosts an annual Arbitration Institute. ATLAS meetings frequently include programs directed at information and best practices. The Houston International Arbitration Club likewise hosts major annual conferences, typically co-sponsored with other institutions or energy groups, such as the annual ICC-ITA-IEL conference (*see*, http://www.cailaw.org/Institute-for-Transnational-Arbitration/Events/2018/ita-iel-icc-conference.html) or other recognized arbitration groups, such as the Energy Arbitration Conference, presented by the Chartered Institute of Arbitrators with ATLAS and HIAC as cooperating entities. *See*, https://www.cpradr.org/events-classes/upcoming/2017-04-28-energy-arbitration-2017-conference.

[31] ATLAS members act as adjunct faculty in Atlanta area law schools where they teach arbitration law and coach arbitration-moot teams.

[32] Among other things, ATLAS publishes and distributes annually a manual with materials useful to international arbitration practitioners.

[33] Each year the survey polls academics, arbitral institution executives, arbitrators, experts, in-house lawyers, private practitioners, and third-party funders and looks at a different aspect of arbitration. For example, in 2018, the survey considered, among other matters, the pros and cons of arbitration for resolving disputes, the evolution of arbitral seats and institutions, arbitrator diversity, arbitrator conduct, funding, efficiency and confidentiality, and likely impacts of technology. *See*, https://www.whitecase.com/sites/whitecase/files/files/download/publications/qmul-international-arbitration-survey-2018-18.pdf.

[34] *See e.g.*, *"Women in Arbitration,"* https://globalarbitrationreview.com/edition/1000142/women-of-arbitration-2007.

[35] http://arbitrationblog.kluwerarbitration.com/.

Chapter 4

Georgia State University Law Center for Arbitration and Mediation

Magaly S. Cobian*

The Georgia State University Law Center for Arbitration and Mediation was established as the Atlanta Center for International Arbitration and Mediation ("Center") in 2014 as a component of the Georgia State University College of Law. It is located at:

85 Park Place, N.E., Fourth Floor
Atlanta, Georgia 30302

Inquiries should be directed to: +1 404-413-9000

Enjoying broad-based community support, thecenter is the product of close collaboration between the GSU College of Law and, in particular, the Atlanta International Arbitration Society ("ATLAS"). ATLAS was established in 2010 by a group of Atlanta lawyers working with various groups interested in seeing Atlanta realize its potential as a venue for international dispute resolution. Other stakeholders include the Metro Atlanta Chamber the City of Atlanta, the Georgia Department of Economic Development, the World Affairs Council of Atlanta and representatives of other law faculties, including Emory Law School and the University of Georgia Law School.

A World-Class Hearing Facility

In June 2015, the GSU College of Law moved into a new building at 85 Park Place in downtown Atlanta. The Center's hearing facility occupies 3,500 square feet (325 square meters) in premium space on the fourth floor of this US$82.5 million building. Overlooking Woodruff Park, the facility is near hotels, restaurants, parks, courts, and museums. Moreover, the facility is virtually on top of Peachtree Center Station, from which trains travel to Hartsfield-Jackson Atlanta International Airport, one of the busiest airports on Earth, with extensive international and domestic connections.

The hearing facility was built expressly for arbitration hearings and mediations. Among criteria considered in its design were preferences identified in surveys of international arbitrators and lawyers conducted by the Global Arbitration Review. A chart is attached that notes the features most frequently identified as important to respondents. All of these features are available at the facility. In summary, it offers:

Appropriately Sized Hearing Rooms:

The facility's array of rooms and the numbers they can accommodate are:
230 people – one room
150 people – one room
50 people – three rooms
24 people – one room
18 people – one room
7-9 people – three rooms
2-4 people – four rooms

Breakout Facilities:

In addition, there are four breakout rooms within the facility and multiple small rooms in the College of Law that can be made available as offices and extra breakout rooms.

Wi-Fi and IT:

All rooms contain Wi-Fi and sophisticated IT capabilities. Five of the rooms are equipped with Polycom® teleconferencing equipment. One room (accommodating 24 people)

[1]Magaly S. Cobian is former executive director of the center. The center is located at 85 Park Place, N.E., Atlanta, GA 30302.

[2]See, "Hearing Centres Survey", Guide to Regional Arbitration Centres & Institutions, 6 et seq. (2013).

includes a multiple screen array allowing teleconferencing for up to six separate locations.

Neutral Ground:

The facility offers a neutral venue. In addition, Georgia law favors arbitratio, and Atlanta is home to the United States Court of Appeals for the Eleventh Circuit, the most arbitration-friendly court in the US. In addition, the American Bar Association has recognized Georgia as the model jurisdiction for international trade in legal services. Based upon Georgia's relaxed rules governing practice by legal professionals from other countries, lawyers qualified to practice in any non-US jurisdiction may participate in arbitrations taking place in Georgia and have a right of audience in Georgia courts in matters pertaining to international arbitrations.

Furnishings and Comfort:

The facility's rooms include ample space for rolling bookshelves, which are provided by the facility on request. Tables are on wheels so that rooms can be arranged to suit parties and their needs. Chairs are comfortable with swivels and wheels. In addition to hearing rooms and breakout rooms, the facility includes a neutrals lounge and a small kitchen. The building's state-of-the-art climate control keeps the building comfortable in all seasons.

Natural Light:

Most hearing rooms have natural lighting afforded by at least one entire wall of windows. Three of these rooms overlook Woodruff Park, which is located near Five Points, the historical heart of Atlanta. Others look out on Atlanta's vibrant city life.

Pricing:

As of July 2021, the price schedule in USD is:

Seats 230 (1 room)	Seats 150 (1 room)	Seats 50 (3 rooms)	Seats 18 – 21 (2 rooms)	Seats 7-9 (3 rooms)	Seats 2-4 (4 rooms)
$800	$900	$300	$500	$300	$250

These prices compare favorably with prices at other international arbitration and mediation venues. In addition, prices related to business travel in Atlanta are generally below those in other major international commercial cities. The GSU College of Law is located within five to seven minutes' walking distance from a number of premier hotels, including the Candler Hotel, the Ritz Carlton, W, Westin, Hyatt Regency, Hilton and Marriott Marquis, and it is only a short cab ride from the Four Seasons and the St. Regis. A number of mid-priced hotels are also conveniently close to the college.

Staff Attentiveness:

Staff experience includes hospitality industry experience as well as familiarity with the practical needs of lawyers and arbitrators. Protocols and procedures for the center were developed to take into account best practices gleaned from visits to, and consultation with, the International Centre for Dispute Resolution in New York and the Hong Kong International Arbitration Centre, plus visits to the ICC, Maxwell Chambers, the New York International Arbitration Center and the Stockholm International Hearing Centre.

Location in City:

The GSU College of Law is located in the heart of downtown Atlanta and within easy walking distance of hotels, restaurants, shopping, parks, professional sports venues and museums. The college is a short block away from the Atlanta Streetcar's Woodruff Park stop, which connects to The King Center, the CNN Center, Centennial Olympic Park, the World of Coca-Cola, the National Center for Civil and Human Rights and the College Football Hall of Fame. The Jimmy Carter Presidential Library and Museum is roughly 15 minutes away by car. MARTA, Atlanta's rail system operated by the Metropolitan Atlanta Rapid Transportation Authority, is accessible through Peachtree Center Station, and is a two- to three-minute walk from the hearing facility.

The Hartsfield-Jackson International Airport–North America's busiest passenger airport–is roughly 20 to 30 minutes by car or taxi from the College of Law. Direct trains from Peachtree Center to the airport take 30 to 40 minutes.

See the following pages for a chart on how the Center stacks up.

How the Georgia State University Law Center for Arbitration and Mediation Stacks Up: 2015 Global Arbitration Review Survey Regarding Hearing Center Qualities

Quality		**Comments**
Hearing Rooms	√	Hearing rooms: • One room – capacity 230 people • One room – capacity 150 people • Three rooms – capacity 50 people • One rooms – capacity 21 people • One room – capacity 18 people • Three rooms – capacity 7-9 people • Four rooms – capacity 2-4 people
Breakout/additional facilities	√	Breakout and additional facilities: • Four dedicated breakout rooms adjacent to hearing rooms • Neutrals' lounge • Extra office and breakout rooms in College of Law building • World-class law library • Kitchen
User-friendly booking	√	Bookings accompanied by additional and personal services– all as a function of Atlanta's Southern Hospitality
Wi-Fi and IT	√	State-of-the-art technology and support: • Wi-Fi available throughout building • State-of-the-art teleconferencing available in hearing rooms • IT personnel on call
Neutral ground	√	Arbitration agreements expeditiously enforced as written through: • Atlanta-based United States Court of Appeals for the Eleventh Circuit–arguably the most arbitration-friendly federal court in US • Local business court with jurisdiction over international arbitration-related matters • Georgia International Arbitration Code aligned with UNCITRAL Model Law (2006) Hospitable environment for non-US lawyers: • Georgia designated by American Bar as model jurisdiction for international law practice • No impediment to non-US lawyers appearing in arbitrations and in court proceedings related to international arbitrations

How the Georgia State University Law Center for Arbitration and Mediation Stacks Up: 2015 Global Arbitration Review Survey Regarding Hearing Center Qualities

Quality		**Comments**
Hearing room charges/Atlanta business expenses	√	Hearing rooms priced below those in other international arbitration centers Hotel and restaurant costs less than other international commercial cities
Location in city	√	Superb location: • Heart of downtown Atlanta • Overlooking Woodruff Park, and convenient to hotels, restaurants and shopping • Two-minute walk to the Atlanta Streetcar with direct access to Centennial Olympic Park and The King Center • Three-minute walk to MARTA's Peachtree Center Station with direct access to airport • Three-minute walk to MARTA's Peachtree Center Station with direct access to airport • Airport 30 to 40 minutes by train and 20 to 30 minutes by car or taxi
Amenities	√	Excellent restaurants and catering available in a city which prides itself on "Southern Hospitality" Premier class hotels within ten-minute walk include: Candler, Hyatt, Hilton, Marriott, Ritz Carlton, Westin and W Parks, sports and museums nearby: • Ten minutes by foot or five minutes by streetcar to Centennial Olympic Park, CNN Center, National Center for Civil Rights and Human Rights, the College Football Hall of Fame, the World of Coca-Cola, Mercedes-Benz Stadium (home of the National Football League Atlanta Falcons and Major League Soccer's Altanta United FC), and Philips Arena (home of the National Basketball Association Atlanta Hawks) • Ten minutes by streetcar to The King Center • Fifteen-minute drive to The Jimmy Carter Presidential Library and Musuem and Georgia Institute of Technology
Other features	√	Excellent acoustics Hearing rooms, private and secure Individual workspaces can be locked

Chapter 5

Georgia State-wide Business Court Rules (2021)

E. Lynette Jimenez and George "Max" Miseyko[1]

As Georgia's first new statewide court in more than a century, the Georgia State-wide Business Court (GSBC or Court) was created to promote efficiency and predictability in complex litigation and to make Georgia more attractive for business. The GSBC is now a venue in which litigants throughout the state can bring their commercial disputes, including claims arising under the Georgia Arbitration Code and Georgia International Commercial Arbitration Code.

I. HISTORY

The GSBC arose from court reform efforts initiated by former Governor Nathan Deal. In March 2017, Governor Deal established the Court Reform Council (Council) to "make recommendations to improve efficiencies and achieve best practices for the administration of justice . . . ."2 After a subcommittee investigation into the feasibility and efficacy of a statewide business court, the Council's November 2017 "Final Report" recommended a constitutionally created statewide business court in Georgia.3 Citing the esteemed Delaware Chancery Court's model, the Council recognized that a specialized business court familiar with complex litigation could efficiently manage cases at lower costs, expedite issue resolution, and increase outcome predictability, ultimately "mak[ing] Georgia a more attractive and competitive venue for business."4

Implementing the Council's recommendation, however, required amending Article VI of the Georgia Constitution to create a new separate class of court. Following passage of the proposed constitutional amendment, House Resolution 993, by a two-thirds super-majority in the Georgia House and Senate, Georgia voters overwhelmingly approved the amendment in November 2018, thereby authorizing the creation of what would become the GSBC. The subsequent 2019 session of the Georgia General Assembly saw passage of House Bill 239 (the Enabling Legislation), effectively taking the GSBC from concept to reality.

In July 2019, Governor Brian Kemp nominated Walter W. Davis, then a partner at the law firm of Jones Day in Atlanta, to serve as the GSBC's inaugural judge. The Judiciary committees of both General Assembly chambers unanimously confirmed Judge Davis in August 2019, and he began his term January 1, 2020. Governor Kemp subsequently appointed Angie T. Davis, the longtime Clerk of Court for the State Court of Cobb County, to serve as the GSBC's first Clerk of Court. The Judiciary committees of the Georgia House and Senate unanimously confirmed her nomination in July 2020, and Ms. Davis was sworn in that August. The GSBC began accepting cases August 1, 2020.5

II. ENABLING LEGISLATION

The Enabling Legislation amended Title 15 of the Georgia Code (relating to courts) to establish the GSBC.6 It vests the GSBC with both equity and at-law jurisdiction in17 categories of business-related claims, including those arising under the Georgia Arbitration Code as well as the Georgia International Commercial Arbitration Code.7 In cases in which no monetary damages are sought, the GSBC may exercise equitable powers in any case falling within the 17 jurisdictional categories provided by statute;8 claims seeking damages, however, must meet a minimum amount in controversy requirement of $500,000.9 Along with specific carve-outs excluding certain claims (e.g., landlord-tenant disputes, foreclosures, and individual consumer claims),10 the statutory minimum amount in controversy

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1 E. Lynette Jimenez is the Georgia State-wide Business Court's Senior Staff Attorney. Before working at the Court, she served as the Director and Staff Attorney for the Metro Atlanta Business Case Division. George "Max" Miseyko is a second-year law student at the University of Georgia School of Law, prior to which he worked as a financial advisor at Merrill Lynch.

2 STATE OF GA. CT. REFORM COUNCIL, FINAL REPORT 2 (Nov. 20, 2017).

3 *Id*. at 17, 21–22.

4 *Id*. at 19.

5 O.C.G.A. § 15-5A-6(b).

6 Georgia's superior and state courts may still create or continue an existing business case division for its circuit, such as the Metro Atlanta Business Case Division. *See* GA. CONST. art. VI, § 1, ¶ I; O.C.G.A. § 15-5A-1.

7 O.C.G.A. § 15-5A-3(a)(1)(A)(i)-(xvii), (B).

8 O.C.G.A. § 15-5A-3(a)(1).

9 O.C.G.A. § 15-5A-3(a)(1)(B)(ii). However, the minimum amount in controversy for claims involving commercial real property is $1,000,000. See O.C.G.A. § 15-5A-3(a)(1)(B)(i).

10 *See* O.C.G.A. § 15-5A-3(b) (listing nine claim categories excepted from the GSBC's subject matter jurisdiction).

threshold allows the GSBC to focus on large, complex cases that stand to benefit from the GSBC's tailored case management approach. The Enabling Legislation also confers supplemental jurisdiction in any claim forming part of the same case or controversy as claims falling under a statutory jurisdictional category, giving the GSBC flexibility to adjudicate business-related disputes comprehensively.11

The Enabling Legislation provides three ways parties may bring a claim before the GSBC.12First, parties may file claims directly with the GSBC so long as the action is not pending in a superior or state court.13 Once a plaintiff files a complaint with the GSBC, any defendant may object to the filing within 30 days and request transfer of the lawsuit to any superior or state court in which venue is proper.14 The GSBC would then transfer the case to the appropriate superior or state court in which venue otherwise lies, unless the action involves a contract claim or dispute in which all parties are business entities and the contract specifies the GSBC is the proper forum.15

Second, parties to a case pending in a superior or state court may jointly remove the case to the GSBC.16 Removal requires consent by all parties and the filing of a petition for removal.17 The petition must be filed within 60 days after the original complaint was filed in the superior or state court.18

Finally, one or more parties may petition the GSBC to transfer an existing action from a superior or state court of competent jurisdiction.19 The petition to transfer must be filed with the GSBC within 60 days of service of the complaint, or within 60 days after the service of an amended pleading, motion, order, or other document providing notice to a party that the case is eligible for transfer to the GSBC.20 As with a direct filing, an opposing party has 30 days to object to the transfer.21 Upon a timely objection, the case would be transferred back to the superior or state court in which it was originally filed.

11O.C.G.A. § 15-5A-3(a)(2).
12Regardless of the method of entry, a party filing a case or seeking removal or transfer to the GSBC must pay a $3,000 filing fee. *See* O.C.G.A. § 15-5A-5(a). If the parties seek removal of the action by agreement, the filing fee may be equally allocated among all parties to the agreement seeking removal of the case. *See* O.C.G.A. § 15-5A-5(a)(2). If, however, the Court declines to exercise jurisdiction regarding an action, the filing fee will be reimbursed, less applicable administrative fees and expenses, if any. *See* Ga. State-wide Bus. Ct. R. 2-4(h).
13O.C.G.A. § 15-5A-4(a)(1).
14*Id.*
15*Id.*
16O.C.G.A. § 15-5A-4(a)(2).
17*Id.*
18*Id.*
19O.C.G.A. § 15-5A-4(a)(3).
20O.C.G.A. § 15-5A-4(a)(3)(A), (B).
21*Id.*

III. GSBC RULES

The Supreme Court of Georgia finalized the GSBC's uniform Rules (GSBC Rules) on May 13, 2021.22 Having operated according to the Uniform Rules of the Superior Courts on an interim basis, the GSBC Rules took effect August 1, 2021, and are tailored to address the demands of the complex cases before the GSBC, providing litigants bringing general business claims, nuanced commercial law questions, or data intensive cases involving numerous parties with individualized attention and expedited resolutions.

The GSBC Rules resulted from an intentional, deliberate process spanning nearly a year. An eight-member Rules Commission consisting of legal minds from throughout the state brought a diverse perspective to the rule-drafting process.23 The Rules Commission sought to consolidate the best practices from the Georgia Uniform Superior Court Rules, the Rules of the North Carolina Business Court, the Local Rules of the U.S. District Court of the Northern District of Georgia, and the Delaware Chancery Court Rules, among others, into a single set of rules focused on early case management, motions practice, and discovery.24 The case management process is designed to encourage parties to identify and implement case management techniques—including novel and creative ideas—most likely to support the efficient resolution of each case.25 Parties are encouraged to enter into a stipulated briefing schedule on motions, allowing them to fully present legal issues while ensuring their timely resolution.26 The democratized discovery process likewise prompts parties to work with the Court to develop a customized discovery plan that caters to the collective needs of the parties.27

IV. LITIGATING IN THE GSBC

The GSBC is located on the third floor of the Nathan Deal Judicial Center in Atlanta.28 Featuring a new, state-of-the-art courtroom and attorney conference rooms, the GSBC's facilities were designed to maximize comfort and convenience for litigants and lawyers who come before

22The approved GSBC Rules are appended at the end of this chapter.
23*Committee to Help Set Up Georgia Business Court*, ALBANY HERALD, Dec. 28, 2019, 2019 WLNR 38846887.
24Letter from the Hon. Walter W. Davis, J., State-wide Bus. Ct., to the Hon. Nels S. D. Peterson, J., Supreme Court of Georgia, (April 28, 2020) (on file with author).
25 Ga. State-wide Bus. Ct. R. 5-1(a).
26Ga. State-wide Bus. Ct. R. 7-2(a).
27*See e.g.*, Ga. State-wide Bus. Ct. R. 5-1, 5-3, 6-1.
28Dedicated on February 14, 2020, the Nathan Deal Judicial Center is the home of Georgia's three statewide courts—the Supreme Court of Georgia, the Court of Appeals of Georgia, and the GSBC—as well as the Office of Bar Admissions and the Reporter of Decisions. Directions, parking options, and building information are available on the GSBC's website: www.georgiabusinesscourt.com/directions/.

it—particularly those who may have traveled long distances.[29] Pre-trial proceedings can be held in the GSBC courtroom or another location convenient to the parties.[30] As with pre-trial proceedings, bench trials offer great flexibility in where and how they occur.[31] Jury trials under the GSBC are treated the same as jury trials in the state's other trial courts, with Judge Davis presiding in the jury trial in the venue in which the case could have been brought in the first instance.[32] Businesses benefit from both the GSBC's adaptability and the commitment that the same judge, well-versed in complex business disputes, will preside throughout a case.

In addition to the GSBC Rules (discussed supra in Part III), the Court's Standing Order outlines specific policies, procedures, and practices of the Court, including with respect to case administration and management, discovery, motions practice, and trial proceedings.[33]

Unless exempted, all filings in the GSBC must be electronically filed and served through the Court's electronic filing (e-file) system, PeachCourt.[34] Existing PeachCourt credentials can be used to file with the GSBC, and there is no fee to e-file documents into an existing GSBC case.[35]

Of particular relevance to out-of-state practitioners engaged in arbitration-related proceedings, attorneys seeking admission to appear before the GSBC pro hac vice must submit a verified application.[36] The application shall be served on all parties who have appeared in the case and on the Office of General Counsel of the State Bar of Georgia.[37] The GSBC has discretion about whether to grant an application for admission pro hac vice and to set the terms and conditions of such admission.[38]

V. ARBITRATION APPLICATIONS

The Enabling Legislation expressly grants the GSBC equity and at-law jurisdiction over claims arising under both the Georgia Arbitration Code (GAC) and the UNCITRAL-based Georgia International Commercial Arbitration Code (GIAC).[39] In this regard, litigants may petition the GSBC to enforce awards or to compel arbitration, among other potential claims arising from arbitration proceedings.

Any application to the Court for relief under the GAC or GIAC must be submitted in the same manner as other claims, i.e., any party may initiate a case in the GSBC through the filing of an application, parties to an existing case may petition to remove the case to the GSBC with the consent of all parties, or one or more parties may petition to transfer an existing case to the GSBC.[40] Any application to the GSBC must be in writing and state with particularity the grounds for the application and set forth clearly the relief sought.[41]

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[29] Additional information regarding the GSBC's facilities and technology is available on its website: www.georgiabusinesscourt.com/courtroom/.
[30] O.C.G.A. § 15-5A-2(c).
[31] O.C.G.A. § 15-5A-2(d), (e). Notably, the Enabling Legislation presumes a bench trial unless any party requests a jury trial. See O.C.G.A. § 15-5A-2(d).
[32] O.C.G.A. § 15-5A-2(d).
[33] The Standing Order is available on the GSBC's website: www.georgiabusinesscourt.com/rules.
[34] Ga. State-wide Bus. Ct. R. 5-1(a).
[35] For information, training, and other resources regarding e-filing and the PeachCourt system, visit: http://awesome.peachcourt.com.
[36] *See* Ga. State-wide Bus. Ct. R. 4-4(e).
[37] *Id.*
[38] *Id.*
[39] O.C.G.A. § 15-5A-3(a)(1)(A)(i)-(ii), (B).
[40] *See supra* Part II
[41] Ga. State-wide Bus. Ct. R. 7-1(a).

RULES OF THE GEORGIA STATE-WIDE BUSINESS COURT

AUGUST 2021

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RULES OF THE GEORGIA STATE-WIDE BUSINESS COURT

ARTICLE 1. SCOPE OF RULES

Rule 1-1. Scope of Rules and Construction

These rules shall govern all actions in the Georgia State-wide Business Court. They shall be construed and administered to secure the just, efficient, and economical resolution of all matters. It is not the intention, nor shall it be the effect, of these rules to conflict with the Constitution of the State of Georgia or substantive State law. These rules shall prevail over a Standing Order of the Business Court.

Rule 1-2. Title and Citation

These rules shall be known and may be cited as the Business Court Rules. Citations to these rules should follow the citation format BCR [article number-rule number] (e.g., BCR 1-2). The parts of each BCR shall be labeled and may be cited as follows:

"(a) Section.

(1) Subsection.

(A) Paragraph.

(i) Subparagraph."

Rule 1-3. Amendments

The Business Court may recommend to the Supreme Court changes and additions to these rules if such changes are necessary or desirable.

Rule 1-4. General Definitions

As used in these rules:

(1) The term "attorney" means any person admitted to practice in the Business Court or any person who is permitted, in accordance with law, to represent a party in an action pending in the Business Court. The term "counsel" has the same meaning as "attorney" in these rules.

(2) The terms "Business Court" or "Court" mean the Georgia State-wide Business Court and not a particular Judge of the Business Court.

(3) The term "Civil Practice Act" means the Georgia Civil Practice Act, OCGA § 9-11-1 et seq.

(4) The term "Clerk" means the Clerk of Court for the Business Court.

(5) The term "e-file" means the act of filing via the Business Court's electronic filing system.

(6) The term "filing" means a submission to the Clerk, either in paper or electronic form.

(7) The terms "Judge" or "Chief Judge" mean a Judge of the Georgia State-wide Business Court exercising jurisdiction with respect to a particular matter, action, or proceeding in the Business Court.

ARTICLE 2. COMMENCEMENT OF ACTION

Rule 2-1. Fees, Expenses, and Exceptions

(a) **Filing Fee**. Except as provided in section (c) of this rule or BCR 2-4 (h), payment of a filing fee in the amount of $3,000 shall be made contemporaneously with the filing of any action.

(b) **Other Fees**. Except as provided in section (c) of this rule or BCR 2-4 (h), each party or person serving as an attorney for a party in a Court proceeding shall pay any fee required by the Court. A fee schedule shall be posted on the Court's website.

(c) **Indigence Exception**. A person who is unable to pay a fee in section (a) or (b) of this rule because of indigence may obtain the necessary information on the Court's website or at the Clerk's office to apply to proceed in forma pauperis.

Rule 2-2. Certificate of Interested Persons and Corporate Disclosure Statement

(a) **Purpose and Scope**. To enable a Judge of the Court to evaluate possible disqualification or recusal, counsel for all parties shall, at the time of first appearance, file with the Clerk a "Certificate of Interested Persons and Corporate Disclosure Statement" (the "Certificate") in the form described in section (c) of this rule. Counsel may petition the Court for permission to file the Certificate in camera or under seal. It shall be in the Court's

discretion as to whether to grant or deny such petition.

(b) **Duties of Counsel**. Each attorney shall have a continuing duty to notify the Court of any additions to or deletions from the Certificate.

(c) **Form of Certificate**. The Certificate shall be signed and dated, and shall specifically contain a full and complete list of:

(1) each party to the action, including a parent corporation or publicly held corporation that owns ten percent or more of the stock of a party;

(2) all other persons, associations, firms, partnerships, or corporations having either a financial interest in, or other interest that could be substantially affected by, the outcome of the particular case; and

(3) each person serving as an attorney for the parties in the proceeding.

Rule 2-3. Venue

(a) **Direct Filing**. For a case directly filed with the Business Court, venue shall be as provided in OCGA § 15-5A-2 (e) (1).

(b) **Removed or Transferred Action**. For a case removed or transferred from a superior or state court, venue shall be as provided in OCGA § 15-5A-2 (e) (2).

(c) **By Agreement**. If all parties agree on the proper venue, venue shall be as provided in OCGA § 15-5A-2 (e) (3).

(d) **Trial**. Absent agreement of the parties, a trial of a case before the Court shall take place in the county where venue is proper pursuant to OCGA § 15-5A-2 (e).

Rule 2-4. Direct Filing, Removal, Transfer, Objection to Jurisdiction, Return of Filing Fee, and Related Orders

(a) **Direct Filing, Removal, and Transfer**. An action may be brought to the Business Court by one of three methods: (1) the direct filing of a pleading with the Business Court; (2) the filing of a Petition for Removal of an existing action from a superior or state court by agreement of all parties; or (3) the filing of a Petition to Transfer an existing action from a superior or state court by one or more parties, but not all parties. Methods (1), (2), and (3) in this section shall be governed by the procedures in sections (c)-(j) of this rule.

(b) **Objection to Jurisdiction**. A party who objects to having an action proceed in the Business Court may file an Objection to Jurisdiction, together with a proposed order, seeking the transfer of the case to a superior or state court in which venue is otherwise proper.

(c) **Direct Filing – Generally**. Actions directly filed with the Business Court, and objections to the same, shall be governed by OCGA § 15-5A-4 (a) (1). A defendant who objects to having an action proceed in the Business Court shall file an Objection to Jurisdiction, together with a proposed order, seeking the transfer of the case to a superior or state court in which venue is otherwise proper.

(d) **Direct Filing – Forum Selection Clause**. A forum selection clause specifically identifying the Business Court shall be enforced to the extent it is consistent with the requirements of OCGA § 15-5A-4 (a) (1) and not otherwise invalid under State law.

(e) **Removal of Existing Actions by Agreement**. The removal of an existing action pending in superior or state court by agreement of the parties shall be governed by OCGA § 15-5A-4 (a) (2). A party seeking the removal of an action from superior or state court to the Business Court shall file a Petition for Removal containing a short and plain statement of the grounds for removal and all parties' agreement to remove the action, together with a copy of all process, pleadings, and orders served upon each party in such action. The Business Court shall determine whether to grant or deny the petition after such documents are received.

(f) **Transfer of Existing Actions**. Existing actions transferred to the Business Court from a superior or state court, and objections to such transfer, shall be governed by OCGA § 15-5A-4 (a) (3). A party seeking to transfer an existing action from a superior or state court shall file with the Business Court a Petition to Transfer containing a short and plain statement of the grounds for transfer, together with a copy of all process, pleadings, and orders served upon each party in such action. A party objecting to a Petition to Transfer shall file an Objection to Jurisdiction within 30 days of the filing of the Petition to Transfer.

(g) **Further Pleading and Answer**. If the Court grants a party's Petition for Removal (see OCGA § 15-5A-4 (a) (2)) or Petition to Transfer (see OCGA § 15-5A-4 (a) (3)), repleading shall not be required unless the Court orders otherwise. A party who did not file a responsive pleading prior to the filing of a Petition for Removal or Petition to Transfer shall file such pleading within 30 days of the date of the Court's order granting such petition.

(h) **Filing Fee Returned**. If the Court declines to exercise jurisdiction over an action, the Court shall direct the Clerk to reimburse the filing party or parties the full amount of the filing fee, less applicable administrative fees and expenses, if any. See sections
(a) and (b) of BCR 2-1.

(i) **Additional Orders and Superior or State Court Records**. In a case removed or transferred from a superior or state court, the Court may issue all necessary orders and process to bring before it all proper parties and court records. Unless otherwise ordered by the Court, the parties may stipulate to the particular records and proceedings from the superior or state court that will be filed with the Clerk or, alternatively, may procure and file a certified copy of all such records and proceedings with the Clerk. If a party is entitled to copies of the records and proceedings in an action in superior or state court and the clerk of such court does not timely deliver certified copies thereof after receiving a timely request and payment of fees for the same, the Court may direct such records and proceedings be supplied by a party by affidavit or otherwise. Thereupon such proceedings, trial and judgment may be had and all process awarded as if certified copies had been filed in the Court in the first instance.

(j) **Notice to Superior or State Courts**. Promptly after the filing of a Petition for Removal or Petition to Transfer under this article, the party seeking removal or transfer shall file a Notice of Removal or Notice of Transfer, as applicable, with the clerk of the superior or state court where the action was then pending. No further action shall proceed unless and until the Court declines to exercise jurisdiction over such action and, if applicable, transfers the action back to the superior or state court from where it was removed or transferred.

ARTICLE 3. FILING, PROCESSING, AND SERVICE

Rule 3-1. Mandatory Electronic Filing

Except as otherwise specified in these rules, all filings in the Court shall be made electronically through the Court's e-filing system, and such filings shall comply with statewide minimum standards and rules for electronic filing adopted by the Judicial Council of Georgia. Any request to be excused from the requirements of this rule must be timely presented to the Court and demonstrate good cause therefor. Instructions for filing documents through the Court's e-filing system shall be made available on the Court's website.

Rule 3-2. Self-Represented Litigants

To protect and promote access to the Court, this Court shall reasonably accommodate self-represented parties by accepting and then converting and maintaining in electronic form paper pleadings or other documents

received from self-represented filers.

Rule 3-3. User Account and E-mail Address

Upon first appearing in a case in this Court and unless excused from using the e-filing system, all parties or their counsel shall promptly register for a user account on the Court's e-filing system using a valid e-mail address and shall be responsible for maintaining a functioning e-filing user account and e-mail address. Except as otherwise specified in these rules, correspondence from the Court and electronic service shall be sent to the e-mail address associated with the party's user account.

Rule 3-4. Documents that May be Filed Electronically

Any document may be electronically filed in lieu of paper by the Court, the Clerk, and any registered filer unless electronic filing is expressly prohibited by law, these rules, or Court order. Electronic filing is expressly prohibited for documents that, according to law, must be filed under seal or presented to the Court in camera, or for documents to which access is otherwise restricted by law, these rules, or Court order. Original depositions are not "sealed documents" within the meaning of this rule and may be filed electronically.

Rule 3-5. Force and Effect

Electronically filed court records have the same force and effect and are subject to the same right of public access as are documents filed by traditional means.

Rule 3-6. Electronic Signatures

(a) **Form**. All filings shall be signed using an electronic signature (unless the filing party has been excused from using the e-filing system). For purposes of this rule, an electronic signature means a person's typed name preceded by the symbol "/s/" or a scanned and legible ink signature. An electronically filed document is deemed signed by the registered filer submitting the document as well as by any other person who has authorized signature by the filer. By electronically filing the document, the filer verifies that the signatures are authentic. An electronic signature shall serve as a signature for purposes of the Civil Practice Act.

(b) **Multiple Signatures**. A filing submitted by multiple parties shall bear the electronic signature of at least one attorney for each party that submits the filing. By filing a document with multiple electronic signatures, the attorney whose user account is used to file the document shall certify that each signatory has authorized the use of his or her signature.

(c) **Form of Signature Block**. Every signature block shall contain the signatory's name, State Bar number (if applicable), physical address, phone number, and e-mail address.

Rule 3-7. Time of Filing and Service

(a) **Time Zone**. A party shall file all motions, briefs, or other documents required to be filed before midnight Eastern Time to be considered timely filed on that day, unless otherwise agreed to by the parties or ordered by the Court. The foregoing shall also apply to service of all other documents required to be exchanged, but not filed, during litigation (e.g., discovery responses), unless otherwise agreed to by the parties or ordered by the Court.

(b) **Time of Filing**. An electronic document is presumed filed upon its receipt by the Court's electronic filing system, which shall automatically confirm the fact, date, and time of receipt to the filer. Absent evidence of such confirmation, there is no presumption of filing.

Rule 3-8. Notice of Filing

When a document is filed and accepted by the Clerk, the Court's e-filing system shall send an e-mail notifying the filing party that the filing has been accepted and docketed. A filing shall not be complete until it is accepted and stamped by the Clerk. A document filed electronically shall be deemed filed on the date and at the time that it is submitted to the Court in the e-filing system unless the filing is rejected. If for any reason the e-filing system fails, the filing party shall follow the procedures in BCR 3-17.

Rule 3-9. Notice and Entry of Orders, Judgments, and Other Matters

Except as otherwise specified in these rules, the Court shall transmit all Court-issued documents through the e-filing system or case management system or both, which, in turn, shall send a notice to all parties at the e-mail address associated with the party's e-filing user account. Such notice shall constitute entry and service of the same for purposes of the Civil Practice Act. If a self-represented litigant is permitted to forgo use of the e-filing system under these rules, the Court shall deliver a paper copy of all Court correspondence and filings to that self-represented litigant by alternative means.

Rule 3-10. Service

(a) **Electronic Service**. E-filed documents may be electronically served through the Court's e-filing system. After a filing has been accepted by the Clerk, a notice of statutory electronic service will be generated by the e-filing system and sent to the individuals registered with the e-filing system to receive electronic service and the individuals selected by the filer to receive electronic service. Such notice shall constitute adequate service under the Civil Practice Act with respect to the filed document. Although permitted, service by other means authorized under the Civil Practice Act shall not be required unless the party served is a self-represented litigant who has not yet established a user account or who has been excused from using the e-filing system.

(b) **Service of Non-Filed Documents**. When a document must be served but not filed, the document shall be served by e-mail unless: (1) the parties have agreed to a different method of service; or (2) another manner of service is required under these rules or by Court order. Service by e-mail under this rule constitutes adequate service under the Civil Practice Act.

(c) **Service on a Self-Represented Litigant**. All documents filed with the Court shall be served upon a self-represented litigant by any method allowed by the Civil Practice Act unless the Court or these rules direct otherwise.

Rule 3-11. Formats, Margins, Case Captions, and Numbering

(a) **Format – Generally**. Pleadings, motions, and other documents presented to the Court for filing shall be computer processed, typed, or hand-printed on one side of the page only; double-spaced between lines; and free of erasures and interlineations.

(b) **Format – Fonts and Footnotes**. Computer-processed documents shall be prepared in one of the following fonts: Times New Roman (at least 14 point), Courier New (at least 12 point), or Book Antiqua (at least 13 point). Footnotes, headings, and indented quotations may be single-spaced.

(c) **Margins**. All pleadings, motions, and other documents shall be prepared with a margin of at least one inch at the right, left, top, and bottom of each page.

(d) **Paper Filings**. All paper documents filed with the Court shall be presented for filing on white opaque paper of good quality, eight and one-half inches by 11 inches in size, with writing appearing only on one side of the page. Paper filings shall not be accepted absent a prior order of the Court.

(e) **Case Captions and Case Numbers**. All documents presented for filing shall bear a caption that sets out the exact nature of the document filed. Generalized captions, such as "Responsive Pleadings," shall not be accepted for filing. Upon filing, all actions filed in the Court shall be assigned a case number designating the last two digits of the year, the Court's initials

(i.e., "GSBC"), and the numerical sequence in which the case was filed (e.g., 21-GSBC-0000). After a case number is assigned, all documents presented to the Clerk for filing and all case-related correspondence shall include the assigned case number. Any document presented for filing that does not reflect the complete case number described in this rule shall not be accepted for filing.

(f) **Numbering**. All pages shall be numbered consecutively at the bottom center of the page. Attachments to pleadings shall be numbered consecutively within the attachment.

Rule 3-12. Filing of Transcripts

Transcripts in all matters shall be filed as provided by law. The Clerk shall not be required to record or preserve transcripts in a bound book or on microfilm.

Rule 3-13. Filing Requirements

Complaints or other initial pleadings presented to the Clerk for filing shall be filed only if accompanied by the proper filing fee, administrative fee, or affidavit of indigence; and, if applicable, any other form required by law or rule to be completed by the parties. Judgments, settlements, dismissals, and other dispositions presented to the Clerk for filing shall be filed only if accompanied by a case disposition form (see BCR 19-4).

Rule 3-14. Case Initiation Questionnaire

When filing a pleading to initiate a proceeding in the Court, the filing party shall complete a Case Initiation Questionnaire in the e-filing system. By submitting case information through the e-filing system, the filing party affirms that the information is complete and accurate to the best of the filer's knowledge.

Rule 3-15. Return of Service

Entry of return of service shall be filed with the Clerk.

Rule 3-16. Procedures for Handling Misfiled, Deficient, or Defective E-Filings

Upon physical acceptance and review of an e-filing, and discovery that it was misfiled or is otherwise deficient or defective, the Clerk shall as soon as practicable provide the e-filer notice of the deficiency or defect and an opportunity to cure or, if appropriate, reject the filing altogether. In any case, the Clerk shall retain a record of the action taken by the Court in response, including the date, time, and reason. Such records shall be maintained until a case is finally concluded, including the exhaustion of all appeals. Absent a Court order to the contrary, such records shall be accessible to the parties and the public upon request without the necessity for a subpoena.

Rule 3-17. Procedures if E-Filing System Appears to Fail and Anticipated Difficulties

(a) If electronic filing or service is prevented or delayed because of a failure of the e-filing system, the Court will enter appropriate relief, such as the allowance of filings nunc pro tunc (i.e., having retroactive effect) or the provision of extensions to respond.

(b) If a person attempts to e-file a document, but (1) the person is unable for technical reasons to transmit the filing to the Court; (2) the document appears to have been transmitted to the Court, but the person who filed the document does not receive an e-mail confirming the filing has been accepted; or (3) some other technical reason prevents the person from filing the document, then the person attempting to file the document shall e-mail the document for which filing attempts were made to the Clerk at filinghelp@gsbc.us, copying all parties of record and including a brief explanation of the relevant technical failure and the date and time of such failure. If timely delivered in accordance with BCR 3-7 (as evidenced by the time and date stamp on the e-mail), the e-mail to filinghelp@gsbc.us shall satisfy all applicable requirements of this article.

(c) If a party anticipates difficulties or actually experiences difficulties with filing voluminous materials (e.g., exhibits to motions or transcripts) using the Court's e-filing system, then counsel should proactively contact the Court for assistance.

Rule 3-18. Sensitive Information

(a) In accord with OCGA § 9-11-7.1 and to promote public electronic access to court records while also protecting sensitive information, unless otherwise ordered by the Court, all documents filed in the Court shall include only the following when listing certain sensitive information:

(1) The last four digits of a social security number.

(2) The last four digits of a taxpayer identification number.

(3) The last four digits of a financial account number.

(4) The year of an individual's birth.

(b) Counsel and the parties shall also limit, if possible, public disclosure of non-public residential addresses, phone numbers, and e-mail addresses belonging to another party, a witness, or a potential witness.

(c) The responsibility for omitting or redacting personal identifiers rests solely with counsel and the parties. The Clerk will not review filings for compliance with this rule.

(d) A party having a legitimate need for sensitive information may obtain it through the ordinary course of discovery, in accordance with Article 5 of the Civil Practice Act, without further order of the Court.

(e) This rule shall not create a private right of action against the Business Court, the Clerk, counsel for any party, or any other individual or entity that may have erroneously included sensitive identifying information in a filed document that is made available electronically or otherwise.

(f) This rule shall not amend or modify any requirements in Article 15 (Access to Court Records) of these rules.

ARTICLE 4. ATTORNEY APPEARANCE, WITHDRAWAL, AND DUTIES

Rule 4-1. Prohibition on Ex Parte Communications

Judges shall not initiate, permit, or consider ex parte communications, or consider other communications made to them outside the presence of the parties or their lawyers, concerning a pending proceeding or impending matter, except as permitted under the Georgia Code of Judicial Conduct and as otherwise authorized by law or by rule.

Rule 4-2. Entry of Appearance and Pleadings

(a) An attorney shall not appear before the Court until such attorney has entered an appearance by filing a signed entry of appearance form or by filing a signed pleading in a pending action. The entry of appearance form or pleading shall state —

(1) the style and number of the case;

(2) the identity of the party for whom the appearance is made; and

(3) the name, assigned State Bar number, current office address, telephone number, and e-mail address of the attorney (the attorney's e-mail address shall be the same e-mail address registered with the State Bar of Georgia).

(b) The filing of a pleading shall contain the information required in

section (a) of this rule and shall constitute an appearance by each person signing the pleading, unless otherwise specified by the Court. The filing of a signed entry of appearance form alone shall not be a substitute for the filing of an answer or any other required pleading.

(c) Any attorney who has been admitted to practice in this State but fails to maintain active membership in good standing with the State Bar of Georgia and makes or files any appearance or pleading in the Court while not in good standing shall be subject to the contempt powers of the Court.

Rule 4-3. Attorney Withdrawal

(a) An attorney who wishes to withdraw as counsel for any party after appearing of record in any matter pending before the Court shall submit a written request to the Court with a proposed order permitting such withdrawal. The request shall state that the attorney has given written notice to the affected client setting forth the attorney's intent to withdraw, that ten days have expired since the notice, and that there has been no objection to withdrawal or the withdrawal is with the client's consent. The request to withdraw shall be granted unless, in the Judge's discretion, doing so would delay the trial or otherwise interrupt the orderly operation of the Court or be manifestly unfair to the client.

(b) The attorney requesting an order permitting withdrawal shall give notice to opposing counsel. A notice of withdrawal shall be filed with the Clerk and served upon the withdrawing attorney's client personally or at that client's last known physical mailing and e-mail addresses. The notice of withdrawal shall also contain at a minimum all the following information:

(1) The attorney wishes to withdraw.

(2) The Business Court retains jurisdiction over the action.

(3) The client has the burden of keeping the Court informed of the address where notices, pleadings, or other documents may be served.

(4) The client has the obligation to prepare for trial or hire new counsel to prepare for trial when the trial date has been scheduled.

(5) The client has the obligation to actively participate in the discovery process (e.g., responding to discovery requests) and to respond to all motions filed in the case.

(6) If the client fails or refuses to meet the burdens described in this rule, the client may suffer adverse consequences.

(7) Dates of any scheduled proceedings (including trial) and that the holding of scheduled proceedings will not be affected by the withdrawal of counsel.

(8) Service of notices may be made upon the client at the client's last known mailing address.

(9) If the client is a corporation, that a corporation may only be represented in the Court by an attorney, that an attorney must sign all pleadings submitted to the Court, and that a corporate officer may not represent the corporation in the Court unless that officer is also an attorney licensed to practice law in the State of Georgia or is otherwise permitted by law.

(10) Unless the withdrawal is with the client's consent, that the client has a right to object within ten days of the date of the notice. The withdrawing attorney must also state with specificity when the tenth day will occur.

(c) An attorney requesting to withdraw shall prepare a written notification certificate stating that the notification requirements have been met, the manner by which notification was given to the client, and the client's last known mailing and e-mail addresses and telephone number. The notification certificate shall be e-filed in accordance with the requirements of BCR 3-1. The attorney seeking withdrawal shall also provide a copy to the client by the most expedient means available due to the strict ten-day time restraint (e.g., e-mail, hand delivery, or overnight mail). After the entry of an order permitting withdrawal, the client shall be notified by the withdrawing attorney of the effective date of the withdrawal. After the effective date of the withdrawal, all notices or other documents shall be served on the party directly until new counsel enters an appearance.

(d) If an attorney has already filed an entry of appearance and the client wishes to substitute counsel, it shall not be necessary for the former attorney to comply with the requirements in sections (a), (b), and (c) of this rule. Instead, the new attorney shall file with the Clerk a notice of substitution of counsel signed by the new attorney. The notice of substitution of counsel shall contain the style of the case and the name, mailing address, e-mail address, telephone number, and State Bar number of the substitute attorney. The new attorney shall e-file a copy of the notice with the Court (as required by BCR 3-1) and serve a copy of such notice on the former attorney and all other parties or their counsel. No further action shall be required by the former attorney to withdraw from representing the party. The substitution shall not delay any proceeding or hearing in the case.

Rule 4-4. Admission Pro Hac Vice

(a) **Definitions**. As used in this rule:

(1) The term "client" means a person or entity for whom the Domestic Lawyer or Foreign Lawyer has rendered services or by whom the lawyer has been retained prior to the lawyer's performance of services in this State.

(2) The term "Domestic Lawyer" means a person not admitted to practice law in this State but who is admitted in another state or territory of the United States or the District of Columbia and not disbarred or suspended from practice in any jurisdiction.

(3) The term "Foreign Lawyer" means a person authorized to practice law by the duly constituted and authorized governmental body of any foreign nation but not authorized by the Supreme Court of Georgia or its rules to practice law in this State and not suspended from practice in any domestic or foreign jurisdiction.

(4) The term "Georgia Counsel" refers to an active member in good standing of the State Bar of Georgia who sponsors an applicant's pro hac vice request.

(5) The term "Office of General Counsel" means the Office of General Counsel of the State Bar of Georgia.

(6) The term "this State" refers to the State of Georgia.

(b) **Eligibility**. A Domestic Lawyer or Foreign Lawyer shall be "eligible" for admission pro hac vice if that lawyer —

(1) lawfully practices solely on behalf of the lawyer's employer and its commonly owned organizational affiliates, regardless of where such lawyer may reside or work;

(2) neither resides nor is regularly employed at an office in this State; or

(3) resides in this State but (A) lawfully practices from offices in one or more other states and (B) practices no more than temporarily in this State, whether pursuant to admission pro hac vice or in other lawful ways and, in the case of a Foreign Lawyer, is and remains in the United States in lawful immigration status.

(c) **Admission of Domestic Lawyer or Foreign Lawyer**. The Court may, in its discretion, admit an eligible Domestic Lawyer or Foreign Lawyer retained to appear in a particular proceeding pending before the Court to

appear pro hac vice as counsel in that proceeding.

(d) **Role of Georgia Counsel**. When a Domestic Lawyer or Foreign Lawyer appears for a client in a proceeding before this Court, either in the role of co-counsel of record with Georgia Counsel, or in an advisory or consultative role, the Georgia Counsel who is co-counsel or counsel of record for the client in the proceeding remains responsible to the client and responsible for the conduct of the proceeding before this Court. It is the duty of the Georgia Counsel to advise the client of the Georgia Counsel's independent judgment on contemplated actions in the proceeding if that judgment differs from that of the Domestic Lawyer or Foreign Lawyer. Georgia Counsel shall receive service of all filings in the action. Georgia Counsel shall also attend in person all proceedings before the Court, unless the Court waives this requirement in advance of such proceedings. Attendance of Georgia Counsel at depositions shall not be required unless otherwise ordered by the Court.

(e) **Application Procedures**. The application procedures to appear pro hac vice before the Court shall be as follows:

(1) **Verified Application**. An eligible Domestic Lawyer or Foreign Lawyer seeking to appear in a proceeding pending in the Court as counsel pro hac vice shall file a verified application with the Court. The application shall be served on all parties who have appeared in the case and the Office of General Counsel. The Court has the discretion to grant or deny the application summarily if there is no opposition.

(2) **Objection to Application**. The Office of General Counsel or a party to the proceeding may file an objection to the application or seek the Court's imposition of conditions to the application being granted. The Office of General Counsel or an objecting party shall file with its objection information establishing a factual basis for the objection. The Office of General Counsel or objecting party may seek denial or modification of the application. If the application has already been granted, the Office of General Counsel or objecting party may move that the pro hac vice admission be withdrawn.

(3) **Standard for Admission and Revocation of Admission**. The Court shall have discretion as to whether to grant an application for admission pro hac vice and to set the terms and conditions of such admission. An application ordinarily should be granted unless the Court or Office of General Counsel finds reason to believe that —

(A) such admission may be detrimental to the prompt, fair, and efficient administration of justice;

(B) such admission may be detrimental to a legitimate interest of a party to the proceedings other than a client the applicant proposes to represent;

(C) such admission may place a client the applicant proposes to represent at risk of receiving inadequate representation and such client cannot adequately appreciate that risk;

(D) the applicant has engaged in such frequent appearances as to constitute the regular practice of law in this State; or

(E) the applicant has previously filed or appeared in an action in a court of this State without securing prior approval pursuant to the applicable court rules.

(4) **Revocation of Admission**. Admission to appear as counsel pro hac vice in a proceeding may be revoked for any reason for revocation of admission listed in subsection (3) of section (e) of this rule.

(5) **Required Information, Fees, and Exemption**. The required information, application fee, annual fee, and exemption for admission pro hac vice to the Court shall be as follows:

(A) **Required Information**. An application shall state the information listed in the pro hac vice materials available on the Court's website. The applicant may also include any other matters supporting admission pro hac vice.

(B) **Application Fee**. An applicant for permission to appear as counsel pro hac vice under this rule shall pay a one-time, non-refundable fee of $75 for each application for pro hac vice admission to this Court payable to the State Bar of Georgia at the time of filing the application.

(C) **Annual Fee**. Any Domestic Lawyer or Foreign Lawyer who has been granted admission pro hac vice before any court of this State shall pay an annual fee of $200, regardless of the number of pro hac vice admissions, upon the first such admission, and on or before January 15 of each calendar year thereafter for so long as the Domestic Lawyer or Foreign Lawyer is admitted pro hac vice before any court of this State. The annual fee shall be payable to the State Bar of Georgia.

(D) **Exemption for Pro Bono Representation**. An applicant shall not be required to pay the fees established in paragraphs (B) and (C) of this subsection if: the applicant (i) will not charge an attorney fee to his or her client; and (ii) is employed or associated with a pro bono project or nonprofit legal services organization in a civil case involving a client of such programs.

(f) **Authority of the Office of General Counsel and Business Court over an Applicant, Domestic Lawyer, or Foreign Lawyer**. The authority of the Office of General Counsel and Business Court regarding the application of ethical rules, discipline, contempt, and sanctions to an applicant, Domestic Lawyer, or Foreign Lawyer shall be as follows:

(1) While an application for admission pro hac vice is pending, and upon the grant of such application, a Domestic Lawyer or Foreign Lawyer shall submit to the authority of the Business Court and the Office of General Counsel for all conduct relating in any way to the proceeding in which the Domestic Lawyer or Foreign Lawyer seeks to appear. The applicant or a Domestic Lawyer or Foreign Lawyer who has obtained pro hac vice admission in a proceeding shall submit to this authority for all of his or her conduct —

(A) within this State while the proceeding is pending; and

(B) arising out of or relating to the application or the proceeding.

(2) An applicant, Domestic Lawyer, or Foreign Lawyer who has pro hac vice authority for a proceeding may be disciplined in the same manner as an in-State lawyer.

(3) The authority of the Business Court and Office of General Counsel includes, without limitation, the authority to —

(A) enforce these rules and the State Bar of Georgia's Rules of Professional Conduct;

(B) issue contempt and sanctions orders;

(C) enforce the rules of other courts; and

(D) mandate compliance with other court policies and procedures.

(g) **Familiarity with Rules**. An applicant for admission pro hac vice in matters before the Business Court shall become familiar with the State Bar of Georgia's Rules of Professional Conduct, these rules, and any standing order of the Court.

(h) **Temporary Practic**e. An out-of-state lawyer will be eligible for admission pro hac vice, or to practice in another lawful way, only on a temporary basis.

(i) **Conflicts**. The conflicts of the Domestic Lawyer or Foreign Lawyer shall not delay any deadline, deposition, mediation, hearing, or trial in connection with the case for which admission has been granted by the Court.

(j) **Federal Proceedings**. This rule shall not govern proceedings before any federal court or federal agency located in this State, unless that body adopts or incorporates this rule.

Rule 4-5. Entry of Appearance and Withdrawal by Member or Employee of Law Firm or Professional Corporation

The entry of an appearance or request for withdrawal by an attorney who is a member or an employee of a law firm or professional corporation shall relieve the other members or employees of the same law firm or professional corporation from the necessity of filing additional entries of appearance or requests for withdrawal in the same action.

Rule 4-6. Duty to Notify of Representation and Related Changes

(a) **Notice of Representation**. In any matter pending in the Court, promptly upon agreeing to represent a client, an attorney shall provide written notice to the Clerk and opposing counsel of record of —

(1) the fact of such representation;

(2) the name of his or her client;

(3) the applicable case caption and civil action number; and

(4) the attorney's firm name, mailing address, e-mail address, and telephone number.

(b) Notice of Changes. An attorney shall provide written notice to the Clerk and each opposing attorney promptly upon any change of representation, name, office address, e-mail address, or telephone number.

Rule 4-7. Duty to Notify of Related Cases

An attorney shall promptly advise the Court any time he or she is counsel in an action that —

(1) the attorney knows is or may be related to another action, either previously or presently pending before the Business Court or any other court; and

(2) involves some or all of the same subject matter, or some or all of the same factual issues.

Rule 4-8. Duty to Notify of Previous Presentation to Another Judge

An attorney shall not present to the Business Court any matter previously presented to another court of this State without first advising the Business Court of this fact and the result of such previous presentation.

Rule 4-9. Binding Authority of Oral Agreements

Attorneys of record shall have apparent authority to enter into agreements on behalf of their clients in actions pending in the Court. The Court shall enforce oral agreements entered into by counsel if such oral agreements are sufficiently established.

ARTICLE 5. CASE MANAGEMENT

Rule 5-1. Case Management Meeting

(a) **General Principles**. The case management process described in this rule should be applied in a flexible and case-specific manner. This article is designed to encourage parties to identify and to implement the case management techniques — including novel and creative ideas — that are most likely to support the efficient resolution of the case.

(b) **Timing**. Except as provided in section (c) of this rule or otherwise ordered by the Court, counsel shall hold a Case Management Meeting within 30 days of all named defendants answering, or in the case of a petition to transfer or remove, within 30 days of the order granting the petition.

(c) **Objection to Jurisdiction Exception**. If a party files an Objection to Jurisdiction in accordance with BCR 2-4 (b), the parties shall not be required to hold a Case Management Meeting until the Court issues an order on such objection, at which time the parties will receive further direction from the Court.

(d) **Procedures**. The Case Management Meeting may be held by telephone, video conference, in person, or some combination thereof. Counsel for the first named plaintiff is responsible for contacting all other counsel of record and scheduling the Case Management Meeting. A party may, by motion, request that the Court alter the process or schedule for the Case Management Meeting, Case Management Report, or both. Any motion for relief under this article shall be made in accordance with the requirements of Article 7 of these rules. The Court may schedule a status conference in advance of the Case Management Meeting if requested by a party or if circumstances otherwise warrant a status conference.

(e) Topics. Unless the Court orders otherwise, the Case Management Meeting shall, at minimum, cover the following topics:

(1) The nature and basis of each party's claims and defenses and the possibilities of settling the case, including by early mediation (see subsection (9) of this section).

(2) Any initial motions that a party might file and whether certain issues may be presented to the Court for early resolution.

(3) The discovery topics, issues, and requirements described in Article 6 of these rules.

(4) A proposed deadline for amending pleadings, adding parties, or both.

(5) A proposed deadline for filing dispositive motions.

(6) A proposed trial date.

(7) Whether a protective order is needed.

(8) Whether any law other than Georgia law might govern any aspect of the case and, if so, what law and what aspect of the case.

(9) Each party's view on the timing of mediation, including any plans for early mediation, a mediation deadline, and each agreed-upon mediator.

(10) Whether periodic Case Management Conferences with the Court (see BCR 5-3) would be beneficial and, if so, the proposed frequency of such conferences.

(11) Whether a Case Management Conference should be transcribed.

(12) Whether a matter might be appropriate for a special master.

(13) Whether client attendance at the Case Management Conference would be beneficial or detrimental.

(14) Whether areas of disagreement exist among the parties that need to be resolved at the Case Management Conference.

(f) Discovery Management. These rules envision a full discussion at the Case Management Meeting of the discovery topics, issues, and require-

ments described in Article 6 of these rules. If, because of the circumstances of the case, the parties need additional time after the Case Management Meeting to complete their discussion of discovery, then the parties should arrange to have additional meetings, as needed, on any discovery issues that remain to be discussed.

(g) Relief from Requirements. Parties may seek relief from, or modifications of, the requirements of this rule, including BCR 5-1 (d), by petitioning the Court in the manner outlined in BCR 7-3 (a) (3). Such petition must be filed at least seven days prior to the deadline for holding the Case Management Meeting.

Rule 5-2. Case Management Report

(a) The parties shall jointly file a Case Management Report no later than ten days after the date of the first Case Management Meeting.

(b) Counsel for the first named plaintiff shall circulate the initial draft of the Case Management Report incorporating the views of all other counsel to prepare for the finalizing and filing of the report. The Case Management Report shall state whether the parties have completed their discussion of the discovery topics, issues, and requirements described in Article 6 of these rules and, if they have not, counsel shall identify the issues that remain to be discussed and the likely date a second discovery meeting will occur. If the parties participate in additional discovery meetings that materially impact case management at any time during the case, then the parties shall promptly file a joint supplement to the Case Management Report.

(c) Unless otherwise ordered by the Court, a party that is not served with process until after the Case Management Meeting may file a proposed supplement to the Case Management Report within ten days after the party files a responsive pleading.

Rule 5-3. Case Management Conference

The Court shall have discretion regarding when and whether to convene a Case Management Conference and whether more than one such conference is needed. The Court may require representatives of each party, in addition to counsel, to attend any Case Management Conference. The Court may conduct the conference in person or by technological means accessible to all parties. Unless it orders otherwise, the Court will not hear substantive motions at a Case Management Conference. The conference shall not be transcribed unless a party arranges for a court reporter to transcribe the proceedings or the Court orders otherwise.

Rule 5-4. Case Management Order

Following submission of the Case Management Report and, if applicable, the Case Management Conference, the Court shall issue a Case Management Order. The Case Management Order shall address the issues developed in the Case Management Report, Case Management Conference, or both, as well as any other issues that the Court deems appropriate. Any party may move to modify the terms of the Case Management Order on a showing of good cause after consultation with all other parties.

ARTICLE 6. DISCOVERY

Rule 6-1. Discovery Management

(a) The parties should be prepared to discuss discovery management at the Case Management Meeting to the fullest extent possible. As stated in BCR 5-1 (f), the parties may conduct additional meetings after the initial Case Management Meeting to complete their discussion of discovery management.

(b) This article is intended to facilitate a process the parties can use to set expectations, with reasonable specificity, concerning the information each party seeks to discover and how that information will be identified, preserved, retrieved, and produced, absent a good faith objection. The parties should at least discuss all the following discovery topics:

(1) **Necessary Scope of Discovery**. Counsel should discuss the scope of discovery (taking into account the needs of the case), the amount in controversy, limitations on the resources of each party, the burden and expense of the expected discovery compared with its likely benefit, the importance of the issues at stake in the litigation, and the importance of the discovery for the adjudication of the merits of the case.

(2) **Organization of Discovery**. The parties should discuss how discovery will be organized, including the numbering system (e.g., Bates numbering) that will be used to identify any materials produced during discovery and the format for producing the same.

(3) **Phased Discovery**. Counsel should consider whether phased discovery is appropriate and, if so, counsel should discuss proposals for specific phases.

(4) **Electronically Stored Information ("ESI")**. Parties should consider preparing an ESI agreement for the identification, preservation, collection, and production of ESI. The Court recognizes that ESI agreements will not be necessary in all cases. Where applicable, the ESI agreement shall be determined on a case- by-case basis and shall include, at minimum, the following topics:

(A) The specific sources, location, and estimated volume of ESI.

(B) Whether ESI should be searched on a custodian-by-custodian basis and, if so: (i) the identity and number of the custodians whose ESI will be searched; and (ii) the search parameters.

(C) A method for designating documents as confidential.

(D) Plans and schedules for any rolling production.

(E) De-duplication of data.

(F) Whether a device needs to be forensically examined and, if so, a process for the examination.

(G) The production format of documents.

(H) The fields of metadata to be produced.

(I) How data produced will be transmitted to other parties (e.g., in read-only media, segregated by source, encrypted, or password protected).

(c) Treatment of Privileged or Protected Information. The treatment of privileged or protected information shall be governed by BCR 6-3.

Rule 6-2. Prompt Completion and Presumptive Limits

(a) **Discovery Period and Presumptive Limits**. The discovery period and presumptive limits on discovery shall be governed by the following:

(1) A party may begin discovery before the entry of the Case Management Order, but the presumptive discovery period shall be set in the Case Management Order. The Court shall presume that an eight-month discovery period should be sufficient to complete all fact discovery. This period may be lengthened or shortened in consideration of the claims and defenses of a particular case, but a significantly longer discovery period shall require a showing of good cause (e.g., the parties demonstrate a need for expert discovery).

(2) Each party shall ensure that discovery is completed within the time specified in the Case Management Order. A party should serve interrogatories, requests for production, and requests for admission early enough that answers and responses can be completed before the

end of the discovery period.

(3) Any motion that seeks to extend the discovery period or take discovery beyond the limits in the Case Management Order shall be made before the current deadline for discovery. The motion to extend the discovery period shall explain the good cause that justifies the relief sought and demonstrate that the parties have diligently pursued discovery to date.

(b) **Written Discovery**. Unless otherwise permitted by the Court, a party may serve no more than 50 interrogatories on each party. Each subpart of an interrogatory counts as a separate interrogatory for purposes of this limit. The same limit shall apply to requests for admission.

(c) **Depositions Upon Oral Examination – Duration and Number**. Unless otherwise permitted by the Court or stipulated by the parties, a deposition shall be limited to one day of seven hours. A party may take no more than 15 fact depositions in the absence of an order by the Court. For purposes of counting depositions taken by any party, for depositions conducted pursuant to OCGA § 9-11-30 (b) (6), each period of seven hours of testimony shall count as a single deposition, regardless of the number of designees presented during that seven-hour period.

(d) **Agreement, Reduction, and Modification of Limits**. The parties should attempt to agree, where appropriate, on reductions to the presumptive limits in this rule. Absent agreement of the parties, the presumptive limits may be increased only upon a showing of good cause.

Rule 6-3. Privilege or Protected Information

(a) **Meet and Confer**. As part of the Case Management Meeting, the parties shall confer regarding: the scope of any privilege review, the amount of information to be set out in a privilege log, the use of categories to reduce document-by-document logging, whether any categories of information may be excluded from the logging requirement, a deadline for exchanging privilege logs, and any other issues pertinent to privilege review.

(b) **Information Withheld**. If a party withholds information otherwise discoverable by claiming the information is privileged or subject to protection as attorney work- product, the party shall: (1) expressly make the claim; and (2) prepare a privilege log that describes the nature of the documents, communications, or tangible things not produced or disclosed and do so in a manner that will enable other parties to assess such claim without revealing information that is itself privileged or protected.

(c) Privilege Log – Form.

(1) The parties should use categorical designations, if appropriate, to reduce the time and costs associated with preparing privilege logs and to utilize any reasoned method of organizing the documents that will facilitate an orderly assessment as to the appropriateness of withholding documents in the specified category. For each category of documents that is established, the producing party shall provide a certification setting forth with specificity those facts supporting the privileged or protected status of the information included within the category. The certification shall also describe the steps taken to identify the documents so categorized, including, but not limited to, whether each document was reviewed or some form of sampling was employed, and if sampling was employed, how the sampling was conducted. As a default matter, document-by-document privilege reviews shall be preferred. Any potential need for sampling, and the potential method for sampling, shall be discussed by the parties before any such sampling is undertaken so that the requesting party has the opportunity to object to the sampling proposal before the review is underway. The certification shall be signed by the Responsible Attorney, as defined in section (f) of this rule, or by the party, through an authorized and knowledgeable representative.

(2) If the requesting party objects to a categorical approach and insists on a document-by-document listing on the privilege log, absent an order of the Court to the contrary, the producing party shall proceed with preparing a document-by- document privilege log. After a showing of good cause, the producing party may apply to the Court for an allocation of costs (including attorney's fees) incurred in the preparation of the document-by-document log.

(3) To the extent that a party insists upon a document-by-document log, and absent an order to the contrary, each uninterrupted e-mail chain shall constitute a single entry, and the description accompanying the entry shall include all of the following:

(A) An indication that the e-mails represent an uninterrupted dialogue.

(B) The beginning and ending dates and times (as noted on the e-mails) of the dialogue.

(C) The number of e-mails within the dialogue.

(D) The names of all authors and recipients, together with sufficient identifying information about each person (e.g., name of employer, job title, and role in the case) to allow for a considered assessment of privilege issues.

(d) **Information Produced**. If information produced in discovery is subject to a claim of privilege or otherwise protected from disclosure, the party making the claim may notify any party that received the information of the claim and the basis for it. The producing party shall preserve the information until the claim is resolved. After being notified, a party —

(1) shall promptly return or destroy the specified information and any copies thereof;

(2) shall take reasonable steps to retrieve the information if the party disclosed it before being notified; and

(3) may promptly present the dispute to the Court for determination of the claim.

(e) **Agreements to Prevent Privilege and Work-Product Waiver**. Parties should agree to an order that provides for the non-waiver of the attorney-client privilege or work-product protection if privileged or work-product material is inadvertently produced.

(f) **Responsible Attorney**. As used in this rule, the term "Responsible Attorney" means an attorney having supervisory responsibility over the privilege review. A Responsible Attorney shall be actively involved in establishing and monitoring the procedures used to collect and review documents to determine that a reasonable and good faith effort is made to ensure that responsive, non-privileged documents are timely produced.

Rule 6-4. Depositions

(a) **Time Limits**. The Court may extend any seven-hour deposition period for good cause. See BCR 6-2 (c).

(b) **Conduct**. Counsel shall conduct depositions as follows:

(1) The parties should cooperate to schedule depositions.

(2) Counsel shall not direct a witness to refrain from answering a question unless —

(A) counsel objects to the question on the ground that the answer is protected by a privilege or another discovery immunity;

(B) counsel proceeds immediately to seek relief under the Civil Practice Act; or

(C) counsel objects to a question that seeks information in con-

travention of a Court-ordered limitation on discovery.

(3) Objections should be succinct and state only the basis for the objection. Counsel shall not make speaking objections (i.e., argumentative or suggestive in manner).

(4) If counsel defending a deposition believes a question calls for privileged or otherwise protected information, counsel should make a contemporaneous objection without first conferencing "off-the-record" with the witness.

(c) **Sanctions**. The Court may impose an appropriate sanction for conduct that impedes, delays, or frustrates the fair examination of a deponent. An appropriate sanction for a violation of this rule may include reasonable attorney's fees incurred by any party.

(d) **Depositions of Organizations**. Depositions of organizations shall proceed as follows:

(1) After a party serves a deposition notice under OCGA § 9-11-30 (b) (6), the named organization to which the notice is issued should present any objections to the noticing party within a reasonable time of service and sufficiently in advance of the deposition.

(2) Counsel for the noticing party and for the named organization to which the notice was issued shall then meet and confer in good faith to resolve any disputes over the topics for the deposition.

(3) The parties shall also discuss and attempt to agree on whether a deponent under OCGA § 9-11-30 (b) (6) may be asked questions about the deponent's personal knowledge. If the parties cannot agree on the appropriate scope of inquiry, the parties shall seek relief from the Court to resolve the dispute prior to the deposition, absent good cause.

Rule 6-5. Expert Witnesses

(a) **Timely Designation of Expert Witness**. A party who desires to use the testimony of an expert witness shall designate the expert sufficiently early in the discovery period to permit the opposing party the opportunity to depose the expert and, if desired, to name his or her own expert witness sufficiently in advance of the close of discovery so that a similar discovery deposition of the second expert may also be conducted prior to the close of discovery. A party who does not comply with this section shall not be permitted to offer the testimony of his or her expert, unless otherwise ordered by the Court.

(b) **Procedures**. Each party shall attempt to agree on procedures that will govern expert discovery, including limits on the number of experts, the number of expert depositions, or both. In the absence of agreement, the Case Management Report should list each party's respective position on expert discovery. The parties may elect to exchange disclosures only, or they may elect to exchange reports in addition to or instead of disclosures. The procedures for expert witnesses may include the following:

(1) **Expert Reports**. If the parties agree to exchange expert reports, then the parties should further agree that the name of each expert, the subject matter the expert is expected to testify about, and the expert's qualifications be exchanged 30 days prior to the date of service of the expert report.

(2) **Timing and Manner of Disclosure**. If the parties agree not to exchange expert reports, then they shall agree on a schedule for the exchange of expert information in the form of interrogatory responses. In the absence of such an agreement, the Court shall establish a sequence for the exchange of expert information in the Case Management Order.

(3) **Facts and Data Considered by the Expert Witness**. The parties shall attempt to agree on when they will provide a copy of previously unproduced material that an expert witness considers in forming his or her opinion.

(c) **Expert Depositions**. Unless the parties agree otherwise, each expert witness may be deposed by a party adverse to the party designating the expert. The expert witness shall only be subject to a single deposition at which all adverse parties may appear.

Rule 6-6. Filing Requirements

(a) Depositions and other original discovery materials shall not be filed with the Court unless or until required pursuant to OCGA § 9-11-29.1 (a).

(b) A party serving interrogatories, requests for production of documents, requests for admission and answers, or responses thereto upon counsel, a party, or a non-party shall file with the Court a certificate indicating the discovery or response that was served, the date of service (or that the same has been delivered for service with the summons), and the persons served.

ARTICLE 7. MOTIONS

Rule 7-1. Form of Motion

(a) Unless made during a hearing or trial, an application to the Court for an order shall be made in writing by motion. Each written motion shall state with particularity the grounds for the motion and set forth clearly the relief sought.

(b) All briefs filed in support of motions shall include or be accompanied by citations of supporting authorities and, where allegations of unstipulated facts are relied upon, supporting affidavits or citations to evidentiary materials of record.

Rule 7-2. Briefing Schedule

(a) With respect to all written motions, these rules do not specify a rigid time period for the briefing of motions, response briefs, or reply briefs. Rather, the parties may enter into a stipulated briefing schedule that reflects the particular demands of the case. If the parties are unable to agree to such a schedule, the following default briefing schedule shall govern:

(1) **Opening Briefs**. Unless otherwise ordered by the Court, a party shall file an opening brief at the same time the corresponding motion is filed.

(2) **Response Briefs**. Unless otherwise ordered by the Court, a party opposing an opening brief shall file a response brief within 14 days of service of the motion. This period shall be extended to 21 days after service for responses to motions for summary judgment. If a party fails to file a response within the time required by this rule, the motion will be considered and decided as an uncontested motion, absent good cause.

(3) **Reply Briefs**. Unless otherwise ordered by the Court, parties are permitted, but not required, to file reply briefs. If a party deems it necessary to file a reply brief, the reply shall be served within ten days of service of a responsive brief. This period shall be extended to 14 days after service for responses to motions for summary judgment. A reply brief shall be limited to discussion of matters newly raised in the responsive brief. The Court retains discretion to strike any reply brief that violates this rule.

(b) If the parties are unable to agree upon a briefing schedule, and special considerations warrant modification of the default schedule in section (a) of this rule, any party may petition the Court for modification of such schedule by letter as provided in BCR 7-3 (a) (3).

Rule 7-3. Briefs

(a) **Form of Briefs**. The form of briefs shall be as follows:

(1) **Briefs on Merit-Related Motions**. Merit-related motions include motions filed pursuant to OCGA §§ 9-11-12; 9-11-23; 9-11-56; 9-11-65. Unless the Court orders otherwise, briefs on merit-related motions shall comply with the following requirements:

(A) Opening briefs shall not exceed 14,000 words.

(B) Response briefs shall not exceed 14,000 words.

(C) Reply briefs, if any, shall not exceed 7,500 words.

(D) The front cover, table of contents, page numbers, and signature block shall not count toward the word limitations in this subsection. All other text (e.g., footnotes, headings, subheadings, etc.) shall count toward the limitations.

(2) **Briefs on Other Motions and Petitions**. Except as otherwise provided in this rule, all other applications shall be made by motion without a supporting brief but may include a concise and incorporated memorandum of law, if appropriate based on the issue(s) presented. Unless the Court orders otherwise, briefing shall proceed in accordance with the following requirements:

(A) The motion or petition seeking relief shall not exceed 4,000 words.

(B) Response briefs, if any, to the motion or petition shall not exceed 4,000 words.

(C) Reply briefs, if any, shall not exceed 2,000 words.

(D) The caption, title, page numbers, and signature block shall not count toward the word limitations in this subsection. All other text (e.g., footnotes, headings, subheadings, etc.) shall count toward the limitations.

(E) The Court recognizes that motions that technically fall under this subsection may require more extensive briefing, and as such, the Court will consider requests to enlarge the limits set forth in this subsection on a case-by-case basis.

(3) **Letter Briefs**. Parties may use letters to provide updates to the Court or to address logistical, scheduling, or discreet legal issues, as directed by the Court. All such letters shall be e-filed via the Court's e-filing system. Counsel is, however, encouraged to contact the Court contemporaneous with the filing of such letters if the parties require the Court's immediate attention. Unless the Court orders otherwise, letters shall comply with the following requirements:

(A) A letter to the Court shall not exceed 1,000 words.

(B) The letterhead, header, address and delivery information, caption, salutation, complimentary close, signature, statement of enclosures, copy recipients, and page numbers shall not count toward the word limitation in this subsection. All other text shall count toward the limitation.

(C) The Court shall provide additional instructions if additional correspondence or briefing is requested or otherwise warranted.

(b) **Certificate of Compliance**. Any document type listed in section (a) of this rule shall include in the signature block the term "Words:" followed by the number of words in the document. Use of the term "Words:" constitutes a certification by the signatory of the document, whether counsel or self-represented litigant, that the document complies with the typeface and word limitation requirements of this rule. In so certifying, the signatory may rely on the word count of the word processing system used to prepare the document.

Rule 7-4. Emergency Motions and Motions for Expedited Proceeding

(a) **Notice to the Court**. If a party files or intends to file a motion for emergency relief or expedited proceedings in the Court, such party should contact chambers as soon as practicable, but in all instances, contact shall be made within 24 hours after filing such a motion. If circumstances permit, the moving party shall give notice to all other interested parties before or contemporaneously with the filing of the motion. The moving party or any interested party may request a scheduling conference to address the motion. The moving party shall promptly advise all other interested parties of all conference dates and times obtained. The party filing a petition for emergency relief or expedited proceedings shall certify in writing that the party is seeking that relief in good faith and for good cause.

(b) **Briefing Schedule**. As with other briefs filed pursuant to this article, the parties are expected to agree on a mutually acceptable briefing schedule, where possible, for all motions filed under this rule. Absent such an agreement, the Court may, in its discretion, establish a briefing schedule on a case-by-case basis.

(c) **Briefing Limitations**. Unless the Court orders otherwise, the briefing limitations and other requirements of BCR 7-3 (including word count limitations) shall apply to all briefs filed under this rule.

Rule 7-5. Discovery Motions

(a) **Application**. This rule shall apply to motions under Article 5 of the Civil Practice Act and OCGA § 9-11-45. References to "party" in this rule shall include non-parties subject to subpoena under OCGA § 9-11-45.

(b) **Pre-Filing Requirements**. The pre-filing requirements for discovery motions shall be as follows:

(1) **Summary of Dispute**. Before filing a motion related to discovery, including the failure of a party to make discovery, a party shall engage in a good faith attempt to resolve or narrow the dispute. If the dispute remains unresolved, then the party seeking relief shall notify the Court as to the existence of the dispute and, unless the Court orders otherwise, the parties shall be directed to submit simultaneous summaries of the dispute via letter in accordance with BCR 7-3 (a) (3). If the parties cannot agree on a deadline for the filing of the summaries, the deadline for filing such summaries shall be within three days after the Court is notified of the dispute and no replies shall be filed unless the Court directs otherwise.

(2) **Certification of Good Faith Effort to Resolve the Dispute**. A dispute summary under subsection (1) of this section shall be accompanied by a separate certification that, after consultation and diligent attempts to resolve differences, the parties could not resolve the dispute. The certificate shall state the date of each conference, the name of each attorney who participated, and the specific results achieved. The certificate shall state, if applicable, whether the parties discussed cost-shifting or alternative discovery methods that might resolve the dispute. The certificate shall not exceed 300 words and shall be submitted with the dispute summary.

(3) **Discovery Conference**. After the summaries and certificates are submitted, the Court may schedule a telephone conference with counsel to discuss the dispute, order the parties to file a motion and brief regarding the dispute or provide additional materials, or issue an order deciding the issue raised or providing the parties with further instructions. If the Court elects to conduct a telephone conference, the Court may make a decision regarding the dispute during the conference.

(c) **Briefs on Discovery Motions**. No discovery motion shall be filed

unless the pre- filing requirements described in section (b) of this rule have been followed and the Court has permitted or instructed briefing on the dispute.

(d) **Cost-Shifting Requests**. If a party contends that cost-shifting is warranted as to any discovery sought, then the party's letter or brief should address estimated costs of responding to the requests in relation to the breadth, complexity, or other considerations bearing upon the specific discovery at issue. Counsel's estimate must have a reasoned factual basis, and the Court may require that any such basis be demonstrated by affidavit. Cost-shifting should not be a common practice in the Court, and parties should continue to assume that a responding party ordinarily bears the cost of responding to discovery.

(e) **Depositions**. This rule shall not preclude a party from seeking an immediate ruling by telephone from the Court on any dispute that arises during a deposition that justifies such a conference with the Court.

Rule 7-6. Motion for Summary Judgment

(a) **Statement of Recovery Theory and Material Facts**. Upon a motion for summary judgment pursuant to the Civil Practice Act, there shall be annexed to the motion a separate, short, and concise statement of each theory of recovery and of each of the material facts as to which the moving party contends there is no genuine issue to be tried. Each material fact shall be numbered separately and supported by a citation to evidence in the record, including a page number, paragraph number, or both, as applicable, establishing such fact.

(b) **Documents with Response Brief**. A party responding to a summary judgment motion shall include a separate statement with individually numbered, concise, and non-argumentative responses corresponding to each of the moving party's numbered undisputed material facts, setting forth the material facts that the non-moving party contends present a genuine issue to be tried. The non-moving party may also include a statement of additional facts that the non-moving party contends are material and present a genuine issue for trial. Each material fact shall be numbered separately and supported by a citation to evidence in the record, including a page number, paragraph number, or both, as applicable, establishing such fact.

(c) **Filed Sufficiently Early**. Motions for summary judgment shall be filed sufficiently early so as not to delay the trial. No trial shall be continued because of the delayed filing of a motion for summary judgment.

ARTICLE 8. PRESENTATION TECHNOLOGY

Rule 8-1. Electronic Presentation Favored

(a) A presentation in the Court —

(1) shall not be permitted unless it meaningfully contributes to the Court's understanding of key issues; and

(2) should, if possible, be presented by electronic means.

(b) Counsel should limit the use of paper handouts at Court proceedings. Any paper handout that a party provides to the Court shall also be provided to all parties, the court reporter, and the Court's staff attorney.

Rule 8-2. Courtroom Technology

Parties may bring and use their own electronic technology and hardware to present to the Court. Each party shall consult in advance with courthouse personnel regarding security, power, and other logistics associated with the use of any external technology or hardware. If counsel plans to use the available courtroom technology, he or she shall be familiar with such technology and follow any rules established by the Court for the use of such technology.

ARTICLE 9. PRE-TRIAL CONFERENCES

Rule 9-1. Pre-Trial Conferences Generally

The Court may set pre-trial conferences on its own motion or upon a motion by a party. In scheduling actions for pre-trial conferences, the Court shall consider the nature of the action, its complexity, and the time required to address pre-trial issues. If a pre- trial conference is ordered, the following shall apply:

(1) A written order shall be issued specifying the time and place for the pre-trial conference.

(2) The Court shall consider the issues stated in OCGA § 9-11-16, among other issues.

(3) Unless excused by the Court, the attorneys who will actually try the action shall attend the pre-trial conference. Additional attorneys of record in the action who are authorized to define the issues and enter into stipulations may also attend the pre- trial conference.

(4) Failure to appear at the pre-trial conference without legal excuse or failure to present a proposed pre-trial order shall authorize the Court to remove the action from the Court's calendar, enter such pre-trial order as the Court deems appropriate, or impose any other appropriate sanction except dismissal of the action with prejudice.

Rule 9-2. Pre-Trial Order

Unless otherwise ordered by the Court, at least five business days prior to the date of the pre-trial conference, the parties shall submit a written, proposed pre-trial order in substantially the form set forth in the form pre-trial order available on the Court's website.

Rule 9-3. Interpreters

(a) In all actions before the Court, either the party or the party's attorney shall provide the Court reasonable notice of the need for a qualified interpreter, if known, before any hearing, trial, or other court proceeding. For purposes of this rule, "reasonable notice" means at least five days before the date the interpreter is needed. Such notice shall be filed and shall comply with any other service requirements established by the Court. The notice of the need for a qualified interpreter shall —

(1) designate the participants in the proceeding who will need the services of an interpreter;

(2) estimate the length of the proceeding requiring the interpreter;

(3) state whether the interpreter will be needed for all proceedings in the case; and

(4) indicate each language, including sign language for the Deaf or Hard of Hearing, for which the interpreter is required.

(b) Upon receipt of notice of the need for a qualified interpreter, the Court shall make a diligent effort to locate and appoint a licensed interpreter at the Court's expense and in accordance with the Supreme Court of Georgia's Rules on the Use of Interpreters for Non-English Speaking and Hearing Impaired Persons. If the Court determines that the nature of the case (e.g., an emergency) warrants the use of a non-licensed interpreter, then the Court shall follow the procedures outlined in the Supreme Court of Georgia's Commission on Interpreters' ("COI") Instructions for Use of a Non-Licensed Interpreter. If a non-licensed interpreter is used initially, the Court shall make a diligent effort to ensure that a licensed interpreter is appointed for all subsequently scheduled proceedings, if one is available.

(c) If a party or party's attorney fails to timely notify the Court of a need

for an interpreter, the Court may assess costs against that party for any delay caused by the need to obtain an interpreter unless that party establishes good cause for the delay. If timely notice is not provided or on other occasions when it may be necessary to utilize an interpreter not licensed by the COI, the Registry of Interpreters of the Deaf ("RID"), or another industry-recognized credentialing entity (such as a telephonic language service or a less qualified interpreter), the Court will weigh the need for immediacy in conducting a hearing against the potential compromise of due process, or the potential of substantive injustice, if interpreting is inadequate. Unless immediacy is a primary concern, some delay may be more appropriate than the use of an interpreter not licensed by the COI, RID, or another industry-recognized credentialing entity.

(d) Regardless of whether a party or party's attorney notifies the Court of the need for an interpreter, the Court shall appoint an interpreter if it becomes apparent from the Court's own observations or from disclosures by any other person that a participant in a proceeding is unable to hear, speak, or otherwise communicate in the English language to the extent reasonably necessary to meaningfully participate in the proceeding.

(e) If the time or date of a proceeding is changed or canceled by the parties, and interpreter services have been arranged by the Court, the party that requested the interpreter shall notify the Court at least 24 hours in advance of the change or cancellation. If a party fails to timely notify the Court of a change or cancellation of interpretation services, the Court may assess any reasonable interpreter expenses it may have incurred on such party, unless the party can show good cause for the failure to provide timely notice.

ARTICLE 10. SCHEDULING

Rule 10-1. Special Settings

(a) Unless otherwise ordered by the Court, all proceedings shall be specially set. Notice of any special setting, including the date, time, and location of the proceeding, shall be e-mailed to each party or filed on the docket. Notice of any specially set trial shall be filed at least 20 days prior to the commencement of the trial.

(b) In scheduling actions, the Judge shall consider the age and nature of the action, its complexity, and reasonable time requirements for the proceeding.

(c) The Court shall ensure the orderly movement and disposition of all assigned matters and not permit any matter pending before it to languish.

Rule 10-2. Ready List

(a) All actions ready for trial in accordance with OCGA § 9-11-40 shall be placed upon a list of actions ready for trial to be maintained as a "ready list" by the Clerk. A case shall be presumed ready for trial after the filing of the pre-trial order.

(b) The Judge shall place actions ready for trial on the ready list and shall notify parties of the same. Except for cause and as provided in section (c) of this rule, the Judge shall place actions on the ready list by order of the age of the action.

(c) If an action is already on the ready list, it shall retain its superior position over new actions unless a new action is entitled by statute to a superior position.

Rule 10-3. Trial Date

The parties and their counsel shall appear ready for trial on the date specified by the Court unless otherwise directed by the Court.

Rule 10-4. Continuance After Trial Scheduled

Continuances shall not be granted solely by agreement of the parties. Actions shall not be removed from the Court's calendar except by direction of the Court and upon such terms as reasonably may be imposed by the Court. Such terms may include the imposition of a penalty of up to $50 upon the moving party if a motion for continuance of an action is first made within five days before a scheduled trial, absent statutory grounds or good cause for such motion.

ARTICLE 11. REMOTE PROCEEDINGS

Rule 11-1. Telephone and Video Conferencing

(a) **Use of Remote Conferencing Generally**. The Court may, in its sole discretion and on its own motion or upon the request of any party, conduct pre-trial or post-trial proceedings by telephone or video conference. The Judge may specify any of the following regarding a pre-trial or post-trial telephone or video conference:

(1) The time and the person who will initiate the conference.

(2) The party who is to incur the initial expense of the conference, if any, or the apportionment of such costs among the parties, if any. The Court may adjust the apportionment of such costs upon final resolution of the case.

(3) Any other matter or requirement necessary to accomplish or facilitate the telephone or video conference.

(b) **Personal Appearance**. Nothing in this rule shall preclude the Judge from ordering a party, witness, or other individual to personally appear in the Court for any hearing or proceeding.

(c) **Confidential Attorney-Client Communication**. If telephone or video conferencing is used, the Court shall preserve the confidentiality of attorney-client communications and privilege in accordance with Georgia law.

(d) **Witnesses**. In any pending matter, a witness may testify via video conference. Any party desiring to call a witness by video conference shall promptly file a notice of intent to present testimony by video conference at least 14 days before the date such testimony is scheduled. Any other party may file an objection to the testimony of a witness by video conference within ten days after the date the notice of intent is filed. The discretion to allow testimony via video conference shall rest with the Judge.

(e) **Recording of Hearings**. A record of any proceeding conducted by telephone or video conference shall be made in the same manner as a similar proceeding not conducted by telephone or video conference (e.g., by court reporter). The proceedings conducted by telephone or video conference may be recorded by the Court or Court- authorized personnel using an audio-visual recording system, and such recording shall become part of the record of the case. Such recording shall be transmitted to the applicable appellate court if the case is appealed.

(f) **Technical Standards**. Any video-conferencing system utilized under this rule shall conform to all the following minimum requirements:

(1) All participants must be able to see, hear, and communicate with each other simultaneously.

(2) All participants must be able to see, hear, and otherwise observe any physical evidence or exhibits presented during the proceeding, either by video, facsimile, or other method.

(3) Video quality must be adequate to allow participants to observe each other's demeanor and nonverbal communications.

(g) **Public Access**. The location from where the Judge is presiding shall be accessible to the public to the same extent as such proceeding would be if not conducted by telephone or video conference. The Court shall

accommodate any reasonable request by an interested party to observe the proceeding.

ARTICLE 12. TRIALS

Rule 12-1. Voir Dire

(a) The Court may propound, or cause to be propounded by the parties, such questions of the jurors as provided in OCGA § 15-12-133. The form, time required, and number of such questions is within the sole discretion of the Court.

(b) The Court may require that questions be asked once only to the full array of the jurors rather than to every juror (i.e., one at a time), provided that the question be framed and the response given in a manner that provides the propounder with an individual response prior to the interposition of challenge.

(c) The parties shall not ask hypothetical questions, but such questions may be allowed in the discretion of the Court. The parties shall not ask how a juror would act in certain contingencies or on a certain hypothetical state of facts.

(d) Parties shall not frame questions to elicit a response from a juror that might amount to a prejudgment of the action.

(e) Parties shall not ask questions calling for an opinion by a juror on matters of law.

(f) The Court shall exclude questions that have been answered in substance previously by the same juror.

(g) The Court may, in its sole discretion, permit examination of each juror without the presence of the remainder of the panel.

(h) Objections to the mode and conduct of voir dire shall be raised promptly or such objections will be deemed waived.

Rule 12-2. Jury Selection

(a) A party may, in the Court's sole discretion, have additional time to prepare for jury selection after completion of the examination of jurors upon their voir dire.

(b) During the selection of jurors, the Court may, in its sole discretion, restrict to not less than one minute the time within which each party may exercise a peremptory challenge.

(c) A party will forfeit a challenge by failing to exercise it within the time allowed.

Rule 12-3. Jury Charge Requests and Exceptions

(a) Except as provided in section (b) of this rule, all requests to charge the jury shall be numbered consecutively on separate sheets of paper and include the legal authority supporting the requested charge. Unless otherwise ordered by the Court, all requested charges shall be submitted to the Court in duplicate at the commencement of trial.

(b) Additional requests to charge the jury may be submitted after the commencement of trial to cover unanticipated points that arise during trial.

Rule 12-4. Authority to Excuse from Courtroom

During the course of a proceeding, only the Judge may excuse a party, a witness (including one who has testified or will testify), or counsel from the courtroom.

ARTICLE 13. DISMISSAL, DEFAULT JUDGMENT, AND WITHDRAWAL OF FUNDS

Rule 13-1. Voluntary Dismissal of Actions

Except in actions that are the result of a final settlement agreement, the terms of which are dictated in court or in chambers into the record, if an action in the Court is voluntarily dismissed (after the trial jury has been empaneled), all court costs, including juror fees incurred for all panels from which the trial jury was selected, will be taxed against the dismissing party.

Rule 13-2. Dismissal Generally

On its own motion or upon request of a party, the Court may dismiss without prejudice any action, or if appropriate, any pleading filed on behalf of any party upon the failure to properly respond to the call of the action for trial or other proceeding. The Court may adjudge any attorney in contempt for failure to appear without good cause upon the call of any proceeding.

Rule 13-3. Default Judgment

(a) The party seeking entry of a default judgment in any action shall certify to the Court all of the following:

(1) The date and type of service effected.

(2) That proof of service was filed with the Court within five business days of the date of service, or, if not filed within five business days of the service date, the date that proof of service was filed.

(3) That no defensive pleading has been filed by the defendant as shown by Court records.

(4) The defendant's military status, if applicable.

(b) The certification required by this rule shall be in writing and attached to the proposed default judgment when presented to the Judge for his or her signature.

Rule 13-4. Procedure for Withdrawal of Funds

When counsel for a party presents to the Judge a proposed order requesting that the Clerk be directed to pay funds from the registry of the Court, counsel for the party presenting such order shall at the same time submit to the Court a certificate in the form provided on the Court's website.

ARTICLE 14. LEAVE OF ABSENCE

Rule 14-1. Leave for 30 Calendar Days or Less

(a) Absent good cause, an attorney of record shall be entitled to a leave of absence for 30 calendar days or less from court appearance in a pending matter that has not been specially set nor has been noticed for a hearing during the requested time. An attorney requesting such leave shall file a written notice thereof at least 30 calendar days prior to the effective date of the proposed leave that contains all the following:

(1) A list of the actions to be protected that includes the action numbers.

(2) The reasons for the leave of absence.

(3) The duration of the requested leave of absence.

(b) Unless opposing counsel files a written objection to a request for a leave of absence within five days or if the Court responds denying the leave of absence, such leave shall stand granted without entry of an order.

(c) All requests for or notices of a leave of absence shall be filed on the record.

Rule 14-2. Other Leave Requests

(a) This rule shall apply to the following leave requests, which shall be filed with the Court: (1) an application for a leave of absence of more than 30 calendar days, (2) an application for a leave of absence in a matter that has been specially set or noticed for a hearing during the requested leave, or (3) an application for a leave of absence not submitted within the time limits contained in BCR 14-1. Unless opposing counsel consents in writing to the leave request, any such application shall be served upon opposing counsel at least ten days prior to filing it with the Court.

(b) The procedure required in section (a) of this rule shall permit opposing counsel to object or consent to the grant of the application for leave. However, approval of an application for leave under this rule shall be at the sole discretion of the Court.

(c) An application for a leave of absence under this rule shall contain all of the following:

(1) A list of the actions to be protected that includes the action numbers.

(2) The reasons for the leave of absence.

(3) The duration of the requested leave of absence.

Rule 14-3. Relief if Leave Granted

Absent a prior order of the Court, leave granted under this article shall relieve any attorney from all trials, hearings, depositions, and other legal proceedings in that matter.

Rule 14-4. Leave Application Denied

Any application for leave not filed in conformance with this article shall be denied.

ARTICLE 15. ACCESS TO COURT RECORDS

Rule 15-1. Access to Court Filings Generally

There is a presumption that court proceedings must be open to the public. All Court filings are public and shall be made available for public inspection unless public access is limited by law or by the procedures set forth in this article. The Court shall not allow the filing of documents under seal without a Court order, even if all parties consent to the filing under seal.

Rule 15-2. Orders to File Under Seal

Upon a motion by a party to a civil action or upon the Court's own motion, and after a hearing on such motion, the Court may limit access to court filings respecting such action and order that such filings be filed under seal. An order to file under seal shall specify the part of the file to which access is limited, the nature and duration of the limitation, and the reason for the limitation.

Rule 15-3. Finding of Harm

An order limiting access shall not be granted by the Court except upon a finding that the harm otherwise resulting to the privacy of a person in interest clearly outweighs the public interest.

Rule 15-4. Ex Parte Orders

Under compelling circumstances, a motion for temporary limitation of access to a Court record for up to 30 days may be granted ex parte when accompanied by supporting affidavit.

Rule 15-5. Review of Request to Seal

An order to file under seal may be reviewed by interlocutory application to the appellate court that has jurisdiction to hear such appeal.

Rule 15-6. Amendment to Order

Upon notice to all parties of record and after a hearing, an order to file under seal may be reviewed and amended by the Court or by the appropriate appellate court at any time on its own motion or upon the motion of any person for good cause.

Rule 15-7. Motion to File Under Seal

(a) Any party that seeks to file a Court filing or any part thereof under seal shall provisionally submit the filing under seal, together with a motion to file under seal. A motion to file under seal shall be submitted in accordance with the instructions provided on the Court's website.

(b) If a motion to file under seal is denied, the provisionally submitted filing shall be deemed withdrawn and shall not be considered by the Court unless timely resubmitted as a public filing in accordance with the instructions provided on the Court's website.

ARTICLE 16. USE OF ELECTRONIC DEVICES IN COURTROOMS AND RECORDING OF JUDICIAL PROCEEDINGS

Rule 16-1. Open Courtrooms

(a) Open courtrooms are an indispensable element of an effective and respected judicial system. It is the policy of Georgia's courts to promote access to and understanding of court proceedings not only by the participants in them but also by the general public and by news media who will report on the proceedings to the public. This must be done, however, while protecting the legal rights of the participants in the proceedings and ensuring appropriate security and decorum.

(b) Except as otherwise required by law, this article shall govern the use of devices to record sounds or images in a courtroom consistent with the standards provided in OCGA § 15-1-10.1 regarding the use of devices to record a judicial proceeding.

(c) This article shall similarly govern the use of electronic devices, including mobile phones and computers, in a courtroom of the Business Court for purposes other than recording sounds and images. Such use shall be generally allowed by lawyers, employees of lawyers, parties, and spectators, including representatives of the news media, but to ensure decorum and avoid distraction, such use shall be generally prohibited by jurors and witnesses. Such persons may, however, use a device outside the courtroom.

(d) The Court shall use reasonable means to advise courtroom visitors of the provisions of this article. The Court shall make the form to request to record Court proceedings, as set forth in BCR 16-5, available in the Clerk's office and on the Court's website.

Rule 16-2. Definitions

As used in this article:

(1) The term "courtroom" means the room where a Judge will con-

duct a Court proceeding and the areas immediately outside the courtroom entrances or any areas providing visibility into the courtroom.

(2) The term "record" means to electronically or mechanically store, access, or transmit sounds or images, including by photographing, making an audio or video recording, or broadcasting.

(3) The term "recording" means electronically or mechanically storing, accessing, or transmitting sounds or images.

(4) The term "recording device" means a device capable of electronically or mechanically storing, accessing, or transmitting sounds or images. The term encompasses, among other things, a computer of any size, including a tablet, a notebook, and a laptop; a smart phone, a cell phone or other wireless phone; a camera; a personal digital assistant; other audio or video recording devices, and any similar device.

Rule 16-3. Use of Recording Devices in the Courtroom

(a) The following restrictions shall apply to the use of any recording device in the courtroom:

(1) **Jurors**. A juror or prospective juror shall turn the power off to any recording device while present in a courtroom or while present in a jury room during the jury's deliberations and discussions concerning a case. A juror or prospective juror may use his or her recording device during breaks, as authorized by the Judge. A juror or prospective juror shall not record proceedings.

(2) **Witnesses**. A witness shall turn the power off to any recording device while present in a courtroom and may use a recording device while testifying only with permission from the Judge. A witness shall not record proceedings.

(3) **Parties and Spectators**. Parties and spectators, including representatives of the media, may use a recording device to record proceedings only as specifically authorized by the Court pursuant to this article. Such individuals may use a recording device for purposes other than recording sounds and images in a courtroom if such use would not be disruptive or distracting and is not otherwise contrary to the administration of justice. However, recording devices used in such a manner shall be silenced and may not be used to make or receive telephone calls or for other audible functions without express permission from the Judge.

(4) **Attorneys, Employees of Attorneys**, Such as Paralegals, and Self-Represented Litigants.

(A) Use of Recording Devices to Record. Unless otherwise ordered by the Court, an attorney representing a party in a proceeding or a self-represented litigant may make audio recordings of the proceeding in a non-disruptive manner after announcing to the Court and all parties that he or she is doing so. A recording made pursuant to this paragraph may be used only: in litigating the case, as otherwise allowed by the Court, or as otherwise provided by law. An attorney or self-represented litigant may also seek authorization to record proceedings pursuant to section (c) of this rule.

(B) Use of Recording Devices for Non-Recording Purposes. An attorney, an attorney's employee (e.g., a paralegal), and a self-represented litigant may use recording devices in a courtroom for purposes other than recording sounds and images if such use would not be disruptive or distracting and is not otherwise contrary to the administration of justice. However, recording devices used in such a manner shall be silenced and may not be used to make or receive telephone calls or for other audible functions without express permission from the Judge.

(b) **Limitation**. The Judge may further restrict the use of recording devices in the courtroom by the public or in connection with a particular proceeding by jurors, attorneys, witnesses, or others as appropriate to protect the integrity of the proceedings and maintain safety, decorum, and order. Any allowed use of a recording device under this rule is subject to the authority of the Judge to terminate activity that is disruptive, distracting, or otherwise contrary to the administration of justice.

(c) **Celebratory or Ceremonial Proceedings, and When the Court is Not in Session**. Notwithstanding other provisions of this rule, a person may request orally or in writing the use of a recording device in a courtroom to record a celebratory or ceremonial proceeding or the use of a recording device in a courtroom when the Court is not in session. Such requests may be approved orally or in writing by a Judge or a Judge's designee.

Rule 16-4. Use of Recording Devices in Business Court Chambers

A person may not use a recording device in chambers without prior approval from the Judge.

Rule 16-5. Other Persons or Organizations Desiring to Record

(a) **Form of a Request**. Any other person or organization, including a representative of the news media, desiring to record a Court proceeding shall make application to the Judge on a form available in the Clerk's office and on the Court's website.

(b) **Submission of a Request**. The person or organization shall submit the request to the Judge or to an officer of the Court designated to receive such requests under this rule. The request should address any logistical issues that are expected to arise.

(c) **Time Limit for Submitting a Request**. The person or organization shall submit the request as soon as practicable, but no later than 24 hours before the date of the proceeding, unless excused by the Judge.

(d) **Notice and Hearing**. The Court will notify the parties of its receipt of a request to record. Parties shall then notify their witnesses of such request. The Judge shall promptly hold a hearing if the Judge intends to deny the request or any portion of the request, or if a party or witness objects to the request. The hearing regarding a request to record shall be part of the official record of the proceeding.

(e) **Time for a Party or Witness to Object to a Request to Record**. A properly notified party or witness waives an objection to a request to record a proceeding if such party or witness does not object to the request in writing or on the record before or at the start of the proceeding.

(f) **Denial or Limitation of Recording**. A properly submitted request to record should generally be approved, but a Judge may deny or limit such request as provided in this section. A Judge's decision on a request to record, or on an objection to such request, is reviewable as provided by law.

(1) **Denial of Recording**. A Judge may deny a request to record only after making specific findings on the record that there is a substantial likelihood of harm arising from one or more of the following factors, that such harm outweighs the benefit of recording to the public, and that the Judge has considered more narrow restrictions on recording than a complete denial of the request:

(A) The nature of the particular proceeding at issue.

(B) The consent or objection of the parties or witnesses whose testimony will be presented in the proceedings.

(C) Whether the proposed recording will promote increased public access to the courts and openness of judicial proceedings.

(D) The impact upon the integrity and dignity of the Court.

(E) The impact upon the administration of the Court.

(F) The impact upon due process and the truth-finding function of the judicial proceeding.

(G) Whether the proposed recording would contribute to the enhancement of or detract from the ends of justice.

(H) Any special circumstances of the parties, witnesses, or other participants, such as factors involving the safety of participants in the judicial proceeding.

(I) Any other factors affecting the administration of justice or which the Court may determine to be important under the circumstances of the case.

(2) **Limitation of Recording**. Upon his or her own motion or upon the request of a party or witness, a Judge may allow recording as requested or may, only after making specific findings on the record based on the factors in subsection (f) (1) of this rule, impose the least restrictive possible limitations, such as an order: that no recording may be made of a particular party, witness, or other person; that such person's identity must be effectively obscured in any image or video recording; or that only an audio recording may be made of such person.

(g) **Manner of Recording**.

(1) The Judge should preserve the dignity of the proceeding by designating the placement of equipment and personnel for recording the proceeding. Unless excused by the Judge, cameras and other electronic devices used to record a judicial proceeding shall be assigned to a specific portion of the public area of the courtroom or specially designed access areas, and such equipment shall not be permitted to be removed or relocated during Court proceedings.

(2) All persons and affiliated individuals engaged in recording shall avoid conduct or appearance that may disrupt or detract from the dignity of the proceeding. All devices used to record a judicial proceeding shall be quiet running, and no person shall use any recording device in a manner that disrupts a proceeding.

(3) Overhead lights in the courtroom shall be switched on and off only by Court personnel. No other lights, flashbulbs, flashes, or sudden light changes may be used unless approved beforehand by the Judge.

(4) No adjustment of the Court's central audio system shall be made except by persons authorized by the Judge. Audio recordings of Court proceedings shall be from one source, normally by connection to the Court's central audio system. Upon prior approval of the Court, microphones may be added in an unobtrusive manner.

(h) **Pooling of Recording Devices**. The Judge may require pooling of recording devices if appropriate. The persons or organizations authorized to record have the responsibility to implement proper pooling procedures that meet the approval of the Judge.

(i) **Prohibitions**. The following uses of recording devices are prohibited:

(1) No Use of Recording Devices While the Judge is Outside the Courtroom. Except as provided in BCR 16-3 (c), a person may use a recording device in a courtroom only if the Judge is in the courtroom and use of a recording device shall terminate when the Judge leaves the courtroom.

(2) Recording of Jurors. Recording devices shall be placed to avoid recording images of jurors or prospective jurors in any manner. Audio recording of a juror's or prospective juror's statements or conversations is also prohibited, except that the jury foreperson's announcement of the verdict or questions to the Judge may be audio recorded.

(3) No Recording of Privileged or Confidential Communications. To preserve the attorney-client privilege and client confidentiality, as set forth in the Georgia Rules of Professional Conduct and statutory or decisional law, no person shall make a recording of any communication subject to the attorney-client privilege or client confidentiality.

(4) Interviews. No interview pertaining to a particular Court proceeding may be electronically recorded in the courtroom or vestibule except with the permission of the Judge.

(5) No Recording of Bench Conferences. No person other than the court reporter may record a bench conference unless prior express permission is granted by the Judge.

(j) **Recording Not Official Court Record**. No recording of a judicial proceeding made pursuant to this article may be used to modify or supplement the official Court record of that proceeding without express permission of the Judge pursuant to OCGA § 5-6-41 (f).

(k) **Notes and Sketches**. Nothing in this article prohibits making written notes and sketches pertaining to any judicial proceeding.

(l) **Disciplinary Authorities**. This article shall not apply to any disciplinary authority acting in the course of his or her official duties.

(m) **Enforcement**. A person who violates this article may be removed or excluded from the courtroom. A willful violation of this rule may be punishable as contempt of Court.

Rule 16-6. Judicial Sessions Outside the Nathan Deal Judicial Center

If the Court holds a judicial session at a place other than in the Nathan Deal Judicial Center in Atlanta, this article shall be followed to the fullest extent practicable.

ARTICLE 17. RECUSAL AND DISQUALIFICATION

Rule 17-1. Motion for Recusal and Affidavits in Support

(a) A motion to recuse or disqualify a Judge presiding in a particular case or proceeding shall be timely filed in writing. A motion to recuse or disqualify shall be filed with an affidavit that —

(1) presents all evidence supporting the motion; and

(2) fully asserts the facts upon which the motion is founded.

(b) The motion to recuse or disqualify shall be filed not later than five days after the date the filing party first learned of the alleged grounds for recusal or disqualification. Such filing shall also not be later than ten days prior to the date of the hearing or trial that is the subject of recusal or disqualification. The time requirements in this section shall be enforced unless good cause is shown for failure to meet such requirements. The motion to recuse or disqualify shall not delay the trial or proceeding.

Rule 17-2. Affidavit in Support of Recusal or Disqualification

(a) The affidavit in support of the motion to recuse or disqualify shall clearly state (1) the specific provision of the Georgia Code of Judicial Conduct or OCGA § 15-1-8 the affiant believes warrants disqualification of the Judge from presiding over the case or proceeding; and (2) the specific facts and reasons for the belief that bias or prejudice exists.

(b) The facts and reasons stated in the affidavit in support of recusal or disqualification shall be definite and specific as to time, place, persons, and circumstances of extra- judicial conduct or statements that demonstrate any of the following that would influence the Judge and impede or prevent impartiality:

(1) Bias in favor of any adverse party.

(2) Prejudice toward the moving party in particular.

(3) A systematic pattern of prejudicial conduct toward persons similarly situated to the moving party.

(c) Allegations consisting of bare conclusions and opinions shall not be legally sufficient to support the motion to recuse or disqualify or warrant further proceedings.

Rule 17-3. Duty of Judge

(a) When a Judge is presented with a motion to recuse or disqualify accompanied by a supporting affidavit, the Judge shall: (1) temporarily cease to act upon the merits of the matter; (2) immediately determine the timeliness of the motion and the legal sufficiency of the affidavit; and (3) make a determination, assuming any of the facts alleged in the affidavit to be true, whether recusal would be warranted.

(b) If it is found that: (1) the motion to recuse or disqualify is timely; (2) the affidavit is sufficient; and (3) recusal would be authorized if some or all of the facts set forth in the affidavit are true, then the motion shall be handled in the manner prescribed in this rule and BCR 17-4.

(c) The allegations of the motion to recuse or disqualify shall stand denied automatically. The Judge shall not otherwise oppose the motion. In reviewing a motion to recuse, the Judge or justice (as provided in BCR 17-4) shall be guided by the Georgia Code of Judicial Conduct.

Rule 17-4. Procedure Upon Motion for Disqualification

The motion to recuse or disqualify shall be assigned for hearing to another Business Court Judge, if any, or a justice of the Supreme Court of Georgia, who shall be selected in the following manner:

(1) If the Business Court consists of only one Judge, then the motion shall be referred to the chief justice of the Supreme Court of Georgia, who in his or her discretion, shall either hear the motion or shall otherwise select another justice of the Supreme Court to hear the motion. If the motion is sustained, the chief justice shall order a sitting judge of the Court of Appeals of Georgia, a superior court, or a state court to sit by designation as a temporary judge of the Georgia State-wide Business Court, pursuant to OCGA § 15-5A-2 (f).

(2) If the Business Court consists of two Judges, the other Business Court Judge shall hear the motion unless he or she is also disqualified. If he or she is disqualified, then the assignment of the motion shall follow the procedures set forth in subsection (1) of this rule.

(3) If the Business Court consists of three or more Judges, selection shall be made by use of the Court's existing random, impartial case assignment method. If the Court does not have random, impartial case assignment rules, then assignment shall be determined by one of the following methods:

(A) The Chief Judge of the Business Court, if any, shall select a Business Court Judge to hear the motion, unless the Chief Judge is the one against whom the motion is filed.

(B) If the Court has no designated Chief Judge or the Chief Judge is the one against whom the motion is filed, the assignment shall be made by the Judge of the Business Court who is the next most senior by time of service, unless the Judge with the next most seniority is also a Judge against whom the motion is filed. The process contemplated in this paragraph shall continue until either the case is assigned to a Business Court Judge who is not disqualified or all Business Court Judges are disqualified from hearing the motion.

(C) If all Judges of the Business Court are disqualified from hearing the motion, the assignment of the motion shall follow the procedures set forth in subsection (1) of this rule.

Rule 17-5. Findings and Ruling

The Judge or Supreme Court justice assigned to hear the motion to recuse or disqualify may consider the motion solely based upon the affidavit in support or may convene a hearing to consider additional evidence. After consideration of the evidence, the Judge or Supreme Court justice assigned shall rule on the merits of the motion and shall make written findings and conclusions. If the motion is sustained, the selection of another Judge to hear the case shall follow the same procedure as established in BCR 17-4. Any determination of disqualification shall not be competent evidence in any other case or proceedings.

Rule 17-6. Voluntary Recusal

If a Business Court Judge, either on the motion of one of the parties or the Judge's own motion, voluntarily disqualifies himself or herself from hearing a particular case, another Judge selected by the procedure set forth in BCR 17-4 shall be assigned to hear the matter involved. A voluntary recusal shall not be construed as either an admission or denial of any allegations set out in the motion to recuse or disqualify.

ARTICLE 18. REMITTITUR AND JUDGMENT

Rule 18-1. Filing of Remittitur and Judgment

After receiving the remittitur and judgment of an appellate court, a copy of the notice of appeal, the remittitur, and the index of each appeal shall be filed with the original action and the balance of the copy of the record shall be destroyed. The original record shall be retained. If two or more cases are involved in one appeal, the material referenced in this rule shall be placed in one of the case files and a cross-reference to that file shall be noted in each remaining file.

ARTICLE 19. DOCKET, FORMS, AND CASELOAD REPORTING

Rule 19-1. Docket Maintenance

The Clerk shall maintain the docket, which shall include the information required under these rules. The docket shall bear the name of the matter docketed and a unique consecutive number. No other dockets shall be kept.

Rule 19-2. Docket Indexing

The docket shall contain separate civil action number entries for each filed action. Each action in the docket shall be indexed by the name of all parties to the action. This docket shall contain entries of all the following information:

(1) Action number (i.e., a unique civil action number shall be assigned to each action).

(2) Cause of action (i.e., an entry of the specific type of action filed).

(3) Names of all counsel of record.

(4) Names of all parties.

(5) Date of filing.

(6) Costs paid.

(7) Date and type of service.

(8) The date and type of specific disposition of the action, including clear entries for each of the following:

(A) Dismissals (noting whether with or without prejudice).

(B) Settlements.

(C) Judgments and the type of each judgment (e.g., summary, default, on the pleadings, consent, on the verdict, notwithstanding the verdict, or directed verdict).

(D) Five-year or other administrative termination.

(E) Transfer to court with proper jurisdiction and venue.

(F) Whether the verdict or judgment is for the plaintiff or the defendant.

(G) Whether there was a mistrial.

(H) The date of the trial, if any.

(I) Whether the case was tried (noting whether with or without jury).

(J) The name of the Judge making the final disposition of the case.

Rule 19-3. Case Initiation Questionnaire Processing

In accordance with BCR 3-14, the Clerk shall require an attorney filing an action in the Court to complete a case initiation questionnaire on the e-filing system. The Clerk shall enter the civil action number for the case on the case initiation questionnaire and the form shall become part of the file for the case. The Clerk shall use each cause of action indicated by the attorney completing the questionnaire to enter the cause of action upon the docket of the Court, unless it appears to the satisfaction of the Clerk by an inspection of the pleadings that a cause of action has been recorded in error by the attorney. If an erroneous cause of action has been recorded, the Clerk shall correct the case initiation questionnaire and enter each correct cause of action upon the docket of the Court.

Rule 19-4. Case Disposition Form

An order disposing of an action presented for consideration to the Court by any attorney or party shall be accompanied by a completed case disposition form. If the order is prepared or reframed by the Court, the Court shall cause the case disposition form to be completed or corrected, if necessary. The case disposition form shall be sent to the Clerk along with the relevant order to become part of the file for the case. The Clerk shall require any attorney or party filing a voluntary dismissal or settlement of an action to complete a case disposition form. The form shall become part of the file for the case. The Clerk shall use the specific type of disposition found on the completed case disposition form to enter the specific type of disposition upon the docket of the Court, unless it appears to the satisfaction of the Clerk by an inspection of the order that the type of disposition has been recorded in error. If the wrong type of disposition has been recorded, the Clerk shall correct the case disposition form and enter the correct type of disposition upon the docket of the Court. If additional information is deemed necessary by the Court at disposition, the case disposition form may be modified to include new items by using the blank space available at the bottom of the form.

Rule 19-5. Caseload Reporting

The Court shall prepare a caseload management report within ten days after the last calendar day of each month. The chief justice of the Supreme Court of Georgia may request copies of the information that is prepared by the Business Court pursuant to this rule. The case types, events types, and disposition methods used in the caseload management reports shall conform to Judicial Council of Georgia guidelines for reporting caseload. Each such report shall include all the following:

(1) The number of cases filed by case type in the prior month and year-to-date.

(2) The number of cases disposed of by case type and disposition method in the prior month and year-to-date.

(3) The number and type of pending cases.

(4) A list of cases more than 180 days old, to include —

(A) case number;

(B) style;

(C) case type;

(D) filing date;

(E) next event scheduled;

(F) date of that event; and

(G) any other information available to the Business Court within its standardized computer programs.

ARTICLE 20. MOTIONS FOR NEW TRIAL

Rule 20-1. Time for Hearing on Motion

(a) Counsel shall make a reasonable effort to expedite litigation consistent with the interests of his or her client. The Court shall hear a motion for new trial as promptly as possible. A ruling on such motion shall be rendered within the time period required by law and on the record, provided that the motion is complete and the transcript and post-hearing motions or other matters are submitted.

(b) The Court shall monitor the progress of each case. Priority should ordinarily be given to cases pending the longest.

Rule 20-2. Transcript Cost

Except where leave to proceed in forma pauperis (i.e., as an indigent party) has been granted by the Court, an attorney who files a motion for a new trial or a notice of appeal specifying that the transcript of evidence or hearing shall be included in the record shall be personally responsible for compensating the court reporter for the cost of transcription. The filing of such motion or notice of appeal shall constitute a certification by the attorney that the transcript has been ordered from the court reporter. The filing of such motion or notice of appeal prior to ordering the transcript from the reporter may subject the attorney to disciplinary action by the Court.

Rule 20-3. Transmission of Record

Upon filing a notice of appeal, the Clerk shall compile and transmit the record in accordance with the requirement of the appropriate appellate court as required by OCGA § 5-6-43.

ARTICLE 21. COURT SECURITY

Rule 21-1. Security and Emergencies Generally

In consultation with the Supreme Court of Georgia, the Business Court shall prepare for emergencies by developing: (1) a court security plan to address the safety of the public and Court employees; and (2) a judicial emergency operations plan to provide for an immediate response to any

type of emergency and provide for continuity of operations during such emergency.

ARTICLE 22. SPECIAL MASTER

Rule 22-1. Appointment, Removal, and Substitution

(a) Unless a statute provides otherwise, upon the motion of a party or upon the Court's own motion, the Court may appoint a special master to conduct any of the following:

(1) To perform duties consented to by the parties.

(2) To address pre-trial and post-trial matters that the Court cannot efficiently, effectively, or promptly address.

(3) To provide guidance, advice, and information to the Court on complex or specialized subjects, including technology issues related to the discovery process.

(4) To monitor implementation of and compliance with orders of the Court or, in appropriate cases, to monitor implementation of settlement agreements.

(5) To investigate and report to the Court on matters identified by the Court.

(6) To conduct an accounting as instructed by the Court and report upon the results of the same.

(7) Upon a showing of good cause, to attend and supervise depositions conducted outside of the Court's jurisdiction.

(8) To hold trial proceedings and make or recommend findings of fact on issues to be decided by the Court without a jury if appointment is warranted by —

(A) some exceptional condition; or

(B) the need to perform an accounting, to resolve a difficult computation of damages, or if the matter involves issues that would benefit from a special substantive competence.

(b) A special master shall not have a relationship to the parties, counsel, action, or Judge that would require disqualification of a Judge under applicable standards, unless the parties consent to the appointment of a particular person after disclosure of all potential grounds for disqualification and the Court thereafter approves such appointment.

(c) In appointing a special master, the Court shall, if possible, consider the fairness of imposing the likely expenses on the parties and should protect against unreasonable expense and delay, taking into account the burdens and the benefits such an appointment would produce. The appointment of a special master shall not deprive any party of access to the courts or the civil justice system.

(d) A special master may be removed or substituted by order of the Court upon the motion of a party or on the Court's own motion.

Rule 22-2. Order Appointing Special Master

(a) **Notice**. The Court shall give the parties notice and an opportunity to be heard before appointing a special master.

(b) **Contents**. The order appointing a special master shall direct such master to proceed with all reasonable diligence and shall state all the following:

(1) The special master's duties, including any investigative or enforcement duties, and any specific limits on the master's authority.

(2) The circumstances, if any, in which the special master may communicate ex parte with the Court or a party.

(3) The nature of the materials to be preserved and filed as the record of the special master's activities.

(4) The time limits, method of filing the record, other procedures, and standards for reviewing the special master's orders, findings, and recommendations.

(5) The basis, terms, and procedure for fixing the special master's compensation pursuant to BCR 22-8.

(c) **Entry of Order of Appointment**. The Court may enter an order appointing a special master only after the prospective special master has filed an affidavit: (1) disclosing whether there is any ground for his or her disqualification and, if a ground for disqualification is disclosed, after the parties have consented with the Court's approval to waive the disqualification; and (2) certifying that the special master shall discharge his or her duties required by law and pursuant to the Court's instructions without favor to, or prejudice against, any party.

(d) **Amendment**. The order appointing a special master may be amended at any time by the Court after notice to the parties and an opportunity to be heard.

Rule 22-3. Authority of Special Master

Unless the order of appointment expressly directs otherwise, a special master shall have authority to regulate all proceedings and take all appropriate measures to perform fairly and efficiently all assigned duties. Unless otherwise indicated in the Court's order of appointment, the special master shall have the power to take evidence, hear motions, and pass on questions of law and fact within the scope of the referral order. The special master may by order impose upon a party any non-contempt sanction provided by OCGA §§ 9-11-37 and 9-11-45, and may recommend to the Court a contempt sanction against a party and any sanction against a non-party.

Rule 22-4. Evidentiary Hearing by Special Master

Unless the order of appointment expressly directs otherwise, a special master conducting an evidentiary hearing may exercise the power of the Court to compel, take, or record evidence.

Rule 22-5. Service of Order by Special Master

A special master who makes an order shall promptly serve a copy of such order on each party.

Rule 22-6. Special Master's Report

(a) Unless otherwise indicated in the order of appointment, a special master shall report all of the following to the Court:

(1) All motions submitted by the parties.

(2) All rulings made on all issues presented and all conclusions of law and findings of fact.

(3) All evidence offered by the parties and all rulings as to the admissibility of such evidence.

(4) Such other matters as the special master may deem appropriate.

(b) The special master shall file his or her report and promptly serve a copy of the report on each party, unless the Court directs otherwise.

Rule 22-7. Action on Special Master's Order, Report, or Recommendation

(a) **Action**. In acting on a special master's order, report, or recommendation, the Court shall afford the parties an opportunity to be heard and to object to any portion of such order, report, or recommendation. The Court may receive evidence, and may adopt or affirm, modify, reject, or reverse in whole or in part, or resubmit all or some issues to the special master with instructions.

(b) **Time to Object or Move**. A party may file a motion to reject or to modify the special master's order, report, or recommendation within 20 days from the date the master's order, report, or recommendation is

served, unless the Court sets a different time. The special master's order, report, or recommendation shall be deemed received three days after the date it is mailed by United States mail or on the same day if transmitted electronically or by hand-delivery. In the absence of a motion to reject or modify an order, report, or recommendation within the time provided, the order, report, or recommendation shall have the force and effect of an order of the Court.

(c) **Fact Findings**. The Court shall decide de novo all objections to findings of fact made or recommended by a special master, unless the parties stipulate with the Court's consent that —

(1) the special master's findings will be reviewed for clear error; or

(2) the findings of a special master appointed under this article will be final.

(d) **Legal Conclusions**. The Court shall decide de novo all objections to conclusions of law made or recommended by a special master.

(e) **Procedural Matters**. Unless the order of appointment establishes a different standard of review, the Court may set aside a special master's ruling on a procedural matter only for an abuse of discretion.

Rule 22-8. Compensation of Special Master

(a) **Fixing Compensation**. The Court shall fix the special master's compensation on the basis and terms stated in the order of appointment, but the Court may set a new basis and terms following notice and an opportunity to be heard.

(b) **Payment**. The compensation fixed shall be paid either —

(1) by a party or parties; or

(2) from a fund or subject matter of the action within the Court's control.

(c) **Allocation**. The Court shall allocate payment of the special master's compensation among the parties after considering the nature of the dispute and amount in controversy, the means of the parties, and the extent any party is more responsible than other parties for the reference to a special master. An interim allocation may be amended to reflect a decision on the merits.

ARTICLE 23. MANDATORY CONTINUING JUDICIAL EDUCATION

Rule 23-1. Judicial Education Program Requirements

(a) Every Judge, including senior Judges, shall attend approved creditable judicial education programs or activities totaling a minimum of 12 hours every calendar year. At least one hour of the mandated 12 hours per calendar year shall be devoted to the topic of legal or judicial ethics or legal or judicial professionalism. If a Judge completes more than 12 hours of credit in any calendar year, the excess credit shall be carried over and credited to the education requirements for the next succeeding year only.

(b) Every Judge is encouraged to attend national or regional specialty, graduate, or advanced programs of judicial and legal education, including a nationally-based basic course for business court judges.

(c) Qualifying creditable judicial education programs and activities shall include the following:

(1) Programs sponsored by the Institute of Continuing Judicial Education of Georgia.

(2) Programs of continuing legal education accredited by the State Bar of Georgia's Commission on Continuing Lawyer Competency, such as all Institute of Continuing Legal Education programs.

(3) Programs sponsored by any law school accredited by the American Bar Association.

(4) Such other programs of continuing judicial or legal education as may be approved by the Court.

(5) Teaching any of the programs listed in subsections (1) through (4) of this section.

(6) Service on the Georgia Judicial Qualifications Commission or the State Bar of Georgia Disciplinary Board for legal or judicial ethics or legal or judicial professionalism credit.

(d) For teaching in a program qualifying under subsections (1) through (5) of section (c) of this rule, the following credits shall be given:

(1) Three additional hours for each hour of instructional responsibility as a lecturer when no handout is prepared and six hours for each hour of lecture when a handout is required.

(2) Two hours for each hour as a panelist or mock trial judge.

(3) When the same lecture or other instructional activity is repeated in a single calendar year, additional credit shall be given equivalent to the actual time spent in delivering that presentation.

Rule 23-2. Judicial Education Reporting

On or before January 31 of each calendar year, each Judge shall make and submit to the Clerk evidence of compliance with the requirements of the program for mandatory continuing judicial education as set forth in BCR 23-1.

Rule 23-3. Failure to Comply with Judicial Education Requirements

(a) If a Judge fails to comply with the requirements of this article at the end of an applicable period, such Judge may submit to the Court a specific plan for making up the deficiency of necessary hours within 60 days after the last day for the reporting of activities for the preceding calendar year.

(b) If such remediation plan is not submitted, or if a plan is submitted but not complied with during the 60-day remediation period, the Court shall administer a reprimand to the noncomplying Judge.

Rule 23-4. Judicial Education Exemptions

The Court may exempt a Judge from the continuing judicial education requirements but not from the reporting requirements of this article for a period of not more than one calendar year upon a finding by the Court of special circumstances unique to that member constituting undue hardship.

ARTICLE 24. GENERAL PROVISIONS

Rule 24-1. Georgia State-wide Business Court Seal

The Chief Judge, if any, may designate a Business Court seal. Such seal shall be the official Court seal for use in such official and ceremonial purposes as the Chief Judge, if any, shall designate. If no Chief Judge is designated, the senior most Judge of the Business Court may designate the official seal for the Court.

Rule 24-2. Effective Date

These rules shall take effect on August 1, 2021.

Chapter 6

State Bar of Georgia - Selected Rules of Professional Responsibility

RULE 1: TERMINOLOGY AND DEFINITIONS

***

(f) "Domestic Lawyer" denotes a person authorized to practice law by the duly constituted and authorized governmental body of any state or territory of the United States or the District of Columbia but not authorized by the Supreme Court of Georgia or its rules to practice law in the state of Georgia.

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(h) Foreign Lawyer" denotes a person authorized to practice law by the duly constituted and authorized governmental body of any foreign nation, but not authorized by the Supreme Court of Georgia or its rules to practice law in the state of Georgia.

RULE 5.5: UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE OF LAW

Ethics & Discipline / Current Rules / Part IV (After January 1 / 2001) - Georgia Rules of Professional Conduct (also includes Disciplinary Proceedings and Advisory Opinion rules) / CHAPTER 1 GEORGIA RULES OF PROFESSIONAL CONDUCT AND ENFORCEMENT THEREOF

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A Domestic Lawyer shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the Domestic Lawyer is admitted to practice law in this jurisdiction.

(c) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the Domestic Lawyer, or a person the Domestic Lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission; or

(4) are not within paragraphs (c) (2) or (c) (3) and arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted to practice.

(d) A Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that:

(1) are provided to the Domestic Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; or

(2) are services that the Domestic Lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) A Foreign Lawyer shall not, except as authorized by this Rule or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law, or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Such a Foreign Lawyer does not engage in the unauthorized practice of law in this jurisdiction when on a temporary basis the Foreign Lawyer performs services in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the Foreign Lawyer, or a person the Foreign Lawyer is assisting, is authorized by law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute res-

olution proceedings held or to be held in this or another jurisdiction, if the services arise out of or are reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice;

(4)are not within paragraphs (e) (2) or (e) (3) and

(i) are performed for a client who resides or has an office in a jurisdiction in which the Foreign Lawyer is authorized to practice to the extent of that authorization; or

(ii) arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or

(iii) are governed primarily by international law or the law of a non-United States jurisdiction.

(f) A Foreign Lawyer who is not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction subject to the following conditions:

(1) The services are provided to the Foreign Lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission; and

(2) The Foreign Lawyer is and remains in this country in lawful immigration status and complies with all relevant provisions of United States immigration laws.

(g) For purposes of the grants of authority found in subsections (e) and (f) above, the Foreign Lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority.

(h) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XXI, Rule 121, Provision Of Legal Services Following Determination Of Major Disaster, may provide legal services in this state to the extent allowed by said Rules.

(i) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XV, Rules 91-95, Student Practice Rule, may provide legal services in this state to the extent allowed by said Rules.

(j) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XVI, Rules 97-103, Law School Graduates, may provide legal services in this state to the extent allowed by said Rules.

(k) A person who is not a member of the State Bar of Georgia, but who is allowed to practice law in Georgia on a limited basis pursuant to Supreme Court of Georgia Rules Part XX, Rules 114-120, Extended Public Service Program, may provide legal services in this state to the extent allowed by said Rules.

(l) Any domestic or foreign lawyer who has been admitted to the practice of law in Georgia pro hac vice, pursuant to the Uniform Rules of the various classes of courts in Georgia, shall pay all required fees and costs annually as set forth in those Rules. Failure to pay the annual fee by January 15 of each year of admission pro hac vice will result in a late fee of $100 that must be paid no later than March 1 of that year. Failure to pay the annual fees may result in disciplinary action, and said lawyer may be subject to prosecution under the unauthorized practice of law statutes of this state.

The maximum penalty for a violation of this Rule is disbarment.

Comment

[1] A lawyer may practice law only in a jurisdiction in which the lawyer is authorized to practice. A lawyer may be admitted to practice law in a jurisdiction on a regular basis or may be authorized by court rule or order or by law to practice for a limited purpose or on a restricted basis. Paragraph (a) applies to unauthorized practice of law by a lawyer, whether through the lawyer's direct action or by the lawyer assisting another person.

[2] The definition of the practice of law is established by law and varies from one jurisdiction to another. Whatever the definition, limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. This Rule does not prohibit a lawyer from employing the services of paraprofessionals and delegating functions to them, so long as the lawyer supervises the delegated work and retains responsibility for their work. See Rule 5.3.

[3] A lawyer may provide professional advice and instruction to nonlawyers whose employment requires knowledge of the law; for example, claims adjusters, employees of financial or commercial institutions, social workers, accountants and persons employed in government agencies. Lawyers also may assist independent nonlawyers, such as paraprofessionals, who are authorized by the law of a jurisdiction to provide particular law-related services. In addition, a lawyer may counsel nonlawyers who wish to proceed pro se.

[4] Other than as authorized by law or this Rule, a Domestic Lawyer violates paragraph (b) and a Foreign Lawyer violates paragraph (e) if the Domestic or Foreign Lawyer establishes an office or other systematic and continuous presence in this jurisdiction for the practice of law. Presence may be systematic and continuous even if the Domestic or Foreign Lawyer is not physically present here. Such Domestic or For-

eign Lawyer must not hold out to the public or otherwise represent that the Domestic or Foreign Lawyer is admitted to practice law in this jurisdiction. See also Rules 7.1(a) and 7.5(b).

[5] There are occasions in which a Domestic or Foreign Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction under circumstances that do not create an unreasonable risk to the interests of their clients, the public or the courts. Paragraph (c) identifies four such circumstances for the Domestic Lawyer. Paragraph (e) identifies four such circumstances for the Foreign Lawyer. The fact that conduct is not so identified does not imply that the conduct is or is not authorized. With the exception of paragraphs (d)(1) and (d)(2), this Rule does not authorize a Domestic Lawyer to establish an office or other systematic and continuous presence in this jurisdiction without being admitted to practice generally here.

[6] There is no single test to determine whether a Domestic or Foreign Lawyer's services are provided on a "temporary basis" in this jurisdiction, and may therefore be permissible under paragraph (c) or paragraph (e). Services may be "temporary" even though the Domestic or Foreign Lawyer provides services in this jurisdiction on a recurring basis, or for an extended period of time, as when the Domestic Lawyer is representing a client in a single lengthy negotiation or litigation.

[7] Paragraphs (c) and (d) apply to Domestic Lawyers. Paragraphs (e), (f) and (g) apply to Foreign Lawyers. Paragraphs (c) and (e) contemplate that the Domestic or Foreign Lawyer is authorized to practice in the jurisdiction in which the Domestic or Foreign Lawyer is admitted and excludes a Domestic or Foreign Lawyer who while technically admitted is not authorized to practice, because, for example, the Domestic or Foreign Lawyer is on inactive status.

[8] Paragraph (c)(1) recognizes that the interests of clients and the public are protected if a Domestic Lawyer associates with a lawyer licensed to practice in this jurisdiction. Paragraph (e)(1) recognizes that the interests of clients and the public are protected if a Foreign Lawyer associates with a lawyer licensed to practice in this jurisdiction. For these paragraphs to apply, however, the lawyer admitted to practice in this jurisdiction must actively participate in and share responsibility for the representation of the client.

[9] Domestic Lawyers not admitted to practice generally in a jurisdiction may be authorized by law or order of a tribunal or an administrative agency to appear before the tribunal or agency. This authority may be granted pursuant to formal rules governing admission pro hac vice or pursuant to informal practice of the tribunal or agency. Under paragraph (c)(2), a Domestic Lawyer does not violate this Rule when the Domestic Lawyer appears before a tribunal or agency pursuant to such authority. To the extent that a court rule or other law of this jurisdiction requires a Domestic Lawyer to obtain admission pro hac vice before appearing before a tribunal or administrative agency, this Rule requires the Domestic Lawyer to obtain that authority.

[10] Paragraph (c)(2) also provides that a Domestic Lawyer rendering services in this jurisdiction on a temporary basis does not violate this Rule when the Domestic Lawyer engages in conduct in anticipation of a proceeding or hearing in a jurisdiction in which the Domestic Lawyer is authorized to practice law or in which the Domestic Lawyer reasonably expects to be admitted pro hac vice. Examples of such conduct include meetings with the client, interviews of potential witnesses, and the review of documents. Similarly, a Domestic Lawyer may engage in conduct temporarily in this jurisdiction in connection with pending litigation in another jurisdiction in which the Domestic Lawyer is or reasonably expects to be authorized to appear, including taking depositions in this jurisdiction.

[11] When a Domestic Lawyer has been or reasonably expects to be admitted to appear before a court or administrative agency, paragraph (c)(2) also permits conduct by lawyers who are associated with that lawyer in the matter, but who do not expect to appear before the court or administrative agency. For example, subordinate Domestic Lawyers may conduct research, review documents, and attend meetings with witnesses in support of the Domestic Lawyer responsible for the litigation.

[12] Paragraph (c)(3) permits a Domestic Lawyer, and paragraph (e)(3) permits a Foreign Lawyer, to perform services on a temporary basis in this jurisdiction if those services are in or reasonably related to a pending or potential arbitration, mediation, or other alternative dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the Domestic or Foreign Lawyer's practice in a jurisdiction in which the Domestic or Foreign Lawyer is admitted to practice. The Domestic Lawyer, however, must obtain admission pro hac vice in the case of a court-annexed arbitration or mediation or otherwise if court rules or law so requires.

[13] Paragraph (c)(4) permits a Domestic Lawyer to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted but are not within paragraphs (c)(2) or (c)(3). These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers. Paragraph (e)(4)(i) permits a Foreign Lawyer to provide certain

legal services in this jurisdiction on behalf of a client who resides or has an office in the jurisdiction in which the Foreign Lawyer is authorized to practice. Paragraph (e)(4)(ii) permits a Foreign Lawyer to provide certain legal services on a temporary basis in this jurisdiction that arise out of or are reasonably related to a matter that has a substantial connection to the jurisdiction in which the Foreign Lawyer is authorized to practice. These services include both legal services and services that nonlawyers may perform but that are considered the practice of law when performed by lawyers.

[14] Paragraphs (c)(3) and (c)(4) require that the services arise out of or be reasonably related to the Domestic Lawyer's practice in a jurisdiction in which the Domestic Lawyer is admitted. Paragraphs (e)(3) and (e)(4)(ii) require that the services arise out of or be reasonably related to the Foreign Lawyer's practice in a jurisdiction in which the Foreign Lawyer is admitted to practice. A variety of factors may evidence such a relationship. These include but are not limited to the following:

a. The Domestic or Foreign Lawyer's client may have been previously represented by the Domestic or Foreign Lawyer; or

b. The Domestic or Foreign Lawyer's client may be resident in, have an office in, or have substantial contacts with the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or

c. The matter, although involving other jurisdictions, may have a significant connection with that jurisdiction in which the Domestic of Foreign Lawyer is admitted; or

d. Significant aspects of the Domestic or Foreign Lawyer's work in a specific matter might be conducted in the jurisdiction in which the Domestic or Foreign Lawyer is admitted or another jurisdiction; or

e. A significant aspect of a matter may involve the law of the jurisdiction in which the Domestic or Foreign Lawyer is admitted; or

f. Some aspect of the matter may be governed by international law or the law of a non-United States jurisdiction; or

g. The Lawyer's work on the specific matter in this jurisdiction is authorized by the jurisdiction in which the lawyer is admitted; or

h. The client's activities or the legal issues involve multiple jurisdictions, such as when the officers of a multinational corporation survey potential business sites and seek the services of their Domestic or Foreign Lawyer in assessing the relative merits of each; or

i. The services may draw on the Domestic or Foreign Lawyer's recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.

[15] Paragraph (d) identifies two circumstances in which a Domestic Lawyer, who is not disbarred or suspended from practice in any jurisdiction, may establish an office or other systematic and continuous presence in this jurisdiction for the practice of law as well as provide legal services on a temporary basis. Except as provided in paragraphs (d)(1) and (d)(2), a Domestic Lawyer who establishes an office or other systematic or continuous presence in this jurisdiction must become admitted to practice law generally in this jurisdiction.

[16] Paragraph (d)(1) applies to a Domestic Lawyer who is employed by a client to provide legal services to the client or its organizational affiliates, i.e., entities that control, are controlled by, or are under common control with the employer. This paragraph does not authorize the provision of personal legal services to the employer's officers or employees. The paragraph applies to in-house corporate lawyers, government lawyers and others who are employed to render legal services to the employer. The Domestic Lawyer's ability to represent the employer outside the jurisdiction in which the Domestic Lawyer is licensed generally serves the interests of the employer and does not create an unreasonable risk to the client and others because the employer is well situated to assess the Domestic Lawyer's qualifications and the quality of the Domestic Lawyer's work.

[17] If an employed Domestic Lawyer establishes an office or other systematic presence in this jurisdiction for the purpose of rendering legal services to the employer, the Domestic Lawyer may be subject to registration or other requirements, including assessments for client protection funds and mandatory continuing legal education.

[18] Paragraph (d)(2) recognizes that a Domestic Lawyer may provide legal services in a jurisdiction in which the Domestic Lawyer is not licensed when authorized to do so by federal or other law, which includes statute, court rule, executive regulation or judicial precedent. Paragraph (e)(4)(iii) recognizes that a Foreign Lawyer may provide legal services when the services provided are governed by international law or the law of a foreign jurisdiction.

[19] A Domestic or Foreign Lawyer who practices law in this jurisdiction pursuant to paragraphs (c), (d), (e) or (f) or otherwise is subject to the disciplinary authority of this jurisdiction. See Rule 8.5(a).

[20] In some circumstances, a Domestic Lawyer who practices law in this jurisdiction pursuant to paragraphs (c) or (d) may have to inform the client that the Domestic Lawyer is not licensed to practice law in this jurisdiction. For example, that may be required when the representation occurs primarily in this jurisdiction and requires knowledge of the law of this jurisdiction. See Rule 1.4.

[21] Paragraphs (c), (d), (e) and (f) do not authorize communications advertising legal services to prospective clients in this jurisdiction by Domestic or Foreign Lawyers who are admitted to practice in other jurisdictions. Whether and how Domestic or Foreign Lawyers may communicate the availability of their services to prospective clients in this jurisdiction is governed by Rules 7.1 to 7.5.

RULE 8.5: DISCIPLINARY AUTHORITY; CHOICE OF LAW

a. Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A Domestic or Foreign Lawyer is also subject to the disciplinary authority of this jurisdiction if the Domestic or Foreign Lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer or Domestic or Foreign Lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

b. Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the rules of professional conduct to be applied shall be as follows:

1. for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

2. for any other conduct, the rules of the jurisdiction in which the lawyer or Domestic or Foreign Lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer or Domestic or Foreign Lawyer shall not be subject to discipline if the lawyer's or Domestic or Foreign Lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer or Domestic or Foreign Lawyer reasonably believes the predominant effect of the lawyer or Domestic or Foreign Lawyer's conduct will occur.

Comment

Disciplinary Authority

[1] It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to Domestic or Foreign Lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. See, Rule 9.4: Jurisdiction and Reciprocal Discipline. A Domestic or Foreign Lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.5 (a) appoints an official to be designated by this Court to receive service of process in this jurisdiction. The fact that the Domestic or Foreign Lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.

Choice of Law

[2] A lawyer or Domestic or Foreign Lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer or Domestic or Foreign Lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer or Domestic or Foreign Lawyer is licensed to practice. Additionally, the lawyer or Domestic or Foreign Lawyer's conduct may involve significant contacts with more than one jurisdiction.

[3] Paragraph (b) seeks to resolve such potential conflicts. Its premise is that minimizing conflicts between rules, as well as uncertainty about which rules are applicable, is in the best interest of both clients and the profession (as well as the bodies having authority to regulate the profession). Accordingly, it takes the approach of (i) providing that any particular conduct of a lawyer or Domestic or Foreign Lawyer shall be subject to only one set of rules of professional conduct, (ii) making the determination of which set of rules applies to particular conduct as straightforward as possible, consistent with recognition of appropriate regulatory interests of relevant jurisdictions, and (iii) providing protection from discipline for lawyers or Domestic or Foreign Lawyers who act reasonably in the face of uncertainty.

[4] Paragraph (b)(1) provides that as to a lawyer or Domestic or Foreign Lawyer conduct relating to a proceeding pending before a tribunal, the lawyer or Domestic or Foreign Lawyer shall be subject only to the rules of the jurisdiction in which

the tribunal sits unless the rules of the tribunal, including its choice of law rule, provide otherwise. As to all other conduct, including conduct in anticipation of a proceeding not yet pending before a tribunal, paragraph (b)(2) provides that a lawyer or Domestic or Foreign Lawyer shall be subject to the rules of the jurisdiction in which the lawyer or Domestic or Foreign Lawyer's conduct occurred, or, if the predominant effect of the conduct is in another jurisdiction, the rules of that jurisdiction shall be applied to the conduct. In the case of conduct in anticipation of a proceeding that is likely to be before a tribunal, the predominant effect of such conduct could be where the conduct occurred, where the tribunal sits or in another jurisdiction.

[5] When a lawyer or Domestic or Foreign Lawyer's conduct involves significant contacts with more than one jurisdiction, it may not be clear whether the predominant effect of the lawyer or Domestic or Foreign Lawyer's conduct will occur in a jurisdiction other than the one in which the conduct occurred. So long as the lawyer or Domestic or Foreign Lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer or Domestic or Foreign Lawyer reasonably believes the predominant effect will occur, the lawyer or Domestic or Foreign Lawyer shall not be subject to discipline under this Rule.

[6] If two admitting jurisdictions were to proceed against a lawyer or Domestic or Foreign Lawyer for the same conduct, they should, applying this rule, identify the same governing ethics rules. They should take all appropriate steps to see that they do apply the same rule to the same conduct, and in all events should avoid proceeding against a lawyer or Domestic or Foreign Lawyer on the basis of two inconsistent rules.

Chapter 7

Georgia International Commercial Arbitration Code (2012)

Introduction to
The Georgia International Commercial Arbitration Code (GIAC)

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In an effort to make their legal climates more attractive for international business, many individual US states and most countries have passed special international arbitration acts. Georgia was a pioneer in these efforts when it enacted the Georgia Arbitration Code (GAC) in 1988. Article 1, Part 2 of the GAC was a set of provisions specifically applicable to international commercial arbitration (ICA).2

In 2011, an ATLAS working group conducted an extensive examination of various arbitral laws and determined that, after more than 20 years of developments in international arbitral practice, Georgia should adopt a version of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration. When the GAC was passed in 1988, the UNCITRAL Model Law was barely two years old. Since then, many US states and most countries adopted some version of the UNCITRAL Model Law, and the Model Law itself was revised in 2006. Essentially, practice evolved, and the Model Law became the familiar standard.

The working group drafted a version of the Model Law that embodied the most advanced pro-arbitration framework possible, and recommended replacing Part 2 of the GAC with that version. The State Bar of Georgia successfully spearheaded the legislative effort, and the Georgia International Arbitration Code (GIAC)3 went into effect July 1, 2012.

The GIAC is compatible with federal arbitration law and policy, including treaties for the enforcement of arbitral agreements and awards. There are very few substantive differences from previous Georgia law; however, unlike previous Georgia law, which relied on a combination of domestic and a few international provisions to "fill in the gaps" in federal law, the new law provides a more coherent and complete stand-alone legal framework for ICA. This includes a clear set of definitions, more detailed guidance on the selection and challenge of arbitrators, and provisions for the conduct of the arbitration when parties have either failed to adopt institutional procedural rules or create their own.

The GIAC varies from the original Model Law by adopting several pro-arbitration elements from other states and countries and improvements developed by the working group. The principles guiding the group's deliberations included:

- Recognition of party use of ICA to avoid either party's home courts.
- Recognition of party autonomy in agreeing to arbitrate and in shaping the arbitral process.
- Minimal judicial involvement except in support of the process.
- Overall efficiency of the process while preserving the fundamental elements of procedural fairness and due process.

With respect to the general organization of the GIAC:

- General provisions. (OCGA §§ 9-9-20 - 27)
- Arbitration agreement. (OCGA §§ 9-9-28 - 30)
- Composition of the arbitration tribunal. (OCGA §§ 9-9-31 - 36)
- Jurisdiction of the arbitration tribunal. (OCGA § 9-9-37)
- Interim measures. (OCGA §§ 9-9-38 - 39)
- Conduct of the arbitral proceedings. (OCGA §§ 9-9-40 - 49)
- Making the award and terminating the proceedings. (OCGA §§ 9-9-50 - 55)
- Recourse against the award (OCGA § 9-9-56)
- Recognition and enforcement of awards. (OCGA §§ 9-9-57 - 58)
- Appeals. (OCGA § 9-9-59)

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2 Previously O.C.G.A. §§ 9-9-30 through 9-2-43 (GCA §§ 7-201 - 7-214),

3 O.C.G.A. §§ 9-9-20 through 59.

Unique aspects of the new law include:

- A statement of purpose. (OCGA § 9-9-20)
- Allowing parties' choice of judicial venue. (OCGA § 9-9-27)
- Default to one arbitrator when the parties have failed to specify. (OCGA § 9-9-31)
- Codification of existing immunity for arbitrators and arbitral institutions. (OCGA § 9-9-32(f))
- Party control over competence-competence and limits on judicial review of jurisdictional rulings by arbitrators. (OCGA § 9-9-32)
- Consolidation of arbitrations only with party consent. (OCGA § 9-9-46(d))
- Arbitrator power to award fees and expenses, including attorney's fees. (OCGA § 9-9-53(e))
- The right for non-Georgia parties to opt out of grounds for judicial review of the award. (OCGA § 9-9-56(e))

The Georgia International Arbitration Code (2012)
Georgia Code 9-9-20 et seq.

§ 9-9-20

(a) This part shall be known and may be cited as the 'Georgia International Commercial Arbitration Code.'
(b) The purpose of this part is to encourage international commercial arbitration in this state, to enforce arbitration agreements and arbitration awards, to facilitate prompt and efficient arbitration proceedings consistent with this part, and to provide a conducive environment for international business and trade.

§ 9-9-21

(a) This part shall apply to international commercial arbitration, subject to any agreement in force between the United States and any other country.
(b) The provisions of this part, except for Code Sections 9-9-29 and 9-9-30, subsections (f) through (h) of Code Section 9-9-38, and Code Sections 9-9-39, 9-9-57, and 9-9-58, shall apply only if the place of arbitration is in this state.
(c) An arbitration shall be considered international if:
(1) The parties to an arbitration agreement have their places of business in different countries at the time of the conclusion of such arbitration agreement;
(2) One of the following places is situated outside the country in which the parties have their places of business:
(A) The place of arbitration, if determined in or pursuant to the arbitration agreement; or
(B) Any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or
(3) The parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.
(d) For the purposes of subsection (c) of this Code section:
(1) If a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement; and
(2) If a party does not have a place of business, reference is to be made to such party's habitual residence.
(e) This part shall not affect any other law of this state by virtue of which certain disputes shall not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this part.

§ 9-9-22

(a) As used in this part, the term:
(1) 'Arbitration' means any arbitration, whether or not administered by a permanent arbitral institution.
(2) 'Arbitration agreement' means an agreement by the parties to submit to arbitration all or certain disputes that have arisen or may arise between them in respect of a defined legal relationship, whether contractual or not, and may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
(3) 'Arbitration award' means a decision of an arbitration tribunal on the substance of a dispute submitted to it and shall include an interim, interlocutory, or partial award.
(4) 'Arbitration tribunal' means a sole arbitrator or a panel of arbitrators.
(b) (1) Where a provision of this part, except Code Section 9-9-50, leaves the parties free to determine a certain issue, such freedom shall include the right of the parties to authorize a third party, including an institution, to make that determination.
(2) Where a provision of this part refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement shall include any arbitration rule referred to in such agreement.
(3) Where a provision of this part, other than in paragraph (1) of Code Section 9-9-47 and paragraph (1) of subsection (b) of Code Section 9-9-54, refers to a claim, it shall also apply to a counterclaim, and where it refers to a defense, it shall also apply to a defense to such counterclaim.

§ 9-9-23

(a) In the interpretation of this part, regard shall be given to its international origin and to the need to promote

uniformity in its application and the observance of good faith.

(b) Questions concerning matters governed by this part which are not expressly settled in it are to be settled in conformity with the general principles on which this part is based.

§ 9-9-24

(a) Unless otherwise agreed by the parties:

(1) Any written communication shall be deemed to have been received if it is delivered to the addressee personally or if it is delivered at his or her place of business, habitual residence, or mailing address; if none of these can be found after making a reasonable inquiry, a written communication shall be deemed to have been received if it is sent to the addressee's last known place of business, habitual residence, or mailing address by registered mail or any other means which provides a record of the attempt to deliver it; and

(2) Communications shall be deemed to have been received on the day it is delivered.

(b) The provisions of this Code section shall not apply to communications in court proceedings.

§ 9-9-25

A party who knows that any provision of this part from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without objecting to such noncompliance without undue delay or, if a time limit is provided therefore, within such period of time, shall be deemed to have waived the right to object.

§ 9-9-26

In matters governed by this part, no court shall intervene except where provided in this part. If the controversy is within the scope of this part, the arbitration agreement shall be enforced by the courts of this state in accordance with this part without regard to the justiciable character of the controversy.

§ 9-9-27

The functions referred to in subsections (c) and (d) of Code Section 9-9-32, subsection (c) of Code Section 9-9-34, Code Section 9-9-35, paragraph (3) of Code Section 9-9-37, Code Section 9-9-49, and subsection (b) of Code Section 9-9-56 shall be performed by the superior court in the county agreed upon by the parties. Barring such agreement, these functions shall be performed by the superior court:

(1) In any county where any portion of the hearing has been conducted;

(2) If no portion of the hearing has been conducted in this state, in the county where any party resides or does business; or

(3) If there is no such county, in any county.

§ 9-9-28

(a) All arbitration agreements shall be in writing.

(b) A written arbitration agreement means that its contents are recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.

(c) (1) As used in this subsection, the term:

(A) 'Data message' means information generated, sent, received or stored by electronic, magnetic, optical, or similar means, including, but not limited to, electronic data interchange (EDI), e-mail, telegram, telex, or telecopy.

(B) 'Electronic communication' means any communication that the parties make by means of data messages.

(2) The requirement that an arbitration agreement be in writing may be met by an electronic communication if the information contained therein is accessible so as to be usable for subsequent reference.

(d) An arbitration agreement shall be deemed to be in writing if it is contained in an exchange of statements of claim and defense in which the existence of an arbitration agreement is alleged by one party and not denied by the other.

(e) The reference in a contract to any document containing an arbitration clause shall constitute an arbitration agreement in writing, provided that the reference is such as to make that clause a part of the contract.

§ 9-9-29

(a) A court before which a civil action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting the party's first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the arbitration agreement is null and void, inoperative, or incapable of being performed.

(b) Where an action referred to in subsection (a) of this Code section has been brought, arbitral proceedings may nevertheless be commenced or continued, and an arbitration award may be made, while the action is pending before the court.

§ 9-9-30

Before or during arbitral proceedings, a party may request from a court an interim measure of protection, and a court may grant such measure, and such request shall not be deemed to be incompatible with an arbitration agreement.

§ 9-9-31

The parties shall be free to determine the number of arbitrators, and if no determination is stated, the number of arbitrators shall be one.

§ 9-9-32

(a) No person shall be precluded by reason of nationality from acting as an arbitrator, unless otherwise agreed by the parties.
(b) The parties shall be free to agree on a procedure to appoint the arbitrator or arbitrators, subject to the provisions of subsections (d) and (e) of this Code section.
(c) If the parties do not agree on the procedure to appoint the arbitrator or arbitrators:
(1) In an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within 30 days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, upon request of a party, by the court specified in Code Section 9-9-27; or
(2) In an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator within 30 days, the arbitrator shall be appointed, upon request of a party, by the court specified in Code Section 9-9-27.
(d) Where, under an appointment procedure agreed upon by the parties:
(1) A party fails to act as required under such procedure;
(2) The parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure; or
(3) A third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the court specified in Code Section 9-9-27 to take the necessary measure, unless the arbitration agreement on the appointment procedure provides other means for securing the appointment.
(e) A decision on a matter entrusted by subsections (c) or (d) of this Code section to the court specified in Code Section 9-9-27 shall not be subject to appeal. The court, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the arbitration agreement and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.
(f) An arbitrator shall not be liable for:
(1) Anything done or omitted in the discharge or purported discharge of arbitral functions, unless the act or omission is shown to have been in bad faith; or
(2) Any mistake of law, fact, or procedure made in the course of arbitration proceedings or in the making of an arbitration award.
(g) Subsection (f) of this Code section shall apply to an employee or agent of an arbitrator and to an appointing authority, arbitral institution, or person designated or requested by the parties to appoint or nominate an arbitrator or provide other administrative services in support of the arbitration.

§ 9-9-33

(a) When a person is approached in connection with the possible appointment of such person as an arbitrator, such person shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by the arbitrator.
(b) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, or if the arbitrator does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by the party, or in whose appointment the party has participated, only for reasons of which the party becomes aware after the appointment has been made.

§ 9-9-34

(a) The parties shall be free to agree on a procedure for challenging an arbitrator, subject to the provisions of subsection (c) of this Code section.
(b) If the parties fail to agree on a procedure for challenging an arbitrator, a party who intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitration tribunal or after becoming aware of any circumstance referred to in subsection (b) of Code Section 9-9-33, send a written statement of the reasons for the challenge to the arbitration tribunal. Unless the challenged arbitrator withdraws from office or the other party agrees to the challenge, the arbitration tribunal shall decide on the challenge.

(c) If a challenge under the procedure set forth in subsection (b) of this Code section is not successful, within 30 days after having received notice of the decision rejecting the challenge, the challenging party may request that the court specified in Code Section 9-9-27 decide on the challenge, which decision shall not be subject to appeal; while such a request is pending, the arbitration tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an arbitration award.

§ 9-9-35

(a) If an arbitrator becomes de jure or de facto unable to perform his or her functions or for other reasons fails to act without undue delay, the arbitrator's mandate terminates if he or she withdraws from office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request that the court specified in Code Section 9-9-27 decide on the termination of the mandate, which decision shall not be subject to appeal.
(b) If, under this Code section or subsection (b) of Code Section 9-9-34, an arbitrator withdraws from office or a party agrees to the termination of the mandate of an arbitrator, this shall not imply acceptance of the validity of any ground referred to in this Code section or subsection (b) of Code Section 9-9-33.

§ 9-9-36

Where the mandate of an arbitrator terminates under Code Section 9-9-34 or 9-9-35 or because of withdrawal from office for any other reason or because of the revocation of the arbitrator's mandate by agreement of the parties or in any other case of termination of the arbitrator's mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

§ 9-9-37

Unless otherwise agreed by the parties:

(1) The arbitration tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitration tribunal that the contract is null and void shall not thereby invalidate the arbitration clause;
(2) A plea that the arbitration tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense. A party shall not be precluded from raising such a plea by the fact that the party has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitration tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitration tribunal may, in either case, admit a later plea if it considers the delay justified; and
(3) The arbitration tribunal may rule on a plea referred to in paragraph (2) of this Code section either as a preliminary question or in an arbitration award on the merits. If the arbitration tribunal rules as a preliminary question that it has jurisdiction or only partial jurisdiction, within 30 days after having received notice of such ruling and subject to the permission of the arbitration tribunal, any party may request that the court specified in Code Section 9-9-27 decide the matter, which decision shall not be subject to appeal; while such a request is pending, the arbitration tribunal may continue the arbitral proceedings and make an arbitration award.

§ 9-9-38

(a) Unless otherwise agreed by the parties, the arbitration tribunal may, at the request of a party, grant interim measures as it deems appropriate.
(b) The arbitration tribunal may modify, suspend, or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitration tribunal's own initiative.
(c) The arbitration tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
(d) The arbitration tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.
(e) If a measure ordered under subsection (a) of this Code section proves to have been unjustified from the outset, the party which obtained its enforcement may be obliged to compensate the other party for damage resulting from the enforcement of such measure or from its providing security in order to avoid enforcement. This claim may be put forward in the pending arbitral proceedings.
(f) An interim measure issued by an arbitration tribunal shall be recognized as binding and, unless otherwise provided by the arbitration tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to the provisions of Code Section 9-9-39.
(g) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension, or modification of that interim measure.

(h) Where recognition or enforcement of an interim measure is sought in a court of this state, such court may order the requesting party to provide appropriate security if the arbitration tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

§ 9-9-39

(a) Recognition or enforcement of an interim measure may be refused only:

(1) At the request of the party against whom it is invoked if the court is satisfied that:

(A) Such refusal is warranted on the grounds set forth in subparagraphs (a)(1)(A) through (a)(1)(D) of Code Section 9-9-58;

(B) The arbitration tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitration tribunal has not been complied with; or

(C) The interim measure has been terminated or suspended by the arbitration tribunal or, where so empowered, by the court of the state in which the arbitration takes place or under the law of which that interim measure was granted; or

(2) If the court finds that:

(A) The interim measure is incompatible with the powers conferred upon the court, unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or

(B) Any of the grounds set forth in subparagraph (a)(2)(A) or (a)(2)(B) of Code Section 9-9-58 shall apply to the recognition and enforcement of the interim measure.

(b) Any determination made by the court on any ground in subsection (a) of this Code section shall be effective only for the purposes of the application to recognize and enforce the interim measure. Where recognition or enforcement is sought, the court shall not undertake a review of the substance of the interim measure in determining any ground specified in subsection (a) of this Code section.

§ 9-9-40

The parties shall be treated with equality, and each party shall be given a full opportunity of presenting its case.

§ 9-9-41

(a) Subject to the provisions of this part, the parties shall be free to agree on the procedure to be followed by the arbitration tribunal in conducting the proceedings.

(b) If the parties fail to agree on the procedure to be followed by the arbitration tribunal in conducting proceedings, the arbitration tribunal may, subject to the provisions of this part, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitration tribunal includes the power to determine the admissibility, relevance, materiality, and weight of any evidence.

§ 9-9-42

(a) The parties shall be free to agree on the place of arbitration; provided, however, that failing such agreement, the place of arbitration shall be determined by the arbitration tribunal having regard to the circumstances of the case, including the convenience of the parties.

(b) Notwithstanding the provisions of subsection (a) of this Code section, the arbitration tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts, or the parties, or for inspection of goods, other property, or documents.

§ 9-9-43

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute shall commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

§ 9-9-44

(a) The parties shall be free to agree on the language or languages to be used in the arbitral proceedings; provided, however, that failing such agreement, the arbitration tribunal shall determine the language or languages to be used in the proceedings. Such agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing, and any arbitration award, decision, or other communication by the arbitration tribunal.

(b) The arbitration tribunal may order that any documentary evidence be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitration tribunal.

§ 9-9-45

(a) Within the period of time agreed by the parties or determined by the arbitration tribunal, the claimant shall state the facts supporting his or her claim, the points at issue, and the relief or remedy sought, and the respondent shall state his or her defense in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(b) Unless otherwise agreed by the parties, either party may amend or supplement his or her claim or defense during the course of the arbitral proceedings, unless the arbitration tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

§ 9-9-46

(a) Subject to any contrary agreement by the parties, the arbitration tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials; provided, however, that unless the parties have agreed that no hearings shall be held, the arbitration tribunal shall hold hearings at an appropriate stage of the proceedings, if requested by a party.
(b) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitration tribunal for the purposes of inspection of goods, other property, or documents.
(c) All statements, documents, or other information supplied to the arbitration tribunal by one party shall be communicated to the other party. Any expert report or evidentiary document on which the arbitration tribunal may rely in making its decision shall be communicated to the parties.
(d) Unless the parties agree to confer such power on the tribunal, the tribunal shall not have the power to order consolidation of proceedings or concurrent hearings; provided, however, that the parties shall be free to agree:
(1) That the arbitral proceedings shall be consolidated with other arbitral proceedings; or
(2) That concurrent hearings shall be held, on such terms as may be agreed.

§ 9-9-47

Unless otherwise agreed by the parties, if, without showing sufficient cause:
(1) The claimant fails to communicate his or her statement of claim in accordance with subsection (a) of Code Section 9-9-45, the arbitration tribunal shall terminate the proceedings;
(2) The respondent fails to communicate his or her statement of defense in accordance with subsection (a) of Code Section 9-9-45, the arbitration tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations; and
(3) Any party fails to appear at a hearing or to produce documentary evidence, the arbitration tribunal may continue the proceedings and make the arbitration award on the evidence before it.

§ 9-9-48

(a) Unless otherwise agreed by the parties, the arbitration tribunal:
(1) May appoint one or more experts to report to it on specific issues to be determined by the arbitration tribunal; and
(2) May require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods, or other property for the expert's inspection.
(b) Unless otherwise agreed by the parties, if a party requests or if the arbitration tribunal considers it necessary, the expert shall, after delivery of the expert's written or oral report, participate in a hearing where the parties have the opportunity to put questions to the expert and to present expert witnesses in order to testify on the points at issue.

§ 9-9-49

(a) The arbitrators may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence. Subpoenas shall be served and, upon application to the court specified in Code Section 9-9-27 by a party or the arbitrators, enforced in the same manner provided by law for the service and enforcement of subpoenas in a civil action.
(b) Notices to produce books, writings, and other documents or tangible things, depositions, and other discovery may be used in the arbitration according to procedures established by the arbitrators.
(c) A party shall have the opportunity to obtain a list of witnesses and to examine and copy documents relevant to the arbitration.
(d) Witnesses shall be compensated in the same amount and manner set forth in Title 24.

§ 9-9-50

(a) The arbitration tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given state shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its conflict of laws rules.
(b) Failing any designation by the parties, the arbitration tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
(c) The arbitration tribunal shall decide e*x aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.
(d) In all cases, the arbitration tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

§ 9-9-51

In arbitral proceedings with more than one arbitrator, any decision of the arbitration tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members; provided, however, that questions of procedure may be decided by a presiding arbitrator, if authorized by the parties or all members of the arbitration tribunal.

§ 9-9-52

(a) If, during arbitral proceedings, the parties settle the dispute, the arbitration tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitration tribunal, record the settlement in the form of an arbitration award on agreed terms.
(b) An arbitration award on agreed terms shall be made in accordance with the provisions of Code Section 9-9-53 and shall state that it is an arbitration award. Such an arbitration award shall have the same status and effect as any other arbitration award on the merits of the case.

§ 9-9-53

(a) An arbitration award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitration tribunal shall suffice, provided that the reason for any omitted signature is stated.
(b) The arbitration award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the arbitration award is an arbitration award on agreed terms pursuant to Code Section 9-9-52.
(c) The arbitration award shall state its date and the place of arbitration as determined in accordance with subsection (a) of Code Section 9-9-42. The arbitration award shall be deemed to have been made at that place.
(d) After the arbitration award is made, a copy signed by the arbitrators in accordance with subsection (a) of this Code section shall be delivered to each party.
(e) The arbitrators may award reasonable fees and expenses actually incurred, including, without limitation, fees and expenses of legal counsel, to any party to the arbitration and shall allocate the costs of the arbitration among the parties as it determines appropriate.

§ 9-9-54

(a) The arbitral proceedings shall be terminated by the final arbitration award or by an order of the arbitration tribunal in accordance with subsection (b) of this Code section.
(b) The arbitration tribunal shall issue an order for the termination of the arbitral proceedings when:

(1) The claimant withdraws his or her claim, unless the respondent objects thereto and the arbitration tribunal recognizes a legitimate interest by the respondent in obtaining a final settlement of the dispute;
(2) The parties agree on the termination of the proceedings; or
(3) The arbitration tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(c) The mandate of the arbitration tribunal shall terminate with the termination of the arbitral proceedings, subject to the provisions of Code Section 9-9-55 and subsection (d) of Code Section 9-9-56.

§ 9-9-55

(a) (1) Within 30 days of receipt of the arbitration award, unless another period of time has been agreed upon by the parties:

(A) A party, with notice to the other party, may request the arbitration tribunal to correct in the arbitration award any errors in computation, any clerical or typographical errors, or any errors of similar nature; and
(B) If agreed by the parties, a party, with notice to the other party, may request the arbitration tribunal to give an interpretation of a specific point or part of the arbitration award.

(2) If the arbitration tribunal considers any request under paragraph (1) of this subsection to be justified, it shall make the correction or give the interpretation within 30 days of receipt of the request. The interpretation shall form part of the arbitration award.

(b) The arbitration tribunal may correct any error of the type referred to in subparagraph (a)(1)(A) of this Code section on its own initiative within 30 days of the date of the arbitration award.
(c) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within 30 days of receipt of the arbitration award, the arbitration tribunal to make an additional award as to claims presented in the arbitration proceedings but omitted from the arbitration award. If the arbitration tribunal considers such request to be justified, it shall make the additional award within 60 days of receipt of the request.
(d) The arbitration tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation, or an additional award under subsection (a) or (c) of this Code section.
(e) The provisions of Code Section 9-9-53 shall apply to a correction or interpretation of the arbitration award or to an additional award.

§ 9-9-56

(a) Recourse to a court against an arbitration award may be made only by an application for setting aside in accordance with subsections (b) and (c) of this Code section.
(b) An arbitration award may be set aside by the court specified in Code Section 9-9-27 only if:
(1) The party making the application furnishes proof that:
(A) A party to the arbitration agreement referred to in Code Section 9-9-28 was under some incapacity; or that said arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this state;
(B) The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his or her case;
(C) The arbitration award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitration award which contains decisions on matters not submitted to arbitration may be set aside; or
(D) The composition of the arbitration tribunal or the arbitral procedure was not in accordance with the arbitration agreement of the parties, unless such arbitration agreement was in conflict with a provision of this part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this part; or
(2) The court finds that:
(A) The subject matter of the dispute is not capable of settlement by arbitration under the law of the United States; or
(B) The arbitration award is in conflict with the public policy of the United States.
(c) An application for setting aside an arbitration award may not be made after three months have elapsed from the date on which the party making that application had received the arbitration award or, if a request had been made under Code Section 9-9-55, from the date on which that request had been disposed of by the arbitration tribunal.
(d) The court, when asked to set aside an arbitration award, may, where appropriate and requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitration tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitration tribunal's opinion will eliminate the grounds for setting aside.
(e) Where none of the parties is domiciled or has its place of business in this state, they may, by written agreement referencing this subsection, limit any of the grounds for recourse against the arbitration award under this Code section, with the exception of paragraph (2) of subsection (b) of this Code section.

§ 9-9-57

(a) An arbitration award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this Code section and of Code Section 9-9-58.
(b) The party relying on an arbitration award or applying for its enforcement shall supply the original arbitration award or a copy thereof. The court may request the party to supply a translation of the arbitration award.

§ 9-9-58

(a) Recognition or enforcement of an arbitration award, irrespective of the country in which it was made, may be refused only:
(1) At the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:
(A) A party to the arbitration agreement referred to in Code Section 9-9-28 was under some incapacity; or the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the arbitration award was made;
(B) The party against whom the arbitration award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his or her case;
(C) The arbitration award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the arbitration award which contains decisions on matters submitted to arbitration may be recognized and enforced;
(D) The composition of the arbitration tribunal or the arbitral procedure was not in accordance with the arbitration agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(E) The arbitration award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that arbitration award was made; or

(2) If the court finds that:

(A) The subject matter of the dispute is not capable of settlement by arbitration under the law of the United States; or

(B) The recognition or enforcement of the arbitration award would be contrary to the public policy of the United States.

(b) If an application for setting aside or suspension of an arbitration award has been made to a court referred to in subparagraph (a)(1)(E) of this Code section, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the arbitration award, order the other party to provide appropriate security.

§ 9-9-59

Any judgment considered a final judgment under this part may be appealed pursuant to Chapter 6 of Title 5.

Chapter 8

Georgia Uniform Mediation Act (2021)

Background

Shelby Guilbert1

In 2021, Georgia further cemented its standing as a leading venue for the resolution of international business disputes through the enactment of the Georgia Uniform Mediation Act ("GUMA").2 The GUMA is primarily based on the Uniform Mediation Act ("UMA"), which was first promulgated by the Uniform Law Commission in 2001 to create a comprehensive uniform law governing the practice of mediation. Key features of the UMA include: (1) the creation a mediation privilege that is designed to promote candor in mediation by prohibiting parties, non-party participants, and mediators from disclosing what is said in a mediation in subsequent proceedings; (2) well-crafted exceptions to the mediation privilege; and (3) requirements that mediators disclose known conflicts of interest.

While a dozen other states in the United States have already enacted the UMA, and many other states around the country have incorporated key aspects of the act into their codes,3 Georgia's new law differs in one key respect: the GUMA expressly incorporates the United Nations Commission on International Trade Law's ("UNCITRAL") 2018 Model Law on International Commercial Mediation and Settlement Agreements Resulting from Mediation (the "Model Law").[4] The Model Law amended and modernized UNCITRAL's earlier 2002 Model Law on International Commercial Conciliation to reflect recent innovations in international dispute resolution and to address issues surrounding the enforcement of international mediated settlement agreements. Georgia is the first state in the United States to enact the Model Law.

Section 10 of the GUMA expressly provides that if a mediation is an "international commercial mediation" as defined by Article 2 of the Model Law,[5] then the mediation is governed by the Model Law unless the parties opt out.[6] The Model Law addresses numerous procedural issues that may arise in an international mediation, such as the process for commencing a mediation,[7] the appointment of the mediator,[8] the conduct of the mediation,[9] the termination of the mediation,10and potential conflicts of interest.11 Perhaps most significantly, the Model Law also provides courts with enforcement mechanisms for international mediated settlement agreements,12and it also enumerates a limited set of factors that courts may consider when asked to refuse enforcement of an international settlement agreement.13These enforcement mechanisms are designed to complement the 2018 United Nations Convention on International Settlement Agreements Resulting from Mediation ("the Singapore Convention"),1[4] which established a legal framework for the enforcement of mediated international settlement agreements across jurisdictions, in much the same way that international arbitral awards are now enforceable pursuant to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention").1[5]

International arbitral institutions increasingly incorporate mediation procedures into their rules, and sophisticated parties increasingly use mediation as an alternative to (or in addition to) international arbitration when resolving complex cross-border disputes. The GUMA and its efficient procedures for conducting international mediations and enforcing international mediated settle-

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2 Georgia Uniform Mediation Act ("GUMA"), O.C.G.A. §§ 9-17-1 to 9-17-17 (2021).
3 *See, e.g.*, FLA. STAT. ANN. §§ 44.401 *et seq.*, and Me. R. Evid. 514.
[4] O.C.G.A. § 9-17-10(a)–(b).

[5] Under Article 2 of the Model Law, a mediation is "international" if: (a) the parties to an agreement to mediate have, at the time of the conclusion of that agreement, their places of business in different States; or (b) the State in which the parties have their places of business is different from either: (i) the State in which a substantial part of the obligations of the commercial relationship is to be performed; or (ii) the State with which the subject matter of the dispute is most closely connected.
[6] O.C.G.A. § 9-17-10(c) and (d).
[7] Model Law, Art. 5.
[8] Model Law, Art. 6.
[9] Model Law, Art. 7.
10Model Law, Art. 18.
11Model Law, Art. 6(5).
12Model Law, Art. 19 (listing factors).
13Model Law, Art. 19.
1[4] United Nations Convention on International Settlement Agreements Resulting from Mediation, Dec. 20, 2018.
1[5] Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21.3 U.S.T. 2517.

ment agreements provide international businesses with yet another reason to consider Atlanta when deciding where to resolve complex business disputes.

Georgia Uniform Mediation Act (2021)

§ 9-17-1. Definitions

As used in this chapter, the term:

(1) "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

(2) "Mediation communication" means a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, terminating, or reconvening a mediation or retaining a mediator.

(3) "Mediation party" means a person that participates in a mediation and whose agreement is necessary to resolve the dispute.

(4) "Mediator" means an individual who conducts a mediation, or if conducting a mediation pursuant to the Supreme Court of Georgia Alternative Dispute Resolution Rules governing the use of alternative dispute resolution mechanisms by the courts of this state, an individual qualified to mediate under such rules.

(5) "Nonparty participant" means a person, other than a mediation party or mediator, that participates in a mediation, including a representative of a party.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(7) "Proceeding" means:

(A) A judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post- hearing motions, conferences, and discovery; or

(B) A legislative hearing or similar process.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Sign" means:

(A) To execute or adopt a tangible symbol with the present intent to authenticate a record; or

(B) To attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

§ 9-17-2. Application

(a) Except as otherwise provided in subsection (b) or (c) of this Code section, this chapter applies to a mediation in which:

(1) The mediation parties are required to mediate by statute or court or administrative agency rule or referred to mediation by a court, administrative agency, or arbitrator;

(2) The mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or

(3) The mediation parties use as a mediator an individual who holds himself or herself out as a mediator or as a provider of mediation services.

(b) This chapter shall not apply to a mediation:

(1) Relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship;

(2) Relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that this chapter shall apply to a mediation arising out of such a dispute that has been filed with an administrative agency or court;

(3) Conducted by a judge where that judge acts as a mediator and may still make a ruling on the dispute; or

(4) Conducted under the auspices of:

(A) A primary or secondary school if all the mediation parties are students; or

(B) A correctional institution for persons who are under the age of 18 years if all the mediation parties are residents of that institution.

(c) If the parties agree in advance in a signed record, or a record of proceeding reflects agreement by the parties, that all or part of a mediation is not privileged, the privileges under Code Sections 9-17-3 through 9-17-5 do not apply to the mediation or part agreed upon. However, Code Sections 9-17-3 through 9-17-5 apply to a mediation communication made by a person that has not received actual notice of the agreement before the communication is made.

§ 9-17-3. Mediation communication as privileged; use of mediation evidence

(a) Except as otherwise provided in Code Section 9-17-6, a mediation communication is privileged as provided in subsection (b) of this Code section and is not subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by Code Section 9-17-4.

(b) In a proceeding, the following privileges apply:

(1) A mediation party may refuse to disclose and may prevent any other person from disclosing a mediation communication;

(2) A mediator may refuse to disclose a mediation communication and may prevent any other person from disclosing a mediation communication of the mediator; and

(3) A nonparty participant may refuse to disclose and may prevent any other person from disclosing a mediation communication of the nonparty participant.

(c) Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

§ 9-17-4. Waiver of privilege; criminal activity

(a) A privilege under Code Section 9-17-3 may be waived in a record if it is expressly waived by all mediation parties and:

(1) In the case of the privilege of a mediator, it is expressly waived by the mediator; and

(2) In the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

(b) A person that discloses or makes a representation about a mediation communication which prejudices another person in a proceeding is precluded from asserting a privilege under Code Section 9-17-3, but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

(c) A person that intentionally uses a mediation to plan, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under Code Section 9-17-3.

§ 9-17-5. When communication privilege is inapplicable; use of mediation evidence

(a) There shall be no privilege under Code Section 9-17-3 for a mediation communication that is:

(1) In an agreement evidenced by a record signed by all parties to the agreement;

(2) Available to the public under Article 4 of Chapter 18 of Title 50, relating to open records, or made during a session of a mediation which is open, or is required by law to be open, to the public;

(3) A threat or statement of a plan to inflict bodily injury or commit a criminal act of violence;

(4) Intentionally used to plan a criminal act, to commit or attempt to commit a criminal act, or to conceal an ongoing criminal act or criminal activity;

(5) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator;

(6) Except as otherwise provided in subsection (c) of this Code section, sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or

(7) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation in a proceeding in which a child or adult protective services agency is a party, unless the public agency participates in the Division of Family and Children Services mediation.

(b) There shall be no privilege under Code Section 9-17-3 if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is

not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:

(1) A court proceeding involving a felony; or

(2) Except as otherwise provided in subsection (c) of this Code section, a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

(c) A mediator shall not be compelled to provide evidence of a mediation communication referred to in paragraph (6) of subsection (a) or paragraph (2) of subsection (b) of this Code section.

(d) If a mediation communication is not privileged under subsection (a) or (b) of this Code section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection (a) or (b) of this Code section does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

§ 9-17-6. Limited disclosures by mediators

(a) Except as provided in subsection (b) of this Code section, a mediator shall not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

(b) A mediator may disclose:

(1) Whether the mediation occurred or has terminated, whether a settlement was reached, and attendance;

(2) A mediation communication as permitted under Code Section 9-17-5; or

(3) A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(c) A communication made in violation of subsection (a) of this Code section may not be considered by a court, administrative agency, or arbitrator.

§ 9-17-7. Limited disclosures of mediation and mediation communications

Notwithstanding any provision of this chapter to the contrary, mediation and mediation communications, and such related conduct, shall not be admissible or subject to disclosure, except to the extent agreed to by the parties in writing or as provided in Code Section 24-4-408 or other law or court required rule of this state, unless such communications are subject to Article 4 of Chapter 18 of Title 50, relating to open records.

§ 9-17-8. Review of mediator's conflict of interest; required disclosures by mediator; exclusion; special qualifications not required

(a) Before accepting a mediation, an individual who is requested to serve as a mediator shall:

(1) Make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

(2) Disclose any such known fact to the mediation parties as soon as is practical before accepting a mediation.

(b) If a mediator learns any fact described in paragraph (1) of subsection (a) of this Code section after accepting a mediation, the mediator shall disclose it as soon as is practicable.

(c) At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

(d) A person that violates subsection (a) or (b) of this Code section is precluded by the violation from asserting a privilege under Code Section 9-17-3.

(e) Subsection (a), (b), or (c) of this Code section shall not apply to an individual acting as a judge.

(f) This chapter shall not require that a mediator have a special qualification by background or profession.

§ 9-17-9. Participation with attorney or designated representative

An attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of participation given before the mediation may be rescinded.

§ 9-17-10. Application of federal Model Law

(a) As used in this Code section, the term "Model Law" means the Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, as approved at the 51st Session of the United Nations Commission on International Trade Law on June 26, 2018.

(b) Except as otherwise provided in subsections (c) and (d) of this Code section, if a mediation is an international commercial mediation as defined by the Model Law, the mediation is governed by the Model Law.

(c) Unless the parties agree in accordance with subsection (c) of Code Section 9-17-2, that all or part of an international commercial mediation is not privileged, Code Sections 9-17-3, 9-17-4, and 9-17-5 and any applicable definitions in Code Section 9-17-1 also apply to the mediation and nothing in Article 11 of the Model Law derogates from Code Sections 9- 17-3, 9-17-4, and 9-17-5

(d) If the parties to an international commercial mediation agree that the Model Law shall not apply, this chapter shall apply.

§ 9-17-11. Application of federal Electronic Signatures in Global and National Commerce Act

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, *et seq*., but shall not modify, limit, or supersede Section 101(c) of such act or authorize electronic delivery of any of the notices described in Section 103(b) of such act.

§ 9-17-12. Uniformity across jurisdictions

In applying and construing this chapter, consideration should be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 9-17-13. Severability

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

§ 9-17-14. Applicability

This chapter shall apply to all mediation agreements and mediation proceedings entered into on or after July 1, 2021.

Chapter 9

UNCITRAL Model Law on Commerical Mediation and International Settlement Agreements (2018)

UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation, 2018 (amending the UNCITRAL Model Law on International Commercial Conciliation, 2002)

Section 1 - General provisions

Article 1. Scope of application of the Law and definitions

1. This Law applies to international commercial[1] mediation[2] and to international settlement agreements.

2. For the purposes of this Law, "mediator" means a sole mediator or two or more mediators, as the case may be.

3. For the purposes of this Law, "mediation" means a process, whether referred to by the expression mediation, conciliation or an expression of similar import, whereby parties request a third person or persons ("the mediator") to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The mediator does not have the authority to impose upon the parties a solution to the dispute.

1 The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions : any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; and carriage of goods or passengers by air, sea, rail or road.

2 In its previously adopted texts and relevant documents, UNCITRAL used the term "conciliation" with the understanding that the terms "conciliation" and "mediation" were interchangeable. In preparing this Model Law, the Commission decided to use the term "mediation" instead in an effort to adapt to the actual and practical use of the terms and with the expectation that this change will facilitate the promotion and heighten the visibility of the Model Law. This change in terminology does not have any substantive or conceptual implications.

Article 2. Interpretation

1. In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

2. Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Section 2 - International commercial mediation

Article 3. Scope of application of the section and definitions

1. This section applies to international[3] commercial mediation.

2. A mediation is "international" if:

(a) The parties to an agreement to mediate have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) The State in which the parties have their places of business is different from either:

(i) The State in which a substantial part of the obligations of the commercial relationship is to be performed; or

(ii) The State with which the subject matter of the dispute is most closely connected.

3 States wishing to enact this section to apply to domestic as well as international mediation may wish to consider the following changes to the text:
- Delete the word "international" in paragraph I of articles I and 3; and
- Delete paragraphs 2, 3 and 4 of article 3, and modify references to paragraphs accordingly.

3. For the purposes of paragraph 2:

(a) If a party has more than one place of business, the place of business is that which has the closest relationship to the agreement to mediate;

(b) If a party does not have a place of business, reference is to be made to the party's habitual residence.

4. This section also applies to commercial mediation when the parties agree that the mediation is international or agree to the applicability of this section.

5. The parties are free to agree to exclude the applicability of this section.

6. Subject to the provisions of paragraph 7 of this article, this section applies irrespective of the basis upon which the mediation is carried out, including agreement between the parties whether reached before or after a dispute has arisen, an obligation established by law, or a direction or suggestion of a court, arbitral tribunal or competent governmental entity.

7. This section does not apply to:

(a) Cases where a judge or an arbitrator, in the course of judicial or arbitral proceedings, attempts to facilitate a settlement; and

(b) [.. .].

Article 4. Variation by agreement

Except for the provisions of article 7, paragraph 3, the parties may agree to exclude or vary any of the provisions of this section.

Article 5. Commencement of mediation proceedings[4]

1. Mediation proceedings in respect of a dispute that has arisen commence on the day on which the parties to that dispute agree to engage in mediation proceedings.

2. If a party that invited another party to mediate does not receive an acceptance of the invitation within 30 days from the day on which the invitation was sent, or within such other period of time as specified in the invitation, the party may elect to treat this as a rejection of the invitation to mediate.

Article 6. Number and appointment of mediators

1. There shall be one mediator, unless the parties agree that there shall be two or more mediators.

2. The parties shall endeavour to reach agreement on a mediator or mediators, unless a different procedure for their appointment has been agreed upon.

3. Parties may seek the assistance of an institution or person in connection with the appointment of mediators . In particular:

(a) A party may request such an institution or person to recommend suitable persons to act as mediator; or

(b) The parties may agree that the appointment of one or more mediators be made directly by such an institution or person.

4. In recommending or appointing individuals to act as mediator, the institution or person shall have regard to such considerations as are likely to secure the appointment of an independent and impartial mediator and, where appropriate, shall take into account the advisability of appointing a mediator of a nationality other than the nationalities of the parties.

5. When a person is approached in connection with his or her possible appointment as mediator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A mediator, from the time of his or her appointment and throughout the mediation proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her.

Article 7. Conduct of mediation

1. The parties are free to agree, by reference to a set of rules or otherwise, on the manner in which the mediation is to be conducted.

2. Failing agreement on the manner in which the mediation is to be conducted, the mediator may conduct the mediation proceedings in such a manner as the mediator considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute.

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[4] The following text is suggested for States that might wish to adopt a provision on the suspension of the limitation period:

Article X. Suspension of limitation period

1. When the mediation proceedings commence, the running of the limitation period regarding the claim that is the subject matter of the mediation is suspended.

2. Where the mediation proceedings have terminated without a settlement agreement, the limitation period resumes running from the time the mediation ended without a settlement agreement.

3. In any case, in conducting the proceedings, the mediator shall seek to maintain fair treatment of the parties and , in so doing, shall take into account the circumstances of the case.

4. The mediator may, at any stage of the mediation proceedings, make proposals for a settlement of the dispute.

Article 8. Communication between mediator and parties

The mediator may meet or communicate with the parties together or with each of them separately.

Article 9. Disclosure of information

When the mediator receives information concerning the dispute from a party, the mediator may disclose the substance of that information to any other party to the mediation. However, when a party gives any information to the mediator, subject to a specific condition that it be kept confidential, that information shall not be disclosed to any other party to the mediation.

Article 10. Confidentiality

Unless otherwise agreed by the parties, all information relating to the mediation proceedings shall be kept confidential, except where disclosure is required under the law or for the purposes of implementation or enforcement of a settlement agreement.

Article 11. Admissibility of evidence in other proceedings

1. A party to the mediation proceedings, the mediator and any third person, including those involved in the administration of the mediation proceedings, shall not in arbitral, judicial or similar proceedings rely on, introduce as evidence or give testimony or evidence regarding any of the following:

(a) An invitation by a party to engage in mediation proceedings or the fact that a party was willing to participate in mediation proceedings;

(b) Views expressed or suggestions made by a party in the mediation in respect of a possible settlement of the dispute;

(c) Statements or admissions made by a party in the course of the mediation proceedings;

(d) Proposals made by the mediator;

(e) The fact that a party had indicated its willingness to accept a proposal for settlement made by the mediator;

(f) A document prepared solely for purposes of the mediation proceedings.

2. Paragraph I of this article applies irrespective of the form of the information or evidence referred to therein.

3. The disclosure of the information referred to in paragraph 1 of this article shall not be ordered by an arbitral tribunal, court or other competent governmental authority and, if such information is offered as evidence in contravention of paragraph 1 of this article, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted in evidence to the extent required under the law or for the purposes of implementation or enforcement of a settlement agreement.

4. The provisions of paragraphs 1, 2 and 3 of this article apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject matter of the mediation proceedings.

5. Subject to the limitations of paragraph I of this article, evidence that is otherwise admissible in arbitral or judicial or similar proceedings does not become inadmissible as a consequence of having been used in a mediation.

Article 12. Termination of mediation proceedings

The mediation proceedings are terminated:

(a) By the conclusion of a settlement agreement by the parties, on the date of the agreement;

(b) By a declaration of the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration;

(c) By a declaration of the parties addressed to the mediator to the effect that the mediation proceedings are terminated , on the date of the declaration; or

(d) By a declaration of a party to the other party or parties and the mediator, if appointed, to the effect that the mediation proceedings are terminated, on the date of the declaration.

Article 13. Mediator acting as arbitrator

Unless otherwise agreed by the parties, the mediator shall not act as an arbitrator in respect of a dispute that was or is the subject of the mediation proceedings or in respect of another dispute that has arisen from the same

contract or legal relationship or any related contract or legal relationship.

Article 14. Resort to arbitral or judicial proceedings

Where the parties have agreed to mediate and have expressly undertaken not to initiate during a specified period of time or until a specified event has occurred arbitral or judicial proceedings with respect to an existing or future dispute, such an undertaking shall be given effect by the arbitral tribunal or the court until the terms of the undertaking have been complied with, except to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to mediate or as a termination of the mediation proceedings.

Article 15. Binding and enforceable nature of settlement agreements

If the parties conclude an agreement settling a dispute, that settlement agreement is binding and enforceable.

Section 3 - International settlement agreements[5]

Article 16. Scope of application of the section and definitions

I. This section applies to international agreements resulting from mediation and concluded in writing by parties to resolve a commercial dispute ("settlement agreements").[6]

2. This section does not apply to settlement agreements:

(a) Concluded to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes;

(b) Relating to family, inheritance or employment law.

3. This section does not apply to:

(a) Settlement agreements:

(i) That have been approved by a court or concluded in the course of proceedings before a court; and

(ii) That are enforceable as a judgment in the State of that court;

(b) Settlement agreements that have been recorded and are enforceable as an arbitral award.

4. A settlement agreement is "international" if, at the time of the conclusion of the settlement agreement:[7]

(a) At least two parties to the settlement agreement have their places of business in different States; or

(b) The State in which the parties to the settlement agreement have their places of business is different from either:

(i) The State in which a substantial part of the obligations under the settlement agreement is to be performed; or

(ii) The State with which the subject matter of the settlement agreement 1s most closely connected.

5. For the purposes of paragraph 4:

(a) If a party has more than one place of business , the relevant place of business is that which has the closest relationship to the dispute resolved by the settlement agreement, having regard to the circumstances known to, or contemplated by, the parties at the time of the conclusion of the settlement agreement;

(b) If a party does not have a place of business, reference is to be made to the party's habitual residence.

6. A settlement agreement is "in writing" if its content is recorded in any form. The requirement that a settlement agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

5 A State may consider enacting this section to apply to agreements settling a dispute, irrespective of whether they resulted from mediation. Adjustments would then have to be made to relevant articles.

6 A State may consider enacting this section to apply only where the parties to the settlement agreement agreed to its application.

7 A State may consider broadening the definition of "international" settlement agreement by adding the following subparagraph to paragraph 4: "A settlement agreement is also 'international' if it results from international mediation as defined in article 3, paragraphs 2, 3 and 4."

Article 17. General principles

1. A settlement agreement shall be enforced in accordance with the rules of procedure of this State, and under the conditions laid down in this section.

2. If a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, the party may invoke the settlement agreement in accordance with the rules of procedure of this State, and under the conditions laid down in this section, in order to prove that the matter has already been resolved .

Article 18. Requirements for reliance on settlement agreements

1. A party relying on a settlement agreement under this section shall supply to the competent authority of this State:

(a) The settlement agreement signed by the parties;

(b) Evidence that the settlement agreement resulted from mediation , such as:

(i) The mediator's signature on the settlement agreement;

(ii) A document signed by the mediator indicating that the mediation was carried out;

(iii) An attestation by the institution that administered the mediation; or

(iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the competent authority.

2. The requirement that a settlement agreement shall be signed by the parties or, where applicable, the mediator , is met in relation to an electronic communication if:

(a) A method is used to identify the parties or the mediator and to indicate the parties' or mediator's intention in respect of the information contained in the electronic communication; and

(b) The method used is either:

(i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or

(ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.

3. If the settlement agreement is not in an official language of this State, the competent authority may request a translation thereof into such language.

4. The competent authority may require any necessary document in order to verify that the requirements of this section have been complied with.

5. When considering the request for relief, the competent authority shall act expeditiously.

Article 19. Grounds for refusing to grant relief

1. The competent authority of this State may refuse to grant relief at the request of the party against whom the relief is sought only if that party furnishes to the competent authority proof that:

(a) A party to the settlement agreement was under some incapacity;

(b) The settlement agreement sought to be relied upon:

(i) Is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, failing any indication thereon, under the law deemed applicable by the competent authority;

(ii) Is not binding, or is not final, according to its terms; or

(iii) Has been subsequently modified;

(c) The obligations in the settlement agreement:

(i) Have been performed; or

(ii) Are not clear or comprehensible;

(d) Granting relief would be contrary to the terms of the settlement agreement;

(e) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or

(f) There was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.

2. The competent authority of this State may also refuse to grant relief if it finds that:

(a) Granting relief would be contrary to the public policy of this State; or

(b) The subject matter of the dispute is not capable of settlement by mediation under the law of this State.

Article 20. Parallel applications or claims

If an application or a claim relating to a settlement agreement has been made to a court, an arbitral tribunal or any other competent authority which may affect the relief being sought under article 18, the competent authority of this State where such relief is sought may, if it considers it proper, adjourn the decision and may also, on the request of a party, order the other party to give suitable security.

SECTION 2

TREATIES

Chapter 10

New York Convention (1958)

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in Article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent

authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in Article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in Article V(1)(e), the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until December 31, 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in Article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-Gen-

eral of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the ease of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the Federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the Federal Government shall bring such articles with a favorable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

I. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

I. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under Article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

(a) Signatures and ratifications in accordance with Article VIII;

(b) Accessions in accordance with Article IX;

(c) Declarations and notifications under Articles I, X and XI;

(d) The date upon which this Convention enters into force in accordance with article XII;

(e) Denunciations and notifications in accordance with Article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in Article VIII.

I hereby certify that the foregoing text is a true copy of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on June 10, 1958, the original of which is deposited with the Secretary-General of the United Nations, as the said Convention was opened for signature, and that it includes the necessary rectifications of typographical errors, as approved by the Parties.

Chapter 11

Panama Convention (1975)

No. 24384

MULTILATERAL

Inter-American Convention on international commercial arbitration. Concluded at Panama City on 30 January 1975

Authentic texts: Spanish, English, Portuguese and French. Registered by the Organization of American States on 23 October 1986.

INTER-AMERICAN CONVENTION[1] ON INTERNATIONAL COMMERCIAL ARBITRATION

The Governments of the Member States of the Organization of American States, desirous of concluding a convention on international commercial arbitration, have agreed as follows:

Article 1. An agreement in which the parties undertake to submit to arbitral decision any differences that may arise or have arisen between them with respect to a commercial transaction is valid. The agreement shall be set forth in an instrument signed by the parties, or in the form of an exchange of letters, telegrams, or telex communications.

Article 2. Arbitrators shall be appointed in the manner agreed upon by the parties. Their appointment may be delegated to a third party, whether a natural or juridical person.

Arbitrators may be nationals or foreigners.

Article 3. In the absence of an express agreement between the parties, the arbitration shall be conducted in accordance with the rules of procedure of the Inter-American Commercial Arbitration Commission.

Article 4. An arbitral decision or award that is not appealable under the applicable law or procedural rules shall have the force of a final judicial judgment. Its execution or recognition may be ordered in the same manner

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[1] Came into force on 16 June 1976, i.e., the thirtieth day following the date of deposit with the General Secretariat of the Organization of American States of the second instrument of ratification, in accordance with article 10:

State	*Date of deposit of the instrument of ratification*
Chile	17 May 1976
Panama	17 December 1975

Subsequently, the Convention came into force for the following States on the thirtieth day after deposit of their instruments of ratification or accession with the General Secretariat of the Organization of American States, in accordance with article 10:

State	*Date of deposit of the instrument of ratification*
Paraguay	15 December 1976
(With effect from 14 January 1977.)	
Uruguay	25 April 1977
(With effect from 25 May 1977.)	
Costa Rica	20 January 1978
(With effect from 19 February 1978.)	
Mexico	27 March 1978
(With effect from 26 April 1978.)	
Honduras	22 March 1979
(With effect from 21 April 1979.)	
El Salvador	11 August 1980
(With effect from 10 September 1980.)	
Venezuela	16 May 1985
(With effect from 15 June 1985.)	
Guatemala	20 August 1986
(With effect from 19 September 1986.)	

as that of decisions handed down by national or foreign ordinary courts, in accordance with the procedural laws of the country where it is to be executed and the provisions of international treaties.

Article 5. 1. The recognition and execution of the decision may be refused, at the request of the party against which it is made, only if such party is able to prove to the competent authority of the State in which recognition and execution are requested:

a. That the parties to the agreement were subject to some incapacity under the applicable law or that the agreement is not valid under the law to which the parties have submitted it, or, if such law is not specified, under the law of the State in which the decision was made; or

b. That the party against which the arbitral decision has been made was not duly notified of the appointment of the arbitrator or of the arbitration procedure to be followed, or was unable, for any other reason, to present his defense; or

c. That the decision concerns a dispute not envisaged in the agreement between the parties to submit to arbitration; nevertheless, if the provisions of the decision that refer to issues submitted to arbitration can be separated from those not submitted to arbitration, the former may be recognized and executed; or

d. That the constitution of the arbitral tribunal or the arbitration procedure has not been carried out in accordance with the terms of the agreement signed by the parties or, in the absence of such agreement, that the constitution of the arbitral tribunal or the arbitration procedure has not been carried out in accordance with the law of the State where the arbitration took place; or

e. That the decision is not yet binding on the parties or has been annulled or suspended by a competent authority of the State in which, or according to the law of which, the decision has been made.

2. The recognition and execution of an arbitral decision may also be refused if the competent authority of the State in which the recognition and execution is requested finds:

a. That the subject of the dispute cannot be settled by arbitration under the law of that State; or

b. That the recognition or execution of the decision would be contrary to the public policy (ordre public) of that State.

Article 6. If the competent authority mentioned in Article 5.1.e has been requested to annul or suspend the arbitral decision, the authority before which such decision is invoked may, if it deems it appropriate, postpone a decision on the execution of the arbitral decision and, at the request of the party requesting execution, may also instruct the other party to provide appropriate guaranties.

Article 7. This Convention shall be open for signature by the Member States of the Organization of American States.

Article 8. This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

Article 9. This Convention shall remain open for accession by any other State. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

Article 10. This Convention shall enter into force on the thirtieth day following the date of deposit of the second instrument of ratification.

For each State ratifying or acceding to the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the thirtieth day after deposit by such State of its instrument of ratification or accession.

Article 11. If a State Party has two or more territorial units in which different systems of law apply in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification or accession, declare that this Convention shall extend to all its territorial units or only to one or more of them.

Such declaration may be modified by subsequent declarations, which shall expressly indicate the territorial unit or units to which the Convention applies. Such subsequent declarations shall be transmitted to the General Secretariat of the Organization of American States, and shall become effective thirty days after the date of their receipt.

Article 12. This Convention shall remain in force indefinitely, but any of the States Parties may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After one year from the date of deposit of the instrument of denunciation, the Convention shall no longer be in effect for the denouncing State, but shall remain in effect for the other States Parties.

Article 13. The original instrument of this Convention, the English, French, Portuguese and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States. The Secretariat shall notify the Member States of the Organization of American States and the States that have acceded to the Convention of the signatures, deposits of instruments of ratification, accession, and denunciation as well as of reservations, if any. It shall also transmit the declarations referred to in Article 11 of this Convention.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

DONE at Panama City, Republic of Panama, this thirtieth day of January one thousand nine hundred and seventy-five.

Chapter 12

Singapore Convention on Mediation (2018)

PREAMBLE

The Parties to this Convention,

Recognizing the value for international trade of mediation as a method for settling commercial disputes in which the parties in dispute request a third person or persons to assist them in their attempt to settle the dispute amicably,

Noting that mediation is increasingly used in international and domestic commercial practice as an alternative to litigation,

Considering that the use of mediation results in significant benefits, such as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the administration of international transactions by commercial parties and producing savings in the administration of justice by States,

Convinced that the establishment of a framework for international settlement agreements resulting from mediation that is acceptable to States with different legal, social and economic systems would contribute to the development of harmonious international economic relations,

Have agreed as follows:

Article 1. Scope of application

1. This Convention applies to an agreement resulting from mediation and concluded in writing by parties to resolve a commercial dispute ("settlement agreement") which, at the time of its conclusion, is international in that:

(a) At least two parties to the settlement agreement have their places of business in different States; or

(b) The State in which the parties to the settlement agreement have their places of business is different from either:

(i) The State in which a substantial part of the obligations under the settlement agreement is performed; or

(ii) The State with which the subject matter of the settlement agreement is most closely connected.

2. This Convention does not apply to settlement agreements:

(a) Concluded to resolve a dispute arising from transactions engaged in by one of the parties (a consumer) for personal, family or household purposes;

(b) Relating to family, inheritance or employment law.

3. This Convention does not apply to:

(a) Settlement agreements:

(i) That have been approved by a court or concluded in the course of proceedings before a court; and

(ii) That are enforceable as a judgment in the State of that court;

(b) Settlement agreements that have been recorded and are enforceable as an arbitral award.

Article 2. Definitions

1. For the purposes of article 1, paragraph 1:

(a) If a party has more than one place of business, the relevant place of business is that which has the closest relationship to the dispute resolved by the settlement agreement, having regard to the circumstances known to, or contemplated by, the parties at the time of the conclusion of the settlement agreement;

(b) If a party does not have a place of business, reference is to be made to the party's habitual residence.

2. A settlement agreement is "in writing" if its content is recorded in any form. The requirement that a settlement agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference.

3. "Mediation" means a process, irrespective of the expression used or the basis upon which the process is carried

out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons ("the mediator") lacking the authority to impose a solution upon the parties to the dispute.

Article 3. General principles

1. Each Party to the Convention shall enforce a settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention.

2. If a dispute arises concerning a matter that a party claims was already resolved by a settlement agreement, a Party to the Convention shall allow the party to invoke the settlement agreement in accordance with its rules of procedure and under the conditions laid down in this Convention, in order to prove that the matter has already been resolved.

Article 4. Requirements for reliance on settlement agreements

1. A party relying on a settlement agreement under this Convention shall supply to the competent authority of the Party to the Convention where relief is sought:

(a) The settlement agreement signed by the parties;

(b) Evidence that the settlement agreement resulted from mediation, such as:
(i) The mediator's signature on the settlement agreement;
(ii) A document signed by the mediator indicating that the mediation was carried out;
(iii) An attestation by the institution that administered the mediation; or
(iv) In the absence of (i), (ii) or (iii), any other evidence acceptable to the competent authority.

2. The requirement that a settlement agreement shall be signed by the parties or, where applicable, the mediator is met in relation to an electronic communication if:

(a) A method is used to identify the parties or the mediator and to indicate the parties' or mediator's intention in respect of the information contained in the electronic communication; and

(b) The method used is either:
(i) As reliable as appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or
(ii) Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.

3. If the settlement agreement is not in an official language of the Party to the Convention where relief is sought, the competent authority may request a translation thereof into such language.

4. The competent authority may require any necessary document in order to verify that the requirements of the Convention have been complied with.

5. When considering the request for relief, the competent authority shall act expeditiously.

Article 5. Grounds for refusing to grant relief

1. The competent authority of the Party to the Convention where relief is sought under article 4 may refuse to grant relief at the request of the party against whom the relief is sought only if that party furnishes to the competent authority proof that:

(a) A party to the settlement agreement was under some incapacity;

(b) The settlement agreement sought to be relied upon:
(i) Is null and void, inoperative or incapable of being performed under the law to which the parties have validly subjected it or, failing any indication thereon, under the law deemed applicable by the competent authority of the Party to the Convention where relief is sought under article 4;
(ii) Is not binding, or is not final, according to its terms; or
(iii) Has been subsequently modified;

(c) The obligations in the settlement agreement:
(i) Have been performed; or
(ii) Are not clear or comprehensible;

(d) Granting relief would be contrary to the terms of the settlement agreement;

(e) There was a serious breach by the mediator of standards applicable to the mediator or the mediation without which breach that party would not have entered into the settlement agreement; or

(f) There was a failure by the mediator to disclose to the parties circumstances that raise justifiable doubts as to the mediator's impartiality or independence and such failure to disclose had a material impact or undue influence on a party without which failure that party would not have entered into the settlement agreement.

2. The competent authority of the Party to the Convention where relief is sought under article 4 may also refuse to grant relief if it finds that:

(a) Granting relief would be contrary to the public policy of that Party; or

(b) The subject matter of the dispute is not capable of settlement by mediation under the law of that Party.

Article 6. Parallel applications or claims

If an application or a claim relating to a settlement agreement has been made to a court, an arbitral tribunal or any other competent authority which may affect the relief being sought under article 4, the competent authority of the Party to the Convention where such relief is sought may, if it considers it proper, adjourn the decision and may also, on the request of a party, order the other party to give suitable security.

Article 7. Other laws or treaties

This Convention shall not deprive any interested party of any right it may have to avail itself of a settlement agreement in the manner and to the extent allowed by the law or the treaties of the Party to the Convention where such settlement agreement is sought to be relied upon.

Article 8. Reservations

1. A Party to the Convention may declare that:

(a) It shall not apply this Convention to settlement agreements to which it is a party, or to which any governmental agencies or any person acting on behalf of a governmental agency is a party, to the extent specified in the declaration;

(b) It shall apply this Convention only to the extent that the parties to the settlement agreement have agreed to the application of the Convention.

2. No reservations are permitted except those expressly authorized in this article.

3. Reservations may be made by a Party to the Convention at any time. Reservations made at the time of signature shall be subject to confirmation upon ratification, acceptance or approval. Such reservations shall take effect simultaneously with the entry into force of this Convention in respect of the Party to the Convention concerned. Reservations made at the time of ratification, acceptance or approval of this Convention or accession thereto, or at the time of making a declaration under article 13 shall take effect simultaneously with the entry into force of this Convention in respect of the Party to the Convention concerned. Reservations deposited after the entry into force of the Convention for that Party to the Convention shall take effect six months after the date of the deposit.

4. Reservations and their confirmations shall be deposited with the depositary.

5. Any Party to the Convention that makes a reservation under this Convention may withdraw it at any time. Such withdrawals are to be deposited with the depositary, and shall take effect six months after deposit.

Article 9. Effect on settlement agreements

The Convention and any reservation or withdrawal thereof shall apply only to settlement agreements concluded after the date when the Convention, reservation or withdrawal thereof enters into force for the Party to the Convention concerned.

Article 10. Depositary

The Secretary-General of the United Nations is hereby designated as the depositary of this Convention.

Article 11. Signature, ratification, acceptance, approval, accession

1.This Convention is open for signature by all States in Singapore, on 1 August 2019, and thereafter at United Nations Headquarters in New York.

2. This Convention is subject to ratification, acceptance or approval by the signatories.

3. This Convention is open for accession by all States that are not signatories as from the date it is open for signature.

4. Instruments of ratification, acceptance, approval or accession are to be deposited with the depositary.

Article 12. Participation by regional economic integration organizations

1. A regional economic integration organization that is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, ratify, accept, approve or accede to this Convention. The regional economic integration organization shall in that case have the rights and obligations of a Party to the Convention, to the extent that that organization has competence over matters governed by this Convention. Where the number of Parties to the Convention is relevant in this Convention, the regional economic integration organization shall not count as a Party to the Convention in addition to its member States that are Parties to the Convention.

2. The regional economic integration organization shall, at the time of signature, ratification, acceptance, approval

or accession, make a declaration to the depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that organization by its member States. The regional economic integration organization shall promptly notify the depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.

3. Any reference to a "Party to the Convention", "Parties to the Convention", a "State" or "States" in this Convention applies equally to a regional economic integration organization where the context so requires.

4. This Convention shall not prevail over conflicting rules of a regional economic integration organization, whether such rules were adopted or entered into force before or after this Convention: (a) if, under article 4, relief is sought in a State that is member of such an organization and all the States relevant under article 1, paragraph 1, are members of such an organization; or (b) as concerns the recognition or enforcement of judgments between member States of such an organization.

Article 13. Non-unified legal systems

1. If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

2. These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

3. If a Party to the Convention has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention:

(a) Any reference to the law or rule of procedure of a State shall be construed as referring, where appropriate, to the law or rule of procedure in force in the relevant territorial unit;

(b) Any reference to the place of business in a State shall be construed as referring, where appropriate, to the place of business in the relevant territorial unit;

(c) Any reference to the competent authority of the State shall be construed as referring, where appropriate, to the competent authority in the relevant territorial unit.

4. If a Party to the Convention makes no declaration under paragraph 1 of this article, the Convention is to extend to all territorial units of that State.

Article 14. Entry into force

1. This Convention shall enter into force six months after deposit of the third instrument of ratification, acceptance, approval or accession.

2. When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the third instrument of ratification, acceptance, approval or accession, this Convention shall enter into force in respect of that State six months after the date of the deposit of its instrument of ratification, acceptance, approval or accession. The Convention shall enter into force for a territorial unit to which this Convention has been extended in accordance with article 13 six months after the notification of the declaration referred to in that article.

Article 15. Amendment

1. Any Party to the Convention may propose an amendment to the present Convention by submitting it to the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the Parties to the Convention with a request that they indicate whether they favour a conference of Parties to the Convention for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the Parties to the Convention favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations.

2. The conference of Parties to the Convention shall make every effort to achieve consensus on each amendment. If all efforts at consensus are exhausted and no consensus is reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the Parties to the Convention present and voting at the conference.

3. An adopted amendment shall be submitted by the depositary to all the Parties to the Convention for ratification, acceptance or approval.

4. An adopted amendment shall enter into force six months after the date of deposit of the third instrument of ratification, acceptance or approval. When an amendment enters into force, it shall be binding on those Parties to the Convention that have expressed consent to be bound by it.

5. When a Party to the Convention ratifies, accepts or approves an amendment following the deposit of the third instrument of ratification, acceptance or approval, the

amendment shall enter into force in respect of that Party to the Convention six months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 16. Denunciations

1. A Party to the Convention may denounce this Convention by a formal notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units of a non-unified legal system to which this Convention applies.

2. The denunciation shall take effect 12 months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation shall take effect upon the expiration of such longer period after the notification is received by the depositary. The Convention shall continue to apply to settlement agreements concluded before the denunciation takes effect.

Chapter 13

Federal Arbitration Act (1925)

TITLE 9—ARBITRATION

This title was enacted by act July 30, 1947, ch. 392, § 1, 61 Stat. 6

AMENDMENTS

1990—Pub. L. 101–369, § 2, Aug. 15, 1990, 104 Stat. 450, added item for chapter 3.
1970—Pub. L. 91–368, § 2, July 31, 1970, 84 Stat. 693, added analysis of chapters.

This title has been made positive law by section 1 of act July 30, 1947, ch. 392, 61 Stat. 669, which provided in part that: "title 9 of the United States Code, entitled 'Arbitration', is codified and enacted into positive law and may be cited as '9 U.S.C., § —'".

REPEALS

Section 2 of act July 30, 1947, ch. 392, 61 Stat. 674, provided that the sections or parts thereof of the Statutes at Large covering provisions codified in this Act, insofar as such provisions appeared in former title 9 were repealed and provided that any rights or liabilities now existing under such repealed sections or parts thereof shall not be affected by such repeal.

CHAPTER 1—GENERAL PROVISIONS

Sec.

AMENDMENTS

1990—Pub. L. 101–650, title III, § 325(a)(2), Dec. 1, 1990, 104 Stat. 5120, added item 15 "Inapplicability of the Act of State doctrine" and redesignated former item 15 "Appeals" as 16.
1988—Pub. L. 100–702, title X, § 1019(b), Nov. 19, 1988, 102 Stat. 4671, added item 15 relating to appeals.

1970—Pub. L. 91–368, § 3, July 31, 1970, 84 Stat. 693, designated existing sections 1 through 14 as "Chapter 1" and added heading for Chapter 1.

§ 1. "Maritime transactions" and "commerce" defined; exceptions to operation of title

"Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of em-

ployment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

(July 30, 1947, ch. 392, 61 Stat. 670.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 1, 43 Stat. 883.

§ 2. Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.
(July 30, 1947, ch. 392, 61 Stat. 670.)

DERIVATION

ACT FEB. 12, 1925, CH. 213, § 2, 43 STAT. 883.

§ 3. Stay of proceedings where issue therein referable to arbitration

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

(July 30, 1947, ch. 392, 61 Stat. 670.)

DERIVATION

ACT FEB. 12, 1925, CH. 213, § 3, 43 STAT. 883.

§ 4. Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury finds that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury finds that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

(July 30, 1947, ch. 392, 61 Stat. 671; Sept. 3, 1954, ch. 1263, § 19, 68 Stat. 1233.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 4, 43 Stat. 883.

REFERENCES IN TEXT

Federal Rules of Civil Procedure, referred to in text, are set out in Appendix to Title 28, Judiciary and Judicial Procedure.

AMENDMENTS

1954—Act Sept. 3, 1954, brought section into conformity with present terms and practice.

§ 5. Appointment of arbitrators or umpire

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

(July 30, 1947, ch. 392, 61 Stat. 671.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 5, 43 Stat. 884.

§ 6. Application heard as motion

Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

(July 30, 1947, ch. 392, 61 Stat. 671.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 6, 43 Stat. 884.

§ 7. Witnesses before arbitrators; fees; compelling attendance

The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.

(July 30, 1947, ch. 392, 61 Stat. 672; Oct. 31, 1951, ch. 655, § 14, 65 Stat. 715.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 7, 43 Stat. 884.

AMENDMENTS

1951—Act Oct. 31, 1951, substituted "United States district court for" for "United States court in and for", and "by law for" for "on February 12, 1925, for".

§ 8. Proceedings begun by libel in admiralty and seizure of vessel or property

If the basis of jurisdiction be a cause of action otherwise justiciable in admiralty, then, not-withstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.
(July 30, 1947, ch. 392, 61 Stat. 672.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 8, 43 Stat 884.

§ 9. Award of arbitrators; confirmation; jurisdiction; procedure

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have juris-

diction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

(July 30, 1947, ch. 392, 61 Stat. 672.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 9, 43 Stat. 885.

§ 10. Same; vacation; grounds; rehearing

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration—

(1) where the award was procured by corruption, fraud, or undue means;

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

(July 30, 1947, ch. 392, 61 Stat. 672; Pub. L. 101–552, § 5, Nov. 15, 1990, 104 Stat. 2745; Pub. L. 102–354, § 5(b)(4), Aug. 26, 1992, 106 Stat. 946; Pub. L. 107–169, § 1, May 7, 2002, 116 Stat. 132.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 10, 43 Stat. 885.

AMENDMENTS

2002—Subsec. (a)(1) to (4). Pub. L. 107–169, § 1(1)–(3), substituted "where" for "Where" and realigned margins in pars. (1) to (4), and substituted a semicolon for § 11 period at end in pars. (1) and (2) and "; or" for the period at end in par. (3).

Subsec. (a)(5). Pub. L. 107–169, § 1(5), substituted "If an award" for "Where an award", inserted a comma after "expired", and redesignated par. (5) as subsec. (b).

Subsec. (b). Pub. L. 107–169, § 1(4), (5), redesignated subsec. (a)(5) as (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 107–169, § 1(4), redesignated subsec. (b) as (c).

1992—Subsec. (b). Pub. L. 102–354 substituted "section 580" for "section 590" and "section 572" for "section 582".

1990—Pub. L. 101–552 designated existing provisions as subsec. (a), in introductory provisions substituted "In any" for "In either", redesignated former subsecs. (a) to (e) as pars. (1) to (5), respectively, and added subsec. (b) which read as follows: "The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5."

§ 11. Same; modification or correction; grounds; order

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration—

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

(July 30, 1947, ch. 392, 61 Stat. 673.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 11, 43 Stat. 885.

§ 12. Notice of motions to vacate or modify; service; stay of proceedings

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

(July 30, 1947, ch. 392, 61 Stat. 673.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 12, 43 Stat. 885.

§ 13. Papers filed with order on motions; judgment; docketing; force and effect; enforcement

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

(July 30, 1947, ch. 392, 61 Stat. 673.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 13, 43 Stat. 886.

§ 14. Contracts not affected

This title shall not apply to contracts made prior to January 1, 1926.

(July 30, 1947, ch. 392, 61 Stat. 674.)

DERIVATION

Act Feb. 12, 1925, ch. 213, § 15, 43 Stat. 886.

PRIOR PROVISIONS

Act Feb. 12, 1925, ch. 213, § 14, 43 Stat. 886, former provisions of section 14 of this title relating to "short title" is not now covered.

§ 15. Inapplicability of the Act of State doctrine

Enforcement of arbitral agreements, confirmation of arbitral awards, and execution upon judgments based on orders confirming such awards shall not be refused on the basis of the Act of State doctrine.

(Added Pub. L. 100–669, § 1, Nov. 16, 1988, 102 Stat. 3969.)

CODIFICATION

Another section 15 of this title was renumbered section 16 of this title.

§ 16. Appeals

(a) An appeal may be taken from—
  (1) an order—
    (A) refusing a stay of any action under section 3 of this title,

(B) denying a petition under section 4 of this title to order arbitration to proceed,
(C) denying an application under section 206 of this title to compel arbitration,
(D) confirming or denying confirmation of an award or partial award, or
(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

(b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order—
(1) granting a stay of any action under section 3 of this title;
(2) directing arbitration to proceed under section 4 of this title;
(3) compelling arbitration under section 206 of this title; or
(4) refusing to enjoin an arbitration that is subject to this title.

(Added Pub. L. 100–702, title X, § 1019(a), Nov. 19, 1988, 102 Stat. 4670, § 15; renumbered § 16, Pub. L. 101–650, title III, § 325(a)(1), Dec. 1, 1990, 104 Stat. 5120.)

AMENDMENTS

1990—Pub. L. 101–650 renumbered the second section 15 of this title as this section.

CHAPTER 2—CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

AMENDMENTS

1970—Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 692, added heading for chapter 2 and analysis of sections for such chapter.

§ 201. Enforcement of Convention

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter.

(Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 692.)

EFFECTIVE DATE

Section 4 of Pub. L. 91–368 provided that: "This Act [enacting this chapter] shall be effective upon the entry into force of the Convention on Recognition and Enforcement of Foreign Arbitral Awards with respect to the United States." The Convention was entered into force for the United States on Dec. 29, 1970.

§ 202. Agreement or award falling under the Convention

An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is incorporated or has its principal place of business in the United States.

(Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 692.)

§ 203. Jurisdiction; amount in controversy

An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.

(Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 692.)

§ 204. Venue

An action or proceeding over which the district courts have jurisdiction pursuant to section 203 of this title may be brought in any such court in which save for the arbitration agreement an action or proceeding with respect to the controversy between the parties could be brought, or in such court for the district and division which embraces the place designated in the agreement as the place of arbitration if such place is within the United States.

(Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 692.)

§ 205. Removal of cases from State courts

Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending. The procedure for removal of causes otherwise provided by law shall apply, except that the ground for removal provided in this section need not appear on the face of the complaint but may be shown in the petition for removal. For the purposes of Chapter 1 of this title any action or proceeding removed under this section shall be deemed to have been brought in the district court to which it is removed.

(Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 692.)

§ 206. Order to compel arbitration; appointment of arbitrators

A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. Such court may also appoint arbitrators in accordance with the provisions of the agreement.

(Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 693.)

§ 207. Award of arbitrators; confirmation; jurisdiction; proceeding

Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.

(Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 693.)

§ 208. Chapter 1; residual application

Chapter 1 applies to actions and proceedings brought under this chapter to the extent that chapter is not in conflict with this chapter or the Convention as ratified by the United States.

(Added Pub. L. 91–368, § 1, July 31, 1970, 84 Stat. 693.)

CHAPTER 3—INTER-AMERICAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION

Sec.

§ 301. Enforcement of Convention

The Inter-American Convention on International Commercial Arbitration of January 30, 1975, shall be enforced in United States courts in accordance with this chapter.

(Added Pub. L. 101–369, § 1, Aug. 15, 1990, 104 Stat. 448.)

EFFECTIVE DATE

Section 3 of Pub. L. 101–369 provided that: "This Act [enacting this chapter] shall take effect upon the entry into force of the Inter-American Convention on International Commercial Arbitration of January 30, 1975, with respect to the United States." The Convention was entered into force for the United States on Oct. 27, 1990.

§ 302. Incorporation by reference

Sections 202, 203, 204, 205, and 207 of this title shall apply to this chapter as if specifically set forth herein, except that for the purposes of this chapter "the Convention" shall mean the Inter-American Convention.

(Added Pub. L. 101–369, § 1, Aug. 15, 1990, 104 Stat. 448.)

§ 303. Order to compel arbitration; appointment of arbitrators; locale

(a) A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. The court may also appoint arbitrators in accordance with the provisions of the agreement.

(b) In the event the agreement does not make provision for the place of arbitration or the appointment of arbitrators, the court shall direct that the arbitration shall be held and the arbitrators be appointed in accordance with Article 3 of the Inter-American Convention.

(Added Pub. L. 101–369, § 1, Aug. 15, 1990, 104 Stat. 448.)

§ 304. Recognition and enforcement of foreign arbitral decisions and awards; reciprocity

Arbitral decisions or awards made in the territory of a foreign State shall, on the basis of reciprocity, be recognized and enforced under this chapter only if that State has ratified or acceded to the Inter-American Convention.

(Added Pub. L. 101–369, § 1, Aug. 15, 1990, 104 Stat. 449.)

§ 305. Relationship between the Inter-American Convention and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958

When the requirements for application of both the Inter-American Convention and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, are met, determination as to which Convention applies shall, unless otherwise expressly agreed, be made as follows:

(1) If a majority of the parties to the arbitration agreement are citizens of a State or States that have ratified or acceded to the Inter-American Convention and are member States of the Organization of American States, the Inter-American Convention shall apply.

(2) In all other cases the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall apply.

(Added Pub. L. 101–369, § 1, Aug. 15, 1990, 104 Stat. 449.)

§ 306. Applicable rules of Inter-American Commercial Arbitration Commission

(a) For the purposes of this chapter the rules of procedure of the Inter-American Commercial Arbitration Commission referred to in Article 3 of the Inter-American Convention shall, subject to subsection (b) of this section, be those rules as promulgated by the Commission on July 1, 1988.

(b) In the event the rules of procedure of the Inter-American Commercial Arbitration Commission are modified or amended in accordance with the procedures for amendment of the rules of that Commission, the Secretary of State, by regulation in accordance with section 553 of title 5, consistent with the aims and purposes of this Convention, may prescribe that such modifications or amendments shall be effective for purposes of this chapter.

(Added Pub. L. 101–369, § 1, Aug. 15, 1990, 104 Stat. 449.)

§ 307. Chapter 1; residual application

Chapter 1 applies to actions and proceedings brought under this chapter to the extent chapter 1 is not in conflict with this chapter or the Inter-American Convention as ratified by the United States.

(Added Pub. L. 101–369, § 1, Aug. 15, 1990, 104 Stat. 449.)

Chapter 14

UNCITRAL Model Law on International Commercial Arbitration (2006)

Contents

RESOLUTIONS ADOPTED BY THE GENERAL ASSEMBLY

40/72. Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law

The General Assembly,

Recognizing the value of arbitration as a method of settling disputes arising in international commercial relations,

Convinced that the establishment of a model law on arbitration that is acceptable to States with different legal, social and economic systems contributes to the development of harmonious international economic relations,

Noting that the Model Law on International Commercial Arbitration[1] was adopted by the United Nations Commission on International Trade Law at its eighteenth session, after due deliberation and extensive consultation with arbitral institutions and individual experts on international commercial arbitration,

Convinced that the Model Law, together with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards[2] and the Arbitration Rules of the United Nations Commission on International Trade Law[3] recommended by the General Assembly in its resolution 31/98 of 15 December 1976, significantly contributes to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations,

1. *Requests* the Secretary-General to transmit the text of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, together with the travaux préparatoires from the eighteenth session of the Commission, to Governments and to arbitral institutions and other interested bodies, such as chambers of commerce;

2. *Recommend*s that all States give due consideration to the Model Law on International Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice.

112th plenary meeting
11 December 1985

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[1] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I.
[2] United Nations, Treaty Series, vol. 330, No. 4739, p. 38.
[3] United Nations publication, Sales No. E.77.V.6.

[on the report of the Sixth Committee (A/61/453)]

61/33. Revised articles of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, and the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958

The General Assembly,

Recognizing the value of arbitration as a method of settling disputes arising in the context of international commercial relations,

Recalling its resolution 40/72 of 11 December 1985 regarding the Model Law on International Commercial Arbitration,[1]

Recognizing the need for provisions in the Model Law to conform to current practices in international trade and modern means of contracting with regard to the form of the arbitration agreement and the granting of interim measures,

Believing that revised articles of the Model Law on the form of the arbitration agreement and interim measures reflecting those current practices will significantly enhance the operation of the Model Law,

Noting that the preparation of the revised articles of the Model Law on the form of the arbitration agreement and interim measures was the subject of due deliberation and extensive consultations with Governments and interested circles and would contribute significantly to the establishment of a harmonized legal framework for a fair and efficient settlement of international commercial disputes,

Believing that, in connection with the modernization of articles of the Model Law, the promotion of a uniform interpretation and application of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958,[2] is particularly timely,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for formulating and adopting the revised articles of its Model Law on International Commercial Arbitration on the form of the arbitration agreement and interim measures, the text of which is contained in annex I to the report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session,[3] and recommends that all States give favourable consideration to the enactment of the revised articles of the Model Law, or the revised Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, when they enact or revise their laws, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;

2. *Also expresses its appreciation* to the United Nations Commission on International Trade Law for formulating and adopting the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958,[2] the text of which is contained in annex II to the report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session;[3]

3. *Requests* the Secretary-General to make all efforts to ensure that the revised articles of the Model Law and the recommendation become generally known and available.

64th plenary meeting
4 December 2006

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[1] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I.

[2] United Nations, *Treaty Series,* vol. 330, No. 4739.

[3] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 17* (A/61/17).

Part One

UNCITRAL Model Law on International Commercial Arbitration

(United Nations documents A/40/17, annex I and A/61/17, annex I)

(As adopted by the United Nations Commission on International Trade Law on 21 June 1985, and as amended by the United Nations Commission on International Trade Law on 7 July 2006)

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application[1]

(1) This Law applies to international commercial[2] arbitration, subject to any agreement in force between this State and any other State or States.

(2) The provisions of this Law, except articles 8, 9, 17 H, 17 I, 17 J, 35 and 36, apply only if the place of arbitration is in the territory of this State.

(Article 1(2) has been amended by the Commission at its thirty-ninth session, in 2006)

(3) An arbitration is international if:

(a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(b) one of the following places is situated outside the State in which the parties have their places of business:

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(c) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

(4) For the purposes of paragraph (3) of this article:

(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;

(b) if a party does not have a place of business, reference is to be made to his habitual residence.

(5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

Article 2. Definitions and rules of interpretation

For the purposes of this Law:

(a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

(b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(c) "court" means a body or organ of the judicial system of a State;

(d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;

(e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

(f) where a provision of this Law, other than in articles 25(a) and 32(2) (a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 2A. International origin and general principles

(As adopted by the Commission at its thirty-ninth session, in 2006)

(1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote

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[1]Article headings are for reference purposes only and are not to be used for purposes of interpretation.

[2]The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

uniformity in its application and the observance of good faith.

(2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 3. Receipt of written communications

(1) Unless otherwise agreed by the parties:

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

Article 4. Waiver of right to object

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

Article 5. Extent of court intervention

In matters governed by this Law, no court shall intervene except where so provided in this Law.

Article 6. Court or other authority for certain functions of arbitration assistance and supervision

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by ... [Each State enacting this model law specifies the court, courts or, where referred to therein, other authority competent to perform these functions.]

CHAPTER II. ARBITRATION AGREEMENT

Option I

Article 7. Definition and form of arbitration agreement

(As adopted by the Commission at its thirty-ninth session, in 2006)

(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing.

(3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.

(4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; "electronic communication" means any communication that the parties make by means of data messages; "data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

(5) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(6) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

Option II

Article 7. Definition of arbitration agreement

(As adopted by the Commission at its thirty-ninth session, in 2006)

"Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

Article 8. Arbitration agreement and substantive claim before court

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 9. Arbitration agreement and interim measures by court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of arbitrators

(1) The parties are free to determine the number of arbitrators.

(2) Failing such determination, the number of arbitrators shall be three.

Article 11. Appointment of arbitrators

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties,

(a) a party fails to act as required under such procedure, or

(b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(c) a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 12. Grounds for challenge

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 13. Challenge procedure

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 14. Failure or impossibility to act

(1) If an arbitrator becomes de jure or de facto unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

Article 15. Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. Competence of arbitral tribunal to rule on its jurisdiction

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

CHAPTER IV A. INTERIM MEASURES AND PRELIMINARY ORDERS

(As adopted by the Commission at its thirty-ninth session, in 2006)

Section 1. Interim measures

Article 17. Power of arbitral tribunal to order interim measures

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.

(2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:

(a) Maintain or restore the status quo pending determination of the dispute;

(b) Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;

(c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or

(d) Preserve evidence that may be relevant and material to the resolution of the dispute.

Article 17A. Conditions for granting interim measures

(1) The party requesting an interim measure under article 17(2)(a), (b) and (c) shall satisfy the arbitral tribunal that:

(a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

(2) With regard to a request for an interim measure under article 17(2)(d), the requirements in paragraphs (1) (a) and (b) of this article shall apply only to the extent the arbitral tribunal considers appropriate.

Section 2. Preliminary orders

Article 17B. Applications for preliminary orders and conditions for granting preliminary orders

(1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

(2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.

(3) The conditions defined under article 17A apply to any preliminary order, provided that the harm to be assessed under article 17A(1)(a), is the harm likely to result from the order being granted or not.

Article 17C. Specific regime for preliminary orders

(1) Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.

(2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.

(3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.

(4) A preliminary order shall expire after twenty days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.

(5) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court. Such a preliminary order does not constitute an award.

Section 3. Provisions applicable to interim measures and preliminary orders

Article 17D. Modification, suspension, termination

The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

Article 17E. Provision of security

(1) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

(2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

Article 17F. Disclosure

(1) The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.

(2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are

likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case. Thereafter, paragraph (1) of this article shall apply.

Article 17G. Costs and damages

The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

Section 4. Recognition and enforcement of interim measures

Article 17H. Recognition and enforcement

(1) An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to the provisions of article 17I.

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.

(3) The court of the State where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

Article 17I. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an interim measure may be refused only:

(a) At the request of the party against whom it is invoked if the court is satisfied that:

(i) Such refusal is warranted on the grounds set forth in article 36(1)(a)(i), (ii), (iii) or (iv); or

(ii) The arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or

(iii) The interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the law of which that interim measure was granted; or

(b) If the court finds that:

(i) The interim measure is incompatible with the powers conferred upon the court unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or

(ii) Any of the grounds set forth in article 36(1)(b)(i) or (ii), apply to the recognition and enforcement of the interim measure.

(2) Any determination made by the court on any ground in paragraph (1) of this article shall be effective only for the purposes of the application to recognize and enforce the interim measure. The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

Section 5. Court-ordered interim measures

Article 17J. Court-ordered interim measures

A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

Article 19. Determination of rules of procedure

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitra-

tion in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 20. Place of arbitration

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 21. Commencement of arbitral proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Article 22. Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 23. Statements of claim and defence

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 24. Hearings and written proceedings

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Article 25. Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 26. Expert appointed by arbitral tribunal

(1) Unless otherwise agreed by the parties, the arbitral tribunal

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Article 27. Court assistance in taking evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of the State assistance in taking evidence. The court may execute the request within its competence and according to the rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 28. Rules applicable to substance of dispute

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide ex aequo et bono or as amiable corn-positeur only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 29. Decision-making by panel of arbitrators

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Article 30. Settlement

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 31. Form and contents of award

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

Article 32. Termination of proceedings

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

Article 33. Correction and interpretation of award; additional award

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

(a) a party with notice to the other arty may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

Article 34. Application for setting aside as exclusive recourse against arbitral award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined

by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in an official language of this State, the court may request the party to supply a translation thereof into such language.

(Article 35(2) has been amended by the Commission at its thirty-ninth session, in 2006)

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a)(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

Part Two

Explanatory Note by the UNCITRAL secretariat on the 1985 Model Law on International Commercial Arbitration as amended in 2006[1]

1. The UNCITRAL Model Law on International Commercial Arbitration ("the Model Law") was adopted by the United Nations Commission on International Trade Law (UNCITRAL) on 21 June 1985, at the end of the eighteenth session of the Commission. The General Assembly, in its resolution 40/72 of 11 December 1985, recommended "that all States give due consideration to the Model Law on International Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration

[1]This note was prepared by the secretariat of the United Nations Commission on International Trade Law (UNCITRAL) for informational purposes only; it is not an official commentary on the Model Law. A commentary prepared by the Secretariat on an early draft of the Model Law appears in document A/CN.9/264 (reproduced in UNCITRAL Yearbook, vol. XVI — 1985, United Nations publication, Sales No. E.87.V.4).

practice". The Model Law was amended by UNCITRAL on 7 July 2006, at the thirty-ninth session of the Commission (see below, paragraphs 4, 19, 20, 27, 29 and 53). The General Assembly, in its resolution 61/33 of 4 December 2006, recommended "that all States give favourable consideration to the enactment of the revised articles of the UNCITRAL Model Law on International Commercial Arbitration, or the revised UNCITRAL Model Law on International Commercial Arbitration, when they enact or revise their laws (...)".

2. The Model Law constitutes a sound basis for the desired harmonization and improvement of national laws. It covers all stages of the arbitral process from the arbitration agreement to the recognition and enforcement of the arbitral award and reflects a worldwide consensus on the principles and important issues of international arbitration practice. It is acceptable to States of all regions and the different legal or economic systems of the world. Since its adoption by UNCITRAL, the Model Law has come to represent the accepted international legislative standard for a modern arbitration law and a significant number of jurisdictions have enacted arbitration legislation based on the Model Law.

3. The form of a model law was chosen as the vehicle for harmonization and modernization in view of the flexibility it gives to States in preparing new arbitration laws. Notwithstanding that flexibility, and in order to increase the likelihood of achieving a satisfactory degree of harmonization, States are encouraged to make as few changes as possible when incorporating the Model Law into their legal systems. Efforts to minimize variation from the text adopted by UNCITRAL are also expected to increase the visibility of harmonization, thus enhancing the confidence of foreign parties, as the primary users of international arbitration, in the reliability of arbitration law in the enacting State.

4. The revision of the Model Law adopted in 2006 includes article 2A, which is designed to facilitate interpretation by reference to internationally accepted principles and is aimed at promoting a uniform understanding of the Model Law. Other substantive amendments to the Model Law relate to the form of the arbitration agreement and to interim measures. The original 1985 version of the provision on the form of the arbitration agreement (article 7) was modelled on the language used in article II (2) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) ("the New York Convention"). The revision of article 7 is intended to address evolving practice in international trade and technological developments. The extensive revision of article 17 on interim measures was considered necessary in light of the fact that such measures are increasingly relied upon in the practice of international commercial arbitration. The revision also includes an enforcement regime for such measures in recognition of the fact that the effectiveness of arbitration frequently depends upon the possibility of enforcing interim measures. The new provisions are contained in a new chapter of the Model Law on interim measures and preliminary orders (chapter IV A).

A. Background to the Model Law

5. The Model Law was developed to address considerable disparities in national laws on arbitration. The need for improvement and harmonization was based on findings that national laws were often particularly inappropriate for international cases.

1. Inadequacy of domestic laws

6. Recurrent inadequacies to be found in outdated national laws include provisions that equate the arbitral process with court litigation and fragmentary provisions that fail to address all relevant substantive law issues. Even most of those laws that appear to be up-to-date and comprehensive were drafted with domestic arbitration primarily, if not exclusively, in mind. While this approach is understandable in view of the fact that even today the bulk of cases governed by arbitration law would be of a purely domestic nature, the unfortunate consequence is that traditional local concepts are imposed on international cases and the needs of modern practice are often not met.

7. The expectations of the parties as expressed in a chosen set of arbitration rules or a "one-off" arbitration agreement may be frustrated, especially by mandatory provisions of applicable law. Unexpected and undesired restrictions found in national laws may prevent the parties, for example, from submitting future disputes to arbitration, from selecting the arbitrator freely, or from having the arbitral proceedings conducted according to agreed rules of procedure and with no more court involvement than appropriate. Frustration may also ensue from non-mandatory provisions that may impose undesired requirements on unwary parties who may not think about the need to provide otherwise when drafting the arbitration agreement. Even the absence of any legislative provision may cause difficulties simply by leaving unanswered some of the many procedural issues relevant in arbitration and not always settled in the arbitration agreement. The Model Law is intended to reduce the risk of such possible frustration, difficulties or surprise.

2. Disparity between national laws

8. Problems stemming from inadequate arbitration laws or from the absence of specific legislation governing arbitration are aggravated by the fact that national laws differ widely. Such differences are a frequent source of concern in international arbitration, where at least one of the parties is, and often both parties are, confronted with foreign and unfamiliar provisions and procedures. Obtaining a full and

precise account of the law applicable to the arbitration is, in such circumstances often expensive, impractical or impossible.

9. Uncertainty about the local law with the inherent risk of frustration may adversely affect the functioning of the arbitral process and also impact on the selection of the place of arbitration. Due to such uncertainty, a party may hesitate or refuse to agree to a place, which for practical reasons would otherwise be appropriate. The range of places of arbitration acceptable to parties is thus widened and the smooth functioning of the arbitral proceedings is enhanced where States adopt the Model Law, which is easily recognizable, meets the specific needs of international commercial arbitration and provides an international standard based on solutions acceptable to parties from different legal systems.

B. Salient features of the Model Law

1. Special procedural regime for international commercial arbitration

10. The principles and solutions adopted in the Model Law aim at reducing or eliminating the above-mentioned concerns and difficulties. As a response to the inadequacies and disparities of national laws, the Model Law presents a special legal regime tailored to international commercial arbitration, without affecting any relevant treaty in force in the State adopting the Model Law. While the Model Law was designed with international commercial arbitration in mind, it offers a set of basic rules that are not, in and of themselves, unsuitable to any other type of arbitration. States may thus consider extending their enactment of the Model Law to cover also domestic disputes, as a number of enacting States already have.

(a) Substantive and territorial scope of application

11. Article 1 defines the scope of application of the Model Law by reference to the notion of "international commercial arbitration". The Model Law defines an arbitration as international if "the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States" (article 1 (3)). The vast majority of situations commonly regarded as international will meet this criterion. In addition, article 1 (3) broadens the notion of internationality so that the Model Law also covers cases where the place of arbitration, the place of contract performance, or the place of the subject-matter of the dispute is situated outside the State where the parties have their place of business, or cases where the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country. Article 1 thus recognizes extensively the freedom of the parties to submit a dispute to the legal regime established pursuant to the Model Law.

12. In respect of the term "commercial", the Model Law provides no strict definition. The footnote to article 1 (1) calls for "a wide interpretation" and offers an illustrative and open-ended list of relationships that might be described as commercial in nature, "whether contractual or not". The purpose of the footnote is to circumvent any technical difficulty that may arise, for example, in determining which transactions should be governed by a specific body of "commercial law" that may exist in some legal systems.

13. Another aspect of applicability is the territorial scope of application. The principle embodied in article 1 (2) is that the Model Law as enacted in a given State applies only if the place of arbitration is in the territory of that State. However, article 1 (2) also contains important exceptions to that principle, to the effect that certain articles apply, irrespective of whether the place of arbitration is in the enacting State or elsewhere (or, as the case may be, even before the place of arbitration is determined). These articles are the following: articles 8 (1) and 9, which deal with the recognition of arbitration agreements, including their compatibility with interim measures ordered by a court, article 17J on court-ordered interim measures, articles 17H and 17I on the recognition and enforcement of interim measures ordered by an arbitral tribunal, and articles 35 and 36 on the recognition and enforcement of arbitral awards.

14. The territorial criterion governing most of the provisions of the Model Law was adopted for the sake of certainty and in view of the following facts. In most legal systems, the place of arbitration is the exclusive criterion for determining the applicability of national law and, where the national law allows parties to choose the procedural law of a State other than that where the arbitration takes place, experience shows that parties rarely make use of that possibility. Incidentally, enactment of the Model Law reduces any need for the parties to choose a "foreign" law, since the Model Law grants the parties wide freedom in shaping the rules of the arbitral proceedings. In addition to designating the law governing the arbitral procedure, the territorial criterion is of considerable practical importance in respect of articles 11, 13, 14, 16, 27 and 34, which entrust State courts at the place of arbitration with functions of supervision and assistance to arbitration. It should be noted that the territorial criterion legally triggered by the parties' choice regarding the place of arbitration does not limit the arbitral tribunal's ability to meet at any place it considers appropriate for the conduct of the proceedings, as provided by article 20 (2).

(b) Delimitation of court assistance and supervision

15. Recent amendments to arbitration laws reveal a trend in favour of limiting and clearly defining court involvement in international commercial arbitration. This is justified in view of the fact that the parties to an arbitration agreement make a conscious decision to exclude court jurisdiction and prefer the finality and expediency of the arbitral process.

16. In this spirit, the Model Law envisages court involvement in the following instances. A first group comprises issues of appointment, challenge and termination of the mandate of an arbitrator (articles 11, 13 and 14), jurisdiction of the arbitral tribunal (article 16) and setting aside of the arbitral award (article 34). These instances are listed in article 6 as functions that should be entrusted, for the sake of centralization, specialization and efficiency, to a specially designated court or, with respect to articles 11, 13 and 14, possibly to another authority (for example, an arbitral institution or a chamber of commerce). A second group comprises issues of court assistance in taking evidence (article 27), recognition of the arbitration agreement, including its compatibility with court-ordered interim measures (articles 8 and 9), court-ordered interim measures (article 17J), and recognition and enforcement of interim measures (articles 17H and 17I) and of arbitral awards (articles 35 and 36).

17. Beyond the instances in these two groups, "no court shall intervene, in matters governed by this Law". Article 5 thus guarantees that all instances of possible court intervention are found in the piece of legislation enacting the Model Law, except for matters not regulated by it (for example, consolidation of arbitral proceedings, contractual relationship between arbitrators and parties or arbitral institutions, or fixing of costs and fees, including deposits). Protecting the arbitral process from unpredictable or disruptive court interference is essential to parties who choose arbitration (in particular foreign parties).

2. Arbitration agreement

18. Chapter II of the Model Law deals with the arbitration agreement, including its recognition by courts.

(a) Definition and form of arbitration agreement

19. The original 1985 version of the provision on the definition and form of arbitration agreement (article 7) closely followed article II (2) of the New York Convention, which requires that an arbitration agreement be in writing. If the parties have agreed to arbitrate, but they entered into the arbitration agreement in a manner that does not meet the form requirement, any party may have grounds to object to the jurisdiction of the arbitral tribunal. It was pointed out by practitioners that, in a number of situations, the drafting of a written document was impossible or impractical. In such cases, where the willingness of the parties to arbitrate was not in question, the validity of the arbitration agreement should be recognized. For that reason, article 7 was amended in 2006 to better conform to international contract practices. In amending article 7, the Commission adopted two options, which reflect two different approaches on the question of definition and form of arbitration agreement. The first approach follows the detailed structure of the original 1985 text. It confirms the validity and effect of a commitment by the parties to submit to arbitration an existing dispute ("*compromis*") or a future dispute ("*clause compromis-soire*"). It follows the New York Convention in requiring the written form of the arbitration agreement but recognizes a record of the "contents" of the agreement "in any form" as equivalent to traditional "writing". The agreement to arbitrate may be entered into in any form (e.g. including orally) as long as the content of the agreement is recorded. This new rule is significant in that it no longer requires signatures of the parties or an exchange of messages between the parties. It modernizes the language referring to the use of electronic commerce by adopting wording inspired from the 1996 UNCITRAL Model Law on Electronic Commerce and the 2005 United Nations Convention on the Use of Electronic Communications in International Contracts. It covers the situation of "an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another". It also states that "the reference in a contract to any document" (for example, general conditions) "containing an arbitration clause constitutes an arbitration agreement in writing provided that the reference is such as to make that clause part of the contract". It thus clarifies that applicable contract law remains available to determine the level of consent necessary for a party to become bound by an arbitration agreement allegedly made "by reference". The second approach defines the arbitration agreement in a manner that omits any form requirement. No preference was expressed by the Commission in favour of either option I or II, both of which are offered for enacting States to consider, depending on their particular needs, and by reference to the legal context in which the Model Law is enacted, including the general contract law of the enacting State. Both options are intended to preserve the enforceability of arbitration agreements under the New York Convention.

20. In that respect, the Commission also adopted, at its thirty-ninth session in 2006, a "Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done

[2]Reproduced in Part Three hereafter.

in New York, 10 June 1958" (A/61/17, Annex 2).[2] The General Assembly, in its resolution 61/33 of 4 December 2006 noted that "in connection with the modernization of articles of the Model Law, the promotion of a uniform interpretation and application of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, is particularly timely". The Recommendation was drafted in recognition of the widening use of electronic commerce and enactments of domestic legislation as well as case law, which are more favourable than the New York Convention in respect of the form requirement governing arbitration agreements, arbitration proceedings, and the enforcement of arbitral awards. The Recommendation encourages States to apply article II (2) of the New York Convention "recognizing that the circumstances described therein are not exhaustive". In addition, the Recommendation encourages States to adopt the revised article 7 of the Model Law. Both options of the revised article 7 establish a more favourable regime for the recognition and enforcement of arbitral awards than that provided under the New York Convention. By virtue of the "more favourable law provision" contained in article VII (1) of the New York Convention, the Recommendation clarifies that "any interested party" should be allowed "to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement".

(b) Arbitration agreement and the courts

21. Articles 8 and 9 deal with two important aspects of the complex relationship between the arbitration agreement and the resort to courts. Modelled on article II (3) of the New York Convention, article 8 (1) of the Model Law places any court under an obligation to refer the parties to arbitration if the court is seized with a claim on the same subject-matter unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed. The referral is dependent on a request, which a party may make not later than when submitting its first statement on the substance of the dispute. This provision, where adopted by a State enacting the Model Law, is by its nature binding only on the courts of that State. However, since article 8 is not limited in scope to agreements providing for arbitration to take place in the enacting State, it promotes the universal recognition and effect of international commercial arbitration agreements.

22. Article 9 expresses the principle that any interim measures of protection that may be obtained from courts under their procedural law (for example, pre-award attachments) are compatible with an arbitration agreement. That provision is ultimately addressed to the courts of any State, insofar as it establishes the compatibility between interim measures possibly issued by any court and an arbitration agreement, irrespective of the place of arbitration. Wherever a request for interim measures may be made to a court, it may not be relied upon, under the Model Law, as a waiver or an objection against the existence or effect of the arbitration agreement.

3. Composition of arbitral tribunal

23. Chapter III contains a number of detailed provisions on appointment, challenge, termination of mandate and replacement of an arbitrator. The chapter illustrates the general approach taken by the Model Law in eliminating difficulties that arise from inappropriate or fragmentary laws or rules. First, the approach recognizes the freedom of the parties to determine, by reference to an existing set of arbitration rules or by an ad hoc agreement, the procedure to be followed, subject to the fundamental requirements of fairness and justice. Secondly, where the parties have not exercised their freedom to lay down the rules of procedure or they have failed to cover a particular issue, the Model Law ensures, by providing a set of suppletive rules, that the arbitration may commence and proceed effectively until the dispute is resolved.

24. Where under any procedure, agreed upon by the parties or based upon the suppletive rules of the Model Law, difficulties arise in the process of appointment, challenge or termination of the mandate of an arbitrator, articles 11, 13 and 14 provide for assistance by courts or other competent authorities designated by the enacting State. In view of the urgency of matters relating to the composition of the arbitral tribunal or its ability to function, and in order to reduce the risk and effect of any dilatory tactics, short time-periods are set and decisions rendered by courts or other authorities on such matters are not appealable.

4. Jurisdiction of arbitral tribunal

(a) Competence to rule on own jurisdiction

25. Article 16 (1) adopts the two important (not yet generally recognized) principles of "Kompetenz-Kompetenz" and of separability or autonomy of the arbitration clause. "Kompetenz-Kompetenz" means that the arbitral tribunal may independently rule on the question of whether it has jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement, without having to resort to a court. Separability means that an arbitration clause shall be treated as an agreement independent of the other terms of the contract. As a consequence, a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause. Detailed provisions in paragraph

(2) require that any objections relating to the arbitrators' jurisdiction be made at the earliest possible time.

26. The competence of the arbitral tribunal to rule on its own jurisdiction (i.e. on the foundation, content and extent of its mandate and power) is, of course, subject to court control. Where the arbitral tribunal rules as a preliminary question that it has jurisdiction, article 16 (3) allows for immediate court control in order to avoid waste of time and money. However, three procedural safeguards are added to reduce the risk and effect of dilatory tactics: short time-period for resort to court (30 days), court decision not appealable, and discretion of the arbitral tribunal to continue the proceedings and make an award while the matter is pending before the court. In those cases where the arbitral tribunal decides to combine its decision on jurisdiction with an award on the merits, judicial review on the question of jurisdiction is available in setting aside proceedings under article 34 or in enforcement proceedings under article 36.

(b) Power to order interim measures and preliminary orders

27. Chapter IV A on interim measures and preliminary orders was adopted by the Commission in 2006. It replaces article 17 of the original 1985 version of the Model Law. Section 1 provides a generic definition of interim measures and sets out the conditions for granting such measures. An important innovation of the revision lies in the establishment (in section 4) of a regime for the recognition and enforcement of interim measures, which was modelled, as appropriate, on the regime for the recognition and enforcement of arbitral awards under articles 35 and 36 of the Model Law.

28. Section 2 of chapter IV A deals with the application for, and conditions for the granting of, preliminary orders. Preliminary orders provide a means for preserving the status quo until the arbitral tribunal issues an interim measure adopting or modifying the preliminary order. Article 17B (1) provides that "a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested". Article 17B (2) permits an arbitral tribunal to grant a preliminary order if "it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure". Article 17C contains carefully drafted safeguards for the party against whom the preliminary order is directed, such as prompt notification of the application for the preliminary order and of the preliminary order itself (if any), and an opportunity for that party to present its case "at the earliest practicable time". In any event, a preliminary order has a maximum duration of twenty days and, while binding on the parties, is not subject to court enforcement and does not constitute an award. The term "preliminary order" is used to emphasize its limited nature.

29. Section 3 sets out rules applicable to both preliminary orders and interim measures.

30. Section 5 includes article 17 J on interim measures ordered by courts in support of arbitration, and provides that "a court shall have the same power of issuing an interim measure in relation to arbitration proceedings irrespective of whether their place is in the territory of the enacting State, as it has in relation to proceedings in courts". That article has been added in 2006 to put it beyond any doubt that the existence of an arbitration agreement does not infringe on the powers of the competent court to issue interim measures and that the party to such an arbitration agreement is free to approach the court with a request to order interim measures.

5. Conduct of arbitral proceedings

31. Chapter V provides the legal framework for a fair and effective conduct of the arbitral proceedings. Article 18, which sets out fundamental requirements of procedural justice, and article 19 on the rights and powers to determine the rules of procedure, express principles that are central to the Model Law.

(a) Fundamental procedural rights of a party

32. Article 18 embodies the principles that the parties shall be treated with equality and given a full opportunity of presenting their case. A number of provisions illustrate those principles. For example, article 24 (1) provides that, unless the parties have agreed that no oral hearings be held for the presentation of evidence or for oral argument, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party. It should be noted that article 24 (1) deals only with the general entitlement of a party to oral hearings (as an alternative to proceedings conducted on the basis of documents and other materials) and not with the procedural aspects, such as the length, number or timing of hearings.

33. Another illustration of those principles relates to evidence by an expert appointed by the arbitral tribunal. Article 26 (2) requires the expert, after delivering his or her written or oral report, to participate in a hearing where the parties may put questions to the expert and present expert witnesses to testify on the points at issue, if such a hearing is requested by a party or deemed necessary by the arbitral tribunal. As another provision aimed at ensuring fairness, objectivity and impartiality, article 24 (3) provides that all

statements, documents and other information supplied to the arbitral tribunal by one party shall be communicated to the other party, and that any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties. In order to enable the parties to be present at any hearing and at any meeting of the arbitral tribunal for inspection purposes, they shall be given sufficient notice in advance (article 24 (2)).

(b) Determination of rules of procedure

34. Article 19 guarantees the parties' freedom to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings, subject to a few mandatory provisions on procedure, and empowers the arbitral tribunal, failing agreement by the parties, to conduct the arbitration in such a manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

35. Autonomy of the parties in determining the rules of procedure is of special importance in international cases since it allows the parties to select or tailor the rules according to their specific wishes and needs, unimpeded by traditional and possibly conflicting domestic concepts, thus obviating the earlier mentioned risk of frustration or surprise (see above, paras. 7 and 9). The supplementary discretion of the arbitral tribunal is equally important in that it allows the tribunal to tailor the conduct of the proceedings to the specific features of the case without being hindered by any restraint that may stem from traditional local law, including any domestic rule on evidence. Moreover, it provides grounds for displaying initiative in solving any procedural question not regulated in the arbitration agreement or the Model Law.

36. In addition to the general provisions of article 19, other provisions in the Model Law recognize party autonomy and, failing agreement, empower the arbitral tribunal to decide on certain matters. Examples of particular practical importance in international cases are article 20 on the place of arbitration and article 22 on the language to be used in the proceedings.

(c) Default of a party

37. The arbitral proceedings may be continued in the absence of a party, provided that due notice has been given. This applies, in particular, to the failure of the respondent to communicate its statement of defence (article 25 (b)). The arbitral tribunal may also continue the proceedings where a party fails to appear at a hearing or to produce documentary evidence without showing sufficient cause for the failure (article 25 (c)). However, if the claimant fails to submit its statement of claim, the arbitral tribunal is obliged to terminate the proceedings (article 25 (a)).

38. Provisions that empower the arbitral tribunal to carry out its task even if one of the parties does not participate are of considerable practical importance. As experience shows, it is not uncommon for one of the parties to have little interest in cooperating or expediting matters. Such provisions therefore provide international commercial arbitration its necessary effectiveness, within the limits of fundamental requirements of procedural justice.

6. Making of award and termination of proceedings

(a) Rules applicable to substance of dispute

39. Article 28 deals with the determination of the rules of law governing the substance of the dispute. Under paragraph (1), the arbitral tribunal decides the dispute in accordance with the rules of law chosen by the parties. This provision is significant in two respects. It grants the parties the freedom to choose the applicable substantive law, which is important where the national law does not clearly or fully recognize that right. In addition, by referring to the choice of "rules of law" instead of "law", the Model Law broadens the range of options available to the parties as regards the designation of the law applicable to the substance of the dispute. For example, parties may agree on rules of law that have been elaborated by an international forum but have not yet been incorporated into any national legal system. Parties could also choose directly an instrument such as the United Nations Convention on Contracts for the International Sale of Goods as the body of substantive law governing the arbitration, without having to refer to the national law of any State party to that Convention. The power of the arbitral tribunal, on the other hand, follows more traditional lines. When the parties have not chosen the applicable law, the arbitral tribunal shall apply the law (i.e., the national law) determined by the conflict-of-laws rules that it considers applicable.

40. Article 28 (3) recognizes that the parties may authorize the arbitral tribunal to decide the dispute ex aequo et bono or as amiables compositeur. This type of arbitration (where the arbitral tribunal may decide the dispute on the basis of principles it believes to be just, without having to refer to any particular body of law) is currently not known or used in all legal systems. The Model Law does not intend to regulate this area. It simply calls the attention of the parties on the need to provide clarification in the arbitration agreement and specifically to empower the arbitral tribunal. However, paragraph (4) makes it clear that in

all cases where the dispute relates to a contract (including arbitration ex aequo et bono) the arbitral tribunal must decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

(b) Making of award and other decisions

41. In its rules on the making of the award (articles 29-31), the Model Law focuses on the situation where the arbitral tribunal consists of more than one arbitrator. In such a situation, any award and other decision shall be made by a majority of the arbitrators, except on questions of procedure, which may be left to a presiding arbitrator. The majority principle applies also to the signing of the award, provided that the reason for any omitted signature is stated.

42. Article 31 (3) provides that the award shall state the place of arbitration and shall be deemed to have been made at that place. The effect of the deeming provision is to emphasize that the final making of the award constitutes a legal act, which in practice does not necessarily coincide with one factual event. For the same reason that the arbitral proceedings need not be carried out at the place designated as the legal "place of arbitration", the making of the award may be completed through deliberations held at various places, by telephone or correspondence. In addition, the award does not have to be signed by the arbitrators physically gathering at the same place.

43. The arbitral award must be in writing and state its date. It must also state the reasons on which it is based, unless the parties have agreed otherwise or the award is "on agreed terms" (i.e., an award that records the terms of an amicable settlement by the parties). It may be added that the Model Law neither requires nor prohibits "dissenting opinions".

7. Recourse against award

44. The disparity found in national laws as regards the types of recourse against an arbitral award available to the parties presents a major difficulty in harmonizing international arbitration legislation. Some outdated laws on arbitration, by establishing parallel regimes for recourse against arbitral awards or against court decisions, provide various types of recourse, various (and often long) time periods for exercising the recourse, and extensive lists of grounds on which recourse may be based. That situation (of considerable concern to those involved in international commercial arbitration) is greatly improved by the Model Law, which provides uniform grounds upon which (and clear time periods within which) recourse against an arbitral award may be made.

(a) Application for setting aside as exclusive recourse

45. The first measure of improvement is to allow only one type of recourse, to the exclusion of any other recourse regulated in any procedural law of the State in question. Article 34 (1) provides that the sole recourse against an arbitral award is by application for setting aside, which must be made within three months of receipt of the award (article 34 (3)). In regulating "recourse" (i.e., the means through which a party may actively "attack" the award), article 34 does not preclude a party from seeking court control by way of defence in enforcement proceedings (articles 35 and 36). Article 34 is limited to action before a court (i.e., an organ of the judicial system of a State). However, a party is not precluded from appealing to an arbitral tribunal of second instance if the parties have agreed on such a possibility (as is common in certain commodity trades).

(b) Grounds for setting aside

46. As a further measure of improvement, the Model Law lists exhaustively the grounds on which an award may be set aside. This list essentially mirrors that contained in article 36 (1), which is taken from article V of the New York Convention. The grounds provided in article 34 (2) are set out in two categories. Grounds which are to be proven by one party are as follows: lack of capacity of the parties to conclude an arbitration agreement; lack of a valid arbitration agreement; lack of notice of appointment of an arbitrator or of the arbitral proceedings or inability of a party to present its case; the award deals with matters not covered by the submission to arbitration; the composition of the arbitral tribunal or the conduct of arbitral proceedings are contrary to the effective agreement of the parties or, failing such agreement, to the Model Law. Grounds that a court may consider of its own initiative are as follows: non-arbitrability of the subject-matter of the dispute or violation of public policy (which is to be understood as serious departures from fundamental notions of procedural justice).

47. The approach under which the grounds for setting aside an award under the Model Law parallel the grounds for refusing recognition and enforcement of the award under article V of the New York Convention is reminiscent of the approach taken in the European Convention on International Commercial Arbitration (Geneva, 1961). Under article IX of the latter Convention, the decision of a foreign court to set aside an award for a reason other than the ones listed in article V of the New York Convention does not constitute a ground for refusing enforcement. The Model Law takes this philosophy one step further by directly limiting the reasons for setting aside.

48. Although the grounds for setting aside as set out in article 34 (2) are almost identical to those for refusing recognition or enforcement as set out in article 36 (1), a practical difference should be noted. An application for setting aside under article 34 (2) may only be made to a court in the State where the award was rendered whereas an application for enforcement might be made in a court in any State. For that reason, the grounds relating to public policy and non-arbitrability may vary in substance with the law applied by the court (in the State of setting aside or in the State of enforcement).

8. Recognition and enforcement of awards

49. The eighth and last chapter of the Model Law deals with the recognition and enforcement of awards. Its provisions reflect the significant policy decision that the same rules should apply to arbitral awards whether made in the country of enforcement or abroad, and that those rules should follow closely the New York Convention.

(a) Towards uniform treatment of all awards irrespective of country of origin

50. By treating awards rendered in international commercial arbitration in a uniform manner irrespective of where they were made, the Model Law distinguishes between "international" and "non-international" awards instead of relying on the traditional distinction between "foreign" and "domestic" awards. This new line is based on substantive grounds rather than territorial borders, which are inappropriate in view of the limited importance of the place of arbitration in international cases. The place of arbitration is often chosen for reasons of convenience of the parties and the dispute may have little or no connection with the State where the arbitration legally takes place. Consequently, the recognition and enforcement of "international" awards, whether "foreign" or "domestic", should be governed by the same provisions.

51. By modelling the recognition and enforcement rules on the relevant provisions of the New York Convention, the Model Law supplements, without conflicting with, the regime of recognition and enforcement created by that successful Convention.

(b) Procedural conditions of recognition and enforcement

52. Under article 35 (1) any arbitral award, irrespective of the country in which it was made, shall be recognized as binding and enforceable, subject to the provisions of article 35 (2) and of article 36 (the latter of which sets forth the grounds on which recognition or enforcement may be refused). Based on the above consideration of the limited importance of the place of arbitration in international cases and the desire of overcoming territorial restrictions, reciprocity is not included as a condition for recognition and enforcement.

53. The Model Law does not lay down procedural details of recognition and enforcement, which are left to national procedural laws and practices. The Model Law merely sets certain conditions for obtaining enforcement under article 35 (2). It was amended in 2006 to liberalize formal requirements and reflect the amendment made to article 7 on the form of the arbitration agreement. Presentation of a copy of the arbitration agreement is no longer required under article 35 (2).

(c) Grounds for refusing recognition or enforcement

54. Although the grounds on which recognition or enforcement may be refused under the Model Law are identical to those listed in article V of the New York Convention, the grounds listed in the Model Law are relevant not only to foreign awards but to all awards rendered in the sphere of application of the piece of legislation enacting the Model Law. Generally, it was deemed desirable to adopt, for the sake of harmony, the same approach and wording as this important Convention. However, the first ground on the list as contained in the New York Convention (which provides that recognition and enforcement may be refused if "the parties to the arbitration agreement were, under the law applicable to them, under some incapacity") was modified since it was viewed as containing an incomplete and potentially misleading conflict-of-laws rule.

Further information on the Model Law may be obtained from:

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Part Three

Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, adopted by the United Nations Commission on International Trade Law on 7 July 2006 at its thirty-ninth session

The United Nations Commission on International Trade Law,

Recalling General Assembly resolution 2205 (XXI) of 17 December 1966, which established the United Nations Commission on International Trade Law with the object of promoting the progressive harmonization and unification of the law of international trade by, inter alia, promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade,

Conscious of the fact that the different legal, social and economic systems of the world, together with different levels of development, are represented in the Commission, Recalling successive resolutions of the General Assembly reaffirming the mandate of the Commission as the core legal body within the United Nations system in the field of international trade law to coordinate legal activities in this field,

Convinced that the wide adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York on 10 June 1958,[1] has been a significant achievement in the promotion of the rule of law, particularly in the field of international trade,

Recalling that the Conference of Plenipotentiaries which prepared and opened the Convention for signature adopted a resolution, which states, inter alia, that the Conference "considers that greater uniformity of national laws on arbitration would further the effectiveness of arbitration in the settlement of private law disputes",

Bearing in mind differing interpretations of the form requirements under the Convention that result in part from differences of expression as between the five equally authentic texts of the Convention,

Taking into account article VII, paragraph 1, of the Convention, a purpose of which is to enable the enforcement of foreign arbitral awards to the greatest extent, in particular by recognizing the right of any interested party to avail itself of law or treaties of the country where the award is sought to be relied upon, including where such law or treaties offer a regime more favourable than the Convention,

Considering the wide use of electronic commerce,

Taking into account international legal instruments, such as the 1985 UNCITRAL Model Law on International Commercial Arbitration,[2] as subsequently revised, particularly with respect to article 7,[3] the UNCITRAL Model Law on Electronic Commerce,[4] the UNCITRAL Model Law on Electronic Signatures[5] and the United Nations Convention on the Use of Electronic Communications in International Contracts,[6]

Taking into account also enactments of domestic legislation, as well as case law, more favourable than the Convention in respect of form requirement governing arbitration agreements, arbitration proceedings and the enforcement of arbitral awards,

Considering that, in interpreting the Convention, regard is to be had to the need to promote recognition and enforcement of arbitral awards,

1. *Recommends* that article II, paragraph 2, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, be applied recognizing that the circumstances described therein are not exhaustive;

2. *Recommends* also that article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, should be applied to allow any interested party to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement.

[1]United Nations, *Treaty Series*, vol. 330, No. 4739.

[2]*Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I, and United Nations publication, Sales No. E.95.V.18.

[3]Ibid., *Sixty-first Session, Supplement No. 17* (A/61/17), annex I.

[4]Ibid., *Fifty-first Session, Supplement No. 17* (A/51/17), annex I, and United Nations publication, Sales No. E.99.V.4, which contains also an additional article 5 bis, adopted in 1998, and the accompanying Guide to Enactment.

[5]Ibid., *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), annex II, and United Nations publication, Sales No. E.02.V.8, which contains also the accompanying Guide to Enactment.

[6]General Assembly resolution 60/21, annex.

SECTION 3

PRACTICE AND PROCEDURE GUIDELINES

Chapter 15

IBA Rules on the Taking of Evidence in International Arbitration (2020)[1]

About the Arbitration Committee

Established as the Committee in the International Bar Association's Legal Practice Division which focuses on the laws, practice and procedures relating to the arbitration of transnational disputes, the Arbitration Committee currently has over 3,000 members from over 130 countries, and membership is increasing steadily.

Through its publications and conferences, the Committee seeks to share information about international arbitration, promote its use and improve its effectiveness. The Committee maintains standing subcommittees and, as appropriate, establishes Task Forces to address specific issues.

Foreward

These IBA Rules on the Taking of Evidence in International Arbitration ('IBA Rules of Evidence') are a revised version of the IBA Rules on the Taking of Evidence in International Commercial Arbitration, prepared by a Working Party of the Arbitration Committee in 1999, revised by a Review Subcommittee in 2009 and further revised by a Task Force in 2020. The members of the Working Party, Review Subcommittee and Task Force are listed from page 25. [omitted]

The IBA issued these Rules as a resource to parties and to arbitrators to provide an efficient, economical and fair process for the taking of evidence in international arbitration. The Rules provide mechanisms for the presentation of documents, witnesses of fact and expert witnesses, inspections, as well as the conduct of evidentiary hearings. The Rules are designed to be used in conjunction with, and adopted together with, institutional, ad hoc or other rules or procedures governing international arbitrations. The IBA Rules of Evidence reflect procedures in use in many different legal systems, and they may be particularly useful when the parties come from different legal cultures.

Since their issuance in 1999, the IBA Rules on the Taking of Evidence in International Commercial Arbitration have gained wide acceptance within the international arbitral community. In 2008, a review process was initiated at the instance of Sally Harpole and Pierre Bienvenu, the then Co-Chairs of the Arbitration Committee. A revised version of the IBA Rules of Evidence was developed by the members of the IBA Rules of Evidence Review Subcommittee, assisted by members of the 1999 Working Party. The revised Rules replaced the IBA Rules on the Taking of Evidence in International Commercial Arbitration, which themselves replaced the IBA Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration, issued in 1983.

In 2019, following a report on the reception of the IBA soft law products, the Review Task Force was created to review and revise the Rules as needed. These revised Rules replace the IBA Rules on the Taking of Evidence in International Arbitration as adopted in 2010.

If parties wish to adopt the IBA Rules of Evidence in their arbitration clause, it is recommended that they add the following language to the clause, selecting one of the alternatives therein provided:

'[In addition to the institutional, ad hoc or other rules chosen by the parties,] [t]he parties agree that the arbitration shall be conducted according to the IBA Rules of Evidence as current on the date of [this agreement/the commencement of the arbitration].'

In addition, parties and Arbitral Tribunals may adopt the IBA Rules of Evidence, in whole or in part, at the commencement of the arbitration, or at any time thereafter. They may also vary them or use them as guidelines in developing their own procedures.

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The revised IBA Rules of Evidence were adopted by resolution of the IBA Council on 17 December 2020. The IBA Rules of Evidence are available in English, and translations in other languages are planned. Copies of the IBA Rules of Evidence may be ordered from the IBA, and the Rules are available to download at tinyurl.com/iba-Arbitration-Guidelines. A Commentary to the IBA Rules of Evidence aimed at assisting parties and Arbitral Tribunals in applying and interpreting the IBA Rules of Evidence is available to download at the address above.

Gaëtan Verhoosel
Philippe Pinsolle
Co-Chairs, Arbitration Committee
17 December 2020

The Rules

Preamble

1. These IBA Rules on the Taking of Evidence in International Arbitration are intended to provide an efficient, economical and fair process for the taking of evidence in international arbitrations, particularly those between Parties from different legal traditions. They are designed to supplement the legal provisions and the institutional, ad hoc or other rules that apply to the conduct of the arbitration.
2. Parties and Arbitral Tribunals may adopt the IBA Rules of Evidence, in whole or in part, to govern arbitration proceedings, or they may vary them or use them as guidelines in developing their own procedures. The Rules are not intended to limit the flexibility that is inherent in, and an advantage of, international arbitration, and Parties and Arbitral Tribunals are free to adapt them to the particular circumstances of each arbitration.
3. The taking of evidence shall be conducted on the principles that each Party shall act in good faith and be entitled to know, reasonably in advance of any Evidentiary Hearing or any fact or merits determination, the evidence on which the other Parties rely.

Definitions

In the IBA Rules of Evidence:

'*Arbitral Tribunal*' means a sole arbitrator or a panel of arbitrators;

'*Claimant*' means the Party or Parties who commenced the arbitration and any Party who, through joinder or otherwise, becomes aligned with such Party or Parties;

'*Document*' means a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means;

'*Evidentiary Hearing*' means any hearing, whether or not held on consecutive days, at which the Arbitral Tribunal, whether in person, by teleconference, videoconference or other method, receives oral or other evidence;

'*Expert Report*' means a written statement by a Tribunal-Appointed Expert or a Party-Appointed Expert;
'General Rules' mean the institutional, ad hoc or other rules that apply to the conduct of the arbitration;

'*IBA Rules of Evidence*' or '*Rules*' means these IBA Rules on the Taking of Evidence in International Arbitration, as they may be revised or amended from time to time;

'*Party*' means a party to the arbitration;

'*Party-Appointed Expert*' means a person or organisation appointed by a Party in order to report on specific issues determined by the Party;

'*Remote Hearing*' means a hearing conducted, for the entire hearing or parts thereof, or only with respect to certain participants, using teleconference, videoconference or other communication technology by which persons in more than one location simultaneously participate;

'*Request to Produce*' means a written request by a Party that another Party produce Documents;

'*Respondent*' means the Party or Parties against whom the Claimant made its claim, and any Party who, through joinder or otherwise, becomes aligned with such Party or Parties, and includes a Respondent making a counterclaim;

'*Tribunal-Appointed Expert*' means a person or organisation appointed by the Arbitral Tribunal in order to report to it on specific issues determined by the Arbitral Tribunal; and

'*Witness Statement*' means a written statement of testimony by a witness of fact.

Article 1 Scope of Application

1. Whenever the Parties have agreed or the Arbitral Tribunal has determined to apply the IBA Rules of Evidence, the Rules shall govern the taking of evidence, except to the extent that any specific provision of them may be found to be in conflict with any mandatory provision of law determined to be applicable to the case by the Parties or by the Arbitral Tribunal.

2. Where the Parties have agreed to apply the IBA Rules of Evidence, in whole or in part, they shall be deemed to have agreed, in the absence of a contrary indication, to the version as current on the date of such agreement.
3. In case of conflict between any provisions of the IBA Rules of Evidence and the General Rules, the Arbitral Tribunal shall apply the IBA Rules of Evidence in the manner that it determines best in order to accomplish, to the extent possible, the purposes of both the General Rules and the IBA Rules of Evidence, unless the Parties agree to the contrary.
4. In the event of any dispute regarding the meaning of the IBA Rules of Evidence, the Arbitral Tribunal shall interpret them according to their purpose and in the manner most appropriate for the particular arbitration.
5. Insofar as the IBA Rules of Evidence and the General Rules are silent on any matter concerning the taking of evidence and the Parties have not agreed otherwise, the Arbitral Tribunal shall conduct the taking of evidence as it deems appropriate, in accordance with the general principles of the IBA Rules of Evidence.

Article 2 Consultation on Evidentiary Issues

1. The Arbitral Tribunal shall consult the Parties at the earliest appropriate time in the proceedings and invite them to consult each other with a view to agreeing on an efficient, economical and fair process for the taking of evidence.
2. The consultation on evidentiary issues may address the scope, timing and manner of the taking of evidence, including, to the extent applicable:
   (a) the preparation and submission of Witness Statements and Expert Reports;
   (b) the taking of oral testimony at any Evidentiary Hearing;
   (c) the requirements, procedure and format applicable to the production of Documents;
   (d) the level of confidentiality protection to be afforded to evidence in the arbitration;
   (e) the treatment of any issues of cybersecurity and data protection; and
   (f) the promotion of efficiency, economy and conservation of resources in connection with the taking of evidence.
3. The Arbitral Tribunal is encouraged to identify to the Parties, as soon as it considers it to be appropriate, any issues:
   (a) that the Arbitral Tribunal may regard as relevant to the case and material to its outcome; and/or
   (b) for which a preliminary determination may be appropriate.

Article 3 Documents

1. Within the time ordered by the Arbitral Tribunal, each Party shall submit to the Arbitral Tribunal and to the other Parties all Documents available to it on which it relies, including public Documents and those in the public domain, except for any Documents that have already been submitted by another Party.
2. Within the time ordered by the Arbitral Tribunal, any Party may submit to the Arbitral Tribunal and to the other Parties a Request to Produce.
3. A Request to Produce shall contain:
   (a) (i) a description of each requested Document sufficient to identify it, or
   (ii) a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner;
   (b) a statement as to how the Documents requested are relevant to the case and material to its outcome; and
   (c) (i) a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such Documents, and (ii) a statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party.
4. Within the time ordered by the Arbitral Tribunal, the Party to whom the Request to Produce is addressed shall produce to the other Parties and, if the Arbitral Tribunal so orders, to it, all the Documents requested in its possession, custody or control as to which it makes no objection.
5. If the Party to whom the Request to Produce is addressed has an objection to some or all of the Documents requested, it shall state the objection in writing to the Arbitral Tribunal and the other Parties within the time ordered by the Arbitral Tribunal. The reasons for such objection shall be any of those set forth in Articles 9.2 or 9.3, or a failure to satisfy any of the requirements of Article 3.3. If so directed by the Arbitral Tribunal, and within the time so ordered, the requesting party may respond to the objection.
6. Upon receipt of any such objection and response, the Arbitral Tribunal may invite the relevant Parties to consult with each other with a view to resolving the objection.
7. Either Party may, within the time ordered by the Arbitral Tribunal, request the Arbitral Tribunal to

rule on the objection. The Arbitral Tribunal shall then, in timely fashion, consider the Request to Produce, the objection and any response thereto. The Arbitral Tribunal may order the Party to whom such Request is addressed to produce any requested Document in its possession, custody or control as to which the Arbitral Tribunal determines that (i) the issues that the requesting Party wishes to prove are relevant to the case and material to its outcome; (ii) none of the reasons for objection set forth in Articles 9.2 or 9.3 applies; and (iii) the requirements of Article 3.3 have been satisfied. Any such Document shall be produced to the other Parties and, if the Arbitral Tribunal so orders, to it.

8. In exceptional circumstances, if the propriety of an objection can be determined only by review of the Document, the Arbitral Tribunal may determine that it should not review the Document. In that event, the Arbitral Tribunal may, after consultation with the Parties, appoint an independent and impartial expert, bound to confidentiality, to review any such Document and to report on the objection. To the extent that the objection is upheld by the Arbitral Tribunal, the expert shall not disclose to the Arbitral Tribunal and to the other Parties the contents of the Document reviewed.
9. If a Party wishes to obtain the production of Documents from a person or organisation who is not a Party to the arbitration and from whom the Party cannot obtain the Documents on its own, the Party may, within the time ordered by the Arbitral Tribunal, ask it to take whatever steps are legally available to obtain the requested Documents, or seek leave from the Arbitral Tribunal to take such steps itself. The Party shall submit such request to the Arbitral Tribunal and to the other Parties in writing, and the request shall contain the particulars set forth in Article 3.3, as applicable. The Arbitral Tribunal shall decide on this request and shall take, authorize the requesting Party to take, or order any other Party to take, such steps as the Arbitral Tribunal considers appropriate if, in its discretion, it determines that (i) the Documents would be relevant to the case and material to its outcome, (ii) the requirements of Article 3.3, as applicable, have been satisfied and (iii) none of the reasons for objection set forth in Articles 9.2 or 9.3 applies.
10. At any time before the arbitration is concluded, the Arbitral Tribunal may (i) request any Party to produce Documents, (ii) request any Party to use its best efforts to take or (iii) itself take, any step that it considers appropriate to obtain Documents from any person or organisation. Any Party may object to the request for any of the reasons set forth in Articles 9.2 or 9.3. In such cases, Article 3.4 to Article 3.8 shall apply correspondingly.
11. Within the time ordered by the Arbitral Tribunal, the Parties may submit to the Arbitral Tribunal and to the other Parties any additional Documents on which they intend to rely or which they believe have become relevant to the case and material to its outcome as a consequence of the issues raised in Documents, Witness Statements or Expert Reports submitted or produced, or in other submissions of the Parties.
12. With respect to the form of submission or production of Documents, unless the Parties agree otherwise or, in the absence of such agreement, the Arbitral Tribunal decides otherwise:
    (a) copies of Documents shall conform to the originals and, at the request of the Arbitral Tribunal, any original shall be presented for inspection;
    (b) Documents that a Party maintains in electronic form shall be submitted or produced in the form most convenient or economical to it that is reasonably usable by the recipients;
    (c) a Party is not obligated to produce multiple copies of Documents which are essentially identical;
    (d) Documents to be produced in response to a Request to Produce need not be translated; and
    (e) Documents in a language other than the language of the arbitration that are submitted to the Arbitral Tribunal shall be accompanied by translations marked as such.
13. Any Document submitted or produced by a Party or non-Party in the arbitration and not otherwise in the public domain shall be kept confidential by the Arbitral Tribunal and the other Parties, and shall be used only in connection with the arbitration. This requirement shall apply except and to the extent that disclosure may be required of a Party to fulfil a legal duty, protect or pursue a legal right, or enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority. The Arbitral Tribunal may issue orders to set forth the terms of this confidentiality. This requirement shall be without prejudice to all other obligations of confidentiality in the arbitration.
14. If the arbitration is organised into separate issues or phases (such as jurisdiction, preliminary determinations, liability or damages), the Arbitral Tribunal may, after consultation with the Parties, schedule the submission of Documents and Requests to Produce separately for each issue or phase.

Article 4 Witnesses of Fact

1. Within the time ordered by the Arbitral Tribunal, each Party shall identify the witnesses on whose testimony it intends to rely and the subject matter of that testimony.

2. Any person may present evidence as a witness, including a Party or a Party's officer, employee or other

representative.

3. It shall not be improper for a Party, its officers, employees, legal advisors or other representatives to interview its witnesses or potential witnesses and to discuss their prospective testimony with them.
4. The Arbitral Tribunal may order each Party to submit within a specified time to the Arbitral Tribunal and to the other Parties Witness Statements by each witness on whose testimony it intends to rely, except for those witnesses whose testimony is sought pursuant to Articles 4.9 or 4.10. If Evidentiary Hearings are organised into separate issues or phases (such as jurisdiction, preliminary determinations, liability or damages), the Arbitral Tribunal or the Parties by agreement may schedule the submission of Witness Statements separately for each issue or phase.
5. Each Witness Statement shall contain:
   (a) the full name and address of the witness, a statement regarding his or her present and past relationship (if any) with any of the Parties, and a description of his or her background, qualifications, training and experience, if such a description may be relevant to the dispute or to the contents of the statement;
   (b) a full and detailed description of the facts, and the source of the witness's information as to those facts, sufficient to serve as that witness's evidence in the matter in dispute. Documents on which the witness relies that have not already been submitted shall be provided;
   (c) a statement as to the language in which the Witness Statement was originally prepared and the language in which the witness anticipates giving testimony at the Evidentiary Hearing;
   (d) an affirmation of the truth of the Witness Statement; and
   (e) the signature of the witness and its date and place.
6. If Witness Statements are submitted, any Party may, within the time ordered by the Arbitral Tribunal, submit to the Arbitral Tribunal and to the other Parties revised or additional Witness Statements, including statements from persons not previously named as witnesses, so long as any such revisions or additions respond only to:
   (a) matters contained in another Party's Witness Statements, Expert Reports or other submissions that have not been previously presented in the arbitration; or
   (b) new factual developments that could not have been addressed in a previous Witness Statement.
7. If a witness whose appearance has been requested pursuant to Article 8.1 fails without a valid reason to appear for testimony at an Evidentiary Hearing, the Arbitral Tribunal shall disregard any Witness Statement related to that Evidentiary Hearing by that witness unless, in exceptional circumstances, the Arbitral Tribunal decides otherwise.
8. If the appearance of a witness has not been requested pursuant to Article 8.1, none of the other Parties shall be deemed to have agreed to the correctness of the content of the Witness Statement.
9. If a Party wishes to present evidence from a person who will not appear voluntarily at its request, the Party may, within the time ordered by the Arbitral Tribunal, ask it to take whatever steps are legally available to obtain the testimony of that person, or seek leave from the Arbitral Tribunal to take such steps itself. In the case of a request to the Arbitral Tribunal, the Party shall identify the intended witness, shall describe the subjects on which the witness's testimony is sought and shall state why such subjects are relevant to the case and material to its outcome. The Arbitral Tribunal shall decide on this request and shall take, authorize the requesting Party to take or order any other Party to take, such steps as the Arbitral Tribunal considers appropriate if, in its discretion, it determines that the testimony of that witness would be relevant to the case and material to its outcome.
10. At any time before the arbitration is concluded, the Arbitral Tribunal may order any Party to provide for, or to use its best efforts to provide for, the appearance for testimony at an Evidentiary Hearing of any person, including one whose testimony has not yet been offered. Any Party may object for any of the reasons set forth in Articles 9.2 or 9.3.

Article 5 Party-Appointed Experts

1. A Party may rely on a Party-Appointed Expert as a means of evidence on specific issues. Within the time ordered by the Arbitral Tribunal, (i) each Party shall identify any Party-Appointed Expert on whose testimony it intends to rely and the subject-matter of such testimony; and (ii) the Party-Appointed Expert shall submit an Expert Report.
2. The Expert Report shall contain:
   (a) the full name and address of the Party-Appointed Expert, a statement regarding his or her present and past relationship (if any) with any of the Parties, their legal advisors and the Arbitral Tribunal, and a description of his or her background, qualifications, training and experience;
   (b) a description of the instructions pursuant to which he or she is providing his or her opinions and conclusions;
   (c) a statement of his or her independence from the Parties, their legal advisors and the Arbitral Tribunal;

(d) a statement of the facts on which he or she is basing his or her expert opinions and conclusions;
(e) his or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions. Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided;
(f) if the Expert Report has been translated, a statement as to the language in which it was originally prepared, and the language in which the Party-Appointed Expert anticipates giving testimony at the Evidentiary Hearing;
(g) an affirmation of his or her genuine belief in the opinions expressed in the Expert Report;
(h) the signature of the Party-Appointed Expert and its date and place; and
(i) if the Expert Report has been signed by more than one person, an attribution of the entirety or specific parts of the Expert Report to each author.

3. If Expert Reports are submitted, any Party may, within the time ordered by the Arbitral Tribunal, submit to the Arbitral Tribunal and to the other Parties revised or additional Expert Reports, including reports or statements from persons not previously identified as Party-Appointed Experts, so long as any such revisions or additions respond only to:
   (a) matters contained in another Party's Witness Statements, Expert Reports or other submissions that have not been previously presented in the arbitration; or
   (b) new developments that could not have been addressed in a previous Expert Report.
4. The Arbitral Tribunal in its discretion may order that any Party-Appointed Experts who will submit or who have submitted Expert Reports on the same or related issues meet and confer on such issues. At such meeting, the Party-Appointed Experts shall attempt to reach agreement on the issues within the scope of their Expert Reports, and they shall record in writing any such issues on which they reach agreement, any remaining areas of disagreement and the reasons therefor.
5. If a Party-Appointed Expert whose appearance has been requested pursuant to Article 8.1 fails without a valid reason to appear for testimony at an Evidentiary Hearing, the Arbitral Tribunal shall disregard any Expert Report by that Party-Appointed Expert related to that Evidentiary Hearing unless, in exceptional circumstances, the Arbitral Tribunal decides otherwise.
6. If the appearance of a Party-Appointed Expert has not been requested pursuant to Article 8.1, none of the other Parties shall be deemed to have agreed to the correctness of the content of the Expert Report.

Article 6 Tribunal-Appointed Experts

1. The Arbitral Tribunal, after consulting with the Parties, may appoint one or more independent Tribunal-Appointed Experts to report to it on specific issues designated by the Arbitral Tribunal. The Arbitral Tribunal shall establish the terms of reference for any Tribunal-Appointed Expert Report after consulting with the Parties. A copy of the final terms of reference shall be sent by the Arbitral Tribunal to the Parties.
2. The Tribunal-Appointed Expert shall, before accepting appointment, submit to the Arbitral Tribunal and to the Parties a description of his or her qualifications and a statement of his or her independence from the Parties, their legal advisors and the Arbitral Tribunal. Within the time ordered by the Arbitral Tribunal, the Parties shall inform the Arbitral Tribunal whether they have any objections as to the Tribunal-Appointed Expert's qualifications and independence. The Arbitral Tribunal shall decide promptly whether to accept any such objection. After the appointment of a Tribunal-Appointed Expert, a Party may object to the expert's qualifications or independence only if the objection is for reasons of which the Party becomes aware after the appointment has been made. The Arbitral Tribunal shall decide promptly what, if any, action to take.
3. Subject to the provisions of Articles 9.2 and 9.3, the Tribunal-Appointed Expert may request a Party to provide any information or to provide access to any Documents, goods, samples, property, machinery, systems, processes or site for inspection, to the extent relevant to the case and material to its outcome. The Parties and their representatives shall have the right to receive any such information and to attend any such inspection. Any disagreement between a Tribunal-Appointed Expert and a Party as to the relevance, materiality or appropriateness of such a request shall be decided by the Arbitral Tribunal, in the manner provided in Articles 3.5 through 3.8. The Tribunal-Appointed Expert shall record in the Expert Report any non-compliance by a Party with an appropriate request or decision by the Arbitral Tribunal and shall describe its effects on the determination of the specific issue.
4. The Tribunal-Appointed Expert shall report in writing to the Arbitral Tribunal in an Expert Report. The Expert Report shall contain:
   (a) the full name and address of the Tribunal-Appointed Expert, and a description of his or her background, qualifications, training and experience;
   (b) a statement of the facts on which he or she is basing his or her expert opinions and conclusions;
   (c) his or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the con-

clusions. Documents on which the Tribunal-Appointed Expert relies that have not already been submitted shall be provided;
(d) if the Expert Report has been translated, a statement as to the language in which it was originally prepared, and the language in which the Tribunal-Appointed Expert anticipates giving testimony at the Evidentiary Hearing;
(e) an affirmation of his or her genuine belief in the opinions expressed in the Expert Report;
(f) the signature of the Tribunal-Appointed Expert and its date and place; and
(g) if the Expert Report has been signed by more than one person, an attribution of the entirety or specific parts of the Expert Report to each author.

5. The Arbitral Tribunal shall send a copy of such Expert Report to the Parties. The Parties may examine any information, Documents, goods, samples, property, machinery, systems, processes or site for inspection that the Tribunal-Appointed Expert has examined and any correspondence between the Arbitral Tribunal and the Tribunal-Appointed Expert. Within the time ordered by the Arbitral Tribunal, any Party shall have the opportunity to respond to the Expert Report in a submission by the Party or through a Witness Statement or an Expert Report by a Party-Appointed Expert. The Arbitral Tribunal shall send the submission, Witness Statement or Expert Report to the Tribunal-Appointed Expert and to the other Parties.
6. At the request of a Party or of the Arbitral Tribunal, the Tribunal-Appointed Expert shall be present at an Evidentiary Hearing. The Arbitral Tribunal may question the Tribunal-Appointed Expert, and he or she may be questioned by the Parties or by any Party-Appointed Expert on issues raised in his or her Expert Report, the Parties' submissions or Witness Statement or the Expert Reports made by the Party-Appointed Experts pursuant to Article 6.5.
7. Any Expert Report made by a Tribunal-Appointed Expert and its conclusions shall be assessed by the Arbitral Tribunal with due regard to all circumstances of the case.
8. The fees and expenses of a Tribunal-Appointed Expert, to be funded in a manner determined by the Arbitral Tribunal, shall form part of the costs of the arbitration.

Article 7 Inspection

Subject to the provisions of Article 9.2, the Arbitral Tribunal may, at the request of a Party or on its own motion, inspect or require the inspection by a Tribunal-Appointed Expert or a Party-Appointed Expert of any site, property, machinery or any other goods, samples, systems, processes or Documents, as it deems appropriate. The Arbitral Tribunal shall, in consultation with the Parties, determine the timing and arrangement for the inspection. The Parties and their representatives shall have the right to attend any such inspection.

Article 8 Evidentiary Hearing

1. Within the time ordered by the Arbitral Tribunal, each Party shall inform the Arbitral Tribunal and the other Parties of the witnesses whose appearance it requests. Each witness (which term includes, for the purposes of this Article, witnesses of fact and any experts) shall, subject to Article 8.3, appear for testimony at the Evidentiary Hearing if such person's appearance has been requested by any Party or by the Arbitral Tribunal.
2. At the request of a Party or on its own motion, the Arbitral Tribunal may, after consultation with the Parties, order that the Evidentiary Hearing be conducted as a Remote Hearing. In that event, the Arbitral Tribunal shall consult with the Parties with a view to establishing a Remote Hearing protocol to conduct the Remote Hearing efficiently, fairly and, to the extent possible, without unintended interruptions. The protocol may address:
   (a) the technology to be used;
   (b) advance testing of the technology or training in use of the technology;
   (c) the starting and ending times considering, in particular, the time zones in which participants will be located;
   (d) how Documents may be placed before a witness or the Arbitral Tribunal; and
   (e) measures to ensure that witnesses giving oral testimony are not improperly influenced or distracted.
3. The Arbitral Tribunal shall at all times have complete control over the Evidentiary Hearing. The Arbitral Tribunal may limit or exclude any question to, answer by or appearance of a witness, if it considers such question, answer or appearance to be irrelevant, immaterial, unreasonably burdensome, duplicative or otherwise covered by a reason for objection set forth in Articles 9.2 or 9.3. Questions to a witness during direct and re-direct testimony may not be unreasonably leading.
4. With respect to oral testimony at an Evidentiary Hearing:
   (a) the Claimant shall ordinarily first present the testimony of its witnesses, followed by the Respondent presenting the testimony of its witnesses;
   (b) following direct testimony, any other Party may question such witness, in an order to be determined by the Arbitral Tribunal. The Party who initially presented the witness shall subsequently have the opportunity to ask additional questions on the matters raised in the other Parties' questioning;
   (c) thereafter, the Claimant shall ordinarily first present the testimony of its Party-Appointed Experts, followed by the Respondent presenting

the testimony of its Party-Appointed Experts. The Party who initially presented the Party-Appointed Expert shall subsequently have the opportunity to ask additional questions on the matters raised in the other Parties' questioning;

(d) the Arbitral Tribunal may question a Tribunal-Appointed Expert, and he or she may be questioned by the Parties or by any Party-Appointed Expert, on issues raised in the Tribunal-Appointed Expert Report, in the Parties' submissions or in the Expert Reports made by the Party-Appointed Experts;

(e) if the arbitration is organised into separate issues or phases (such as jurisdiction, preliminary determinations, liability and damages), the Parties may agree or the Arbitral Tribunal may order the scheduling of testimony separately for each issue or phase;

(f) the Arbitral Tribunal, upon request of a Party or on its own motion, may vary this order of proceeding, including the arrangement of testimony by particular issues or in such a manner that witnesses be questioned at the same time and in confrontation with each other (witness conferencing);

(g) the Arbitral Tribunal may ask questions to a witness at any time.

5. A witness of fact providing testimony shall first affirm, in a manner determined appropriate by the Arbitral Tribunal, that he or she commits to tell the truth or, in the case of an expert witness, his or her genuine belief in the opinions to be expressed at the Evidentiary Hearing. If the witness has submitted a Witness Statement or an Expert Report, the witness shall confirm it. The Parties may agree or the Arbitral Tribunal may order that the Witness Statement or Expert Report shall serve as that witness's direct testimony, in which event the Arbitral Tribunal may nevertheless permit further oral direct testimony.
6. Subject to the provisions of Articles 9.2 and 9.3, the Arbitral Tribunal may request any person to give oral or written evidence on any issue that the Arbitral Tribunal considers to be relevant to the case and material to its outcome. Any witness called and questioned by the Arbitral Tribunal may also be questioned by the Parties.

Article 9 Admissibility and Assessment of Evidence

1. The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of evidence.
2. The Arbitral Tribunal shall, at the request of a Party or on its own motion, exclude from evidence or production any Document, statement, oral testimony or inspection, in whole or in part, for any of the following reasons:
   (a) lack of sufficient relevance to the case or materiality to its outcome;
   (b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable (see Article 9.4 below);
   (c) unreasonable burden to produce the requested evidence;
   (d) loss or destruction of the Document that has been shown with reasonable likelihood to have occurred;
   (e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;
   (f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling; or
   (g) considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling.
3. The Arbitral Tribunal may, at the request of a Party or on its own motion, exclude evidence obtained illegally.
4. In considering issues of legal impediment or privilege under Article 9.2(b), and insofar as permitted by any mandatory legal or ethical rules that are determined by it to be applicable, the Arbitral Tribunal may take into account:
   (a) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of providing or obtaining legal advice;
   (b) any need to protect the confidentiality of a Document created or statement or oral communication made in connection with and for the purpose of settlement negotiations;
   (c) the expectations of the Parties and their advisors at the time the legal impediment or privilege is said to have arisen;
   (d) any possible waiver of any applicable legal impediment or privilege by virtue of consent, earlier disclosure, affirmative use of the Document, statement, oral communication or advice contained therein, or otherwise; and
   (e) the need to maintain fairness and equality as between the Parties, particularly if they are subject to different legal or ethical rules.
5. The Arbitral Tribunal may, where appropriate, make necessary arrangements to permit Documents to be produced, and evidence to be presented or considered subject to suitable confidentiality protection.
6. If a Party fails without satisfactory explanation to pro-

duce any Document requested in a Request to Produce to which it has not objected in due time or fails to produce any Document ordered to be produced by the Arbitral Tribunal, the Arbitral Tribunal may infer that such document would be adverse to the interests of that Party.

7. If a Party fails without satisfactory explanation to make available any other relevant evidence, including testimony, sought by one Party to which the Party to whom the request was addressed has not objected in due time or fails to make available any evidence, including testimony, ordered by the Arbitral Tribunal to be produced, the Arbitral Tribunal may infer that such evidence would be adverse to the interests of that Party.
8. If the Arbitral Tribunal determines that a Party has failed to conduct itself in good faith in the taking of evidence, the Arbitral Tribunal may, in addition to any other measures available under these Rules, take such failure into account in its assignment of the costs of the arbitration, including costs arising out of or in connection with the taking of evidence.

Chapter 16

IBA Guidelines for Party Representation in International Arbitration (2013)[1]

The Guidelines

Preamble

The IBA Arbitration Committee established the Task Force on Counsel Conduct in International Arbitration (the 'Task Force') in 2008.

The mandate of the Task Force was to focus on issues of counsel conduct and party representation in international arbitration that are subject to, or informed by, diverse and potentially conflicting rules and norms. As an initial inquiry, the Task Force undertook to determine whether such differing norms and practises may undermine the fundamental fairness and integrity of international arbitral proceedings and whether international guidelines on party representation in international arbitration may assist parties, counsel and arbitrators. In 2010, the Task Force commissioned a survey (the 'Survey') in order to examine these issues. Respondents to the Survey expressed support for the development of international guidelines for party representation.

The Task Force proposed draft guidelines to the IBA Arbitration Committee's officers in October 2012. The Committee then reviewed the draft guidelines and consulted with experienced arbitration practitioners, arbitrators and arbitral institutions. The draft guidelines were then submitted to all members of the IBA Arbitration Committee for consideration.

Unlike in domestic judicial settings, in which counsel are familiar with, and subject, to a single set of professional conduct rules, party representatives in international arbitration may be subject to diverse and potentially conflicting bodies of domestic rules and norms. The range of rules and norms applicable to the representation of parties in international arbitration may include those of the party representative's home jurisdiction, the arbitral seat, and the place where hearings physically take place. The Survey revealed a high degree of uncertainty among respondents regarding what rules govern party representation in international arbitration. The potential for confusion may be aggravated when individual counsel working collectively, either within a firm or through a co-counsel relationship, are themselves admitted to practise in multiple jurisdictions that have conflicting rules and norms.

In addition to the potential for uncertainty, rules and norms developed for domestic judicial litigation may be ill-adapted to international arbitral proceedings. Indeed, specialised practises and procedures have been developed in international arbitration to accommodate the legal and cultural differences among participants and the complex, multinational nature of the disputes. Domestic professional conduct rules and norms, by contrast, are developed to apply in specific legal cultures consistent with established national procedures.

The IBA Guidelines on Party Representation in International Arbitration (the 'Guidelines') are inspired by the principle that party representatives should act with integrity and honesty and should not engage in activities designed to produce unnecessary delay or expense, including tactics aimed at obstructing the arbitration proceedings.

As with the International Principles on Conduct for the Legal Profession, adopted by the IBA on 28 May 2011, the Guidelines are not intended to displace otherwise applicable mandatory laws, professional or disciplinary rules, or agreed arbitration rules that may be relevant or applicable to matters of party representation. They are also not intended to vest arbitral tribunals with powers otherwise reserved to bars or other professional bodies.

The use of the term guidelines rather than rules is intended to highlight their contractual nature. The parties may thus adopt the Guidelines or a portion thereof by agreement. Arbitral tribunals may also apply the Guidelines in their discretion, subject to any applicable mandatory rules, if they determine that they have the authority to do so. The Guidelines are not intended to limit the flexibility that

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is inherent in, and a considerable advantage of international arbitration, and parties and arbitral tribunals may adapt them to the particular circumstances of each arbitration.

Definitions

In the IBA Guidelines on Party Representation in International Arbitration:

'*Arbitral Tribunal*' or 'Tribunal' means a sole Arbitrator or a panel of Arbitrators in the arbitration;

'*Arbitrator*' means an arbitrator in the arbitration;

'*Document*' means a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means;

'*Domestic Bar*' or '*Bar*' means the national or local authority or authorities responsible for the regulation of the professional conduct of lawyers;

'*Evidence*' means documentary evidence and written and oral testimony.

'*Ex Parte Communications*' means oral or written communications between a Party Representative and an Arbitrator or prospective Arbitrator without the presence or knowledge of the opposing Party or Parties;

'*Expert*' means a person or organisation appearing before an Arbitral Tribunal to provide expert analysis and opinion on specific issues determined by a Party or by the Arbitral Tribunal;

'*Expert Report*' means a written statement by an Expert;

'*Guidelines*' mean these IBA Guidelines on Party Representation in International Arbitration, as they may be revised or amended from time to time;

'*Knowingly*' means with actual knowledge of the fact in question;

'*Misconduct*' means a breach of the present Guidelines or any other conduct that the Arbitral Tribunal determines to be contrary to the duties of a Party Representative;

'*Party*' means a party to the arbitration;

'*Party-Nominated Arbitrator*' means an Arbitrator who is nominated or appointed by one or more Parties;

'*Party Representative*' or '*Representative*' means any person, including a Party's employee, who appears in an arbitration on behalf of a Party and makes submissions, arguments or representations to the Arbitral Tribunal on behalf of such Party, other than in the capacity as a Witness or Expert, and whether or not legally qualified or admitted to a Domestic Bar;

'*Presiding Arbitrator*' means an arbitrator who is either a sole Arbitrator or the chairperson of the Arbitral Tribunal;

'*Request to Produce*' means a written request by a Party that another Party produce Documents;

'*Witness*' means a person appearing before an Arbitral Tribunal to provide testimony of fact;

'*Witness Statement*' means a written statement by a Witness recording testimony.

Application of Guidelines

1. *The Guidelines shall apply where and to the extent that the Parties have so agreed, or the Arbitral Tribunal after consultation with the Parties, wishes to rely upon them after having determined that it has the authority to rule on matters of Party representation to ensure the integrity and fairness of the arbitral proceedings.*

2. *In the event of any dispute regarding the meaning of the Guidelines, the Arbitral Tribunal should interpret them in accordance with their overall purpose and in the manner most appropriate for the particular arbitration.*

3. *The Guidelines are not intended to displace otherwise applicable mandatory laws, professional or disciplinary rules, or agreed arbitration rules, in matters of Party representation. The Guidelines are also not intended to derogate from the arbitration agreement or to undermine either a Party representative's primary duty of loyalty to the party whom he or she represents or a Party Representative's paramount obligation to present such Party's case to the Arbitral Tribunal.*

Comments to Guidelines 1-3

As explained in the Preamble, the Parties and Arbitral Tribunals may benefit from guidance in matters of Party Representation, in particular in order to address instances where differing norms and expectations may threaten the integrity and fairness of the arbitral proceedings.

By virtue of these Guidelines, Arbitral Tribunals need not, in dealing with such issues, and subject to applicable mandatory laws, be limited by a choice-of-law rule or private international law analysis to choosing among national

or domestic professional conduct rules. Instead, these Guidelines offer an approach designed to account for the multi-faceted nature of international arbitral proceedings.

These Guidelines shall apply where and to the extent that the Parties have so agreed. Parties may adopt these Guidelines, in whole or in part, in their arbitration agreement or at any time subsequently.

An Arbitral Tribunal may also apply, or draw inspiration from, the Guidelines, after having determined that it has the authority to rule on matters of Party representation in order to ensure the integrity and fairness of the arbitral proceedings. Before making such determination, the Arbitral Tribunal should give the Parties an opportunity to express their views.

These Guidelines do not state whether Arbitral Tribunals have the authority to rule on matters of Party representation and to apply the Guidelines in the absence of an agreement by the Parties to that effect The Guidelines neither recognise nor exclude the existence of such authority. It remains for the Tribunal to make a determination as to whether it has the authority to rule on matters of Party representation and to apply the Guidelines.

A Party Representative, acting within the authority granted to it, acts on behalf of the Party whom he or she represents. It follows therefore that an obligation or duty bearing on a Party Representative is an obligation or duty of the represented Party, who may ultimately bear the consequences of the misconduct of its Representative.

Party Representation

4. *Party Representatives should identify themselves to the other Party or Parties and the Arbitral Tribunal at the earliest opportunity. A Party should promptly inform the Arbitral Tribunal and the other Party or Parties of any change in such representation.*
5. *Once the Arbitral Tribunal has been constituted, a person should not accept representation of a Party in the arbitration when a relationship exists between the person and an Arbitrator that would create a conflict of interest, unless none of the Parties objects after proper disclosure.*
6. *The Arbitral Tribunal may, in case of breach of Guideline 5, take measures appropriate to safeguard the integrity of the proceedings, including the exclusion of the new Party Representative from participating in all or part of the arbitral proceedings.*

Comments to Guidelines 4-6

Changes in Party representation in the course of the arbitration may, because of conflicts of interest between a newly-appointed Party Representative and one or more of the Arbitrators, threaten the integrity of the proceedings. In such case, the Arbitral Tribunal may, if compelling circumstances so justify, and where it has found that it has the requisite authority, consider excluding the new Representative from participating in all or part of the arbitral proceedings. In assessing whether any such conflict of interest exists, the Arbitral Tribunal may rely on the IBA Guidelines on Conflicts of Interest in International Arbitration.

Before resorting to such measure, it is important that the Arbitral Tribunal give the Parties an opportunity to express their views about the existence of a conflict, the extent of the Tribunal's authority to act in relation to such conflict, and the consequences of the measure that the Tribunal is contemplating.

Communications with Arbitrators

7. *Unless agreed otherwise by the Parties, and subject to the exceptions below, a Party Representative should not engage in any Ex Parte Communications with an Arbitrator concerning the arbitration.*

8. *It is not improper for a Party Representative to have Ex Parte Communications in the following circumstances:*

   (a) A Party Representative may communicate with a prospective Party-Nominated Arbitrator to determine his or her expertise, experience, ability, availability, willingness and the existence of potential conflicts of interest.

   (b) A Party Representative may communicate with a prospective or appointed Party-Nominated Arbitrator for the purpose of the selection of the Presiding Arbitrator.

   (c) A Party Representative may, if the Parties are in agreement that such a communication is permissible, communicate with a prospective Presiding Arbitrator to determine his or her expertise, experience, ability, availability, willingness and the existence of potential conflicts of interest.

   (d) While communications with a prospective Party-Nominated Arbitrator or Presiding Arbitrator may include a general description of the dispute, a Party Representative should not seek the views

of the prospective Party-Nominated Arbitrator or Presiding Arbitrator on the substance of the dispute.

Comments to Guidelines 7-8

Guidelines 7-8 deal with communications between a Party Representative and an Arbitrator or potential Arbitrator concerning the arbitration.

The Guidelines seek to reflect best international practices and, as such, may depart from potentially diverging domestic arbitration practices that are more restrictive or, to the contrary, permit broader Ex Parte Communications.

Ex Parte Communications, as defined in these Guidelines, may occur only in defined circumstances, and a Party Representative should otherwise refrain from any such communication. The Guidelines do not seek to define when the relevant period begins or ends. Any communication that takes place in the context of, or in relation to, the constitution of the Arbitral Tribunal is covered.

Ex Parte Communications with a prospective Arbitrator (Party-Nominated or Presiding Arbitrator) should be limited to providing a general description of the dispute and obtaining information regarding the suitability of the potential Arbitrator, as described in further detail below. A Party Representative should not take the opportunity to seek the prospective Arbitrator's views on the substance of the dispute.

The following discussion topics are appropriate in pre-appointment communications in order to assess the prospective Arbitrator's expertise, experience, ability, availability, willingness and the existence of potential conflicts of interest: (a) the prospective Arbitrator's publications, including books, articles and conference papers or engagements; (b) any activities of the prospective Arbitrator and his or her law firm or organisation within which he or she operates, that may raise justifiable doubts as to the prospective Arbitrator's independence or impartiality; (c) a description of the general nature of the dispute; (d) the terms of the arbitration agreement, and in particular any agreement as to the seat, language, applicable law and rules of the arbitration; (e) the identities of the Parties, Party Representatives, Witnesses, Experts and interested parties; and (f) the anticipated timetable and general conduct of the proceedings.

Applications to the Arbitral Tribunal without the presence or knowledge of the opposing Party or Parties may be permitted in certain circumstances, if the parties so agreed, or as permitted by applicable law. Such may be the case, in particular, for interim measures.

Finally, a Party Representative may communicate with the Arbitral Tribunal if the other Party or Parties fail to participate in a hearing or proceedings and are not represented.

Submissions to the Arbitral Tribunal

9. A Party Representative should not make any knowingly false submission of fact to the Arbitral Tribunal.

10. In the event that a Party Representative learns that he or she previously made a false submission of fact to the Arbitral Tribunal the Party Representative should, subject to countervailing considerations of confidentiality and privilege, promptly correct such submission.

11. A Party Representative should not submit Witness or Expert evidence that he or she knows to be false. If a Witness or Expert intends to present or presents evidence that a Party Representative knows or later discovers to be false, such Party Representative should promptly advise the Party whom he or she represents of the necessity of taking remedial measures and of the consequences of failing to do so. Depending upon the circumstances, and subject to countervailing considerations of confidentiality and privilege, the Party Representative should promptly take remedial measures, which may include one or more of the following:

a) advise the Witness or Expert to testify truthfully;

b) take reasonable steps to deter the Witness or Expert from submitting false evidence;

c) urge the Witness or Expert to correct or withdraw the false evidence;

d) correct or withdraw the false evidence;

e) withdraw as Party Representative if the circumstances so warrant.

Comments to Guidelines 9-11

Guidelines 9-11 concern the responsibility of a Party Representative when making submissions and tendering evidence to the Arbitral Tribunal. This principle is sometimes referred to as the duty of candour or honesty owed to the Tribunal.

The Guidelines identify two aspects of the responsibility of a Party Representative: the first relates to submissions of fact made by a Party Representative (Guidelines 9 and 10), and the second concerns the evidence given by a Witness or Expert (Guideline 11).

With respect to submissions to the Arbitral Tribunal, these Guidelines contain two limitations to the principles set out for Party Representatives. First, Guidelines 9 and 10 are restricted to false submissions of fact. Secondly, the Party Representative must have actual knowledge of the false nature of the submission, which may be inferred from the circumstances.

Under Guideline 10, a Party Representative should promptly correct any false submissions of fact previously made to the Tribunal, unless prevented from doing so by countervailing considerations of confidentiality and privilege. Such principle also applies, in case of a change in representation, to a newly-appointed Party Representative who becomes aware that his or her predecessor made a false submission.

With respect to legal submissions to the Tribunal, a Party Representative may argue any construction of a law, a contract, a treaty or any authority that he or she believes is reasonable.

Guideline 11 addresses the presentation of evidence to the Tribunal that a Party Representative knows to be false. A Party Representative should not offer knowingly false evidence or testimony. A Party Representative therefore should not assist a Witness or Expert or seek to influence a Witness or Expert to give false evidence to the Tribunal in oral testimony or written Witness Statements or Expert Reports.

The considerations outlined for Guidelines 9 and 10 apply equally to Guideline 11. Guideline 11 is more specific in terms of the remedial measures that a Party Representative may take in the event that the Witness or Expert intends to present or presents evidence that the Party Representative knows or later discovers to be false. The list of remedial measures provided in Guideline 11 is not exhaustive. Such remedial measures may extend to the Party Representative's withdrawal from the case, if the circumstances so warrant. Guideline 11 acknowledges, by using the term 'may', that certain remedial measures, such as correcting or withdrawing false Witness or Expert evidence may not be compatible with the ethical rules bearing on counsel in some jurisdictions.

Information Exchange and Disclosure

12. *When the arbitral proceedings involve or are likely to involve Document production, a Party Representative should inform the client of the need to preserve, so far as reasonably possible, Documents, including electronic Documents that would otherwise be deleted in accordance with a Document retention policy or in the ordinary course of business, which are potentially relevant to the arbitration.*

13. *A Party Representative should not make any Request to Produce, or any objection to a Request to Produce, for an improper purpose, such as to harass or cause unnecessary delay.*

14. *A Party Representative should explain to the Party whom he or she represents the necessity of producing and potential consequences of failing to produce, any Document that the Party or Parties have undertaken, or been ordered, to produce.*

15. *A Party Representative should advise the Party whom he or she represents to take, and assist such Party in taking, reasonable steps to ensure that: (i) a reasonable search is made for Documents that a Party has undertaken, or been ordered, to produce and (ii) all non-privileged, responsive Documents are produced.*

16. *A Party Representative should not suppress or conceal or advise a Party to suppress or conceal, Documents that have been requested by another Party or that the Party whom he or she represents has undertaken, or been ordered, to produce.*

17. *If, during the course of an arbitration, a Party Representative becomes aware of the existence of a Document that should have been produced, but was not produced, such Party Representative should advise the Party whom he or she represents of the necessity of producing the Document and the consequences of failing to do so.*

Comments to Guidelines 12-17

The IBA addressed the scope of Document production in the IBA Rules on the Taking of Evidence in International Arbitration (see Articles 3 and 9). Guidelines 12-17 concern the conduct of Party Representatives in connection with Document production.

Party Representatives are often unsure whether and to what extent their respective domestic standards of professional conduct apply to the process of preserving, collecting and producing documents in international arbitration. It is common for Party Representatives in the same arbitration proceeding to apply different standards. For example, one Party Representative may consider him- or her-self obligated to ensure that the Party whom he or she represents undertakes a reasonable search for, and produces, all responsive, non-privileged Documents, while another Party Representative may view Document production as the sole responsibility of the Party whom he or she represents. In these circumstances, the disparity in access to information or evidence may undermine the integrity and fairness of the arbitral proceedings.

The Guidelines are intended to address these difficulties by suggesting standards of conduct in international arbitration. They may not be necessary in cases where Party Representatives share similar expectations with respect to their role in relation to Document production or in cases where Document production is not done or is minimal.

The Guidelines are intended to foster the taking of objectively reasonable steps to preserve, search for and produce Documents that a Party has an obligation to disclose.

Under Guidelines 12-17, a Party Representative should, under the given circumstances, advise the Party whom he or she represents to: (i) identify those persons within the Party's control who might possess Documents potentially relevant to the arbitration, including electronic Documents; (ii) notify such persons of the need to preserve and not destroy any such Documents; and (iii) suspend or otherwise make arrangements to override any Document retention or other policies/practises whereby potentially relevant Documents might be destroyed in the ordinary course of business.

Under Guidelines 12-17, a Party Representative should, under the given circumstances, advise the Party whom he or she represents to, and assist such Party to: (i) put in place a reasonable and proportionate system for collecting and reviewing Documents within the possession of persons within the Party's control in order to identify Documents that are relevant to the arbitration or that have been requested by another Party; and (ii) ensure that the Party Representative is provided with copies of, or access to, all such Documents.

While Article 3 of the IRA Rules on the Taking of Evidence in International Arbitration requires the production of Documents relevant to the case and material to its outcome, Guideline 12 refers only to potentially relevant Documents because its purpose is different when a Party Representative advises the Party whom he or she represents to preserve evidence, such Party Representative is typically not at that stage in a position to assess materiality, and the test for preserving and collecting Documents therefore should be potential relevance to the case at hand.

Finally, a Party Representative should not make a Request to Produce, or object to a Request to Produce, when such request or objection is only aimed at harassing, obtaining documents for purposes extraneous to the arbitration, or causing unnecessary delay (Guideline 13).

Witnesses and Experts

18. *Before seeking any information from a potential Witness or Expert, a Party Representative should identify himself or herself; as well as the Party he or she represents, and the reason for which the information is sought.*

19. *A Party Representative should make any potential Witness aware that he or she has the right to inform or instruct his or her own counsel about the contact and to discontinue the communication with the Party Representative.*

20. *A Party Representative may assist Witnesses in the preparation of Witness Statements and Experts in the preparation of Expert Reports.*

21. *A Party Representative should seek to ensure that a Witness Statement reflects the Witness's own account of relevant facts, events and circumstances.*

22. *A Party Representative should seek to ensure that an Expert Report reflects the Expert's own analysis and opinion.*

23. *A Party Representative should not invite or encourage a Witness to give false evidence.*

24. *A Party Representative may, consistent with the principle that the evidence given should reflect the Witness's own account of relevant facts, events or circumstances, or the Expert's own analysis or opinion, meet or interact with Witnesses and Experts in order to discuss and prepare their prospective testimony.*

25. *A Party Representative may pay, offer to pay, or acquiesce in the payment of*

    (a) expenses reasonably incurred by a Witness or Expert in preparing to testify or testifying at a hearing;

    (b) reasonable compensation for the loss of time incurred by a Witness in testifying and preparing to testify; and

    (c) reasonable fees for the professional services of a Party-appointed Expert.

Comments to Guidelines 18-25

Guidelines 18-25 are concerned with interactions between Party Representatives and Witnesses and Experts. The interaction between Party Representatives and Witnesses is also addressed in Guidelines 9-11 concerning Submissions to the Arbitral Tribunal

Many international arbitration practitioners desire more transparent and predictable standards of conduct with

respect to relations with Witnesses and Experts in order to promote the principle of equal treatment among Parties. Disparate practises among jurisdictions may create inequality and threaten the integrity of the arbitral proceedings.

The Guidelines are intended to reflect best international arbitration practise with respect to the preparation of Witness and Expert testimony.

When a Party Representative contacts a potential Witness, he or she should disclose his or her identity and the reason for the contact before seeking any information from the potential Witness (Guideline 18). A Party Representative should also make the potential Witness aware of his or her right to inform or instruct counsel about this contact and involve such counsel in any further communication (Guideline 19).

Domestic professional conduct norms in some jurisdictions require higher standards with respect to contacts with potential Witnesses who are known to be represented by counsel. For example, some common law jurisdictions maintain a prohibition against contact by counsel with any potential Witness whom counsel knows to be represented in respect of the particular arbitration.

If a Party Representative determines that he or she is subject to a higher standard than the standard prescribed in these Guidelines, he or she may address the situation with the other Party and/or the Arbitral Tribunal.

As provided by Guideline 20, a Party Representative may assist in the preparation of Witness Statements and Expert Reports, but should seek to ensure that a Witness Statement reflects the Witness's own account of relevant facts, events and circumstances (Guideline 21), and that any Expert Report reflects the Expert's own views, analysis and conclusions (Guideline 22).

A Party Representative should not invite or encourage a Witness to give false evidence (Guideline 23).

As part of the preparation of testimony for the arbitration, a Party Representative may meet with Witnesses and Experts (or potential Witnesses and Experts) to discuss their prospective testimony. A Party Representative may also help a Witness in preparing his or her own Witness Statement or Expert Report. Further, a Party Representative may assist a Witness in preparing for their testimony in direct and cross-examination, including through practise questions and answers (Guideline 24). This preparation may include a review of the procedures through which testimony will be elicited and preparation of both direct testimony and cross-examination. Such contacts should however not alter the genuineness of the Witness or Expert evidence, which should always reflect the Witness's own account of relevant facts, events or circumstances, or the Expert's own analysis or opinion.

Finally, Party Representatives may pay, offer to pay or acquiesce in the payment of reasonable compensation to a Witness for his or her time and a reasonable fee for the professional services of an Expert (Guideline 25).

Remedies for Misconduct

26. If the Arbitral Tribunal, after giving the Parties notice and a reasonable opportunity to be heard, finds that a Party Representative has committed Misconduct, the Arbitral Tribunal, as appropriate, may:

- *(a) admonish the Party Representative;*
- *(b) draw appropriate inferences in assessing the evidence relied upon, or the legal arguments advanced by, the Party Representative;*
- *(c) consider the Party Representative's Misconduct in apportioning the costs of the arbitration, indicating, if appropriate, how and in what amount the Party Representative's Misconduct leads the Tribunal to a different apportionment of costs;*
- *(d) take any other appropriate measure in order to preserve the fairness and integrity of the proceedings.*

27. In addressing issues of Misconduct, the Arbitral Tribunal should take into account

- *(a) the need to preserve the integrity and fairness of the arbitral proceedings and the enforceability of the award;*
- *(b) the potential impact of a ruling regarding Misconduct on the rights of the Parties;*
- *(c) the nature and gravity of the Misconduct, including the extent to which the misconduct affects the conduct of the proceedings;*
- *(d) the good faith of the Party Representative;*
- *(e) relevant considerations of privilege and confidentiality; and*
- *(f) the extent to which the Party represented by the Party Representative knew of; condoned, directed, or participated in, the Misconduct.*

Comments to Guidelines 26-27

Guidelines 26-27 articulate potential remedies to address Misconduct by a Party Representative.

Their purpose is to preserve or restore the fairness and integrity of the arbitration.

The Arbitral Tribunal should seek to apply the most proportionate remedy or combination of remedies in light of the nature and gravity of the Misconduct, the good faith of

the Party Representative and the Party whom he or she represents, the impact of the remedy on the Parties' rights, and the need to preserve the integrity, effectiveness and fairness of the arbitration and the enforceability of the award.

Guideline 27 sets forth a list of factors that is neither exhaustive nor binding, but instead reflects an overarching balancing exercise to be conducted in addressing matters of Misconduct by a Party Representative in order to ensure that the arbitration proceed in a fair and appropriate manner.

Before imposing any remedy in respect of alleged Misconduct, it is important that the Arbitral Tribunal gives the Parties and the impugned Representative the right to be heard in relation to the allegations made.

Chapter 17

IBA Guidelines on Conflicts of Interest in International Arbitration 2014[1]

Since their issuance in 2004, the *IBA Guidelines on Conflicts of Interest in International Arbitration* (the 'Guidelines')[2] have gained wide acceptance within the international arbitration community. Arbitrators commonly use the Guidelines when making decisions about prospective appointments and disclosures. Likewise, parties and their counsel frequently consider the Guidelines in assessing the impartiality and independence of arbitrators, and arbitral institutions and courts also often consult the Guidelines in considering challenges to arbitrators. As contemplated when the Guidelines were first adopted, on the eve of their tenth anniversary it was considered appropriate to reflect on the accumulated experience of using them and to identify areas of possible clarification or improvement. Accordingly, in 2012, the IBA Arbitration Committee initiated a review of the Guidelines, which was conducted by an expanded Conflicts of Interest Subcommittee (the 'Subcommittee'),[3] representing diverse legal cultures and a range of perspectives, including counsel, arbitrators and arbitration users. The Subcommittee was chaired by David Arias, later co-chaired by Julie Bédard, and the review process was conducted under the leadership of Pierre Bienvenu and Bernard Hanotiau.

While the Guidelines were originally intended to apply to both commercial and investment arbitration, it was found in the course of the review process that uncertainty lingered as to their application to investment arbitration. Similarly, despite a comment in the original version of the Guidelines that their application extended to non-legal professionals serving as arbitrator, there appeared to remain uncertainty in this regard as well. A consensus emerged in favour of a general affirmation that the Guidelines apply to both commercial and investment arbitration, and to both legal and non-legal professionals serving as arbitrator. The Subcommittee has carefully considered a number of issues that have received attention in international arbitration practice since 2004, such as the effects of so-called 'advance waivers', whether the fact of acting concurrently as counsel and arbitrator in unrelated cases raising similar legal issues warrants disclosure, 'issue' conflicts, the independence and impartiality of arbitral or administrative secretaries and third party funding. The revised Guidelines reflect the Subcommittee's conclusions on these issues.

The Subcommittee has also considered, in view of the evolution of the global practice of international arbitration, whether the revised Guidelines should impose stricter standards in regard to arbitrator disclosure. The revised Guidelines reflect the conclusion that, while the basic approach of the 2004 Guidelines should not be altered, disclosure should be required in certain circumstances not contemplated in the 2004 Guidelines. It is also essential to reaffirm that the fact of requiring disclosure - or of an arbitrator making a disclosure - does not imply the existence of doubts as to the impartiality or independence of the

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[2] The 2004 Guidelines were drafted by a Working Group of 19 experts: Henri Alvarez, Canada; John Beechey, England; Jim Carter, United States; Emmanuel Gaillard, France; Emilio Gonzales de Castilla, Mexico; Bernard Hanotiau, Belgium; Michael Hwang, Singapore; Albert Jan van den Berg, Belgium; Doug Jones, Australia; Gabrielle Kaufmann-Kohler, Switzerland; Arthur Marriott, England; Tore Wiwen Nilsson, Sweden; Hilmar Raeschke-Kessler, Germany; David W Rivkin, United States; Klaus Sachs, Germany; Nathalie Voser, Switzerland (Rapporteur); David Williams, New Zealand; Des Williams, South Africa; and Otto de Witt Wijnen, The Netherlands (Chair).

[3] The members of the expanded Subcommittee on Conflicts of Interest were: Habib Almulla, United Arab Emirates; David Arias, Spain (Co-Chair); Julie Bédard, United States (Co-Chair); José Astigarraga, United States; Pierre Bienvenu, Canada (Review Process Co-Chair); Karl Heinz Böckstiegel, Germany; Yves Derains, France; Teresa Giovannini, Switzerland; Eduardo Damiao Goncalves, Brazil; Bernard Hanotiau, Belgium (Review Process Co-Chair); Paula Hodges, England; Toby Landau, England; Christian Leathley, England; Carole Malinvaud, France; Ciccu Mukhopadhaya, India; Yoshimi Ohara, Japan; Tinuade Oyekunle, Nigeria; Eun Young Park, Korea; Constantine Partasides, England; Peter Rees, The Netherlands; Anke Sessler, Germany; Guido Tawil, Argentina; Jingzhou Tao, China; Gäetan Verhoosel, England (Rapporteur); Nathalie Voser, Switzerland; Nassib Ziadé, United Arab Emirates; and Alexis Mourre.

Assistance was provided by: Niuscha Bassiri, Belgium; Alison Fitzgerald, Canada; Oliver Cojo, Spain; and Ricardo Dalmaso Marques, Brazil.

arbitrator. Indeed, the standard for disclosure differs from the standard for challenge. Similarly, the revised Guidelines are not in any way intended to discourage the service as arbitrators of lawyers practising in large firms or legal associations.

The Guidelines were adopted by resolution of the IBA Council on Thursday 23 October 2014. The Guidelines are available for download at: **www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx**

Signed by the Co-Chairs of the Arbitration Committee
Thursday 23 October 2014
Eduardo Zuleta

Paul Friedland

Introduction

1. Arbitrators and party representatives are often unsure about the scope of their disclosure obligations. The growth of international business, including larger corporate groups and international law firms, has generated more disclosures and resulted in increased complexity in the analysis of disclosure and conflict of interest issues. Parties have more opportunities to use challenges of arbitrators to delay arbitrations, or to deny the opposing party the arbitrator of its choice. Disclosure of any relationship, no matter how minor or serious, may lead to unwarranted or frivolous challenges. At the same time, it is important that more information be made available to the parties, so as to protect awards against challenges based upon alleged failures to disclose, and to promote a level playing field among parties and among counsel engaged in international arbitration.

2. Parties, arbitrators, institutions and courts face complex decisions about the information that arbitrators should disclose and the standards to apply to disclosure. In addition, institutions and courts face difficult decisions when an objection or a challenge is made after a disclosure. There is a tension between, on the one hand, the parties' right to disclosure of circumstances that may call into question an arbitrator's impartiality or independence in order to protect the parties' right to a fair hearing, and, on the other hand, the need to avoid unnecessary challenges against arbitrators in order to protect the parties' ability to select arbitrators of their choosing.
3. It is in the interest of the international arbitration community that arbitration proceedings are not hindered by ill-founded challenges against arbitrators and that the legitimacy of the process is not affected by uncertainty and a lack of uniformity in the applicable standards for disclosures, objections and challenges. The 2004 Guidelines reflected the view that the standards existing at the time lacked sufficient clarity and uniformity in their application. The Guidelines, therefore, set forth some 'General Standards and Explanatory Notes on the Standards'. Moreover, in order to promote greater consistency and to avoid unnecessary challenges and arbitrator withdrawals and removals, the Guidelines list specific situations indicating whether they warrant disclosure or disqualification of an arbitrator. Such lists, designated 'Red', 'Orange' and 'Green' (the 'Application Lists'), have been updated and appear at the end of these revised Guidelines.

4. The Guidelines reflect the understanding of the IBA Arbitration Committee as to the best current international practice, firmly rooted in the principles expressed in the General Standards below. The General Standards and the Application Lists are based upon statutes and case law in a cross-section of jurisdictions, and upon the judgement and experience of practitioners involved in international arbitration. In reviewing the 2004 Guidelines, the IBA Arbitration Committee updated its analysis of the laws and practices in a number of jurisdictions. The Guidelines seek to balance the various interests of parties, representatives, arbitrators and arbitration institutions, all of whom have a responsibility for ensuring the integrity, reputation and efficiency of international arbitration. Both the 2004 Working Group and the Subcommittee in 2012/2014 have sought and considered the views of leading arbitration institutions, corporate counsel and other persons involved in international arbitration through public consultations at IBA annual meetings, and at meetings with arbitrators and practitioners. The comments received were reviewed in detail and many were adopted. The IBA Arbitration Committee is grateful for the serious consideration given to its proposals by so many institutions and individuals.

5. The Guidelines apply to international commercial arbitration and investment arbitration, whether the representation of the parties is carried out by lawyers or non-lawyers, and irrespective of whether or not non-legal professionals serve as arbitrators.

6. These Guidelines are not legal provisions and do not override any applicable national law or arbitral rules chosen by the parties. However, it is hoped that, as was the case for the 2004 Guidelines and other sets of rules and guidelines of the IBA Arbitration Committee, the revised Guidelines will find broad acceptance within the international arbitration community, and that they

will assist parties, practitioners, arbitrators, institutions and courts in dealing with these important questions of impartiality and independence. The IBA Arbitration Committee trusts that the Guidelines will be applied with robust common sense and without unduly formalistic interpretation.

7. The Application Lists cover many of the varied situations that commonly arise in practice, but they do not purport to be exhaustive, nor could they be. Nevertheless, the IBA Arbitration Committee is confident that the Application Lists provide concrete guidance that is useful in applying the General Standards. The IBA Arbitration Committee will continue to study the actual use of the Guidelines with a view to furthering their improvement.

8. In 1987, the IBA published Rules of Ethics for International Arbitrators. Those Rules cover more topics than these Guidelines, and they remain in effect as to subjects that are not discussed in the Guidelines. The Guidelines supersede the Rules of Ethics as to the matters treated here.

Part I: General Standards Regarding Impartiality, Independence and Disclosure

(1) General Principle

Every arbitrator shall be impartial and independent of the parties at the time of accepting an appointment to serve and shall remain so until the final award has been rendered or the proceedings have otherwise finally terminated.

Explanation to General Standard 1:

A fundamental principle underlying these Guidelines is that each arbitrator must be impartial and independent of the parties at the time he or she accepts an appointment to act as arbitrator, and must remain so during the entire course of the arbitration proceeding, including the time period for the correction or interpretation of a final award under the relevant rules, assuming such time period is known or readily ascertainable.

The question has arisen as to whether this obligation should extend to the period during which the award may be challenged before the relevant courts. The decision taken is that this obligation should not extend in this manner, unless the final award may be referred back to the original Arbitral Tribunal under the relevant applicable law or relevant institutional rules. Thus, the arbitrator's obligation in this regard ends when the Arbitral Tribunal has rendered the final award, and any correction or interpretation as may be permitted under the relevant rules has been issued, or the time for seeking the same has elapsed, the proceedings have been finally terminated (for example, because of a settlement), or the arbitrator otherwise no longer has jurisdiction. If, after setting aside or other proceedings, the dispute is referred back to the same Arbitral Tribunal, a fresh round of disclosure and review of potential conflicts of interests may be necessary.

(2) Conflicts of Interest

(a) An arbitrator shall decline to accept an appointment or, if the arbitration has already been commenced, refuse to continue to act as an arbitrator, if he or she has any doubt as to his or her ability to be impartial or independent.

(b) The same principle applies if facts or circumstances exist, or have arisen since the appointment, which, from the point of view of a reasonable third person having knowledge of the relevant facts and circumstances, would give rise to justifiable doubts as to the arbitrator's impartiality or independence, unless the parties have accepted the arbitrator in accordance with the requirements set out in General Standard 4.

(c) Doubts are justifiable if a reasonable third person, having knowledge of the relevant facts and circumstances, would reach the conclusion that there is a likelihood that the arbitrator may be influenced by factors other than the merits of the case as presented by the parties in reaching his or her decision.

(d) Justifiable doubts necessarily exist as to the arbitrator's impartiality or independence in any of the situations described in the Non-Waivable Red List.

Explanation to General Standard 2:

(a) If the arbitrator has doubts as to his or her ability to be impartial and independent, the arbitrator must decline the appointment. This standard should apply regardless of the stage of the proceedings. This is a basic principle that is spelled out in these Guidelines in order to avoid confusion and to foster confidence in the arbitral process.

(b) In order for standards to be applied as consistently as possible, the test for disqualification is an objective one. The wording 'impartiality or independence' derives from the widely adopted Article 12 of the United Nations Commission on International Trade Law (UNCITRAL) Model Law, and the use of an appearance test based on justifiable doubts as to the impartiality or independence of the arbitrator, as provided in Article 12(2) of the UNCITRAL Model Law, is to be applied objectively (a 'reasonable third person test'). Again, as described in the Explanation to General Standard 3(e), this standard applies regardless of the stage of the proceedings.

(c) Laws and rules that rely on the standard of justifiable doubts often do not define that standard. This General Standard is intended to provide some context for making this determination.

(d) The Non-Waivable Red List describes circumstances that necessarily raise justifiable doubts as to the arbitrator's impartiality or independence. For example, because no one is allowed to be his or her own judge, there cannot be identity between an arbitrator and a party. The parties, therefore, cannot waive the conflict of interest arising in such a situation.

(3) Disclosure by the Arbitrator

(a) If facts or circumstances exist that may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence, the arbitrator shall disclose such facts or circumstances to the parties, the arbitration institution or other appointing authority (if any, and if so required by the applicable institutional rules) and the co-arbitrators, if any, prior to accepting his or her appointment or, if thereafter, as soon as he or she learns of them.

(b) An advance declaration or waiver in relation to possible conflicts of interest arising from facts and circumstances that may arise in the future does not discharge the arbitrator's ongoing duty of disclosure under General Standard 3(a).

(c) It follows from General Standards 1 and 2(a) that an arbitrator who has made a disclosure considers himself or herself to be impartial and independent of the parties, despite the disclosed facts, and, therefore, capable of performing his or her duties as arbitrator. Otherwise, he or she would have declined the nomination or appointment at the outset, or resigned.

(d) Any doubt as to whether an arbitrator should disclose certain facts or circumstances should be resolved in favour of disclosure.

(e) When considering whether facts or circumstances exist that should be disclosed, the arbitrator shall not take into account whether the arbitration is at the beginning or at a later stage.

Explanation to General Standard 3:

(a) The arbitrator's duty to disclose under General Standard 3(a) rests on the principle that the parties have an interest in being fully informed of any facts or circumstances that may be relevant in their view. Accordingly, General Standard 3(d) provides that any doubt as to whether certain facts or circumstances should be disclosed should be resolved in favour of disclosure. However, situations that, such as those set out in the Green List, could never lead to disqualification under the objective test set out in General Standard 2, need not be disclosed. As reflected in General Standard 3(c), a disclosure does not imply that the disclosed facts are such as to disqualify the arbitrator under General Standard 2. The duty of disclosure under General Standard 3(a) is ongoing in nature.

(b) The IBA Arbitration Committee has considered the increasing use by prospective arbitrators of declarations in respect of facts or circumstances that may arise in the future, and the possible conflicts of interest that may result, sometimes referred to as 'advance waivers'. Such declarations do not discharge the arbitrator's ongoing duty of disclosure under General Standard 3(a). The Guidelines, however, do not otherwise take a position as to the validity and effect of advance declarations or waivers, because the validity and effect of any advance declaration or waiver must be assessed in view of the specific text of the advance declaration or waiver, the particular circumstances at hand and the applicable law.

(c) A disclosure does not imply the existence of a conflict of interest. An arbitrator who has made a disclosure to the parties considers himself or herself to be impartial and independent of the parties, despite the disclosed facts, or else he or she would have declined the nomination, or resigned. An arbitrator making a disclosure thus feels capable of performing his or her duties. It is

the purpose of disclosure to allow the parties to judge whether they agree with the evaluation of the arbitrator and, if they so wish, to explore the situation further. It is hoped that the promulgation of this General Standard will eliminate the misconception that disclosure itself implies doubts sufficient to disqualify the arbitrator, or even creates a presumption in favour of disqualification. Instead, any challenge should only be successful if an objective test, as set forth in General Standard 2 above, is met. Under Comment 5 of the Practical Application of the General Standards, a failure to disclose certain facts and circumstances that may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence, does not necessarily mean that a conflict of interest exists, or that a disqualification should ensue.

(d) In determining which facts should be disclosed, an arbitrator should take into account all circumstances known to him or her. If the arbitrator finds that he or she should make a disclosure, but that professional secrecy rules or other rules of practice or professional conduct prevent such disclosure, he or she should not accept the appointment, or should resign.

(e) Disclosure or disqualification (as set out in General Standards 2 and 3) should not depend on the particular stage of the arbitration. In order to determine whether the arbitrator should disclose, decline the appointment or refuse to continue to act, the facts and circumstances alone are relevant, not the current stage of the proceedings, or the consequences of the withdrawal. As a practical matter, arbitration institutions may make a distinction depending on the stage of the arbitration. Courts may likewise apply different standards. Nevertheless, no distinction is made by these Guidelines depending on the stage of the arbitral proceedings. While there are practical concerns, if an arbitrator must withdraw after the arbitration has commenced, a distinction based on the stage of the arbitration would be inconsistent with the General Standards.

(4) Waiver by the Parties

(a) If, within 30 days after the receipt of any disclosure by the arbitrator, or after a party otherwise learns of facts or circumstances that could constitute a potential conflict of interest for an arbitrator, a party does not raise an express objection with regard to that arbitrator, subject to paragraphs (b) and (c) of this General Standard, the party is deemed to have waived any potential conflict of interest in respect of the arbitrator based on such facts or circumstances and may not raise any objection based on such facts or circumstances at a later stage.

(b) However, if facts or circumstances exist as described in the Non-Waivable Red List, any waiver by a party (including any declaration or advance waiver, such as that contemplated in General Standard 3(b)), or any agreement by the parties to have such a person serve as arbitrator, shall be regarded as invalid.

(c) A person should not serve as an arbitrator when a conflict of interest, such as those exemplified in the Waivable Red List, exists. Nevertheless, such a person may accept appointment as arbitrator, or continue to act as an arbitrator, if the following conditions are met:

(i) all parties, all arbitrators and the arbitration institution, or other appointing authority (if any), have full knowledge of the conflict of interest; and

(ii) all parties expressly agree that such a person may serve as arbitrator, despite the conflict of interest.

(d) An arbitrator may assist the parties in reaching a settlement of the dispute, through conciliation, mediation or otherwise, at any stage of the proceedings. However, before doing so, the arbitrator should receive an express agreement by the parties that acting in such a manner shall not disqualify the arbitrator from continuing to serve as arbitrator. Such express agreement shall be considered to be an effective waiver of any potential conflict of interest that may arise from the arbitrator's participation in such a process, or from information that the arbitrator may learn in the process. If the assistance by the arbitrator does not lead to the final settlement of the case, the parties remain bound by their waiver. However, consistent with General Standard 2(a) and notwithstanding such agreement, the arbitrator shall resign if, as a consequence of his or her involvement in the settlement process, the arbitrator develops doubts as to his or her ability to remain impartial or independent in the future course of the arbitration.

Explanation to General Standard 4:

(a) Under General Standard 4(a), a party is deemed to have waived any potential conflict of interest, if

such party has not raised an objection in respect of such conflict of interest within 30 days. This time limit should run from the date on which the party learns of the relevant facts or circumstances, including through the disclosure process.

(b) General Standard 4(b) serves to exclude from the scope of General Standard 4(a) the facts and circumstances described in the Non-Waivable Red List. Some arbitrators make declarations that seek waivers from the parties with respect to facts or circumstances that may arise in the future. Irrespective of any such waiver sought by the arbitrator, as provided in General Standard 3(b), facts and circumstances arising in the course of the arbitration should be disclosed to the parties by virtue of the arbitrator's ongoing duty of disclosure.

(c) Notwithstanding a serious conflict of interest, such as those that are described by way of example in the Waivable Red List, the parties may wish to engage such a person as an arbitrator. Here, party autonomy and the desire to have only impartial and independent arbitrators must be balanced. Persons with a serious conflict of interest, such as those that are described by way of example in the Waivable Red List, may serve as arbitrators only if the parties make fully informed, explicit waivers.

(d) The concept of the Arbitral Tribunal assisting the parties in reaching a settlement of their dispute in the course of the arbitration proceedings is well-established in some jurisdictions, but not in others. Informed consent by the parties to such a process prior to its beginning should be regarded as an effective waiver of a potential conflict of interest. Certain jurisdictions may require such consent to be in writing and signed by the parties. Subject to any requirements of applicable law, express consent may be sufficient and may be given at a hearing and reflected in the minutes or transcript of the proceeding. In addition, in order to avoid parties using an arbitrator as mediator as a means of disqualifying the arbitrator, the General Standard makes clear that the waiver should remain effective, if the mediation is unsuccessful. In giving their express consent, the parties should realise the consequences of the arbitrator assisting them in a settlement process, including the risk of the resignation of the arbitrator.

(5) Scope

(a) These Guidelines apply equally to tribunal chairs, sole arbitrators and co-arbitrators, howsoever appointed.

(b) Arbitral or administrative secretaries and assistants, to an individual arbitrator or the Arbitral Tribunal, are bound by the same duty of independence and impartiality as arbitrators, and it is the responsibility of the Arbitral Tribunal to ensure that such duty is respected at all stages of the arbitration.

Explanation to General Standard 5:

(a) Because each member of an Arbitral Tribunal has an obligation to be impartial and independent, the General Standards do not distinguish between sole arbitrators, tribunal chairs, party-appointed arbitrators or arbitrators appointed by an institution.

(b) Some arbitration institutions require arbitral or administrative secretaries and assistants to sign a declaration of independence and impartiality. Whether or not such a requirement exists, arbitral or administrative secretaries and assistants to the Arbitral Tribunal are bound by the same duty of independence and impartiality (including the duty of disclosure) as arbitrators, and it is the responsibility of the Arbitral Tribunal to ensure that such duty is respected at all stages of the arbitration. Furthermore, this duty applies to arbitral or administrative secretaries and assistants to either the Arbitral Tribunal or individual members of the Arbitral Tribunal.

(6) Relationships

(a) The arbitrator is in principle considered to bear the identity of his or her law firm, but when considering the relevance of facts or circumstances to determine whether a potential conflict of interest exists, or whether disclosure should be made, the activities of an arbitrator's law firm, if any, and the relationship of the arbitrator with the law firm, should be considered in each individual case. The fact that the activities of the arbitrator's firm involve one of the parties shall not necessarily constitute a source of such conflict, or a reason for disclosure. Similarly, if one of the parties is a member of a group with which the arbitrator's firm has a relationship, such fact should be considered in each individual case, but shall not

necessarily constitute by itself a source of a conflict of interest, or a reason for disclosure.

(b) If one of the parties is a legal entity, any legal or physical person having a controlling influence on the legal entity, or a direct economic interest in, or a duty to indemnify a party for, the award to be rendered in the arbitration, may be considered to bear the identity of such party.

Explanation to General Standard 6:

(a) The growing size of law firms should be taken into account as part of today's reality in international arbitration. There is a need to balance the interests of a party to appoint the arbitrator of its choice, who may be a partner at a large law firm, and the importance of maintaining confidence in the impartiality and independence of international arbitrators. The arbitrator must, in principle, be considered to bear the identity of his or her law firm, but the activities of the arbitrator's firm should not automatically create a conflict of interest. The relevance of the activities of the arbitrator's firm, such as the nature, timing and scope of the work by the law firm, and the relationship of the arbitrator with the law firm, should be considered in each case. General Standard 6(a) uses the term 'involve' rather than 'acting for' because the relevant connections with a party may include activities other than representation on a legal matter. Although barristers' chambers should not be equated with law firms for the purposes of conflicts, and no general standard is proffered for barristers' chambers, disclosure may be warranted in view of the relationships among barristers, parties or counsel. When a party to an arbitration is a member of a group of companies, special questions regarding conflicts of interest arise. Because individual corporate structure arrangements vary widely, a catch-all rule is not appropriate. Instead, the particular circumstances of an affiliation with another entity within the same group of companies, and the relationship of that entity with the arbitrator's law firm, should be considered in each individual case.

(b) When a party in international arbitration is a legal entity, other legal and physical persons may have a controlling influence on this legal entity, or a direct economic interest in, or a duty to indemnify a party for, the award to be rendered in the arbitration. Each situation should be assessed individually, and General Standard 6(b) clarifies that such legal persons and individuals may be considered effectively to be that party. Third-party funders and insurers in relation to the dispute may have a direct economic interest in the award, and as such may be considered to be the equivalent of the party. For these purposes, the terms 'third-party funder' and 'insurer' refer to any person or entity that is contributing funds, or other material support, to the prosecution or defence of the case and that has a direct economic interest in, or a duty to indemnify a party for, the award to be rendered in the arbitration.

(7) Duty of the Parties and the Arbitrator

(a) A party shall inform an arbitrator, the Arbitral Tribunal, the other parties and the arbitration institution or other appointing authority (if any) of any relationship, direct or indirect, between the arbitrator and the party (or another company of the same group of companies, or an individual having a controlling influence on the party in the arbitration), or between the arbitrator and any person or entity with a direct economic interest in, or a duty to indemnify a party for, the award to be rendered in the arbitration. The party shall do so on its own initiative at the earliest opportunity.

(b) A party shall inform an arbitrator, the Arbitral Tribunal, the other parties and the arbitration institution or other appointing authority (if any) of the identity of its counsel appearing in the arbitration, as well as of any relationship, including membership of the same barristers' chambers, between its counsel and the arbitrator. The party shall do so on its own initiative at the earliest opportunity, and upon any change in its counsel team.

(c) In order to comply with General Standard 7(a), a party shall perform reasonable enquiries and provide any relevant information available to it.

(d) An arbitrator is under a duty to make reasonable enquiries to identify any conflict of interest, as well as any facts or circumstances that may reasonably give rise to doubts as to his or her impartiality or independence. Failure to disclose a conflict is not excused by lack of knowledge, if the arbitrator does not perform such reasonable enquiries.

Explanation to General Standard 7:

(a) The parties are required to disclose any relationship with the arbitrator. Disclosure of such relationships should reduce the risk of an unmeritorious challenge of an arbitrator's impartiality or

independence based on information learned after the appointment The parties' duty of disclosure of any relationship, direct or indirect, between the arbitrator and the party (or another company of the same group of companies, or an individual having a controlling influence on the party in the arbitration) has been extended to relationships with persons or entities having a direct economic interest in the award to be rendered in the arbitration, such as an entity providing funding for the arbitration, or having a duty to indemnify a party for the award.

(b) Counsel appearing in the arbitration, namely the persons involved in the representation of the parties in the arbitration, must be identified by the parties at the earliest opportunity. A party's duty to disclose the identity of counsel appearing in the arbitration extends to all members of that party's counsel team and arises from the outset of the proceedings.

(c) In order to satisfy their duty of disclosure, the parties are required to investigate any relevant information that is reasonably available to them. In addition, any party to an arbitration is required, at the outset and on an ongoing basis during the entirety of the proceedings, to make a reasonable effort to ascertain and to disclose available information that, applying the general standard, might affect the arbitrator's impartiality or independence.

(d) In order to satisfy their duty of disclosure under the Guidelines, arbitrators are required to investigate any relevant information that is reasonably available to them.

Part II: Practical Application of the General Standards

1. If the Guidelines are to have an important practical influence, they should address situations that are likely to occur in today's arbitration practice and should provide specific guidance to arbitrators, parties, institutions and courts as to which situations do or do not constitute conflicts of interest, or should or should not be disclosed. For this purpose, the Guidelines categorise situations that may occur in the following Application Lists. These lists cannot cover every situation. In all cases, the General Standards should control the outcome.

2. The Red List consists of two parts: 'a Non-Waivable Red List' (see General Standards 2(d) and 4(b)); and 'a Waivable Red List' (see General Standard 4(c)). These lists are non-exhaustive and detail specific situations that, depending on the facts of a given case, give rise to justifiable doubts as to the arbitrator's impartiality and independence. That is, in these circumstances, an objective conflict of interest exists from the point of view of a reasonable third person having knowledge of the relevant facts and circumstances (see General Standard 2(b)). The Non-Waivable Red List includes situations deriving from the overriding principle that no person can be his or her own judge. Therefore, acceptance of such a situation cannot cure the conflict. The Waivable Red List covers situations that are serious but not as severe. Because of their seriousness, unlike circumstances described in the Orange List, these situations should be considered waivable, but only if and when the parties, being aware of the conflict of interest situation, expressly state their willingness to have such a person act as arbitrator, as set forth in General Standard 4(c).

3. The Orange List is a non-exhaustive list of specific situations that, depending on the facts of a given case, may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence. The Orange List thus reflects situations that would fall under General Standard 3(a), with the consequence that the arbitrator has a duty to disclose such situations. In all these situations, the parties are deemed to have accepted the arbitrator if, after disclosure, no timely objection is made, as established in General Standard 4(a).

4. Disclosure does not imply the existence of a conflict of interest; nor should it by itself result either in a disqualification of the arbitrator, or in a presumption regarding disqualification. The purpose of the disclosure is to inform the parties of a situation that they may wish to explore further in order to determine whether objectively - that is, from the point of view of a reasonable third person having knowledge of the relevant facts and circumstances - there are justifiable doubts as to the arbitrator's impartiality or independence. If the conclusion is that there are no justifiable doubts, the arbitrator can act. Apart from the situations covered by the Non-Waivable Red List, he or she can also act if there is no timely objection by the parties or, in situations covered by the Waivable Red List, if there is a specific acceptance by the parties in accordance with General Standard 4(c). If a party challenges the arbitrator, he or she can nevertheless act, if the authority that rules on the challenge decides that the challenge does not meet the objective test for disqualification.

5. A later challenge based on the fact that an arbitrator did not disclose such facts or circumstances should not

result automatically in non-appointment, later disqualification or a successful challenge to any award. Non-disclosure cannot by itself make an arbitrator partial or lacking independence: only the facts or circumstances that he or she failed to disclose can do so.

6. Situations not listed in the Orange List or falling outside the time limits used in some of the Orange List situations are generally not subject to disclosure. However, an arbitrator needs to assess on a case-by-case basis whether a given situation, even though not mentioned in the Orange List, is nevertheless such as to give rise to justifiable doubts as to his or her impartiality or independence. Because the Orange List is a non-exhaustive list of examples, there may be situations not mentioned, which, depending on the circumstances, may need to be disclosed by an arbitrator. Such may be the case, for example, in the event of repeat past appointments by the same party or the same counsel beyond the three-year period provided for in the Orange List, or when an arbitrator concurrently acts as counsel in an unrelated case in which similar issues of law are raised. Likewise, an appointment made by the same party or the same counsel appearing before an arbitrator, while the case is ongoing, may also have to be disclosed, depending on the circumstances. While the Guidelines do not require disclosure of the fact that an arbitrator concurrently serves, or has in the past served, on the same Arbitral Tribunal with another member of the tribunal, or with one of the counsel in the current proceedings, an arbitrator should assess on a case-by-case basis whether the fact of having frequently served as counsel with, or as an arbitrator on, Arbitral Tribunals with another member of the tribunal may create a perceived imbalance within the tribunal. If the conclusion is 'yes', the arbitrator should consider a disclosure.

7. The Green List is a non-exhaustive list of specific situations where no appearance and no actual conflict of interest exists from an objective point of view. Thus, the arbitrator has no duty to disclose situations falling within the Green List. As stated in the Explanation to General Standard 3(a), there should be a limit to disclosure, based on reasonableness; in some situations, an objective test should prevail over the purely subjective test of 'the eyes' of the parties.

8. The borderline between the categories that comprise the Lists can be thin. It can be debated whether a certain situation should be on one List instead of another. Also, the Lists contain, for various situations, general terms such as 'significant' and 'relevant'. The Lists reflect international principles and best practices to the extent possible. Further definition of the norms, which are to be interpreted reasonably in light of the facts and circumstances in each case, would be counterproductive.

1. Non-Waivable Red List

1.1 There is an identity between a party and the arbitrator, or the arbitrator is a legal representative or employee of an entity that is a party in the arbitration.

1.2 The arbitrator is a manager, director or member of the supervisory board, or has a controlling influence on one of the parties or an entity that has a direct economic interest in the award to be rendered in the arbitration.

1.3 The arbitrator has a significant financial or personal interest in one of the parties, or the outcome of the case.

1.4 The arbitrator or his or her firm regularly advises the party, or an affiliate of the party, and the arbitrator or his or her firm derives significant financial income therefrom.

2. Waivable Red List

2.1 Relationship of the arbitrator to the dispute

2.1.1 The arbitrator has given legal advice, or provided an expert opinion, on the dispute to a party or an affiliate of one of the parties.

2.1.2 The arbitrator had a prior involvement in the dispute.

2.2 Arbitrator's direct or indirect interest in the dispute

2.2.1 The arbitrator holds shares, either directly or indirectly, in one of the parties, or an affiliate of one of the parties, this party or an affiliate being privately held.

2.2.2 A close family member[4] of the arbitrator has a significant financial interest in the outcome of the dispute.

2.2.3 The arbitrator, or a close family member of the arbitrator, has a close relationship with a non-par-

[4] Throughout the Application Lists, the term 'close family member' refers to a: spouse, sibling, child, parent or life partner, in addition to any other family member with whom a close relationship exists.

ty who may be liable to recourse on the part of the unsuccessful party in the dispute.

2.3 Arbitrator's relationship with the parties or counsel

2.3.1 The arbitrator currently represents or advises one of the parties, or an affiliate of one of the parties.

2.3.2 The arbitrator currently represents or advises the lawyer or law firm acting as counsel for one of the parties.

2.3.3 The arbitrator is a lawyer in the same law firm as the counsel to one of the parties.

2.3.4 The arbitrator is a manager, director or member of the supervisory board, or has a controlling influence in an affiliate[5] of one of the parties, if the affiliate is directly involved in the matters in dispute in the arbitration.

2.3.5 The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.

2.3.6 The arbitrator's law firm currently has a significant commercial relationship with one of the parties, or an affiliate of one of the parties.

2.3.7 The arbitrator regularly advises one of the parties, or an affiliate of one of the parties, but neither the arbitrator nor his or her firm derives a significant financial income therefrom.

2.3.8 The arbitrator has a close family relationship with one of the parties, or with a manager, director or member of the supervisory board, or any person having a controlling influence in one of the parties, or an affiliate of one of the parties, or with a counsel representing a party.

2.3.9 A close family member of the arbitrator has a significant financial or personal interest in one of the parties, or an affiliate of one of the parties.

3. Orange List

3.1 Previous services for one of the parties or other involvement in the case

3.1.1 The arbitrator has, within the past three years, served as counsel for one of the parties, or an affiliate of one of the parties, or has previously advised or been consulted by the party, or an affiliate of the party, making the appointment in an unrelated matter, but the arbitrator and the party, or the affiliate of the party, have no ongoing relationship.

3.1.2 The arbitrator has, within the past three years, served as counsel against one of the parties, or an affiliate of one of the parties, in an unrelated matter.

3.1.3 The arbitrator has, within the past three years, been appointed as arbitrator on two or more occasions by one of the parties, or an affiliate of one of the parties.[6]

3.1.4 The arbitrator's law firm has, within the past three years, acted for or against one of the parties, or an affiliate of one of the parties, in an unrelated matter without the involvement of the arbitrator.

3.1.5 The arbitrator currently serves, or has served within the past three years, as arbitrator in another arbitration on a related issue involving one of the parties, or an affiliate of one of the parties.

3.2 Current services for one of the parties

3.2.1 The arbitrator's law firm is currently rendering services to one of the parties, or to an affiliate of one of the parties, without creating a significant commercial relationship for the law firm and without the involvement of the arbitrator.

3.2.2 A law firm or other legal organisation that shares significant fees or other revenues with the arbitrator's law firm renders services to one of the parties, or an affiliate of one of the parties, before the Arbitral Tribunal.

3.2.3 The arbitrator or his or her firm represents a party, or an affiliate of one of the parties to the arbitration, on a regular basis, but such representation does not concern the current dispute.

3.3 Relationship between an arbitrator and another arbitrator or counsel

3.3.1 The arbitrator and another arbitrator are lawyers in the same law firm.

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[5] Throughout the Application Lists, the term 'affiliate' encompasses all companies in a group of companies, including the parent company.

[6] It may be the practice in certain types of arbitration, such as maritime, sports or commodities arbitration, to draw arbitrators from a smaller or specialised pool of individuals. If in such fields it is the custom and practice for parties to frequently appoint the same arbitrator in different cases, no disclosure of this fact is required, where all parties in the arbitration should be familiar with such custom and practice.

3.3.2 The arbitrator and another arbitrator, or the counsel for one of the parties, are members of the same barristers' chambers.

3.3.3 The arbitrator was, within the past three years, a partner of, or otherwise affiliated with, another arbitrator or any of the counsel in the arbitration.

3.3.4 A lawyer in the arbitrator's law firm is an arbitrator in another dispute involving the same party or parties, or an affiliate of one of the parties.

3.3.5 A close family member of the arbitrator is a partner or employee of the law firm representing one of the parties, but is not assisting with the dispute.

3.3.6 A close personal friendship exists between an arbitrator and a counsel of a party.

3.3.7 Enmity exists between an arbitrator and counsel appearing in the arbitration.

3.3.8 The arbitrator has, within the past three years, been appointed on more than three occasions by the same counsel, or the same law firm.

3.3.9 The arbitrator and another arbitrator, or counsel for one of the parties in the arbitration, currently act or have acted together within the past three years as co-counsel.

3.4 Relationship between arbitrator and party and others involved in the arbitration

3.4.1 The arbitrator's law firm is currently acting adversely to one of the parties, or an affiliate of one of the parties.

3.4.2 The arbitrator has been associated with a party, or an affiliate of one of the parties, in a professional capacity, such as a former employee or partner.

3.4.3 A close personal friendship exists between an arbitrator and a manager or director or a member of the supervisory board of: a party; an entity that has a direct economic interest in the award to be rendered in the arbitration; or any person having a controlling influence, such as a controlling shareholder interest, on one of the parties or an affiliate of one of the parties or a witness or expert.

3.4.4 Enmity exists between an arbitrator and a manager or director or a member of the supervisory board of: a party; an entity that has a direct economic interest in the award; or any person having a controlling influence in one of the parties or an affiliate of one of the parties or a witness or expert.

3.4.5 If the arbitrator is a former judge, he or she has, within the past three years, heard a significant case involving one of the parties, or an affiliate of one of the parties.

3.5 Other circumstances

3.5.1 The arbitrator holds shares, either directly or indirectly, that by reason of number or denomination constitute a material holding in one of the parties, or an affiliate of one of the parties, this party or affiliate being publicly listed.

3.5.2 The arbitrator has publicly advocated a position on the case, whether in a published paper, or speech, or otherwise.

3.5.3 The arbitrator holds a position with the appointing authority with respect to the dispute.

3.5.4 The arbitrator is a manager, director or member of the supervisory board, or has a controlling influence on an affiliate of one of the parties, where the affiliate is not directly involved in the matters in dispute in the arbitration.

4. Green List

4.1 Previously expressed legal opinions

4.1.1 The arbitrator has previously expressed a legal opinion (such as in a law review article or public lecture) concerning an issue that also arises in the arbitration (but this opinion is not focused on the case).

4.2 Current services for one of the parties

4.2.1 A firm, in association or in alliance with the arbitrator's law firm, but that does not share significant fees or other revenues with the arbitrator's law firm, renders services to one of the parties, or an affiliate of one of the parties, in an unrelated matter.

4.3 Contacts with another arbitrator, or with counsel for one of the parties

4.3.1 The arbitrator has a relationship with another arbitrator, or with the counsel for one of the parties, through membership in the same professional association, or social or charitable organisation, or through a social media network.

4.3.2 The arbitrator and counsel for one of the parties have previously served together as arbitrators.

4.3.3 The arbitrator teaches in the same faculty or school as another arbitrator or counsel to one of the parties, or serves as an officer of a professional association or social or charitable organisation with another arbitrator or counsel for one of the parties.

4.3.4 The arbitrator was a speaker, moderator or organiser in one or more conferences, or participated in seminars or working parties of a professional, social or charitable organisation, with another arbitrator or counsel to the parties.

4.4 Contacts between the arbitrator and one of the parties

4.4.1 The arbitrator has had an initial contact with a party, or an affiliate of a party (or their counsel) prior to appointment, if this contact is limited to the arbitrator's availability and qualifications to serve, or to the names of possible candidates for a chairperson, and did not address the merits or procedural aspects of the dispute, other than to provide the arbitrator with a basic understanding of the case.

4.4.2 The arbitrator holds an insignificant amount of shares in one of the parties, or an affiliate of one of the parties, which is publicly listed.

4.4.3 The arbitrator and a manager, director or member of the supervisory board, or any person having a controlling influence on one of the parties, or an affiliate of one of the parties, have worked together as joint experts, or in another professional capacity, including as arbitrators in the same case.

4.4.4 The arbitrator has a relationship with one of the parties or its affiliates through a social media network.

Chapter 18
Rules on the Efficient Conduct of Proceedings in International Arbitration (Prague Rules) (2018)

NOTE FROM THE WORKING GROUP

It has become almost commonplace these days for users of arbitration to be dissatisfied with the time and costs involved in arbitral proceedings. One of the ways to increase the efficiency of arbitral proceedings is to encourage tribunals to take a more active role in managing the proceedings (as is traditionally done in many civil law countries).

With this in mind a Working Group was formed with representatives from around 30, mainly civil law, countries. The list of Working Group members is enclosed as Appendix I to the Prague Rules. The members of the group conducted a survey on procedural traditions in international arbitration in their respective countries. The list of respondents who filled in and returned the questionnaire is given in Appendix II of the Prague Rules. On the basis of this research the Working Group prepared the first draft of the Rules, which was released in January 2018.

The draft Rules inspired a vigorous debate among arbitration practitioners, and discussions of the draft Rules were held at arbitration events all around the world, specifically in Austria, Belarus, People's Republic of China, France, Georgia, Poland, Portugal, Spain, Russia, Latvia, Lithuania, Sweden, UK, Ukraine and the US. These discussions also revealed that the Rules, initially intended to be used in disputes between companies from civil law countries, could in fact be used in any arbitration proceedings where the nature of the dispute or its amount justifies a more streamlined procedure actively driven by the tribunal, a practice which is generally welcomed by arbitration users.

The feedback received from arbitration practitioners allowed further improvement of the draft Rules and they were made available for signing on 14 December 2018 in Prague. The Working Group wants to thank Assen Alexiev, Hans Bagner, Prof. Dr. Klaus Peter Berger, David Böckenförde, Miroslav Dubovský, Prof. Dr. Cristina Ioana Florescu, Duarte G. Henriques, Alexandre Khrapoutski, Vladimir Khvalei, Dr. Christoph Liebscher, Andrey Panov, Olena Perepelynska, Asko Pohla, Roman Prekop and José Rosell, who made a significant contribution to the draft document.

PREAMBLE TO THE PRAGUE RULES ON THE EFFICIENT CONDUCT OF PROCEEDINGS IN INTERNATIONAL ARBITRATION

The Prague Rules on the Efficient Conduct of Proceedings in International Arbitration ("Prague Rules") are intended to provide a framework and/or guidance for arbitral tribunals and parties on how to increase efficiency of arbitration by encouraging a more active role for arbitral tribunals in managing proceedings.

The Prague Rules are not intended to replace the arbitration rules provided by various institutions and are designed to supplement the procedure to be agreed by parties or otherwise applied by arbitral tribunals in a particular dispute.

Parties and arbitral tribunals may decide to apply the Prague Rules as a binding document or as guidelines to all or any part of the proceedings. They may also exclude the application of any part of the Prague Rules or decide to apply only part of them. Arbitral tribunals and parties may also modify the provisions of the Prague Rules by taking into account the particular circumstances of the case.

Article 1. Application of the Prague Rules

1.1. The parties may agree on the application of the Prague Rules before arbitration is initiated or at any stage of the arbitration.

1.2. The arbitral tribunal may apply the Prague Rules or any part thereof upon the parties' agreement or at its own initiative after having heard the parties.

1.3. In all cases, due regard must be given to the mandatory legal provisions of the lex arbitri as well as to the applicable arbitration rules and the procedural arrangements of the parties.

1.4. At all stages of the arbitration and in implementing the Prague Rules, the arbitral tribunal shall ensure fair and equal

treatment of the parties and provide them with a reasonable opportunity to present their respective cases.

Article 2. Proactive Role of the Arbitral Tribunal

2.1. The arbitral tribunal shall hold a case management conference without any unjustified delay after receiving the case file.

2.2. During the case management conference, the arbitral tribunal shall:

a. discuss with the parties a procedural timetable;
b. clarify with the parties their respective positions with regard to:
    i. the relief sought by the parties;
    ii. the facts which are undisputed between the par ties and the facts which are disputed; and
    iii. the legal grounds on which the parties base their positions.

2.3. If the parties' positions have not been sufficiently presented at the time of the case management conference, the arbitral tribunal could deal with the issues mentioned in Article 2.2.b at a later stage of the arbitration.

2.4. The arbitral tribunal may at the case management conference or at any later stage of the arbitration, if it deems it appropriate, indicate to the parties:

a. the facts which it considers to be undisputed between the parties and the facts which it considers to be disputed;
b. with regard to the disputed facts – the type(s) of evidence the arbitral tribunal would consider to be appropriate to prove the parties' respective positions;
c. its understanding of the legal grounds on which the parties base their positions;
d. the actions which could be taken by the parties and the arbitral tribunal to ascertain the factual and legal basis of the claim and the defence;
e. its preliminary views on:
    i. the allocation of the burden of proof between the parties;
    ii. the relief sought;
    iii. the disputed issues; and
    iv. the weight and relevance of evidence submitted by the parties.

Expressing such preliminary views shall not by itself be considered as evidence of the arbitral tribunal's lack of independence or impartiality, and cannot constitute grounds for disqualification.

2.5. When establishing the procedural timetable, the arbitral tribunal may decide – after having heard the parties – to determine certain issues of fact or law as preliminary matters, limit the number of rounds for exchange of submissions, the length of submissions, as well as fix strict time limits for the filing thereof, the form and extent of document production (if any).

Article 3. Fact Finding

3.1. The arbitral tribunal is entitled and encouraged to take a proactive role in establishing the facts of the case which it considers relevant for the resolution of the dispute. This, however, shall not release the parties from their burden of proof.

3.2. In particular, the arbitral tribunal may, after having heard the parties, at any stage of the arbitration and at its own initiative:

a. request any of the parties to submit relevant documentary evidence or make fact witnesses available for oral testimony during the hearing;
b. appoint one or more experts, including on legal issues;
c. order site inspections; and/or
d. for the purposes of fact finding, take any other actions which it deems appropriate.

3.3. The arbitral tribunal shall consider imposing a cut-off date for submission of evidence and not accepting any new evidence after that date, save for under exceptional circumstances.

Article 4. Documentary Evidence

4.1. Each party shall submit documentary evidence upon which it intends to rely in support of its case as early as possible in the proceedings.

4.2. Generally, the arbitral tribunal and the parties are encouraged to avoid any form of document production, including e-discovery.

4.3. However, if a party believes that it would need to request certain documents from the other party, it should indicate this to the arbitral tribunal at the case management conference and explain the reasons why the document production may be needed in this particular case. If the arbitral tribunal is satisfied that the document production may be needed, it should decide on a procedure for document production and make an appropriate provision for it in the procedural timetable.

4.4. A party can request the arbitral tribunal to order document production at a later stage of the arbitration only in exceptional circumstances. Such a request should be granted only if the arbitral tribunal is satisfied that the party could

not have made such a request at the case management conference.

4.5. Subject to Articles 4.2 – 4.4, a party may request the arbitral tribunal to order another party to produce a specific document which:

a. is relevant and material to the outcome of the case;
b. is not in the public domain; and
c. is in the possession of another party or within its power or control.

4.6. The arbitral tribunal, after hearing the party's view on such request, may order it to produce the requested document.

4.7. Documents shall be submitted or produced in photocopies and/or electronically. The submitted or produced documents are presumed to be identical to the originals unless disputed by the other party. However, the arbitral tribunal may, at the request of a party or on its own initiative, order the party submitting or producing the document to present the original of the document for examination by the arbitral tribunal or expert review.

4.8. Any document submitted or produced by a party in the arbitration and not otherwise in the public domain shall be kept confidential by the arbitral tribunal and the other party, and may only be used in connection with that arbitration, save where and to the extent that disclosure may be required of a party by the applicable law.

Article 5. Fact Witnesses

5.1. When filing a statement of claim or defence, or at any other stage of the arbitration which the arbitral tribunal considers appropriate, a party shall identify:

a. each fact witness (if any), on whose testimony the party intends to rely in support of its position;
b. the factual circumstances on which the respective fact witness intends to testify; and
c. the relevance and materiality of the testimony for the outcome of the case.

5.2. The arbitral tribunal, after having heard the parties, will decide which witnesses are to be called for examination during the hearing in accordance with Articles 5.3 – 5.9 below.

5.3. The arbitral tribunal may decide that a certain witness should not be called for examination during the hearing, either before or after a witness statement has been submitted, in particular if it considers the testimony of such a witness to be irrelevant, immaterial, unreasonably burdensome, duplicative or for any other reasons not necessary for the resolution of the dispute.

5.4. If the arbitral tribunal decides that the witness should not be called for examination during the hearing prior to any witness statement being submitted, this does not, by itself, preclude a party from submitting a witness statement for that witness.

5.5. The arbitral tribunal may also, if it deems it appropriate, itself invite a party to submit a written witness statement of a particular witness before the hearing.

5.6. If a written witness statement is submitted by a party by virtue of Article 5.4 or at the invitation of the arbitral tribunal by virtue of Article 5.5, the arbitral tribunal, upon having heard the parties, may decide that such witness nonetheless should not be called for examination at the hearing.

5.7. However, if a party insists on calling a witness whose witness statement has been submitted by the other party, as a general rule, the arbitral tribunal should call the witness to testify at the hearing, unless there are good reasons not to do so.

5.8. Any decision not to call a witness who has submitted a witness statement does not limit the arbitral tribunal's authority to give as much evidential value to the written witness statement as it deems appropriate.

5.9. At the hearing, the examination of any fact witness shall be conducted under the direction and control of the arbitral tribunal. The arbitral tribunal can reject a question posed to the witness if the arbitral tribunal considers it to be irrelevant, redundant, not material to the outcome of the case or for other reasons. After having heard the parties, the arbitral tribunal may also impose other restrictions, including setting the order of examination of the witnesses, time limits for examination or types of questions to be allowed or hold witness conferences, as it deems appropriate.

Article 6. Experts

6.1. At the request of a party or on its own initiative and after having heard the parties, the arbitral tribunal may appoint one or more independent experts to present a report on disputed matters which require specialised knowledge.

6.2. If the arbitral tribunal decides to appoint an expert, the arbitral tribunal shall:

a. seek suggestions from the parties as to who should be appointed as an expert. For this purpose, the arbitral tribunal may establish the requirements for potential experts, such as qualification, availability, costs, and com-

municate them to the parties. The arbitral tribunal shall not be bound by the candidates proposed by either party and may:

i. appoint a candidate:

a) proposed by any one of the parties; or

b) identified by the arbitral tribunal itself;

ii. create a joint expert commission consisting of the candidates proposed by the parties; or

iii. seek a proposal for a suitable expert from a neutral organisation, such as a chamber of commerce or a professional association;

b. after having heard the parties, approve the terms of reference for the tribunal-appointed expert;

c. request the parties to pay an advance on costs to cover the expert's work in equal proportion. If a party refrains from advancing its share of the costs, this share shall be advanced by the other party;

d. request the parties to provide the expert appointed by the arbitral tribunal with all the information and documents he or she may require to perform his or her duties in connection with the expert examination;

e. monitor the expert's work and keep the parties informed regarding its progress.

6.3. The tribunal-appointed expert shall issue his or her report to the tribunal and the parties.

6.4. At the request of a party or on the arbitral tribunal's own initiative, the expert shall be called for examination at the hearing.

6.5. The appointment of any expert by the arbitral tribunal does not preclude a party from submitting an expert report by any expert appointed by that party. At the request of any other party or on the arbitral tribunal's own initiative, such party-appointed expert shall be called for examination during the hearing.

6.6. After having heard the parties, the arbitral tribunal may instruct any party-appointed and/or the tribunal-appointed experts to establish a joint list of questions on the content of their reports, covering the issues that they consider necessary to be reviewed.

6.7. After having heard the parties, the arbitral tribunal may instruct the party-appointed and the tribunal-appointed experts, (if any), to have a conference and to issue a joint report in order to provide the arbitral tribunal with:

a. a list of issues on which the experts agree;
b. a list of issues on which the experts disagree; and
c. if practicable, reasons why the experts disagree.

Article 7. Iura Novit Curia

7.1. A party bears the burden of proof with respect to the legal position on which it relies.

7.2. However, the arbitral tribunal may apply legal provisions not pleaded by the parties if it finds it necessary, including, but not limited to, public policy rules. In such cases, the arbitral tribunal shall seek the parties' views on the legal provisions it intends to apply. The arbitral tribunal may also rely on legal authorities even if not submitted by the parties if they relate to legal provisions pleaded by the parties and provided that the parties have been given an opportunity to express their views in relation to such legal authorities.

Article 8. Hearing

8.1. In order to promote cost-efficiency and to the extent appropriate for a particular case, the arbitral tribunal and the parties should seek to resolve the dispute on a documents only basis.

8.2. If one of the parties requests a hearing or the arbitral tribunal itself finds it appropriate, the parties and the arbitral tribunal shall seek to organise the hearing in the most cost-efficient manner possible, including by limiting the duration of the hearing and using video, electronic or telephone communication to avoid unnecessary travel costs for arbitrators, parties and other participants.

Article 9. Assistance in Amicable Settlement

9.1. Unless one of the parties objects, the arbitral tribunal may assist the parties in reaching an amicable settlement of the dispute at any stage of the arbitration.

9.2. Upon the prior written consent of all parties, any member of the arbitral tribunal may also act as a mediator to assist in the amicable settlement of the case.

9.3. If the mediation does not result in a settlement within an agreed period of time, the member of the arbitral tribunal who has acted as mediator:

a. may continue to act as an arbitrator in the arbitration proceedings after obtaining written consent from all parties at the end of the mediation; or

b. shall terminate his/her mandate in accordance with the applicable arbitration rules if such written consent is not obtained.

Article 10. Adverse Inference

If a party does not comply with the arbitral tribunal's order(s) or instruction(s), without justifiable grounds, the arbitral tribunal may draw, where it considers appropriate, an adverse inference with regard to such party's respective case or issue.

Article 11. Allocation of Costs

When deciding on the allocation of costs in an award, the arbitral tribunal may take into account the parties' conduct during the arbitral proceedings, including their co-operation and assistance (or the lack thereof) in conducting the proceedings in a cost-efficient and expeditious manner.

Article 12. Deliberations

12.1. The arbitral tribunal shall use its best efforts to issue the award as soon as possible.

12.2. The arbitral tribunal shall conduct internal discussions on the case before the hearing and hold deliberations as soon as possible thereafter. In the event of documents-only arbitration, the arbitral tribunal shall hold deliberations as soon as possible after all documents have been submitted.

Appendix I. Working Group members

Akinci Ziya (Turkey)
Alexiev Assen (Bulgaria)
Anischenko Alexey (Belarus)
Antal Jozsef (Hungary)
Audzevičius Ramūnas (Lithuania)
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Panov Andrey (Russia)
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Pohla Asko (Estonia)
Rajoo Sundra (Malaysia)
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Sabirov Nurbek (Kyrgyzstan)
Shalbanova Anna (Belarus)
Tercier Pierre (Switzerland)
Tetley Andrew (New Zealand, UK)
Trittmann Rolf (Germany)
Ūdris Ziedonis (Latvia)
Vail Tomas (UK)
Zukova Galina (France)
Zykov Roman (Russia)

Appendix II. List of Country Reporters
Country Participants

Albania	Lazimi Fatos
Argentina	Christian Albanesi
Armenia	Sargis Grigoryan
Austria	Christoph Liebscher
Azerbaijan	Gunduz Karimov
Belarus	Alexandre Khrapoutski
Bulgaria	Assen Alexiev
Czech Republic	Alexander Bělohlavek
	Miroslav Dubovsky
Egypt	Mohamed Abdel Wahab
Estonia	Asko Pohla
Finland	Leena Kujansuu
Georgia	Lasha Nodia
Germany	Klaus Peter Berger
Hungary	Jozsef Antal
Kazakhstan	Alexander Korobeinikov
Kyrgyzstan	Nurbek Sabirov
Latvia	Ziedonis Ūdris
Lithuania	Ramūnas Audzevičius
Norway	Ola Haugen
Poland	Beata Gessel
Portugal	Duarte Henriques
Russia	Andrey Panov
Serbia	Vladimir Pavić
Slovakia	Roman Prekop
Slovenia	Aleš Galič
Sweden	Carl Persson
Switzerland	Philipp Habegger
Turkey	Ziya Akinci
Ukraine	Olena Perepelynska

Chapter 19
ICCA-NYC BAR-CPR Protocol on Cybersecurity in International Arbitration (2020)*

Members of the Working Group

ICCA Representatives:

Chair: **Brandon Malone**, Scottish Arbitration Centre; Brandon Malone & Company

Paul Cohen, 4-5 Gray's Inn Square Chambers

Kathleen Paisley, International Arbitrator, Ambos Lawyers

NYC Bar Representatives:

Stephanie Cohen, Independent Arbitrator

Lea Haber Kuck, Skadden, Arps, Slate, Meagher & Flom LLP

Mark Morril, Independent Arbitrator

CPR Representatives:

Olivier André, International Institute for Conflict Prevention and Resolution (CPR)

Hagit Elul, Hughes Hubbard & Reed LLP

Micaela McMurrough, Covington & Burling LLP

Secretaries: **Eva Y. Chan** and **Jesse R. Peters**, Skadden, Arps, Slate, Meagher & Flom LLP

Foreward to the 2020 Protocol

I. Purpose of the Protocol

The purpose of the ICCA-NYC Bar-CPR Cybersecurity Protocol for International Arbitration (the "**Cybersecurity Protocol**" or the "**Protocol**") is twofold.

First, the Protocol is intended to provide a framework to determine reasonable information security measures for individual arbitration matters. That framework includes procedural and practical guidance to assess security risks and identify available measures that may be implemented.

Second, the Protocol is intended to increase awareness about information security in international arbitrations. This includes awareness of: (i) information security risks in the arbitral process, which include both cybersecurity and physical security risks; (ii) the importance of information security to maintaining user confidence in the overall arbitral regime; (iii) the essential role played by individuals involved in the arbitration in effective risk mitigation; and (iv) some of the readily accessible information security measures available to improve everyday security practices.

II. Scope of the Protocol

(a) Application Beyond International Commercial Arbitrations

Although the Protocol has been drafted with international commercial arbitrations in mind, it may also be a useful reference for domestic arbitration matters and/or investor-state arbitrations.

(b) Data Protection Issues

Information security and data protection issues are closely connected, largely because there is increasing regulation around the globe governing the processing of personal data. It is typical for data protection law and regulations to mandate, among other things, that persons processing personal data implement reasonable information security measures.

Adherence to the Protocol may therefore facilitate compliance with data protection legal regimes such as the European Union General Data Protection Regulation. However, the focus of the Protocol is on mitigating information security risks and not on achieving compliance with such regimes. The Protocol does not supersede applicable legal or other binding obligations, and implementation of the Protocol does not guarantee compliance with data protection regimes.

As useful resources on data protection compliance become available (including the forthcoming Roadmap to Data Protection in International Arbitration Proceedings by the ICCA/IBA Joint Task Force on Data Protection in International Arbitration Proceedings), the Protocol will incorporate references to such resources to facilitate the concurrent consideration of information security and data protection issues.

III. Future Revisions to the Protocol

As this version of the Protocol is released in late 2019, we refer to it as the "2020 Protocol." The Working Group has adopted the editioning approach to emphasize that the Protocol will necessarily evolve over time in light of (i) changing technology; (ii) new and prevalent cyber threats; (iii) new or amended laws/regulations; (iv) consensus that may emerge as to reasonable measures/arbitration best practices; (v) new cybersecurity initiatives by institutions or others; and (vi) practical experience implementing the Protocol. To facilitate the periodic improvement and updating of the Protocol, the Working Group encourages persons who use the Protocol to share their experiences in deploying it and provide feedback. Feedback on the Protocol may be sent to cybersecurity@arbitration-icca.org.

For an electronic copy of the Protocol with hyperlinks and bookmarks to facilitate navigation, please visit https://www.arbitration- icca.org/projects/Cybersecurity-in-International-Arbitration.html.

ICCA-NYC BAR-CPR CYBERSECURITY PROTOCOL FOR INTERNATIONAL ARBITRATION (2020) (Without Commentary)

Scope and Applicability

Principle 1 The Cybersecurity Protocol provides a recommended framework to guide tribunals, parties, and administering institutions in their consideration of what information security measures are reasonable to apply to a particular arbitration matter.

Principle 2 As a threshold matter, each party, arbitrator, and administering institution should consider the baseline information security practices that are addressed in Schedule A and the impact of their own information security practices on the arbitration. Effective information security in a particular arbitration requires all custodians of arbitration-related information to adopt reasonable information security practices.

Principle 3 Parties, arbitrators, and administering institutions should ensure that all persons directly or indirectly involved in an arbitration on their behalf are aware of, and follow, any information security measures adopted in a proceeding, as well as the potential impact of any security incidents.

Principle 4 The Protocol does not supersede applicable law, arbitration rules, professional or ethical obligations, or other binding obligations.

The Standard

Principle 5 Subject to Principle 4, the information security measures adopted for the arbitration shall be those that are reasonable in the circumstances of the case as considered in Principles 6-8.

Determining Reasonable Cybersecurity Measures

Principle 6 In determining which specific information security measures are reasonable for a particular arbitration, the parties and the tribunal should consider:

(a) the risk profile of the arbitration, taking into account the factors set forth in Schedule B;
(b) the existing information security practices, infrastructure, and capabilities of the parties, arbitrators, and any administering institution, and the extent to which those practices address the categories of information security measures referenced in Principle 7;
(c) the burden, costs, and the relative resources of the parties, arbitrators, and any administering institution;
(d) proportionality relative to the size, value, and risk profile of the dispute; and
(e) the efficiency of the arbitral process.

Principle 7 In considering the specific information security measures to be applied in an arbitration, consideration should be given to the following categories:

(a) asset management;
(b) access controls;
(c) encryption;
(d) communications security;
(e) physical and environmental security;

(f) operations security; and
(g) information security incident management.

Principle 8 In some cases, it may be reasonable to tailor the information security measures applied to the arbitration to the risks present in different aspects of the arbitration, which may include:

(a) information exchanges and transmission of arbitration-related information;
(b) storage of arbitration-related information;
(c) travel;
(d) hearings and conferences; and/or
(e) post-arbitration retention and destruction policies.

The Process to Establish Reasonable Cybersecurity Measures

Principle 9 Taking into consideration the factors outlined in Principles 6-8 as appropriate, the parties should attempt in the first instance to agree on reasonable information security measures.

Principle 10 Information security should be raised as early as practicable in the arbitration, which ordinarily will not be later than the first case management conference.

Principle 11 Taking into consideration Principles 4-9 as appropriate, the arbitral tribunal has the authority to determine the information security measures applicable to the arbitration.

Principle 12 The arbitral tribunal may modify the measures previously established for the arbitration, at the request of any party or on the tribunal's own initiative, in light of the evolving circumstances of the case.

Principle 13 In the event of a breach of the information security measures adopted for an arbitration proceeding or the occurrence of an information security incident, the arbitral tribunal may, in its discretion: (a) allocate related costs among the parties; and/or (b) impose sanctions on the parties.

Principle 14 The Protocol does not establish any liability or any liability standard for any purpose, including, but not limited to, legal or regulatory purposes, liability in contract, professional malpractice, or negligence.

ICCA-NYC BAR-CPR CYBERSECURITY PROTOCOL FOR INTERNATIONAL ARBITRATION (2020) (With Commentary)

Organization of the Protocol

The Protocol is organized into Principles, Commentary, and Schedules. Each Principle provides high-level guidance and is accompanied by explanatory Commentary. The Principles are supplemented as necessary with more detailed guidance contained in the Schedules. Following the Schedules, the Working Group acknowledges the many organizations and individuals who contributed to the Protocol.

- **Principles 1-4** address the scope and applicability of the Protocol.
  - **Principle 1** establishes the basic building blocks of the Protocol, including the framework approach and the reasonableness standard.
  - **Principles 2-3** address the role of the arbitral tribunal,[1] the parties[2] and any administering institution[3] in ensuring effective information security[4] for a particular arbitration matter.
  - **Principle 4** addresses the relationship between the Protocol and applicable law and other binding obligations.
- **Principle 5** establishes the standard of reasonableness, which governs what measures should be adopted to address issues of information security in an individual arbitration matter.
- **Principles 6-8** set out a series of factors to be considered in determining what information security measures are reasonable in a particular matter and how they should be applied.

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1 "**Arbitral tribunal**" or "**tribuna**l" refers to a sole arbitrator or a panel of arbitrators.

2 "**Party**" or "**parties**" refers to the parties to the arbitration and their counsel or other representatives.

3 "**Administering institution**" or "**institution**" refers to any institution administering the arbitration and the individual representatives of the institution.

4 "**Information security**" includes security for all types and forms of electronic and non-electronic information, including both commercial and personal data. "**Cybersecurity,**" which concerns the means employed to maintain the confidentiality, integrity, and availability of digital information, is one aspect of information security.

- **Principles 9-13** provide a series of suggested procedural steps to address information security issues in an individual arbitration.
    - o **Principles 9-10** recognize the importance of party autonomy in determining what information security measures are reasonable in any given case.
    - o **Principles 11-13** recognize the arbitral tribunal's authority to determine the information security measures applicable to the arbitration.
- **Principle 14** clarifies that the Protocol does not establish liability or a liability standard for any purpose whatsoever.
- **Schedule A** addresses baseline information security practices that all custodians of arbitration-related information should consider in connection with their everyday business activities.
- **Schedule B** considers the risk factors that can be used to assess the risk profile of an arbitration.
- **Schedule C** gives examples of specific information security measures and processes that might be adopted for particular arbitration matters.
- **Schedule D** contains sample language for addressing information security issues in arbitration agreements, agendas for case management conferences, procedural orders, and post-arbitration dispute resolution clauses.
- **Schedule E** lists prevailing cybersecurity standards and resources that may be consulted for further information.
- **Schedule F** is a glossary of terms used in the Protocol, which are also included in footnotes for ease of use.

Scope and Applicability

1. The Cybersecurity Protocol provides a recommended framework to guide tribunals, parties, and administering institutions in their consideration of what information security measures are reasonable to apply to a particular arbitration matter.

Commentary to Principle 1

(a) **Recommended framework**. Principle 1 establishes the basic approach of the Protocol, which is to provide a framework for the consideration of the security measures to be applied to the information processed[5] during a particular arbitration matter.

(b) The Protocol is not intended to, and does not, provide a one-size-fits-all information security solution. A core premise of the Protocol is that reasonable information security measures should be applied to arbitral proceedings, but that the measures which will be reasonable in a particular matter may vary significantly based on the facts and circumstances of the case, as well as evolving threats and technology. Tribunals and parties who decide to utilize the Protocol in an arbitration can refer to the guidance in the Protocol to determine reasonable information security measures for their matter.

(c) ***Relationship between cybersecurity and information security***. Due to the highly digitized nature of today's international arbitrations, the Protocol focuses on cybersecurity, which concerns the means employed to maintain the confidentiality, integrity, and availability of digital information.[6] However, the guidance in the Protocol applies broadly to all information security measures, including both cybersecurity and physical security, and the Protocol therefore refers generally to information security rather than to cybersecurity wherever appropriate. As such, in this Protocol, the term "information security" includes security for all

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5 "**Processing**" broadly refers to anything that is done to, or with, arbitration-related information. It includes automated and non-automated operations, such as the collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, alignment or combination, restriction, erasure, or destruction.

6 In this context, "**confidentiality**" can be understood as a set of rules or restrictions that limits access to certain information, "**integrity**" can be understood as an assurance that certain information is trustworthy and accurate, and "**availability**" can be understood as a promise of reliable access to certain information by authorized individuals.

types and forms of electronic and non-electronic information, including both commercial and personal data.

(d) Importance of reasonable information security. The need for reasonable information security measures in international arbitrations is highlighted by: the litigious backdrop of arbitration, which can lead to the targeting of information; the often high value, high stakes nature of disputes, which increases the risk of security incidents7 and the likelihood that those incidents will cause significant loss; the exchange of information that is often confidential commercial information and/or regulated personal or other data; and the cross-border nature of the process, which creates complex challenges in complying with applicable legal requirements and heightens the consequences of a security incident.

Specific consequences that may result from inadequate attention to information security include:

- economic loss to individuals whose commercial information or personal data8 is compromised;
- loss of integrity of data, or questions about the reliability and accuracy of data, due to a cyber security incident;
- unavailability of data, networks, platforms, or websites due to disruption caused by a cyber security incident;
- potential liability under applicable law and other regulatory frameworks, including applicable data protection regimes; and
- reputational damage to parties, arbitrators, administering institutions, and third-parties, as well as to the system of arbitration overall.

In the increasingly digital landscape in which proceedings take place, the credibility of any dispute resolution system, including arbitration, depends on maintaining a reasonable degree of protection of the information exchanged during the process, not only with respect to the information's confidentiality (except where the parties intend for the information to become public), but also its integrity and availability.

Further, arbitration has the benefit over other dispute resolution processes of enabling parties to maintain the confidentiality of the dispute resolution process itself, where they want to and where applicable law permits, and the information exchanged within it. Reasonable information security measures are essential to ensure that international arbitration maintains this advantage.

2. As a threshold matter, each party, arbitrator, and administering institution should consider the baseline information security practices that are addressed in Schedule A and the impact of their own information security practices on the arbitration. Effective information security in a particular arbitration requires all custodians of arbitration-related information to adopt reasonable information security practices.

Commentary to Principle 2

(a) ***Baseline security.*** Principle 2 recognizes it is important that all persons who have access to arbitration-related information apply reasonable information security measures in their general business activities ("**baseline security**").

International arbitrations tend to involve a constant exchange and hosting of information among parties, tribunals, and administering institutions, which means that they are largely digitally interdependent and any break in the security of arbitral information by any one participant in the arbitration has the potential to affect all participants and to compromise the security of the entire arbitration. Thus, the security of information in an arbitral proceeding ultimately depends on the decisions and actions of all individuals involved. Actions by any individual can be the cause of an information security incident or be the "weakest link," no matter the setting in which they practice or the infrastructure available to them. Indeed, many security incidents result from individual conduct rather than a breach of systems or infrastructure.

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7 "**Security incident**" refers to an event that may have compromised the confidentiality, integrity, or availability of data or systems, such as a malware infection, loss or theft of equipment, denial of service attack, or a phishing attempt A security incident is to be distinguished from a "**security breach**," which is a security incident that results in unauthorized access to data and requires that notice be given to persons whose data has been compromised. Whether a particular security incident constitutes a security breach will depend on applicable law.

8 "**Personal data**" is a broad concept used in many of the data protection legal regimes that are proliferating around the globe. Typically, it is defined to include information of any nature whatsoever that, standing alone or as linked to other information, could be used to identify an individual (including, for example, work-related e-mails, lab notebooks, agreements, handwritten notes, etc.), but the exact definition and scope of personal data may vary from jurisdiction to jurisdiction. Another common term for such information is "**personally identifiable information**" ("**PII**").

Because day-to-day security practices and infrastructure pre-date individual arbitration matters, pre-existing information security practices of parties, arbitrators, or administering institutions may have a significant impact on the security of the arbitration process and arbitration-related information. Thus, the participants in an arbitration may need to seek guidance from their own information technology personnel or consultants, when such resources are available.

While the need and ability to implement information security measures in a particular arbitration inevitably will vary based on the size, sophistication, and available resources of the parties, arbitrators, and any administering institution, Schedule A highlights general, readily accessible cybersecurity measures that all custodians of arbitration-related information should consider employing in their day-to-day use of technology, so as to protect the confidentiality, integrity, and availability of data in their arbitration-related activities.

Since many of the measures that are reasonable to adopt as a matter of such baseline security may also be required of the participants in an individual arbitration matter, there is significant overlap between Schedule A, which addresses baseline security measures, and Schedule C, which focuses on security measures that may be applied in individual arbitrations.

(b) ***Familiarity with existing security practices***. Principle 2 also recognizes that familiarity with, and consideration of the adequacy of, existing information security practices and infrastructure of parties, arbitrators and administering institutions is an essential first step to determining what information security measures should be adopted in a particular arbitration matter.

For example, some parties, arbitrators, or administering institutions may be bound by internal policies that also will be relevant to the consideration of measures in the arbitration, as, for example, policies limiting communication with personal e-mail addresses or prohibiting the use of unencrypted portable drives (i.e., media, such as USB drives, DVD's, or hard disks, that are accessible without any further steps, such as entering passwords, to decipher their content). Individuals involved in international arbitrations should ensure that they are aware of any such policies that apply to them and that they are in compliance.

3. Parties, arbitrators, and administering institutions should ensure that all persons directly or indirectly involved in an arbitration on their behalf are aware of, and follow, any information security measures adopted in a proceeding, as well as the potential impact of any security incidents.

Commentary to Principle 3

(a) ***Information-sharing***. Principle 3 recognizes that many persons, other than the parties, tribunals, and institutions directly involved in an arbitration, may have access to arbitration-related information and that the security of such information may be undermined if reasonable information security measures are not applied by all such persons, each of whom could cause a security incident.

(b) ***Applicable legal or other requirements***. In some cases, legal, contractual, or ethical obligations may require that parties, arbitrators, and institutions ensure that reasonable information security measures are in place before they share arbitration-related information with others, and/or that such measures are subsequently complied with.

(c) ***Supporting personnel***. Parties, arbitrators, and administering institutions may be supported by, among others, employees, lawyers, legal assistants, law clerks, trainees, administrative or other support staff, case management personnel, and tribunal secretaries. To mitigate the risk of security incidents, information security awareness should permeate organizational structures and extend to such persons, who should be made aware of, and comply with, any information security measures adopted in the arbitration.

(d) ***Independent contractors and vendors***. Parties may engage independent contractors or third party vendors to assist with the arbitrations, including, among others, consultants, experts, translators, interpreters, transcription services, and document production or "e-discovery" vendors and professionals. These persons will typically have a contractual relationship with, or be under the practical control of, a party, but will not be under the actual control of the arbitral tribunal and may not suffer directly from the consequences of an information security incident.

Parties who provide access to arbitral information covered by information security measures to such third parties should ensure that those third parties are aware of applicable security measures, have the

necessary technical capabilities to comply with them, and agree to follow them. In relationships governed by contract, it will often be appropriate to expressly address information security in the agreement.

(e) ***Fact witnesses***. Fact witnesses may need to be supplied with information related to the arbitration, yet may not be employed by, or have a contractual relationship with, any party. Where a fact witness is unable or unwilling to comply with applicable information security standards, the matter should be referred to the arbitral tribunal for consideration, and, if necessary, direction.

4. The Protocol does not supersede applicable law, arbitration rules, professional or ethical obligations, or other binding obligations.

Commentary to Principle 4

(a) ***Superseding obligations***. Principle 4 recognizes that the Principles and other guidance in the Protocol may be subject to overriding legal or other binding obligations and that such obligations may determine or affect the information security measures that are adopted in the individual circumstances of the arbitration.

(b) ***Legal obligations, including data protection law and regulation***. Legal requirements may apply to all persons who either process or control arbitration-related information.

Furthermore, parties, arbitrators, and administering institutions may have individual responsibility for compliance with such obligations.

The most prevalent legally imposed information security requirements are those contained in many of the more than 100 national data protection laws, regulations, and industry norms applicable across the globe to certain types of personal data and data of public importance, including, for example, the General Data Protection Regulation ("**GDPR**") in Europe, the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") and California Consumer Privacy Act in the United States, the General Data Protection Law in Brazil, and the Personal Information Protection and Electronic Documents Act ("**PIPEDA**") in Canada.

Data protection regimes may vary from jurisdiction to jurisdiction, including with respect to what constitutes "personal data." Non-compliance with applicable law may result in substantial penalties and/or litigation risk. Furthermore, data protection enforcement and other legal risk may be inconsistent among different jurisdictions and create obstacles to transborder information exchanges, including during international arbitration proceedings. It is therefore important in each case for all parties, arbitrators, and administering institutions to understand their legal obligations with respect to the processing of information, including personal data, during an arbitration.

However, although data protection laws may vary in their specific requirements, almost all require the implementation of reasonable data security measures to protect the processing of personal data. Among other things, it is important to look to applicable law to determine how applicable concepts of "reasonableness," "adequacy," "appropriateness," and "proportionality" have been applied, as the interpretation of these terms may differ under various legal regimes.

Where participants in the arbitration are faced with differing or conflicting legal obligations, the tribunal may need to determine, in consultation with the parties and any administering institution, how to harmonize such obligations, taking into consideration the consequences of non-compliance, principles of proportionality and due process, as well as the tribunal's role in the administration of justice.

(c) ***Arbitration rules and institutional involvement***. If an arbitration is administered by an institution, it may be necessary for the parties, their representatives, and the arbitral tribunal to consult and coordinate with that institution prior to adopting information security measures in order to ensure that proposed measures are consistent with, and can be implemented pursuant to, the institution's rules, practices, technical capabilities, and legal obligations. In some cases, the legal obligations of an administering institution (for example, under data protection law) may impact what information security measures are adopted by the parties and tribunal.

Depending on the sensitivity of the information involved in a particular arbitration or the nature of applicable legal obligations, coordination with the institution may be necessary at the time the arbitration is commenced or in some cases even before. This may be necessary, for example, to determine whether secure notification of a request for arbitration or request for emergency relief is possible or whether a more limited filing may be appropriate in the first instance; to determine whether data can be transferred; or to re-

quest institutional attention to the secure handling of confidential information by potential arbitrators.

As information security receives increasing attention, some institutions are adopting their own rules and practices relating to information security. For example, institutions have started to refer expressly to information security in their rules and practice notes. Some institutions are also adopting or endorsing secure platforms for the transmission and hosting of some of the information related to arbitrations they administer. Such rules and practices may or may not be considered mandatory by the institution.

(d) ***Ethical and professional obligations***. Ethical and professional rules and guidance increasingly address information security, often in terms of well-established duties of confidentiality and competence. Parties and tribunals should consider potentially applicable obligations of this nature. In the case of the tribunal, for example, this may include consideration of an ethical obligation to preserve and protect the legitimacy and integrity of the arbitration process.

5. Subject to Principle 4, the information security measures adopted for the arbitration shall be those that are reasonable in the circumstances of the case as considered in Principles 6-8.

Commentary to Principle 5

(a) Principle 5 recognizes that there is no one-size-fits-all approach to information security in arbitration matters and that the application of the reasonableness standard in the Protocol is always subject to superseding legal and other obligations, as set forth in Principle 4.

This individualized approach recognizes that the implementation of information security measures entails balancing potentially competing considerations (such as cost and convenience) and that, subject to Principle 4, similarly situated parties may make different, but equally legitimate, choices based on their own preferences, including considerations of cost and proportionality, risk tolerance, and technical capabilities, among others.

Principles 6-8 and the related schedules provide three-step guidance on how to apply the reasonableness standard in each case. First, Principle 6 and Schedule B walk through risk factors bearing on what security measures are reasonable in particular arbitration matters. Next, Principle 7 identifies categories of information security measures that should be considered in each matter. Principle 8 then flags aspects of the arbitration process to which information security measures may be applied. Schedule C supplements Principles 7 and 8 with examples of specific information security measures and processes that might be adopted for particular arbitration matters. It is anticipated that Schedule C will require updates over time. The reasonableness standard also provides flexibility to accommodate changes in technology and the best practices and threats current at the time of an actual dispute.

Determining Reasonable Cybersecurity Measures

6. In determining which specific information security measures are reasonable for a particular arbitration, the parties and the tribunal should consider:

(a) the risk profile of the arbitration, taking into account the factors set forth in Schedule B;

(b) the existing information security practices, infrastructure, and capabilities of the parties, arbitrators, and any administering institution, and the extent to which those practices address the categories of information security measures referenced in Principle 7;

(c) the burden, costs, and the relative resources of the parties, arbitrators, and any administering institution;

(d) proportionality relative to the size, value, and risk profile of the dispute; and

(e) the efficiency of the arbitral process.

Commentary to Principle 6

(a) ***Factors bearing on reasonableness***. Principle 6 sets out factors to be considered in determining what information security measures are reasonable in particular arbitration matters.

(b) ***Risk analysis***. Principle 6(a) recommends a risk analysis to determine the risk-profile of the arbitration.

Schedule B identifies relevant risk factors relating to the nature of the information expected to be shared in the arbitration, potential security threats, and the potential consequences of an information security breach.

It is possible that some aspects of an arbitration may have a higher risk profile than others, in which case the risk analysis will be useful in identifying those aspects of the case that may warrant the application of more secure measures.

(c) ***Practical considerations***. The remainder of Principle 6 identifies practical considerations that may bear on what information security measures are reasonable. For example:

i. Consistent with Principle 2. Principle 6(b) flags that the day-to-day security practices and digital infrastructure of the parties, tribunal, and administering institution may affect what security measures are reasonable in any given arbitration matter.

For instance, if all participants already employ a level of information security appropriate to the case, additional measures may not be needed. To make such a determination, it may be appropriate in some instances for the parties, arbitrators, and any administering institution to discuss their existing information security with others, including the baseline security measures identified in Schedule A, and to agree that certain measures will be maintained during the arbitration, subject to modification under Principle 2.

ii. Principle 6(c) and (d) draw attention to the possibility that the parties, arbitrators, and any institution may have differing technical or financial resources or other constraints on their technical capacity that will influence what may be reasonable in a particular case. In such instances, it will be important to balance such limitations with all other relevant factors. Special consideration should be given to what measures may be taken without significant expenditure or resources.

iii. Principle 6(e) recognizes that if proposed information security measures would be so onerous as to prevent the arbitration from proceeding in an orderly fashion, then the balance of 'reasonableness' may weigh against their adoption. In particular, information security measures that are too difficult to implement risk being ignored or evaded, or may have a negative impact on the administration of the arbitration.

7. In considering the specific information security measures to be applied in an arbitration, consideration should be given to the following categories:

(a) asset management;

(b) access controls;

(c) encryption;

(d) communications security;

(e) physical and environmental security;

(f) operations security; and

(g) information security incident management.

Commentary to Principle 7

(a) ***Categories of information security measures***. Upon determining what level of security is reasonable in consideration of the risk profile and other relevant circumstances under Principle 6, Principle 7 addresses the broad categories of security measures that should be considered. These categories may be useful to consider in an individual arbitration, taking into account, and adapting as necessary to reflect, the risk assessment that has been carried out pursuant to Principle 6.

While a brief explanation of each general category in Principle 7 is provided below, arbitrators, parties, and administering institutions should look to Schedule C for specific examples of how security measures within each category may be tailored to address risks present in different aspects of the arbitration, as set forth in Principle 8.

(b) ***Asset Management:*** Information should be identified, classified, and controlled as appropriate for the arbitration.

Through the risk analysis in Principle 6, the parties and tribunal may have identified certain aspects of

the arbitration, such as information containing commercial trade secrets, that is of a higher risk profile than other aspects of the arbitration. It may be appropriate in such circumstances to categorize such information for the purpose of applying differing levels of protection or differing types of measures based on different risk profiles.

Retention and destruction policies that will apply during the arbitration and after its conclusion are another aspect of asset management.

(c) **Access Controls**: Access to arbitration-related information, including access to any systems, services, devices, or applications that host such information, should be limited to authorized individuals.

Parties and the tribunal may wish to consider, for example, restricting access to arbitration data on a need to know basis. They might also consider policies that will apply in the arbitration in respect to the control of user accounts, passwords and multi-factor authentication (particularly where a shared platform is used to host arbitration-related data), or in respect to remote access protocols.

(d) **Encryption**: Encryption is the process of making plain text illegible without decryption tools, such as passwords or encryption keys. It is one of many security techniques from the field of cryptography, which deals more generally with the protection of information and communications from unauthorized recipients through the use of codes. Use of encryption should be considered where appropriate to protect the confidentiality, integrity, and availability of confidential or sensitive information in the arbitration.

(e) **Communications Security**: The means used to communicate electronically and to share information digitally should be secure. Common means employed to protect communications security include exercising caution with attachments and links, use of secure share-file services in lieu of e-mail, and avoiding the use of public networks or, if necessary, mitigating the risks of use.

(f) **Physical and Environmental Security**: Physical access to information resources in the arbitration and to the hearing premises should be controlled to prevent unauthorized access, damage, or interference.

(g) **Operations Security**: Operations security measures are largely concerned with ensuring the integrity of information processing systems that are used in the arbitration. What this means in practice depends on the circumstances, but such measures could include, for example, agreements regarding vulnerability monitoring, system auditing, and routine back-up of a shared platform.

(h) **Information Security Incident Management**: Consideration should be given to the implementation of agreed incident response capabilities and to the timing and extent of an obligation to provide notification of a breach.

8. In some cases, it may be reasonable to tailor the information security measures applied to the arbitration to the risks present in different aspects of the arbitration, which may include:

(a) information exchanges and transmission of arbitration-related information;

(b) storage of arbitration-related information;

(c) travel;

(d) hearings and conferences; and/or

(e) post-arbitration retention and destruction policies.

Commentary to Principle 8

(a) Principle 8 recognizes that certain information security measures, such as those enumerated in Principle 7, may be applied differently to different aspects of the arbitration. While examples of the categories that may be relevant to the different aspects of the arbitration are provided below, these are not intended to be exclusive, nor to suggest that each of the referenced categories or measures will be appropriate in any individual arbitration.

Furthermore, because specific measures that may be adopted are likely to change over time, detailed examples of how the general information security categories in Principle 7 may be tailored to aspects of the arbitration process are contained in Schedule C, which the Working Group expects to revise over time.

(b) **Information exchanges and transmission of arbitration-related information**. Access controls, communications security, encryption, and operations security will be most relevant to securing information exchanges and transmission of arbitration-related information. The types of security measures to be considered may differ depending on the parties, tribunal, and institutions involved, and it may be appropriate to consider different measures for exchanges among

parties and their representatives, the arbitral tribunal, and/or any administering institution. Consideration should be given to how transmissions of arbitral data will be made (e.g., e-mail; via third-party platform or virtual data room; USB drives or other portable storage devices) as well as to corresponding protective measures (e.g., only enterprise-grade e-mail services will be used; portable storage devices must be encrypted and the password for decryption must be communicated separately).

(c) ***Storage of arbitration-related information***. Generally, measures in the categories of asset management, access controls and encryption will be most relevant to the secure storage of arbitration-related information. Measures should be considered for storing communications, pleadings, disclosure materials, and evidence, and may include measures such as minimizing the processing of confidential commercial information, personal data, or other sensitive information in relation to the arbitration; limiting certain information to attorneys' eyes only; and agreeing to confidentiality provisions or implementing protective orders.

(d) ***Travel***. The nature of international arbitration is such that significant travel is often involved. Travel-related information security concerns are addressed in Schedule A as a matter of baseline information security. Access controls, encryption and physical security are relevant categories in considering measures to be applied when travelling with arbitration data.

(e) ***Hearings and conferences***. Information security measures for hearings and conferences may include procedures for the handling of any transcripts, recordings, or videos which are made; restrictions on what technology, such as smartphones, attendees may bring to and use at hearings; and establishing a protocol for remote testimony. Access controls and physical security will be relevant categories, among others, at these events in the arbitration. Furthermore, when hearings and conferences are held telephonically, secure telephone services should be used.

(f) ***Post-arbitration document retention and destruction.*** As a matter of prudent asset management, issues to be considered with respect to post-arbitration document retention and destruction may include whether to require that arbitration-related information be returned or safely disposed of, and the timing of any such requirement, with due consideration for applicable legal or ethical obligations, rules relating to the correction of awards and award recognition/enforcement proceedings, and legitimate interests in retaining information (e.g., for conflict checking or precedent purposes). Consideration may also be given to whether there should be a process for certification of compliance with respect to any such requirement.

The Process to Establish Cybersecurity Measures

9. Taking into consideration the factors outlined in Principles 6-8 as appropriate, the parties should attempt in the first instance to agree on reasonable information security measures.

Commentary to Principle 9

(a) ***Importance of party autonomy***. Principle 9 recognizes the important role that parties and their legal representatives play in establishing information security measures.

Party autonomy is fundamental in information security, as it is in other aspects of the arbitral process, and ordinarily parties and their legal representatives will take the lead in considering what information security measures should be employed for the arbitration, as they will have the best information about what security measures will be reasonable for their arbitration, as well as the greatest interest in ensuring compliance with those measures during the arbitration.

(b) ***Confer.*** In the first instance, legal representatives should generally confer concerning the information security measures to be implemented in an arbitration, taking into consideration the Principles in this Protocol.

Issues that legal representatives should consider discussing with their clients and opposing counsel may overlap with issues ordinarily considered in the context of disclosure and document preservation, and also with potential data protection issues.

10. Information security should be raised as early as practicable in the arbitration, which ordinarily will not be later than the first case management conference.

Commentary to Principle 10

(a) ***Early case management topic***. Principle 10 recognizes that information security should be raised as early as practicable in the arbitration. The expectation generally is for issues of information security to be discussed with the parties and, where necessary, with any administering institution, in preparation for, and

during, the initial case management conference or procedural hearing.

Schedule D provides sample procedural language that arbitral tribunals may use to raise issues of information security for consideration at the procedural conference. Arbitral tribunals should also consult institutional rules and practices.

In some cases, the initial procedural hearing or case management conference may be too late to raise information security issues; in such a case, any party may raise information security measures for consideration by the tribunal or any administering institution at any time.

At the initial conference, the arbitral tribunal should be prepared to:

i. engage the legal representatives in a discussion about reasonable information security measures;

ii. discuss the ability and willingness of its members to adopt specific security measures;

iii. address any disputes about reasonable information security measures;

iv. express its own interests in preserving the legitimacy and integrity of the arbitration process, taking into account the parties' concerns and preferences, the capabilities of any administering institution, and other factors discussed in this Protocol; and

v. address any other issues related to information security that it considers relevant to the proceeding.

Where cases are administered by an institution, that institution may raise issues of information security with the parties or tribunal at any time.

11. Taking into consideration Principles 4-9 as appropriate, the arbitral tribunal has the authority to determine the information security measures applicable to the arbitration.

Commentary to Principle 11

(a) ***Tribunal authority.*** Principle 11recognizes that the arbitral tribunal has the authority to determine the information security measures applicable to the arbitration and that, ordinarily, it should defer to any agreement of the parties.

The general expectation is that the arbitral tribunal will incorporate directions concerning information security in an early procedural order. Schedule D provides sample language that tribunals may use in procedural orders. Alternatively, the tribunal may simply approve and order an information security agreement made by the parties.

Where disputes arise about information security measures, the tribunal should resolve any such disputes, including any disputes about what measures should be adopted in the first instance and any disputes arising from either an agreement adopted by the parties or measures ordered by the tribunal. In case of post-arbitration disputes, it may be advisable to provide for a dispute resolution mechanism that will apply in the event that the arbitral tribunal is functus officio at the time of a dispute regarding information security measures. To that effect, see the sample language provided in Schedule D.

(b) ***Tribunal deference.*** The arbitral tribunal should ordinarily respect any agreement the parties have reached on the information security measures to be employed, subject to overriding legal or other obligations under Principle 4 and unless there are significant countervailing considerations. Conversely, the parties cannot unilaterally bind either the arbitral tribunal or any institution administering the arbitration. Therefore, to the extent an information security agreement between the parties impacts the arbitration process, it should be formalized only after consultation with the tribunal and, if necessary, any administering institution.

Circumstances in which the arbitral tribunal may be justified in departing from the parties' agreement may include, but are not limited to:

i. measures to protect third-party interests, including the interests of witnesses or others who may be involved in the arbitration as described in the commentary to Principle 3;

ii. capabilities of the arbitrators and administering institution; and

iii. the tribunal's own interest in protecting the legitimacy and integrity of the arbitral process, including the security of its own communications and deliberations.

(c) ***Arbitrator selection.*** If the subject matter of the arbitration itself involves the resolution of information

security related issues, the parties may wish to: (i) engage arbitrators with sufficient knowledge of information security issues to resolve the issues without reliance on an independent expert; and/or (ii) use adversarial expert testimony to educate the arbitral tribunal similar to the treatment of other technical issues arising in arbitration.

12. The arbitral tribunal may modify the measures previously established for the arbitration, at the request of any party or on the tribunal's own initiative, in light of the evolving circumstances of the case.

Commentary to Principle 12

(a) ***Evolving circumstances***. Principle 12 recognizes that the procedures adopted at the outset of the arbitration may be modified as necessary throughout the course of the proceeding, including updates as to:

i. what qualifies as the nature of the information being processed;

ii. required procedures based on the specific circumstances of the case as it develops; and

iii. changed circumstances, such as changes in applicable law, risks in the proceeding, institutional rules/requirements, or technological developments.

(b) ***Consultation.*** Such modifications should be made after consultation with the parties and any administering institution.

13. In the event of a breach of the information security measures adopted for an arbitration proceeding or the occurrence of an information security incident, the arbitral tribunal may, in its discretion: (a) allocate related costs among the parties; and/or (b) impose sanctions on the parties.

Commentary to Principle 13

(a) Costs and sanctions. Principle 13 clarifies the power of the arbitral tribunal to order costs or sanctions in the the event of a breach of the information security measures adopted for an arbitration proceeding or the occurrence of an information security incident.

The authority conferred on the arbitral tribunal in Principle 13 is implied in the tribunal's general powers and in institutional rules providing that the tribunal has the authority to administer the arbitration.

(b) Subject to applicable law. As noted in Principle 4, the arbitral tribunal's powers are subject to, and may be limited by, applicable law.

14. The Protocol does not establish any liability or any liability standard for any purpose, including, but not limited to, legal or regulatory purposes, liability in contract, professional malpractice, or negligence.

Commentary to Principle 14

(a) ***Not a liability standard.*** Principle 14 clarifies that the Protocol is not intended to establish any liability or any liability standard for any purpose.

As established throughout, the Protocol is intended to provide a general framework for how information security issues may be considered in an arbitration, and is subject to any overriding legal or other obligations that may exist. It would therefore be inappropriate to apply the Principles established by the Protocol to form any legal or other liability or responsibility.

(b) ***Party autonomy***. Principle 14 however, is not intended to limit the right of the parties to make agreements that allocate liability for security incidents, nor is it intended to limit the power of the arbitral tribunal to issue directions regarding issues such as costs or sanctions as provided i Principle 13.

Schedule A
Baseline Security Measures

Schedule A supplements Principle 2 with a non-exhaustive checklist of general cybersecurity measures that all custodians of arbitration-related information should consider implementing in their day-to-day use of technology in arbitration-related activities, bearing in mind that:

- the schedule highlights various security considerations and it may not be necessary to adopt all of the measures to achieve a reasonable level of protection;

- practical and detailed guidance must be balanced with the reality that cybersecurity threats and mitigation strategies evolve rapidly, such that other practices may emerge and some of the security measures identified here may be superseded or become outdated over time; and

- these measures should be considered in conjunction with any systems, processes, policies, and procedures already in place, and, where appropriate, in consultation with information technology and/or information security professionals, either within one's organization or externally.

This schedule is intended to offer a mixture of readily accessible and useful information that everyone involved in international arbitrations should consider, regardless of their practice setting or infrastructure, together with guidance that will be most helpful for those who work on their own or with minimal support and who largely manage their own digital architecture. Though it is beyond the scope of the Protocol to recommend specific products or vendors, links to resources that provide technology reviews and recommendations are provided in Schedule E.

Furthermore, although the guidance set forth here is informed by well-established, detailed technical standards for information security, most individual custodians of arbitration data will not have oversight or responsibility for full deployment of such standards (particularly in organizational settings) and do not require the level of detail or technical matter that is contained in those standards.

Baseline Security Measures Checklist

*Click on any of the topics listed in the baseline security measures checklist below to jump to commentary on that issue.**

Knowledge and Education

Keep abreast of security threats and solutions
Consider professional obligations relating to cybersecurity
Consider industry standards and governmental regulations

Asset Management

Know assets and infrastructure
Identify sensitive data and take steps to minimize and protect it
Avoid unnecessary multiple copies of documents
Establish document retention and destruction practices
Enable remote location tracking and data wiping functions
Minimize access to sensitive data while traveling
Back-up data

Access Controls

Consider access control policies
Establish strong passwords or biometric controls
Consider password-change intervals
Consider password managers
Use multi-factor authentication where available
Set up separate administrator and user accounts
Periodically review user privileges

Encryption

Encrypt data in transit
Consider file-level encryption Enable full-disk encryption
Consider encrypting data in the cloud

Communications Security

Be skeptical of attachments and links
Consider secure share-file services in lieu of e-mail
Avoid public networks or, if necessary, mitigate risks of use

Physical and Environmental Security

Consider the risks of portable storage media
Lock devices
Secure paper files
Do not leave documents unattended
Guard against "visual hacking"

Operations Security

Use professional, commercial products and tools
Do not share devices and accounts
Guard digital perimeters
Promptly install software updates and patches
Monitor for vulnerabilities

* Desk Book Note: Use this underlined list as a table of contents, as we have not yet mastered the importation of the functionality of linking into our printed version.

Information Security Incident Response

* * *

I. Knowledge and Education

Keep abreast of security threats and solutions. Effective security is an ongoing process that requires continuous attention to evolving risks and technology. For timely information about current security vulnerabilities and best practices, consider subscribing to one or more e-mail alerts or newsletters. Such alerts are free and readily available, for example, from the cybersecurity and data privacy practice groups of major law firms.

Cybersecurity training may be tailored to one's practice environment; for example, bar associations frequently offer training that is directed to solo practitioners and small law firms. Likewise, employee training and awareness at all levels of an organization is an important part of cybersecurity defense, to raise cyber-education across the board and to create a culture of security in one's organization.

Consider professional obligations relating to cybersecurity. Increasingly, achieving basic competence in technology, including familiarity with measures to protect the confidentiality, integrity, and availability of digital information, is viewed as an element of professional competence; for example, in lawyer and arbitrator ethical codes. Cybersecurity obligations may arise from other professional duties as well, such as from a duty of confidentiality. As a result, in many jurisdictions, significant cybersecurity guidance may be found in lawyer ethics opinions and on bar association websites. A sample of leading legal references and resources is contained in Schedule E.

Consider industry standards and governmental regulations. There are various organizations in the information security field that have developed, and regularly update, comprehensive technical standards for cybersecurity practices and policies. Links to some of the best known standards internationally are provided in Schedule E, as are links to more accessible, simplified resources that are particularly helpful for smaller organizations and individual practitioners, such as the ICC Cyber Security Guide for Business.

In this context, also consider whether any specific technical standards should be adopted based on the types of disputes or information that typically arise in one's arbitration practice (e.g., personal data, aerospace and defense disputes, etc.), and governmental regulations that may apply as a result.

II. Asset Management

Know assets and infrastructure. An important first step to implementing appropriate security controls and safeguards is to know one's own data security infrastructure, including professional and personal networks and network appliances (e.g., routers and firewalls), computers, tablets, smartphones, other portable devices (such as USB drives), computer appliances (e.g., printers, scanners, internet protocol enabled video and security devices, fax machines), cloud services, software programs and apps, remote access tools, and back-up services.

It is important to have an understanding (if not a written inventory) of where data resides in, and flows through, one's digital infrastructure (or, as noted below, to be able to reasonably rely on one's organization to have that understanding). For example, an arbitrator who uses a personal tablet to review pleadings and case-related communications should know whether the documents will be stored locally on the tablet by default, on a server for applications that are used to review these documents, and/or on a cloud storage site. One should also bear in mind that confidential data may reside in non-digital formats, such as paper files.

In most cases, individuals who work in an organization that supplies systems and other resources, together with information systems support, may reasonably rely on those resources to maintain the requisite knowledge of infrastructure, data flows, and other aspects of security, provided that the organization has taken care to implement reasonable security measures and that the individual is aware of the organizational practices and policies that apply to him or her and adheres to them. Such individuals will still need to consider data flow in connection with personal devices and infrastructure, such as any technology in a home office that is also used for work purposes.

Once one is cognizant of their own digital architecture and data flows, they can take steps to mitigate the risk of security incidents from basic security vulnerabilities.

Identify sensitive data and take steps to minimize and protect it. Persons involved in international arbitrations maintain a wide array of data, ranging from data that is publicly available to data that is highly sensitive because of its confidential, commercial or personal nature. To minimize the risks of unauthorized users gaining access to sensitive data, as a general practice, it is a good idea not to accept or request sensitive data that is not needed for one's work and not to share data with anyone who does not similarly have a need for it. Such "data minimization" may also be required by various data privacy laws, such as the E.U.'s General Data Protection Regulation (GDPR).

Other general measures available to protect data that is deemed to warrant additional protection include, without limitation:

- redacting (or "masking") information (e.g., redacting party names and other identifying information in procedural orders that an arbitrator maintains from a closed matter for future consideration in other cases); and

- adding confidentiality designations to the names of documents or folders or confidentiality legends within documents so that: (i) users will consider transmitting such information by more secure means; (ii) unauthorized recipients will be alerted and on notice that they should delete or return the data if it is inadvertently disclosed; and/or (iii) the information can be readily and securely deleted when it is no longer needed.

Avoid unnecessary multiple copies of documents. Avoid maintaining unnecessary multiple copies of digital or physical files and take steps to routinely look for and securely dispose of them. Be alert to the existence of copies that are created by popular digital mark-up tools, in email transmissions, through the unintentional storage of copies in cloud services linked to popular software services, such as iCloud, Adobe Creative Cloud, Microsoft Cloud, etc., and in "download" folders, and securely delete copies that are no longer required.

Establish document retention and destruction practices. Consider implementing document retention and destruction practices to minimize holding data that is no longer required or no longer serves a business purpose, taking into account applicable legal or ethical obligations, rules relating to the correction of awards and award recognition/enforcement proceedings, and legitimate interests in retaining information. Where documents and data from closed matters are retained for conflict checking, tax purposes, precedent purposes, or for other legitimate reasons, consider whether some or all of the data can be anonymized or redacted and whether it can or should be stored in archived form (e.g., segregated from active files on an offline, encrypted hard drive or secure cloud service).

Data that is no longer needed should be securely destroyed. Paper files should be shredded while digital devices and files should be securely wiped or deleted. Be sure to empty digital "trash" folders regularly and be aware that documents that have been "deleted" on a device still may be recoverable with forensic tools that are in widespread use. Consider using special programs that over-write deleted data to dispose of particularly sensitive data and always use such programs before disposing of a device.

Enable remote location tracking and data wiping functions. Enable remote location tracking and wiping functions that are available on mobile devices, including phones, tablets, and laptops, and take special care to securely wipe data from devices that are no longer in use. Examples include the "Find My iPhone" or "Find My Mac" capability on Apple devices, and the Android and Windows "Find My Device" capability. In larger organizations, systems support personnel may ensure that these functions are implemented in devices owned by the organization, whereas it may be the responsibility of individual users to adjust these settings on their authorized personal devices.

Minimize access to sensitive data while traveling. The nature of international arbitration is such that significant travel is often involved. Travel creates risks for information security caused by traveling with arbitration related information, the use of non-secure networks, and other similar issues.

Some measures that one may consider to minimize travel-related risks are, among others:

- Turn off laptops and mobile devices before passing through border security and set them so that applications and documents do not automatically load when they are turned on. This may make it more difficult for data to be accessed (e.g., by activating full-disk encryption), though beware that in some countries, including the United States and Canada, border officials may have authority to search the content on electronic devices, including by compelling the holder to provide password or biometric (e.g., fingerprint or face recognition) access.

- Do not travel with devices that are not needed or consider traveling with a dedicated "clean" or "burner" device (i.e., a device that is reserved for travel purposes that does not have e- mail or cloud applications installed on it and that stores only data that is essential for use in transit). One may then log in to e-mail and cloud content remotely over a secure network at the destination.

- Where the travel mode feature is available for a password manager, take advantage of it to temporarily disable access to sensitive passwords.

- Mark and segregate privileged and confidential files in a separate digital folder so that they can readily be identified as such. If questioned, assert applicable privilege or confidentiality protections when border authorities seek to access the data.

Schedule E contains references to further guidance regarding the protection of data at border crossings.

Back-up data. Make routine secure and redundant data back-ups. Redundant data back-ups allow the recovery of information in the event data is lost or compromised due to human error, technical failure, ransomware attack, fire, or otherwise. One approach is to follow the so-called 3-2-1 rule, which means there should be three copies of the data in total, two different storage media should be used (e.g., one physical external and encrypted back-up drive could be used, together with a cloud-based back-up service), and one copy should be stored offsite (e.g., in the cloud). It is also commonly recommended that a "cold" back-up (i.e., a back-up that is kept offline and disconnected from one's network) be maintained so that if one's network is compromised, there will be an uncompromised back-up of the network data.

III. Access Controls

Access controls determine who has authority to access accounts, devices, and information and what privileges they have with respect to those accounts, devices, and information. Among other things, access controls include user account management, strong and complex passwords, multi-factor authentication, and/or secure password storage.

Consider access control policies. Robust access controls should be considered and implemented throughout one's digital architecture as necessary to protect information from unauthorized users. For example, it may be appropriate to establish rules, among other things, for how users in the organization are to create strong passwords, how they are to store them securely, how often they are to change them, restrictions on sharing passwords, what should be password-protected (ranging from routers and printers to mobile devices, software applications, and documents or folders), and what should additionally be subject to multi-factor authentication.

Establish strong passwords or biometric controls. Access to accounts, devices, and information typically is protected by gateway security such as a password or biometric identification (e.g., fingerprints, face recognition, retinal scan).

While the trend is towards increased use of biometrics, which are convenient and considered secure, most users will have a continuing need for the foreseeable future to create passwords. Key recommendations made by the United States National Institute of Science and Technology ("NIST") include that passwords should be based on unique passphrases, at least 8 characters long, and easily remembered. A passphrase (or "memorized secret") is a sequence of words or text that is longer than a typical password (i.e., longer than 6-10 characters) and easy for the user to remember, but hard for anyone else (even someone who knows the user well) to guess. Thus, common dictionary words, popular quotes, past passwords, repetitive or sequential characters, and context-specific words (such as derivatives of the service being used) should be avoided. Mixtures of different character types can also be used in a passphrase, but are not strictly necessary.

Consider password-change intervals. Arbitral participants may also consider how frequently they change passwords, including consideration of whether there are indications that any previous passwords have been compromised. For example, there are publicly available websites such as www.haveibeenpwned.com that may indicate whether any prior passwords have been compromised as the result of prior data breaches.

Consider password managers. Security professionals often recommend the use of password managers, which are software applications that generate, store, and manage passwords. When a password manager is in place, the user need only create and remember one complex master password, thereby making it practicable for arbitrators, parties, and administering institutions to use stronger, unique passwords for every account/service being used, and to change them from time to time. Some password managers also offer an audit feature which helps identify vulnerable passwords and/or have special travel settings that can be used to limit access to sensitive sites and passwords during border crossings and travel to vulnerable destinations. Before choosing a password manager, among other things, it is important to consider the commercial reputation of the service and how it handles data recovery.

Use multi-factor authentication where available. Multi-factor authentication requires additional proof of identity beyond a password at the time of login. The control may consist of entering a special code transmitted by the provider to the user at login via text message, email, or a special dedicated device, such as an authentication token.

Given the frequency with which arbitrators, parties, and administering institutions, that are involved in international arbitrations, travel, they may wish to ensure that any secondary authentication factor is available offline or that there is a back-up offline alternative (such as a physical static security token or key that plugs into the device) to provide the authentication.

In some cases (when logging into e-mail, for example), it may also be possible to simplify the use of multi-factor authentication and avoid issues arising from lack of internet connectivity while traveling by entering the secondary authentication factor one-time and designating the device being used as a "trusted device." When this is done, the additional authentication is only required when a new or different device, such as a public computer, is being used.

Multi-factor authentication may be considered, in particular, for obtaining remote access to networks, systems, or platforms that contain confidential or sensitive information.

Set up separate administrator and user accounts. An administrator account is a user account that has greater privileges than an ordinary user, such as to install new programs or hardware, change the usernames and passwords of others, access critical system files, and/or change security settings. To reduce the damage that a malicious program or attacker could do if they gain access to a system or account, it is generally advisable to use a standard user account (when logging in to one's computer, for example) for day-to-day work rather than an administrative account. A standard user account should have a different password than the administrative account.

Periodically review user privileges. Organizations should review access control lists and user privileges for systems and accounts on a periodic basis (e.g., quarterly or annually, depending on the size of the organization, and otherwise in the event of personnel changes) and disable access for former employees and others who no longer require access.

IV. Encryption

Encryption is a process that uses an algorithm to transform information to make it unreadable to unauthorized persons. Encrypted data appears as unreadable cipher text except when decrypted with one or more encryption "keys."

Encrypt data in transit. Arbitral information should generally be protected during transmission using industry-standard encryption technology. Most e-mail and cloud services, with the notable exception of some free e-mail services, use transport layer security by default to protect all e-mail and documents while they are in transit over the internet. Note, though, that this is not full end-to-end encryption and the data is decrypted for processing at various steps in transit. Especially sensitive documents and communications should be transmitted by other means. As explained below regarding communications security, if an unprotected Wi-Fi network is being used, measures to ensure that information will be encrypted in transit include using a reputable, commercial virtual private network and using websites that employ HTTPS security.

Third-party encryption software may be considered where it is appropriate to have end-to-end encryption of e-mail messages (i.e., to ensure that there is not only a secure connection for transmissions, but also that messages can be viewed only by the sender and the recipient).

Consider file-level encryption. Where appropriate, specific documents or folders may be encrypted before being transmitted. Many popular applications such as Microsoft Office documents provide the option to add a password to a file to encrypt its contents.

Enable full-disk encryption. To guard against unauthorized access of digital information due to loss or theft of a laptop or other mobile device, enable full-disk encryption to protect the entire hard drive of the device from all persons who lack proper sign-on credentials. On a laptop, the option to enable full-disk encryption is now built-in to the operating software (known as "BitLocker" on Windows systems and "FileVault" on Apple systems), but it must be enabled. Once enabled, a user will need an account password to logon to the device and the hard drive will be encrypted when the device is turned off (i.e., not when it is sleeping). Android and iOS devices also support full-disk encryption, as do many portable storage devices such as USB drives.

Consider encrypting data in the cloud. It is generally appropriate to encrypt data before it is uploaded to a file-sharing or cloud storage service. Always use "business" or "professional" versions of such services and avoid free consumer versions, which tend to have less robust security. Some services make use of a "zero-knowledge" protocol, which means that two encryption keys are required to decipher encrypted data and the subscriber can maintain sole custody of one of the keys in a readable format rather than sharing it with the cloud provider. This feature provides the significant advantage that even if the service itself suffers a security breach, the user's data should remain inaccessible to the intruder.

V. Communications Security

Be skeptical of attachments and links. Phishing attacks are commonplace and sometimes highly sophisticated in mimicking known or authorized sources. Download programs and digital content only from known legitimate sources and do not open attachments or click on links from unknown email senders. Sometimes, a malicious e-mail or link may be identified simply by double-checking the sender's e-mail address for a discrepancy or hovering over, but not clicking on, a link to reveal an unrelated web address. Moreover, if in doubt about the legitimacy of an email, contact the sender directly by telephone. Instead of clicking on the link in an email, enter the correct URL of the site in a browser and navigate directly to the website. Provide passwords or personal identifying information only when certain the request is from a legitimate website and exercise extreme caution if a site asks for such information to be re-entered. Seek out anti-phishing training.

Consider secure share-file services in lieu of e-mail. Where appropriate, file-sharing or cloud storage services may be used as an alternative to e-mail for more secure transmissions. Cloud storage is a service that maintains data on re-

mote servers that are accessed over the internet. Third party cloud storage can provide better security than an individual practitioner or small organization can reasonably provide on its own. The use of a reputable cloud service with appropriate security controls can thus be a convenient, secure, and appropriate way to store and share data.

Numerous bar association opinions in the United States have considered what due diligence should be undertaken to determine whether the use of a particular cloud storage technology or service provider is consistent with a lawyer's duty to maintain confidentiality (see Schedule E). The requirements typically include factors such as having a reasonable understanding of the provider's security system and its commitment to maintaining confidentiality, provisions for the user's access, protection and retrieval of data, notice provisions when third parties seek access to data, and regulatory, compliance and document retention obligations that may depend on the nature of the data and the location of the provider's servers.

Avoid public networks or, if necessary, mitigate risks of use. Avoid unprotected use of public internet networks in hotels, airports, coffee shops, and elsewhere. Public Wi-Fi networks may provide hackers with access to unsecured devices on the same network, allow them to intercept password credentials, or to distribute malware. Instead of public networks, it may be preferable to use personal cellular hotspots or a wireless tether to establish an internet connection.

If it is deemed necessary to connect to a public network, the risks of such a connection may be mitigated by:

- where possible, checking the authenticity of the network username and any password with the network's owner, to avoid connecting to an impostor network;
- limiting the length of the connection time (e.g., to the time needed to send drafted messages and to download new ones);
- using a reliable, commercial (paid) virtual private network (VPN) service, the purpose of which is to establish an encrypted connection over the internet for the secure transmission of data and to allow users to mask their identity from others on the network by identifying the user through the VPN; and/or
- when accessing confidential information, avoiding to connect to websites that fail to use enhanced HTTPS (which stands for hypertext transfer protocol secure and encrypts the transmission of data between two devices connected over the internet) security, as indicated in web addresses that begin with "https" rather than "http."

VI. Physical and Environmental Security

Physical access to information resources should be controlled to prevent unauthorized access, damage, or interference. Preventing loss or theft of devices is especially important because many cases of digital intrusion begin with simple human error, such as leaving laptops behind in airport security lines or using non-secure computers or printers in airline clubs or hotel business centers, where copies may persist in the memory of the shared devices.

Consider the risks of portable storage media. Consider the risks of using portable storage media, such as USB or "thumb" drives, which are small and easily misplaced. Never use a USB or other portable peripheral device unless you know its source, as such devices can be loaded with malicious software. Risks associated with these devices may be mitigated by encrypting the data and password-protecting the devices.

Passwords should not accompany the drive or be transmitted in a way that is easily matched to the drive. For example, the password may be provided separately by telephone or text message.

Lock devices. Turn off and lock computers (with a cable lock or in a docking station) when they are not in use or when away from them more than momentarily. Laptops and mobile devices should be configured to automatically lock screens after a certain period of inactivity (e.g., 5 or 10 minutes).

Secure paper files. Take care to protect the information contained in paper copies of arbitration-related data. If possi-ble, work in a dedicated location and restri.orgct access to that area. Maintain files in secure locations and safeguard them against disasters such as fire and floods.

Do not leave documents unattended. Whenever any confidential data is shipped, make it a practice to track packages and ensure that packages will not be left unattended upon delivery (requiring signature, if necessary). Similarly, do not leave confidential data unattended on a printer, fax machine, or scanner.

Guard against "visual hacking." Consider using privacy screens for laptops and mobile devices when accessing confidential information or accounts while in transit or in public or semi-public places.

VII. Operations Security

Use professional, commercial products and tools. Avoid free or consumer versions of products and tools such as e-mail services, cloud share-file services, virtual private networks, and anti-virus software. Business and professional (or "enterprise") versions of the same tools frequently are available at a minimal cost and generally include more robust security protection. Implement available security features of these products and tools in consultation with their customer service representatives and/or information technology or information security personnel about appropriate security settings.

Do not share devices and accounts. Avoid sharing devices or accounts (such as laptops, e-mail, and cloud storage) that contain business confidential information with family members or others not directly involved in one's business.

Guard digital perimeters. Measures such as firewalls, antivirus, and anti-malware and anti-spyware software, which are widely available from numerous reputable vendors, guard digital "perimeters." These tools typically offer multiple settings so that the products can be customized for various users. For example, a solo practitioner or small business looking for anti-virus and anti-malware protection may consider a business or professional application (as opposed to a free, consumer version) that offers the ability to continuously scan the device or network rather than requiring manual initiation of the scan.

Promptly install software updates and patches. It is critically important to promptly install updates and patches to operating systems and other software applications. Vendors frequently release updates and patches as an immediate response to identified security threats. Time is then of the essence to avoid the threat which the patch is intended to address. Avoid using any software that a developer has stopped supporting by releasing patches since unsupported software is an attractive target for malicious actors.

Monitor for vulnerabilities. Arbitrators, parties, and administering institutions should regularly consider the scope and effectiveness of their security practices and take steps to remediate or mitigate any security weaknesses that they identify through such systematic reviews. Among other things, for example, this may entail automated scans for updates and patches to operating systems and software; automated scans for malware; reviewing account access logs for, or receiving alerts of, unauthorized access to critical services; and/or configuring systems or services to identify weak password credentials.

VIII. Information Security Incident Response

Notwithstanding the implementation of security and data protection measures, cybersecurity incidents occur with some frequency. Applicable law and sometimes professional or ethical obligations may impose breach response obligations, which may include notification to affected persons and other remediation measures. Arbitrators, parties, and administering institutions should consider having an incident response plan prepared in advance that includes specific plans and procedures for responding to a breach, and should also be aware that such plans and procedures could be required by applicable law. The planning and response will be facilitated by awareness of one's digital architecture and the location of one's data. It also is advisable to consider obtaining cybersecurity risk insurance, which may be available through bar associations or other sources.

Schedule B
Arbitral Information Security Risk Factors

Information security risk in an arbitration is a function of: the nature of the information being processed; the risks related to the subject matter of the arbitration and the participants in the process; other factors impacting the risk profile of the arbitration; and the foreseeable consequences of a breach.

Careful consideration of the risk profile of the arbitration will inform the determination of the reasonable measures to be applied in the arbitration pursuant to Principle 6. In some cases, the risk profile analysis may lead to classification of the arbitration data into different risk categories that may require differing measures of protection.

The following list is intended to help the parties and the tribunal assess the risk profile of the arbitration.

I. Nature of the Information

As concerns the nature of information that is likely to be processed in the arbitration, the following factors, among others, may be considered:

(a) whether personal data, also referred to as personally identifying information ("PII"), will be processed;

(b) whether sensitive data that is legally regulated or protected will be processed (for example, under data protection legal regimes, laws or regulations protecting health data, banking or personal financial records, or other sensitive categories of data);

(c) whether confidential commercial information, including financial or accounting records, will be processed;

(d) whether data of standalone value such as audio-visual content, proprietary databases, or other intellectual property will be processed; and

(e) whether the data to be processed will likely include information that is subject to express confidentiality agreements or other relevant contractual obligations.

Examples of the types of data that may require special consideration include:

(a) intellectual property;

(b) trade secrets or other commercially valuable information;

(c) health or medical information, including specially protected categories such as substance abuse treatment records and HIV/AIDS status or treatment;

(d) other categories of sensitive personal information, including data concerning racial or ethnic origins, political opinions, sexuality, religious beliefs, trade union activity, criminal records (including sealed criminal records);

(e) payment card information;

(f) non-payment card financial information;

(g) personal data, which is also referred to as personally identifying information ("PII");

(h) information subject to a professional legal privilege, such as attorney-client or doctor-patient privilege;

(i) information related to or belonging to a government or governmental body (including classified data and politically sensitive information); and

(j) information that may be detrimental or embarrassing to a natural or legal person if released.

II. Risks Relating to the Subject Matter of the Arbitration or the Identity of Parties, Key Witnesses, Other Participants (Including Arbitral Institution and Experts)

The nature of the subject matter of the arbitration or the identity of participants in the arbitration may also impact the risk profile of the arbitration. The following factors, among others, may be considered in determining the impact of these factors on information security risk:

(a) whether the matter involves a party or other participant with a history of being targeted for cyber-attacks;

(b) whether the matter involves parties or others that handle large amounts of high value confidential commercial information and/or personal data (e.g., a law firm, bank, or health care provider);

(c) whether the matter involves a public figure, high ranking official or executive, or a celebrity; and

(d) whether the matter touches upon any government, government information, or government figure.

III. Other Factors Impacting the Cybersecurity Risk Profile of an Arbitration

Other factors that may influence the cybersecurity risk profile of an arbitration include:

(a) the industry/subject matter of the dispute;

(b) the size and value of the dispute;

(c) the prevalence of cyber threats, including threats that target the industry, parties, or type of data involved in the arbitration;

(d) whether the matter is likely to attract news or media attention or impacts public policy or matters of public interest;

(e) the quantity of confidential or sensitive data likely to be processed in the arbitration;

(f) the security environment in which the data is stored or communicated, including network security, the security of transmission and communications in the arbitration, and the format in which the data is stored and transmitted, e.g., whether the data is encrypted, masked, or minimized;

(g) the identity of the parties, key witnesses, any administering institution, and other individuals who may have access to the data that is processed in the arbitration; and

(h) the nature and frequency of events that increase the risk of breach, including transmissions of data, email or other communications that include the data, and the level of international travel likely to be required for the arbitration.

IV. Consequences of a Potential Breach

The consequences of a breach should also be considered in deciding the risk profile of an arbitration, including:

(a) risks of potential injury caused by loss of confidentiality, availability, integrity, or authenticity of the information;

(b) risks to the integrity of the arbitration process or the nature and quality of evidence in the proceeding;

(c) financial loss, loss of privacy, destruction of value from release of confidential or proprietary data, injury to reputation or privacy of natural or legal persons, exposure of confidential, secret, or proprietary data; and

(d) in addition to considering the potential impact of a breach on the tribunal, parties, and administering institution, consideration should be given to the potential impact on persons outside of the arbitration process, including but not limited to the persons to whom personal data relates. An information breach suffered by one participant may cause injury to other participants or to third parties.

Schedule C
Sample Information Security Measures

Schedule C supplements Principles 7 and 8 and includes non-exhaustive examples of specific information security measures that the parties may agree to, or the tribunal may impose, for particular arbitration matters. The measures listed here may not need to be adopted in their entirety in any individual matter, as certain measures may be viewed as alternatives to each other or as part of a complementary system. Further, because information security is changing rapidly, different or new best practices may emerge and the sample measures outlined here may be superseded or become outdated over time.

Schedule C builds upon Schedule A, which addresses general security measures that may be adopted as a regular business practice. Thus, the measures suggested here for possible adoption in individual matters should be considered in conjunction with any systems, processes, policies, and procedures already in place as part of regular business operations and in consultation with any information technology or information security professionals whose organizations are involved in the dispute and may be impacted by agreed-upon procedures.

1. Asset Management

(a) Limiting exchanges of, and access to, information about the dispute to individuals on a "need to know" basis.

(b) Adopting protective measures, such as redaction (also known as masking) or pseudonymization, before the exchange of information with respect to data classified within the arbitration as higher risk.

(c) Labeling confidential or sensitive data (e.g., by adding appropriate confidentiality legends by bates stamp or to a document name). Examples of such legends include categories such as "confidential," "highly sensitive," "attorneys' eyes only" and the like, as well as categories specific to the arbitration.

(d) Not sharing disclosure material with the arbitral tribunal or the administering institution, except in respect to disclosure disputes or as required for evidentiary purposes, in which case limiting the material shared to what is relevant to, and necessary for, the tribunal's resolution of the dispute.

(e) Using a secure share site or cloud platform to share information and documents related to the dispute.

(f) Restricting use of public networks to access, store, or transmit arbitration related information.

(g) Agreeing that the parties' respective networks shall be accessed on a remote basis solely through a secure VPN.

(h) Maintaining backups of arbitration material during the pendency of the matter.

(i) Limiting the amount of time that information related to the dispute will be retained after the completion of the matter, and providing for a procedure at the conclusion of the arbitration process for such information, regardless of how stored, to be returned to the originating party, or permanently destroyed and deleted, with a process for certification of compliance.

2. Access Controls

(a) Restricting access to arbitration-related information on a least-privilege and need-to-know basis, or limiting certain information to attorneys' eyes only.

(b) Agreeing on how passwords to share file sites will be communicated (typically through a separate means of communication), password protecting specific documents, and/or on expiration limits for access.

(c) Using multi-factor authentication for remote access or access to networks, systems, or platforms that may contain confidential or sensitive information related to the dispute.

(d) Conducting periodic reviews of access control lists for the systems or networks where information related to the dispute will be stored and disabling access for persons who no longer have a need to know, for example, persons who leave the employ of a party.

(e) Imposing limitations on downloading and printing hard-copy documents regarding the matter.

3. Encryption

(a) Requiring information at rest, i.e., stored data, to be encrypted.

(b) Requiring information at rest, i.e., stored data, to be encrypted using zero-knowledge encryption.

(c) Agreeing to encrypt information in transit.

(d) Agreeing to encrypt devices (e.g., USB drives, hard drives) on which information related to the matter is stored or exchanged.

4. Communications Security

(a) Providing for procedures concerning how communications will occur between and among the tribunal, the parties, and the administering institution in order to protect the integrity of such communications, including: (i) the transmission of communications, pleadings, and evidence by the parties; (ii) communications among arbitrators; and (iii) communications between the arbitrators and any administering institutions.

(b) Using business or enterprise-level email accounts, not free consumer or personal email services, for any emails regarding this matter.

(c) Using business or enterprise-level document sharing systems or software, not free consumer or personal storage or sharing, for any shared documents.

(d) Restricting the use of email files or attachments to transmit confidential or sensitive information, unless such email is end-to-end encrypted and the attachments are password-protected, with passwords to be transmitted by a separate means of communication such as text message or voicemail.

(e) In the case of a shared third-party cloud platform, agreeing on who will have access to the platform, for how long, what privileges different users will have with respect to the data, requirements for user passwords, multi-factor authentication, and remote access, as well as what vulnerability monitoring will take place.

(f) Using a shipping method with signature and tracking mechanism for delivery of any packages, drives, devices, or hard copy materials related to the dispute.

(g) Limiting or excluding the use of certain types of media, e.g., prohibiting the use of portable drives to store arbitration data, or allowing only encrypted and password protected portable drives.

(h) Using secure telecommunication methods for all voice calls relating to the arbitration.

5. Physical and Environmental Security

(a) Taking care to prevent loss or theft of devices, including portable storage devices, and having the ability to remotely "wipe" those devices if they are lost or stolen.

(b) Taking steps to secure information contained in paper copies of arbitration-related data.

(c) Considering security measures for any hearing rooms, "war rooms," and breakout rooms, which may be located in public buildings such as hotels.

(d) Using privacy screens for laptops and mobile devices when accessing arbitration-related materials while in transit or in public places.

(e) Configuring laptops and mobile devices to automatically lock the screen after a certain period of inactivity.

6. Operations Security

(a) Patching all systems or devices that house arbitration-related information promptly when patches are issued.

(b) Monitoring for system vulnerabilities and reporting any discovered vulnerabilities to the other participants in the arbitration promptly after discovery of any vulnerability in accordance with any applicable law, regulatory regime, or any incident response plan agreed to for the arbitration.

7. Information Security Incident Management

(a) Taking into account any applicable regulatory regime or professional ethical obligations and the parties'

existing infrastructure, putting in place measures to address any information security incident that may occur over the course of the arbitration. (Schedule E includes resources that may be consulted in developing an incident response plan.)

(b) Defining procedures and expectations for any notice to be provided to parties, arbitrators, arbitral institutions, or regulators regarding information security incidents related to the arbitration. Such procedures and expectations should include, among other things, the definition of an "incident" that would give rise to notification obligations, the timing of any such notice (usually triggered upon discovery of the incident), the method of providing notice, and the recipient for such notice.

(c) Agreeing to reasonably cooperate regarding any investigation and/or remediation of any information security incident related to the arbitration.

(d) Agreeing on the parties' rights and obligations concerning any public statements made about any information security incident related to the arbitration.

Schedule D
Sample Language

A. Arbitration Agreement Language

It is not generally recommended that parties provide for specific information security measures in their arbitration agreements. First, prevailing cyber risks and technology, including technical measures available to guard against those risks, may change materially by the time a dispute arises. Second, the decision to adopt particular information security measures for an arbitration should be informed by analysis of the risk profile of the dispute and any ensuing arbitration and what is reasonable given the circumstances.

This being said, parties may want to provide generally in their arbitration agreement that reasonable security measures will be employed in the conduct of the arbitration. The following language would be appropriate for inclusion in the arbitration agreement to achieve that end:

> The Parties shall take reasonable measures to protect the security of the information processed in relation to the arbitration, taking into consideration, as appropriate, the ICCA-NYC Bar-CPR Cybersecurity Protocol for International Arbitration.

B. Agenda of the Initial Case Management Conference or Preliminary Hearing

If information security has not already been addressed before the preliminary hearing or case management conference, it should be placed on the agenda for the conference. Language along the following lines could be considered for the agenda:

> The Parties should be prepared to address information security at the case management conference, and are invited to consider the ICCA-NYC Bar-CPR Cybersecurity Protocol for International Arbitration. The Parties shall confer in advance of the conference and advise the Tribunal of any agreement or points of disagreement with respect to what information security measures are reasonable for the arbitration, including whether the Tribunal should order that any particular information security measures be taken to safeguard the security of arbitration-related information.

C. Information Security Measures

Taking into account any agreement of the parties with respect to reasonable information security measures, and after consideration of the parties' respective positions with respect to whether additional measures are required, the tribunal may decide to address information security in a number of ways. We have suggested below some language that may be considered or adapted for a procedural order.

1. Parties Agree Reasonable Information Security Measures for the Arbitration

> In preparation for the case management conference, the Parties were invited to consider information security for the arbitration, including whether the Tribunal should order that any particular information security measures be taken to safeguard the security of arbitration-related information. Having had an opportunity to fully consider the issue, the Parties have agreed to employ the additional information security measures set forth in the Schedule to this Order when processing arbitration-related information during this proceeding. Each Party shall also maintain information security measures that are at least as robust as those that they follow in the normal course of business at the time of this Order when conducting this arbitration.
>
> In addition, before exchanging sensitive personal or other data (including, but not limited to, social security or national identification numbers, financial account details, and birth dates), the Par-

ties shall reduce the amount of sensitive data that is processed to that which is necessary and shall confer regarding redacting or otherwise masking that data to protect it from unnecessary disclosure in the arbitration. The Parties shall refrain from submitting any such information to the Tribunal in unredacted form absent prior approval of the Tribunal in consideration of the Parties' legitimate interests, including the relevance of the unredacted information.

2. Tribunal Prescribes Reasonable Information Security Measures for the Arbitration

In preparation for the case management conference, the Parties were invited to consider information security for the arbitration, including whether the Tribunal should order that any particular information security measures be taken to safeguard the security of arbitration-related information. Having had an opportunity to fully consider the issue, the Parties were unable to agree. Therefore, after consideration of the Parties' respective positions with respect to what security measures are reasonable for this matter, the Tribunal orders the Parties to employ the information security measures set forth in the Schedule to this Order when processing arbitration- related information during this proceeding. Each Party shall also maintain information security measures that are at least as robust as those that they follow in the normal course of business at the time of this Order when conducting this arbitration.

3. Parties Agree Existing Information Security Measures Are Reasonable for the Arbitration

In preparation for the case management conference, the Parties were invited to consider information security for the arbitration, including whether the Tribunal should order that any particular information security measures be taken to safeguard the security of arbitration-related information. Having had an opportunity to fully consider the issue, the Parties agree that: (i) the security measures that they follow in the normal course of business are reasonable for the arbitration; and (ii) no additional information security measures are warranted for purposes of conducting this arbitration. Each Party shall maintain information security measures that are at least as robust as those in place at the time of this Order when conducting this arbitration.

In addition, before exchanging sensitive personal or other data (including, but not limited to, social security or national identification numbers, financial account details, and birth dates), the Parties shall reduce the amount of sensitive data that is exchanged to that which is necessary and shall confer regarding redacting or otherwise masking that data to protect it from unnecessary disclosure in the arbitration. The Parties shall refrain from submitting any such information to the Tribunal in unredacted form absent prior approval of the Tribunal in consideration of the Parties' legitimate interests, including the relevance of the unredacted information.

D. Post-Arbitration Dispute Resolution Clause

When parties enter into information security agreements in relation to an arbitration, they should consider that the arbitral tribunal may be *functus officio* at the time that dispute arises under the agreement. The parties therefore may consider including language in any information security agreement they may enter into addressing the resolution of any disputes related thereto after the arbitral tribunal become *functus officio*:

> Upon the Tribunal rendering a final award or otherwise being functus officio, any dispute relating to information security, including, without limitation, disputes relating to data breach or incident response arising out of or relating to this Agreement, including the interpretation, breach, termination, or validity thereof, shall be finally resolved by arbitration in accordance with the [select applicable rules]. The seat of the arbitration shall be [place of arbitration]. The language of the arbitration shall be [select language]. There shall be one arbitrator [selected in accordance with the applicable rules] [who shall have experience relating to cybersecurity].

Schedule E
Selected References

Border Crossings

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ting/reports/detail/formal-opinion-2017-5-an-attorneys-ethical-duties-regarding-us-border-searches-of-electronic-devices-containing-clients-confidential-information

Cybersecurity Resources for Lawyers and Arbitrators

American Bar Association, *Cybersecurity Legal Task Force*, https://www.americanbar.org/groups/cybersecurity/

American Bar Association, *Legal Technology Resource Center*, https://www.americanbar.org/groups/departments_offices/legal_technol ogy_resources/ (including links to books, articles, and ethical opinions)

Association of Corporate Counsel, *Model Information Protection and Security Controls for Outside Counsel Possessing Company Confidential Information*, https://www.acc.com/resource-library/model-information-protection-and-security-controls-outside-counsel-possessing-0

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Law Society, CybersecurityGuidance andAdvice, https://www.lawsociety.org.uk/support-services/practice-management/cybersecurity-and-scam-prevention/cybersecurity-guidance-and-advice/ (United Kingdom)

Queensland Law Society, *Cyber Security*, https://www.qls.com.au/Knowledge_centre/Ethics/Resources/Cyber_security (Australia)

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Data Protection Laws and Regulations

Daniel Cooper & Christopher Kuner, *Data Protection Law and International Dispute Resolution*, 382 Recueil des Cours: Collected Courses of the Hague Academy of International Law 174 (2017)

ICCA-IBA Joint Data Protection Task Force, *Draft Roadmap to Data Protection in International Arbitration*, https://www.arbitration-icca.org/projects/ICCA-IBA_TaskForce.html (Public Consultation Draft to be published December 2019)

Kathleen Paisley, *It's All About the Data: The Impact of the EU General Data Protection Regulation on International Arbitration*, 41 FORDHAM INT'L L.J. 841 (2018)

General Guidance

International Chamber of Commerce, *ICC Cyber Security Guide for Business*, https://iccwbo.org/publication/icc-cyber-security-guide-for- business/

International Comparative Legal Guides, *The ICLG to: Cybersecurity Laws and Regulations 2020*, https://iclg.com/practice- areas/cybersecurity-laws-and-regulations (covering 32 jurisdictions)

National Cyber Security Centre, *Cyber Essentials*, https://www.cyberessentials.ncsc.gov.uk/

U.S. Department of Commerce, *FTC Cybersecurity Guide for Small Business*, https://www.ftc.gov/about-ftc/bureaus-offices/bureau-consumer-protection/small-businesses

Glossaries

International Association of Privacy Professionals ("IAPP"), *Glossary of Privacy Terms*, https://iapp.org/resources/glossary

National Initiative for Cybersecurity Careers and Studies ("NICCS"), *Glossary*, https://niccs.us-cert.gov/about-niccs/glossary

National Institute of Standards and Technology ("NIST"), *Glossary*, https://csrc.nist.gov/Glossary

SANS Institute, *Glossary of Security Terms*, https://www.sans.org/security-resources/glossary-of-terms

Incident Response

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Password Guidance

NIST, *NIST Special Publication 800-63B: Digital Identity Guidelines* (June 2017), https://pages.nist.gov/800-63-3/sp800-63b.html

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SHARON D. NELSON ET AL., THE 2019 SOLO AND SMALL FIRM LEGAL TECHNOLOGY GUIDE (2019)

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Schedule F
Glossary

Well-known information security glossaries are cited in Schedule E. Below is a list of terms specifically defined in the Protocol.

Administering institution. Administering institution, or institution, refers to any institution administering the arbitration and the individual representatives of the institution.

Arbitral Tribunal. Arbitral tribunal, or tribunal, refers to a sole arbitrator or a panel of arbitrators.

Availability. Availability can be understood as a promise of reliable access to certain information by authorized individuals.

Confidentiality. Confidentiality can be understood as a set of rules or restrictions that limits access to certain information.

Cybersecurity. Cybersecurity concerns the means employed to maintain the confidentiality, integrity, and availability of digital information and is one aspect of information security.

Information security. Information security includes security for all types and forms of electronic and non-electronic information and includes both commercial and personal data.

Integrity. Integrity can be understood as an assurance that certain information is trustworthy and accurate.

Party. Party, or parties, refers to the parties to the arbitration and their counsel or other representatives.

Personal data. Personal data is a broad concept used in many of the data protection legal regimes that are proliferating around the globe. Typically, it is defined to include information of any nature whatsoever that standing alone or as linked to other information could be used to identify an individual (including, for example, work-related e-mails, lab notebooks, agreements, handwritten notes, etc.), but the exact definition and scope of personal data may vary from jurisdiction to jurisdiction. Another common term for such information is "**personally identifiable information**" ("**PII**").

Processing. Processing broadly refers to anything that is done to, or with, arbitration-related information. It includes automated and non- automated operations, such as the collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, alignment or combination, restriction, erasure, or destruction.

Security breach. A security breach is a security incident that results in unauthorized access to data and requires that notice be given to persons whose data has been compromised. Whether a particular security incident constitutes a security breach will depend on applicable law.

Security incident. Security incident refers to an event that may have compromised the confidentiality, integrity, or availability of data or systems, such as a malware infection, loss or theft of equipment, denial of service attack, or a phishing attempt.

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SECTION 4

DRAFTING GUIDELINES

Chapter 20

IBA Guidelines for Drafting International Arbitration Clauses (2010)[1]

The Guidelines

I. Introduction

1. The purpose of these Guidelines is to provide a succinct and accessible approach to the drafting of international arbitration clauses. Poorly drafted arbitration clauses may be unenforceable and often cause unnecessary cost and delay. By considering these Guidelines, contract drafters should be able to ensure that their arbitration clauses are effective and adapted to their needs.

2. The Guidelines are divided into five sections (in addition to this introduction). The first section offers basic guidelines on what to do and not to do. The second section addresses optional elements that should be considered when drafting arbitration clauses. The third section addresses multi-tier dispute resolution clauses providing for negotiation, mediation and arbitration. The fourth section discusses the drafting of arbitration clauses for multiparty contracts, and the fifth section considers the drafting of arbitration clauses in situations involving multiple, but related contracts.

II. Basic Drafting Guidelines

Guideline 1: The parties should decide between institutional and ad hoc arbitration.

Comments:

3. The first choice facing parties drafting an arbitration clause is whether to opt for institutional or ad hoc arbitration.

4. In institutional (or administered) arbitration, an arbitral institution provides assistance in running the arbitral proceedings in exchange for a fee. The institution can assist with practical matters such as organizing hearings and handling communications with and payments to the arbitrators. The institution can also provide services such as appointing an arbitrator if a party defaults, deciding a challenge against an arbitrator and scrutinizing the award. The institution does not decide the merits of the parties' dispute, however. This is left entirely to the arbitrators.

5. Institutional arbitration may be beneficial for parties with little experience in international arbitration. The institution may contribute significant procedural `know how' that helps the arbitration run effectively, and may even be able to assist when the parties have failed to anticipate something when drafting their arbitration clause. The services provided by an arbitral institution are often worth the relatively low administrative fee charged.

6. If parties choose administered arbitration, they should seek a reputable institution, usually one with an established track record of administering international cases. The major arbitral institutions can administer arbitrations around the world, and the arbitral proceedings do not need to take place in the city where the institution is headquartered.

7. In ad hoc (or non-administered) arbitration, the burden of running the arbitral proceedings falls entirely on the parties and, once they have been appointed, the arbitrators. As explained below (Guideline 2), the parties can facilitate their task by selecting a set of arbitration rules designed for use in ad hoc arbitration. Although no arbitral institution is involved in running the arbitral proceedings, as explained below (Guideline 6), there still is a need to designate a neutral third party (known as an `appointing authority') to select arbitrators and deal with possible vacancies if the parties cannot agree.

Guideline 2: The parties should select a set of arbitration rules and use the model clause recommended for these arbitration rules as a starting point.

Comments:

8. The second choice facing parties drafting an arbitration clause is selection of a set of arbitration rules.

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The selected arbitration rules will provide the procedural framework for the arbitral proceedings. If the parties do not incorporate an established set of rules, many procedural issues that may arise during arbitral proceedings should be addressed in the arbitration clause itself, an effort that is rarely desirable and should be undertaken with specialized advice.

9. When the parties have opted for institutional arbitration, the choice of arbitration rules should always coincide with that of the arbitral institution. When the parties have opted for ad hoc arbitration, the parties can select arbitration rules developed for non-administered arbitration, eg, the Arbitration Rules developed by the United Nations Commission on International Trade Law (`UNCITRAL'). Even if they do so, the parties should designate an arbitral institution (or another neutral entity) as the appointing authority for selection of the arbitrators (see paragraphs 31-32 below).

10. Once a set of arbitration rules is selected, the parties should use the model clause recommended by the institution or entity that authored the rules as a starting point for drafting their arbitration clause. The parties can add to the model clause, but should rarely subtract from it. By doing so, the parties will ensure that all the elements required to make an arbitration agreement valid, enforceable and effective are present. They will ensure that arbitration is unambiguously established as the exclusive dispute resolution method under their contract and that the correct names of the arbitral institution and rules are used (thus avoiding confusion or dilatory tactics when a dispute arises). The parties should assure that language added to a model clause is consistent with the selected arbitration rules.

Recommended Clause:

11. For an institutional arbitration clause, the website of the chosen institution should be accessed in order to use the model clause proposed by the institution as a basis for drafting the arbitration clause. Some institutions have also developed clauses that are specific to certain industries (eg, shipping).

12. For an ad hoc arbitration designating a set of rules, the website of the entity that issues such rules should be accessed in order to use the entity's model clause as a basis for drafting the arbitration clause.

13. In those instances where contracting parties agree to *ad hoc* arbitration without designating a set of rules, the following clause can be used for two-party contracts:

> All disputes arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, shall be finally resolved by arbitration.
>
> The place of arbitration shall be [city, country].
>
> The language of the arbitration shall be [...].
>
> The arbitration shall be commenced by a request for arbitration by the claimant, delivered to the respondent. The request for arbitration shall set out the nature of the claim(s) and the relief requested.
> The arbitral tribunal shall consist of three arbitrators, one selected by the claimant in the request for arbitration, the second selected by the respondent within [30] days of receipt of the request for arbitration, and the third, who shall act as presiding arbitrator, selected by the two parties within [30] days of the selection of the second arbitrator. If any arbitrators are not selected within these time periods, [the designated appointing authority] shall, upon the request of any party, make the selection(s).
>
> If a vacancy arises, the vacancy shall be filled by the method by which that arbitrator was originally appointed, provided, however, that, if a vacancy arises during or after the hearing on the merits, the remaining two arbitrators may proceed with the arbitration and render an award.
>
> The arbitrators shall be independent and impartial. Any challenge of an arbitrator shall be decided by [the designated appointing authority].
>
> The procedure to be followed during the arbitration shall be agreed by the parties or, failing such agreement, determined by the arbitral tribunal after consultation with the parties.
>
> The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, validity or effectiveness of the arbitration agreement. The arbitral tribunal may make such ruling in a preliminary decision on jurisdiction or in an award on the merits, as it considers appropriate in the circumstances.
>
> Default by any party shall not prevent the arbitral tribunal from proceeding to render an award.
>
> The arbitral tribunal may make its decisions by a majority. In the event that no majority is possible, the presiding arbitrator may make the decision(s) as if acting as a sole arbitrator.
>
> If the arbitrator appointed by a party fails or refuses to participate, the two other arbitrators may proceed

with the arbitration and render an award if they determine that the failure or refusal to participate was unjustified.

Any award of the arbitral tribunal shall be final and binding on the parties. The parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made. Enforcement of any award may be sought in any court of competent jurisdiction.

Guideline 3: Absent special circumstances, the parties should not attempt to limit the scope of disputes subject to arbitration and should define this scope broadly.

Comments:

14. The scope of an arbitration clause refers to the type and ambit of disputes that are subject to arbitration. Absent particular circumstances compelling otherwise, the scope of an arbitration clause should be defined broadly to cover not only all disputes `arising out of' the contract, but also all disputes 'in connection with' (or 'relating to') the contract. Less inclusive language invites arguments about whether a given dispute is subject to arbitration.

15. In certain circumstances, the parties may have good reasons to exclude some disputes from the scope of the arbitration clause. For example, it may be appropriate to refer pricing and technical disputes under certain contracts to expert determination rather than to arbitration. As another example, licensors may justifiably wish to retain the option to seek orders of specific performance and other injunctive relief directly from the courts in case of infringement of their intellectual property rights or to submit decisions on the ownership or validity of these rights to courts.

16. The parties should bear in mind that, even when drafted carefully, exclusions may not avoid preliminary arguments over whether a given dispute is subject to arbitration. A claim may raise some issues that fall within the scope of the arbitration clause and others that do not. To use one of the above examples, a dispute over the ownership or validity of intellectual property rights under a licensing agreement may also involve issues of non-payment, breach and so forth, which could give rise to intractable jurisdictional problems in situations where certain disputes have been excluded from arbitration.

Recommended Clauses:

17. The parties will ensure that the scope of their arbitration clause is broad by using the model clause associated with the selected arbitration rules.

18. If the parties do not use a model clause, the following clause should be used:

All disputes arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, shall be finally resolved by arbitration under [selected arbitration rules].

19. Exceptionally, if there are special circumstances and the parties wish to limit the scope of disputes subject to arbitration, the following clause can be used: Except for matters that are specifically excluded from arbitration hereunder, all disputes arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, shall be finally resolved by arbitration under [selected arbitration rules].

The following matters are specifically excluded from arbitration hereunder: [...]

Guideline 4: The parties should select the place of arbitration. This selection should be based on both practical and juridical considerations.

Comments:

20. The selection of the place (or 'seat') of arbitration involves obvious practical considerations: neutrality, availability of hearing facilities, proximity to the witnesses and evidence, the parties' familiarity with the language and culture, willingness of qualified arbitrators to participate in proceedings in that place. The place of arbitration may also influence the profile of the arbitrators, especially if not appointed by the parties. Convenience should not be the decisive factor, however, as under most rules the tribunal is free to meet and hold hearings in places other than the designated place of arbitration.

21. The place of arbitration is the juridical home of the arbitration. Close attention must be paid to the legal regime of the chosen place of arbitration because this choice has important legal consequences under most national arbitration legislations as well as under some arbitration rules. While the place of arbitration does not determine the law governing the contract and the merits (see paragraphs 42-46 below), it does determine the law (arbitration law or lex arbitri) that governs certain procedural aspects of the arbitration, eg, the powers of arbitrators and the judicial oversight of the arbitral process. Moreover, the courts at the place of arbitration can be called upon to provide assistance (eg, by appointing or replacing arbitrators, by ordering provisional and conservatory measures, or by assisting with the taking of evidence), and may also interfere with the conduct of the arbitration (eg, by ordering a stay of the arbitral proceedings). Further, these courts have jurisdiction to hear challenges against the award at the end of the

arbitration; awards set aside at the place of arbitration may not be enforceable elsewhere. Even if the award is not set aside, the place of arbitration may affect the enforceability of the award under applicable international treaties.

22. As a general rule, the parties should set the place of arbitration in a jurisdiction (i) that is a party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (known as the New York Convention), (ii) whose law is supportive of arbitration and permits arbitration of the subject matter of the contract, and (iii) whose courts have a track record of issuing unbiased decisions that are supportive of the arbitral process.

23. An arbitration clause that fails to specify the place of arbitration will be effective, though undesirable. The arbitral institution, if there is one, or the arbitrators, will choose for the parties if they cannot agree on a place of arbitration after a dispute has arisen. (In ad hoc arbitration, however, if difficulties arise with the appointment of the arbitrators and no place of arbitration is selected, the parties may be unable to proceed with the arbitration unless courts in some country are willing to assist.) The parties should not leave such a critical decision to others.

24. The parties should specify in their arbitration clause the 'place of arbitration', rather than the place of the 'hearing'. By designating only the place of the hearing, the parties leave it uncertain whether they have designated the 'place of arbitration' for the purposes of applicable laws and treaties. Moreover, by designating the place of the hearing in the arbitration clause, the parties deprive the arbitrators of desired flexibility to hold hearings in other places, as may be convenient.

Recommended Clause:

25. The place of arbitration shall be [city, country]

Guideline 5: The parties should specify the number of arbitrators.

Comments:

26. The parties should specify the number of arbitrators (ordinarily one or three and, in any case, an odd number). The number of arbitrators has an impact on the overall cost, the duration and, on occasion, the quality of the arbitral proceedings. Proceedings before a three-member tribunal will almost inevitably be lengthier and more expensive than those before a sole arbitrator. A three-member tribunal may be better equipped, however, to address complex issues of fact and law, and may reduce the risk of irrational or unfair results. The parties may also desire the increased control of the process afforded by each having the opportunity to select an arbitrator.

27. If the parties do not specify the number of arbitrators (and cannot agree on this once a dispute has arisen), the arbitral institution, if there is one, will make the decision for them, generally on the basis of the amount in dispute and the perceived complexity of the case. In ad hoc arbitration, the selected arbitration rules, if any, will ordinarily specify whether one or three arbitrators are to be appointed absent contrary agreement. Where the parties have not selected such a set of arbitration rules, it is especially important to specify the number of arbitrators in the clause itself.

28. Parties may remain deliberately silent as to the number of arbitrators, reasoning that the choice between a one- or three-member tribunal will be better made if and when a dispute arises. While the opportunity to decide this question after a dispute arises is an advantage, the corresponding disadvantage is that the proceedings may be delayed if the parties disagree on the number of arbitrators, particularly in the ad hoc context. On balance, it is recommended to specify the number of arbitrators in advance in the arbitration clause itself.

Recommended Clause:

29. There shall be [one or three] arbitrator[s].

Guideline 6: The parties should specify the method of selection and replacement of arbitrators and, when ad hoc arbitration is chosen, should select an appointing authority.

Comments:

30. Both institutional and ad hoc arbitration rules provide default mechanisms for selecting and replacing arbitrators. When they have incorporated such set of rules, the parties may be content to rely on the default mechanism set forth in the rules. The parties may also agree on an alternative method. For example, many arbitration rules provide for the chairperson of a three-member tribunal to be selected by the two co-arbitrators or by the institution. Parties often prefer to attempt to select the chairperson themselves in the first instance. If the parties decide to depart from the default mechanism, they should use language consistent with the terminology of the applicable arbitration rules. For example, under certain institutional rules, the parties 'nominate' arbitrators, and only the institution is empowered to 'appoint' them. When the parties have not incorporated a set of arbitration rules, it is crucial that they spell out the method for selecting and replacing arbitrators in the arbitration clause itself.

31. The need to designate an appointing authority in the context of ad hoc arbitration constitutes a significant difference between drafting an institutional arbitration clause and drafting an ad hoc arbitration clause. In insti-

tutional arbitration, the institution is available to select or replace arbitrators when the parties fail to do so. There is no such institution in ad hoc arbitration. It is, therefore, critical that the parties designate an 'appointing authority' in the ad hoc context, to select or replace arbitrators in the event the parties fail to do so. Absent such a choice, the courts at the place of arbitration may be willing to make the necessary appointments and replacement. (Under the UNCITRAL Rules, the Secretary General of the Permanent Court of Arbitration designates the appointing authority if the parties have failed to do so in their arbitration clause.)

32. The appointing authority may be an arbitral institution, a court, a trade or professional association, or another neutral entity. The parties should select an office or title (eg, the president of an arbitral institution, the chief judge of a court, or the chair of a trade or professional association) rather than an individual (as such individual may be unable to act when called upon to do so). The parties should also make sure that the selected authority will agree to perform its duties if and when called upon to do so.

33. Significant time may be wasted at the outset of the proceedings if no time limits are specified for the appointment of the arbitrators. Such time limits are ordinarily set in arbitration rules. Parties that have agreed to incorporate such rules thus need not concern themselves with this issue, unless they wish to depart from the appointment mechanism set forth in the rules. When the parties have not agreed to incorporate a set of arbitration rules, it is important to set such time limits in the arbitration clause itself.

34. When a tribunal is comprised of three arbitrators, it sometimes occurs that one arbitrator resigns, refuses to cooperate or otherwise fails to participate in the proceedings at a late and critical juncture (eg, during the deliberations). In those circumstances, replacement may not be an option as it would overly delay and disrupt the proceedings. Absent specific authorization, however, the remaining two arbitrators may not be able to render a valid and enforceable award. Most (but not all) arbitration rules therefore permit the other two arbitrators in such a situation to continue the proceedings as a `truncated' tribunal and to issue an award. When the parties do not select a set of arbitration rules (or where the selected arbitration rules do not address the issue), the parties can authorize in the arbitration clause a 'truncated' tribunal to proceed to render an award.

Recommended Clauses:

35. When institutional arbitration is chosen, and the institutional rules do not provide for all arbitrator selections and replacements to be made by the parties in the first instance, and the parties wish to make their own selections, the following clause can be used:

> There shall be three arbitrators, one selected by the initiating party in the request for arbitration, the second selected by the other party within [30] days of receipt of the request for arbitration, and the third, who shall act as [chairperson or presiding arbitrator], selected by the two parties within [30] days of the selection of the second arbitrator. If any arbitrators are not selected within these time periods, the [institution] shall make the selection(s). If replacement of an arbitrator becomes necessary, replacement shall be done by the same method(s) as above.

36. When non-administered arbitration is chosen, the parties can provide for a method of selection and replacement of arbitrators by choosing a set of ad hoc arbitration rules, eg, the UNCITRAL Arbitration Rules.

37. The clause proposed above for ad hoc arbitration without a set of arbitration rules (see paragraph 13 above) sets forth a comprehensive mechanism to select and replace the members of a three-member tribunal and includes provisions permitting a truncated tribunal to proceed to render an award without the participation of an obstructive or defaulting arbitrator.

38. In similar circumstances, but where the parties wish to submit their dispute to a sole arbitrator, the parties can amend the clause proposed in paragraph 13 above and use the following language:

> There shall be one arbitrator, selected jointly by the parties. If the arbitrator is not selected within [30] days of the receipt of the request for arbitration, the [designated appointing authority] shall make the selection.

Guideline 7: The parties should specify the language of arbitration.

Comments:

39. Arbitration clauses in contracts between parties whose languages differ, or whose shared language differs from that of the place of arbitration, should ordinarily specify the language of arbitration. In making this choice, the parties should consider not only the language of the contract and of the related documentation, but also the likely effect of their choice on the pool of qualified arbitrators and counsel. Absent a choice in the arbitration clause, it is for the arbitrators to determine the language of arbitration. It is likely that the arbitrators will choose the language of the contract or, if different, of the correspondence exchanged by the parties. Leaving this decision to the arbitrators could cause unnecessary cost and delay.

40. Contract drafters are often tempted to provide for more than one language of arbitration. The parties should carefully consider whether to do so. Multi-lingual arbi-

tration, while workable (there are numerous examples of proceedings conducted in both English and Spanish, for example), may present challenges depending on the languages chosen. There may be difficulties in finding arbitrators who are able to conduct arbitration proceedings in two languages, and the required translation and interpretation may add to the costs and delays of the proceedings. A solution may be to specify one language of arbitration, but to provide that documents may be submitted in another language (without translation).

Recommended Clause:

41. The language of the arbitration shall be [...]

Guideline 8: The parties should ordinarily specify the rules of law governing the contract and any subsequent disputes.

Comments:

42. In international transactions, it is important for the parties to select in their contract the rules of law that govern the contract and any subsequent disputes (the 'substantive law').

43. The choice of substantive law should be set forth in a clause separate from the arbitration clause or should be addressed together with arbitration in a clause which makes clear that the clause serves a dual purpose, eg, captioning the clause 'Governing Law and Arbitration [or Dispute Resolution].' This is so because issues can arise under the substantive law during the performance of the contract independent of any arbitral dispute.

44. By choosing the substantive law, the parties do not choose the procedural or arbitration law. Such law, absent a contrary agreement, is ordinarily that of the place of arbitration (see paragraph 21 above). Although the parties can agree otherwise, it is rarely advisable to do so.

45. Sometimes parties do not choose a national legal system as the substantive law. Instead, they choose lex mercatoria or other a-national rules of law. In other cases, they empower the arbitral tribunal to determine the dispute on the basis of what is fair and reasonable (ex aequo et bono). Care should be taken before selecting these options. While appropriate in certain situations (eg, when the parties cannot agree on a national law), they may create difficulties by virtue of the relative uncertainty as to their content or impact on the outcome. As it is difficult to ascertain in advance the rules that will ultimately be applied by the arbitrators when the parties select these alternatives to national laws, resolving disputes may become more complex, uncertain and costly.

Recommended Clause:

46. The following clause can be used to select the substantive law:

> This agreement is governed by, and all disputes arising under or in connection with this agreement shall be resolved in accordance with, [selected law or rules of law].

III. Drafting Guidelines for Optional Elements

47. Arbitration being a matter of agreement, contracting parties have the opportunity in their arbitration clause to tailor the process to their specific needs. There are numerous options that contracting parties can consider. This section sets out and comments upon the few that the parties should consider during the negotiation of an arbitration clause. By setting out these options, these Guidelines do not thereby suggest that these optional elements need to be included in an arbitration clause.

Option 1: The authority of the arbitral tribunal and of the courts with respect to provisional and conservatory measures.

Comments:

48. It is rarely necessary to provide in the arbitration clause that the arbitral tribunal or the courts or both have the authority to order provisional and conservatory measures pending decision on the merits. The arbitral tribunal and the courts ordinarily have the authority to do so, subject to various conditions, even where the arbitration clause is silent in this respect. The authority of the arbitral tribunal rests with the arbitration rules and the relevant arbitration law. That of the courts rests with the relevant arbitration law.

49. When the governing arbitration law restricts the availability of provisional or conservatory relief, however, or when the availability of provisional and conservatory relief is of special concern (eg, because trade secrets or other confidential information are involved), the parties may want to make the authority of the arbitral tribunal and the courts explicit in the arbitration clause.

50. When the availability of provisional and conservatory relief is of special concern, the parties may also want to modify restrictive aspects of the applicable arbitration rules. For example, certain institutional rules restrict the right of the parties to apply to the courts for provisional and conservatory relief once the arbitral tribunal is appointed. Under other arbitration rules, the arbitral tribu-

nal is authorized to order provisional and conservatory measures with respect to 'the subject matter of the dispute', which leaves uncertain whether the arbitral tribunal can order measures to preserve the position of the parties (eg, injunction, security for costs) or the integrity of the arbitral process (eg, freezing orders, anti-suit injunctions).

Recommended Clauses:

51. The following clause can be used to make explicit the authority of the arbitral tribunal with respect to provisional and conservatory relief:

> Except as otherwise specifically limited in this agreement, the arbitral tribunal shall have the power to grant any remedy or relief that it deems appropriate, whether provisional or final, including but not limited to conservatory relief and injunctive relief, and any such measures ordered by the arbitral tribunal shall, to the extent permitted by applicable law, be deemed to be a final award on the subject matter of the measures and shall be enforceable as such.

52. The following clause can be added to the above clause, or used independently, to specify that resort to courts for provisional and conservatory measures is not precluded by the arbitration agreement:

> Each party retains the right to apply to any court of competent jurisdiction for provisional and/or conservatory relief, including pre-arbitral attachments or injunctions, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

53. The following clause can be added to the clause recommended at paragraph 51 above, or used independently, to limit the parties' right to resort to the courts for provisional and conservatory relief after the arbitral tribunal is constituted:

> Each party has the right to apply to any court of competent jurisdiction for provisional and/or conservatory relief, including pre-arbitral attachments or injunctions, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate, provided however that, after the arbitral tribunal is constituted, the arbitral tribunal shall have sole jurisdiction to consider applications for provisional and/or conservatory relief, and any such measures ordered by the arbitral tribunal may be specifically enforced by any court of competent jurisdiction.

54. If, in exceptional circumstances, the parties consider that ex parte provisional relief by the arbitral tribunal may be needed, they should so specify and amend the clause recommended at paragraph 51 above by adding `(including ex parte)' after the word `provisional'. Even with such addition, however, ex parte remedies ordered by the arbitral tribunal may not be enforceable under the relevant arbitration law.

Option 2: Document production.

Comments:

55. While the extent document production and information exchange in international arbitration varies from case to case and from arbitrator to arbitrator, parties are usually required to produce identified documents (including internal documents) that are shown to be relevant and material to the dispute. Other features particular to `discovery' in some jurisdictions, such as depositions and interrogatories, are ordinarily absent. The IBA has developed a set of rules, the IBA Rules on the Taking of Evidence in International Arbitration (the 'IBA Rules'), designed to reflect this standard practice. These rules, which address production of both paper documents and electronically-stored information, are often used by international arbitral tribunals, expressly or not, as guidance.

56. The parties have three primary options regarding information or document production. They can say nothing about it and be content to rely on the default provisions of the governing arbitration law, which ordinarily leaves the question to the discretion of the arbitrators. They can adopt the IBA Rules. They can devise their own standards (bearing in mind that extensive document production is likely to have a major impact on the length and cost of the proceedings).

57. A difficulty that may arise in the context of document production in international arbitration is the issue of which rules should govern whether certain documents are exempt from production due to privilege. When, in the rare instance, contracting parties can foresee at the contract drafting stage that issues of privilege may arise and be of consequence, the parties may want to specify in their arbitration clause the principles that will govern all such questions. Article 9 of the IBA Rules provides guidance in this respect.

Recommended Clauses:

58. The following clause can be used to incorporate the IBA Rules either as a mandatory standard or, alternatively, for guidance purpose only:

> [In addition to the authority conferred upon the arbitral tribunal by the [arbitration rules], the arbitral tribunal shall have the authority to order production

of documents [in accordance with] [taking guidance from] the IBA Rules on the Taking of Evidence in International Arbitration [as current on the date of this agreement/the commencement of the arbitration].

59. The following clause can be used if the parties wish to specify the principles that will govern issues of privilege with respect to document disclosure:

All contentions that a document or communication is privileged and, as such, exempt from production in the arbitration, shall be resolved by the arbitral tribunal in accordance with Article 9 of the IBA Rules on the Taking of Evidence in International Arbitration.

Option 3: Confidentiality issues.

Comments:

60. Parties frequently assume that arbitration proceedings are confidential. While arbitration is private, in many jurisdictions parties are under no duty to keep the existence or content of the arbitration proceedings confidential. Few national laws or arbitration rules impose confidentiality obligations on the parties. Where a general duty is recognized, it is often subject to exceptions.

61. Parties concerned about confidentiality should, therefore, address this issue in their arbitration clause. In doing so, the parties should avoid absolute requirements because disclosure may be required by law, to protect or pursue a legal right or to enforce or challenge an award in subsequent judicial proceedings. The parties should also anticipate that the preparation of their claims, defenses and counterclaims may require disclosure of confidential information to non-parties (witnesses and experts).

62. Conversely, given the common assumption that arbitration proceedings are confidential, where the parties do not wish to be bound by any confidentiality duties, the parties should expressly say so in their arbitration clause.

Recommended Clauses:

63. Some arbitration rules set forth confidentiality obligations, and the parties will accordingly impose such obligations upon themselves if they agree to arbitrate under these rules.

64. The following clause imposes confidentiality obligations upon the parties:

The existence and content of the arbitral proceedings and any rulings or award shall be kept confidential by the parties and members of the arbitral tribunal except (i) to the extent that disclosure may be required of a party to fulfil a legal duty, protect or pursue a legal right, or enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority, (ii) with the consent of all parties, (iii) where needed for the preparation or presentation of a claim or defense in this arbitration, (iv) where such information is already in the public domain other than as a result of a breach of this clause, or (v) by order of the arbitral tribunal upon application of a party.

65. The following clause may be used where the parties do not wish to be bound by any confidentiality obligation:

The parties shall be under no confidentiality obligation with respect to arbitration hereunder except as may be imposed by mandatory provisions of law.

Option 4: Allocation of costs and fees.

Comments:

66. Costs (eg, arbitrators' fees and expenses and, if applicable, institutional fees) and lawyers' fees can be substantial in international arbitration. It is rarely possible to predict how the arbitral tribunal will allocate these costs and fees, if at all, at the end of the proceedings. Domestic approaches diverge widely (from no allocation at all to full recovery by the prevailing party), and arbitrators have wide discretion in this respect.

67. Given these uncertainties, the parties may wish to address the issue of costs and fees in their arbitration clause (bearing in mind that such provisions may not be enforceable in certain jurisdictions). The parties have several options. They may merely confirm that the arbitrators can allocate costs and fees as they see fit. They may provide that the arbitrators make no allocation of costs and fees. They may try to ensure that costs and fees are allocated to the `winner' or the 'prevailing party' on the merits, or that the arbitrators are to allocate costs and fees in proportion to success or failure. The parties should avoid absolute language ('shall') in drafting such a clause, as the identification of the 'winner' or the `prevailing party' may be difficult and the clause may needlessly constrain the arbitrators in their allocation of costs and fees.

68. The parties may also wish to consider whether to allow compensation for the time spent by management, in-house counsel, experts and witnesses, as this issue is often uncertain in international arbitration.

Recommended Clauses:

69. The following clause can be used to ensure that the arbitrators have discretion to allocate both costs and fees (or to reaffirm such discretion if the designated arbitration rules include a provision to this effect):

> The arbitral tribunal may include in its award an allocation to any party of such costs and expenses, including lawyers' fees [and costs and expenses of management, in-house counsel, experts and witnesses], as the arbitral tribunal shall deem reasonable.

70. The following clause provides for allocation of costs and fees to the 'prevailing' party:

> The arbitral tribunal may award its costs and expenses, including lawyers' fees, to the prevailing party, if any and as determined by the arbitral tribunal in its discretion.

71. The following clause provides for allocation of costs and fees in proportion to success:

> The arbitral tribunal may include in their award an allocation to any party of such costs and expenses, including lawyers' fees [and costs and expenses of management, in-house counsel, experts and witnesses], as the arbitral tribunal shall deem reasonable. In making such allocation, the arbitral tribunal shall consider the relative success of the parties on their claims and counterclaims and defenses.

72. The following clause can be used to ensure that the arbitrators do not allocate costs and fees:

> All costs and expenses of the arbitral tribunal [and of the arbitral institution] shall be borne by the parties equally. Each party shall bear all costs and expenses (including of its own counsel, experts and witnesses) involved in preparing and presenting its case.

Option 5: Qualifications required of arbitrators.

Comments:

73. An advantage of arbitration, as compared to national court proceedings, is that the parties select the arbitrators and can, therefore, choose individuals with expertise or knowledge relevant to their dispute.

74. It is usually not advisable, however, to specify in the arbitration clause the qualifications required of arbitrators. The parties are ordinarily in a better position at the time of a dispute to know whether expertise is required, and if so, which, and each remains free at that time to appoint an arbitrator with the desired qualifications. Specifying qualification requirements in the arbitration clause may also drastically reduce the pool of available arbitrators. Further, a party intent on delaying the proceedings may challenge arbitrators on the basis of the qualification requirements.

75. If the parties nonetheless wish to specify such qualifications in the arbitration clause, they should avoid overly specific requirements, as the arbitration agreement may be unenforceable if, when a dispute arises, the parties are unable to identify suitable candidates who both meet the qualification requirements and are available to act as arbitrators.

76. Parties sometimes specify that the sole arbitrator or, in the case of a three-member panel, the presiding arbitrator shall not share a common nationality with any of the parties. In institutional arbitration, such qualification requirement is often superfluous, as arbitral institutions ordinarily apply such practice in making appointments. In ad hoc arbitration, however, the parties may want so to specify in their arbitration clause.

Recommended Clauses:

77. The qualifications of arbitrators can be specified by adding the following to the arbitration clause:

> [Each arbitrator] [The presiding arbitrator] shall be [a lawyer/an accountant].
>
> Or
>
> [Each arbitrator] [The presiding arbitrator] shall have experience in [specific industry].
>
> Or
>
> [The arbitrators] [The presiding arbitrator] shall not be of the same nationality as any of the parties.

Option 6: Time limits.

Comments:

78. Parties sometimes try to save costs and time by providing in the arbitration clause that the award be made within a fixed period from the commencement of arbitration (a process known as 'fast-tracking'). Fast-tracking can save costs, but parties can rarely know at the time of drafting the arbitration clause whether every dispute liable to arise under the contract will be appropriate for resolution within the prescribed period. An award that is not rendered within the prescribed period may be unenforceable or may attract unnecessary challenges.

79. If, despite these considerations, the parties wish to set time limits in the arbitration clause, the tribunal should be allowed to extend these time limits to avoid the risk of an unenforceable award.

Recommended Clauses:

80. The following clause can be used to set time limits:

> The award shall be rendered within [...] months of the appointment of [the sole arbitrator] [the chairperson], unless the arbitral tribunal determines, in a reasoned decision, that the interest of justice or the complexity of the case requires that such limit be extended.

Option 7: Finality of arbitration.

Comments:

81. An advantage of arbitration is that arbitral awards are final and not subject to appeal. In most jurisdictions, awards can be challenged only for lack of jurisdiction, serious procedural defects or unfairness, and cannot be reviewed on the merits. Most arbitration rules reinforce the finality of arbitration by providing that awards are final and that the parties waive any recourse against them.

82. When the arbitration clause does not incorporate a set of arbitration rules, or where the incorporated rules do not contain finality and waiver of recourse language, it is prudent to specify in the arbitration clause that awards are final and not subject to recourse. Even where the parties incorporate arbitration rules that contain such language, it may still be advisable to repeat this language in the arbitration clause if the parties anticipate that the award may need to be enforced or otherwise scrutinized in jurisdictions that view arbitration with suspicion. When adding a waiver of recourse to the arbitration clause, the parties should review the law of the seat of arbitration to determine the scope of what is being waived, and the language required under the lex arbitri.

83. Parties are sometimes tempted to expand the scope of judicial review by, for example, allowing review of the merits. It is rarely advisable, and often not open to the parties, to do so. If the parties nonetheless wish to expand the scope of judicial review, specialized advice should be sought and the law at the place of arbitration should be reviewed carefully.

Recommended Clauses:

84. When the parties wish to emphasize the finality of arbitration and to waive any recourse against the award, the following language can be added to the arbitration clause, subject to any requirement imposed by the lex arbitri:

> Any award of the arbitral tribunal shall be final and binding on the parties. The parties undertake to comply fully and promptly with any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made.

85. When, in the exceptional case, the parties wish to expand the scope of judicial review and allow appeals on the merits, the parties should seek advice as to their power to do so in the relevant jurisdiction. Where enforceable, the following sentence can be considered:

> The parties shall have the right to seek judicial review of the tribunal's award in the courts of [selected jurisdiction] in accordance with the standard of appellate review applicable to decisions of courts of first instance in such jurisdiction(s).

IV. Drafting Guidelines for Multi-Tier Dispute Resolution Clauses

86. It is common for dispute resolution clauses in international contracts to provide for negotiation, mediation or some other form of alternative dispute resolution as preliminary steps before arbitration. Construction contracts, for example, sometimes require disputes to be submitted to a standing dispute board before they can be referred to arbitration. These clauses, known as multi-tier clauses, present specific drafting challenges.

Multi-Tier Guideline 1: The clause should specify a period of time for negotiation or mediation, triggered by a defined and undisputable event (ie, a written request), after which either party can resort to arbitration.

Comments:

87. A multi-tier clause that requires negotiation or mediation before arbitration may be deemed to create a condition precedent to arbitration. To minimize the risk that a party will use negotiation or mediation in order to gain delay or other tactical advantage, the clause should specify a time period beyond which the dispute can be submitted to arbitration, and this time period should generally be short. In specifying such time period, the parties should be aware that commencing negotiation or mediation may not be sufficient to suspend the prescription or limitation periods.

88. The period of time for negotiation or mediation should be triggered by a defined and indisputable event, such as a written request to negotiate or mediate under the clause or the appointment of a mediator. It is not advisable to define the triggering event by reference to a written notice of the dispute because a mere written exchange about the dispute might then be sufficient to trigger the deadline.

Recommended Clauses:

89. See the clauses recommended below at paragraphs 94-96.

Multi-Tier Guideline 2: The clause should avoid the trap of rendering arbitration permissive, not mandatory.

Comments:

90. Parties drafting multi-tier dispute resolution clauses often inadvertently leave ambiguous their intent to arbitrate disputes that cannot be resolved by negotiation or mediation. This happens when the parties provide that disputes not resolved by negotiation or mediation `may' be submitted to arbitration.

Recommended Clauses:

91. See the clauses recommended below at paragraphs 94-96.

Multi-Tier Guideline 3: The clause should define the disputes to be submitted to negotiation or mediation and to arbitration in identical terms.

Comments:

92. Multi-tier dispute resolution clauses sometimes do not define in identical terms the disputes that are subject to negotiation or mediation as a first step and those subject to arbitration. Such ambiguities may suggest that some disputes can be submitted to arbitration immediately without going through negotiation or mediation as a first step.

93. The broad reference to 'disputes' in the clauses recommended below should cover counterclaims. Such counterclaims would thus need to go through the several steps and could not be raised for the first time in the arbitration. If the parties wish to preserve the right to raise counterclaims for the first time in the arbitration, they should so specify in their arbitration clause.

Recommended Clauses:

94. The following clause provides for mandatory negotiation as a first step:

> The parties shall endeavor to resolve amicably by negotiation all disputes arising out of or in connection with this agreement, including any question regarding its existence, validity or termination. Any such dispute which remains unresolved [30] days after either party requests in writing negotiation under this clause or within such other period as the parties may agree in writing, shall be finally settled under the [designated set of arbitration rules] by [one or three] arbitrator[s] appointed in accordance with the said Rules. The place of arbitration shall be [city, country] . The language of arbitration shall be [...].
>
> [All communications during the negotiation are confidential and shall be treated as made in the course of compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality and professional secrecy protections provided by applicable law.]

95. The following clause provides for mandatory mediation as a first step:

> The parties shall endeavor to resolve amicably by mediation under the [designated set of mediation rules] all disputes arising out of or in connection with this agreement, including any question regarding its existence, validity or termination. Any such dispute not settled pursuant to the said Rules within [45] days after appointment of the mediator or within such other period as the parties may agree in writing, shall be finally settled under the [designated set of arbitration rules] by [one or three] arbitrator[s] appointed in accordance with the said Rules. The place of arbitration shall be [city, country]. The language of arbitration shall be [...].
>
> [All communications during the mediation are confidential and shall be treated as made in the course of compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality and professional secrecy protections provided by applicable law.]

96. The following clause provides for both mandatory negotiation and mediation sequentially before arbitration:

> All disputes arising out of or in connection with this agreement, including any question regarding its existence, validity or termination (`Dispute'), shall be resolved in accordance with the procedures specified below, which shall be the sole and exclusive procedures for the resolution of any such Dispute.

(A) Negotiation

The parties shall endeavor to resolve any Dispute amicably by negotiation between executives who have authority to settle the Dispute [and who are at a higher level of management than the persons with direct responsibility for administration or performance of this agreement].

(B) Mediation

Any Dispute not resolved by negotiation in accordance with paragraph (A) within [30] days after either party requested in writing negotiation under paragraph (A), or within such other period as the parties may agree in writing, shall be settled amicably by mediation under the [designated set of mediation rules].

(C) Arbitration

Any Dispute not resolved by mediation in accordance with paragraph (B) within [45] days after appointment of the mediator, or within such other period as the parties may agree in writing, shall be finally settled under the [designated set of arbitration rules] by [one or three] arbitrator [s] appointed in accordance with the said Rules. The place of arbitration shall be [...]. The language of arbitration shall be [...].

[All communications during the negotiation and mediation pursuant to paragraphs (A) and (B) are confidential and shall be treated as made in the course of compromise and settlement negotiations for purposes of applicable rules of evidence and any additional confidentiality and professional secrecy protections provided by applicable law.]

V. Drafting Guidelines for Multiparty Arbitration Clauses

97. International contracts often involve more than two parties. Parties drafting arbitration clauses for these contracts may fail to realize the specific drafting difficulties that result from the multiplicity of parties. In particular, one cannot always rely on the model clauses of arbitral institutions, as these are ordinarily drafted with two parties in mind and may need to be adapted to be workable in a multiparty context. Specialized advice should generally be sought to draft such clauses.

Multiparty Guideline 1: The clause should address the consequences of the multiplicity of parties for the appointment of the arbitral tribunal.

Comments:

98. In a multiparty context, it is often not workable to provide that 'each party' appoints an arbitrator. There is an easy solution if the parties are content to provide for a sole arbitrator: in such case, the parties can provide that the sole arbitrator is to be appointed jointly by the parties or, absent agreement, by the institution or appointing authority. Where there are to be three arbitrators, a solution is to provide that the three arbitrators be appointed jointly by the parties or, absent agreement on all, by the institution or appointing authority.

99. Alternatively, the arbitration clause can require that the parties on each 'side' make joint appointments. This option is available when it can be anticipated at the drafting stage that certain contracting parties will have aligned interests. The overriding requirement is, however, that all parties be treated equally in the appointment process. This means in practice that, when two or more parties on one side fail to agree on an arbitrator, the institution or appointing authority will appoint all arbitrators, as the parties on one side would otherwise have had the opportunity to pick their arbitrator while the others not. This is the solution that has been adopted in some institutional arbitration rules.

Recommended Clauses:

100. The clause recommended below at paragraph 105 specifies a mechanism for appointing arbitrators in a multiparty context.

Multiparty Guideline 2: The clause should address the procedural complexities (intervention, joinder) arising from the multiplicity of parties.

Comments:

101. Procedural complexities may abound in the multiparty context. One is that of intervention: a contracting party that is not party to an arbitration commenced under the clause may wish to intervene in the proceedings. Another is that of joinder a contracting party that is named as respondent may wish to join another contracting party that has not been named as respondent in the proceedings.

102. An arbitration clause would be workable even if it failed to address these complexities. Such clause would, however, leave open the possibility of overlapping proceedings, conflicting decisions and associated delays, costs and uncertainties.

103. There is no easy way to address these complexities. A multiparty arbitration clause should be carefully drafted

with regard to the particular circumstances, and specialized advice should usually be sought. As a general rule, the clause should provide that notice of any proceedings commenced under the clause be given to each contracting party regardless of whether that contracting party is named as respondent. There should be a clear time period after that notice for each contracting party to intervene or join other contracting parties in the proceedings, and no arbitrator should be appointed before the expiry of that time period.

104. Alternatively, the parties can opt to arbitrate under institutional rules that provide for intervention and joinder, bearing in mind that these rules may give wide discretion to the institution in this respect.

Recommended Clauses:

105. The following provision provides for intervention and joinder of other parties to the same agreement:

> All disputes arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, shall be finally resolved by arbitration under [selected arbitration rules], except as they may be modified herein or by mutual agreement of the parties.
>
> The place of arbitration shall be [city, country]. The language of arbitration shall be [...]. There shall be three arbitrators, selected as follows.
>
> In the event that the request for arbitration names only one claimant and one respondent, and no party has exercised its right to joinder or intervention in accordance with the paragraphs below, the claimant and the respondent shall each appoint one arbitrator within [15] days after the expiry of the period during which parties can exercise their right to joinder or intervention. If either party fails to appoint an arbitrator as provided, then, upon the application of any party, that arbitrator shall be appointed by [the designated arbitral institution]. The two arbitrators shall appoint the third arbitrator, who shall act as presiding arbitrator. If the two arbitrators fail to appoint the presiding arbitrator within [45] days of the appointment of the second arbitrator, the presiding arbitrator shall be appointed by [the designated arbitral institution/appointing authority].
>
> In the event that more than two parties are named in the request for arbitration or at least one contracting party exercises its right to joinder or intervention in accordance with the paragraphs below, the claimant(s) shall jointly appoint one arbitrator and the respondent(s) shall jointly appoint the other arbitrator, both within [15] days after the expiry of the period during which parties can exercise their right to joinder or intervention. If the parties fail to appoint an arbitrator as provided above, [the designated arbitral institution/appointing authority] shall, upon the request of any party, appoint all three arbitrators and designate one of them to act as presiding arbitrator. If the claimant(s) and the respondent(s) appoint the arbitrators as provided above, the two arbitrators shall appoint the third arbitrator, who shall act as presiding arbitrator. If the two arbitrators fail to appoint the third arbitrator within [45] days of the appointment of the second arbitrator, the presiding arbitrator shall be appointed by [the designated arbitral institution/appointing authority].
>
> Any party to this agreement may, either separately or together with any other party to this agreement, initiate arbitration proceedings pursuant to this clause by sending a request for arbitration to all other parties to this agreement [and to the designated arbitral institution, if any].
> Any party to this agreement may intervene in any arbitration proceedings hereunder by submitting a written notice of claim, counterclaim or cross-claim against any party to this agreement, provided that such notice is also sent to all other parties to this agreement [and to the designated arbitral institution, if any] within [30] days from the receipt by such intervening party of the relevant request for arbitration or notice of claim, counterclaim or cross-claim.
>
> Any party to this agreement named as respondent in a request for arbitration, or a notice of claim, counterclaim or cross-claim, may join any other party to this agreement in any arbitration proceedings hereunder by submitting a written notice of claim, counterclaim or cross-claim against that party, provided that such notice is also sent to all other parties to this agreement [and to the designated arbitral institution, if any] within [30] days from the receipt by such respondent of the relevant request for arbitration or notice of claim, counterclaim or cross-claim.
>
> Any joined or intervening party shall be bound by any award rendered by the arbitral tribunal even if such party chooses not to participate in the arbitration proceedings.

VI. Drafting Guidelines for Multi-Contract Arbitration Clauses

106. It is common for a single international transaction to involve several related contracts. Drafting arbitration clauses in a multi-contract setting presents specific challenges.

Multi-Contract Guideline 1: The arbitration clauses in the related contracts should be compatible.

Comments:

107. The parties should avoid specifying different dispute resolution mechanisms in their related contracts (eg, arbitration under different sets of rules or in different places), lest they run the risk of fragmenting future disputes. An arbitral tribunal appointed under the first contract may not have jurisdiction to consider a dispute that raises questions about the second contract, thus inviting parallel proceedings.

108. Assuming the parties want consistent decisions and wish to avoid parallel proceedings, a straightforward solution is to establish a stand-alone dispute resolution protocol, which is signed by all the parties and then incorporated by reference in all related contracts. If it is impractical to conclude such a protocol, the parties should ensure that the arbitration clauses in the related contract are identical or complementary. It is especially important that the arbitration clauses specify the same set of rules, place of arbitration and number of arbitrators. To avoid difficulties when proceedings are consolidated, the same substantive law and language of arbitration should also be specified. The parties should also make clear that a tribunal appointed under one contract has jurisdiction to consider and decide issues related to the other related contracts.

Recommended Clause:

109. If the parties do not wish to, or cannot, establish a stand-alone dispute resolution protocol, the following provision should be added to the arbitration clause in each related contract:

> The parties agree that an arbitral tribunal appointed hereunder or under [the related agreement(s)] may exercise jurisdiction with respect to both this agreement and [the related agreement(s)].

Multi-Contract Guideline 2: The parties should consider whether to provide for consolidation of arbitral proceedings commenced under the related contracts.

Comments:

110. A procedural complexity that arises in a multi-contract setting is that of consolidation. Different arbitrations may be commenced under related contracts at different times. It may, or may not, be in the parties' interest to have these arbitrations dealt with in a single consolidated arbitration. In some situations, the parties may reason that one single consolidated arbitration would be more efficient and cost-effective. In other circumstances, the parties may have reasons to keep the arbitrations separated.

111. If the parties wish to permit consolidation of related arbitrations, they should say so in the arbitration clause. Courts in some jurisdiction have discretion to order consolidation of related arbitration proceedings, but ordinarily will not do so absent parties' agreement. Where the courts at the place of arbitration have no such power, or where the parties do not wish to rely on judicial discretion, the parties should also spell out in the clause the procedure for consolidating related proceedings. The applicable arbitration rules, if any, and the law of the place of arbitration should be reviewed carefully, as they may constrain the parties' ability to consolidate arbitral proceedings. Conversely, in some jurisdictions, the parties may want to exclude the possibility of consolidation (or class arbitration).

112. Specialized advice is required when the related contracts also involve more than two parties. Drafting consolidation provisions in a multiparty context is especially intricate. An obvious difficulty is that each party must be treated equally with respect to the appointment of the arbitrators. A workable, but less than ideal, solution is to provide for all appointments to be made by the institution or appointing authority. The parties should also be aware that a consolidation clause may, in some jurisdictions, be read as consent to class-action arbitration.

Recommended Clauses:

114. The following provision provides for consolidation of related arbitrations between the same two parties:

> The parties consent to the consolidation of arbitrations commenced hereunder and/or under [the related agreements] as follows. If two or more arbitrations are commenced hereunder and/or [the related agreements], any party named as claimant or respondent in any of these arbitrations may petition any arbitral tribunal appointed in these arbitrations for an order that the several arbitrations be consolidated in a single arbitration before that arbitral tribunal (a 'Consolidation Order'). In deciding whether to make such a Consolidation Order, that arbitral tribunal shall consider whether the several arbitrations raise common issues of law or facts and whether to consolidate the several arbitrations would serve the interests of justice and efficiency.
>
> If before a Consolidation Order is made by an arbitral tribunal with respect to another arbitration, arbitrators have already been appointed in that other arbitration, their appointment terminates upon the making of such Consolidation Order and they are deemed to be functus officio. Such termination is without prejudice

to: (i) the validity of any acts done or orders made by them prior to the termination, (ii) their entitlement to be paid their proper fees and disbursements, (iii) the date when any claim or defense was raised for the purpose of applying any limitation bar or any like rule or provision, (iv) evidence adduced and admissible before termination, which evidence shall be admissible in arbitral proceedings after the Consolidation Order, and (v) the parties' entitlement to legal and other costs incurred before termination.

In the event of two or more conflicting Consolidation Orders, the Consolidation Order that was made first in time shall prevail.

Chapter 21

ICDR Guidelines for Drafting International Arbitration Clauses (2013)[1]

GUIDE TO DRAFTING INTERNATIONAL DISPUTE RESOLUTION CLAUSES

MODEL "SHORT FORM" ARBITRATION CLAUSE

The short form arbitration clause below will guide the parties through all the major aspects of international arbitration. Incorporating by reference a modern set of arbitral procedures which meet the expectations of the parties in international arbitration proceedings, the short form clause serves as an excellent starting point for the drafter, with additional language added only as necessary to either address particular needs of the contract or to emphasize certain powers of the tribunal. Incorporation of the short form clause provides for the following critical aspects of the arbitral process:

- Notice requirements
- Form of Claim and/or Counterclaim
- Interim and/or emergency relief
- Appointment of the arbitral tribunal
- Arbitrators' Conflicts of Interest
- Scheduling
- Place of arbitration
- Jurisdiction – Powers of the Tribunal
- Conduct of the arbitration – The taking of evidence
- Proceedings in the absence of a party's participation
- Costs
- The form and effect of the Award

All references to arbitration rules in this guide, excepting the reference to ICDR administration under UNCITRAL Rules, are to the International Arbitration Rules of the ICDR. ICDR also administers cases under various American Arbitration Association (AAA) Rules where the parties have provided for those Rules in their contract. See www.adr.org for further information and a separate drafting guide.

The ICDR offers the following short form standard clause for International Commercial Contracts:

"Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules."

The parties should consider adding:

"The number of arbitrators shall be (one or three)";
"The place of arbitration shall be [city, (province or state), country]";
"The language(s) of the arbitration shall be ___."

As the ICDR is a division of the American Arbitration Association, albeit with separate administrative offices, its own roster of arbitrators and mediators and a unique set of arbitration rules which meet international expectations, contracting parties may also use the following short form standard clause for International Commercial Contracts:

"Any controversy or claim arising out of or relating to this contract, or a breach thereof, shall be determined by arbitration administered by the American Arbitration Association in accordance with its International Arbitration Rules."

The parties should consider adding:

"The number of arbitrators shall be (one or three)";
"The place of arbitration shall be [city, (province or state), country]";
"The language(s) of the arbitration shall be ___."

MODEL "STEP" DISPUTE RESOLUTION CLAUSES

Contracting parties may wish to include a provision requiring negotiation or mediation before arbitration is initiated. Such clauses, which are often referred to as "step-clauses," are particularly appropriate where the parties have a long-standing and on-going commercial relationship, and where there may be factors to consider other than the nar-

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row scope of a particular dispute. While those factors are missing in a commercial relationship arising out of a single transaction, it is the rare case that would not benefit from settlement discussions.

A legitimate concern about the use of "step clauses" is the potential for a party to unnecessarily delay an adverse decision. However, this problem can be addressed by providing time limits on each step. These limits are, at best, an educated guess regarding appropriate timing for negotiations or a mediation to be completed by the disputing parties. Alternatively, the clause might be drafted to allow each party to demand arbitration without recourse to the previous step(s), or by permitting mediation and arbitration to proceed concurrently. Otherwise, having agreed to a series of conditions precedent, parties should be prepared to go through each required dispute resolution process.

There are various examples of "step-clauses." They may require parties to seek resolution of the dispute by negotiation and/or mediation before resorting to arbitration.

For the benefit of parties drafting commercial contracts who wish to include an express obligation to seek resolution of disputes by negotiation and/or mediation prior to arbitration, the International Centre for Dispute Resolution (ICDR) offers the following model Negotiation-Arbitration, Mediation-Arbitration, and Negotiation-Mediation-Arbitration "step" clauses:

NEGOTIATION-ARBITRATION CLAUSE

"In the event of any controversy or claim arising out of or relating to this contract, or a breach thereof, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a satisfactory solution. If they do not reach settlement within a period of 60 days, then, upon notice by any party to the other(s), any unresolved controversy or claim shall be settled by arbitration administered by the International Centre for Dispute Resolution in accordance with the provisions of its International Arbitration Rules."

The parties should consider adding:

"The number of arbitrators shall be (one or three)";
"The place of arbitration shall be [city, (province or state), country]";
"The language(s) of the arbitration shall be ___."

The model negotiation-arbitration clause above provides a single negotiation "step". Parties sometimes provide multiple steps, by way of an "issue escalation" clause, in an attempt to encourage the surfacing and resolution of problems quickly during an ongoing project. Again, parties in those circumstances should be careful to provide time frames for moving the negotiation to the next level to avoid delay.

MEDIATION-ARBITRATION CLAUSE

Use of the Mediation process is growing globally. In mediation, parties are free to negotiate business solutions not constrained by law or contract. Parties to ICDR/AAA administered mediations have historically enjoyed a settlement rate exceeding 85%.

Increasingly, parties perceive that mediation is more effective if an unresolved dispute is to be followed, and resolved, by arbitration. Since the requirement to mediate may be seen as a condition precedent to arbitration, a deadline should be established allowing parties to move from mediation to arbitration if necessary to avoid delay.

The ICDR Model "Step-Clause" for mediation-arbitration is as follows:

"In the event of any controversy or claim arising out of or relating to this contract, or a breach thereof, the parties hereto agree first to try and settle the dispute by mediation, administered by the International Centre for Dispute Resolution under its Mediation Rules. If settlement is not reached within 60 days after service of a written demand for mediation, any unresolved controversy or claim arising out of or relating to this contract shall be settled by arbitration in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution."

The parties should consider adding:

"The number of arbitrators shall be (one or three)";
"The place of arbitration shall be [city, (province or state), country]";
"The language(s) of the arbitration shall be ___."

It should be noted that parties could agree to mediate at any time, even in the absence of a future disputes clause providing for mediation. Indeed, disputing parties frequently find that mediation is particularly effective when conducted against the deadline of a pending arbitration hearing.

MODEL NEGOTIATION-MEDIATION-ARBITRATION CLAUSE

Parties to commercial contracts, most particularly those involving strategic commercial relationships, will sometimes provide for both negotiation and mediation as precursors to arbitration. The intent is that the parties should try to solve the problem themselves first, and, if that proves dif-

ficult, utilize the services of a third party mediator, before resorting to a third party decision-maker/arbitrator.

Once again, time limits or an opt-out provision should be considered to avoid delay tactics. The ICDR Model "Step-Clause" for Negotiation-Mediation-Arbitration is as follows:

"In the event of any controversy or claim arising out of or relating to this contract, or the breach thereof, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties. If they do not reach settlement within a period of 60 days, then either party may, by notice to the other party and the International Centre for Dispute Resolution, demand mediation under the Mediation Rules of the International Centre for Dispute Resolution. If settlement is not reached within 60 days after service of a written demand for mediation, any unresolved controversy or claim arising out of or relating to this contract shall be settled by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules."

The parties should consider adding:

"The number of arbitrators shall be (one or three)";
"The place of arbitration shall be [city, (province or state), country]";
"The language(s) of the arbitration shall be ___."

MODEL CONCURRENT ARBITRATION-MEDIATION CLAUSE

Some parties prefer not to obligate themselves to mediate as a condition precedent to the filing of arbitration. They could be concerned that early mediation will not allow them sufficient time to understand the case, so making negotiation more perilous. That said, not providing for mediation in the dispute resolution clause may result in a lost opportunity to make clear the parties' preference for a negotiated settlement. With those countervailing concerns in mind, ICDR has developed a model "Concurrent Arbitration-Mediation" Clause. The Clause obligates the parties to mediate, but does so after the initiation of arbitration, when the parties are presumably more informed regarding both the matters in dispute and their respective needs and interests.

The ICDR Model Concurrent Arbitration-Mediation Clause is as follows:

"Any controversy or claim arising out of or related to this contract, or a breach thereof, shall be resolved by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules. Once the demand for arbitration is initiated, the parties agree to attempt to settle any controversy or claim arising out of or relating to this contract or a breach thereof by mediation administered by the International Centre for Dispute Resolution under its International Mediation Rules. Mediation will proceed concurrently with arbitration and shall not be a condition precedent to any stage of the arbitration process."

The parties should consider adding:

"The number of arbitrators shall be (one or three)";
"The number of mediators shall be (one or two)";
"The place of arbitration shall be [city, (province or state), country]";
"The place of mediation shall be [city, (province or state), country]";
"The language(s) of the arbitration shall be ___.";
"The language(s) of the mediation shall be ___."

MODEL STAND-ALONE MEDIATION CLAUSE

Parties can adopt mediation as a stand-alone dispute settlement procedure. In the event that mediation does not result in settlement, the parties can agree to utilize other dispute resolution procedures or default to national courts for the resolution of their dispute.

The ICDR Model Stand-Alone Mediation Clause is as follows:

"In the event of any controversy or claim arising out of or relating to this contract, or a breach thereof, the parties hereto agree first to try and settle the dispute by mediation, administered by the International Centre for Dispute Resolution under its Mediation Rules, before resorting to arbitration, litigation or some other dispute resolution procedure."

The parties should consider adding:

"The number of mediators shall be (one or two)";
"The place of mediation shall be [city, (province or state), country]";
"The language(s) of the mediation shall be ___."

APPOINTMENT OF ARBITRAL TRIBUNAL — PARTY-APPOINTED ARBITRATOR CLAUSE

For parties and their counsel, the appointment of the arbitral tribunal is arguably the single most critical issue in arbitration. Unless parties provide otherwise, the ICDR uses a list selection process for arbitrator appointments. The other notable method for arbitrator selection is the party-appointed selection process. The ICDR will follow whatever method of appointment is provided by the parties' agreement. The ICDR International Arbitration Rules require that all arbitrators, regardless of method of appointment, shall be impartial and independent. For cases with

multiple claimants or respondents, unless the parties have agreed otherwise, the ICDR will make all appointments.

There is no need to mention any arbitrator selection method in the arbitration clause if the parties wish to use the ICDR's list selection process. One perceived advantage of the list selection method is that it eliminates the need for any ex parte contact between parties and arbitrators. The ICDR begins the list selection process by consulting with the parties regarding arbitrator qualifications. After consultation, the ICDR sends an identical list of names along with their corresponding Curriculum Vitae to the parties with an invitation to strike unacceptable arbitrators, rank order the remaining arbitrators in order of preference and return the list to the ICDR. The ICDR appoints the presiding arbitrator or tribunal from the closest mutual preference of the parties.

As an alternative to the list-selection process, parties can agree to use the party-appointed method of appointment. The perceived advantage of the party-appointed method is that with direct appointment of an arbitrator each party will have increased confidence in the tribunal. Parties who wish to use the party-appointed method should consider adding the following language to their arbitration clause:

"Within [30] days after the commencement of arbitration, each party shall appoint a person to serve as an arbitrator. The parties shall then appoint the presiding arbitrator within [20] days after selection of the party appointees. If any arbitrators are not selected within these time periods, the International Centre for Dispute Resolution shall, at the written request of any party, complete the appointments that have not been made."

LIMITATIONS ON TIME AND INFORMATION EXCHANGE

The parties may agree to amend the rules to suit their particular needs. For example, they may wish to restrict or expand time limits provided for in the ICDR International Arbitration Rules, limit information exchanges or change other aspects of the process. They may do so by addressing those issues in their dispute resolution clause.

The following clause limits the time frame in arbitration:

"The award shall be rendered within [9] months of the commencement of the arbitration, unless such time limit is extended by the arbitrator."

The parties should be wary of the dangers inherent in setting artificial deadlines. If time frames can't be met, the ability to enforce the award may be compromised. The alternative clause set forth below addresses the consequences of a "late" arbitration.

"It is the intent of the Parties that, barring extraordinary circumstances, arbitration proceedings will be concluded within [120] days from the date the arbitrator(s) are appointed. The arbitral tribunal may extend this time limit in the interests of justice. Failure to adhere to this time limit shall not constitute a basis for challenging the award."

The parties may limit information exchange by using the following clause:

"Consistent with the expedited nature of arbitration, pre-hearing information exchange shall be limited to the reasonable production of relevant, non-privileged documents explicitly referred to by a party for the purpose of supporting relevant facts presented in its case, carried out expeditiously."

There is a danger in limiting the exchange of information at the time of contracting. In the event that more information exchange would be advantageous to a party in a particular dispute, that additional evidence cannot be taken without further agreement.

The parties should always exercise caution when restricting arbitration procedures and arbitral authority. Doing so may prevent international arbitrators from doing what they usually do so well, managing the process according to the immediate needs of the parties.

CONFIDENTIALITY CLAUSE

The type of contract may also call for additional language. So, for example, parties to an exclusive information contract or sensitive technology contract may wish to consider a confidentiality provision in their agreement. Parties to international contracts frequently mistake privacy, which is a standard feature of international commercial arbitration, for the obligation to maintain confidentiality, which absent party agreement under the ICDR International Arbitration Rules will extend only to the arbitrator and the ICDR. Parties should also be aware of the limits of party agreement to confidentiality as regards non-signatories to the agreement such as witnesses and the requirements of law otherwise.

The ICDR Model Confidentiality Clause is as follows:

"Except as may be required by law, neither a party nor its representatives may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of (all/both) parties."

OTHER DRAFTING CONSIDERATIONS

Contracting parties might also consider adding language to address specific procedural or remedial concerns. So, for example, notwithstanding the availability of emergency and interim relief under ICDR International Arbitration Rules, parties may wish to underscore their expectation that such relief will be available by providing language to that effect in the dispute resolution clause.

THE ICDR ADMINISTRATION UNDER THE UNCITRAL ARBITRATION RULES

Certain parties, including most especially nation states, may feel more comfortable in contracting for application of the UNCITRAL Arbitration Rules. The ICDR is particularly well suited to providing administrative assistance in connection with the UNCITRAL Arbitration Rules. The ICDR International Arbitration Rules were originally drafted, in 1986, using the UNCITRAL Arbitration Rules as a model. Providing for ICDR administration can add significant value, especially as regards the establishment of the tribunal, scheduling and numerous other administrative concerns.

The ICDR offers the following model for providing administered UNCITRAL procedures.

"Any dispute, controversy, or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules in effect on the date of this contract.

The appointing authority shall be the International Centre for Dispute Resolution.

The case shall be administered by the International Centre for Dispute Resolution in accordance with its "Procedures for Cases under the UNCITRAL Arbitration Rules"."

The parties should consider adding:

"The number of arbitrators shall be (one or three)";
"The place of arbitration shall be [city, (province or state), country]";
"The language(s) of the arbitration shall be ___."

The ICDR offers the following model where parties seek to have ICDR act as the appointing authority only under UNCITRAL procedures.

"Any dispute, controversy, or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules in effect on the date of this contract.

The appointing authority shall be the International Centre for Dispute Resolution."

The parties should consider adding:

"The number of arbitrators shall be (one or three)";
"The place of arbitration shall be [city, (province or state), country]";
"The language(s) of the arbitration shall be ___."

Chapter 22

JAMS Guidelines for Drafting International Arbitration Clauses (2015)[1]

PART I: ARBITRATION CLAUSES

STANDARD JAMS INTERNATIONAL ARBITRATION CLAUSES

JAMS has a standard clause that provides for submission to arbitration. While the standard clause does not set forth details as to procedures to be followed, it provides a simple means of assuring that any future dispute will be arbitrated. An additional benefit is that it is sometimes easier for contracting parties to agree to simple, straightforward clauses than to some of the more complex provisions detailed in subsequent sections of this Guide. The standard JAMS International Arbitration Clause is as follows:

Any dispute, controversy or claim arising out of or relating to this contract, including the formation, interpretation, breach or termination thereof, including whether the claims asserted are arbitrable, will be referred to and finally determined by arbitration in accordance with the JAMS International Arbitration Rules. The tribunal will consist of [three arbitrators][a sole arbitrator]. The place of the arbitration will be [location]. The language to be used in the arbitral proceedings will be [language]. Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.

The standard JAMS International Arbitration Clause allows the parties to make some choices about where, how and by whom their disputes will be decided. It provides the parties with a blueprint to which they can add, depending on the needs of their dispute. While the standard clause is an effective vehicle to get the parties to arbitration, parties have the option to refine the clause to provide for more specificity in the process. Set forth below are some of the elements that the parties may wish to consider including in their arbitration agreement.

NUMBER OF ARBITRATORS

It is not always clear at the time of contracting what a future dispute might entail, nor how complex it might be. Parties have the option to choose one or more arbitrators to decide their dispute. While one or three are the most common choices, parties could conceivably provide for a larger number. It is important that the parties keep in mind that an odd number of arbitrators be chosen to avoid a deadlock in the decision-making process. The parties should also take into account the increased costs that should result from a larger tribunal.

It is increasingly common in international arbitration for the dispute to be decided by a sole arbitrator, particularly when cost and speed of resolution are of the essence. Many arbitral institutions have now made a sole arbitrator the default choice, unless the parties provide otherwise. However, not every dispute is necessarily suited to a one-person tribunal. Parties may prefer three arbitrators so that each party has an opportunity to appoint an arbitrator to the tribunal. A three-person tribunal is also the norm when a State party is involved in the dispute. A particularly complex dispute might benefit from having a three-person tribunal, as may a "bet the company" matter, where the parties have a great deal at stake.

ARBITRATOR QUALIFICATIONS

It is common for a contract clause to require that one or more of the arbitrators have certain specified qualifications. In drafting such a provision, care should be taken, as specific qualifications can narrow the number of available, competent and qualified arbitrators. Specification of arbitrator qualifications often works best in a three-person panel since it is possible to require that one of the arbitrators has certain expertise without limiting the entire panel to a potentially narrow area of expertise. In this way, it is possible to ensure that the desired technical expertise is available while assuring that the chair of the panel has necessary experience in the arbitration process.

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If the arbitration is to be conducted by a sole arbitrator, the contract clause might provide that the arbitrator must be:

1. A retired judge from a particular court; or
2. A lawyer with 10 years of active practice in a specified area, such as construction or computer technology; or
3. A professional experienced in a particular sector, such as intellectual property or information technology; or
4. A professional fluent or proficient in a particular language; or
5. An individual of a particular nationality.

If the arbitration is to be conducted by a three-arbitrator panel, the contract clause might provide that:

1. The Chair be an attorney with at least 20 years of active litigation/arbitration experience; or
2. One of the co-arbitrators be an expert in an area such as construction; or
3. The Chair must have served as Chair or sole arbitrator in at least 10 arbitrations where an award was rendered following a hearing on the merits; or
4. The Chair be of a nationality different from either of the parties.

The foregoing are merely examples. The point is that the qualifications of the arbitrator(s) should be considered at the time the contract clause is drafted. The parties, in drafting such a list of qualifications, must take care not to have an overly onerous or specific list of qualifications and should avoid naming a particular individual to serve as arbitrator to prevent the circumstance that the desired candidate is not available when the dispute arises.

PLACE OF ARBITRATION

The place of arbitration is an important consideration. Not only should the parties provide for a place of arbitration that will be convenient for the parties, but they should also consider whether the chosen venue has a modern judiciary and solid experience with respect to international arbitration. They should also ideally choose a venue that is a signatory to the New York Convention. While there are over 145 countries that are signatories to the New York Convention, and thus many options for the parties to choose from, the parties need to know that when they choose a particular venue, they will typically be governed, from a procedural standpoint, from the chosen venue's international arbitration law. In the United States, for example, the parties' arbitration would be governed by the Federal Arbitration Act. In many countries, the UNCITRAL Model Law is the governing procedural law. In other countries, there may be a well-developed arbitration law that has been applied consistently by the local courts. When the parties choose a venue that is not known for robustly applying the New York Convention, they may face difficulties and even risk the ultimate non-enforcement of their arbitral award.

Parties should also keep in mind that not all activities have to take place in the chosen venue. Hearings and other matters can, and often do, take place at sites other than the chosen seat of the arbitration. Nevertheless, the legal implications for the choice of an arbitral seat cannot be overstated, and the parties are advised to consult local counsel before agreeing to a venue with which they are not familiar.

LANGUAGE OF ARBITRATION

Another option the parties have is to specify the language in which the arbitration will be conducted. While this might seem an obvious element that need not be specified in the contract, it is best to avoid a circumstance where one party demands that the arbitration be bilingual or simultaneous translation be part of the procedure. The tribunal may be obligated to agree to such a request where it is unclear from the underlying contract or the arbitration agreement as to what language should be used for the arbitration. If the language of the arbitration is agreed to in the arbitration clause, the tribunal will not have to second-guess the parties' intent.

CONFIDENTIALITY

Article 16 of the JAMS International Arbitration Rules provides that JAMS and the arbitrator(s) must maintain the confidentiality of the arbitration proceeding. If it is desired that the parties should also maintain the confidentiality of the arbitration proceeding, this can be accomplished with the following language:

The parties shall maintain the confidential nature of the arbitration proceeding and the Award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an Award or its enforcement, or unless otherwise required by law or judicial decision.

Article 16 further provides that unless otherwise required by law, an award will remain confidential unless all of the parties consent to its publication.

GOVERNING LAW

It is common for the governing law to be specified in the parties' contract. This provides some certainty for the parties and the tribunal. If the parties opt to include a governing law provision, the following language can be used as a model:

This Agreement and the rights of the parties hereunder shall be governed and construed in accordance with the laws of the State of _____, exclusive of conflict or choice of law rules. In the absence of party agreement, the tribunal will apply the law or rules of law that it determines to be most appropriate. In all cases the tribunal will take account of the provisions of the contract and the relevant trade usages.

AMIABLE COMPOSITEUR AND *EX AEQUO ET BONO*

Another option available to the parties is to authorize the arbitral tribunal to decide the merits of the arbitration as an *amiable compositeur* or *ex aequo et bono*. This allows the tribunal to decide the dispute in an equitable, as opposed to a strictly legalistic, manner. The parties must expressly provide for this in their arbitration clause or expressly authorize the tribunal to do so once the dispute has arisen.

LIMITATION OF LIABILITY

The parties may choose not to allow the arbitrators to grant certain types of relief, such as specific performance or lost profits. If the parties choose to limit the relief that may be sought, they can do so by inserting a clause similar to the following:

In any arbitration arising out of or related to this Agreement, the arbitrator(s) may not award any incidental, indirect or consequential damages, including damages for lost profits.

The parties may also wish to provide for whether the tribunal may award punitive damages, or whether they are prohibited from doing so, although most institutional rules (including the JAMS International Arbitration Rules) forbid an award of punitive damages.

FEES AND COSTS TO PREVAILING PARTY

While it is common practice in international arbitration for the losing party to pay the costs of an arbitration, parties may wish to make that clear in the arbitration clause. Apportionment of arbitration costs is a feature of the JAMS International Arbitration Rules; however, a "prevailing party" clause such as the following tends to discourage frivolous claims, counterclaims and defenses:

In any arbitration arising out of or related to this Agreement, the arbitrator(s) shall award to the prevailing party, if any, the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration.

If the arbitrator(s) determine a party to be the prevailing party under the circumstances where the prevailing party won on some but not all of its claims and counterclaims, the arbitrator(s) may award the prevailing party an appropriate percentage of the costs and attorneys' fees reasonably incurred by the prevailing party in connection with the arbitration.

If the parties intend not to allow cost-shifting, they can specifically state that each party shall bear its own fees and costs of arbitration.

JAMS INTERNATIONAL ARBITRATION EFFICIENCY GUIDELINES

Article 20 of the JAMS International Arbitration Rules provides for the "Conduct of the Arbitration" and sets forth the manner in which the tribunal will conduct the arbitration. In addition to the provisions in Article 20, JAMS has adopted "Efficiency Guidelines for the Pre-Hearing Phase of International Arbitrations." The Guidelines are an effort to assure parties around the world that an international arbitration before JAMS will be conducted in accordance with internationally accepted standards and practices, and will be a fair, focused and cost-effective proceeding.

Pre-hearing disclosure in international arbitration will be based on the judgment of the arbitrator as regards the applicable rules, industry norms and the expectations and preferences of the parties and counsel. In exercising this judgment, JAMS international arbitrator(s) 1) produce a protocol for pre-hearing disclosure that is specific and appropriate to the given case and is consistent with the accepted norms of international arbitration practice, and 2) exercise sound judgment to ensure enough pre-hearing disclosure and evidence to permit a fair result, balanced against the need for an efficient process.

The JAMS Efficiency Guidelines provide, inter alia, guidance on e-discovery, witness statements, pre-hearing disclosure disputes and dispositive motions. They provide key points in managing e-discovery. The Chair (or other arbitrator) can act alone to resolve disclosure disputes. Lengthy briefs on pre-hearing disclosure are discouraged, and parties are obliged to negotiate pre-hearing disclosure differences in good faith.

Parties do not need to provide for the use of the Efficiency Guidelines in their arbitration clause but should be aware that the tribunal will act in accordance with the Guidelines unless the parties have provided otherwise.

JAMS INTERNATIONAL ARBITRATION MEDIATOR-IN-RESERVE POLICY

The JAMS International Arbitration Rules have a unique provision titled "Mediator-in-Reserve for International Arbitrations." This provides that once parties commence an arbitration under the JAMS International Arbitration Rules, they may at any time during the course of the arbi-

tration decide to enlist the services of a mediator who has been put on "reserve" for the case. Parties may decide to exercise the option to put a mediator on reserve.

Within one week of the commencement of the arbitration, a suggested list of mediators will be sent to the parties. The parties will be encouraged to select a mediator from the list who will be placed on reserve during the pendency of the arbitration. There will be no charge to the parties for the appointment of the Mediator-in-Reserve, and the parties will not incur fees unless and until they choose to utilize the mediator's services.

The Mediator-in-Reserve will not be informed of the parties' selection until and unless the parties decide to request the mediator's services. The parties will not be bound to use the Mediator-in-Reserve and may, at any time, mutually select another mediator to assist in their settlement discussions.

The arbitrator(s) in the proceeding will have no knowledge of the identity of the Mediator-in-Reserve, or whether the parties may have engaged her or his services at any point in the arbitration proceedings.

- **Modified Time Limits**

There are circumstances where the parties may wish to shorten the time limits set forth in the JAMS International Arbitration Rules. Article 21 of the Rules provides that the parties may agree to shorten the time limits. Care should be taken, however, not to specify time limits that are unrealistic and hence might jeopardize the ultimate enforceability of the award. Parties may either provide for modified time limits in the arbitration clause or agree once the matter has been commenced. Once the arbitral tribunal has been constituted, however, the parties must obtain the approval of the tribunal to shorten any time limits.

- **Interim Measures of Protection**

Under the provisions of Article 26 of the JAMS International Arbitration Rules, the parties have the right to apply for interim measures of protection, either from the arbitral tribunal or to a judicial authority. Parties do not have to include a separate provision for interim relief in the arbitration clause. A request by a party for interim relief from a judicial authority will not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

- **Award on Agreed Terms**

If the parties reach a settlement of the dispute during the course of the arbitration, they may request the tribunal to record the settlement in the form of an award on agreed terms. Such an award need not contain reasons.

PART II: MEDIATION CLAUSES

Another dispute resolution option available to parties in addition to arbitration is to provide for mediation of any disputes. The Standard JAMS International Mediation Clause is set forth below:

STANDARD JAMS INTERNATIONAL MEDIATION CLAUSE

The parties agree that any dispute, controversy or claim arising out of or relating to this contract shall be submitted to JAMS or its successors for mediation under the JAMS International Mediation Rules. Either party may commence mediation by providing a written request for mediation ("Request for Mediation") to JAMS and the other party, setting forth the subject matter of the dispute and the relief requested. If the dispute has not been settled within 45 days following the filing of a Request for Mediation or within such other time period as the parties may agree in writing, the parties shall have no further obligation under this paragraph.

Pursuant to Paragraph 3 of the JAMS International Mediation Rules, a party may request JAMS to invite another party to participate in mediation. Upon receipt of such a request, JAMS will contact the other party involved in the dispute and attempt to obtain an agreement to participate in mediation.

STATEMENT OF THE NATURE OF THE DISPUTE

When filing a request for mediation under the JAMS International Mediation Rules, the requesting party should set forth a brief statement of the nature of the dispute as well as the contact information of all of the parties to the dispute and the counsel, if any, who will represent them in mediation.

APPOINTMENT OF THE MEDIATOR

The parties to a JAMS international mediation are always at liberty to agree on the mediator who will decide their dispute. If the parties cannot agree, JAMS will provide the parties with a list of no fewer than five persons who would, in the estimation of JAMS, be qualified to mediate the dispute. JAMS will take into account such relevant factors as the nationalities of the parties, language in which the mediation will be conducted, the place of mediation and any substantive expertise that may be required in the resolution of the dispute. Each party may strike up to two names and will number the remaining names in order of preference. JAMS will take into account the parties' expressed preferences in appointing the mediator.

Typically, a single mediator will be appointed unless the parties agree otherwise. JAMS may recommend co-mediators in appropriate cases.

REPRESENTATION

While not required, it is typical for parties to be represented by counsel in a mediation. Paragraph 7 of the JAMS International Mediation Rules provides that a party may be represented by persons of that party's choice, including a non-attorney. Parties other than natural persons are expected to have present throughout the mediation an officer, partner or other employee authorized to make decisions concerning the resolution of the dispute.

CONDUCT OF THE MEDIATION AND AUTHORITY OF THE MEDIATOR

Under the JAMS International Mediation Rules, a mediator is at liberty to conduct the mediation in such manner as he or she considers appropriate, taking into account the circumstances of the case, the wishes of the parties and the need for a speedy settlement.

The mediator is authorized to conduct both joint and separate meetings with the parties and, if requested, may make oral or written recommendations concerning the appropriate resolution of the dispute. The mediator does not have the authority to impose a settlement on the parties.

CONFIDENTIALITY

Confidentiality is a hallmark of the mediation process and one of the many reasons parties opt to mediate over what might be less confidential processes. Paragraph 11 of the JAMS International Mediation Rules provides for extensive confidentiality provisions with respect to, for example, documents, views expressed by the parties or the mediator, admissions relating to the merits or the willingness to settle by one party or the other.

The mediator will not be compelled to divulge any information with regard to the mediation unless required by law.

GOVERNING LAW AND JURISDICTION

Paragraph 17 of the JAMS International Mediation Rules provides that the mediation shall be governed by the laws where the mediation takes place. The courts of the State where the mediation takes place have exclusive jurisdiction to settle any claim, dispute or matter or difference that may arise out of or in connection with the mediation.

TERMINATION OF THE MEDIATION

Paragraph 18 of the JAMS International Mediation Rules provides that any party may withdraw from the mediation at any time. A withdrawing party must immediately notify the mediator and the other representatives in writing. The mediation will be considered terminated when a) a party withdraws from mediation; b) the mediator, in his or her discretion, withdraws from the mediation; or c) a written settlement agreement is concluded.

The mediator has the authority to adjourn the mediation in order to allow the parties to consider specific proposals, get further information or for any other reason that the mediator considers helpful in furthering the mediation process. The mediator will then reconvene with the agreement of the parties.

SETTLEMENT AGREEMENTS

Paragraph 19 of the JAMS International Mediation Rules provides that any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, the parties.

PART III: COMBINED ADR PROCEDURES, OR "STEP CLAUSES"

It is becoming increasingly common in international practice for the parties to provide for combined ADR procedures, or "step clauses." These clauses allow the parties to incorporate different ADR procedures in one clause, with the resultant benefits that each process provides. Set forth below are several options the parties may wish to incorporate into their dispute resolution clause.

RESOLUTION PRIOR TO ARBITRATION

It is common practice for a contract clause to provide for negotiation and/or mediation in advance of arbitration. There is much to recommend such clauses because they represent by far the most cost-effective means of resolving a dispute and they often lead to an early settlement. Unless drafted with care, however, such clauses can also have negative side effects since they can be a vehicle for delay and can result in required empty negotiations where one or all parties have no intention of moving toward a settlement. In the experience of JAMS, such downsides can be greatly minimized by setting strict deadlines marking the early ends of the negotiation and mediation periods.

CLAUSE PROVIDING FOR NEGOTIATION IN ADVANCE OF ARBITRATION

1. The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the dispute and who are at a higher level of management than the person with direct responsibility for administration of this Agreement. Any party may give to the other party written notice of any dispute not resolved in the ordinary course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity a) a statement of each party's position and a summary of arguments supporting that position, and b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place.

2. Unless otherwise agreed in writing by the negotiating parties, the above-described negotiation shall end at the close of the first meeting of the executives described above ("First Meeting"). Such closure shall not preclude continuing or later negotiations, if desired.

3. All offers, promises, conduct and statements, whether written or oral, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

4. At no time prior to the First Meeting shall either side initiate an arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by JAMS International Arbitration Rules or by agreement of the parties. However, this limitation is inapplicable to a party if the other party refuses to comply with the requirements of Paragraph 1.

5. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in Paragraphs 1 and 2 above are pending and for 15 calendar days thereafter. The parties will take such action, if any, required to effectuate such tolling.

6. If the dispute has not been settled at the close of the First Meeting as defined above, or within such time period as the parties may agree in writing, either party may initiate arbitration with respect to the matters submitted to negotiation by filing a written demand for arbitration with JAMS or its successors. The negotiations may continue after the commencement of the arbitration if the parties so desire.

CLAUSE PROVIDING FOR MEDIATION IN ADVANCE OF ARBITRATION

If the matter is not resolved by negotiation pursuant to paragraphs ___ above, then the matter will proceed to mediation as set forth below.

Or in the Alternative

If the parties do not wish to negotiate in advance of arbitration, but do wish to mediate before proceeding to arbitration, they may accomplish this through use of the following language:

The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to JAMS, or its successor, for mediation. Either party may commence mediation by providing a written request for mediation to JAMS and the other party, setting forth the subject of the dispute and the relief requested. If the dispute has not been settled within 45 days following the filing of a Request for Mediation or within such longer time period as the parties may agree in writing, either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration with JAMS. The mediation may continue after the commencement of the arbitration if the parties so desire.

At no time prior to the First Meeting shall either side initiate an arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by JAMS International Arbitration Rules or by agreement of the parties.

SECTION 5

INSTITUTIONAL CLAUSES AND RULES FOR INTERNATIONAL ARBITRATION

Chapter 23

Australian Centre for International Commercial Arbitration (ACICA) (2021)

[Incorporating Clauses for Arbitration and Mediation][1]

Foreword

Since the prior edition of the ACICA Rules came into effect on 1 January 2016, the use and acceptance of arbitration in Australia has continued to grow. In the recently released Australian Arbitration Report, respondents reported some A$35 billion in dispute, spread over 223 discreet arbitrations. This inaugural report, the first empirical study of arbitration with an Australian connection, was based on a nation-wide survey conducted by ACICA and FTI Consulting, with the support of the Australian Bar Association, Francis Burt Chambers and the WA Arbitration Initiative, and covered the period from the beginning of 2016 to the end of 2019.

The inclusion of ACICA Rules in contracts, and the specification of Australian seats, is also on a significant upward trajectory.

In keeping with international developments and the growing importance of arbitration in Australia, ACICA has updated its rules to further reflect international best practice, enhance the user experience, provide avenues for the parties to exercise greater flexibility and control and enjoy greater certainty in the arbitral process.

As a supplement to these rules, ACICA's Practice and Procedures Board has promulgated useful guidance and explanatory notes and sample documents for corporates, counsel and other participants in the arbitral process. These documents, along with other resources, are publicly available on the ACICA website.

This booklet contains ACICA's current Arbitration Rules, Expedited Arbitration Rules and model clauses. Together with the resources on ACICA's website, it forms part of an extensive toolkit designed to inform and assist in-house counsel, corporate lawyers, business professionals and the arbitration community with realising the real value of the arbitration process.

Brenda Horrigan
ACICA President

MODEL ARBITRATION CLAUSE

Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia [or choose another city]. The language of the arbitration shall be English [or choose another language]. The number of arbitrators shall be one [or three, or delete this sentence and rely on Article 11 of the ACICA Arbitration Rules].

ACICA Arbitration Rules

Incorporating Emergency Arbitrator Provisions
1 January 2016

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ACICA ARBITRATION RULES

SECTION I
INTRODUCTORY RULES

1. ACICA Arbitration Rules

1.1 These rules ("Rules") are the rules of arbitration of the Australian Centre for International Commercial Arbitration ("ACICA") and may be referred to as the "ACICA Arbitration Rules".

1.2 ACICA administers the resolution of disputes by arbitral tribunals in accordance with the Rules. ACICA is the only body authorised to administer arbitrations under the Rules.

2 Scope of Application and Interpretation

2.1 Where parties agree in writing that disputes shall be referred to arbitration under the Rules of or by ACICA, then such disputes shall be resolved in accordance with these Rules, subject to such modification as the parties may agree in writing. By agreeing to arbitration under the Rules or by ACICA, the parties have accepted that their arbitration shall be administered by ACICA.

2.2 These Rules shall govern the arbitration except that where any of these Rules are in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

2.3 By selecting these Rules the parties do not intend to exclude the operation of the UNCITRAL Model Law on International Commercial Arbitration.

2.4 The parties to an arbitration agreement referring to these Rules shall be deemed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules.

2.5 Unless otherwise agreed by the parties:

(a) the provisions contained in Article 16 and 17 of these Rules will apply only to the extent that those provisions were in force at the time of the conclusion of the arbitration agreement; and

(b) the provisions contained in Article 18 shall only apply if the arbitration agreement was concluded after the date on which this version of the Rules came into force.

2.6 ACICA shall have the power to interpret all provisions of these Rules. The Arbitral Tribunal shall interpret the Rules insofar as they relate to its powers and duties under these Rules. In the event of any inconsistency between such interpretation and any interpretation by ACICA, the Arbitral Tribunal's interpretation will prevail.

2.7 English is the original language of these Rules. In the event of any discrepancy or inconsistency between the English version and the version in any other language, the English version shall prevail.

3 Overriding Objective

3.1 The overriding objective of these Rules is to provide arbitration that is timely, cost effective and fair, considering especially the amounts in dispute and complexity of issues or facts involved.

3.2 By invoking these Rules the parties agree to accept the overriding objective and its application by the Arbitral Tribunal.

4 Notice, Calculation of Periods of Time

4.1 For the purposes of these Rules, any notice, including a notification, communication, or proposal, may be delivered by hand, registered post or courier service, or transmitted by any form of electronic communication (including email), or delivered by any other appropriate means that provides a record of its delivery.

4.2 Any notice shall be deemed to have been received if it is delivered:

(a) physically to the addressee or to its authorised representative;

(b) to the addressee's place of business, habitual residence or designated address;

(c) to any address agreed by the parties;

(d) according to the practice of the parties in prior dealings; or

(e) if, after reasonable efforts, none of these can be found, to the addressee's last known place of business or habitual residence.

4.3 A notice shall be deemed to have been received on the day it is delivered in accordance with Article 4.1 or 4.2. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a Notice of Arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.

4.4 For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

4.5 Unless the parties agree otherwise in writing, any reference to time shall be deemed to be a reference to the time at the seat of the arbitration.

4.6 Any period of time imposed by these Rules or by ACICA in respect of the Notice of Arbitration, the Answer to Notice of Arbitration and the composition of the Arbitral Tribunal, or otherwise, may be extended by ACICA.

5 Party Communications with the Arbitral Tribunal

5.1 All written communications between the parties and the Arbitral Tribunal shall be copied to the ACICA Secretariat.

5.2 All documents or information supplied to the Arbitral Tribunal by one party shall at the same time be communicated by that party to the other party, except if after consulting with the parties, the Arbitral Tribunal otherwise directs.

6 Notice of Arbitration

6.1 The party initiating recourse to arbitration (the "Claimant") shall submit a Notice of Arbitration to ACICA. The Claimant shall at the same time pay ACICA's registration fee as specified in Appendix A. The Claimant shall submit the Notice of Arbitration in electronic form either by email or other electronic means including any electronic filing system operated by ACICA. ACICA may request the provision of hard copies if required.

6.2 Subject to Articles 6.6 and 18.2, the arbitration shall be deemed to commence on the date on which the Notice of Arbitration or the registration fee is received by ACICA, whichever is the later. ACICA shall notify the parties of the commencement of the arbitration.

6.3 The Notice of Arbitration shall include the following:

(a) a demand that the dispute be referred to arbitration;

(b) the names, postal addresses, telephone number and email addresses (if any) of the parties and their legal representatives;

(c) a copy of the arbitration clause or the separate arbitration agreement that is invoked. To the extent that claims are made under more than one arbitration clause or agreement, as referred to in Article 18, an indication and copy of the arbitration clause or agreement under which each claim is made;

(d) a reference to the contract out of, relating to or in connection with which the dispute arises;

(e) the general nature of the claim and an indication of the amount involved, if any;

(f) the relief or remedy sought; and

(g) a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon.

6.4 The Notice of Arbitration may also include:

(a) the Claimant's proposal for the nomination of a sole arbitrator in accordance with Article 12.1;

(b) the notification of the nomination of an arbitrator referred to in Article 13.1;

(c) the Statement of Claim referred to in Article 29; and

(d) any application for consolidation pursuant to Articles 16 or 18.

6.5 The Claimant shall at the same time send a copy of the Notice of Arbitration to the party or parties against whom it seeks relief ("Respondent" or "Respondents"), and notify ACICA that it has done so, specifying the means by which the Notice of Arbitration was communicated to the Respondent(s) and the date of delivery.

6.6 If the Notice of Arbitration is incomplete or if the provisions of Article 6.5 are not complied with, ACICA may request the Claimant to remedy the defect within an appropriate period of time and may delay the date of commencement of the arbitration until such defect is remedied. ACICA's discretion in this regard is without prejudice to the provisions with respect to emergency interim measures of protection set out in Schedule 1.

7 Answer to Notice of Arbitration

7.1 Within 30 days after receipt of the Notice of Arbitration the Respondent(s) shall submit an Answer to Notice of Arbitration to ACICA. The Respondent shall submit the Answer to Notice of Arbitration in electronic form to ACICA either by email or other electronic means including any electronic filing system operated by ACICA. ACICA may request the provision of hard copies if required.

7.2 The Answer to Notice of Arbitration shall include the following:

(a) the names, postal addresses, telephone numbers and email addresses (if any) of the Respondent and its legal representatives;

(b) any submission that an Arbitral Tribunal constituted under these Rules does not have jurisdiction;

(c) the Respondent's comments on the particulars set forth in the Notice of Arbitration;

(d) the Respondent's answer to the relief or remedy sought in the Notice of Arbitration; and

(e) the Respondent's proposal as to the number of arbitrators if the parties have not previously agreed thereon.

7.3 The Answer to Notice of Arbitration may also include:

(a) the Respondent's proposal for the nomination of a sole arbitrator in accordance with Article 12.1;

(b) the notification of the nomination of an arbitrator referred to in Article 13.1;

(c) the Statement of Defence referred to in Article 30; and

(d) a brief description of a counterclaim or claim for the purpose of a set-off, if any, including

where relevant, an indication of the amounts involved, and the relief or remedy sought.

7.4 The Respondent shall at the same time send a copy of the Answer to Notice of Arbitration to the Claimant and notify ACICA that it has done so, specifying the means by which the Answer to Notice of Arbitration was communicated to the Claimant and the date of delivery.

7.5 Once the registration fee has been paid, and the Arbitral Tribunal constituted, ACICA shall transmit the file to the Arbitral Tribunal.

8 Expedited Procedure

8.1 Prior to the constitution of the Arbitral Tribunal, a party may apply to ACICA in writing for the arbitration proceedings to be conducted in accordance with the ACICA Expedited Rules where:

(a) the amount in dispute determined in accordance with Article 2.2 of Appendix A of these Rules is less than $5,000,000;

(b) the parties so agree; or

(c) it is a case of exceptional urgency.

8.2 ACICA will consider the views of both parties in determining whether to grant such an application.

8.3 Unless the parties agree otherwise, Articles 8.1 and 8.2 shall not apply to any consolidated proceedings under Article 16 or 18.

9 Representation and Assistance

9.1 The parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party and ACICA.

9.2 Each party shall use its best endeavours to ensure that its legal representatives comply with the International Bar Association Guidelines on Party Representation in International Arbitration in the version current at the commencement of the arbitration.

10 ACICA Assistance

ACICA shall, at the request of the Arbitral Tribunal or either party, assist in making available, or arranging for, such facilities and assistance for the conduct of the arbitration proceedings as may be required, including a suitable venue for any hearing (whether held in person or virtually), secretarial assistance and interpretation facilities. ACICA may charge a fee for any service or assistance provided by it. Third party services and facilities arranged on behalf of the Arbitral Tribunal or the parties will be charged separately by the third party.

SECTION II:

COMPOSITION OF THE ARBITRAL TRIBUNAL

11 Number of Arbitrators

If the parties have not previously agreed on the number of arbitrators (i.e. one or three), and if within 30 days after the receipt by the Respondent of the Notice of Arbitration the parties cannot agree, ACICA shall determine the number of arbitrators taking into account all relevant circumstances.

12 Sole Arbitrator

12.1 If the dispute is to be resolved by a sole arbitrator, either party may propose to the other the name(s) of one or more person(s), one of whom the parties may agree to nominate for confirmation by ACICA as the Sole Arbitrator.

12.2 If within 40 days after the date when the Notice of Arbitration was received by the Respondent the parties have not reached agreement on the choice of a sole arbitrator and provided written evidence of their agreed nomination to ACICA, the Sole Arbitrator shall be appointed by ACICA.

12.3 In making the appointment, ACICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

12.4 For the purposes of Articles 12.3, 13.2, 16.8, 17.12, 20.3, 21.1 and 22.4, ACICA, the Arbitral Tribunal and the parties may have regard to the International Bar Association Guidelines on Conflicts of Interest in International Arbitration in the version current at the commencement of the arbitration.

13 Three Arbitrators

13.1 If the dispute is to be resolved by three arbitrators, each party shall nominate one arbitrator for confirmation by ACICA. The two arbitrators thus confirmed and/or appointed shall agree to nominate for confirmation the third arbitrator who, if confirmed by ACICA, will act as the Chairperson of the Arbitral Tribunal.

13.2 If within 30 days after the receipt of a party's notification of the nomination of an arbitrator the other party has not notified the first party of the arbitrator it has nominated, the first party may request ACICA to appoint the second

arbitrator. In making the appointment, ACICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

13.3 If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed to nominate for confirmation by ACICA the Chairperson, he or she shall be appointed by ACICA.

13.4 If ACICA decides not to confirm any arbitrator nominated under Article 13.1, ACICA may invite the party or the two arbitrators to nominate a different arbitrator for confirmation by ACICA or appoint the arbitrator itself.

14 Secretary-General's Power of Confirmation

14.1 Where the parties have made a nomination under Article 12.1 or 13.1 or, in the case of a three-person Arbitral Tribunal, where two arbitrators have nominated a Chairperson pursuant to Article 13.1, the Secretary-General of ACICA shall have power to confirm the nomination if:

(a) the nominee has not disclosed any circumstances likely to give rise to justifiable doubts as to his or her availability, independence or impartiality, or

(b) the nominee has disclosed circumstances likely to give rise to justifiable doubts as to his or her availability, independence or impartiality and no objections have been raised by any party.

14.2 Where the Secretary-General confirms a nomination under Article 14.1, the Secretary-General shall report that confirmation to ACICA.

14.3 Where the Secretary-General declines to exercise his or her power of confirmation under Article 14.1, the nomination shall be submitted to ACICA for determination.

14.4 Neither the Secretary-General nor ACICA is obliged to provide reasons for any decisions taken in respect of the confirmation of an arbitrator.

15 Appointment of Arbitrators in Multi-Party Disputes

15.1 For the purposes of Articles 12 and 13, the acts of multiple parties, whether as multiple Claimants or multiple Respondents, shall have no effect, unless the multiple Claimants or multiple Respondents have acted jointly and provided written evidence of their agreement to ACICA.

15.2 If three arbitrators are to be appointed and the multiple Claimants or multiple Respondents do not act jointly in appointing an arbitrator, ACICA shall appoint each member of the Arbitral Tribunal and shall designate one of them to act as Chairperson, unless all parties agree in writing on a different method for the constitution of the Arbitral Tribunal and provide written evidence of their agreement to ACICA.

16 Consolidation of Arbitrations

16.1 Upon request by a party, and after consulting with the parties and any confirmed or appointed arbitrators, ACICA may consolidate two or more arbitrations pending under these Rules into a single arbitration, if:

(a) the parties have agreed to the consolidation;

(b) all the claims in the arbitrations are made under the same arbitration agreement; or

(c) the claims in the arbitrations are made under more than one arbitration agreement, a common question of law or fact arises in both or all of the arbitrations, the rights to relief claimed are in respect of, or arise out of, the same transaction or series of transactions, and ACICA finds the arbitration agreements to be compatible.

16.2 Any party wishing to consolidate two or more arbitrations pursuant to Article 16.1 shall communicate a Request for Consolidation to ACICA, all other parties and any confirmed or appointed arbitrators.

16.3 The Request for Consolidation shall include the following:

(a) the case references of the arbitrations pending under the Rules requested to be consolidated, where applicable;

(b) the names, postal addresses, telephone numbers and email addresses (if any) of each of the parties to the arbitrations, their legal representatives and any arbitrators who have been confirmed or appointed in the arbitrations;

(c) a request that the arbitrations be consolidated;

(d) copies of the arbitration agreements giving rise to the arbitrations;

(e) a copy of or reference to the contract(s) or other legal instrument(s) out of or in relation to which the Request for Consolidation arises;

(f) a statement of the facts supporting the Request for Consolidation, including, where applicable, evidence of all parties' written consent to consolidate the arbitrations;

(g) the points at issue;

(h) the legal arguments supporting the Request for Consolidation;

(i) details of any applicable mandatory provision affecting consolidation of arbitrations;

(j) the relief or remedy sought in each of the arbitrations;

(k) comments on the constitution of the arbitral tribunal if the Request for Consolidation is granted, including whether to preserve the confirmation and/or appointment of any arbitrator; and

(l) confirmation that copies of the Request for Consolidation have been or are being communicated simultaneously to all other parties and any confirmed or appointed arbitrators by one or more means of delivery to be identified in such confirmation.

16.4 ACICA may vary any of the requirements in Article 16.3 as it deems appropriate.

16.5 Where the non-requesting parties or any confirmed or appointed arbitrators are requested to provide comments on the Request for Consolidation, such comments may include (without limitation) the following particulars:

(a) comments on the particulars set forth in the Request for Consolidation pursuant to Article 16.3(a) to (j);

(b) responses to the comments made in the Request for Consolidation pursuant to Article 16.3(k); and

(c) confirmation that copies of the comments have been or are being communicated simultaneously to all other relevant parties and any confirmed or appointed arbitrators by one or more means of delivery to be identified in such confirmation.

16.6 In deciding whether to consolidate two or more arbitrations, ACICA may take into account any circumstances it considers to be relevant, including, but not limited to, whether one or more arbitrators have been appointed in more than one of the arbitrations and, if so, whether the same or different arbitrators have been appointed.

16.7 When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties.

16.8 Within 14 days of being notified of a decision by ACICA to consolidate two or more arbitrations, all parties may agree to the identity of the arbitrator(s) to be nominated for confirmation by ACICA in the consolidated arbitration. Failing such agreement, ACICA shall revoke the confirmation or appointment of any arbitrator already confirmed or appointed and appoint each member of the Arbitral Tribunal and, if the Arbitral Tribunal is composed of three arbitrators, designate one of them to act as the Chairperson. In making the appointments, ACICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

16.9 The parties waive any objection, on the basis of ACICA's decision to consolidate, to the validity and/or enforcement of any award made by the Arbitral Tribunal in the consolidated proceedings, in so far as such waiver can validly be made.

16.10 The revocation of the confirmation or appointment of an arbitrator under Article 16.8 is without prejudice to:

(a) the validity of any act done or order made by any arbitrator before his or her confirmation or appointment was revoked;
(b) his or her entitlement to be paid his or her fees and expenses subject to Article 50 as applicable; and
(c) the date when any claim or defence was raised for the purpose of applying any limitation bar or any similar rule or provision.

16.11 The party requesting consolidation shall pay to ACICA an application fee as set out in Appendix A.

17 Joinder

17.1 The Arbitral Tribunal, upon request by a party or third party, after giving all parties, including the additional party to be joined, the opportunity to be heard, shall have the power to allow an additional party to be joined to the arbitration provided that:

(a) prima facie, the additional party is bound by the same arbitration agreement between the existing parties to the arbitration; or

(b) all parties, including the additional party, expressly agree.

17.2 The Arbitral Tribunal's decision pursuant to Article

17.1 is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision.

17.3 A party wishing to join an additional party to the arbitration shall submit a Request for Joinder to ACICA. ACICA may fix a time limit for the submission of a Request for Joinder.

17.4 The Request for Joinder shall include the following:

(a) the case reference of the existing arbitration;

(b) the names and addresses, telephone numbers, and email addresses of each of the parties, including the additional party;

(c) a request that the additional party be joined to the arbitration;

(d) a reference to the contract(s) or other legal instrument(s) out of or in relation to which the request arises;

(e) a statement of the facts supporting the request;

(f) the points at issue;

(g) the legal arguments supporting the request;

(h) the relief or remedy sought; and

(i) confirmation that copies of the Request for Joinder and any exhibits included therewith have been or are being communicated simultaneously to all other parties, including the additional party, and any confirmed or appointed arbitrator, where applicable, by one or more means of delivery to be identified in such confirmation. A copy of the contract(s) and of the arbitration agreement(s) if not contained in the contract(s), shall be annexed to the Request for Joinder.

17.5 Within 15 days of receiving the Request for Joinder, the additional party shall submit to ACICA an Answer to the Request for Joinder. The Answer to the Request for Joinder shall include the following:

(a) the name, postal address, telephone numbers and email address (if any) of the additional party and its legal representatives (if different from the description contained in the Request for Joinder);

(b) any plea that the Arbitral Tribunal has been improperly constituted and/or lacks jurisdiction over the additional party;

(c) the additional party's comments on the particulars set forth in the Request for Joinder, pursuant to Article 17.4(a) to (g);

(d) the additional party's answer to the relief or remedy sought in the Request for Joinder, pursuant to Article 17.4(h);

(e) details of any claims by the additional party against any other party to the arbitration; and

(f) confirmation that copies of the Answer to the Request for Joinder and any exhibits included therewith have been or are being communicated simultaneously to all other parties and the Arbitral Tribunal, where applicable, by one or more means of delivery to be identified in such confirmation.

17.6 A third party wishing to be joined as an additional party to the arbitration shall submit a Request for Joinder to ACICA. The provisions of Article 17.4 shall apply to such Request for Joinder.

17.7 Within 15 days of receiving a Request for Joinder pursuant to Article 17.3 or 17.6, the parties shall submit their comments on the Request for Joinder to ACICA. Such comments may include (without limitation) the following particulars:

(a) any plea that the Arbitral Tribunal lacks jurisdiction over the additional party;

(b) comments on the particulars set forth in the Request for Joinder, pursuant to Article 17.4(a) to (g);

(c) answer to the relief or remedy sought in the Request for Joinder, pursuant to Article 17.4(h);

(d) details of any claims against the additional party; and

(e) confirmation that copies of the comments have been or are being communicated simultaneously to all other parties and the Arbitral Tribunal, where applicable, by one or more means of delivery to be identified in such confirmation.

17.8 Where ACICA receives a Request for Joinder before the date on which the Arbitral Tribunal is constituted, and after considering the views of all parties, including the additional party to be joined, ACICA:

(a) may decide whether, prima facie, the additional party is bound by the same arbitration agreement between the existing parties to the arbitration; and

(b) if so, may join the additional party to the arbitration.

17.9 Any question as to the jurisdiction of the Arbitral Tribunal arising from ACICA's decision under this Article shall be decided by the Arbitral Tribunal once constituted, pursuant to Article 32.1. ACICA's decision to reject an application for joinder under Article 17.8, in whole or in part, is without prejudice to any party's or third party's right to apply to the Arbitral Tribunal for joinder pursuant to Article 17.1.

17.10 ACICA's decision pursuant to Article 17.8 is without prejudice to the admissibility or merits of any party's pleas.

17.11 Where an additional party is joined to the arbitration, the date on which the Request for Joinder is received by ACICA shall be deemed to be the date on which the arbitration in respect of the additional party commences.

17.12 Where an additional party is joined to the arbitration before the date on which the Arbitral Tribunal is constituted, ACICA shall revoke the confirmation or appointment of any arbitrators already confirmed or appointed, unless all parties agree on the identity of all the arbitrators to be nominated for confirmation by ACICA within 14 days of being notified of the joinder. Where there is no such agreement, ACICA shall appoint each member of the Arbitral Tribunal and, if the Arbitral Tribunal is composed of three arbitrators, shall designate one of them to act as the Chairperson. In making the appointments, ACICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

17.13 The revocation of the confirmation or appointment of an arbitrator under Article 17.12 is without prejudice to:

(a) the validity of any act done or order made by that arbitrator before his or her appointment was revoked; and

(b) his or her entitlement to be paid his or her fees and expenses subject to Article 50 as applicable.

17.14 The parties waive any objection to the validity and/or enforcement of any award made by the Arbitral Tribunal in the arbitration which is based on the joinder of an additional party to the arbitration, in so far as such waiver can validly be made.

17.15 The party requesting joinder shall pay to ACICA an application fee as set out in Appendix A.

18 Single Arbitration under Multiple Contracts

18.1 Claims arising out of or in connection with more than one contract may be made in a single arbitration, by filing a single Notice of Arbitration, provided that any of the criteria in Article 16.1 are satisfied.

18.2 By filing a single Notice of Arbitration, the Claimant shall be deemed to have commenced multiple arbitrations, one in respect of each arbitration agreement invoked. The Notice of Arbitration is required to include an application to ACICA to consolidate all such arbitrations pursuant to Article 16.1. In addition to satisfying the requirements in Article 16.3, the Claimant shall include a statement identifying each contract and arbitration agreement invoked, copies of the contracts and arbitration agreements, a statement of the facts and legal arguments supporting the satisfaction of the criteria in Article 16.1 and pay to ACICA the application fee as set out in Appendix A for consolidation.

18.3 Where the Claimant has filed a single Notice of Arbitration pursuant to Article 18.1 and ACICA rejects the application for consolidation, in whole or in part, it shall file a Notice of Arbitration in respect of each arbitration that has not been consolidated, and the Claimant shall be required to make payment of the registration fee as specified in Appendix A in respect of each arbitration that has not been consolidated.

18.4 The parties waive any objection, on the basis of ACICA's decision to consolidate, to the validity and/or enforcement of any award made by the Arbitral Tribunal in the consolidated proceedings, in so far as such waiver can validly be made.

19 Concurrent Proceedings

19.1 The Arbitral Tribunal may, after consulting with the parties, conduct two or more arbitrations under the Rules at the same time, or one immediately after another, or suspend any of those arbitrations until after the determination of any other of them, where:

(a) the same Arbitral Tribunal is constituted in each arbitration; and

(b) a common question of law or fact arises in all the arbitrations.

19.2 ACICA may adjust its Administration Fee and the Arbitral Tribunal's fees (where appropriate) where the arbitrations are conducted pursuant to Article 19.1.

20 Disclosures and Information about Arbitrators

20.1 Where the name of any person is proposed or nominated for confirmation as arbitrator in accordance with Articles 6.4(a) and (b) and 7.3(a) and (b), his or her name, postal addresses, telephone numbers and email addresses (if any) shall be provided and his or her nationality shall be indicated, together with a description of his or her qualifications.

20.2 When ACICA is required to appoint an arbitrator pursuant to Articles 12 to 17, ACICA may require from either party such information as it deems necessary to fulfil its function.

20.3 Before confirmation or appointment, a prospective arbitrator shall sign a statement of availability, impartiality and independence and return the same to ACICA. The prospective arbitrator shall disclose in writing to ACICA any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, once confirmed or appointed, and throughout the arbitration proceedings shall without delay disclose in writing such circumstances to the parties unless he or she has already informed them of these circumstances. A copy of any disclosure provided to a party by any nominated, confirmed or appointed arbitrator shall be sent to ACICA.

20.4 No party or its representatives shall have any ex parte communication relating to the arbitration with any arbitrator, or with any candidate for nomination or appointment as arbitrator or the Chairperson of the Arbitral Tribunal, except to advise the candidate of the general nature of the dispute, to discuss the candidate's qualifications, availability, impartiality or independence in relation to the parties, or to discuss the suitability of candidates for the selection of Chairperson of the Arbitral Tribunal where the parties or any arbitrator nominated by the party or appointed by ACICA on behalf of the party are to designate that arbitrator.

21 Challenge of Arbitrators

21.1 Any arbitrator may be challenged by any party if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess any requisite qualification on which the parties have agreed.

21.2 A party may challenge the arbitrator nominated by that party or appointed on behalf of that party only for reasons of which it becomes aware after the confirmation or appointment has been made.

22 Procedure for the Challenge of Arbitrators

22.1 A party who intends to challenge an arbitrator shall send notice of its challenge within 15 days after being notified by ACICA of the appointment of that arbitrator or within 15 days after becoming aware of the circumstances mentioned in Article 21.

22.2 The challenge shall be notified to the other party, to the arbitrator who is challenged, to the other members of the Arbitral Tribunal and to ACICA. The notification shall be in writing and shall state the reasons for the challenge.

22.3 When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, resign. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedures provided in Articles 12 to 20 shall be used for the nomination or appointment of a substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise its right to nominate or to participate in the appointment.

22.4 If the other party does not agree to the challenge and the challenged arbitrator does not resign, the decision on the challenge shall be made by ACICA.

22.5 If ACICA sustains the challenge, a substitute arbitrator shall be nominated or appointed pursuant to the procedure applicable to the nomination or appointment of the arbitrator to be replaced as provided in Articles 12 to 20, even if the party challenging the arbitrator had failed to exercise previously its right to participate in the nomination or appointment of that arbitrator.

23 Replacement of an Arbitrator

In the event that:

(a) an arbitrator dies;

(b) an arbitrator's resignation is accepted by ACICA; or

(c) an arbitrator fails to act or it becomes de jure or de facto impossible for the arbitrator to perform his or her functions and ACICA decides to replace the arbitrator,

a substitute arbitrator shall be nominated or appointed pursuant to the procedure applicable to the nomination or appointment of the arbitrator to be replaced as provided in Articles 12 to 20.

24 Repetition of Hearings if Arbitrator Replaced

Once reconstituted, and after having invited the parties to comment, the Arbitral Tribunal shall determine if and to what extent prior arbitration proceedings shall be repeated before the reconstituted Arbitral Tribunal.

SECTION III
ARBITRATION PROCEEDINGS

25 General Provisions

25.1 Subject to these Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated equally and that each party is given a reasonable opportunity of presenting its case.

25.2 Subject to these Rules, the Arbitral Tribunal shall adopt suitable procedures for the conduct of the arbitration in order to avoid unnecessary delay or expense, having regard to the complexity of the issues and the amount in dispute, and provided that such procedures ensure equal treatment of the parties and afford the parties a reasonable opportunity to present their case.

25.3 As soon as practicable after being constituted, the Arbitral Tribunal shall hold a preliminary meeting with the parties in person or virtually by conference call, videoconference or using other communications technology with participants in one or more geographical places and shall make a procedural timetable for the arbitration which may include provisional hearing dates. The Arbitral Tribunal may at any time after giving the parties an opportunity to present their views, extend or vary the procedural timetable. The Arbitral Tribunal shall raise for discussion with the parties the possibility of using other techniques to facilitate the settlement of the dispute, including the options set out in Article 55 (Alternative Dispute Resolution).

25.4 The Arbitral Tribunal may decide where the arbitration proceedings shall be conducted (at the seat or other venues, in person or virtually). In particular, it may hold meetings for consultation among its members at any venue (whether in person or virtually) it deems appropriate, having regard to the circumstances of the arbitration.

25.5 The Arbitral Tribunal may meet at any venue it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present (in person or virtually, as is considered appropriate by the Arbitral Tribunal after consultations with the parties) at such inspection.

25.6 Questions of procedure may be decided by the Chairperson alone, or if the Arbitral Tribunal so authorises, any other member of the Arbitral Tribunal. Any such decision is subject to revision, if any, by the Arbitral Tribunal as a whole.

25.7 For the avoidance of doubt, the powers of the Arbitral Tribunal under these Rules include the power on the application of any party to make an award granting early dismissal or termination of any claim, defence or counterclaim, the subject of the arbitration.

26 Confidentiality and Data Protection

26.1 Unless the parties agree otherwise in writing, all hearings shall take place in private.

26.2 The parties, the Arbitral Tribunal and ACICA shall treat as confidential and shall not disclose to a third party without prior written consent from the parties all matters relating to the arbitration (including the existence of the arbitration), the award, materials created for the purpose of the arbitration and documents produced by another party in the arbitration proceedings and not in the public domain (including for the purposes of Articles 16, 17 and 18) except:

(a) for the purpose of making an application to any competent court;

(b) for the purpose of making an application to the courts of any State to enforce the award;

(c) pursuant to the order of a court of competent jurisdiction;

(d) if required by the law of any State which is binding on the party making the disclosure;

(e) if required to do so by any regulatory body; or

(f) to a person for the purposes of having or seeking third- party funding, where that person has agreed to keep the material and information supplied confidential.

26.3 Nothing in Article 26.2 permits a party who receives information or documents provided by another party in the arbitration proceedings (including any concurrent proceedings under Article 19 of these Rules), which is not otherwise in the public domain, to disclose or use the information or documents otherwise than for the purposes of the arbitration proceedings.

26.4 Any party planning to make disclosure under Article 26.2 must within a reasonable time prior to the intended

disclosure notify the Arbitral Tribunal, ACICA and the other parties (if during the arbitration) or ACICA and the other parties (if the disclosure takes place after the conclusion of the arbitration) and furnish details of the disclosure and an explanation of the reason for it.

26.5 To the extent that a witness is given access to evidence or other information obtained in the arbitration, the party calling such witness is responsible for the maintenance by the witness of the same degree of confidentiality as that required of the party.

26.6 The Arbitral Tribunal may, in consultation with the parties and where appropriate ACICA, adopt any measure:

(a) to protect any physical and electronic information shared in the arbitration; and

(b) to ensure any personal data produced or exchanged in the arbitration is processed and/or stored in light of any applicable law.

27 Seat of Arbitration

27.1 If the parties have not previously agreed on the seat of the arbitration and if within 15 days after the commencement of the arbitration they cannot agree, the seat of the arbitration shall be Sydney, Australia.

27.2 If a hearing is held virtually (by conference call, videoconference or using other communications technology) it will be deemed to be held at the seat, unless otherwise agreed by the parties or directed by the Tribunal.

27.3 The award shall be made at the seat of the arbitration.

27.4 The law of the seat shall be the governing law of the arbitration agreement, unless the parties have expressly agreed otherwise and that agreement is not prohibited by an applicable law.

28 Language

28.1 Subject to an agreement by the parties, the Arbitral Tribunal shall, promptly after its constitution, determine the language or languages to be used in the arbitration proceedings. This determination shall apply to the Statement of Claim, the Statement of Defence, any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

28.2 The Arbitral Tribunal may order that any submissions (written or oral), documents annexed to the Statement of Claim or Statement of Defence, and any supplementary documents or exhibits submitted in the course of the arbitration proceedings, delivered in their original language, shall be accompanied by a translation (or be translated) into the language or languages agreed upon by the parties or determined by the Arbitral Tribunal.

29 Statement of Claim

29.1 Unless the Statement of Claim was contained in the Notice of Arbitration, within a period of time to be determined by the Arbitral Tribunal, the Claimant shall communicate its Statement of Claim in writing to the Respondent, each arbitrator and ACICA. A copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.

29.2 The Statement of Claim shall include the following particulars:

(a) the names, postal addresses, telephone numbers and email addresses (if any) of the parties and their legal representatives;

(b) a statement of the facts supporting the claim;

(c) the points at issue;

(d) the relief or remedy sought; and

(e) the legal grounds or arguments supporting the claim.

29.3 The Claimant should, as far as possible, annex to its Statement of Claim all documents and other evidence on which it relies or contain references to them.

30 Statement of Defence

30.1 Unless the Statement of Defence was contained in the Answer to Notice of Arbitration, within a period of time to be determined by the Arbitral Tribunal, the Respondent shall communicate its Statement of Defence in writing to the Claimant, each arbitrator and ACICA.

30.2 The Statement of Defence shall reply to the particulars (b) to (e) of the Statement of Claim (Article 29.2). The Respondent should, as far as possible, annex to its Statement of Defence the documents and other evidence on which it relies for its defence or contain references to them.

30.3 Unless put forward in the Answer to Notice of Arbitration, the Respondent may in its Statement of Defence, or at a later stage in the arbitration proceedings if the Arbitral Tribunal decides that the delay was justified under the circumstances, make a counterclaim or claim for the pur-

pose of a set-off, arising out of, relating to or in connection with the contract.

30.4 The provisions of Article 29.2 (b) to (e) shall apply to a counterclaim and a claim relied on for the purpose of a set-off.

31 Amendments to the Claim or Defence

During the course of the arbitration proceedings either party may amend or supplement its claim or defence unless the Arbitral Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances it considers relevant. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

32 Jurisdiction of the Arbitral Tribunal

32.1 The Arbitral Tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.

32.2 The Arbitral Tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of this Article 32, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the Arbitral Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

32.3 Any submission that the Arbitral Tribunal does not have jurisdiction shall be raised no later than in the Statement of Defence referred to in Article 30, or, with respect to a counterclaim, in the reply to the counterclaim.

32.4 In general, the Arbitral Tribunal should rule on any submission concerning its jurisdiction as a preliminary question. However, the Arbitral Tribunal may proceed with the arbitration and rule on such a submission in its final award.

33 Further Written Statements

The Arbitral Tribunal shall decide which further written statements, in addition to the Statement of Claim and the Statement of Defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

34 Periods of Time

The periods of time fixed by the Arbitral Tribunal for the communication of written statements (including the Statement of Claim and Statement of Defence) should not exceed 45 days. However, the Arbitral Tribunal may extend the periods of time if it concludes that an extension is justified.

35 Evidence and Hearings

35.1 Each party shall have the burden of proving the facts relied upon to support its claim or defence.

35.2 The Arbitral Tribunal shall have regard to, but is not bound to apply, the International Bar Association Rules on the Taking of Evidence in International Arbitration in the version current at the commencement of the arbitration.

35.3 An agreement of the parties and the Rules (in that order) shall at all times prevail over an inconsistent provision in the International Bar Association Rules on the Taking of Evidence in International Arbitration.

35.4 If either party so requests, the Arbitral Tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, and/or for oral argument. In the absence of such a request, the Arbitral Tribunal shall decide whether to hold such hearings or whether the arbitration proceedings shall be conducted on the basis of documents and other materials.

35.5 The Arbitral Tribunal shall organise the conduct of any hearing in advance, in consultation with the parties. The Arbitral Tribunal shall have the fullest authority under the arbitration agreement to establish the conduct of a hearing, including its date, duration, form, content, procedure, time limits and geographical place (if applicable). As to form, a hearing may take place in person, or virtually by conference call, videoconference or using other communications technology with participants in one or more geographical places (or in a combined form).

35.6 The Arbitral Tribunal shall give the parties reasonable notice in writing of any hearing.

36 Experts appointed by the Arbitral Tribunal

36.1 To assist it in the assessment of evidence, the Arbitral Tribunal, after consulting with the parties, may appoint one or more experts to report to it, in writing, on specific issues to be determined by the Arbitral Tribunal. The Arbitral Tribunal may meet privately with any tribunal-appointed expert. The Arbitral Tribunal shall establish terms of reference for the expert, and shall communicate a copy of the expert's terms of reference to the parties and ACICA.

36.2 The expert shall, before accepting appointment, submit to the Arbitral Tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the Arbitral Tribunal, the parties shall inform the Arbitral Tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The Arbitral Tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The Arbitral Tribunal shall decide promptly what, if any, action to take in those circumstances.

36.3 The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the Arbitral Tribunal for decision.

36.4 Upon receipt of the expert's report, the Arbitral Tribunal shall send a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinions on the report. The parties shall be entitled to examine any document on which the expert has relied in his or her report.

36.5 At the request of either party, the expert, after delivery of the report, shall attend a hearing at which the parties shall have the opportunity to be present (in person or virtually) and to examine the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of Article 35 shall be applicable to such evidence and hearings.

37 Interim Measures of Protection

37.1 Unless the parties agree otherwise in writing:

(a) a party may request emergency interim measures of protection to be issued by an arbitrator (the Emergency Arbitrator) appointed prior to the constitution of the Arbitral Tribunal in accordance with the provisions set out in Schedule 1; and

(b) the Arbitral Tribunal may, on the request of any party, order interim measures of protection. The Arbitral Tribunal may order such measures in the form of an award, or in any other form (such as an order) provided reasons are given, and on such terms as it deems appropriate. The Arbitral Tribunal shall endeavour to ensure that the measures are enforceable.

37.2 An interim measure of protection is any temporary measure by which the Arbitral Tribunal orders a party to:

(a) maintain or restore the status quo pending determination of the dispute;

(b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm;

(c) provide a means of preserving assets out of which a subsequent award may be satisfied;

(d) preserve evidence that may be relevant and material to the resolution of the dispute; or

(e) provide security for the legal or other costs of any party.

37.3 Before the Arbitral Tribunal orders any interim measure, the party requesting it shall satisfy the Arbitral Tribunal that:

(a) irreparable harm is likely to result if the measure is not ordered;

(b) such harm substantially outweighs the harm that is likely to result to the party affected by the measure if the measure is granted; and

(c) there is a reasonable possibility that the requesting party will succeed on the merits, provided that any determination on this possibility shall not affect the liberty of decision of the Arbitral Tribunal in making any subsequent determination.

37.4 The Arbitral Tribunal may require a party to provide appropriate security as a condition to granting an interim measure.

37.5 The requesting party shall promptly disclose in writing to the Arbitral Tribunal any material change in the circumstances on the basis of which that party made the request for, or the Arbitral Tribunal granted, the interim measure.

37.6 The Arbitral Tribunal may modify, suspend or terminate any of its own interim measures at any time upon the request of any party. In exceptional circumstances the Arbi-

tral Tribunal may, on its own initiative, modify, suspend or terminate any of its own interim measures upon prior notice to the parties.

37.7 If the Arbitral Tribunal later determines that the measure should not have been granted, it may decide that the requesting party is liable to the party against whom the measure was directed for any costs or damages caused by the measure.

37.8 The power of the Arbitral Tribunal under this Article 37 shall not prejudice a party's right to apply to any competent court or other judicial authority for interim measures. Any application and any order for such measures after the formation of the Arbitral Tribunal shall be promptly communicated, in writing, by the applicant to the Arbitral Tribunal, all other parties and ACICA.

38 Default

38.1 If, within the period of time fixed by the Arbitral Tribunal, the Claimant has failed to communicate its Statement of Claim without showing sufficient cause for such failure, the Arbitral Tribunal may issue an order for the termination of the arbitration proceedings or any other order as the Arbitral Tribunal considers appropriate. If, within the period of time fixed by the Arbitral Tribunal, the Respondent has failed to communicate its Statement of Defence without showing sufficient cause for such failure, the Arbitral Tribunal shall order that the arbitration proceedings continue (with or without a hearing) and make one or more awards.

38.2 If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the Arbitral Tribunal may proceed with the arbitration and make one or more awards.

38.3 If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the Arbitral Tribunal may make the award on the evidence before it.

39 Closure of Arbitration Proceedings

39.1 The Arbitral Tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the arbitration proceedings closed.

39.2 The Arbitral Tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the arbitration proceedings at any time before the award is made.

39.3 Unless a shorter period is specified by law or the parties agree otherwise, the final award shall be made no later than nine months from the date the file was transmitted to the Arbitral Tribunal pursuant to Article 7.5 or no later than three months from the date the Arbitral Tribunal declares the arbitration proceedings closed, whichever is the earlier. ACICA may extend this time upon a reasoned request from the Arbitral Tribunal or if ACICA otherwise deems it necessary.

40 Waiver of Rules

A party that knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

SECTION IV
THE AWARD

41 Decisions

When there are three arbitrators, any award or other decision of the Arbitral Tribunal shall be made by a majority of the arbitrators. Failing a majority decision on any issue, the opinion of the Chairperson shall prevail.

42 Form and Effect of the Award

42.1 In addition to making a final award, the Arbitral Tribunal shall be entitled to make interim, interlocutory, or partial awards.

42.2 An award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.

42.3 The Arbitral Tribunal shall state the reasons upon which an award is based, unless the parties have agreed that no reasons are to be given.

42.4 An award shall be signed by the Arbitral Tribunal and it shall contain the date on which and the place (which shall be in conformity with Article 27.3) where the award was made. If any arbitrator refuses or fails to sign an award, the signatures of the majority or (failing a majority) of the Chairperson shall be sufficient, provided that the reason for the omitted signature is stated in the award by the majority or Chairperson. Unless the parties agree otherwise, or the Arbitral Tribunal or ACICA directs otherwise, any award may be signed electronically and/or in counterparts and assembled into a single instrument.

42.5 The Arbitral Tribunal shall communicate copies of an award signed by the arbitrator(s) to the parties and

ACICA. Such transmission may be made by any electronic means, and (if so requested by any party or if transmission by electronic means to a party is not possible) in paper form. In the event of any disparity between electronic and paper forms, the electronic form shall prevail.

42.6 Before communicating an award to the parties, the Arbitral Tribunal shall inquire of ACICA whether there are any outstanding monies due to it. The award shall not be communicated to the parties until ACICA certifies that there are no monies due to either ACICA or the Arbitral Tribunal.

42.7 If the arbitration law of the place where an award is made requires that the award be filed or registered by the Arbitral Tribunal, the Arbitral Tribunal shall comply with this requirement within the period of time required by law.

43 Applicable Law, Amiable Compositeur

43.1 The Arbitral Tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Arbitral Tribunal shall apply the rules of law which it considers applicable.

43.2 The Arbitral Tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have, in writing, expressly authorised the Arbitral Tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.

43.3 In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

44 Settlement or Other Grounds for Termination

44.1 If, before an award is made, the parties agree on a settlement of the dispute, the Arbitral Tribunal shall either issue an order for the termination of the arbitration proceedings or, if requested by both parties and accepted by the Arbitral Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Arbitral Tribunal is not obliged to give reasons for such an award.

44.2 If, before an award is made, the continuation of the arbitration proceedings becomes unnecessary or impossible for any reason not mentioned in Article 44.1, the Arbitral Tribunal shall inform the parties of its intention to issue an order for the termination of the arbitration proceedings. The Arbitral Tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.

44.3 Copies of the order for termination of the arbitration proceedings or of the arbitral award on agreed terms, signed by the arbitrator(s), shall be communicated by the Arbitral Tribunal to the parties and ACICA. Where an arbitral award on agreed terms is made, the provisions of Articles 42.2, and 42.4 to 42.7, shall apply.

45 Interpretation of the Award

45.1 Within 30 days after the receipt of an award, either party, with notice to the other party, may request that the Arbitral Tribunal give an interpretation of the award.

45.2 The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of Articles 42.2 to 42.7, shall apply.

46 Correction of the Award

46.1 Within 30 days after the receipt of an award, either party, with notice to the other party, may request the Arbitral Tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The Arbitral Tribunal may within 30 days after the communication of the award make such corrections on its own initiative.

46.2 Such corrections shall be in writing and the provisions of Articles 42.2 to 42.7 shall apply.

47 Additional Award

47.1 Within 30 days after the receipt of an award, either party, with notice to the other party, may request the Arbitral Tribunal to make an additional award as to claims presented in the arbitration proceedings but omitted from the award.

47.2 If the Arbitral Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within 60 days after the receipt of the request.

47.3 When an additional award is made, the provisions of Articles 42.2 to 42.7 shall apply.

SECTION V
GENERAL

48 Costs of Arbitration

The term "costs of arbitration" includes:

(a) the fees and expenses of the Arbitral Tribunal;

(b) ACICA's administration fee;

(c) the fees and expenses of any experts and/or assistants appointed by the Arbitral Tribunal;

(d) the parties' legal and other costs, including, but not limited to, in-house costs, such as in-house counsel and other non-independent experts, and third-party funding costs, directly incurred by any party in conducting the arbitration, if such costs were claimed during the arbitration proceedings and only to the extent that the Arbitral Tribunal determines that such costs are reasonable;

(e) fees for services and assistance provided by ACICA in accordance with Articles 10 and 49.7; and

(f) the costs associated with any request for emergency interim measures of protection made pursuant to Article 37.1(a).

49 Deposit of Costs

49.1 As soon as practicable after the establishment of the Arbitral Tribunal, ACICA shall, after consulting the Arbitral Tribunal, fix an amount to be paid by the parties for the deposit of costs to pay for the fees and expenses of the Arbitral Tribunal and ACICA's administration fee. ACICA may also, after consulting the Arbitral Tribunal, fix an amount to be paid by the parties for the deposit of costs to pay for the fees and expenses of any experts appointed by the Arbitral Tribunal.

49.2 The amount to be paid by the parties or any of them for any deposit of costs fixed by ACICA for the fees and expenses of the Arbitral Tribunal shall be determined by ACICA either on the basis of an hourly rate:

(a) agreed between the parties and the Arbitral Tribunal; or

(b) failing such agreement, determined in ACICA's discretion after considering the circumstances of the case including its complexity and the amount in dispute (if known), as well as the experience, standing, special qualifications and/or usual hourly rate of the arbitrator.

49.3 The hourly rate referred to in Article 49.2 will be exclusive of any goods and services tax (GST), value added tax (VAT) or other similar tax which may apply, unless the parties have expressly agreed otherwise.

49.4 Any deposit of costs fixed by ACICA pursuant to Article 49.1 shall in principle be payable in equal shares by the Claimant and the Respondent or, where there are more than two parties, the deposit of costs shall be payable in such proportions as ACICA determines to be appropriate.

49.5 Where a Respondent submits a counterclaim or it otherwise appears appropriate in the circumstances, ACICA may, after consulting the Arbitral Tribunal, fix separate deposits of costs and request payment of them from the parties.

49.6 During the course of the arbitration proceedings, ACICA may, after consulting the Arbitral Tribunal, readjust the amount to be paid and/or the proportion to be paid by any party for any deposit of costs fixed by ACICA and request the parties or any of them to make supplementary deposits.

49.7 Any deposit of costs fixed under this Article will be paid to and held by ACICA. Any interest which may accrue on any such deposit shall be retained by ACICA, with no interest to be owing or payable to the parties or the arbitrator. ACICA may make a charge for its trust account services.

49.8 The Arbitral Tribunal will not proceed with the arbitration without ascertaining at all times from ACICA that ACICA is in possession of the requisite funds.

49.9 If the required deposit of costs are not paid in full within 30 days of the request, ACICA shall, after consulting the Arbitral Tribunal, so inform the parties in order that any party may pay the unpaid portion of the deposit to allow the arbitration to proceed. In such circumstances, a party making substitute payment shall be entitled to recover that amount as a debt immediately due from the defaulting party and the Arbitral Tribunal may issue an award for that debt on application of the party making substitute payment.

49.10 In the event that any deposit of costs directed to be paid by ACICA under this Article remains unpaid (in whole or in part), the Arbitral Tribunal may, after consulting ACICA, order the suspension or termination of the whole or any part of the arbitration.

49.11 At the end of any arbitration, including where the costs of the arbitration have been fixed by ACICA in accordance with Article 50.3 and where an arbitration is terminated or an award on agreed terms is made in accordance with Article 44, ACICA shall render an accounting to the parties of the deposit of costs received and held by it and return any unexpended balance to the parties.

50 Decisions on Costs of Arbitration by ACICA

50.1 In appropriate circumstances and upon the request of the Arbitral Tribunal, ACICA may, after considering the stage attained in the arbitration, the work undertaken by the Arbitral Tribunal and any other relevant circumstance, determine to make interim payments for the fees of the Arbitral Tribunal and/or interim reimbursements for the expenses of the Arbitral Tribunal from the deposit of costs.

50.2 At any time during the arbitration, ACICA may fix as payable a portion of ACICA's administration fee corresponding to services that have already been performed by ACICA and the Secretariat.

50.3 Prior to the Arbitral Tribunal either issuing a final award, an award on agreed terms, or an order for the termination of the arbitration, ACICA shall determine the fees and expenses of the Arbitral Tribunal and ACICA's administration fee and notify the Arbitral Tribunal of those determinations.

50.4 In making a determination under Article 50.3, ACICA may, after considering the diligence and efficiency of the arbitrator(s), the time spent by the arbitrator(s), the complexity of the dispute, the stage at which the arbitration concluded and whether the final award (if any) was made within the time limit provided in Article 39.3, determine that the fees of the Arbitral Tribunal shall be less than the amount of the deposit of costs paid by the parties or any of them for those fees under Article 49.

50.5 If there is an order for termination of the arbitration or an award on agreed terms in accordance with Article 44, ACICA may, after considering the stage attained by the arbitration proceedings and any other relevant circumstance, determine that ACICA's administration fee shall be less than the amount of the deposit of costs paid by the parties or any of them for that fee under Article 49.

50.6 The Arbitral Tribunal's fees and expenses shall be determined exclusively by ACICA as required by the Rules. Separate fee arrangements between any of the parties and the Arbitral Tribunal are contrary to the Rules.

51 Decisions on Costs of Arbitration by the Arbitral Tribunal

51.1 The costs of the arbitration referred to in Article 48 shall be fixed by the Arbitral Tribunal either:

(a) in the final award;

(b) in an award on agreed terms made pursuant to Article 44.1; or

(c) in an order for the termination of the arbitration issued pursuant to Article 44.1 or Article 44.2.

51.2 In addition to making a final award on costs of arbitration in accordance with Article 51.1, the Arbitral Tribunal may at any time during the arbitration make decisions on costs, other than those costs to be fixed by ACICA, and order payment. Any such decision and order on costs may be made by the Arbitral Tribunal, without limitation, by way of interim, interlocutory and partial award.

51.3 Except as provided in Article 51.4, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the Arbitral Tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

51.4 With respect to the costs of arbitration referred to in Article 48(d), the Arbitral Tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

51.5 No additional fees may be charged by an Arbitral Tribunal for interpretation or correction or completion of its award under Articles 45 to 47.

51.6 With respect to the costs of Arbitration referred to in Article 48(a), the fees and expenses of the Arbitral Tribunal shall be stated separately as to each arbitrator where there is more than one arbitrator.

52 Decisions Made by ACICA

52.1 Decisions made by ACICA will be made by the ACICA Board of Directors, or by any person(s) to whom the Board of Directors has delegated decision making authority.

52.2 Decisions made by ACICA with respect to all matters relating to the arbitration shall be conclusive and binding upon the parties and the Arbitral Tribunal. ACICA shall not be required to give any reasons.

52.3 To the extent permitted by the law of the seat of the arbitration, the parties shall be taken to have waived any right of appeal or review in respect of any such decisions made by ACICA to any State court or other judicial authority.

52.4 Neither ACICA nor its members, officers, servants or agents shall be liable for making any decision or taking any action or failing to make any decision or take any action

under these Rules, including where any such decision and/or action occurs after the Arbitral Tribunal has made a final award, the parties agree on a settlement of the dispute or the arbitration proceedings have terminated.

53 Immunity of the Arbitral Tribunal

The Arbitral Tribunal shall not be liable for any act or omission in connection with any arbitration or any mediation conducted by reference to these Rules save where the act or omission was not done in good faith.

54 Third Party Funding

54.1 In these Rules, "third-party funding" means any arrangement whereby a natural or legal person, that is not party to the arbitration proceedings provides to a party, or an affiliate of that party, or law firm representing that party:

(a) funds or other material support in order to finance part or all of the arbitration costs; and

(b) such support or financing is either provided in exchange for remuneration or reimbursement that is wholly or partially dependent on the outcome of the dispute, or is provided through a grant or in return for a premium payment.

54.2 A party and/or its representative shall, on its own initiative, disclose the existence of third party funding and the identity of the funder to the Arbitral Tribunal and ACICA, and the other parties, upon that party submitting a Notice of Arbitration or Answer to Notice of Arbitration or Answer to the Request for Joinder, or as soon as practicable after third-party funding is provided or after entering into an arrangement for third-party funding, whichever is earlier. Each party shall have a continuing obligation to disclose any changes to the information referred to in this Article occurring after the initial disclosure, including termination of the third-party funding.

54.3 The Arbitral Tribunal may, at any time during the arbitration proceedings, order a party to the arbitration proceedings to disclose:

(a) the existence of third-party funding; and/or

(b) the identity of any such third-party funder.

55 Other Alternative Dispute Resolution

55.1 The Arbitral Tribunal shall raise for discussion with the parties the possibility of using mediation or other forms of alternative dispute resolution to facilitate the timely, cost effective and fair resolution of the dispute.

55.2 On the application of any party, the Arbitral Tribunal may suspend the arbitration to allow for a mediation or other form of alternative dispute resolution on such terms as the Arbitral Tribunal considers appropriate. The arbitration shall resume at any time upon the written request of any of the parties.

55.3 Any mediation of the dispute shall be conducted in accordance with the ACICA Mediation Rules from time to time in force.

APPENDIX A: Fees and Expenses

The reference in these Rules to "dollars" or "$" is to Australian currency.

1 Registration Fee

1.1 When submitting the Notice of Arbitration the Claimant shall pay to ACICA a registration fee in the amount set by ACICA in the Schedule of Fees on ACICA's website on the date that the Notice of Arbitration is submitted ("Schedule of Fees"). The registration fee is not refundable.

2 Administration Fee

2.1 The parties shall pay to ACICA an administration fee as specified in the Schedule of Fees.

2.2 For the purposes of determining the amount in dispute:

(a) claims, counterclaims and set-off defences shall be added together;

(b) amounts claimed for interest shall not be taken into account, unless the interest claim exceeds the principal amount claimed, in which case the interest claims alone shall be considered in calculating the amount in dispute;

(c) claims expressed in currencies other than in Australian dollars shall be converted into Australian dollars at the rate of exchange applicable on the day when ACICA received the relevant claim, including any counterclaim or set-off defence; and

(d) if the amount in dispute is not specified in the Notice of Arbitration, Statement of Claim or counterclaim, the amount set out in the Schedule of Fees to apply in these circumstances will be payable to ACICA as the administration fee until the amount in dispute is determined by

the Arbitral Tribunal. If no such determination is made, or the claim is for non-monetary relief, the administration fee will be as set out in the Schedule of Fees, unless in its discretion ACICA determines that a lesser fee is payable, or if the case is not resolved within 6 months from the constitution of the Arbitral Tribunal, that a higher fee is to be paid (up to the maximum specified in the Schedule of Fees).

3 Consolidation Fees

When submitting a request for consolidation, the party making the request shall pay to ACICA an application fee as may be set by ACICA in the Schedule of Fees on ACICA's website on the date that the request is filed with ACICA. ACICA may adjust its Administration Fee and the arbitral tribunal's fees (where appropriate) after a Request for Consolidation has been submitted.

4 Joinder Fees

When submitting a request for joinder, the party making the request shall pay to ACICA an application fee as may be set by ACICA in the Schedule of Fees on ACICA's website on the date that the request is filed with ACICA. ACICA may adjust its Administration Fee and the arbitral tribunal's fees (where appropriate) after a Request for Joinder has been submitted.

5 Emergency Arbitrator Fee

5.1 The party applying for the appointment of an Emergency Arbitrator must pay the costs of the emergency arbitration proceedings upon filing the application. The applicable costs are the Emergency Arbitrator Fee and the application fee set out in the Schedule of Fees on ACICA's website on the date that the application is filed with ACICA.

5.2 ACICA may decide to increase or reduce the costs having regard to the nature of the case, the work performed by the Emergency Arbitrator and ACICA, and other relevant circumstances.

6 Fees and Expenses Payable after Revocation of Arbitrator's Appointment or Arbitrator's Replacement

Where an arbitrator's appointment is revoked or where an arbitrator is replaced pursuant to Articles 16, 17, 22 or 23 of the Rules, ACICA may fix an amount of fees or expenses to be paid by the parties for the arbitrator's services, taking into account the circumstances of the case including, but not limited to, the applicable method for determining the arbitrator's fees, work done by the arbitrator in connection with the arbitration, and the circumstances of the revocation of the arbitrator's appointment or the arbitrator's replacement.

7 Cancellation Fees

The Arbitral Tribunal's fees may include a charge for time reserved but not used as a result of late postponement or cancellation of hearings, provided that the basis for such charge shall be advised in writing to, and approved by, ACICA and that the parties have been informed in advance.

SCHEDULE 1

1 Application for Emergency Interim Measures of Protection

1.1 A party in need of emergency interim measures of protection may make an application to ACICA for emergency interim measures of protection prior to the constitution of the Arbitral Tribunal.

1.2 The application for emergency interim measures of protection shall:

(a) be made to ACICA in writing;

(b) be made concurrently with or following the filing of the Notice of Arbitration;

(c) if possible, be communicated to all other parties prior to or at the same time as making the application; and

(d) include a statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify the other parties of the application.

1.3 The application shall contain details of:

(a) the nature of the relief sought;

(b) the reasons why such relief is required on an emergency basis; and

(c) the reasons why the party is entitled to such relief.

1.4 The party making the application shall at the same time pay ACICA the Emergency Arbitrator Fee and the application fee as specified in Appendix A.

2 Appointment of Emergency Arbitrator

2.1 Upon receipt of an application for emergency interim measures of protection ACICA shall use its best endeavours to appoint an Emergency Arbitrator within 1 business

day from the receipt of the application and shall notify the parties of the appointment as soon as possible thereafter. A prospective Emergency Arbitrator shall immediately in writing disclose to ACICA any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A party who intends to challenge an Emergency Arbitrator shall send notice of its challenge within one business day after being notified of the appointment of that arbitrator and the circumstances disclosed.

2.2 The time period for the appointment of the Emergency Arbitrator does not commence until ACICA has received:

(a) the application in compliance with Article 1 above; and

(b) payment of the Emergency Arbitrator Fee and the application fee.

2.3 Unless the parties otherwise agree in writing, the Emergency Arbitrator shall not act as an arbitrator in the arbitration proceedings.

2.4 Once the Emergency Arbitrator has been appointed, ACICA shall refer the application to the Emergency Arbitrator.

3 Decisions on Emergency Interim Measures of Protection

3.1 Any decision on an application for emergency interim measures of protection shall be made not later than 5 business days from the date upon which the application was referred to the Emergency Arbitrator pursuant to Article 2.4 above. ACICA may extend this time limit upon a request from the Emergency Arbitrator.

3.2 Any decision on an application for emergency interim measures of protection shall:

(a) be made in writing;

(b) state the date when it was made;

(c) contain reasons for the decision; and

(d) be signed by the Emergency Arbitrator.

3.3 The Emergency Arbitrator shall have the power to order or award any interim measure of protection on an emergency basis (the "Emergency Interim Measure") that he or she deems necessary and on such terms as he or she deems appropriate.

3.4 The Emergency Arbitrator may modify or vacate the Emergency Interim Measure for good cause shown at any time prior to the constitution of the Arbitral Tribunal.

3.5 Before the Emergency Arbitrator orders or awards any Emergency Interim Measure, the party requesting it shall satisfy the Emergency Arbitrator that:

(a) irreparable harm is likely to result if the Emergency Interim Measure is not ordered;

(b) such harm substantially outweighs the harm that is likely to result to the party affected by the Emergency Interim Measure if the Emergency Interim Measure is granted; and

(c) there is a reasonable possibility that the requesting party will succeed on the merits, provided that any determination on this possibility shall not affect the liberty of decision of the Arbitral Tribunal in making any subsequent determination.

3.6 The Emergency Arbitrator may require a party to provide appropriate security as a condition of any Emergency Interim Measure.

3.7 The Emergency Arbitrator shall promptly deliver a copy of the decision on emergency interim measures of protection and any Emergency Interim Measure to each of the parties and ACICA. The decision may be delivered by any electronic means, and (if so requested by any party or if transmission by electronic means to a party is not possible) in paper form. In the event of any disparity between electronic and paper forms, the electronic form shall prevail.

4 Compliance with the Emergency Interim Measure

4.1 Any Emergency Interim Measure shall be binding on the parties.

4.2 The parties undertake to comply with any Emergency Interim Measure without delay.

4.3 Any Emergency Interim Measure shall, in any event, cease to be binding if:

(a) the Arbitral Tribunal makes a final award;

(b) the claim is withdrawn;

(c) the Emergency Arbitrator or the Arbitral Tribunal (whichever applies) so decides; or

(d) the Arbitral Tribunal is not constituted within 90 days of the Emergency Interim Measure being made.

5 Powers after Constitution of the Arbitral Tribunal

5.1 The Emergency Arbitrator's jurisdiction and powers cease forthwith upon the constitution of the Arbitral Tribunal.

5.2 The Arbitral Tribunal may reconsider, vacate or modify any Emergency Interim Measure.

5.3 The Arbitral Tribunal is not bound by any decision or the reasons of the Emergency Arbitrator.

6 Costs

6.1 The costs associated with the emergency interim measures of protection proceedings include:

(a) the Emergency Arbitrator Fee and the application fee; and

(b) the legal and other costs directly incurred by the parties.

6.2 If the time for a decision on an application for emergency interim measures of protection is extended pursuant to Article 3.1 above, ACICA may request an increase to the Emergency Arbitrator Fee specified in Appendix A.

6.3 The costs associated with any emergency interim measures of protection proceedings may initially be apportioned by the Emergency Arbitrator and are subject to the Arbitral Tribunal's determination of the costs of arbitration under the Rules.

7 Other

7.1 The power of the Emergency Arbitrator under this Schedule 1 shall not prejudice a party's right to apply to any competent court or other judicial authority for emergency interim measures. If any such application or any order for such measures is made after the referral of an application for emergency interim measures of protection to an Emergency Arbitrator, the applicant shall promptly notify the Emergency Arbitrator, all other parties and ACICA in writing.

7.2 The Emergency Arbitrator shall not be liable for any act or omission in connection with any arbitration conducted by reference to these Rules save where the act or omission was not done in good faith.

ACICA Expedited Arbitration Rules

1 April 2021

MODEL ARBITRATION CLAUSE

SECTION I: INTRODUCTORY RULES

SECTION II: COMPOSITION OF THE ARBITRAL TRIBUNAL

SECTION III: ARBITRATION PROCEEDINGS

SECTION IV: THE AWARD

SECTION V: GENERAL

MODEL ARBITRATION CLAUSE

Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Expedited Arbitration Rules. The seat of arbitration shall be Sydney, Australia [or choose another city]. The language of the arbitration shall be English [or choose another language].

SECTION I:
INTRODUCTORY RULES

1. ACICA Expedited Arbitration Rules

1.1 These rules ("Rules") are the expedited rules of arbitration of the Australian Centre for International Commercial Arbitration ("ACICA") and may be referred to as the "ACICA Expedited Arbitration Rules".

1.2 ACICA administers the resolution of disputes by an arbitrator in accordance with the ACICA Expedited Arbitration Rules. ACICA is the only body authorised to administer arbitrations under the ACICA Expedited Arbitration Rules.

2 Scope of Application and Interpretation

2.1 Where parties agree in writing that disputes shall be referred to arbitration under the expedited rules of ACICA or the ACICA Expedited Arbitration Rules then such disputes shall be resolved in accordance with these Rules, subject to such modification as the parties may agree in writing. By agreeing to arbitration under the Rules of or by ACICA, the parties have accepted that their arbitration shall be administered by ACICA.

2.2 These Rules shall govern the arbitration except that where any of these Rules are in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

2.3 By selecting these Rules the parties do not intend to exclude the operation of the UNCITRAL Model Law on International Commercial Arbitration.

2.4 The parties to an arbitration agreement referring to these Rules shall be deemed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules.

2.5 ACICA shall have the power to interpret all provisions of the Rules. The Arbitrator shall interpret the Rules insofar as they relate to the Arbitrator's powers and duties under these Rules. In the event of any inconsistency between such interpretation and any interpretation by ACICA, the Arbitrator's interpretation will prevail.

2.6 English is the original language of these Rules. In the event of any discrepancy or inconsistency between the English version and the version in any other language, the English version shall prevail.

3 Overriding Objective

3.1 The overriding objective of these Rules is to provide arbitration that is timely, cost effective and fair, considering especially the amounts in dispute and complexity of issues or facts involved.

3.2 By invoking these Rules the parties agree to accept the overriding objective and its application by the Arbitrator.

4 Notice, Calculation of Periods of Time

4.1 For the purposes of these Rules, any notice, including a notification, communication, or proposal, may be delivered by hand, registered post or courier service, or transmitted by any form of electronic communication (including email), or delivered by an other appropriate means that provides a record of its delivery.

4.2 Any notice shall be deemed to have been received if it is delivered:

(a) physically to the addressee or to its authorised representative;

(b) to the addressee's place of business, habitual residence or designated address;

(c) to any address agreed by the parties;

(d) according to the practice of the parties in prior dealings; or

(e) if, after reasonable efforts, none of these can be found, to the addressee's last known place of business or habitual residence.

4.3 A notice shall be deemed to have been received on the day it is delivered in accordance with Article 4.1 or 4.2. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a Notice of Arbitration so transmitted is only deemed to have been received on the date when it reaches the addressee's electronic address.

4.4 For the purposes of calculating a period of time under the Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

4.5 Unless the parties agree otherwise in writing any reference to time shall be deemed to be a reference to the time at the seat of the arbitration.

4.6 Any period of time imposed by these Rules or by ACICA may be extended by ACICA.

5 Party Communication with the Arbitrator

5.1 All written communications between the parties and the Arbitrator shall be copied to the ACICA Secretariat.

5.2 All documents or information supplied to the Arbitrator by one party shall at the same time be communicated by that party to the other party, except if, after consulting with the parties, the Arbitrator otherwise directs.

6 Commencement of Arbitration

6.1 The party initiating recourse to arbitration (the "Claimant") shall submit a Notice of Arbitration to ACICA. The Claimant shall at the same time pay ACICA's registration fee as specified in Appendix A. The Claimant shall submit the Notice of Arbitration in electronic form either by email or other electronic means including any electronic filing system operated by ACICA. ACICA may request the provision of hard copies if required.

6.2 Subject to Article 6.5, the arbitration shall be deemed to commence on the date on which the Notice of Arbitration or the registration fee is received by ACICA, whichever is the later. ACICA shall notify the parties of the commencement of arbitration.

6.3 The Notice of Arbitration shall include the following:

(a) a demand that the dispute be referred to arbitration;

(b) the names, postal addresses, telephone number and email addresses (if any) of the parties and their legal representatives;

(c) a copy of the arbitration clause or the separate arbitration agreement that is invoked. To the extent that claims are made under more than one arbitration clause or agreement, an indication and copy of the arbitration clause or agreement under which each claim is made;

(d) a reference to the contract out of, relating to or in connection with which the dispute arises;

(e) the general nature of the claim and an indication of the amount involved, if any;

(f) the relief or remedy sought; and

(g) the Statement of Claim referred to in Article 18, which may be attached as a separate document.

6.4 The Claimant shall at the same time send a copy of the Notice of Arbitration to the other party or parties against whom it seeks relief ("Respondent" or "Respondents"), and notify ACICA that it has done so, specifying the means by which the Notice of Arbitration was communicated on the Respondent(s) and the date of delivery. The Respondent(s) shall file a Statement of Defence under Article 19.

6.5 If the Notice of Arbitration is incomplete or if the provisions of Article 6.4 are not complied with, ACICA may request the Claimant to remedy the defect within an appropriate period of time and may delay the date of commencement of the arbitration until such defect is remedied, in which event the arbitration is deemed to have commenced on the date ACICA gives to the parties advice that the defect has been remedied.

7 Representation and Assistance

7.1 The parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party and ACICA.

7.2 Each party shall use its best endeavours to ensure that its legal representatives comply with the International Bar Association Guidelines on Party Representation in In-

ternational Arbitration in the version current at the commencement of the arbitration.

8 ACICA Assistance

ACICA shall, at the request of the Arbitrator or either party, assist in making available, or arranging for, such facilities and assistance for the conduct of the arbitration proceedings as may be required, including a suitable venue for any hearing (whether held in person or virtually), secretarial assistance and interpretation facilities. ACICA may charge a fee for any service or assistance provided by it. Third party services and facilities arranged on behalf of the Arbitrator or the parties will be charged separately by the third party.

SECTION II

COMPOSITION OF THE ARBITRAL TRIBUNAL

9 Appointment of the Arbitrator

9.1 There shall be one arbitrator.

9.2 Within 14 days from the commencement of the arbitration, the Arbitrator shall be appointed by ACICA.

9.3 Before appointment, a prospective arbitrator shall sign a statement of availability, impartiality, and independence and return the same to ACICA. The prospective arbitrator shall disclose in writing to ACICA any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, once appointed, and throughout the arbitration proceedings shall without delay disclose in writing such circumstances to ACICA and the parties unless he or she has already informed them of these circumstances.

9.4 In making the appointment, ACICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

9.5 When making the appointment, ACICA may require from either party such information as it deems necessary to fulfil its function.

9.6 For the purposes of Articles 9.3 to 9.5, 10 and 11.4, the Arbitrator, the parties, and ACICA may have regard to the International Bar Association Guidelines on Conflicts of Interest in International Arbitration in the version current at the commencement of the arbitration.

9.7 Once the Arbitrator has been appointed, ACICA shall transmit the file to him or her.

10 Challenge of Arbitrators

The Arbitrator may be challenged by any party if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence.

11 Procedure for the Challenge of Arbitrators

11.1 A party who intends to challenge the Arbitrator shall send notice of its challenge within 7 days after being notified by ACICA of the appointment of that arbitrator or within 7 days after becoming aware of the circumstances mentioned in Article 10.

11.2 The challenge shall be notified to the other party, to the Arbitrator who is challenged and to ACICA. The notification shall be in writing and shall state the reasons for the challenge.

11.3 When the Arbitrator has been challenged by one party, the other party may agree to the challenge. The Arbitrator may also, after the challenge, resign. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in Article 9 shall be used for the appointment of a substitute Arbitrator.

11.4 If the other party does not agree to the challenge and the challenged Arbitrator does not resign, the decision on the challenge shall be made by ACICA.

11.5 If ACICA sustains the challenge, a substitute Arbitrator shall be appointed pursuant to the procedure set out in Article 9.

11.6 Challenge to the Arbitrator shall not affect the conduct of the arbitration in any way unless the Arbitrator resigns or is removed. However if an Arbitrator resigns or is removed, all time limits under these Rules will be extended by the time that elapses between the Arbitrator's resignation or removal and the appointment of a substitute Arbitrator.

12 Replacement of an Arbitrator

12.1 In the event that:

(a) an arbitrator dies;

(b) an arbitrator's resignation is accepted by ACICA; or

(c) an arbitrator fails to act or it becomes de jure or de facto impossible for the arbitrator to perform his or her functions and ACICA decides to replace the arbitrator, a substitute arbitrator shall be appointed pursuant to the procedure provided for in Article 9.

13 Repetition of Proceedings if Arbitrator Replaced

Once the substitute Arbitrator has been appointed, and after having invited the parties to comment, the Arbitrator shall determine if and to what extent prior arbitration proceedings shall be repeated.

SECTION III
ARBITRATION PROCEEDINGS

14 General Provisions

14.1 Subject to these Rules, including the overriding objective in Article 3, the Arbitrator may conduct the arbitration in such manner as he or she considers appropriate, provided that the parties are treated equally and that each party is given a reasonable opportunity of presenting its case.

14.2 Subject to these Rules, the Arbitrator shall adopt suitable procedures for the conduct of the arbitration in order to avoid unnecessary delay and expense. As soon as practicable after being constituted, the Arbitrator shall hold a preliminary meeting with the parties in person or virtually by conference call, videoconference or using other communications technology with participants in one or more geographical places and shall make a procedural timetable for the arbitration.

14.3 The Arbitral Tribunal may decide where the proceedings shall be conducted (at the seat or other venues, in person or virtually). In particular, it may hear witnesses and hold meetings for consultation among its members at any venue (whether in person or virtually) it deems appropriate, having regard to the circumstances of the arbitration.

14.4 The Arbitral Tribunal may meet at any venue it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present (in person or virtually, as is considered appropriate by the Arbitrator, after consultation with the parties) at such inspection.

14.5 For the avoidance of doubt, the powers of the Arbitrator under these Rules include the power on the application of any party to make an award granting early dismissal or termination of any claim, defence or counterclaim, the subject of the arbitration.

15 Confidentiality and Data Protection

15.1 Unless the parties agree otherwise in writing, any hearings shall take place in private.

15.2 The parties, the Arbitrator and ACICA shall treat as confidential and shall not disclose to a third party without prior written consent from the parties any matters relating to the arbitration (including the existence of the arbitration), the award, materials created for the purpose of the arbitration and documents produced by another party in the arbitration proceedings and not in the public domain except:

(a) for the purpose of making an application to any competent court;

(b) for the purpose of making an application to the courts of any State to enforce the award;

(c) pursuant to the order of a court of competent jurisdiction;

(d) if required by the law of any State which is binding on the party making the disclosure;

(e) if required to do so by any regulatory body; or

(f) to a person for the purposes of having or seeking third-party funding, where that person has agreed to keep the material and information supplied confidential.

15.3 Nothing in Article 15.2 permits a party who receives information or documents provided by another party in the arbitration proceedings, which is not otherwise in the public domain, to disclose or use the information or documents otherwise than for the purposes of the arbitration proceedings.

15.4 Any party planning to make disclosure under Article 15.2 must within a reasonable time prior to the intended disclosure notify the Arbitrator, ACICA and the other party (if during the arbitration) or ACICA and the other party (if the disclosure takes place after the conclusion of the arbitration) and furnish details of the disclosure and an explanation of the reason for it.

15.5 To the extent that a witness is given access to evidence or other information obtained in the arbitration, the party calling such witness is responsible for the maintenance by the witness of the same degree of confidentiality as that required of the party.

15.6 The Arbitrator may, in consultation with the parties and where appropriate ACICA, adopt any measure:

(a) to protect any physical and electronic information shared in the arbitration; and

(b) to ensure any personal data produced or exchanged in the arbitration is processed and/or stored in light of an applicable law.

16 Seat of Arbitration

16.1 If the parties have not previously agreed on the seat of the arbitration, the seat of the arbitration shall be Sydney, Australia.

16.2 If a hearing is held virtually (by conference call, videoconference or using other communications technology) it will be deemed to be held at the seat, unless otherwise agreed by the parties or directed by the Arbitrator.

16.3 The award shall be made at the seat of the arbitration.

16.4 The law of the seat shall be the governing law of the arbitration agreement, unless the parties have expressly agreed otherwise and that agreement is not prohibited by an applicable law.

17 Language

17.1 Subject to an agreement by the parties, the Arbitrator shall, promptly after its constitution, determine the language or languages to be used in the arbitration proceedings. This determination shall apply to the Statement of Claim, the Statement of Defence, any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

17.2 The Arbitrator may order that any submissions (written or oral), documents annexed to the Statement of Claim or Statement of Defence, and any supplementary documents or exhibits submitted in the course of the arbitration proceedings, delivered in their original language, shall be accompanied by a translation (or be translated) into the language or languages agreed upon by the parties or determined by the Arbitrator.

18 Statement of Claim

18.1 The Statement of Claim shall be contained in the Notice of Arbitration. A copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.

18.2 The Statement of Claim shall include the following particulars:

(a) the names, postal addresses, telephone numbers and email addresses (if any) of the parties and their legal representatives (if any);

(b) a statement of the facts supporting the claim;

(c) the points at issue;

(d) the relief or remedy sought; and

(e) the legal grounds or arguments supporting the claim.

18.3 The Claimant should, as far as possible, annex to its Statement of Claim all documents and other evidence on which it relies or contain references to them.

19 Statement of Defence

19.1 Within 28 days of service of the Notice of Arbitration under Article 6.4, the Respondent shall communicate its Statement of Defence in writing to the Claimant, the Arbitrator and ACICA.

19.2 The Statement of Defence shall reply to the particulars (b) to (e) of the Statement of Claim (Article 18.2) and provide particulars similar to those required under Article 18.2. The Respondent should, as far as possible, annex to its Statement of Defence the documents and other evidence on which it relies for its defence or contain references to them.

19.3 The Respondent may in its Statement of Defence make a counterclaim or claim for the purpose of a set-off, arising out of, relating to or in connection with the dispute.

19.4 The provisions of Article 18.2 (b) to (e) and 18.3 shall apply to a counterclaim and a claim relied on for the purpose of a set-off.

19.5 The Claimant shall communicate a Defence to the Counterclaim (if any) within 14 days, including any additional documents.

20 Amendments to the Claim or Defence

During the course of the arbitration proceedings no party may amend or supplement its claim or defence unless the Arbitrator considers it appropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances it considers relevant, including the overriding objective in Article 3. A claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

21 Jurisdiction of the Arbitrator

21.1 The Arbitrator shall have the power to rule on objections that he or she has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.

21.2 The Arbitrator shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of this Article 21, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the Arbitrator that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

21.3 Any submission that the Arbitrator does not have jurisdiction shall be raised no later than in the Statement of Defence referred to in Article 19, or, with respect to a counterclaim, in the Defence to the Counterclaim.

21.4 In general, the Arbitrator should rule on any submission concerning his or her jurisdiction as a preliminary question. However, the Arbitrator may proceed with the arbitration and rule on such a submission in his or her final award.

22 Further Written Statements

22.1 The Arbitrator shall decide which further written statements, in addition to the Statement of Claim, the Statement of Defence and Defence to the Counterclaim, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

22.2 The periods of time fixed by the Arbitrator for the communication of further written statements shall not exceed 14 days.

23 Periods of Time

23.1 Any times fixed under these Rules may be varied by agreement among the Arbitrator and the parties.

23.2 Notwithstanding Article 23.1 the Arbitrator, in exceptional circumstances as determined by the Arbitrator, may vary the times fixed:

(a) to give effect to the overriding objective set out in Article 3;

(b) if the Arbitrator is satisfied that a variation of any fixed time or times is required in the interests of justice;

(c) on such terms as to costs or otherwise as the Arbitrator considers reasonable in the circumstances;

(d) to a maximum total period of 14 days to the total time fixed under these Rules for actions by each party; and

(e) to a maximum total period of 30 days for actions by the Arbitrator.

24 Evidence and Hearings

24.1 Each party shall have the burden of proving the facts relied upon to support its claim or defence.

24.2 The Arbitrator shall have regard to, but is not bound to apply, the International Bar Association Rules on the Taking of Evidence in International Arbitration in the version current at the commencement of the arbitration.

24.3 An agreement of the parties and the Rules (in that order) shall at all times prevail over an inconsistent provision in the International Bar Association Rules on the Taking of Evidence in International Arbitration.

24.4 There shall be no discovery.

24.5 The Arbitrator may order a party to produce such particular documents as he or she may believe to be relevant. If the Arbitrator believes that a party has failed to produce any relevant document without good reason, he or she may draw an adverse inference from that party's failure to produce.

24.6 There shall be no hearing unless:

(a) exceptional circumstances exist, as determined by the Arbitrator; and

(b) either the Arbitrator or the parties require a hearing to take place.

24.7 Any hearing shall be no longer than one working day, unless the Arbitrator decides otherwise. The Arbitrator shall allocate the available time to the parties in such manner that each party shall have an equal opportunity to present its case.

24.8 The Arbitral Tribunal shall organise the conduct of any hearing in advance, in consultation with the parties. The Arbitral Tribunal shall have the fullest authority under the arbitration agreement to establish the conduct of a hearing, including its date, duration, form, content, procedure, time limits and geographical place (if applicable). As to form, a hearing may take place in person, or virtually by conference call, videoconference or using other communications technology with participants in one or more geographical places (or in a combined form).

24.9 The Arbitral Tribunal shall give the parties reasonable notice in writing of any hearing.

25 Interim Measures of Protection

25.1 In appropriate circumstances, the Arbitrator may, on the request of any party, order interim measures of protection. The Arbitrator may order such measures in the form of an award, or in any other form (such as an order), provided reasons are given, and on such terms as he or she deems appropriate. The Arbitrator shall endeavour to ensure that the measures are enforceable.

25.2 An interim measure of protection is any temporary measure by which the Arbitrator orders a party to:

(a) maintain or restore the status quo pending determination of the dispute;

(b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm;

(c) provide a means of preserving assets out of which a subsequent award may be satisfied;

(d) preserve evidence that may be relevant and material to the resolution of the dispute; or

(e) provide security for legal or other costs of any party.

25.3 Before the Arbitrator orders any interim measure, the party requesting it shall satisfy the Arbitrator that:

(a) irreparable harm is likely to result if the measure is not ordered;

(b) such harm substantially outweighs the harm that is likely to result to the party affected by the measure if the measure is granted; and

(c) there is a reasonable possibility that the requesting party will succeed on the merits, provided that any determination on this possibility shall not affect the liberty of decision of the Arbitrator in making any subsequent determination.

25.4 The Arbitrator may require a party to provide appropriate security as a condition to granting an interim measure.

25.5 The requesting party shall promptly disclose in writing to the Arbitrator any material change in the circumstances on the basis of which that party made the request for, or the Arbitrator granted, the interim measure.

25.6 The Arbitrator may modify, suspend or terminate any of his or her own interim measures at any time upon the request of any party. In exceptional circumstances the Arbitrator may, on his or her own initiative, modify, suspend or terminate any of his or her own interim measures upon prior notice to the parties.

25.7 If the Arbitrator later determines that the measure should not have been granted, he or she may decide that the requesting party is liable to the party against whom the measure was directed for any costs or damages caused by the measure.

25.8 The power of the Arbitrator under this Article 25 shall not prejudice a party's right to apply to any competent court or other judicial authority for interim measures. Any application and any order for such measures after the appointment of the Arbitrator shall be promptly communicated, in writing, by the applicant to the Arbitrator, all other parties and ACICA.

26 Default

26.1 If, within the period of time fixed under these Rules, the Respondent has failed to communicate its Statement of Defence without showing sufficient cause for such failure, the Arbitrator shall order that the proceedings continue (with or without a hearing) and make one or more awards.

26.2 If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the Arbitrator may proceed with the arbitration and make one or more awards.

26.3 If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the Arbitrator may make the award on the evidence before him or her.

27 Waiver of Rules

A party that knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

SECTION IV
THE AWARD

28 Time for the Final Award

Subject to Articles 23 and 29.6, the Arbitrator shall make the final award within 4 months of the appointment of the Arbitrator if there is no counterclaim (or claim relied on for the purpose of a set-off), and otherwise within 5 months.

29 Form and Effect of the Award

29.1 In addition to making a final award, the Arbitrator shall be entitled to make interim, interlocutory, or partial awards.

29.2 An award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out an award without delay.

29.3 Subject to Article 31.1, the Arbitrator shall state the reasons upon which an award is based in summary form, unless the parties have agreed that no reasons are to be given.

29.4 An award shall be signed by the Arbitrator and it shall contain the date on which and the place (which shall be in conformity with Article 16.4) where the award was made. Unless the parties agree otherwise, or the Arbitrator or ACICA directs otherwise, any award may be signed electronically.

29.5 The Arbitrator shall communicate signed copies of an award to the parties and ACICA. Such transmission may be made by any electronic means, and (if so requested by any party or if transmission by electronic means to a party is not possible) in paper form. In the event of any disparity between electronic and paper forms, the electronic form shall prevail.

29.6 Before communicating an award to the parties, the Arbitrator shall inquire of ACICA whether there are any outstanding monies due to it. The award shall not be communicated to the parties until ACICA certifies that there are no monies due to either ACICA or the Arbitrator. Time for the Final Award in Article 28 will not run for these purposes.

29.7 If the arbitration law of the place where the award is made requires that an award be filed or registered by the Arbitrator, he or she shall comply with this requirement within the period of time required by law.

30 Applicable Law, Amiable Compositeur

30.1 The Arbitrator shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Arbitrator shall apply the rules of law which he or she considers applicable.

30.2 The Arbitrator shall decide as amiable compositeur or ex aequo et bono only if the parties have, in writing, expressly authorised him or her to do so and if the law applicable to the arbitral procedure permits such arbitration.

30.3 In all cases, the Arbitrator shall decide in accordance with the terms of the contract and shall take into account any usages of the trade applicable to any transaction the subject of or connected with the dispute.

31 Settlement or Other Grounds for Termination

31.1 If, before an award is made, the parties agree on a settlement of the dispute, the Arbitrator shall either issue an order for the termination of the arbitration proceedings or, if requested by both parties and accepted by the Arbitrator, record the settlement in the form of an arbitral award on agreed terms. The Arbitrator is not obliged to give reasons for such an award.

31.2 If, before an award is made, the continuation of the arbitration proceedings becomes unnecessary or impossible for any reason not mentioned in Article 31.1, the Arbitrator shall inform the parties of his or her intention to issue an order for the termination of the arbitration proceedings. The Arbitrator shall have the power to issue such an order unless a party raises justifiable grounds for objection.

31.3 Copies of the order for termination of the arbitration proceedings or of the arbitral award on agreed terms, signed by the Arbitrator, shall be communicated by the Arbitrator to the parties and ACICA. Where an arbitral award on agreed terms is made, the provisions of Articles 29.2, and 29.4 to 29.7 shall apply.

32 Interpretation of the Award

32.1 Within 7 days after the receipt of an award, either party, with notice to the other party, may request that the Arbitrator give an interpretation of the award.

32.2 The interpretation shall be given in writing within 28 days after the receipt of the request. The interpretation

shall form part of the award and the provisions of Articles 29.2 to 29.7 shall apply.

33 Correction of the Award

33.1 Within 7 days after the receipt of an award, either party, with notice to the other party, may request the Arbitrator to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The Arbitrator may within 28 days after the communication of the award make such corrections on his or her own initiative.

33.2 Such corrections shall be in writing and the provisions of Articles 29.2 to 29.7 shall apply.

34 Additional Award

34.1 Within 7 days after the receipt of an award, either party, with notice to the other party, may request the Arbitrator to make an additional award as to claims presented in the arbitration proceedings but omitted from the award.

34.2 If the Arbitrator considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, he or she shall complete the award within 28 days after the receipt of the request.

34.3 When an additional award is made, the provisions of Articles 29.2 to 29.7 shall apply.

SECTION V
GENERAL

35 Costs of Arbitration

The term "costs of arbitration" includes:

(a) the fees and expenses of the Arbitrator;

(b) ACICA's administration fee;

(c) the fees and expenses of any experts and/or assistants appointed by the Arbitrator; and

(d) the parties' legal and other costs, including, but not limited to, in-house costs, such as in-house counsel and other non-independent experts, and the costs incurred in obtaining third-party funding, directly incurred by any party in conducting the arbitration, if such costs were claimed during the arbitration proceedings and only to the extent that the Arbitrator determines that such costs are reasonable; and

(e) Fees for services and assistance provided by ACICA in accordance with Articles 8 and 36.7.

36 Deposit of Costs

36.1 As soon as practicable after the appointment of the Arbitrator, ACICA shall, after consulting the Arbitrator, fix an amount to be paid by the parties for the deposit of costs to pay for the fees and expenses of the Arbitrator and ACICA's administration fee. ACICA may also, after consulting the Arbitrator, fix an amount to be paid by the parties for the deposit of costs to pay for the fees and expenses of any experts appointed by the Arbitrator.

36.2 The amount to be paid by the parties or any of them for any deposit of costs fixed by ACICA for the fees and expenses of the Arbitrator shall be determined by ACICA either on the basis of an hourly rate:

(a) agreed between the parties and the Arbitrator; or

(b) failing such agreement, determined in ACICA's discretion after considering the circumstances of the case including its complexity and the amount in dispute (if known), as well as the experience, standing, special qualifications and/or usual hourly rate of the arbitrator.

36.3 The hourly rate referred to in Article 36.2 will be exclusive of any goods and services tax (GST), value added tax (VAT) or other similar tax which may apply, unless the parties have expressly agreed otherwise.

36.4 Any deposit of costs fixed by ACICA pursuant to Article 36.1 shall in principle be payable in equal shares by the Claimant and the Respondent or, where there are more than two parties, the deposit of costs shall be payable in such proportions as ACICA determines to be appropriate.

36.5 Where a Respondent submits a counterclaim or it otherwise appears appropriate in the circumstances, ACICA may, after consulting the Arbitrator, fix separate deposits of costs and request payment of them from the parties.

36.6 During the course of the arbitration proceedings, ACICA may, after consulting the Arbitrator, readjust the amount to be paid and/or the proportion to be paid by any party for any deposit of costs fixed by ACICA and request the parties or any of them to make supplementary deposits.

36.7 Any deposit of costs fixed under this Article will be paid to and held by ACICA. Any interest which may accrue on any such deposit shall be retained by ACICA, with no in-

terest to be owing or payable to the parties or the arbitrator. ACICA may make a charge for its trust account services.

36.8 The Arbitrator will not proceed with the arbitration without ascertaining at all times from ACICA that ACICA is in possession of the requisite funds.

36.9 If the required deposits are not paid in full within 30 days, ACICA shall, after consulting the Arbitrator, so inform the parties in order that any party may pay the unpaid portion of the deposit to allow the arbitration to proceed. In such circumstances, a party making substitute payment shall be entitled to recover that amount as a debt immediately due from the defaulting party and the Arbitrator may issue an award for that debt on application of the party making substitute payment.

36.10 In the event that any deposit of costs directed to be paid by ACICA under this Article remains unpaid (in whole or in part), the Arbitrator may, after consulting ACICA, order the suspension or termination of the whole or any part of the arbitration.

36.11 If there is an order for termination of the arbitration or an award on agreed terms in accordance with Article 31, ACICA shall render an accounting to the parties of the deposits received and held by it and return any unexpended balance to the parties.

37 Decisions on Costs of Arbitration by ACICA

37.1 In appropriate circumstances and upon the request of the Arbitrator, ACICA may, after considering the stage attained in the arbitration, the work undertaken by the Arbitrator and any other relevant circumstance, determine to make interim payments for the fees of the Arbitrator and/or interim reimbursements for the expenses of the Arbitrator from the deposit of costs.

37.2 At any time during the arbitration, ACICA may fix as payable a portion of ACICA's administration fee corresponding to services that have already been performed by ACICA and the Secretariat.

37.3 Prior to the Arbitrator either issuing a final award, an award on agreed terms, or an order for the termination of the arbitration, ACICA shall determine the fees and expenses of the Arbitrator and ACICA's administration fee and notify the Arbitrator of those determinations.

37.4 In making a determination under Article 37.3, ACICA may, after considering the diligence and efficiency of the arbitrator(s), the time spent by the arbitrator(s), the complexity of the dispute, the stage at which the arbitration concluded and whether the final award (if any) was made within the time limit provided in Article 28, determine that the fees of the Arbitrator shall be less than the amount of the deposit of costs paid by the parties or any of them for those fees under Article 36.

37.5 If there is an order for termination of the arbitration or an award on agreed terms in accordance with Article 31, ACICA may, after considering the stage attained by the arbitration proceedings and any other relevant circumstance, determine that ACICA's administration fee shall be less than the amount of the deposit of costs paid by the parties or any of them for that fee under Article 36.

37.6 The Arbitrator's fees and expenses shall be determined exclusively by ACICA as required by the Rules. Separate fee arrangements between any of the parties and the Arbitrator are contrary to the Rules.

38 Decisions on Costs of Arbitration by the Arbitrator

38.1 The costs of the arbitration referred to in Article 35 shall be fixed by the Arbitrator either:

(a) in the final award

(b) in an award on agreed terms made pursuant to Article 31.1; or

(c) in an order for the termination of the arbitration issued pursuant to Article 31.1 or Article 31.2.

38.2 In addition to making a final award on costs in accordance with Article 38.1, the Arbitrator may at any time during the arbitration make decisions on costs, other than those costs to be fixed by ACICA, and order payment. Any such decision and order on costs may be made by the Arbitrator, without limitation, by way of interim, interlocutory and partial award.

38.3 Except as provided in Article 38.4, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the Arbitrator may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

38.4 With respect to the costs of arbitration referred to in Article 35(d), the Arbitrator, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

38.5 No additional fees may be charged by an Arbitrator for interpretation or correction or completion of its award under Articles 32 to 34.

39 Decisions Made by ACICA

39.1 Decisions made by ACICA will be made by the ACICA Board of Directors, or by any person(s) to whom the Board of Directors has delegated decision making authority.

39.2 Decisions made by ACICA with respect to all matters relating to the arbitration shall be conclusive and binding upon the parties and the Arbitrator. ACICA shall not be required to give any reasons.

39.3 To the extent permitted by the law of the seat of the arbitration, the parties shall be taken to have waived any right of appeal or review in respect of any such decisions made by ACICA to any State court or other judicial authority.

39.4 Neither ACICA nor its members, officers, servants or agents shall be liable for making any decision or taking any action or failing to make any decision or take any action under these Rules, including where any such decision and/or action occurs after the Arbitrator has made a final award, the parties agree on a settlement of the dispute or the proceedings have terminated.

40 Immunity of the Arbitrator

The Arbitrator shall not be liable for any act or omission in connection with any arbitration or mediation conducted by reference to these Rules save where the act or omission was not done in good faith.

41 Third Party Funding

41.1 In this section, "third-party funding" means any arrangement whereby a natural or legal person, that is not party to the arbitration proceedings provides to a party, or an affiliate of that party, or law firm representing that party:

(a) funds or other material support in order to finance part or all of the arbitration costs; and

(b) such support or financing is either provided in exchange for renumeration or reimbursement that is wholly or partially dependent on the outcome of the dispute, or is provided through a grant or in return for a premium payment.

41.2 A party and/or its representative shall, on its own initiative, disclose the existence of third party funding and the identity of the funder to the Arbitrator and ACICA, and the other parties, upon that party submitting a Notice of Arbitration or Statement of Defence, or as soon as practicable after third-party funding is provided or after entering into an arrangement for third-party funding, whichever is earlier. Each party shall have a continuing obligation to disclose any changes to the information referred to in this Article occurring after the initial disclosure, including termination of the third-party funding.

41.3 The Arbitrator may, at any time during the arbitration proceedings, order a party to the proceedings to disclose:

(a) the existence of third-party funding; and/or

(b) the identity of any such third-party funder.

APPENDIX A: Fees and Expenses

1 Registration Fee

1.1 The reference in these Rules to "dollars" or "$" is to Australian currency.

1.2 When submitting the Notice of Arbitration the Claimant shall pay to ACICA a registration fee in the amount set by ACICA in the Schedule of Fees on ACICA's website on the date that the Notice of Arbitration is submitted ("Schedule of Fees"). The registration fee is not refundable.

2 Administration Fee

2.1 The parties shall pay to ACICA an administration fee as specified in the Schedule of Fees.

2.2 For the purposes of determining the amount in dispute:

(a) claims, counterclaims and set-off defences shall be added together;

(b) amounts claimed for interest shall not be taken into account, unless the interest claim exceeds the principal amount claimed, in which case the interest claims alone shall be considered in calculating the amount in dispute;

(c) claims expressed in currencies other than in Australian dollars shall be converted into Australian dollars at the rate of exchange applicable on the day when ACICA received the relevant claim, including any counterclaim or set-off defence; and

(d) if the amount in dispute is not specified in the Notice of Arbitration, Statement of Claim or counterclaim, the amount set out in the Schedule of Fees to apply in these circumstances will be payable to ACICA as the administration fee until the amount in dispute is determined by the Arbitrator. If no such determination is

made, or the claim is for non-monetary relief, the administration fee will be as set out in the Schedule of Fees unless in its discretion ACICA determined that a lesser fee is payable, or if the case is not resolved within 5 months from the appointment of the Arbitrator, that a higher fee is to be paid (up to the maximum specified in the Schedule of Fees).

3 Fees and Expenses Payable after Revocation of Arbitrator's Appointment or Arbitrator's Replacement

Where an arbitrator's appointment is revoked or where an arbitrator is replaced pursuant to Articles 12 and 13 of the Rules, ACICA may fix an amount of fees or expenses to be paid by the parties for the arbitrator's services, taking into account the circumstances of the case including, but not limited to, the applicable method for determining the arbitrator's fees, work done by the arbitrator in connection with the arbitration, and the circumstances of the revocation of the arbitrator's appointment or the arbitrator's replacement.

4 Cancellation Fees

The Arbitrator's fees may include a charge for time reserved but not used as a result of late postponement or cancellation of hearings, provided that the basis for such charge shall be advised in writing to, and approved by, ACICA and that the parties have been informed in advance.

Chapter 24

Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada (CAM-CCBC)[1] (2016)

About CAM-CCBC

The CAM-CCBC, founded almost 40 years ago in one of the most important business centers in Latin America, the city of São Paulo, is the most traditional arbitration and mediation center in Brazil.

The country flaunts a modern Arbitration Act, published in 1996 and based in the UNCITRAL Model Law, which enabled national arbitration to be in line with international standards. In this sense, the CAM-CCBC is the Brazilian arbitration institution with the largest projection abroad, serving companies from several countries – 14% of our clients and almost 40% of our arbitrators listed are foreign - with the best practices in International Arbitration.

Focused on the administration of complex and large commercial disputes, CAM-CCBC has a highly qualified technical staff that follows the CAM-CCBC Rules and internal proceedings for dispute administration. Because of that, we are certified by ISO 9001 – which guarantees the efficiency, predictability, and consistency expected from a leading arbitral institution.

Since its foundation, the Center has received over 950 arbitral proceedings, with over US$18 billion in dispute.

Parties have submitted to the CAM-CCBC administration disputes regarding construction contracts, corporate law issues – and others – and, in the past 10 years, the Secretariat registered over 30 proceedings involving the Public Sector.

Nowadays, there are over 300 ongoing arbitrations, distributed among eight teams of case managers. The arbitration proceedings administered by the CAM-CCBC have an average duration of 14 months.

Each of the case managers, all certified lawyers with extensive practical and academic experience in arbitration, closely oversee every step in the development of the proceeding. They also assist the arbitral tribunal and serve as a direct channel of communication between parties, counsel, and arbitrators.

Aiming at the continuous improvement of its procedures, the CAM-CCBC is working for the promotion of more transparency to the proceedings. These initiatives have resulted in Administrative Resolutions addressing its practices, such as the exclusively electronic communication before the constitution of the arbitral tribunal, as well as contemporary issues, such as equal opportunities for women in the field of Arbitration.

With its headquarters in São Paulo, the CAM-CCBC provides, with no extra costs to the parties, a complete hearing center with state-of-the-art infrastructure, sound technology and IT, showcasing the best environment for arbitration and mediation hearings and ensuring the appropriate development of the proceedings.

The CAM-CCBC is aware of the importance of its institutional role to promote the development of arbitration; therefore, the CAM-CCBC Rules, in force since 2012, were the official rules applicable to the 2017 Willem C. Vis Moot in Vienna, the most traditional and acclaimed international commercial arbitration competition. This is a direct result of the Center's commitment to the improvement of its Rules and to its institutional role of advertising arbitration in Brazil and abroad.

The Center's model clauses were drafted to encompass the parameters that must be taken into consideration at the time of the writing or reviewing of an arbitration clause. Since the arbitration agreement is the cornerstone of international and domestic arbitration, as it represents the will of the parties and the consensus on the main choices that will guide the arbitration proceeding, we consider that the wording of our model clauses is adequate to fulfill the parties' intentions, preserving their autonomy and will.

[1] *Republished with the kind permission of CAM-CCBC. Copyright 2016. All rights reserved. Arbitration Rules approved by an Extraordinary General Meeting of the Chamber of Commerce Brazil-Canada on 01 September 2011, with amendments from 28 April 2016. Code of Ethics approved in 1998, with amendments approved on 20 January 2016 by the President of the CAM-CCBC, after hearing the Advisory Commitee.*

Thus, the CAM-CCBC is continually challenging itself to raise its standards in case management, providing an increasingly efficient service and promoting arbitration as an efficient dispute resolution mechanism. For instance, the Center's endeavors are: the modernization of the hearing center, the issuance of Administrative Resolutions mentioned before, the ISO 9001:2015 certification, the cooperation agreements, the incitement to academic initiatives, and the use of CAM-CCBC Rules in renowned arbitration competitions.

This solid experience, combined with an arbitration-friendly environment, has helped the Center to become the leading dispute resolution provider in Brazil, accounting for over 50% of the Brazilian market and leadership among the arbitral institutions in Latin America.

MODEL ARBITRATION CLAUSES

I. Standard Arbitration Clause

Any dispute arising out of or in connection with the present contract, including its interpretation or performance, shall be finally settled by arbitration, administered by the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada ("CAM/CCBC") under its Rules and the Arbitral Tribunal shall consist of [one (1)/three (3)] arbitrators appointed in accordance with the said Rules.

II. Detailed Arbitration Clause

1. Any dispute arising out of or in connection with the present contract, including its interpretation or performance, shall be finally settled by arbitration.

1.1 The arbitration shall be administered by the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada ("CAM/CCBC") under its Rules, and the Rules' provisions shall be an integral part of the present contract.

1.2 The Arbitral Tribunal shall consist of [one (1)/three (3)] arbitrators appointed in accordance with the Rules of the CAM/CMBC.

1.3 The seat of arbitration shall be established in [City, State, Country].

1.4 The arbitration proceedings shall be conducted in [language].

1.5 [applicable law]

III. Standard Multi-Tier Mediation-Arbitration Clause

Any dispute arising out of the present contract, including its interpretation or performance, shall be mandatorily submitted to mediation, administered by the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada ("CAM-CCBC"), under the Mediation Guide, and it shall be coordinated by a Mediator from the CAM/CCBC's Mediator List, appointed in accordance with the mentioned Guide.

If the dispute is not settled by the mediation, it shall be finally settled by arbitration, administered by the same CAM/CCBC, under its Rules, and the Arbitral Tribunal shall consist of three (3) arbitrators appointed in accordance with the said Rules.

IV. Detailed Multi-Tier Mediation-Arbitration Clause

1. Any dispute arising out of the present contract, including its interpretation or performance, shall be mandatorily submitted to mediation, administered by the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada ("CAM-CCBC"), under the Mediation Guide, and it shall be coordinated by a Mediator from the CAM/CCBC's Mediator List, appointed in accordance with the mentioned Guide.

1.1 If the conflict is not settled by the mediation, it shall be finally settled by arbitration, administered by the same CAM-CCBC, under its Rules.

2.1 The arbitration shall be administered by the CAM-CCBC under its Rules, and the Rules' provisions shall be an integral part of the present contract.

2.2 The Arbitral Tribunal shall consist of [one(1)/three(3)] arbitrators, appointed in accordance with the Rules of the CAM-CCBC.

2.3 The seat of arbitration shall be [city, state, country].

2.4 The arbitration proceedings shall be conducted in [language].

2.5 [applicable law].

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Explanatory Note

The amendments on the CAM-CCBC's Arbitration Rules, approved by an Extraordinary General Meeting of the Chamber of Commerce Brazil-Canada on 28 April 2016, have a purely administrative nature.

As formally noted in the minutes recorded in the 4th Registry of Legal Entities on 27 May 2016 under No. 651484, "(...) (iii) changes in the Arbitral Rules of CAM-CCBC, changing the acronym CAM/CCBC to CAM-CCBC; the expansion and reappointment of the list of arbitrators, and the removal of Chapter V - Mediation;(...)" were approved without any reservations or restrictions.

The Board of Directors and the Advisory Committee of CAM-CCBC consider that the amendments have no impact on the administration of the arbitration proceedings, consisting solely of relevant revisions to the internal administration of CAM-CCBC.

To better understand the extension of the amendments, below are the changes made:

- Change of acronym from CAM/CCBC to CAM-CCBC
- The following were removed:
  - o the number of arbitrators referred to in Article 3.1
  - o Chapter V of the CAM-CCBC's Arbitration Rules

CAM-CCBC ARBITRATION RULES

(approved by an Extraordinary General Meeting of the Chamber of Commerce Brazil-Canada on 01 September 2011, with amendments from 28 April 2016)

SUMMARY

CHAPTER I – THE CAM-CCBC

ARTICLE 1 - SCOPE OF APPLICATION OF THE RULES

1.1 These Rules are binding on parties who have decided to submit a dispute to the Center for Arbitration and Mediation of the Chamber of Commerce Brazil-Canada, which is abbreviated as CAM-CCBC.

1.2. Any variation to these Rules that may have been agreed to by the parties in their respective proceedings will apply only to the specific case and so long as it does not affect any provision regarding the administrative organization of the CAM-CCBC nor the conduct of its duties.

ARTICLE 2 - NAME, HEAD OFFICE, PURPOSE AND COMPOSITION OF THE CAM-CCBC

2.1. The CAM-CCBC will operate under this name and have its head office in the city of São Paulo, state of São Paulo, without prejudice to the possibility that it administrates proceedings that take place at any other location in Brazil or abroad, as provided in article 9.1 of these Rules.

2.2. By performing the acts and services provided for in these Rules, the CAM-CCBC's purpose is to administer arbitration, mediation and other dispute resolution proceedings that are submitted to it by the interested parties, regardless of whether or not they are members of the Chamber of Commerce Brazil-Canada, hereinafter referred to simply as the Chamber, and regardless of their nationality, domicile or origin.

2.3. The CAM-CCBC can become a member of associations or bodies that represent arbitration or mediation institutions, or associate with other counterpart institutions in Brazil and abroad, and maintain exchange agreements with them.

2.4. The CAM-CCBC governing bodies are:

(a) The Executive Committee, consisting of one (1) President, five (5) Vice Presidents and one (1) General Secretary, who are responsible for its administration, in keeping with the specific duties established in these Rules.
(b) The Advisory Committee, consisting of the former Presidents of the CAM-CCBC, as permanent members, and of at least five (5) representatives of the List of Arbitrators, chosen by the permanent members, with a term in office of two (2) years, with re-election being allowed.

2.5. The President of the CAM-CCBC will be elected by the General Meeting of the Chamber to a term in office of two (2) years, with reelection allowed, and the other members of the Executive Committee will be appointed by the President.

2.6. The duties of the President of the CAM-CCBC are to:

(a) Represent the CAM-CCBC;
(b) Convene and chair the meetings of the Executive Committee and convene the meetings of the Advisory Committee;
(c) Issue Administrative Resolutions;
(d) Approve Rules and norms related to other methods of alternative dispute resolution;
(e) Apply these Rules and have them applied;
(f) Issue complementary rules to resolve doubts and provide guidance for the application of these Rules, including in cases of gaps;
(g) Appoint arbitrators in ad hoc arbitrations, upon request from interested parties;
(h) Appoint arbitrators in the cases provided for in these Rules;
(i) Decide on the extension of time periods that do not fall within the authority of the Arbitral Tribunal, as well as those in reference to the appointment of arbitrators and mediators;
(j) Appoint arbitrators, mediators and specialists to be members of the respective lists of professionals;
(k) Perform other duties provided for in these Rules.

2.7. The President of the CAM-CCBC can, without prejudice to the authority of the Advisory Committee, form Commissions to conduct studies and make specific recommendations for the purpose of developing and improving the CAM-CCBC's activities.

2.8. It falls upon the President of the CAM-CCBC to hear the Advisory Committee in the cases expressly referred to in these Rules. The President can convene the Advisory Committee whenever he or she believes it necessary.

2.8.1. The Advisory Committee can also be convened by two (2) Vice Presidents, jointly, in instances where the Advisory Committee should be heard and has not been regularly convened by the President.

2.9. The Vice Presidents' duties are to:

(a) Substitute for the President of the CAM-CCBC, as designated by the President, when he or she is absent or prevented from performing his or her duties;
(b) Assist the President in the performance of his or her duties;
(c) Convene the meetings of the Advisory Committee, in the situations and manner provided for in article 2.8.1.;
(d) Perform duties assigned to them by the President.

2.10. The General Secretary's duties are to:

(a) Maintain, under his or her responsibility, the CAM-CCBC's records and documents;
(b) Be responsible for the supervision and coordination of the CAM-CCBC's administrative activities;
(c) See to the progress of the proceedings administered by the CAM-CCBC, especially in regard to meeting deadlines, as well as to perform the duties that are given him or her by the President;
(d) Take part, as a subsidiary duty, in the organization of events connected with spreading awareness of arbitration and of the CAM-CCBC's activities, as well as in other administrative tasks, such as the Quality Management System.

2.11. The Advisory Committee shall assist the CAM-CCBC's President in his or her duties, whenever he or she so requests, as well as suggest measures that strengthen the institution's prestige and the good quality of its services.

2.12. The Advisory Committee will meet regularly one (1) time every four months and, extraordinarily, whenever convened by the President or by two (2) Vice Presidents.

ARTICLE 3 - LIST OF ARBITRATORS

3.1. The List of Arbitrators is constituted of professionals domiciled in Brazil or abroad, with flawless reputation and recognized legal expertise, who are appointed by the President of the CAM-CCBC, with the Advisory Committee being heard, for a period of five (5) years, with reappointment allowed.

3.2. The President of the CAM-CCBC, with the Advisory Committee being heard, can replace any member of the List of Arbitrators.

CHAPTER II – THE ARBITRATION PROCEEDINGS

ARTICLE 4 - COMMENCEMENT OF THE ARBITRATION

4.1. The party desiring to commence an arbitration will notify the CAM-CCBC, through its President, in person or by registered mail, providing sufficient copies for all the parties, arbitrators and the Secretariat of the CAM-CCBC to receive a copy, enclosing:

(a) A document that contains the arbitration agreement, providing for choice of the CAM-CCBC to administer the proceedings;
(b) A power of attorney for any lawyers providing for adequate representation;
(c) A summary statement of the matter that will be the subject of the arbitration;
(d) The estimated amount in dispute;
(e) The full name and details of the parties involved in the arbitration; and
(f) A statement of the seat, language, law or rules of law applicable to the arbitration under the contract.

4.2. The party will attach proof of payment of the Registration Fee together with the notice, in accordance with article 12.5 of the Rules.

4.3. The Secretariat of the CAM-CCBC will send a copy of the notice and respective documents that support it to the other party, requesting that, within fifteen (15) days, it describes in brief any matter that may be the subject of its claim and the respective amount, as well as comments regarding the seat of arbitration, language, law or rules of law applicable to the arbitration under the contract.

4.4. The Secretariat of the CAM-CCBC will send both parties a copy of these Rules and the list of the names of the members of the List of Arbitrators, inviting them to, within fifteen (15) days, each appoint one (1) arbitrator and, optionally, one (1) alternate to constitute the Arbitral Tribunal.

4.4.1. The parties can freely appoint the arbitrators who will constitute the Arbitral Tribunal. However, if a professional who is not a member of the List of Arbitrators is appointed, the appointment must be accompanied by that person's résumé, which will be submitted for the approval of the President of the CAM-CCBC.

4.5. Before the Arbitral Tribunal is constituted, the President of the CAM-CCBC will examine objections regarding the existence, validity or effectiveness of the arbitration agreement that can be immediately resolved, without the production of evidence, and will examine requests regarding joinder of claims, under article 4.20. In both cases, the Arbitral Tribunal, once it is constituted, will decide on its jurisdiction, confirming or modifying the decision previously made.

4.6. The Secretariat of the CAM-CCBC will inform the Parties and the arbitrators of the appointments made. At the same time, the arbitrators who are appointed will be asked to fill out CAM-CCBC's Conflict of Interest and Availability Questionnaire, referred to simply as the Questionnaire, within ten (10) days.

4.6.1. The Questionnaire will be prepared by the CAM-CCBC's Executive Committee, together with the Advisory Committee. Its purpose will be to gather information about the arbitrators' impartiality and independence, as well as time availability and other information related to their duty of disclosure.

4.7. The answers to the Questionnaires and any material facts will be sent to the Parties, after which they will have ten (10) days to submit comments.

4.8. If the parties raise an objection related to the independence, impartiality or any material issue in regard to an arbitrator, the arbitrator involved will have ten (10) days to submit comments, after which the parties will have ten (10) days to present any challenge, which will be processed under article 5.4.

4.9. Upon expiration of the time periods in articles 4.7 and 4.8, the Secretariat of the CAM-CCBC will notify the arbitrators appointed by the parties, who must, within fifteen (15) days, choose the third arbitrator from among the members of the List of Arbitrators, to act as President of the Arbitral Tribunal.

4.9.1. The expression "Arbitral Tribunal" applies without distinction to a Sole Arbitrator and an Arbitral Tribunal.

4.9.2. On an exceptional basis and based on a reasoned justification and approval of the President of the CAM-CCBC, the arbitrators chosen by the parties can appoint a person who is not a member of the List of Arbitrators as President of the Arbitral Tribunal.

4.10. In the event of a successful challenge to or the resignation of an appointed arbitrator, the Secretariat of the CAM-CCBC will notify the party to make a new appointment within ten (10) days.

4.11. The Secretariat of the CAM-CCBC will inform the Parties and the arbitrators regarding the appointment of the arbitrator who will act as President of the Arbitral Tribunal, requesting that the appointed arbitrator state his or her acceptance in the manner and by the time provided for in article 4.6.

4.12. If either of the parties fails to appoint an arbitrator or the arbitrators appointed by the party fail to appoint the third arbitrator, the President of the CAM-CCBC will make this appointment from among the members of the List of Arbitrators.

4.13. If the arbitration agreement states that the arbitration proceedings will be conducted by a sole arbitrator, the sole arbitrator must be appointed by agreement between the parties, within fifteen (15) days from notification by the Secretariat. Upon expiration of this time period, if the parties fail to appoint the sole arbitrator or to agree on his or her appointment, the President of the CAM-CCBC will appoint the sole arbitrator, with observance of article 4.12.

4.13.1. The parties can freely appoint the sole arbitrator. However, if a person who is not a member of the List of Arbitrators is appointed, the appointment must be accompanied by the person's résumé, which will be submitted for the approval of the President of the CAM-CCBC.

4.13.2. The commencement and conduct of an arbitration with a sole arbitrator will follow the same procedures under these Rules as for an arbitration conducted by an Arbitral Tribunal.

4.14. The Secretariat will notify the arbitrators to sign the Statement of Independence within ten (10) days, which will demonstrate formal acceptance of the arbitrators' duties, for all purposes, and the parties will be notified for the preparation of the Terms of Reference.

4.15. In proceedings in which one of the parties has its head office or domicile abroad, either of them can request that the third arbitrator be of a nationality different from those of the parties involved. The President of the CAM-CCBC, with the Advisory Committee being heard, will evaluate the necessity or convenience of granting the request in each particular case.

4.16. In arbitration cases with multiple parties as claimants and/or respondents, if there is no consensus regarding the appointment of an arbitrator by the parties, the President of the CAM-CCBC shall appoint all the members of the Arbitral Tribunal, designating one of them to act as President, with observance of the requirements of article 4.12 of these Rules.

4.17. The parties will sign the Terms of Reference together with the arbitrators, a representative of the CAM-CCBC and two witnesses.

4.18. The Terms of Reference will contain:

(a) Name and details of the parties and arbitrators;
(b) Seat of arbitration;
(c) The transcription of the arbitration agreement;
(d) If applicable, authorization for the arbitrators to decide ex aequo et bono;
(e) The language in which the arbitration will be conducted;
(f) Subject matter of the dispute;
(g) Applicable law;
(h) The claims of each of the parties;
(i) Amount in dispute;
(j) Express acceptance of liability for the payment of the administrative costs for the proceedings, expenses, experts' fees and arbitrators' fees upon request of the CAM-CCBC.

4.19. The absence of any of the parties regularly convened to appear at the initial meeting or its refusal to sign the Terms of Reference will not prevent the normal course of the arbitration.

4.20. If a request for the commencement of an Arbitration is submitted and has the same purpose or same cause of action as an arbitration currently proceeding at the CAM-CCBC or if the same parties and causes of action are present in two arbitrations, but the subject matter of one, because it is broader, includes that of the others, the President of the CAM-CCBC can, upon request of the parties, up to the time the Terms of Reference are signed, order joinder of the proceedings.

4.21. The Parties can change, modify or amend the claims and causes of action until the date the Terms of Reference are signed.

ARTICLE 5 - ARBITRAL TRIBUNAL

5.1. Members of the List of Arbitrators and/or others designated by the parties can be appointed as arbitrators, with the provisions of article 4.4.1 of these Rules, the CAM-CCBC Code of Ethics and the requirements of independence, impartiality and availability always being observed.

5.2. A person cannot be appointed as an arbitrator if he or she:

(a) Is a party to the dispute;
(b) Has participated in the resolution of the dispute as legal representative for one of the parties before a judicial authority, testified as a witness, served as an expert or presented an opinion;
(c) Is a spouse or relative, whether by blood or marriage, as an ancestor, descendent or collaterally, to the third degree, of one of the parties;
(d) Is a spouse or relative, whether by blood or marriage, as an ancestor, descendent or collaterally, to the second-degree, of the attorney or representative of one of the parties;
(e) Participates in a management or administrative body of a corporate entity that is a party to the litigation or is a shareholder or partner;
(f) Is a personal friend or enemy of one of the parties;
(g) Is a creditor or debtor of one of the parties or of his or her spouse or of relatives, whether ancestors, descendents or collaterally, to the third degree;
(h) Is a presumptive heir, legatee, employer or employee of one of the parties;
(i) Receives gifts before or after the dispute begins, advises one of the parties regarding the subject matter of the case or provides funds to cover the expenses of the proceedings;
(j) Has a direct or indirect interest in the decision of the dispute in favor of one of the parties;
(k) Has served as a mediator or conciliator in the dispute before the commencement of arbitration, unless expressly agreed to by the parties;
(l) Has an economic interest related to any of the parties or their lawyers, unless there is express agreement of all parties.

5.3. It falls upon the Arbitrator to disclose, at any time, if he or she is prevented from acting and to refuse the appointment or tender a resignation.

5.4. The parties can challenge the arbitrators for lack of independence or impartiality or for other justified reason within fifteen (15) days from awareness of the fact. The challenge will be decided by a Special Committee composed of three (3) members of the List of Arbitrators appointed by the President of the CAM-CCBC.

5.5. If in the course of the proceedings there should arise any cause that prevents an arbitrator from acting or if an arbitrator should die or become incapacitated, that arbitrator will be replaced by another arbitrator appointed by the same party. If the President of the Arbitral Tribunal should become prevented from acting, he or she will be replaced by another President appointed by the other arbitrators. In either case, if an appointment fails to be made, the President of the CAM-CCBC will make the appointment.

ARTICLE 6 - NOTICES AND TIME PERIODS

6.1. Unless expressly provided otherwise, all communications, notices or the like will be made to the representatives appointed by the party, at the addresses informed by the representatives.

6.2. For all purposes of these Rules, the communications, notices or the like will be made by letter, fax, e-mail or equivalent means, with confirmation of receipt.

6.3. Any and all documents addressed to the Arbitral Tribunal will be sent to the Secretariat of the CAM-CCBC, with sufficient copies for each arbitrator and representative of the parties, as well as an additional copy for the CAM-CCBC case file, unless otherwise agreed by the parties.

6.4. The time periods provided in these Rules can be extended, at the discretion of the Arbitral Tribunal.

6.5. If no time period is stated in these Rules or established by the Arbitral Tribunal, the time period will be ten (10) days.

6.6. A time period is counted in calendar days and will be counted so as to exclude the day of receipt of the notice and include the day on which the deadline expires.

6.6.1. A time period only begins to run on the first business day after notice.

6.6.2. A time period will be considered to extend to the next business day if it expires on a day during which the CAM-CCBC is not open for business.

ARTICLE 7 – PROCEDURE

7.1 Upon commencement of the arbitration, as provided in article 4.14, the Secretariat of the CAM-CCBC will notify the parties and the arbitrators for the signing of the Terms of Reference, which must take place within thirty (30) days.

7.1.1. The Terms of Reference can establish the initial timetable for the proceedings, established by agreement among the parties and the Arbitral Tribunal.

7.2. The arbitration briefs will be presented by the time agreed to by the parties or, if none is agreed to, that established by the Arbitral Tribunal. If none is established, they must be presented concurrently within at most thirty (30) days from the date the meeting to sign the Terms of Reference is held.

7.3. During the five (5) days after receiving the parties' arbitration briefs, the Secretariat of the CAM-CCBC will send the respective copies to the arbitrators and to the parties, the latter of which will present their respective answers within twenty (20) days, unless another time period is established in the Terms of Reference.

7.3.1. Rebuttals and Surrebuttals can be presented, at the discretion of the parties and of the Arbitral Tribunal, in the manner and by the times established in article 7.3.

7.4. Within ten (10) days from receipt of the documents mentioned above, the Arbitral Tribunal will evaluate the status of the proceedings and order, if judged necessary, the production of evidence.

7.4.1. It will be the responsibility of the Arbitral Tribunal to grant and establish the burden of evidence it considers useful, necessary and appropriate in the manner and order held to be convenient under the circumstances.

7.5. The proceedings will continue in the absence of any of the parties provided that, having been properly notified, that party does not appear.

7.5.1. The arbitration award cannot be based on the default of a party.

7.6. Aspects of a technical nature involved in the arbitration proceedings can be the subject of expert examination or clarifications presented by specialists appointed by the parties, who can be convened to testify at a hearing, as decided by the Arbitral Tribunal.

7.7. When the evidentiary phase is concluded, the Arbitral Tribunal will establish a time of up to thirty (30) days for the parties to present their closing arguments.

7.8. The Arbitral Tribunal will adopt the necessary and convenient measures for the appropriate conduct of the proceedings, observing the right to fully defend oneself and the right to dispute the allegations of the other party, as well as the equal treatment of the parties.

ARTICLE 8 - PROVISIONAL MEASURES

8.1. Unless the parties have otherwise agreed, the Arbitral Tribunal can grant provisional measures, both injunctive and anticipatory, that can, at the discretion of the Arbitral Tribunal, be subject to the provision of guarantees by the requesting party.

8.2. If there is an urgent matter and the Arbitral Tribunal has not yet been constituted, the parties can seek provisional or injunctive measures from the competent judicial authority, if another manner has not been expressly agreed by them. In this case, the parties must inform the CAM-CCBC of the decisions.

8.2.1. As soon as the Arbitral Tribunal is constituted, it will have the authority to uphold, amend or revoke the previously granted measures.

8.2.2. A request made by one of the parties to a judicial authority to obtain these measures, or the enforcement of similar measures granted by an Arbitral Tribunal, will not be considered a violation of, or waiver to, the arbitration agreement and will not interfere with the jurisdiction of the Arbitral Tribunal.

ARTICLE 9 - SEAT OF ARBITRATION, APPLICABLE LAW AND LANGUAGE

9.1. The arbitration can be seated at any place in Brazil or abroad.

9.2. If the parties have not indicated the seat of the arbitration, if there is not agreement regarding the seat or if the designation is incomplete or obscure, the President of the CAM-CCBC can, if necessary, determine the seat on a

provisional basis, falling upon the Arbitral Tribunal, once it is constituted, to definitively decide regarding the seat of the arbitration, after the parties have been heard.

9.3. The acts of the arbitration proceedings can occur at a place different from the seat of the arbitration, at the discretion of the Arbitral Tribunal.

9.4.The parties will be able to choose the rules of law to be applied by the Arbitral Tribunal to the merits of the dispute. In case of omission or divergence, it falls upon the Arbitral Tribunal to decide in this regard.

9.4.1. Permission for the Arbitral Tribunal to decide ex aequo et bono must be expressed either in the arbitration agreement or in the Terms of Reference.

9.5. The arbitration will be conducted in the language agreed by the Parties.

9.5.1. If there is no agreement, the Arbitral Tribunal will choose the language, taking into consideration all relevant circumstances, including the contract.

ARTICLE 10 - ARBITRAL AWARD

10.1. The Arbitral Tribunal will issue the arbitral award within sixty (60) days from receipt by the arbitrators of the final arguments presented by the parties (or of their notification that the referred time period has expired), unless another time period is established in the Terms of Reference or agreed to with the parties.

10.1.1. The time period in the article above can be extended by up to thirty (30) days, at the discretion of the President of the Arbitral Tribunal.

10.2. The arbitral award can be partial or final.

10.2.1. In the event of a partial award, the Arbitral Tribunal will indicate the later procedural steps necessary for the preparation of the final award.

10.3. The arbitral award will be expressed in a written document.

10.3.1. Where there is an Arbitral Tribunal, the arbitral award shall be issued by consensus whenever possible and, if this is not viable, by a majority vote, with each arbitrator, including the President of the Arbitral Tribunal, having one vote. Failing a majority opinion, the vote of the President of the Arbitral Tribunal will prevail.

10.3.2. The arbitration award will be reduced to writing by the President of the Arbitral Tribunal and signed by all the arbitrators. If one or more of the arbitrators do not sign the award, it will fall upon the President of the Arbitral Tribunal to state that fact.

10.3.3. An arbitrator who dissents from the majority can explain his or her dissenting vote, which will be included in the arbitration award.

10.4. The arbitration award must contain:

(a) The facts, with the parties' names and a summary of the dispute;
(b) The reasons for the decision, which will address both questions of fact and of law, with an express statement that it was issued ex aequo et bono, when that is the case;
(c) The order, with all the specifications and time assigned for performance, when appropriate;
(d) The day, month and year on which it was issued and the seat of the arbitration.

10.4.1. The award will also contain, where appropriate, the parties' liability for the administrative costs, arbitrators' fees, expenses, and attorneys' fees, as well as the respective apportionment, also observing that which was agreed by the parties in the Terms of Reference.

10.5. Once the final arbitral award is issued and the parties notified, the arbitration will be considered closed, unless there is a request for clarification as provided in the following article, in which case jurisdiction will be extended until the respective decision.

10.5.1. The President of the Arbitral Tribunal will send the original copies of the decision to the Secretariat of the CAM-CCBC, who will send them to the parties.

10.6. The parties can, within fifteen (15) days from the date they receive the arbitral award, request clarifications regarding any contradiction, omission or obscurity by request directed to the Arbitral Tribunal.

10.6.1. The Arbitral Tribunal will decide during the following ten (10) days, counted from their notification regarding the request for clarification.

10.7. None of the arbitrators, or the CAM-CCBC or the people connected to the Chamber, are liable to any persons for any acts, facts or omissions related to the arbitration.

10.8. If the parties reach a settlement during the arbitration proceedings, putting an end to the dispute, the Arbitral Tribunal, upon request of the parties, will record that agreement in an arbitral award.

ARTICLE 11 - COMPLIANCE WITH THE ARBITRAL AWARD

11.1. The parties are obliged to comply with the arbitral award as issued, in the manner and by the time provided for in it, and if they do not do so the losing party will be liable for the harm caused to the prevailing party.

11.2. If the arbitral award is not complied with, the injured party can communicate this fact to the CAM-CCBC so that it can disclose this fact to other arbitration institutions and chambers of commerce or analogous entities in Brazil or abroad.

11.3. Upon written request from any of the parties or of the arbitrators, the CAM-CCBC can provide copies of documents regarding the arbitration proceedings that are necessary to start court proceedings directly related to the arbitration.

11.4. The case file of the arbitration proceedings will remain in the CAM-CCBC's archives for five (5) years from the closing of the arbitration. Within this period, an interested Party can request, at its expense, a copy of the arguments and documents it wishes.

CHAPTER III – COSTS AND EXPENSES

ARTICLE 12 - ARBITRATION EXPENSES

12.1. The CAM-CCBC will maintain a table of administrative fees and arbitrators' fees, referred to simply as the Table of Expenses.1 The manner the Table of Expenses is applied and its content can be periodically revised by an act of the President of the CAM-CCBC.

12.2. The Administrative Fee owed to the CAM-CCBC will be required from the claimant from the date the notice to the President is filed requesting commencement of arbitration, and from the respondent from the date it is notified.

12.3. In an arbitration in which there are multiple parties, as claimants or as respondents, each of them, separately, must pay in full the Administrative Fee owed as a result of the services performed by the CAM-CCBC.

12.3.1. If more than one party on the same side is represented by the same lawyers, each one of them will have a fifty percent (50%) discount on the amount for the Administrative Fee owed to the CAM-CCBC.

12.4. Fulfillment of the provisions contained in the Table of Expenses will be mandatory for the parties and for the arbitrators.

12.5. At the time of presentation of the notice for commencement of arbitration, the claimant must pay to the CAM-CCBC the Registration Fee, in the amount stated in the Table of Expenses, which cannot be set off or reimbursed.

12.6. After receipt of the notice for commencement of arbitration, the parties will be notified to pay the Administrative Fees in advance for the first ten (10) months of the proceedings.

12.6.1. At the same time, the Secretariat of the CAM-CCBC can request that the claimant pay the estimated expenses in advance when the Terms of Reference are signed. This payment can be set off when the expense fund is established under article 12.8 of these Rules.

12.7. Each party will deposit with the CAM-CCBC its portion of the amount of the arbitrators' fees, corresponding to a minimum number of hours established in the Table of Expenses or a percentage of the amount in dispute. This deposit must be made by the time established in the Table of Expenses.

12.8. After the Terms of Reference are signed, the Secretariat of the CAM-CCBC will be able to request that the parties make advance payment of the estimated expenses for the proceedings to establish an expense fund, with the amount paid by the claimant being set off under article 12.6.1 of these Rules.

12.9. All the expenses that are incidental to, or incurred during, the arbitration will be paid in advance by the party who requested the act, or by the parties, equally, if resulting from acts requested by the Arbitral Tribunal.

12.10. In the event that the Administrative Fees, arbitrators' fees and experts' fees or any arbitration expenses are not paid, one of the parties will have the option of making the payment for the other's account, by a time to be established by the Secretariat of the CAM-CCBC.

12.10.1. If the payment is made by the other party, the Secretariat of the CAM-CCBC will give notice to the parties and to the Arbitral Tribunal, in which case the latter will consider the claims, made by the party which failed to pay, withdrawn, if any.

1 Editor's Note: For information on the Table of Expenses, please go to CAM_CCBC's Table of Expenses - Centro de Arbitragem e Mediação Brasil-Canada.

12.10.2. If neither of the parties is willing to make payment, the proceedings will be stayed.

12.11. Once the proceedings have been stayed for thirty (30) days for lack of payment, without either of the parties effectuating the provision of funds, the proceedings can be terminated, without prejudice to the right of the parties to present a request for the commencement of new arbitration proceedings seeking resolution of the dispute, so long as the amounts in arrears are paid.

12.12. Independently of the provisions in articles 12.10 and 12.11 of these Rules, the CAM-CCBC can demand payment, in court or out of it, of the Administrative Fees, arbitrators' fees or expenses, which will be considered liquidated debts, and can collect them through judicial execution, together with interest and inflation adjustment, as provided in the Table of Expenses.

12.12.1. The experts' work will not begin before the full amount of their fees is deposited, even if payment to the experts is effectuated in a different manner.

12.13. The Special Committee provided for in article 5.4 of these Rules can only be established on payment of the amounts stated in the Table of Expenses. Unless otherwise expressly and specifically provided, the fees must be paid by the party who brought the challenge.

12.14. The president of the CAM-CCBC can order reimbursement of amounts that the institution has advanced or of expenses it has endured, as well as the payment of all fees or charges owed and not paid by any of the parties.

CHAPTER IV – GENERAL PROVISIONS

ARTICLE 13 – INTERPRETATION

13.1. The arbitrators will interpret and apply these Rules in all matters concerning their authority and duties.

13.2. Majority rule will also be followed for interim decisions that fall upon the Arbitral Tribunal, including regarding the interpretation and application of these Rules.

13.3. The arbitrators can submit a question regarding the interpretation of the provisions of these Rules to the President of the CAM-CCBC, without prejudice to the provisions in article 2.6.(f).

13.4. The CAM-CCBC Code of Ethics is an integral part of these Rules for all purposes of law and should be used, as a secondary source, for the interpretation of the provisions of these Rules.

ARTICLE 14 – CONFIDENTIALITY

14.1. The arbitration proceedings are confidential, except for the situations provided for in statute or by express agreement of the parties or in light of the need to protect the right of a party involved in the arbitration.

14.1.1. For the purposes of research and statistical surveys, the CAM-CCBC reserves the right to publish excerpts from the award, without mentioning the parties or allowing their identification.

14.2. Members of the CAM-CCBC, the arbitrators, the experts, the parties and others who participate are prohibited from disclosing any information to which they have had access as a result of their role or participation in the arbitration proceedings.

ARTICLE 15 - ENTER INTO FORCE

15.1. These Rules, approved by an Extraordinary General Meeting of the Chamber of Commerce Brazil-Canada held on September 1, 2011, will enter into force on January 1, 2012, except for articles 2 and 3 of these Rules, which will enter into force from September 1, 2011.

15.2. These Rules revoke the former ones, which were approved on July 15, 1998.

15.3. Unless otherwise agreed by the parties, the CAM-CCBC Rules in force on the date the notification described in article 4.1 is filed will apply.

15.4. At the parties' option, any arbitration filed before January 1, 2012, but whose Terms of Reference are signed after the beginning of the enter into force of these Rules, can also be governed by them.

CAM-CCBC's CODE OF ETHICS

INTRODUCTION

The objective of this Code is to guide the conduct of the arbitrators acting in the Center for Arbitration and Mediation of the Chamber of Commerce Brazil – Canada ("CAM-CCBC"), from the prior phase of indication, during the arbitration and after the award is made.

The guidelines provided in this Code of Ethics, when appropriate, apply to all participants of the arbitration proceedings.

It also aims at serving as a guide to the Parties and attorneys in dealing with the arbitrator or arbitrators within each arbitration panel.

The attorneys of the Party must base his operations in the procedure on ethical principles and honest behavior in relation to arbitrators and counterpart, collaborating to enable them (arbitrators) to do their work properly.

As a code of conduct, the following statements are recommended standards of guidance to be observed by the arbitrators. They are not legal rules, but rules of conduct to be adopted by the arbitrators to provide guidance for CAM-CCBC and its users.

Such standards should not be regarded as complete or exhaustive, and they do not exclude other positions that common sense and ethics indicate.

The statements reproduced below observe the provisions of Article 13, § 6 of Law No. 9.307/96: "In the performance of his duty, the arbitrator shall proceed with impartiality, independence, competence, diligence and discretion."

Every arbitrator to integrate the Group of Referees, as well as those who may work in arbitrations administered by CAM-CCBC, will receive a copy of this Code.

Statement 1 – INDEPENDENCE AND IMPARTIALITY

The first duty of the arbitrator is to be and remain independent and impartial before and during arbitration.

Independence is a prerequisite for impartiality.

Be and remain impartial, without favoring one party over another or show predisposition to certain aspects related to the subject matter of the dispute.

Adopt the conduct and decide according to your free rational and reasoned conviction. Act justly.

Always act independently and transparently, without any connection or even approach with the parties to the dispute.

Reveal all the facts and circumstances which may give rise to doubts as to your impartiality or independence, not only as to your opinion, but also under the eyes of the parties, i.e., you must put yourself in the place of the parties and ask yourself the question that if you were a party, you would like to know a certain fact or not.

Preferably you should not maintain direct contact with the parties and their lawyers until the permanent end of the procedure. If you need to contact them, do not talk to them individually, but together with the other members of the Arbitration Panel.

Statement 2 – DILIGENCE, COMPETENCE AND AVAILABILITY

Be diligent, ensuring regularity and quality of the procedure, sparing no effort to act in the best possible way in the investigation of the facts related to the dispute.

Conduct the procedure smoothly and diligently, with great rectitude in all your actions and attitudes, which should be conducted with caution.

Act competently and efficiently, being guided by the parameters dictated by the parties in the Arbitration Term for the preparation of your decision.

Ensure that the costs do not rise out of proportion, resulting in an overly costly arbitration.

Only accept the task if you have the qualifications necessary to resolve the contentious issues and the proper knowledge of the language corresponding to the arbitration.

Only accept the task if you can devote to the arbitration the time and attention necessary to meet the reasonable expectations of the parties, including the time for the study on the topic and the latest contributions brought to it by the doctrine and jurisprudence.

Be prepared for the hearings, having previously and adequately studied the case.

Avoid not only improper or questionable conduct, but also the appearance of improper or questionable conduct.

Keep honest and urban behavior towards the parties, lawyers, witnesses and also the other arbitrators and the members of the administrative body of CAM-CCBC, whether in relation to the procedure or out of it.

Behave with dedication and commitment so that the parties feel supported and have the expectation of a regular development of the arbitration proceedings.

Retain documents you receive and ensure that this duty is well performed by CAM-CCBC. Cooperate for the good quality of the services provided by CAM-CCBC.

Statement 3 – DUTY OF CONFIDENTIALITY

Before, during and even after the arbitration, maintain the confidentiality of the procedure, the discussions, the deliberations of the Arbitration Panel and the content of the award, unless the parties exclusively allow you to disclose the award.

Refrain from using information obtained during the arbitration proceedings for personal or third-party advantages, or that may affect any third-party interests.

Avoid using elements collected in arbitrations in which you are participating or have participated for the publication of news or technical-legal articles that may provide the identification of the parties and/or the "sub judice" issue by the target audience of such matters.

Deliver to CAM-CCBC any and all documents or work papers in your possession or, at the discretion of the parties, destroy them without keeping copies or virtual records.

Statement 4 – DUTY OF REVELATION

The arbitrator shall disclose to the Parties, upon his appointment, any interest or business and professional relationship that he has or had with any of them and that can somehow affect his impartiality or independence.

Disclose any interest or relationship that could potentially affect the independence or that might create the appearance of partiality or bias.

The Parties, after acknowledging the arbitrator's appointment, must report any fact that is of their knowledge or that they should know and which may link them to the arbitrator, so that he can perform the checks and relevant disclosures.

Upon hearing the revelation made by the arbitrator, the Party should report the facts about which it wants clarification and that in its opinion could compromise the impartiality and independence of the arbitrator.

Partiality or bias should be understood as the personal situation of the arbitrator in relation to the parties and their lawyers, or to the subject matter of the dispute, which may affect the exemption of his judgment in the case.

The duty of revelation is continuous during the arbitration proceedings and any occurrences or events that may arise or be discovered in that period should be disclosed.

Statement 5 – ACCEPTANCE OF ENDOWMENT

Once the appointment is accepted, the arbitrator shall be bound in relation to the parties and shall comply with the terms agreed on the occasion of his investiture.

The arbitrator is part of the arbitration panel and, if a sole arbitrator, the arbitration panel has no attachment or commitment to the party that nominated him.

The arbitrator, during the arbitration proceedings, should not make contact with the party who appointed him or his attorney, to make any comment on the arbitration proceedings in progress.

The arbitrator should not resign, unless exceptionally, for a serious reason that prevents him from exercising his function.

It is considered serious or relevant reason, among others, serious illness of the arbitrator himself or of relatives or closely-connected people that prevents him or substantially hinders him from performing his duties; the appearance of deep disagreement with one of the other arbitrators or with both, or with the parties and their lawyers, which prevents the proper and free development of the procedure; the need for urgent extended trip, incompatible with the functions to be exercised in the Arbitration Panel or that may harm it substantially; and the occurrence of any event or situation that may characterize hindrance situation.

Be respectful in acts and words.

Refrain from making derogatory references, or that may cause any kind of embarrassment to the arbitrations which are or have been under the supervision of another arbitrator.

GENERAL PROVISIONS

The members of CAM-CCBC managing board are allowed to exercise the duty of arbitrator or attorney of a party in arbitrations administered by CAM-CCBC. However, they shall refrain from participating in administrative decisions related to the respective arbitration proceedings.

On the duty of confidentiality and loyalty, as well as to avoid embarrassing situations for arbitrators in social gatherings and academic events, the attorneys of the parties shall refrain from making comments or hold conversations with the arbitrators on arbitration proceedings in progress.

Chapter 25

British Virgin Islands International Arbitration Centre (2021)[1]

About BVI IAC

The BVI International Arbitration Centre (BVI IAC), an independent not-for-profit institution, was established to meet the demands of the international business community for a neutral, impartial, efficient and reliable dispute resolution institution in the Caribbean, the Americas and beyond.

The Arbitration Act, through which the BVI largely adopted the UNCITRAL Model Law, and the BVI's accession to the New York Convention on 25 May 2014, were crucial steps, which made possible the establishment of a viable and internationally respected arbitration centre in the BVI.

Lord Goldsmith singled out the BVI International Arbitration Centre as having the potential to become the "best thought out and thus most popular" centre in the region.

A well run and well equipped 'state of the art' centre, together with the acknowledged quality of the BVI legal framework and the stable political environment offered by a British Overseas Territory, should enable the BVI to rapidly become a leading arbitration hub in the Americas.

WORD BY JOHN BEECHEY CBE, Chairman

The BVI IAC has over 200 of the world's leading arbitration practitioners on its panel of arbitrators, and as such the Centre can claim to have a culturally, linguistically and gender diverse list to match that of any leading arbitral institution anywhere in the world. New Rules, which draw on the respected 2010 UNCITRAL Arbitration Rules, have been adopted, and an experienced Secretariat dedicated to facilitate a proactive, efficient and impartial administration of arbitration proceedings will grow with the caseload and state of the art premises, built to world-class standards, are ready to open for business.

The establishment of the BVI IAC, the independent standing of which is formally recognised by Government, is a further demonstration of the Government of the BVI's significant commitment to international arbitration as a means of resolving disputes. The BVI is the world leader for the establishment of businesses, which reflect interests around the world. That global reach is reflected in the constitution of a panel of arbitrators, which includes practitioners from Argentina, Brazil, Chile, Mexico and Panama, from China and Russia, from all of the leading European civil law jurisdictions, from the USA and the UK as well as from the BVI itself and its Caribbean neighbours.

Government has taken a series of steps over the past few years to enable the BVI to hold itself out as a centre of choice for international arbitration. The BVI has acceded to the New York Convention, it has a modern Arbitration Act, based on the UNCITRAL Model Law, its respected Commercial Court is an arbitration-friendly court of supervisory jurisdiction, supported by the Eastern Caribbean Court of Appeal with an ultimate appeal to the Privy Council in London. The opening of the BVI IAC to business from all over the world is the latest indication of the BVI's intent to be a major player in international arbitration both in, and beyond, the Caribbean and the Americas. In addition to the steps that the BVI Government has already taken to ease immigration formalities for parties and their representatives, who travel to the BVI the Government is committed to an airport expansion plan, which will make access to the BVI easier and more efficient..

All this bodes well for the BVI IAC, the aim of which is to offer its users a service of the highest quality in conformity with international best practice. It deserves to succeed!

WORD BY FRANCOIS LASSALLE, CEO

Since its inception, the BVI International Arbitration Centre (BVI IAC) has made good progress and achieved a lot. Although operations were slightly disrupted by hurricanes Irma and Maria, as well as the Covid19 pandemic, the BVI IAC's development remains aligned to its original five years' plan. The Centre got a first administered case in its first year of operations, and since then, the caseload of administered arbitration, appointing authority and fund holding cases has been growing steadily.

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Every two years, the BVI IAC hosts the BVI International Arbitration Conference. The last one was in November 2019 and the team is working on a virtual conference for late 2021.

The Centre signed two collaboration agreements with two major international arbitration institutions, namely, the International Centre for Settlement of Investment Disputes (ICSID) based in Washington, D.C., and the Permanent Court of Arbitration (PCA) in The Hague. The IAC is already working on further collaboration agreements with other international institutions.

In 2021, the BVI IAC started a webinar interview series called Arbitration Life by Janette & Hana, where the Centre Manager (Janette Brin) and the Registrar (Hana Doumal) interview a wide range of practitioners involved in the field of arbitration. The series is increasingly growing its audience and is designed to discuss the life, career and practices of arbitration practitioners.

FORWARD by John Beechey CBE

Five years on from the publication of the 2016 Rules, what better way for the BVI IAC to emerge from the turbulence created first by Hurricane Irma and then the COVID-19 pandemic with a statement of intent for the future in the form of these revised Rules?

The 2021 BVI IAC Arbitration Rules are the result of a comprehensive and critical review undertaken by the members of the Centre's Rules Amendment Committee, Christine Artero, Chiann Bao, Victor Bonnin Reynes, Thomas Granier and Sherlin Tung. The Centre is indebted to all of them for the care, commitment and energy with which they have carried out this review. Their experience of arbitral practice, of arbitral institutions and of international best practice has been applied to great effect to ensure that this latest iteration of the BVI IAC Rules is up to date and responsive to the needs of the Centre's users and tribunals. The 2021 Rules include new provisions for emergency arbitrator proceedings, expedited procedures, tribunal secretaries, joinder and consolidation. The 2021 Rules reflect the Centre's commitment to encourage the adoption of environment-friendly measures in arbitration, including provision for the use of remote hearing platforms and electronic filing of submissions.

It will be the task of the Centre's newly formed Arbitration Committee to oversee the consistent application of the Rules and to monitor their use in practice. In accordance with the Centre's commitment to transparency in its governance, the terms of reference and the composition of the Arbitration Committee are set out in Annex D to the Rules.

With these new Rules, its growing and diverse roster of arbitrators drawn from over 40 countries and its world-class facilities, the Centre is proud to be able to offer its users a level of service which is second to none. My colleagues and I on the Board, CEO, François Lassalle and our Registrar, Hana Doumal, look forward to welcoming you to the BVI IAC.

Road Town, Tortola, BVI
November 2021

John Beechey CBE

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Annex D

The Arbitration Committee

BVI IAC Arbitration Rules

In force as from 16 November 20216

Preamble

The BVI International Arbitration Centre Board (the "Board") is the governing body of the BVI International Arbitration Centre (the "BVI IAC"). The BVI IAC is composed of a Secretariat (the "Secretariat") headed by the Chief Executive Officer (the "CEO"), who performs such functions as are delegated to him or her by the Arbitration Act 2013 (the "Act") and these Arbitration Rules, including its Appendices and Annexes (the "Rules"). The Rules take effect on 16 November 2021.The Board makes the Rules in accordance with the powers conferred by section 107 of the Act.

The Rules are based on the 2016 BVI IAC Arbitration Rules (the "2016 BVI IAC Rules") and international best practices, and:

(i) describe the additional services offered by the BVI IAC and the roles of the CEO and the Secretariat;

(ii) describe the function and responsibilities of the Arbitration Committee of the BVI IAC (the "Arbitration Committee") (as defined in Annex D to the Rules);

(iii) provide that an agreement to arbitrate under the Rules constitutes a waiver of any immunity from jurisdiction;

(iv) provide that the arbitration proceedings are deemed to commence on the date on which the Notice of Arbitration is received by the Secretariat;

(v) make clear that prospective arbitrators are required to provide a statement of impartiality, independence and availability;

(vi) clarify that, unless otherwise agreed by the parties, not only the award but also all other matters relating to the arbitration proceedings, including its existence, shall at all times be treated as confidential;

(vii) emphasise flexibility and party autonomy; and

(viii) provide that the responsibility for fixing fees and expenses of the arbitral tribunal, the costs of expert advice and of other assistance required by the arbitral tribunal and the administrative expenses of the BVI IAC lies with the Secretariat.

The BVI IAC is an institutional supporter of the Campaign for Greener Arbitrations, an initiative to reduce the environmental impact of international arbitrations.
As a proud signatory of The Green Pledge, the BVI IAC stands committed to taking ongoing steps to:

(i} minimise the environmental impact of its daily operating procedures; (ii} reduce energy consumption and waste in arbitration proceedings;
(iii) facilitate virtual hearings and meetings;
(iv} adopt measures to reduce the environmental impact of arbitration events and conferences; and (v} where possible, partner with organisations that are committed to reducing their environmental impact.

The Rules are comprised of this Preamble and the Articles, together with the Appendices and Annexes. The Annexes may be separately amended by the BVI IAC from time to time. The BVI IAC may also issue practice notes to supplement, regulate and implement the Rules.

The original language of the Rules is English. In case of any discrepancy between the English version of the Rules and any translated versions of the Rules, the English version shall prevail.

Section I. Introductory rules

Scope of Application (Article 1)

1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the Rules, or that their arbitration shall be administered by the BVI IAC, or words to similar effect, then such disputes shall be settled in accordance with the Rules and the arbitration shall be administered by the BVI IAC. The BVI IAC is the only body authorised to administer arbitrations under the Rules and to scrutinise and approve awards rendered pursuant to the Rules.

2. Where the parties to an arbitration agreement have agreed to submit their disputes to arbitration under the Rules, they shall be deemed to have submitted to the Rules in effect on the date of commencement of the arbitration proceedings, unless agreed otherwise. The Rules shall not govern arbitrations where the arbitration agreement specifically provides for arbitration under other rules, including the 2016 BVI IAC Rules.

3. The Rules shall govern the arbitration except where any provision of the Rules is in conflict with a mandatory provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

4. Nothing in the Rules shall prevent the parties to a dispute from naming the BVI IAC as appointing authority or from requesting certain administrative services from the BVI IAC, including fundholding services, without subjecting the arbitration to the Rules.

5. The BVI IAC has the power to interpret all provisions of the Rules. The arbitral tribunal has the power to interpret the Rules insofar as they relate to its powers and duties hereunder. In the event of any inconsistency between the arbitral tribunal's interpretation and the BVI IAC's interpretation in relation to the arbitral tribunal's powers and duties hereunder, the arbitral tribunal's interpretation shall prevail.

6. The BVI IAC has no obligation to give reasons for any decision it makes in respect of any arbitration commenced under the Rules. Unless otherwise determined by the BVI IAC, all decisions made by the BVI IAC under the Rules are final.

7. Agreement by a State, State-controlled entity, or intergovernmental organization to arbitrate under the Rules with a party that is not a State, State-controlled entity, or intergovernmental organization constitutes a waiver of any right of immunity from jurisdiction in respect of the proceedings relating to the dispute in question to which such party might otherwise be entitled. A waiver of immunity relating to the execution of an arbitral award must be explicitly expressed.

8. The Secretariat is composed of a Registrar (the "Registrar") and other staff members. The Secretariat shall serve as the registry for the proceedings and provide administrative services. Such administrative services include, but are not limited to, the following:

   a) maintaining a file of communications, including an electronic file;

   b) facilitating communication between the parties, the arbitral tribunal or emergency arbitrator, and the tribunal secretary (if any);

   c) making all necessary practical arrangements and providing logistical support for meetings and hearings, including the provision of:

      i) secretarial or clerical assistance to the arbitral tribunal;

      ii) meeting rooms and break-out rooms for hearings or deliberations of the arbitral tribunal;

      iii) telephone conference and videoconference facilities;

      iv) facilities to enable transcripts of hearings to be made and to assist with the obtaining of visas for short-hand writers and permits for the import of all necessary equipment;

      v) live streaming facilities;

      vi) document management and interpretation services;

      vii) assistance in obtaining entry visas for the purposes of hearings when required; and

      viii) assistance with arrangements for travel and accommodation for parties and arbitrators;

   d) providing fundholding services;

   e) ensuring that the arbitral tribunal and the parties are alerted to pending deadlines and advising the arbitral tribunal and the parties in the event that they have not been met;

   f) proofreading and reviewing draft procedural orders and awards;

   g) scrutinising draft awards;

   h) providing assistance in obtaining certified copies of any award, including certified electronic copies and notarised copies, as and when required;

   i) to the extent that it is able to do so, providing assistance with the translation of arbitral awards;

   j) providing services with respect to the storage, including electronically, of arbitral awards and files relating to the arbitration proceedings;

   k) providing assistance in the appointment of experts; and

   I) providing assistance in the appointment of tribunal secretaries (the role and duties of which are defined in Appendix 3 to the Rules).

9. The CEO may delegate his or her duties to one member of the Board or to the Registrar. Equally, if the CEO is unable or unavailable to perform his or her duties, they shall be performed by one member of the Board or by the Registrar.

Notice and calculation of periods of time (Article 2)

1. A notice, including a notification, communication or proposal, may be transmitted electronically or by any means of communication that provides or allows for a record of its transmission.

2. If an address has been designated by a party specifically for the purpose of receiving notifications or authorised by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated by the relevant party or authorized by the arbitral tribunal.

3. In the absence of such designation or authorisation, a notice is:

   a) received if it is physically delivered to the addressee; or

   b) deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.

4. If, after reasonable efforts, delivery cannot be effected in accordance with Article 2.2 or Article 2.3, a notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

5. A notice shall be deemed to have been received on the day it is delivered in accordance with Article 2.2, Article 2.3 or Article 2.4, or attempted to be delivered in accordance with Article 2.4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except for the Notice of Arbitration which, when transmitted by electronic means, is only deemed to have been received on the day when it reaches the addressee's electronic address.

6. For the purpose of calculating a period of time under the Rules, such period shall begin to run on the first business day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Notice of Arbitration (Article 3)

1. The party or parties initiating recourse to arbitration (the "Claimant") shall communicate to the Secretariat and the other party or parties (the "Respondent") a notice of arbitration (the "Notice of Arbitration"). Reference to "Claimant" include one or more claimants, and reference to "Respondent" include one or more respondents.

2. Arbitration proceedings shall be deemed to commence on the date on which the Notice of Arbitration is received by the Secretariat. The Secretariat shall have the discretion to fix a time limit to terminate the arbitration if payment of the registration fee prescribed in the BVI IAC's Schedule of fees and costs set out in Annex C to the Rules (the "Registration Fee") is not made within 2 weeks of the commencement of the arbitration.

3. The Notice of Arbitration shall include the following:

   a) a demand that the dispute be referred to arbitration;

   b) the names and contact details of the parties and their representatives;

   c) a copy of the arbitration agreement(s) invoked;

   d) a copy of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;

   e) a brief description of the claim and an indication of the amount claimed {if any);

   f) the relief or remedy sought;

   g) a proposal or reference to the number of arbitrators, language and seat of arbitration;

   h) confirmation that the Registration Fee has been or is being paid to the BVI IAC; and

i) confirmation that copies of the Notice of Arbitration {including all accompanying documents) have been or are being delivered to all other parties.

4. The Notice of Arbitration may also include:

a) a proposal for the designation of a sole arbitrator pursuant to Article 9.1;

b) notification of the designation of an arbitrator referred pursuant to Article 10 or Article 11;

c) any application for an Expedited Procedure in accordance with Appendix 2 to the Rules.

5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the Notice of Arbitration, which shall be finally resolved by the arbitral tribunal.

Response to the Notice of Arbitration (Article 4)

1. Within 30 days from the date of receipt of the Notice of Arbitration by the Secretariat, or such other period as may be set by the Secretariat, the Respondent shall communicate to the Secretariat and the Claimant a response to the Notice of Arbitration (the "Response to the Notice of Arbitration"), which shall include:

a) the name and contact details of the Respondent and its representatives;

b) a response to the information set forth in the Notice of Arbitration, pursuant to Article 3.3; and

c) confirmation that copies of the Response to the Notice of Arbitration (including all accompanying documents) have been or are being delivered to all other parties.

2. The Response to the Notice of Arbitration may also include:

a) any plea that an arbitral tribunal to be constituted under the Rules lacks jurisdiction;

b) a proposal for the designation of a sole arbitrator pursuant to Article 9.1;

c) notification of the designation of an arbitrator pursuant to Articles 10 or 11;

d) a brief description of any counterclaims or claims for the purpose of a set-off, including, where relevant, an indication of the amounts claimed, and the relief or remedy sought;

e) a Notice of Arbitration in accordance with Article 3 in case the Respondent formulates a claim against a party or parties other than the Claimant, and which may be joined to the arbitration proceedings pursuant to Article 32; and

f) any application for an Expedited Procedure, or comments on Claimant's application for an Expedited Procedure, if any, in accordance with Appendix 2 to the Rules.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the Respondent's failure to communicate the Response to the Notice of Arbitration, or an incomplete or late Response to the Notice of Arbitration, which shall be finally resolved by the arbitral tribunal.

Disclosure of third-party funding (Article 5)

Each party must inform the Secretariat, the arbitral tribunal (if constituted) and the other party or parties of the existence of any funding agreement as well as the identity of the third-party funder. This duty of disclosure remains throughout the arbitration proceedings.

Representation and assistance (Article 6)

1. Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to the Secretariat, all parties and the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such form as the arbitral tribunal may determine.

2. It shall be the responsibility of each party promptly to notify the Secretariat, the arbitral tribunal and the other party or parties of any change in its representation. Any such intended change in its representation shall be subject to the approval of the arbitral tribunal, which shall have discretion to take such measures as it deems appropriate to preserve the integrity of the proceedings.

Appointment and Confirmation of Arbitrators (Article 7)

1. The CEO appoints and confirms arbitrators on recommendation of the Arbitration Committee (see Annex D to the Rules), assisted by the Secretariat. The designation of an arbitrator, whether made by the parties or the arbitrators, is subject to confirmation by the CEO, upon which the designation shall become effective.

2. The CEO and the members of the Secretariat shall not act as arbitrators or as counsel in cases administered by the BVI IAC.

3. The parties or arbitrators, when designating arbitrators, and the CEO, when confirming or appointing arbitrators pursuant to the Rules, are not obliged to choose from the panel of arbitrators of the BVI IAC.

4. In exercising his or her functions under the Rules, the CEO may require from any party, prospective arbitrators and arbitrators appointed or confirmed, any information he or she deems necessary. The CEO shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner he or she considers appropriate.

5. The CEO shall have regard to such considerations as are likely to secure the appointment or confirmation of an independent and impartial arbitrator and shall take into account any qualifications required of the arbitrator by the agreement of the parties. The CEO shall, inter alia, consider the prospective arbitrator's nationality, residence and other relationships with the countries of which the parties or the other members of the arbitral tribunal (if any) are nationals, and the prospective arbitrator's availability and ability to conduct the arbitration in accordance with the Rules.

6. The CEO may appoint or confirm arbitrators, having taken into account any designation made by any party, any written agreement between the parties as to the constitution of the arbitral tribunal (including the method of constitution of the arbitral tribunal), any joint designation by the parties, or any designation by the arbitrators.

7. Any decision by the CEO to appoint or confirm an arbitrator under the Rules shall be final.

Section II. Composition of the arbitral tribunal

Number of arbitrators (Article 8}

1. If the parties have not previously agreed on the number of arbitrators, and, if within 30 days after the receipt of the Notice of Arbitration by the Respondent, the parties have not agreed on the number of arbitrators, the case shall be referred to a sole arbitrator, unless the Arbitration Committee decides, after taking into account all relevant circumstances, that referring the case to three arbitrators is more appropriate.

2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be designated according to the method agreed upon by the parties.

Appointment of a sole arbitrator (Article 9}

1. If the parties have agreed that a sole arbitrator is to be appointed, and, if the parties have not reached agreement within 30 days after receipt by all other parties of a proposal of an individual who would serve as a sole arbitrator, or if such designation has not been confirmed by the CEO, a sole arbitrator shall, at the request of a party, be appointed by the CEO.

2. The CEO shall appoint the sole arbitrator as promptly as possible.

Appointment of three arbitrators (Article 10}

1. Unless otherwise agreed by the parties, if three arbitrators are to be appointed, each party shall designate one arbitrator, and the two arbitrators so designated shall, upon confirmation by the CEO, designate the third arbitrator who, upon confirmation by the CEO, will act as presiding arbitrator of the arbitral tribunal.

2. If three arbitrators are to be appointed and there are multiple parties as Claimant and/or as Respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties, whether as Claimant or as Respondent, shall jointly designate an arbitrator.

3. Unless otherwise agreed by the parties, if within 30 days after the receipt of the CEO's confirmation of the first arbitrator, the other party has not notified the first party of the arbitrator it has designated,

the first party may request the CEO to appoint the second arbitrator on behalf of the other party.

4. Unless otherwise agreed by the parties, if within 30 days after the confirmation or appointment of the second arbitrator, or such other period as may be set by the Secretariat, the two arbitrators have not designated the presiding arbitrator, the presiding arbitrator shall be appointed by the CEO.

Appointment of arbitrators in cases not covered by Articles 9 and 10 (Article 11)

1. In the event of any failure to constitute the arbitral tribunal under the Rules, the CEO shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any confirmation or appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

2. If the arbitration agreement grants preponderant rights to one party with regards to the constitution of the arbitral tribunal which place the other party at a disadvantage, that other party may request the CEO to constitute the entire arbitral tribunal, including in deviation from the designations made, or from the agreed appointment procedure. The CEO may do so, after consultation with the Arbitration Committee, pursuant to Article 11.1of the Rules at his or her discretion.

Impartiality, independence and availability of arbitrators (Article 12)

1. Any arbitrator appointed or confirmed under the Rules shall be and remain independent and impartial at all times.

2. Any prospective arbitrator shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence (see Model in Annex B to the Rules). The duty of disclosure remains throughout the arbitration proceedings, such that arbitrators shall, without delay, disclose any circumstances that may give rise to justifiable doubts as to his or her impartiality or independence to the Secretariat, the parties and the other members of the arbitral tribunal (if any).

3. The prospective arbitrator shall also confirm that, on the basis of the information available to him or her at such juncture, he or she can devote the time necessary to conduct the arbitration diligently, efficiently and in accordance with the time limits set out in the Rules.

Challenge of arbitrators (Article 13)

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

Challenge procedure (Article 14)

1. A party that intends to challenge an arbitrator shall send notice of its challenge (the "Notice of Challenge") within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in Articles 12 and 13 became known to that party.

2. The Notice of Challenge shall be communicated to the Secretariat, the other party or parties, the challenged arbitrator and the other members of the arbitral tribunal (if any). The Notice of Challenge shall state the reasons for the challenge.

3. After receiving the Notice of Challenge, the Secretariat will invite the other party or parties, the challenged arbitrator and the other members of the arbitral tribunal (if any) to provide their comments on the challenge within 15 days.

4. When an arbitrator has been challenged by a party, all parties may agree to the challenge. The challenged arbitrator may also withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

5. Unless, with 15 days from the date of the Notice of Challenge, all parties agree to the challenge or the challenged arbitrator withdraws, the challenge shall be submitted to the Arbitration Committee.

6. The Arbitration Committee shall decide on the challenge within 30 days from the date of receipt by the Secretariat of all comments from the parties, the challenged arbitrator and the other members of the arbitral tribunal (if any). Unless otherwise agreed by the parties, the decision on the challenge shall be reasoned. The decision of the Arbitration Committee shall be final. Copies of the decision shall be transmitted by the Secretariat to the parties, the

challenged arbitrator and the other members of the arbitral tribunal (if any).

7. Pending the determination of the challenge by the Arbitration Committee, the arbitral tribunal (including the challenged arbitrator) may proceed with the arbitration proceedings, unless a party requests or the Arbitration Committee decides that the arbitration proceedings should be suspended.

8. The Secretariat shall determine the amount of fees and expenses (if any) to be paid to an arbitrator who is the subject of a successful challenge.

9. The Secretariat may adjust the costs as set out in Article 45 of the Rules after a Notice of Challenge has been submitted.

Replacement of an arbitrator (Article 15)

1. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of an arbitrator in performing his or her functions, a party can request that the arbitrator be replaced.

2. Subject to Article 15.3, in any event where an arbitrator needs to be replaced during the course of the arbitration proceedings, a substitute arbitrator shall be appointed or confirmed in accordance with the procedure applicable to the designation and appointment or confirmation of the arbitrator being replaced.

3. At the request of a party, and after giving an opportunity to the other party or parties and to the remaining arbitrators to state their views, the CEO may, in view of the exceptional circumstances of the case: (a) appoint the substitute arbitrator in deviation from the original procedure; or (b) after the closure of the hearings, authorise the other members of the arbitral tribunal to proceed with the arbitration and render any decision or award.

Repetition of hearings in the event of the replacement of an arbitrator (Article 16)

If an arbitrator is replaced, the arbitration proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal, after consulting the parties, decides otherwise.

Exclusion of liability (Article 17)

1. Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators or emergency arbitrators, any person appointed by the arbitral tribunal, including any tribunal secretary and any expert, the BVI IAC and its employees, including the CEO, any member of its Secretariat and any member of the Arbitration Committee in respect of any act or omission in connection with the arbitration.

2. After the final award is rendered and there remains no further possibility of any application for an interpretation, correction or additional award pursuant to Articles 42, 43 and 44 of the Rules, neither the BVI IAC (including its CEO, employees, any member of its Secretariat and any member of the Arbitration Committee), nor any arbitrator, emergency arbitrator, or any person appointed by the arbitral tribunal, including any tribunal secretary and any expert, shall be under any legal obligation to make any statement about any matter concerning the arbitration, nor shall any party seek to make the BVI IAC or any of the above-mentioned persons a witness in any legal proceedings arising out of the arbitration.

Section III. Arbitration proceedings

General provisions (Article 18)

1. The Secretariat shall transmit the case file to the arbitral tribunal as soon as practicable after it has been constituted, provided that any requested deposit has been paid, unless the Secretariat determines otherwise.

2. Subject to the Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.

3. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the timetable for the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend

or abridge any period of time prescribed under the Rules or agreed by the parties.

4. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses and experts, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials only.

5. All communications to the arbitral tribunal or the tribunal secretary (if any) by one party shall be simultaneously communicated by that party to the Secretariat, all other parties and the tribunal secretary (if any), unless otherwise directed by the arbitral tribunal.

6. Unless otherwise agreed by the parties or under the circumstances set out in Article 39.9, any party, any arbitrator and any person appointed by the arbitral tribunal shall at all times treat all matters relating to the proceedings as confidential. The discussions and deliberations of the arbitral tribunal shall be confidential.

7. In Article 18.6, "matters relating to the proceedings" includes the existence of the proceedings, the written submissions, evidence and all other materials adduced in the arbitration proceedings, any documents produced in the course of the proceedings, and the order(s), decision(s) and award(s) rendered by the arbitral tribunal, but excludes any matter that is otherwise in the public domain.

8. The arbitral tribunal has the power to take appropriate measures, including issuing an order or award for sanctions or costs, if a party breaches the provisions of Article 18.6 and Article 18.7.

Seat of arbitration (Article 19)

1. **Seat of arbitration.** The parties may agree on the seat of arbitration. Where there is no agreement as to the seat of arbitration, the seat shall be Road Town, Tortola, British Virgin Islands, unless the arbitral tribunal determines, having regard to the circumstances of the case, that another seat is more appropriate. The award shall be deemed to have been made at the seat of arbitration.

2. **Venue.** The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings, or decide to have hearings entirely conducted remotely.

Language(s) (Article 20)

1. If the parties have not agreed on the language of the arbitration, the arbitral tribunal shall, promptly after its appointment, determine the language of the arbitration.

2. Prior to any determination of the language of the arbitration by the arbitral tribunal, the parties shall communicate in English.

3. If a party submits a document in a language other than the language of the arbitration, the arbitral tribunal or, if the arbitral tribunal has not yet been constituted, the Secretariat, may order that any documents shall be accompanied by a translation in the language of the arbitration.

Statement of Claim (Article 21)

1. The Claimant shall communicate its Statement of Claim in writing to the Secretariat, Respondent and the arbitral tribunal within a time limit to be determined by the arbitral tribunal. The Claimant may elect to treat its Notice of Arbitration as a Statement of Claim, provided that the Notice of Arbitration complies with the requirements of Article 21.2, Article 21.3 and Article 21.4.

2. The Statement of Claim shall include the following particulars:

   a) the names and contact details of the parties and their representatives;

   b) a statement of the facts supporting the claim;

   c) the points at issue;

   d) the relief or remedy sought; and

   e) the legal grounds or arguments supporting the claim.

3. Copies of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the Statement of Claim.

4. The Statement of Claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the Claimant and contain references to them.

Statement of Defence (Article 22)

1. The Respondent shall communicate its Statement of Defence in writing to the Secretariat, Claimant and the arbitral tribunal within a time limit to be determined by the arbitral tribunal. The Respondent may elect to treat its Response to the Notice of Arbitration as a Statement of Defence, provided that the Response to the Notice of Arbitration complies with Article 22.2.

2. The Statement of Defence shall reply to the particulars (b) to (e) of the Statement of Claim (Article 21.2). The Statement of Defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the Respondent and contain references to them.

3. In its Statement of Defence, or at a later stage in the arbitration proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the Respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.

4. The provisions of Article 21.2, Article 21.3 and Article 21.4 shall apply to a counterclaim, a claim under Article 4.2(e}, and a claim relied on for the purpose of a set-off.

Amendments to the Claim or Defence (Article 23)

During the course of the arbitration proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to the other party or parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

Jurisdiction of the arbitral tribunal (Article 24)

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract or other legal instrument shall be treated as an agreement independent of the other terms of the contract or other legal instrument. A decision by the arbitral tribunal that the contract or other legal instrument is null, void, or invalid shall not automatically entail the invalidity of the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the Statement of Defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has designated, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitration proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

3. The arbitral tribunal may rule on a plea referred to in Article 24.2 either as a preliminary question or in an award on the merits. The arbitral tribunal may proceed with the arbitration proceedings and render an award, notwithstanding any pending challenge to its jurisdiction before a court or other competent authority.

Further written statements (Article 25)

The arbitral tribunal shall decide which further written statements, in addition to the Statement of Claim and the Statement of Defence, shall be required from the parties or may be presented by them, and shall fix the time limits for communicating such statements.

Time limits (Article 26)

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the Statement of Claim and Statement of Defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

Interim measures (Article 27)

1. The arbitral tribunal may, at the request of a party, grant interim measures.

2. Interim measures are any temporary measures by which, at any time prior to the issuance of the final award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:

   a) maintain or restore the status quo pending determination of the dispute;

   b) take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself;

   c) provide a means of preserving assets out of which a subsequent award may be satisfied; or

   d) preserve evidence that may be relevant and material to the resolution of the dispute.

3. The party or parties requesting an interim measure under Article 27.2{a) to {c) shall satisfy the arbitral tribunal that:

   a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to affect the party against whom the measure is directed if the measure is granted; and

   b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination

4. With regard to a request for an interim measure under Article 27.2{d}, the requirements in Article 27.3{a) and {b) shall apply only to the extent the arbitral tribunal considers appropriate.

5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

6. The arbitral tribunal may require the party or parties requesting an interim measure to provide appropriate security in connection with the measure.

7. The arbitral tribunal may require any party to promptly disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.

8. The party or parties requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the arbitration proceedings.

9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the arbitration agreement(s), or as a waiver thereof.

Evidence (Article 28)

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.

2. Witnesses and experts who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses and experts may be presented in writing and signed by them.

3. At any time during the arbitration proceedings, the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a time limit as the arbitral tribunal shall determine.

4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Hearings (Article 29)

1. In the event that the parties agree or the arbitral tribunal otherwise determines that there shall be an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof, and, after consultation with the parties, whether the hearing shall be held remotely or by physical attendance.

2. Witnesses and experts may be heard under the conditions and examined in the manner set by the arbitral tribunal.

3. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witnesses or experts, during the testimony of such other witnesses or experts, except that a witness or expert who is a party to the arbitration shall not, in principle, be asked to retire.

4. The arbitral tribunal may direct that witnesses and experts be examined through means of telecommunication that do not require their physical presence at the hearing {such as videoconference).

Experts appointed by the arbitral tribunal (Article 30)

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of appointment, established by the arbitral tribunal, shall be communicated to the Secretariat and the parties.

2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal, the Secretariat and the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time limit ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.

3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents, items or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the Secretariat and the parties. The parties shall be given the opportunity to express, in writing, their opinion on the report. The parties shall be entitled to examine any document on which the expert relied in his or her report.

5. If a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of the report, participate in a hearing where the parties have the opportunity to put questions to him or her and to present experts in order to testify on the points at issue. The provisions of Article 29 shall be applicable to such proceedings.

Default (Article 31}

1. If, within the time limit fixed by the Rules or the arbitral tribunal, without showing sufficient cause:

   a) the Claimant has failed to communicate its written statement, without showing sufficient cause for such failure, the arbitral tribunal may issue an order for the termination of the arbitration proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;

   b) the Respondent has failed to communicate its written statement, without showing sufficient cause for such failure, the arbitral tribunal may order that the proceedings continue, without treating such failure in itself as an admission of the Claimant's allegations; the provisions of Article 31.1(b) also apply to a Claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

2. If a party, duly notified under the Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established time limit, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Joinder of Additional Parties (Article 32}

1. Before or after the constitution of the arbitral tribunal, the Arbitration Committee may, at the request of any party, allow one or more additional parties to be joined in the arbitration as a party (the "Additional Party"), after giving all parties, including the Addi-

tional Party, the opportunity to be heard, and taking into account all relevant circumstances.

2. The requesting party shall communicate its request to join the Additional Party (the "Request for Joinder") to the Secretariat, all other parties, including the Additional Party, and any appointed or confirmed arbitrators.

3. An Additional Party wishing to be joined to the arbitration shall communicate its Request for Joinder to the Secretariat, all other parties and any appointed or confirmed arbitrators.

4. The date on which the Request for Joinder is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of arbitration against the Additional Party.

5. The Request for Joinder shall include:

a) a request that the Additional Party be joined to the arbitration;

b) the case reference number of the relevant arbitration;

c) the names and contact details of the parties, including the Additional Party, their representatives, and any appointed or confirmed arbitrators;

d) a copy of the arbitration agreement(s) invoked;

e) a copy of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;

f) a brief description of the claims, facts and legal basis supporting the Request for Joinder, and an indication of the amount claimed (if any);

g) the relief or remedy sought;

h) details of any applicable mandatory provision affecting the joinder of the Additional Party;

i) evidence of all parties' agreement to join the Additional Party, including agreement of the Additional Party (if any); and

j) confirmation that copies of the Request for Joinder (including all accompanying documents) have been or are being delivered to all other parties, including the Additional Party, and any appointed or confirmed arbitrators.

6. The Additional Party, or the other parties when the Request for Joinder is filed under Article 32.3, shall be invited to submit a response to the Request for Joinder, which may contain claims against any party.

7. The Arbitration Committee shall grant the Request for Joinder when all parties, including the Additional Party, agree.

8. Failing agreement between all parties, the Request for Joinder may be granted if the Arbitration Committee, taking into account all relevant circumstances, is satisfied that the Additional Party may be bound by the arbitration agreement.

9. Where a Request for Joinder is granted, the parties to the arbitration shall be deemed to have waived their right to designate an arbitrator, and the CEO may revoke the confirmation or appointment of any arbitrator and shall appoint the arbitral tribunal with or without regard to any party's designation.

10. Where a Request for Joinder is granted, any party who has not participated in the constitution of the arbitral tribunal shall be deemed to have waived its right to participate in the constitution of the arbitral tribunal and to have accepted the constitution of the arbitral tribunal, without prejudice to the right of such party to challenge an arbitrator pursuant to Article 14.

11. Any decision to join an Additional Party is without prejudice to the arbitral tribunal's decision as to its jurisdiction with respect to that Additional Party.

12. The Secretariat may adjust the costs as set out in Article 45 of the Rules after a Request for Joinder has been submitted.

Consolidation of Arbitrations (Article 33)

1. Before or after the constitution of the arbitral tribunal, the Arbitration Committee may, at the request of any party, consolidate arbitration proceedings pending under the Rules into a single arbitration, after giving all parties the opportunity to be heard, and taking into account all relevant circumstances.

2. After the constitution of the arbitral tribunal, such request to consolidate arbitration proceedings can only be made if:

a) the same arbitral tribunal has been constituted in each of the arbitrations; or

b) no other arbitral tribunal has been fully constituted in the other arbitrations.

3. The requesting party shall communicate its request to have two or more arbitrations consolidated (the "Request for Consolidation") to the Secretariat, all other parties, and any appointed or confirmed arbitrators.

4. The Request for Consolidation shall include:

a) a request that two or more arbitrations be consolidated;

b) the case reference numbers of the relevant arbitrations;

c) the names and contact details of the parties, their representatives and any appointed or confirmed arbitrators;

d) a copy of the arbitration agreement(s) invoked;

e) a copy of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;

f) a brief description of the claims, facts and legal basis supporting the Request for Consolidation, and an indication of the amount claimed (if any);

g) the relief or remedy sought;

h) details of any applicable mandatory provision affecting consolidation of arbitrations;

i) evidence of all parties' agreement to consolidate the arbitrations (if any); and

j) confirmation that copies of the Request for Consolidation (including all accompanying documents) have been or are being delivered to all other parties and any appointed or confirmed arbitrators.

5. The Arbitration Committee shall grant the Request for Consolidation when all parties agree.

6. Failing agreement between all parties, the Request for Consolidation may be granted if, the Arbitration Committee, taking into account all relevant circumstances, is satisfied that:

a) the claims are made under the same arbitration agreement; or

b) the claims are made under different arbitration agreements, which are found to be compatible by the Arbitration Committee, and (i) a common question of law or fact arises under both or all of the arbitrations, or (ii) the rights to relief claimed are in respect of, or arise out of, the same transaction or series of related transactions.

7. Where arbitrations are consolidated, they shall be consolidated in the arbitration that commenced first, unless otherwise agreed by all parties or unless the Arbitration Committee decides otherwise.

8. The consolidation of two or more arbitrations is without prejudice to the validity of any act done or order made by any competent authority in support of the relevant arbitration before it was consolidated.

9. Where a Request for Consolidation is granted, the parties to all such arbitrations shall be deemed to have waived their right to designate an arbitrator, and the CEO may revoke the confirmation or appointment of any arbitrator and shall appoint the arbitral tribunal in respect of the consolidated proceedings with or without regard to any party's designation.

10. Where a Request for Consolidation is granted, any party who has not participated in the constitution of the arbitral tribunal shall be deemed to have waived its right to participate in the constitution of the arbitral tribunal and to have accepted the constitution of the arbitral tribunal, without prejudice to the right of such party to challenge an arbitrator pursuant to Article 14.

11. The Secretariat may adjust the costs as set out in Article 45 of the Rules after a Request for Consolidation has been submitted.

Single Arbitration under Multiple Contracts (Article 34}

1. A Claimant may file a single Notice of Arbitration in relation to claims arising out of or in connection with more than one contract, irrespective of whether such claims are made under one or more than one arbitration agreement under the Rules.

2. Claims made pursuant to a Notice of Arbitration filed under Article 34.1 may be heard in a single arbitration should all parties agree to submit all such claims under a single arbitration.

3. Failing agreement between all parties, the Arbitration Committee shall decide if claims made pursuant to a Notice of Arbitration filed under Article 34.1 may still be heard in a single arbitration. In so deciding, the Arbitration Committee will consider, among other circumstances, whether:

   a) the arbitration agreements under which the claims are made are identical; or

   b) the claims are made under different arbitration agreements, which are found to be compatible by the Arbitration Committee, and (i) a common question of law or fact arises under each contract, or (ii) the rights to relief claimed are in respect of, or arise out of, the same transaction or series of related transactions.

4. Where the arbitral tribunal, once constituted, decides pursuant to Article 34 that the arbitration cannot proceed in respect of any of the claims, such decision shall not prevent a party from reintroducing the same claim at a later date in other arbitration proceedings.

5. The provisions of Article 3 shall apply, mutatis mutandis, to any Notice of Arbitration filed under multiple contracts.

Concurrent Proceedings (Article 35)

1. An arbitral tribunal may conduct two or more arbitrations under the Rules at the same time, immediately after one another, or suspend any of such arbitrations until reaching a determination in the other arbitration or arbitrations, if all parties to all arbitrations agree and the same arbitral tribunal is constituted in each arbitration.

2. Failing agreement between all parties, the arbitral tribunal may still, after consultation with the parties, proceed with the actions contemplated under Article 35.1, so long as:

   a) the arbitral tribunal in each of the arbitrations are the same; and

   b) a common question of law or fact exists in all the arbitrations.

3. The Secretariat may adjust the costs as set out in Article 45 of the Rules where the arbitrations are conducted pursuant to Article 35.

Closure of proceedings (Article 36)

1. When it is satisfied that the parties have had a reasonable opportunity to present their case, the arbitral tribunal shall declare the proceedings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the proceedings at any time before the final award is rendered.

Waiver (Article 37)

1. A failure by any party to object promptly to any non-compliance with the Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

2. The parties waive any objection, on the basis of the use of any procedure under Articles 32, 33, 34 or 35 and any decision made in respect of such procedure, to the validity and/or enforcement of any award made by the arbitral tribunal in the arbitration(s), insofar as such waiver can be validly made.

3. The parties waive their rights to any form of recourse or defence in respect of the setting-aside, enforcement and execution of any award, insofar as such waiver can validly be made.

Section IV. The award

Decisions (Article 38)

1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators. If there is no majority, any award or decision shall be made by the presiding arbitrator alone.

2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

Form and effect of the award (Article 39)

1. The arbitral tribunal may make separate awards on different issues at different times.

2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

4. Unless the parties have agreed otherwise, the arbitral tribunal may order that pre-award and post-award interest (either simple or compound) be paid by any party on any sum awarded, and at such rates as the arbitral tribunal decides is appropriate (without being bound by rates of interest practised by any state court or other legal authority).

5. The arbitral tribunal shall submit any such award in draft form to the Secretariat. The Secretariat may, as soon as practicable, suggest modifications as to the form of the award and, without affecting the arbitral tribunal's liberty of decision, draw the arbitral tribunal's attention to points of substance. No award shall be rendered by the arbitral tribunal until it has been approved by the Secretariat as to its form.

6. An award shall be signed by the arbitrators, and it shall indicate the date on which the award was made and the seat of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

7. Copies of the award signed by the arbitrators and affixed with the seal of the BVI IAC shall be communicated to the parties by the Secretariat upon full settlement of the costs of the arbitration as set out in Article 45 of the Rules.

8. The parties undertake to comply without delay with any order, decision or award made by the arbitral tribunal.

9. An award may be published with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.

10. The BVI IAC shall not publish any award or part of an award without the prior written consent of all parties and the arbitral tribunal.

11. The CEO and the Registrar have the authority to certify true copies of awards, including electronic certified copies.

Applicable law, amiable compositeur (Article 40)

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.

2. The arbitral tribunal shall decide as amiable compositeur or ex aequo et bona only if expressly authorized by the parties.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract(s), if any, and shall take into account any relevant trade usages.

Settlement or other grounds for termination (Article 41)

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitration or, if requested by the parties and accepted by the arbitral tribunal, record the parties' settlement agreement in the form of a consent award. The arbitral tribunal is not obliged to give reasons for such a consent award.

2. If, before the award is made, the continuation of the arbitration proceedings becomes unnecessary or impossible for any reason not mentioned in Article 41.1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the arbitration. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.

3. Copies of the order for termination of the arbitration or of the consent award, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where a consent award is made, the provisions of Article 39.2 and Article 39.5 to Article 39.10 shall apply.

Interpretation of the award (Article 42)

1. Within 30 days after the receipt of the award, a party, with notice to the Secretariat and the other parties, may request that the arbitral tribunal give an interpretation of the award (the "Request for Interpretation"). The arbitral tribunal may set a time limit, in principle not exceeding 15 days, for all other parties to comment on the Request for Interpretation.

2. The interpretation shall be given in writing within 45 days after the receipt of the Request for Interpretation. The interpretation shall form part of the award and the provisions of Article 39.2 to Article 39.10 shall apply.

Correction of the award (Article 43)

1. Within 30 days after the receipt of the award, a party, with notice to the Secretariat and the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature (the "Request for Correction"). The arbitral tribunal may set a time limit, in principle not exceeding 15 days, for all other parties to comment on the Request for Correction. If the arbitral tribunal considers that the Request for Correction is justified, it shall make the correction within 45 days of receipt of the Request for Correction.

2. The arbitral tribunal may, within 30 days after the communication of the award, make such corrections on its own initiative.

3. Such corrections shall be in writing and shall form part of the award. The provisions of Article 39.2 to Article 39.10 shall apply.

Additional award (Article 44)

1. Within 30 days after the receipt of the termination order or the final award, a party, with notice to the Secretariat and the other parties, may request the arbitral tribunal to render an additional award to decide on claims presented in the arbitration but not decided by the arbitral tribunal (the "Request for Additional Award"). The arbitral tribunal may set a time limit, in principle not exceeding 15 days, for all other parties to comment on the Request for Additional Award.

2. If the arbitral tribunal considers the Request for Additional Award to be justified, it shall render an additional award or complete its award within 60 days after the receipt of the Request for Additional Award. The arbitral tribunal may extend, if necessary, the time limit within which it shall render an additional award or complete its award.

3. When the arbitral tribunal renders an additional award or completes its award, the provisions of Article 39.2 to Article 39.10 shall apply.

Definitions of costs (Article 45)

The term "costs" includes only:

a) the fees of the arbitral tribunal to be stated separately for each arbitrator;

b) the reasonable travel and other expenses incurred by each arbitrator;

c) the fees of any tribunal secretary, if the parties and the arbitral tribunal agreed upon a separate remuneration for the tribunal secretary (Article 5.1 of Appendix 3 to the Rules);

d) the reasonable travel and other expenses of the tribunal secretary, if any (Article 5.2 of Appendix 3 to the Rules);

e) the reasonable costs of expert advice and of other assistance required by the arbitral tribunal;

f) the fees, reasonable travel and other expenses of witnesses and experts to the extent such expenses are approved by the arbitral tribunal;

g) the legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable; and

h) the administrative fees, including the Registration Fee, and expenses of the BVI IAC.

Deposit of costs (Article 46)

1. The Secretariat, following the commencement of the arbitration, and at such other times as it thinks appropriate, may request the parties to deposit an equal amount, or amounts in such proportions as it may determine, as advances for the costs referred to in Article 45 (a}, (b}, (c}, (d}, (e) and (h). Such payments deposited by the parties may be applied by the Secretariat to pay any item of the above-mentioned costs.

2. During the course of the arbitration proceedings, the Secretariat may request supplementary deposits from the parties.

3. Any deposit of security for costs ordered by the arbitral tribunal pursuant to Article 27 shall be directed to the Secretariat and disbursed by it upon order from the arbitral tribunal.

4. The parties are jointly and severally liable for the costs of the arbitration. Any party is free to pay the whole amount of the deposits towards the costs of the arbitration should the other party or parties fail to pay their share. If a party pays the required deposits on behalf of another party, the arbitral tribunal may, at the request of the paying party, make an award for reimbursement of the payment.

5. If the requested deposits are not paid in part or in full within 30 days after the receipt of the request or such other period as may be set by the Secretariat, the Secretariat shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made before the constitution of the arbitral tribunal, the Secretariat may set a time limit after which it may order the suspension or termination of the arbitration proceedings. If such payment is not made after the constitution of the arbitral tribunal, the arbitral tribunal may order the suspension or termination of the arbitration proceedings.

6. After releasing a termination order or final award, the Secretariat shall render a statement of accounts to the parties of the deposits received and return any unexpended balance to the parties.

Fees and expenses of arbitrators (Article 47)

The costs referred to in Article 45 (a}, (b}, (c}, (d}, (e) and {h) shall be fixed by the Secretariat in accordance with the BVI IAC's Schedule of fees and costs set out in Annex C to the Rules, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any experts or tribunal secretary appointed by the arbitral tribunal, and any other relevant circumstances of the case.

Allocation of costs (Article 48)

1. The arbitral tribunal shall specify the costs of arbitration in an award.

2. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal has discretion to apportion such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

3. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

Appendices

Appendix 1- Emergency Arbitrator

Article 1- Request for Emergency Arbitrator and Scope of application of the Emergency Arbitrator proceedings

1. A party that needs urgent interim or conservatory measures may file a request for the CEO to appoint an emergency arbitrator (the "Emergency Arbitrator") before the constitution of the arbitral tribunal (the "Request for Emergency Arbitrator"), including before the filing of a Notice of Arbitration.

2. Appendix 1 shall apply if the arbitration agreement was signed after the entry into force of the Rules, provided that the parties did not opt out of its application. Appendix 1 shall also apply to Requests for Emergency Arbitrator based on arbitration agreements signed before the entry into force of the Rules, provided that the parties have expressly agreed upon their application.

3. The Request for Emergency Arbitrator shall be drafted in the language agreed by the parties in the arbitration agreement. If the parties agreed to more than one language, the Request for Emergency Arbitrator shall be drafted in one of the agreed languages only. If the parties agreed to a language other than English, they should also file an English translation of the Request for Emergency Arbitrator. If no language was agreed, the Request for Emergency Arbitrator shall be drafted in English.

4. The CEO shall have the power to decide all matters related to the administration of the Emergency Arbitrator proceedings not expressly provided in Appendix 1.

Article 2 - Contents of the Request for Emergency Arbitrator

1. The Request for Emergency Arbitrator shall contain:

   a) and that the dispute be referred to Emergency Arbitrator proceedings;

   b) the names and contact details of the requesting party, the other parties and their representatives;

c) a copy of the arbitration agreement(s) invoked;

d) a copy of any contract or other legal instrument out of or in relation to which the dispute underlying the request for Emergency Arbitrator arises or, in the absence of such contract or instrument, a brief description of the relevant underlying relationship;

e) a description of the measures sought;

f) the requesting party's proposal or comments in relation to the language, seat of arbitration and applicable law;

g) the reasons why the requested measures cannot await the constitution of the arbitral tribunal;

h) if the Request for Emergency Arbitrator is related to arbitration proceedings already filed with the BVI IAC, the case reference number of the relevant arbitration proceedings;

i) any other documents that the requesting party considers to be relevant to its Request for Emergency Arbitrator; and

j) proof of payment of the costs of the Emergency Arbitrator proceedings set out in Article 10 of Appendix 1.

Article 3 - Receipt of the Request for Emergency Arbitrator

1. The requesting party shall submit the Request for Emergency Arbitrator and any accompanying documents to the Secretariat in electronic form. The Secretariat may ask the requesting party to provide hard copies of some or all the documents in a number sufficient to provide a copy to the Secretariat, the Emergency Arbitrator and each of the other parties.

2. Upon receipt of the Request for Emergency Arbitrator, the Secretariat may ask the requesting party to correct or complete the Request for Emergency Arbitrator before transmitting it to the other party or parties.

3. Once the Secretariat is satisfied that the Request for Emergency Arbitrator is complete pursuant to Article 3.2 of Appendix 1, it shall immediately transmit it to the other party or parties.

Article 4 - Appointment of the Emergency Arbitrator

1. Upon receipt of the Request for Emergency Arbitrator, the CEO shall appoint an Emergency Arbitrator as soon as possible, and no later than 2 days from the receipt of the complete Request for Emergency Arbitrator, subject to extenuating circumstances.

2. Before being appointed, the Emergency Arbitrator shall sign a statement of independence and impartiality specifically confirming its acceptance and availability to act as Emergency Arbitrator (see Model in Annex B to the Rules). The Emergency Arbitrator shall remain impartial and independent during the Emergency Arbitrator proceedings. If, during the course of the Emergency Arbitrator proceedings, the Emergency Arbitrator becomes aware of a circumstance that could affect his independence or impartiality, he or she shall so communicate immediately to the Secretariat and the parties.

3. Once the CEO appoints the Emergency Arbitrator, the Secretariat will so notify the parties and transmit the case file to the Emergency Arbitrator.

4. Challenges to an Emergency Arbitrator shall be made within 2 days following notification of his or her appointment or following the date on which the party became aware of the circumstances giving rise to the challenge. The challenge shall be decided by the Arbitration Committee within 3 days after the time limit granted to the other party or parties and to the Emergency Arbitrator to comment on the challenge.

Article 5 - Seat and language of the Emergency Arbitrator proceedings

1. The seat of the Emergency Arbitrator proceedings shall be the one agreed by the parties. Failing party agreement, the seat shall be the seat of arbitration agreed to in the arbitration agreement. If the parties have not agreed on a seat of arbitration in the arbitration agreement, the seat of the Emergency Arbitrator proceedings shall be determined by the Arbitration Committee, after giving the other party or parties a reasonable opportunity to comment on the requesting party's proposal, as stated in its Request for Emergency Arbitrator.

2. Unless otherwise agreed by the parties, the Emergency Arbitrator may decide to hold any meetings or hearings in a venue different from the seat of the Emergency Arbitrator proceedings, or remotely, by

videoconference, telephone conference or any other similar technology.

3. The language of the Emergency Arbitrator proceedings shall be the one agreed by the parties. Failing party agreement, the language shall be the language of arbitration agreed to in the arbitration agreement. If the parties have not agreed on a language in the arbitration agreement, the language of the Emergency Arbitrator proceedings shall be determined by the Emergency Arbitrator after giving the other party or parties a reasonable opportunity to comment on the requesting party's proposal, as stated in its Request for Emergency Arbitrator.

Article 6 - Procedure

1. Once the Emergency Arbitrator has been appointed, the Secretariat, the Emergency Arbitrator and the parties shall be copied in all communications.

2. The Emergency Arbitrator, after giving the parties a reasonable opportunity to express their views, shall establish a procedural timetable within 3 days after receipt of the case file from the Secretariat.

3. When fixing the procedural timetable and conducting the Emergency Arbitrator proceedings, the Emergency Arbitrator shall ensure that the parties are given a reasonable opportunity to present their case, and shall take into account all circumstances, including but not limited to the nature, complexity and urgency of the matter, and the number of parties affected by the requested measures.

Article 7 - Decision of the Emergency Arbitrator

1. The Emergency Arbitrator shall render a decision on the request for urgent interim or conservatory measures (the "Decision") and send it to the Secretariat and the parties within 14 days following receipt of the case file. The parties may agree to extend the 14 days' time limit. Upon request of the Emergency Arbitrator, the Secretariat may extend the time limit to render the Decision by no longer than 7 additional days.

2. As an exception to Article 7.1 of Appendix 1, if the Secretariat modifies the costs of the Emergency Arbitrator proceedings pursuant to Article 10 of Appendix 1, the Decision will not be communicated to the parties until the Secretariat receives proof of payment of the additional costs.

3. The Decision shall be issued in the form of an order. This order shall be made in written form, shall provide reasons, be dated and signed by the Emergency Arbitrator.

4. The order containing the Decision shall determine whether the Emergency Arbitrator has jurisdiction to order the requested measures.

5. The order containing the Decision shall include a decision on costs of the Emergency Arbitrator proceedings. Such costs include the administrative fees of the BVI IAC, the Emergency Arbitrator's fees and expenses, as well as the reasonable legal and other costs incurred by the parties for the Emergency Arbitrator proceedings.

Article 8 - Binding effect of the Decision of the Emergency Arbitrator

1. The order containing the Decision shall be binding on the parties and the parties undertake to voluntarily comply with it without delay.

2. Prior to the transmission of the Emergency Arbitrator proceedings case file to the arbitral tribunal and upon a change in the circumstances, a party may request the Emergency Arbitrator to revoke, modify or terminate the order. The Emergency Arbitrator shall decide as soon as possible on the request, after granting the other party or parties a reasonable opportunity to present its case.

3. The Decision shall cease to have a binding effect if:

   a) the Emergency Arbitrator or the arbitral tribunal so decides;

   b) a Notice of Arbitration is not received by the Secretariat within 14 days following the Request for Emergency Arbitrator; or

   c) the arbitration proceedings are terminated, unless the arbitral tribunal determines that the Decision shall continue to be binding.

4. The decision on costs shall remain binding even if the Decision ceases to have effect pursuant to Article 8.3 of Appendix 1, unless it is modified by the arbitral tribunal pursuant to Article 8.5 of Appendix 1.

5. Neither the Decision nor any issues examined in the order containing the Decision shall bind the arbitral tribunal, which may revoke, modify or terminate the

Decision, including the decision on costs made by the Emergency Arbitrator.

Article 9 - Termination of the Emergency Arbitrator Proceedings

1. The Emergency Arbitrator proceedings shall be terminated before the issuance of the order containing the Decision if:

a) the requesting party withdraws its request;

b) the parties agree upon the termination; or

c) the arbitral tribunal is constituted, in which case the Secretariat shall transmit the Emergency Arbitrator proceedings case file to the newly appointed arbitral tribunal, which shall decide on the request for urgent interim or conservatory measures within 14 days following receipt of the Emergency Arbitrator proceedings case file.

2. If proof of payment is not submitted within 10 days following the request of payment of the costs of the Emergency Arbitrator proceedings or any additional costs determined pursuant to Article 10.1of Appendix 1 by the Secretariat, the Request for Emergency Arbitrator shall be considered as withdrawn.

Article 10 - Costs of the Emergency Arbitrator proceedings

1. The costs of the Emergency Arbitrator proceedings are US$28,000 (US$7,000 for the administrative fees of the BVI IAC and US$21,000 for the fees and expenses of the Emergency Arbitrator). The Secretariat may modify these costs having regard to the circumstances of the case, in particular if a party submits an additional request for the Emergency Arbitrator to modify, revoke or terminate the Decision pursuant to Article 8.2 of Appendix 1 or if any party other than the requesting party requests other urgent interim or conservatory measures in the Emergency Arbitrator proceedings.

2. When the costs are increased, the party requesting the measures or the party requesting the revision of the Decision shall be responsible to pay the additional costs, as the case may be, unless the Secretariat determines otherwise, and without prejudice of to the decision on costs made by the Emergency Arbitrator pursuant to Article 7.5 of Appendix 1.

3. When the Emergency Arbitrator proceedings are terminated before the Emergency Arbitrator renders the Decision, the Secretariat shall determine the costs of the Emergency Arbitrator proceedings and the Emergency Arbitrator shall issue an order to allocate the costs.

4. If the Emergency Arbitrator proceedings case file is transferred to the arbitral tribunal before the Emergency Arbitrator renders the Decision pursuant to Article 9.1(c) of Appendix 1, the Secretariat will determine the portion of fees that corresponds to the Emergency Arbitrator and to the arbitral tribunal taking into account the work done by the Emergency Arbitrator.

Appendix 2 - Expedited Procedure

Article 1-Application and objective of the Expedited Procedure

1. By agreeing to arbitration under the Rules, the parties agree that Appendix 2 and the Expedited Procedure set forth therein (the "Expedited Procedure") shall take precedence over any contrary terms of the arbitration agreement.

2. The overriding objective of Appendix 2 and of the Expedited Procedure is to provide a procedure that is timely, cost effective and fair, considering especially the amount in dispute and the complexity of the issues or facts involved.

3. When the Expedited Procedure applies, the parties agree to accept this overriding objective and its application by the arbitral tribunal.

Article 2 - Scope of application of the Expedited Procedure

1. The Expedited Procedure shall apply if:

a) the amount in dispute does not exceed the amount of US$4,000,000.00, representing the aggregate of the claim, counterclaim and any defence of set-off or cross-claim;

b) the parties so agree (see Model Clause in Annex A to the Rules); or

c) prior to the constitution of the arbitral tribunal, a party applies to the Secretariat for the arbitration to be conducted in accordance with the Expedited Procedure, and the Arbitration Committee determines, after considering the views of the parties and having regard to the circumstances of the case, that it is a case of exceptional urgency that shall be conducted in accordance with the Expedited Procedure.

2. The party applying for the arbitration proceedings to be conducted in accordance with the Expedited Procedure under Article 2.1(c) of Appendix 2 shall, at the same time as it files its application with the Secretariat, send a copy of the application to the other party or parties and notify the Secretariat that it has done so, specifying the mode of service employed and the date of service.

3. The Expedited Procedure shall not apply if:

a) the arbitration agreement was concluded before the date on which the Expedited Procedure came into force;

b) the parties have agreed to opt out of the Expedited Procedure; or

c) the Arbitration Committee, at request of a party filed before the constitution of the arbitral tribunal or on its own motion, determines that it is inappropriate in the circumstances to apply the Expedited Procedure.

4. The Arbitration Committee may, at any time during the proceedings, on its own motion, at the request of a party or at the request of the arbitral tribunal, and after consultation with the parties and the arbitral tribunal, decide that the Expedited Procedure shall no longer apply to the case. In such case, unless the Arbitration Committee considers that it is appropriate to reconstitute the arbitral tribunal, the arbitral tribunal shall remain in place.

Article 3 - Constitution of the Arbitral Tribunal

1. The case shall be referred to a sole arbitrator, unless the Arbitration Committee determines otherwise.

2. The parties may designate the sole arbitrator within a time limit to be fixed by the Secretariat. In the absence of such designation, the sole arbitrator shall be appointed by the CEO within as short a time as possible.

3. By agreeing to arbitration under the Rules, the parties agree that the CEO may, notwithstanding any contrary provision of the arbitration agreement, appoint a sole arbitrator.

Article 4 - Proceedings

1. The Secretariat may abbreviate any time limits under the Rules.

2. Once the arbitral tribunal is constituted, no party shall make new claims or counterclaims, unless it has been authorised to do so by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration, any delay and cost implications, any prejudice to the other party or parties, and any other relevant circumstances, including the overriding objective set out in Article 1.2 of Appendix 2.

3. The first procedural conference convened pursuant to Article 18.3 of the Rules shall take place no later than 10 days from the date on which the case file was transmitted to the arbitral tribunal. The Secretariat may extend this time limit upon receiving a request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so.

4. The arbitral tribunal shall have discretion to adopt such procedural measures as it considers appropriate. In particular, the arbitral tribunal may, after consultation with the parties, decide not to allow requests for document production or to limit the number, length and scope of written submissions and written evidence submitted by witnesses and experts.

5. The arbitral tribunal may, after consulting the parties, decide that the dispute shall be decided on the basis of documentary evidence only, with no hearing and no examination of witnesses or experts.

Article 5 - Award

1.The final award shall be made within 6 months from the date on which the Secretariat transmitted the case file to the arbitral tribunal, unless, in exceptional circumstances, the Secretariat extends the time limit for rendering the final award.

2. The arbitral tribunal may state the reasons upon which the final award is based in summary form.

3. The fees of the arbitral tribunal shall be fixed according to the Schedule of fees set out in Annex C to the Rules

Appendix 3 - Tribunal Secretaries

Article 1- Appointment of the tribunal secretary

1. In appropriate circumstances, the arbitral tribunal may appoint a tribunal secretary.

2. The arbitral tribunal shall inform the parties of its intention to appoint a tribunal secretary. For that purpose, the arbitral tribunal shall submit to the parties:

a) the curriculum vitae of the proposed tribunal secretary;

b) the tribunal secretary's declaration of impartiality, independence, and availability (see Model in Annex B to the Rules);

c) a statement setting out the proposed scope of the tribunal secretary's tasks in the relevant matter and confirming that the arbitral tribunal shall under no circumstance delegate to the tribunal secretary any of its decision-making functions; and

d) a statement that the parties may object to such proposal and that a tribunal secretary shall not be appointed if a party has raised such an objection.

Article 2 - Independence and impartiality

The tribunal secretary shall at all times remain independent of the parties and impartial. Article 12 of the Rules shall apply mutatis mutandis to the tribunal secretary.

Article 3 - Duties and functions of the tribunal secretary

1. The tribunal secretary shall at all time work upon the arbitral tribunal's instructions and under the latter's continuous supervision.

2. Subject to any objection made by the parties to any statement made by the arbitral tribunal pursuant to Article 1.2{c) of Appendix 3, the tribunal secretary may perform organisational, administrative and redactional tasks, including, but not limited to:

a) assisting the arbitral tribunal in reviewing the evidence and the issues in dispute, including through the review of submissions and evidence, preparation of summaries and/or memoranda, and research on specific factual or legal issues;

b) assisting the arbitral tribunal in the preparation and communication to the parties of its decisions on procedural and substantive issues, including by preparing initial drafts of procedural orders and awards, under the direction and supervision of the arbitral tribunal, provided that (i) any substantive reasons in the awards shall be those of the members of the arbitral tribunal, and (ii) any such drafts prepared by the tribunal secretary shall be reviewed by the arbitral tribunal before they are established in final form;

c) assisting the arbitral tribunal with administrative tasks (e.g., liaising with court reporters and keeping track of time used by the parties during hearings);

d) assisting the members of the arbitral tribunal in communicating with each other and the parties, and with the Secretariat; and

e) providing general support to the arbitral tribunal or its members at any time, and especially during hearings and deliberations, which the tribunal secretary may attend.

3. The arbitral tribunal shall under no circumstance delegate its decision making functions to the tribunal secretary.

Article 4- Removal of the tribunal secretary

1. A party that intends to ask for the removal of the tribunal secretary, for an alleged lack of impartiality, independence or otherwise, shall submit its application to the arbitral tribunal within 15 days after it has been notified of the appointment of tribunal secretary, or within 15 days after the circumstances underlying such application for removal became known to that party.

2. The application for removal shall be communicated to the Secretariat, all other parties, the arbitral tribunal and the tribunal secretary. The application for removal shall state the reasons for the challenge.

3. The arbitral tribunal may grant an adequate time limit to the other parties and the tribunal secretary to provide comments on the application for removal.

4. After the expiry of this time limit, the arbitral tribunal shall decide on the application for removal via a procedural order.

Article 5 - Remuneration of the tribunal secretary

1. Any remuneration of the tribunal secretary shall be paid out of the arbitral tribunal's fees, unless the arbitral tribunal and the parties agree otherwise. If the parties and the arbitral tribunal agree upon a separate remuneration for the tribunal secretary, such remuneration shall be calculated on the basis of an hourly rate, which shall not exceed US$250 per hour, provided that the total amount of the tribunal

secretary's remuneration does not exceed one third of the sole arbitrator or presiding arbitrator's total fees.

2. The arbitral tribunal may seek reimbursement from the parties of the tribunal secretary's reasonable expenses disbursed for the conduct of the arbitration.

Annexes

Annex A

Model Clause (Article 1 of the Rules)

"Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be referred to arbitration administered by the BVI International Arbitration Centre (BVI IAC) under the BVI IAC Arbitration Rules.

The number of arbitrators shall be... [one or three];

The seat of arbitration shall be... [Road Town, Tortola, British Virgin Islands, unless the parties agree otherwise];

The language to be used in the arbitration shall be... [language]."

Model Clause Expedited Procedure (Appendix 2 to the Rules)

"Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be referred to arbitration administered by the BVI International Arbitration Centre (BVI IAC) in accordance with the Expedited Procedure set out in Appendix 2 to the BVI IAC Arbitration Rules.

The seat of arbitration shall be... [Road Town, Tortola, British Virgin Islands, unless the parties agree otherwise];

The language to be used in the arbitration shall be... [language]."

Annex B

Model Statement of impartiality, independence and availability of the arbitrator (Article 12 of the Rules)

No circumstances to disclose

I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the Secretariat, the parties and the other arbitrators of any such circumstances that may subsequently come to my attention during this arbitration.

Circumstances to disclose

I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made pursuant to Article 12 of the BVI IAC Arbitration Rules of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances.

[Include statement.]

I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the Secretariat, the parties and the other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration.

Statement of availability

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules.

Model Statement of impartiality, independence and availability of the Emergency Arbitrator (Article 4.2 of Appendix 1 to the Rules)

No circumstances to disclose

I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the Secretariat and the parties of any such circumstances that may subsequently come to my attention during these Emergency Arbitrator proceedings.

Circumstances to disclose

I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made pursuant to Article 4.2 of Appendix 1 to the BVI IAC

Arbitration Rules of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances.

[Include statement.]

I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the Secretariat and the parties of any such further relationships or circumstances that may subsequently come to my attention during these Emergency Arbitrator proceedings.

Statement of availability

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct these Emergency Arbitrator proceedings diligently, efficiently and in accordance with the time limits in the Rules.

Model Statement of impartiality, independence and availability of the tribunal secretary (Article l.2(b) of Appendix 3 to the Rules)

No circumstances to disclose

I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the Secretariat, the parties and the arbitral tribunal of any such circumstances that may subsequently come to my attention during this arbitration.

Circumstances to disclose

I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made pursuant to Article l.2{b) of Appendix 3 to the BVI IAC Arbitration Rules of {a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances.

[Include statement.]

I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the Secretariat, the parties and the arbitral tribunal of any such further relationships or circumstances that may subsequently come to my attention during this arbitration.

Statement of availability

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to assist the arbitral tribunal in conducting this arbitration diligently, efficiently and in accordance with the time limits in the Rules.

Annex C

{Editor's note: The schedule of fees and costs may be accessed at https://www.bviiac.org/Portals/0/Files/Arbitration%20Documents/2021%20BVI%20IAC%20Arbitra-tion%20Rules.pdf]

Annex D

The Arbitration Committee

A. Function

The function of the Arbitration Committee is to ensure the application of the Rules. It shall have all the necessary powers to fulfil its mission.

B. Composition

1. The Arbitration Committee shall consist of a President, three Vice Presidents, and members (collectively designated as "**Arbitration Committee Members**"). The CEO and the Secretariat assist it in the conduct of its work. The Arbitration Committee Members shall be appointed for a three-year term by the Board, upon recommendation by the CEO.

2. The term office of the Arbitration Committee Members is renewable once. If a member is no longer in a position to exercise his or her functions, the Board may appoint a successor for the remainder of his or her term.

3. No Arbitration Committee Member shall serve for more than two full consecutive terms, unless the Board decides otherwise upon the recommendation of the CEO.

4. The composition of the Arbitration Committee is published on the BVI IAC website.

C. Plenary Session and Sub-Committees

1. Unless the CEO or the Registrar considers that a matter is of such complexity that it needs to be

referred to the Arbitration Committee's Plenary Session (the "**Plenary Session**"), the Arbitration Committee conducts its work in Sub-Committees (the "**Sub-Committees**").

2. Sub-Committees consist of the President or a Vice-President, or in exceptional circumstances an Arbitration Committee Member, and two other Arbitration Committee Members.

3. A Plenary Session consists of the President, the Vice-Presidents and all Arbitration Committee Members who are in attendance.

D. Confidentiality

1. The work of the Arbitration Committee is confidential. Any person participating in that work in whatever capacity shall be strictly bound by such confidentiality.

2. The sessions of the Arbitration Committee are open to the Arbitration Committee Members, the CEO and the Secretariat.

3. The documents submitted to the Arbitration Committee or established by it, by the CEO or by the Secretariat are communicated only to the Arbitration Committee Members, the CEO and the Secretariat.

E. Conflicts of Interest

1. The CEO shall not appoint any of the Arbitration Committee Members as arbitrators. They may, however, be proposed for such duties by one or more of the parties, or pursuant to any other procedure agreed upon by the parties, subject to the provisions of the Rules concerning the constitution of the arbitral tribunal.

2. When any Arbitration Committee Member or a member of the Secretariat is or was involved in any capacity whatsoever in proceedings pending before the Arbitration Committee, such person must inform the CEO upon becoming aware of such involvement. This restriction does not apply to the involvement of members of the Secretariat in the administration of BVI IAC cases.

3. Such person shall not attend the Arbitration Committee session whenever the matter in which he or she is or was involved is considered by the Arbitration Committee and shall not participate in the discussions or in the decisions of the Arbitration Committee in relation to such matter.

4. Such person will not receive any material documentation or information pertaining to such proceedings.

F. Constitution, Quorum and Decision-making

1. The members of the Sub-Committees are appointed by the CEO or the Registrar among the Arbitration Committee Members.

2. The President of the Arbitration Committee shall act as the president of the Plenary. A Vice-President of the Arbitration Committee may act as president of a Sub-Committee or of the Plenary: (i) at the request of the President, or (ii) in the President's absence or otherwise where the President is unable to act, at the request of the CEO or at the request of the Registrar. In exceptional circumstances, another Arbitration Committee Member may act as president of a Sub-Committee.

3. Sub-Committees meet whenever convened by their president, including via video or telephone conference.

4. A quorum is met when:

   a) all three Arbitration Committee Members are present, including the President or a Vice-President or in exceptional circumstances another Arbitration Committee Member, at a Sub-Committee session;

   b) at least five Arbitration Committee Members, including the President or designated Vice-President, are present at a Plenary Session.

5. Decisions at Sub-Committees are taken by majority. When a Sub Committee deems it preferable to refrain from deciding, it shall transfer the case to the Plenary Session.

6. Decisions at the Plenary are taken by majority, the President or a designated Vice-President, as the case may be, having a casting vote in the event of a tie.

7. The Arbitration Committee has no obligation to give reasons for any decision it makes in respect of any arbitration commenced under the Rules, unless otherwise provided in the Rules. The decisions of the Arbitration Committee shall be final.

G. Authority to refer matters to the Arbitration Committee

The CEO and the Registrar have authority to refer matters to the Arbitration Committee in accordance with the Rules.

H. Default power of the President of the Arbitration Committee

In the absence of a provision in Annex D to the Rules addressing a specific situation concerning, inter alia, the conduct of the sessions of the Arbitration Committee, the President of the Arbitration Committee shall have all the powers required to allow the resolution of such situation and the conduct of the Arbitration Committee's sessions, acting in the spirit and pursuant to the ethical standards underlying the Rules.

Chapter 26

China International Economic and Trade Arbitration Commission (CIETAC)[1] (2015)

MODEL ARBITRATION CLAUSE

Model Arbitration Clause(1)

Any dispute arising from or in connection with this Contract shall be submitted to China International Economic and Trade Arbitration Commission (CIETAC) for arbitration which shall be conducted in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.

Model Arbitration Clause(2)

Any dispute arising from or in connection with this Contract shall be submitted to China International Economic and Trade Arbitration Commission (CIETAC)_____Sub-Commission (Arbitration Center) for arbitration which shall be conducted in accordance with the CIETAC's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.

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CIETAC ARBITRATION RULES

(Revised and adopted by the China Council for the Promotion of International Trade/China Chamber of International Commerce on November 4, 2014. Effective as of January 1, 2015.)

Chapter I General Provisions

Article 1 The Arbitration Commission

1. The China International Economic and Trade Arbitration Commission ("CIETAC"), originally named the Foreign

Trade Arbitration Commission of the China Council for the Promotion of International Trade and later renamed the Foreign Economic and Trade Arbitration Commission of the China Council for the Promotion of International Trade, concurrently uses as its name the "Arbitration Institute of the China Chamber of International Commerce".

2. Where an arbitration agreement provides for arbitration by the China Council for the Promotion of International Trade/China Chamber of International Commerce, or by the Arbitration Commission or the Arbitration Institute of the China Council for the Promotion of International Trade/China Chamber of International Commerce, or refers to CIETAC's previous names, it shall be deemed that the parties have agreed to arbitration by CIETAC.

Article 2 Structure and Duties

1. The Chairman of CIETAC shall perform the functions and duties vested in him/her by these Rules while a Vice Chairman may perform the Chairman's functions and duties with the Chairman's authorization.

2. CIETAC has an Arbitration Court (the "Arbitration Court"), which performs its functions in accordance with these Rules under the direction of the authorized Vice Chairman and the President of the Arbitration Court.

3. CIETAC is based in Beijing. It has sub-commissions or arbitration centers (Appendix I). The sub-commissions/arbitration centers are CIETAC's branches, which accept arbitration applications and administer arbitration cases with CIETAC's authorization.

4. A sub-commission/arbitration center has an arbitration court, which performs the functions of the Arbitration Court in accordance with these Rules under the direction of the president of the arbitration court of the sub-commission/arbitration center.

5. Where a case is administered by a sub-commission/arbitration center, the functions and duties vested in the President of the Arbitration Court under these Rules may, by his/her authorization, be performed by the president of the arbitration court of the relevant sub-commission/arbitration center.

6. The parties may agree to submit their disputes to CIETAC or a sub-commission/arbitration center of CIETAC for arbitration. Where the parties have agreed to arbitration by CIETAC, the Arbitration Court shall accept the arbitration application and administer the case. Where the parties have agreed to arbitration by a sub-commission/arbitration center, the arbitration court of the sub-commission/arbitration center agreed upon by the parties shall accept the arbitration application and administer the case. Where the sub-commission/arbitration center agreed upon by the parties does not exist or its authorization has been terminated, or where the agreement is ambiguous, the Arbitration Court shall accept the arbitration application and administer the case. In the event of any dispute, a decision shall be made by CIETAC.

Article 3 Jurisdiction

1. CIETAC accepts cases involving economic, trade and other disputes of a contractual or non-contractual nature, based on an agreement of the parties.

2. The cases referred to in the preceding paragraph include:
   (a) international or foreign-related disputes;
   (b) disputes related to the Hong Kong Special Administrative Region, the Macao Special Administrative Region and the Taiwan region; and
   (c) domestic disputes.

Article 4 Scope of Application

1. These Rules uniformly apply to CIETAC and its sub-commissions/arbitration centers.

2. Where the parties have agreed to refer their dispute to CIETAC for arbitration, they shall be deemed to have agreed to arbitration in accordance with these Rules.

3. Where the parties agree to refer their dispute to CIETAC for arbitration but have agreed on a modification of these Rules or have agreed on the application of other arbitration rules, the parties' agreement shall prevail unless such agreement is inoperative or in conflict with a mandatory provision of the law applicable to the arbitral proceedings. Where the parties have agreed on the application of other arbitration rules, CIETAC shall perform the relevant administrative duties.

4. Where the parties agree to refer their dispute to arbitration under these Rules without providing the name of the arbitration institution, they shall be deemed to have agreed to refer the dispute to arbitration by CIETAC.

5. Where the parties agree to refer their dispute to arbitration under CIETAC's customized arbitration rules for a specific trade or profession, the parties' agreement shall prevail. However, if the dispute falls outside the scope of the specific rules, these Rules shall apply.

Article 5 Arbitration Agreement

1. An arbitration agreement means an arbitration clause in a contract or any other form of a written agreement concluded between the parties providing for the settlement of disputes by arbitration.

2. The arbitration agreement shall be in writing. An arbitration agreement is in writing if it is contained in the tangible form of a document such as a contract, letter, telegram, telex, fax, electronic data interchange, or email. An arbitration agreement shall be deemed to exist where its existence is asserted by one party and not denied by the other during the exchange of the Request for Arbitration and the Statement of Defense.

3. Where the law applicable to an arbitration agreement has different provisions as to the form and validity of the arbitration agreement, those provisions shall prevail.

4. An arbitration clause contained in a contract shall be treated as a clause independent and separate from all other clauses of the contract, and an arbitration agreement attached to a contract shall also be treated as independent and separate from all other clauses of the contract. The validity of an arbitration clause or an arbitration agreement shall not be affected by any modification, cancellation, termination, transfer, expiry, invalidity, ineffectiveness, rescission or non-existence of the contract.

Article 6 Objection to Arbitration Agreement and/or Jurisdiction

1. CIETAC has the power to determine the existence and validity of an arbitration agreement and its jurisdiction over an arbitration case. CIETAC may, where necessary, delegate such power to the arbitral tribunal.

2. Where CIETAC is satisfied by prima facie evidence that a valid arbitration agreement exists, it may make a decision based on such evidence that it has jurisdiction over the arbitration case, and the arbitration shall proceed. Such a decision shall not prevent CIETAC from making a new decision on jurisdiction based on facts and/or evidence found by the arbitral tribunal during the arbitral proceedings that are inconsistent with the prima facie evidence.

3. Where CIETAC has delegated the power to determine jurisdiction to the arbitral tribunal, the arbitral tribunal may either make a separate decision on jurisdiction during the arbitral proceedings or incorporate the decision in the final arbitral award.

4. Any objection to an arbitration agreement and/or the jurisdiction over an arbitration case shall be raised in writing before the first oral hearing held by the arbitral tribunal. Where a case is to be decided on the basis of documents only, such an objection shall be raised before the submission of the first substantive defense.

5. The arbitration shall proceed notwithstanding an objection to the arbitration agreement and/or jurisdiction over the arbitration case.

6. The aforesaid objections to and/or decisions on jurisdiction by CIETAC shall include objections to and/or decisions on a party's standing to participate in the arbitration.

7. CIETAC or its authorized arbitral tribunal shall decide to dismiss the case upon finding that CIETAC has no jurisdiction over an arbitration case. Where a case is to be dismissed before the formation of the arbitral tribunal, the decision shall be made by the President of the Arbitration Court. Where the case is to be dismissed after the formation of the arbitral tribunal, the decision shall be made by the arbitral tribunal.

Article 7 Place of Arbitration

1. Where the parties have agreed on the place of arbitration, the parties' agreement shall prevail.

2. Where the parties have not agreed on the place of arbitration or their agreement is ambiguous, the place of arbitration shall be the domicile of CIETAC or its sub-commission/arbitration center administering the case. CIETAC may also determine the place of arbitration to be another location having regard to the circumstances of the case.

3. The arbitral award shall be deemed as having been made at the place of arbitration.

Article 8 Service of Documents and Periods of Time

1. All documents, notices and written materials in relation to the arbitration may be delivered in person or sent by registered mail or express mail, fax, or by any other means considered proper by the Arbitration Court or the arbitral tribunal.

2. The arbitration documents referred to in the preceding Paragraph 1 shall be sent to the address provided by the party itself or by its representative(s), or to an address agreed by the parties. Where a party or its representative(s) has not provided an address or the parties have not agreed on an address, the arbitration documents shall be sent to such party's address as provided by the other party or its representative(s).

3. Any arbitration correspondence to a party or its representative(s) shall be deemed to have been properly served on the party if delivered to the addressee or sent to the addressee's place of business, place of registration, domicile, habitual residence or mailing address, or where, after reasonable inquiries by the other party, none of the aforesaid addresses can be found, the arbitration correspondence is sent by the Arbitration Court to the addressee's last known place of business, place of registration, domicile, habitual residence or mailing address by registered or express mail, or by any other means that can provide a record of the

attempt at delivery, including but not limited to service by public notary, entrustment or retention.

4. The periods of time specified in these Rules shall begin on the day following the day when the party receives or should have received the arbitration correspondence, notices or written materials sent by the Arbitration Court.

Article 9 Good Faith

Arbitration participants shall proceed with the arbitration in good faith.

Article 10 Waiver of Right to Object

A party shall be deemed to have waived its right to object where it knows or should have known that any provision of, or requirement under, these Rules has not been complied with and yet participates in or proceeds with the arbitral proceedings without promptly and explicitly submitting its objection in writing to such non-compliance.

Chapter II Arbitral Proceedings

Section 1 Request for Arbitration, Defense and Counterclaim

Article 11 Commencement of Arbitration

The arbitral proceedings shall commence on the day on which the Arbitration Court receives a Request for Arbitration.

Article 12 Application for Arbitration

A party applying for arbitration under these Rules shall:

1. Submit a Request for Arbitration in writing signed and/or sealed by the Claimant or its authorized representative(s), which shall, inter alia, include:

(a) the names and addresses of the Claimant and the Respondent, including the zip code, telephone, fax, email, or any other means of electronic telecommunications;

(b) a reference to the arbitration agreement that is invoked;

(c) a statement of the facts of the case and the main issues in dispute;

(d) the claim of the Claimant; and

(e) the facts and grounds on which the claim is based.

2. Attach to the Request for Arbitration the relevant documentary and other evidence on which the Claimant's claim is based.

3. Pay the arbitration fee in advance to CIETAC in accordance with its Arbitration Fee Schedule.

Article 13 Acceptance of a Case

1. Upon the written application of a party, CIETAC shall accept a case in accordance with an arbitration agreement concluded between the parties either before or after the occurrence of the dispute, in which it is provided that disputes are to be referred to arbitration by CIETAC.

2. Upon receipt of a Request for Arbitration and its attachments, where after examination the Arbitration Court finds the formalities required for arbitration application to be complete, it shall send a Notice of Arbitration to both parties together with one copy each of these Rules and CIETAC's Panel of Arbitrators. The Request for Arbitration and its attachments submitted by the Claimant shall be sent to the Respondent under the same cover.

3. Where after examination the Arbitration Court finds the formalities required for the arbitration application to be incomplete, it may request the Claimant to complete them within a specified time period. The Claimant shall be deemed not to have submitted a Request for Arbitration if it fails to complete the required formalities within the specified time period. In such a case, the Claimant's Request for Arbitration and its attachments shall not be kept on file by the Arbitration Court.

4. After CIETAC accepts a case, the Arbitration Court shall designate a case manager to assist with the procedural administration of the case.

Article 14 Multiple Contracts

The Claimant may initiate a single arbitration concerning disputes arising out of or in connection with multiple contracts, provided that:

(a) such contracts consist of a principal contract and its ancillary contract(s), or such contracts involve the same parties as well as legal relationships of the same nature;

(b) the disputes arise out of the same transaction or the same series of transactions; and

(c) the arbitration agreements in such contracts are identical or compatible.

Article 15 Statement of Defense

1. The Respondent shall file a Statement of Defense in writing within forty-five (45) days from the date of its receipt of the Notice of Arbitration. If the Respondent has justified reasons to request an extension of the time period, the arbitral tribunal shall decide whether to grant an extension. Where the arbitral tribunal has not yet been formed, the decision on whether to grant the extension of the time period shall be made by the Arbitration Court.

2. The Statement of Defense shall be signed and/or sealed by the Respondent or its authorized representative(s), and shall, inter alia, include the following contents and attachments:

(a) the name and address of the Respondent, including the zip code, telephone, fax, email, or any other means of electronic telecommunications;

(b) the defense to the Request for Arbitration setting forth the facts and grounds on which the defense is based; and

(c) the relevant documentary and other evidence on which the defense is based.

3. The arbitral tribunal has the power to decide whether to accept a Statement of Defense submitted after the expiration of the above time period.

4. Failure by the Respondent to file a Statement of Defense shall not affect the conduct of the arbitral proceedings.

Article 16 Counterclaim

1. The Respondent shall file a counterclaim, if any, in writing within forty-five (45) days from the date of its receipt of the Notice of Arbitration. If the Respondent has justified reasons to request an extension of the time period, the arbitral tribunal shall decide whether to grant an extension. Where the arbitral tribunal has not yet been formed, the decision on whether to grant the extension of the time period shall be made by the Arbitration Court.

2. When filing the counterclaim, the Respondent shall specify the counterclaim in its Statement of Counterclaim and state the facts and grounds on which the counterclaim is based with the relevant documentary and other evidence attached thereto.

3. When filing the counterclaim, the Respondent shall pay an arbitration fee in advance in accordance with the Arbitration Fee Schedule of CIETAC within a specified time period, failing which the Respondent shall be deemed not to have filed any counterclaim.

4. Where the formalities required for filing a counterclaim are found to be complete, the Arbitration Court shall send a Notice of Acceptance of Counterclaim to the parties. The Claimant shall submit its Statement of Defense in writing within thirty (30) days from the date of its receipt of the Notice. If the Claimant has justified reasons to request an extension of the time period, the arbitral tribunal shall decide whether to grant such an extension. Where the arbitral tribunal has not yet been formed, the decision on whether to grant the extension of the time period shall be made by the Arbitration Court.

5. The arbitral tribunal has the power to decide whether to accept a counterclaim or a Statement of Defense submitted after the expiration of the above time period.

6. Failure of the Claimant to file a Statement of Defense to the Respondent's counterclaim shall not affect the conduct of the arbitral proceedings.

Article 17 Amendment to Claim or Counterclaim

The Claimant may apply to amend its claim and the Respondent may apply to amend its counterclaim. However, the arbitral tribunal may refuse any such amendment if it considers that the amendment is too late and may delay the arbitral proceedings.

Article 18 Joinder of Additional Parties

1. During the arbitral proceedings, a party wishing to join an additional party to the arbitration may file the Request for Joinder with CIETAC, based on the arbitration agreement invoked in the arbitration that prima facie binds the additional party. Where the Request for Joinder is filed after the formation of the arbitral tribunal, a decision shall be made by CIETAC after the arbitral tribunal hears from all parties including the additional party if the arbitral tribunal considers the joinder necessary.

The date on which the Arbitration Court receives the Request for Joinder shall be deemed to be the date of the commencement of arbitration against the additional party.

2. The Request for Joinder shall contain the case number of the existing arbitration; the name, address and other means of communication of each of the parties, including the additional party; the arbitration agreement invoked to join the additional party as well as the facts and grounds the request relies upon; and the claim.

The relevant documentary and other evidence on which the request is based shall be attached to the Request for Joinder.

3. Where any party objects to the arbitration agreement and/or jurisdiction over the arbitration with respect to the

joinder proceedings, CIETAC has the power to decide on its jurisdiction based on the arbitration agreement and relevant evidence.

4. After the joinder proceedings commence, the conduct of the arbitral proceedings shall be decided by the Arbitration Court if the arbitral tribunal is not formed, or shall be decided by the arbitral tribunal if it has been formed.

5. Where the joinder takes place prior to the formation of the arbitral tribunal, the relevant provisions on party's nominating or entrusting of the Chairman of CIETAC to appoint arbitrator under these Rules shall apply to the additional party. The arbitral tribunal shall be formed in accordance with Article 29 of these Rules.

Where the joinder takes place after the formation of the arbitral tribunal, the arbitral tribunal shall hear from the additional party of its comments on the past arbitral proceedings including the formation of the arbitral tribunal. If the additional party requests to nominate or entrust the Chairman of CIETAC to appoint an arbitrator, both parties shall nominate or entrust the Chairman of CIETAC to appoint arbitrators again. The arbitral tribunal shall be formed in accordance with Article 29 of these Rules.

6. The relevant provisions on the submission of the Statement of Defense and the Statement of Counterclaim under these Rules shall apply to the additional party. The time period for the additional party to submit its Statement of Defense and Statement of Counterclaim shall start counting from the date of its receipt of the Notice of Joinder.

7. CIETAC shall have the power to decide not to join an additional party where the additional party is prima facie not bound by the arbitration agreement invoked in the arbitration, or where any other circumstance exists that makes the joinder inappropriate.

Article 19 Consolidation of Arbitrations

1. At the request of a party, CIETAC may consolidate two or more arbitrations pending under these Rules into a single arbitration if:

(a) all of the claims in the arbitrations are made under the same arbitration agreement;

(b) the claims in the arbitrations are made under multiple arbitration agreements that are identical or compatible and the arbitrations involve the same parties as well as legal relationships of the same nature;

(c) the claims in the arbitrations are made under multiple arbitration agreements that are identical or compatible and the multiple contracts involved consist of a principle contract and its ancillary contract(s); or

(d) all the parties to the arbitrations have agreed to consolidation.

2. In deciding whether to consolidate the arbitrations in accordance with the preceding Paragraph 1, CIETAC shall take into account the opinions of all parties and other relevant factors such as the correlation between the arbitrations concerned, including the nomination and appointment of arbitrators in the separate arbitrations.

3. Unless otherwise agreed by all the parties, the arbitrations shall be consolidated into the arbitration that was first commenced.

4. After the consolidation of arbitrations, the conduct of the arbitral proceedings shall be decided by the Arbitration Court if the arbitral tribunal is not formed, or shall be decided by the arbitral tribunal if it has been formed.

Article 20 Submission and Exchange of Arbitration Documents

1. All arbitration documents from the parties shall be submitted to the Arbitration Court.

2. All arbitration documents to be exchanged during the arbitral proceedings shall be exchanged among the arbitral tribunal and the parties by the Arbitration Court unless otherwise agreed by the parties and with the consent of the arbitral tribunal or otherwise decided by the arbitral tribunal.

Article 21 Copies of Arbitration Documents

When submitting the Request for Arbitration, the Statement of Defense, the Statement of Counterclaim, evidence, and other arbitration documents, the parties shall make their submissions in quintuplicate. Where there are multiple parties, additional copies shall be provided accordingly. Where the party applies for preservation of property or protection of evidence, it shall also provide additional copies accordingly. Where the arbitral tribunal is composed of a sole arbitrator, the number of copies submitted may be reduced by two.

Article 22 Representation

A party may be represented by its authorized Chinese and/or foreign representative(s) in handling matters relating to the arbitration. In such a case, a Power of Attorney shall be forwarded to the Arbitration Court by the party or its authorized representative(s).

Article 23 Conservatory and Interim Measures

1. Where a party applies for conservatory measures pursuant to the laws of the People's Republic of China, CIETAC shall forward the party's application to the competent court designated by that party in accordance with the law.

2. In accordance with the applicable law or the agreement of the parties, a party may apply to the Arbitration Court for emergency relief pursuant to the CIETAC Emergency Arbitrator Procedures (Appendix III). The emergency arbitrator may decide to order or award necessary or appropriate emergency measures. The decision of the emergency arbitrator shall be binding upon both parties.

3. At the request of a party, the arbitral tribunal may decide to order or award any interim measure it deems necessary or proper in accordance with the applicable law or the agreement of the parties and may require the requesting party to provide appropriate security in connection with the measure.

Section 2 Arbitrators and the Arbitral Tribunal

Article 24 Duties of Arbitrator

An arbitrator shall not represent either party, and shall be and remain independent of the parties and treat them equally.

Article 25 Number of Arbitrators

1. The arbitral tribunal shall be composed of one or three arbitrators.

2. Unless otherwise agreed by the parties or provided by these Rules, the arbitral tribunal shall be composed of three arbitrators.

Article 26 Nomination or Appointment of Arbitrator

1. CIETAC maintains a Panel of Arbitrators which uniformly applies to itself and all its sub-commissions/arbitration centers. The parties shall nominate arbitrators from the Panel of Arbitrators provided by CIETAC.

2. Where the parties have agreed to nominate arbitrators from outside CIETAC's Panel of Arbitrators, an arbitrator so nominated by the parties or nominated according to the agreement of the parties may act as arbitrator subject to the confirmation by the Chairman of CIETAC.

Article 27 Three-Arbitrator Tribunal

1. Within fifteen (15) days from the date of receipt of the Notice of Arbitration, the Claimant and the Respondent shall each nominate, or entrust the Chairman of CIETAC to appoint, an arbitrator, failing which the arbitrator shall be appointed by the Chairman of CIETAC.

2. Within fifteen (15) days from the date of the Respondent's receipt of the Notice of Arbitration, the parties shall jointly nominate, or entrust the Chairman of CIETAC to appoint, the third arbitrator, who shall act as the presiding arbitrator.

3. The parties may each recommend one to five arbitrators as candidates for the presiding arbitrator and shall each submit a list of recommended candidates within the time period specified in the preceding Paragraph 2. Where there is only one common candidate on the lists, such candidate shall be the presiding arbitrator jointly nominated by the parties. Where there is more than one common candidate on the lists, the Chairman of CIETAC shall choose the presiding arbitrator from among the common candidates having regard to the circumstances of the case, and he/she shall act as the presiding arbitrator jointly nominated by the parties. Where there is no common candidate on the lists, the presiding arbitrator shall be appointed by the Chairman of CIETAC.

4. Where the parties have failed to jointly nominate the presiding arbitrator according to the above provisions, the presiding arbitrator shall be appointed by the Chairman of CIETAC.

Article 28 Sole-Arbitrator Tribunal

Where the arbitral tribunal is composed of one arbitrator, the sole arbitrator shall be nominated pursuant to the procedures stipulated in Paragraphs 2, 3 and 4 of Article 27 of these Rules.

Article 29 Multiple-Party Tribunal

1. Where there are two or more Claimants and/or Respondents in an arbitration case, the Claimant side and/or the Respondent side, following discussion, shall each jointly nominate or jointly entrust the Chairman of CIETAC to appoint one arbitrator.

2. The presiding arbitrator or the sole arbitrator shall be nominated in accordance with the procedures stipulated in Paragraphs 2, 3 and 4 of Article 27 of these Rules. When making such nomination pursuant to Paragraph 3 of Article 27 of these Rules, the Claimant side and/or the Respondent side, following discussion, shall each submit a list of their jointly agreed candidates.

3. Where either the Claimant side or the Respondent side fails to jointly nominate or jointly entrust the Chairman of CIETAC to appoint one arbitrator within fifteen (15) days

from the date of its receipt of the Notice of Arbitration, the Chairman of CIETAC shall appoint all three members of the arbitral tribunal and designate one of them to act as the presiding arbitrator.

Article 30 Considerations in Appointing Arbitrators

When appointing arbitrators pursuant to these Rules, the Chairman of CIETAC shall take into consideration the law applicable to the dispute, the place of arbitration, the language of arbitration, the nationalities of the parties, and any other factor(s) the Chairman considers relevant.

Article 31 Disclosure

1. An arbitrator nominated by the parties or appointed by the Chairman of CIETAC shall sign a Declaration and disclose any facts or circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence.

2. If circumstances that need to be disclosed arise during the arbitral proceedings, the arbitrator shall promptly disclose such circumstances in writing.

3. The Declaration and/or the disclosure of the arbitrator shall be submitted to the Arbitration Court to be forwarded to the parties.

Article 32 Challenge to Arbitrator

1. Upon receipt of the Declaration and/or the written disclosure of an arbitrator, a party wishing to challenge the arbitrator on the grounds of the disclosed facts or circumstances shall forward the challenge in writing within ten (10) days from the date of such receipt. If a party fails to file a challenge within the above time period, it may not subsequently challenge the arbitrator on the basis of the matters disclosed by the arbitrator.

2. A party having justifiable doubts as to the impartiality or independence of an arbitrator may challenge that arbitrator in writing and shall state the facts and reasons on which the challenge is based with supporting evidence.

3. A party may challenge an arbitrator in writing within fifteen (15) days from the date it receives the Notice of Formation of the Arbitral Tribunal. Where a party becomes aware of a reason for a challenge after such receipt, the party may challenge the arbitrator in writing within fifteen (15) days after such reason has become known to it, but no later than the conclusion of the last oral hearing.

4. The challenge by one party shall be promptly communicated to the other party, the arbitrator being challenged and the other members of the arbitral tribunal.

5. Where an arbitrator is challenged by one party and the other party agrees to the challenge, or the arbitrator being challenged voluntarily withdraws from his/her office, such arbitrator shall no longer be a member of the arbitral tribunal. However, in neither case shall it be implied that the reasons for the challenge are sustained.

6. In circumstances other than those specified in the preceding Paragraph 5, the Chairman of CIETAC shall make a final decision on the challenge with or without stating the reasons.

7. An arbitrator who has been challenged shall continue to serve on the arbitral tribunal until a final decision on the challenge has been made by the Chairman of CIETAC.

Article 33 Replacement of Arbitrator

1. In the event that an arbitrator is prevented de jure or de facto from fulfilling his/her functions, or fails to fulfill his/her functions in accordance with the requirements of these Rules or within the time period specified in these Rules, the Chairman of CIETAC shall have the power to replace the arbitrator. Such arbitrator may also voluntarily withdraw from his/her office.

2. The Chairman of CIETAC shall make a final decision on whether or not an arbitrator should be replaced with or without stating the reasons.

3. In the event that an arbitrator is unable to fulfill his/her functions due to challenge or replacement, a substitute arbitrator shall be nominated or appointed within the time period specified by the Arbitration Court according to the same procedure that applied to the nomination or appointment of the arbitrator being challenged or replaced. If a party fails to nominate or appoint a substitute arbitrator accordingly, the substitute arbitrator shall be appointed by the Chairman of CIETAC.

4. After the replacement of an arbitrator, the arbitral tribunal shall decide whether and to what extent the previous proceedings in the case shall be repeated.

Article 34 Continuation of Arbitration by Majority

After the conclusion of the last oral hearing, if an arbitrator on a three-member tribunal is unable to participate in the deliberations and/or to render the award owing to his/her demise or to his/her removal from CIETAC's Panel of Arbitrators, or for any other reason, the other two arbitrators may request the Chairman of CIETAC to replace that arbitrator pursuant to Article 33 of these Rules. After consulting with the parties and upon the approval of the Chairman of CIETAC, the other two arbitrators may also continue the

arbitral proceedings and make decisions, rulings, or render the award. The Arbitration Court shall notify the parties of the above circumstances.

Section 3 Hearing

Article 35 Conduct of Hearing

1. The arbitral tribunal shall examine the case in any way it deems appropriate unless otherwise agreed by the parties. Under all circumstances, the arbitral tribunal shall act impartially and fairly and shall afford a reasonable opportunity to both parties to present their case.

2. The arbitral tribunal shall hold oral hearings when examining the case. However, the arbitral tribunal may examine the case on the basis of documents only if the parties so agree and the arbitral tribunal consents or the arbitral tribunal deems that oral hearings are unnecessary and the parties so agree.

3. Unless otherwise agreed by the parties, the arbitral tribunal may adopt an inquisitorial or adversarial approach in hearing the case having regard to the circumstances of the case.

4. The arbitral tribunal may hold deliberations at any place or in any manner that it considers appropriate.

5. Unless otherwise agreed by the parties, the arbitral tribunal may, if it considers it necessary, issue procedural orders or question lists, produce terms of reference, or hold pre-hearing conferences, etc. With the authorization of the other members of the arbitral tribunal, the presiding arbitrator may decide on the procedural arrangements for the arbitral proceedings at his/her own discretion.

Article 36 Place of Oral Hearing

1. Where the parties have agreed on the place of an oral hearing, the case shall be heard at that agreed place except in the circumstances stipulated in Paragraph 3 of Article 82 of these Rules.

2. Unless otherwise agreed by the parties, the place of oral hearings shall be in Beijing for a case administered by the Arbitration Court or at the domicile of the sub-commission/arbitration center administering the case, or if the arbitral tribunal considers it necessary and with the approval of the President of the Arbitration Court, at another location.

Article 37 Notice of Oral Hearing

1. Where a case is to be examined by way of an oral hearing, the parties shall be notified of the date of the first oral hearing at least twenty (20) days in advance of the oral hearing. A party having justified reasons may request a postponement of the oral hearing. However, the party shall communicate such request in writing to the arbitral tribunal within five (5) days of its receipt of the notice of the oral hearing. The arbitral tribunal shall decide whether or not to postpone the oral hearing.

2. Where a party has justified reasons for its failure to submit a request for a postponement of the oral hearing in accordance with the preceding Paragraph 1, the arbitral tribunal shall decide whether or not to accept the request.

3. A notice of a subsequent oral hearing, a notice of a postponed oral hearing, as well as a request for postponement of such an oral hearing, shall not be subject to the time periods specified in the preceding Paragraph 1.

Article 38 Confidentiality

1. Hearings shall be held in camera. Where both parties request an open hearing, the arbitral tribunal shall make a decision.

2. For cases heard in camera, the parties and their representatives, the arbitrators, the witnesses, the interpreters, the experts consulted by the arbitral tribunal, the appraisers appointed by the arbitral tribunal and other relevant persons shall not disclose to any outsider any substantive or procedural matters relating to the case.

Article 39 Default

1. If the Claimant fails to appear at an oral hearing without showing sufficient cause, or withdraws from an on-going oral hearing without the permission of the arbitral tribunal, the Claimant may be deemed to have withdrawn its application for arbitration. In such a case, if the Respondent has filed a counterclaim, the arbitral tribunal shall proceed with the hearing of the counterclaim and make a default award.

2. If the Respondent fails to appear at an oral hearing without showing sufficient cause, or withdraws from an on-going oral hearing without the permission of the arbitral tribunal, the arbitral tribunal may proceed with the arbitration and make a default award. In such a case, if the Respondent has filed a counterclaim, the Respondent may be deemed to have withdrawn its counterclaim.

Article 40 Record of Oral Hearing

1. The arbitral tribunal may arrange for a written and/or an audio-visual record to be made of an oral hearing. The arbitral tribunal may, if it considers it necessary, take minutes of the oral hearing and request the parties and/or their representatives, witnesses and/or other persons involved to sign and/or affix their seals to the written record or the minutes.

2. The written record, the minutes and the audio-visual record of an oral hearing shall be available for use and reference by the arbitral tribunal.

3. At the request of a party, the Arbitration Court may, having regard to the specific circumstances of the arbitration, decide to engage a stenographer to make a stenographic record of an oral hearing, the cost of which shall be advanced by the parties.

Article 41 Evidence

1. Each party shall bear the burden of proving the facts on which it relies to support its claim, defense or counterclaim and provide the basis for its opinions, arguments and counter-arguments.

2. The arbitral tribunal may specify a time period for the parties to produce evidence and the parties shall produce evidence within the specified time period. The arbitral tribunal may refuse to admit any evidence produced after that time period. If a party experiences difficulties in producing evidence within the specified time period, it may apply for an extension before the end of the period. The arbitral tribunal shall decide whether or not to extend the time period.

3. If a party bearing the burden of proof fails to produce evidence within the specified time period, or if the produced evidence is not sufficient to support its claim or counterclaim, it shall bear the consequences thereof.

Article 42 Examination of Evidence

1. Where a case is examined by way of an oral hearing, the evidence shall be produced at the oral hearing and may be examined by the parties.

2. Where a case is to be decided on the basis of documents only, or where the evidence is submitted after the hearing and both parties have agreed to examine the evidence by means of writing, the parties may examine the evidence in writing. In such circumstances, the parties shall submit their written opinions on the evidence within the time period specified by the arbitral tribunal.

Article 43 Investigation and Evidence Collection by the Arbitral Tribunal

1. The arbitral tribunal may undertake investigation and collect evidence as it considers necessary.

2. When investigating and collecting evidence, the arbitral tribunal may notify the parties to be present. In the event that one or both parties fail to be present after being notified, the investigation and collection of evidence shall proceed without being affected.

3. Evidence collected by the arbitral tribunal through its investigation shall be forwarded to the parties for their comments.

Article 44 Expert's Report and Appraiser's Report

1. The arbitral tribunal may consult experts or appoint appraisers for clarification on specific issues of the case. Such an expert or appraiser may be a Chinese or foreign institution or natural person.

2. The arbitral tribunal has the power to request the parties, and the parties are also obliged, to deliver or produce to the expert or appraiser any relevant materials, documents, property, or physical objects for examination, inspection or appraisal by the expert or appraiser.

3. Copies of the expert's report and the appraiser's report shall be forwarded to the parties for their comments. At the request of either party and with the approval of the arbitral tribunal, the expert or appraiser shall participate in an oral hearing and give explanations on the report when the arbitral tribunal considers it necessary.

Article 45 Suspension of the Arbitral Proceedings

1. Where the parties jointly or separately request a suspension of the arbitral proceedings, or under circumstances where such suspension is necessary, the arbitral proceedings may be suspended.

2. The arbitral proceedings shall resume as soon as the reason for the suspension disappears or the suspension period ends.

3. The arbitral tribunal shall decide whether to suspend or resume the arbitral proceedings. Where the arbitral tribunal has not yet been formed, the decision shall be made by the President of the Arbitration Court.

Article 46 Withdrawal and Dismissal

1. A party may withdraw its claim or counterclaim in its entirety. In the event that the Claimant withdraws its claim in its entirety, the arbitral tribunal may proceed with its examination of the counterclaim and render an arbitral award thereon. In the event that the Respondent withdraws its counterclaim in its entirety, the arbitral tribunal may proceed with the examination of the claim and render an arbitral award thereon.

2. A party may be deemed to have withdrawn its claim or counterclaim if the arbitral proceedings cannot proceed for reasons attributable to that party.

3. A case may be dismissed if the claim and counterclaim have been withdrawn in their entirety. Where a case is to be dismissed prior to the formation of the arbitral tribunal, the President of the Arbitration Court shall make a decision on the dismissal. Where a case is to be dismissed after the formation of the arbitral tribunal, the arbitral tribunal shall make the decision.

4. The seal of CIETAC shall be affixed to the Dismissal Decision referred to in the preceding Paragraph 3 and Paragraph 7 of Article 6 of these Rules.

Article 47 Combination of Conciliation with Arbitration

1. Where both parties wish to conciliate, or where one party wishes to conciliate and the other party's consent has been obtained by the arbitral tribunal, the arbitral tribunal may conciliate the dispute during the arbitral proceedings. The parties may also settle their dispute by themselves.

2. With the consents of both parties, the arbitral tribunal may conciliate the case in a manner it considers appropriate.

3. During the process of conciliation, the arbitral tribunal shall terminate the conciliation proceedings if either party so requests or if the arbitral tribunal considers that further conciliation efforts will be futile.

4. The parties shall sign a settlement agreement where they have reached settlement through conciliation by the arbitral tribunal or by themselves.

5. Where the parties have reached a settlement agreement through conciliation by the arbitral tribunal or by themselves, they may withdraw their claim or counterclaim, or request the arbitral tribunal to render an arbitral award or a conciliation statement in accordance with the terms of the settlement agreement.

6. Where the parties request for a conciliation statement, the conciliation statement shall clearly set forth the claims of the parties and the terms of the settlement agreement. It shall be signed by the arbitrators, sealed by CIETAC, and served upon both parties.

7. Where conciliation is not successful, the arbitral tribunal shall resume the arbitral proceedings and render an arbitral award.

8. Where the parties wish to conciliate their dispute but do not wish to have conciliation conducted by the arbitral tribunal, CIETAC may, with the consents of both parties, assist the parties to conciliate the dispute in a manner and procedure it considers appropriate.

9. Where conciliation is not successful, neither party may invoke any opinion, view or statement, and any proposal or proposition expressing acceptance or opposition by either party or by the arbitral tribunal in the process of conciliation as grounds for any claim, defense or counterclaim in the subsequent arbitral proceedings, judicial proceedings, or any other proceedings.

10. Where the parties have reached a settlement agreement by themselves through negotiation or conciliation before the commencement of an arbitration, either party may, based on an arbitration agreement concluded between them that provides for arbitration by CIETAC and the settlement agreement, request CIETAC to constitute an arbitral tribunal to render an arbitral award in accordance with the terms of the settlement agreement. Unless otherwise agreed by the parties, the Chairman of CIETAC shall appoint a sole arbitrator to form such an arbitral tribunal, which shall examine the case in a procedure it considers appropriate and render an award in due course. The specific procedure and time period for rendering the award shall not be subject to other provisions of these Rules.

Chapter III Arbitral Award

Article 48 Time Period for Rendering Award

1. The arbitral tribunal shall render an arbitral award within six (6) months from the date on which the arbitral tribunal is formed.

2. Upon the request of the arbitral tribunal, the President of the Arbitration Court may extend the time period if he/she considers it truly necessary and the reasons for the extension truly justified.

3. Any suspension period shall be excluded when calculating the time period in the preceding Paragraph 1.

Article 49 Making of Award

1. The arbitral tribunal shall independently and impartially render a fair and reasonable arbitral award based on the facts of the case and the terms of the contract, in accordance with the law, and with reference to international practices.

2. Where the parties have agreed on the law applicable to the merits of their dispute, the parties' agreement shall prevail. In the absence of such an agreement or where such agreement is in conflict with a mandatory provision of the

law, the arbitral tribunal shall determine the law applicable to the merits of the dispute.

3. The arbitral tribunal shall state in the award the claims, the facts of the dispute, the reasons on which the award is based, the result of the award, the allocation of the arbitration costs, and the date on which and the place at which the award is made. The facts of the dispute and the reasons on which the award is based may not be stated in the award if the parties have so agreed, or if the award is made in accordance with the terms of a settlement agreement between the parties. The arbitral tribunal has the power to fix in the award the specific time period for the parties to perform the award and the liabilities for failure to do so within the specified time period.

4. The seal of CIETAC shall be affixed to the arbitral award.

5. Where a case is examined by an arbitral tribunal composed of three arbitrators, the award shall be rendered by all three arbitrators or a majority of the arbitrators. A written dissenting opinion shall be kept with the file and may be appended to the award. Such dissenting opinion shall not form a part of the award.

6. Where the arbitral tribunal cannot reach a majority opinion, the arbitral award shall be rendered in accordance with the presiding arbitrator's opinion. The written opinions of the other arbitrators shall be kept with the file and may be appended to the award. Such written opinions shall not form a part of the award.

7. Unless the arbitral award is made in accordance with the opinion of the presiding arbitrator or the sole arbitrator and signed by the same, the arbitral award shall be signed by a majority of the arbitrators. An arbitrator who has a dissenting opinion may or may not sign his/her name on the award.

8. The date on which the award is made shall be the date on which the award comes into legal effect.

9. The arbitral award is final and binding upon both parties. Neither party may bring a lawsuit before a court or make a request to any other organization for revision of the award.

Article 50 Partial Award

1. Where the arbitral tribunal considers it necessary, or where a party so requests and the arbitral tribunal agrees, the arbitral tribunal may first render a partial award on any part of the claim before rendering the final award. A partial award is final and binding upon both parties.

2. Failure of either party to perform a partial award shall neither affect the arbitral proceedings nor prevent the arbitral tribunal from making the final award.

Article 51 Scrutiny of Draft Award

The arbitral tribunal shall submit its draft award to CIETAC for scrutiny before signing the award. CIETAC may bring to the attention of the arbitral tribunal issues addressed in the award on the condition that the arbitral tribunal's independence in rendering the award is not affected.

Article 52 Allocation of Fees

1. The arbitral tribunal has the power to determine in the arbitral award the arbitration fees and other expenses to be paid by the parties to CIETAC.

2. The arbitral tribunal has the power to decide in the arbitral award, having regard to the circumstances of the case, that the losing party shall compensate the winning party for the expenses reasonably incurred by it in pursuing the case. In deciding whether or not the winning party's expenses incurred in pursuing the case are reasonable, the arbitral tribunal shall take into consideration various factors such as the outcome and complexity of the case, the workload of the winning party and/or its representative(s), the amount in dispute, etc.

Article 53 Correction of Award

1. Within a reasonable time after the award is made, the arbitral tribunal may, on its own initiative, make corrections in writing of any clerical, typographical or calculation errors, or any errors of a similar nature contained in the award.

2. Within thirty (30) days from its receipt of the arbitral award, either party may request the arbitral tribunal in writing for a correction of any clerical, typographical or calculation errors, or any errors of a similar nature contained in the award. If such an error does exist in the award, the arbitral tribunal shall make the correction in writing within thirty (30) days of its receipt of the written request for the correction.

3. The above written correction shall form a part of the arbitral award and shall be subject to the provisions in Paragraphs 4 to 9 of Article 49 of these Rules.

Article 54 Additional Award

1. Where any matter which should have been decided by the arbitral tribunal was omitted from the arbitral award,

the arbitral tribunal may, on its own initiative, make an additional award within a reasonable time after the award is made.

2. Either party may, within thirty (30) days from its receipt of the arbitral award, request the arbitral tribunal in writing for an additional award on any claim or counterclaim which was advanced in the arbitral proceedings but was omitted from the award. If such an omission does exist, the arbitral tribunal shall make an additional award within thirty (30) days of its receipt of the written request.

3. Such additional award shall form a part of the arbitral award and shall be subject to the provisions in Paragraphs 4 to 9 of Article 49 of these Rules.

Article 55 Performance of Award

1. The parties shall perform the arbitral award within the time period specified in the award. If no time period is specified in the award, the parties shall perform the award immediately.

2. Where one party fails to perform the award, the other party may apply to a competent court for enforcement of the award in accordance with the law.

Chapter IV Summary Procedure

Article 56 Application

1. The Summary Procedure shall apply to any case where the amount in dispute does not exceed RMB 5,000,000 unless otherwise agreed by the parties; or where the amount in dispute exceeds RMB 5,000,000, yet one party applies for arbitration under the Summary Procedure and the other party agrees in writing; or where both parties have agreed to apply the Summary Procedure.

2. Where there is no monetary claim or the amount in dispute is not clear, CIETAC shall determine whether or not to apply the Summary Procedure after full consideration of relevant factors, including but not limited to the complexity of the case and the interests involved.

Article 57 Notice of Arbitration

Where after examination the Claimant's arbitration application is accepted for arbitration under the Summary Procedure, the Arbitration Court shall send a Notice of Arbitration to both parties.

Article 58 Formation of the Arbitral Tribunal

Unless otherwise agreed by the parties, a sole-arbitrator tribunal shall be formed in accordance with Article 28 of these Rules to hear a case under the Summary Procedure.

Article 59 Defense and Counterclaim

1. The Respondent shall submit its Statement of Defense, evidence and other supporting documents within twenty (20) days of its receipt of the Notice of Arbitration. Counterclaim, if any, shall also be filed with evidence and supporting documents within such time period.

2. The Claimant shall file its Statement of Defense to the Respondent's counterclaim within twenty (20) days of its receipt of the counterclaim and its attachments.

3. If a party has justified reasons to request an extension of the time period, the arbitral tribunal shall decide whether to grant such extension. Where the arbitral tribunal has not yet been formed, such decision shall be made by the Arbitration Court.

Article 60 Conduct of Hearing

The arbitral tribunal may examine the case in the manner it considers appropriate. The arbitral tribunal may decide whether to examine the case solely on the basis of the written materials and evidence submitted by the parties or to hold an oral hearing.

Article 61 Notice of Oral Hearing

1. For a case examined by way of an oral hearing, after the arbitral tribunal has fixed a date for the first oral hearing, the parties shall be notified of the date at least fifteen (15) days in advance of the oral hearing. A party having justified reasons may request a postponement of the oral hearing. However, the party shall communicate such request in writing to the arbitral tribunal within three (3) days of its receipt of the notice of the oral hearing. The arbitral tribunal shall decide whether or not to postpone the oral hearing.

2. If a party has justified reasons for failure to submit a request for a postponement of the oral hearing in accordance with the preceding Paragraph 1, the arbitral tribunal shall decide whether to accept such a request.

3. A notice of a subsequent oral hearing, a notice of a postponed oral hearing, as well as a request for postponement of such oral hearing, shall not be subject to the time periods specified in the preceding Paragraph 1.

Article 62 Time Period for Rendering Award

1. The arbitral tribunal shall render an arbitral award within three (3) months from the date on which the arbitral tribunal is formed.

2. Upon the request of the arbitral tribunal, the President of the Arbitration Court may extend the time period if he/she considers it truly necessary and the reasons for the extension truly justified.

3. Any suspension period shall be excluded when calculating the time period in the preceding Paragraph 1.

Article 63 Change of Procedure

The Summary Procedure shall not be affected by any amendment to the claim or by the filing of a counterclaim. Where the amount in dispute of the amended claim or that of the counterclaim exceeds RMB 5,000,000, the Summary Procedure shall continue to apply unless the parties agree or the arbitral tribunal decides that a change to the general procedure is necessary.

Article 64 Context Reference

The relevant provisions in the other Chapters of these Rules shall apply to matters not covered in this Chapter.

Chapter V Special Provisions for Domestic Arbitration

Article 65 Application

1. The provisions of this Chapter shall apply to domestic arbitration cases.

2. The provisions of the Summary Procedure in Chapter IV shall apply if a domestic arbitration case falls within the scope of Article 56 of these Rules.

Article 66 Acceptance of a Case

1. Upon receipt of a Request for Arbitration, where the Arbitration Court finds the Request to meet the requirements specified in Article 12 of these Rules, the Arbitration Court shall notify the parties accordingly within five (5) days from its receipt of the Request. Where a Request for Arbitration is found not to be in conformity with the requirements, the Arbitration Court shall notify the party in writing of its refusal of acceptance with reasons stated.

2. Upon receipt of a Request for Arbitration, where after examination, the Arbitration Court finds the Request not to be in conformity with the formality requirements specified in Article 12 of these Rules, it may request the Claimant to comply with the requirements within a specified time period.

Article 67 Formation of the Arbitral Tribunal

The arbitral tribunal shall be formed in accordance with the provisions of Articles 25, 26, 27, 28, 29 and 30 of these Rules.

Article 68 Defense and Counterclaim

1. Within twenty (20) days from the date of its receipt of the Notice of Arbitration, the Respondent shall submit its Statement of Defense, evidence and other supporting documents. Counterclaim, if any, shall also be filed with evidence and other supporting documents within the time period.

2. The Claimant shall file its Statement of Defense to the Respondent's counterclaim within twenty (20) days from the date of its receipt of the counterclaim and its attachments.

3. If a party has justified reasons to request an extension of the time period, the arbitral tribunal shall decide whether to grant such extension. Where the arbitral tribunal has not yet been formed, such decision shall be made by the Arbitration Court.

Article 69 Notice of Oral Hearing

1. For a case examined by way of an oral hearing, after the arbitral tribunal has fixed a date for the first oral hearing, the parties shall be notified of the date at least fifteen (15) days in advance of the oral hearing. A party having justified reason may request a postponement of the oral hearing. However, the party shall communicate such request in writing to the arbitral tribunal within three (3) days of its receipt of the notice of the oral hearing. The arbitral tribunal shall decide whether or not to postpone the oral hearing.

2. If a party has justified reasons for failure to submit a request for a postponement of the oral hearing in accordance with the preceding Paragraph 1, the arbitral tribunal shall decide whether to accept such a request.

3. A notice of a subsequent oral hearing, a notice of a postponed oral hearing, as well as a request for postponement of such oral hearing, shall not be subject to the time periods specified in the preceding Paragraph 1.

Article 70 Record of Oral Hearing

1. The arbitral tribunal shall make a written record of the oral hearing. Any party or participant in the arbitration may apply for a correction upon finding any omission or

mistake in the record regarding its own statements. If the application is refused by the arbitral tribunal, it shall nevertheless be recorded and kept with the file.

2. The written record shall be signed or sealed by the arbitrator(s), the recorder, the parties, and any other participant in the arbitration.

Article 71 Time Period for Rendering Award

1. The arbitral tribunal shall render an arbitral award within four (4) months from the date on which the arbitral tribunal is formed.

2. Upon the request of the arbitral tribunal, the President of the Arbitration Court may extend the time period if he/she considers it truly necessary and the reasons for the extension truly justified.

3. Any suspension period shall be excluded when calculating the time period in the preceding Paragraph 1.

Article 72 Context Reference

The relevant provisions in the other Chapters of these Rules, with the exception of Chapter VI, shall apply to matters not covered in this Chapter.

Chapter VI Special Provisions for Hong Kong Arbitration

Article 73 Application

1. CIETAC has established the CIETAC Hong Kong Arbitration Center in the Hong Kong Special Administrative Region. The provisions of this Chapter shall apply to arbitration cases accepted and administered by the CIETAC Hong Kong Arbitration Center.

2. Where the parties have agreed to submit their disputes to the CIETAC Hong Kong Arbitration Center for arbitration or to CIETAC for arbitration in Hong Kong, the CIETAC Hong Kong Arbitration Center shall accept the arbitration application and administer the case.

Article 74 Place of Arbitration and Law Applicable to the Arbitral Proceedings

Unless otherwise agreed by the parties, for an arbitration administered by the CIETAC Hong Kong Arbitration Center, the place of arbitration shall be Hong Kong, the law applicable to the arbitral proceedings shall be the arbitration law of Hong Kong, and the arbitral award shall be a Hong Kong award.

Article 75 Decision on Jurisdiction

Any objection to an arbitration agreement and/or the jurisdiction over an arbitration case shall be raised in writing no later than the submission of the first substantive defense.

The arbitral tribunal shall have the power to determine the existence and validity of the arbitration agreement and its jurisdiction over the arbitration case.

Article 76 Nomination or Appointment of Arbitrator

The CIETAC Panel of Arbitrators in effect shall be recommended in arbitration cases administered by the CIETAC Hong Kong Arbitration Center. The parties may nominate arbitrators from outside the CIETAC's Panel of Arbitrators. An arbitrator so nominated shall be subject to the confirmation of the Chairman of CIETAC.

Article 77 Interim Measures and Emergency Relief

1. Unless otherwise agreed by the parties, the arbitral tribunal has the power to order appropriate interim measures at the request of a party.

2. Where the arbitral tribunal has not yet been formed, a party may apply for emergency relief pursuant to the CIETAC Emergency Arbitrator Procedures (Appendix III).

Article 78 Seal on Award

The seal of the CIETAC Hong Kong Arbitration Center shall be affixed to the arbitral award.

Article 79 Arbitration Fees

The CIETAC Arbitration Fee Schedule III (Appendix II) shall apply to the arbitration cases accepted and administered in accordance with this Chapter.

Article 80 Context Reference

The relevant provisions in the other Chapters of these Rules, with the exception of Chapter V, shall apply to matters not covered in this Chapter.

Chapter VII Supplementary Provisions

Article 81 Language

1. Where the parties have agreed on the language of arbitration, their agreement shall prevail. In the absence of such agreement, the language of arbitration to be used in the proceedings shall be Chinese. CIETAC may also designate another language as the language of arbitration having regard to the circumstances of the case.

2. If a party or its representative(s) or witness(es) requires interpretation at an oral hearing, an interpreter may be provided either by the Arbitration Court or by the party.

3. The arbitral tribunal or the Arbitration Court may, if it considers it necessary, require the parties to submit a corresponding translation of their documents and evidence into Chinese or other languages.

Article 82 Arbitration Fees and Costs

1. Apart from the arbitration fees charged in accordance with its Arbitration Fee Schedule, CIETAC may charge the parties for any other additional and reasonable actual costs, including but not limited to arbitrators' special remuneration, their travel and accommodation expenses incurred in dealing with the case, engagement fees of stenographers, as well as the costs and expenses of experts, appraisers or interpreters appointed by the arbitral tribunal. The Arbitration Court shall, after hearing from the arbitrator and the party concerned, determine the arbitrator's special remuneration with reference to the standards of arbitrators' fees and expenses set forth in the CIETAC Arbitration Fee Schedule III (Appendix II).

2. Where a party has nominated an arbitrator but fails to advance a deposit for such actual costs as the special remuneration, travel and accommodation expenses of the nominated arbitrator within the time period specified by CIETAC, the party shall be deemed not to have nominated the arbitrator.

3. Where the parties have agreed to hold an oral hearing at a place other than the domicile of CIETAC or its relevant sub-commission/arbitration center, they shall advance a deposit for the actual costs such as travel and accommodation expenses incurred thereby. In the event that the parties fail to do so within the time period specified by CIETAC, the oral hearing shall be held at the domicile of CIETAC or its relevant sub-commission/arbitration center.

4. Where the parties have agreed to use two or more than two languages as the languages of arbitration, or where the parties have agreed on a three-arbitrator tribunal in a case where the Summary Procedure shall apply in accordance with Article 56 of these Rules, CIETAC may charge the parties for any additional and reasonable costs.

Article 83 Interpretation

1. The headings of the articles in these Rules shall not be construed as interpretations of the contents of the provisions contained therein.

2. These Rules shall be interpreted by CIETAC.

Article 84 Coming into Force

These Rules shall be effective as of January 1, 2015. For cases administered by CIETAC or its sub-commissions/arbitration centers before these Rules come into force, the Arbitration Rules effective at the time of acceptance shall apply, or where both parties agree, these Rules shall apply.

Appendix I

Directory of China International Economic and Trade Arbitration Commission and its Sub-commissions/Arbitration Centers

China International Economic and Trade Arbitration Commission (CIETAC) Add: 6/F, CCOIC Building, No.2 Huapichang Hutong,
Xicheng District, Beijing, 10035, P.R. China
Tel: 86 10 82217788
Fax: 86 10 82217766/64643500
E-mail: info@cietac.org
Website: http://www.cietac.org

CIETAC South China Sub-Commission
Add: 14A01, Anlian Plaza, No.4018, Jintian Road, Futian District, Shenzhen 518026, Guangdong Province, P.R.China
Tel: 86 755 82796739
Fax: 86 755 23964130
E-mail: infosz@cietac.org
Website: http://www.cietac.org

CIETAC Shanghai Sub-Commission
Add: 18/F, Tomson Commercial Building, 710 Dongfang Road,
Pudong New Area, Shanghai 200122, P.R.China
Tel: 86 21 60137688
Fax: 86 21 60137689
E-Mail: infosh@cietac.org
Website: http://www.cietac.org

CIETAC Tianjin International Economic and Financial Arbitration Center (Tianjin Sub-commission)
Add: 4/F, E2-ABC, Financial Street, No.20 Guangchangdong Road,
Tianjin Economic-Technological Development Zone, Tianjin 300457, P.R.China
Tel: 86 22 66285688
Fax: 86 22 66285678
Email: tianjin@cietac.org
Website: http://www.cietac-tj.org

CIETAC Southwest Sub-Commission
Add: 1/F, Bld B, Caifu 3, Caifu Garden, Cai fu Zhongxin, Yubei, Chongqing 401121, China
Tel: 86 23 86871307
Fax: 86 23 86871190
Email: cietac-sw@cietac.org
Website: http://www.cietac-sw.org

CIETAC Hong Kong Arbitration Center
Add: Unit 4705, 47th Floor, Far East Finance Center, No.16 Harcourt Road, Hong Kong.
Tel: 852 25298066
Fax: 852 25298266
Email: hk@cietac.org
Website: http://www.cietachk.org

Appendix II

China International Economic and Trade Arbitration Commission Arbitration Fee Schedule I

[Editor's note: For information on fees, please go to Fee Calculator - CIETAC (cietac-eu.org).]

Appendix III

China International Economic and Trade Arbitration Commission Emergency Arbitrator Procedures

Article 1 Application for the Emergency Arbitrator Procedures

1. A party requiring emergency relief may apply for the Emergency Arbitrator Procedures based upon the applicable law or the agreement of the parties.

2. The party applying for the Emergency Arbitrator Procedures (the "Applicant") shall submit its Application for the Emergency Arbitrator Procedures to the Arbitration Court or the arbitration court of the relevant sub-commission/ arbitration center of CIETAC administering the case prior to the formation of the arbitral tribunal.

3. The Application for the Emergency Arbitrator Procedures shall include the following information:

(a) the names and other basic information of the parties involved in the Application;

(b) a description of the underlying dispute giving rise to the Application and the reasons why emergency relief is required;

(c) a statement of the emergency measures sought and the reasons why the applicant is entitled to such emergency relief;

(d) other necessary information required to apply for the emergency relief; and

(e) comments on the applicable law and the language of the Emergency Arbitrator Procedures.

When submitting its Application, the Applicant shall attach the relevant documentary and other evidence on which the Application is based, including but not limited to the arbitration agreement and any other agreements giving rise to the underlying dispute.

The Application, evidence and other documents shall be submitted in triplicate. Where there are multiple parties, additional copies shall be provided accordingly.

4. The Applicant shall advance the costs for the Emergency Arbitrator Procedures.

5. Where the parties have agreed on the language of arbitration, such language shall be the language of the Emergency Arbitrator Procedures. In the absence of such agreement, the language of the Procedures shall be determined by the Arbitration Court.

Article 2 Acceptance of Application and Appointment of the Emergency Arbitrator

1. After a preliminary review on the basis of the Application, the arbitration agreement and relevant evidence submitted by the Applicant, the Arbitration Court shall decide whether the Emergency Arbitrator Procedures shall apply. If the Arbitration Court decides to apply the Emergency Arbitrator Procedures, the President of the Arbitration Court shall appoint an emergency arbitrator within one (1) day from his/her receipt of both the Application and the advance payment of the costs for the Emergency Arbitrator Procedures.

2. Once the emergency arbitrator has been appointed by the President of the Arbitration Court, the Arbitration Court shall promptly transmit the Notice of Acceptance and the Applicant's application file to the appointed emergency arbitrator and the party against whom the emergency measures are sought, meanwhile copying the Notice of Acceptance to each of the other parties to the arbitration and the Chairman of CIETAC.

Article 3 Disclosure and Challenge of the Emergency Arbitrator

1. An emergency arbitrator shall not represent either party, and shall be and remain independent of the parties and treat them equally.

2. Upon acceptance of the appointment, an emergency arbitrator shall sign a Declaration and disclose to the Arbitration Court any facts or circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence. If circumstances that need to be disclosed arise during the Emergency Arbitrator Procedures, the emergency arbitrator shall promptly disclose such circumstances in writing.

3. The Declaration and/or the disclosure of the emergency arbitrator shall be communicated to the parties by the Arbitration Court.

4. Upon receipt of the Declaration and/or the written disclosure of an emergency arbitrator, a party wishing to challenge the arbitrator on the grounds of the facts or circumstances disclosed by the emergency arbitrator shall forward the challenge in writing within two (2) days from the date of such receipt. If a party fails to file a challenge within the above time period, it may not subsequently challenge the emergency arbitrator on the basis of the matters disclosed by the emergency arbitrator.

5. A party which has justifiable doubts as to the impartiality or independence of the appointed emergency arbitrator may challenge that emergency arbitrator in writing and shall state the facts and reasons on which the challenge is based with supporting evidence.

6. A party may challenge an emergency arbitrator in writing within two (2) days from the date of its receipt of the Notice of Acceptance. Where a party becomes aware of a reason for a challenge after such receipt, the party may challenge the emergency arbitrator in writing within two (2) days after such reason has become known, but no later than the formation of the arbitral tribunal.

7. The President of the Arbitration Court shall make a final decision on the challenge of the emergency arbitrator. If the challenge is accepted, the President of the Arbitration Court shall reappoint an emergency arbitrator within one (1) day from the date of the decision confirming the challenge, and copy the decision to the Chairman of CIETAC. The emergency arbitrator who has been challenged shall continue to perform his/her functions until a final decision on the challenge has been made.

The disclosure and challenge proceedings shall apply equally to the reappointed emergency arbitrator.

8. Unless otherwise agreed by the parties, the emergency arbitrator shall not accept nomination or appointment to act as a member of the arbitral tribunal in any arbitration relating to the underlying dispute.

Article 4 Place of the Emergency Arbitrator Proceedings

Unless otherwise agreed by the parties, the place of the emergency arbitrator proceedings shall be the place of arbitration, which is determined in accordance with Article 7 of the Arbitration Rules.

Article 5 The Emergency Arbitrator Proceedings

1. The emergency arbitrator shall establish a procedural timetable for the emergency arbitrator proceedings within a time as short as possible, best within two (2) days from his/her acceptance of the appointment. The emergency arbitrator shall conduct the proceedings in the manner the emergency arbitrator considers to be appropriate, taking into account the nature and the urgency of the emergency relief, and shall ensure that each party has a reasonable opportunity to present its case.

2. The emergency arbitrator may order the provision of appropriate security by the party seeking the emergency relief as the precondition of taking emergency measures.

3. The power of the emergency arbitrator and the emergency arbitrator proceedings shall cease on the date of the formation of the arbitral tribunal.

4. The emergency arbitrator proceedings shall not affect the right of the parties to seek interim measures from a competent court pursuant to the applicable law.

Article 6 Decision of the Emergency Arbitrator

1. The emergency arbitrator has the power to make a decision to order or award necessary emergency relief, and shall make every reasonable effort to ensure that the decision is valid.

2. The decision of the emergency arbitrator shall be made within fifteen (15) days from the date of that arbitrator's acceptance of the appointment. The President of the Arbitration Court may extend the time period upon the request of the emergency arbitrator only if the President of the Arbitration Court considers it reasonable.

3. The decision of the emergency arbitrator shall state the reasons for taking the emergency measures, be signed by

the emergency arbitrator and stamped with the seal of the Arbitration Court or the arbitration court of its relevant sub-commission/arbitration center.

4.The decision of the emergency arbitrator shall be binding upon both parties. A party may seek enforcement of the decision from a competent court pursuant to the relevant law provisions of the enforcing state or region. Upon a reasoned request of a party, the emergency arbitrator or the arbitral tribunal to be formed may modify, suspend or terminate the decision.

5. The emergency arbitrator may decide to dismiss the application of the Applicant and terminate the emergency arbitrator proceedings, if that arbitrator considers that circumstances exist where emergency measures are unnecessary or unable to be taken for various reasons.

6. The decision of the emergency arbitrator shall cease to be binding:

(a) if the emergency arbitrator or the arbitral tribunal terminates the decision of the emergency arbitrator;

(b) if the President of the Arbitration Court decides to accept a challenge against the emergency arbitrator;

(c) upon the rendering of a final award by the arbitral tribunal, unless the arbitral tribunal decides that the decision of the emergency arbitrator shall continue to be effective;

(d) upon the Applicant's withdrawal of all claims before the rendering of a final award;

(e) if the arbitral tribunal is not formed within ninety (90) days from the date of the decision of the emergency arbitrator. This period of time may be extended by agreement of the parties or by the Arbitration Court under circumstances it considers appropriate; or

(f) if the arbitration proceedings have been suspended for sixty (60) consecutive days after the formation of the arbitral tribunal.

Article 7 Costs of the Emergency Arbitrator Proceedings

1. The Applicant shall advance an amount of RMB 30,000 as the costs of the emergency arbitrator proceedings, consisting of the remuneration of the emergency arbitrator and the administrative fee of CIETAC. The Arbitration Court may require the Applicant to advance any other additional and reasonable actual costs.

A party applying to the CIETAC Hong Kong Arbitration Center for emergency relief shall advance the costs of the emergency arbitrator proceedings in accordance with the CIETAC Arbitration Fee Schedule III (Appendix II).

2. The emergency arbitrator shall determine in its decision in what proportion the costs of the emergency arbitrator proceedings shall be borne by the parties, subject to the power of the arbitral tribunal to finally determine the allocation of such costs at the request of a party.

3. The Arbitration Court may fix the amount of the costs of the emergency arbitrator proceedings refundable to the Applicant if such proceedings terminate before the emergency arbitrator has made a decision.

Article 8 Miscellaneous

These rules for the Emergency Arbitrator Procedures shall be interpreted by CIETAC.

Chapter 27

International Institute for Conflict Prevention and Resolution (CPR) Arbitration[1] (2020)

ABOUT CPR

Established in 1977, CPR is an independent nonprofit organization that helps prevent and resolve legal conflict more effectively and efficiently.

The CPR Institute drives a global prevention and dispute resolution culture through the thought leadership of its diverse member companies, leading mediators and arbitrators, law firms, individual practitioners, and academics. It convenes Committees to share best practices and develop innovative tools. It connects thought leaders through global, regional and smaller events. It publishes a monthly journal on related topics and advocates for expanding the capacity for dispute prevention and resolution globally through a variety of initiatives.

CPR Dispute Resolution provides leading edge dispute management services – mediation, arbitration, early neutral evaluation, dispute review boards and others -- as well as training and education. It is uniquely positioned to resolve disputes by leveraging the resources generated by the leaders who participate in the CPR Institute. It has deep experience in dispute management, a deep bench on its global Panel of Distinguished Neutrals, and deep expertise across a variety of subject areas.

WHY USE CPR FOR YOUR DISPUTES?

Thought Leadership—Our rules, protocols and model clauses are driven and informed by CPR's think tank and hand-crafted by end-users who are on the front lines of dispute resolution. CPR's Rules were designed to reflect the issues of importance to the end-user.

Flexibility—CPR offers options for all party preferences, from non-administered to fully administered arbitration options, as well as an array of à la carte services, including dispute prevention, custom appointment services, fund holding, scheduling and interim measures.

Neutrality—All CPR Arbitrators must be independent and neutral. Among the options for Arbitrator selection include our GAR Award-winning "Screened Selection" Process (see Rule 5.4). In rendering the Final Award, the Tribunal must issue written and reasoned decisions and must apply the Rule of Law.

Confidentiality—Broad confidentiality provisions require the parties, CPR and arbitrators treat proceedings, discovery, and decisions as confidential except as otherwise required by law.

Experience—CPR has handled more than $1,000,000,000 (one trillion dollars) in disputes. The matter management team are all attorneys who understand arbitration, mediation, and other dispute resolution mechanisms, having managed matters across the globe and in over 20 different subject areas.

Reputation—CPR's panel of over 600 Distinguished Neutrals are rigorously vetted and globally respected, including over 30 Specialty Panels, speaking 28 languages.

Cost Savings—CPR offers competitive flat fees you can see upfront, with caps ranging from US$4,000 for disputes up to US$300,000 to US$34,000 for disputes over US$500 million under the Administered Arbitration Rules, with no additional fees for separate counterclaims or additional parties. Under the Non-Administered Arbitration Rules, fees for appointment of the Tribunal range from US$4,000 for disputes up to US$300,000 to US$16,000 for disputes over US$500 million.

Efficiency—with streamlined rules, the average time from filing to award for an Administered CPR case is 14 months, with tribunal confirmation occurring 2 months from initial

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filing. CPR's Administered Rules call for Hearing within 9 months of pre-hearing conference and award within 60 days after the close of the proceedings. The Rules require CPR to approve any scheduling orders or extensions that would result in the final award being rendered more than twelve months after the initial pre-hearing conference.

CPR's Rules were developed by CPR to provide procedures to facilitate the conduct of arbitration fairly, expeditiously and economically. The Rules were designed to be easily comprehended. They are intended, in particular, for the complex case, but are suitable regardless of the complexity of the case or the amount in dispute.

MODEL ARBITRATION CLAUSES

Standard Contractual Provisions

The International Institute for Conflict Prevention and Resolution (CPR) Rules for Administered Arbitration of International Disputes are intended in particular for use in commercial arbitrations and are designed to assure the expeditious and economical conduct of proceedings. They may be adopted by parties by using one of the following standard provisions:

A: Pre-Dispute Clause

Any dispute arising out of or relating to this contract, including the breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution ("CPR") Rules for Administered Arbitration of International Disputes by [a sole arbitrator] [three arbitrators, of whom each party shall designate one, with the third arbitrator to be appointed by CPR] [three arbitrators, of whom each party shall designate one, with the third arbitrator to be designated by the two party-appointed arbitrators] [three arbitrators, of whom each party shall designate one in accordance with the screened appointment procedure provided in Rule 5.4] [three arbitrators, none of whom shall be designated by either party]. Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The seat of the arbitration shall be (city, country). The language of the arbitration shall be (language).

B: Existing Dispute Submission Agreement

We, the undersigned parties, hereby agree to submit to arbitration in accordance with the International Institute for Conflict Prevention and Resolution ("CPR") Rules for Administered Arbitration of International Disputes (the "Rules") the following dispute:

[Describe briefly]

We further agree that the above dispute shall be submitted to [a sole arbitrator] [three arbitrators, of whom each party shall designate one, with the third arbitrator to be appointed by CPR] [three arbitrators, of whom each party shall designate one, with the third arbitrator to be designated by the two party-appointed arbitrators] [three arbitrators, of whom each shall designate one in accordance with the screened selection procedure provided in Rule 5.4] [three arbitrators, none of whom shall be designated by either party.] We further agree that we shall faithfully observe this agreement and the Rules and that we shall abide by and perform any award rendered by the arbitrator(s). Judgment upon the award may be entered by any court having jurisdiction thereof. The seat of the arbitration shall be (city, country). The language of the arbitration shall be (language).

2019 CPR RULES FOR ADMINISTRATED ARBITRATION OF INTERNATIONAL DISPUTES
*Effective March 1, 2019

[Editor's Note: Fast Track Rules appended at end.]

GENERAL AND INTRODUCTORY RULES

RULES WITH RESPECT TO THE TRIBUNAL

RULES WITH RESPECT TO THE CONDUCT OF THE ARBITRAL PROCEEDINGS

CPR's Full Range of Arbitration Options

The International Institute for Conflict Prevention and Resolution ("CPR") recognizes that arbitrations managed by a separate administering entity, as well as arbitrations managed only by the Tribunal and counsel (so-called "ad hoc" or non-administered arbitrations), can offer benefits to the parties. Choosing administered arbitration under CPR's rules allows the parties to avail themselves of CPR's high quality multilingual staff and resources and obtain assistance with arbitrator selection, resolution of challenges to arbitrators, timeliness of awards, mediation queries and other key aspects of the arbitral process. On the other hand, some parties may prefer non-administered arbitrations and choose to request the assistance of CPR only for discrete functions (e.g., arbitrator selection).

Since both approaches may offer benefits to the parties, CPR provides different sets of arbitration rules for each. There are four sets of rules. CPR's non-administered rules include its Rules for Non-Administered Arbitration (March 1, 2018) for domestic disputes and its Rules for Non-Administered Arbitration of International Disputes (March 1, 2018).

CPR has also promulgated two sets of administered arbitration rules for domestic and international cases. The CPR Rules for Administered Arbitration (March 1, 2019) for domestic disputes and CPR Rules for Administered Arbitration of International Disputes (March 1, 2019) provide parties with the same well-designed procedures and high quality arbitrators as CPR's non-administered options, while also allowing the parties to avail themselves of CPR's staff and resources when an administered process is desired. As is the case with the domestic administered arbitration rules, the Rules for Administered Arbitration of International Disputes are based on the non-administered version, with changes to facilitate CPR's administration of the proceedings.

The CPR Rules - Background

The CPR's Rules for Administered Arbitration of International Disputes (the "Rules") were developed by CPR to provide procedures to facilitate the conduct of international arbitration fairly, expeditiously and economically. The Rules were designed to be easily comprehended. They are intended, in particular, for the complex international case, but are suitable regardless of the complexity of the case or the amount in dispute.

Every disputant wants to have a reasonable opportunity to develop and present its case. Parties that choose arbitration over litigation of an international dispute do so primarily to avoid the unfamiliarity and uncertainty of litigation in a foreign court; also out of a need or desire for a proceeding that is confidential and expeditious. The Rules were designed with all of these objectives in mind. The standard arbitration clauses in the Rules have been drafted to make proceedings under the Rules subject to the law selected by the parties. The standard clauses also provide for the parties to select the seat and language of the arbitration as well as for CPR to perform the arbitrator-selection functions provided in Rules 5, 6 and 7.

International Disputes

These Rules are designed for "international disputes," which broadly encompass disputes of any nature involving persons or business enterprises of different nationalities or located in different countries. For example, international commercial disputes, intellectual property disputes, construction disputes, disputes between manufacturers and distributors or franchisees, disputes between joint venturers, insurance disputes and investment disputes. The Rules may be adopted by parties that do not have a contractual or other business relationship, e.g., for a patent infringement dispute. The Rules may also be employed to adjudicate a dispute between a government agency and a private entity, subject to any legal restraints on that government's submission to arbitration.

CPR recommends that where the parties are based or located in different countries or where their contract involves a foreign subject matter or otherwise calls for performance abroad, they specifically provide for application of CPR's Rules for Administered Arbitration of International Disputes ("Administered International Rules") or Rules for Non-Administered Arbitration of International Disputes ("Non-Administered International Rules").

Where parties to an international transaction have provided for CPR arbitration generally, without specifically identifying which CPR arbitration rules shall apply, the CPR Administered International Rules shall apply.

Particular Rule Provisions - Overview

The Administered International Rules, as well as the Non-Administered International Rules, take into account that an international dispute calls for additional or different rules for international dispute resolution. Thus, the Administered International Rules contain additional or different provisions concerning, inter alia, certain time limits (e.g., Rules 3.5 and 5.2), the nationality of arbitrators (Rules 6.2 and 6.3), the language of the arbitration (Rule 9.6), applicable laws and remedies including currency (Rule 10), and certain provisions concerning evidence (Rule 12). The Rules require that arbitrators be neutral and that the Tribunal issue a reasoned award.

While most arbitrations involve two parties, the Rules are also suitable for proceedings among three or more parties. References to "Claimant," "Respondent" and "other party" should be construed to encompass multiple Claimants, Respondents or other parties in such multi-party proceedings. Where necessary, the Rules specifically address particular issues raised in the multi-party context. For example, Rule 3.4 provides that the arbitration shall be deemed commenced on the date on which CPR receives the notice of arbitration. Rules 3.12 and 3.13 deal with joinder and consolidation.

Rule 5.1.a provides that, absent the parties' agreement on the number of arbitrators, in all cases in which the stated amount of the claim or counterclaim does not exceed $3 million, exclusive of interest or costs under Rule 19, a Tribunal shall consist of a sole arbitrator unless CPR, in its discretion, decides that three arbitrators shall be appointed due to the complexity of the case or other considerations. In all other cases, a Tribunal shall consist of three arbitrators.

Rule 5.1.c provides that where a Tribunal is to consist of three arbitrators, the "screened selection" procedure of Rule 5.4 shall apply to the selection of the arbitrators absent the parties' agreement on a different procedure. Under "screened selection" the arbitrators are designated by the parties without the arbitrators knowing which party designated them. Rule 5.5 deals with the constitution of the Tribunal where the arbitration agreement entitles each party to designate an arbitrator but there is more than one Claimant or Respondent to the dispute.

Rule 9.2 empowers the arbitrator(s) to establish time limits for each phase of the proceeding, including specifically the time allotted to each party for presentation of its case and for rebuttal.

Rule 9.3 requires the Tribunal to hold a pre-hearing conference promptly after it is constituted. The goal of the conference is to plan the future conduct of the arbitration and allow the Tribunal subsequently to issue a procedural order and timetable.

Rule 9.3.b provides for Tribunal and parties, at the initial pre-hearing conference, to discuss the identification and narrowing of the issues, including the possibility of early disposition of issues in accordance with Rule 12.6 and the CPR Guidelines on Early Disposition of Issues in Arbitration.

Rule 9.3.e provides for the possibility of the setting a date during the proceeding when CPR will query the parties as to their desire to mediate under the CPR International Mediation Procedure. Rule 9.3.f provides for the possibility of implementing steps to address issues of cybersecurity and protecting the security of information in the arbitration.

Rule 9.3.g provides for the Tribunal and parties to discuss the setting of a date for a hearing for the presentation of evidence and oral argument.

A new Rule 12.5 supports the development of the next generation of lawyers by providing that the Tribunal, in its discretion, may encourage lead counsel to share witness examination and/or legal arguments with more junior attorneys.

A new Rule 12.6 deals with the early disposition of claims, defenses and other factual and legal issues.

Rule 14 deals with emergency measures of protection by an emergency arbitrator.

Rule 15.8.a states that the dispute should in most circumstances be heard and submitted to the Tribunal for decision within nine months after the initial pre-hearing conference required by Rule 9.3 and that the final award should in most circumstances be submitted by the Tribunal to CPR within two months after the close of the proceedings. It requires the parties, the Tribunal and CPR to use their best efforts to meet these timeframes. Rule 15.8.b requires CPR to approve any scheduling orders or extensions that would result in the final award being rendered more than twelve months after the initial pre-hearing conference. Rule 15.8.a should be read in conjunction with Rule 9.3.h, which relates to the adoption of a timetable following the initial pre-hearing conference.

The Rules contemplate that counsel will cooperate fully with the Tribunal and with each other to assure that the proceeding will be conducted with civility and in an efficient, expeditious and economical manner. Rule 19.2 empowers the arbitrators in apportioning costs to take into account, inter alia, "the circumstances of the case" and "the conduct of the parties during the proceeding." This broad

power is intended to permit the arbitrators to apportion a greater share of costs than they otherwise might to a party that has employed tactics the arbitrators consider dilatory, or in other ways has failed to cooperate in assuring the efficient conduct of the proceedings.

Rule 21.3 permits CPR, at any point in the proceeding, to invite the parties to mediate under the CPR International Mediation Procedure or under any other mediation procedure acceptable to the parties. Any such mediation would take place concurrently with the arbitration.

Commentary, Guidelines and Protocols

Commentary to come

CPR has promulgated guidelines and protocols that are designed to control time and cost and increase efficiency (available on CPR's website at www.cpradr.org).

Mediation and Other ADR Procedures

The following Procedures are intended to govern arbitration proceedings. However, many parties wish to incorporate in their contract provisions for face-to-face negotiation or mediation prior to arbitration. Parties desiring to use such procedures should consult the CPR International Mediation Procedure and CPR's tools for drafting dispute resolution clauses (available on CPR's website at www.cpradr.org, Resource Center).

A. GENERAL AND INTRODUCTORY RULES

Rule 1: Scope of Application

1.1 Where the parties to a contract have provided for arbitration under the International Institute for Conflict Prevention and Resolution ("CPR") Rules for Administered Arbitration of International Disputes (the "Rules"), they shall be deemed to have made these Rules a part of their arbitration agreement, except to the extent that they have agreed in writing, or on the record during the course of the arbitral proceeding, to modify these Rules (other than Rule 22, which cannot be modified without CPR's written consent). Unless the parties otherwise agree, these Rules, and any amendment thereof adopted by CPR, shall apply in the form in effect at the time the arbitration is commenced. Where parties to a contract have provided for CPR arbitration generally, without specifying which set of CPR rules shall apply, these Rules shall apply to any arbitration agreement dated on or after December 1, 2014 where the parties reside in different countries or where the contract involves property or calls for performance in a country other than the parties' country of residence. CPR shall make the final decision as to which CPR rules shall apply.

1.2 These Rules shall govern the conduct of the arbitration except that where any of these Rules is in conflict with a mandatory provision of applicable arbitration law of the seat of the arbitration, that provision of law shall prevail.

Rule 2: Notices

2.1 Notices or other communications required under these Rules shall be in writing and delivered to the address specified in writing by the recipient for this purpose or, if no address has been specified, to the last known business or residence address of the recipient. Notices and communications may be given by registered mail, courier, facsimile transmission, email communication or any other means of telecommunication that provides a record thereof. Notices and communications shall be deemed to be effective as of the date of receipt. Proof of transmission shall be deemed prima facie proof of receipt of any notice or communication given under these Rules.

2.2 Time periods specified by these Rules or established by the Arbitral Tribunal (the "Tribunal") shall start to run on the day following the day when a notice or communication is received, unless the Tribunal shall specifically provide otherwise. If the last day of such a period is an official holiday or a non-business day at the place where the notice or communication is received, the period is extended until the first business day which follows. Official holidays and non-business days occurring during the running of the time period are included in calculating the period.

Rule 3: Commencement of Arbitration; Counterclaims; Joinder and Consolidation

3.1 The party commencing arbitration (the "Claimant") shall, in accordance with Rule 3.3, simultaneously deliver to the other party (the "Respondent") a notice of arbitration with an electronic copy to CPR.

3.2 The notice of arbitration shall include in the text or in attachments thereto:

a. The full names, addresses, telephone numbers and email addresses for the parties and their counsel;
b. A demand that the dispute be referred to arbitration pursuant to these Rules;
c. The text of the arbitration clause or the separate arbitration agreement that is involved;
d. A statement of the general nature of the Claimant's claim;
e. The relief or remedy sought; and
f. The name, address, telephone number and email address of the arbitrator designated for appointment by the Claimant, if the parties have agreed that each shall designate an arbitrator.

3.3 Delivery of the notice of arbitration to CPR required under Rule 3.1 shall be as specified on the CPR website. Simultaneous with delivery of the notice of arbitration to CPR, the Claimant shall make payment to CPR of the appropriate Filing Fee as provided in the Pricing and Fees Schedule on the CPR website. In the event the Claimant fails to comply with this requirement, CPR may fix a time limit within which the Claimant must make payment, failing which the file shall be closed without prejudice to the Claimant's right to submit the same claim(s) at a later date in another notice of arbitration if otherwise permissible. CPR shall notify all parties forthwith if it has closed the file pursuant to this Rule 3.3.

3.4 The date on which CPR is in receipt of the notice of arbitration shall, for all purposes, be deemed to be the date of the commencement of the arbitration ("Commencement Date").

3.5 CPR shall notify the Respondent of its time to deliver a notice of defense, which shall be 30 days after the Commencement Date.

3.6 The Respondent shall, by the date provided by CPR under Rule 3.5, simultaneously deliver a notice of defense to the Claimant and an electronic copy to CPR. Failure to deliver a notice of defense shall not delay the arbitration; in the event of such failure, all claims set forth in the notice of arbitration shall be deemed denied. Failure to deliver a notice of defense shall not excuse the Respondent from notifying the Claimant and CPR in writing, by the date provided by CPR under Rule 3.5, of the arbitrator designated for appointment by the Respondent, if the parties have agreed that each shall designate an arbitrator.

3.7 The notice of defense shall include:

a. The full names, addresses, telephone numbers and email addresses for the parties and their counsel;
b. Any comment on the notice of arbitration that the Respondent may deem appropriate;
c. A statement of the general nature of the Respondent's defense; and email address of the arbitrator designated for appointment by the Respondent, if the parties have agreed that each shall designate an arbitrator.

3.8 The Respondent may include in its notice of defense any counterclaim within the scope of the arbitration clause. If it does so, the counterclaim in the notice of defense shall include items a, b, c, d and e of Rule 3.2.

3.9 If a counterclaim is asserted in accordance with Rule 3.8, CPR shall notify the Claimant of its time to deliver a response, which shall be 30 days after CPR's receipt of the notice of defense and counterclaim. Such response shall have the same elements as provided in Rule 3.7.b and c for the notice of defense. Failure to deliver a reply to a counterclaim shall not delay the arbitration; in the event of such failure, all counterclaims set forth in the notice of defense shall be deemed denied.

3.10 Claims or counterclaims within the scope of the arbitration clause may be freely added, amended or withdrawn prior to the constitution of the Tribunal and thereafter with the consent of the Tribunal. Notices of defense or replies to added or amended claims or counterclaims shall be delivered within 20 days after CPR's receipt of the addition or amendment or such other date as specified by CPR, or, if the Tribunal has been constituted, by the date specified by the Tribunal.

3.11 If a dispute is submitted to arbitration pursuant to a submission agreement, this Rule 3 shall apply to the extent that it is not inconsistent with the submission agreement.

3.12 Prior to the appointment of any arbitrator, CPR may, at the request of any party, allow one or more third parties to be joined in the arbitration as a party, unless, after giving all parties, including the party or parties to be joined, the opportunity to be heard, CPR finds that joinder should not be permitted. Any such joinder shall be subject to the provisions of Rule 8. Whenever joinder is considered, CPR may, in its discretion, adjust or set any deadlines otherwise provided for in Rules 3, 5 and 6. No additional party may be joined after the appointment of any arbitrator, unless all parties, including the additional party or parties, otherwise agree. A request for joinder shall be addressed to CPR together with the CPR Filing Fee, and shall include the full name, address, telephone number and email address for each party to be joined and its counsel, if any, as well as the basis on which the party is proposed to be joined, including the text of any relevant arbitration clause or separate arbitration agreement.

3.13 a. CPR may, at the request of a party and following consultation with the parties, consolidate two or more arbitrations pending under these Rules into a single arbitration, where:
1. The parties have agreed to consolidation; or
2. All of the claims in the arbitrations are made under the same arbitration agreement; or
3. The claims in the arbitrations are made under more than one arbitration agreement, the arbitrations are between the same parties, the disputes in the arbitrations arise in connection with the same legal relationship, and CPR finds the arbitration agreements to be compatible.

b. In deciding whether to consolidate, CPR may take into account any circumstances it considers to be relevant, including whether one or more arbitra-tors have been appointed in more than one of the arbitrations and, if so, whether the same or differ-ent persons have been appointed; the existence of common issues of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation; and consolidation would serve the interests of justice and efficiency.

c. When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by the parties or determined by CPR.

d. Arbitrations shall not be consolidated if the arbitration agreement prohibits consolidation.

e. In its discretion, CPR may refer any issues relating to consolidation to the CPR International Arbitration Council (the "Council") for determination. Information on the Council is set forth in Rule 24 and also available on CPR's website, www.cpradr.org.

Rule 4: Representation

4.1 The parties may be represented or assisted by persons of their choice.

4.2 Each party shall communicate the names, addresses, telephone numbers, email addresses and function of such persons in writing to the other party, to the Tribunal and to CPR.

B. RULES WITH RESPECT TO THE TRIBUNAL

Rule 5: Selection of Arbitrators by the Parties

5.1 a. *Number of Arbitrators.* Absent the parties' agreement on the number of arbitrators, in all cases in which the stated amount of the claim or counterclaim does not exceed $3 million, exclusive of interest or costs under Rule 19, a Tribunal shall consist of a sole arbitrator unless CPR, in its discretion, decides that three arbitrators shall be appointed due to the complexity of the case or other considerations. In all other cases, a Tribunal shall consist of three arbitrators.

b. *Procedures for Selection.* Arbitrators may be selected (i) by the parties through direct designation (Rule 5.2), (ii) by the parties through CPR's screened selection procedure (Rule 5.4), or (iii) by the parties through CPR's list procedure (Rule 6). Unless the parties have agreed otherwise, any arbitrator not designated for appointment by a party shall be a member of the CPR Panels of Distinguished Neutrals ("CPR Panels") or a candidate selected by CPR. Upon request, CPR will provide a list of candidates in accordance with the Rules.

c. *Screened Selection As Default Procedure.* Where a Tribunal is to consist of three arbitrators, Rule 5.4 shall apply to the selection of the arbitrators absent the parties' agreement on a different procedure.

5.2 a. *Direct Designation By the Parties.* Where the parties have agreed that two of the three arbitrators on a Tribunal are to be directly designated for appointment by the parties rather than designated through the screened selection procedure of Rule 5.4 or a different procedure, Rules 3.2 and 3.7 shall apply to the selection of the party-designated arbitrators, and a third arbitrator who shall chair the Tribunal shall be selected in accordance with the procedure set forth in Rule 5.2.c & d.

b. Where a party has directly designated an arbitrator for appointment under Rule 3.2 or 3.7, CPR will query such candidate for their availability and request that the candidate disclose in writing any circumstances that might give rise to justifiable doubt regarding the candidate's independence or impartiality as provided in Rule 7. Upon receipt, CPR shall circulate any disclosures made to the parties, and, within 10 days after receipt of that candidate's disclosures, a party may object to the appointment of any candidate on grounds of lack of independence or impartiality by written and reasoned notice to CPR, with a copy to the other party. CPR shall decide the objection after providing the non-objecting party with an opportunity to comment on the objection. If there is no objection to the candidate, or if the objection is overruled by CPR, CPR shall appoint the candidate as the party-appointed arbitrator, and any subsequent challenges of that arbitrator, based on circumstances subsequently learned, shall be made and decided in accordance with the procedures set forth in Rules 7.6 – 7.8. At its discretion, CPR may decide an objection made under this Rule 5.2.b by referring it to a Challenge Review Committee pursuant to the CPR Challenge Protocol (excluding its fee requirement).

c. Absent the parties' agreement on a different procedure, CPR shall select the third arbitrator in accordance with the procedure set forth in Rule 6.2.

d. If the parties have agreed that the party-appointed arbitrators shall designate for appointment the third arbitrator who shall chair the Tribunal, such designation cannot occur until after appointment by CPR of both of the party-designated arbitrators. The party-appointed arbitrators shall inform CPR of the candidate designated by them to be the third arbitrator, whereupon CPR will query such candidate for availability and request such candidate to disclose in writing any circumstances that might give rise to justifiable doubt regarding the candidate's independence or impartiality as provided in Rule 7. Upon receipt, CPR shall circulate any disclosures made to the parties, and, within 10 days after receipt of the candidate's disclosures, a party may object to the appointment of such candidate on the grounds of lack of independence or impartiality by written and reasoned notice to CPR, with a copy to the other party. CPR shall decide the objection after providing the non-objecting party with an opportunity to comment. If there is no objection to the candidate, or if the objection is overruled by CPR, CPR shall appoint the candidate as the third arbitrator, and any subsequent challenges of that arbitrator, based on circumstances subsequently learned, shall be made and decided in accordance with the procedures set forth in Rules 7.6 – 7.8. At its discretion, CPR may decide an objection under this Rule 5.2.d by referring it to a Challenge Review Committee pursuant to the CPR Challenge Protocol (excluding its fee requirement).

In the event that the party-appointed arbitrators are unable to agree on a third arbitrator within 30 days of CPR's appointment of the second arbitrator, the third arbitrator shall be selected as provided in Rule 6.2.

5.3 Selection by the Parties through Means Other than Direct Designation or Screened Selection. If Rule 5.1.a provides for a Tribunal consisting of a sole arbitrator, or if the parties have agreed on a Tribunal consisting of a sole arbitrator or of three arbitrators none of whom shall be directly designated for appointment by either party or designated by either party through screened selection, the parties shall attempt jointly to designate such arbitrator(s) within 30 days after the deadline for notice of defense provided for in Rule 3.6 is due. CPR will query such jointly designated candidate(s) in accordance with the procedure provided for in Rule 5.2.b. The parties may extend their selection process until one or both of them have concluded that a deadlock has been reached, but in no event for more than 45 days after the notice of defense provided for in Rule 3.6 is due. In the event the parties are unable to designate the arbitrator(s) within the extended selection period, the arbitrator(s) shall be selected as provided in Rule 6.2.

5.4 a. *Screened Selection By the Parties.* Absent party agreement to the contrary, where the Tribunal is to consist of three arbitrators, two of the arbitrators shall be designated by the parties without the arbitrators knowing which party designated each of them, as provided for in this Rule 5.4. CPR shall conduct a screened selection of party-designated arbitrators as follows:

b. Each party may provide designee(s) to CPR to be included in a list of candidates to be circulated to the parties by such date as CPR shall set, provided that neither the party nor anyone acting on its behalf has had any ex parte communications with the arbitrator candidate relating to the case. CPR will query such designee in accordance with the procedure provided for in Rule CPR 5.2.b. CPR will provide each party a list of candidates, drawn in whole or in part from the CPR Panels, including any designees provided by the parties, together with confirmation of their availability to serve as arbitrators and disclosure of any circumstances that might give rise to justifiable doubt regarding their independence or impartiality as provided in Rule 7. Within 10 days after the receipt of the CPR list of candidates, each party shall designate from the list three candidates, in order of preference, for its party-designated arbitrator, and so notify CPR and the other party in writing.

c. Within the same 10-day period after receipt of the CPR list, a party may also object to the appointment of any candidate on the list on grounds of lack of independence or impartiality by written and reasoned notice to CPR, with a copy to the other party. CPR shall decide the objection after providing the non-objecting party with an opportunity to comment. If there is no objection to the first candidate designated by a party, or if the objection is overruled by CPR, CPR shall appoint the candidate as the arbitrator, and any subsequent challenges of that arbitrator, based on circumstances subsequently learned, shall be made and decided in accordance with the procedures set forth in Rules 7.6 – 7.8. At its discretion, CPR may decide an objection under this Rule 5.4.b by referring it to a Challenge Review Committee pursuant to the CPR Challenge Protocol (excluding its fee requirement).

d. If the independence or impartiality of the first candidate designated by a party is successfully challenged, CPR will appoint the subsequent candidate designated by that party, in order of the party's indicated preference, provided CPR does not sustain any objection made to the appointment of that candidate.

e. Neither CPR nor the parties shall advise or otherwise provide any information or indication to any

arbitrator candidate or appointed arbitrator as to which party selected either of the party-designated arbitrators. No party or anyone acting on its behalf shall have any ex parte communications relating to the case with any arbitrator candidate or appointed arbitrator pursuant to this Rule 5.4.

f. The chair of the Tribunal will be appointed by CPR in accordance with the procedure set forth in Rule 6.2, which shall proceed concurrently with the procedure for appointing the party-designated arbitrators provided in subsections a-d above.

5.5 *Selection in Multi-party Cases.* Where the arbitration agreement entitles each party to designate an arbitrator but there is more than one Claimant or Respondent to the dispute, and either the multiple Claimants or the multiple Respondents do not jointly designate an arbitrator within the time limit set by CPR, CPR shall appoint all of the arbitrators as provided in Rule 6.2.

Rule 6: Selection of Arbitrator(s) by CPR

6.1 Whenever (i) a party has failed to designate its arbitrator to be appointed by CPR; (ii) the parties have failed jointly to designate the arbitrator(s) to be appointed by CPR; (iii) the parties have agreed that the party-designated arbitrators who have been appointed by CPR shall designate the third arbitrator, and such arbitrators have failed to designate the third arbitrator; (iv) the parties have provided that one or more arbitrators shall be appointed by CPR; or (v) the multi-party nature of the dispute calls for CPR to appoint all members of a three-member Tribunal pursuant to Rule 5.5, the arbitrator(s) required to complete the Tribunal shall be selected as provided in this Rule 6.

6.2 *Selection Through CPR List Procedure.* Except where a party has failed to designate its arbitrator to be appointed by CPR, CPR shall proceed as follows:

a. At its discretion, CPR shall jointly convene the parties by telephone to discuss the selection of the arbitrator(s).
b. Thereafter, CPR shall provide to the parties a list, drawn in whole or in part from the CPR Panels, of not less than five candidates if one arbitrator is to be selected, and of not less than seven candidates if two or three arbitrators are to be selected. If either party shall so request, such candidates shall be of a nationality other than the nationalities of the parties. Such list shall include a brief statement of each candidate's qualifications, availability and disclosure in writing of any circumstances that might give rise to justifiable doubt regarding the candidate's independence or impartiality as provided in Rule 7. Each party shall number the candidates in order of preference, shall note any objection it may have to any candidate, and shall deliver the list so marked to CPR, which, on agreement of the parties, shall circulate the delivered lists to the parties.
c. Any party failing without good cause to return the candidate list so marked within 10 days after receipt shall be deemed to have assented to all candidates listed thereon.

CPR shall appoint as arbitrator(s) the nominee(s) willing to serve for whom the parties collectively have indicated the highest preference and who appear to meet the standards set forth in Rule 7. If a tie should result between two candidates, CPR may designate either candidate. If this procedure for any reason should fail to result in designation of the required number of arbitrators or if a party fails to participate in this procedure, CPR shall appoint a person or persons whom it deems qualified to fill any remaining vacancy, and whom, if either party shall so request, shall be of a nationality other than the nationalities of the parties.

6.3 Where a party has failed to designate its arbitrator to be appointed by CPR, CPR shall appoint a person whom it deems qualified to serve as such arbitrator, taking into account the nationalities of the parties and any other relevant circumstances.

Rule 7: Qualifications, Challenges and Replacement of Arbitrator(s)

7.1 Each arbitrator shall be independent and impartial.

7.2 By accepting appointment, each arbitrator shall be deemed to be bound by these Rules and any modification agreed to by the parties, and to have represented that he or she has the time available to devote to the expeditious process contemplated by these Rules.

7.3 Each arbitrator shall disclose in writing to CPR and the parties prior to appointment in accordance with the Rules, and also promptly upon their arising during the course of the arbitration, any circumstances that might give rise to justifiable doubt regarding the arbitrator's independence or impartiality as well as any additional disclosures required by the law of the seat. Such circumstances include bias, interest in the result of the arbitration, and past or present relations with a party or its counsel.

7.4 No party or anyone acting on its behalf shall have any ex parte communications concerning any matter relating to the proceeding with any arbitrator or arbitrator candidate, except that a party may advise a candidate being considered for designation as its party-appointed arbitrator of the general nature of the case and discuss the candidate's qualifications, availability, and independence and

impartiality with respect to the parties, and a party may confer with its designated arbitrator after the arbitrator's appointment by CPR regarding the selection of the chair of the Tribunal, if the chair is to be selected by agreement of the party-appointed arbitrators or the parties. As provided in Rule 5.4.d, no party or anyone acting on its behalf shall have any ex parte communications relating to the case with any arbitrator candidate designated or appointed pursuant to Rule 5.4, either before or after that candidate is designated or appointed.

7.5 Any arbitrator may be challenged if circumstances exist or arise that give rise to justifiable doubt regarding that arbitrator's independence or impartiality, provided that a party may challenge an arbitrator whom it has designated only for reasons of which it becomes aware after the designation has been made.

7.6 A party may challenge an appointed arbitrator only by a notice in writing to CPR, with a copy to the Tribunal and the other party, in accordance with the CPR Challenge Protocol (excluding its fee requirement) given no later than 15 days after the challenging party (i) receives notification of the appointment of that arbitrator, or (ii) becomes aware of the circumstances specified in Rule 7.5, whichever shall last occur. The notice shall state the reasons for the challenge with specificity. The notice shall not be sent to the Tribunal when the challenged arbitrator is a party-designated arbitrator selected through CPR's screened selection procedure as provided in Rule 5.4; in that event, CPR may provide each member of the Tribunal with an opportunity to comment on the substance of the challenge without disclosing the identity of the challenging party.

7.7 When an arbitrator has been challenged by a party, the other party may agree to the challenge or the arbitrator may voluntarily withdraw. Neither of these actions implies acceptance of the validity of the challenge.

7.8 If neither agreed disqualification nor voluntary withdrawal occurs, the challenge shall be decided by CPR in accordance with the CPR Challenge Protocol (excluding its fee requirement) after providing the non-challenging party and each member of the Tribunal with an opportunity to comment on the challenge.

7.9 In the event of death, resignation or successful challenge of an arbitrator not designated by a party, a substitute arbitrator shall be selected pursuant to the procedure by which the arbitrator being replaced was selected. In the event of the death, resignation or successful challenge of an arbitrator designated by a party, that party may designate a substitute arbitrator; provided, however, that should that party fail to notify the Tribunal and the other party of the substitute designation within 20 days from the date on which it becomes aware that the opening arose, that party's right of designation shall lapse and CPR shall appoint a substitute arbitrator forthwith in accordance with these Rules.

7.10 In the event that an arbitrator fails to act or is de jure or de facto prevented from duly performing the functions of an arbitrator, the procedures provided in Rule 7.9 shall apply to the selection of a replacement. If the parties do not agree on whether the arbitrator has failed to act or is prevented from performing the functions of an arbitrator, either party may request CPR to make that determination forthwith.

7.11 If the sole arbitrator or the chair of the Tribunal is replaced, the successor shall decide the extent to which any hearings held previously shall be repeated. If any other arbitrator is replaced, the Tribunal in its discretion may require that some or all prior hearings be repeated.

7.12 If an arbitrator on a three-person Tribunal fails to participate in the arbitration, the two other arbitrators shall have the power in their sole discretion to continue the arbitration and to make any decision, ruling or award, notwithstanding the failure of the third arbitrator to participate, unless the parties agree otherwise. In determining whether to continue the arbitration or to render any decision, ruling or award without the participation of an arbitrator, the two other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the third arbitrator for such nonparticipation, and such other matters as they consider appropriate in the circumstances of the case. In the event that the two other arbitrators determine not to continue the arbitration without the participation of the third arbitrator, the procedures provided in Rule 7.9 shall apply to the selection of a replacement.

Rule 8: Challenges to the Jurisdiction of the Tribunal

8.1 The Tribunal shall have the power to hear and determine challenges to its jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration agreement. This authority extends to jurisdictional challenges with respect to both the subject matter of the dispute and the parties to the arbitration.

8.2 The Tribunal shall have the power to determine the existence, validity or scope of the contract of which an arbitration clause forms a part. For the purpose of challenges to the jurisdiction of the Tribunal, the arbitration clause shall be considered as separable from any contract of which it forms a part.

8.3 Any challenges to the jurisdiction of the Tribunal, except challenges based on the award itself, shall be made

no later than the notice of defense or, with respect to a counterclaim, the reply to the counterclaim; provided, however, that if a claim or counterclaim is later added or amended, a challenge to jurisdiction over such claim or counterclaim must be made no later than the response to such claim or counterclaim as provided under these Rules.

C. RULES WITH RESPECT TO THE CONDUCT OF THE ARBITRAL PROCEEDINGS

Rule 9: General Provisions

9.1 Subject to these Rules, the Tribunal may conduct the arbitration in such manner as it shall deem appropriate while giving each party a fair opportunity to present its case and according the parties equality of treatment. The chair shall be responsible for the organization of arbitral conferences and hearings and arrangements with respect to the functioning of the Tribunal, and shall keep CPR informed of such arrangements throughout the proceedings.

9.2 The proceedings shall be conducted in an expeditious manner. The Tribunal is empowered to impose reasonable time limits on each phase of the proceeding, including without limitation the time allotted to each party for presentation of its case and for rebuttal. In setting time limits, the Tribunal should bear in mind its obligation to manage the proceeding efficiently in order to complete proceedings as economically and expeditiously as possible.

9.3 The Tribunal shall hold an initial pre-hearing conference for the planning and scheduling of the proceeding. Such conference shall be held promptly after the constitution of the Tribunal. The objective of this conference shall be to discuss all elements of the arbitration with a view to planning for its future conduct and allowing the Tribunal thereafter to issue a procedural order and timetable governing the arbitration. Matters to be considered in the initial pre-hearing conference may include, inter alia, the following:

a. Procedural matters, such as the desirability of bifurcation or other separation of the issues in the arbitration; the desirability and practicability of consolidating the arbitration with any other proceeding; the scheduling of conferences and hearings; the need for and costs of translations; the scheduling of pre-hearing memoranda; the need for and type of record of conferences and hearings, including the need for transcripts; the amount of time allotted to each party for presentation of its case and for rebuttal; the mode, manner and order for presenting proof; the need for expert witnesses and how expert testimony should be presented; and the necessity for any on-site inspection by the Tribunal;
b. The early identification and narrowing of the issues in the arbitration, including the possibility of early disposition of any claims, counterclaims, defenses or other issues in accordance with Rule 12.6 and the CPR Guidelines on Early Disposition of Issues in Arbitration;
c. The possibility of stipulations of fact by the parties solely for purposes of the arbitration;
d. The possibility of appointment of a neutral expert by the Tribunal;
e. The possibility of the parties engaging in settlement negotiations, with or without the assistance of a mediator, and the possibility of setting of a date during the proceeding when CPR will query the parties as to their desire to mediate under the CPR International Mediation Procedure;
f. The possibility of implementing steps to address issues of cybersecurity and to protect the security of information in the arbitration;
g. The setting of a date for a hearing to be held for the presentation of evidence and oral argument if requested by either party or directed by the Tribunal as provided in Rule 12.2; and
h. The adoption of a timetable that would allow the Tribunal to render a final award within the timeframe specified in Rule 15.8.a, or, subject to the approval of CPR under Rule 15.8.b, by such later date consistent with the objectives of efficiency, expedition and fairness set forth in Rules 9.1 and 9.2.

After the initial conference, further pre-hearing or other conferences may be held as the Tribunal deems appropriate.

9.4 In order to define the issues to be heard and determined, the Tribunal may, inter alia, make pre-hearing orders for the arbitration and instruct the parties to file more detailed statements of claim and of defense and pre-hearing memoranda.

9.5 Unless the parties have agreed upon the seat of arbitration, CPR may initially determine the seat of the arbitration, subject to the power of the Tribunal to determine finally the seat of the arbitration promptly after its constitution. All such determinations shall be made having regard for the contentions of the parties and the circumstances of the arbitration. The award shall be deemed made at the seat. The Tribunal may schedule meetings and hold hearings wherever it deems appropriate.

9.6 If the parties have not agreed otherwise, the language(s) of the arbitration shall be that of the documents containing the arbitration agreement, subject to the power

of the Tribunal to determine otherwise based upon the contentions of the parties and the circumstances of the arbitration. The Tribunal may order that any documents submitted in other languages shall be accompanied by a translation into such language or languages.

9.7 Except as otherwise provided in these Rules, only electronic copies of filings, communications and other documents shall be sent to CPR; hard copies of filings or other documents sent to the Tribunal and/or the other party should not be sent to CPR in the ordinary course.

Rule 10: Applicable Law(s) and Remedies

10.1 The Tribunal shall apply the substantive law(s) or rules of law designated by the parties as applicable to the dispute. Failing such a designation by the parties, the Tribunal shall apply such law(s) or rules of law as it determines to be appropriate.

10.2 Subject to Rule 10.1, in arbitrations involving the application of contracts, the Tribunal shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.

10.3 The Tribunal shall not decide as amiable compositeur or ex aequo et bono unless the parties have authorized it to do so in writing or on the record.

10.4 The Tribunal may grant any remedy or relief, including but not limited to specific performance of a contract, which is within the scope of the agreement of the parties and permissible under the law(s) or rules of law applicable to the dispute pursuant to Rule 10.1, or, if the parties have expressly so provided pursuant to Rule 10.3, within the Tribunal's authority to decide as amiable compositeur or ex aequo et bono.

10.5 Unless the parties agree otherwise, the parties expressly waive and forego any right to punitive, exemplary or similar damages unless a statute requires that compensatory damages be increased in a specified manner. This provision shall not limit the Tribunal's authority under Rule 19 to take into account a party's dilatory or bad faith conduct in the arbitration in apportioning arbitration costs between or among the parties.

10.6 A monetary award shall be in the currency or currencies of the contract unless the Tribunal considers another currency more appropriate, and the Tribunal may award such pre-award and post-award interest, simple or compound, as it considers appropriate, taking into consideration the contract and applicable law.

Rule 11: Disclosure

The Tribunal may require and facilitate such disclosure as it shall determine is appropriate in the circumstances, taking into account the needs of the parties and the desirability of making disclosure expeditious and cost-effective. The Tribunal may issue orders to protect the confidentiality of proprietary information, trade secrets and other sensitive information disclosed.

Rule 12: Evidence and Hearings

12.1 The Tribunal shall determine the manner in which the parties shall present their cases. Unless otherwise determined by the Tribunal or agreed by the parties, the presentation of a party's case shall include the submission of a pre-hearing memorandum including the following elements:

a. A statement of facts;
b. A statement of each claim being asserted;
c. A statement of the applicable law and authorities upon which the party relies;
d. A statement of the relief requested, including the basis for any damages claimed; and
e. The evidence to be presented, including documents relied upon and the name, capacity and subject of testimony of any witnesses to be called, and the language in which each witness will testify.

12.2 If either party so requests or the Tribunal so directs, a hearing shall be held for the presentation of evidence and oral argument. Testimony may be presented in written and/or oral form as the Tribunal may determine is appropriate. The Tribunal is not required to apply the rules of evidence used in judicial proceedings. The Tribunal shall determine the applicability of any privilege or immunity and the admissibility, relevance, materiality and weight of the evidence offered.

12.3 The Tribunal, in its discretion, may require the parties to produce evidence in addition to that initially offered. It may also appoint neutral experts whose testimony shall be subject to examination by the parties and the Tribunal and to rebuttal.

12.4 The Tribunal shall determine the manner in which witnesses are to be examined, including the need and arrangements for translation of any witness testimony in a language other than the language of the arbitration. The Tribunal shall have the right to exclude witnesses from hearings during the testimony of other witnesses.

12.5 In order to support the development of the next generation of lawyers, the Tribunal, in its discretion, may encourage lead counsel to permit more junior lawyers with significantly less arbitration experience than lead counsel to examine witnesses at the hearing and present argument. The Tribunal, in its discretion, may permit experienced counsel to provide assistance or support, where appropriate, to a lawyer with significantly less experience during the examination of witnesses or argument. Notwithstanding the contents of this Rule 12.5, the ultimate decision of who speaks on behalf of the client in an arbitration is for the parties and their counsel, not the Tribunal.

12.6 *Early Disposition of Claims, Counterclaims, Defenses and Other Issues*

a. Subject to the Tribunal's instructions pursuant to Rule. 9.3.b, a party may make a preliminary application to the Tribunal to file a motion for early disposition of issues, including claims, counterclaims, defenses, and other legal and factual questions.
b. A preliminary application to file a motion for early disposition shall set forth:
   i. the issue(s) to be resolved;
   ii. a short statement of the basis for the proposed motion for early disposition and relief requested;
   iii. how early disposition of the issue(s) will advance efficient resolution of the overall dispute; and
   iv. the applicant's proposal as to the procedure by which the issues submitted for early disposition would be resolved.
c. The Tribunal shall promptly review the preliminary application and any responses from the other party(ies) and determine whether there is a reasonable likelihood that hearing the motion for early disposition may result in increased efficiency in resolving the overall dispute while not unduly delaying the rendering of a final award.
d. If the Tribunal concludes that hearing the motion for early disposition of the issue(s) is appropriate, it shall instruct the parties as to the procedure to be followed, taking into account the proposals by the parties. The motion for early disposition may be resolved on the basis of written submissions, witness testimony by affidavit or other written form, limited hearings, or in any other manner the Tribunal shall deem appropriate, provided that the party opposing the motion has a reasonable opportunity to make its factual and other presentations.
e. The Tribunal shall endeavour to render a decision on the motion for early disposition expeditiously, which in most circumstances should be within sixty (60) days of the date of the motion. The Tribunal shall consider whether its decision should be in the form of a procedural order or a final, interim or partial award. With respect to any interim or partial award, the Tribunal may state in its award whether it is final for purposes of any judicial proceedings in connection therewith.
f. The Tribunal may apportion the costs of the early disposition proceedings between or among the parties in accordance with Rule 19.

Rule 13: Interim Measures of Protection

13.1 At the request of a party, the Tribunal may take such interim measures as it deems necessary, including measures for the preservation of assets, the conservation of goods or the sale of perishable goods. The Tribunal may require appropriate security as a condition of ordering such measures.

13.2 A request for interim measures by a party to a court shall not be deemed incompatible with the agreement to arbitrate or as a waiver of that agreement.

Rule 14: Emergency Measures of Protection by an Emergency Arbitrator

14.1 Unless otherwise agreed by the parties, this Rule 14 shall be deemed part of any arbitration clause or agreement that provides for arbitration under these Rules.

14.2 Prior to the constitution of the Tribunal, any party may request that emergency measures be granted under this Rule against any other party by an emergency arbitrator appointed for that purpose.

14.3 Emergency measures under this Rule are requested by written application to CPR, entitled "Request for Emergency Measures of Protection By an Emergency Arbitrator," describing in reasonable detail the relief sought, the party against whom the relief is sought, the grounds for the relief, and, if practicable, the evidence and law supporting the request. The request shall be delivered in accordance with Rule 2.1, and shall certify that all other parties affected have been notified of the request or explain the steps taken to notify such parties.

14.4 The request for emergency measures by an emergency arbitrator shall be accompanied by an initial deposit payable to CPR as provided in the Pricing and Fees Schedule on the CPR website, www.cpradr.org. CPR shall promptly determine whether any further deposit is due to cover the fee of CPR and the remuneration of the emergency arbitrator, which amount shall be paid within the time period determined by CPR.

14.5 Unless the parties have jointly designated an emergency arbitrator to be appointed by CPR, CPR shall appoint an emergency arbitrator from a list of arbitrators maintained by CPR for that purpose. To the extent practicable, CPR shall appoint the emergency arbitrator within one business day of CPR's receipt of the application for emergency measures under this Rule. The emergency arbitrator's fee shall be determined by CPR in consultation with the emergency arbitrator. The emergency arbitrator's fee and reasonable out-of-pocket expenses shall be paid from the deposit made with CPR.

14.6 Prior to appointment, an emergency arbitrator candidate shall disclose to CPR any circumstances that might give rise to justifiable doubt regarding the arbitrator's independence or impartiality within the meaning of Rule 7.3. Any challenge to the appointment of an emergency arbitrator must be made within one business day of the challenging party's receipt of CPR's notification of the appointment of the arbitrator and the circumstances disclosed. An emergency arbitrator may be challenged on any ground for challenging arbitrators generally under Rule 7. To the extent practicable, CPR shall rule on the challenge within one business day after CPR's receipt of the challenge in accordance with the CPR Challenge Protocol (excluding its fee requirement). CPR's ruling on the challenge shall be final.

14.7 In the event of death, resignation or successful challenge of an emergency arbitrator, CPR shall appoint a replacement forthwith in accordance with the procedures set forth in Rules 14.5 and 14.6.

14.8 The emergency arbitrator shall determine the procedure to be followed, which shall include, whenever possible, reasonable notice to, and an opportunity for hearing (either in person, by teleconference or other appropriate means) for all affected parties. The emergency arbitrator shall conduct the proceedings as expeditiously as possible, and shall have the powers vested in the Tribunal under Rule 8, including the power to rule on his/her own jurisdiction and on the applicability of this Rule 14.

14.9 The emergency arbitrator may grant such emergency measures as he or she deems necessary, including but not limited to measures for the preservation of assets, the conservation of goods or the sale of perishable goods.

14.10 The ruling on the request for emergency measures shall be made by award or order, and the emergency arbitrator may state in such award or order whether or not the award or order is final for purposes of any judicial proceedings in connection therewith. The award or order may be made conditional upon the provision of security or any act or cessation of any act specified in the award or order. The award or order may provide for the payment of a specified amount in case of noncompliance with its terms.

14.11 The award or order shall specify the emergency measures awarded or denied, shall determine the cost of the proceedings, which includes CPR's administrative fees and expenses and the emergency arbitrator's fee and expenses as determined by CPR, and shall apportion such costs among the parties as the emergency arbitrator deems appropriate. The emergency arbitrator may also apportion the parties' reasonable attorneys' fees and expenses in the award or order or in a supplementary award or order. Unless the parties agree otherwise, the award or order shall state the reasoning on which the award or order rests as the emergency arbitrator deems appropriate.

14.12 Prior to the execution of any emergency arbitrator's award, the emergency arbitrator shall send a copy of the award in draft form to CPR for a limited review for format, clerical, typographical or computational errors, or any errors of a similar nature in the award. CPR shall promptly review such award, suggest any corrections to the emergency arbitrator and the emergency arbitrator shall as soon as possible thereafter deliver executed copies of the award to CPR, which shall promptly deliver the award to the parties, provided no fees, expenses and other charges incurred in accordance with the Pricing and Fees Schedule are outstanding.

14.13 A request for emergency measures by a party to a court shall not be deemed incompatible with the agreement to arbitrate, including the agreement to this Rule 14, or as a waiver of that agreement.

14.14 Unless otherwise agreed by the parties, any agreement by the parties to negotiate, mediate, or use any other form of non-binding dispute resolution shall not prevent the parties from requesting emergency measures from an emergency arbitrator under this Rule 14.

14.15 The emergency arbitrator's award or order shall remain in effect until modified or vacated by the emergency arbitrator or the Tribunal. The emergency arbitrator may modify or vacate the award or order for good cause. If the Tribunal is constituted before the emergency arbitrator has rendered an award or order, the emergency arbitrator shall retain jurisdiction to render such award or order unless and until the Tribunal directs otherwise. Once the Tribunal has been constituted, the Tribunal may modify or vacate the award or order rendered by the emergency arbitrator.

14.16 The emergency arbitrator shall not serve as a member of the Tribunal unless the parties agree otherwise.

Rule 15: The Award

15.1 The Tribunal may make final, interim, interlocutory and partial orders or awards. With respect to any interim, interlocutory or partial award, the Tribunal may state in its award whether or not the award is final for purposes of any judicial proceedings in connection therewith.

15.2 All awards shall be in writing and shall state the reasoning on which the award rests unless the parties agree otherwise. The award shall be deemed to be made at the seat of the arbitration and shall contain the date on which the award was made. When there are three arbitrators, the award shall be made and signed by at least a majority of the arbitrators.

15.3 A member of the Tribunal who does not join in an award may issue a dissenting opinion. Such opinion shall not constitute part of the award.

15.4 Prior to execution of any award, the Tribunal shall send a copy of the award in draft form to CPR for a limited review for format, clerical, typographical or computational errors, or any errors of a similar nature in the award. CPR shall promptly review such award and suggest any corrections to the Tribunal.

15.5 Thereafter, as soon as possible, but in no event more than 10 days, or such other period as may be specified by CPR, the Tribunal shall deliver executed copies of the award and of any dissenting opinion to CPR, which shall promptly deliver the award and any dissenting opinion to the parties provided no fees, expenses and other charges incurred in accordance with the Pricing and Fees Schedule are outstanding. If the arbitration law of the country where the award is made requires the award to be filed or registered, the parties shall bring such requirement to the attention of the Tribunal and CPR, and the Tribunal shall endeavor to arrange for compliance with such requirement.

15.6 Within 20 days after receipt of the award, either party, with notice to the other party and CPR, may request the Tribunal to clarify the award; to correct any clerical, typographical or computational errors, or any errors of a similar nature in the award; or to make an additional award as to claims or counterclaims presented in the arbitration but not determined in the award. The Tribunal shall make any clarification, correction or additional award requested by either party that it deems justified within 30 days after receipt of such request. Within 20 days after delivery of the award to the parties or, if a party requests a clarification, correction or additional award, within 30 days after receipt of such request, the Tribunal may make such corrections and additional awards on its own initiative as it deems appropriate. All clarifications, corrections and additional awards shall be in writing, shall be submitted directly to CPR by the Tribunal for delivery by CPR to the parties, and the provisions of this Rule 15 shall apply to them.

15.7 The award shall be final and binding on the parties, and the parties will undertake to carry out the award without delay. If an interpretation, correction or additional award is requested by a party, or a correction or additional award is made by the Tribunal on its own initiative, as provided in Rule 15.6, the award shall be final and binding on the parties when such clarification, correction or additional award is made by the Tribunal or upon the expiration of the time periods provided in Rule 15.6 for such clarification, correction or additional award to be made, whichever is earlier.

15.8 a. The dispute should in most circumstances be heard and submitted to the Tribunal for decision within nine months after the initial pre-hearing conference required by Rule 9.3. The final award should in most circumstances be rendered within two months after the close of the proceedings. The parties, the Tribunal, and CPR shall use their best efforts to meet these timeframes.

b. CPR must approve any scheduling orders or extensions that would result in the final award being rendered more than twelve months after the initial pre-hearing conference. When such approval is required, CPR in its discretion may convene a call with the parties and arbitrators to discuss factors relevant to such request.

Rule 16: Failure to Comply with Rules

Whenever a party fails to comply with these Rules, or any order of the Tribunal pursuant to these Rules, in a manner deemed material by the Tribunal, the Tribunal shall, if appropriate, fix a reasonable period of time for compliance and, if the party does not comply within said period, the Tribunal may impose a remedy it deems just, including an award on default. Prior to entering an award on default, the Tribunal shall require the non-defaulting party to produce such evidence and legal argument in support of its contentions as the Tribunal may deem appropriate. The Tribunal may receive such evidence and argument without the defaulting party's presence or participation.

D. RULES WITH RESPECT TO COSTS AND FEES

Rule 17: Arbitrator Fees, Expenses and Deposits

17.1 Each arbitrator shall be compensated on a reasonable basis determined at the time of appointment for serving as an arbitrator and shall be reimbursed for any reason-

able travel and other expenses. The compensation for each arbitrator should be fully disclosed to all Tribunal members and parties. If there is a disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by CPR and confirmed in writing to the parties. The parties shall be jointly and severally liable for such fees and expenses.

17.2 The Tribunal shall determine the necessary advances on the arbitrator(s) fees and expenses and advise CPR which, unless otherwise agreed by the parties, shall invoice the parties in equal shares. The amount of any advances to cover arbitrator fees and expenses may be subject to readjustment at any time during the arbitration. Such funds shall be held and disbursed in a manner CPR deems appropriate. An accounting will be rendered to the parties and any unexpended balance returned at the conclusion of the arbitration as may be appropriate.

17.3 If the requested advances are not paid in full within 20 days after receipt of the request, CPR shall so inform the parties and the proceeding may be suspended or terminated unless the other party pays the non-paying party's share subject to any award on costs.

Rule 18: CPR Administrative Fees and Expenses

18.1 In addition to the CPR Filing Fee, CPR shall charge a Case Administrative Fee ("Administrative Fee") as set forth in the Pricing and Fees Schedule. CPR reserves the right in special circumstances to adjust the Administrative Fee based on developments in the proceeding.

18.2 Unless otherwise agreed by the parties, CPR shall invoice the parties in equal shares for the Administrative Fee. Payment shall be due on receipt unless other arrangements are authorized by CPR. The parties shall be jointly and severally liable to CPR for the Administrative Fee. In the event a party fails to pay as provided in the invoice, the proceeding shall be suspended or terminated unless the other party pays the non-paying party's share subject to any award on costs.

Rule 19: Fixing and Apportionment of Costs

19.1 The Tribunal shall fix the costs of arbitration in its award. The costs of arbitration include:

a. The fees and expenses of members of the Tribunal;
b. The costs of expert advice and other assistance engaged by the Tribunal;
c. The travel, translation and other expenses of witnesses to such extent as the Tribunal may deem appropriate;
d. The costs for legal representation and assistance and experts incurred by a party to such extent as the Tribunal may deem appropriate;
e. The CPR Administrative Fee with respect to the arbitration;
f. The costs of a transcript; and
g. The costs of meeting and hearing facilities.

19.2 Subject to any agreement between the parties to the contrary, the Tribunal may apportion the costs of arbitration between or among the parties in such manner as it deems reasonable, taking into account the circumstances of the case, the conduct of the parties and their counsel during the proceeding, and the result of the arbitration.

E. MISCELLANEOUS RULES

Rule 20: Confidentiality

Unless the parties agree otherwise, the parties, the arbitrators and CPR shall treat the proceedings, any related disclosure and the decisions of the Tribunal, as confidential, except in connection with judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award, and unless otherwise required by law or to protect a legal right of a party. To the extent possible, any specific issues of confidentiality should be raised with and resolved by the Tribunal.

Rule 21: Settlement and Mediation

21.1 Either party may propose settlement negotiations to the other party at any time. The Tribunal may suggest that the parties explore settlement at such times as the Tribunal may deem appropriate.

21.2 With the consent of the parties, the Tribunal at any stage of the proceeding may request CPR to arrange for mediation of the claims asserted in the arbitration by a mediator acceptable to the parties. The mediator shall be a person other than a member of the Tribunal. Unless the parties agree otherwise, any such mediation shall be conducted under the CPR International Mediation Procedure.

21.3 At any point in the proceeding, CPR may invite the parties to mediate under the CPR International Mediation Procedure or under any other mediation procedure acceptable to the parties. Any such mediation shall take place concurrently with the arbitration.

21.4 The Tribunal will not be informed of any settlement offers or other statements made during settlement negotiations or a mediation between the parties, unless both parties consent.

21.5 If the parties settle the dispute before an award is made, the Tribunal shall terminate the arbitration and so inform CPR. If requested by all parties and accepted by

the Tribunal, the Tribunal may record the settlement in the form of an award made by consent of the parties. The Tribunal is not obliged to give reasons for such an award. CPR shall issue the award.

Rule 22: Actions against CPR or Arbitrator(s)

Neither CPR nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules.

Rule 23: Waiver

A party knowing of a failure to comply with any provision of these Rules, or any requirement of the arbitration agreement or any direction of the Tribunal, and neglecting to state its objections promptly, waives any objection thereto.

Rule 24: Interpretation and Application of Rules

The Tribunal shall interpret and apply these Administered International Rules insofar as they relate to the Tribunal's powers and duties. When there is more than one member on the Tribunal and a difference arises among them concerning the meaning or application of these Administered International Rules, it shall be decided by a majority vote. All other Rules shall be interpreted and applied by CPR. Unless otherwise provided in the Rules, whenever under these Rules CPR is required to make a determination, CPR in its discretion may refer the issue for such determination to a panel of three members from the CPR International Arbitration Council, the composition of which is set forth on CPR's website, www.cpradr.org.

Commentary to come.

RULES FOR NON-ADMINISTERED ARBITRATION OF INTERNATIONAL DISPUTES (Effective March 1, 2018)

THE CPR RULES
CPR CLAUSES
A . GENERAL AND INTRODUCTORY RULES

B . RULES WITH RESPECT TO THE TRIBUNAL

C . RULES WITH RESPECT TO THE CONDUCT OF THE ARBITRAL PROCEEDINGS

D . MISCELLANEOUS RULES

THE CPR RULES

The primary objective of arbitration is to arrive at a just and enforceable result, based on a private procedure that is fair, expeditious, economical, and less burdensome and adversarial than litigation. This objective is most likely to be achieved if the parties and their attorneys:

- adopt well-designed rules of procedure;
- select skilled arbitrators who are able and willing to actively manage the process;
- limit the issues to focus on the core of the disputes; and
- cooperate on procedural matters even while acting as effective advocates on substantive issues.

The International Institute for Conflict Prevention and Resolution ("CPR") Rules for Non-Administered Arbitration (effective as of March 1, 2018) (the "Rules") were developed by CPR to provide procedures to facilitate the conduct of the arbitration process fairly, expeditiously, and economically. The Rules are designed to be easily understood and it is hoped that this Background will be useful to those considering using the Rules. The Rules are intended in partic-

ular for the complex case, but are suitable regardless of the complexity or nature of the case or the amount in dispute.

Every disputant wants to have a reasonable opportunity to develop and present its case. Parties that choose arbitration over litigation do so in large part out of a need or desire for an out-of-court proceeding that is confidential, expeditious and cost-effective. The Rules were designed with each of these objectives in mind.

The complexity of cases will vary greatly. In rules of general application, it is not appropriate to fix hard and fast deadlines. Rule 15.7 commits the parties and the arbitrator(s) to use their best efforts to assure that the dispute will be submitted to the Tribunal for decision within six months after the initial pre-hearing conference and that the final award will be rendered within one month after the close of proceedings. Rule 9.2 empowers the arbitrator(s) to establish time limits for each phase of the proceeding.

Rule 14 allows for emergency measures by an emergency arbitrator prior to tribunal selection.

Counsel are expected to cooperate fully with the Tribunal and with each other to assure that the proceeding will be conducted with civility in an efficient, expeditious, and economical manner. Rule 17.3 empowers the arbitrators in apportioning costs to take into account, inter alia, "the circumstances of the case" and "the conduct of the parties during the proceeding." This broad power is intended to permit the arbitrators to apportion a greater share of costs than they otherwise might to a party that has employed tactics the arbitrators consider dilatory, or in other ways has failed to cooperate in assuring the efficient conduct of the proceeding.

While most arbitrations involve two parties, the Rules are also suitable for proceedings among three or more parties. References to "Claimant," "Respondent" and "other party" should be construed to encompass multiple Claimants, Respondents or other parties in such multi-party proceedings. Where necessary, the Rules specifically address particular issues raised in the multi-party context. For example, Rule 3.2 provides that the arbitration shall be deemed commenced "as to any Respondent" when that Respondent receives the notice of arbitration. Rules 3.10 and 3.11 deal with joinder and consolidation. Rule 5.4 provides for the "screened selection" of party-designated arbitrators if the parties have agreed to such procedure, whereby the arbitrators to be designated by the parties without knowledge of which party designated them. Rule 5.5 deals with the constitution of the Tribunal where the arbitration agreement entitles each party to appoint an arbitrator but there is more than one Claimant or Respondent to the dispute. Rule 9.3(b) deals with the early disposition of claims, defenses and other factual and legal issues. Rule 9.3(f) provides for the possibility of implementing steps to address issues of cybersecurity and protecting the security of information in the arbitration.

A new Rule 12.5 encourages the development of the next generation of lawyers by empowering the Tribunal to encourage lead counsel to share witness examination and/or legal argument with more junior attorneys.

Commentary, Guidelines and Protocols

CPR has prepared a General Commentary for CPR's Rules for Non-Administered Arbitration of Disputes that should be consulted in applying these Rules. The General Commentary may be found on CPR's website at www.cpradr.org following the text of the Rules.

CPR has promulgated guidelines and protocols that are designed to control time and cost and increase efficiency (available on CPR's website at www.cpradr.org).

Mediation and Other ADR Procedures

The following Procedures are intended to govern arbitration proceedings. However, many parties wish to incorporate in their contract provisions for face-to-face negotiation or mediation prior to arbitration.

Parties desiring to use such Procedures should consult the CPR Mediation Procedure and CPR's Dispute Resolution Clauses (available on CPR's website under Model Clauses).

Help in Finding or Selecting a Neutral

In addition, some parties may need assistance in finding and selecting an appropriate mediator or arbitrator(s). For a fee, CPR is available to assist in neutral selection with the customized, neutral appointment service of CPR Dispute Resolution Services.

To obtain a copy of our Procedures or to find out more about our Dispute Resolution Services and fees, visit our website under Dispute Resolution Services or call CPR's office at +1.212.949.6490.

CPR CLAUSES

Standard Contractual Provisions

The International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration of International Disputes are intended in particular for use

in complex commercial arbitrations and are designed to assure the expeditious and economical conduct of proceedings. The Rules may be adopted by parties wishing to do so by using one of the following standard provisions:

A. Pre-Dispute

> Any dispute arising out of or relating to, this contract, including the breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration of International Disputes, by (a sole arbitrator) (three arbitrators, of whom each party shall appoint one) (three arbitrators, none of whom shall be appointed by either party) (three arbitrators, of whom each party shall designate one in accordance with the "screened" appointment procedure provided in Rule 5.4). Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The seat of the arbitration shall be (city, country). The arbitration shall be conducted in (language).

B. Existing Dispute Submission Agreement

> We, the undersigned parties, hereby agree to submit to arbitration in accordance with the International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration of International Disputes (the "Rules") the following dispute:
>
> [Describe briefly]
>
> We further agree that the above dispute shall be submitted to (a sole arbitrator) (three arbitrators, of whom each party shall appoint one) (three arbitrators, of whom each party shall designate one in accordance with the "screened" appointment process provided in Rule 5.4) (three arbitrators, none of whom shall be appointed by either party). We further agree that we shall faithfully observe this agreement and the International Rules and that we shall abide by and perform any award rendered by the arbitrator(s). Judgment upon the award may be entered by any court having jurisdiction thereof. The seat of the arbitration shall be (city, country). The arbitration shall be conducted in (language).

A. GENERAL AND INTRODUCTORY RULES

Rule 1: Scope of Application

1.1 Where the parties to a contract have provided for arbitration under the International Institute for Conflict Prevention and Resolution ("CPR") Rules for Non-Administered Arbitration of International Disputes (the "Rules"), they shall be deemed to have made these Rules a part of their arbitration agreement, except to the extent that they have agreed in writing, or on the record during the course of the arbitral proceeding, to modify these Rules. Unless the parties otherwise agree, these Rules, and any amendment thereof adopted by CPR, shall apply in the form in effect at the time the arbitration is commenced. Where parties to a contract have provided for CPR arbitration generally, without specifying which set of CPR arbitration rules shall apply, the CPR Rules for Administered Arbitration of International Disputes shall apply to any arbitration agreement entered into after December 1, 2014, where the parties reside in different countries or where the contract involves property or calls for performance in a country other than the parties' country or residence.

1.2 These Rules shall govern the arbitration except that where any of these Rules is in conflict with a mandatory provision of applicable arbitration law, that provision of law shall prevail.

Rule 2: Notices

2.1 Notices or other communications required under these Rules shall be in writing and delivered to the address specified in writing by the recipient for this purpose or, if no address has been specified, to the last known business or residence address of the recipient. Notices and communications may be given by registered mail, courier, facsimile transmission, email communication or any other means of telecommunication that provides a record thereof. Notices and communications shall be deemed to be effective as of the date of receipt. Proof of transmission shall be deemed prima facie proof of receipt of any notice or communication given under these Rules.

2.2 Time periods specified by these Rules or established by the Arbitral Tribunal (the "Tribunal") shall start

to run on the day following the day when a notice or communication is received, unless the Tribunal shall specifically provide otherwise. If the last day of such period is an official holiday or a non-business day at the place where the notice or communication is received, the period is extended until the first business day which follows. Official holidays and non-business days occurring during the running of the period of time are included in calculating the period.

Rule 3: Commencement of Arbitration

3.1 The party commencing arbitration (the "Claimant") shall address to the other party (the "Respondent") a notice of arbitration.

3.2 The arbitration shall be deemed commenced as to any Respondent on the date on which the notice of arbitration is received by the Respondent.

3.3 The notice of arbitration shall include in the text or in attachments thereto:

a. The full names, addresses, telephone numbers and email addresses for the parties and their counsel;
b. A demand that the dispute be referred to arbitration pursuant to the Rules;
c. The text of the arbitration clause or the separate arbitration agreement that is involved;
d. A statement of the general nature of the Claimant's claim;
e. The relief or remedy sought; and
f. The name, address, telephone number and email address of the arbitrator appointed by the Claimant, unless the parties have agreed that neither shall appoint an arbitrator or that the party-appointed arbitrators shall be appointed as provided in Rule 5.4.

3.4 Within 30 days after receipt of the notice of arbitration, the Respondent shall deliver to the Claimant a notice of defense. Failure to deliver a notice of defense shall not delay the arbitration; in the event of such failure, all claims set forth in the demand shall be deemed denied. Failure to deliver a notice of defense shall not excuse the Respondent from notifying the Claimant in writing, within 30 days after receipt of the notice of arbitration, of the arbitrator appointed by the Respondent, unless the parties have agreed that neither shall appoint an arbitrator or that the party-appointed arbitrators shall be appointed as provided in Rule 5.4.

3.5 The notice of defense shall include:

a. Any comment on the notice of arbitration that the Respondent may deem appropriate;
b. A statement of the general nature of the Respondent's defense; and
c. The name, address, telephone number and email address of the arbitrator appointed by the Respondent, unless the parties have agreed that neither shall appoint an arbitrator or that the party-appointed arbitrators shall be appointed as provided in Rule 5.4.

3.6 The Respondent may include in its notice of defense any counterclaim within the scope of the arbitration clause. If it does so, the counterclaim in the notice of defense shall include items (a), (b), (c), (d) and (e) of Rule 3.3.

3.7 If a counterclaim is asserted, within 20 days after receipt of the notice of defense, the Claimant shall deliver to the Respondent a reply to counterclaim which shall have the same elements as provided in Rule 3.5 for the notice of defense. Failure to deliver a reply to counterclaim shall not delay the arbitration; in the event of such failure, all counterclaims set forth in the notice of defense shall be deemed denied.

3.8 Claims or counterclaims within the scope of the arbitration clause may be freely added, amended or withdrawn prior to the establishment of the Tribunal and thereafter with the consent of the Tribunal. Notices of defense or replies to amended claims or counterclaims shall be delivered within 20 days after the addition or amendment.

3.9 If a dispute is submitted to arbitration pursuant to a submission agreement, this Rule 3 shall apply to the extent that it is not inconsistent with the submission agreement.

3.10 Prior to the appointment of any arbitrator, CPR may, at the request of any party, allow one or more third parties to be joined in the arbitration as a party unless, after giving all parties, including the party or parties to be joined, an opportunity to be heard, CPR finds that joinder should not be permitted. Any such joinder shall be subject to the provisions of Rule 8. Whenever joinder is considered, CPR may, in its discretion, adjust or set any deadlines otherwise provided for in Rules 3, 5 and 6. No additional party may be joined after the appointment of any arbitrator unless all parties, including the additional party

or parties, otherwise agree. A request for joinder shall be addressed to CPR with a copy to Claimant and Claimant's counsel, if known, and shall include the full name, address, telephone number and email address for each party to be joined and its counsel, if known, as well as the basis on which the party is proposed to be joined, including the text of any relevant arbitration clause or separate arbitration agreement.

3.11 a. CPR may, at the request of a party and following consultation with the parties, consolidate two or more arbitrations pending under these Rules into a single arbitration where:

1. the parties have agreed to consolidation; or
2. all of the claims in the arbitrations are made under the same arbitration agreement; or
3. where the claims in the arbitrations are made under more than one arbitration agreement, the arbitrations are between the same parties, the disputes in the arbitrations arise in connection with the same legal relationship, and CPR finds the arbitration agreements to be compatible.

b. In deciding whether to consolidate, CPR may take into account any circumstances it considers to be relevant, including whether one or more arbitrators have been appointed in more than one of the arbitrations, and if so, whether the same or different persons have been appointed; the existence of common issues of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation; and consolidation would serve the interests of justice and efficiency.

c. When arbitrations are consolidated, they shall be consolidated in the arbitration that commenced first, unless otherwise agreed to by the parties or determined by CPR.

d. Arbitrations shall not be consolidated if the arbitration agreement prohibits consolidation.

e. In its discretion, CPR may refer issues relating to consolidation to the CPR International Arbitration Council (the Council) for determination. Information on the Council is set forth in Rule 22 and also available on CPR's website.

Rule 4: Representation

4.1 The parties may be represented or assisted by persons of their choice.

4.2 Each party shall communicate the name, address (including email address) and function of such persons in writing to the other party and to the Tribunal.

B. RULES WITH RESPECT TO THE TRIBUNAL

Rule 5: Selection of Arbitrators by the Parties

5.1 Unless the parties have agreed in writing on a Tribunal consisting of a sole arbitrator or of three arbitrators not appointed by parties or appointed as provided in Rule 5.4, the Tribunal shall consist of two arbitrators, one appointed by each of the parties as provided in Rules 3.3 and 3.5, and a third arbitrator who shall chair the Tribunal, selected as provided in Rule 5.2. Unless otherwise agreed, any arbitrator not appointed by a party shall be a member of the CPR Panels of Distinguished Neutrals ("CPR Panels").

5.2 Within 20 days of the appointment of the second arbitrator, the two party-appointed arbitrators shall appoint a third arbitrator, who shall chair the Tribunal. In the event the party-appointed arbitrators are unable to agree on the third arbitrator within that period, the third arbitrator shall be selected as provided in Rule 6.

5.3 If the parties have agreed on a Tribunal consisting of a sole arbitrator or of three arbitrators none of whom shall be appointed by either party, the parties shall attempt jointly to select such arbitrator(s) within 30 days after the deadline for notice of defense provided for in Rule 3.4 is due. Unless the parties mutually agree to extend the time for that selection process, any arbitrator(s) not jointly selected by the end of the 30 day period shall be selected by CPR as provided in Rule 6.

5.4 If the parties have agreed on a Tribunal consisting of three arbitrators, two of whom are to be designated by the parties without knowing which party designated each of them, as provided in this Rule 5.4, either

party, following the expiration of the time period for the notice of defense, may request CPR in writing, with a copy to the other party, to conduct a "screened" selection of party-designated arbitrators as follows:

a. CPR will provide each party with a copy of a list of candidates from the CPR Panels together with confirmation of their availability to serve as arbitrators and disclosures of any circumstances that might give rise to justifiable doubt regarding the candidate's independence or impartiality, as provided in Rule 7. Within 10 days thereafter, each party shall designate from the list three candidates, in order of preference, as candidates for its party-designated arbitrator, and so notify CPR and the other party in writing.

b. Within the same 10 day period after receipt of the CPR list, a party may also object to the appointment of any candidate on the grounds of lack of independence or impartiality by written and reasoned notice to CPR, with a copy to the other party. CPR shall decide the objection after providing the non-objecting party with an opportunity to comment on the objection. If there is no objection to the candidate, or if the objection is overruled by CPR, CPR shall appoint the candidate as arbitrator, and any subsequent challenges of that arbitrator, based on circumstances subsequently learned, shall be made and decided in accordance with the procedures set forth in Rules 7.6 - 8. At its discretion, CPR may decide an objection under this Rule 5.4(b) by referring it to a Challenge Review Committee pursuant to the CPR Challenge Protocol (excluding its Fee requirement).

c. If the independence or impartiality of the first candidate is successfully challenged, CPR will appoint the subsequent candidate designated by that party, in order of the party's indicate preference, provided CPR does not sustain any objection made to the appointment of that candidate.

d. Neither CPR nor the parties shall advise or otherwise provide any information or indication to any arbitrator candidate or arbitrator as to which party selected either of the party-designated arbitrators. No party or anyone acting on its behalf shall have any ex parte communications relating to the case with any arbitrator or arbitrator candidate designated or appointed pursuant to this Rule 5.4.

e. Unless the parties otherwise agree, the chair of the Tribunal will be appointed by CPR in accordance with the procedure set forth in Rule 6.4, which shall proceed concurrently with the procedure for appointing the party-designated arbitrators provided in subsections (a)-(d) above.

f. The compensation of all members of the Tribunal appointed pursuant to Rule 5.4 shall be administered by the chair of the Tribunal in accordance with Rule 17.

5.5 Where the arbitration agreement entitles each party to appoint an arbitrator but there is more than one Claimant or Respondent to the dispute, and either the multiple Claimants or the multiple Respondents do not jointly appoint an arbitrator within the time period provided in Rules 3.3 and 3.5, CPR shall appoint all of the arbitrators as provided in Rule 6.4.

Rule 6: Selection of Arbitrator(s) by CPR

6.1 Whenever (i) a party has failed to appoint the arbitrator to be appointed by it; (ii) the parties have failed to appoint the arbitrator(s) to be appointed by them acting jointly; (iii) the party- appointed arbitrators have failed to appoint the third arbitrator; (iv) the parties have provided that one or more arbitrators shall be appointed by CPR; or (v) the multi-party nature of the dispute calls for CPR to appoint all members of a three-member Tribunal pursuant to Rule 5.5, the arbitrator(s) required to complete the Tribunal shall be selected as provided in this Rule 6, and either party may request CPR in writing, with copy to the other party, to proceed pursuant to this Rule 6.

6.2 The written request may be made as follows:

a. If a party has failed to appoint the arbitrator to be appointed by it, or the parties have failed to appoint the arbitrator(s) to be appointed by them through agreement, at any time after such failure to make a timely appointment has occurred.

b. If the party-appointed arbitrators have failed to appoint the third arbitrator, as soon as the time period provided in Rule 5.2 has expired.

c. If the arbitrator(s) are to be appointed by CPR, as soon as the notice of defense is due.

6.3 The written request shall include complete copies of the notice of arbitration and the notice of defense or, if the dispute is submitted under a submission agreement, a copy of the agreement supplemented by the notice of arbitration and notice of defense if they are not part of the agreement.

6.4 Except where a party has failed to appoint the arbitrator to be appointed by it, CPR shall proceed as follows:

a. Promptly following receipt by it of the request provided for in Rule 6.3, CPR shall convene the parties in person or by telephone to attempt to select the arbitrator(s) by agreement of the parties.

b. If the procedure provided for in (a) does not result in the required number of arbitrators, CPR shall submit to the parties a list of not less than five candidates if one arbitrator remains to be selected, and of not less than seven candidates if two or three arbitrators are to be selected. If either party shall so request, such candidates shall be of a nationality other than the nationality of the parties. Such list shall include a brief statement of each candidate's qualifications. Each party shall number the candidates in order of preference, shall note any objection it may have to any candidate, and shall deliver the list so marked to CPR which, on agreement of the parties, shall circulate the delivered lists to the parties.

c. Any party failing without good cause to return the candidate list so marked within 10 days after receipt shall be deemed to have assented to all candidates listed thereon. CPR shall designate as arbitrator(s) the nominee(s) willing to serve for whom the parties collectively have indicated the highest preference and who appear to meet the standards set forth in Rule 7. If a tie should result between two candidates, CPR may designate either candidate. If this procedure for any reason should fail to result in designation of the required number of arbitrators or if a party fails to participate in this procedure, CPR shall appoint a person or persons whom it deems qualified to fill any remaining vacancy, and whom, if either party shall so request, shall be of a nationality other than the nationality of the parties.

6.5 Where a party has failed to appoint the arbitrator to be appointed by it, CPR shall appoint a person whom it deems qualified to serve as such arbitrator, taking into account the nationalities of the parties and other relevant circumstances.

Rule 7: Qualifications, Challenges and Replacement of Arbitrator(s)

7.1 Each arbitrator shall be independent and impartial.

7.2 By accepting appointment, each arbitrator shall be deemed to be bound by these Rules and any modification agreed to by the parties, and to have represented that he or she has the time available to devote to the expeditious process contemplated by these Rules.

7.3 Taking into account applicable law, each arbitrator shall disclose in writing to the Tribunal and the parties at the time of his or her appointment and promptly upon their arising during the course of the arbitration any circumstances that might give rise to justifiable doubt regarding the arbitrator's independence or impartiality as well as any additional disclosures required by the law of the seat. Such circumstances include bias, interest in the result of the arbitration, and past or present relations with a party or its counsel.

7.4 No party or anyone acting on its behalf shall have any ex parte communications concerning any matter relating to the proceeding with any arbitrator or arbitrator candidate, except that a party may advise a candidate for appointment as its party-appointed arbitrator of the general nature of the case and discuss the candidate's qualifications, availability, and independence and impartiality with respect to the parties, and a party may confer with its party-appointed arbitrator regarding the selection of the chair of the Tribunal. As provided in Rule 5.4(d), no party or anyone acting on its behalf shall have any ex parte communications relating to the case with any arbitrator or arbitrator candidate designated or appointed pursuant to Rule 5.4.

7.5 Any arbitrator may be challenged if circumstances exist or arise that give rise to justifiable doubt regarding that arbitrator's independence or impartiality, provided that a party may challenge an arbitrator whom it has appointed only for reasons of which it becomes aware after the appointment has been made.

7.6 A party may challenge an arbitrator only by a notice in writing to CPR, with a copy to the Tribunal and the other party, given no later than 10 days after the challenging party (i) receives notification of the appointment of that arbitrator, or (ii) becomes aware of the circumstances specified in Rule 7.5, whichever shall last occur. The notice shall state the reasons for the challenge with specificity. The notice shall not be sent to the Tribunal when the challenged arbitrator is a party-designated arbitrator selected as provided in Rule 5.4; in that event, CPR may provide each member of the Tribunal with an opportunity to comment on the substance of the challenge without disclosing the identity of the party.

7.7 When an arbitrator has been challenged by a party, the other party may agree to the challenge or the arbitrator may voluntarily withdraw. Neither of these actions implies acceptance of the validity of the challenge.

7.8 If neither agreed disqualification nor voluntary withdrawal occurs, the challenge shall be decided by CPR, after providing the non-challenging party and each member of the Tribunal with an opportunity to comment on the challenge.

7.9 In the event of death, resignation or successful challenge of an arbitrator not appointed by a party, a substitute arbitrator shall be selected pursuant to the procedure by which the arbitrator being replaced was selected. In the event of the death, resignation or successful challenge of an arbitrator appointed by a party, that party may appoint a substitute arbitrator; provided, however, that should that party fail to notify the Tribunal (or CPR, if the Tribunal has been constituted as provided in Rule 5.4) and the other party of the substitute appointment within 20 days from the date on which it becomes aware that the opening arose, that party's right of appointment shall lapse and the Tribunal shall promptly request CPR to appoint a substitute arbitrator forthwith.

7.10 In the event that an arbitrator fails to act or is de jure or de facto prevented from duly performing the functions of an arbitrator, the procedures provided in Rule 7.9 shall apply to the selection of a replacement. If the parties do not agree on whether the arbitrator has failed to act or is prevented from performing the functions of an arbitrator, either party may request CPR to make that determination forthwith.

7.11 If the sole arbitrator or the chair of the Tribunal is replaced, the successor shall decide the extent to which any hearings held previously shall be repeated. If any other arbitrator is replaced, the Tribunal in its discretion may require that some or all prior hearings be repeated.

7.12 If an arbitrator on a three-person Tribunal fails to participate in the arbitration, the two other arbitrators shall have the power in their sole discretion to continue the arbitration and to make any decision, ruling or award, notwithstanding the failure of the third arbitrator to participate, unless the parties agree otherwise. In determining whether to continue the arbitration or to render any decision, ruling or award without the participation of an arbitrator, the two other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the third arbitrator for such non-participation, and such other matters as they consider appropriate in the circumstances of the case. In the event that the two other arbitrators determine not to continue the arbitration without the participation of the third arbitrator, the procedures provided in Rule 7.9 shall apply to the selection of a replacement.

Rule 8: Challenges to the Jurisdiction of the Tribunal

8.1 The Tribunal shall have the power to hear and determine challenges to its jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement. This authority extends to jurisdictional challenges with respect to both the subject matter of the dispute and the parties to the arbitration.

8.2 The Tribunal shall have the power to determine the existence, validity or scope of the contract of which an arbitration clause forms a part. For the purposes of challenges to the jurisdiction of the Tribunal, the arbitration clause shall be considered as separable from any contract of which it forms a part.

8.3 Any challenges to the jurisdiction of the Tribunal, except challenges based on the award itself, shall be made not later than the notice of defense or, with respect to a counterclaim, the reply to the counterclaim; provided, however, that if a claim or counterclaim is later added or amended such a challenge may be made not later than the response to such claim or counterclaim as provided under these Rules.

C. RULES WITH RESPECT TO THE CONDUCT OF THE ARBITRAL PROCEEDINGS

Rule 9: General Provisions

9.1 Subject to these Rules, the Tribunal may conduct the arbitration in such manner as it shall deem appropriate. The chair shall be responsible for the organization of arbitral conferences and hearings and arrangements with respect to the functioning of the Tribunal.

9.2 The proceedings shall be conducted in an expeditious manner. The Tribunal is empowered to impose time limits it considers reasonable on each phase of the proceeding, including without limitation the time allotted to each party for presentation of its case and for rebuttal. In setting time limits, the Tribunal

should bear in mind its obligation to manage the proceeding firmly in order to complete proceedings as economically and expeditiously as possible.

9.3 The Tribunal shall hold an initial pre-hearing conference for the planning and scheduling of the proceeding. Such conference shall be held promptly after the constitution of the Tribunal, unless the Tribunal is of the view that further submissions from the parties are appropriate prior to such conference. The objective of this conference shall be to discuss all elements of the arbitration with a view to planning for its future conduct. Matters to be considered in the initial pre-hearing conference may include, inter alia, the following:

a. Procedural matters (such as the timing and manner of any required disclosure; the desirability of bifurcation or other separation of the issues in the arbitration; the desirability and practicability of consolidating the arbitration with any other proceeding; the scheduling of conferences and hearings; the need for and costs of translations; the scheduling of prehearing memoranda; the need for and type of record of conferences and hearings, including the need for transcripts; the amount of time allotted to each party for presentation of its case and for rebuttal; the mode, manner and order for presenting proof; the need for expert witnesses and how expert testimony should be presented; and the necessity for any on-site inspection by the Tribunal);
b. The early identification and narrowing of the issues in the arbitration, including the possibility of early disposition of any issues in accordance with CPR Guidelines on Early Disposition of Issues in Arbitration;
c. The possibility of stipulations of fact and admissions by the parties solely for purposes of the arbitration, as well as simplification of document authentication;
d. The possibility of appointment of a neutral expert by the Tribunal;
e. The possibility of the parties engaging in settlement negotiations, with or without the assistance of a mediator; and
f. The possibility of implementing steps to address issues of cybersecurity and to protect the security of information in the arbitration. After the initial conference, further pre-hearing or other conferences may be held as the Tribunal deems appropriate.

9.4 In order to define the issues to be heard and determined, the Tribunal may, inter alia, make pre-hearing orders and instruct the parties to file more detailed statements of claim and of defense, and pre-hearing memoranda.

9.5 Unless the parties have agreed upon the place of arbitration, the Tribunal shall fix the place of arbitration based upon the contentions of the parties and the circumstances of the arbitration. The award shall be deemed made at such place. The Tribunal may schedule meetings and hold hearings wherever it deems appropriate.

Rule 10: Applicable Law(s) and Remedies

10.1 The Tribunal shall apply the substantive law(s) or rules of law designated by the parties as applicable to the dispute. Failing such a designation by the parties, the Tribunal shall apply such law(s) or rules of law as it determines to be appropriate.

10.2 Subject to Rule 10.1, in arbitrations involving the application of contracts, the Tribunal shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.

10.3 The Tribunal shall not decide as *amiable compositeur* or *ex aequo et bono* unless the parties have authorized it to do so in writing or on the record.

10.4 The Tribunal may grant any remedy or relief, including but not limited to specific performance of a contract, which is within the scope of the agreement of the parties and permissible under the law(s) or rules of law applicable to the dispute pursuant to Rule 10.1, or, if the parties have expressly so provided pursuant to Rule 10.3, within the Tribunal's authority to decide as *amiable compositeur* or *ex aequo et bono*.

10.5 Unless the parties agree otherwise, the parties expressly waive and forego any right to punitive, exemplary or similar damages unless a statute requires that compensatory damages be increased in a specified manner. This provision shall not limit the Tribunal's authority under Rule 17.3 to take into account a party's dilatory or bad faith conduct in the arbitration in apportioning arbitration costs between or among the parties.

10.6 A monetary award shall be in the currency or currencies of the contract unless the Tribunal considers another currency more appropriate, and the Tribunal may award such pre-award and post-award interest, simple or compound, as it considers appropriate,

taking into consideration the contract and applicable law.

Rule 11: Disclosure

The Tribunal may require and facilitate such disclosure as it shall determine is appropriate in the circumstances, taking into account the needs of the parties and the desirability of making disclosure expeditious and cost-effective. The Tribunal may issue orders to protect the confidentiality of proprietary information, trade secrets and other sensitive information disclosed

Rule 12: Evidence and Hearings

12.1 The Tribunal shall determine the manner in which the parties shall present their cases. Unless otherwise determined by the Tribunal or agreed by the parties, the presentation of a party's case shall include the submission of a pre-hearing memorandum including the following elements:

a. a statement of facts;
b. a statement of each claim being asserted;
c. a statement of the applicable law and authorities upon which the party relies;
d. a statement of the relief requested, including the basis for any damages claimed; and
e. the evidence to be presented, including documents relied upon and the name, capacity and subject of testimony of any witnesses to be called and the language in which each witness will testify.

12.2 If either party so requests or the Tribunal so directs, a hearing shall be held for the presentation of evidence and oral argument. Testimony may be presented in written and/or oral form as the Tribunal may determine is appropriate. The Tribunal is not required to apply the rules of evidence used in judicial proceedings, provided, however, that the Tribunal shall apply the lawyer-client privilege and the work product immunity.

The Tribunal shall determine the applicability of any privilege or immunity and the admissibility, relevance, materiality and weight of the evidence offered.

12.3 The Tribunal, in its discretion, may require the parties to produce evidence in addition to that initially offered. It may also appoint neutral experts whose testimony shall be subject to cross-examination and rebuttal.

12.4 The Tribunal shall determine the manner in which witnesses are to be examined. The Tribunal shall have the right to exclude witnesses from hearings during the testimony of other witnesses.

12.5 In order to support the development of the next generation of lawyers, the Tribunal, in its discretion, may encourage lead counsel to permit more junior lawyers with significantly less arbitration experience than lead counsel to examine witnesses at the hearing and present argument. The Tribunal, in its discretion, may permit experienced counsel to provide assistance or support, where appropriate, to a lawyer with significantly less experience during the examination of witnesses or argument. Notwithstanding the contents of this Rule 12.5, the ultimate decision of who speaks on behalf of the client in an arbitration is for the parties and their counsel, not the Tribunal.

Rule 13: Interim Measures of Protection

13.1 At the request of a party, the Tribunal may take such interim measures as it deems necessary, including measures for the preservation of assets, the conservation of goods or the sale of perishable goods. The Tribunal may require appropriate security as a condition of ordering such measures.

13.2 A request for interim measures by a party to a court shall not be deemed incompatible with the agreement to arbitrate or as a waiver of that agreement.

Rule 14: Emergency Measures of Protection by an Emergency Arbitrator

14.1 Unless otherwise agreed by the parties, this Rule 14 shall be deemed part of any arbitration clause or agreement that provides for arbitration under these Rules.

14.2 Prior to the constitution of the Tribunal, any party may request that emergency measures be granted under this Rule against any other party by an emergency arbitrator appointed for that purpose.

14.3 Emergency measures under this Rule are requested by written application to CPR, entitled "Request for Emergency Measures of Protection By an Emergency Arbitrator," describing in reasonable detail the relief sought, the party against whom the relief is sought, the grounds for the relief, and, if practicable, the evidence and law supporting the request. The request

shall be delivered in accordance with Rule 2.1, and shall certify that all other parties affected have been notified of the request or explain the steps taken to notify such parties.

14.4 The request for emergency measures shall be accompanied by an initial deposit of $2000, paid to CPR by wire, check, credit card or draft. CPR shall promptly determine, pursuant to its administrative rules, any further deposit due to cover the fee of CPR and the remuneration of the emergency arbitrator, which amount shall be paid within the time period determined by CPR.

14.5 If the parties agree upon an emergency arbitrator within one business day of the request, that arbitrator shall be appointed. If there is no such timely agreement, CPR shall appoint an emergency arbitrator from a list of arbitrators maintained by CPR for that purpose. To the extent practicable, CPR shall appoint the emergency arbitrator within one business day of CPR's receipt of the application for emergency measures under this Rule. The emergency arbitrator's fee shall be determined by CPR in consultation with the emergency arbitrator. The emergency arbitrator's fee and reasonable out-of-pocket expenses shall be paid from the deposit made with CPR.

14.6 Prior to accepting appointment, an emergency arbitrator candidate shall disclose to CPR any circumstances that might give rise to justifiable doubt regarding the arbitrator's independence or impartiality within the meaning of Rule 7.3. Any challenge to the appointment of an emergency arbitrator must be made within one business day of the challenging party's receipt of CPR's notification of the appointment of the arbitrator and the circumstances disclosed. An emergency arbitrator may be challenged on any ground for challenging arbitrators generally under Rule To the extent practicable, CPR shall rule on the challenge within one business day after CPR's receipt of the challenge. CPR's ruling on the challenge shall be final.

14.7 In the event of death, resignation or successful challenge of an emergency arbitrator, CPR shall appoint a replacement forthwith in accordance with the procedures prescribed in Rules 14.5 and 14.6.

14.8 The emergency arbitrator shall determine the procedure to be followed, which shall include, whenever possible, reasonable notice to, and an opportunity for hearing (either in person, by teleconference or other appropriate means), all affected parties. The emergency arbitrator shall conduct the proceedings as expeditiously as possible, and shall have the powers vested in the Tribunal under Rule 8, including the power to rule on his/her own jurisdiction and the applicability of this Rule 14.

14.9 The emergency arbitrator may grant such emergency measures as he or she deems necessary, including but not limited to measures for the preservation of assets, the conservation of goods or the sale of perishable goods.

14.10 The ruling on the request for emergency measures shall be made by award or order, and the emergency arbitrator may state in such award or order whether or not the emergency arbitrator views the award or order as final for purposes of any judicial proceedings in connection therewith. The award or order may be made conditional upon the provision of security or any act or omission specified in the award or order. The award or order may provide for the payment of a specified amount in case of noncompliance with its terms.

14.11 The award or order shall specify the relief awarded or denied, shall determine the cost of the proceedings, including CPR's administrative fee, the arbitrator's fee and expenses as determined by CPR, and apportion such costs among the parties as the emergency arbitrator deems appropriate. The emergency arbitrator may also apportion the parties' reasonable attorneys' fees and expenses in the award or order or in a supplementary award or order. Unless the parties agree otherwise, the award or order shall state the reasoning on which the award or order rests as the emergency arbitrator deems appropriate.

14.12 A request for emergency measures by a party to a court shall not be deemed incompatible with the agreement to arbitrate, including the agreement to this Rule 14, or as a waiver of that agreement.

14.13 The award or order shall remain in effect until modified or vacated by the emergency arbitrator or the Tribunal. The emergency arbitrator may modify or vacate the award or order for good cause. If the Tribunal is constituted before the emergency arbitrator has rendered an award or order, the emergency arbitrator shall retain jurisdiction to render such award or order unless and until the Tribunal directs otherwise. Once the Tribunal has been constituted, the Tribunal may modify or vacate the award or order rendered by the emergency arbitrator.

14.14 The emergency arbitrator shall not serve as a member of the Tribunal unless the parties agree otherwise.

Rule 15: The Award

15.1 The Tribunal may make final, interim, interlocutory and partial awards. With respect to any interim, interlocutory or partial award, the Tribunal may state in its award whether or not the award is final for purposes of any judicial proceedings in connection therewith.

15.2 All awards shall be in writing and shall state the reasoning on which the award rests unless the parties agree otherwise. The award shall be deemed to be made at the seat of arbitration and shall contain the date on which the award was made. When there are three arbitrators, the award shall be made and signed by at least a majority of the arbitrators.

15.3 A member of the Tribunal who does not join in an award may issue a dissenting opinion. Such opinion shall not constitute part of the award.

15.4 Executed copies of awards and of any dissenting opinion shall be delivered by the Tribunal to the parties. If the arbitration law of the country where the award is made requires the award to be filed or registered, the parties shall bring such requirements to the attention of the Tribunal, and the Tribunal shall endeavor to arrange for compliance with such requirement.

15.5 Within 20 days after receipt of the award, either party, with notice to the other party, may request the Tribunal to clarify the award; to correct any clerical, typographical or computation errors, or any errors of a similar nature in the award; or to make an additional award as to claims or counterclaims presented in the arbitration but not determined in the award. The Tribunal shall make any clarification, correction or additional award requested by either party that it deems justified within 30 days after receipt of such request. Within 20 days after delivery of the award to the parties or, if a party requests a clarification, correction or additional award, within 30 days after receipt of such request, the Tribunal may make such corrections and additional awards on its own initiative as it deems appropriate. All clarifications, corrections, and additional awards shall be in writing, and the provisions of this Rule 15 shall apply to them.

15.6 The award shall be final and binding on the parties, and the parties will undertake to carry out the award without delay. If an interpretation, correction or additional award is requested by a party, or a correction or additional award is made by the Tribunal on its own initiative as provided in Rule 15.5, the award shall be final and binding on the parties when such clarification, correction or additional award is made by the Tribunal or upon the expiration of the time periods provided in Rule 15.5 for such clarification, correction or additional award to be made, whichever is earlier.

15.7 The dispute should in most circumstances be submitted to the Tribunal for decision within six months after the initial pre-hearing conference required by Rule 9.3. The final award should in most circumstances be rendered within one month after the close of proceedings. The parties and the Tribunal shall use their best efforts to comply with this schedule.

D. MISCELLANEOUS RULES

Rule 16: Failure to Comply with Rules

Whenever a party fails to comply with these Rules, or any order of the Tribunal pursuant to these Rules, in a manner deemed material by the Tribunal, the Tribunal, if appropriate, shall fix a reasonable period of time for compliance and, if the party does not comply within said period, the Tribunal may impose a remedy it deems just, including an award on default. Prior to entering an award on default, the Tribunal shall require the non-defaulting party to produce evidence and legal argument in support of its contentions as the Tribunal may deem appropriate. The Tribunal may receive such evidence and argument without the defaulting party's presence or participation.

Rule 17: Costs

17.1 Each arbitrator shall be compensated on a reasonable basis determined at the time of appointment for serving as an arbitrator and shall be reimbursed for any reasonable travel and other expenses. The compensation for each arbitrator should be fully disclosed to all Tribunal members and parties. If there is a disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by CPR and confirmed in writing to the parties. Subject to any agreement between the

parties to the contrary, the parties shall be jointly and severally liable for such fees and expenses.

17.2 The Tribunal shall fix the costs of arbitration in its award. The costs of arbitration include:

a. The fees and expenses of members of the Tribunal;
b. The costs of expert advice and other assistance engaged by the Tribunal;
c. The travel and other expenses of witnesses to such extent as the Tribunal may deem appropriate;
d. The costs for legal representation and assistance and experts incurred by a party to such extent as the Tribunal may deem appropriate;
e. The charges and expenses of CPR with respect to the arbitration;
f. The costs of a transcript; and
g. The costs of meeting and hearing facilities.

17.3 Subject to any agreement between the parties to the contrary, the Tribunal may apportion the costs of arbitration between or among theparties in such manner as it deems reasonable, taking into account the circumstances of the case, the conduct of the parties during the proceeding, and the result of the arbitration.

17.4 The Tribunal may request each party to deposit an appropriate amount as an advance for the costs referred to in Rule 17.2, except those specified in subparagraph (d), and, during the course of the proceeding, it may request supplementary deposits from the parties. Any such funds shall be held and disbursed in such a manner as the Tribunal may deem appropriate.

17.5 If the requested deposits are not paid in full within 20 days after receipt of the request, the Tribunal shall so inform the parties in order that jointly or severally they may make the requested payment. If such payment is not made, the Tribunal may suspend or terminate the proceeding.

17.6 After the proceeding has been concluded, the Tribunal shall return any unexpended balance from deposits made to the parties as may be appropriate.

Rule 18: Confidentiality

Unless the parties agree otherwise, the parties, the arbitrators and CPR shall treat the proceedings, any related discovery and the decisions of the Tribunal, as confidential, except in connection with judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award, and unless otherwise required by law or to protect a legal right of a party. To the extent possible, any specific issues of confidentiality should be raised with and resolved by the Tribunal.

Rule 19: Settlement and Mediation

19.1 Either party may propose settlement negotiations to the other party at any time. The Tribunal may suggest that the parties explore settlement at such times as the Tribunal may deem appropriate.

19.2 With the consent of the parties, the Tribunal at any stage of the proceeding may arrange for mediation of the claims asserted in the arbitration by a mediator acceptable to the parties. The mediator shall be a person other than a member of the Tribunal. Unless the parties agree otherwise, any such mediation shall be conducted under the CPR Mediation Procedure.

19.3 The Tribunal will not be informed of any settlement offers or other statements made during settlement negotiations or a mediation between the parties, unless both parties consent.

19.4 If the parties settle the dispute before an award is made, the Tribunal shall terminate the arbitration and, if requested by all parties and accepted by the Tribunal, may record the settlement in the form of an award made by consent of the parties. The Tribunal is not obliged to give reasons for such an award.

Rule 20: Actions Against CPR or Arbitrator(s)

Neither CPR nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules.

Rule 21: Waiver

A party knowing of a failure to comply with any provision of these Rules, or any requirement of the arbitration agreement or any direction of the Tribunal, and neglecting to state its objections promptly, waives any objection thereto.

Rule 22: Interpretation and Application of Rules

The Tribunal shall interpret and apply these Rules insofar as they relate to the Tribunal's powers and duties. When there is more than one member on the Tribunal and a difference arises among them

concerning the meaning or application of these Rules, that difference shall be decided by a majority vote. All other Rules shall be interpreted and applied by CPR. Unless otherwise provided in the Rules, whenever under these Rules CPR is required to make a determination, CPR in its discretion may refer the issue for such determination to a panel of three members from the CPR International Arbitration Counsel, the composition of which is set forth on the CPR website.

INTERNATIONAL INSTITUTE FOR CONFLICT PREVENTION AND RESOLUTION (CPR)

Fast Track Rules For Administered Arbitration of International Disputes

Effective July 1, 2020

FAST TRACK RULES FOR ADMINISTERED ARBITRATION OF INTERNATIONAL DISPUTES

The International Institute for Conflict Prevention and Resolution (CPR) Fast Track Rules for Administered Arbitration of International Disputes are intended for parties that desire an accelerated, streamlined arbitral process designed to result in the delivery of an award within a shortened, specified period. These Rules were developed with the goal in mind of facilitating the delivery of an award in a period of between 90 and 180 days after the constitution of the Arbitral Tribunal, but the parties are free to agree on and specify their own time period. If the parties have not agreed on a time period, the default period of 90 days will apply.

These Fast Track Rules are intended to be used in conjunction with the CPR Rules for Administered Arbitration of International Disputes and shall supplement and, where inconsistent with, modify and supersede those Administered Rules.

The Rules were designed to be suitable for disputes regardless of their complexity or the amount in dispute.

Commentary

CPR has prepared a Commentary for CPR's Fast Track Rules for Administered Arbitration of International Disputes that should be consulted when applying these Rules. The Commentary can be found on CPR's website at www.cpadr.org following the text of the Rules.

Model Clauses for CPR Fast Track Rules for Administered Arbitration of International Disputes

CPR's Fast Track Rules for Administered Arbitration of International Disputes may be adopted by parties by using one of the following standard provisions:

A: Pre-Dispute Clause for Fast-Track Administered Arbitration of International Disputes

"Any dispute arising out of or relating to this contract, including the breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution ("CPR") Rules for Administered Arbitration of International Disputes, as supplemented and modified by the CPR Fast Track Rules for Administered Arbitration of International Disputes (the "Rules"), by [a sole arbitrator] [three arbitrators]. The arbitral tribunal, and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitral tribunal. Subject to any extension granted under Rule 4.5 of the Rules, the arbitration shall be conducted in accordance with a procedural timetable providing for the delivery of an award [within days after the constitution of the Tribunal] [as provided in the Rules]. Judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The seat of the arbitration shall be (city, country)."

B: Existing Dispute Submission Agreement for Fast-Track Administered Arbitration of International Disputes

"We, the undersigned parties, hereby agree to submit to arbitration in accordance with the International Institute for Conflict Prevention and Resolution ("CPR") Rules for Administered Arbitration of International Disputes (the "Administered Rules"), as supplemented and modified by the CPR Fast Track Rules for Administered Arbitration of International Disputes (the "Rules"), the following dispute:

[Describe briefly]

We further agree that the above dispute shall be submitted to a [sole arbitrator] [three arbitrators]. The arbitral tribunal, and not the court, shall have primary responsibility to hear and determine challenges to the jurisdiction of the arbitral tribunal. Subject to any extension granted under Rule 4.5 of the Rules, the arbitration shall be conducted in accordance with a procedural timetable providing for the delivery of an award [within days after the constitution of the Tribunal][as provided in the Rules]. Judgment upon

the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The seat of the arbitration shall be (city, country)."

C. Optional Clause Limiting Application of Fast Track Arbitration Rules To Claims Below a Financial Threshold

[To be used with CPR Clauses A (Pre-Dispute Clause) or B (Existing Dispute Submission Agreement) of the CPR Rules for Administered Arbitration of International Disputes]

"Provided, however, that where the stated amount of the claim or counterclaim does not exceed [specify amount] exclusive of interest or costs under Rule 19 of the Administered Rules, the CPR Fast Track Rules for Administered Arbitration of International Disputes (the "Fast Track Rules") shall apply to supplement and modify the CPR Rules for Administered Arbitration of International Disputes (the "Administered Rules"). Furthermore, subject to any extension granted under Rule 4.5 of the Fast Track Rules, the arbitration shall be conducted in accordance with a procedural timetable providing for the delivery of an award [within days after the constitution of the Tribunal] [as provided in the Fast Track Rules]."

CPR Fast Track Rules for Administered Arbitration (2020)

Rule 1: Scope of Application

1.1 Where the parties to a contract have provided for arbitration under the International Institute for Conflict Prevention and Resolution (CPR) Rules for Administered Arbitration of International Disputes (the "Administered Rules"), as supplemented and modified by the CPR Fast Track Rules for Administered Arbitration of International Disputes (the "Rules"), they shall be deemed to have made these Rules a part of their arbitration agreement, except to the extent they have agreed before or at any time during the course of the arbitration proceedings to modify these Rules.

1.2 These Rules supplement and, to the extent they are inconsistent with, modify and supersede the Administered Rules.

1.3 The parties shall be presumed to have agreed to the version of these Rules in effect at the time of the commencement of the arbitration.

1.4 The arbitration shall be conducted in accordance with a procedural timetable providing for the Tribunal's delivery of an award to CPR, as provided in Administered Rule 15.5, within the period agreed on by the parties. If the parties have not agreed on such a period, the arbitration shall be conducted in accordance with a procedural timetable providing for the Tribunal's delivery of an award to CPR within 90 days following the constitution of the Tribunal. The foregoing period for delivery of an award may be extended as provided in Rule 4.5.

1.5 By agreeing to these Rules, a party commits to cooperate with the Tribunal and the other party to conduct the arbitration in an efficient manner and facilitate the Tribunal's timely delivery of an award to CPR in accordance with Rule 4.4. The parties agree that the Tribunal shall take the parties' compliance with this obligation into account when apportioning costs under Rule 8 of these Rules and Administered Rule 19.2.

1.6 At any time during the proceedings, the parties may mutually agree that these Rules do not apply to the arbitration and that they will proceed solely under the Administered Rules. Prior to the constitution of the Tribunal, CPR and, after its constitution, the Tribunal, may, in exceptional circumstances and at the request of a party, determine that it is not appropriate to apply these Rules to the arbitration and that the parties will proceed solely under the Administered Rules. In making that determination, CPR or the Tribunal, as appropriate, may consider (i) the factual and legal complexity of the dispute; (ii) the stage of the proceedings when the request was made; (iii) whether the circumstances relied on to support the request were foreseeable when the parties agreed to adopt the Rules; (iv) the urgency of the need to resolve the dispute; (v) the need for efficiency and expedition; and (vi) the need to ensure due process and procedural fairness. Any agreement by the parties or a determination by the Tribunal or CPR that these Rules shall not apply to the arbitration shall not affect (1) the constitution or jurisdiction of the Tribunal, which shall continue to conduct the arbitration under the Administered Rules, or (2) the validity of any award.

Rule 2: Notice of Arbitration, Notice of Defense, Counterclaims and New Claims

2.1 The party commencing the arbitration (the "Claimant") shall simultaneously deliver a notice of arbitration to the other party (the "Respondent") and an electronic copy to CPR in accordance with Administered Rule 3. The notice of arbitration shall include the information specified in Administered Rule 3.2 and the additional information specified in Rule 2.3.

2.2 The Respondent shall simultaneously deliver a notice of defense to the Claimant and an electronic copy to CPR in accordance with Administered Rule 3. The notice of defense shall include the information

specified in Administered Rule 3.7 and the additional information specified in Rule 2.3. Such notice shall be delivered by the date notified by CPR, which shall be ten days after the Commencement Date as determined by CPR under Administered Rule 3.4. In exceptional circumstances, the Respondent may request that CPR grant a seven-day extension of the date for delivering a notice of defense. Such extension shall not extend the period(s) for selection of an arbitrator(s) pursuant to Rule 3. Failure to deliver a notice of defense shall not delay the arbitration.

2.3 Any notice of arbitration or defense, in addition to the information specified in Administered Rule 3, shall include, to the extent reasonably known at the time:

a. a description of each of its claims or defenses and a summary of the facts to be proven in support;
b. a description of the relief sought by the party, the reason it is being sought, and the amount and computation of each category of any damages;
c. the legal grounds or arguments supporting its claims or defenses;
d. the names and addresses of persons whom the party may call as fact witnesses to support its claims or defenses and the issues as to which those witnesses will testify;
e. whether the party may call expert witnesses to support its claims or defenses and the issues as to which those witnesses will testify;
f. a copy of all documents the party may rely on to support its claims or defenses, including the computation of any damages, or alternatively, to the extent it is not practicable to provide a copy, a reference to and description of such documents; and
g. any proposal the party desires to make to permit the arbitration to be conducted in a fair and efficient manner and for an award to be delivered within the period agreed on by the parties or otherwise provided in these Rules.

2.4 Any counterclaim shall be asserted with the notice of defense. If a counterclaim is asserted, Claimant shall simultaneously deliver a notice of defense to the counterclaim to the Respondent and an electronic copy to CPR. Such notice shall be delivered by the date notified by CPR, which shall be ten days after CPR's receipt of the notice of defense and counterclaim unless CPR, in its discretion, extends the date. Failure to deliver a response to the counterclaim shall not delay the arbitration. The counterclaim and notice of defense to the counterclaim shall have the same elements as provided in Rule 2.3.

2.5 After the initial pre-hearing conference as provided in Rule 4, no new claims or counterclaims may be asserted without the consent of the Tribunal, which should be given only in exceptional circumstances.

Rule 3: Number and Selection of Arbitrator(s)

3.1 As soon as practicable after the Commencement Date, CPR shall jointly convene the parties by video conference, telephone or other means of communication for a pre-case conference to discuss the selection of the arbitrator(s) and other administrative matters.

3.2 The number of arbitrators shall be in accordance with the agreement of the parties. Absent the parties' agreement on the number of arbitrators, a Tribunal shall consist of a sole arbitrator, provided that, at the request of a party, CPR may determine that three arbitrators shall be appointed. The factors that may be taken into consideration by CPR include (i) the legal or factual complexity of the dispute; (ii) the total amount in dispute (the sum of both claims and counterclaims); and (iii) differences in nationalities of the parties.

3.3 Procedures for Selection of Sole Arbitrator. Where the Tribunal is to consist of a sole arbitrator, the parties shall attempt jointly to agree on and designate a sole arbitrator within 15 days of the Commencement Date.

3.4 If the parties have not jointly designated an arbitrator within 15 days of the Commencement Date, CPR shall appoint an arbitrator in accordance with the procedure provided in Administered Rule 6.2 (Selection Through CPR List Procedure).

3.5 Procedures for Selection of Three-Person Tribunal. Where a Tribunal is to consist of three arbitrators, CPR shall appoint the arbitrators in accordance with the procedure provided in Administered Rule 5.4 (Screened Selection By the Parties).

3.6 Availability. The arbitrator(s) designated by the parties or appointed by CPR shall affirm in writing their availability, taking into account that the parties have agreed to an expedited arbitration to be conducted in accordance with a procedural timetable providing for the Tribunal's delivery of an arbitral award within a specified time period, and their willingness and ability to manage the proceedings efficiently in order to meet that objective.

3.7 Unless the parties agree otherwise, the provisions of Rule 3 shall apply to the number and selection of arbitrators regardless of whether CPR or the Tribunal decides that the arbitration will proceed solely under the Administered Rules pursuant to Rule 1.6

Rule 4: Pre-hearing Conference

4.1 Within five days of its constitution or as soon thereafter as practicable, the Tribunal shall hold an initial pre-hearing conference as provided in Administered Rule 9.

4.2 During the conference, the Tribunal shall discuss with the parties the matters set forth in Administered Rule 9.3.a-h and, in addition, the adoption of procedures to accelerate and streamline the arbitral process with the objective of facilitating the Tribunal's timely delivery of an award. Such procedures include the possibility of:

a. determining issues solely on the basis of documents and written submissions;
b. identifying and narrowing the issues that are relevant and material to the determination of the dispute and so limiting the issues that would be addressed at any hearing;
c. limiting the number, length and scope of any pre-hearing memoranda;
d. providing that the direct testimony of fact witnesses and expert witnesses shall be in written form;
e. limiting the number of fact witnesses and the scope of their testimony;
f. limiting the number of expert witnesses and the scope of their testimony; and
g. conducting any hearing by video conference.

4.3 The Tribunal shall discuss with the parties the production of documents and other information, including:

a. the information required to be provided under Rules 2.3.a, b, c, d, e and f;
b. to the extent such documents were not provided in the notice of arbitration, defense or counterclaim under Rule 2.3.f, the documents that a party may rely on to support its claims or defenses; and
c. the possibility of limiting the number and scope of any document requests as provided in Rules 5.1 and 5.2.

4.4 As soon as practicable following the pre-hearing conference, the Tribunal shall issue a procedural order and timetable governing the arbitration. As appropriate, the procedural timetable shall set dates for:

a. the exchange of any document disclosure requests, to the extent authorized by the Tribunal;
b. the completion of the production of documents and other information required by Rule 2.3;
c. the submission of any pre-hearing memoranda;
d. the submission of any fact witness statements;
e. the submission of any expert reports;
f. the holding of any hearing for the presentation of evidence or oral argument; and
g. the delivery of the award by the Tribunal to CPR in accordance with Rule 15.5 of the Administered Rules and within the time period agreed on by the parties or otherwise provided in Rules 1.3 and 4.5.

4.5 Following the issuance of the procedural order and timetable under Rule 4.4, the date for the Tribunal's delivery of the award to CPR may be extended only (i) by agreement of the parties; (ii) by CPR upon a reasoned request by the Tribunal after obtaining views of the parties; or (iii) by CPR on its own initiative. In determining whether to grant a request by the Tribunal for an extension, CPR may convene the Tribunal and the parties by telephone to discuss factors relevant to such request. If it grants the extension, CPR shall state the reasons, and the extended period shall be no longer than 90 days. In no event shall the Tribunal's failure to deliver an award to CPR within the period agreed on by the parties or otherwise provided in these Rules affect the constitution or jurisdiction of the Tribunal or the validity of any award.

4.6 Following the issuance of the procedural timetable in accordance with Rule 4.4, the Tribunal shall monitor the pre-hearing process and shall convene the parties by video conference, telephone or other means of communication as necessary to discuss disputes regarding document disclosure and other matters as they arise and assist the parties in complying with its procedural order(s) and timetable.

Rule 5: Document Exchange and Disclosure

5.1 The scope of any document disclosure authorized by the Tribunal should generally be narrower than what might otherwise be appropriate under the Administered Rules. Rules 5.2, 5.3, 5.4 and 5.5 are meant to be illustrative, and not limitative, of the Tribunal's authority to manage document disclosure.

5.2 The Tribunal may require that any disclosure requests for documents contain:

a. a description of each requested document or category of documents, or an identification of

search terms sufficient to identify the requested documents;

b. a statement explaining how the requested documents are relevant and material to the outcome of the dispute; and

c. a statement that the requested documents are not in the possession, custody, or control of the requesting party and are reasonably believed to be in the possession, custody, or control of another party.

5.3 The Tribunal may require that any document disclosure requests (a) be proportional to the amount in controversy, the complexity of the issues, and the importance of the matter to the parties' relationship; and (b) seek only documents that are relevant and material to the outcome of the dispute and for which the requesting party can demonstrate a substantial need.

Rule 6: Evidence and Hearings

6.1 The Tribunal may adopt any of the procedures described in Rule 4.2 as it may determine is appropriate to achieve an expeditious, cost-effective proceeding.

6.2 Following consultation with the parties, the Tribunal may proceed to determine issues solely on the basis of documents and written submissions and without a hearing for the presentation of evidence or oral argument.

6.3 The Tribunal may hold any hearing in person or by video conference, telephone or similar means of communication, as it may determine is appropriate.

Rule 7: The Award

7.1 All awards shall be succinct and shall ordinarily be shorter in length than in a non-expedited proceeding.

Rule 8: Fixing and Apportionment of Costs

8.1 In apportioning costs pursuant to Rule 19.2 of the Administered Rules, the Tribunal shall take into account the extent to which each party conducted the arbitration in an efficient manner and in accordance with its obligations under Rule 1.5, including whether a party asserted any claims or defenses that were frivolous or manifestly without legal merit.

Commentary for CPR FastTrack Rules for Administered Arbitration of International Disputes

A. Objective of Rules

CPR's Fast Track Rules for Administered Arbitration of International Disputes (the "Rules" or "Fast-Track Rules") are designed for parties that want an accelerated, streamlined arbitral process with the objective of having the Tribunal deliver an award within a shortened, specified time frame. The Rules were developed with the goal in mind of facilitating the delivery of an award within a period of between 90 to 180 days after the constitution of the Tribunal, but the parties are free to agree on and specify their own time period. If the parties have not agreed on a time period, a default period of 90 days will apply. The Rules are intended to reduce the time and cost of the proceedings while observing the requirements of due process and procedural fairness.

The Rules are for use in the context of administered arbitration, and more specifically, in conjunction with the CPR Rules for Administered Arbitration of International Disputes (the "Administered Rules").

B. Form of the Rules

These are a special set of rules that supplements the standard Administered Rules and, where inconsistent with the Administered Rules, modifies and supersedes them. See Rule 1.3.

This approach avoids the need to repeat the provisions that apply to both the standard Administered Rules and the Fast-Track Rules. And it allows parties to use the same standard rules for both regular and fast–track proceedings depending on the circumstances, and makes clear the linkage between the two. It also allows parties easily to identify the rules specific to fast–track proceedings that supersede the standard rules.

The Rules may be adopted using either of the Model Clauses included in the Rules (one for pre-dispute agreement and the other for existing dispute submission).

C. Scope of Application

The Rules are applicable only where the parties have expressly agreed to them and not by default. This approach ensures that the parties will not have inad-

vertently opted for fast- track arbitration. Thus, their applicability does not depend on whether the amount in dispute falls below a financial threshold. Nor does the arbitral institution (CPR) or the Tribunal have discretion to trigger the application of the rules based on their assessment of the circumstances of the dispute.

There are three Model Clauses. Model Clause (A) allows parties to agree in advance to resolve their disputes through fast-track arbitration by incorporating the Fast Track Rules into their arbitration clause. Model Clause (B) offers, as an alternative, a provision by which the parties may agree to fast-track arbitration after the dispute has arisen. Both clauses delegate to the arbitral tribunal, and not the court, the primary responsibility to hear and determine challenges to the jurisdiction of the arbitral tribunal. The clauses also request the parties to specify the number of arbitrators and the time period for delivery of an award.

The Rules are suitable for claims of any size or complexity and not just smaller or simpler claims. Of course, nothing prevents the parties from making the rules applicable only in the event the amount of the claim is below a financial threshold or only when other criteria are met. To facilitate such a preference, the Rules offer an optional Model Clause (C) providing that they apply will only when the case involves claims below a financial threshold specified by the parties.

Modification and Opt Out. The Rules contain provisions expressly recognizing that at any time during the proceedings the parties may mutually agree to modify the Rules (Rule 1.1) or opt out of them entirely and proceed solely under the Administered Rules (Rule 1.6). In addition, before the Tribunal has been constituted, in exceptional circumstances and at the request of a party, the CPR may determine that it is inappropriate for the arbitration to be subject to the Rules and that it should instead proceed under the Administered Rules. After it is constituted, the Tribunal may also make that determination. In doing so, CPR or the Tribunal, as applicable, may consider (i) the factual and legal complexity of the dispute; (ii) the stage of the proceedings when the request was made; (iii) whether the circumstances relied on to support the request were foreseeable when the parties agreed to adopt the Rules; (iv) the urgency of the need to resolve the dispute; (v) the need for efficiency and expedition; and (vi) the need to ensure due process and procedural fairness. The purpose of this provision is to provide relief where, for example, the complexity of the dispute makes application of the Rules impractical. Under Rule 1.6, any agreement by the parties or determination by the Tribunal that the Rules shall not apply will not affect the constitution or jurisdiction of the Tribunal, which will continue to resolve the dispute pursuant to the standard Administered Rules. Needless to say, the Tribunal should be careful not to allow a party to draw the other party into a full-fledged, prolonged arbitration, despite its agreement to a fast-track approach, by presenting the dispute in its notice of arbitration of notice or notice of defense as more complex than it actually is.

Modification of Time Period for Delivery of the Award. The Rules also give flexibility for extending the specified period for the Tribunal's delivery of the award, which can be done by agreement of the parties, by CPR upon a reasoned request by the Tribunal after consultation with the parties, or by CPR on its own initiative. See Rule 4.5. This provision should lessen the need for the parties to resort to the opt-out provision. CPR is required to state the reasons for granting the extension, and the extended period is limited to no longer than 90 days. The Rules make clear that the jurisdiction of the Tribunal shall not be affected by any failure by the Tribunal to deliver the award within the time period agreed by the parties or otherwise provided for in the Rules.

D. Duration of Proceeding -- Specific Choice of the Parties or By Default under the Rules

The Model Clause allows the parties to specify in their arbitration agreement the period within which the Tribunal must deliver the arbitral award to CPR under Rule 15.5 of the Administered Rules. The Rules are designed to facilitate the delivery of the award within a period of between 90 and 180 days after the constitution of the Tribunal, but the parties are free to specify any time period the mutually choose. If the parties have not agreed on a specific period, the Rules provide for a default period of 90 days.

Thus, the parties can determine how expeditious a proceeding they desire and match the length of the proceeding to the types of disputes they anticipate may arise. This approach contrasts with that of some expedited rules that flatly prescribe, for example, either a 90 or 180 day deadline and do not allow the parties choose a different period.

E. Parties' Duty to Cooperate and Apportionment of Costs

Each party has a duty to cooperate with the Tribunal and the other party to conduct the arbitration in

an efficient manner, comply with the timelines, and facilitate the Tribunal's timely submission of an award to CPR. See Rule 1.5.

In apportioning costs under Rule 8 and Administered Rule 19.2, the Tribunal is required ("shall") to take into account the extent to which each party conducted the arbitration in an efficient manner and in accordance with its obligations under the Rule 1.5. The Tribunal may also consider whether a party asserted claims or defenses that were frivolous or manifestly without legal merit.

F. Notice of Arbitration and Notice of Defense—Enhanced Disclosure at Inception

Rule 2.3 provides that the notice of arbitration and notice of defense should include more information than is required under the standard rules (Administered Rule 3, 7), including "to the extent reasonable known at the time":

— a description of its claims and defenses and a summary of the facts to be proven in support;
— a description of the relief sought by the party, the reasons it is being sought, and the amount and computation of each category of any damages;
— the legal grounds or arguments supporting its claims or defenses;
— the names and addresses of persons whom the party may call as fact witnesses and the issues as to which they will testify;
— whether the party will call expert witnesses and as to what issues;
— a copy of all documents or other evidence a party may rely on to support its claims or defenses, including the computation of any damages, or alternatively, to the extent it is not practicable to provide a copy, a reference to and description of such documents and evidence;
— any suggestions a party desires to make to permit the arbitration to be conducted in an efficient and timely manner and for an award to be delivered within the time period agreed by the parties or otherwise provided in the Rules.

The time for the Respondent to respond to the notice of arbitration is shortened to ten days from the usual 20 days. CPR has the discretion to extend that by an additional seven days, but any extension does not affect the timing of arbitrator selection or the initial pre-hearing conference. See Rule 2.2.

G. Number and Selection of Arbitrators

Number

As soon as practicable after the notice of arbitration, CPR will convene a pre-case conference to discuss selection and appointment of the arbitrators See Rule 3.1.

Absent party agreement on the number of arbitrators, a sole arbitrator will be appointed unless CPR, in its discretion, decides that three arbitrators shall be appointed due to the factual and legal complexity of the case, the total amount in dispute, the different nationalities of the parties or other considerations. See Rule 3.2.

A sole arbitrator is usually preferable in expedited proceedings given that it takes longer to constitute a three-member tribunal, which may also find it more difficult to render awards within a shorten timeframe. Nonetheless, some parties favor collective decision-making and feel a higher level of security by not relying on a sole arbitrator. Also, in certain cases three-member tribunals have shown themselves to be capable of rendering awards on expedited schedules.

Sole Arbitrator

The parties have 15 days after the Commencement Date to agree on the sole arbitrator. See Rule 3.3.

If the parties do not jointly designate an arbitrator within that period, CPR will appoint the arbitrator pursuant to Administered Rule 6.2 (the list procedure). See Rule 3.4.

Three-Person Tribunal

Where a Tribunal is to consist of three arbitrators, Administered Rule 5.4 (Screened Selection by the Parties) shall apply to the selection of the arbitrators. See Rule 3.5.

Administered Rule 5.4.b specifies a 10 day period for the parties to designate arbitrators in order of preference after receipt of CPR's list. CPR has the discretion to shorten this period and will do so in fast-track cases.

Availability

The arbitrator(s) designated by the parties or appointed by CPR must affirm in writing their availability, taking into account that the parties have agreed to an

expedited arbitration to be conducted under a timetable providing for the delivery of an award within a specified time period, and their willingness and ability to manage the proceedings efficiently to meet that objective. See Rule 3.6.

The Tribunal has a specific responsibility to monitor the pre-hearing process and convene the parties by video conference or telephone as necessary to discuss disputes regarding disclosure and other matters and assist the parties in complying with its procedural orders and timetable. See Rule 4.6.

H. Pre-Hearing Conference—Streamlining the Procedure

Specific provisions reinforce the Tribunal's wide discretion in managing the arbitration and organizing the hearing with the goal of shortening the length of the proceeding and rendering a timely award.

Guidance is provided as to the matters to be raised by the Tribunal for discussion with the parties at the initial pre-hearing conference. See Rule 4.2. These include

— deciding issues solely on the basis of documents and written submissions;
— identifying and narrowing the issues that are relevant and material to the determination of the dispute and that would be addressed at any hearing;
— limiting the number, length and scope of any pre-hearing memoranda;
— requiring direct testimony of fact witnesses and expert witnesses in written form;
— limiting the number of fact witnesses;
— limiting the number of expert witnesses; and
— conducting any hearing by video conference.

I. Pre-Hearing Conference—Procedural Timetable

The Tribunal is to issue a procedural order and timetable with the objective of the Tribunal delivering an award within the specific period agreed on by the parties. If the parties have not agreed on a specific period, the Rules provide for a default time period of 90 days.

1. The procedural order will also specify dates for interim steps, including
— exchange of any document requests, to the extent authorized by the Tribunal
— completion of document production
— submission of any pre-hearing memoranda
— submission of any fact witness statements
— submission of any expert reports
— beginning of the hearing
— delivery of the award by the Tribunal to CPR

Following the issuance of the procedural order and timetable under Rule 4.5, the date for the Tribunal's delivery of the award to CPR may be extended only (i) by agreement of the parties; (ii) by CPR upon a reasoned request by the Tribunal after obtaining views of the parties; or (iii) by CPR on its own initiative. In determining whether to grant a request by the Tribunal for an extension, CPR may convene the Tribunal and the parties by video conference, telephone or other means of communication to discuss factors relevant to such request. If it grants the extension, CPR shall state the reasons, and the extended period shall be no longer than 90 days. In no event shall the Tribunal's failure to deliver an award to CPR within the period agreed on by the parties or otherwise provided in these Rules affect the constitution or jurisdiction of the Tribunal or the validity of any award.

Rule 4.6 provides for the Tribunal actively to monitor the pre-hearing process and to assist the parties in complying with the procedural timetable.

J. Managing and Limiting the Scope of Document Disclosure

The Tribunal may limit document disclosure as it deems appropriate in the circumstances. Rule 5 contemplates that the scope of any disclosure authorized by the Tribunal should generally be narrower than what might otherwise be permissible under the Administered Rules.

The Tribunal may require that any disclosure requests for documents contain:

— a description of each requested document or category of documents, or an identification of search terms sufficient to identify the requested documents;
— a statement demonstrating how the requested documents are relevant and material to the outcome of the dispute; and
— a statement that the requested documents are not in the possession, custody, or control of the requesting party and are reasonably believed to be in the possession, custody, or control of another party.

The Tribunal may require that any document disclosure requests (a) be proportional to the amount in controversy, the complexity of the issues, and the importance of the matter to the parties' relationship; and (b) seek only documents that are relevant and material to the outcome of the case and for which the requesting party can demonstrate a substantial need. See Rule 5.3.

K. Evidence and Hearings

The Rules empower the Tribunal to adopt any of the procedures described in Rule 4.2 to achieve an expeditious, cost-effective proceeding. See Rule 6.1.

Provided the parties have been consulted, the Tribunal may proceed to determine issues solely on the basis of documents and written submissions and without examination of witnesses or oral argument. See Rule 6.2. Of course, the Tribunal must ensure that due process and fundamental fairness are respected and that the procedural law applicable at the seat (lex arbitri) permits this approach under the circumstances.

Any hearing may be held in person or by video conference, telephone or other means of communication, as the Tribunal may determine is appropriate. See Rule 6.3.

L. The Award

Any award shall be succinct. See Rule 7. It should ordinarily shorter in length than in a non-expedited case.

Chapter 28

Deutsche Institution fur Schiedsgerichtsbarkeit (DIS)[1] (2018)

About DIS

The DIS (German Arbitration Institute) is Germany's leading institution for the resolution of domestic and international commercial disputes.

A private and independent institution with historical roots in the 1920s, the DIS administers hundreds of arbitration and ADR proceedings annually. Offering a complete set of conflict management, ADR, sports and commercial arbitration rules tailored to the needs of the business and sports communities, the DIS is one of the most diversified dispute resolution providers in the world.

The growth in the DIS' caseload in part reflects an appreciation for the benefits of Germany as a seat of arbitration: based on the UNCITRAL Model Law, German arbitration law is modern and efficient; German state courts respect and enforce arbitration agreements and arbitral awards; and Germany offers a central location, convenient logistics, and an experienced bar of arbitration practitioners.

The DIS Board of Directors and the DIS Advisory Board include leading representatives from private practice, multinational companies, chambers of commerce, and academia. The DIS membership of approximately 1,500 includes arbitration experts from around the world.

The DIS seeks to promote arbitration and alternative dispute resolution in Germany and beyond; it regularly hosts conferences, conducts training seminars, and fosters dialogue with courts, governmental agencies, bar associations and other stakeholders. It publishes a leading quarterly journal (SchiedVZ) and awards a prize for outstanding scholarship in the field. Featuring one of the largest national group of young practitioners, the DIS40 conducts dozens of events annually, promoting education and dialogue among the next generation of arbitration specialists.

With offices in Berlin and Cologne, and administering arbitrations seated in numerous German cities and abroad, the DIS enjoys an international reputation for excellence and neutrality. The DIS Secretariat's multi-national and multi-lingual staff is committed to serving its users efficiently and professionally. The DIS offers a "light," non-bureaucratic approach to administering cases under its rules, with a system of fixed ad-valorem institutional and arbitrator fees that ranks among the most affordable in the world.

The DIS has been continuously updating its offering of administered rules to respond to current developments and user needs. A revised set of arbitration rules entered into force on 1 March 2018, including an annex with rules for corporate disputes. The DIS also hosts the German Court of Arbitration for Sports whose rules were last modernized in 2016. In the last decade, the DIS has introduced an extensive portfolio of ADR Rules, such as Mediation, Conciliation, Expert Determination as well as Conflict Management Rules.

MODEL CLAUSE FOR ARBITRATION

The DIS recommends all parties wishing to make reference to the 2018 DIS Arbitration Rules to use the following arbitration clauses:

(1) All disputes arising out of or in connection with this contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law.
(2) The arbitral tribunal shall be comprised of [please enter "a sole arbitrator" or "three arbitrators"].
(3) The seat of the arbitration shall be [please enter city and country].
(4) The language of the arbitration shall be [please enter language of the arbitration].
(5) The law applicable to the merits shall be [please enter law or rules of law].

MODEL CLAUSE FOR EXPEDITED ARBITRATION

(1) All disputes arising out of or in connection with this contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law.

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(2) The arbitral tribunal shall be comprised of [please enter "a sole arbitrator" or "three arbitrators"].
(3) The seat of the arbitration shall be [please enter city and country].
(4) The language of the arbitration shall be [please enter language of the arbitration].
(5) The law applicable to the merits shall be [please enter law or rules of law].
(6) The Parties agree that the arbitration shall be conducted as Expedited Proceedings and that Annex 4 of the DIS Arbitration Rules shall apply.

DIS ARBITRATION RULES

Effective as of 1 March 2018

DIS INTEGRITY PRINCIPLES

Introductory Provisions

Article 1: Scope of Application

1.1 These rules apply to international and domestic arbitrations in which disputes are to be settled pursuant to the Arbitration Rules of the German Arbitration Institute (DIS) (the "Rules").

1.2 With respect to any arbitration, the version of the Rules in force on the date of its commencement pursuant to Article 6 shall apply.

1.3 The following Annexes constitute an integral part of the Rules:

- Annex 1 (Internal Rules)
- Annex 2 (Schedule of Costs)
- Annex 3 (Measures for Increasing Procedural Efficiency)
- Annex 4 (Expedited Proceedings)
- Annex 5 (Supplementary Rules for Corporate Disputes)
- Annex 6 (Dispute Management Rules).

1.4 The Rules shall be applied, mutatis mutandis, with respect to Annex 4 (Expedited Proceedings) or Annex 5 (Supplementary Rules for Corporate Disputes) when the parties have agreed to apply such Annexes.

Article 2: Role of the DIS

2.1 The DIS administers arbitrations under the Rules and provides support to the parties and the arbitral tribunal for the efficient conduct of the arbitration. It does not resolve disputes itself.

2.2 The DIS appoints Dispute Managers pursuant to Dispute Management Rules (Annex 6) when one or more of the parties so request and none of the parties object thereto. Dispute Managers advise and assist the parties in selecting the dispute resolution mechanism best suited for resolving their dispute. Any party, or the parties jointly, may request the appointment of a Dispute Manager, either prior to the filing of a Request for Arbitration or at any time during the course of the arbitration.

Article 3: Definitions

3.1 In the Rules, "Claimant", "Respondent", "Party", "Additional Party" and other nouns shall, as required by the context, refer to the singular or the plural.

3.2 "Submissions" as used in the Rules refer to all communications in writing exchanged between or among the parties, the arbitral tribunal and the DIS, including the Request for Arbitration, the Answer, any counterclaims, any additional claims, any Request against an Additional Party, any and all pleadings filed in the course of the arbitration, along with the respective attachments thereto.

3.3 "Address" as used in the Rules refers to both postal and electronic addresses.

3.4 References to persons are gender-neutral.

Article 4: Submissions and time limits

4.1 Subject to Articles 4.2 and 4.3, all Submissions of the parties and the arbitral tribunal to the DIS shall be sent electronically, by email, or on a portable storage device, or by any other means of electronic transmission that has been authorized by the DIS. If electronic transmission is not possible, the Submission shall be sent in paper form.

4.2 Requests for Arbitration pursuant to Article 5 and Article 19 shall be sent to the DIS in paper form as well as in electronic form. The following number of copies shall be filed:

(i) paper form: one copy of the Request for Arbitration for each party, as well as any attachments thereto, and one copy for the DIS without attachments; and

(ii) electronic form: one copy of the Request for Arbitration for each party and for the DIS, as well as any attachments thereto.

The DIS may at any time request further copies of the Request for Arbitration as well as any attachments thereto.

4.3 A party filing a counterclaim or any additional claims prior to the constitution of the arbitral tribunal shall send to the DIS, for transmission to each party, one paper copy thereof, as well as any attachments thereto, in addition to the electronic copy required by Article 4.1. The DIS may at any time request further copies of such documents as well as any attachments thereto.

4.4 The arbitral tribunal shall determine the form of transmission of Submissions between the parties and the arbitral tribunal.

4.5 Subject to Article 4.2 and Article 25, all Submissions from any party to the arbitral tribunal or to the DIS shall be sent simultaneously to the other party.

4.6 All Submissions shall be sent to the last address provided by the addressee or by the other party. Submissions in paper form shall be sent by delivery against receipt, registered mail, courier, facsimile, or by any other means that provides a record of receipt.

4.7 The date of transmission of any Submission shall be deemed to be the date of actual receipt by the party itself or by its designated counsel. If a Submission in paper form has been properly sent pursuant to Article 4.6 but has not been received by the party itself or by its designated counsel, such Submission shall be deemed to have been received on the date on which it would have been received in the ordinary course of the process of transmission.

4.8 Time periods pursuant to the Rules shall commence on the first business day at the place of receipt after the deemed date of transmission pursuant to Article 4.7. In case of electronic transmission, time periods shall commence on the first business day after the date of transmission to the electronic address pursuant to Article 4.6. Public holidays and non-business days at the place of receipt that fall within a time period shall be included in the calculation of the time period. If the last day of a time period is a public holiday or a non-business day at the place of receipt, the time period shall expire at the end of the first subsequent business day.

4.9 The DIS may, in its discretion, extend any time limit referred to in the Rules or fixed by the DIS pursuant to the Rules, except for time limits fixed by the arbitral tribunal.

Request for Arbitration, Answer, Counterclaims and Consolidation of Proceedings

Article 5: Request for Arbitration, Transmission to Respondent, Administrative Fee

5.1 A party wishing to commence an arbitration under the Rules shall file a Request for Arbitration (the "Request") with the DIS.

5.2 The Request shall contain:

(i) the names and addresses of the parties;
(ii) the names and addresses of any designated counsel representing the Claimant in the arbitration;
(iii) a statement of the specific relief sought;
(iv) the amount of any quantified claims and an estimate of the monetary value of any unquantified claims;
(v) a description of the facts and circumstances on which the claims are based;
(vi) the arbitration agreement(s) on which the Claimant relies;
(vii) the nomination of an arbitrator if required under the Rules; and
(viii) any particulars or proposals regarding the seat of the arbitration, the language of the arbitration, and the rules of law applicable to the merits.

5.3 Within a time limit set by the DIS, the Claimant shall pay to the DIS an administrative fee in accordance with the Schedule of Costs (Annex 2) in effect at the time of the commencement of the arbitration. If payment is not made within such time limit, the DIS may terminate the arbitration pursuant to Article 42.5.

5.4 If the Claimant has not filed the Request or the attachments thereto in the number of copies required by Article 4.2, or if the DIS considers that the Request does not sufficiently comply with the requirements of Article 5.2, the DIS may set a time limit for the Claimant to supplement the filing. If the Claimant fails to submit the required number of copies or to supplement the filing with respect to Article 5.2 (ii), (iv), (vii) and (viii) within such time limit, the DIS may terminate the arbitration pursuant to Article 42.6. Article 6.2 shall apply to supplementing the filing with respect to Article 5.2 (i), (iii), (v) and (vi).

5.5 The DIS shall transmit the Request to the Respondent. If the requirements of Article 5.3 or Article 5.4 are not met, the DIS may withhold the transmission.

Article 6: Commencement of the Arbitration

6.1 The arbitration shall commence on the date on which the Request, with or without the attachments thereto, is filed with the DIS in at least one of the forms required by Article 4.2, provided that it includes at least the items listed in Article 5.2 (i), (iii), (v) and (vi).

6.2 If the Claimant fails to supplement the filing with respect to Article 5.2 (i), (iii), (v) and (vi), within the time limit pursuant to Article 5.4, the DIS may take the administrative decision to close the file without prejudice to the Claimant's right to resubmit its claims in a new proceeding.

Article 7: Respondent's Notification, Answer and Counterclaim

7.1 Within 21 days after the date of transmission of the Request, the Respondent shall notify in writing to the DIS:

(i) the nomination of an arbitrator, if required under the Rules;
(ii) any particulars or proposals regarding the seat of the arbitration, the language of the arbitration, and the rules of law applicable to the merits; and
(iii) any request pursuant to Article 7.2 for an extension of the time limit to file an Answer to the Request (the "Answer").

7.2 The Respondent shall file its Answer to the Request within 45 days following the date of transmission of the Request. The DIS, upon a request by the Respondent, shall extend the time limit up to a maximum of 30 additional days.

7.3 If the Respondent maintains that due to exceptional circumstances a total of 75 days is insufficient for filing the Answer, the arbitral tribunal may grant a longer time limit. If the arbitral tribunal is not yet constituted, the DIS shall grant a preliminary extension of the time limit that shall be valid until the arbitral tribunal decides upon the request for an extension.

7.4 The Answer shall contain:

(i) the names and addresses of the parties;
(ii) the names and addresses of any designated counsel representing the Respondent in the arbitration;
(iii) a description of the facts and circumstances on which the Answer is based;
(iv) a statement of the specific relief sought; and
(v) any relevant particulars regarding the arbitration agreement, the jurisdiction of the arbitral tribunal, and the amount in dispute.

7.5 Any counterclaim shall, when possible, be filed together with the Answer. Article 5.2 shall apply, mutatis mutandis. The counterclaim shall be filed with the DIS.

7.6 The Respondent shall pay to the DIS an administrative fee for the counterclaim in accordance with the Schedule of Costs (Annex 2) in effect at the time of the commencement of the arbitration. If payment is not made within a time limit set by the DIS, the DIS may terminate the arbitration with regard to the counterclaim pursuant to Article 42.5.

7.7 If the Respondent has not filed the counterclaim or the attachments thereto in the number of copies required by Article 4.3, or if the DIS considers that the counterclaim does not sufficiently comply with the requirements of Article 7.5, the DIS may set a time limit for the Respondent to supplement the filing. If the Respondent fails to submit the required number of copies or to supplement the filing within such time limit, the DIS may terminate the arbitration with regard to the counterclaim pursuant to Article 42.6.

7.8 The DIS shall transmit the counterclaim to the Claimant and the arbitral tribunal if the Respondent has not already done so. If the requirements of Article 7.6 or Article 7.7 are not met, the DIS may withhold the transmission of the counterclaim.

7.9 The arbitral tribunal shall set a reasonable time limit for the Answer to the counterclaim.

Article 8: Consolidation of Arbitrations

8.1 Upon the request of one or more parties, the DIS may consolidate two or more arbitrations conducted under the Rules into a single arbitration if all parties to all of the arbitrations consent to the consolidation. Such consolidation is without prejudice to any decisions of the arbitral tribunal pursuant to Articles 17 to 19.

8.2 Any consolidation of arbitrations shall be into the arbitration that was first commenced, unless the parties have agreed otherwise.

The Arbitral Tribunal

Article 9: Impartiality and Independence of the Arbitrators, Duties of Disclosure

9.1 Every arbitrator shall be impartial and independent of the parties throughout the entire arbitration and shall have all of the qualifications, if any, that have been agreed upon by the parties.

9.2 Subject to Article 9.1, the parties may nominate any person of their choice to act as an arbitrator. The DIS may propose names of potential arbitrators to any party upon such party's request.

9.3 Every prospective arbitrator shall declare in writing whether they accept to act as arbitrator.

9.4 In case of acceptance, the prospective arbitrators shall sign a declaration in which they shall state that they are impartial and independent of the parties, that they have all of the qualifications, if any, that have been agreed upon by the parties, and that they will be available throughout the arbitration. In addition, each prospective arbitrator shall disclose any facts or circumstances that could cause a reasonable person in the position of a party to have doubts as to the arbitrator´s impartiality and independence.

9.5 The DIS shall send each prospective arbitrator's declaration and any disclosures pursuant to Articles 9.3 and 9.4 to the parties and shall set a time limit for the parties to provide any comments regarding the appointment of the prospective arbitrator.

9.6 Every arbitrator shall have a continuing obligation throughout the entire arbitration to promptly disclose in writing to the parties, the other arbitrators and the DIS any facts or circumstances in the sense of Article 9.4.

9.7 Subject to the provisions of this Article 9, Articles 10 to 13 and 20 shall apply to the constitution of the arbitral tribunal, unless the parties have agreed otherwise.

Article 10: Number of Arbitrators

10.1 The parties may agree that the arbitral tribunal shall be comprised of a sole arbitrator, of three arbitrators, or of any other odd number of arbitrators. Article 16.4 shall apply notwithstanding any such agreement.

10.2 If the parties have not agreed upon the number of arbitrators, any party may submit a request to the DIS that the arbitral tribunal be comprised of a sole arbitrator. The Arbitration Council of the DIS (the "Arbitration Council") shall decide on such request after consultation with the other party. If no request for the appointment of a sole arbitrator has been made, or if a request has been made but not granted, the arbitral tribunal shall be comprised of three arbitrators.

Article 11: Sole Arbitrator

If the arbitral tribunal is comprised of a sole arbitrator, the parties may jointly nominate the sole arbitrator. If the par-

ties do not agree upon a sole arbitrator within a time limit fixed by the DIS, the Appointing Committee of the DIS (the "Appointing Committee") shall select and appoint the sole arbitrator pursuant to Article 13.2. In such case, the sole arbitrator shall be of a nationality different from that of any party, unless all parties are of the same nationality or have agreed otherwise.

Article 12: Three-Member Arbitral Tribunal

12.1 If the arbitral tribunal is comprised of three arbitrators, each party shall nominate one co-arbitrator. If a party fails to nominate a co-arbitrator, such co-arbitrator shall be selected by the Appointing Committee and appointed pursuant to Article 13.2.

12.2 The co-arbitrators shall jointly nominate the president of the arbitral tribunal (the "President") within 21 days after being requested to do so by the DIS. Each co-arbitrator nominated by or appointed on behalf of a party may consult with such party regarding the selection of the President.

12.3 If the co-arbitrators do not nominate the President within the time limit provided in Article 12.2, the Appointing Committee shall select and appoint the President pursuant to Article 13.2. In such case, the President shall be of a nationality different from that of any party, unless all parties are of the same nationality or have agreed otherwise.

Article 13: Appointment of the Arbitrators

13.1 Every arbitrator shall be appointed by the DIS even when such arbitrator has been nominated by a party or by the co-arbitrators.

13.2 The Appointing Committee decides on the appointment of arbitrators, except as provided in Article 13.3.

13.3 The appointment of an arbitrator may also be decided upon by the Secretary General of the DIS if no party has objected to the appointment of the prospective arbitrator within the time limit fixed pursuant to Article 9.5.

13.4 The arbitral tribunal is constituted once all of the arbitrators have been appointed.

13.5 Until all payments requested by the DIS have been made in full, the DIS may postpone the constitution of the tribunal or the appointment of any arbitrator.

Article 14: Conduct of the Arbitration by the Arbitral Tribunal

14.1 Once the arbitral tribunal has been constituted pursuant to Article 13.4, the DIS shall inform the arbitral tribunal and the parties that the arbitration shall henceforth be conducted by the arbitral tribunal.

14.2 In an arbitration having more than one arbitrator, every decision by the arbitral tribunal that is not made unanimously shall be made by majority vote, unless the parties agree otherwise. In the absence of a majority vote, the President shall decide alone.

14.3 The President may, in exceptional circumstances, rule on individual procedural issues alone, as long as he or she has been authorized to do so by the other members of the arbitral tribunal.

Article 15: Challenge of an Arbitrator

15.1 Any party who seeks to challenge an arbitrator, on the grounds that the arbitrator has failed to comply with one or more of the requirements of Article 9.1, shall file a request for challenge ("Challenge") pursuant to Article 15.2.

15.2 The Challenge shall describe the facts and circumstances on which it is based and shall specify when the party filing the Challenge first obtained knowledge of the same. The Challenge shall be filed with the DIS no later than 14 days after the party filing the Challenge first obtained knowledge of the facts and circumstances on which it is based.

15.3 The DIS shall transmit the Challenge to the challenged arbitrator, the other arbitrators and the other party, and shall set a time limit for comments. The DIS shall send any comments that it receives to the parties and to each arbitrator.

15.4 The Arbitration Council shall decide upon the Challenge.

15.5 The arbitral tribunal may proceed with the arbitration, unless and until the Challenge is accepted.

Article 16: Termination of an Arbitrator's Mandate

16.1 An arbitrator's mandate shall terminate on the date on which:

(i) the Arbitration Council accepts the Challenge of such arbitrator;
(ii) the Arbitration Council accepts the resignation of such arbitrator;
(iii) the arbitrator dies;
(iv) the Arbitration Council removes the arbitrator from office pursuant to Article 16.2; or
(v) all of the parties notify the DIS that they have agreed to terminate such arbitrator's mandate.

16.2 The Arbitration Council may remove an arbitrator from office if it considers that such arbitrator is not fulfilling the arbitrator's duties pursuant to the Rules or is not, or will not be, in a position to fulfil those duties in the future. The procedure for removal from office is set forth in Article 9 of the Internal Rules (Annex 1).

16.3 If an arbitrator's mandate is terminated, a replacement arbitrator shall be appointed pursuant to Article 16.5, except as provided in Article 16.4.

16.4 The Arbitration Council may decide that an arbitrator whose mandate has been terminated shall not be replaced if all of the parties and the remaining arbitrators so agree and after taking into account all of the circumstances. If the Arbitration Council so decides, then the arbitration shall continue with the remaining arbitrators only.

16.5 When an arbitrator is to be replaced, the same process that was used for the initial appointment of the replaced arbitrator shall be followed; provided, however, that, after consultation with the parties and the remaining arbitrators and having taken into account any circumstances that it considers to be relevant, the Arbitration Council may determine that a different process pursuant to the Rules shall apply.

16.6 The arbitral tribunal, once reconstituted, shall continue the proceedings without repeating any part thereof, unless the parties agree otherwise or the arbitral tribunal considers, after consultation with the parties, that repeating any part of the proceedings is necessary.

Multi-Contract Arbitration, Multi-Party Arbitration, Joinder

Article 17: Multi-Contract Arbitration

17.1 Claims arising out of or in connection with more than one contract may be decided in a single arbitration ("Multi-Contract Arbitration"), provided that all of the parties to the arbitration have agreed thereto. Any dispute as to whether all of the parties have agreed thereto, in particular when there is no express agreement in writing to that effect, shall be decided by the arbitral tribunal.

17.2 When claims are made in reliance on more than one arbitration agreement, they may be decided in a single arbitration, provided that, in addition to the requirement set forth in Article 17.1, such arbitration agreements are compatible. Any dispute as to whether the arbitration agreements are compatible shall be decided by the arbitral tribunal, subject to Article 17.3.

17.3 When Article 17.2 applies and the DIS considers that an incompatibility of the arbitration agreements with respect to their provisions on the constitution of an arbitral tribunal prevents the constitution of an arbitral tribunal under the Rules, Article 42.4 (ii) shall apply.

17.4 When there are multiple parties in a Multi-Contract Arbitration, the provisions of Article 18 (Multi-Party Arbitration) shall apply in addition to the provisions of this Article 17.

Article 18: Multi-Party Arbitration

18.1 Claims made in an arbitration with multiple parties ("Multi-Party Arbitration") may be decided in that arbitration if there is an arbitration agreement that binds all of the parties to have their claims decided in a single arbitration or if all of the parties have so agreed in a different manner. Any dispute as to whether the parties have agreed thereto, in particular when there is no express agreement in writing to that effect, shall be decided by the arbitral tribunal.

18.2 When claims arising out of or in connection with more than one contract are made in a Multi-Party Arbitration, the provisions of Article 17 (Multi-Contract Arbitration) shall apply in addition to the provisions of this Article 18.

Article 19: Joinder of Additional Parties

19.1 Prior to the appointment of any arbitrator, any party who wishes to join an additional party to the arbitration may file with the DIS a Request for Arbitration against such additional party (the "Request against an Additional Party").

19.2 The Request against an Additional Party shall contain:
(i) the case reference of the pending arbitration;
(ii) the names and addresses of the parties, includ ing the additional party;
(iii) a statement of the specific relief sought against the additional party;
(iv) the amount of any quantified claims and an estimate of the monetary value of any unquantified claims against the additional party;
(v) a description of the facts and circumstances on which the claims against the additional party are based; and

(vi) the arbitration agreement(s) on which the party filing the Request against an Additional Party relies.

The remaining provisions of Articles 5 and 6 shall apply, mutatis mutandis, to the Request against an Additional Party.

19.3 Within a time limit set by the DIS, the additional party shall:

(i) provide its comments regarding the constitution of the arbitral tribunal; and
(ii) file an Answer in accordance, mutatis mutandis, with the requirements of Article 7.4.

19.4 In the Answer, the additional party may make claims against any other party in the arbitration. The requirements of Articles 7.5 to 7.9 shall apply, mutatis mutandis, to any such claims.

19.5 The arbitral tribunal shall decide any dispute as to whether claims made by or against the additional party may be resolved in the pending arbitration. The arbitral tribunal, in making its decision, shall apply the provisions of Article 18 (Multi-Party Arbitration) and, when claims are made under more than one contract, the arbitral tribunal shall also apply the provisions of Article 17 (Multi-Contract Arbitration).

Article 20: Three-Member Arbitral Tribunal in Multi-Party Arbitrations

20.1 In a Multi-Party Arbitration (Article 18), the co-arbitrators shall be appointed as follows:

(i) the Claimant, or the Claimants jointly, shall nominate one co-arbitrator; and
(ii) the Respondent, or the Respondents jointly, shall nominate the other co-arbitrator.

20.2 When in a Multi-Party Arbitration a single Claimant or a single Respondent does not nominate a co-arbitrator, such co-arbitrator shall be selected and appointed by the Appointing Committee pursuant to Article 13.2.

20.3 In the absence of a joint nomination by either the Claimants or the Respondents, the Appointing Committee may, in its discretion, after consultation with the parties:

(i) select and appoint pursuant to Article 13.2 a co-arbitrator for the parties who have not jointly nominated a co-arbitrator and appoint the co-arbitrator nominated by the opposing side; or
(ii) select and appoint pursuant to Article 13.2 a co-arbitrator both for the parties who have not jointly nominated a co-arbitrator and for the opposing side, in which case any prior party nomination shall be deemed void.

20.4 Articles 12.2 and 12.3 shall apply with respect to the nomination or appointment of the President.

20.5 Where an additional party has been joined pursuant to Article 19, the additional party, with respect to the nomination of co-arbitrators, may nominate an arbitrator only either jointly with the Claimant(s) or jointly with the Respondent(s). In the absence of a joint nomination, the Appointing Committee may, in its discretion, after consultation with the parties:

(i) apply, mutatis mutandis, Article 20.3 (i) for the co-arbitrators;
(ii) apply, mutatis mutandis, Article 20.3 (ii) for the co-arbitrators; or
(iii) select and appoint the co-arbitrators as well as the President pursuant to Article 13.2.

When Article 20.5 (i) and (ii) apply, Articles 12.2 and 12.3 shall apply with respect to the nomination or appointment of the President. When Article 20.5 (ii) and (iii) apply, and when an appointment is made by the Appointing Committee, any prior party nomination shall be deemed void.

The Proceedings before the Arbitral Tribunal

Article 21: Rules of Procedure

21.1 The parties shall be treated equally. Each party shall have a right to be heard.

21.2 The Rules shall apply to the proceedings before the arbitral tribunal except to the extent that the parties have agreed otherwise.

21.3 When the Rules are silent as to the procedure to be applied in the proceedings before the arbitral tribunal, such procedure shall be determined by agreement of the parties, in the absence of which the arbitral tribunal in its discretion shall decide upon the procedure, after consultation with the parties.

21.4 The arbitral tribunal shall apply all mandatory provisions of the arbitration law applicable at the seat of the pending arbitration.

Article 22: Seat of the Arbitration

22.1 If the parties have not agreed upon the seat of the arbitration, then it shall be fixed by the arbitral tribunal.

22.2 Unless the parties have agreed otherwise, the arbitral tribunal may decide to undertake any or all acts in the proceedings at a location other than the seat of the arbitration.

Article 23: Language of the Arbitration

If the parties have not agreed upon the language of the arbitration, the arbitral tribunal shall fix the language of the arbitration.

Article 24: Rules of Law Applicable to the Merits

24.1 The parties may agree upon the rules of law to be applied to the merits of the dispute.

24.2 If the parties have not agreed upon the rules of law to be applied to the merits of the dispute, the arbitral tribunal shall apply the rules of law that it deems to be appropriate.

24.3 The arbitral tribunal shall decide on the merits in accordance with the provisions of the contract between the parties, if any, and shall take into account any relevant trade usages.

24.4 The arbitral tribunal may not decide ex aequo et bono or act as an amiable compositeur, unless the parties have expressly agreed thereto.

Article 25: Interim Relief

25.1 Unless the parties have agreed otherwise, the arbitral tribunal may, at the request of a party, order interim or conservatory measures, and may amend, suspend or revoke any such measure. The arbitral tribunal shall transmit the request to the other party for comments. The arbitral tribunal may request any party to provide appropriate security in connection with such measures.

25.2 In exceptional circumstances, the arbitral tribunal may rule on a request pursuant to Article 25.1 without giving prior notice to or receiving comments from the other party, if otherwise it would risk frustrating the purpose of the measure. In such case, the arbitral tribunal shall notify the other party of the request, at the latest, when ordering the measure. The arbitral tribunal shall promptly grant the other party a right to be heard. Thereafter, the arbitral tribunal shall confirm, amend, suspend, or revoke the measure.

25.3 The parties may request interim or conservatory measures from any competent court at any time.

Article 26: Encouraging Amicable Settlements

Unless any party objects thereto, the arbitral tribunal shall, at every stage of the arbitration, seek to encourage an amicable settlement of the dispute or of individual disputed issues.

Article 27: Efficient Conduct of the Proceedings

27.1 The arbitral tribunal and the parties shall conduct the proceedings in a time- and cost-efficient manner, taking into account the complexity and economic importance of the dispute.

27.2 The arbitral tribunal shall hold a case management conference as soon as possible after its constitution, in principle within 21 days.

27.3 When the parties are represented by outside counsel, they are also encouraged to attend the case management conference in person or with an in-house party representative, together with such outside counsel. Any Dispute Manager who has been duly appointed pursuant to Article 2.2 of the Rules may, with the authorization of the arbitral tribunal, attend the case management conference.

27.4 During the case management conference, the arbitral tribunal shall discuss with the parties the procedural rules to be applied in the proceedings pursuant to Article 21, as well as the procedural timetable. With a view to increasing procedural efficiency, the arbitral tribunal shall specifically discuss the following with the parties:

(i) each of the measures set forth in Annex 3 (Measures for Increasing Procedural Efficiency) in order to determine whether any of them should be applied;
(ii) the provisions of Annex 4 (Expedited Proceedings) in order to determine whether they should be applied;
(iii) the possibility of using mediation or any other method of amicable dispute resolution to seek the amicable settlement of the dispute or of individual disputed issues.

27.5 During, or as soon as possible after, the case management conference, the arbitral tribunal shall issue a procedural order and a procedural timetable.

27.6 The arbitral tribunal may hold additional case management conferences as needed and may issue additional procedural orders or amend the procedural timetable as needed.

27.7 In the first case management conference or, if necessary, in additional case management conferences, the arbitral tribunal shall discuss with the parties whether to employ experts and, if so, how to conduct the expert procedure efficiently.

27.8 The arbitral tribunal shall also transmit to the DIS a copy of each procedural order and the procedural timetable, as well as any amendments thereto.

Article 28: Establishing the Facts, Tribunal-Appointed Expert

28.1 The arbitral tribunal shall establish the facts of the case that are relevant and material for deciding the dispute.

28.2 For this purpose, the arbitral tribunal may, inter alia, on its own initiative, appoint experts, examine fact witnesses other than those called by the parties, and order any party to produce or make available any documents or electronically stored data. The arbitral tribunal shall not be limited to admit only evidence offered by the parties.

28.3 The arbitral tribunal shall consult with the parties before appointing an expert. Any expert appointed by the arbitral tribunal shall be impartial and independent of the parties. The arbitral tribunal shall apply the provisions of Article 9 and Article 15, mutatis mutandis, to any tribunal-appointed expert, provided, however, that the arbitral tribunal shall assume with respect to the expert the function that the DIS has with respect to the arbitral tribunal.

Article 29: Oral Hearing

29.1 The arbitral tribunal shall hold an oral hearing if:
(i) all of the parties have so agreed; or
(ii) any party so requests, unless all of the parties have agreed not to hold oral hearings.

In all other cases, the arbitral tribunal shall hold an oral hearing when it determines in its discretion, after consultation with the parties, that an oral hearing is necessary.

29.2 A record shall be kept of all oral hearings using appropriate means, which may include verbatim transcripts.

Article 30: Default of a Respondent

In the event of a default of a Respondent, the arbitral tribunal shall proceed with the arbitration. The factual allegations of the Claimant shall not be considered as having been admitted by the Respondent as a result of its default.

Article 31: Closing of Proceedings

After the last hearing or the last admitted Submission, whichever is later, the arbitral tribunal shall close the proceedings by a procedural order that shall also be sent to the DIS. No evidence or Submissions may be filed after the closing of the proceedings, except with the prior leave of the arbitral tribunal.

Costs

Article 32: Costs of the Arbitration

The costs of the arbitration shall include:
(i) the arbitrators' fees and expenses;
(ii) the fees and expenses of any expert appointed by the arbitral tribunal;
(iii) the reasonable costs of the parties that were incurred in connection with the arbitration, including legal fees, fees of experts and expenses of any witnesses; and
(iv) the Administrative Fees.

Article 33: Arbitral Tribunal's Costs Decisions

33.1 The arbitral tribunal may make decisions, including interim decisions, concerning the costs of the arbitration at any time during the course of the arbitration. Only the DIS may make decisions pursuant to Article 32 (i) and (iv).

33.2 The arbitral tribunal shall decide on the allocation of the costs of the arbitration between the parties.
33.3 The arbitral tribunal shall make decisions concerning the costs of the arbitration in its discretion. In so doing, it shall take into account all circumstances that it considers to be relevant. Such circumstances may include the outcome of the arbitration and the extent to which the parties have conducted the arbitration efficiently.

Article 34: Arbitrators' Fees and Expenses

34.1 The arbitrators shall be entitled to fees and reimbursement of their expenses, except as otherwise provided in the Rules.

34.2 The arbitrators' fees and expenses shall be calculated pursuant to the Schedule of Costs (Annex 2) in effect on the date of the commencement of the arbitration, except as provided in Article 34.4; provided, however, that the Arbitration Council may reduce the fees of any arbitrator pursuant to Article 37. No separate fee agreements between the parties and the arbitrators shall be made or performed.

The expenses of the arbitrators shall be reimbursed to the extent and in the amount provided in the Schedule of Costs (Annex 2) in effect on the date of the commencement of the arbitration.

34.3 The DIS shall pay the fees and expenses of the arbitrators after the termination of the arbitration. At the arbitral tribunal's request, the Arbitration Council may grant an advance on the arbitrators' fees in an amount that it considers to be appropriate in view of the stage of the proceedings. Any fees, expenses or advances on the arbitrators' fees shall be paid by the DIS out of the Deposit pursuant to Article 35.1.

34.4 When the arbitration has been terminated prior to the making of a final award or by an award by consent, the Arbitration Council shall, in its discretion, and after consultation with the parties and the arbitral tribunal, fix the arbitrators' fees. In so doing, it shall take into consideration, inter alia, the stage of the proceedings at the time of the termination and the diligence and efficiency of the arbitrators, having regard to the complexity and economic importance of the dispute.

34.5 When the mandate of an arbitrator has been terminated pursuant to Article 16.1, the Arbitration Council shall, in its discretion, determine whether to pay any fees or reimburse any expenses of the arbitrator whose mandate was terminated, and, if so, in what amount. In making such determination, the Arbitration Council shall take into account the reasons for the premature termination of the mandate and the circumstances of the arbitration.

Article 35: Deposit for Fees and Expenses of the Arbitral Tribunal

35.1 The parties shall provide a security for the fees and expenses of the arbitrators by paying an amount that the DIS shall calculate on the basis of Article 36 and shall fix during the course of the arbitration (the "Deposit").

35.2 Before constitution of the arbitral tribunal, the DIS shall fix the amount of an initial deposit and set a time limit for payment by the parties. The DIS may, in its discretion, request both parties or only one party to pay the initial deposit.

35.3 At a later point in time, the DIS shall fix the amount of the Deposit and shall set a time limit for payment by the parties. The Deposit shall be paid by the Claimant and the Respondent in equal shares. Any initial deposit already paid by the parties shall be deducted. The amount of the Deposit may be equal to the amount of the initial deposit.

35.4 If a party fails to pay its share of the initial deposit or the Deposit, any other party may substitute such payment without prejudice to the decision of the arbitral tribunal pursuant to Article 33.2 on the allocation of the costs of the arbitration between the parties.

35.5 If the parties have not paid the initial deposit or the Deposit in full, the DIS may terminate the proceedings pursuant to Article 42.5.

35.6 The DIS may increase or decrease the amount of the initial deposit or the Deposit at any time.

35.7 In a Multi-Party Arbitration (Article 18), the Arbitration Council may fix the share of the initial deposit and the Deposit for each party separately and in different amounts, or it may fix several deposits.

Article 36: Basis for Calculation of Deposits and Administrative Fees

36.1 The initial deposit, the Deposit and the Administrative Fees, as well as any later increases or decreases thereto, shall be calculated on the basis of the amount in dispute pursuant to the Schedule of Costs (Annex 2) in effect on the date of the commencement of the arbitration.

36.2 The arbitral tribunal shall determine the amount in dispute after consultation with the parties.

36.3 Within 14 days after the determination of the amount in dispute by the arbitral tribunal pursuant to Article 36.2, any party may request the Arbitration Council to reconsider the arbitral tribunal's determination. The Arbitration Council may either confirm or modify the amount in dispute determined by the arbitral tribunal. Any such confirmation or modification by the Arbitration Council shall be solely for the purpose of calculating the amounts of the initial deposit, the Deposit and the Administrative Fees.

Termination of the Arbitration by Award or Otherwise

Article 37: Time Limit for the Final Award

The arbitral tribunal shall send the final award to the DIS for review pursuant to Article 39.3, in principle within three months after the last hearing or the last authorized Submission, whichever is later. The Arbitration Council, in its discretion, may reduce the fee of one or more arbitrators based upon the time taken by the arbitral tribunal to issue its final award. In deciding whether to reduce the fee, the Arbitration Council shall consult the arbitral tribunal and take into consideration the circumstances of the case.

Article 38: Effect of the Arbitral Award

Each arbitral award shall be final and binding on the parties.

Article 39: Content, Form and Transmission of the Arbitral Award

39.1 Each arbitral award shall be made in writing and shall state:

(i) the names and addresses of the parties, of any designated counsel representing a party in the arbitration, and of the arbitrators;
(ii) the arbitral tribunal's decision and the reasons upon which it is based, unless the parties have agreed that reasons need not be given or the award is by consent pursuant to Article 41;
(iii) the seat of the arbitration; and
(iv) the date of the award.

39.2 In the final award, the arbitral tribunal shall state the costs of the arbitration and shall decide on their allocation between the parties pursuant to Article 33. The DIS shall communicate to the arbitral tribunal the amount of the costs pursuant to Article 32 (i) and (iv).

39.3 The arbitral tribunal shall send a draft of the award to the DIS for review. The DIS may make observations with regard to form and may suggest other non-mandatory modifications to the arbitral tribunal. The arbitral tribunal shall remain exclusively responsible for the content of the award.

39.4 The award shall be signed by the arbitral tribunal. If an arbitrator does not sign the award, the reason therefor shall be explained in the award.

39.5 The arbitral tribunal shall transmit to the DIS as many originals of the signed award as are needed in order to provide an original to each party and the DIS.

39.6 The DIS shall transmit one original of the award to each party, provided that all Deposits and Administrative Fees have been paid in full. Articles 4.6 and 4.7 shall apply, mutatis mutandis.

39.7 The award shall be deemed to have been made on the date and at the seat of the arbitration stated in the award.

Article 40: Correction of the Arbitral Award

40.1 The arbitral tribunal shall, upon the request of any party:

(i) correct clerical, typographical or computation errors, and any other errors of a similar nature; and
(ii) render a supplementary award upon any claims that were made in the arbitration but were not decided in the arbitral award.

40.2 The arbitral tribunal may, upon the request of any party, interpret the arbitral award and clarify the dispositive section thereof.

40.3 A request by a party pursuant to Article 40.1 or Article 40.2 shall be submitted to the DIS within 30 days after the date of transmission of the arbitral award. The DIS shall promptly transmit any such request to the arbitral tribunal.

40.4 The arbitral tribunal shall consult the other party and shall decide upon the request within 30 days after the receipt of the request by the President of the arbitral tribunal.

40.5 After consultation with the parties, the arbitral tribunal may also make corrections pursuant to Article 40.1 on its own initiative. The corrections shall be made within 60 days after the date on which the award was made pursuant to Article 39.7.

40.6 Articles 38 and 39 shall apply, mutatis mutandis, to any decision to correct the arbitral award pursuant to this Article 40.

Article 41: Award by Consent

41.1 At the request of the parties, the arbitral tribunal may record a settlement in an award by consent, unless it considers that there are serious grounds not to do so.

41.2 At the request of all of the parties, the arbitral tribunal may record in the form of an award by consent a settlement agreement or a decision arising out of proceedings pursuant to:

- the DIS Mediation Rules,
- the DIS Conciliation Rules,
- the DIS Rules on Adjudication,
- the DIS Rules on Expertise, or
- the DIS Rules on Expert Determination,

unless it considers that there are serious grounds not to do so.

41.3 The provisions of Articles 38 to 40 shall apply, mutatis mutandis, to awards by consent.

Article 42: Termination of the Arbitration before the Making of a Final Award

42.1 The arbitration may be terminated before the arbitral tribunal makes its final award, either by the arbitral tribunal pursuant to Article 42.2, or by the DIS pursuant to Articles 42.4, 42.5 or 42.6.

42.2 The arbitral tribunal shall terminate the arbitration by way of a termination order:

(i) if all of the parties agree to terminate the arbitration;
(ii) if one of the parties requests a termination order and none of the other parties objects, or, if there is an objection, the arbitral tribunal considers that the objecting party has no legitimate interest in the continuation of the arbitration;
(iii) if the parties fail to pursue the arbitration even after being requested to do so by the arbitral tribunal; or
(iv) if the arbitral tribunal considers that, for any other reason, the arbitration cannot be continued.

42.3 Any termination order issued by the arbitral tribunal is without prejudice to a party's right to resubmit its claims in a new proceeding.

42.4 Prior to the constitution of the arbitral tribunal, the Arbitration Council may, after consultation with the parties, decide to terminate the arbitration:

(i) if the parties have agreed that the arbitration be terminated;
(ii) if the DIS considers that it is not possible to constitute the arbitral tribunal pursuant to the Rules;
(iii) if the parties fail to pursue the arbitration even after being requested to do so by the DIS; or
(iv) if the DIS considers that, for any other reason, the arbitration cannot be continued.

42.5 Prior to or after the constitution of the arbitral tribunal, the Arbitration Council may decide to terminate the arbitration if the parties fail within the set time limit to pay in full any initial deposits, Deposits or Administrative Fees requested by the DIS pursuant to the Rules. If the arbitral tribunal is already constituted, the arbitral tribunal may, upon consultation with the DIS, suspend its work prior to the termination by the Arbitration Council.

42.6
The DIS may, subject to the provision set forth in the second sentence of Article 5.4, terminate the arbitration at any time if a party has failed to comply with the request of the DIS to supplement a filing pursuant to Articles 5, 7 or 19 within the time limit set by the DIS.

42.7
A termination of the arbitration in whole or in part pursuant to Articles 42.4, 42.5 or 42.6 is without prejudice to a party's right to resubmit its claims in a new proceeding.

Miscellaneous

Article 43: Waiver of Right to Object

If a party does not raise an objection with respect to any failure to comply with the Rules or with any other provisions applicable to the arbitration promptly after it first becomes aware of such failure, such party shall be deemed to have waived its right to object.

Article 44: Confidentiality

44.1 Unless the parties agree otherwise, the parties and their outside counsel, the arbitrators, the DIS employees, and any other persons associated with the DIS who are involved in the arbitration shall not disclose to anyone any information concerning the arbitration, including in particular the existence of the arbitration, the names of the parties, the nature of the claims, the names of any witnesses or experts, any procedural orders or awards, and any evidence that is not publicly available.

44.2 Disclosures may nonetheless be made to the extent required by applicable law, by other legal duties, or for purposes of the recognition and enforcement or annulment of an arbitral award.

44.3 The DIS may publish statistical data or other general information concerning arbitral proceedings, provided that no party is identified by name and that no particular arbitration is identifiable on the basis of such information. The DIS may publish an arbitral award only with the prior written consent of all of the parties.

Article 45: Limitation of Liability

45.1 An arbitrator shall not be liable to any person for any acts or omissions in connection with such arbitrator's decision-making in the arbitration, except in case of an intentional breach of duty.

45.2 For any other acts or omissions in connection with the arbitration, an arbitrator, the DIS, its statutory organs, its employees, and any other person associated with the DIS who is involved in the arbitration shall not be liable, except in case of an intentional breach of duty or gross negligence.

ANNEX

ANNEX 1: Internal Rules

Article 1: Scope of Application

These internal rules for administering arbitrations under the Rules (the "Internal Rules") shall govern the work of the Arbitration Council, the Appointing Committee, and the DIS Secretariat (the "Secretariat").

Article 2: Powers of the Arbitration Council, the Appointing Committee, and the Secretariat

2.1 The Arbitration Council and the Appointing Committee shall render such decisions and exercise such powers and activities as are specifically assigned to them in the Rules. They shall be assisted in their work by the Secretariat.

2.2 The Secretariat, under the direction of its Secretary General (the "Secretary General"), shall render such decisions and exercise such powers and activities as the Rules assign to the DIS, or as the DIS considers appropriate for the proper administration of an arbitration. The Secretariat may at any time consult the Arbitration Council, the Case Committee designated pursuant to Article 4.2 of these Internal Rules, or the Appointing Committee.

Article 3: The Arbitration Council

3.1 The Arbitration Council shall consist of at least fifteen members (each member, a "Council Member"). The Council Members shall be nationals of at least five different countries and shall have practical experience in domestic and international arbitration. The provisions of Section 6 of the DIS Integrity Principles shall apply to Council Members.

3.2 Council Members shall be appointed by the DIS Board of Directors pursuant to Section 7.2 of the DIS Statutes, after consultation with the chairman of the Advisory Board of the DIS. Members of the DIS Board of Directors pursuant to Section 7.2 of the DIS Statutes, members of the Appointing Committee, and staff of the Secretariat may not be Council Members.

3.3 A Council Member's term of office shall be four years and may be renewed once.

3.4 The Arbitration Council shall hold plenary sessions at least once annually to discuss and take decisions in respect of subjects of general importance to the practice of the Arbitration Council. The Secretariat shall attend all plenary sessions and may invite the members of the Appointing Committee to attend a plenary session. A plenary session may be attended in person or by any suitable means of communication.

3.5 The Council Members shall elect from their members a President and up to two Vice Presidents. The President, or, in the President's absence, one of the Vice Presidents, shall call and preside over plenary sessions.

3.6 All decisions to be taken by the Arbitration Council under the Rules shall be exercised, with respect to any specific arbitration, exclusively by the Case Committee to which such arbitration has been assigned pursuant to Article 4.2 of these Internal Rules. The Arbitration Council shall not have the power to review, alter, or vacate decisions rendered by a Case Committee.

3.7 The Arbitration Council may, after consultation with the Secretariat, issue internal guidelines that all Case Committees shall observe.

Article 4: The Case Committees

4.1 The Secretariat shall create at least five Case Committees to supervise DIS arbitrations (each committee, a "Case Committee"), each consisting of three Council Members.

4.2 Upon receipt of a Request for Arbitration, the Secretariat shall assign supervision of the arbitration to a Case Committee. The Secretariat may at any time during the arbitration reassign supervision of an arbitration from one Case Committee to another Case Committee, or replace any Council Member on a Case Committee by another Council Member. The Secretariat, in its discretion, may take any decision pursuant to this Article 4.2 of these Internal Rules, taking into account in particular the workload, any conflicts of interest, and any other reasons affecting the availability of a Council Member.

4.3 A Council Member who has a conflict of interest with respect to any arbitration shall promptly disclose such conflict to the Secretariat, and, as from the time such Council Member obtained knowledge of the conflict, may no longer participate in decisions pertaining to such arbitration. Such Council Member may not obtain any additional information or documentation pertaining to such arbitration, and must return or destroy any information or documentation already received.

4.4 Decisions by a Case Committee require a quorum of two of its members and a majority of such Case Committee.

4.5 As a basis for any decision of the Case Committees, the Secretariat shall prepare a written statement, which shall

advise of any existing practice of other Case Committees in comparable cases and may contain non-binding recommendations.

Article 5: Specialized Case Committees

5.1 All arbitrations administered by the DIS pursuant to the rules of a chamber of commerce and industry referring to the Rules shall be assigned to the same Case Committee.

5.2 The DIS may at any time create additional specialized Case Committees, for example for specific geographic regions or certain types of arbitrations.

Article 6: The Appointing Committee

6.1 The Appointing Committee shall consist of three main members and three alternate members (together the "Appointing Committee Members"). The Appointing Committee Members shall have practical experience in domestic and international arbitration. The provisions of Section 3 of the DIS Integrity Principles shall apply to Appointing Committee Members.

6.2 Appointing Committee Members shall be appointed by the DIS Board of Directors pursuant to Section 7.2 of the DIS Statutes, after consultation with the chairman of the Advisory Board of the DIS. Members of the DIS Board of Directors pursuant to Section 7.2 of the DIS Statutes, Council Members, and staff of the Secretariat may not be Appointing Committee Members.

6.3 The Appointing Committee Members' terms of office shall be three years and may be renewed once.

6.4 An Appointing Committee Member who has a conflict of interest with respect to any arbitration shall promptly disclose such conflict to the Secretariat, and, as from the time such Appointing Committee Member obtained knowledge of the conflict, may no longer participate in decisions pertaining to such arbitration. Such Appointing Committee Member may not obtain any additional information or documentation pertaining to such arbitration, and must return or destroy any information or documentation already received.

6.5 The Appointing Committee's decisions are taken by the main members. If a main member cannot act due to a conflict of interest or otherwise, an alternate member designated by the Secretariat shall act in lieu of such main member.

6.6 Decisions by the Appointing Committee require a majority vote.

6.7 As a basis for any decision of the Appointing Committee, the Secretariat shall prepare a written statement, which shall advise of any existing practice of the Appointing Committees in comparable cases and may contain non-binding recommendations.

Article 7: The Secretariat

7.1 Within the Secretariat, arbitrations are administered by the Case Management Team under the direction of the Deputy Secretary General.

7.2 The Secretary General may, when absent or otherwise, authorize the Deputy Secretary General or another staff member of the Secretariat to decide upon the appointment of an arbitrator pursuant to Article 13.3 of the Rules.

7.3 The Secretariat may issue notes and other documents for the information of the parties and the arbitrators or, as necessary, for the proper conduct of the arbitral proceedings.

Article 8: Submissions and Notifications, Reasons, Confidentiality

8.1 All Submissions that are to be sent to the DIS under the Rules, and any communication addressed to the Arbitration Council, a Case Committee, or the Appointing Committee, shall be sent to the Secretariat.

8.2 All notifications from, and communications of decisions by, the Appointing Committee or any Case Committees to the parties or arbitrators concerning any arbitration shall be sent exclusively by the Secretariat.

8.3 The reasons for decisions of the Appointing Committee and the Case Committees shall not be communicated.

8.4 Information and documentation relating to any arbitration, as well as to the work of the Appointing Committee, the Arbitration Council, a Case Committee, and the Secretariat, shall be confidential, unless otherwise provided in Article 44 of the Rules.

Article 9: Removal of an Arbitrator from Office Pursuant to Article 16.2 of the Rules

9.1 Any party who considers that an arbitrator is not fulfilling the arbitrator's duties pursuant to the Rules or is not, or will not be, in a position to fulfil those duties in the future, may file a request for removal ("Request for Removal") pursuant to Article 9.2 of these Internal Rules.

9.2 The Request for Removal shall describe the facts and circumstances on which it is based and shall specify when the party filing the Request for Removal first obtained knowledge of the same. The Request for Removal shall be filed with the DIS no later than 14 days after the party filing the Request for Removal first obtained knowledge of the facts and circumstances on which it is based.

9.3 The DIS shall transmit the Request for Removal to the concerned arbitrator, the other arbitrators and the other party, and shall set a time limit for comments. The DIS shall send any comments that it receives to the parties and to each arbitrator.

9.4 The Case Committee to which the arbitration has been assigned pursuant to Article 4.2 shall decide upon the Request for Removal.

9.5 If the Case Committee to which the arbitration has been assigned pursuant to Article 4.2 considers that an arbitrator is not fulfilling the arbitrator's duties pursuant to the Rules or is not, or will not be, in a position to fulfil those duties in the future, such Case Committee may, after consultation with the parties and all arbitrators, remove such arbitrator from office even in the absence of a Request for Removal.

Article 10: Transitional Provision

Until such time as the DIS Statutes have been amended, Section 14 of the DIS Statutes regarding the DIS Appointing Committee shall supersede the provisions of Article 6 of these Internal Rules.

ANNEX 2: Schedule of Costs

[Editor's Note: For information on fees, please go to German Arbitration Insitute (DIS): Cost Calculator (disarb.org)."]

ANNEX 3: Measures for Increasing Procedural Efficiency

During the case management conference, the arbitral tribunal shall discuss with the parties the following measures for increasing procedural efficiency:

A. Limiting the length or the number of Submissions, of any written fact witness statements, and of any expert reports provided by the parties.
B. Conducting only one oral hearing, including any taking of evidence.
C. Dividing the proceedings into multiple phases.
D. Rendering one or more partial awards or procedural orders on specific issues.
E. Regulating whether the production of documents can be requested from a party that does not bear the burden of proof, as well as possibly limiting document production requests generally.
F. Providing the parties with a preliminary non-binding assessment of factual or legal issues in the arbitration, provided all of the parties consent thereto.
G. Making use of information technology.

To the extent that the parties disagree as to whether to apply one or more of the above measures, the arbitral tribunal shall, during or as soon as possible after the case management conference, decide in its discretion whether to apply such measures.

ANNEX 4: Expedited Proceedings

Article 1

The final award shall be made at the latest six months after conclusion of the case management conference held pursuant to Article 27.2.

Article 2

When establishing the procedure for the arbitration, and in particular when setting time limits, the arbitral tribunal shall at all times take into account the parties' specific interest in accelerating the proceedings.

Article 3

In addition to the Request pursuant to Article 5.1 of the Rules and the Answer pursuant to Article 7.2 of the Rules, each party may file only one further written Submission. In the case of a counterclaim pursuant to Article 7.5, one further written Submission in reply to the counterclaim may be filed.

Article 4

The arbitral tribunal shall hold only one oral hearing, including for the taking of evidence. An oral hearing may be dispensed with if all parties so agree.

Article 5

If the final award cannot be made within the time limit set in Article 1 of this Annex, the arbitral tribunal shall inform the parties and the DIS in writing of the reasons therefore. If such time limit is exceeded, the arbitral tribunal shall not for that reason cease to have jurisdiction, and the final award shall be made as soon as possible.

ANNEX 5: Supplementary Rules for Corporate Disputes

Article 1: Scope of Application

1.1 The Supplementary Rules for Corporate Disputes ("DIS-CDR") set forth herein shall apply if the parties have referred to them in their arbitration agreement, either within or outside the articles of incorporation, or have otherwise agreed to their application.

1.2 With respect to any arbitration, the version of the DIS-CDR in force on the date of its commencement pursuant to Article 6 of the Rules shall apply.

Article 2: Inclusion of Concerned Others

2.1 In disputes requiring a uniform decision binding all shareholders and the corporation, and in which a party intends to extend the effects of an arbitral award to any shareholder or the corporation who are not named parties to the arbitration ("Concerned Others"), the Concerned Others shall be granted the opportunity to join the arbitration pursuant to these DIS-CDR as a party or compulsory intervenor in the sense of Section 69 of the German Code of Civil Procedure ("Intervenor"). This applies, mutatis mutandis, to disputes that can be decided only by a uniform decision binding specific shareholders or the corporation.

2.2 In its Request, the Claimant shall designate, in addition to the Respondent, any Concerned Others, providing the names and addresses of any shareholders or of the corporation itself to which the effects of the arbitral award shall extend, and shall request the DIS to also transmit the Request to the Concerned Others. In addition to what is required in Article 4.2 of the Rules, a number of copies of the Request sufficient for the designated Concerned Others shall be filed with the DIS in paper form as well as in electronic form.

2.3 Concerned Others designated after expiry of the time limits provided in these DIS-CDR for designating Concerned Others may join the arbitration pursuant to Article 4.3 of these DIS-CDR.

Article 3: Transmission of the Request and Invitation to Join the Proceedings

3.1 The DIS shall deliver the Request to the Respondent and the designated Concerned Others pursuant to Article 5.5 of the Rules. The DIS shall request the Concerned Others to inform the DIS in writing within one month following transmission of the Request whether they wish to join the arbitration on the Claimant's or on the Respondent's side, either as a party or as an Intervenor. The DIS shall inform the parties and all Concerned Others designated pursuant to Articles 2.2 or 9.4 of these DIS-CDR of any effected joinder.

3.2 Within one month following the date of transmission of the Request, the Respondent may designate additional Concerned Others, providing their addresses and requesting the DIS to transmit the Request to such additional Concerned Others. With its request, the Respondent shall file the number of copies of the Request in paper form as well as in electronic form required by Article 4.2 of the Rules. Article 3.1 of these DIS-CDR shall apply to any additional Concerned Others.

Article 4: Joinder

4.1 If Concerned Others join the arbitration as a party within the time limit provided for in Article 3 or Article 9.4 of these DIS-CDR, they shall become a party to the arbitration with all rights and duties pertaining thereto as of the date on which their declaration of joinder is filed with the DIS. If they join as an Intervenor, they shall be entitled to the rights of a compulsory Intervenor as provided for in Section 69 of the German Code of Civil Procedure. Upon their joinder, Concerned Others are entitled to designate additional Concerned Others. Article 3.2 of these DIS-CDR shall apply, mutatis mutandis, with regard to any such additional designated Concerned Others.

4.2 If a designated Concerned Other does not join the arbitration within the provided time limit, such Concerned Others shall be deemed to have waived participation in the arbitration, without prejudice to the right to join the arbitration at a later point in time pursuant to Article 4.3 of these DIS-CDR.

4.3 Designated Concerned Others may join the arbitration at any time, provided that they do not raise objections to the composition of the arbitral tribunal, and either:

(i) such Concerned Others accept the arbitration as it stands at the time of their joinder, or
(ii) the arbitral tribunal in its discretion decides to approve the joinder of such Concerned Others.

In addition, the first and second sentences of Article 4.1 of these DIS-CDR shall apply, mutatis mutandis.

Article 5: Continuous Information of Concerned Others

5.1 Unless Concerned Others have expressly waived in writing their right thereto, the arbitral tribunal shall in-

form, pursuant to Article 4.4 of the Rules, the designated Concerned Others who have not joined the arbitration of the progress of the arbitration by transmitting to the provided addresses of the Concerned Others copies of all Submissions of the parties or of Intervenors as well as any decisions and procedural orders of the arbitral tribunal. This shall apply to other communications from the arbitral tribunal to the parties or Intervenors only insofar as it may be reasonably assumed that such communications are relevant to a subsequent decision of any Concerned Others to join the arbitration. If the DIS transmits decisions by the arbitral tribunal to the parties, the DIS instead of the arbitral tribunal shall transmit such decisions to any designated Concerned Others who have not joined the arbitration.

5.2 Concerned Others who have not joined the arbitration are not entitled to attend case management conferences or the oral hearing.

Article 6: Extension or Amendment of the Subject Matter of the Claim; Withdrawal of a Claim

6.1 An extension or amendment of the subject matter of the claim (including any counterclaim pursuant to Articles 7.5 to 7.9 of the Rules and any joinder of additional parties pursuant to Article 19 of the Rules) or, in case of a shareholder resolution dispute, the extension of the claim to other resolutions, is only admissible with the consent of all Concerned Others.

6.2 A complete or partial withdrawal of a claim is admissible without the consent of the Concerned Others, unless a Concerned Other objects within one month after having been informed of the intended withdrawal of such claim and the arbitral tribunal acknowledges the Concerned Other's legitimate interest in the continuation of the arbitration.

Article 7: Sole Arbitrator

7.1 If the arbitral tribunal is comprised of a sole arbitrator, the parties and Intervenors may jointly nominate the sole arbitrator within one month following the date of transmission of the Request to the Respondent and to all Concerned Others, or, in case of an admissible joinder of a Concerned Other, within one month following such joinder.

7.2 If the Respondent and the Concerned Others have received the Request at different times, the time limit shall be calculated by reference to the time of receipt by the party or Concerned Other who last received the Request. If Concerned Others join the arbitration at different points in time, the time limit shall be calculated by reference to the last such joinder.

7.3 Where the parties and the Intervenor do not reach an agreement on the sole arbitrator within the time limits provided in Articles 7.1 and 7.2 of these DIS-CDR, upon request of any Claimant, Respondent, or Intervenor, the sole arbitrator shall be selected and appointed by the Appointing Committee pursuant to Article 13.2 of the Rules. The third sentence of Article 11 of the Rules shall apply; however, for purposes of such provision, Intervenors shall be deemed equal to parties.

Article 8: Three-Member Arbitral Tribunal

8.1 If the arbitral tribunal is comprised of three arbitrators, the Request, in deviation from Article 5.2 (vii) of the Rules, need not contain the nomination of an arbitrator. Notwithstanding the above, any nomination made shall be deemed to be a proposal.

8.2 Within one month following the date of transmission of the Request to the Respondent and all Concerned Others, or in case of an admissible joinder within one month thereafter, the parties and any Intervenors on Claimant's and on Respondent's side, respectively, shall jointly nominate a co-arbitrator. Article 7.2 of these DIS-CDR shall apply, mutatis mutandis.

8.3 Where the parties and any Intervenors on Claimant's or on Respondent's side do not jointly nominate an arbitrator within the time limit provided for in Article 8.2 of these DIS-CDR, the two co-arbitrators shall be selected and appointed by the Appointing Committee pursuant to Article 13.2 of the Rules.

8.4 Articles 12.2 and 12.3 of the Rules shall apply to the nomination and appointment of the President of the arbitral tribunal; however, for purposes of such provisions, Intervenors shall be deemed equal to parties.

Article 9: Consolidation of Jurisdiction in Case of Parallel Proceedings

9.1 Where multiple arbitrations concerning the same subject matter have been initiated that require a uniform decision applying to all parties and Concerned Others, Articles 9.2 to 9.4 of these DIS-CDR shall apply.

9.2 The arbitration that has been commenced at an earlier point in time (the "Primary Arbitration") shall preclude an arbitration commenced at a later point in time (the "Secondary Arbitration"). The Secondary Arbitration shall be inadmissible.

9.3 The priority of multiple requests for arbitration shall be determined by the time of filing of each Request with the

DIS. To prove the exact time of day at which the Request was filed with the DIS, the Request (with or without attachments thereto, pursuant to Article 6.1 of the Rules) shall, in deviation from Articles 4.1 and 4.2 of the Rules, always also be sent by fax or email. In case of doubt, the DIS shall determine the priority of multiple requests for arbitration in its discretion. If the DIS considers prima facie that the case described in Article 9.1 of these DIS-CDR exists, it shall so inform the parties and the designated Concerned Others of the pending arbitration.

9.4 If the Claimant in the Secondary Arbitration has filed its Request within the time limit provided for in Article 3.1 of these DIS-CDR, it may join the Primary Arbitration as a designated Concerned Other. In such case, the Request shall be deemed to constitute a joinder to the Primary Arbitration as a designated Concerned Other. Such Claimant shall become an additional claimant in the Primary Arbitration, unless it objects within the time limit for joinder provided in Article 3.1 of these DIS-CDR. Such additional claimant may participate in the constitution of the arbitral tribunal pursuant to Articles 7 or 8 of these DIS-CDR and name additional Concerned Others in the Primary Arbitration pursuant to Article 4.1 of these DIS-CDR. Insofar as Articles 7 and 8 of these DIS-CDR make reference to the time of the joinder of a Concerned Other for the calculation of time limits, it shall be deemed, for the purposes of this Article 9.4 of these DIS-CDR, that the joinder has occurred on the day on which the time limit for joining the arbitration pursuant to Article 3.1 of these DIS-CDR has expired. If the Claimant in the Secondary Arbitration expressly consents to join the Primary Arbitration before the expiry of the time limit provided for in Article 3.1 of these DIS-CDR, the time of consent shall apply for the calculation of time limits. If the Claimant in the Secondary Arbitration files timely objections, or if it files the Request after the time limit provided in Article 3.1 of these DIS-CDR has expired, such Claimant shall not be considered a party to the Primary Arbitration. Irrespective thereof, the Secondary Arbitration is inadmissible. The foregoing is without prejudice to the Claimant's rights pursuant to Article 4.3 of these DIS-CDR.

Article 10: Confidentiality

Article 44 of the Rules shall also apply to all designated Concerned Others.

Article 11: Extension of Effects of the Arbitral Award

11.1 The effects of an arbitral award extend to those Concerned Others that have been designated as such within the time limits provided in these DIS-CDR, regardless of whether they have availed themselves of the opportunity to join the arbitration as a party or as an Intervenor. The shareholders designated as Concerned Others within the provided time limits agree to recognize the effects of an arbitral award rendered in accordance with these DIS-CDR.

11.2 The effects of an arbitral award also extend to those Concerned Others that have been designated as such after the time limits provided in these DIS-CDR, but that have joined the arbitration as a party or as an Intervenor. These Concerned Others also agree to recognize the effects of an arbitral award rendered in accordance with these DIS-CDR.

Article 12: Costs

12.1 Concerned Others who have not joined the arbitration as a party or as an Intervenor are not entitled to reimbursement of costs.

12.2 When calculating the costs pursuant to Annex 2 of the Rules (Schedule of Costs), a designated Concerned Other shall be treated as a party.

ANNEX 6: Dispute Management Rules

Article 1: Scope of Application

1.1 These Dispute Management Rules (the "DMR") shall apply when

(i) the parties have agreed to conduct dispute management proceedings under the DMR, or

(ii) a party initiates dispute management proceedings under the DMR and the other party consents thereto.

1.2 With respect to any dispute management proceedings, the version of the DMR in force on the date of their commencement pursuant to Article 2.4 of these DMR shall apply.

Article 2: Initiation and Commencement of the Proceedings

2.1 A party wishing to commence dispute management proceedings under the DMR shall file a written application with the DIS. The application shall contain:

(i) the names and addresses of the parties;
(ii) the names and addresses of any designated counsel representing the applicant;
(iii) a brief description of the dispute and the underlying facts; and
(iv) the asserted claims and information regarding the amount in dispute.

2.2 If at the time of the application there is an agreement to conduct dispute management proceedings under the DMR, the applicant shall submit a copy of such agreement together with the application pursuant to Article 2.1 of these DMR, as well as evidence of payment to the DIS of half of the costs pursuant to Article 9.1 (i) and (ii) of these DMR. The DIS shall send the application for the commencement of dispute management proceedings to the other party and shall request the other party to pay the other half of the costs pursuant to Article 9.1 (i) and (ii) of these DMR.

2.3 If the applicant states that at the time of the application there is no agreement to conduct dispute management proceedings under the DMR, or no agreement is filed with the application pursuant to Article 2.2 of these DMR, the DIS shall send the application to commence dispute management proceedings to the other party requesting that the latter, within 14 days, provide the DIS with its written consent to conduct such proceedings. If the other party fails to provide its consent within such time period, no dispute management proceedings shall take place. If such consent is provided, the DIS shall request the parties to pay the costs pursuant to Article 9 (i) and (ii) of these DMR.

2.4 The dispute management proceedings shall commence:

(i) in the case of Article 2.2 of these DMR, on the date on which the application for commencement of dispute management proceedings is filed with the DIS; or

(ii) in the case of Article 2.3 of these DMR, on the date on which the consent of the other party is filed with the DIS.

The DIS shall inform the parties about the date of commencement of the proceedings.

Article 3: Appointment of a Dispute Manager

After commencement of the dispute management proceedings pursuant to Article 2.4 of these DMR, and after informal consultation with the parties, the DIS shall appoint an impartial and independent Dispute Manager. The DIS may refrain from appointing a Dispute Manager unless and until the costs pursuant to Article 9.1 (i) and (ii) of these DMR have been paid.

Article 4: Joint Consultation

4.1 The Dispute Manager shall contact the parties promptly, and no later than one week following his or her appointment, in order to determine, together with the parties, the date and venue for a joint consultation. The Dispute Manager may prepare the joint consultation at his or her discretion and may provide guidance to the parties in advance.

4.2 During the joint consultation, the Dispute Manager shall comprehensively consult and assist the parties in deciding upon the selection and design of the dispute resolution procedure.

4.3 The parties agree to endeavour, with the assistance of the Dispute Manager, to agree on an appropriate dispute resolution procedure during or promptly after the joint consultation. The parties and the Dispute Manager are free in their selection of such procedure. The Dispute Manager may make proposals regarding the appropriate dispute resolution procedure, but is not authorized to make any decisions.

Article 5: Termination of the Proceedings

5.1 The dispute management proceedings shall terminate:

(i) on the date of the written declaration by the parties that they have agreed upon a dispute resolution procedure pursuant to Article 4.3 of these DMR;

(ii) on the date on which a party files with the DIS a written termination notice;

(iii) on the date on which the Dispute Manager files with the DIS a written termination notice, in particular when he or she considers that conducting the joint consultation would not serve a purpose or that the parties cannot be expected to reach an agreement; or

(iv) if the parties have failed to agree on a dis - pute resolution procedure two months from com mencement of the proceedings pursuant to Article 2.4 of these DMR.

5.2 The DIS may decide to terminate the dispute management proceedings at any time if, within the time limit set by the DIS, the costs pursuant to Article 9 of these DMR have not been paid.

Article 6: Prescription

The statute of limitations applicable to the claims described in the application shall be tolled upon commencement of the dispute management proceedings pursuant to Article 2.4 of these DMR, until three months after the termination of the proceedings pursuant to Article 5 of these DMR.

Article 7: Special Provisions in the Event of a Pending Dispute Resolution Procedure

7.1 If there is a dispute resolution procedure already pending between the parties that involves matters related to the dispute management proceedings, the parties and the Dispute Manager during the joint consultation should

additionally take into consideration any effects on such procedure.

7.2 If the pending procedure is an arbitration under the DIS Arbitration Rules, in addition to Article 7.1 of these DMR the following shall apply:

(i) no Administrative Fees pursuant to these DMR shall be due;
(ii) the time limit stipulated in Article 2.3 of these DMR for the other party to provide its consent shall be five days; and
(iii) in deviation from Article 5.1 (iv) of these DMR, the dispute management proceedings shall terminate if, within 30 days from commencement of the dispute resolution proceedings pursuant to Article 2.4 of these DMR, the parties do not agree on a dispute resolution procedure other than the already pending dispute resolution procedure pursuant to Article 7.1 of these DMR.

Article 8: Confidentiality

8.1 Unless the parties agree otherwise, the parties and their outside counsel, the Dispute Manager, the DIS employees, and any other persons associated with the DIS who are involved in the dispute management proceedings shall not disclose to anyone any information concerning the proceedings, including in particular the existence of the proceedings, the names of the parties, the nature of the claims, the names of any witnesses or experts, any procedural orders or awards, and any evidence that is not publicly available. Disclosures may nonetheless be made to the extent required by applicable law or by other legal duties.

8.2 Unless the parties agree otherwise, no party shall nominate the Dispute Manager as a witness in a procedure that relates to the subject matter of the dispute management proceedings.

8.3 Unless the other party consents thereto, no party shall appoint or otherwise engage the Dispute Manager as party-appointed arbitrator, expert, counsel, or advisor in any arbitration, litigation, or alternative dispute resolution proceedings that relate to the subject matter of the dispute management proceedings.

8.4 The DIS may publish statistical data or other general information concerning dispute management proceedings, provided that no party is identified by name and that no particular dispute management proceedings are identifiable on the basis of such information.

8.5 Article 8 of these DMR is notwithstanding any contractual confidentiality and secrecy obligations of the parties.

Article 9: Costs

9.1 The costs of the dispute management proceedings (including the DIS Administrative Fees and the fees and expenses of the Dispute Manager) shall be determined as follows:

(i) The DIS Administrative Fees shall amount to 500 €.
(ii) The Dispute Manager shall be entitled to a flat fee of 2.500 €, which shall include the preparation for, and the conduct of, the first joint consultation, and which shall be due even if, for reasons beyond the Dispute Manager's control, no joint consultation takes place.
(iii) The Dispute Manager's necessary and docu mented expenses, in particular travel and lodging costs, shall be reimbursed.

9.2 Paragraph 6 of Annex 2 to the DIS Arbitration Rules in respect of value added tax shall apply, mutatis mutandis.

9.3 The parties shall bear in equal shares, and are jointly and severally liable for, the costs of the dispute management proceedings pursuant to Article 9.1.

Article 10: Limitation of Liability

For any acts or omissions in connection with the dispute management proceedings, a Dispute Manager, the DIS, its statutory organs, its employees, and any other person associated with the DIS who is involved in the proceedings shall not be liable, except in case of an intentional breach of duty or gross negligence.

DIS Integrity Principles

(1) The following provisions shall aim at making transparent the Integrity Principles of the DIS applicable in arbitrations under the DIS Arbitration Rules concerning:

(i) the nomination of arbitrators by the DIS Appointing Committee; and
(ii) the acceptance of mandates as arbitrators or external counsel by members of organs or other officials of the DIS.

(2) The Integrity Principles serve to promote trust in arbitration and are to be interpreted and applied for this purpose. All members of organs of the DIS and all persons exercising functions within the DIS concerning the administration of DIS arbitrations are obligated to promote trust in arbitration. They are also required to act in the spirit of the Integrity Principles even in cases for which the following provisions do not contain specific instructions, and to resolve possible conflicts of interest on the basis of the highest standards of integrity.

(3) Members of the DIS Appointing Committee (Article 14 of the DIS Statutes) shall not:

(i) simultaneously be members of the Board of Directors or the Advisory Board (Articles 7 and 9 of the DIS Statutes);
(ii) serve more than two terms in office;
(iii) appoint members of the Board of Directors or the Advisory Board or the DIS Secretariat or the DIS's external auditors as arbitrators for arbitrations under the DIS Arbitration Rules;
(iv) during their term of office, accept mandates as arbitrators in an arbitration under the DIS Arbitration Rules.

They may, however, during their term of office, act as external counsel in an arbitration under the DIS Arbitration Rules. In this case, they may not participate in decisions relating to this arbitration pursuant to Article 14.6 of the DIS Statutes.

(4) Members of the Secretariat or other employees of the DIS may not:

(i) accept mandates as arbitrators for an arbitration under the DIS Arbitration Rules;
(ii) act as external counsel in an arbitration under the DIS Arbitration Rules.

(5) Executive members of the DIS Board of Directors pursuant to Section 26 of the German Civil Code (Article 7.2 of the DIS Statutes) may not:

(i) accept mandates as arbitrators in an arbitration under the DIS Arbitration Rules;
(ii) act as external counsel in an arbitration under the DIS Arbitration Rules.

(6) Non-executive members of the DIS Board of Directors who do not have a power of attorney (Article 7 of the DIS Statutes) and members of the DIS Advisory Board (Article 9 of the DIS Statutes) may:

(i) accept mandates as arbitrators in arbitrations under the DIS Arbitration Rules, taking into account the restrictions of Paragraph 3 (iii);
(ii) act as external counsel in proceedings under the DIS Arbitration Rules.

Chapter 29

Hong Kong International Arbitration Centre (HKIAC)[1] (2018)

Introduction

These Rules have been adopted by the Council of the Hong Kong International Arbitration Centre (HKIAC) for use by parties who seek the procedural flexibility and cost-effectiveness of an arbitration administered by HKIAC.

Application

These Rules may be adopted in a written agreement at any time before or after a dispute has arisen, and may be adopted for use in both domestic and international arbitrations commenced under a contract or treaty. Provisions regarding the scope of application of these Rules are set out in Article 1.

Effectiveness

These Rules have been adopted to take effect from 1 November 2018.

MODEL CLAUSES

1. The following model clause may be adopted by the parties to a contract who wish to refer any future disputes to arbitration in accordance with these Rules:

"Any dispute, controversy, difference or claim arising out of or relating to this contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding noncontractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted.

* The law of this arbitration clause shall be ... (Hong Kong law).

The seat of arbitration shall be ... (Hong Kong).
** The number of arbitrators shall be ... (one or three).
The arbitration proceedings shall be conducted in ... (insert language). "

* Optional. This provision should be included particularly where the law of the substantive contract and the law of the seat are different. The law of the arbitration clause potentially governs matters including the formation, existence, scope, validity, legality, interpretation, termination, effects and enforceability of the arbitration clause and identities of the parties to the arbitration clause. It does not replace the law governing the substantive contract.

** Optional

2. Parties to an existing dispute in which neither an arbitration clause nor a previous agreement with respect to arbitration exists, who wish to refer such dispute to arbitration under the HKIAC Administered Arbitration Rules, may agree to do so in the following terms:

"We, the undersigned, agree to refer to arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules any dispute, controversy, difference or claim (including any dispute regarding non-contractual obligations) arising out of or relating to:

(Brief description of contract under which disputes, controversies, differences or claims have arisen or may arise.)

The law of this arbitration agreement shall be … (Hong Kong law).

The seat of arbitration shall be ... (Hong Kong).

** The number of arbitrators shall be ... (one or three). The arbitration proceedings shall be conducted in ... (insert language).

Signed: _____ (Claimant)
Signed: _____ (Respondent)
Date: _____ "

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* Optional. This provision should be included particularly where the law of the substantive contract and the law of the seat are different. The law of the arbitration agreement potentially governs matters including the formation, existence, scope, validity, legality, interpretation, termination, effects and enforceability of the arbitration agreement and identities of the parties to the arbitration agreement. It does not replace the law governing the substantive contract.

** Optional

HKIAC ARBITRATION RULES

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SECTION I. GENERAL RULES

Article 1 – Scope of Application

1.1 These Rules shall govern arbitrations where an arbitration agreement (whether entered into before or after a dispute has arisen) either: (a) provides for these Rules to apply; or (b) subject to Articles 1.3 and 1.4 below, provides for arbitration "administered by HKIAC" or words to similar effect.

1.2 By agreeing to arbitration in accordance with Article 1.1, the parties accept that the arbitration shall be administered by HKIAC.

1.3 Nothing in these Rules shall prevent parties to a dispute or arbitration agreement from naming HKIAC as appoint-

ing authority, or from requesting certain administrative services from HKIAC, without subjecting the arbitration to the provisions contained in these Rules. For the avoidance of doubt, these Rules shall not govern arbitrations where an arbitration agreement provides for arbitration under other rules, including other rules adopted by HKIAC from time to time.

1.4 Subject to Article 1.5, these Rules shall come into force on 1 November 2018 and, unless the parties have agreed otherwise, shall apply to all arbitrations falling within Art cle 1.1 in which the Notice of Arbitration is submitted on or after that date.

1.5 Unless otherwise agreed by the parties: (a) Article 43 and paragraphs 1(a) and 21 of Schedule 4 shall not apply if the arbitration agreement was concluded before the date on which these Rules came into force; and (b) Articles 23.1, 28, 29 and Schedule 4 shall not apply if the arbitration agreement was concluded before 1 November 2013.

Article 2 – Interpretation of Rules

2.1 HKIAC shall have the power to interpret all provisions of these Rules. The arbitral tribunal shall interpret the Rules insofar as they relate to its powers and duties hereunder. In the event of any inconsistency between such interpretation and any interpretation by HKIAC, the arbitral tribunal's interpretation shall prevail.

2.2 HKIAC has no obligation to give reasons for any decision it makes in respect of any arbitration commenced under these Rules. Unless otherwise determined by HKIAC, all decisions made by HKIAC under these Rules are final and, to the extent permitted by any applicable law, not subject to appeal.

2.3 Where the parties have designated an HKIAC body or person to perform a function that is delegated to HKIAC under the Rules, that function shall be performed by HKIAC.

2.4 References to "HKIAC" are to the Council of HKIAC or any other body or person designated by it to perform the functions referred to herein, or, where applicable, to the Secretary-General of HKIAC and other staff members of the Secretariat of HKIAC.

2.5 References to "Claimant" include one or more claimants.

2.6 References to "Respondent" include one or more respondents.

2.7 References to "additional party" include one or more additional parties and references to "party" or "parties" include Claimant, Respondent and/or an additional party.

2.8 References to the "arbitral tribunal" include one or more arbitrators. Except in Schedule 2, such references do not include an emergency arbitrator.

2.9 References to "witness" include one or more witnesses and references to "expert" include one or more experts.

2.10 References to "claim" or "counterclaim" include any claim or claims by any party against any other party. References to "defence" include any defence or defences by any party to any claim or counterclaim submitted by any other party, including any defence for the purpose of a set-off or cross-claim.

2.11 References to "arbitration agreement" include one or more arbitration agreements.

2.12 References to "language" include one or more languages.

2.13 References to "award" include, inter alia, an interim, interlocutory, partial or final award, save for any award made by an emergency arbitrator.

2.14 References to the "seat" of arbitration mean the place of arbitration as defined in Article 20.1 of the UNCITRAL Model Law on International Commercial Arbitration.

2.15 References to "written communications" include all notifications, proposals, pleadings, statements, documents, orders and awards that are produced, submitted or exchanged in the arbitration.

2.16 References to "communication" mean delivery, transmission or notification of a written communication by hand, registered post, courier service, facsimile, email or other means of telecommunication that provides a record of transmission.

2.17 These Rules include all Schedules attached thereto, as amended from time to time by HKIAC, in force on the date the Notice of Arbitration is submitted.

2.18 HKIAC may from time to time issue practice notes and guidelines to supplement, regulate and implement these Rules for the purpose of facilitating the administration of arbitrations governed by these Rules.

2.19 English is the original language of these Rules. In the event of any discrepancy or inconsistency between the

English version and the version in any other language, the English version shall prevail.

Article 3 – Written Communications and Calculation of Time Limits

3.1 Any written communication pursuant to these Rules shall be deemed to be received by a party, arbitrator, emergency arbitrator or HKIAC if:

(a) communicated to the address, facsimile number and/or email address communicated by the addressee or its representative in the arbitration; or
(b) in the absence of (a), communicated to the address, facsimile number and/or email address specified in any applicable agreement between the parties; or
(c) in the absence of (a) and (b), communicated to any address, facsimile number and/or email address which the addressee holds out to the world at the time of such communication; or
(d) in the absence of (a), (b) and (c), communicated to any last known address, facsimile number and/or email address of the addressee; or
(e) uploaded to any secured online repository that the parties have agreed to use.

3.2 If, after reasonable efforts, communication cannot be effected in accordance with Article 3.1, a written communication is deemed to have been received if it is sent to the addressee's last-known address, facsimile number and/or email address by means that provides a record of attempted communication.

3.3 Any written communication shall be deemed received on the earliest day when it is communicated pursuant to paragraph 3.1(a) to (d), uploaded pursuant to paragraph 3.1(e), or attempted to be communicated pursuant to Article 3.2. For this purpose, the date shall be determined according to the local time at the place of receiving such written communication or a notice of the upload pursuant to paragraph 3.1(e).

3.4 Where a written communication is being communicated to more than one party, or more than one arbitrator, such written communication shall be deemed received when it is communicated pursuant to Article 3.1(a) to (d), or attempted to be communicated pursuant to Article 3.2, to the last intended recipient, or when a notice that such written communication has been uploaded pursuant to Article 3.1(e) is communicated to the last intended recipient.

3.5 Time limits under these Rules shall begin to run on the day following the day when any written communication is received or deemed received. If the last day of the time limit is an official holiday or a nonbusiness day at the place of receipt, the time limit shall be extended until the first business day which follows. Official holidays or non-business days occurring during the running of the time limit shall be included in calculating the time limit.

3.6 If the circumstances of the case so justify, HKIAC may amend the time limits provided for in these Rules, as well as any time limits that it has set, whether any such time limits have expired. HKIAC shall not amend any time limits agreed by the parties or set by the arbitral tribunal or emergency arbitrator unless the parties agree or the arbitral tribunal or emergency arbitrator directs otherwise.

SECTION II. COMMENCEMENT OF THE ARBITRATION

Article 4 – Notice of Arbitration

4.1 The party initiating arbitration (the "Claimant") shall communicate a Notice of Arbitration to HKIAC and the other party (the "Respondent").

4.2 An arbitration shall be deemed to commence on the date on which a copy of the Notice of Arbitration is received by HKIAC. For the avoidance of doubt, this date shall be determined in accordance with the provisions of Articles 3.1 to 3.5.

4.3 The Notice of Arbitration shall include the following:

(a) a request that the dispute be referred to arbitration;
(b) the names and (in so far as known) the addresses, facsimile numbers and/or email addresses of the parties and of their representatives;
(c) a copy of the arbitration agreement invoked;
(d) a copy of the contract(s) or other legal instrument(s) out of or in relation to which the dispute arises, or reference thereto;
(e) a description of the general nature of the claim and an indication of the amount involved, if any;
(f) the relief or remedy sought;
(g) a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon;
(h) the Claimant's proposal and any comments regarding the designation of a sole arbitrator under Article 7, or the Claimant's designation of an arbitrator under Article 8;
(i) the existence of any funding agreement and the identity of any third party funder pursuant to Article 44; and
(j) confirmation that copies of the Notice of Arbitration and any supporting materials included with it have been or are being communicated simultaneously to the Respondent by one or more means of service to be identified in such confirmation.

4.4 The Notice of Arbitration shall be accompanied by payment to HKIAC of the Registration Fee as required by Schedule 1.

4.5 The Notice of Arbitration may include the Statement of Claim.

4.6 If the Notice of Arbitration does not comply with these Rules or if the Registration Fee is not paid, HKIAC may request the Claimant to remedy the defect within an appropriate time limit. If the Claimant complies with such directions within the applicable time limit, the arbitration shall be deemed to have commenced under Article 4.2 on the date the initial version was received by HKIAC. If the Claimant fails to comply, the arbitration shall be deemed not to have commenced under Article 4.2 without prejudice to the Claimant's right to submit the same claim at a later date in a subsequent Notice of Arbitration.

4.7 Where an amendment is made to the Notice of Arbitration prior to the constitution of the arbitral tribunal, HKIAC has discretion to determine whether and to what extent such amendment affects other time limits under the Rules.

4.8 The Claimant shall notify, and lodge documentary verification with, HKIAC of the date the Respondent receives the Notice of Arbitration and any supporting materials included with it.

Article 5 – Answer to the Notice of Arbitration

5.1 Within 30 days from receipt of the Notice of Arbitration, the Respondent shall communicate an Answer to the Notice of Arbitration to HKIAC and the Claimant. The Answer to the Notice of Arbitration shall include the following:

(a) the name, address, facsimile number, and/or email address of the Respondent and of its representatives (if different from the description contained in the Notice of Arbitration);
(b) any plea that an arbitral tribunal constituted under these Rules lacks jurisdiction;
(c) the Respondent's comments on the particulars set forth in the Notice of Arbitration, pursuant to Article 4.3(e);
(d) the Respondent's answer to the relief or remedy sought in the Notice of Arbitration, pursuant to Article 4.3(f);
(e) the Respondent's proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon;
(f) the Respondent's proposal and any comments regarding the designation of a sole arbitrator under Article 7 or the Respondent's designation of an arbitrator under Article 8;
(g) the existence of any funding agreement and the identity of any third party funder pursuant to Article 44; and
(h) confirmation that copies of the Answer to the Notice of Arbitration and any supporting materials included with it have been or are being communicated simultaneously to all other parties to the arbitration by one or more means of service to be identified in such confirmation.

5.2 The Answer to the Notice of Arbitration may also include the Statement of Defence, if the Notice of Arbitration contained the Statement of Claim.

5.3 Any counterclaim, set-off defence or cross-claim shall, to the extent possible, be raised with the Respondent's Answer to the Notice of Arbitration, which should include in relation to any such counterclaim, set-off defence or cross-claim:

(a) a copy of the contract(s) or other legal instrument(s) out of or in relation to which it arises, or reference thereto;
(b) a description of the general nature of the counterclaim, set-off defence and/or cross-claim, and an indication of the amount involved, if any; and
(c) the relief or remedy sought.

5.4 HKIAC shall transmit the case file to the arbitral tribunal as soon as it has been constituted, provided that any deposit requested by HKIAC has been paid, unless HKIAC determines otherwise

SECTION III. THE ARBITRAL TRIBUNAL

Article 6 – Number of Arbitrators

6.1 If the parties have not agreed upon the number of arbitrators before the arbitration commences or within 30 days from the date the Notice of Arbitration is received by the Respondent, HKIAC shall decide whether the case shall be referred to a sole arbitrator or to three arbitrators, taking into account the circumstances of the case.

6.2 Where a case is conducted under an Expedited Procedure in accordance with Article 42, the provisions of Article 42.2(a) and (b) shall apply.

Article 7 – Appointment of a Sole Arbitrator

7.1 Unless the parties have agreed otherwise:

(a) where the parties have agreed before the arbitration commences that the dispute shall be referred to a sole arbitrator, they shall jointly designate the sole arbitrator within 30 days from the date the Notice of Arbitration was received by the Respondent.

(b) where the parties have agreed after the arbitration commences to refer the dispute to a sole arbitrator, they shall jointly designate the sole arbitrator within 15 days from the date of that agreement.
(c) where the parties have not agreed upon the number of arbitrators and HKIAC has decided that the dispute shall be referred to a sole arbitrator, the parties shall jointly designate the sole arbitrator within 15 days from the date HKIAC's decision was received by the last of them.

7.2 If the parties fail to designate the sole arbitrator within the applicable time limit, HKIAC shall appoint the sole arbitrator.

7.3 Where the parties have agreed on a different procedure for designating the sole arbitrator and such procedure does not result in a designation within a time limit agreed by the parties or set by HKIAC, HKIAC shall appoint the sole arbitrator.

Article 8 – Appointment of Three Arbitrators

8.1 Where a dispute between two parties is referred to three arbitrators, the arbitral tribunal shall be constituted as follows, unless the parties have agreed otherwise:
(a) where the parties have agreed before the arbitration commences that the dispute shall be referred to three arbitrators, each party shall designate in the Notice of Arbitration and the Answer to the Notice of Arbitration, respectively, one arbitrator. If either party fails to designate an arbitrator, HKIAC shall appoint the arbitrator.
(b) where the parties have agreed after the arbitration commences to refer the dispute to three arbitrators, the Claimant shall designate an arbitrator within 15 days from the date of that agreement, and the Respondent shall designate an arbitrator within 15 days from receiving notice of the Claimant's designation. If a party fails to designate an arbitrator, HKIAC shall appoint the arbitrator.
(c) where the parties have not agreed upon the number of arbitrators and HKIAC has decided that the dispute shall be referred to three arbitrators, the Claimant shall designate an arbitrator within 15 days from receipt of HKIAC's decision, and the Respondent shall designate an arbitrator within 15 days from receiving notice of the Claimant's designation. If a party fails to designate an arbitrator, HKIAC shall appoint the arbitrator.
(d) the two arbitrators so appointed shall designate a third arbitrator, who shall act as the presiding arbitrator. Failing such designation within 30 days from the confirmation or appointment of the second arbitrator, HKIAC shall appoint the presiding arbitrator.

8.2 Where there are more than two parties to the arbitration and the dispute is to be referred to three arbitrators, the arbitral tribunal shall be constituted as follows, unless the parties have agreed otherwise:
(a) the Claimant or group of Claimants shall designate an arbitrator and the Respondent or group of Respondents shall designate an arbitrator in accordance with the procedure in Article 8.1(a), (b) or (c), as applicable;
(b) if the parties have designated arbitrators in accordance with Article 8.2(a), the procedure in Article 8.1(d) shall apply to the designation of the presiding arbitrator;
(c) in the event of any failure to designate arbitrators under Article 8.2(a) or if the parties do not all agree that they represent two separate sides (as Claimant and Respondent respectively) for the purposes of designating arbitrators, HKIAC may appoint all members of the arbitral tribunal with or without regard to any party's designation.

8.3 Where the parties have agreed on a different procedure for designating three arbitrators and such procedure does not result in the designation of an arbitrator within a time limit agreed by the parties or set by HKIAC, HKIAC shall appoint the arbitrator.

Article 9 – Confirmation of the Arbitral Tribunal

9.1 All designations of any arbitrator, whether made by the parties or the arbitrators, are subject to confirmation by HKIAC, upon which the appointments shall become effective.

9.2 Where the parties have agreed that an arbitrator is to be appointed by one or more of the parties or by the arbitrators already confirmed or appointed, that agreement shall be deemed an agreement to designate an arbitrator under the Rules.

9.3 The designation of an arbitrator shall be confirmed taking into account any agreement by the parties as to an arbitrator's qualifications, any information provided under Article 11.4, and in accordance with Article 10.

Article 10 – Fees and Expenses of the Arbitral Tribunal

10.1 The fees and expenses of the arbitral tribunal shall be determined according to either:
(a) an hourly rate in accordance with Schedule 2; or
(b) the schedule of fees based on the sum in dispute in accordance with Schedule 3. The parties shall agree the method for determining the fees and expenses of the arbitral tribunal, and shall inform HKIAC of the applicable method within 30 days of the date on

which the Respondent receives the Notice of Arbitration. If the parties fail to agree on the applicable method, the arbitral tribunal's fees and expenses shall be determined in accordance with Schedule 2.

10.2 Where the fees of the arbitral tribunal are to be determined in accordance with Schedule 2,

(a) the applicable rate for each co-arbitrator shall be the rate agreed between that co-arbitrator and the designating party;
(b) the applicable rate for a sole or presiding arbitrator designated by the parties or the coarbitrators, as applicable, shall be the rate agreed between that arbitrator and the parties, subject to paragraphs 9.3 to 9.5 of Schedule 2. Where the rate of an arbitrator is not agreed in accordance with Article 10.2(a) or (b), or where HKIAC appoints an arbitrator, HKIAC shall determine the rate of that arbitrator.

10.3 Where the fees of the arbitral tribunal are determined in accordance with Schedule 3, HKIAC shall fix the fees in accordance with that Schedule and the following rules:

(a) the fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitral tribunal and any secretary appointed under Article 13.4, and any other circumstances of the case, including, but not limited to, the discontinuation of the arbitration in case of settlement or for any other reason;
(b) where a case is referred to three arbitrators, HKIAC, at its discretion, shall have the right to increase the total fees up to a maximum which shall normally not exceed three times the fees of a sole arbitrator;
(c) the arbitral tribunal's fees may exceed the amounts calculated in accordance with Schedule 3 where, in the opinion of HKIAC, there are exceptional circumstances, which include, but are not limited to, the parties conducting the arbitration in a manner not reasonably contemplated at the time when the arbitral tribunal was constituted.

Article 11 – Qualifications and Challenge of the Arbitral Tribunal

11.1 An arbitral tribunal confirmed under these Rules shall be and remain at all times impartial and independent of the parties.

11.2 Subject to Article 11.3, as a general rule, where the parties to an arbitration under these Rules are of different nationalities, a sole or presiding arbitrator shall not have the same nationality as any party unless specifically agreed otherwise by all parties.

11.3 Notwithstanding the general rule in Article 11.2, in appropriate circumstances and provided that none of the parties objects within a time limit set by HKIAC, a sole or presiding arbitrator may be of the same nationality as any of the parties.

11.4 Before confirmation or appointment, a prospective arbitrator shall (a) sign a statement confirming his or her availability to decide the dispute and his or her impartiality and independence; and (b) disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, once confirmed or appointed and throughout the arbitration, shall disclose without delay any such circumstances to the parties unless they have already been informed by him or her of these circumstances.

11.5 No party or its representatives shall have any ex parte communication relating to the arbitration with any arbitrator, or with any candidate to be designated as arbitrator by a party, except to advise the candidate of the general nature of the dispute, to discuss the candidate's qualifications, availability, impartiality or independence, or to discuss the suitability of candidates for the designation of a third arbitrator where the parties or party-designated arbitrators are to designate that arbitrator. No party or its representatives shall have any ex parte communication relating to the arbitration with any candidate for the presiding arbitrator.

11.6 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, or if the arbitrator does not possess qualifications agreed by the parties, or if the arbitrator becomes de jure or de facto unable to perform his or her functions or for other reasons fails to act without undue delay. A party may challenge the arbitrator designated by it or in whose appointment it has participated only for reasons of which it becomes aware after the designation has been made.

11.7 A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after the confirmation or appointment of that arbitrator has been comm nicated to the challenging party or within 15 days after that party became aware of the circumstances mentioned in Article 11.6.

11.8 The notice of challenge shall be communicated to HKIAC, all other parties, the challenged arbitrator and any other members of the arbitral tribunal. The notice of challenge shall state the reasons for the challenge.

11.9 Unless the arbitrator being challenged resigns or the non-challenging party agrees to the challenge within 15

days from receiving the notice of challenge, HKIAC shall decide on the challenge. Pending the determination of the challenge, the arbitral tribunal (including the challenged arbitrator) may continue the arbitration.

11.10 If an arbitrator resigns or a party agrees to a challenge under Article 11.9, no acceptance of the validity of any ground referred to in Article 11.6 shall be implied.

Article 12 – Replacement of an Arbitrator

12.1 Subject to Articles 12.2, 27.13 and 28.8, where an arbitrator dies, has been successfully challenged, has been otherwise removed or has resigned, a substitute arbitrator shall be appointed pursuant to the rules that were applicable to the appointment of the arbitrator being replaced. These rules shall apply even if, during the process of appointing the arbitrator being replaced, a party had failed to exercise its right to designate or to participate in the appointment.

12.2 If, at the request of a party, HKIAC determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to designate a substitute arbitrator, HKIAC may, after giving an opportunity to the parties and the remaining arbitrators to express their views:

(a) appoint the substitute arbitrator; or
(b) authorise the other arbitrators to proceed with the arbitration and make any decision or award.

12.3 If an arbitrator is replaced, the arbitration shall resume at the stage where the arbitrator was replaced or ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

SECTION IV. CONDUCT OF ARBITRATION

Article 13 – General Provisions

13.1 Subject to these Rules, the arbitral tribunal shall adopt suitable procedures for the conduct of the arbitration in order to avoid unnecessary delay or expense, having regard to the complexity of the issues, the amount in dispute and the effective use of technology, and provided that such procedures ensure equal treatment of the parties and afford the parties a reasonable opportunity to present their case.

13.2 At an early stage of the arbitration and in consultation with the parties, the arbitral tribunal shall prepare a provisional timetable for the arbitration, which shall be provided to the parties and HKIAC.

13.3 Subject to Article 11.5, all written communications between any party and the arbitral tribunal shall be communicated to all other parties and HKIAC.

13.4 The arbitral tribunal may, after consulting with the parties, appoint a secretary. The secretary shall remain at all times impartial and independent of the parties and shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence prior to his or her appointment. A secretary, once appointed and throughout the arbitration, shall disclose without delay any such circumstances to the parties unless they have already been informed by him or her of these circumstances.

13.5 The arbitral tribunal and the parties shall do everything necessary to ensure the fair and efficient conduct of the arbitration.

13.6 The parties may be represented by persons of their choice, subject to Article 13.5. The names, addresses, facsimile numbers and/or email addresses of party representatives shall be communicated to all other parties, HKIAC, any emergency arbitrator, and the arbitral tribunal once constituted. The arbitral tribunal, emergency arbitrator or HKIAC may require proof of authority of any party representatives.

13.7 After the arbitral tribunal is constituted, any change or addition by a party to its legal representatives shall be communicated promptly to all other parties, the arbitral tribunal and HKIAC.

13.8 Where the parties agree to pursue other means of settling their dispute after the arbitration commences, HKIAC, the arbitral tribunal or emergency arbitrator may, at the request of any party, suspend the arbitration or Emergency Arbitrator Procedure, as applicable, on such terms as it considers appropriate. The arbitration or Emergency Arbitrator Procedure shall resume at the request of any party to HKIAC, the arbitral tribunal or emergency arbitrator.

13.9 In all matters not expressly provided for in these Rules, HKIAC, the arbitral tribunal, emergency arbitrator and the parties shall act in the spirit of these Rules.

13.10 The arbitral tribunal or emergency arbitrator shall make every reasonable effort to ensure that an award is valid.

Article 14 – Seat and Venue of the Arbitration

14.1 The parties may agree on the seat of arbitration. Where there is no agreement as to the seat, the seat of arbitration shall be Hong Kong, unless the arbitral tribunal determines, having regard to the circumstances of the case, that another seat is more appropriate.

14.2 Unless the parties have agreed otherwise, the arbitral tribunal may meet at any location outside of the seat of

arbitration which it considers appropriate for consultation among its members, hearing witnesses, experts or the parties, or the inspection of goods, other property or documents. The arbitration shall nonetheless be treated for all purposes as an arbitration conducted at the seat.

Article 15 – Language

15.1 The arbitration shall be conducted in the language of the arbitration. Where the parties have not previously agreed on such language, any party shall communicate in English or Chinese prior to any determination by the arbitral tribunal under Article 15.2.

15.2 Subject to agreement by the parties, the arbitral tribunal shall, promptly after its constitution, determine the language of the arbitration. This determination shall apply to all written communications and the language to be used in any hearing.

15.3 The arbitral tribunal may order that any supporting materials submitted in their original language shall be accompanied by a translation, in whole or in part, into the language of the arbitration as agreed by the parties or determined by the arbitral tribunal

Article 16 – Statement of Claim

16.1 Unless the Statement of Claim was contained in the Notice of Arbitration (or the Claimant elects to treat the Notice of Arbitration as the Statement of Claim), the Claimant shall communicate its Statement of Claim to all other parties and to the arbitral tribunal within a time limit to be determined by the arbitral tribunal.

16.2 The Statement of Claim shall include the following particulars:

(a) a statement of the facts supporting the claim;
(b) the points at issue;
(c) the legal arguments supporting the claim; and
(d) the relief or remedy sought.

16.3 The Claimant shall annex to its Statement of Claim all supporting materials on which it relies.

16.4 The arbitral tribunal may vary any of the requirements in Article 16 as it deems appropriate.

Article 17 – Statement of Defence

17.1 Unless the Statement of Defence was contained in the Answer to the Notice of Arbitration (or the Respondent elects to treat the Answer to the Notice of Arbitration as the Statement of Defence), the Respondent shall communicate its Statement of Defence to all other parties and to the arbitral tribunal within a period of time to be determined by the arbitral tribunal.

17.2 The Statement of Defence shall reply to the particulars of the Statement of Claim (set out in Article 16.2(a) to (c)). If the Respondent has raised an objection to the jurisdiction or to the proper constitution of the arbitral tribunal, the Statement of Defence shall contain the factual and legal basis of such objection.

17.3 Where there is a counterclaim, a set-off defence or cross-claim, the Statement of Defence shall also include the following particulars:

(a) a statement of the facts supporting the counterclaim, set-off defence or cross-claim;
(b) the points at issue;
(c) the legal arguments supporting the counterclaim, set-off defence or cross-claim; and
(d) the relief or remedy sought.

17.4 The Respondent shall annex to its Statement of Defence all supporting materials on which it relies.

17.5 The arbitral tribunal may vary any of the requirements in Article 17 as it deems appropriate.

Article 18 – Amendments to the Claim or Defence

18.1 During the course of the arbitration, a party may amend or supplement its claim or defence, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the circumstances of the case. However, a claim or defence may not be amended in such a manner that the amended claim or defence falls outside the jurisdiction of the arbitral tribunal.

18.2 HKIAC may adjust its Administrative Fees and the arbitral tribunal's fees (where appropriate) if a party amends its claim or defence.

Article 19 – Jurisdiction of the Arbitral Tribunal

19.1 The arbitral tribunal may rule on its own jurisdiction under these Rules, including any objections with respect to the existence, validity or scope of the arbitration agreement.

19.2 The arbitral tribunal shall have the power to determine the existence or validity of any contract of which an arbitration agreement forms a part. For the purposes of Article 19, an arbitration agreement which forms part of a contract, and which provides for arbitration under these Rules, shall be treated as an agreement independent of the other terms

of the contract. A decision by the arbitral tribunal that the contract is null and void shall not necessarily entail the invalidity of the arbitration agreement.

19.3 A plea that the arbitral tribunal does not have jurisdiction shall be raised if possible in the Answer to the Notice of Arbitration, and shall be raised no later than in the Statement of Defence, or, with respect to a counterclaim, in the Defence to the Counterclaim. A party is not precluded from raising such a plea by the fact that it has designated or appointed, or participated in the designation or appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitration. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

19.4 Subject to Article 19.5, if a question arises as to:

(a) the existence, validity or scope of the arbitration agreement; or
(b) whether all of the claims have been properly made in a single arbitration pursuant to Article 29; or
(c) the competence of HKIAC to administer an arbitration; before the constitution of the arbitral tribunal, the arbitration shall proceed and any such question shall be decided by the arbitral tribunal once constituted.

19.5 The arbitration shall proceed only if and to the extent that HKIAC is satisfied, prima facie, that an arbitration agreement under the Rules may exist or the arbitration has been properly commenced under Article 29. Any question as to the jurisdiction of the arbitral tribunal shall be decided by the arbitral tribunal once constituted, pursuant to Article 19.1.

19.6 HKIAC's decision pursuant to Article 19.5 is without prejudice to the admissibility or merits of any party's claim or defence.

Article 20 – Further Written Statements

The arbitral tribunal shall decide which further written statements, if any, in addition to the Statement of Claim and the Statement of Defence, shall be required from the parties and shall set the time limits for communicating such statements.

Article 21 – Time Limits

21.1 The time limits set by the arbitral tribunal for the communication of written statements should not exceed 45 days, unless the arbitral tribunal considers otherwise.

21.2 The arbitral tribunal may, even in circumstances where the relevant time limit has expired, extend time limits where it concludes that an extension is justified.

Article 22 – Evidence and Hearings

22.1 Each party shall have the burden of proving the facts relied on to support its claim or defence.

22.2 The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence, including whether to apply strict rules of evidence.

22.3 At any time during the arbitration, the arbitral tribunal may allow or require a party to produce documents, exhibits or other evidence that the arbitral tribunal determines to be relevant to the case and material to its outcome. The arbitral tribunal shall have the power to admit or exclude any documents, exhibits or other evidence.

22.4 The arbitral tribunal shall decide whether to hold hearings for presenting evidence or for oral arguments, or whether the arbitration shall be conducted solely on the basis of documents and other materials. The arbitral tribunal shall hold such hearings at an appropriate stage of the arbitration, if so requested by a party or if it considers fit. In the event of a hearing, the arbitral tribunal shall give the parties adequate advance notice of the relevant date, time and place.

22.5 The arbitral tribunal may determine the manner in which a witness or expert is examined.

22.6 The arbitral tribunal may make directions for the translation of oral statements made at a hearing and for a record of the hearing if it deems that either is necessary in the circumstances of the case.

22.7 Hearings shall be held in private unless the parties agree otherwise. The arbitral tribunal may require any witness or expert to leave the hearing room at any time during the hearing.

Article 23 – Interim Measures of Protection and Emergency Relief

23.1 A party may apply for urgent interim or conservatory relief ("Emergency Relief") prior to the constitution of the arbitral tribunal pursuant to Schedule 4.

23.2 At the request of either party, the arbitral tribunal may order any interim measures it deems necessary or appropriate.

23.3 An interim measure, whether in the form of an order or award or in another form, is any temporary measure ordered by the arbitral tribunal at any time before it issues the award by which the dispute is finally decided, that a party, for example and without limitation:

(a) maintain or restore the status quo pending determination of the dispute; or
(b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself; or
(c) provide a means of preserving assets out of which a subsequent award may be satisfied; or
(d) preserve evidence that may be relevant and material to the resolution of the dispute.

23.4 When deciding a party's request for an interim measure under Article 23.2, the arbitral tribunal shall take into account the circumstances of the case. Relevant factors may include, but are not limited to:

(a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
(b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

23.5 The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

23.6 The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

23.7 The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which an interim measure was requested or granted.

23.8 The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the arbitration.

23.9 A request for interim measures addressed by any party to a competent authority shall not be deemed incompatible with the arbitration agreement, or as a waiver thereof.

Article 24 – Security for Costs

The arbitral tribunal may make an order requiring a party to provide security for the costs of the arbitration.

Article 25 – Tribunal-Appointed Experts

25.1 To assist it in the assessment of evidence, the arbitral tribunal, after consulting with the parties, may appoint one or more experts. Such expert shall report to the arbitral tribunal, in writing, on specific issues to be determined by the arbitral tribunal. After consulting with the parties, the arbitral tribunal shall establish terms of reference for the expert, and shall communicate a copy of the expert's terms of reference to the parties and HKIAC.

25.2 The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

25.3 Upon receipt of the expert's report, the arbitral tribunal shall send a copy of the report to the parties who shall be given the opportunity to express their opinions on the report. The parties shall be entitled to examine any document on which the expert has relied in his or her report.

25.4 At the request of either party, the expert, after delivering the report, shall attend a hearing at which the parties shall have the opportunity to be present and to examine the expert. At this hearing either party may present experts in order to testify on the points at issue. The provisions of Articles 22.2 to 22.7 shall be applicable to such proceedings.

25.5 The provisions of Article 11 shall apply by analogy to any expert appointed by the arbitral tribunal.

Article 26 – Default

26.1 If, within the time limit set by the arbitral tribunal, the Claimant has failed to communicate its written statement without showing sufficient cause for such failure, the arbitral tribunal may terminate the arbitration unless another party has brought a claim and wishes the arbitration to continue, in which case the tribunal may proceed with the arbitration in respect of the other party's claim.

26.2 If, within the time limit set by the arbitral tribunal, the Respondent has failed to communicate its written statement without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

26.3 If one of the parties, duly notified under these Rules, fails to present its case in accordance with these Rules including as directed by the arbitral tribunal, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration and make an award on the basis of the evidence before it

Article 27 – Joinder of Additional Parties

27.1 The arbitral tribunal or, where the arbitral tribunal is not yet constituted, HKIAC shall have the power to allow an additional party to be joined to the arbitration provided that:

(a) prima facie, the additional party is bound by an arbitration agreement under these Rules giving rise to the arbitration, including any arbitration under Article 28 or 29; or
(b) all parties, including the additional party, expressly agree.

27.2 Any decision pursuant to Article 27.1 is without prejudice to the arbitral tribunal's power to decide any question as to its jurisdiction arising from such decision.

27.3 Any Request for Joinder shall be raised no later than in the Statement of Defence, except in exceptional circumstances.

27.4 Before the arbitral tribunal is constituted, a party wishing to join an additional party to the arbitration shall communicate a Request for Joinder to HKIAC, all other parties and any confirmed or appointed arbitrators.

27.5 After the arbitral tribunal is constituted, a party wishing to join an additional party to the arbitration shall communicate a Request for Joinder to the arbitral tribunal, HKIAC and all other parties.

27.6 The Request for Joinder shall include the following:

(a) the case reference of the existing arbitration;
(b) the names and addresses, facsimile numbers and/or email addresses, if known, of each of the parties, including the additional party, their representatives and any arbitrators who have been confirmed or appointed in the arbitration;
(c) a request that the additional party be joined to the arbitration;
(d) a copy of the contract(s) or other legal instrument(s) out of or in relation to which the request arises, or reference thereto;
(e) a statement of the facts supporting the request;
(f) the points at issue;
(g) the legal arguments supporting the request;
(h) any relief or remedy sought;
(i) the existence of any funding agreement and the identity of any third party funder pursuant to Article 44; and
(j) confirmation that copies of the Request for Joinder and any supporting materials included with it have been or are being communicated simultaneously to all other parties and any confirmed or appointed arbitrators, by one or more means of service to be identified in such confirmation.

27.7 Within 15 days of receiving the Request for Joinder, the additional party shall communicate an Answer to the Request for Joinder to HKIAC, all other parties and any confirmed or appointed arbitrators. The Answer to the Request for Joinder shall include the following:

(a) the name, address, facsimile number and/or email address of the additional party and its representatives (if different from the description contained in the Request for Joinder);
(b) any plea that the arbitral tribunal has been improperly constituted and/or lacks jurisdiction over the additional party;
(c) the additional party's comments on the particulars set forth in the Request for Joinder pursuant to Article 27.6(a) to (g);
(d) the additional party's answer to any relief or remedy sought in the Request for Joinder, pursuant to Article 27.6(h);
(e) details of any claims by the additional party against any other party to the arbitration;
(f) the existence of any funding agreement entered into by the additional party and the identity of any third party funder pursuant to Article 44; and
(g) confirmation that copies of the Answer to the Request for Joinder and any supporting materials included with it have been or are being communicated simultaneously to all other parties and any confirmed or appointed arbitrators, by one or more means of service to be identified in such confirmation.

27.8 HKIAC or the arbitral tribunal may vary any of the requirements in Article 27.6 and 27.7 as it deems appropriate.

27.9 An additional party wishing to be joined to the arbitration shall communicate a Request for Joinder to HKIAC, all other parties and any confirmed or appointed arbitrators. The provisions of Article 27.6 shall apply to such Request for Joinder.

27.10 Within 15 days of receiving a Request for Joinder, the parties shall communicate their comments on the Request for Joinder to HKIAC, all other parties and any confirmed or appointed arbitrators. Such comments may include (without limitation):

(a) any plea that the arbitral tribunal lacks jurisdiction over the additional party;
(b) comments on the particulars set forth in the Request for Joinder, pursuant to Article 27.6(a) to (g);
(c) answer to any relief or remedy sought in the Request for Joinder pursuant to Article 27.6(h);
(d) details of any claims against the additional party; and
(e) confirmation that copies of the comments have been or are being communicated simultaneously to all other parties and any confirmed or appointed arbitrators, by one or more means of service to be identified in such confirmation.

27.11 Where an additional party is joined to the arbitration, the arbitration against that additional party shall be deemed to commence on the date on which HKIAC or the arbitral tribunal once constituted, received the Request for Joinder.

27.12 Where an additional party is joined to the arbitration, all parties to the arbitration shall be deemed to have waived their right to designate an arbitrator.

27.13 Where an additional party is joined to the arbitration before the arbitral tribunal is constituted, HKIAC may revoke any confirmation or appointment of an arbitrator, and shall appoint the arbitral tribunal with or without regard to any party's designation.

27.14 The revocation of the confirmation or appointment of an arbitrator pursuant to Article 27.13 is without prejudice to:

(a) the validity of any act done or order made by that arbitrator before his or her confirmation or appointment was revoked;
(b) his or her entitlement to be paid his or her fees and expenses subject to Schedule 2 or 3 as applicable; and
(c) the date when any claim or defence was raised for the purpose of applying any limitation bar or any similar rule or provision.

27.15 HKIAC may adjust its Administrative Fees and the arbitral tribunal's fees (where appropriate) after a Request for Joinder has been submitted.

Article 28 – Consolidation of Arbitrations

28.1 HKIAC shall have the power, at the request of a party and after consulting with the parties and any confirmed or appointed arbitrators, to consolidate two or more arbitrations pending under these Rules where:

(a) the parties agree to consolidate; or
(b) all of the claims in the arbitrations are made under the same arbitration agreement; or
(c) the claims are made under more than one arbitration agreement, a common question of law or fact arises in all of the arbitrations, the rights to relief claimed are in respect of, or arise out of, the same transaction or a series of related transactions and the arbitration agreements are compatible.

28.2 Any party wishing to consolidate two or more arbitrations pursuant to Article 28.1 shall communicate a Request for Consolidation to HKIAC, all other parties and any confirmed or appointed arbitrators.

28.3 The Request for Consolidation shall include the following:

(a) the case references of the arbitrations pending under the Rules requested to be consolidated, where applicable;
(b) the names and addresses, facsimile numbers and/or email addresses of each of the parties to the arbitrations, their representatives and any arbitrators who have been confirmed or appointed in the arbitrations;
(c) a request that the arbitrations be consolidated;
(d) a copy of the arbitration agreement giving rise to the arbitrations;
(e) a copy of the contract(s) or other legal instrument(s) out of or in relation to which the Request for Consolidation arises, or reference thereto;
(f) a description of the general nature of the claim and an indication of the amount involved, if any, in each of the arbitrations;
(g) a statement of the facts supporting the Request for Consolidation, including, where applicable, evidence of all parties' written consent to consolidate the arbitrations;
(h) the points at issue;
(i) the legal arguments supporting the Request for Consolidation;
(j) details of any applicable mandatory provision affecting consolidation of arbitrations;
(k) comments on the constitution of the arbitral tribunal if the Request for Consolidation is granted, including whether to preserve the appointment of any arbitrators already designated or confirmed; and
(l) confirmation that copies of the Request for Consolidation and any supporting materials included with it have been or are being communicated simultaneously to all other relevant parties and any confirmed or appointed arbitrators, by one or more means of service to be identified in such confirmation.

28.4 HKIAC may vary any of the requirements in Article 28.3 as it deems appropriate.

28.5 Where the non-requesting parties or any confirmed or appointed arbitrators are requested to provide comments on the Request for Consolidation, such comments may include (without limitation) the following particulars:

(a) comments on the particulars set forth in the Request for Consolidation pursuant to Article 28.3(a) to (j);
(b) responses to the comments made in the Request for Consolidation pursuant to Article 28.3(k); and
(c) confirmation that copies of the comments have been or are being communicated simultaneously to all other relevant parties and any confirmed or appointed arbitrators, by one or more means of service to be identified in such confirmation.

28.6 Where HKIAC decides to consolidate two or more arbitrations, the arbitrations shall be consolidated into the arbitration that commenced first, unless all parties agree or HKIAC decides otherwise taking into account the circumstances of the case. HKIAC shall communicate such decision to all parties and to any confirmed or appointed arbitrators in all arbitrations.

28.7 The consolidation of two or more arbitrations is without prejudice to the validity of any act done or order made by a competent authority in support of the relevant arbitration before it was consolidated.

28.8 Where HKIAC decides to consolidate two or more arbitrations, the parties to all such arbitrations shall be deemed to have waived their right to designate an arbitrator, and HKIAC may revoke any confirmation or appointment of an arbitrator. HKIAC shall appoint the arbitral tribunal in respect of the consolidated proceedings with or without regard to any party's designation.

28.9 The revocation of the confirmation or appointment of an arbitrator pursuant to Article 28.8 is without prejudice to:

(a) the validity of any act done or order made by that arbitrator before his or her confirmation or appointment was revoked;
(b) his or her entitlement to be paid his or her fees and expenses subject to Schedule 2 or 3 as applicable; and
(c) the date when any claim or defence was raised for the purpose of applying any limitation bar or any similar rule or provision.

28.10 HKIAC may adjust its Administrative Fees and the arbitral tribunal's fees (where appropriate) after a Request for Consolidation has been submitted.

Article 29 – Single Arbitration under Multiple Contracts

Claims arising out of or in connection with more than one contract may be made in a single arbitration, provided that:

(a) a common question of law or fact arises under each arbitration agreement giving rise to the arbitration; and
(b) the rights to relief claimed are in respect of, or arise out of, the same transaction or a series of related transactions; and
(c) the arbitration agreements under which those claims are made are compatible.

Article 30 – Concurrent Proceedings

30.1 The arbitral tribunal may, after consulting with the parties, conduct two or more arbitrations under the Rules at the same time, or one immediately after another, or suspend any of those arbitrations until after the determination of any other of them, where:

(a) the same arbitral tribunal is constituted in each arbitration; and
(b) a common question of law or fact arises in all the arbitrations.

30.2 HKIAC may adjust its Administrative Fees and the arbitral tribunal's fees (where appropriate) where the arbitrations are conducted pursuant to Article 30.1

Article 31 – Closure of Proceedings

31.1 When it is satisfied that the parties have had a reasonable opportunity to present their case, whether in relation to the entire proceedings or a discrete phase of the proceedings, the arbitral tribunal shall declare the proceedings or the relevant phase of the proceedings closed. Thereafter, no further submissions or arguments may be made, or evidence produced in respect of the entire proceedings or the discrete phase, as applicable, unless the arbitral tribunal reopens the proceedings or the relevant phase of the proceedings in accordance with Article 31.4.

31.2 Once the proceedings are declared closed, the arbitral tribunal shall inform HKIAC and the parties of the anticipated date by which an award will be communicated to the parties. The date of rendering the award shall be no later than three months from the date when the arbitral tribunal declares the entire proceedings or the relevant phase of the proceedings closed, as applicable. This time limit may be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.

31.3 Article 31.2 shall not apply to any arbitration conducted pursuant to the Expedited Procedure under Article 42.

31.4 The arbitral tribunal may, if it considers it necessary, decide, on its own initiative or upon application of a party, to reopen the proceedings at any time before the award is made.

Article 32 – Waiver

32.1 A party that knows, or ought reasonably to know, that any provision of, or requirement arising under, these Rules (including the arbitration agreement) has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

32.2 The parties waive any objection, on the basis of the use of any procedure under Articles 27, 28, 29, 30 or 43 and any decision made in respect of such procedure, to the validity and/or enforcement of any award made by the arbitral tribunal in the arbitration(s), in so far as such waiver can validly be made.

SECTION V. AWARDS, DECISIONS AND ORDERS OF THE ARBITRAL TRIBUNAL

Article 33 – Decisions

33.1 When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators. If there is no majority, the award shall be made by the presiding arbitrator alone.

33.2 With the prior agreement of all members of the arbitral tribunal, the presiding arbitrator may make procedural rulings alone.

Article 34 – Costs of the Arbitration

34.1 The arbitral tribunal shall determine the costs of the arbitration in one or more orders or awards. The term "costs of the arbitration" includes only:

(a) the fees of the arbitral tribunal, as determined in accordance with Article 10;
(b) the reasonable travel and other expenses incurred by the arbitral tribunal;
(c) the reasonable costs of expert advice and of other assistance required by the arbitral tribunal, including fees and expenses of any tribunal secretary;
(d) the reasonable costs for legal representation and other assistance, including fees and expenses of any witnesses and experts, if such costs were claimed during the arbitration; and
(e) the Registration Fee and Administrative Fees payable to HKIAC in accordance with Schedule 1, and any expenses payable to HKIAC.

34.2 With respect to the costs of legal representation and other assistance referred to in Article 34.1(d), the arbitral tribunal, taking into account the circumstances of the case, may direct that the recoverable costs of the arbitration, or any part of the arbitration, shall be limited to a specified amount.

34.3 The arbitral tribunal may apportion all or part of the costs of the arbitration referred to in Article 34.1 between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

34.4 The arbitral tribunal may take into account any third party funding arrangement in determining all or part of the costs of the arbitration referred to in Article 34.1.

34.5 Where arbitrations are consolidated pursuant to Article 28, the arbitral tribunal in the consolidate arbitration shall determine the costs of the arbitration in accordance with Articles 34.2 to 34.4. Such costs include, but are not limited to, the fees of any arbitrator designated, confirmed or appointed and any other costs incurred in an arbitration that was subsequently consolidated into another arbitration.

34.6 When the arbitral tribunal issues an order for the termination of the arbitration or makes an award on agreed terms, it shall determine the costs of the arbitration referred to in Article 34.1 (to the extent not already determined) and may apportion all or part of such costs, in the text of that order or award.

Article 35 – Form and Effect of the Award

35.1 The arbitral tribunal may make a single award or separate awards regarding different issues at different times and in respect of all parties involved in the arbitration in the form of interim, interlocutory, partial or final awards. If appropriate, the arbitral tribunal may also issue interim awards on costs and any awards pursuant to Article 41.5.

35.2 Awards shall be made in writing and shall be final and binding on the parties and any person claiming through or under any of the parties. The parties and any such person waive their rights to any form of recourse or defence in respect of the setting-aside, enforcement and execution of any award, in so far as such waiver can validly be made.

35.3 The parties undertake to comply without delay with any order or award made by the arbitral tribunal or any emergency arbitrator, including any order or award made in any proceedings under Articles 27, 28, 29, 30 or 43.

35.4 An award shall state the reasons upon which it is based unless the parties have agreed that no reasons are to be given.

35.5 An award shall be signed by the arbitral tribunal. It shall state the date on which it was made and the seat of arbitration as determined under Article 14 and shall be deemed to have been made at the seat of the arbitration. Where there are three arbitrators and any of them fails to sign, the award shall state the reason for the absence of the signature(s).

35.6 The arbitral tribunal shall communicate to HKIAC originals of the award signed by the arbitral tribunal. HKIAC shall affix its seal to the award and, subject to any lien, communicate it to the parties.

Article 36 – Applicable Law, Amiable Compositeur

36.1 The arbitral tribunal shall decide the substance of the dispute in accordance with the rules of law agreed upon by the parties. Any designation of the law or legal system of a given jurisdiction shall be construed, unless otherwise expressed, as directly referring to the substantive law of that jurisdiction and not to its conflict of laws rules. Failing such designation by the parties, the arbitral tribunal shall apply the rules of law which it determines to be appropriate.

36.2 The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly agreed that the arbitral tribunal should do so.

36.3 In all cases, the arbitral tribunal shall decide the case in accordance with the terms of the relevant contract(s) and may take into account the usages of the trade applicable to the transaction(s).

Article 37 – Settlement or Other Grounds for Termination

37.1 If, before the arbitral tribunal is constituted, a party wishes to terminate the arbitration, it shall communicate this to all other parties and HKIAC. HKIAC shall set a time limit for all other parties to indicate whether they agree to terminate the arbitration. If no other party objects within the time limit, HKIAC may terminate the arbitration. If any party objects to the termination of the arbitration, the arbitration shall proceed in accordance with the Rules.

37.2 If, after the arbitral tribunal is constituted and before the final award is made:

(a) the parties settle the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitration or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

(b) continuing the arbitration becomes unnecessary or impossible for any reason not mentioned in Article 37.2(a), the arbitral tribunal shall issue an order for the termination of the arbitration. The arbitral tribunal shall issue such an order unless a party raises a justifiable objection, having been given a reasonable opportunity to comment upon the proposed course of action.

37.3 The arbitral tribunal shall communicate copies of the order to terminate the arbitration or of the arbitral award on agreed terms, signed by the arbitral tribunal, to HKIAC. Subject to any lien, HKIAC shall communicate the order for termination of the arbitration or the arbitral award on agreed terms to the parties. Where an arbitral award on agreed terms is made, the provisions of Articles 35.2, 35.3, 35.5 and 35.6 shall apply

Article 38 – Correction of the Award

38.1 Within 30 days after receipt of the award, either party, with notice to all other parties, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may set a time limit, normally not exceeding 15 days, for all other parties to comment on such request.

38.2 The arbitral tribunal shall make any corrections it considers appropriate within 30 days after receipt of the request but may extend such time limit if necessary.

38.3 The arbitral tribunal may within 30 days after the date of the award make such corrections on its own initiative.

38.4 The arbitral tribunal has the power to make any further correction to the award which is necessitated by or consequential on (a) the interpretation of any point or part of the award under Article 39; or (b) the issue of any additional award under Article 40.

38.5 Such corrections shall be in writing, and the provisions of Articles 35.2 to 35.6 shall apply

Article 39 – Interpretation of the Award

39.1 Within 30 days after receipt of the award, either party, with notice to all other parties, may request that the arbitral tribunal give an interpretation of the award. The arbitral tribunal may set a time limit, normally not exceeding 15 days, for all other parties to comment on such request.

39.2 Any interpretation considered appropriate by the arbitral tribunal shall be given in writing within 30 days after receipt of the request but the arbitral tribunal may extend such time limit if necessary.

39.3 The arbitral tribunal has the power to give any further interpretation of the award which is necessitated by or consequential on (a) the correction of any error in the award under Article 38; or (b) the issue of any additional award under Article 40.

39.4 Any interpretation given under Article 39 shall form part of the award and the provisions of Articles 35.2 to 35.6 shall apply.

Article 40 – Additional Award

40.1 Within 30 days after receipt of the award, either party, with notice to all other parties, may request the arbitral tribunal to make an additional award as to claims presented in the arbitration but omitted from the award. The arbitral tribunal may set a time limit, normally not exceeding 30 days, for all other parties to comment on such request.

40.2 If the arbitral tribunal considers the request for an additional award to be justified, it shall make the additional award within 60 days after receipt of the request but may extend such time limit if necessary.

40.3 The arbitral tribunal has the power to make an additional award which is necessitated by or consequential on (a) the correction of any error in the award under Article 38; or (b) the interpretation of any point or part of the award under Article 39.

40.4 When an additional award is made, the provisions of Articles 35.2 to 35.6 shall apply.

Article 41 – Deposits for Costs

41.1 As soon as practicable after receipt of the Notice of Arbitration by the Respondent, HKIAC shall, in principle, request the Claimant and the Respondent each to deposit with HKIAC an equal amount as an advance for the costs referred to in Article 34.1(a), (b), (c) and (e). HKIAC shall provide a copy of such request to the arbitral tribunal.

41.2 Where the Respondent submits a counterclaim or cross-claim, or it otherwise appears appropriate in the circumstances, HKIAC may request separate deposits.

41.3 During the course of the arbitration, HKIAC may request the parties to make supplementary deposits with HKIAC. HKIAC shall provide a copy of such request to the arbitral tribunal.

41.4 If the required deposits are not paid in full to HKIAC within 30 days after receipt of the request, HKIAC shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitration or continue with the arbitration on such basis and in respect of such claim or counterclaim as the arbitral tribunal considers fit.

41.5 If a party pays the required deposits on behalf of another party, the arbitral tribunal may, at the request of the paying party, make an award for reimbursement of the payment.

41.6 When releasing the final award, HKIAC shall render an account to the parties of the deposits received by HKIAC. Any unexpended balance shall be returned to the parties in the shares in which it was paid by the parties to HKIAC, or as otherwise instructed by the arbitral tribunal.

41.7 HKIAC shall place the deposits made by the parties in an account at a reputable licensed deposit-taking institution. In selecting the account, HKIAC shall have due regard to the possible need to make the deposited funds available immediately.

SECTION VI. OTHER PROVISIONS

Article 42 – Expedited Procedure

42.1 Prior to the constitution of the arbitral tribunal, a party may apply to HKIAC for the arbitration to be conducted in accordance with Article 42.2 where:

(a) the amount in dispute representing the aggregate of any claim and counterclaim (or any set-off defence or cross-claim) does not exceed the amount set by HKIAC, as stated on HKIAC's website on the date the Notice of Arbitration is submitted; or
(b) the parties so agree; or
(c) in cases of exceptional urgency.

42.2 When HKIAC, after considering the views of the parties, grants an application made pursuant to Article 42.1, the arbitral proceedings shall be conducted in accordance with an Expedited Procedure based upon the foregoing provisions of these Rules, subject to the following changes:

(a) the case shall be referred to a sole arbitrator, unless the arbitration agreement provides for three arbitrators;
(b) if the arbitration agreement provides for three arbitrators, HKIAC shall invite the parties to agree to

refer the case to a sole arbitrator. If the parties do not agree, the case shall be referred to three arbitrators;
(c) HKIAC may shorten the time limits provided for in the Rules, as well as any time limits that it has set;
(d) after the submission of the Answer to the Notice of Arbitration, the parties shall in principle be entitled to submit one Statement of Claim and one Statement of Defence (and Counterclaim) and, where applicable, one Statement of Defence in reply to the Counterclaim;
(e) the arbitral tribunal shall decide the dispute on the basis of documentary evidence only, unless it decides that it is appropriate to hold one or more hearings;
(f) subject to any lien, the award shall be communicated to the parties within six months from the date when HKIAC transmitted the case file to the arbitral tribunal. In exceptional circumstances, HKIAC may extend this time limit;
(g) the arbitral tribunal may state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons are to be given.

42.3 Upon the request of any party and after consulting with the parties and any confirmed or appointed arbitrators, HKIAC may, having regard to any new circumstances that have arisen, decide that the Expedited Procedure under Article 42 shall no longer apply to the case. Unless HKIAC considers that it is appropriate to revoke the confirmation or appointment of any arbitrator, the arbitral tribunal shall remain in place

Article 43 – Early Determination Procedure

43.1 The arbitral tribunal shall have the power, at the request of any party and after consulting with all other parties, to decide one or more points of law or fact by way of early determination procedure, on the basis that:
(a) such points of law or fact are manifestly without merit; or
(b) such points of law or fact are manifestly outside the arbitral tribunal's jurisdiction; or
(c) even if such points of law or fact are submitted by another party and are assumed to be correct, no award could be rendered in favour of that party.

43.2 Any party making a request for early determination procedure shall communicate the request to the arbitral tribunal, HKIAC and all other parties.

43.3 Any request for early determination procedure shall be made as promptly as possible after the relevant points of law or fact are submitted, unless the arbitral tribunal directs otherwise.

43.4 The request for early determination procedure shall include the following:
(a) a request for early determination of one or more points of law or fact and a description of such points;
(b) a statement of the facts and legal arguments supporting the request;
(c) a proposal of the form of early determination procedure to be adopted by the arbitral tribunal;
(d) comments on how the proposed form referred to in Article 43.4(c) would achieve the objectives stated in Articles 13.1 and 13.5; and
(e) confirmation that copies of the request and any supporting materials included with it have been or are being communicated simultaneously to all other parties by one or more means of service to be identified in such confirmation.

43.5 After providing all other parties with an opportunity to submit comments on the request, the arbitral tribunal shall issue a decision either dismissing the request or allowing the request to proceed by fixing the early determination procedure in the form it considers appropriate. The arbitral tribunal shall make such decision within 30 days from the date of filing the request. This time limit may be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.

43.6 If the request is allowed to proceed, the arbitral tribunal shall make its order or award, which may be in summary form, on the relevant points of law or fact. The arbitral tribunal shall make such order or award within 60 days from the date of its decision to proceed. This time limit may be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.

43.7 Pending the determination of the request, the arbitral tribunal may decide whether and to what extent the arbitration shall proceed.

Article 44 – Disclosure of Third Party Funding of Arbitration

44.1 If a funding agreement is made, the funded party shall communicate a written notice to all other parties, the arbitral tribunal, any emergency arbitrator and HKIAC of:
(a) the fact that a funding agreement has been made; and
(b) the identity of the third party funder.

44.2 The notice referred to in Article 44.1 must be communicated:
(a) in respect of a funding agreement made on or before the commencement of the arbitration, in the application for the appointment of an emergency arbitrator, the Notice of Arbitration, the Answer to the Notice

of Arbitration, the Request for Joinder or the Answer to the Request for Joinder (as applicable); or
(b) in respect of a funding agreement made after the commencement of the arbitration, as soon as practicable after the funding agreement is made.

44.3 Any funded party shall disclose any changes to the information referred to in Article 44.1 that occur after the initial disclosure.

Article 45 – Confidentiality

45.1 Unless otherwise agreed by the parties, no party or party representative may publish, disclose or communicate any information relating to:
(a) the arbitration under the arbitration agreement; or
(b) an award or Emergency Decision made in the arbitration.

45.2 Article 45.1 also applies to the arbitral tribunal, any emergency arbitrator, expert, witness, tribunal secretary and HKIAC.

45.3 Article 45.1 does not prevent the publication, disclosure or communication of information referred to in Article 45.1 by a party or party representative:
(a) (i) to protect or pursue a legal right or interest of the party; or
(ii) to enforce or challenge the award or Emergency Decision referred to in Article 45.1; in legal proceedings before a court or other authority; or
(b) to any government body, regulatory body, court or tribunal where the party is obliged by law to make the publication, disclosure or communication; or
(c) to a professional or any other adviser of any of the pa ties, including any actual or potential witness or expert; or
(d) to any party or additional party and any confirmed or appointed arbitrator for the purposes of Articles 27, 28, 29 or 30; or
(e) to a person for the purposes of having, or seeking, third party funding of arbitration.

45.4 The deliberations of the arbitral tribunal are confidential.

45.5 HKIAC may publish any award, whether in its entirety or in the form of excerpts or a summary, only under the following conditions:
(a) all references to the parties' names and other identifying information are deleted; and
(b) no party objects to such publication within the time limit fixed for that purpose by HKIAC. In the case of an objection, the award shall not be published.

Article 46 – Exclusion of Liability

46.1 None of the Council members of HKIAC nor any body or person specifically designated by it to perform the functions in these Rules, nor the Secretary-General of HKIAC or other staff members of the Secretariat of HKIAC, the arbitral tribunal, any emergency arbitrator, tribunal-appointed expert or tribunal secretary shall be liable for any act or omission in connection with an arbitration conducted under these Rules, save where such act was done or omitted to be done dishonestly.

46.2 After the award has been made and the possibilities of correction, interpretation and additional awards referred to in Articles 38 to 40 have lapsed or been exhausted, neither HKIAC nor the arbitral tribunal, any emergency arbitrator, tribunal-appointed expert or tribunal secretary shall be under an obligation to make statements to any person about any matter concerning the arbitration, nor shall a party seek to make any of these persons a witness in any legal or other proceedings arising out of the arbitration.

SCHEDULES 1, 2, and 3

[Editor's Note: For information on fees, please go to Fees | HKIAC,]

SCHEDULE 4

EMERGENCY ARBITRATOR
PROCEDURES
Effective 1 November 2018

1. A party requiring Emergency Relief may submit an application (the "Application") for the appointment of an emergency arbitrator to HKIAC (a) before, (b) concurrent with, or (c) following the filing of a Notice of Arbitration, but prior to the constitution of the arbitral tribunal.

2. The Application shall be submitted in accordance with any of the means specified in Articles 3.1 and 3.2 of the Rules. The Application shall include the following information:
(a) the names and (in so far as known) the addresses, facsimile numbers and/or email addresses of the parties to the Application and of their representatives;
(b) a description of the circumstances giving rise to the Application and of the underlying dispute referred to arbitration;
(c) a statement of the Emergency Relief sought;
(d) the reasons why the applicant needs the Emergency Relief on an urgent basis that cannot await the constitution of an arbitral tribunal;

(e) the reasons why the applicant is entitled to such Emergency Relief;
(f) any relevant agreement and, in particular, the arbitration agreement;
(g) comments on the language, the seat of the Emergency Relief proceedings, and the applicable law;
(h) confirmation of payment of the amount referred to in paragraph 5 of this Schedule (the "Application Deposit");
(i) the existence of any funding agreement and the identity of any third party funder pursuant to Article 44; and
(j) confirmation that copies of the Application and any supporting materials included with it have been or are being communicated simultaneously to all other parties to the arbitration by one or more means of service to be identified in such confirmation.

3. The Application may contain such other documents or information as the applicant considers appropriate or as may contribute to the efficient examination of the Application.

4. If HKIAC determines that it should accept the Application, HKIAC shall seek to appoint an emergency arbitrator within 24 hours after receipt of both the Application and the Application Deposit.

5. The Application Deposit is the amount set by HKIAC, as stated on HKIAC's website on the date the Application is submitted. The Application Deposit consists of HKIAC's emergency administrative fees and the emergency arbitrator's fees and expenses. The emergency arbitrator's fees shall be determined by reference to his or her hourly rate subject to the terms of Schedule 2 and shall not exceed the amount set by HKIAC, as stated on HKIAC's website on the date the Application is submitted unless the parties agree or HKIAC determines otherwise in exceptional circumstances. HKIAC may, at any time during the Emergency Relief proceedings, request additional deposits to cover any increase in the emergency arbitrator's fees or HKIAC's emergency administrative fees, taking into account, inter alia, the nature of the case and the nature and amount of work performed by the emergency arbitrator and HKIAC. If the party which submitted the Application fails to pay the additional deposits within the time limit fixed by HKIAC, the Application shall be dismissed.

6. Once the emergency arbitrator has been appointed, HKIAC shall communicate the appointment to the parties to the Application and shall communicate the case file to the emergency arbitrator. Thereafter, the parties shall communicate with the emergency arbitrator directly, with a copy to all other parties to the Application and HKIAC. Any written communications from the emergency arbitrator to the parties shall also be copied to HKIAC.

7. Article 11 of the Rules shall apply to the emergency arbitrator, except that the time limits set out in Articles 11.7 and 11.9 are shortened to three days.

8. Where an emergency arbitrator dies, has been successfully challenged, has been otherwise removed, or has resigned, HKIAC shall seek to appoint a substitute emergency arbitrator within 24 hours. If an emergency arbitrator withdraws or a party agrees to terminate an emergency arbitrator's appointment under paragraph 8 of this Schedule, no acceptance of the validity of any ground referred to in Article 11.6 of the Rules shall be implied. If the emergency arbitrator is replaced, the Emergency Relief proceedings shall resume at the stage where the emergency arbitrator was replaced or ceased to perform his or her functions, unless the substitute emergency arbitrator decides otherwise.

9. If the parties have agreed on the seat of arbitration, such seat shall be the seat of the Emergency Relief proceedings. Where the parties have not agreed on the seat of arbitration, and without prejudice to the arbitral tribunal's determination of the seat of arbitration pursuant to Article 14.1 of the Rules, the seat of the Emergency Relief proceedings shall be Hong Kong.

10. Taking into account the urgency inherent in the Emergency Relief proceedings and ensuring that each party has a reasonable opportunity to be heard on the Application, the emergency arbitrator may conduct such proceedings in such a manner as the emergency arbitrator considers appropriate. The emergency arbitrator shall have the power to rule on objections that the emergency arbitrator has no jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration clause or of the separate arbitration agreement, and shall resolve any disputes over the applicability of this Schedule.

11. Articles 23.2 to 23.8 shall apply, mutatis mutandis, to any Emergency Relief granted by the emergency arbitrator.

12. Any decision, order or award of the emergency arbitrator on the Application (the "Emergency Decision") shall be made within 14 days from the date on which HKIAC transmitted the case file to the emergency arbitrator. This time limit may be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.

13. The Emergency Decision may be made even if in the meantime the case file has been transmitted to the arbitral tribunal.

14. Any Emergency Decision shall:
(a) be made in writing;
(b) state the date when it was made and reasons upon which the Emergency Decision is based, which may be in summary form (including a determination on whether the emergency arbitrator has jurisdiction to grant the Emergency Relief); and
(c) be signed by the emergency arbitrator.

15. Any Emergency Decision may fix and apportion the costs of the Emergency Relief proceedings, subject always to the power of the arbitral tribunal to fix and apportion finally such costs in accordance with Article 34 of the Rules. The costs of the Emergency Relief proceedings include HKIAC's emergency administrative fees, the fees and expenses of the emergency arbitrator and any tribunal secretary, and the reasonable legal and other costs incurred by the parties for the Emergency Relief proceedings.

16. Any Emergency Decision shall have the same effect as an interim measure granted pursuant to Article 23 of the Rules and shall be binding on the parties when rendered.

17. Any Emergency Decision ceases to be binding:
(a) if the emergency arbitrator or the arbitral tribunal so decides;
(b) upon the arbitral tribunal rendering a final award, unless the arbitral tribunal expressly decides otherwise;
(c) upon the termination of the arbitration before the rendering of a final award; or
(d) if the arbitral tribunal is not constituted within 90 days from the date of the Emergency Decision. This time limit may be extended by agreement of the parties or, in appropriate circumstances, by HKIAC.

18. Subject to paragraph 13 of this Schedule, the emergency arbitrator shall have no further power to act once the arbitral tribunal is constituted.

19. The emergency arbitrator may not act as arbitrator in any arbitration relating to the dispute that gave rise to the Application and in respect of which the emergency arbitrator has acted, unless otherwise agreed by the parties to the arbitration.

20. The Emergency Arbitrator Procedure is not intended to prevent any party from seeking urgent interim or conservatory measures from a competent authority at any time.

21. The Emergency Arbitrator Procedure shall be terminated if a Notice of Arbitration has not been submitted by the applicant to HKIAC within seven days of HKIAC's receipt of the Application, unless the emergency arbitrator extends this time limit.

22. Where the Emergency Arbitrator Procedure is terminated without an Emergency Decision, the emergency arbitrator may fix and apportion any costs of the Emergency Relief proceedings, subject to the power of the arbitral tribunal to fix and apportion finally such costs in accordance with Article 34 of the Rules.

Chapter 30

International Chamber of Commerce (ICC)[1] (2021)

ABOUT THE ICC

Founded in 1919, ICC is a worldwide organization with an authoritative voice in international trade and investment, as acknowledged by the United Nations observer status granted in 2016.

ICC develops policy positions through specialized commissions in many sectors including banking, competition, corporate responsibility and anti-corruption, IT, environment, intellectual property, marketing and advertising, trade and investment as well as dispute resolution. The ICC Commission on Arbitration and ADR is a unique think tank on international dispute resolution which provides guidance and practical tools to businesses and legal practitioners.

ICC also offers a wide choice of administered procedures for settling disputes outside the courts. In 2020, parties from 145 countries have used ICC's dispute resolution services. Through its network of offices and 90+ National Committees and groups, ICC has access to worldwide candidates and can offer the most suitable arbitrator or mediator failing a nomination by the parties.

The ICC International Court of Arbitration, the main initiator of the 1958 New York Convention, has administered over 25,000 cases since its creation in 1923. The three-year appointed Court members from over 100 countries, as well as the various nationalities at the ICC Court Secretariat, reflect the Court's neutrality and ability to take into account different cultural and legal backgrounds. The Secretariat, which is the main link between parties, arbitrators and the Court, has offices in ICC headquarters in Paris (7 teams focusing on different regions) but also in Hong Kong, New York (SICANA), Sao Paulo, Singapore, and a recent opening in Abu Dhabi.

Under the ICC Arbitration Rules, the Court can intervene at different stages where necessary to unblock the arbitration procedure and ensure an efficient and fair procedure. Awards rendered are subject to a scrutiny process and approved by the Court, hence aiming at well-reasoned and enforceable decisions. On the other hand, parties can choose any place or language for the proceedings, adapt time limits if necessary, agree on the number of arbitrators and nominate the arbitrator of their choice, subject to the institution's review of his/her independence, impartiality and availability. The ICC Note to Parties and Arbitral Tribunals on the Conduct of Arbitration2 provides guidance for all stages of the arbitration.

The International Centre for ADR provides complementary services which are compelling alternatives to litigation. Such services include mediation but also administered expertise, expert appointments, rules for setting up and running dispute boards, expert decisions on trade finance instruments, including documentary credits.

The ICC Mediation Rules are flexible and parties can deviate from the Rules so as to shape the Mediation as they deem fit. The Rules apply where parties have agreed to mediation but, in the absence of such agreement, the Centre can assist the parties in considering the use of mediation.

Arbitration and Mediation Rules are available in many languages and are updated regularly to match present situations and needs. The 2021 Arbitration Rules, for instance, meet the demand for greater efficiency, transparency and flexibility in complex or lower-value disputes. ICC dispute resolution model clauses, a good starting point for an efficient arbitration, include options for different combinations of arbitration and mediation techniques as well as for the exclusion of the emergency arbitrator or expedited procedure provisions.

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[2] *Available at https://iccwbo.org/publication/note-parties-arbitral-tribunals-conduct-arbitration/*

INTRODUCTORY PROVISIONS

Article 1: International Court of Arbitration

1)
The International Court of Arbitration (the "Court") of the International Chamber of Commerce ("ICC") is the independent arbitration body of ICC. The statutes of the Court are set forth in Appendix I.
2)
The Court does not itself resolve disputes. It administers the resolution of disputes by arbitral tribunals, in accordance with the Rules of Arbitration of ICC (the "Rules"). The Court is the only body authorized to administer arbitrations under the Rules, including the scrutiny and approval of awards rendered in accordance with the Rules. It draws up its own internal rules, which are set forth in Appendix II (the "Internal Rules").
3)
The President of the Court (the "President") shall have the power to take urgent decisions on behalf of the Court, provided that any such decision is reported to the Court at one of its next sessions. At the President's request, in the President's absence or otherwise where the President is unable to act, one of the Vice-Presidents shall have the same power.
4)
As provided for in the Internal Rules, the Court may delegate to one or more committees composed of its members the power to take certain decisions, provided that any such decision is reported to the Court at one of its next sessions.
5)
The Court is assisted in its work by the Secretariat of the Court (the "Secretariat") under the direction of its Secretary General (the "Secretary General").

Article 2: Definitions

In the Rules:

(i) "arbitral tribunal" includes one or more arbitrators;
(ii) "claimant" includes one or more claimants, "respondent" includes one or more respondents, and "additional party" includes one or more additional parties;
(iii) "party" or "parties" include claimants, respondents or additional parties;
(iv) "claim" or "claims" include any claim by any party against any other party;
(v) "award" includes, inter alia, an interim, partial, final, or additional award.

Article 3: Written Notifications or Communications; Time Limits

1)
Save as otherwise provided in Articles 4(4)(b) and 5(3), all pleadings and other written communications submitted by any party, as well as all documents annexed thereto, shall be sent to each party, each arbitrator, and the Secretariat. Any notification or communication from the arbitral tribunal to the parties shall also be sent in copy to the Secretariat.
2)
All notifications or communications from the Secretariat and the arbitral tribunal shall be made to the last address of the party or its representative for whom the same are intended, as notified either by the party in question or by any other party. Such notification or communication may be made by delivery against receipt, registered post, courier, email, or any other means of telecommunication that provides a record of the sending thereof.
3)
A notification or communication shall be deemed to have been made on the day it was received by the party itself or by its representative, or would have been received if made in accordance with Article 3(2).
4)
Periods of time specified in or fixed under the Rules shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with Article 3(3). When the day next following such date is an official holiday, or a non-business day in the country where the notification or communication is deemed to have been made, the period of time shall commence on the first following business day. Official holidays and non-business days are included in the calculation of the period of time. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication is deemed to have been made, the period of time shall expire at the end of the first following business day.

COMMENCING THE ARBITRATION

Article 4: Request for Arbitration

1)
A party wishing to have recourse to arbitration under the Rules shall submit its Request for Arbitration (the "Request") to the Secretariat at any of the offices specified in the Internal Rules. The Secretariat shall notify the claimant

and respondent of the receipt of the Request and the date of such receipt.

2)
The date on which the Request is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of the arbitration.

3)
The Request shall contain the following information:

a) the name in full, description, address and other contact details of each of the parties;
b) the name in full, address and other contact details of any person(s) representing the claimant in the arbitration;
c) a description of the nature and circumstances of the dispute giving rise to the claims and of the basis upon which the claims are made;
d) a statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;
e) any relevant agreements and, in particular, the arbitration agreement(s);
f) where claims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each claim is made;
g) all relevant particulars and any observations or proposals concerning the number of arbitrators and their choice in accordance with the provisions of Articles 12 and 13, and any nomination of an arbitrator required thereby; and
h) all relevant particulars and any observations or proposals as to the place of the arbitration, the applicable rules of law and the language of the arbitration.
The claimant may submit such other documents or information with the Request as it considers appropriate or as may contribute to the efficient resolution of the dispute.

4)
Together with the Request, the claimant shall:

a) make payment of the filing fee required by Appendix III ("Arbitration Costs and Fees") in force on the date the Request is submitted; and
b) submit a sufficient number of copies of the Request for each other party, each arbitrator and the Secretariat where the claimant requests transmission of the Request by delivery against receipt, registered post or courier.

In the event that the claimant fails to comply with either of these requirements, the Secretariat may fix a time limit within which the claimant must comply, failing which the file shall be closed without prejudice to the claimant's right to submit the same claims at a later date in another Request.

5)
The Secretariat shall transmit a copy of the Request and the documents annexed thereto to the respondent for its Answer to the Request once the Secretariat has sufficient copies of the Request and the required filing fee.

Article 5: Answer to the Request; Counterclaims

1

1)
Within 30 days from receipt of the Request from the Secretariat, the respondent shall submit an Answer (the "Answer") which shall contain the following information:

a) its name in full, description, address and other contact details;
b) the name in full, address and other contact details of any person(s) representing the respondent in the arbitration;
c) its comments as to the nature and circumstances of the dispute giving rise to the claims and the basis upon which the claims are made;
d) its response to the relief sought;
e) any observations or proposals concerning the number of arbitrators and their choice in light of the claimant's proposals and in accordance with the provisions of Articles 12 and 13, and any nomination of an arbitrator required thereby; and
f) any observations or proposals as to the place of the arbitration, the applicable rules of law and the language of the arbitration.
The respondent may submit such other documents or information with the Answer as it considers appropriate or as may contribute to the efficient resolution of the dispute.

2)
The Secretariat may grant the respondent an extension of the time for submitting the Answer, provided the application for such an extension contains the respondent's observations or proposals concerning the number of arbitrators and their choice and, where required by Articles 12 and 13, the nomination of an arbitrator. If the respondent fails to do so, the Court shall proceed in accordance with the Rules.

3)
The Answer shall be submitted in a sufficient number of copies for each other party, each arbitrator and the Secretariat where the respondent requests transmission thereof by delivery against receipt, registered post or courier.

4)
The Secretariat shall communicate the Answer and the documents annexed thereto to all other parties.
5)
Any counterclaims made by the respondent shall be submitted with the Answer and shall provide:

a) a description of the nature and circumstances of the dispute giving rise to the counterclaims and of the basis upon which the counterclaims are made;
b) a statement of the relief sought together with the amounts of any quantified counterclaims and, to the extent possible, an estimate of the monetary value of any other counterclaims;
c) any relevant agreements and, in particular, the arbitration agreement(s); and
d) where counterclaims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each counterclaim is made.
The respondent may submit such other documents or information with the counterclaims as it considers appropriate or as may contribute to the efficient resolution of the dispute.

6)
The claimant shall submit a reply to any counterclaim within 30 days from receipt of the counterclaims communicated by the Secretariat. Prior to the transmission of the file to the arbitral tribunal, the Secretariat may grant the claimant an extension of time for submitting the reply.

Article 6: Effect of the Arbitration Agreement

1)
Where the parties have agreed to submit to arbitration under the Rules, they shall be deemed to have submitted ipso facto to the Rules in effect on the date of commencement of the arbitration, unless they have agreed to submit to the Rules in effect on the date of their arbitration agreement.
2)
By agreeing to arbitration under the Rules, the parties have accepted that the arbitration shall be administered by the Court.
3)
If any party against which a claim has been made does not submit an Answer, or if any party raises one or more pleas concerning the existence, validity or scope of the arbitration agreement or concerning whether all of the claims made in the arbitration may be determined together in a single arbitration, the arbitration shall proceed and any question of jurisdiction or of whether the claims may be determined together in that arbitration shall be decided directly by the arbitral tribunal, unless the Secretary General refers the matter to the Court for its decision pursuant to Article 6(4).
4)
In all cases referred to the Court under Article 6(3), the Court shall decide whether and to what extent the arbitration shall proceed. The arbitration shall proceed if and to the extent that the Court is prima facie satisfied that an arbitration agreement under the Rules may exist. In particular:

(i) where there are more than two parties to the arbitration, the arbitration shall proceed between those of the parties, including any additional parties joined pursuant to Article 7(1), with respect to which the Court is prima facie satisfied that an arbitration agreement under the Rules that binds them all may exist; and
(ii) where claims pursuant to Article 9 are made under more than one arbitration agreement, the arbitration shall proceed as to those claims with respect to which the Court is prima facie satisfied (a) that the arbitration agreements under which those claims are made may be compatible, and (b) that all parties to the arbitration may have agreed that those claims can be determined together in a single arbitration.

The Court's decision pursuant to Article 6(4) is without prejudice to the admissibility or merits of any party's plea or pleas.
5)
In all matters decided by the Court under Article 6(4), any decision as to the jurisdiction of the arbitral tribunal, except as to parties or claims with respect to which the Court decides that the arbitration cannot proceed, shall then be taken by the arbitral tribunal itself.
6)
Where the parties are notified of the Court's decision pursuant to Article 6(4) that the arbitration cannot proceed in respect of some or all of them, any party retains the right to ask any court having jurisdiction whether or not, and in respect of which of them, there is a binding arbitration agreement.
7)
Where the Court has decided pursuant to Article 6(4) that the arbitration cannot proceed in respect of any of the claims, such decision shall not prevent a party from reintroducing the same claim at a later date in other proceedings.
8)
If any of the parties refuses or fails to take part in the arbitration or any stage thereof, the arbitration shall proceed notwithstanding such refusal or failure.
9)
Unless otherwise agreed, the arbitral tribunal shall not cease to have jurisdiction by reason of any allegation that the contract is non-existent or null and void, provided that the arbitral tribunal upholds the validity of the arbitration agreement. The arbitral tribunal shall continue to have jurisdiction to determine the parties' respective rights and to decide their claims and pleas even though the contract itself may be non-existent or null and void.

MULTIPLE PARTIES, MULTIPLE CONTRACTS AND CONSOLIDATION

Article 7: Joinder of Additional Parties

1)
A party wishing to join an additional party to the arbitration shall submit its request for arbitration against the additional party (the "Request for Joinder") to the Secretariat. The date on which the Request for Joinder is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of arbitration against the additional party. Any such joinder shall be subject to the provisions of Articles 6(3)–6(7) and 9. Unless all parties, including the additional party, otherwise agree, or as provided for in Article 7(5), no additional party may be joined after the confirmation or appointment of any arbitrator. The Secretariat may fix a time limit for the submission of a Request for Joinder.
2)
The Request for Joinder shall contain the following information:

a) the case reference of the existing arbitration;
b) the name in full, description, address and other contact details of each of the parties, including the additional party; and
c) the information specified in Article 4(3), subparagraphs c), d), e) and f).

The party filing the Request for Joinder may submit therewith such other documents or information as it considers appropriate or as may contribute to the efficient resolution of the dispute.
3)
The provisions of Articles 4(4) and 4(5) shall apply, mutatis mutandis, to the Request for Joinder.
4)
The additional party shall submit an Answer in accordance, mutatis mutandis, with the provisions of Articles 5(1)–5(4). The additional party may make claims against any other party in accordance with the provisions of Article 8.
5)
Any Request for Joinder made after the confirmation or appointment of any arbitrator shall be decided by the arbitral tribunal once constituted and shall be subject to the additional party accepting the constitution of the arbitral tribunal and agreeing to the Terms of Reference, where applicable. In deciding on such a Request for Joinder, the arbitral tribunal shall take into account all relevant circumstances, which may include whether the arbitral tribunal has prima facie jurisdiction over the additional party, the timing of the Request for Joinder, possible conflicts of interests and the impact of the joinder on the arbitral procedure. Any decision to join an additional party is without prejudice to the arbitral tribunal's decision as to its jurisdiction with respect to that party.

Article 8: Claims Between Multiple Parties

1)
In an arbitration with multiple parties, claims may be made by any party against any other party, subject to the provisions of Articles 6(3)-6(7) and 9 and provided that no new claims may be made after the Terms of Reference are signed or approved by the Court without the authorization of the arbitral tribunal pursuant to Article 23(4).
2)
Any party making a claim pursuant to Article 8(1) shall provide the information specified in Article 4(3) subparagraphs c), d), e) and f).
3)
Before the Secretariat transmits the file to the arbitral tribunal in accordance with Article 16, the following provisions shall apply, mutatis mutandis, to any claim made: Article 4(4) subparagraph b); Article 4(5); Article 5(1) except for subparagraphs a), b), e) and f); Article 5(2); Article 5(3) and Article 5(4). Thereafter, the arbitral tribunal shall determine the procedure for making a claim.

Article 9: Multiple Contracts

Subject to the provisions of Articles 6(3)-6(7) and 23(4), claims arising out of or in connection with more than one contract may be made in a single arbitration, irrespective of whether such claims are made under one or more than one arbitration agreement under the Rules.

Article 10: Consolidation of Arbitrations

The Court may, at the request of a party, consolidate two or more arbitrations pending under the Rules into a single arbitration, where:

a) the parties have agreed to consolidation; or
b) all of the claims in the arbitrations are made under the same arbitration agreement or agreements; or
c) the claims in the arbitrations are not made under the same arbitration agreement or agreements, but the arbitrations are between the same parties, the disputes in the arbitrations arise in connection with the same legal relationship, and the Court finds the arbitration agreements to be compatible.

In deciding whether to consolidate, the Court may take into account any circumstances it considers to be relevant, including whether one or more arbitrators have been con-

firmed or appointed in more than one of the arbitrations and, if so, whether the same or different persons have been confirmed or appointed.

When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties.

THE ARBITRAL TRIBUNAL

Article 11: General Provisions

1)
Every arbitrator must be and remain impartial and independent of the parties involved in the arbitration.
2)
Before appointment or confirmation, a prospective arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The prospective arbitrator shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence in the eyes of the parties, as well as any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality. The Secretariat shall provide such information to the parties in writing and fix a time limit for any comments from them.
3)
An arbitrator shall immediately disclose in writing to the Secretariat and to the parties any facts or circumstances of a similar nature to those referred to in Article 11(2) concerning the arbitrator's impartiality or independence which may arise during the arbitration.
4)
The decisions of the Court as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final.
5)
By accepting to serve, arbitrators undertake to carry out their responsibilities in accordance with the Rules.
6)
Insofar as the parties have not provided otherwise, the arbitral tribunal shall be constituted in accordance with the provisions of Articles 12 and 13.
7)
In order to assist prospective arbitrators and arbitrators in complying with their duties under Articles 11(2) and 11(3), each party must promptly inform the Secretariat, the arbitral tribunal and the other parties, of the existence and identity of any non-party which has entered into an arrangement for the funding of claims or defences and under which it has an economic interest in the outcome of the arbitration.

Article 12: Constitution of the Arbitral Tribunal

Number of Arbitrators

1)
The disputes shall be decided by a sole arbitrator or by three arbitrators.

2)
Where the parties have not agreed upon the number of arbitrators, the Court shall appoint a sole arbitrator, save where it appears to the Court that the dispute is such as to warrant the appointment of three arbitrators. In such case, the claimant shall nominate an arbitrator within 15 days from receipt of the notification of the decision of the Court, and the respondent shall nominate an arbitrator within 15 days from receipt of the notification of the nomination made by the claimant. If a party fails to nominate an arbitrator, the appointment shall be made by the Court.

Sole Arbitrator

3)
Where the parties have agreed that the dispute shall be resolved by a sole arbitrator, they may, by agreement, nominate the sole arbitrator for confirmation. If the parties fail to nominate a sole arbitrator within 30 days from the date when the claimant's Request for Arbitration has been received by the other party or parties, or within such additional time as may be allowed by the Secretariat, the sole arbitrator shall be appointed by the Court.

Three Arbitrators

4)
Where the parties have agreed that the dispute shall be resolved by three arbitrators, each party shall nominate in the Request and the Answer, respectively, one arbitrator for confirmation. If a party fails to nominate an arbitrator, the appointment shall be made by the Court.
5)
Where the dispute is to be referred to three arbitrators, the third arbitrator, who will act as president of the arbitral tribunal, shall be appointed by the Court, unless the parties have agreed upon another procedure for such appointment, in which case the nomination will be subject to confirmation pursuant to Article 13. such procedure not result in a nomination within 30 days from the confirmation or appointment of the co-arbitrators or any other time limit agreed by the parties or fixed by the Court, the third arbitrator shall be appointed by the Court.

6)
Where there are multiple claimants or multiple respondents, and where the dispute is to be referred to three arbitrators, the multiple claimants, jointly, and the multiple respondents, jointly, shall nominate an arbitrator for confirmation pursuant to Article 13.
7)
Where an additional party has been joined, (Article 7(1)), and where the dispute is to be referred to three arbitrators, the additional party may, jointly with the claimant(s) or with the respondent(s), nominate an arbitrator for confirmation pursuant to Article 13 and subject to Article 7(5).
8)
In the absence of a joint nomination pursuant to Articles 12(6) or 12(7) and where all parties are unable to agree to a method for the constitution of the arbitral tribunal, the Court may appoint each member of the arbitral tribunal and shall designate one of them to act as president. In such cases, the Court shall be at liberty to choose any person it regards as suitable to act as arbitrator, applying Article 13 when it considers this appropriate.
9)
Notwithstanding any agreement by the parties on the method of constitution of the arbitral tribunal, in exceptional circumstances the Court may appoint each member of the arbitral tribunal to avoid a significant risk of unequal treatment and unfairness that may affect the validity of the award.

Article 13: Appointment and Confirmation of the Arbitrators

1)
In confirming or appointing arbitrators, the Court shall consider the prospective arbitrator's nationality, residence and other relationships with the countries of which the parties or the other arbitrators are nationals and the prospective arbitrator's availability and ability to conduct the arbitration in accordance with the Rules. The same shall apply where the Secretary General confirms arbitrators pursuant to Article 13(2).
2)
The Secretary General may confirm as co-arbitrators, sole arbitrators and presidents of arbitral tribunals persons nominated by the parties or pursuant to their particular agreements, provided that the statement they have submitted contains no qualification regarding impartiality or independence or that a qualified statement regarding impartiality or independence has not given rise to objections. Such confirmation shall be reported to the Court at one of its next sessions. If the Secretary General considers that a co-arbitrator, sole arbitrator or president of an arbitral tribunal should not be confirmed, the matter shall be submitted to the Court.
3)
Where the Court is to appoint an arbitrator, it shall make the appointment upon proposal of an ICC National Committee or Group that it considers to be appropriate. If the Court does not accept the proposal made, or if the National Committee or Group fails to make the proposal requested within the time limit fixed by the Court, the Court may repeat its request, request a proposal from another National Committee or Group that it considers to be appropriate, or appoint directly any person whom it regards as suitable.
4)
The Court may also appoint directly to act as arbitrator any person whom it regards as suitable where:

a) one or more of the parties is a state or may be considered to be a state entity;
b) the Court considers that it would be appropriate to appoint an arbitrator from a country or territory where there is no National Committee or Group; or
c) the President certifies to the Court that circumstances exist which, in the President's opinion, make a direct appointment necessary and appropriate.

5)
Where the Court is to appoint the sole arbitrator or the president of the arbitral tribunal, such sole arbitrator or president of the arbitral tribunal shall be of a nationality other than those of the parties. However, in suitable circumstances and provided that none of the parties objects within the time limit fixed by the Secretariat, the sole arbitrator or the president of the arbitral tribunal may be chosen from a country of which any of the parties is a national.
6)
Whenever the arbitration agreement upon which the arbitration is based arises from a treaty, and unless the parties agree otherwise, no arbitrator shall have the same nationality of any party to the arbitration.

Article 14: Challenge of Arbitrators

1)
A challenge of an arbitrator, whether for an alleged lack of impartiality or independence, or otherwise, shall be made by the submission to the Secretariat of a written statement specifying the facts and circumstances on which the challenge is based.
2)
For a challenge to be admissible, it must be submitted by a party either within 30 days from receipt by that party of the notification of the appointment or confirmation of the arbitrator, or within 30 days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.

3)
The Court shall decide on the admissibility and, at the same time, if necessary, on the merits of a challenge after the Secretariat has afforded an opportunity for the arbitrator concerned, the other party or parties and any other members of the arbitral tribunal to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.

Article 15: Replacement of Arbitrators

1)
An arbitrator shall be replaced upon death, upon acceptance by the Court of the arbitrator's resignation, upon acceptance by the Court of a challenge, or upon acceptance by the Court of a request of all the parties.
2)
An arbitrator shall also be replaced on the Court's own initiative when it decides that the arbitrator is prevented de jure or de facto from fulfilling the arbitrator's functions, or that the arbitrator is not fulfilling those functions in accordance with the Rules or within the prescribed time limits.
3)
When, on the basis of information that has come to its attention, the Court considers applying Article 15(2), it shall decide on the matter after the arbitrator concerned, the parties and any other members of the arbitral tribunal have had an opportunity to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.
4)
When an arbitrator is to be replaced, the Court has discretion to decide whether or not to follow the original nominating process. Once reconstituted, and after having invited the parties to comment, the arbitral tribunal shall determine if and to what extent prior proceedings shall be repeated before the reconstituted arbitral tribunal.
5)
Subsequent to the closing of the proceedings, instead of replacing an arbitrator who has died or been removed by the Court pursuant to Articles 15(1) or 15(2), the Court may decide, when it considers it appropriate, that the remaining arbitrators shall continue the arbitration. In making such determination, the Court shall take into account the views of the remaining arbitrators and of the parties and such other matters that it considers appropriate in the circumstances.

THE ARBITRAL PROCEEDINGS

Article 16: Transmission of the File to the Arbitral Tribunal

The Secretariat shall transmit the file to the arbitral tribunal as soon as it has been constituted, provided the advance on costs requested by the Secretariat at this stage has been paid.

Article 17: Party Representation

1)
Each party must promptly inform the Secretariat, the arbitral tribunal and the other parties of any changes in its representation.
2)
The arbitral tribunal may, once constituted and after it has afforded an opportunity to the parties to comment in writing within a suitable period of time, take any measure necessary to avoid a conflict of interest of an arbitrator arising from a change in party representation, including the exclusion of new party representatives from participating in whole or in part in the arbitral proceedings.
3)
At any time after the commencement of the arbitration, the arbitral tribunal or the Secretariat may require proof of the authority of any party representatives.

Article 18: Place of the Arbitration

1)
The place of the arbitration shall be fixed by the Court, unless agreed upon by the parties.
2)
The arbitral tribunal may, after consulting the parties, conduct hearings and meetings at any location it considers appropriate, unless otherwise agreed by the parties.
3)
The arbitral tribunal may deliberate at any location it considers appropriate.

Article 19: Rules Governing the Proceedings

The proceedings before the arbitral tribunal shall be governed by the Rules and, where the Rules are silent, by any rules which the parties or, failing them, the arbitral tribunal may settle on, whether or not reference is thereby made to the rules of procedure of a national law to be applied to the arbitration.

Article 20: Language of the Arbitration

In the absence of an agreement by the parties, the arbitral tribunal shall determine the language or languages of the arbitration, due regard being given to all relevant circumstances, including the language of the contract.

Article 21: Applicable Rules of Law

1)
The parties shall be free to agree upon the rules of law to be applied by the arbitral tribunal to the merits of the dispute. In the absence of any such agreement, the arbitral tribunal shall apply the rules of law which it determines to be appropriate.
2)
The arbitral tribunal shall take account of the provisions of the contract, if any, between the parties and of any relevant trade usages.
3)
The arbitral tribunal shall assume the powers of an amiable compositeur or decide ex aequo et bono only if the parties have agreed to give it such powers.

Article 22: Conduct of the Arbitration

1)
The arbitral tribunal and the parties shall make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute.
2)
In order to ensure effective case management, after consulting the parties, the arbitral tribunal shall adopt such procedural measures as it considers appropriate, provided that they are not contrary to any agreement of the parties. Such measures may include one or more of the case management techniques described in Appendix IV.
3)
Upon the request of any party, the arbitral tribunal may make orders concerning the confidentiality of the arbitration proceedings or of any other matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.
4)
In all cases, the arbitral tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.
5)
The parties undertake to comply with any order made by the arbitral tribunal.

Article 23: Terms of Reference

1)
As soon as it has received the file from the Secretariat, the arbitral tribunal shall draw up, on the basis of documents or in the presence of the parties and in the light of their most recent submissions, a document defining its Terms of Reference. This document shall include the following particulars:

a) the names in full, description, address and other contact details of each of the parties and of any person(s) representing a party in the arbitration;
b) the addresses to which notifications and communications arising in the course of the arbitration may be made;
c) a summary of the parties' respective claims and of the relief sought by each party, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;
d) unless the arbitral tribunal considers it inappropriate, a list of issues to be determined;
e) the names in full, address and other contact details of each of the arbitrators;
f) the place of the arbitration; and
g) particulars of the applicable procedural rules and, if such is the case, reference to the power conferred upon the arbitral tribunal to act as amiable compositeur or to decide ex aequo et bono.

2)
The Terms of Reference shall be signed by the parties and the arbitral tribunal. Within 30 days from the date on which the file has been transmitted to it, the arbitral tribunal shall transmit to the Court the Terms of Reference signed by it and by the parties. The Court may extend this time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so.
3)
If any of the parties refuses to take part in the drawing up of the Terms of Reference or to sign the same, they shall be submitted to the Court for approval. When the Terms of Reference have been signed in accordance with Article 23(2) or approved by the Court, the arbitration shall proceed.
4)
After the Terms of Reference have been signed or approved by the Court, no party shall make new claims which fall outside the limits of the Terms of Reference unless it has been authorized to do so by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances.

Article 24: Case Management Conference and Procedural Timetable

1)
When drawing up the Terms of Reference or as soon as possible thereafter, the arbitral tribunal shall hold a case management conference to consult the parties on procedural measures that may be adopted pursuant to Article 22(2).
2)
During such conference, or as soon as possible thereafter, the arbitral tribunal shall establish the procedural timetable that it intends to follow for the efficient conduct of the arbitration. The procedural timetable and any modifications thereto shall be communicated to the Court and the parties.
3)
To ensure continued effective case management, the arbitral tribunal, after consulting the parties by means of a further case management conference or otherwise, may adopt further procedural measures or modify the procedural timetable.
4)
Case management conferences may be conducted through a meeting in person, by video conference, telephone or similar means of communication. In the absence of an agreement of the parties, the arbitral tribunal shall determine the means by which the conference will be conducted. The arbitral tribunal may request the parties to submit case management proposals in advance of a case management conference and may request the attendance at any case management conference of the parties in person or through an internal representative.

Article 25: Establishing the Facts of the Case

1)
The arbitral tribunal shall proceed within as short a time as possible to establish the facts of the case by all appropriate means.
2)
The arbitral tribunal may decide to hear witnesses, experts appointed by the parties or any other person, in the presence of the parties, or in their absence provided they have been duly summoned.
3)
The arbitral tribunal, after consulting the parties, may appoint one or more experts, define their terms of reference and receive their reports. At the request of a party, the parties shall be given the opportunity to question at a hearing any such expert.
4)
At any time during the proceedings, the arbitral tribunal may summon any party to provide additional evidence.
5)
The arbitral tribunal may decide the case solely on the documents submitted by the parties unless any of the parties requests a hearing.

Article 26: Hearings

1)
A hearing shall be held if any of the parties so requests or, failing such a request, if the arbitral tribunal on its own motion decides to hear the parties. When a hearing is to be held, the arbitral tribunal, giving reasonable notice, shall summon the parties to appear before it on the day and at the place fixed by it. The arbitral tribunal may decide, after consulting the parties, and on the basis of the relevant facts and circumstances of the case, that any hearing will be conducted by physical attendance or remotely by videoconference, telephone or other appropriate means of communication.
2)
If any of the parties, although duly summoned, fails to appear without valid excuse, the arbitral tribunal shall have the power to proceed with the hearing.
3)
The arbitral tribunal shall be in full charge of the hearings, at which all the parties shall be entitled to be present. Save with the approval of the arbitral tribunal and the parties, persons not involved in the proceedings shall not be admitted.
4)
The parties may appear in person or through duly authorized representatives. In addition, they may be assisted by advisers.

Article 27: Closing of the Proceedings and Date for Submission of Draft Awards

As soon as possible after the last hearing concerning matters to be decided in an award or the filing of the last authorized submissions concerning such matters, whichever is later, the arbitral tribunal shall:

a) declare the proceedings closed with respect to the matters to be decided in the award; and
b) inform the Secretariat and the parties of the date by which it expects to submit its draft award to the Court for approval pursuant to Article 34.

After the proceedings are closed, no further submission or argument may be made, or evidence produced, with respect to the matters to be decided in the award, unless requested or authorized by the arbitral tribunal.

Article 28: Conservatory and Interim Measures

1)
Unless the parties have otherwise agreed, as soon as the file has been transmitted to it, the arbitral tribunal may, at the request of a party, order any interim or conservatory measure it deems appropriate. The arbitral tribunal may make the granting of any such measure subject to appropriate security being furnished by the requesting party. Any such measure shall take the form of an order, giving reasons, or of an award, as the arbitral tribunal considers appropriate.
2)
Before the file is transmitted to the arbitral tribunal, and in appropriate circumstances even thereafter, the parties may apply to any competent judicial authority for interim or conservatory measures. The application of a party to a judicial authority for such measures or for the implementation of any such measures ordered by an arbitral tribunal shall not be deemed to be an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers reserved to the arbitral tribunal. Any such application and any measures taken by the judicial authority must be notified without delay to the Secretariat. The Secretariat shall inform the arbitral tribunal thereof.

Article 29: Emergency Arbitrator

1)
A party that needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal ("Emergency Measures") may make an application for such measures pursuant to the Emergency Arbitrator Rules in Appendix V. Any such application shall be accepted only if it is received by the Secretariat prior to the transmission of the file to the arbitral tribunal pursuant to Article 16 and irrespective of whether the party making the application has already submitted its Request for Arbitration.
2)
The emergency arbitrator's decision shall take the form of an order. The parties undertake to comply with any order made by the emergency arbitrator.
3)
The emergency arbitrator's order shall not bind the arbitral tribunal with respect to any question, issue or dispute determined in the order. The arbitral tribunal may modify, terminate or annul the order or any modification thereto made by the emergency arbitrator.
4)
The arbitral tribunal shall decide upon any party's requests or claims related to the emergency arbitrator proceedings, including the reallocation of the costs of such proceedings and any claims arising out of or in connection with the compliance or non-compliance with the order.
5)
Articles 29(1)-29(4) and the Emergency Arbitrator Rules set forth in Appendix V (collectively the "Emergency Arbitrator Provisions") shall apply only to parties that are either signatories of the arbitration agreement under the Rules that is relied upon for the application or successors to such signatories.
6)
The Emergency Arbitrator Provisions shall not apply if:

a) the arbitration agreement under the Rules was concluded before 1 January 2012;
b) the parties have agreed to opt out of the Emergency Arbitrator Provisions; or
c) the arbitration agreement upon which the application is based arises from a treaty.

7)
The Emergency Arbitrator Provisions are not intended to prevent any party from seeking urgent interim or conservatory measures from a competent judicial authority at any time prior to making an application for such measures, and in appropriate circumstances even thereafter, pursuant to the Rules. Any application for such measures from a competent judicial authority shall not be deemed to be an infringement or a waiver of the arbitration agreement. Any such application and any measures taken by the judicial authority must be notified without delay to the Secretariat.

Article 30: Expedited Procedure

1)
By agreeing to arbitration under the Rules, the parties agree that this Article 30 and the Expedited Procedure Rules set forth in Appendix VI (collectively the "Expedited Procedure Provisions") shall take precedence over any contrary terms of the arbitration agreement.
2)
The Expedited Procedure Rules set forth in Appendix VI shall apply if:

a) the amount in dispute does not exceed the limit set out in Article 1(2) of Appendix VI at the time of the communication referred to in Article 1(3) of that Appendix; or
b) the parties so agree.

3)
The Expedited Procedure Provisions shall not apply if:

a) the arbitration agreement under the Rules was concluded before the date on which the Expedited Procedure Provisions came into force;
b) the parties have agreed to opt out of the Expedited Procedure Provisions; or

c) the Court, upon the request of a party before the constitution of the arbitral tribunal or on its own motion, determines that it is inappropriate in the circumstances to apply the Expedited Procedure Provisions.

AWARDS

Article 31: Time Limit for the Final Award

1)
The time limit within which the arbitral tribunal must render its final award is six months. Such time limit shall start to run from the date of the last signature by the arbitral tribunal or by the parties of the Terms of Reference or, in the case of application of Article 23(3), the date of the notification to the arbitral tribunal by the Secretariat of the approval of the Terms of Reference by the Court. The Court may fix a different time limit based upon the procedural timetable established pursuant to Article 24(2).
2)
The Court may extend the time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so.

Article 32: Making of the Award

1)
When the arbitral tribunal is composed of more than one arbitrator, an award is made by a majority decision. If there is no majority, the award shall be made by the president of the arbitral tribunal alone.
2)
The award shall state the reasons upon which it is based.
3)
The award shall be deemed to be made at the place of the arbitration and on the date stated therein.

Article 33: Award by Consent

If the parties reach a settlement after the file has been transmitted to the arbitral tribunal in accordance with Article 16, the settlement shall be recorded in the form of an award made by consent of the parties, if so requested by the parties and if the arbitral tribunal agrees to do so.

Article 34: Scrutiny of the Award by the Court

Before signing any award, the arbitral tribunal shall submit it in draft form to the Court. The Court may lay down modifications as to the form of the award and, without affecting the arbitral tribunal's liberty of decision, may also draw its attention to points of substance. No award shall be rendered by the arbitral tribunal until it has been approved by the Court as to its form.

Article 35: Notification, Deposit and Enforceability of the Award

1)
Once an award has been made, the Secretariat shall notify to the parties the text signed by the arbitral tribunal, provided always that the costs of the arbitration have been fully paid to ICC by the parties or by one of them.
2)
Additional copies certified true by the Secretary General shall be made available on request and at any time to the parties, but to no one else.
3)
By virtue of the notification made in accordance with Article 35(1), the parties waive any other form of notification or deposit on the part of the arbitral tribunal.
4)
An original of each award made in accordance with the Rules shall be deposited with the Secretariat.
5)
The arbitral tribunal and the Secretariat shall assist the parties in complying with whatever further formalities may be necessary.
6)
Every award shall be binding on the parties. By submitting the dispute to arbitration under the Rules, the parties undertake to carry out any award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made.

Article 36: Correction and Interpretation of the Award; Additional Award; Remission of Awards

1)
On its own initiative, the arbitral tribunal may correct a clerical, computational or typographical error, or any errors of similar nature contained in an award, provided such correction is submitted for approval to the Court within 30 days from notification of the award by the Secretariat pursuant to Article 35(1).
2)
Any application of a party for the correction of an error of the kind referred to in Article 36(1), or for the interpretation of an award, must be made to the Secretariat within 30 days from receipt of the award by such party.
3)
Any application of a party for an additional award as to claims made in the arbitral proceedings which the arbitral tribunal has omitted to decide must be made to the Secretariat within 30 days from receipt of the award by such party.

4)
After transmission of an application pursuant to Articles 36(2) or 36(3) to the arbitral tribunal, the latter shall grant the other party or parties a short time limit, normally not exceeding 30 days, from receipt of the application by that party or parties, to submit any comments thereon. The arbitral tribunal shall submit its decision on the application in draft form to the Court not later than 30 days from expiry of the time limit for the receipt of any comments from the other party or parties or within such other period as the Court may decide. A decision to correct or to interpret the award shall take the form of an addendum and shall constitute part of the award. A decision to grant the application under paragraph 3 shall take the form of an additional award. The provisions of Articles 32, 34 and 35 shall apply mutatis mutandis.
5)
Where a court remits an award to the arbitral tribunal, the provisions of Articles 32, 34, 35 and this Article 36 shall apply mutatis mutandis to any addendum or award made pursuant to the terms of such remission. The Court may take any steps as may be necessary to enable the arbitral tribunal to comply with the terms of such remission and may fix an advance to cover any additional fees and expenses of the arbitral tribunal and any additional ICC administrative expenses.

COSTS

Article 37: Advance to Cover the Costs of the Arbitration

1)
After receipt of the Request, the Secretary General may request the claimant to pay a provisional advance in an amount intended to cover the costs of the arbitration:

a) until the Terms of Reference have been drawn up; or
b) when the Expedited Procedure Provisions apply, until the case management conference.

Any provisional advance paid will be considered as a partial payment by the claimant of any advance on costs fixed by the Court pursuant to this Article 37.
2)
As soon as practicable, the Court shall fix the advance on costs in an amount likely to cover the fees and expenses of the arbitrators, the ICC administrative expenses and any other expenses incurred by ICC related to the arbitration for the claims which have been referred to it by the parties, unless any claims are made under Article 7 or 8 in which case Article 37(4) shall apply. The advance on costs fixed by the Court pursuant to this Article 37(2) shall be payable in equal shares by the claimant and the respondent.
3)
Where counterclaims are submitted by the respondent under Article 5 or otherwise, the Court may fix separate advances on costs for the claims and the counterclaims. When the Court has fixed separate advances on costs, each of the parties shall pay the advance on costs corresponding to its claims.
4)
Where claims are made under Article 7 or 8, the Court shall fix one or more advances on costs that shall be payable by the parties as decided by the Court. Where the Court has previously fixed any advance on costs pursuant to this Article 37, any such advance shall be replaced by the advance(s) fixed pursuant to this Article 37(4), and the amount of any advance previously paid by any party will be considered as a partial payment by such party of its share of the advance(s) on costs as fixed by the Court pursuant to this Article 37(4).
5)
The amount of any advance on costs fixed by the Court pursuant to this Article 37 may be subject to readjustment at any time during the arbitration. In all cases, any party shall be free to pay any other party's share of any advance on costs should such other party fail to pay its share.
6)
When a request for an advance on costs has not been complied with, and after consultation with the arbitral tribunal, the Secretary General may direct the arbitral tribunal to suspend its work and set a time limit, which must be not less than 15 days, on the expiry of which the relevant claims shall be considered as withdrawn. Should the party in question wish to object to this measure, it must make a request within the aforementioned period for the matter to be decided by the Court. Such party shall not be prevented, on the ground of such withdrawal, from reintroducing the same claims at a later date in another proceeding.
7)
If one of the parties claims a right to a set-off with regard to any claim, such set-off shall be taken into account in determining the advance to cover the costs of the arbitration in the same way as a separate claim insofar as it may require the arbitral tribunal to consider additional matters.

Article 38: Decision as to the Costs of the Arbitration

1)
The costs of the arbitration shall include the fees and expenses of the arbitrators and the ICC administrative expenses fixed by the Court, in accordance with the scale in force at the time of the commencement of the arbitration, as well as the fees and expenses of any experts appointed by the arbitral tribunal and the reasonable legal and other costs incurred by the parties for the arbitration.

2)
The Court may fix the fees of the arbitrators at a figure higher or lower than that which would result from the application of the relevant scale should this be deemed necessary due to the exceptional circumstances of the case.
3)
At any time during the arbitral proceedings, the arbitral tribunal may make decisions on costs, other than those to be fixed by the Court, and order payment.
4)
The final award shall fix the costs of the arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.
5)
In making decisions as to costs, the arbitral tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.
6)
In the event of the withdrawal of all claims or the termination of the arbitration before the rendering of a final award, the Court shall fix the fees and expenses of the arbitrators and the ICC administrative expenses. If the parties have not agreed upon the allocation of the costs of the arbitration or other relevant issues with respect to costs, such matters shall be decided by the arbitral tribunal. If the arbitral tribunal has not been constituted at the time of such withdrawal or termination, any party may request the Court to proceed with the constitution of the arbitral tribunal in accordance with the Rules so that the arbitral tribunal may make decisions as to costs.

MISCELLANEOUS

Article 39: Modified Time Limits

1)
The parties may agree to shorten the various time limits set out in the Rules. Any such agreement entered into subsequent to the constitution of an arbitral tribunal shall become effective only upon the approval of the arbitral tribunal.
2)
The Court, on its own initiative, may extend any time limit which has been modified pursuant to Article 39(1) if it decides that it is necessary to do so in order that the arbitral tribunal and the Court may fulfil their responsibilities in accordance with the Rules.

Article 40: Waiver

A party which proceeds with the arbitration without raising its objection to a failure to comply with any provision of the Rules, or of any other rules applicable to the proceedings, any direction given by the arbitral tribunal, or any requirement under the arbitration agreement relating to the constitution of the arbitral tribunal or the conduct of the proceedings, shall be deemed to have waived its right to object.

Article 41: Limitation of Liability

The arbitrators, any person appointed by the arbitral tribunal, the emergency arbitrator, the Court and its members, ICC and its employees, and the ICC National Committees and Groups and their employees and representatives shall not be liable to any person for any act or omission in connection with the arbitration, except to the extent such limitation of liability is prohibited by applicable law.

Article 42: General Rule

In all matters not expressly provided for in the Rules, the Court and the arbitral tribunal shall act in the spirit of the Rules and shall make every effort to make sure that the award is enforceable at law.

Article 43: Governing Law and Settlement of Disputes

Any claims arising out of or in connection with the administration of the arbitration proceedings by the Court under the Rules shall be governed by French law and settled by the Paris Judicial Tribunal (Tribunal Judiciaire de Paris) in France, which shall have exclusive jurisdiction.

APPENDIX I: STATUTES OF THE INTERNATIONAL COURT OF ARBITRATION

Article 1: Function

1)
The function of the International Court of Arbitration of the International Chamber of Commerce (the "Court") is to ensure the application of the Rules of Arbitration of ICC, and it has all the necessary powers for that purpose.
2)
As an autonomous body, it carries out these functions in complete independence from ICC and its organs.
3)
Its members are independent from the ICC National Committees and Groups.

Article 2: Composition of the Court

The Court shall consist of a President, Vice-Presidents, and members and alternate members (collectively designated as

members). In its work it is assisted by its Secretariat (Secretariat of the Court).

Article 3: Appointment

1)
The President is elected by the ICC World Council upon the recommendation of the Executive Board of ICC based on the proposal of an independent selection committee which includes highly distinguished arbitration practitioners.
2)
On the proposal of the President, the ICC World Council appoints the Vice-Presidents of the Court from among the members of the Court or otherwise. The President and the Vice-Presidents of the Court form the Bureau of the Court.
3)
The members of the Court are appointed by the ICC World Council on the proposal of ICC National Committees or Groups, one member for each National Committee or Group. On the proposal of the President, the World Council may appoint alternate members.
4)
On the proposal of the President, the ICC World Council may appoint members and alternate members in countries and territories:

a) where there is no National Committee or Group; or
b) where the National Committee or Group is suspended.

5)
The term of office of all members, including, for the purposes of this paragraph, the President and Vice-Presidents, is three years and may be renewed once. If a member is no longer in a position to exercise the member's functions, a successor is appointed by the World Council for the remainder of the term.
6)
No Court member shall serve for more than two full consecutive terms, unless the World Council decides otherwise upon the recommendation of the Executive Board further to the proposal of the President, in particular where a Court member is proposed for election as Vice-President.

Article 4: Committees

1)
Save as provided in Articles 5(1), 6 and 7 of this Appendix, the Court conducts its work in Committees of three members.
2)
Members of the Committees consist of a president and two other members.

Article 5: Special Committees

1)
The Court may conduct its work in Special Committees:

a) to decide on matters under Articles 14 and 15(2) of the Rules;
b) to scrutinise draft awards in the presence of dissenting opinions;
c) to scrutinise draft awards in cases where one or more of the parties is a state or may be considered to be a state entity;
d) to decide on matters transferred to a Special Committee by a Committee which did not reach a decision or deemed it preferable to abstain, having made any suggestions it deemed appropriate; or
e) upon request of the President.

2)
Members of the Special Committee consist of a president and at least six other members.

Article 6: Single Member Committees

The Court may scrutinize draft awards under the Expedited Procedure Provisions in Single-member Committees.

Article 7: Plenary of the Court

1)
The Court meets in plenary during its annual working session. It also meets in plenary whenever so convened by the President.
2)
The plenary of the Court may take any decision under Articles 4(1), 5(1) and 6 of this Appendix.
3)
Members of the plenary consist of the President, the Vice-Presidents and all Court members who have accepted to attend and are in attendance.

Article 8: Confidentiality

The work of the Court is of a confidential nature which must be respected by everyone who participates in that work in whatever capacity. The Court lays down the rules regarding the persons who can attend the meetings of the Court and its Committees and who are entitled to have access to materials related to the work of the Court and its Secretariat.

Article 9: Modification of the Rules of Arbitration

Any proposal of the Court for a modification of the Rules is laid before the Commission on Arbitration and ADR before submission to the Executive Board of ICC for approval, provided, however, that the Court, in order to take account of developments in information technology, may propose to modify or supplement the provisions of Article 3 of the Rules or any related provisions in the Rules without laying any such proposal before the Commission.

Article 10

The decisions of the Court shall be deemed to be made in Paris, France.

APPENDIX II: INTERNAL RULES OF THE INTERNATIONAL COURT OF ARBITRATION

Article 1: Confidential Character of the Work of the International Court of Arbitration

1)
For the purposes of this Appendix, members of the Court include the President and Vice-Presidents of the Court.
2)
The sessions of the Court are open only to its members and to the Secretariat.
3)
However, in exceptional circumstances, the President of the Court may invite other persons to attend. Such persons must respect the confidential nature of the work of the Court.
4)
The documents submitted to the Court, or drawn up by it or the Secretariat in the course of the Court's proceedings, are communicated only to the members of the Court, to the Secretariat and to persons authorized by the President to attend Court sessions.
5)
The President or the Secretary General of the Court may authorize researchers undertaking work of an academic nature to acquaint themselves with awards and other documents of general interest, with the exception of memoranda, notes, statements and documents remitted by the parties within the framework of arbitration proceedings.
6)
Such authorization shall not be given unless the beneficiary has undertaken to respect the confidential character of the documents made available and to refrain from publishing anything based upon information contained therein without having previously submitted the text for approval to the Secretary General of the Court.
7)
The Secretariat will in each case submitted to arbitration under the Rules retain in the archives of the Court all awards, Terms of Reference and decisions of the Court, as well as copies of the pertinent correspondence of the Secretariat.
8)
Any documents, communications or correspondence submitted by the parties or the arbitrators may be destroyed unless a party or an arbitrator requests in writing within a period fixed by the Secretariat the return of such documents, communications or correspondence. All related costs and expenses for the return of those documents shall be paid by such party or arbitrator.

Article 2: Participation of Members of the International Court of Arbitration in ICC Arbitration

1)
The President and the members of the Secretariat of the Court may not act as arbitrators or as counsel in cases submitted to ICC Arbitration.
2)
The Court shall not appoint Vice-Presidents or members of the Court as arbitrators. They may, however, be proposed for such duties by one or more of the parties, or pursuant to any other procedure agreed upon by the parties, subject to confirmation.
3)
When the President, a Vice-President or a member of the Court or of the Secretariat is involved in any capacity whatsoever in proceedings pending before the Court, such person must inform the Secretary General of the Court upon becoming aware of such involvement.
4)
Such person must be absent from the Court session whenever the matter is considered by the Court and shall not participate in the discussions or in the decisions of the Court.
5)
Such person will not receive any material documentation or information pertaining to such proceedings.

Article 3: Relations Between the Members of the Court and the ICC National Committees and Groups

1)
By virtue of their capacity, the members of the Court are independent of the ICC National Committees and Groups which proposed them for appointment by the ICC World Council.
2)
Furthermore, they must regard as confidential, vis-à-vis the said National Committees and Groups, any information concerning individual cases with which they have become acquainted in their capacity as members of the Court, except when they have been requested by the President of the Court, by a Vice-President of the Court authorized by the President of the Court, or by the Court's Secretary General to communicate specific information to their respective National Committees or Groups.

Article 4: Constitution, Quorum and Decision making

1)
The members of Committees, Special Committees and Single-member Committees are appointed by the President from among the Vice-Presidents or the other members of the Court. In the President's absence or otherwise where the President is unable to act, they are appointed by a Vice-President at the request of the Secretary General or the Deputy Secretary General of the Court.
2)
Committees and Special Committees meet whenever convened by their president.
3)
The President of the Court acts as the president of the Committee, the Special Committee and the plenary. A Vice-President of the Court may act as president of a Committee, Special Committee or the plenary (i) at the request of the President or (ii) in the President's absence or otherwise where the President is unable to act, at the request of the Secretary General or the Deputy Secretary General of the Court. In exceptional circumstances, another member of the Court may act as president of a Committee or Special Committee following the same procedure.
4)
The President of the Court, a Vice-President and any Court member may act in, and convene, the Single-member Committee.
5)
Decisions on the constitution of Committees, Special Committees and Single-member Committees are reported to the Court at one of its next sessions.
6)
Deliberations shall be valid:

a) At the Committee, when at least two members are present.
b) At the Special Committee and plenary, when at least six members, and the President or designated Vice-President, are present.

7
Decisions at Committees are taken unanimously. When a Committee cannot reach a unanimous decision or deems it preferable to abstain, it transfers the case to a Special Committee, making any suggestions it deems appropriate.

8)
Decisions at Special Committees and the plenary are taken by majority, the President or Vice-President, as the case may be, having a casting vote in the event of a tie.

Article 5: Communication of Reasons of Decison

1)
Upon request of any party, the Court will communicate the reasons for Articles 6(4), 10, 12(8), 12(9), 14 and 15(2).
2)
Any request for the communications of reasons must be made in advance of the decision in respect of which reasons are sought. For decisions pursuant to Article 15(2), a party shall address its request to the Court when invited to comment pursuant to Article 15(3).
3)
In exceptional circumstances, the Court may decide not to communicate the reasons for any of the above decisions.

Article 6: Court Secretariat

1)
In the Secretary General's absence or otherwise at the Secretary General's request, the Deputy Secretary General and/or the General Counsel shall have the authority to refer matters to the Court, confirm arbitrators, certify true copies of awards request the payment of a provisional advance and authorize the payment of advances in installments, respectively provided for in Articles 6(3), 13(2), 35(2) and 37(1) of the Rules and Article 1(6) of Appendix III, as well as to take the measure provided for in Article 37(6).

2)
The Secretariat may, with the approval of the Court, issue notes and other documents for the information of the parties and the arbitrators, or as necessary for the proper conduct of the arbitral proceedings.
3)
Offices of the Secretariat may be established outside the headquarters of the ICC. The Secretariat shall keep a list of offices designated by the Secretary General. Requests for Arbitration may be submitted to the Secretariat at any of its offices, and the Secretariat's functions under the Rules may be carried out from any of its offices, as instructed by the Secretary General, Deputy Secretary General or General Counsel.

Article 7: Scrutiny of Arbitral Awards

When the Court scrutinizes draft awards in accordance with Article 34 of the Rules, it considers, to the extent practicable, the requirements of mandatory law at the place of the arbitration.

APPENDIX III: ARBITRATION COSTS AND FEES

Article 1: Advance on Costs

1)
Each request to commence an arbitration pursuant to the Rules must be accompanied by a filing fee of US $ 5,000. Such payment is non-refundable and shall be credited to the claimant's portion of the advance on costs.
2)
The provisional advance fixed by the Secretary General according to Article 37(1) of the Rules shall normally not exceed the amount obtained by adding together the ICC administrative expenses, the minimum of the fees (as set out in the scale hereinafter) based upon the amount of the claim and the expected reimbursable expenses of the arbitral tribunal incurred with respect to the drafting of the Terms of Reference or the holding of the case management conference. If such amount is not quantified, the provisional advance shall be fixed at the discretion of the Secretary General. Payment by the claimant shall be credited to its share of the advance on costs fixed by the Court.
3)
In general, the arbitral tribunal shall, in accordance with Article 37(6) of the Rules, proceed only with respect to those claims or counterclaims in regard to which the whole of the advance on costs has been paid.
4)
The advance on costs fixed by the Court according to Articles 37(2) or 37(4) of the Rules comprises the fees of the arbitrator or arbitrators (hereinafter referred to as "arbitrator"), any arbitration-related expenses of the arbitrator and the ICC administrative expenses.
5)
Each party shall pay its share of the total advance on costs in cash. However, if a party's share of the advance on costs is greater than US$ 500,000 (the "Threshold Amount"), such party may post a bank guarantee for any amount above the Threshold Amount. The Court may modify the Threshold Amount at any time at its discretion.
6)
The Secretary-General may authorize the payment of advances on costs, or any party's share thereof, in installments, subject to such conditions as the Court thinks fit.
7)
A party that has already paid in full its share of the advance on costs fixed by the Court may, in accordance with Article 37(5) of the Rules, pay the unpaid portion of the advance owed by the defaulting party by posting a bank guarantee.
8)
When the Court has fixed separate advances on costs pursuant to Article 37(3) of the Rules, the Secretariat shall invite each party to pay the amount of the advance corresponding to its respective claim(s).

9)
When, as a result of the fixing of separate advances on costs, the separate advance fixed for the claim of either party exceeds one half of such global advance as was previously fixed (in respect of the same claims and counterclaims that are the subject of separate advances), a bank guarantee may be posted to cover any such excess amount. In the event that the amount of the separate advance is subsequently increased, at least one half of the increase shall be paid in cash.
10)
The Secretariat shall establish the terms governing all bank guarantees which the parties may post pursuant to the above provisions.
11)
As provided in Article 37(5) of the Rules, the advance on costs may be subject to readjustment at any time during the arbitration, in particular to take into account fluctuations in the amount in dispute, changes in the amount of the estimated expenses of the arbitrator, or the evolving difficulty or complexity of arbitration proceedings.
12)
Before any expertise ordered by the arbitral tribunal can be commenced, the parties, or one of them, shall pay an advance on costs fixed by the arbitral tribunal sufficient to cover the expected fees and expenses of the expert as determined by the arbitral tribunal. The arbitral tribunal shall be responsible for ensuring the payment by the parties of such fees and expenses.

13)
The amounts paid as advances on costs do not yield interest for the parties or the arbitrator.

Article 2: Costs and Fees

1)
Subject to Article 38(2) of the Rules, the Court shall fix the fees of the arbitrator in accordance with the scale hereinafter set out or, where the amount in dispute is not stated, at its discretion.
2)
In setting the arbitrator's fees, the Court shall take into consideration the diligence and efficiency of the arbitrator, the time spent, the rapidity of the proceedings, the complexity of the dispute and the timeliness of the submission of the draft award, so as to arrive at a figure within the limits specified or, in exceptional circumstances (Article 38(2) of the Rules), at a figure higher or lower than those limits.
3)
When a case is submitted to more than one arbitrator, the Court, at its discretion, shall have the right to increase the total fees up to a maximum which shall normally not exceed three times the fees of one arbitrator.

4)
The arbitrator's fees and expenses shall be fixed exclusively by the Court as required by the Rules. Separate fee arrangements between the parties and the arbitrator are contrary to the Rules.
5)
The Court shall fix the ICC administrative expenses of each arbitration in accordance with the scale hereinafter set out or, where the amount in dispute is not stated, at its discretion. Where the parties have agreed upon additional services, or in exceptional circumstances, the Court may fix the ICC administrative expenses at a lower or higher figure than that which would result from the application of such scale, provided that such expenses shall normally not exceed the maximum amount of the scale.
6)
At any time during the arbitration, the Court may fix as payable a portion of the ICC administrative expenses corresponding to services that have already been performed by the Court and the Secretariat.
7)
The Court may require the payment of administrative expenses in addition to those provided in the scale of administrative expenses as a condition for holding an arbitration in abeyance at the request of the parties or of one of them with the acquiescence of the other.
8)
If an arbitration terminates before the rendering of a final award, the Court shall fix the fees and expenses of the arbitrators and the ICC administrative expenses at its discretion, taking into account the stage attained by the arbitral proceedings and any other relevant circumstances.
9)
Any amount paid by the parties as an advance on costs exceeding the costs of the arbitration fixed by the Court shall be reimbursed to the parties having regard to the amounts paid.
10)
In the case of an application under Articles 36(2) or 36(3) of the Rules or of a remission pursuant to Article 36(5) of the Rules, the Court may fix an advance to cover additional fees and expenses of the arbitral tribunal and additional ICC administrative expenses and may make the transmission of such application to the arbitral tribunal subject to the prior cash payment in full to ICC of such advance. The Court shall fix at its discretion the costs of the procedure following an application or a remission, which shall include any possible fees of the arbitrator and ICC administrative expenses, when approving the decision of the arbitral tribunal.
11)
The Secretariat may require the payment of administrative expenses in addition to those provided in the scale of administrative expenses for any expenses arising in relation to a request pursuant to Article 35(5) of the Rules.

12)
When an arbitration is preceded by proceedings under the ICC Mediation Rules, one half of the ICC administrative expenses paid for such proceedings shall be credited to the ICC administrative expenses of the arbitration.
13)
Amounts paid to the arbitrator do not include any possible value added tax (VAT) or other taxes or charges and imposts applicable to the arbitrator's fees. Parties have a duty to pay any such taxes or charges; however, the recovery of any such charges or taxes is a matter solely between the arbitrator and the parties.
14)
ICC administrative expenses do not include VAT, taxes, imposts or any other charges of a similar nature. They may be increased by the amount of VAT, taxes, imposts or any charges of a similar nature at the prevailing rate. Parties have a duty to pay any such charges pursuant to invoices issued by ICC.

Article 3: Scales of Administrative Expenses and Arbitrator's Fees

[Editor's Note: For information on fees, please go to Cost caculator - ICC - International Chamber of Commerce (iccwbo.org).]

APPENDIX IV: CASE MANAGEMENT TECHNIQUES

The following are examples of case management techniques that can be used by the arbitral tribunal and the parties for controlling time and cost. Appropriate control of time and cost is important in all cases. In cases of low complexity and low value, it is particularly important to ensure that time and costs are proportionate to what is at stake in the dispute.

a) Bifurcating the proceedings or rendering one or more partial awards on key issues, when doing so may genuinely be expected to result in a more efficient resolution of the case.
b) Identifying issues that can be resolved by agreement between the parties or their experts.
c) Identifying issues to be decided solely on the basis of documents rather than through oral evidence or legal argument at a hearing.
d) Production of documentary evidence:

(i) requiring the parties to produce with their submissions the documents on which they rely;
(ii) avoiding requests for document production when appropriate in order to control time and cost;
(iii) in those cases where requests for document production are considered appropriate, limiting such requests to documents or categories of documents that are relevant and material to the outcome of the case;
(iv) establishing reasonable time limits for the production of documents;
(v) using a schedule of document production to facilitate the resolution of issues in relation to the production of documents.

e) Limiting the length and scope of written submissions and written and oral witness evidence (both fact witnesses and experts) so as to avoid repetition and maintain a focus on key issues.
f) Using telephone or video conferencing for procedural and other hearings where attendance in person is not essential and use of IT that enables online communication among the parties, the arbitral tribunal and the Secretariat of the Court.
g) Organizing a pre-hearing conference with the arbitral tribunal at which arrangements for a hearing can be discussed and agreed and the arbitral tribunal can indicate to the parties issues on which it would like the parties to focus at the hearing.
h) Settlement of disputes:
(i) encouraging the parties to consider settlement of all or part of the dispute either by negotiation or through any form of amicable dispute resolution methods such as, for example, mediation under the ICC Mediation Rules;
(ii) where agreed between the parties and the arbitral tribunal, the arbitral tribunal may take steps to facilitate settlement of the dispute, provided that every effort is made to ensure that any subsequent award is enforceable at law.

Additional techniques are described in the ICC publication entitled "Controlling Time and Costs in Arbitration".

APPENDIX V: EMERGENCY ARBITRATOR RULES

Article 1: Application for Emergency Measures

A party wishing to have recourse to an emergency arbitrator pursuant to Article 29 of the Rules of Arbitration of ICC (the "Rules") shall submit its Application for Emergency Measures (the "Application") to the Secretariat at any of the offices specified in the Internal Rules of the Court in Appendix II to the Rules.
2)
The Application shall be supplied in a number of copies sufficient to provide one copy for each party, plus one for the emergency arbitrator, and one for the Secretariat where the party submitting the Application requests transmission thereof by delivery against receipt, registered post or courier.
3)
The Application shall contain the following information:

a) the name in full, description, address and other contact details of each of the parties;
b) the name in full, address and other contact details of any person(s) representing the applicant;
c) a description of the circumstances giving rise to the Application and of the underlying dispute referred or to be referred to arbitration;
d) a statement of the Emergency Measures sought;
e) the reasons why the applicant needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal;
f) any relevant agreements and, in particular, the arbitration agreement;
g) any agreement as to the place of the arbitration, the applicable rules of law or the language of the arbitration;
h) proof of payment of the amount referred to in Article 7(1) of this Appendix; and
i) any Request for Arbitration and any other submissions in connection with the underlying dispute, which have been filed with the Secretariat by any of the parties

to the emergency arbitrator proceedings prior to the making of the Application.

The Application may contain such other documents or information as the applicant considers appropriate or as may contribute to the efficient examination of the Application.

4)
The Application shall be drawn up in the language of the arbitration if agreed upon by the parties or, in the absence of any such agreement, in the language of the arbitration agreement.

5)
If and to the extent that the President of the Court (the "President") considers, on the basis of the information contained in the Application, that the Emergency Arbitrator Provisions apply with reference to Article 29(5) and Article 29(6) of the Rules, the Secretariat shall transmit a copy of the Application and the documents annexed thereto to the responding party. If and to the extent that the President considers otherwise, the Secretariat shall inform the parties that the emergency arbitrator proceedings shall not take place with respect to some or all of the parties and shall transmit a copy of the Application to them for information.

6)
The President shall terminate the emergency arbitrator proceedings if a Request for Arbitration has not been received by the Secretariat from the applicant within 10 days from the Secretariat's receipt of the Application, unless the emergency arbitrator determines that a longer period of time is necessary.

Article 2: Appointment of the Emergency Arbitrator; Transmission of the File

1)
The President shall appoint an emergency arbitrator within as short a time as possible, normally within two days from the Secretariat's receipt of the Application.

2)
No emergency arbitrator shall be appointed after the file has been transmitted to the arbitral tribunal pursuant to Article 16 of the Rules. An emergency arbitrator appointed prior thereto shall retain the power to make an order within the time limit permitted by Article 6(4) of this Appendix.

3)
Once the emergency arbitrator has been appointed, the Secretariat shall so notify the parties and shall transmit the file to the emergency arbitrator. Thereafter, all written communications from the parties shall be submitted directly to the emergency arbitrator with a copy to each other party and the Secretariat. A copy of any written communications from the emergency arbitrator to the parties shall be submitted to the Secretariat.

4)
Every emergency arbitrator shall be and remain impartial and independent of the parties involved in the dispute.

5)
Before being appointed, a prospective emergency arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The Secretariat shall provide a copy of such statement to the parties.

6)
An emergency arbitrator shall not act as an arbitrator in any arbitration relating to the dispute that gave rise to the Application.

Article 3: Challenge of an Emergency Arbitrator

1)
A challenge against the emergency arbitrator must be made within three days from receipt by the party making the challenge of the notification of the appointment or from the date when that party was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.

2)
The challenge shall be decided by the Court after the Secretariat has afforded an opportunity for the emergency arbitrator and the other party or parties to provide comments in writing within a suitable period of time.

Article 4: Place of the Emergency Arbitrator Proceedings

1)
If the parties have agreed upon the place of the arbitration, such place shall be the place of the emergency arbitrator proceedings. In the absence of such agreement, the President shall fix the place of the emergency arbitrator proceedings, without prejudice to the determination of the place of the arbitration pursuant to Article 18(1) of the Rules.

2)
Any meetings with the emergency arbitrator may be conducted through a meeting in person at any location the emergency arbitrator considers appropriate or by video conference, telephone or similar means of communication.

Article 5: Proceedings

1)
The emergency arbitrator shall establish a procedural timetable for the emergency arbitrator proceedings within as short a time as possible, normally within two days from the transmission of the file to the emergency arbitrator pursuant to Article 2(3) of this Appendix.

2)
The emergency arbitrator shall conduct the proceedings in the manner which the emergency arbitrator considers to be appropriate, taking into account the nature and the urgency of the Application. In all cases, the emergency arbitrator

shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.

Article 6: Order

1)
Pursuant to Article 29(2) of the Rules, the emergency arbitrator's decision shall take the form of an order (the "Order").
2)
In the Order, the emergency arbitrator shall determine whether the Application is admissible pursuant to Article 29(1) of the Rules and whether the emergency arbitrator has jurisdiction to order Emergency Measures.
3)
The Order shall be made in writing and shall state the reasons upon which it is based. It shall be dated and signed by the emergency arbitrator.
4)
The Order shall be made no later than 15 days from the date on which the file was transmitted to the emergency arbitrator pursuant to Article 2(3) of this Appendix. The President may extend the time limit pursuant to a reasoned request from the emergency arbitrator or on the President's own initiative if the President decides it is necessary to do so.
5)
Within the time limit established pursuant to Article 6(4) of this Appendix, the emergency arbitrator shall send the Order to the parties, with a copy to the Secretariat, by any of the means of communication permitted by Article 3(2) of the Rules that the emergency arbitrator considers will ensure prompt receipt.
6)
The Order shall cease to be binding on the parties upon:

a) the President's termination of the emergency arbitrator proceedings pursuant to Article 1(6) of this Appendix;
b) the acceptance by the Court of a challenge against the emergency arbitrator pursuant to Article 3 of this Appendix;
c) the arbitral tribunal's final award, unless the arbitral tribunal expressly decides otherwise; or
d) the withdrawal of all claims or the termination of the arbitration before the rendering of a final award.

7)
The emergency arbitrator may make the Order subject to such conditions as the emergency arbitrator thinks fit, including requiring the provision of appropriate security.
8)
Upon a reasoned request by a party made prior to the transmission of the file to the arbitral tribunal pursuant to Article 16 of the Rules, the emergency arbitrator may modify, terminate or annul the Order.

Article 7: Costs of the Emergency Arbitrator Proceedings

1)
The applicant must pay an amount of US$ 40,000, consisting of US$ 10,000 for ICC administrative expenses and US$ 30,000 for the emergency arbitrator's fees and expenses. Notwithstanding Article 1(5) of this Appendix, the Application shall not be notified until the payment of US$ 40,000 is received by the Secretariat.
2)
The President may, at any time during the emergency arbitrator proceedings, decide to increase the emergency arbitrator's fees or the ICC administrative expenses taking into account, inter alia, the nature of the case and the nature and amount of work performed by the emergency arbitrator, the Court, the President and the Secretariat. If the party which submitted the Application fails to pay the increased costs within the time limit fixed by the Secretariat, the Application shall be considered as withdrawn.
3)
The emergency arbitrator's Order shall fix the costs of the emergency arbitrator proceedings and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.
4)
The costs of the emergency arbitrator proceedings include the ICC administrative expenses, the emergency arbitrator's fees and expenses and the reasonable legal and other costs incurred by the parties for the emergency arbitrator proceedings.
5)
In the event that the emergency arbitrator proceedings do not take place pursuant to Article 1(5) of this Appendix or are otherwise terminated prior to the making of an Order, the President shall determine the amount to be reimbursed to the applicant, if any. An amount of US$ 5,000 for ICC administrative expenses is non-refundable in all cases.

Article 8: General Rule

1)
The President shall have the power to decide, at the President's discretion, all matters relating to the administration of the emergency arbitrator proceedings not expressly provided for in this Appendix.
2)
In the President's absence or otherwise at the President's request, any of the Vice-Presidents of the Court shall have the power to take decisions on behalf of the President.

3)
In all matters concerning emergency arbitrator proceedings not expressly provided for in this Appendix, the Court, the President and the emergency arbitrator shall act in the spirit of the Rules and this Appendix.

APPENDIX VI: EXPEDITED PROCEDURE RULES

Article 1: Application of the Expedited Procedure Rules

1)
Insofar as Article 30 of the Rules of Arbitration of ICC (the "Rules") and this Appendix VI do not provide otherwise, the Rules shall apply to an arbitration under the Expedited Procedure Rules.
2)
The amount referred to in Article 30(2), subparagraph a) of the Rules is:

a) US$ 2,000,000 if the arbitration agreement under the Rules was concluded on or after 1 March 2017 and before 1 January 2021 or
b) US$ 3,000,000 if the arbitration agreement under the Rules was concluded on or after 1 January 2021.

3)
Upon receipt of the Answer to the Request pursuant to Article 5 of the Rules, or upon expiry of the time limit for the Answer or at any relevant time thereafter and subject to Article 30(3) of the Rules, the Secretariat will inform the parties that the Expedited Procedure Provisions shall apply in the case.
4)
The Court may, at any time during the arbitral proceedings, on its own motion or upon the request of a party, and after consultation with the arbitral tribunal and the parties, decide that the Expedited Procedure Provisions shall no longer apply to the case. In such case, unless the Court considers that it is appropriate to replace and/or reconstitute the arbitral tribunal, the arbitral tribunal shall remain in place.

Article 2: Constitution of the Arbitral Tribunal

1)
The Court may, notwithstanding any contrary provision of the arbitration agreement, appoint a sole arbitrator.
2)
The parties may nominate the sole arbitrator within a time limit to be fixed by the Secretariat. In the absence of such nomination, the sole arbitrator shall be appointed by the Court within as short a time as possible.

Article 3: Proceedings

1)
Article 23 of the Rules shall not apply to an arbitration under the Expedited Procedure Rules.
2)
After the arbitral tribunal has been constituted, no party shall make new claims, unless it has been authorized to do so by the arbitral tribunal, which shall consider the nature of such new claims, the stage of the arbitration, any cost implications and any other relevant circumstances.
3)
The case management conference convened pursuant to Article 24 of the Rules shall take place no later than 15 days from the date on which the file was transmitted to the arbitral tribunal. The Court may extend this time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it decides it is necessary to do so.
4)
The arbitral tribunal shall have discretion to adopt such procedural measures as it considers appropriate. In particular, the arbitral tribunal may, after consultation with the parties, decide not to allow requests for document production or to limit the number, length and scope of written submissions and written witness evidence (both fact witnesses and experts).
5)
The arbitral tribunal may, after consulting the parties, decide the dispute solely on the basis of the documents submitted by the parties, with no hearing and no examination of witnesses or experts.

Article 4: Award

1)
The time limit within which the arbitral tribunal must render its final award is six months from the date of the case management conference. The Court may extend the time limit pursuant to Article 31(2) of the Rules.

2)
The fees of the arbitral tribunal shall be fixed according to the scales of administrative expenses and arbitrator's fees for the expedited procedure set out in Appendix III.

Article 5: General Rule

In all matters concerning the expedited procedure not expressly provided for in this Appendix, the Court and the arbitral tribunal shall act in the spirit of the Rules and this Appendix.

Chapter 31

International Centre for Dispute Resolution (ICDR)[1] (2021)

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Introduction

The International Centre for Dispute Resolution® ("ICDR®") is the international division of the American Arbitration Association® ("AAA®"). The ICDR provides dispute resolution services around the world in locations chosen by the parties. ICDR arbitrations and mediations may be conducted in any language chosen by the parties. The ICDR Procedures reflect best international practices that are designed to deliver efficient, economic, and fair proceedings.

These Procedures are designed to provide a complete dispute resolution framework for parties to a dispute, their counsel, arbitrators, and mediators. They provide a balance between the autonomy of the parties to agree to the dispute resolution process they want and the need for process management by mediators and arbitrators.

The UNCITRAL (The United National Commission on International Trade Law) Model Law's definition of an international arbitration has been incorporated by the ICDR for the purpose of determining whether a case is international. An arbitration may be deemed international and administered by the ICDR if the parties to an arbitration agreement have:

- their places of business in different countries;
- the place where a substantial part of the obligations of their commercial relationship to be performed is situated outside the country of any party;
- the place with which the subject-matter of the dispute is most closely connected is situated outside the country of any party;
- the place of arbitration is situated outside the country of any party; or
- one party with more than one place of business (including parent and/or subsidiary) is situated outside the country of any party.

Whenever a singular term is used in the International Mediation Rules or International Arbitration Rules, such as "party," "claimant," or "arbitrator," that term shall include the plural if there is more than one such entity. Whenever any party is not participating, the reference to the "parties" shall mean the participating party or parties.

The English-language version of these Rules is the official text.

International Arbitration

A dispute can be submitted to an arbitral tribunal for a final and binding decision. In ICDR arbitration, each party is given the opportunity to make a case presentation following the process provided by these Rules and the tribunal.

Features of the International Arbitration Rules:

- Codify the ICDR's practice of having the International Administrative Review Council, which is comprised of current and former ICDR executives, decide arbitrator challenges and other administrative disputes;
- Give the arbitral tribunal the authority to decide issues of arbitrability and jurisdiction without any need to refer such matters first to a court;
- Provide that the parties and tribunal shall discuss in the procedural hearing issues related to cybersecurity, privacy, and data protection;
- Create a presumption that parties will mediate during the arbitration, with any party being able to opt out;
- Allow parties to request permission to submit an early disposition application for issues that have a reasonable possibility of success, will dispose of or narrow issues, or add economy;
- Authorize access to a special emergency arbitrator for urgent measures of protection within three (3) business days of filing with a criteria for the filing party to set forth reasoning why relief is likely to be found and what injury will be suffered if relief is not granted;
- Allow tribunal to manage the scope of document and electronic document requests and to manage, limit, or avoid U.S. litigation-style discovery practices;
- Permit a party or the tribunal to request disclosure of third-party funders and other non-parties;

- Contain express provisions allowing for "video, audio or other electronic means" during the proceedings;
- Provide that electronically-signed orders and awards can be issued unless law, the administrator, or party agreement provides otherwise; and
- Permit a party to request the tribunal make a separate award for any fees the party pays in advance on behalf of another party.

Parties can provide for arbitration of future disputes by inserting the following clause into their contracts:

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules.

The parties should consider adding:

a. *The number of arbitrators shall be (one or three);*

b. *The place of arbitration shall be [city, (province or state), country]; and*

c. *The language of the arbitration shall be* _____ .

For more complete clause-drafting guidance, please refer to the *ICDR Guide to Drafting International Dispute Resolution Clauses* on the Clause Drafting page at **www.icdr.org**. When writing a dispute resolution clause or agreement, the parties may choose to confer with the ICDR on useful options. Please see the contact information provided in How to File a Case with the ICDR. The AAA and ICDR have also developed the ClauseBuilder® (**www.clausebuilder.org**) on-line tool, a simple, self-guided process to assist individuals and organizations in developing clear and effective arbitra-tion and mediation agreements.

International Expedited Procedures

The Expedited Procedures provide parties with an expedited and simplified arbitration procedure designed to reduce the time and cost of an arbitration.

The Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds $500,000 USD exclusive of interest and the costs of arbitration. The parties may agree to the application of these Expedited Procedures on matters of any claim size.

Features of the International Expedited Procedures:

- May apply to cases of any size with party agreement;
- Set forth comprehensive filing requirements;
- Provide for expedited arbitrator appointment process with party input;
- Access to and appointment from an experienced pool of arbitrators ready to serve on an expedited basis;
- Call for an early procedural hearing with the arbitrator requiring participation of parties and their representatives;
- Presume that cases up to $100,000 USD will be decided on documents only;
- Provide for an expedited schedule and limited hearing days, if any; and
- Require an award within 30 calendar days of the close of the hearing or the date established for the receipt of the parties' final statements and proofs.

Where parties intend that the Expedited Procedures shall apply regardless of the amount in dispute, they may consider the following clause:

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Expedited Procedures.

The parties should consider adding:

a. *The place of arbitration shall be (city, [province or state], country); and*
b. *The language of the arbitration shall be* _____.

How to File a Case with the ICDR

Parties initiating a case with the International Centre for Dispute Resolution or the American Arbitration Association may file online via AAA WebFile® (File & Manage a Case) at **www.icdr.org**, by email, mail, courier, or facsimile (fax). For filing assistance, parties may contact the ICDR directly at any ICDR or AAA office.

Mail:
International Centre for Dispute Resolution Case Filing Services 1101 Laurel Oak Road, Suite 100
Voorhees, NJ, 08043 United States

AAA WebFile: www.icdr.org
Email: casefiling@adr.org
Phone: +1.856.435.6401
Fax: +1.212.484.4178
Toll-free phone in the U.S. and Canada: +1.877.495.4185
Toll-free fax in the U.S. and Canada: +1.877.304.8457

For further information about these Rules, visit the ICDR website at **www.icdr.org** or call +1.212.484.4181.

International Arbitration Rules

Article 1: Scope of These Rules

1. Where parties have agreed to arbitrate disputes under these International Arbitration Rules ("Rules"), or have provided for arbitration of an international dispute by either the International Centre for Dispute Resolution ("ICDR"), the international division of the American Arbitration Association ("AAA"), or the AAA without designating particular rules, the arbitration shall take place in accordance with these Rules as in effect at the date of commencement of the arbitration, subject to modifications that the parties may adopt in writing. The ICDR is the Administrator of these Rules.

2. These Rules govern the arbitration, except that, where any such rule is in conflict with any provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

3. When parties agree to arbitrate under these Rules, or when they provide for arbitration of an international dispute by the ICDR or the AAA without designating particular rules, they thereby authorize the ICDR to administer the arbitration. These Rules specify the duties and responsibilities of the ICDR as the Administrator. The Administrator may provide services through any of the ICDR's case management offices or through the facilities of the AAA or arbitral institutions with which the ICDR or the AAA has agreements of cooperation. Arbitrations administered under these Rules shall be administered only by the ICDR or by an individual or organization authorized by the ICDR to do so.

4. Unless the parties agree or the Administrator determines otherwise, the International Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds $500,000 USD exclusive of interest and the costs of arbitration. The parties may also agree to use the International Expedited Procedures in other cases. The International Expedited Procedures shall be applied as described in Articles E-1 through E-10 of these Rules, in addition to any other portion of these Rules that is not in conflict with the Expedited Procedures. Where no party's claim or counterclaim exceeds $100,000 USD exclusive of interest, attorneys' fees, and other arbitration costs, the dispute shall be resolved by written submissions only unless the arbitrator determines that an oral hearing is necessary.

Commencing the Arbitration

Article 2: Notice of Arbitration and Statement of Claim

1. The party initiating arbitration ("Claimant") shall, in compliance with Article 11, give written Notice of Arbitration to the Administrator and at the same time to the party against whom a claim is being made ("Respondent"). The Claimant may also initiate the arbitration online through the Administrator's AAA WebFile at **www.icdr.org** or via email at **casefiling@adr.org**.

2. The arbitration shall be deemed to commence on the date on which the Administrator receives the Notice of Arbitration.

3. The Notice of Arbitration shall contain the following information:

   a. a demand that the dispute be referred to arbitration;

   b. the names, addresses, telephone numbers, fax numbers, and email addresses of the parties and, if known, of their representatives;

   c. a copy of the entire arbitration clause or agreement being invoked, and, where claims are made under more than one arbitration agreement, a copy of the arbitration agreement under which each claim is made;

   d. a reference to any contract out of or in relation to which the dispute arises;

   e. a description of the claim and of the facts supporting it;

   f. the relief or remedy sought and any amount claimed; and

g. optionally, proposals, consistent with any prior agreement between or among the parties, as to the means of designating the arbitrators, the number of arbitrators, the place of arbitration, the language of the arbitration, and whether the party filing the Notice of Arbitration is willing to mediate the dispute prior to or concurrently with the arbitration.

4. The Notice of Arbitration shall be accompanied by the appropriate filing fee.

5. Upon receipt of the Notice of Arbitration, the Administrator shall communicate with all parties with respect to the arbitration and shall acknowledge the commencement of the arbitration.

Article 3: Answer and Counterclaim

1. Within 30 days after the Administrator confirms receipt of the Notice of Arbitration, Respondent shall submit to Claimant, to any other parties, and to the Administrator a written Answer to the Notice of Arbitration.

2. At the time Respondent submits its Answer, Respondent may make any counterclaims covered by the agreement to arbitrate or assert any setoffs and Claimant shall within 30 days submit to Respondent, to any other parties, and to the Administrator a written Answer to the counterclaim or setoffs.

3. A counterclaim or setoff shall contain the same information required of a Notice of Arbitration under Article 2(3) and shall be accompanied by the appropriate filing fee.

4. Respondent shall within 30 days after the Administrator confirms receipt of the Notice of Arbitration submit to Claimant, to any other parties, and to the Administrator a response to any proposals by Claimant not previously agreed upon, or submit its own proposals, consistent with any prior agreement between or among the parties, as to the means of designating the arbitrators, the number of arbitrators, the place of the arbitration, the language of the arbitration, and whether Respondent is willing to mediate the dispute prior to or concurrently with the arbitration.

5. The arbitral tribunal, or the Administrator if the tribunal has not yet been constituted, may extend any of the time limits established in this Article if it considers such an extension justified.

6. Failure of Respondent to submit an Answer shall not preclude the arbitration from proceeding.

7. In arbitrations with multiple parties, Respondent may make claims or assert setoffs against another Respondent and Claimant may make claims or assert setoffs against another Claimant in accordance with the provisions of this Article 3.

Article 4: Administrative Conference

The Administrator may conduct an administrative conference before the arbitral tribunal is constituted to facilitate party discussion and agreement on issues such as arbitrator selection, mediating the dispute, process efficiencies, and any other administrative matters.

Article 5: International Administrative Review Council

When the Administrator is called upon to act under these Rules, the Administrator may act through its International Administrative Review Council (IARC) to take any action. Such actions may include determining challenges to the appointment or continuing service of an arbitrator, deciding disputes regarding the number of arbitrators to be appointed, or determining whether a party has met the administrative requirements to initiate or file an arbitration contained in the Rules have been met. If the parties do not agree on the place of arbitration, the IARC may make an initial determination as to the place of arbitration, subject to the power of the arbitral tribunal to make a final determination.

Article 6: Mediation

Subject to (a) any agreement of the parties otherwise or (b) the right of any party to elect not to participate in mediation, the parties shall mediate their dispute pursuant to the ICDR's International Mediation Rules concurrently with the arbitration.

Article 7: Emergency Measures of Protection

1. A party may apply for emergency relief before the constitution of the arbitral tribunal by submitting a written application to the Administrator and to all other parties setting forth:

   a. the nature of the relief sought;

   b. the reasons why such relief is required on an emergency basis before the tribunal is appointed;

   c. the reasons why the party is likely to be found to be entitled to such relief; and

   d. what injury or prejudice the party will suffer if relief is not provided.

The application shall be submitted concurrent with or following the submission of a Notice of Arbitration. Such application may be filed by email, or as otherwise permitted by Article 11, and must include payment of any applicable fees and a statement certifying that all parties have been notified or an explanation of the steps taken in good faith to notify all parties.

2. Within one business day of receipt of the application for emergency relief as provided in Article 7(1), and upon being satisfied that the requirements of Article 7(1) have been met, the Administrator shall appoint a single emergency arbitrator. Upon accepting appointment, a prospective emergency arbitrator shall, in accordance with Article 14, disclose to the Administrator any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within one business day of the communication by the Administrator to the parties of the appointment of the emergency arbitrator and the circumstances disclosed.

3. The emergency arbitrator shall as soon as possible, and in any event within two business days of appointment, establish a schedule for consideration of the application for emergency relief. Such schedule shall provide a reasonable opportunity to all parties to be heard and may provide for proceedings by telephone, video, written submissions, or other suitable means, as alternatives to an in-person hearing. The emergency arbitrator shall have the authority vested in the arbitral tribunal under Article 21, including the authority to rule on the emergency arbitrator's jurisdiction, and shall resolve any disputes over the applicability of this Article.

4. The emergency arbitrator shall have the power to order or award any interim or conservatory measures that the emergency arbitrator deems necessary, including injunctive relief and measures for the protection or conservation of property. Any such measures may take the form of an interim award or an order. The emergency arbitrator shall give reasons in either case. The emergency arbitrator may modify or vacate the interim award or order. Any interim award or order shall have the same effect as an interim measure made pursuant to Article 27 and shall be binding on the parties when rendered. The parties shall undertake to comply with such an interim award or order without delay.

5. The emergency arbitrator shall have no further power to act after the arbitral tribunal is constituted. Once the tribunal has been constituted, the tribunal may affirm, reconsider, modify, or vacate the interim award or order of emergency relief issued by the emergency arbitrator. The emergency arbitrator may not serve as a member of the tribunal unless the parties agree otherwise.

6. Any interim award or order of emergency relief may be conditioned on provision of appropriate security by the party seeking such relief.

7. A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with this Article 7 or with the agreement to arbitrate or a waiver of the right to arbitrate.

8. The costs associated with applications for emergency relief shall be addressed by the emergency arbitrator, subject to the power of the arbitral tribunal to determine finally the allocation of such costs.

Article 8: Joinder

1. A party wishing to join an additional party to the arbitration shall submit to the Administrator a Notice of Arbitration against the additional party. No additional party may be joined after the appointment of any arbitrator, unless (a) all parties, including the additional party, otherwise agree, or (b) the arbitral tribunal once constituted determines that the joinder of an additional party is appropriate, and the additional party consents to such joinder. The party wishing to join the additional party shall, at that same time, send the Notice of Arbitration to the additional party and all other parties. The date on which such Notice of Arbitration is received by the Administrator shall be deemed to be the date of the commencement of arbitration against the additional party. Any joinder shall be subject to the provisions of Articles 13 and 21.

2. The request for joinder shall contain the same information required of a Notice of Arbitration under Article 2(3) and shall be accompanied by the appropriate filing fee.

3. The additional party shall submit an Answer in accordance with the provisions of Article 3.

4. The additional party may make claims, counterclaims, or assert setoffs against any other party in accordance with the provisions of Article 3.

Article 9: Consolidation

1. At the request of a party or on its own initiative, the Administrator may appoint a consolidation arbitrator, who will have the power to consolidate two or more arbitrations pending under these Rules, or these and

other arbitration rules administered by the AAA or ICDR, into a single arbitration where:

a. the parties have expressly agreed to appoint a consolidation arbitrator; or

b. all of the claims and counterclaims in the arbitrations are made under the same arbitration agreement; or

c. the claims, counterclaims, or setoffs in the arbitrations are made under more than one arbitration agreement; the arbitrations involve the same or related parties; the disputes in the arbitrations arise in connection with the same legal relationship; and the arbitration agreements may be compatible.

2. A consolidation arbitrator shall be appointed as follows:

a. The Administrator shall notify the parties in writing of its intention to appoint a consolidation arbitrator and invite the parties to agree upon a procedure for the appointment of a consolidation arbitrator.

b. If the parties have not within 15 days of such notice agreed upon a procedure for appointment of a consolidation arbitrator, the Administrator shall appoint the consolidation arbitrator.

c. Absent the agreement of all parties, the consolidation arbitrator shall not be an arbitrator who is appointed to any pending arbitration subject to potential consolidation under this Article.

d. The provisions of Articles 14-16 of these Rules shall apply to the appointment of the consolidation arbitrator.

3. In deciding whether to consolidate, the consolidation arbitrator shall consult the parties, may consult the arbitral tribunal(s), and may take into account all relevant circumstances, including:

a. applicable law;

b. whether one or more arbitrators have been appointed in more than one of the arbitrations and, if so, whether the same or different persons have been appointed;

c. the progress already made in the arbitrations;

d. whether the arbitrations raise common issues of law and/or facts; and

e. whether the consolidation of the arbitrations would serve the interests of justice and efficiency.

4. The consolidation arbitrator may order that any or all arbitrations subject to potential consolidation be stayed pending a ruling on a request for consolidation.

5. When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties or the consolidation arbitrator decides otherwise.

6. Where the consolidation arbitrator decides to consolidate an arbitration with one or more other arbitrations, each party in those arbitrations shall be deemed to have waived its right to appoint an arbitrator. The consolidation arbitrator may revoke the appointment of any arbitrators and may select one of the previously-appointed tribunals to serve in the consolidated proceeding. The Administrator shall, as necessary, complete the appointment of the tribunal in the consolidated proceeding. Absent the agreement of all parties, the consolidation arbitrator shall not be appointed in the consolidated proceedings.

7. The decision as to consolidation, which need not include a statement of reasons, shall be rendered within 15 days of the date for final submissions on consolidation.

Article 10: Amendment or Supplement of Claim, Counterclaim, or Defense

Any party may amend or supplement its claim, counterclaim, setoff, or defense unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement because of the party's delay in making it, prejudice to the other parties, or any other circumstances. A party may not amend or supplement a claim or counterclaim if the amendment or supplement would fall outside the scope of the agreement to arbitrate. The tribunal may permit an amendment or supplement subject to an award of costs and/or the payment of filing fees as determined by the Administrator.

Article 11: Notices

1. Unless otherwise agreed by the parties or ordered by the arbitral tribunal, all notices and written communications may be transmitted by any means of com-

munication that allows for a record of its transmission, including email, mail, courier, fax, or other written forms of electronic communication addressed to the party or its representative at its last-known address, or by personal service.

2. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is made. If the last day of such period is an official holiday at the place received, the period is extended until the first business day that follows. Official holidays occurring during the running of the period of time are included in calculating the period.

The Tribunal

Article 12: Number of Arbitrators

If the parties have not agreed on the number of arbitrators, one arbitrator shall be appointed unless the Administrator determines that three arbitrators are appropriate because of the size, complexity, or other circumstances of the case.

Article 13: Appointment of Arbitrators

1. The parties may agree upon any procedure for appointing arbitrators and shall inform the Administrator as to such procedure. In the absence of party agreement as to the method of appointment, the Administrator may use the ICDR list method as provided in Article 13(6).

2. The parties may agree to select arbitrators, with or without the assistance of the Administrator. When such selections are made, the parties shall take into account the arbitrators' availability to serve and shall notify the Administrator so that a Notice of Appointment can be communicated to the arbitrators, together with a copy of these Rules.

3. If within 45 days after the commencement of the arbitration, all parties have not agreed on a procedure for appointing the arbitrator(s) or have not agreed on the selection of the arbitrator(s), the Administrator shall, at the written request of any party, appoint the arbitrator(s). Where the parties have agreed upon a procedure for selecting the arbitrator(s), but all appointments have not been made within the time limits provided by that procedure, the Administrator shall, at the written request of any party, perform all functions provided for in that procedure that remain to be performed.

4. In making appointments, the Administrator shall, after inviting consultation with the parties, endeavor to appoint suitable arbitrators, taking into account their availability to serve. At the request of any party or on its own initiative, the Administrator may appoint or submit a list(s) including nationals of a country other than that of any of the parties.

5. If there are more than two parties to the arbitration, the Administrator may appoint all arbitrators unless the parties have agreed otherwise no later than 45 days after the commencement of the arbitration.

6. If the parties have not selected an arbitrator(s) and have not agreed upon any other method of appointment, the Administrator, at its discretion, may appoint the arbitrator(s) in the following manner using the ICDR list method. The Administrator shall send simultaneously to each party an identical list of names of persons for consideration as arbitrator(s). The parties are encouraged to agree to an arbitrator(s) from the submitted list and shall advise the Administrator of their agreement. If, after receipt of the list, the parties are unable to agree upon an arbitrator(s), each party shall have 15 days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the Administrator. The parties are not required to exchange selection lists. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on the parties' lists, and in accordance with the designated order of mutual preference, the Administrator shall invite an arbitrator(s) to serve. If the parties fail to agree on any of the persons listed, or if acceptable arbitrators are unable or unavailable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Administrator shall have the power to make the appointment without the submission of additional lists. The Administrator shall, if necessary, designate the presiding arbitrator in consultation with the tribunal.

7. The appointment of an arbitrator is effective upon receipt by the Administrator of the Administrator's Notice of Appointment completed and signed by the arbitrator.

Article 14: Impartiality and Independence of Arbitrator

1. Arbitrators acting under these Rules shall be impartial and independent and shall act in accordance with these Rules, the terms of the Notice of Appointment provided by the Administrator, and with The Code of Ethics for Arbitrators in Commercial Disputes.

2. Upon accepting appointment, an arbitrator shall sign the Notice of Appointment provided by the Administrator affirming that the arbitrator is available to serve and is independent and impartial. The arbitrator shall disclose any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence and any other relevant facts the arbitrator wishes to bring to the attention of the parties.

3. If, at any stage during the arbitration, circumstances arise that may give rise to such doubts, an arbitrator or party shall promptly disclose such information to all parties and to the Administrator. Upon receipt of such information from an arbitrator or a party, the Administrator shall communicate it to all parties and to the tribunal.

4. Disclosure by an arbitrator or party does not necessarily indicate belief by the arbitrator or party that the disclosed information gives rise to justifiable doubts as to the arbitrator's impartiality or independence.

5. Failure of a party to disclose any circumstances that may give rise to justifiable doubts as to an arbitrator's impartiality or independence within a reasonable period after the party becomes aware of such information constitutes a waiver of the right to challenge an arbitrator based on those circumstances.

6. No party or anyone acting on its behalf shall have any ex parte communication relating to the case with any arbitrator, or with any candidate for party-appointed arbitrator, except to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability, or impartiality and independence in relation to the parties, or to discuss the suitability of candidates for selection as a presiding arbitrator where the parties or party-appointed arbitrators are to participate in that selection. No party or anyone acting on its behalf shall have any ex parte communication relating to the case with any candidate for presiding arbitrator.

7. On the application of a party, or on its own initiative after consulting the parties, the tribunal may require the parties to disclose:

   a. Whether any non-party (such as a third-party funder or an insurer) has undertaken to pay or to contribute to the cost of a party's participation in the arbitration, and if so, to identify the person or entity concerned and to describe the nature of the undertaking.

   b. Whether any non-party (such as a funder, insurer, parent company, or ultimate beneficial owner) has an economic interest in the outcome of the arbitration, and if so, to identify the person or entity concerned and to describe the nature of the interest.

Article 15: Challenge of an Arbitrator

1. A party may challenge an arbitrator whenever circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality, or independence, or for failing to perform the arbitrator's duties. Unless a shorter time period is otherwise agreed by the parties, specified by law, or determined by the Administrator, a party shall send a written notice of the challenge to the Administrator within 15 days after being notified of the appointment of the arbitrator or within 15 days after the circumstances giving rise to the challenge become known to that party. The challenge shall state in writing the reasons for the challenge. The party shall not send this notice to any member of the arbitral tribunal.

2. Upon receipt of such a challenge, the Administrator shall notify the other party of the challenge and give such party an opportunity to respond. The Administrator shall not send the notice of challenge to any member of the tribunal but shall notify the tribunal that a challenge has been received, without identifying the party challenging. When an arbitrator has been challenged by a party, the other party may agree to the acceptance of the challenge and, if there is agreement, the arbitrator shall be removed. The Administrator may advise the challenged arbitrator of the challenge and request information from the challenged arbitrator relating to the challenge. The challenged arbitrator, after consultation with the Administrator, also may withdraw in the absence of such agreement. In neither case does withdrawal imply acceptance of the validity of the grounds for the challenge.

3. If the other party does not agree to the challenge or the challenged arbitrator does not withdraw, the Administrator shall make the decision on the challenge.

4. The Administrator, on its own initiative, may remove an arbitrator for failing to perform or if the arbitrator

becomes incapable of performing the duties of an arbitrator.

Article 16: Replacement of an Arbitrator

1. If an arbitrator withdraws, is incapable of performing the duties of an arbitrator, or is removed for any reason, and the office becomes vacant, a substitute arbitrator, if needed, shall be appointed pursuant to the provisions of Article 13, unless the parties otherwise agree.

2. If a substitute arbitrator is appointed under this Article, unless the parties otherwise agree, the arbitral tribunal shall determine at its sole discretion whether all or part of the case shall be repeated.

3. If an arbitrator on a three-person arbitral tribunal fails to participate in the arbitration for any reason, and unless otherwise agreed to by the parties, the two other arbitrators shall have the power in their sole discretion to continue the arbitration and to make any decision, ruling, order, or award, notwithstanding the failure of the third arbitrator to participate. In determining whether to continue the arbitration or to render any decision, ruling, order, or award without the participation of an arbitrator, the two other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the third arbitrator for such non-participation and such other matters as they consider appropriate in the circumstances of the case.

4. In the event that the two other arbitrators do not agree to continue the arbitration without the participation of the third arbitrator, the Administrator on proof-satisfactory to it shall declare the office vacant, and a substitute arbitrator shall be appointed pursuant to the provisions of Article 13, unless the parties otherwise agree.

Article 17: Arbitral Tribunal Secretary

The tribunal may, with the consent of the parties, appoint an arbitral tribunal secretary, who will serve in accordance with ICDR guidelines.

General Conditions

Article 18: Party Representation

Any party may be represented in the arbitration. The names, addresses, telephone numbers, fax numbers, and email addresses of representatives shall be communicated in writing to the other party and to the Administrator. Unless instructed otherwise by the Administrator, once the arbitral tribunal has been established, the parties or their representatives may communicate in writing directly with the tribunal with simultaneous copies to the other party and, unless otherwise instructed by the Administrator, to the Administrator. The conduct of party representatives shall be in accordance with such guidelines as the ICDR may issue on the subject.

Article 19: Place of Arbitration

1. If the parties do not agree on the place of arbitration by a date established by the Administrator, the Administrator may initially determine the place of arbitration, subject to the power of the arbitral tribunal to determine finally the place of arbitration within 45 days after its constitution.

2. The tribunal may meet at any location it deems appropriate for any purpose, including to conduct hearings, hold conferences, hear witnesses, inspect property or documents, or deliberate, and, if done elsewhere than the place of arbitration, the arbitration shall be deemed conducted at the place of arbitration and any award shall be deemed made at the place of arbitration.

Article 20: Language

If the parties have not agreed otherwise, the language(s) of the arbitration shall be the language(s) of the documents containing the arbitration agreement, subject to the power of the arbitral tribunal to determine otherwise. The tribunal may order that any documents delivered in another language shall be accompanied by a translation into the language(s) of the arbitration.

Article 21: Arbitral Jurisdiction

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to arbitrability, to the existence, scope, or validity of the arbitration agreement(s), or with respect to whether all of the claims, counterclaims, and setoffs made in the arbitration may be determined in a single arbitration, without any need to refer such matters first to a court.

2. The tribunal shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the tribunal that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

3. A party must object to the jurisdiction of the tribunal or to arbitral jurisdiction respecting the admissibility of a claim, counterclaim, or setoff no later than the filing of the Answer, as provided in Article 3, to the claim, counterclaim, or setoff that gives rise to the objection. The tribunal may extend such time limit and may rule on any objection under this Article as a preliminary matter or as part of the final award.

4. Issues regarding arbitral jurisdiction raised prior to the constitution of the tribunal shall not preclude the Administrator from proceeding with administration and shall be referred to the tribunal once constituted for determination.

Article 22: Conduct of Proceedings

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

2. The tribunal shall conduct the proceedings with a view to expediting the resolution of the dispute. The tribunal may, promptly after being constituted, conduct a procedural hearing with the parties for the purpose of organizing, scheduling, and agreeing to procedures, including the setting of deadlines for any submissions by the parties. In establishing procedures for the case, the tribunal and the parties may consider how technology, including video, audio, or other electronic means, could be used to increase the efficiency and economy of the proceedings.

3. At the procedural hearing, the tribunal shall discuss with the parties cybersecurity, privacy, and data protection to provide for an appropriate level of security and compliance in connection with the proceeding.

4. The tribunal may decide preliminary issues, bifurcate proceedings, direct the order of proof, exclude cumulative or irrelevant testimony or other evidence, and direct the parties to focus their presentations on issues whose resolution could dispose of all or part of the case.

5. At any time during the proceedings, the tribunal may order the parties to produce documents, exhibits, or other evidence it deems necessary or appropriate. Unless the parties agree otherwise in writing, the tribunal shall apply Article 24.

6. Documents or information submitted to the tribunal by one party shall at the same time be transmitted by that party to all parties and, unless instructed otherwise by the Administrator, to the Administrator.

7. The tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence.

8. The parties shall make every effort to avoid unnecessary delay and expense in the arbitration. The arbitral tribunal may allocate costs, draw adverse inferences, and take such additional steps as are necessary to protect the efficiency and integrity of the arbitration.

Article 23: Early Disposition

1. A party may request leave from the arbitral tribunal to submit an application for disposition of any issue presented by any claim or counterclaim in advance of the hearing on the merits ("early disposition"). The tribunal shall allow a party to submit an application for early disposition if it determines that the application (a) has a reasonable possibility of succeeding, (b) will dispose of, or narrow, one or more issues in the case, and (c) that consideration of the application is likely to be more efficient or economical than leaving the issue to be determined with the merits.
2. Each party shall have the right to be heard and a fair opportunity to present its case regarding whether or not such application should be heard and, if permission to make the application is given, whether early disposition should be granted.

3. The arbitral tribunal shall have the power to make any order or award in connection with the early disposition of any issue presented by any claim or counterclaim that the tribunal deems necessary or appropriate. The tribunal shall provide reasoning for any award.

Article 24: Exchange of Information

1. The arbitral tribunal shall manage the exchange of information between the parties with a view to maintaining efficiency and economy. The tribunal and the parties should endeavor to avoid unnecessary delay and expense while at the same time avoiding surprise, assuring equality of treatment, and safeguarding each party's opportunity to present its claims and defenses fairly.

2. The parties may provide the tribunal with their views on the appropriate level of information exchange for each case, but the tribunal retains final authority. To the extent that the parties wish to depart from this Article, they may do so only by written agreement and in consultation with the tribunal.

3. The parties shall exchange all documents upon which each intends to rely on a schedule set by the tribunal.

4. The tribunal may, upon application, require a party to make available to another party documents in that party's possession not otherwise available to the party seeking the documents, that are reasonably believed to exist and to be relevant and material to the outcome of the case. Requests for documents shall contain a description of specific documents or classes of documents, along with an explanation of their relevance and materiality to the outcome of the case.

5. The tribunal may condition any exchange of information subject to claims of commercial or technical confidentiality on appropriate measures to protect such confidentiality.

6. When documents to be exchanged are maintained in electronic form, the party in possession of such documents may make them available in the form (which may be paper copies) most convenient and economical for it, unless the tribunal determines, on application, that there is a compelling need for access to the documents in a different form. Requests for documents maintained in electronic form should be narrowly focused and structured to make searching for them as economical as possible. The tribunal may direct testing or other means of focusing and limiting any search.

7. The tribunal may, on application, require a party to permit inspection on reasonable notice of relevant premises or objects.

8. In resolving any dispute about pre-hearing exchanges of information, the tribunal shall require a requesting party to justify the time and expense that its request may involve and may condition granting such a request on the payment of part or all of the cost by the party seeking the information. The tribunal may also allocate the costs of providing information among the parties, either in an interim order or in an award.

9. In the event a party fails to comply with an order for information exchange, the tribunal may draw adverse inferences and may take such failure into account in allocating costs.

10. Depositions, interrogatories, and requests to admit as developed for use in U.S. court procedures generally are not appropriate procedures for obtaining information in an arbitration under these Rules.

Article 25: Privilege

The arbitral tribunal shall take into account applicable principles of privilege, such as those involving the confidentiality of communications between a lawyer and client. When the parties, their counsel, or their documents would be subject under applicable law to different rules, the tribunal should, to the extent possible, apply the same rule to all parties, giving preference to the rule that provides the highest level of protection.

Article 26: Hearing

1. The arbitral tribunal shall give the parties reasonable notice of the date, time, and place of any oral hearing.

2. A hearing or a portion of a hearing may be held by video, audio, or other electronic means when: (a) the parties so agree; or (b) the tribunal determines, after allowing the parties to comment, that doing so would be appropriate and would not compromise the rights of any party to a fair process. The tribunal may at any hearing direct that witnesses be examined through means that do not require their physical presence.

3. The tribunal shall determine the manner in which witnesses are examined and who shall be present during witness examination.

4. Unless otherwise agreed by the parties or directed by the tribunal, evidence of witnesses should be presented in the form of written statements signed by them. In accordance with a schedule set by the tribunal, each party shall notify the tribunal and the other parties of the names of any witnesses who have presented a witness statement whom it requests to examine. The tribunal may require any witness to appear at a hearing. If a witness whose appearance has been requested fails to appear without valid excuse as determined by the tribunal, the tribunal may make such order it deems appropriate, which may include reducing the weight to be given to the statement(s) or disregarding such statement(s).

5. At least 15 days before the hearings, each party shall give the tribunal and the other parties the names and contact information of any witnesses it intends to present, the subject of their testimony, and the languages in which such witnesses will give their testimony.

6. Hearings are private unless the parties agree otherwise or the law provides to the contrary.

Article 27: Interim Measures

1. At the request of any party, the arbitral tribunal may order or award any interim or conservatory measures it deems necessary, including injunctive relief and measures for the protection or conservation of property.

2. Such interim measures may take the form of an interim order or award, and the tribunal may require security for the costs of such measures.

3. A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

4. The arbitral tribunal may allocate costs associated with applications for interim relief in any interim order or award or in the final award.

5. An application for emergency relief prior to the constitution of the arbitral tribunal may be made as provided for in Article 7.

Article 28: Tribunal-Appointed Expert

1. The arbitral tribunal, after consultation with the parties, may appoint one or more independent experts to report to it, in writing, on issues designated by the tribunal and communicated to the parties.

2. The parties shall provide such an expert with any relevant information or produce for inspection any relevant documents or goods that the expert may require. Any dispute between a party and the expert as to the relevance of the requested information or goods shall be referred to the tribunal for decision.

3. Upon receipt of an expert's report, the tribunal shall send a copy of the report to all parties and shall give the parties an opportunity to express, in writing, their opinion of the report. A party may examine any document on which the expert has relied in such a report.

4. At the request of any party, the tribunal shall give the parties an opportunity to question the expert at a hearing. At this hearing, parties may present expert witnesses to testify on the points at issue.

Article 29: Default

1. If a party fails to submit an Answer in accordance with Article 3, the arbitral tribunal may proceed with the arbitration.

2. If a party, duly notified under these Rules, fails to appear at a hearing without showing sufficient cause for such failure, the tribunal may proceed with the hearing.

3. If a party, duly invited or ordered to produce evidence or take any other steps in the proceedings, fails to do so within the time established by the tribunal without showing sufficient cause for such failure, the tribunal may make the award on the evidence before it.

Article 30: Closure of Hearing

1. The arbitral tribunal may ask the parties if they have any further submissions and upon receiving negative replies or if satisfied that the record is complete, the tribunal may declare the arbitral hearing closed.

2. The tribunal on its own motion, or upon application of a party, may reopen the arbitral hearing at any time before the award is made.

Article 31: Waiver

A party who knows of any non-compliance with any provision or requirement of the Rules or the arbitration agreement, and proceeds with the arbitration without promptly stating an objection in writing, waives the right to object.

Article 32: Awards, Orders, Decisions, and Rulings

1. In addition to making a final award, the arbitral tribunal may make interim, interlocutory, or partial awards, orders, decisions, and rulings.

2. When there is more than one arbitrator, any award, order, decision, or ruling of the tribunal shall be made by a majority of the arbitrators.

3. When the parties or the tribunal so authorize, the presiding arbitrator may make orders, decisions, or rulings on questions of procedure, including exchanges of information, subject to revision by the tribunal.

4. An order or award may be signed electronically, unless (a) the applicable law requires a physical signature, (b) the parties agree otherwise, or (c) the arbitral tribunal or Administrator determines otherwise.

Article 33: Time, Form, and Effect of Award

1. Awards shall be made in writing by the arbitral tribunal and shall be final and binding on the parties. The tribunal shall make every effort to deliberate and

prepare the award as quickly as possible after the hearing. Unless otherwise agreed by the parties, specified by law, or determined by the Administrator, the final award shall be made no later than 60 days from the date of the closing of the hearing pursuant to Article 30. The parties shall carry out any such award without delay and, absent agreement otherwise, waive irrevocably their right to any form of appeal, review, or recourse to any court or other judicial authority, insofar as such waiver can validly be made. The tribunal shall state the reasons upon which an award is based, unless the parties have agreed that no reasons need be given.

2. An award shall be signed by the arbitrator(s) and shall state the date on which the award was made and the place of arbitration pursuant to Article 19. Where there is more than one arbitrator and any of them fails to sign an award, the award shall include or be accompanied by a statement of the reason for the absence of such signature.

3. The award shall be transmitted in draft form by the tribunal to the Administrator. The award shall be communicated to the parties by the Administrator.

4. If applicable law requires an award to be filed or registered, the tribunal shall cause such requirement to be satisfied. It is the responsibility of the parties to bring such requirements or any other procedural requirements of the place of arbitration to the attention of the tribunal.

Article 34: Applicable Laws and Remedies

1. The arbitral tribunal shall apply the substantive law(s) or rules of law agreed by the parties as applicable to the dispute. Failing such an agreement by the parties, the tribunal shall apply such law(s) or rules of law as it determines to be appropriate.

2. In arbitrations involving the application of contracts, the tribunal shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.

3. The tribunal shall not decide as amiable compositeur or ex aequo et bono unless the parties have expressly authorized it to do so.

4. A monetary award shall be in the currency or currencies of the contract unless the tribunal considers another currency more appropriate, and the tribunal may award such pre-award and post-award interest, simple or compound, as it considers appropriate, taking into consideration the contract and applicable law(s).

5. Unless the parties agree otherwise, the parties expressly waive and forego any right to punitive, exemplary, or similar damages unless any applicable law(s) requires that compensatory damages be increased in a specified manner. This provision shall not apply to an award of arbitration costs to a party to compensate for misconduct in the arbitration.

Article 35: Settlement or Other Reasons for Termination

1. If the parties settle the dispute before a final award is made, the arbitral tribunal shall terminate the arbitration and, if requested by all parties, may record the settlement in the form of a consent award on agreed terms. The tribunal is not obliged to give reasons for such an award.

2. If continuation of the arbitration becomes unnecessary or impossible due to the non-payment of deposits required by the Administrator, the arbitration may be suspended or terminated as provided in Article 39(3).

3. If continuation of the arbitration becomes unnecessary or impossible for any reason other than as stated in Sections 1 and 2 of this Article, the tribunal shall inform the parties of its intention to terminate the arbitration. The tribunal shall thereafter issue an order terminating the arbitration, unless a party raises justifiable grounds for objection.

Article 36: Interpretation and Correction of Award

1. Within 30 days after the receipt of an award, any party, with notice to the other party, may request the arbitral tribunal to interpret the award or correct any clerical, typographical, or computational errors or make an additional award as to claims, counterclaims, or setoffs presented but omitted from the award.

2. If the tribunal considers such a request justified after considering the contentions of the parties, it shall comply with such a request within 30 days after receipt of the parties' last submissions respecting the requested interpretation, correction, or additional award. Any interpretation, correction, or additional award made by the tribunal shall contain reasoning and shall form part of the award.

3. The tribunal on its own initiative may, within 30 days of the date of the award, correct any clerical, typographical, or computational errors or make an additional award as to claims presented but omitted from the award.

4. The parties shall be responsible for all costs associated with any request for interpretation, correction, or an additional award, and the tribunal may allocate such costs.

Article 37: Costs of Arbitration

The arbitral tribunal shall fix the costs of arbitration in its award(s). The tribunal may allocate such costs among the parties if it determines that allocation is reasonable, taking into account the circumstances of the case.

Such costs may include:

a. the fees and expenses of the arbitrators, including applicable taxes;

b. the costs of any assistance required by the tribunal;

c. the fees and expenses of the Administrator;

d. the reasonable legal and other costs incurred by the parties;

e. any costs incurred in connection with a request for interim or emergency relief pursuant to Articles 7 or 27;

f. any costs incurred in connection with a request for consolidation pursuant to Article 9; and

g. any costs associated with information exchange pursuant to Article 24

Article 38: Fees and Expenses of Arbitral Tribunal

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the time spent by the arbitrators, the size and complexity of the case, and any other relevant circumstances.

2. As soon as practicable after the commencement of the arbitration, the Administrator shall designate an appropriate daily or hourly rate of compensation in consultation with the parties and all arbitrators, taking into account the arbitrators' stated rate of compensation and the size and complexity of the case.

3. Any dispute regarding the fees and expenses of the arbitrators shall be determined by the Administrator.

Article 39: Deposits

1. The Administrator may request that the parties deposit appropriate amounts as an advance for the costs referred to in Article 37.

2. During the course of the arbitration, the Administrator may request supplementary deposits from the parties.

3. Failure of a party asserting a claim or counterclaim to pay the required fees or deposits shall be deemed a withdrawal of the claim or counterclaim. In no event, however, shall a party be precluded from defending a claim or counterclaim.

4. If the deposits requested as referred to in Article 37(a) and 37(b) are not paid promptly and in full, the Administrator shall so inform the parties in order that one or more of them may make the required deposits. If any such deposit is made by one or more of the parties, the tribunal may, upon request, make a separate award in favor of the paying party(s) for recovery of the deposit, together with any interest.

5. If no party is willing to make the requested deposits, the arbitral tribunal may order the suspension or termination of the proceedings. If the tribunal has not yet been appointed, the Administrator may suspend or terminate the proceedings.

6. After the final award has been made, the Administrator shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Article 40: Confidentiality

1. Confidential information disclosed during the arbitration by the parties or by witnesses shall not be divulged by an arbitrator or by the Administrator. Except as provided in Article 40.3, unless otherwise agreed by the parties or required by applicable law, the members of the arbitral tribunal and the Administrator shall keep confidential all matters relating to the arbitration or the award.

2. Unless the parties agree otherwise, the tribunal may make orders concerning the confidentiality of the arbitration or any matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.

3. An award may be made public only with the consent of all parties or as required by law, except that the Administrator may publish or otherwise make publicly available selected awards, orders, decisions, and rulings that have become public in the course of enforcement or otherwise.

4. The ICDR may also publish selected awards, orders, decisions, and rulings that have been edited to conceal the names of the parties and other identifying details unless a party has objected in writing to publication within 6 months from the date of the award.

Article 41: Exclusion of Liablity

The members of the arbitral tribunal, any emergency arbitrator appointed under Article 7, any consolidation arbitrator appointed under Article 9, any arbitral tribunal secretary, and the Administrator shall not be liable to any party for any act or omission in connection with any arbitration under these Rules, except to the extent that such a limitation of liability is prohibited by applicable law. The parties agree that no arbitrator, emergency arbitrator, consolidation arbitrator, or arbitral tribunal secretary, nor the Administrator shall be under any obligation to make any statement about the arbitration, and no party shall seek to make any of these persons a party or witness in any judicial or other proceedings relating to the arbitration.

Article 42: Interpretation of Rules

The arbitral tribunal, any emergency arbitrator appointed under Article 7, and any consolidation arbitrator appointed under Article 9, shall interpret and apply these Rules insofar as they relate to their powers and duties. The Administrator shall interpret and apply all other Rules.

International Expedited Procedures

Article E-1: Scope of Expedited Procedures

These Expedited Procedures supplement the International Arbitration Rules as provided in Article 1(4).

Article E-2: Detailed Submissions

Parties are to present detailed submissions on the facts, Parties are to present detailed submissions on the facts, claims, counterclaims, setoffs and defenses, together with all of the evidence then available on which such party intends to rely, in the Notice of Arbitration and the Answer. The arbitrator, in consultation with the parties, shall establish a procedural order, including a timetable, for completion of any written submissions.

Article E-3: Administrative Conference

The Administrator may conduct an administrative conference with the parties and their representatives to discuss the application of these procedures, arbitrator selection, mediating the dispute, and any other administrative matters.

Article E-4: Objection to the Applicability of the Expedited Procedures

If an objection is submitted before the arbitrator is appointed, the Administrator may initially determine the applicability of these Expedited Procedures, subject to the power of the arbitrator to make a final determination. The arbitrator shall take into account the amount in dispute and any other relevant circumstances.

Article E-5: Changes of Claim or Counterclaim

If, after filing of the initial claims and counterclaims, a party amends its claim or counterclaim to exceed $500,000 USD exclusive of interest and the costs of arbitration, the case will continue to be administered pursuant to these Expedited Procedures unless the parties agree otherwise, or the Administrator or the arbitrator determines otherwise. After the arbitrator is appointed, no new or different claim, counterclaim or setoff and no change in amount may be submitted except with the arbitrator's consent.

Article E-6: Appointment and Qualifications of the Arbitrator

A sole arbitrator shall be appointed as follows. The Administrator shall simultaneously submit to each party an identical list of five proposed arbitrators. The parties may agree to an arbitrator from this list and shall so advise the Administrator. If the parties are unable to agree upon an arbitrator, each party may strike two names from the list, number the remaining names in order of preference, and return the list to the Administrator within 10 days from the transmittal date of the list to the parties. The parties are not required to exchange selection lists. If the parties fail to agree on any of the arbitrators or if acceptable arbitrators are unable or unavailable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Administrator may make the appointment without the circulation of additional lists. The parties will be given notice by the Administrator of the appointment of the arbitrator, together with any disclosures.

Article E-7: Procedural Hearing and Order

After the arbitrator's appointment, the arbitrator may schedule a procedural hearing with the parties, their representatives, and the Administrator to discuss the procedure and schedule for the case. Within 14 days of appointment, the arbitrator shall issue a procedural order.

Article E-8: Proceedings by Written Submissions

In expedited proceedings based on written submissions, all submissions are due within 60 days of the date of the procedural order, unless the arbitrator determines otherwise. The arbitrator may require an oral hearing if deemed necessary.

Article E-9: Proceedings with an Oral Hearing

In expedited proceedings in which an oral hearing is to be held, the arbitrator shall set the date, time, and location of the hearing. The oral hearing shall take place within 60 days of the date of the procedural order unless the arbitrator deems it necessary to extend that period. Hearings may take place in person or via video, audio, or other electronic means, at the discretion of the arbitrator. Generally, there will be no transcript or stenographic record. Any party desiring a stenographic record may arrange for one. The oral hearing shall not exceed one day unless the arbitrator determines otherwise. The Administrator will notify the parties in advance of the hearing date.

Article E-10: The Award

Awards shall be made in writing and shall be final and binding on the parties. Unless otherwise agreed by the parties, specified by law, or determined by the Administrator, the award shall be made not later than 30 days from the date of the closing of the hearing or from the time established for final written submissions.

Administrative Fees

Administrative Fee Schedules

FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT
www.adr.org/internationalfeeschedule.

Chapter 32

JAMS International Arbitration Rules and Procedures[1] (2021)

About JAMS

JAMS provides arbitration and mediation services from Resolution Centers located throughout Europe and the United States. Our arbitrators and mediators hear and resolve some of the most complex and contentious disputes. Our arbitrators and mediators come from the highest ranks of the legal profession. These highly trained and experienced ADR professionals are dedicated to the highest ethical standards of conduct. Parties wishing to write a predispute JAMS arbitration clause into their agreement should review the sample arbitration clauses. These clauses may be modified to tailor the arbitration process to meet the parties' individual needs.

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JAMS International Arbitration Rules

JAMS INTERNATIONAL ARBITRATION RULES

Article 1. International Arbitration Rules

1.1 Where parties have agreed in writing to arbitrate disputes under these International Arbitration Rules ("Rules") or have provided for arbitration of an international dispute to be administered by JAMS without designating specific rules that will apply, the arbitration will take place in accordance with these Rules, as in effect at the date of commencement of the arbitration, subject to whatever modifications the parties may adopt in writing. The Rules include the Schedule of Costs in effect at the commencement of the arbitration, which JAMS may amend from time to time. A dispute that is subject to these Rules may be administered by JAMS, as requested by the parties or as determined by JAMS.

1.2 When the Rules govern the arbitration, the parties will be deemed to have made the Rules a part of their arbitra-

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tion agreement, except to the extent that they have agreed in writing, or on the record during the course of the arbitral proceeding, to modify the Rules. The Schedule of Costs will not be subject to modification by the parties.

1.3 When the Rules specify the duties and responsibilities of the Administrator or specify duties of an administrative nature, such reference will be to JAMS Administrators. When the Rules specify the duties and responsibilities of JAMS and specify duties and responsibilities of a discretionary nature, such reference will be to the JAMS International Arbitration Committee ("JIAC") as it may be comprised from time to time. No member of the JIAC may participate in any decision that applies to an arbitration in which that member participates as an arbitrator.

1.4 Arbitration will be deemed to be "international" under the Rules if, at the time of the making of their agreement, the parties are located or have their places of business in different states, or if a substantial part of the transaction(s) or occurrence(s) that gave rise to the dispute took place in different states. For the purpose of this Rule, "state" means sovereign nations as well as territories, dependencies, mandates of a sovereign nation and other political entities recognized by the United Nations as having governmental status.

1.5 These Rules will govern the conduct of the arbitration, except that where any of these Rules is in conflict with a mandatory provision of applicable arbitration law of the seat of the arbitration, that provision of law will prevail.

1.6 Except in respect of deliberate wrongdoing, the arbitrator or arbitrators, the emergency arbitrator, the JIAC and JAMS will not be liable to any person for any act or omission in connection with the arbitration, except to the extent such limitation of liability is prohibited by applicable law.

Article 2. Request for Arbitration

2.1 Arbitration is initiated by the claimant filing a Request for Arbitration ("Request") with JAMS, which should include:

(a) A statement of the names, addresses, telephone numbers and email addresses of the parties and their representatives, if known;

(b) A description of the nature and circumstances of the dispute giving rise to the claim(s);

(c) A statement of the relief sought, including, to the extent possible, an indication of any amount(s) claimed;

(d) A copy of the arbitration agreement or clause under which the dispute is to be arbitrated;

(e) If applicable, a statement identifying the arbitrator appointed by the claimant, including such arbitrator's address, telephone number(s) and email address; and

(f) A statement of any matters (such as seat or language of the arbitration or the number of arbitrators, or their qualifications or identities) on which the parties have already agreed in writing for the arbitration or in respect of which the claimant wishes to make a proposal. The claimant may annex to its Request documents it deems relevant, or may add a reference to documents or other evidence it intends to submit. The failure to annex or refer to a document will not in itself preclude the use of that document in the arbitration.

2.2 (a) Service by a party under these Rules is effected by claimant providing one signed copy of the Request and any accompanying documents to each party and two copies in the case of a sole arbitrator and four copies in the case of a tripartite panel to JAMS. Service may be made by hand-delivery, overnight delivery services or, if a respondent is located in the United States, by U.S. mail. Service by any of these means is considered effective upon the date of deposit of the document. Unless prohibited by the law of the seat of the arbitration, or otherwise agreed to by the parties, at the option of the filing party, the Request may be filed with the Administrator in electronic form with the requisite number of paper copies sent on the same date by courier service or post, if applicable. The claimant must also remit the filing fee and the advance payment on administrative expenses required by JAMS. In the event that the claimant fails to comply with either of these requirements, the Administrator may fix a time limit within which the claimant must comply, failing which the file will be closed without prejudice to the right of the claimant to submit the same claims at a later date in another Request.

(b) The arbitrator or arbitrators ("Tribunal") or JAMS may at any time require, or the parties may agree to, electronic filing and service of documents in an arbitration, including through the JAMS Electronic Filing System. If the Tribunal or JAMS requires electronic filing and service, the parties shall maintain and regularly monitor a valid, usable and live email address for the receipt of all documents and notifications. Any document filed via the JAMS Electronic Filing System shall be considered as filed when the transmission to the JAMS Electronic Filing System is complete. Any document e-filed by 11:59 p.m. (of the sender's time zone) shall be deemed filed on that date.

(c) Every document filed with the JAMS Electronic Filing System shall be deemed to have been signed by the arbitrator, Administrator, attorney or declarant who submits the document to the JAMS Electronic Filing System, and shall bear the typed name, address and telephone number of a signing attorney.

(d) Delivery of documents by e-service through the JAMS Electronic Filing System to other registered users is valid and effective service and has the same legal effect as an original paper document. Recipients of e-served documents shall access such documents through the JAMS Electronic Filing System. E-service shall be deemed complete when the party initiating e-service or the Administrator completes the transmission of the electronic document(s) to the JAMS Electronic Filing System for e-filing and/or e-service.

(e) If an electronic filing and/or service via the JAMS Electronic Filing System does not occur due to error in the transmission of the document, the Tribunal or JAMS may, for good cause shown, permit the document to be filed and/or served nunc pro tunc to the date it was first attempted to be transmitted electronically. In such cases a party shall, absent extraordinary circumstances, be entitled to an order extending the date for any response or the period within which any right, duty or other act must be performed.

(f) For documents that are not electronically filed, service by a party under these Rules is effected by providing one signed copy of the document to each party and two copies in the case of a sole arbitrator and four copies in the case of a tripartite panel to JAMS. Service may be made by courier service or, if the party to be served is located in the United States, certified or registered post or any other means of communication that provides a record of transmission. Service by any of these means is considered effective upon the date of deposit of the document.

2.3 In communications with the parties, the Administrator may, if practicable, utilize facsimile or email communication in addition to post or courier service, and any such communication will be deemed received upon the first receipt of any communication sent by any of the above means.

2.4 (a) The arbitration will be deemed to have been commenced when JAMS issues a Commencement Letter based upon the existence of one of the following:

(i) A post-dispute arbitration agreement fully executed by all parties specifying JAMS administration or use of any JAMS rules; or

(ii) A pre-dispute written contractual provision requiring the parties to arbitrate the dispute or claim and specifying JAMS administration or the use of any JAMS rules or that the parties agree shall be administered by JAMS; or

(iii) A written confirmation of an oral agreement of all parties to participate in an arbitration administered by JAMS or conducted pursuant to any JAMS rules; or

(iv) The respondent's failure to timely object to JAMS administration, where the parties' arbitration agreement does not specify JAMS administration or any of the JAMS rules; or

(v) A copy of a court order compelling arbitration at JAMS.

(b) The issuance of the Commencement Letter confirms that requirements for commencement have been met, that JAMS has received all payments required under the applicable fee schedule and that the claimant has provided JAMS with contact information for all parties together with evidence that the Request has been served on all parties.

(c) If a party that is obligated to arbitrate in accordance with subparagraph (a) of this Article fails to agree to participate in the arbitration, JAMS shall confirm in writing that party's failure to respond or participate, and, pursuant to Article 27.1, the Tribunal, once appointed, shall schedule and provide appropriate notice of a hearing or other opportunity for the party demanding the arbitration to demonstrate its entitlement to relief.

(d) The date of commencement of the arbitration is the date of the Commencement Letter but is not intended to be applicable to any legal requirements such as the statute of limitations, any contractual limitations period or claims notice requirements. The term "commencement," as used in this Article, is intended only to pertain to the operation of this and other Articles.

2.4 In communications with the parties, the Administrator may, if practicable, utilize facsimile or email communication in addition to post or courier service, and

any such communication will be deemed received upon the first receipt of any communication sent by any of the above means.

Article 3. Emergency Relief Procedures

These Emergency Relief Procedures are available where not otherwise prohibited by law. Parties may agree to opt out of these procedures in their arbitration agreement or by subsequent written agreement. A party in need of emergency relief prior to the appointment of an arbitrator may notify JAMS and all other parties in writing of the relief sought and the basis for an award of such relief. The notice shall include an explanation of why such relief is needed on an expedited basis. Such notice may be given by courier service, email or personal delivery, and must include a statement certifying that all other parties have been notified and the means of such notification, or, if all other parties have not been notified, an explanation of the efforts made to notify such parties.

3.1 Upon payment of any advance requested by JAMS, JAMS shall promptly appoint a sole emergency arbitrator ("Emergency Arbitrator") to rule on the emergency request. In most cases the appointment of an Emergency Arbitrator will be done within 24 hours of receipt of the application and any requested advance. The Emergency Arbitrator shall promptly disclose any circumstance likely, based on information disclosed in the application, to affect the arbitrator's ability to be impartial or independent. Any challenge to the appointment of the Emergency Arbitrator shall be made within 24 hours of the disclosures by the Emergency Arbitrator. JAMS will promptly review and decide any such challenge. JAMS' decision will be final.

3.2 Within two business days after appointment, or as soon as practicable thereafter, the Emergency Arbitrator shall establish a schedule for the consideration of the request for emergency relief. The schedule shall provide a reasonable opportunity for all parties to be heard, taking into account the nature of the relief sought. If a hearing is required, such hearing will be deemed to take place at the seat of the arbitration, and, at the discretion of the Emergency Arbitrator, the parties may attend by conference call, videoconference or other technology that enables the participants to appear remotely. The Emergency Arbitrator has the authority to rule on their own jurisdiction and shall resolve any disputes with respect to the request for emergency relief.

3.3 The Emergency Arbitrator shall determine whether the party seeking emergency relief has shown that immediate loss or damage will result in the absence of emergency relief and whether the requesting party is entitled to such relief. The Emergency Arbitrator shall enter an order or award granting or denying the relief, as the case may be, and stating the reasons therefor. The Emergency Arbitrator's order or award may be in the form of an interim award or a partial final award. By agreeing to arbitration under these Rules, the parties undertake to comply with any emergency decision without delay.

3.4 The emergency decision may be amended or revoked by the Emergency Arbitrator upon a reasoned request by a party. Any request to modify the Emergency Arbitrator's decision must be based on changed circumstances and may be made to the Emergency Arbitrator until such time as a Tribunal is appointed in accordance with the parties' agreement and JAMS' usual procedures. The Tribunal appointed to hear the Arbitration shall not be bound by the decision(s) and reason(s) of the Emergency Arbitrator and may, at its discretion, modify any emergency decision.

3.5 In the Emergency Arbitrator's discretion, any order or award of emergency relief may be conditioned on the provision of adequate security by the party seeking such relief.

Article 4. Statements of Defense and Reply; Counterclaims

4.1 Within 30 calendar days after commencement of the Arbitration, the respondent will deliver to the claimant (with a copy to the Administrator) a statement of defense ("Statement of Defense"). Failure to deliver a Statement of Defense will not delay the arbitration. In the event of such failure, the respondent will be deemed to have denied the claims set forth in the Request. Failure to deliver a Statement of Defense will not excuse the respondent from notifying the claimant in writing, within 30 calendar days from the date of commencement of the arbitration, of the arbitrator appointed by the respondent, unless the parties have agreed that neither will appoint an arbitrator or that JAMS will make the appointment. The Statement of Defense should include:

(a) Confirmation or denial of all or part of the claims advanced by the claimant in the Request;

(b) If not made earlier, any objection to the jurisdiction of the Tribunal to determine a claim or defense, or any objection to JAMS' authority to administer the arbitration;

(c) A brief statement describing the nature and circumstances of any set-offs asserted or counterclaims advanced by the respondent against the claimant;

(d) Comment in response to any statements contained in the Request on matters relating to the conduct of the arbitration;

(e) If applicable, the name, address, telephone number(s) and email address (if known) of the respondent's appointed arbitrator; and

(f) Any counterclaim the respondent wishes to assert against the claimant. If a counterclaim is asserted in the Statement of Defense, then, within 30 calendar days after receipt of the Statement of Defense, the claimant will deliver to the respondent (with a copy to the Administrator) a reply to counterclaim ("Reply to Counterclaim"), which should include the same elements as provided for in the Statement of Defense. Failure to deliver a Reply to Counterclaim will not delay the arbitration. In the event of such a failure, all counterclaims set forth in the Statement of Defense will be deemed denied.

4.2 The Tribunal, or JAMS if the Tribunal has not yet been constituted, may extend any of the time limits established in this Article if it considers such an extension justified.

4.3 As soon as practicable following receipt of the Request, the Statement of Defense and the Reply to Counterclaim, if applicable, the Tribunal will proceed promptly in such a manner as has been agreed in writing by the parties or pursuant to its authority under these Rules.

4.4 The Tribunal will have jurisdiction to determine whether any claim, defense or counterclaim, whether original or amended, falls within the scope of the arbitration clause or the parties' separate agreement to arbitrate.

Article 5. Amendments to the Claim or Defense

5.1 Claims or counterclaims within the scope of the arbitration clause may be added or amended prior to the establishment of the Tribunal, but thereafter only with the consent of the Tribunal. After the Tribunal has been established, a party may amend or supplement its claims or defenses, unless the Tribunal considers it inappropriate to allow such amendment, having regard to the delay in making it or prejudice to any party or any other circumstances. However, a claim or defense may not be amended in such a manner that the amended claim or the amended defense falls outside the scope of the arbitration clause or the parties' separate arbitration agreement.

5.2 The Statement of Defense or Reply to Counterclaim to amended claims or counterclaims will be delivered within 20 calendar days after the receipt of any amendment.

Article 6. Consolidation of Arbitral Proceedings (Joinder); Participation of Third Parties (Intervention)

6.1 Where a Request is submitted between parties already involved in other arbitral proceedings pending under these Rules, JAMS may decide, after consulting with the parties to all proceedings and with the Tribunal, that the new case will be referred to the Tribunal already constituted for the existing proceedings. JAMS may proceed in the same way when a Request is submitted between parties that are not identical to the parties in the existing arbitral proceedings. When rendering its decision, JAMS will take into account all circumstances, including the links between the two cases and the progress already made in the existing proceedings. Where JAMS decides to refer the new case to the existing Tribunal, the Parties to the new case will be deemed to have waived their right to designate an arbitrator or arbitrators.

6.2 Where the claimant requests a single arbitration concerning disputes arising out of or in connection with multiple contracts, JAMS may administer such arbitration, provided that:

(a) The parties to the contracts consent to a single arbitration to be conducted and administered in accordance with these Rules; or

(b) The contracts contain arbitration agreements referring such disputes to arbitration to be conducted and administered under these Rules, the arbitration agreements are compatible and:

(i) The disputes in the arbitrations arise out of the same legal relationship(s);

(ii) Such contracts consist of a principal contract and its ancillary contract(s); or

(iii) The disputes arise out of the same transaction or series of transactions.

6.3 Where a third party seeks to participate in an arbitration already pending under these Rules or where a party to an arbitration under these Rules seeks to cause a third party to participate in the arbitration, the Tribunal will decide on such request, after consulting with all the parties, taking into account all circumstances it deems relevant and applicable. If a third party is joined in a pending arbitration, or intervenes in a pending arbitration in accordance

with this Article 6.3, the Tribunal already constituted shall continue to hear and determine the dispute. A party so joined or who intervenes in a pending arbitration in accordance with this Article 6.3 may, subject to the consent of the Tribunal, make claims against any other party or be subject to claims made against it by any other party. If the additional party makes a claim(s), it shall also make payment of the requisite filing fee for such claim(s).

6.4 Where arbitral proceedings have been consolidated in accordance with Article 6.1, or where a single arbitration against multiple parties has been accepted for administration in accordance with Article 6.2, or where a third party participates in a pending arbitration in accordance with Article 6.3, the decision by JAMS, or the Tribunal, as the case may be, to allow a party's participation under any of those subsections shall be without prejudice to the Tribunal's power subsequently to decide any question as to its jurisdiction.

Article 7. Appointment of the Arbitrator(s)

7.1 If the parties have not appointed arbitrators or if they have agreed that JAMS will appoint the Tribunal, JAMS will appoint one Arbitrator, unless JAMS determines in its discretion that three arbitrators are appropriate because of the size, complexity or other circumstances of the case.

7.2 If the parties have agreed on a procedure for appointing the Tribunal, that procedure will be followed. If the parties have not agreed on a procedure of appointment, or if the Tribunal has not been established pursuant to the agreed procedure within the period of time stipulated by the parties (or, in the absence of such a stipulated period of time, within 45 calendar days after the commencement of the arbitration), the Tribunal will be established or completed, as the case may be, in accordance with the procedures set forth in Articles 7.3, 7.4 and 7.5 below.

7.3 Where a sole arbitrator is to be appointed, the sole arbitrator will be appointed jointly by the parties. If the appointment of the sole arbitrator is not made within the period of time agreed upon by the Parties, or in the absence of such an agreed period of time, the sole arbitrator will be appointed in accordance with Article 7.5.

7.4 Where three arbitrators are to be appointed, the arbitrators will be appointed in the following manner: The claimant(s) will appoint one arbitrator in the Request. The respondent(s) will appoint one arbitrator upon the earlier of the filing of the Statement of Defense or 30 calendar days from the date of commencement of the arbitration, unless that time is extended by stipulation of the parties or by JAMS. The two arbitrators thus appointed will, within 20 calendar days after the appointment of the second arbitrator, appoint a third arbitrator, who will be the presiding arbitrator. If the respondent(s) fail to appoint an arbitrator within the time allotted, JAMS will appoint an arbitrator for the respondent(s). If the two arbitrators appointed by the claimant(s) and the respondent(s), respectively, fail to appoint a third arbitrator within the time period allotted under these Rules, the presiding arbitrator will be appointed in accordance with Article 7.5.

7.5 If the parties have failed to appoint an arbitrator as required under Article 7.2 or 7.3, or if the presiding arbitrator has not been appointed as required under Article 7.4, the appointment will take place in accordance with the following procedure:

(a) The Administrator will send to each party an identical list of candidates. The list will comprise the names of at least five candidates. The list will include or be accompanied by a brief statement of each candidate's qualifications. If the parties have agreed upon any particular qualifications, the list will contain only the names of candidates that satisfy those qualifications.

(b) Each side (claimant(s) and respondent(s)) will have the right to strike the names of any two candidates to whose appointment it objects and will number any remaining candidates in order of preference.

(c) Each side will return the marked list to the Administrator within 20 calendar days after the date it receives the list. Any side failing to return a marked list within that period of time, or that fails to respond according to the instructions provided by the Administrator, will be deemed to have assented to all candidates appearing on the list.

(d) As soon as possible after receipt of the lists from the parties, or failing this, after the expiration of the period of time specified in the previous subparagraph, JAMS, taking into account the preferences and objections expressed by the parties, will invite a person from the list to be the sole arbitrator, or the presiding arbitrator as the case may be.

7.6 Each prospective arbitrator will accept appointment in writing and will communicate such acceptance to the Administrator.

7.7 The Administrator will notify the parties of the establishment of the Tribunal.

7.8 Where there are more than two parties in the arbitration, and three arbitrators are to be appointed, the claimant(s) shall jointly nominate one arbitrator, and the

respondent(s) shall jointly nominate one arbitrator. The third arbitrator, who shall act as the presiding arbitrator, shall then be appointed in accordance with Article 7.5, unless all parties, within 10 calendar days after the appointment of the two party-appointed arbitrators, are able to agree on the appointment of a presiding arbitrator.

7.9 Where there are more than two parties in the arbitration, and one arbitrator is to be appointed, all parties are to agree on an arbitrator. In the absence of such a joint nomination having been made within 30 calendar days of receipt by the Administrator of the Request for Arbitration or within the period agreed by the parties or set by the Administrator, the arbitrator shall be appointed in accordance with Article 7.5.

Article 8. Independence and Availability of the Arbitrators

8.1 Arbitrators acting under these Rules will be impartial and independent. Each arbitrator will disclose in writing to the Administrator and to the parties at the time of his or her appointment and promptly, upon there arising during the course of the arbitration, any circumstances that might give rise to justifiable doubt regarding that arbitrator's independence or impartiality. Such circumstances include bias, interest in the result of the arbitration and past or present relationships with a party or its counsel. The parties and their representatives shall disclose to JAMS any circumstances likely to give rise to justifiable doubt as to an arbitrator's independence or impartiality, including any bias or any financial or personal interest in the result of the Arbitration or any past or present relationship with the parties or their representatives. The obligation of the Arbitrator, the parties and their representatives to make all required disclosures continues throughout the Arbitration process.

8.2 By accepting appointment, each arbitrator will be deemed to be bound by these Rules and any modification agreed to by the parties, and to have represented that he or she has and will maintain the time available to devote to the process contemplated by these Rules, as these Rules may have been amended by the parties' agreement.

Article 9. Challenge to Arbitrators

9.1 A party may challenge any arbitrator whenever circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, or if the arbitrator does not possess the requisite qualifications on which the parties have agreed. A party wishing to challenge an arbitrator must send notice of the challenge to the Administrator within 15 calendar days after being notified of the appointment of the arbitrator or within 15 calendar days after the circumstances giving rise to the challenge become known to that party.

9.2 The challenge must state in writing the reasons for the challenge.

9.3 Upon receipt of such a challenge, the Administrator will notify the other parties of the challenge. When an arbitrator has been challenged by one party, the other party or parties may agree to the acceptance of the challenge, and if there is agreement, the challenged arbitrator must withdraw. The challenged arbitrator may also withdraw from office in the absence of such agreement. In neither case does withdrawal imply acceptance of the validity of the grounds for the challenge.

9.4 If the other party or parties do not agree to the challenge and the challenged arbitrator does not withdraw, JAMS in its sole discretion will make the decision on the challenge.

9.5 The Tribunal may, in its discretion, suspend or continue the arbitral proceedings during the pendency of the challenge.

9.6 JAMS' decision as to the challenge or replacement of an arbitrator will be communicated to the parties and will be final.

Article 10. Replacement of an Arbitrator

10.1 If an arbitrator withdraws after a challenge, or if JAMS sustains a challenge, or if JAMS determines that there are sufficient reasons to accept the resignation of an arbitrator, or if an arbitrator dies or, in JAMS' sole discretion, becomes unable to act, a substitute arbitrator will be appointed pursuant to the provisions of Article 10.3, unless the parties otherwise agree on another procedure.

10.2 If a substitute arbitrator is appointed under this Article, JAMS, after consultation with the parties and the remaining members of the Tribunal, will determine in its sole discretion whether all or part of any prior hearings will be repeated.

10.3 Where a substitute arbitrator is to be appointed, JAMS will appoint such arbitrator. If the arbitrator to be replaced had been appointed by a party, JAMS will solicit the views of that party prior to the appointment. Where the Tribunal consists of three or more arbitrators, JAMS may decide that the remaining arbitrators will proceed with the case. Prior to making such a decision, the views of the parties and the remaining arbitrators will be solicited.

Article 11. Majority Power to Continue with Proceedings

11.1 If any arbitrator on a Tribunal of three or more members refuses or persistently fails to participate in pro-

ceedings or deliberations, the other arbitrators will have the power, after giving written notice of such refusal or failure to the Administrator, the parties and the non-participating arbitrator, to continue with the arbitration (including the making of any decision, ruling or award).

11.2 In determining whether to continue the arbitration, the other arbitrators will take into account the status of the arbitration, any explanation made by the non-participating arbitrator for that arbitrator's non-participation and such other matters as they may consider appropriate in the circumstances of the case. The reasons for such determination will be stated in any award, order or other decision made by the other arbitrators without the participation of the non-participating arbitrator.

11.3 In the event that the other arbitrators determine not to continue with the arbitration without the participation of a non-participating arbitrator, JAMS will, on proof satisfactory to it of the failure of the arbitrator to participate in the proceedings and deliberation of the Tribunal, declare the office vacant. JAMS will then appoint a substitute arbitrator, unless the parties agree otherwise.

Article 12. Communications between the Parties and the Arbitral Tribunal

12.1 Except as provided in Article 12.3, until the Tribunal is formed, all communications between parties and arbitrators will be made through the Administrator.

12.2 Thereafter, unless and until the Tribunal directs that communications will take place directly between the Tribunal and the parties (with simultaneous copies to the Administrator), all written communications between the parties and the Tribunal will continue to be made through the Administrator.

12.3 No party or anyone acting on its behalf will have any ex parte communication relating to the case with any arbitrator or with any candidate for appointment as party-appointed arbitrator, except to advise a candidate for appointment of the general nature of the controversy and of the anticipated proceedings and to ascertain the candidate's qualifications, availability or independence in relation to the parties, or to discuss with a party-appointed arbitrator the suitability of candidates for selection as presiding arbitrator where the parties or party-appointed arbitrators are to participate in that selection.

12.4 Documents or information supplied to the Tribunal by one party must be communicated simultaneously to the other party or parties.

Article 13. Notices

13.1 Unless otherwise ordered by the Tribunal, any notice or other communication that may be or is required to be given by a party under these Rules must be in writing and must be delivered via the JAMS Electronic Filing System or by courier service, or transmitted by email or any other means of communication that provides a record of its transmission. Parties resident in the United States may be notified by certified or registered mail.

13.2 A party's last-known residence or place of business during the arbitration will be a valid address for the purpose of any notice or other communication in the absence of any notification of a change to such address by that party to the other parties, the Tribunal and the Administrator.

13.3 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be treated as having been received on the day it is delivered or, in the case of a telecommunication, the date it is transmitted. If the date of receipt is an official holiday at the place received, the period is calculated from the first business day that follows. Official holidays occurring during the running of the period of time are included in calculating the period.

Article 14. Seat of the Arbitration

14.1 The seat of the arbitration will be fixed by the Administrator, unless designated in the arbitration agreement or otherwise agreed upon by the parties. Upon application of a party or at the request of an arbitrator, the Administrator or the Tribunal, for reasons of the health or safety of a party, a witness or an arbitrator, may direct that hearings take place in a location other than the seat of the arbitration.

14.2 The Tribunal, in its discretion, or by direction of the Administrator pursuant to Article 14.1, may hold hearings, meetings and deliberations at any convenient location; if elsewhere than the seat of the arbitration, the arbitration will be treated as an arbitration conducted at the seat of the arbitration, and any award will be treated as an award made at the seat of the arbitration for all purposes. At the discretion of the Tribunal, and after consultation with the parties, a hearing, or any part thereof, may take place by conference call, videoconference or the use of technology that enables participants to be located in one or more geographical locations. If some or all of the witnesses or other participants are located remotely, the Tribunal may make such orders and set such procedures as it deems necessary or advisable.

Article 15. Language

15.1 If the parties have not agreed otherwise, the language(s) of the arbitration will be that of the documents containing the arbitration agreement, subject to the power of the Tribunal to determine otherwise based upon the contentions of the parties and the circumstances of the arbitration. The Tribunal may order that any documents delivered in another language be accompanied by a translation into the language(s) of the arbitration.

Article 16. Confidentiality

16.1 Unless otherwise required by law, or unless the parties expressly agree otherwise, the Tribunal, the parties, the Administrator and JAMS will maintain the confidentiality of the arbitration.

16.2 Unless otherwise required by law, an award will remain confidential, unless all of the parties consent to its publication.

Article 17. Jurisdiction

17.1 The Tribunal will have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause will be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is null and void will not for that reason alone render invalid the arbitration clause.

17.2 A party that objects to the jurisdiction of the Tribunal or to the arbitrability of a claim, defense or counterclaim must make that objection no later than the filing of the Statement of Defense or the Reply to Counterclaim, as provided in Article 4.1(b) and (f). The Tribunal may nevertheless admit an untimely objection as to its jurisdiction or authority if it considers the delay justified in the circumstances. The Tribunal may rule on such objections as a preliminary ruling or as part of the final award.

17.3 By agreeing to arbitration under these Rules, the parties will be treated as having agreed not to apply to any court or other judicial authority for any relief regarding the Tribunal's jurisdiction, except with the agreement in writing of all parties to the arbitration or the prior authorization of the Tribunal, or following the latter's ruling on the objection to its jurisdiction.

Article 18. Applicable Law(s)

18.1 The Tribunal will decide the merits of the dispute on the basis of the rules of law agreed upon by the parties. In the absence of such an agreement, the Tribunal will apply the law or rules of law that it determines to be most appropriate.

18.2 The procedure applicable to the arbitration will be the procedure set forth in these Rules and in the arbitration law of the seat of the arbitration, unless the parties have expressly agreed upon another procedure, or upon the application of another arbitration law, provided any such agreement is deemed enforceable by the law of the seat of arbitration.

18.3 In all cases the Tribunal will take account of the provisions of the contract and the relevant trade usages.

Article 19. Representation

19.1 The parties, whether natural persons or legal entities such as corporations, LLCs or partnerships, may be represented by the persons of their choice, irrespective of, in particular, nationality or professional qualification. The names, addresses and telephone, email or other communication references of representatives will be communicated to the Administrator, the other parties and, after its establishment, the Tribunal.

19.2 Following the Tribunal's formation, any intended change or addition by a party to its legal representatives shall be notified promptly in writing to all other parties, the Tribunal and JAMS, and any such intended change or addition shall only take effect in the arbitration subject to the approval of the Tribunal.

19.3 The Tribunal may withhold approval of any intended change or addition to a party's legal representative(s) where such change or addition could compromise the composition of the Tribunal or the finality of any award (on the grounds of possible conflict or other like impediment). In deciding whether to grant or withhold such approval, the Tribunal shall have regard to the circumstances, including the general principle that a party may be represented by a legal representative chosen by that party, the stage that the arbitration has reached, the efficiency resulting from maintaining the composition of the Tribunal (as constituted throughout the arbitration), the views of the other party or parties to the arbitration and any likely wasted costs or loss of time resulting from such change or addition.

Article 20. Conduct of the Arbitration

20.1 Subject to these rules, the Tribunal may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a reasonable opportunity to present its case. The Tribunal,

exercising its discretion, will conduct the proceedings with a view to expediting the resolution of the dispute.

20.2 The Tribunal may decide whether the parties will present any written statements in addition to statements of claims and counterclaims and statements of defense, and it will fix the periods of time for submitting any such statements.

20.3 The Tribunal may, in its discretion, direct the order of proof, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

20.4 Unless the parties at any time agree otherwise in writing, the Tribunal will have the power, on the application of any party or on its own initiative, to identify the issues and to ascertain the relevant facts and the law or rules of law applicable to the arbitration, or to inquire into the merits of the parties' dispute.

20.5 The Tribunal may decide that the presiding arbitrator of a Tribunal may alone make procedural rulings.

20.6 The Tribunal is empowered to impose time limits it considers reasonable on each phase of the proceedings, including, without limitation, the time allotted to each party for presentation of its case and for rebuttal.

Article 21. Expedited Procedures

21.1 Prior to the full constitution of the Tribunal, a party may apply to the Administrator in writing for the arbitral proceedings to be conducted in accordance with the expedited procedures under this Rule ("Expedited Procedures"), where any of the following criteria are satisfied:

(a) The amount in dispute does not exceed the equivalent amount of $5,000,000 (USD), representing the aggregate of the claim, counterclaim and any set-off defense, and exclusive of any demand for reimbursement of costs or fees;

(b) The parties so agree; or

(c) In cases of exceptional urgency as may initially be determined by JAMS, subject to ultimate review by the Tribunal.

21.2 When a party has applied to the Administrator under Rule 21.1, JAMS shall make the initial determination, after considering the views of the parties, whether the arbitral proceedings shall be conducted in accordance with the Expedited Procedures, subject to ultimate determination by the Tribunal.

21.3 JAMS determines that the arbitral proceedings shall be conducted in accordance with the Expedited Procedures, the following procedure shall apply:

(a) The Administrator, before the full constitution of the Tribunal, or the Tribunal, after its full constitution, may shorten any time limits under these Rules;

(b) The Tribunal shall have the discretion to decide if the dispute shall be decided on the basis of documentary evidence, or if a hearing is required for the examination of any witnesses, expert witnesses and/or oral arguments;

(c) The award shall be made within six months from the date when the Tribunal is constituted, unless, in exceptional circumstances, the Administrator extends the time; and

(d) The Tribunal may state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons are to be given.

21.4 The parties may agree to shorten the various time limits set out in these Rules. Any such agreement entered into subsequent to the constitution of a full Tribunal will become effective only upon the approval of the Tribunal.

Article 22. Preliminary Conference

23.1 The Tribunal may hold an initial preliminary conference for the planning and scheduling of the arbitration. Such conference, if any, will be held promptly after the establishment of the Tribunal, unless the Tribunal is of the view that further submissions from the parties are appropriate prior to such conference. Such preliminary conference may, at the discretion of the Tribunal, be conducted in person, by conference call, videoconference or the use of technology that enables participants to be located in one or more geographical locations.

22.2 The Tribunal may provide an agenda for the preliminary conference in advance. By way of example, the following procedural matters may be addressed: any anticipated applications for interim measures of protection; any objections to the arbitrability of a particular claim or counterclaim; any objections to the jurisdiction of the Tribunal; the timing and manner of any required disclosure; the need or advisability of establishing measures or security protocols to protect the confidentiality of the arbitration or the confidentiality of information disclosed in connection

with the arbitration; the desirability of bifurcation or other separation of the issues in the arbitration; the desirability and practicability of consolidating the arbitration with any other proceeding; the scheduling of conferences and hearings; the need for and cost of translations; the scheduling of pre-hearing memorials and witness statements; the need for a record of conferences and hearings, including the need for or desirability of transcripts; the amount of time that may be allotted to each party for presentation of its case and for rebuttal; the mode, manner and order of presenting proof; the need for expert witnesses and how expert testimony should be presented; and the necessity for any on-site inspection by the Tribunal.

Article 23. Hearings

23.1 If either party so requests, the Tribunal will hold hearings for the presentation of evidence by witnesses, including expert witnesses. In the absence of such a request, the Tribunal will decide whether to hold such hearings or whether the proceedings will be conducted on the basis of the written record.

23.2 The Tribunal will fix the date, time and place of any meetings and hearings on the arbitration, and will give the parties reasonable notice thereof. At the discretion of the Tribunal, hearings may be conducted in person, by conference call, videoconference or the use of technology that enables participants to be located in one or more geographical locations.

23.3 In advance of any hearing, the Tribunal may submit to the parties a list of questions that it wishes them to address with special attention.

23.4 Hearings are private, unless the parties agree otherwise or the law provides to the contrary. The Tribunal will determine the manner in which witnesses are examined and may require any witness or witnesses to retire during the testimony of other witnesses.

23.5 If any of the parties, without valid excuse, fails to appear although duly summoned, the Tribunal will have the power to proceed with the hearing.

23.6 Any party may arrange for a stenographic record to be made of the hearing and shall inform the other parties in advance of the Hearing. No other means of recording the proceedings shall be permitted absent agreement of the parties or by direction of the Tribunal.

Article 24. Evidence

24.1 Each party will have the burden of proving the facts relied upon to support its claim or defense.

24.2 At any time during the proceedings, the Tribunal may order parties to exchange and produce documents, exhibits or other evidence it deems necessary or appropriate. The Tribunal may issue orders to protect the confidentiality of proprietary information, trade secrets and other sensitive information disclosed.

24.3 The Tribunal may determine the time, manner and form in which written exhibits are to be exchanged between the parties and presented to the Tribunal.

24.4 The Tribunal will determine the admissibility, relevance, materiality and weight of the evidence offered by any party. The Tribunal will take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

Article 25. Dispositive Motions or Early Determinations

25.1 The Tribunal may permit any party to file a dispositive motion directed to a particular claim or issue, either by agreement of all interested parties or at the request of one party, provided other interested parties have reasonable notice to respond to the request. The dispositive motion may be granted only if the Tribunal determines that the requesting party has shown that the proposed motion is likely to succeed and dispose of or narrow the issues in the case.

25.2 After consultation with the parties, the Tribunal, in its discretion, may sua sponte determine that any claim or defense is outside of the jurisdiction of the Tribunal or manifestly without merit. If such a determination is made, the Tribunal will issue an appropriate award to that effect.

Article 26. Experts and Other Witnesses

26.1 Before any hearing, the Tribunal may require either party to give notice of the identity of the witness it wishes to call, as well as of the subject matter of the witness's testimony and its relevance to the issues.

26.2 The Tribunal has the power to summon witnesses and to compel the production of relevant documents by summons, subpoena or other compulsory process where authorized to do so by the law of the location where the testimony of the witness is to be heard, or the production of documents is to be made, whether such location is at the seat of arbitration or in another location designated by the Tribunal pursuant to Article 14.2.

26.3 The Tribunal has discretion, on the grounds of redundancy and irrelevance, to limit or refuse the appearance of any witness, whether witness of fact or expert witness.

26.4 In the discretion of the Tribunal, evidence of witnesses may also be presented in the form of written statements signed by them. In the discretion of the Tribunal, the presentation of witness testimony in the form of written statements may be made conditional upon the witness's appearance for the purpose of cross-examination.

26.5 Subject to the provisions of any applicable law or ethical rule, it will not be improper for any party or its legal representatives to interview any witness or potential witness for the purpose of presenting the witness's testimony in written form or producing them as an oral witness.

26.6 Any person intending to testify to the Tribunal on any issue of fact or expertise will be treated as a witness under these Rules, even if that person is a party to the arbitration or was or is an officer, employee or shareholder of any party.

26.7 The Tribunal, after having consulted the parties, may appoint one or more experts, define the scope of their work and receive their reports. At the request of a party, the parties will be given the opportunity to question at a hearing any such expert appointed by the Tribunal and comment on any reports.

26.8 The fees and expenses of any expert appointed by the Tribunal under this Article will form part of the costs of the arbitration.

Article 27. Default

27.1 If the respondent fails to submit a Statement of Defense or the claimant fails to submit a Reply to Counterclaim, or if at any point any party fails to avail itself of the opportunity to present its case in the manner determined by these Rules or as directed by the Tribunal, the Tribunal may nevertheless proceed with the arbitration and make an award.

27.2 The Tribunal will make no final award upon the default of a party without a determination made upon the submission of proof by the non-defaulting party of the validity and amount of that party's claim.

27.3 If a party, without showing good cause, fails to comply with any provision of, or requirement under, these Rules or any direction given by the Tribunal, the Tribunal may draw the inferences that it considers appropriate.

Article 28. Waiver of Rules

28.1 A party that knows that any provision of or requirement under these Rules has not been complied with, and yet proceeds with the arbitration without promptly stating its objection to such noncompliance, will be deemed to have waived its right to object.

Article 29. Closing of the Proceedings

29.1 When it is satisfied that the parties have had a reasonable opportunity to present their cases, the Tribunal will declare the proceedings closed. Thereafter, no further submission or argument may be made, or evidence produced, unless requested or authorized by the Tribunal.

Article 30. Powers of the Tribunal and Remedies

30.1 The Tribunal may grant any remedy or relief, including, but not limited to, specific performance of a contract, which is within the scope of the agreement of the parties and permissible under the law(s) or rules of law applicable to the dispute or, if the parties have expressly so provided, within the Tribunal's authority to decide as amiable compositeur or ex aequo et bono. The Tribunal will decide a dispute ex aequo et bono or as amiable compositeur only if the parties have expressly authorized it to do so.

30.2 Unless the parties agree otherwise, the parties expressly waive and forgo any right to punitive, exemplary or similar damages, unless a statute requires that compensatory damages be increased in a specified manner. This provision will not limit the Tribunal's authority to take into account a party's dilatory or bad faith conduct in the arbitration in apportioning arbitration costs between or among the parties.

30.3 In addition to making a final award, the Tribunal will be entitled to make interim, interlocutory, partial or partial final awards.

Article 31. Interim Measures of Protection

31.1 At the request of any party, the Tribunal may take whatever interim measures it deems necessary, including injunctive relief and measures for the preservation of evidence or for the protection or conservation of property, including, at the Tribunal's discretion, measures to secure the payment of any award that might be rendered.

31.2 The party requesting an interim measure shall satisfy the Tribunal that (a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim.

31.3 With regard to a request for an interim measure to preserve evidence or to protect or conserve property, the requirements of Article 31.2(a) and (b) shall apply on to the extent the Tribunal considers appropriate.

31.4. Such interim measures may take the form of an order, an interim award, a partial award or a partial final award, and the Tribunal may require security for the costs of such measures, including security for any costs that the party that is the subject of the order or award may incur if it is subsequently determined that the moving party was not entitled to such interim relief.

31.5 A request for interim measures addressed by a party to a judicial authority will not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

31.6 The Tribunal may, in its discretion, apportion costs associated with applications for interim relief in any Interim or Partial Final Award or in the Final Award.

Article 32. Sanctions

32.1 The Tribunal may order appropriate sanctions for failure of a party to comply with its obligations under any of these Rules or with an order of the Tribunal. These sanctions may include, but are not limited to, assessment of arbitration fees and arbitrator compensation and expenses; assessment of any other costs occasioned by the actionable conduct, including reasonable attorneys' fees; exclusion of certain evidence; drawing adverse inferences; or, in extreme cases, determining an issue or issues submitted to arbitration adversely to the party that has failed to comply.

Article 33. Determination of the Award

33.1 In most circumstances, the dispute should be heard and be submitted to the Tribunal for decision within nine months after the initial preliminary conference required by Article 22, and the final award should be rendered within three months thereafter. The parties and the Tribunal will use their best efforts to comply with this schedule.

33.2 Unless otherwise required by law, where there are three or more arbitrators and the Tribunal fails to agree unanimously on any issue, the arbitrators will decide that issue by a majority. Failing a majority decision on any issue, the presiding arbitrator will decide that issue.

33.3 If any arbitrator fails to comply with the provisions of these Rules or of any applicable law relating to the making of the award, having been given a reasonable opportunity to do so, the remaining arbitrators may proceed to render an award. In that event, the remaining arbitrators will state in their award the circumstances of the other arbitrator's failure to participate in the making of the award.

33.4 An arbitrator may attach a dissenting or concurring opinion to the award.

33.5 The award shall be delivered to the Administrator, who shall transmit copies to the parties upon the full settlement of the costs of the arbitration.

Article 34. Form of the Award

34.1 The award will be made in writing and will be final and binding on the parties. The parties undertake to carry out the award without delay.

34.2 The Tribunal will state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

34.3 Before signing any award, the Tribunal will submit it in draft to JAMS. JAMS may suggest modifications as to the form of the award and may also draw the Tribunal's attention to points of substance. No award will be rendered by the Tribunal until it has been approved by JAMS as to its form.

34.4 An award will be signed by the arbitrators, and it will contain the date on which it is rendered, and the seat where the award was made. The arbitrators may sign the award outside of the seat of arbitration without affecting where the award was made. The award may be signed electronically and/or in counterparts and assembled into a single document. Copies of the award signed by the arbitrators will be communicated to the parties by the Administrator.

34.5 If the arbitration law of the country where the award is made requires that the award be filed or registered by the Tribunal, the Tribunal will comply with this requirement within the period of time required by law.

34.6 At the request of any party, the Administrator will provide it, at cost, with a copy of the award certified by JAMS. A copy so certified will be deemed to comply with the requirements of Article IV(1)(a) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, June 10, 1958.

34.7 A monetary award will be in the currency or currencies of the contract, unless the Tribunal considers another currency more appropriate, and the Tribunal may award such pre-award and post-award interest, simple or compound, as it considers appropriate, at such rate and from such date(s) as the arbitrator(s) may deem appropri-

ate, taking into consideration the contract and applicable law.

Article 35. Fees

35.1 At the same time as the Request for Arbitration is filed, the claimant will pay a filing fee. The amount of the fee is fixed in accordance with the JAMS Schedule of Fees and Costs in force on the date of the filing of the Request.

35.2 In addition to the filing fee, the Administrator may direct the parties to make one or several deposits on account of the costs of the arbitration. Such deposits will be made to and held by JAMS and from time to time may be released by JAMS to the Tribunal, to any expert appointed by the Tribunal and to JAMS itself as the arbitration progresses.

35.3 If at any time any party has failed to pay fees or expenses in full, JAMS may order the suspension or termination of the proceedings. In the event that a party fails or refuses to provide any deposit as directed by the Administrator, JAMS may direct the other party or parties to effect a substitute payment to allow the arbitration to proceed, subject to any award on costs. An administrative suspension shall toll any time limits contained in these Rules or the parties' agreement.

35.4 The Tribunal need not proceed with the arbitration unless the Tribunal ascertains from the Administrator that JAMS is in receipt of the requisite funds.

35.5 In the discretion of the Tribunal, failure by a claimant or counterclaiming party to provide promptly and in full the required deposit may be treated as a withdrawal, without prejudice, of the claim or counterclaim, respectively.

35.6 JAMS may decide that an advance on costs consists of or includes a bank guarantee or other form of security.

35.7 If one of the parties claims a right to a set-off with regard to either claims or counterclaims asserted against it, such set-off will be taken into account in determining the advance to cover the costs of arbitration in the same way as a separate claim insofar as it may require the Tribunal to consider additional matters.

35.8 If a party that has not paid an advance on costs requests the Tribunal to rule on a withdrawn claim, JAMS may, as a condition for such a ruling, order the requesting party to pay an advance on costs.

35.9 Where the amount of the counterclaim greatly exceeds the amount of the claim or involves the examination of significantly different matters, or where it otherwise appears appropriate in the circumstances, JAMS, in its discretion, may establish two separate deposits on account of claim and counterclaim. If separate deposits are established, the totality of the deposit on account of the claim will be paid by the claimant, and the totality of the deposit on account of the counterclaim will be paid by the respondent.

35.10 After the award has been made, JAMS, in accordance with the award, will render an accounting to the parties of the deposits received and return any unexpended balance to the parties or require the payment of any amount owing from the parties.

Article 36. Arbitration Costs

36.1 Arbitration costs consist of:

(a) The Tribunal's fees, including, if applicable, the fees of a clerk or Tribunal secretary appointed to assist the Tribunal;

(b) The filing fee and JAMS administrative fees as set forth in the Schedule of Fees and Costs;

(c) The fees and expenses of any expert appointed by the Tribunal;

(d) The reasonable costs for legal representation of a successful party; and

(e) Any costs incurred in connection with an application for interim or emergency relief.

36.2 The Tribunal's fees will be calculated by reference to work done by its members in connection with the arbitration and will be charged at rates appropriate to the particular circumstances of the case, including its complexity and the special qualifications of the arbitrators. JAMS will agree upon fee rates with the arbitrators in writing prior to their appointment by JAMS.

36.3 In the event of the replacement of any arbitrator pursuant to Article 10 of these Rules, JAMS will decide upon the amount of fees and expenses to be paid for the former arbitrator's services, if any, as it may consider appropriate in all the circumstances.

36.4 The Tribunal will fix the arbitration costs in its award. The Tribunal may apportion such costs among the

parties if it determines that such apportionment is reasonable, taking into account the circumstances of the case.

Article 37. Interpretation or Correction of the Award

37.1 Within 30 calendar days after the receipt of an award, any party, with notice to the other parties, may request the Tribunal to interpret the award or correct any clerical, typographical or computational errors, or make an additional award as to claims presented but omitted from the award.

37.2 If the Tribunal considers such a request justified, after considering the contentions of the parties, it will comply with such a request within 30 days after the request.

37.3 The Tribunal may correct any error of the type referred to in Article 37.1 on its own initiative within 30 days of the date of the award.

Article 38. Settlement and Award on Agreed Terms

38.1 In the event of a settlement, if the parties so request, the Tribunal may render an award on agreed terms ("Award on Agreed Terms") recording the settlement. If the parties do not require an Award on Agreed Terms, the parties shall confirm to JAMS that a settlement has been reached. The Tribunal shall be discharged and the arbitration concluded upon payment of any outstanding costs of the arbitration.

Chapter 33
The London Court of International Arbitration (LCIA)[1] (2020)

About the LCIA

The LCIA is one of the world's leading international institutions for commercial dispute resolution. The LCIA provides efficient, flexible and impartial administration of arbitration and other ADR proceedings, regardless of location, and under any system of law.

The LCIA provides access to the most eminent and experienced arbitrators, mediators and experts, with diverse backgrounds, from a variety of jurisdictions, and with the widest range of expertise and industry experience. The LCIA's dispute resolution services are available to all contracting parties, with no membership requirements.

In order to ensure cost-effective services, the LCIA's administrative charges and the fees charged by the arbitrators it appoints are not based on the value of the dispute. Instead, a fixed registration fee is payable with the Request for Arbitration, and the arbitrators and LCIA apply hourly rates for services.

In addition to its dispute administration services, the LCIA conducts a worldwide program of conferences, seminars, and other events of interest to the arbitration and ADR community, operates a membership program for over 2,300 members from over 86 countries, and sponsors the Young International Arbitration Group (YIAG), a group for members of the arbitration community aged 40 or younger, with over 11,000 members.

RECOMMENDED CLAUSES

Future disputes

For contracting parties who wish to have future disputes referred to arbitration under the LCIA Rules, the following clause is recommended. Words/spaces in square brackets should be deleted/completed as appropriate.

> "Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause.
>
> The number of arbitrators shall be [one/three].
>
> The seat, or legal place, of arbitration shall be [City and/or Country].
>
> The language to be used in the arbitral proceedings shall be [ ].
>
> The governing law of the contract shall be the substantive law of [ ]."

Existing Disputes

If a dispute has arisen, but there is no agreement between the parties to arbitrate, or if the parties wish to vary a dispute resolution clause to provide for LCIA arbitration, the following clause is recommended. Words/spaces in square brackets should be deleted/completed as appropriate.

> "A dispute having arisen between the parties concerning [ ], the parties hereby agree that the dispute shall be referred to and finally resolved by arbitration under the LCIA Rules.

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The number of arbitrators shall be [one/three].

The seat, or legal place, of arbitration shall be [City and/or Country].

The language to be used in the arbitral proceedings shall be [ ].

The governing law of the contract [is/shall be] the substantive law of [ ]. "

Modifications to Recommended Clauses

The LCIA Secretariat will be pleased to discuss any modifications to these standard clauses. For example, to provide for party nomination of arbitrators or for expedited procedures.

Mediation and other forms of ADR

Recommended clauses and procedures for Mediation, for Expert Determination, for Adjudication, and for other forms of ADR, to be administered by the LCIA, or in which the LCIA is to act as appointing authority, are available on request from the LCIA Secretariat.

RULES OF ARBITRATION

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Preamble

Where any agreement, submission or reference howsoever made or evidenced in writing (whether signed or not) provides in whatsoever manner for arbitration under the rules of or by the LCIA, the London Court of International Arbitration, the London Court of Arbitration or the London Court, the parties thereto shall be taken to have agreed in writing that any arbitration between them shall be conducted in accordance with the LCIA Rules or such amended rules as the LCIA may have adopted hereafter to take effect before the commencement of the arbitration and that such LCIA Rules form part of their agreement (collectively, the "Arbitration Agreement"). These LCIA Rules comprise this Preamble, the Articles and the Index, together with the Annex to the LCIA Rules and the Schedule of Costs as both from time to time may be separately amended by the LCIA (the "LCIA Rules").

Article 1 Request for Arbitration

1.1 Any party wishing to commence arbitration under the LCIA Rules (the "Claimant") shall deliver to the Registrar of the LCIA Court (the "Registrar") a written request for arbitration (the "Request"), containing or accompanied by:

(i) the full name, nationality and all contact details (including email address, postal address and telephone number) of the Claimant for the purpose of receiving delivery of all documentation in the arbitration in accordance with Article 4; and the same particulars of the Claimant's authorised rep-

resentatives (if any) and of all other parties to the arbitration;

(ii) the full terms of the Arbitration Agreement (excepting the LCIA Rules) invoked by the Claimant to support its claim, together with a copy of any contractual or other documentation in which those terms are contained and to which the Claimant's claim relates;

(iii) a statement briefly summarising the nature and circumstances of the dispute, its estimated monetary amount or value, the transaction(s) at issue and the claim advanced by the Claimant against any other party to the arbitration (each such other party being here separately described as a "Respondent");

(iv) a statement of any procedural matters for the arbitration (such as the arbitral seat, the language(s) of the arbitration, the number of arbitrators, their qualifications and identities) upon which the parties have already agreed in writing or in respect of which the Claimant makes any proposal under the Arbitration Agreement;

(v) if the Arbitration Agreement (or any other written agreement) howsoever calls for any form of party nomination of arbitrators, the full name, email address, postal address and telephone number of the Claimant's nominee;

(vi) confirmation that the registration fee prescribed in the Schedule of Costs has been or is being paid to the LCIA, without actual receipt of which the Request shall be treated by the Registrar as not having been delivered and the arbitration as not having been commenced under the Arbitration Agreement; and

(vii) confirmation that copies of the Request (including all accompanying documents) have been or are being delivered to all other parties to the arbitration in accordance with Article 4 by one or more means to be identified specifically in such confirmation, to be supported then or as soon as possible thereafter by documentary proof satisfactory to the LCIA Court of actual delivery (including the date of delivery) or, if actual delivery is demonstrated to be impossible to the LCIA Court's satisfaction, sufficient information as to any other effective form of notification.

1.2 A Claimant wishing to commence more than one arbitration under the LCIA Rules (whether against one or more Respondents and under one or more Arbitration Agreements) may serve a composite Request in respect of all such arbitrations, provided that the requirements of Article 1.1 are complied with to the satisfaction of the LCIA Court in respect of each arbitration. In particular, in any composite Request the Claimant must identify separately the estimated monetary amount or value in dispute, the transaction(s) at issue and the claim advanced by the Claimant against any other party in each arbitration. Each arbitration so commenced shall proceed separately and in accordance with the LCIA Rules, subject to the LCIA Court or the Arbitral Tribunal determining otherwise.

1.3 The Request (including all accompanying documents) shall be submitted to the Registrar in electronic form in accordance with Article 4.1.

1.4 The arbitration shall be treated as having commenced for all purposes on the date upon which the Request (including all accompanying documents) is received electronically by the Registrar (the "Commencement Date"), provided that the LCIA has received the registration fee. Where the registration fee is received subsequently the Commencement Date will be the date of the LCIA's actual receipt of the registration fee.

1.5 At any time after the Commencement Date but prior to the appointment of the Arbitral Tribunal the LCIA Court may allow a Claimant to supplement, modify or amend its Request to correct any error in computation, any clerical or typographical error, any ambiguity or any mistake of a similar nature, after giving the parties a reasonable opportunity to state their views and upon such terms as the LCIA Court may decide.

1.6 There may be one or more Claimants (whether or not jointly represented); and in such event, where appropriate, the term "Claimant" shall be so interpreted under the Arbitration Agreement.

Article 2 Response

2.1 Within 28 days of the Commencement Date, or such lesser or greater period to be determined by the LCIA Court upon application by any party or upon its own initiative (pursuant to Article 22.5), the Respondent shall deliver to the Registrar a written response to the Request (the "Response"), containing or accompanied by:

(i) the Respondent's full name, nationality and all contact details (including email address, postal address and telephone number) for the purpose of receiving delivery of all documentation in the

arbitration in accordance with Article 4 and the same particulars of its authorised representatives (if any);

(ii) confirmation or denial of all or part of the claim advanced by the Claimant in the Request, including the Claimant's invocation of the Arbitration Agreement in support of its claim;

(iii) if not full confirmation, a statement briefly summarising the nature and circumstances of the dispute, its estimated monetary amount or value, the transaction(s) at issue and the defence advanced by the Respondent, and also indicating any counterclaim advanced by the Respondent against any Claimant and any cross-claim against any other Respondent;

(iv) a response to any statement of procedural matters for the arbitration contained in the Request under Article 1.1(iv), including the Respondent's own statement relating to the arbitral seat, the language(s) of the arbitration, the number of arbitrators, their qualifications and identities and any other procedural matter upon which the parties have already agreed in writing or in respect of which the Respondent makes any proposal under the Arbitration Agreement;

(v) if the Arbitration Agreement (or any other written agreement) howsoever calls for party nomination of arbitrators, the full name, email address, postal address and telephone number of the Respondent's nominee; and

(vi) confirmation that copies of the Response (including all accompanying documents) have been or are being delivered to all other parties to the arbitration in accordance with Article 4 by one or more means of delivery to be identified specifically in such confirmation, to be supported then or as soon as possible thereafter by documentary proof satisfactory to the LCIA Court of actual delivery (including the date of delivery) or, if actual delivery is demonstrated to be impossible to the LCIA Court's satisfaction, sufficient information as to any other effective form of notification.

2.2 Where the Request is a composite Request, the Respondent may serve a composite Response in respect of all or any of the arbitrations, provided that the requirements of Article 2.1 are complied with to the satisfaction of the LCIA Court in respect of each arbitration to which the Response responds. In particular, in any composite Response the Respondent must identify separately the estimated monetary amount or value in dispute, the transaction(s) at issue and the defence, counterclaim or cross-claim advanced by the Respondent against any other party to each arbitration.

2.3 The Response (including all accompanying documents) shall be submitted to the Registrar in electronic form in accordance with Article 4.1.

2.4 Failure to nominate or propose any arbitrator candidate within the time for delivery of a Response or such other time period as is agreed by the parties shall constitute an irrevocable waiver of that party's opportunity to nominate or propose any arbitrator candidate. Failure to deliver any or any part of a Response within time or at all shall not (by itself) preclude the Respondent from denying any claim or from advancing any defence, counterclaim or cross-claim in the arbitration.

2.5 Subject to Article 2.4, at any time prior to the appointment of the Arbitral Tribunal the LCIA Court may allow a party to supplement, modify or amend its Response to correct any error in computation, any clerical or typographical error, any ambiguity or any mistake of a similar nature, after giving the parties a reasonable opportunity to state their views and upon such terms as the LCIA Court may decide.

2.6 There may be one or more Respondents (whether or not jointly represented); and in such event, where appropriate, the term "Respondent" shall be so interpreted under the Arbitration Agreement.

Article 3 LCIA Court and Registrar

3.1 The functions of the LCIA Court under the Arbitration Agreement shall be performed in its name by the President of the LCIA Court (or any of its Vice Presidents, Honorary Vice Presidents or former Vice Presidents) or by a division of three or more members of the LCIA Court appointed by its President or any Vice President (the "LCIA Court").

3.2 The functions of the Registrar under the Arbitration Agreement shall be performed under the supervision of the LCIA Court by the Registrar or any deputy Registrar.

3.3 All communications in the arbitration to the LCIA Court from any party, authorised representative of a party, arbitrator, tribunal secretary or expert to the Arbitral Tribunal shall be addressed to the Registrar. All such communications with the Registrar from any party or authorised representative of a party shall be copied to all other parties.

Article 4 Written Communications and Periods of Time

4.1 The Claimant shall submit the Request under Article 1.3 and the Respondent the Response under Article 2.3 in electronic form, either by email or other electronic means including via any electronic filing system operated by the LCIA. Prior written approval should be sought from the Registrar, acting on behalf of the LCIA Court, to submit the Request or the Response by any alternative method.

4.2 Save with the prior written approval or direction of the Arbitral Tribunal, or, prior to the constitution of the Arbitral Tribunal, the Registrar acting on behalf of the LCIA Court, any written communication in relation to the arbitration shall be delivered by email or any other electronic means of communication that provides a record of its transmission.

4.3 Delivery by email or other electronic means of communication shall be as agreed or designated by a party for the purpose of receiving any communication in regard to the Arbitration Agreement. Any written communication (including the Request and Response) delivered to such party by that electronic means shall be treated as having been received by such party. In the absence of such agreement or designation or order by the Arbitral Tribunal, if delivery by electronic means has been regularly used in the parties' previous dealings, any written communication (including the Request and Response) may be delivered to a party by that electronic means and shall be treated as having been received by such party, subject to the LCIA Court or the Arbitral Tribunal being informed of any reason why the communication will not actually be received by such party including electronic delivery failure notification. Notwithstanding the above, the LCIA Court or the Arbitral Tribunal may direct that any written communication be delivered to a party at any address and by any means it considers appropriate.

4.4 For the purpose of determining the commencement of any time limit, unless otherwise ordered by the Arbitral Tribunal or the Registrar acting on behalf of the LCIA Court, a written communication sent by electronic means shall be treated as having been received by a party on the day it is transmitted (such time to be determined by reference to the recipient's time zone). If delivery by any other means is permitted or directed under this Article 4, a written communication shall be treated as having been received by a party on the day it is delivered (such time to be determined by reference to the recipient's time zone).

4.5 For the purpose of determining compliance with a time limit, unless otherwise ordered by the Arbitral Tribunal or the Registrar acting on behalf of the LCIA Court, a written communication shall be treated as having been made by a party if transmitted or delivered prior to or on the date of the expiration of the time limit (such time to be determined by reference to the sender's time zone).

4.6 For the purpose of calculating a period of time, such period shall begin to run on the day following the day when a written communication is received by the addressee. If the last day of such period is an official holiday or non-business day at the place of that addressee (or the place of the party against whom the calculation of time applies), the period shall be extended until the first business day which follows that last day. Official holidays and nonbusiness days occurring during the running of the period of time shall be included in calculating that period.

4.7 A party shall inform the Registrar, the Arbitral Tribunal and all other parties as soon as reasonably practical of any changes to its full name and contact details (including email address, postal address and telephone number) or to those of its authorised representatives.

Article 5 Formation of Arbitral Tribunal

5.1 The formation of the Arbitral Tribunal by the LCIA Court shall not be impeded by any controversy between the parties relating to the sufficiency of the Request or the Response. The LCIA Court may also proceed with the arbitration notwithstanding that the Request is incomplete or the Response is missing, late or incomplete.

5.2 The expression the "Arbitral Tribunal" includes a sole arbitrator (including, where appropriate, an Emergency Arbitrator) or all the arbitrators where more than one.

5.3 All arbitrators shall be and remain at all times impartial and independent of the parties; and none shall act in the arbitration as advocate for or authorised representative of any party. No arbitrator shall give advice to any party on the parties' dispute or the conduct or outcome of the arbitration.

5.4 Before appointment by the LCIA Court, each arbitrator candidate shall furnish to the Registrar (upon the latter's request) a brief written summary of his or her qualifications and professional positions (past and present); the candidate shall also agree in writing fee rates conforming to the Schedule of Costs; the candidate shall sign a written declaration stating: (i) whether there are any circumstances currently known to the candidate which are likely to give rise in the

mind of any party to any justifiable doubts as to his or her impartiality or independence and, if so, specifying in full such circumstances in the declaration; and (ii) whether the candidate is ready, willing and able to devote sufficient time, diligence and industry to ensure the expeditious and efficient conduct of the arbitration. The candidate shall promptly furnish such agreement and declaration to the Registrar.

5.5 Each arbitrator shall assume a continuing duty, until the arbitration is finally concluded, forthwith to disclose in writing any circumstances becoming known to that arbitrator after the date of his or her written declaration (under Article 5.4) which are likely to give rise in the mind of any party to any justifiable doubts as to his or her impartiality or independence, to be delivered to the LCIA Court, any other members of the Arbitral Tribunal and all parties in the arbitration.

5.6 The LCIA Court shall appoint the Arbitral Tribunal promptly following delivery to the Registrar of the Response or, if no Response is received, promptly after 28 days from the Commencement Date (or such other lesser or greater period to be determined by the LCIA Court pursuant to Article 22.5).

5.7 No party or third person may appoint any arbitrator under the Arbitration Agreement: the LCIA Court alone is empowered to appoint arbitrators (albeit taking into account any written agreement or joint nomination by the parties or nomination by the other candidates or arbitrators).

5.8 A sole arbitrator shall be appointed unless the parties have agreed in writing otherwise or the LCIA Court determines that in the circumstances a three-member tribunal is appropriate (or, exceptionally, more than three).

5.9 The LCIA Court shall appoint arbitrators with due regard for any particular method or criteria of selection agreed in writing by the parties. The LCIA Court shall also take into account the transaction(s) at issue, the nature and circumstances of the dispute, its monetary amount or value, the location and languages of the parties, the number of parties and all other factors which it may consider relevant in the circumstances.

5.10 The President of the LCIA Court shall only be eligible to be appointed as an arbitrator if the parties agree in writing to nominate him or her as the sole or presiding arbitrator; and the Vice Presidents of the LCIA Court and the Chair of the LCIA Board of Directors (the latter being ex officio a member of the LCIA Court) shall only be eligible to be appointed as arbitrators if nominated in writing by a party or parties or by the other candidates or arbitrators – provided that no such nominee shall have taken or shall take thereafter any part in any function of the LCIA Court or LCIA relating to such arbitration.

Article 6 Nationality of Arbitrators and Parties

6.1 Upon request of the Registrar, the parties shall each inform the Registrar and all other parties of their nationality. Where the parties are of different nationalities, a sole arbitrator or the presiding arbitrator shall not have the same nationality as any party unless the parties who are not of the same nationality as the arbitrator candidate all agree in writing otherwise.

6.2 For the purposes of Article 6.1, in the case of a natural person, nationality shall mean citizenship, whether acquired by birth or naturalisation or other requirements of the nation concerned. In the case of a legal person, nationality shall mean the jurisdiction in which it is incorporated and has its seat of effective management. A legal person that is incorporated in one jurisdiction but has its seat of effective management in another shall be treated as a national of both jurisdictions. The nationality of a party that is a legal person shall be treated as including the nationalities of its controlling shareholders or interests.

6.3 A person who is a citizen of two or more States shall be treated as a national of each State; citizens of the European Union shall be treated as nationals of its different Member States and shall not be treated as having the same nationality; a citizen of a State's overseas territory shall be treated as a national of that territory and not of that State; and a legal person incorporated in a State's overseas territory shall be treated as such and not (by such fact alone) as a national of or a legal person incorporated in that State.

Article 7 Party and Other Nominations

7.1 If the parties have agreed howsoever that any arbitrator is to be appointed by one or more of them or by any third person (other than the LCIA Court), that agreement shall be treated under the Arbitration Agreement as an agreement to nominate an arbitrator for all purposes. Such nominee may only be appointed by the LCIA Court as arbitrator subject to that nominee's compliance with Articles 5.3 to 5.5; and the LCIA Court shall refuse to appoint any nominee if it determines that the nominee is not so compliant or is otherwise unsuitable.

7.2 Where the parties have howsoever agreed that the Claimant or the Respondent or any third person (other than the LCIA Court) is to nominate an arbitrator

and such nomination is not made within time (in the Request, Response or otherwise), the LCIA Court may appoint an arbitrator notwithstanding the absence of a nomination. The LCIA Court may, but shall not be obliged to, take into consideration any late nomination.

7.3 In the absence of written agreement between the Parties, no party may unilaterally nominate a sole arbitrator or presiding arbitrator.

Article 8 Three or More Parties

8.1 Where the Arbitration Agreement entitles each party howsoever to nominate an arbitrator, the parties to the dispute number more than two and such parties have not all agreed in writing that the disputant parties represent collectively two separate "sides" for the formation of the Arbitral Tribunal (as Claimants on one side and Respondents on the other side, each side nominating a single arbitrator), the LCIA Court shall appoint the Arbitral Tribunal without regard to any party's entitlement or nomination.

8.2 In such circumstances, the Arbitration Agreement shall be treated for all purposes as a written agreement by the parties for the nomination and appointment of the Arbitral Tribunal by the LCIA Court alone.

Article 9A Expedited Formation of Arbitral Tribunal

9.1 In the case of exceptional urgency, any party may apply to the LCIA Court for the expedited formation of the Arbitral Tribunal under Article 5.

9.2 Such an application shall be made to the Registrar in writing by electronic means, together with a copy of the Request (if made by a Claimant) or a copy of the Response (if made by a Respondent), and shall be delivered or notified forthwith to all other parties to the arbitration. The application shall set out the specific grounds for exceptional urgency requiring the expedited formation of the Arbitral Tribunal.

9.3 The LCIA Court shall determine the application as expeditiously as possible in the circumstances. If the application is granted, for the purpose of forming the Arbitral Tribunal the LCIA Court may set or abridge any period of time under the Arbitration Agreement or other agreement of the parties (pursuant to Article 22.5).

Article 9B Emergency Arbitrator

9.4 Subject always to Article 9.16 below, in the case of emergency at any time prior to the formation or expedited formation of the Arbitral Tribunal (under Articles 5 or 9A), any party may apply to the LCIA Court for the immediate appointment of a temporary sole arbitrator to conduct emergency proceedings pending the formation or expedited formation of the Arbitral Tribunal (the "Emergency Arbitrator").

9.5 Such an application shall be made to the Registrar in writing by electronic means, together with a copy of the Request (if made by a Claimant) or a copy of the Response (if made by a Respondent), delivered or notified forthwith to all other parties to the arbitration. The application shall set out, together with all relevant documentation: (i) the specific grounds for requiring, as an emergency, the appointment of an Emergency Arbitrator; and (ii) the specific claim, with reasons, for emergency relief. The application shall be accompanied by the applicant's written confirmation that the applicant has paid or is paying to the LCIA the Special Fee under Article 9B, without actual receipt of which the application shall be dismissed by the LCIA Court. The Special Fee shall be subject to the terms of the Schedule of Costs. Its amount is prescribed in the Schedule, covering the fees and expenses of the Emergency Arbitrator and the administrative charges and expenses of the LCIA, with additional charges (if any) of the LCIA Court. After the appointment of the Emergency Arbitrator, the amount of the Special Fee payable by the applicant may be increased by the LCIA Court in accordance with the Schedule. Save as provided in Section 5(vi) of the Schedule of Costs, Article 24 shall not apply to any Special Fee paid to the LCIA.

9.6 The LCIA Court shall determine the application as soon as possible in the circumstances. If the application is granted, an Emergency Arbitrator shall be appointed by the LCIA Court within three days of the Registrar's receipt of the application (or as soon as possible thereafter). Articles 5.1, 5.7, 5.9, 5.10, 6, 9C, 10 and 16.2 (last sentence) shall apply to such appointment. The Emergency Arbitrator shall comply with the requirements of Articles 5.3, 5.4 and (until the emergency proceedings are finally concluded) Article 5.5.

9.7 The Emergency Arbitrator may conduct the emergency proceedings in any manner determined by the Emergency Arbitrator to be appropriate in the circumstances, taking account of the nature of such

emergency proceedings, the need to afford to each party, if possible, an opportunity to be consulted on the claim for emergency relief (whether or not it avails itself of such opportunity), the claim and reasons for emergency relief and the parties' further submissions (if any). The Emergency Arbitrator is not required to hold any hearing with the parties whether in person, or virtually by conference call, videoconference or using other communications technology and may decide the claim for emergency relief on available documentation. In the event of a hearing, which may consist of several part-hearings (as decided by the Emergency Arbitrator), Articles 16.3, 19.2, 19.3 and 19.4 shall apply.

9.8 The Emergency Arbitrator shall decide the claim for emergency relief as soon as possible, but no later than 14 days following the Emergency Arbitrator's appointment. This deadline may only be extended by the LCIA Court in exceptional circumstances (pursuant to Article 22.5) or by the written agreement of all parties to the emergency proceedings. The Emergency Arbitrator may make any order or award which the Arbitral Tribunal could make under the Arbitration Agreement; and, in addition, may make any order adjourning the consideration of all or any part of the claim for emergency relief to the proceedings conducted by the Arbitral Tribunal (when formed).

9.9 An order of the Emergency Arbitrator shall be made in writing, with reasons. An award of the Emergency Arbitrator shall comply with Article 26.2 and, when made, take effect as an award under Article 26.8 (subject to Articles 9.11 and 9.12). The Emergency Arbitrator shall be responsible for delivering any order or award to the Registrar, who shall transmit the same promptly to the parties by electronic means.

9.10 The Special Fee paid shall form a part of the Arbitration Costs under Article 28.1, the amount of which shall be determined by the LCIA Court. Any legal or other expenses incurred by any party during the emergency proceedings shall form a part of the Legal Costs under Article 28.3. The Emergency Arbitrator may determine the amount of the Legal Costs relating to the emergency proceedings and the proportions in which the parties shall bear the Legal Costs and the Arbitration Costs of the emergency proceedings. Alternatively, the Emergency Arbitrator may leave such determination of all or part of the costs of the emergency proceedings to be decided by the Arbitral Tribunal.

9.11 Any order or award of the Emergency Arbitrator (apart from any order adjourning to the Arbitral Tribunal, when formed, any part of the claim for emergency relief) may be confirmed, varied, discharged or revoked, in whole or in part, by order or award made by the Arbitral Tribunal upon application by any party or upon its own initiative.

9.12 Prior to the formation of the Arbitral Tribunal, the Emergency Arbitrator may, upon application by any party or upon its own initiative:

(i) confirm, vary, discharge or revoke, in whole or in part, any order of the Emergency Arbitrator and/or issue an additional order;

(ii) correct any error in computation, any clerical or typographical error, any ambiguity or any mistake of a similar nature in any award of the Emergency Arbitrator; and/or

(iii) make an additional award as to any claim for emergency relief presented in the emergency proceedings but not decided in any award of the Emergency Arbitrator.

9.13 Notwithstanding Article 9B, a party may apply to a competent state court or other legal authority for any interim or conservatory measures before the formation of the Arbitral Tribunal; and Article 9B shall not be treated as an alternative to or substitute for the exercise of such right. During the emergency proceedings, any application to and any order by such court or authority shall be communicated promptly in writing to the Emergency Arbitrator, the Registrar and all other parties.

9.14 Articles 3.3, 4, 13.1-13.4, 14.1-14.2, 14.5, 14A, 16, 17, 18, 22.3-22.4, 23, 24A, 25.1, 25.3, 28, 29, 30, 30A, 31 and 32 and the Annex shall apply to emergency proceedings. In addition to the provisions expressly set out there and in this Article 9B, the Emergency Arbitrator and the parties to the emergency proceedings shall also be guided by other provisions of the Arbitration Agreement, whilst recognising that several such provisions may not be fully applicable or appropriate to emergency proceedings. Wherever relevant, the LCIA Court may set or abridge any period of time under any such provisions (pursuant to Article 22.5).

9.15 The LCIA Court shall have the power to decide, at its discretion, all matters relating to the administration of the emergency proceedings not expressly provided for in this Article 9B.

9.16 Article 9B shall not apply if either: (i) the parties have concluded their arbitration agreement before 1 Octo-

ber 2014 and the parties have not agreed in writing to 'opt in' to Article 9B; or (ii) the parties have agreed in writing at any time to 'opt out' of Article 9B.

Article 9C Expedited Appointment of Replacement Arbitrator

9.17 Any party may apply to the LCIA Court to expedite the appointment of a replacement arbitrator under Article 11.

9.18 Such an application shall be made in writing to the Registrar by electronic means, delivered or notified forthwith to all other parties to the arbitration; and it shall set out the specific grounds requiring the expedited appointment of the replacement arbitrator.

9.19 The LCIA Court shall determine the application as expeditiously as possible in the circumstances. If the application is granted, for the purpose of expediting the appointment of the replacement arbitrator the LCIA Court may set or abridge any period of time in the Arbitration Agreement or any other agreement of the parties (pursuant to Article 22.5).

Article 10 Revocation and Challenges

10.1 The LCIA Court may revoke any arbitrator's appointment upon its own initiative, at the written request of all other members of the Arbitral Tribunal or upon a written challenge by any party if: (i) that arbitrator gives written notice to the LCIA Court of his or her intent to resign as arbitrator, to be copied to all parties and all other members of the Arbitral Tribunal (if any); (ii) that arbitrator falls seriously ill, refuses or becomes unable or unfit to act; or (iii) circumstances exist that give rise to justifiable doubts as to that arbitrator's impartiality or independence.

10.2 The LCIA Court may determine that an arbitrator is unfit to act under Article 10.1 if that arbitrator: (i) acts in deliberate violation of the Arbitration Agreement; (ii) does not act fairly or impartially as between the parties; or (iii) does not conduct or participate in the arbitration with reasonable efficiency, diligence and industry.

10.3 A party challenging an arbitrator under Article 10.1 shall, within 14 days of the formation of the Arbitral Tribunal or (if later) within 14 days of becoming aware of any grounds described in Article 10.1 or 10.2, deliver a written statement of the reasons for its challenge to the LCIA Court, the Arbitral Tribunal and all other parties. A party may challenge an arbitrator whom it has nominated, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made by the LCIA Court.

10.4 If all other parties agree in writing to the challenge within 14 days of receipt of the written statement, the LCIA Court shall revoke that arbitrator's appointment (without reasons).

10.5 Unless the parties so agree or the challenged arbitrator resigns in writing within 14 days of receipt of the written statement, the LCIA Court shall decide the challenge. The LCIA Court may conduct the challenge proceedings in any manner it considers to be appropriate in the circumstances but shall in any event provide the other parties and the challenged arbitrator a reasonable opportunity to comment on the challenging party's written statement. The LCIA Court may require at any time further information and materials from the challenging party, the challenged arbitrator, other parties, any authorised representative of a party, other members of the Arbitral Tribunal and the tribunal secretary (if any).

10.6 The LCIA Court's decision shall be made in writing, with reasons; and a copy shall be transmitted by the Registrar to the parties, the challenged arbitrator and other members of the Arbitral Tribunal (if any). If the challenge is upheld, the LCIA Court shall revoke that arbitrator's appointment. A challenged arbitrator who resigns in writing prior to the LCIA Court's decision shall not be considered as having admitted any part of the written statement.

10.7 The LCIA Court shall determine the amount of fees and expenses (if any) to be paid for the former arbitrator's services, as it may consider appropriate in the circumstances. The LCIA Court may also determine whether, in what amount and to whom any party should pay all or any part of the costs of the challenge; and the LCIA Court may also refer all or any part of such costs to the later decision of the Arbitral Tribunal and/or the LCIA Court under Article 28.

Article 11 Nomination and Replacement

11.1 In the event that the LCIA Court determines that justifiable doubts exist as to any arbitrator candidate's suitability, independence or impartiality, or if a nominee declines appointment as arbitrator, or if an arbitrator is to be replaced for any reason, the LCIA Court may determine whether or not to follow the original nominating process for such arbitral appointment.

11.2 The LCIA Court may determine that any opportunity given to a party to make any re-nomination (under the

Arbitration Agreement or otherwise) shall be waived if not exercised within 14 days (or such lesser or greater time as the LCIA Court may determine), after which the LCIA Court shall appoint the replacement arbitrator without such renomination.

11.3 Save for any award rendered, the Arbitral Tribunal (when reconstituted) shall determine whether, and if so to what extent, the previous proceedings in the arbitration shall stand.

Article 12 Majority Power to Continue Deliberations

12.1 Where an arbitrator without good cause refuses or persistently fails to participate in the deliberations of an Arbitral Tribunal, the remaining arbitrators jointly may give written notice of such refusal or failure to the LCIA Court, the parties and the absent arbitrator. In exceptional circumstances, the remaining arbitrators may decide to continue the arbitration (including the making of any award) notwithstanding the absence of that other arbitrator, subject to the written approval of the LCIA Court.

12.2 In deciding whether to continue the arbitration, the remaining arbitrators shall take into account the stage of the arbitration, any explanation made by or on behalf of the absent arbitrator for his or her refusal or failure to participate, the likely effect upon the legal recognition or enforceability of any award at the seat of the arbitration and such other matters as they consider appropriate in the circumstances. The reasons for such decision shall be stated in any award made by the remaining arbitrators without the participation of the absent arbitrator.

12.3 In the event that the remaining arbitrators decide at any time after giving written notice of such refusal or failure not to continue the arbitration without the participation of the absent arbitrator, the remaining arbitrators shall notify in writing the parties and the LCIA Court of such decision; and, in that event, the remaining arbitrators or any party may refer the matter to the LCIA Court for the revocation of the absent arbitrator's appointment and the appointment of a replacement arbitrator under Articles 10 and 11.

Article 13 Communications between Parties and Arbitral Tribunal

13.1 Following the formation of the Arbitral Tribunal, all communications shall take place directly between the Arbitral Tribunal and the parties (to be copied to the Registrar), unless the Arbitral Tribunal decides that communications should continue to be made through the Registrar.

13.2 Where the Registrar sends any written communication to one party on behalf of the Arbitral Tribunal or the LCIA Court, he or she shall send a copy to each of the other parties.

13.3 Where any party delivers to the Arbitral Tribunal any communication (including statements and documents under Article 15) it shall deliver a copy to each arbitrator, all other parties and the Registrar; and it shall confirm to the Arbitral Tribunal in writing that it has done or is doing so.

13.4 During the arbitration proceedings, no party shall deliberately initiate or attempt to initiate any unilateral contact relating to the arbitration or the parties' dispute with any member of the LCIA Court exercising any function in regard to the arbitration or, from the Arbitral Tribunal's formation onwards, any member of the Arbitral Tribunal or the tribunal secretary (if any), which has not been disclosed in writing prior to or shortly after the time of such contact to all other parties, all members of the Arbitral Tribunal and the Registrar. Notwithstanding Article 3.3, a party may, however, have unilateral contact with the Registrar regarding administrative matters.

13.5 Prior to the Arbitral Tribunal's formation, unless the parties agree otherwise in writing, any arbitrator, candidate or nominee who is required to participate in the selection of a presiding arbitrator may consult any party in order to obtain the views of that party as to the suitability of any candidate or nominee as presiding arbitrator, provided that such arbitrator, candidate or nominee promptly informs any other arbitrator, candidate or nominee involved in the selection process and the Registrar of such consultation.

Article 14 Conduct of Proceedings

14.1 Under the Arbitration Agreement, the Arbitral Tribunal's general duties at all times during the arbitration shall include:

(i) a duty to act fairly and impartially as between all parties, giving each a reasonable opportunity of putting its case and dealing with that of its opponent(s); and

(ii) a duty to adopt procedures suitable to the circumstances of the arbitration, avoiding unnecessary

delay and expense, so as to provide a fair, efficient and expeditious means for the final resolution of the parties' dispute.

14.2 The Arbitral Tribunal shall have the widest discretion to discharge these general duties, subject to the mandatory provisions of any applicable law or any rules of law the Arbitral Tribunal may decide to be applicable; and at all times the parties shall do everything necessary in good faith for the fair, efficient and expeditious conduct of the arbitration, including the Arbitral Tribunal's discharge of its general duties.

14.3 The parties and the Arbitral Tribunal shall make contact (whether by a hearing in person or virtually by conference call, videoconference or using other communications technology or exchange of correspondence) as soon as practicable but no later than 21 days from receipt of the Registrar's written notification of the formation of the Arbitral Tribunal.

14.4 The parties may agree on joint proposals for the conduct of their arbitration for consideration by the Arbitral Tribunal.

14.5 Without prejudice to the generality of the Arbitral Tribunal's discretion, after giving the parties a reasonable opportunity to state their views, the Arbitral Tribunal may, subject to the LCIA Rules, make any procedural order it considers appropriate with regard to the fair, efficient and expeditious conduct of the arbitration.

14.6 The Arbitral Tribunal's power under Article 14.5 includes the making of any procedural order with a view to expediting the procedure to be adopted in the arbitration by:

(i) limiting the length or content of, or dispensing with, any written statement to be delivered under Article 15;

(ii) limiting the written and oral testimony of any witness in accordance with Article 20.4;

(iii) employing technology to enhance the efficiency and expeditious conduct of the arbitration (including any hearing);

(iv) deciding the stage of the arbitration at which any issue or issues shall be determined, and in what order, in accordance with Article 22.1(vii) below;

(v) dispensing with a hearing, subject always to Article 19;

(vi) exercising its powers of Early Determination under Article 22.1(viii);

(vii) setting an appropriate period of time for any stage of, or step to be taken in, the arbitration including with regard to the conduct of any hearing;

(viii) abridging any period of time in accordance with Article 22.1(ii); and

(ix) making any other order that the Arbitral Tribunal considers appropriate in the circumstances of the arbitration.

14.7 In the case of an Arbitral Tribunal other than a sole arbitrator, the presiding arbitrator, with the prior agreement of its other members and all parties, may make procedural decisions alone.

Article 14A Tribunal Secretary

14.8 Subject to Articles 14.9 to 14.15, and to any applicable law, an Arbitral Tribunal may obtain assistance from a tribunal secretary in relation to an arbitration. Under no circumstances may an Arbitral Tribunal delegate its decision-making function to a tribunal secretary. All tasks carried out by a tribunal secretary shall be carried out on behalf of, and under the supervision of, the Arbitral Tribunal which shall retain its responsibility to ensure that all tasks are performed to the standard required by the LCIA Rules.

14.9 Before assisting an Arbitral Tribunal, each tribunal secretary candidate shall sign a written declaration stating: (i) whether there are any circumstances currently known to the candidate which are likely to give rise in the mind of any party to any justifiable doubts as to his or her impartiality or independence and, if so, specifying in full such circumstances in the declaration; and (ii) whether the candidate is ready, willing and able to devote sufficient time, diligence and industry to ensure the expeditious and efficient conduct of the tasks to be performed by the tribunal secretary. The candidate shall furnish promptly such written declaration to the Arbitral Tribunal and to the Registrar.

14.10 An Arbitral Tribunal may only obtain assistance from a tribunal secretary once the tribunal secretary has been approved by all parties. A tribunal secretary is approved once:

(i) the parties have agreed the tasks that may be carried out by the tribunal secretary;

(ii) if an hourly rate is to be charged and the tribunal secretary is to be entitled to have expenses reimbursed, the parties have agreed to this hourly rate and entitlement to reimbursement;

(iii) the written declaration referred to in Article 14.9 has been provided to the parties; and

(iv) the parties have agreed to the particular person filling the role of tribunal secretary.

14.11 If additional tasks to those agreed under Article 14.10(i) are to be undertaken by the tribunal secretary, or the hourly rate to be charged by the tribunal secretary is to increase, the Arbitral Tribunal must obtain prior agreement from all parties.

14.12 A party will be deemed to have agreed to the matters set out in Articles 14.10 and 14.11 if that party has not objected within such reasonable time as is set by the Arbitral Tribunal.

14.13 Any fees charged by, or expenses reimbursed to, a tribunal secretary shall form a part of the Arbitration Costs determined by the LCIA Court (as to the amount of Arbitration Costs) under Article 28.1.

14.14 A tribunal secretary shall assume a continuing duty, until the arbitration is finally concluded, forthwith to disclose in writing any circumstances becoming known to that tribunal secretary after the date of his or her written declaration (under Article 14.9) which are likely to give rise in the mind of any party to any justifiable doubts as to his or her impartiality or independence, to be delivered to the LCIA Court, the Arbitral Tribunal and all parties in the arbitration.

14.15 A tribunal secretary may be removed by the Arbitral Tribunal at its discretion. Article 10 above shall also apply, with necessary changes, to any tribunal secretary.

Article 15 Written Stage of the Arbitration

15.1 Unless the parties have agreed or jointly proposed in writing otherwise or the Arbitral Tribunal should decide differently, the written stage of the arbitration and its procedural timetable shall be as set out in this Article 15.

15.2 Within 28 days of receipt of the Registrar's written notification of the Arbitral Tribunal's formation, the Claimant shall deliver to the Arbitral Tribunal and all other parties either: (i) its written election to have its Request treated as its Statement of Case complying with this Article 15.2; or (ii) its written Statement of Case setting out in sufficient detail the relevant facts and legal submissions on which it relies, together with the relief claimed against all other parties, and all documents relied upon.

15.3 Within 28 days of receipt of the Claimant's Statement of Case or the Claimant's election to treat the Request as its Statement of Case, the Respondent shall deliver to the Arbitral Tribunal and all other parties either: (i) its written election to have its Response treated as its Statement of Defence and (if applicable) Counterclaim complying with this Article 15.3; or (ii) its written Statement of Defence and (if applicable) Statement of Counterclaim setting out in sufficient detail the relevant facts and legal submissions on which it relies, together with the relief claimed against all other parties, and all documents relied upon.

15.4 Within 28 days of receipt of the Respondent's Statement of Defence and (if applicable) Statement of Counterclaim or the Respondent's election to treat the Response as its Statement of Defence and (if applicable) Counterclaim, the Claimant shall deliver to the Arbitral Tribunal and all other parties a written Statement of Reply which, where there is any counterclaim, shall also include a Statement of Defence to Counterclaim in the same manner required for a Statement of Defence, together with all documents relied upon.

15.5 If the Statement of Reply contains a Statement of Defence to Counterclaim, within 28 days of its receipt the Respondent shall deliver to the Arbitral Tribunal and all other parties its written Statement of Reply to the Defence to Counterclaim, together with all documents relied upon.

15.6 No party may submit any further written statement following the last of these Statements, unless otherwise ordered by the Arbitral Tribunal.

15.7 The Arbitral Tribunal may provide additional or alternative directions as to any part of the written stage of the arbitration, including but not limited to directions for:

(i) further written submissions;

(ii) written statements with respect to any party's cross-claims;

(iii) the service of written evidence from any fact or expert witness;

(iv) the service of any other form of written evidence; and

(v) the sequence, timing and composition of the written stage of the arbitration.

15.8 If the Respondent fails to submit a Statement of Defence or the Claimant a Statement of Defence to Counterclaim, or if at any time any party fails to avail itself of the opportunity to present its written case in the manner required under this Article 15 or as otherwise ordered by the Arbitral Tribunal, the Arbitral Tribunal may nevertheless proceed with the arbitration (with or without a hearing) and make one or more awards.

15.9 As soon as practicable following the written stage of the arbitration, the Arbitral Tribunal shall proceed in such manner as has been agreed in writing by the parties or pursuant to its authority under the Arbitration Agreement.

15.10 In any event, the Arbitral Tribunal shall seek to make its final award as soon as reasonably possible and shall endeavour to do so no later than three months following the last submission from the parties (whether made orally or in writing), in accordance with a timetable notified to the parties and the Registrar as soon as practicable (if necessary, as revised and re-notified from time to time). When the Arbitral Tribunal (not being a sole arbitrator) establishes a time for what it contemplates shall be the last submission from the parties (whether written or oral), it shall set aside adequate time for deliberations (whether in person or otherwise) as soon as possible after that last submission and notify the parties of the time it has set aside.

Article 16 Seat of Arbitration and Place(s) of Hearing and Applicable Law

16.1 The parties may agree in writing the seat (or legal place) of their arbitration at any time before the formation of the Arbitral Tribunal and, after such formation, with the prior written consent of the Arbitral Tribunal.

16.2 In default of any such agreement, the seat of the arbitration shall be London (England), unless and until the Arbitral Tribunal orders, in view of the circumstances and after having given the parties a reasonable opportunity to make written comments to the Arbitral Tribunal, that another arbitral seat is more appropriate. Such default seat shall not be considered as a relevant circumstance by the LCIA Court in appointing any arbitrator or Emergency Arbitrator under Articles 5, 9A, 9B, 9C and 11.

16.3 If any hearing is to be held in person, the Arbitral Tribunal may hold such hearing at any convenient geographical place in consultation with the parties. If the Arbitral Tribunal is to meet in person to hold its deliberations, it may do so at any geographical place of its own choice. If such place(s) should be elsewhere than the seat of the arbitration, or if any hearing or deliberation takes place otherwise than in person (in whole or in part), the arbitration shall nonetheless be treated for all purposes as an arbitration conducted at the arbitral seat and any order or award as having been made at that seat.

16.4 Subject to Article 16.5 below, the law applicable to the Arbitration Agreement and the arbitration shall be the law applicable at the seat of the arbitration, unless and to the extent that the parties have agreed in writing on the application of other laws or rules of law and such agreement is not prohibited by the law applicable at the arbitral seat.

16.5 Notwithstanding Article 16.4, the LCIA Rules shall be interpreted in accordance with the laws of England.

Article 17 Language(s) of Arbitration

17.1 The initial language of the arbitration (until the formation of the Arbitral Tribunal) shall be the language or prevailing language of the Arbitration Agreement, unless the parties have agreed in writing otherwise.

17.2 In the event that the Arbitration Agreement is written in more than one language of equal standing, the LCIA Court may, unless the Arbitration Agreement provides that the arbitration proceedings shall be conducted from the outset in more than one language, determine which of those languages shall be the initial language of the arbitration.

17.3 A non-participating or defaulting party shall have no cause for complaint if communications to and from the LCIA Court and Registrar are conducted in the initial language(s) of the arbitration or of the arbitral seat.

17.4 Following the formation of the Arbitral Tribunal, unless the parties have agreed upon the language or languages of the arbitration, the Arbitral Tribunal shall decide upon the language(s) of the arbitration after giving the parties a reasonable opportunity to make written comments and taking into account the initial language(s) of the arbitration and any other matter it may consider appropriate in the circumstances.

17.5 If any document is expressed in a language other than the language(s) of the arbitration and no translation

of such document is submitted by the party relying upon the document, the Arbitral Tribunal may order or (if the Arbitral Tribunal has not been formed) the Registrar may request that party to submit a translation of all or any part of that document in any language(s) of the arbitration or of the arbitral seat.

Article 18 Authorised Representatives of a Party

18.1 Any party may be represented in the arbitration by one or more authorised representatives appearing by name before the Arbitral Tribunal.

18.2 Until the Arbitral Tribunal's formation, the Registrar may request from any party: (i) written proof of the authority granted by that party to any authorised representative designated in its Request or Response; and (ii) written confirmation of the names, email and postal addresses of all such party's authorised representatives in the arbitration. After its formation, at any time, the Arbitral Tribunal may order any party to provide similar proof or confirmation in any form it considers appropriate.

18.3 Following the Arbitral Tribunal's formation, any intended change or addition by a party to its authorised representatives shall be notified promptly in writing to all other parties, the Arbitral Tribunal, the tribunal secretary (if any) and the Registrar; and any such intended change or addition shall only take effect in the arbitration subject to the approval of the Arbitral Tribunal.

18.4 The Arbitral Tribunal may withhold approval of any intended change or addition to a party's authorised representatives where such change or addition could compromise the composition of the Arbitral Tribunal or the finality of any award (on the grounds of possible conflict of interest or other like impediment). In deciding whether to grant or withhold such approval, the Arbitral Tribunal shall have regard to the circumstances, including: the general principle that a party may be represented by an authorised representative chosen by that party, the stage which the arbitration has reached, the efficiency resulting from maintaining the composition of the Arbitral Tribunal (as constituted throughout the arbitration) and any likely wasted costs or loss of time resulting from such change or addition.

18.5 Each party shall ensure that all its authorised representatives appearing by name before the Arbitral Tribunal have agreed to comply with the general guidelines contained in the Annex to the LCIA Rules, as a condition of such representation. In permitting any authorised representative so to appear, a party shall thereby represent that the authorised representative has agreed to such compliance.

18.6 In the event of a complaint by one party against another party's authorised representative appearing by name before the Arbitral Tribunal (or of such complaint by the Arbitral Tribunal upon its own initiative), the Arbitral Tribunal may decide, after consulting the parties and granting that authorised representative a reasonable opportunity to answer the complaint, whether or not the authorised representative has violated the general guidelines. If such violation is found by the Arbitral Tribunal, the Arbitral Tribunal may order any or all of the following sanctions against the authorised representative: (i) a written reprimand; (ii) a written caution as to future conduct in the arbitration; and (iii) any other measure necessary to fulfil within the arbitration the general duties required of the Arbitral Tribunal under Articles 14.1(i) and (ii).

Article 19 Hearing(s)

19.1 Any party has the right to a hearing before the Arbitral Tribunal prior to any ruling of the Arbitral Tribunal on its jurisdiction and authority (pursuant to Article 23) or any award on the merits. The Arbitral Tribunal may itself decide that a hearing should be held at any stage, unless the parties have agreed in writing upon a documents-only arbitration. For these purposes, a hearing may consist of several part-hearings (as decided by the Arbitral Tribunal).

19.2 The Arbitral Tribunal shall organise the conduct of any hearing in advance, in consultation with the parties. The Arbitral Tribunal shall have the fullest authority under the Arbitration Agreement to establish the conduct of a hearing, including its date, duration, form, content, procedure, timelimits and geographical place (if applicable). As to form, a hearing may take place in person, or virtually by conference call, videoconference or using other communications technology with participants in one or more geographical places (or in a combined form). As to content, the Arbitral Tribunal may require the parties to address specific questions or issues arising from the parties' dispute. The Arbitral Tribunal may also limit the extent to which questions or issues are to be addressed.

19.3 The Arbitral Tribunal shall give to the parties reasonable notice in writing of any hearing.

19.4 All hearings shall be held in private, unless the parties agree otherwise in writing.

Article 20 Witnesses

20.1 The provisions of this Article 20 shall apply to any fact or expert witness on whose evidence a party relies.

20.2 Before any hearing, the Arbitral Tribunal may order any party to give written notice of the identity of each witness that party wishes to call (including rebuttal witnesses), as well as the subject matter of that witness's testimony, its content and its relevance to the issues in the arbitration.

20.3 Subject to any order otherwise by the Arbitral Tribunal, the testimony of a witness may be presented by a party in written form, either as a signed statement or like document.

20.4 The Arbitral Tribunal may decide the time, manner and form in which these written materials shall be exchanged between the parties and presented to the Arbitral Tribunal; and it may allow, refuse or limit the written and oral testimony of witnesses.

20.5 The Arbitral Tribunal and any party may request that a witness, on whose written testimony another party relies, should attend for oral questioning at a hearing before the Arbitral Tribunal. If the Arbitral Tribunal orders that other party to secure the attendance of that witness and the witness refuses or fails to attend the hearing without good cause, the Arbitral Tribunal may place such weight on the written testimony or exclude all or any part thereof altogether as it considers appropriate in the circumstances.

20.6 Subject to the mandatory provisions of any applicable law, rules of law and any order of the Arbitral Tribunal otherwise, it shall not be improper for any party or its authorised representatives to interview any potential witness for the purpose of presenting his or her testimony in written form to the Arbitral Tribunal or producing such person as an oral witness at any hearing.

20.7 Subject to any order by the Arbitral Tribunal otherwise, any individual intending to testify to the Arbitral Tribunal may be treated as a witness notwithstanding that the individual is a party to the arbitration or was, remains or has become an officer, employee, owner or shareholder of any party or is otherwise identified with any party.

20.8 Subject to the mandatory provisions of any applicable law, the Arbitral Tribunal shall be entitled (but not required) to administer any appropriate oath or affirmation to any witness at any hearing, prior to the oral testimony of that witness.

20.9 Any witness who gives oral testimony at a hearing before the Arbitral Tribunal may be questioned by each of the parties under the control of the Arbitral Tribunal. The Arbitral Tribunal may put questions at any stage of such testimony.

Article 21 Expert to Arbitral Tribunal

21.1 The Arbitral Tribunal, after consultation with the parties, may appoint one or more experts to report in writing to the Arbitral Tribunal and the parties on specific issues in the arbitration, as identified by the Arbitral Tribunal.

21.2 Any such expert shall be and remain impartial and independent of the parties; and he or she shall sign a written declaration to such effect, delivered to the Arbitral Tribunal and copied to all parties.

21.3 The Arbitral Tribunal may require any party at any time to give to such expert any relevant information or to provide access to any relevant documents, goods, samples, property, site or thing for inspection under that party's control on such terms as the Arbitral Tribunal thinks appropriate in the circumstances.

21.4 If any party so requests or the Arbitral Tribunal considers it necessary, the Arbitral Tribunal may order the expert, after delivery of the expert's written report, to attend a hearing at which the parties shall have a reasonable opportunity to question the expert on the report and to present witnesses in order to testify on relevant issues arising from the report. Articles 20.8 and 20.9 of the LCIA Rules shall apply, with necessary changes, to any expert to the Arbitral Tribunal.

21.5 The fees and expenses of any expert appointed by the Arbitral Tribunal under this Article 21 may be paid out of the Advance Payment for Costs payable by the parties under Article 24 and shall form part of the Arbitration Costs under Article 28.1.

Article 22 Additional Powers

22.1 The Arbitral Tribunal shall have the power, upon the application of any party or (save for sub-paragraph (x) below) upon its own initiative, but in either case only after giving the parties a reasonable opportunity to state their views and upon such terms (as to costs and otherwise) as the Arbitral Tribunal may decide:

(i) to allow a party to supplement, modify or amend any claim, defence, counterclaim, cross-claim, defence to counterclaim, defence to cross-claim and reply, including a Request, Response and any other written statement, submitted by such party;

(ii) to abridge or extend (even where the period of time has expired) any period of time prescribed under the Arbitration Agreement, any other agreement of the parties or any order made by the Arbitral Tribunal;

(iii) to conduct such enquiries as may appear to the Arbitral Tribunal to be necessary or expedient, including whether and to what extent the Arbitral Tribunal should itself take the initiative in identifying relevant issues and ascertaining relevant facts and the law(s) or rules of law applicable to the Arbitration Agreement, the arbitration and the merits of the parties' dispute;

(iv) to order any party to make any documents, goods, samples, property, site or thing under its control available for inspection by the Arbitral Tribunal, any other party, any expert to such party and any expert to the Tribunal;

(v) to order any party to produce to the Arbitral Tribunal and to other parties documents or copies of documents in their possession, custody or power which the Arbitral Tribunal decides to be relevant;

(vi) to decide whether or not to apply any strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material tendered by a party on any issue of fact or expert opinion; and to decide the time, manner and form in which such material should be exchanged between the parties and presented to the Arbitral Tribunal;

(vii) to decide the stage of the arbitration at which any issue or issues shall be determined, in what order, and the procedure to be adopted at each stage in accordance with Article 14 above;

(viii) to determine that any claim, defence, counterclaim, cross-claim, defence to counterclaim or defence to cross-claim is manifestly outside the jurisdiction of the Arbitral Tribunal, or is inadmissible or manifestly without merit; and where appropriate to issue an order or award to that effect (an "Early Determination");

(ix) to order compliance with any legal obligation or payment of compensation for breach of any legal obligation or specific performance of any agreement (including any arbitration agreement or any contract relating to land);

(x) to allow one or more third persons to be joined in the arbitration as a party provided any such third person and the applicant party have consented expressly to such joinder in writing following the Commencement Date or (if earlier) in the Arbitration Agreement; and thereafter to make a single final award, or separate awards, in respect of all parties so implicated in the arbitration; and

(xi) to order the discontinuance of the arbitration if it appears to the Arbitral Tribunal that the arbitration has been abandoned by the parties or all claims and any counterclaims or cross-claims have been withdrawn by the parties, after giving the parties a reasonable opportunity to state their views.

22.2 By agreeing to arbitration under the Arbitration Agreement, the parties shall be treated as having agreed not to apply to any state court or other legal authority for any order available from the Arbitral Tribunal (if formed) under Article 22.1, except with the agreement in writing of all parties.

22.3 The Arbitral Tribunal shall decide the parties' dispute in accordance with the law(s) or rules of law chosen by the parties as applicable to the merits of their dispute. If and to the extent that the Arbitral Tribunal decides that the parties have made no such choice, the Arbitral Tribunal shall apply the law(s) or rules of law which it considers appropriate.

22.4 The Arbitral Tribunal shall only apply to the merits of the dispute principles deriving from "ex aequo et bono", "amiable composition" or "honourable engagement" where the parties have so agreed in writing.

22.5 Subject to any order of the Arbitral Tribunal under Article 22.1(ii), the LCIA Court may also set, abridge or extend any period of time under the Arbitration Agreement or other agreement of the parties (even where the period of time has expired).

22.6 Without prejudice to Article 22.1(xi), the LCIA Court may determine, after giving the parties a reasonable opportunity to state their views, that the arbitration shall be discontinued if it appears to the LCIA Court that the arbitration has been abandoned by the parties or all claims and any counterclaims or cross-claims have been withdrawn by the parties.

Article 22A Power to Order Consolidation/Concurrent Conduct of Arbitrations

22.7 The Arbitral Tribunal shall have the power to order with the approval of the LCIA Court, upon the application of any party, after giving all affected parties a

reasonable opportunity to state their views and upon such terms (as to costs and otherwise) as the Arbitral Tribunal may decide:

(i) the consolidation of the arbitration with one or more other arbitrations into a single arbitration subject to the LCIA Rules where all the parties to the arbitrations to be consolidated so agree in writing;

(ii) the consolidation of the arbitration with one or more other arbitrations subject to the LCIA Rules and commenced under the same arbitration agreement or any compatible arbitration agreement(s) and either between the same disputing parties or arising out of the same transaction or series of related transactions, provided that no arbitral tribunal has yet been formed by the LCIA Court for such other arbitration(s) or, if already formed, that such arbitral tribunal(s) is (are) composed of the same arbitrators; and

(iii) that two or more arbitrations, subject to the LCIA Rules and commenced under the same arbitration agreement or any compatible arbitration agreement(s) and either between the same disputing parties or arising out of the same transaction or series of related transactions, shall be conducted concurrently where the same arbitral tribunal is constituted in respect of each arbitration.

22.8 Without prejudice to the generality of Article 22.7, the LCIA Court may:

(i) consolidate an arbitration with one or more other arbitrations into a single arbitration subject to the LCIA Rules where all the parties to the arbitrations to be consolidated so agree in writing; and

(ii) determine, after giving the parties a reasonable opportunity to state their views, that two or more arbitrations, subject to the LCIA Rules and commenced under the same arbitration agreement or any compatible arbitration agreement(s) and either between the same disputing parties or arising out of the same transaction or series of related transactions, shall be consolidated to form one single arbitration subject to the LCIA Rules, provided that no arbitral tribunal has yet been formed by the LCIA Court for any of the arbitrations to be consolidated.

Article 23 Jurisdiction and Authority

23.1 The Arbitral Tribunal shall have the power to rule upon its own jurisdiction and authority, including any objection to the initial or continuing existence, validity, effectiveness or scope of the Arbitration Agreement.

23.2 For that purpose, an arbitration clause which forms or was intended to form part of another agreement shall be treated as an arbitration agreement independent of that other agreement. A decision by the Arbitral Tribunal that such other agreement is non-existent, invalid or ineffective shall not entail (of itself) the non-existence, invalidity or ineffectiveness of the arbitration clause.

23.3 An objection by a Respondent that the Arbitral Tribunal does not have jurisdiction shall be raised as soon as possible but not later than the time for its Statement of Defence; and a like objection by any party responding to a Counterclaim or Cross-claim shall be raised as soon as possible but not later than the time for its Statement of Defence to Counterclaim or Cross-Claim. An objection that the Arbitral Tribunal is exceeding the scope of its authority shall be raised promptly after the Arbitral Tribunal has indicated its intention to act upon the matter alleged to lie beyond its authority. The Arbitral Tribunal may nevertheless admit an untimely objection as to its jurisdiction or authority if it considers the delay justified in the circumstances.

23.4 The Arbitral Tribunal may decide the objection to its jurisdiction or authority in an award as to jurisdiction or authority or later in an award on the merits, as it considers appropriate in the circumstances.

23.5 By agreeing to arbitration under the Arbitration Agreement, after the formation of the Arbitral Tribunal the parties shall be treated as having agreed not to apply to any state court or other legal authority for any relief regarding the Arbitral Tribunal's jurisdiction or authority, except (i) with the prior agreement in writing of all parties to the arbitration, or (ii) the prior authorisation of the Arbitral Tribunal, or (iii) following the latter's award on the objection to its jurisdiction or authority.

Article 24 Advance Payment for Costs

24.1 The LCIA Court may direct the parties, in such proportions and at such times as it thinks appropriate, to

make one or more payments to the LCIA (the "Advance Payment for Costs") in order to secure payment of the Arbitration Costs under Article 28.1. Such payments by the parties may be applied by the LCIA to pay any item of such Arbitration Costs (including the LCIA's own fees and expenses) in accordance with the LCIA Rules.

24.2 The Advance Payment for Costs shall be the property of the LCIA, to be disbursed or otherwise applied by the LCIA in accordance with the LCIA Rules and invested having regard to the interests of the LCIA. The parties agree that the LCIA shall not act as trustee and its sole duty to the parties in respect of the Advance Payment for Costs shall be to act pursuant to these LCIA Rules.

24.3 In the event that, at the conclusion of the arbitration, the Advance Payment for Costs exceeds the total amount of the Arbitration Costs under Article 28.1, the excess amount shall be transferred by the LCIA to the parties in such proportions as the parties may agree in writing or, failing such agreement, in the same proportions and to the same parties as the Advance Payment for Costs was paid to the LCIA, subject to any order of the Arbitral Tribunal.

24.4 The LCIA will make reasonable attempts to contact the parties in order to arrange for the transfer of the excess amount, using the contact details provided to the LCIA during the proceedings. If a response is not received from a party so contacted within 30 days, the LCIA will provide that party with written notice of its intention to retain the excess amount. If no response is received within a further 60 days, the party will be deemed irrevocably to have waived any right to claim and/or receive the excess amount.

24.5 Save for exceptional circumstances, the Arbitral Tribunal should not proceed with the arbitration without having ascertained from the Registrar that the LCIA is or will be in requisite funds as regards outstanding and future Arbitration Costs.

24.6 In the event that a party fails or refuses to make any payment on account of the Arbitration Costs as directed by the LCIA Court, the LCIA Court may direct the other party or parties to effect a further Advance Payment for Costs in an equivalent amount to allow the arbitration to proceed (subject to any order or award on Arbitration Costs).

24.7 In such circumstances, the party effecting the further Advance Payment for Costs may request the Arbitral Tribunal to make an order or award in order to recover that amount as a debt immediately due and payable to that party by the defaulting party, together with any interest.

24.8 Failure by a claiming, counterclaiming or crossclaiming party to make promptly and in full any required payment may be treated by the LCIA Court or the Arbitral Tribunal as a withdrawal from the arbitration of the claim, counterclaim or cross-claim respectively, thereby removing such claim, counterclaim or cross-claim (as the case may be) from the scope of the Arbitral Tribunal's jurisdiction under the Arbitration Agreement, subject to any terms decided by the LCIA Court or the Arbitral Tribunal as to the reinstatement of the claim, counterclaim or cross-claim in the event of subsequent payment by the claiming, counterclaiming or cross-claiming party. Such a withdrawal shall not preclude the claiming, counterclaiming or cross-claiming party from defending as a respondent any claim, counterclaim or cross-claim made by another party.

Article 24A Compliance

24.9 Any dealings between a party and the LCIA will be subject to any requirements applicable to that party or the LCIA relating to bribery, corruption, terrorist financing, fraud, tax evasion, money laundering and/or economic or trade sanctions ("Prohibited Activity"), and LCIA will deal with any party on the understanding that it is complying with all such requirements.

24.10 The LCIA may refuse to act on any instructions and/or accept or make any payment if the LCIA determines (in its sole discretion and without the need to state any reasons) that doing so may involve Prohibited Activity. The LCIA may take any action it considers appropriate to comply with any applicable obligations relating to Prohibited Activity, including disclosure of any information and documents to courts, law enforcement agencies and regulatory authorities.

24.11 The parties agree to provide the LCIA with any information and/or documents reasonably requested by the LCIA for the purpose of compliance with laws relating to Prohibited Activity. The LCIA may take any action it considers appropriate to comply with any applicable obligations relating to Prohibited Activity, including disclosure of any information and documents to courts, law enforcement agencies or regulatory authorities.

Article 25 Interim and Conservatory Measures

25.1 The Arbitral Tribunal shall have the power upon the application of any party, after giving all other parties a reasonable opportunity to respond to such application

and upon such terms as the Arbitral Tribunal considers appropriate in the circumstances:

(i) to order any respondent party to a claim, counterclaim or cross-claim to provide security for all or part of the amount in dispute, by way of deposit or bank guarantee or in any other manner;

(ii) to order the preservation, storage, sale or other disposal of any monies, documents, goods, samples, property, site or thing under the control of any party and relating to the subject-matter of the arbitration; and

(iii) to order on a provisional basis, subject to a final decision in an award, any relief which the Arbitral Tribunal would have power to grant in an award, including the payment of money or the disposition of property as between any parties.

Such terms may include the provision by the applicant party of a cross-indemnity, secured in such manner as the Arbitral Tribunal considers appropriate, for any costs or losses incurred by the respondent party in complying with the Arbitral Tribunal's order. Any amount payable under such cross-indemnity and any consequential relief may be decided by the Arbitral Tribunal by one or more awards in the arbitration.

25.2 The Arbitral Tribunal shall have the power upon the application of a party, after giving all other parties a reasonable opportunity to respond to such application, to order any claiming, counterclaiming or cross-claiming party to provide or procure security for Legal Costs and Arbitration Costs by way of deposit or bank guarantee or in any other manner and upon such terms as the Arbitral Tribunal considers appropriate in the circumstances. Such terms may include the provision by the applicant of a cross-indemnity, itself secured in such manner as the Arbitral Tribunal considers appropriate, for any costs and losses incurred by such claimant, counterclaimant or cross-claimant in complying with the Arbitral Tribunal's order. Any amount payable under such cross-indemnity and any consequential relief may be decided by the Arbitral Tribunal by one or more awards in the arbitration. In the event that a claiming, counterclaiming or cross-claiming party does not comply with any order to provide security, the Arbitral Tribunal may stay that party's claims, counterclaims or cross-claims or dismiss them by an award.

25.3 A party may apply to a competent state court or other legal authority for interim or conservatory measures that the Arbitral Tribunal would have power to order under Article 25.1: (i) before the formation of the Arbitral Tribunal; and (ii) after the formation of the Arbitral Tribunal, in exceptional cases and with the Arbitral Tribunal's authorisation, until the final award. After the Commencement Date, any application and any order for such measures before the formation of the Arbitral Tribunal shall be communicated promptly in writing by the applicant party to the Registrar; after its formation, also to the Arbitral Tribunal; and in both cases also to all other parties.

25.4 By agreeing to arbitration under the Arbitration Agreement, the parties shall be taken to have agreed not to apply to any state court or other legal authority for any order for security for Legal Costs or Arbitration Costs.

Article 26 Award(s)

26.1 The Arbitral Tribunal may make separate awards on different issues at different times, including interim payments on account of any claim, counterclaim or cross-claim (including Legal and Arbitration Costs under Article 28). Such awards shall have the same status as any other award made by the Arbitral Tribunal.

26.2 The Arbitral Tribunal shall make any award in writing and, unless all parties agree in writing otherwise, shall state the reasons upon which such award is based. The award shall also state the date when the award is made and the seat of the arbitration; and it shall be signed by the Arbitral Tribunal or those of its members assenting to it. Unless the parties agree otherwise, or the Arbitral Tribunal or LCIA Court directs otherwise, any award may be signed electronically and/or in counterparts and assembled into a single instrument.

26.3 An award may be expressed in any currency, unless the parties have agreed otherwise.

26.4 Unless the parties have agreed otherwise, the Arbitral Tribunal may order that simple or compound interest shall be paid by any party on any sum awarded at such rates as the Arbitral Tribunal decides to be appropriate (without being bound by rates of interest practised by any state court or other legal authority) in respect of any period which the Arbitral Tribunal decides to be appropriate ending not later than the date upon which the award is complied with.

26.5 Where there is more than one arbitrator and the Arbitral Tribunal fails to agree on any issue, the arbitrators shall decide that issue by a majority. Failing a majority decision on any issue, the presiding arbitrator shall decide that issue.

26.6 If any arbitrator refuses or fails to sign an award,the signatures of the majority or (failing a majority) of the

presiding arbitrator shall be sufficient, provided that the reason for any omitted signature is stated in the award by the majority or by the presiding arbitrator.

26.7 The sole or presiding arbitrator shall be responsible for delivering the award to the LCIA Court, which shall transmit to the parties the award authenticated by the Registrar as an LCIA award, provided that all Arbitration Costs have been paid in full to the LCIA in accordance with Articles 24 and 28. Such transmission may be made by any electronic means, and (if so requested by any party or if transmission by electronic means to a party is not possible) in paper form. In the event of any disparity between electronic and paper forms, the electronic form shall prevail.

26.8 Every award (including reasons for such award) shall be final and binding on the parties. The parties undertake to carry out any award immediately and without any delay (subject only to Article 27); and the parties also waive irrevocably their right to any form of appeal, review or recourse to any state court or other legal authority, insofar as such waiver shall not be prohibited under any applicable law.

26.9 In the event of any final settlement of the parties' dispute, the Arbitral Tribunal may decide to make an award recording the settlement if the parties jointly so request in writing (a "Consent Award"), provided always that such Consent Award shall contain an express statement on its face that it is an award made at the parties' joint request and with their consent. A Consent Award need not contain reasons or a determination in relation to the Arbitration Costs or Legal Costs. If the parties do not jointly request a Consent Award, on written confirmation by the parties to the LCIA Court that a final settlement has been reached, the Arbitral Tribunal shall be discharged and the arbitration proceedings concluded by the LCIA Court, subject to payment by the parties of any outstanding Arbitration Costs in accordance with Articles 24 and 28.

Article 27 Correction of Award(s) and Additional Award(s)

27.1 Within 28 days of receipt of any award, a party may by written notice to the Registrar (copied to all other parties) request the Arbitral Tribunal to correct in the award any error in computation, any clerical or typographical error, any ambiguity or any mistake of a similar nature. If, after consulting the parties, the Arbitral Tribunal considers the request to be justified, it shall make the correction by recording it in an addendum to the award within 28 days of receipt of the request. If, after consulting the parties, the Arbitral Tribunal does not consider the request to be justified it may nevertheless issue an addendum to the award dealing with the request, including any Arbitration Costs and Legal Costs related thereto.

27.2 The Arbitral Tribunal may also correct any error (including any error in computation, any clerical or typographical error, any ambiguity or any mistake of a similar nature) upon its own initiative in the form of an addendum to the award within 28 days of the date of the award, after consulting the parties.

27.3 Within 28 days of receipt of the final award, a party may by written notice to the Registrar (copied to all other parties), request the Arbitral Tribunal to make an additional award as to any claim, counterclaim or cross-claim presented in the arbitration but not decided in any award. If, after consulting the parties, the Arbitral Tribunal considers the request to be justified, it shall make the additional award within 56 days of receipt of the request. If, after consulting the parties, the Arbitral Tribunal does not consider the request to be justified it may nevertheless issue an addendum to the award dealing with the request, including any Arbitration Costs and Legal Costs related thereto.

27.4 As to any claim, counterclaim or cross-claim presented in the arbitration but not decided in any award, the Arbitral Tribunal may also make an additional award upon its own initiative within 28 days of the date of the award, after consulting the parties.

27.5 The provisions of Article 26.2 to 26.7 shall apply to any addendum to an award or additional award made hereunder. An addendum to an award shall be treated as part of the award.

Article 28 Arbitration Costs and Legal Costs

28.1 The costs of the arbitration other than the legal or other expenses incurred by the parties themselves (the "Arbitration Costs") shall be determined by the LCIA Court in accordance with the Schedule of Costs.[2] The parties shall be jointly and severally liable to the LCIA and the Arbitral Tribunal for such Arbitration Costs.

28.2 The Arbitral Tribunal shall specify by an order or award the amount of the Arbitration Costs determined by the LCIA Court. The Arbitral Tribunal shall decide the proportions in which the parties shall bear such Arbitration Costs (in the absence of a final settlement of the parties' dispute regarding liability for such costs).

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[2] Editor's note: For information on the schedule of costs, please go to Schedules of Costs (lcia.org).

If the Arbitral Tribunal has decided that all or any part of the Arbitration Costs shall be borne by a party other than a party which has already covered such costs by way of a payment to the LCIA under Article 24, the latter party shall have the right to recover the appropriate amount of Arbitration Costs from the former party.

28.3 The Arbitral Tribunal shall also have the power to decide by an order or award that all or part of the legal or other expenses incurred by a party (the "Legal Costs") be paid by another party. The Arbitral Tribunal shall decide the amount of such Legal Costs on such reasonable basis as it thinks appropriate. The Arbitral Tribunal shall not be required to apply the rates or procedures for assessing such costs practised by any state court or other legal authority.

28.4 The Arbitral Tribunal shall make its decisions on both Arbitration Costs and Legal Costs on the general principle that costs should reflect the parties' relative success and failure in the award or arbitration or under different issues, except where it appears to the Arbitral Tribunal that in the circumstances the application of such a general principle would be inappropriate under the Arbitration Agreement or otherwise. The Arbitral Tribunal may also take into account the conduct of the parties and that of their authorised representatives in the arbitration, including any cooperation in facilitating the proceedings as to time and cost and any non-cooperation resulting in undue delay and unnecessary expense. Any decision on costs by the Arbitral Tribunal shall be made with reasons in the order or award containing such decision (unless it is a Consent Award).

28.5 In the event that the parties have howsoever agreed before their dispute that one or more parties shall pay the whole or any part of the Arbitration Costs or Legal Costs whatever the result of any dispute, arbitration or award, such agreement (in order to be effective) shall be confirmed by the parties in writing after the Commencement Date.

28.6 If the arbitration is abandoned, suspended, withdrawn or concluded, by agreement or otherwise, before the final award is made, the parties shall remain jointly and severally liable to pay to the LCIA and the Arbitral Tribunal the Arbitration Costs determined by the LCIA Court.

Article 29 Determinations and Decisions by LCIA Court

29.1 The determinations of the LCIA Court with respect to all matters relating to the arbitration shall be conclusive and binding upon the parties and the Arbitral Tribunal, unless otherwise directed by the LCIA Court. Save for reasoned decisions on arbitral challenges under Article 10, such determinations are to be treated as administrative in nature; and the LCIA Court shall not be required to give reasons for any such determination.

29.2 To the extent permitted by any applicable law, the parties shall be taken to have waived any right of appeal or review in respect of any determination and decision of the LCIA Court to any state court or other legal authority. If such appeal or review takes place due to mandatory provisions of any applicable law or otherwise, the LCIA Court may determine whether or not the arbitration should continue, notwithstanding such appeal or review.

Article 30 Confidentiality

30.1 The parties undertake as a general principle to keep confidential all awards in the arbitration, together with all materials in the arbitration created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain, save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a state court or other legal authority. The parties shall seek the same undertaking of confidentiality from all those that it involves in the arbitration, including but not limited to any authorised representative, witness of fact, expert or service provider.

30.2 Article 30.1 of the LCIA Rules shall also apply, with necessary changes, to the Arbitral Tribunal, any tribunal secretary and any expert to the Arbitral Tribunal. Notwithstanding any other provision of the LCIA Rules, the deliberations of the Arbitral Tribunal shall remain confidential to its members and if appropriate any tribunal secretary, save as required by any applicable law and to the extent that disclosure of an arbitrator's refusal to participate in the arbitration is required of the other members of the Arbitral Tribunal under Articles 10, 12, 26.6 and 27.5.

30.3 The LCIA does not publish any award or any part of an award without the prior written consent of all parties and the Arbitral Tribunal.

Article 30A Data Protection

30.4 Any processing of personal data by the LCIA is subject to applicable data protection legislation, and the LCIA's data protection notice can be found on the LCIA website.

30.5 In accordance with its duties under Article 14.1, at an early stage of the arbitration the Arbitral Tribunal shall, in consultation with the parties and where appropriate the LCIA, consider whether it is appropriate to adopt:

(i) any specific information security measures to protect the physical and electronic information shared in the arbitration; and

(ii) any means to address the processing of personal data produced or exchanged in the arbitration in light of applicable data protection or equivalent legislation.

30.6 The LCIA and the Arbitral Tribunal may issue directions addressing information security or data protection, which shall be binding on the parties, and in the case of those issued by the LCIA, also on the members of the Arbitral Tribunal, subject to the mandatory provisions of any applicable law or rules of law.

Article 31 Limitation of Liability and Jurisdiction Clause

31.1 None of the LCIA (including its officers, members and employees), the LCIA Court (including its President, Vice Presidents, Honorary Vice Presidents, former Vice Presidents and members), the LCIA Board (including any board member), the Registrar (including any deputy Registrar), any arbitrator, any Emergency Arbitrator, any tribunal secretary and any expert to the Arbitral Tribunal shall be liable to any party howsoever for any act or omission in connection with any arbitration, save: (i) where the act or omission is shown by that party to constitute conscious and deliberate wrongdoing committed by the body or person alleged to be liable to that party; or (ii) to the extent that any part of this provision is shown to be prohibited by any applicable law.

31.2 After the award has been made and all possibilities of any addendum to the award or additional award under Article 27 have lapsed or been exhausted, none of the LCIA (including its officers, members and employees), the LCIA Court (including its President, Vice Presidents, Honorary Vice Presidents, former Vice Presidents and members), the LCIA Board (including any board member), the Registrar (including any deputy Registrar), any arbitrator, any Emergency Arbitrator, any tribunal secretary and any expert to the Arbitral Tribunal shall be under any legal obligation to make any statement to any person about any matter concerning the arbitration; nor shall any party seek to make any of these bodies or persons a witness in any legal or other proceedings arising out of the arbitration.

31.3 Any party agreeing to arbitration under or in accordance with the LCIA Rules irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to hear and decide any action, suit or proceedings between that party and the LCIA (including its officers, members and employees), the LCIA Court (including its President, Vice Presidents, Honorary Vice Presidents, former Vice Presidents and members), the LCIA Board (including any board member), the Registrar (including any deputy Registrar) any arbitrator, any Emergency Arbitrator, any tribunal secretary and/or any expert to the Arbitral Tribunal which may arise out of or in connection with any such arbitration and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England and Wales.

Article 32 General Rules

32.1 A party who knows that any provision of the Arbitration Agreement has not been complied with and yet proceeds with the arbitration without promptly stating its objection as to such non-compliance to the Registrar (before the formation of the Arbitral Tribunal) or the Arbitral Tribunal (after its formation), shall be treated as having irrevocably waived its right to object for all purposes.

32.2 For all matters not expressly provided in the Arbitration Agreement, the LCIA, the LCIA Court, the Registrar, the Arbitral Tribunal, any tribunal secretary and each of the parties shall act at all times in good faith, respecting the spirit of the Arbitration Agreement, and shall make every reasonable effort to ensure that any award is legally recognised and enforceable at the arbitral seat.

32.3 If and to the extent that any part of the Arbitration Agreement is decided by the Arbitral Tribunal, the Emergency Arbitrator, or any court or other legal authority of competent jurisdiction to be invalid, ineffective or unenforceable, such decision shall not, of itself, adversely affect any order or award by the Arbitral Tribunal or the Emergency Arbitrator or any other part of the Arbitration Agreement which shall remain in full force and effect, unless prohibited by any applicable law.

Index (in alphabetical order)

(N.B. This Index comprises both defined and other undefined terms. All references to any person or party include both masculine and feminine).

ANNEX TO THE LCIA RULES

General Guidelines for the Authorised Representatives of the Parties

(Articles 18.5 and 18.6 of the LCIA Rules)

Paragraph 1: These general guidelines are intended to promote the good and equal conduct of the authorised representatives of the parties appearing by name within the arbitration. Nothing in these guidelines is intended to derogate from the Arbitration Agreement or to undermine any authorised representative's primary duty of loyalty to the party represented in the arbitration or the obligation to present that party's case effectively to the Arbitral Tribunal. Nor shall these guidelines derogate from any mandatory laws, rules of law, professional rules or codes of conduct if and to the extent that any are shown to apply to an authorised representative appearing in the arbitration.

Paragraph 2: An authorised representative should not engage in activities intended unfairly to obstruct the arbitration or to jeopardise the finality of any award, including repeated challenges to an arbitrator's appointment or to the jurisdiction or authority of the Arbitral Tribunal where such challenges are known to be unfounded by that authorised representative.

Paragraph 3: An authorised representative should not knowingly make any false statement to the Arbitral Tribunal or the LCIA Court.

Paragraph 4: An authorised representative should not knowingly procure or assist in the preparation of or rely upon any false evidence presented to the Arbitral Tribunal or the LCIA Court.

Paragraph 5: An authorised representative should not knowingly conceal or assist in the concealment of any document (or any part thereof) which is ordered to be produced by the Arbitral Tribunal.

Paragraph 6: During the arbitration proceedings, an authorised representative should not deliberately initiate or attempt to initiate any unilateral contact relating to the arbitration or the parties' dispute with any member of the LCIA Court exercising any function in regard to the arbitration or, from the Arbitral Tribunal's formation onwards, any member of the Arbitral Tribunal or the tribunal secretary (if any), which has not been disclosed in writing prior to or shortly after the time of such contact to all other parties, all members of the Arbitral Tribunal and the Registrar in accordance with Article 13.4. An authorised representative may, however, have unilateral contact with the Registrar regarding administrative matters.

Paragraph 7: In accordance with Articles 18.5 and 18.6, the Arbitral Tribunal may decide whether an authorised representative has violated these general guidelines and, if so, how to exercise its discretion to impose any or all of the sanctions listed in Article 18.6.

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Chapter 34

Singapore International Arbitration Centre (SIAC)[1] (2016)

About the SIAC

Since commencing operations in 1991 as an independent, not-for-profit organisation, the SIAC has established a proven track record in providing neutral arbitration services to the global business community. The SIAC arbitration awards have been enforced in many jurisdictions including Australia, China, Hong Kong SAR, India, Indonesia, Jordan, Thailand, UK, USA and Vietnam, amongst other New York Convention signatories. the SIAC is a global arbitral institution providing cost-competitive and efficient case management services to parties from all over the world.

The SIAC's Board of Directors and its Court of Arbitration consists of eminent lawyers and professionals from all over the world.

The Board is responsible for overseeing the SIAC's operations, business strategy and development, as well as corporate governance matters.

The Court's main functions include the appointment of arbitrators, as well as overall supervision of case administration at the SIAC. The SIAC has an experienced international panel of over 400 expert arbitrators from over 40 jurisdictions. Appointments are made on the basis of our specialist knowledge of an arbitrator's expertise, experience, and track record.

The SIAC Rules provide a state-of-the-art procedural framework for efficient, expert and enforceable resolution of international disputes of all sizes and complexities involving parties from diverse legal systems and cultures.

The SIAC's full-time staff manages all the financial aspects of the arbitration, including:
- Regular rendering of accounts
- Collecting deposits towards the costs of arbitration
- Processing the Tribunal's fees and expenses

The SIAC supervises and monitors the progress of the case. The SIAC's scrutiny process enhances the enforceability of awards.

The SIAC's administration fees are highly competitive.

SAMPLE CLAUSES

SIAC Model Clause

In drawing up international contracts, we recommend that parties include the following arbitration clause:

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be [Singapore].*

The Tribunal shall consist of _____** arbitrator(s).

The language of the arbitration shall be _____.

Applicable Law

Parties should also include an applicable law clause. The following is recommended:

This contract is governed by the laws of _____.***

[1] *Republished with the kind permission of the Singapore International Arbitration Centre. Copyright 2016. All rights reserved. On July 7, 2020, the SIAC announced the commencement or revisions with a planned release in the third quarter of 2021.*

Table of Contents

RULES OF ARBITRATION*

Rule 1: Scope of Application and Interpretation

1.1 Where the parties have agreed to refer their disputes to SIAC for arbitration or to arbitration in accordance with the SIAC Rules, the parties shall be deemed to have agreed that the arbitration shall be conducted pursuant to and administered by SIAC in accordance with these Rules.

1.2 These Rules shall come into force on 1 August 2016 and, unless otherwise agreed by the parties, shall apply to any arbitration which is commenced on or after that date.

1.3 In these Rules:
"Award" includes a partial, interim or final award and an award of an Emergency Arbitrator;

"Committee of the Court" means a committee consisting of not less than two members of the Court appointed by the President (which may include the President);

"Court" means the Court of Arbitration of SIAC and includes a Committee of the Court;

"Emergency Arbitrator" means an arbitrator appointed in accordance with paragraph 3 of Schedule 1;

"Practice Notes" mean the guidelines published by the Registrar from time to time to supplement, regulate and implement these Rules;

"President" means the President of the Court and includes any Vice President and the Registrar;

"Registrar" means the Registrar of the Court and includes any Deputy Registrar;

"Rules" means the Arbitration Rules of the Singapore International Arbitration Centre (6th Edition, 1 August 2016);

"SIAC" means the Singapore International Arbitration Centre; and

"Tribunal" includes a sole arbitrator or all the arbitrators where more than one arbitrator is appointed.

Any pronoun in these Rules shall be understood to be gender-neutral. Any singular noun shall be understood to refer to the plural in the appropriate circumstances.

*Arbitration Rules of the Singapore International Arbitration Centre SIAC Rules (6th Edition, 1 August 2016).

Rule 2: Notice and Calculation of Periods of Time

2.1 For the purposes of these Rules, any notice, communication or proposal shall be in writing. Any such notice, communication or proposal may be delivered by hand, registered post or courier service, or transmitted by any form of electronic communication (including electronic mail and facsimile), or delivered by any other appropriate means that provides a record of its delivery. Any notice, communication or proposal shall be deemed to have been received if it is delivered: (i) to the addressee personally or to its authorised representative; (ii) to the addressee's habitual residence, place of business or designated address; (iii) to any address agreed by the parties; (iv) according to the practice of the parties in prior dealings; or (v) if, after reasonable efforts, none of these can be found, then at the addressee's last-known residence or place of business.

2.2 Any notice, communication or proposal shall be deemed to have been received on the day it is delivered in accordance with Rule 2.1.

2.3 For the purpose of calculating any period of time under these Rules, such period shall begin to run on the day following the day when a notice, communication or proposal is deemed to have been received. Unless the Registrar or the Tribunal determines otherwise, any period of time under these Rules is to be calculated in accordance with Singapore Standard Time (GMT +8).

2.4 Any non-business days at the place of receipt shall be included in calculating any period of time under these Rules. If the last day of any period of time under these Rules is not a business day at the place of receipt in accordance with Rule 2.1, the period is extended until the first business day which follows.

2.5 The parties shall file with the Registrar a copy of any notice, communication or proposal concerning the arbitral proceedings.

2.6 Except as provided in these Rules, the Registrar may at any time extend or abbreviate any time limits prescribed under these Rules.

Rule 3: Notice of Arbitration

3.1 A party wishing to commence an arbitration under these Rules (the "Claimant") shall file with the Registrar a Notice of Arbitration which shall include:

a. a demand that the dispute be referred to arbitration;
b. the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of

the parties to the arbitration and their representatives, if any;
c. a reference to the arbitration agreement invoked and a copy of the arbitration agreement;
d. a reference to the contract or other instrument (e.g. investment treaty) out of or in relation to which the dispute arises and, where possible, a copy of the contract or other instrument;
e. a brief statement describing the nature and circumstances of the dispute, specifying the relief claimed and, where possible, an initial quantification of the claim amount;
f. a statement of any matters which the parties have previously agreed as to the conduct of the arbitration or with respect to which the Claimant wishes to make a proposal;
g. a proposal for the number of arbitrators if not specified in the arbitration agreement;
h. unless otherwise agreed by the parties, the nomination of an arbitrator if the arbitration agreement provides for three arbitrators, or a proposal for a sole arbitrator if the arbitration agreement provides for a sole arbitrator;
i. any comment as to the applicable rules of law;
j. any comment as to the language of the arbitration; and
k. payment of the requisite filing fee under these Rules.

3.2 The Notice of Arbitration may also include the Statement of Claim referred to in Rule 20.2.

3.3 The date of receipt of the complete Notice of Arbitration by the Registrar shall be deemed to be the date of commencement of the arbitration. For the avoidance of doubt, the Notice of Arbitration is deemed to be complete when all the requirements of Rule 3.1 and Rule 6.1(b) (if applicable) are fulfilled or when the Registrar determines that there has been substantial compliance with such requirements. SIAC shall notify the parties of the commencement of the arbitration.

3.4 The Claimant shall, at the same time as it files the Notice of Arbitration with the Registrar, send a copy of the Notice of Arbitration to the Respondent, and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

Rule 4: Response to the Notice of Arbitration

4.1 The Respondent shall file a Response with the Registrar within 14 days of receipt of the Notice of Arbitration. The Response shall include:

a. a confirmation or denial of all or part of the claims, including, where possible, any plea that the Tribunal lacks jurisdiction;
b. a brief statement describing the nature and circumstances of any counterclaim, specifying the relief claimed and, where possible, an initial quantification of the counterclaim amount;
c. any comment in response to any statements contained in the Notice of Arbitration under Rule 3.1 or any comment with respect to the matters covered in such Rule;
d. unless otherwise agreed by the parties, the nomination of an arbitrator if the arbitration agreement provides for three arbitrators or, if the arbitration agreement provides for a sole arbitrator, comments on the Claimant's proposal for a sole arbitrator or a counter-proposal; and
e. payment of the requisite filing fee under these Rules for any counterclaim.

4.2 The Response may also include the Statement of Defence and a Statement of Counterclaim, as referred to in Rule 20.3 and Rule 20.4.

4.3 The Respondent shall, at the same time as it files the Response with the Registrar, send a copy of the Response to the Claimant, and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

Rule 5: Expedited Procedure

5.1 Prior to the constitution of the Tribunal, a party may file an application with the Registrar for the arbitral proceedings to be conducted in accordance with the Expedited Procedure under this Rule, provided that any of the following criteria is satisfied:
a. the amount in dispute does not exceed the equivalent amount of S$6,000,000, representing the aggregate of the claim, counterclaim and any defence of set-off;
b. the parties so agree; or
c. in cases of exceptional urgency.

The party applying for the arbitral proceedings to be conducted in accordance with the Expedited Procedure under this Rule 5.1 shall, at the same time as it files an application for the proceedings to be conducted in accordance with the Expedited Procedure with the Registrar, send a copy of the application to the other party and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

5.2 Where a party has filed an application with the Registrar under Rule 5.1, and where the President determines, after considering the views of the parties, and having regard to the circumstances of the case, that the arbitral proceedings shall be conducted in accordance with the Expedited Procedure, the following procedure shall apply:

a. the Registrar may abbreviate any time limits under these Rules;
b. the case shall be referred to a sole arbitrator, unless the President determines otherwise;
c. the Tribunal may, in consultation with the parties, decide if the dispute is to be decided on the basis of documentary evidence only, or if a hearing is required for the examination of any witness and expert witness as well as for any oral argument;
d. the final Award shall be made within six months from the date when the Tribunal is constituted unless, in exceptional circumstances, the Registrar extends the time for making such final Award; and
e. the Tribunal may state the reasons upon which the final Award is based in summary form, unless the parties have agreed that no reasons are to be given.

5.3 By agreeing to arbitration under these Rules, the parties agree that, where arbitral proceedings are conducted in accordance with the Expedited Procedure under this Rule 5, the rules and procedures set forth in Rule 5.2 shall apply even in cases where the arbitration agreement contains contrary terms.

5.4 Upon application by a party, and after giving the parties the opportunity to be heard, the Tribunal may, having regard to any further information as may subsequently become available, and in consultation with the Registrar, order that the arbitral proceedings shall no longer be conducted in accordance with the Expedited Procedure. Where the Tribunal decides to grant an application under this Rule 5.4, the arbitration shall continue to be conducted by the same Tribunal that was constituted to conduct the arbitration in accordance with the Expedited Procedure.

Rule 6: Multiple Contracts

6.1 Where there are disputes arising out of or in connection with more than one contract, the Claimant may:

a. file a Notice of Arbitration in respect of each arbitration agreement invoked and concurrently submit an application to consolidate the arbitrations pursuant to Rule 8.1; or
b. file a single Notice of Arbitration in respect of all the arbitration agreements invoked which shall include a statement identifying each contract and arbitration agreement invoked and a description of how the applicable criteria under Rule 8.1 are satisfied. The Claimant shall be deemed to have commenced multiple arbitrations, one in respect of each arbitration agreement invoked, and the Notice of Arbitration under this Rule 6.1(b) shall be deemed to be an application to consolidate all such arbitrations pursuant to Rule 8.1.

6.2 Where the Claimant has filed two or more Notices of Arbitration pursuant to Rule 6.1(a), the Registrar shall accept payment of a single filing fee under these Rules for all the arbitrations sought to be consolidated. Where the Court rejects the application for consolidation, in whole or in part, the Claimant shall be required to make payment of the requisite filing fee under these Rules in respect of each arbitration that has not been consolidated.

6.3 Where the Claimant has filed a single Notice of Arbitration pursuant to Rule 6.1(b) and the Court rejects the application for consolidation, in whole or in part, it shall file a Notice of Arbitration in respect of each arbitration that has not been consolidated, and the Claimant shall be required to make payment of the requisite filing fee under these Rules in respect of each arbitration that has not been consolidated.

Rule 7: Joinder of Additional Parties

7.1 Prior to the constitution of the Tribunal, a party or non-party to the arbitration may file an application with the Registrar for one or more additional parties to be joined in an arbitration pending under these Rules as a Claimant or a Respondent, provided that any of the following criteria is satisfied:

a. the additional party to be joined is prima facie bound by the arbitration agreement; or
b. all parties, including the additional party to be joined, have consented to the joinder of the additional party.

7.2 An application for joinder under Rule 7.1 shall include:

a. the case reference number of the pending arbitration;
b. the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of all parties, including the additional party to be joined, and their representatives, if any, and any arbitrators who have been nominated or appointed in the pending arbitration;
c. whether the additional party is to be joined as a Claimant or a Respondent;
d. the information specified in Rule 3.1(c) and Rule 3.1(d);
e. if the application is being made under Rule 7.1(b), identification of the relevant agreement and, where possible, a copy of such agreement; and
f. a brief statement of the facts and legal basis supporting the application,

The application for joinder is deemed to be complete when all the requirements of this Rule 7.2 are fulfilled or when

the Registrar determines that there has been substantial compliance with such requirements. SIAC shall notify all parties, including the additional party to be joined, when the application for joinder is complete.

7.3 The party or non-party applying for joinder under Rule 7.1 shall, at the same time as it files an application for joinder with the Registrar, send a copy of the application to all parties, including the additional party to be joined, and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

7.4 The Court shall, after considering the views of all parties, including the additional party to be joined, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for joinder under Rule 7.1. The Court's decision to grant an application for joinder under this Rule 7.4 is without prejudice to the Tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision. The Court's decision to reject an application for joinder under this Rule 7.4, in whole or in part, is without prejudice to any party's or non-party's right to apply to the Tribunal for joinder pursuant to Rule 7.8.

7.5 Where an application for joinder is granted under Rule 7.4, the date of receipt of the complete application for joinder shall be deemed to be the date of commencement of the arbitration in respect of the additional party.

7.6 Where an application for joinder is granted under Rule 7.4, the Court may revoke the appointment of any arbitrators appointed prior to the decision on joinder. Unless otherwise agreed by all parties, including the additional party joined, Rule 9 to Rule 12 shall apply as appropriate, and the respective timelines thereunder shall run from the date of receipt of the Court's decision under Rule 7.4.

7.7 The Court's decision to revoke the appointment of any arbitrator under Rule 7.6 is without prejudice to the validity of any act done or order or Award made by the arbitrator before his appointment was revoked.

7.8 After the constitution of the Tribunal, a party or non-party to the arbitration may apply to the Tribunal for one or more additional parties to be joined in an arbitration pending under these Rules as a Claimant or a Respondent, provided that any of the following criteria is satisfied:

a. the additional party to be joined is prima facie bound by the arbitration agreement; or
b. all parties, including the additional party to be joined, have consented to the joinder of the additional party.

Where appropriate, an application to the Tribunal under this Rule 7.8 may be filed with the Registrar.

7.9 Subject to any specific directions of the Tribunal, the provisions of Rule 7.2 shall apply, mutatis mutandis, to an application for joinder under Rule 7.8.

7.10 The Tribunal shall, after giving all parties, including the additional party to be joined, the opportunity to be heard, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for joinder under Rule 7.8. The Tribunal's decision to grant an application for joinder under this Rule 7.10 is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision.

7.11 Where an application for joinder is granted under Rule 7.10, the date of receipt by the Tribunal or the Registrar, as the case may be, of the complete application for joinder shall be deemed to be the date of commencement of the arbitration in respect of the additional party.

7.12 Where an application for joinder is granted under Rule 7.4 or Rule 7.10, any party who has not nominated an arbitrator or otherwise participated in the constitution of the Tribunal shall be deemed to have waived its right to nominate an arbitrator or otherwise participate in the constitution of the Tribunal, without prejudice to the right of such party to challenge an arbitrator pursuant to Rule 14.

7.13 Where an application for joinder is granted under Rule 7.4 or Rule 7.10, the requisite filing fee under these Rules shall be payable for any additional claims or counterclaims.

Rule 8: Consolidation

8.1 Prior to the constitution of any Tribunal in the arbitrations sought to be consolidated, a party may file an application with the Registrar to consolidate two or more arbitrations pending under these Rules into a single arbitration, provided that any of the following criteria is satisfied in respect of the arbitrations to be consolidated:

a. all parties have agreed to the consolidation;
b. all the claims in the arbitrations are made under the same arbitration agreement; or
c. the arbitration agreements are compatible, and: (i) the disputes arise out of the same legal relationship(s); (ii) the disputes arise out of contracts consisting of a principal contract and its ancillary contract(s); or (iii) the disputes arise out of the same transaction or series of transactions.

8.2 An application for consolidation under Rule 8.1 shall include:

a. the case reference numbers of the arbitrations sought to be consolidated;
b. the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of all parties and their representatives, if any, and any arbitrators who have been nominated or appointed in the arbitrations sought to be consolidated;
c. the information specified in Rule 3.1(c) and Rule 3.1(d);
d. if the application is being made under Rule 8.1(a), identification of the relevant agreement and, where possible, a copy of such agreement; and
e. a brief statement of the facts and legal basis supporting the application.

8.3 The party applying for consolidation under Rule 8.1 shall, at the same time as it files an application for consolidation with the Registrar, send a copy of the application to all parties and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

8.4 The Court shall, after considering the views of all parties, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for consolidation under Rule 8.1. The Court's decision to grant an application for consolidation under this Rule 8.4 is without prejudice to the Tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision. The Court's decision to reject an application for consolidation under this Rule 8.4, in whole or in part, is without prejudice to any party's right to apply to the Tribunal for consolidation pursuant to Rule 8.7. Any arbitrations that are not consolidated shall continue as separate arbitrations under these Rules.

8.5 Where the Court decides to consolidate two or more arbitrations under Rule 8.4, the arbitrations shall be consolidated into the arbitration that is deemed by the Registrar to have commenced first, unless otherwise agreed by all parties or the Court decides otherwise having regard to the circumstances of the case.

8.6 Where an application for consolidation is granted under Rule 8.4, the Court may revoke the appointment of any arbitrators appointed prior to the decision on consolidation. Unless otherwise agreed by all parties, Rule 9 to Rule 12 shall apply as appropriate, and the respective timelines thereunder shall run from the date of receipt of the Court's decision under Rule 8.4.

8.7 After the constitution of any Tribunal in the arbitrations sought to be consolidated, a party may apply to the Tribunal to consolidate two or more arbitrations pending under these Rules into a single arbitration, provided that any of the following criteria is satisfied in respect of the arbitrations to be consolidated:

a. all parties have agreed to the consolidation;
b. all the claims in the arbitrations are made under the same arbitration agreement, and the same Tribunal has been constituted in each of the arbitrations or no Tribunal has been constituted in the other arbitration(s); or
c. the arbitration agreements are compatible, the same Tribunal has been constituted in each of the arbitrations or no Tribunal has been constituted in the other arbitration(s), and: (i) the disputes arise out of the same legal relationship(s); (ii) the disputes arise out of contracts consisting of a principal contract and its ancillary contract(s); or (iii) the disputes arise out of the same transaction or series of transactions.

8.8 Subject to any specific directions of the Tribunal, the provisions of Rule 8.2 shall apply, mutatis mutandis, to an application for consolidation under Rule 8.7.

8.9 The Tribunal shall, after giving all parties the opportunity to be heard, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for consolidation under Rule 8.7. The Tribunal's decision to grant an application for consolidation under this Rule 8.9 is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision. Any arbitrations that are not consolidated shall continue as separate arbitrations under these Rules.

8.10 Where an application for consolidation is granted under Rule 8.9, the Court may revoke the appointment of any arbitrators appointed prior to the decision on consolidation.

8.11 The Court's decision to revoke the appointment of any arbitrator under Rule 8.6 or Rule 8.10 is without prejudice to the validity of any act done or order or Award made by the arbitrator before his appointment was revoked.

8.12 Where an application for consolidation is granted under Rule 8.4 or Rule 8.9, any party who has not nominated an arbitrator or otherwise participated in the constitution of the Tribunal shall be deemed to have waived its right to nominate an arbitrator or otherwise participate in the constitution of the Tribunal, without prejudice to the

right of such party to challenge an arbitrator pursuant to Rule 14.

Rule 9: Number and Appointment of Arbitrators

9.1 A sole arbitrator shall be appointed in any arbitration under these Rules unless the parties have otherwise agreed; or it appears to the Registrar, giving due regard to any proposals by the parties, that the complexity, the quantum involved or other relevant circumstances of the dispute, warrants the appointment of three arbitrators.

9.2 If the parties have agreed that any arbitrator is to be appointed by one or more of the parties, or by any third person including by the arbitrators already appointed, that agreement shall be deemed an agreement to nominate an arbitrator under these Rules.

9.3 In all cases, the arbitrators nominated by the parties, or by any third person including by the arbitrators already appointed, shall be subject to appointment by the President in his discretion.

9.4 The President shall appoint an arbitrator as soon as practicable. Any decision by the President to appoint an arbitrator under these Rules shall be final and not subject to appeal.

9.5 The President may appoint any nominee whose appointment has already been suggested or proposed by any party.

9.6 The terms of appointment of each arbitrator shall be fixed by the Registrar in accordance with these Rules and any Practice Notes for the time being in force, or in accordance with the agreement of the parties.

Rule 10: Sole Arbitrator

10.1 If a sole arbitrator is to be appointed, either party may propose to the other party the names of one or more persons to serve as the sole arbitrator. Where the parties have reached an agreement on the nomination of a sole arbitrator, Rule 9.3 shall apply.

10.2 If within 21 days after the date of commencement of the arbitration, or within the period otherwise agreed by the parties or set by the Registrar, the parties have not reached an agreement on the nomination of a sole arbitrator, or if at any time either party so requests, the President shall appoint the sole arbitrator.

Rule 11: Three Arbitrators

11.1 If three arbitrators are to be appointed, each party shall nominate one arbitrator.

11.2 If a party fails to make a nomination of an arbitrator within 14 days after receipt of a party's nomination of an arbitrator, or within the period otherwise agreed by the parties or set by the Registrar, the President shall proceed to appoint an arbitrator on its behalf.

11.3 Unless the parties have agreed upon another procedure for appointing the third arbitrator, or if such agreed procedure does not result in a nomination within the period agreed by the parties or set by the Registrar, the President shall appoint the third arbitrator, who shall be the presiding arbitrator.

Rule 12: Multi-party Appointment of Arbitrator(s)

12.1 Where there are more than two parties to the arbitration, and a sole arbitrator is to be appointed, the parties may agree to jointly nominate the sole arbitrator. In the absence of such joint nomination having been made within 28 days of the date of commencement of the arbitration or within the period otherwise agreed by the parties or set by the Registrar, the President shall appoint the sole arbitrator.

12.2 Where there are more than two parties to the arbitration, and three arbitrators are to be appointed, the Claimant(s) shall jointly nominate one arbitrator and the Respondent(s) shall jointly nominate one arbitrator. The third arbitrator, who shall be the presiding arbitrator, shall be appointed in accordance with Rule 11.3. In the absence of both such joint nominations having been made within 28 days of the date of commencement of the arbitration or within the period otherwise agreed by the parties or set by the Registrar, the President shall appoint all three arbitrators and shall designate one of them to be the presiding arbitrator.

Rule 13: Qualifications of Arbitrators

13.1 Any arbitrator appointed in an arbitration under these Rules, whether or not nominated by the parties, shall be and remain at all times independent and impartial.

13.2 In appointing an arbitrator under these Rules, the President shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations that are relevant to the impartiality or independence of the arbitrator.

13.3 The President shall also consider whether the arbitrator has sufficient availability to determine the case in a prompt and efficient manner that is appropriate given the nature of the arbitration.

13.4 A nominated arbitrator shall disclose to the parties and to the Registrar any circumstances that may give rise to justifiable doubts as to his impartiality or independence as soon as reasonably practicable and in any event before his appointment.

13.5 An arbitrator shall immediately disclose to the parties, to the other arbitrators and to the Registrar any circumstances that may give rise to justifiable doubts as to his impartiality or independence that may be discovered or arise during the arbitration.

13.6 No party or person acting on behalf of a party shall have any ex parte communication relating to the case with any arbitrator or with any candidate for appointment as party-nominated arbitrator, except to advise the candidate of the general nature of the controversy and of the anticipated proceedings; to discuss the candidate's qualifications, availability or independence in relation to the parties; or to discuss the suitability of candidates for selection as the presiding arbitrator where the parties or party-nominated arbitrators are to participate in that selection. No party or person acting on behalf of a party shall have any ex parte communication relating to the case with any candidate for presiding arbitrator.

Rule 14: Challenge of Arbitrators

14.1 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess any requisite qualification on which the parties have agreed.

14.2 A party may challenge the arbitrator nominated by it only for reasons of which it becomes aware after the appointment has been made.

Rule 15: Notice of Challenge

15.1 A party that intends to challenge an arbitrator shall file a notice of challenge with the Registrar in accordance with the requirements of Rule 15.2 within 14 days after receipt of the notice of appointment of the arbitrator who is being challenged or within 14 days after the circumstances specified in Rule 14.1 or Rule 14.2 became known or should have reasonably been known to that party.

15.2 The notice of challenge shall state the reasons for the challenge. The date of receipt of the notice of challenge by the Registrar shall be deemed to be the date the notice of challenge is filed. The party challenging an arbitrator shall, at the same time as it files a notice of challenge with the Registrar, send the notice of challenge to the other party, the arbitrator who is being challenged and the other members of the Tribunal (or if the Tribunal has not yet been constituted, any appointed arbitrator), and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

15.3 The party making the challenge shall pay the requisite challenge fee under these Rules in accordance with the applicable Schedule of Fees. If the party making the challenge fails to pay the challenge fee within the time limit set by the Registrar, the challenge shall be considered as withdrawn.

15.4 After receipt of a notice of challenge under Rule 15.2, the Registrar may order a suspension of the arbitral proceedings until the challenge is resolved. Unless the Registrar orders the suspension of the arbitral proceedings pursuant to this Rule 15.4, the challenged arbitrator shall be entitled to continue to participate in the arbitration pending the determination of the challenge by the Court in accordance with Rule 16.

15.5 Where an arbitrator is challenged by a party, the other party may agree to the challenge, and the Court shall remove the arbitrator if all parties agree to the challenge. The challenged arbitrator may also voluntarily withdraw from office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

15.5 Where an arbitrator is challenged by a party, the other party may agree to the challenge, and the Court shall remove the arbitrator if all parties agree to the challenge. The challenged arbitrator may also voluntarily withdraw from office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

15.6 If an arbitrator is removed or withdraws from office in accordance with Rule 15.5, a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced. This procedure shall apply even if, during the process of appointing the challenged arbitrator, a party failed to exercise its right to nominate an arbitrator. The time limits applicable to the nomination and appointment of the substitute arbitrator shall commence from the date of receipt of the agreement of the other party to the challenge or the challenged arbitrator's withdrawal from office.

Rule 16: Decision on Challenge

16.1 If, within seven days of receipt of the notice of challenge under Rule 15, the other party does not agree to the challenge and the arbitrator who is being challenged does not withdraw voluntarily from office, the Court shall decide the challenge. The Court may request comments on the challenge from the parties, the challenged arbitrator and the other members of the Tribunal (or if the Tribunal has not yet been constituted, any appointed arbitrator), and set a schedule for such comments to be made.

16.2 If the Court accepts the challenge to an arbitrator, the Court shall remove the arbitrator, and a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced. The time limits applicable to the nomination and appointment of the substitute arbitrator shall commence from the date of the Registrar's notification to the parties of the decision by the Court.

16.3 If the Court rejects the challenge to an arbitrator, the challenged arbitrator shall continue with the arbitration.

16.4 The Court's decision on any challenge to an arbitrator under this Rule 16 shall be reasoned, unless otherwise agreed by the parties, and shall be issued to the parties by the Registrar. Any such decision on any challenge by the Court shall be final and not subject to appeal.

Rule 17: Replacement of an Arbitrator

17.1 Except as otherwise provided in these Rules, in the event of the death, resignation, withdrawal or removal of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced.

17.2 In the event that an arbitrator refuses or fails to act or perform his functions in accordance with the Rules or within prescribed time limits, or in the event of any de jure or de facto impossibility by an arbitrator to act or perform his functions, the procedure for challenge and replacement of an arbitrator provided in Rule 14 to Rule 16 and Rule 17.1 shall apply.

17.3 The President may, at his own initiative and in his discretion, remove an arbitrator who refuses or fails to act or to perform his functions in accordance with the Rules or within prescribed time limits, or in the event of a de jure or de facto impossibility of an arbitrator to act or perform his functions, or if the arbitrator does not conduct or participate in the arbitration with due diligence and/or in a manner that ensures the fair, expeditious, economical and final resolution of the dispute. The President shall consult the parties and the members of the Tribunal, including the arbitrator to be removed (or if the Tribunal has not yet been constituted, any appointed arbitrator) prior to the removal of an arbitrator under this Rule.

Rule 18: Repetition of Hearings in the Event of Replacement of an Arbitrator

If the sole or presiding arbitrator is replaced in accordance with the procedure in Rule 15 to Rule 17, any hearings held previously shall be repeated unless otherwise agreed by the parties. If any other arbitrator is replaced, any hearings held previously may be repeated at the discretion of the Tribunal after consulting with the parties. If the Tribunal has issued an interim or partial Award, any hearings relating solely to that Award shall not be repeated, and the Award shall remain in effect.

Rule 19: Conduct of the Proceedings

19.1 The Tribunal shall conduct the arbitration in such manner as it considers appropriate, after consulting with the parties, to ensure the fair, expeditious, economical and final resolution of the dispute.

19.2 The Tribunal shall determine the relevance, materiality and admissibility of all evidence. The Tribunal is not required to apply the rules of evidence of any applicable law in making such determination.

19.3 As soon as practicable after the constitution of the Tribunal, the Tribunal shall conduct a preliminary meeting with the parties, in person or by any other means, to discuss the procedures that will be most appropriate and efficient for the case.

19.4 The Tribunal may, in its discretion, direct the order of proceedings, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

19.5 Unless otherwise agreed by the parties, the presiding arbitrator may make procedural rulings alone, subject to revision by the Tribunal.

19.6 All statements, documents or other information supplied to the Tribunal and/or the Registrar by a party shall simultaneously be communicated to the other party.

19.7 The President may, at any stage of the proceedings, request the parties and the Tribunal to convene a meeting

to discuss the procedures that will be most appropriate and efficient for the case. Such meeting may be conducted in person or by any other means.

Rule 20: Submissions by the Parties

20.1 Unless the Tribunal determines otherwise, the submission of written statements shall proceed as set out in this Rule.

20.2 Unless already submitted pursuant to Rule 3.2, the Claimant shall, within a period of time to be determined by the Tribunal, send to the Respondent and the Tribunal a Statement of Claim setting out in full detail:

a. a statement of facts supporting the claim;
b. the legal grounds or arguments supporting the claim; and
c. the relief claimed together with the amount of all quantifiable claims.

20.3 Unless already submitted pursuant to Rule 4.2, the Respondent shall, within a period of time to be determined by the Tribunal, send to the Claimant and the Tribunal a Statement of Defence setting out in full detail:

a. a statement of facts supporting its defence to the Statement of Claim;
b. the legal grounds or arguments supporting such defence; and
c. the relief claimed.

20.4 If a Statement of Counterclaim is made, the Claimant shall, within a period of time to be determined by the Tribunal, send to the Respondent and the Tribunal a Statement of Defence to Counterclaim setting out in full detail:

a. a statement of facts supporting its defence to the Statement of Counterclaim;
b. the legal grounds or arguments supporting such defence; and
c. the relief claimed.

20.5 A party may amend its claim, counterclaim or other submissions unless the Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim or counterclaim may not be amended in such a manner that the amended claim or counterclaim falls outside the scope of the arbitration agreement.

20.6 The Tribunal shall decide which further submissions shall be required from the parties or may be presented by them. The Tribunal shall fix the periods of time for communicating such submissions.

20.7 All submissions referred to in this Rule shall be accompanied by copies of all supporting documents which have not previously been submitted by any party.

20.8 If the Claimant fails within the time specified to submit its Statement of Claim, the Tribunal may issue an order for the termination of the arbitral proceedings or give such other directions as may be appropriate.

20.9 If the Respondent fails to submit its Statement of Defence, or if at any point any party fails to avail itself of the opportunity to present its case in the manner directed by the Tribunal, the Tribunal may proceed with the arbitration.

Rule 21: Seat of the Arbitration

21.1 The parties may agree on the seat of the arbitration. Failing such an agreement, the seat of the arbitration shall be determined by the Tribunal, having regard to all the circumstances of the case.

21.2 The Tribunal may hold hearings and meetings by any means it considers expedient or appropriate and at any location it considers convenient or appropriate.

Rule 22: Language of the Arbitration

22.1 Unless otherwise agreed by the parties, the Tribunal shall determine the language to be used in the arbitration.

22.2 If a party submits a document written in a language other than the language(s) of the arbitration, the Tribunal, or if the Tribunal has not been constituted, the Registrar, may order that party to submit a translation in a form to be determined by the Tribunal or the Registrar.

Rule 23: Party Representatives

23.1 Any party may be represented by legal practitioners or any other authorised representatives. The Registrar and/or the Tribunal may require proof of authority of any party representatives.

23.2 After the constitution of the Tribunal, any change or addition by a party to its representatives shall be promptly communicated in writing to the parties, the Tribunal and the Registrar.

Rule 24: Hearings

24.1 Unless the parties have agreed on a documents-only arbitration or as otherwise provided in these Rules, the Tribunal shall, if either party so requests or the Tribunal so decides, hold a hearing for the presentation of evidence and/or for oral submissions on the merits of the dispute, including any issue as to jurisdiction.

24.2 The Tribunal shall, after consultation with the parties, set the date, time and place of any meeting or hearing and shall give the parties reasonable notice.

24.3 If any party fails to appear at a meeting or hearing without showing sufficient cause for such failure, the Tribunal may proceed with the arbitration and may make the Award based on the submissions and evidence before it.

24.4 Unless otherwise agreed by the parties, all meetings and hearings shall be in private, and any recordings, transcripts, or documents used in relation to the arbitral proceedings shall remain confidential.

Rule 25: Witnesses

25.1 Before any hearing, the Tribunal may require the parties to give notice of the identity of witnesses, including expert witnesses, whom the parties intend to produce, the subject matter of their testimony and its relevance to the issues.

25.2 The Tribunal may allow, refuse or limit the appearance of witnesses to give oral evidence at any hearing.

25.3 Any witness who gives oral evidence may be questioned by each of the parties, their representatives and the Tribunal in such manner as the Tribunal may determine.

25.4 The Tribunal may direct the testimony of witnesses to be presented in written form, either as signed statements or sworn affidavits or any other form of recording. Subject to Rule 25.2, any party may request that such a witness should attend for oral examination. If the witness fails to attend for oral examination, the Tribunal may place such weight on the written testimony as it thinks fit, disregard such written testimony, or exclude such written testimony altogether.

25.5 It shall be permissible for any party or its representatives to interview any witness or potential witness (that may be presented by that party) prior to his appearance to give oral evidence at any hearing.

Rule 26: Tribunal-Appointed Experts

26.1 Unless otherwise agreed by the parties, the Tribunal may:

a. following consultation with the parties, appoint an expert to report on specific issues; and
b. require a party to give any expert appointed under Rule 26.1(a) any relevant information, or to produce or provide access to any relevant documents, goods or property for inspection.

26.2 Any expert appointed under Rule 26.1(a) shall submit a report in writing to the Tribunal. Upon receipt of such written report, the Tribunal shall deliver a copy of the report to the parties and invite the parties to submit written comments on the report.

26.3 Unless otherwise agreed by the parties, if the Tribunal considers it necessary or at the request of any party, an expert appointed under Rule 26.1(a) shall, after delivery of his written report, participate in a hearing. At the hearing, the parties shall have the opportunity to examine such expert.

Rule 27: Additional Powers of the Tribunal

Unless otherwise agreed by the parties, in addition to the other powers specified in these Rules, and except as prohibited by the mandatory rules of law applicable to the arbitration, the Tribunal shall have the power to:

a. order the correction or rectification of any contract, subject to the law governing such contract;
b. except as provided in these Rules, extend or abbreviate any time limits prescribed under these Rules or by its directions;
c. conduct such enquiries as may appear to the Tribunal to be necessary or expedient;
d. order the parties to make any property or item in their possession or control available for inspection;
e. order the preservation, storage, sale or disposal of any property or item which is or forms part of the subject matter of the dispute;
f. order any party to produce to the Tribunal and to the other parties for inspection, and to supply copies of, any document in their possession or control which the Tribunal considers relevant to the case and material to its outcome;
g. issue an order or Award for the reimbursement of unpaid deposits towards the costs of the arbitration;

h. direct any party or person to give evidence by affidavit or in any other form;
i. direct any party to take or refrain from taking actions to ensure that any Award which may be made in the arbitration is not rendered ineffectual by the dissipation of assets by a party or otherwise;
j. order any party to provide security for legal or other costs in any manner the Tribunal thinks fit;
k. order any party to provide security for all or part of any amount in dispute in the arbitration;
l. proceed with the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Tribunal's orders or directions or any partial Award or to attend any meeting or hearing, and to impose such sanctions as the Tribunal deems appropriate in relation to such failure or refusal;
m. decide, where appropriate, any issue not expressly or impliedly raised in the submissions of a party provided such issue has been clearly brought to the notice of the other party and that other party has been given adequate opportunity to respond;
n. determine the law applicable to the arbitral proceedings; and
o. determine any claim of legal or other privilege.

Rule 28: Jurisdiction of the Tribunal

28.1 If any party objects to the existence or validity of the arbitration agreement or to the competence of SIAC to administer an arbitration, before the Tribunal is constituted, the Registrar shall determine if such objection shall be referred to the Court. If the Registrar so determines, the Court shall decide if it is prima facie satisfied that the arbitration shall proceed. The arbitration shall be terminated if the Court is not so satisfied. Any decision by the Registrar or the Court that the arbitration shall proceed is without prejudice to the power of the Tribunal to rule on its own jurisdiction.

28.2 The Tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration agreement. An arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration agreement, and the Tribunal shall not cease to have jurisdiction by reason of any allegation that the contract is non-existent or null and void.

28.3 Any objection that the Tribunal:

a. does not have jurisdiction shall be raised no later than in a Statement of Defence or in a Statement of Defence to a Counterclaim; or
b. is exceeding the scope of its jurisdiction shall be raised within 14 days after the matter alleged to be beyond the scope of the Tribunal's jurisdiction arises during the arbitral proceedings.

The Tribunal may admit an objection raised by a party outside the time limits under this Rule 28.3 if it considers the delay justified. A party is not precluded from raising an objection under this Rule 28.3 by the fact that it has nominated, or participated in the nomination of, an arbitrator.

28.4 The Tribunal may rule on an objection referred to in Rule 28.3 either as a preliminary question or in an Award on the merits.

28.5 A party may rely on a claim or defence for the purpose of a set-off to the extent permitted by these Rules and the applicable law.

Rule 29: Early Dismissal of Claims and Defences

29.1 A party may apply to the Tribunal for the early dismissal of a claim or defence on the basis that:

a. a claim or defence is manifestly without legal merit; or
b. a claim or defence is manifestly outside the jurisdiction of the Tribunal.

29.2 An application for the early dismissal of a claim or defence under Rule 29.1 shall state in detail the facts and legal basis supporting the application. The party applying for early dismissal shall, at the same time as it files the application with the Tribunal, send a copy of the application to the other party, and shall notify the Tribunal that it has done so, specifying the mode of service employed and the date of service.

29.3 The Tribunal may, in its discretion, allow the application for the early dismissal of a claim or defence under Rule 29.1 to proceed. If the application is allowed to proceed, the Tribunal shall, after giving the parties the opportunity to be heard, decide whether to grant, in whole or in part, the application for early dismissal under Rule 29.1.

29.4 If the application is allowed to proceed, the Tribunal shall make an order or Award on the application, with reasons, which may be in summary form. The order or Award shall be made within 60 days of the date of filing of the application, unless, in exceptional circumstances, the Registrar extends the time.

Rule 30: Interim and Emergency Relief

30.1 The Tribunal may, at the request of a party, issue an order or an Award granting an injunction or any other interim relief it deems appropriate. The Tribunal may order the party requesting interim relief to provide appropriate security in connection with the relief sought.

30.2 A party that wishes to seek emergency interim relief prior to the constitution of the Tribunal may apply for such relief pursuant to the procedures set forth in Schedule 1.

30.3 A request for interim relief made by a party to a judicial authority prior to the constitution of the Tribunal, or in exceptional circumstances thereafter, is not incompatible with these Rules.

Rule 31: Applicable Law, Amiable Compositeur and Ex Aequo et Bono

31.1 The Tribunal shall apply the law or rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Tribunal shall apply the law or rules of law which it determines to be appropriate.

31.2 The Tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorised it to do so.

31.3 In all cases, the Tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any applicable usage of trade.

Rule 32: The Award

32.1 The Tribunal shall, as promptly as possible, after consulting with the parties and upon being satisfied that the parties have no further relevant and material evidence to produce or submission to make with respect to the matters to be decided in the Award, declare the proceedings closed. The Tribunal's declaration that the proceedings are closed shall be communicated to the parties and to the Registrar.

32.2 The Tribunal may, on its own motion or upon application of a party but before any Award is made, re-open the proceedings. The Tribunal's decision that the proceedings are to be re-opened shall be communicated to the parties and to the Registrar. The Tribunal shall close any re-opened proceedings in accordance with Rule 32.1.

32.3 Before making any Award, the Tribunal shall submit such Award in draft form to the Registrar. Unless the Registrar extends the period of time or unless otherwise agreed by the parties, the Tribunal shall submit the draft Award to the Registrar not later than 45 days from the date on which the Tribunal declares the proceedings closed. The Registrar may, as soon as practicable, suggest modifications as to the form of the Award and, without affecting the Tribunal's liberty to decide the dispute, draw the Tribunal's attention to points of substance. No Award shall be made by the Tribunal until it has been approved by the Registrar as to its form.

32.4 The Award shall be in writing and shall state the reasons upon which it is based unless the parties have agreed that no reasons are to be given.

32.5 Unless otherwise agreed by the parties, the Tribunal may make separate Awards on different issues at different times.

32.6 If any arbitrator fails to cooperate in the making of the Award, having been given a reasonable opportunity to do so, the remaining arbitrators may proceed. The remaining arbitrators shall provide written notice of such refusal or failure to the Registrar, the parties and the absent arbitrator. In deciding whether to proceed with the arbitration in the absence of an arbitrator, the remaining arbitrators may take into account, among other things, the stage of the arbitration, any explanation provided by the absent arbitrator for his refusal to participate and the effect, if any, upon the enforceability of the Award should the remaining arbitrators proceed without the absent arbitrator. The remaining arbitrators shall explain in any Award made the reasons for proceeding without the absent arbitrator.

32.7 Where there is more than one arbitrator, the Tribunal shall decide by a majority. Failing a majority decision, the presiding arbitrator alone shall make the Award for the Tribunal.

32.8 The Award shall be delivered to the Registrar, who shall transmit certified copies to the parties upon full settlement of the costs of the arbitration.

32.9 The Tribunal may award simple or compound interest on any sum which is the subject of the arbitration at such rates as the parties may have agreed or, in the absence of such agreement, as the Tribunal determines to be appropriate, in respect of any period which the Tribunal determines to be appropriate.

32.10 In the event of a settlement, and if the parties so request, the Tribunal may make a consent Award recording the settlement. If the parties do not require a consent Award, the parties shall confirm to the Registrar that a settlement has been reached, following which the Tribunal

shall be discharged and the arbitration concluded upon full settlement of the costs of the arbitration.

32.11 Subject to Rule 33 and Schedule 1, by agreeing to arbitration under these Rules, the parties agree that any Award shall be final and binding on the parties from the date it is made, and undertake to carry out the Award immediately and without delay. The parties also irrevocably waive their rights to any form of appeal, review or recourse to any State court or other judicial authority with respect to such Award insofar as such waiver may be validly made.

32.12 SIAC may, with the consent of the parties and the Tribunal, publish any Award with the names of the parties and other identifying information redacted.

Rule 33: Correction of Awards, Interpretation of Awards and Additional Awards

33.1 Within 30 days of receipt of an Award, a party may, by written notice to the Registrar and the other party, request the Tribunal to correct in the Award any error in computation, any clerical or typographical error or any error of a similar nature. If the Tribunal considers the request to be justified, it shall make the correction within 30 days of receipt of the request. Any correction, made in the original Award or in a separate memorandum, shall constitute part of the Award.

33.2 The Tribunal may correct any error of the type referred to in Rule 33.1 on its own initiative within 30 days of the date of the Award.

33.3 Within 30 days of receipt of an Award, a party may, by written notice to the Registrar and the other party, request the Tribunal to make an additional Award as to claims presented in the arbitration but not dealt with in the Award. If the Tribunal considers the request to be justified, it shall make the additional Award within 45 days of receipt of the request.

33.4 Within 30 days of receipt of an Award, a party may, by written notice to the Registrar and the other party, request that the Tribunal give an interpretation of the Award. If the Tribunal considers the request to be justified, it shall provide the interpretation in writing within 45 days after receipt of the request. The interpretation shall form part of the Award.

33.5 The Registrar may, if necessary, extend the period of time within which the Tribunal shall make a correction of an Award, interpretation of an Award or an additional Award under this Rule.

33.6 The provisions of Rule 32 shall apply in the same manner with the necessary or appropriate changes in relation to a correction of an Award, interpretation of an Award and to any additional Award made.

Rule 34: Fees and Deposits

34.1 The Tribunal's fees and SIAC's fees shall be ascertained in accordance with the Schedule of Fees in force at the time of commencement of the arbitration. The parties may agree to alternative methods of determining the Tribunal's fees prior to the constitution of the Tribunal.

34.2 The Registrar shall fix the amount of deposits payable towards the costs of the arbitration. Unless the Registrar directs otherwise, 50% of such deposits shall be payable by the Claimant and the remaining 50% of such deposits shall be payable by the Respondent. The Registrar may fix separate deposits on costs for claims and counterclaims, respectively.

34.3 Where the amount of the claim or the counterclaim is not quantifiable at the time payment is due, a provisional estimate of the costs of the arbitration shall be made by the Registrar. Such estimate may be based on the nature of the controversy and the circumstances of the case. This estimate may be adjusted in light of such information as may subsequently become available.

34.4 The Registrar may from time to time direct parties to make further deposits towards the costs of the arbitration.

34.5 Parties are jointly and severally liable for the costs of the arbitration. Any party is free to pay the whole of the deposits towards the costs of the arbitration should the other party fail to pay its share.

34.6 If a party fails to pay the deposits directed by the Registrar either wholly or in part:

a. the Tribunal may suspend its work and the Registrar may suspend SIAC's administration of the arbitration, in whole or in part; and
b. the Registrar may, after consultation with the Tribunal (if constituted) and after informing the parties, set a time limit on the expiry of which the relevant claims or counterclaims shall be considered as withdrawn without prejudice to the party reintroducing the same claims or counterclaims in another proceeding.

34.7 In all cases, the costs of the arbitration shall be finally determined by the Registrar at the conclusion of

the proceedings. If the claim and/or counterclaim is not quantified, the Registrar shall finally determine the costs of the arbitration, as set out in Rule 35, in his discretion. The Registrar shall have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration concluded. In the event that the costs of the arbitration determined are less than the deposits made, there shall be a refund in such proportions as the parties may agree, or failing an agreement, in the same proportions as the deposits were made.

34.8 All deposits towards the costs of the arbitration shall be made to and held by SIAC. Any interest which may accrue on such deposits shall be retained by SIAC.

34.9 In exceptional circumstances, the Registrar may direct the parties to pay an additional fee, in addition to that prescribed in the applicable Schedule of Fees, as part of SIAC's administration fees.

Rule 35: Costs of the Arbitration

35.1 Unless otherwise agreed by the parties, the Tribunal shall specify in the Award the total amount of the costs of the arbitration. Unless otherwise agreed by the parties, the Tribunal shall determine in the Award the apportionment of the costs of the arbitration among the parties.

35.2 The term "costs of the arbitration" includes:

a. the Tribunal's fees and expenses and the Emergency Arbitrator's fees and expenses, where applicable;
b. SIAC's administration fees and expenses; and
c. the costs of any expert appointed by the Tribunal and of any other assistance reasonably required by the Tribunal.

Rule 36: Tribunal's Fees and Expenses

36.1 The fees of the Tribunal shall be fixed by the Registrar in accordance with the applicable Schedule of Fees or, if applicable, with the method agreed by the parties pursuant to Rule 34.1, and the stage of the proceedings at which the arbitration concluded. In exceptional circumstances, the Registrar may determine that an additional fee over that prescribed in the applicable Schedule of Fees1 shall be paid.

36.2 The Tribunal's reasonable out-of-pocket expenses necessarily incurred and other allowances shall be reimbursed in accordance with the applicable Practice Note.

1 Editor's note: For information on the schedule of fees go to https://www. siac.org.sg/fees/siac-schedule-of-fees.

Rule 37: Party's Legal and Other Costs

The Tribunal shall have the authority to order in its Award that all or a part of the legal or other costs of a party be paid by another party.

Rule 38: Exclusion of Liability

38.1 Any arbitrator, including any Emergency Arbitrator, any person appointed by the Tribunal, including any administrative secretary and any expert, the President, members of the Court, and any directors, officers and employees of SIAC, shall not be liable to any person for any negligence, act or omission in connection with any arbitration administered by SIAC in accordance with these Rules.

38.2 SIAC, including the President, members of the Court, directors, officers, employees or any arbitrator, including any Emergency Arbitrator, and any person appointed by the Tribunal, including any administrative secretary and any expert, shall not be under any obligation to make any statement in connection with any arbitration administered by SIAC in accordance with these Rules. No party shall seek to make the President, any member of the Court, director, officer, employee of SIAC, or any arbitrator, including any Emergency Arbitrator, and any person appointed by the Tribunal, including any administrative secretary and any expert, act as a witness in any legal proceedings in connection with any arbitration administered by SIAC in accordance with these Rules.

Rule 39: Confidentiality

39.1 Unless otherwise agreed by the parties, a party and any arbitrator, including any Emergency Arbitrator, and any person appointed by the Tribunal, including any administrative secretary and any expert, shall at all times treat all matters relating to the proceedings and the Award as confidential. The discussions and deliberations of the Tribunal shall be confidential.

39.2 Unless otherwise agreed by the parties, a party or any arbitrator, including any Emergency Arbitrator, and any person appointed by the Tribunal, including any administrative secretary and any expert, shall not, without the prior written consent of the parties, disclose to a third party any such matter except:

a. for the purpose of making an application to any competent court of any State to enforce or challenge the Award;

b. pursuant to the order of or a subpoena issued by a court of competent jurisdiction;
c. for the purpose of pursuing or enforcing a legal right or claim;
d. in compliance with the provisions of the laws of any State which are binding on the party making the disclosure or the request or requirement of any regulatory body or other authority;
e. pursuant to an order by the Tribunal on application by a party with proper notice to the other parties; or
f. for the purpose of any application under Rule 7 or Rule 8 of these Rules.

39.3 In Rule 39.1, "matters relating to the proceedings" includes the existence of the proceedings, and the pleadings, evidence and other materials in the arbitral proceedings and all other documents produced by another party in the proceedings or the Award arising from the proceedings, but excludes any matter that is otherwise in the public domain.

39.4 The Tribunal has the power to take appropriate measures, including issuing an order or Award for sanctions or costs, if a party breaches the provisions of this Rule.

Rule 40: Decisions of the President, the Court and the Registrar

40.1 Except as provided in these Rules, the decisions of the President, the Court and the Registrar with respect to all matters relating to an arbitration shall be conclusive and binding upon the parties and the Tribunal. The President, the Court and the Registrar shall not be required to provide reasons for such decisions, unless the Court determines otherwise or as may be provided in these Rules. The parties agree that the discussions and deliberations of the Court are confidential.

40.2 Save in respect of Rule 16.1 and Rule 28.1, the parties waive any right of appeal or review in respect of any decisions of the President, the Court and the Registrar to any State court or other judicial authority.

Rule 41: General Provisions

41.1 Any party that proceeds with the arbitration without promptly raising any objection to a failure to comply with any provision of these Rules, or of any other rules applicable to the proceedings, any direction given by the Tribunal, or any requirement under the arbitration agreement relating to the constitution of the Tribunal or the conduct of the proceedings, shall be deemed to have waived its right to object.

41.2 In all matters not expressly provided for in these Rules, the President, the Court, the Registrar and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure the fair, expeditious and economical conclusion of the arbitration and the enforceability of any Award.

41.3 In the event of any discrepancy or inconsistency between the English version of these Rules and any other languages in which these Rules are published, the English version shall prevail.

SCHEDULE 1

EMERGENCY ARBITRATOR

1. A party that wishes to seek emergency interim relief may, concurrent with or following the filing of a Notice of Arbitration but prior to the constitution of the Tribunal, file an application for emergency interim relief with the Registrar. The party shall, at the same time as it files the application for emergency interim relief, send a copy of the application to all other parties. The application for emergency interim relief shall include:

a. the nature of the relief sought;
b. the reasons why the party is entitled to such relief; and
c. a statement certifying that all other parties have been provided with a copy of the application or, if not, an explanation of the steps taken in good faith to provide a copy or notification to all other parties.

2. Any application for emergency interim relief shall be accompanied by payment of the non-refundable administration fee and the requisite deposits under these Rules towards the Emergency Arbitrator's fees and expenses for proceedings pursuant to this Schedule 1. In appropriate cases, the Registrar may increase the amount of the deposits requested from the party making the application. If the additional deposits are not paid within the time limit set by the Registrar, the application shall be considered as withdrawn.

3. The President shall, if he determines that SIAC should accept the application for emergency interim relief, seek to appoint an Emergency Arbitrator within one day of receipt by the Registrar of such application and payment of the administration fee and deposits.

4. If the parties have agreed on the seat of the arbitration, such seat shall be the seat of the proceedings for emergency interim relief. Failing such an agreement, the seat of the proceedings for emergency interim relief shall be

Singapore, without prejudice to the Tribunal's determination of the seat of the arbitration under Rule 21.1.

5. Prior to accepting appointment, a prospective Emergency Arbitrator shall disclose to the Registrar any circumstances that may give rise to justifiable doubts as to his impartiality or independence. Any challenge to the appointment of the Emergency Arbitrator must be made within two days of the communication by the Registrar to the parties of the appointment of the Emergency Arbitrator and the circumstances disclosed.

6. An Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless otherwise agreed by the parties.

7. The Emergency Arbitrator shall, as soon as possible but, in any event, within two days of his appointment, establish a schedule for consideration of the application for emergency interim relief. Such schedule shall provide a reasonable opportunity for the parties to be heard, but may provide for proceedings by telephone or video conference or on written submissions as alternatives to a hearing in person. The Emergency Arbitrator shall have the powers vested in the Tribunal pursuant to these Rules, including the authority to rule on his own jurisdiction, without prejudice to the Tribunal's determination.

8. The Emergency Arbitrator shall have the power to order or award any interim relief that he deems necessary, including preliminary orders that may be made pending any hearing, telephone or video conference or written submissions by the parties. The Emergency Arbitrator shall give summary reasons for his decision in writing. The Emergency Arbitrator may modify or vacate the preliminary order, the interim order or Award for good cause.

9. The Emergency Arbitrator shall make his interim order or Award within 14 days from the date of his appointment unless, in exceptional circumstances, the Registrar extends the time. No interim order or Award shall be made by the Emergency Arbitrator until it has been approved by the Registrar as to its form.

10. The Emergency Arbitrator shall have no power to act after the Tribunal is constituted. The Tribunal may reconsider, modify or vacate any interim order or Award issued by the Emergency Arbitrator, including a ruling on his own jurisdiction. The Tribunal is not bound by the reasons given by the Emergency Arbitrator. Any interim order or Award issued by the Emergency Arbitrator shall, in any event, cease to be binding if the Tribunal is not constituted within 90 days of such order or Award or when the Tribunal makes a final Award or if the claim is withdrawn.

11. Any interim order or Award by the Emergency Arbitrator may be conditioned on provision by the party seeking such relief of appropriate security.

12. The parties agree that an order or Award by an Emergency Arbitrator pursuant to this Schedule 1 shall be binding on the parties from the date it is made, and undertake to carry out the interim order or Award immediately and without delay. The parties also irrevocably waive their rights to any form of appeal, review or recourse to any State court or other judicial authority with respect to such Award insofar as such waiver may be validly made.

13. The costs associated with any application pursuant to this Schedule 1 may initially be apportioned by the Emergency Arbitrator, subject to the power of the Tribunal to determine finally the apportionment of such costs.

14. These Rules shall apply as appropriate to any proceeding pursuant to this Schedule 1, taking into account the urgency of such a proceeding. The Emergency Arbitrator may decide in what manner these Rules shall apply as appropriate, and his decision as to such matters is final and not subject to appeal, review or recourse. The Registrar may abbreviate any time limits under these Rules in applications made pursuant to proceedings commenced under Rule 30.2 and Schedule 1.

Chapter 35

Arbitration Institute of The Stockholm Chamber of Commerce[1] (2017)

ABOUT THE SCC

The Arbitration Institute of the Stockholm Chamber of Commerce (SCC), an independent part of the Stockholm Chamber of Commerce, celebrated its Centennial year in 2017. Originally an initiative to meet the need of local arbitration the SCC has grown to play a prominent role in international dispute resolution.

The institute sees around 200 new cases per year. About half of the SCC cases are international arbitrations with parties from 30-40 countries on an annual basis. Today, the SCC is also the world´s second largest institution for investment disputes under its own rules. In at least 120 of the current Bilateral Investment Treaties (BITs), Sweden or the SCC is cited as the forum for resolving disputes between investors and the state. In addition, the SCC is one of three foras for investor-state arbitration under the Energy Charter Treaty.

The SCC continuously strives to meet its user´s need and to be efficient, knowledgeable and at the forefront of legal development. One example of its forward thinking is the global innovation contest sponsored by the Stockholm Treaty Lab, inspired by the need of cross-border investments to address climate change challenges. With its modern international arbitration, the SCC is one of the world´s leading arbitration institutes as it moves into its second century.

MODEL ARBITRATION CLAUSE

Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce.

Recommended additions:
The arbitral tribunal shall be composed of three arbitrators/a sole arbitrator.
The seat of arbitration shall be […].
The language of the arbitration shall be […].
This contract shall be governed by the substantive law of […].

ARBITRATION RULES OF THE ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE

ADOPTED BY THE STOCKHOLM CHAMBER OF COMMERCE AND IN FORCE AS OF 1 JANUARY 2017

Under any arbitration agreement referring to the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (the "Arbitration Rules") the parties shall be deemed to have agreed that the following rules, or such amended rules, in force on the date of the commencement of the arbitration, or the filing of an application for the appointment of an Emergency Arbitrator, shall be applied unless otherwise agreed by the parties.

The English text prevails over other language versions.

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Article 1 About the SCC

The Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC") is the body responsible for the administration of disputes in accordance with the "SCC Rules"; the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (the "Arbitration Rules") and the Rules for Expedited Arbitrations of the Stockholm Chamber of Commerce (the "Rules for Expedited Arbitrations"), and other procedures or rules agreed upon by the parties. The SCC is composed of a board of directors (the "Board") and a secretariat (the "Secretariat"). Detailed provisions regarding the organisation of the SCC are set out in Appendix I.

General rules

Article 2 General conduct of the participants to the arbitration

(1) Throughout the proceedings, the SCC, the Arbitral Tribunal and the parties shall act in an efficient and expeditious manner.
(2) In all matters not expressly provided for in these Rules, the SCC, the Arbitral Tribunal and the parties shall act in the spirit of these Rules and shall make every reasonable effort to ensure that any award is legally enforceable.

Article 3 Confidentiality

Unless otherwise agreed by the parties, the SCC, the Arbitral Tribunal and any administrative secretary of the Arbitral Tribunal shall maintain the confidentiality of the arbitration and the award.

Article 4 Time periods

The Board may, on application by either party or on its own motion, extend any time period set by the SCC for a party to comply with a particular direction.

Article 5 Notices

(1) Any notice or other communication from the Secretariat or the Board shall be delivered to the last known address of the addressee.

(2) Any notice or other communication shall be delivered by courier or registered mail, e-mail or any other means that records the sending of the communication.

(3) A notice or communication sent in accordance with paragraph (2) shall be deemed to have been received by the addressee on the date it would normally have been received given the means of communication used.

(4) This article shall apply equally to any communications from the Arbitral Tribunal.

Commencement of proceedings

Article 6 Request for Arbitration

A Request for Arbitration shall include:

(i) the names, addresses, telephone numbers and e-mail addresses of the parties and their counsel;
(ii) a summary of the dispute;
(iii) a preliminary statement of the relief sought by the Claimant, including an estimate of the monetary value of the claims;
(iv) a copy or description of the arbitration agreement or clause under which the dispute is to be settled;
(v) where claims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each claim is made;
(vi) comments on the number of arbitrators and the seat of arbitration; and
(vii) if applicable, the name, address, telephone number and e-mail address of the arbitrator appointed by the Claimant.

Article 7 Registration Fee

(1) Upon filing the Request for Arbitration, the Claimant shall pay a Registration Fee. The amount of the Registration Fee shall be determined in accordance with the Schedule of Costs (Appendix IV) in force on the date the Request for Arbitration is filed.

(2) If the Registration Fee is not paid upon filing the Request for Arbitration, the Secretariat shall set a time period within which the Claimant shall pay the Registration Fee. If the Registration Fee is not paid within this time period, the Secretariat shall dismiss the Request for Arbitration.

Article 8 Commencement of arbitration

Arbitration shall be deemed to commence on the date the SCC receives the Request for Arbitration.

Article 9 Answer

(1) The Secretariat shall send a copy of the Request for Arbitration and any attached documents to the Respondent. The Secretariat shall set a time period within which the Respondent shall submit an Answer to the SCC. The Answer shall include:

(i) any objections concerning the existence, validity or applicability of the arbitration agreement; however, failure to object shall not preclude the Respondent from raising such objections at any time up to and including the submission of the Statement of Defence;
(ii) an admission or denial of the relief sought in the Request for Arbitration;
(iii) a preliminary statement of any counterclaims or set-offs, including an estimate of the monetary value thereof;
(iv) where counterclaims or set-offs are made under more than one arbitration agreement, an indication of the arbitration agreement under which each counterclaim or set-off is made;
(v) comments on the number of arbitrators and the seat of arbitration; and
(vi) if applicable, the name, address, telephone number and e-mail address of the arbitrator appointed by the Respondent.

(2) The Secretariat shall send a copy of the Answer to the Claimant. The Claimant may be given an opportunity to submit comments on the Answer, having regard to the circumstances of the case.

(3) Failure by the Respondent to submit an Answer shall not prevent the arbitration from proceeding.

Article 10 Request for further details

(1) The Board may request further details from either party regarding any of their written submissions to the SCC.

(2) If the Claimant fails to comply with a request for further details, the Board may dismiss the case.

(3) If the Respondent fails to comply with a request for further details regarding its counterclaim or set-off, the Board may dismiss the counterclaim or set-off.

(4) Failure by the Respondent to otherwise comply with a request for further details shall not prevent the arbitration from proceeding.

Article 11 Decisions by the Board

The Board takes decisions as provided under these Rules, including deciding:

(i) whether the SCC manifestly lacks jurisdiction over the dispute pursuant to Article 12(i);
(ii) whether to grant a request for joinder pursuant to Article 13;
(iii) whether claims made under multiple contracts shall proceed in a single arbitration pursuant to Article 14;
(iv) whether to consolidate cases pursuant to Article 15;
(v) on the number of arbitrators pursuant to Article 16;
(vi) on any appointment of arbitrators pursuant to Article 17;
(vii) on any challenge to an arbitrator pursuant to Article 19;
(viii) on the seat of arbitration pursuant to Article 25; and
(ix) on the Advance on Costs pursuant to Article 51.

Article 12 Dismissal

The Board shall dismiss a case, in whole or in part, if:

(i) the SCC manifestly lacks jurisdiction over the dispute; or
(ii) the Advance on Costs is not paid pursuant to Article 51.

Article 13 Joinder of additional parties

(1) A party to the arbitration may request that the Board join one or more additional parties to the arbitration.

(2) The Request for Joinder shall be made as early as possible. A Request for Joinder made after the submission of the Answer will not be considered, unless the Board decides otherwise. Articles 6 and 7 shall apply mutatis mutandis to the Request for Joinder.

(3) Arbitration against the additional party shall be deemed to commence on the date the SCC receives the Request for Joinder.

(4) The Secretariat shall set a time period within which the additional party shall submit an Answer to the Request for Joinder. Article 9 shall apply mutatis mutandis to the Answer to the Request for Joinder.

(5) The Board may decide to join one or more additional parties provided that the SCC does not manifestly lack jurisdiction over the dispute between the parties, including any additional party requested to be joined to the arbitration, pursuant to Article 12(i).

(6) In deciding whether to grant the Request for Joinder where claims are made under more than one arbitration agreement, the Board shall consult with the parties and shall have regard to Article 14(3)(i)-(iv).

(7) In all cases where the Board decides to grant the Request for Joinder any decision as to the Arbitral Tribunal's jurisdiction over any party joined to the arbitration shall be made by the Arbitral Tribunal.

(8) Where the Board decides to grant the Request for Joinder and the additional party does not agree to any arbitrator already appointed, the Board may release the arbitrators and appoint the entire Arbitral Tribunal, unless all parties, including the additional party, agree on a different procedure for the appointment of the Arbitral Tribunal.

Article 14 Multiple contracts in a single arbitration

(1) Parties may make claims arising out of or in connection with more than one contract in a single arbitration.

(2) If any party raises any objections as to whether all of the claims made against it may be determined in a single arbitration, the claims may proceed in a single arbitration provided that the SCC does not manifestly lack jurisdiction over the dispute between the parties pursuant to Article 12(i).

(3) In deciding whether the claims shall proceed in a single arbitration, the Board shall consult with the parties and shall have regard to:

(i) whether the arbitration agreements under which the claims are made are compatible;
(ii) whether the relief sought arises out of the same transaction or series of transactions;
(iii) the efficiency and expeditiousness of the proceedings; and
(iv) any other relevant circumstances.

(4) In all cases where the Board decides that the claims may proceed in a single arbitration, any decision as to the Arbitral Tribunal's jurisdiction over the claims shall be made by the Arbitral Tribunal.

Article 15 Consolidation of arbitrations

(1) At the request of a party the Board may decide to consolidate a newly commenced arbitration with a pending arbitration, if:

(i) the parties agree to consolidate;
(ii) all the claims are made under the same arbitration agreement; or
(iii) where the claims are made under more than one arbitration agreement, the relief sought arises out of the same transaction or series of transactions and the Board considers the arbitration agreements to be compatible.

(2) In deciding whether to consolidate, the Board shall consult with the parties and the Arbitral Tribunal and shall have regard to:

(i) the stage of the pending arbitration;
(ii) the efficiency and expeditiousness of the proceedings; and
(iii) any other relevant circumstances.

(3) Where the Board decides to consolidate, the Board may release any arbitrator already appointed.

Composition of the Arbitral Tribunal

Article 16 Number of arbitrators

(1) The parties may agree on the number of arbitrators.

(2) Where the parties have not agreed on the number of arbitrators, the Board shall decide whether the Arbitral Tribunal shall consist of a sole arbitrator or three arbitrators, having regard to the complexity of the case, the amount in dispute and any other relevant circumstances.

Article 17 Appointment of arbitrators

(1) The parties may agree on a procedure for appointment of the Arbitral Tribunal.

(2) Where the parties have not agreed on a procedure, or if the Arbitral Tribunal has not been appointed within the time period agreed by the parties or, where the parties have not agreed on a time period, within the time period set by the Board, the appointment shall be made pursuant to paragraphs (3)–(7).

(3) Where the Arbitral Tribunal is to consist of a sole arbitrator, the parties shall be given 10 days to jointly appoint the arbitrator. If the parties fail to appoint the arbitrator within this time, the Board shall make the appointment.

(4) Where the Arbitral Tribunal is to consist of more than one arbitrator, each party shall appoint an equal number of arbitrators and the Board shall appoint the Chairperson. Where a party fails to appoint arbitrator(s) within the stipulated time period, the Board shall make the appointment.

(5) Where there are multiple Claimants or Respondents and the Arbitral Tribunal is to consist of more than one arbitrator, the multiple Claimants, jointly, and the multiple Respondents, jointly, shall appoint an equal number of arbitrators. If either side fails to make such joint appointment, the Board may appoint the entire Arbitral Tribunal.

(6) If the parties are of different nationalities, the sole arbitrator or the Chairperson of the Arbitral Tribunal shall be of a different nationality than the parties, unless the parties have agreed otherwise or the Board otherwise deems it appropriate.

(7) When appointing arbitrators, the Board shall consider the nature and circumstances of the dispute, the applicable law, the seat and language of the arbitration and the nationality of the parties.

Article 18 Impartiality, independence and availability

(1) Every arbitrator must be impartial and independent.

(2) Before being appointed, a prospective arbitrator shall disclose any circumstances that may give rise to justifiable doubts as to the prospective arbitrator's impartiality or independence.

(3) Once appointed, an arbitrator shall submit to the Secretariat a signed statement of acceptance, availability, impartiality and independence, disclosing any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence. The Secretariat shall send a copy of the statement of acceptance, availability, impartiality and independence to the parties and the other arbitrators.

(4) An arbitrator shall immediately inform the parties and the other arbitrators in writing if any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence arise during the course of the arbitration.

Article 19 Challenge to arbitrators

(1) A party may challenge any arbitrator if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess the qualifications agreed by the parties.

(2) A party may challenge an arbitrator it has appointed, or in whose appointment it has participated, only for reasons it becomes aware of after the appointment was made.

(3) A party wishing to challenge an arbitrator shall submit a written statement to the Secretariat stating the reasons for the challenge, within 15 days from the date the circumstances giving rise to the challenge became known to the party. Failure to challenge an arbitrator within the stipulated time constitutes a waiver of the party's right to make the challenge.

(4) The Secretariat shall notify the parties and the arbitrators of the challenge and give them an opportunity to submit comments.

(5) If the other party agrees to the challenge, the arbitrator shall resign. In all other cases, the Board shall take the final decision on the challenge.

Article 20 Release from appointment

(1) The Board shall release an arbitrator from appointment where:

(i) the Board accepts the resignation of the arbitrator;
(ii) a challenge to the arbitrator under Article 19 is sustained; or
(iii) the arbitrator is otherwise unable or fails to perform the arbitrator's functions.

(2) Before the Board releases an arbitrator, the Secretariat may give the parties and the arbitrators an opportunity to submit comments.

Article 21 Replacement of arbitrators

(1) The Board shall appoint a new arbitrator where an arbitrator has been released from appointment pursuant to Article 20, or where an arbitrator has died. If the released arbitrator was appointed by a party, that party shall appoint the new arbitrator, unless the Board otherwise deems it appropriate.

(2) Where the Arbitral Tribunal consists of three or more arbitrators, the Board may decide that the remaining arbitrators shall proceed with the arbitration. Before the Board takes a decision, the parties and the arbitrators shall be given an opportunity to submit comments. In taking its decision, the Board shall have regard to the stage of the arbitration and any other relevant circumstances.

(3) Where an arbitrator has been replaced, the newly composed Arbitral Tribunal shall decide whether and to what extent the proceedings are to be repeated.

The proceedings before the Arbitral Tribunal

Article 22 Referral to the Arbitral Tribunal

When the Arbitral Tribunal has been appointed and the Advance on Costs has been paid, the Secretariat shall refer the case to the Arbitral Tribunal.

Article 23 Conduct of the arbitration by the Arbitral Tribunal

(1) The Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, subject to these Rules and any agreement between the parties.

(2) In all cases, the Arbitral Tribunal shall conduct the arbitration in an impartial, efficient and expeditious manner, giving each party an equal and reasonable opportunity to present its case.

Article 24 Administrative secretary of the Arbitral Tribunal

(1) The Arbitral Tribunal may at any time during the arbitration submit to the SCC a proposal for the appointment of a specific candidate as administrative secretary. The appointment is subject to the approval of the parties.

(2) The Arbitral Tribunal shall consult the parties regarding the tasks of the administrative secretary. The Arbitral Tribunal may not delegate any decision-making authority to the administrative secretary.

(3) The administrative secretary must be impartial and independent. The Arbitral Tribunal shall ensure that the administrative secretary remains impartial and independent at all stages of the arbitration.

(4) Before being appointed, the proposed administrative secretary shall sign a statement of availability, impartiality and independence disclosing any circumstances that may give rise to justifiable doubts as to the proposed administrative secretary's impartiality or independence.

(5) A party may request the removal of the administrative secretary based on the procedure set out in Article 19, which shall apply mutatis mutandis to a challenge of an administrative secretary. If the Board removes an administrative secretary, the Arbitral Tribunal may propose the appointment of another administrative secretary in accordance with this Article. A request for removal shall not prevent the arbitration from proceeding, unless the Arbitral Tribunal decides otherwise.

(6) Any fee payable to the administrative secretary shall be paid from the fees of the Arbitral Tribunal.

Article 25 Seat of arbitration

(1) Unless agreed upon by the parties, the Board shall decide the seat of arbitration.

(2) The Arbitral Tribunal may, after consulting the parties, conduct hearings at any place it considers appropriate. The Arbitral Tribunal may meet and deliberate at any place it considers appropriate. The arbitration shall be deemed to have taken place at the seat of arbitration regardless of any hearing, meeting, or deliberation held elsewhere.

(3) The award shall be deemed to have been made at the seat of arbitration.

Article 26 Language

(1) Unless agreed upon by the parties, the Arbitral Tribunal shall determine the language(s) of the arbitration. In so determining, the Arbitral Tribunal shall have due regard to all relevant circumstances and shall give the parties an opportunity to submit comments.

(2) The Arbitral Tribunal may request that any documents submitted in languages other than those of the arbitration be accompanied by a translation into the language(s) of the arbitration.

Article 27 Applicable law

(1) The Arbitral Tribunal shall decide the merits of the dispute on the basis of the law(s) or rules of law agreed upon by the parties. In the absence of such agreement, the Arbitral Tribunal shall apply the law or rules of law that it considers most appropriate.

(2) Any designation by the parties of the law of a given state shall be deemed to refer to the substantive law of that state, not to its conflict of laws rules.

(3) The Arbitral Tribunal shall decide the dispute ex aequo et bono or as amiable compositeur only if the parties have expressly authorised it to do so.

Article 28 Case management conference and timetable

(1) After the referral of the case to the Arbitral Tribunal, the Arbitral Tribunal shall promptly hold a case management conference with the parties to organise, schedule and establish procedures for the conduct of the arbitration.

(2) The case management conference may be conducted in person or by any other means.

(3) Having regard to the circumstances of the case, the Arbitral Tribunal and the parties shall seek to adopt procedures enhancing the efficiency and expeditiousness of the proceedings.

(4) During or immediately following the case management conference, the Arbitral Tribunal shall establish a timetable for the conduct of the arbitration, including the date for making the award.

(5) The Arbitral Tribunal may, after consulting the parties, hold further case management conferences and issue revised timetables as it deems appropriate. The Arbitral Tribunal shall send a copy of the timetable and any subsequent modifications to the parties and to the Secretariat.

Article 29 Written submissions

(1) Within the period determined by the Arbitral Tribunal, the Claimant shall submit a Statement of Claim which shall include, unless previously submitted:

(i) the specific relief sought;
(ii) the factual and legal basis the Claimant relies on; and
(iii) any evidence the Claimant relies on.

(2) Within the period determined by the Arbitral Tribunal, the Respondent shall submit a Statement of Defence which shall include, unless previously submitted:

(i) any objections concerning the existence, validity or applicability of the arbitration agreement;
(ii) a statement whether, and to what extent, the Respondent admits or denies the relief sought by the Claimant;
(iii) the factual and legal basis the Respondent relies on;
(iv) any counterclaim or set-off and the grounds on which it is based; and
(v) any evidence the Respondent relies on.

(3) The Arbitral Tribunal may order the parties to submit additional written submissions.

Article 30 Amendments

At any time prior to the close of proceedings pursuant to Article 40, a party may amend or supplement its claim, counterclaim, defence or set-off provided its case, as amended or supplemented, is still comprised by the arbitration agreement, unless the Arbitral Tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it, the prejudice to the other party or any other relevant circumstances.

Article 31 Evidence

(1) The admissibility, relevance, materiality and weight of evidence shall be for the Arbitral Tribunal to determine.

(2) The Arbitral Tribunal may order a party to identify the documentary evidence it intends to rely on and specify the circumstances intended to be proved by such evidence.

(3) At the request of a party, or exceptionally on its own motion, the Arbitral Tribunal may order a party to produce any documents or other evidence that may be relevant to the case and material to its outcome.

Article 32 Hearings

(1) A hearing shall be held if requested by a party, or if the Arbitral Tribunal deems it appropriate.

(2) The Arbitral Tribunal shall, in consultation with the parties, determine the date, time and location of any hearing and shall provide the parties with reasonable notice thereof.

(3) Unless otherwise agreed by the parties, hearings will be held in private.

Article 33 Witnesses

(1) In advance of any hearing, the Arbitral Tribunal may order the parties to identify each witness or expert they intend to call and specify the circumstances intended to be proved by each testimony.

(2) The testimony of witnesses or party-appointed experts may be submitted in the form of signed statements.

(3) Any witness or expert, on whose testimony a party seeks to rely, shall attend a hearing for examination, unless otherwise agreed by the parties.

Article 34 Experts appointed by the Arbitral Tribunal

(1) After consulting the parties, the Arbitral Tribunal may appoint one or more experts to report to it on specific issues set out by the Arbitral Tribunal in writing.

(2) Upon receipt of a report from an expert it has appointed, the Arbitral Tribunal shall send a copy of the report to the parties and shall give the parties an opportunity to submit written comments on the report.

(3) Upon the request of a party, the parties shall be given an opportunity to examine any expert appointed by the Arbitral Tribunal at a hearing.

Article 35 Default

(1) If the Claimant, without good cause, fails to submit a Statement of Claim in accordance with Article 29, the Arbitral Tribunal shall terminate the proceedings, provided the Respondent has not filed a counterclaim.

(2) If a party, without good cause, fails to submit a Statement of Defence or other written statement in accordance with Article 29, fails to appear at a hearing, or otherwise fails to avail itself of the opportunity to present its case, the Arbitral Tribunal may proceed with the arbitration and make an award.

(3) If a party, without good cause, fails to comply with any provision of, or requirement under, these Rules or any procedural order given by the Arbitral Tribunal, the Arbitral Tribunal may draw such inferences as it considers appropriate.

Article 36 Waiver

A party who, during the arbitration, fails to object without delay to any failure to comply with the arbitration agreement, these Rules or other rules applicable to the proceedings, shall be deemed to have waived the right to object to such failure.

Article 37 Interim measures

(1) The Arbitral Tribunal may, at the request of a party, grant any interim measures it deems appropriate.

(2) The Arbitral Tribunal may order the party requesting an interim measure to provide appropriate security in connection with the measure.

(3) An interim measure shall take the form of an order or an award.

(4) Provisions with respect to interim measures requested before arbitration has commenced, or before a case has been referred to an Arbitral Tribunal, are set out in Appendix II.

(5) A request for interim measures made by a party to a judicial authority is not incompatible with the arbitration agreement or with these Rules.

Article 38 Security for costs

(1) The Arbitral Tribunal may, in exceptional circumstances and at the request of a party, order any Claimant or Counterclaimant to provide security for costs in any manner the Arbitral Tribunal deems appropriate.

(2) In determining whether to order security for costs, the Arbitral Tribunal shall have regard to:

(i) the prospects of success of the claims, counterclaims and defences;

(ii) the Claimant's or Counterclaimant's ability to comply with an adverse costs award and the availability of assets for enforcement of an adverse costs award;
(iii) whether it is appropriate in all the circumstances of the case to order one party to provide security; and
(iv) any other relevant circumstances.

(3) If a party fails to comply with an order to provide security, the Arbitral Tribunal may stay or dismiss the party's claims in whole or in part.

(4) Any decision to stay or to dismiss a party's claims shall take the form of an order or an award.

Article 39 Summary procedure

(1) A party may request that the Arbitral Tribunal decide one or more issues of fact or law by way of summary procedure, without necessarily undertaking every procedural step that might otherwise be adopted for the arbitration.

(2) A request for summary procedure may concern issues of jurisdiction, admissibility or the merits. It may include, for example, an assertion that:

(i) an allegation of fact or law material to the outcome of the case is manifestly unsustainable;
(ii) even if the facts alleged by the other party are assumed to be true, no award could be rendered in favour of that party under the applicable law; or
(iii) any issue of fact or law material to the outcome of the case is, for any other reason, suitable to determination by way of summary procedure.

(3) The request shall specify the grounds relied on and the form of summary procedure proposed, and demonstrate that such procedure is efficient and appropriate in all the circumstances of the case.

(4) After providing the other party an opportunity to submit comments, the Arbitral Tribunal shall issue an order either dismissing the request or fixing the summary procedure in the form it deems appropriate.

(5) In determining whether to grant a request for summary procedure, the Arbitral Tribunal shall have regard to all relevant circumstances, including the extent to which the summary procedure contributes to a more efficient and expeditious resolution of the dispute.

(6) If the request for summary procedure is granted, the Arbitral Tribunal shall seek to make its order or award on the issues under consideration in an efficient and expeditious manner having regard to the circumstances of the case, while giving each party an equal and reasonable opportunity to present its case pursuant to Article 23(2).

Article 40 Close of proceedings

The Arbitral Tribunal shall declare the proceedings closed when it is satisfied that the parties have had a reasonable opportunity to present their cases. In exceptional circumstances, prior to the making of the final award, the Arbitral Tribunal may reopen the proceedings on its own motion, or on the application of a party.

Awards and decisions

Article 41 Awards and decisions

(1) Where the Arbitral Tribunal consists of more than one arbitrator, any award or other decision shall be made by a majority of the arbitrators or, failing a majority, by the Chairperson.

(2) The Arbitral Tribunal may decide that the Chairperson alone may make procedural rulings.

Article 42 Making of awards

(1) The Arbitral Tribunal shall make its award in writing, and, unless otherwise agreed by the parties, shall state the reasons upon which the award is based.

(2) An award shall include the date of the award and the seat of arbitration in accordance with Article 25.

(3) An award shall be signed by the arbitrators. If an arbitrator fails to sign an award, the signatures of the majority of the arbitrators or, failing a majority, of the Chairperson shall be sufficient, provided that the reason for the omission of the signature is stated in the award.

(4) The Arbitral Tribunal shall deliver a copy of the award to each of the parties and to the SCC without delay.

(5) If any arbitrator fails, without good cause, to participate in the deliberations of the Arbitral Tribunal on any issue, such failure will not preclude a decision being taken by the other arbitrators.

Article 43 Time limit for final award

The final award shall be made no later than six months from the date the case was referred to the Arbitral Tribunal pursuant to Article 22. The Board may extend this time limit upon a reasoned request from the Arbitral Tribunal or if otherwise deemed necessary.

Article 44 Separate award

The Arbitral Tribunal may decide a separate issue or part of the dispute in a separate award.

Article 45 Settlement or other grounds for termination of the arbitration

(1) If the parties reach a settlement before the final award is made, the Arbitral Tribunal may, at the request of both parties, make a consent award recording the settlement.

(2) If the arbitration is terminated for any other reason before the final award is made, the Arbitral Tribunal shall issue an award recording the termination.

Article 46 Effect of an award

An award shall be final and binding on the parties when rendered. By agreeing to arbitration under these Rules, the parties undertake to carry out any award without delay.

Article 47 Correction and interpretation of an award

(1) Within 30 days of receiving an award, a party may, upon notice to the other party, request that the Arbitral Tribunal correct any clerical, typographical or computational errors in the award, or provide an interpretation of a specific point or part of the award. After giving the other party an opportunity to comment on the request, and if the Arbitral Tribunal considers the request justified, it shall make the correction or provide the interpretation within 30 days of receiving the request.

(2) The Arbitral Tribunal may correct any error of the type referred to in paragraph (1) above on its own motion within 30 days of the date of an award.

(3) Any correction or interpretation of an award shall be in writing and shall comply with the requirements of Article 42.

Article 48 Additional award

Within 30 days of receiving an award, a party may, upon notice to the other party, request that the Arbitral Tribunal make an additional award on claims presented in the arbitration but not determined in the award. After giving the other party an opportunity to comment on the request, and if the Arbitral Tribunal considers the request justified, it shall make the additional award within 60 days of receiving the request. When deemed necessary, the Board may extend this 60 day time limit.

Costs of the Arbitration

Article 49 Costs of the Arbitration

(1) The Costs of the Arbitration consist of:

(i) the Fees of the Arbitral Tribunal;
(ii) the Administrative Fee; and
(iii) the expenses of the Arbitral Tribunal and the SCC.

(2) Before making the final award, the Arbitral Tribunal shall request that the Board finally determine the Costs of the Arbitration. The Board shall finally determine the Costs of the Arbitration in accordance with the Schedule of Costs (Appendix IV) in force on the date of commencement of the arbitration pursuant to Article 8.

(3) In finally determining the Costs of the Arbitration, the Board shall have regard to the extent to which the Arbitral Tribunal has acted in an efficient and expeditious manner, the complexity of the dispute and any other relevant circumstances.

(4) If the arbitration is terminated before the final award is made pursuant to Article 45, the Board shall finally determine the Costs of the Arbitration having regard to the stage of the arbitration, the work performed by the Arbitral Tribunal and any other relevant circumstances.

(5) The Arbitral Tribunal shall include in the final award the Costs of the Arbitration as finally determined by the Board and specify the individual fees and expenses of each member of the Arbitral Tribunal and the SCC.

(6) Unless otherwise agreed by the parties, the Arbitral Tribunal shall, at the request of a party, apportion the Costs of the Arbitration between the parties, having regard to the outcome of the case, each party's con-

tribution to the efficiency and expeditiousness of the arbitration and any other relevant circumstances.

(7) The parties are jointly and severally liable to the arbitrator(s) and to the SCC for the Costs of the Arbitration.

Article 50 Costs incurred by a party

Unless otherwise agreed by the parties, the Arbitral Tribunal may in the final award, at the request of a party, order one party to pay any reasonable costs incurred by another party, including costs for legal representation, having regard to the outcome of the case, each party's contribution to the efficiency and expeditiousness of the arbitration and any other relevant circumstances.

Article 51 Advance on Costs

(1) The Board shall determine an amount to be paid by the parties as an Advance on Costs.

(2) The Advance on Costs shall correspond to the estimated amount of the Costs of Arbitration pursuant to Article 49(1).

(3) Each party shall pay half of the Advance on Costs, unless separate advances are determined. Where counterclaims or set-offs are submitted, the Board may decide that each party shall pay advances corresponding to its claims. Where an additional party is joined to the arbitration pursuant to Article 13, the Board may determine each party's share of the Advance on Costs as it deems appropriate, having regard to the circumstances of the case.

(4) At the request of the Arbitral Tribunal, or if otherwise deemed necessary, the Board may order parties to pay additional advances during the course of the arbitration.

(5) If a party fails to make a required payment, the Secretariat shall give the other party an opportunity to do so within a specified period of time. If the payment is not made within that time, the Board shall dismiss the case in whole or in part. If the other party makes the required payment, the Arbitral Tribunal may, at the request of that party, make a separate award for reimbursement of the payment.

(6) At any stage during the arbitration or after the Award has been made, the Board may draw on the Advance on Costs to cover the Costs of the Arbitration.

(7) The Board may decide that part of the Advance on Costs may be provided in the form of a bank guarantee or other form of security.

Miscellaneous

Article 52 Exclusion of liability

Neither the SCC, the arbitrator(s), the administrative secretary of the Arbitral Tribunal, nor any expert appointed by the Arbitral Tribunal, is liable to any party for any act or omission in connection with the arbitration, unless such act or omission constitutes wilful misconduct or gross negligence.

APPENDIX I
ORGANISATION

Article 1 About the SCC

The Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC") is a body providing administrative services in relation to the settlement of disputes. The SCC is part of the Stockholm Chamber of Commerce, but is independent in exercising its functions in the administration of disputes. The SCC is composed of a board of directors (the "Board") and a secretariat (the "Secretariat").

Article 2 Function of the SCC

The SCC does not itself decide disputes. The function of the SCC is to:

(i) administer domestic and international disputes in accordance with the SCC Rules and other procedures or rules agreed upon by the parties; and
(ii) provide information concerning arbitration and mediation matters.

Article 3 The Board

The Board shall be composed of one chairperson, a maximum of three vice-chairpersons and a maximum of 12 additional members. The Board shall include both Swedish and non-Swedish nationals.

Article 4 Appointment of the Board

The Board shall be appointed by the Board of Directors of the Stockholm Chamber of Commerce (the "Board of Directors"). The members of the Board shall be appointed for a period of three years and, unless exceptional circum-

stances apply, are only eligible for re-appointment in their respective capacities for one further three-year period.

Article 5 Removal of a member of the Board

In exceptional circumstances, the Board of Directors may remove a member of the Board. If a member resigns or is removed during a term of office, the Board of Directors shall appoint a new member for the remainder of the term.

Article 6 Function of the Board

The function of the Board is to take the decisions required of the SCC in administering disputes under the SCC Rules and any other rules or procedures agreed upon by the parties. Such decisions include decisions on the jurisdiction of the SCC, determination of advances on costs, appointment of arbitrators, decisions upon challenges to arbitrators, removal of arbitrators and the fixing of arbitration costs.

Article 7 Decisions by the Board

Two members of the Board form a quorum. If a majority is not attained, the Chairperson has the casting vote. The Chairperson or a Vice Chairperson may take decisions on behalf of the Board in urgent matters. A committee of the Board may be appointed to take certain decisions on behalf of the Board. The Board may delegate decisions to the Secretariat, including decisions on advances on costs, extension of time for rendering an award, dismissal for non-payment of registration fee, release of arbitrators and fixing of arbitration costs. Decisions by the Board are final.

Article 8 The Secretariat

The Secretariat acts under the direction of a Secretary General. The Secretariat carries out the functions assigned to it under the SCC Rules. The Secretariat may also take decisions delegated to it by the Board.

Article 9 Procedures

The SCC shall maintain the confidentiality of the arbitration and the award and shall deal with the arbitration in an impartial, efficient and expeditious manner.

APPENDIX II
EMERGENCY ARBITRATOR

Article 1 Emergency Arbitrator

(1) A party may apply for the appointment of an Emergency Arbitrator until the case has been referred to an Arbitral Tribunal pursuant to Article 22 of the Arbitration Rules.

(2) The powers of the Emergency Arbitrator shall be those set out in Article 37(1)-(3) of the Arbitration Rules. Such powers terminate on referral of the case to an Arbitral Tribunal pursuant to Article 22 of the Arbitration Rules, or when an emergency decision ceases to be binding according to Article 9(4) of this Appendix.

Article 2 Application for the appointment of an Emergency Arbitrator

An application for the appointment of an Emergency Arbitrator shall include:

(i) the names, addresses, telephone numbers and e-mail addresses of the parties and their counsel;
(ii) a summary of the dispute;
(iii) a statement of the interim relief sought and the reasons therefor;
(iv) a copy or description of the arbitration agreement or clause under which the dispute is to be settled;
(v) comments on the seat of the emergency proceedings, the applicable law(s) and the language(s) of the proceedings; and
(vi) proof of payment of the costs for the emergency proceedings pursuant to Article 10(1) of this Appendix.

Article 3 Notice

As soon as an application for the appointment of an Emergency Arbitrator has been received, the Secretariat shall send the application to the other party.

Article 4 Appointment of the Emergency Arbitrator

(1) The Board shall seek to appoint an Emergency Arbitrator within 24 hours of receipt of the application.

(2) An Emergency Arbitrator shall not be appointed if the SCC manifestly lacks jurisdiction over the dispute.

(3) Article 19 of the Arbitration Rules applies to the challenge of an Emergency Arbitrator, except that a challenge must be made within 24 hours from the time the circumstances giving rise to the challenge became known to the party.

(4) An Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless otherwise agreed by the parties.

Article 5 Seat of the emergency proceedings

The seat of the emergency proceedings shall be that which has been agreed upon by the parties as the seat of the

arbitration. If the seat of the arbitration has not been agreed by the parties, the Board shall determine the seat of the emergency proceedings.

Article 6 Referral to the Emergency Arbitrator

Once an Emergency Arbitrator has been appointed, the Secretariat shall promptly refer the application to the Emergency Arbitrator.

Article 7 Conduct of the emergency proceedings

Article 23 of the Arbitration Rules shall apply to the emergency proceedings, taking into account the urgency inherent in such proceedings.

Article 8 Emergency decisions on interim measures

(1) Any emergency decision on interim measures shall be made no later than 5 days from the date the application was referred to the Emergency Arbitrator pursuant to Article 6 of this Appendix. The Board may extend this time limit upon a reasoned request from the Emergency Arbitrator, or if otherwise deemed necessary.

(2) Any emergency decision on interim measures shall:

(i) be made in writing;
(ii) state the date when it was made, the seat of the emergency proceedings and the reasons upon which the decision is based; and
(iii) be signed by the Emergency Arbitrator.

(3) The Emergency Arbitrator shall promptly deliver a copy of the emergency decision to each of the parties and to the SCC.

Article 9 Binding effect of emergency decisions

(1) An emergency decision shall be binding on the parties when rendered.

(2) At the reasoned request of a party, the Emergency Arbitrator may amend or revoke the emergency decision.

(3) By agreeing to arbitration under the Arbitration Rules, the parties undertake to comply with any emergency decision without delay.

(4) The emergency decision ceases to be binding if:

(i) the Emergency Arbitrator or an Arbitral Tribunal so decides;
(ii) an Arbitral Tribunal makes a final award;
(iii) arbitration is not commenced within 30 days from the date of the emergency decision; or
(iv) the case is not referred to an Arbitral Tribunal within 90 days from the date of the emergency decision.

(5) An Arbitral Tribunal is not bound by the decision(s) and reasons of the Emergency Arbitrator.

Article 10 Costs of the emergency proceedings

(1) The party applying for the appointment of an Emergency Arbitrator shall pay the costs set out in paragraph (2) (i) and (ii) below upon filing the application.

(2) The costs of the emergency proceedings include:

(i) the fee of the Emergency Arbitrator, which amounts to EUR 16,000;
(ii) the application fee of EUR 4,000; and
(iii) the reasonable costs incurred by the parties, including costs for legal representation.

(3) At the request of the Emergency Arbitrator, or if otherwise deemed appropriate, the Board may decide to increase or reduce the costs set out in paragraph (2) (i) and (ii) above, having regard to the nature of the case, the work performed by the Emergency Arbitrator and the SCC and any other relevant circumstances.

(4) If payment of the costs set out in paragraph (2) (i) and (ii) above is not made in due time, the Secretariat shall dismiss the application.

(5) At the request of a party, the Emergency Arbitrator shall in the emergency decision apportion the costs of the emergency proceedings between the parties.

(6) The Emergency Arbitrator shall apply the principles of Articles 49(6) and 50 of the Arbitration Rules when apportioning the costs of the emergency proceedings.

APPENDIX III

INVESTMENT TREATY DISPUTES

Article 1 Scope of application

(1) The articles contained in this Appendix apply to cases under the Arbitration Rules based on a treaty providing for arbitration of disputes between an investor and a state.

(2) Articles 13, 14 and 15 of the Arbitration Rules shall apply mutatis mutandis to the cases indicated in paragraph (1) above.

Article 2 Number of arbitrators

(1) The parties may agree on the number of arbitrators.

(2) Where the parties have not agreed on the number of arbitrators, the Arbitral Tribunal shall consist of three arbitrators, unless the Board, having regard to the complexity of the case, the amount in dispute and any other relevant circumstances, decides that the dispute is to be decided by a sole arbitrator.

Article 3 Submission by a Third Person

(1) Any person that is neither a disputing party nor a non-disputing treaty Party ("Third Person") may apply to the Arbitral Tribunal for permission to make a written submission in the arbitration.

(2) All such applications shall:

(i) be made in a language of the arbitration;
(ii) identify and describe the Third Person, including where relevant its membership and legal status, its general objectives, the nature of its activities and any parent or other affiliated organisation, and any other entity or person that directly or indirectly controls the Third Person;
(iii) disclose any direct or indirect affiliation with any party to the arbitration;
(iv) identify any government, organisation or person that has directly or indirectly provided any financial or other assistance in preparing the submission;
(v) specify the nature of the interest that the Third Person has in the arbitration; and
(vi) identify the specific issues of fact or law in the arbitration that the Third Person wishes to address in its submission.

(3) In determining whether to allow such a submission, and after consulting the disputing parties, the Arbitral Tribunal shall have regard to:

(i) the nature and significance of the interest of the Third Person in the arbitration;
(ii) whether the submission would assist the Arbitral Tribunal in determining a material factual or legal issue in the arbitration by bringing a perspective, particular knowledge or insight that is distinct from or broader than that of the disputing parties; and
(iii) any other relevant circumstances.

(4) The Arbitral Tribunal may, after consulting the disputing parties, invite a Third Person to make a written submission on a material factual or legal issue in the arbitration. The Arbitral Tribunal shall not draw any inference from the absence of any submission or response to an invitation.

(5) If permission is granted or an invitation by the Arbitral Tribunal accepted, the submission filed by the Third Person shall:

(i) be made in a language of the arbitration; and
(ii) set out a precise statement of the Third Person's position on the identified issue(s), in no case longer than as authorized by the Arbitral Tribunal.

(6) For the purposes of preparing its written submission, a Third Person may apply to the Arbitral Tribunal for access to submissions and evidence filed in the arbitration. The Arbitral Tribunal shall consult the disputing parties before ruling on the application, and shall take into account, and where appropriate safeguard, any confidentiality of the information in question.

(7) The Arbitral Tribunal may, at the request of a disputing party, or on its own initiative:
(i) request further details from the Third Person regarding the written submission; and
(ii) require that the Third Person attend a hearing to elaborate or be examined on its submission.

(8) The Arbitral Tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on any submission by any Third Person.

(9) The Arbitral Tribunal shall ensure that any Third Person submission does not disrupt or unduly burden the arbitral proceedings or unduly prejudice any disputing party.

(10) The Arbitral Tribunal may, as a condition for allowing a Third Person to make a submission, require that the Third Person provide security for reasonable legal or other costs expected to be incurred by the disputing parties as a result of the submission.

Article 4 Submission by a non-disputing treaty Party

(1) Subject to Article 3 (9) of this Appendix, as applied by Article 4 (4) below, the Arbitral Tribunal shall allow or, after consulting the disputing parties, may invite,

submissions on issues of treaty interpretation that are material to the outcome of the case from a non-disputing treaty Party.

(2) The Arbitral Tribunal, after consulting the disputing parties, may allow or invite submissions from a non-disputing treaty Party on other material issues in the arbitration. In determining whether to allow or invite such submissions, the Arbitral Tribunal shall have regard to:

(i) the matters referred to in Article 3 (3) of this Appendix;
(ii) the need to avoid submissions appearing to support the investor's claim in a manner tantamount to diplomatic protection; and
(iii) any other relevant circumstances.

(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) above.

(4) Article 3 (5)-(9) of this Appendix shall apply equally to any submission by a non-disputing treaty Party.

APPENDIX IV

SCHEDULE OF COSTS

[Editor's note: For information on fees, please go to https://sccinstitute.com/our-services/calculator/]

EXPEDITED ARBITRATION

MODEL ARBITRATION CLAUSE

Any dispute, controversy or claim arising out of or in connection with this contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce.

Recommended additions:

The seat of arbitration shall be […].
The language of the arbitration shall be […].
This contract shall be governed by the substantive law of […]..

RULES FOR EXPEDITED ARBITRATIONS OF THE ARBITRATION INSTITUTE OF THE STOCKHOLM CHAMBER OF COMMERCE

Adopted by the Stockholm Chamber of Commerce and in force as of 1 January 2017

Under any arbitration agreement referring to the Rules for Expedited Arbitrations of the Arbitration Institute of the Stockholm Chamber of Commerce (the "Rules for Expedited Arbitrations") the parties shall be deemed to have agreed that the following rules, or such amended rules, in force on the date of the commencement of the arbitration, or the filing of an application for the appointment of an Emergency Arbitrator, shall be applied unless otherwise agreed by the parties.

The English text prevails over other language versions.

Table of Contents for Expedited Arbitration

Article 1 About the SCC

The Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC") is the body responsible for the administration of disputes in accordance with the "SCC Rules"; the Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (the "Arbitration Rules") and the Rules for Expedited Arbitrations of the Stockholm Chamber of Commerce (the "Rules for Expedited Arbitrations"), and other procedures or rules agreed upon by the parties. The SCC is composed of a board of directors (the "Board") and a secretariat (the "Secretariat"). Detailed provisions regarding the organisation of the SCC are set out in Appendix I.

General rules

Article 2 General conduct of the participants to the arbitration

(1) Throughout the proceedings, the SCC, the Arbitrator and the parties shall act in an efficient and expeditious manner.

(2) In all matters not expressly provided for in these Rules, the SCC, the Arbitrator and the parties shall act in the spirit of these Rules and shall make every reasonable effort to ensure that any award is legally enforceable.

Article 3 Confidentiality

Unless otherwise agreed by the parties, the SCC, the Arbitrator and any administrative secretary of the Arbitrator shall maintain the confidentiality of the arbitration and the award.

Article 4 Time periods

The Board may, on application by either party or on its own motion, extend any time period set by the SCC for a party to comply with a particular direction.

Article 5 Notices

(1) Any notice or other communication from the Secretariat or the Board shall be delivered to the last known address of the addressee.

(2) Any notice or other communication shall be delivered by courier or registered mail, e-mail or any other means that records the sending of the communication.

(3) A notice or communication sent in accordance with paragraph (2) shall be deemed to have been received by the addressee on the date it would normally have been received given the means of communication used.

(4) This article shall apply equally to any communications from the Arbitrator.

Commencement of proceedings

Article 6 Request for Arbitration

The Request for Arbitration, which also constitutes the Statement of Claim, shall include:

(i) the names, addresses, telephone numbers and e-mail addresses of the parties and their counsel;
(ii) the specific relief sought, including an estimate of the monetary value of the claims;
(iii) the factual and legal basis the Claimant relies on;
(iv) any evidence the Claimant relies on;
(v) a copy or description of the arbitration agreement or clause under which the dispute is to be settled;
(vi) where claims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each claim is made; and
(vii) comments on the seat of arbitration.

Article 7 Registration Fee

(1) Upon filing the Request for Arbitration, the Claimant shall pay a Registration Fee. The amount of the Registration Fee shall be determined in accordance with the Schedule of Costs (Appendix III) in force on the date the Request for Arbitration is filed.

(2) If the Registration Fee is not paid upon filing the Request for Arbitration, the Secretariat shall set a time period within which the Claimant shall pay the Registration Fee. If the Registration Fee is not paid within this time period, the Secretariat shall dismiss the Request for Arbitration.

Article 8 Commencement of arbitration

Arbitration shall be deemed to commence on the date the SCC receives the Request for Arbitration.

Article 9 Answer

(1) The Secretariat shall send a copy of the Request for Arbitration and any attached documents to the Respondent. The Secretariat shall set a time period within which the Respondent shall submit an Answer to the SCC. The Answer, which also constitutes the Statement of Defence, shall include:

(i) any objections concerning the existence, validity or applicability of the arbitration agreement; failure to object shall preclude the Respondent from raising such objections at a later stage of the proceedings;
(ii) a statement whether, and to what extent, the Respondent admits or denies the relief sought by the Claimant;
(iii) the factual and legal basis the Respondent relies on;
(iv) any counterclaim or set-off and the grounds on which it is based, including an estimate of the monetary value thereof;

(v) where counterclaims or set-offs are made under more than one arbitration agreement, an indication of the arbitration agreement under which each counterclaim or set-off is made;
(vi) any evidence the Respondent relies on; and
(vii) comments on the seat of arbitration.

(2) The Secretariat shall send a copy of the Answer to the Claimant. The Claimant may be given an opportunity to submit comments on the Answer, having regard to the circumstances of the case.

(3) Failure by the Respondent to submit an Answer shall not prevent the arbitration from proceeding.

Article 10 Request for further details

(1) The Board may request further details from either party regarding any of their written submissions to the SCC.

(2) If the Claimant fails to comply with a request for further details, the Board may dismiss the case.

(3) If the Respondent fails to comply with a request for further details regarding its counterclaim or set-off, the Board may dismiss the counterclaim or set-off.

(4) Failure by the Respondent to otherwise comply with a request for further details shall not prevent the arbitration from proceeding.

Article 11 Agreement on the application of the Arbitration Rules

After receiving the Answer, and prior to the appointment of the Arbitrator, the SCC may invite the parties to agree to apply the Arbitration Rules with either a sole or three arbitrator(s), having regard to the complexity of the case, the amount in dispute and any other relevant circumstances.

Article 12 Decisions by the Board

The Board takes decisions as provided under these Rules, including deciding:

(i) whether the SCC manifestly lacks jurisdiction over the dispute pursuant to Article 13(i);
(ii) whether to grant a request for joinder pursuant to Article 14;
(iii) whether claims made under multiple contracts shall proceed in a single arbitration pursuant to Article 15;
(iv) whether to consolidate cases pursuant to Article 16;
(v) on any appointment of arbitrator pursuant to Article 18;
(vi) on any challenge to an arbitrator pursuant to Article 20;
(vii) on the seat of arbitration pursuant to Article 26; and
(viii) on the Advance on Costs pursuant to Article 51.

Article 13 Dismissal

The Board shall dismiss a case, in whole or in part, if:

(i) the SCC manifestly lacks jurisdiction over the dispute; or
(ii) the Advance on Costs is not paid pursuant to Article 51.

Article 14 Joinder of additional parties

(1) A party to the arbitration may request the Board to join one or more additional parties to the arbitration.

(2) The Request for Joinder shall be made as early as possible. A Request for Joinder made after the submission of the Answer will not be considered, unless the Board decides otherwise. Articles 6 and 7 shall apply mutatis mutandis to the Request for Joinder.

(3) Arbitration against the additional party shall be deemed to commence on the date the SCC receives the Request for Joinder.

(4) The Secretariat shall set a time period within which the additional party shall submit an Answer to the Request for Joinder. Article 9 applies mutatis mutandis to the Answer to the Request for Joinder.

(5) The Board may decide to join one or more additional parties provided that the SCC does not manifestly lack jurisdiction over the dispute between the parties, including any additional party requested to be joined to the arbitration, pursuant to Article 13(i).

(6) In deciding whether to grant the Request for Joinder where claims are made under more than one arbitration agreement, the Board shall consult with the parties and shall have regard to Article 15(3)(i)-(iv).

(7) In all cases where the Board decides to grant the Request for Joinder, any decision as to the Arbitrator's jurisdiction over any party joined to the arbitration shall be made by the Arbitrator.

(8) Where the Board decides to grant the Request for Joinder and the additional party does not agree to any Arbitrator already appointed, the Board may release the Arbitrator and make an appointment in accordance with Article 18 (2)-(4), unless all parties, including the additional party, agree on a different procedure for the appointment of the Arbitrator.

Article 15 Multiple contracts in a single arbitration

(1) Parties may make claims arising out of or in connection with more than one contract in a single arbitration.

(2) If any party raises any objections as to whether all of the claims made against it may be determined in a single arbitration, the claims may proceed in a single arbitration provided that the SCC does not manifestly lack jurisdiction over the dispute between the parties pursuant to Article 13 (i).

(3) In deciding whether the claims shall proceed in a single arbitration, the Board shall consult with the parties and shall have regard to:

(i) whether the arbitration agreements under which the claims are made are compatible;
(ii) whether the relief sought arises out of the same transaction or series of transactions;
(iii) the efficiency and expeditiousness of the proceedings; and
(iv) any other relevant circumstances.

(4) In all cases where the Board decides that the claims may proceed in a single arbitration, any decision as to the Arbitrator's jurisdiction over the claims shall be made by the Arbitrator.

Article 16 Consolidation of arbitrations

(1) At the request of a party the Board may decide to consolidate a newly commenced arbitration with a pending arbitration, if:

(i) the parties agree to consolidate;
(ii) all the claims are made under the same arbitration agreement; or
(iii) where the claims are made under more than one arbitration agreement, the relief sought arises out of the same transaction or series of transactions and the Board considers the arbitration agreements to be compatible.

(2) In deciding whether to consolidate, the Board shall consult with the parties and the Arbitrator and shall have regard to:

(i) the stage of the pending arbitration;
(ii) the efficiency and expeditiousness of the proceedings; and
(iii) any other relevant circumstances.

(3) Where the Board decides to consolidate, the Board may release any Arbitrator already appointed.

The Arbitrator

Article 17 Number of Arbitrators

The arbitration shall be decided by a sole Arbitrator.

Article 18 Appointment of Arbitrator

(1) The parties may agree on a procedure for appointment of the Arbitrator.

(2) Where the parties have not agreed on a procedure, or if the Arbitrator has not been appointed within the time period agreed by the parties or, where the parties have not agreed on a time period, within the time period set by the Board, the appointment shall be made pursuant to paragraphs (3)–(5).

(3) The parties shall be given 10 days to jointly appoint the Arbitrator. If the parties fail to appoint the Arbitrator within this time, the Board shall make the appointment.

(4) If the parties are of different nationalities, the Arbitrator shall be of a different nationality than the parties, unless the parties have agreed otherwise or the Board otherwise deems it appropriate.

(5) When appointing the Arbitrator, the Board shall consider the nature and circumstances of the dispute, the applicable law, the seat and language of the arbitration and the nationality of the parties.

Article 19 Impartiality, independence and availability

(1) The Arbitrator must be impartial and independent.

(2) Before being appointed, a prospective arbitrator shall disclose any circumstances that may give rise to justifiable doubts as to the prospective arbitrator's impartiality or independence.

(3) Once appointed, the Arbitrator shall submit to the Secretariat a signed statement of acceptance, availability, impartiality and independence disclosing any circumstances that may give rise to justifiable doubts as to the Arbitrator's impartiality or independence. The Secretariat shall send a copy of the statement of acceptance, availability, impartiality and independence to the parties.

(4) The Arbitrator shall immediately inform the parties in writing if any circumstances that may give rise to justifiable doubts as to the Arbitrator's impartiality or independence arise during the course of the arbitration.

Article 20 Challenge to Arbitrator

(1) A party may challenge the Arbitrator if circumstances exist that give rise to justifiable doubts as to the Arbitrator's impartiality or independence or if the Arbitrator does not possess the qualifications agreed by the parties.

(2) A party may challenge an arbitrator it has appointed, or in whose appointment it has participated, only for reasons it becomes aware of after the appointment was made.

(3) A party wishing to challenge the Arbitrator shall submit a written statement to the Secretariat stating the reasons for the challenge, within 15 days from the date the circumstances giving rise to the challenge became known to the party. Failure to challenge the Arbitrator within the stipulated time constitutes a waiver of the party's right to make the challenge.

(4) The Secretariat shall notify the parties and the Arbitrator of the challenge and give them an opportunity to submit comments.

(5) If the other party agrees to the challenge, the Arbitrator shall resign. In all other cases, the Board shall take the final decision on the challenge.

Article 21 Release from appointment

(1) The Board shall release the Arbitrator from appointment where:

(i) the Board accepts the resignation of the Arbitrator;
(ii) a challenge to the Arbitrator under Article 20 is sustained; or
(iii) the Arbitrator is otherwise unable or fails to perform the Arbitrator's functions.

(2) Before the Board releases an arbitrator, the Secretariat may give the parties and the Arbitrator an opportunity to submit comments.

Article 22 Replacement of Arbitrator

(1) The Board shall appoint a new Arbitrator where the Arbitrator has been released from appointment pursuant to Article 21, or where the Arbitrator has died.

(2) Where the Arbitrator has been replaced, the new Arbitrator shall decide whether and to what extent the proceedings are to be repeated.

The proceedings before the Arbitrator

Article 23 Referral to the Arbitrator

When the Arbitrator has been appointed and the Advance on Costs has been paid, the Secretariat shall refer the case to the Arbitrator.

Article 24 Conduct of the arbitration

(1) The Arbitrator may conduct the arbitration in such manner as the Arbitrator considers appropriate, subject to these Rules and any agreement between the parties.

(2) In all cases, the Arbitrator shall conduct the arbitration in an impartial, efficient and expeditious manner, giving each party an equal and reasonable opportunity to present its case, considering at all times the expedited nature of the proceedings.

Article 25 Administrative secretary of the Arbitrator

(1) The Arbitrator may at any time during the arbitration submit to the SCC a proposal for the appointment of a specific candidate as administrative secretary. The appointment is subject to the approval of the parties.

(2) The Arbitrator shall consult the parties regarding the tasks of the administrative secretary. The Arbitrator may not delegate any decision-making authority to the administrative secretary.

(3) The administrative secretary must be impartial and independent. The Arbitrator shall ensure that the administrative secretary remains impartial and independent at all stages of the arbitration.

(4) Before being appointed, the proposed administrative secretary shall submit to the SCC a signed statement of availability, impartiality and independence disclosing any circumstances that may give rise to justifiable doubts as to the proposed administrative secretary's impartiality or independence.

(5) A party may request the removal of the administrative secretary based on the procedure set out in Article 20, which shall apply mutatis mutandis to a challenge of an administrative secretary. If the Board removes an administrative secretary, the Arbitrator may propose the appointment of another administrative secretary in accordance with this Article. A request for removal shall not prevent the arbitration from proceeding, unless the Arbitrator decides otherwise.

(6) Any fee payable to the administrative secretary shall be paid from the fees of the Arbitrator.

Article 26 Seat of arbitration

(1) Unless agreed upon by the parties, the Board shall decide the seat of arbitration.

(2) The Arbitrator may, after consulting the parties, conduct hearings at any place the Arbitrator considers appropriate. The arbitration shall be deemed to have taken place at the seat regardless of any hearing or meeting held elsewhere.

(3) The award shall be deemed to have been made at the seat of arbitration.

Article 27 Language

(1) Unless agreed upon by the parties, the Arbitrator shall determine the language(s) of the arbitration. In so determining, the Arbitrator shall have due regard to all relevant circumstances and shall give the parties an opportunity to submit comments.

(2) The Arbitrator may request that any documents submitted in languages other than those of the arbitration be accompanied by a translation into the language(s) of the arbitration.

Article 28 Applicable law

(1) The Arbitrator shall decide the merits of the dispute on the basis of the law(s) or rules of law agreed upon by the parties. In the absence of such agreement, the Arbitrator shall apply the law or rules of law that the Arbitrator considers most appropriate.

(2) Any designation by the parties of the law of a given state shall be deemed to refer to the substantive law of that state, not to its conflict of laws rules.

(3) The Arbitrator shall decide the dispute ex aequo et bono or as amiable compositeur only if the parties have expressly authorised the Arbitrator to do so.

Article 29 Case management conference and timetable

(1) After the referral of the case to the Arbitrator, the Arbitrator shall promptly hold a case management conference with the parties to organise, schedule and establish procedures for the conduct of the arbitration.

(2) The case management conference may be conducted in person or by any other means.

(3) Having regard to the circumstances of the case, the Arbitrator and the parties shall seek to adopt procedures enhancing the efficiency and expeditiousness of the proceedings.

(4) During or immediately following the case management conference, and no later than 7 days from the referral of the case to the Arbitrator, the Arbitrator shall seek to establish a timetable for the conduct of the arbitration, including the date for making the award.

(5) The Arbitrator may, after consulting the parties, hold further case management conferences and issue revised timetables as the Arbitrator deems appropriate. The Arbitrator shall send a copy of the timetable to the parties and to the Secretariat.

Article 30 Written submissions

(1) The parties may make one supplementary written submission in addition to the Request for Arbitration and the Answer. In circumstances the Arbitrator considers to be compelling, the Arbitrator may allow the parties to make further written submissions.

(2) Written submissions shall be brief and the time limits for the filing of submissions may not exceed 15 working days, subject to any other time limit that the Arbitrator, for compelling reasons, may determine.

(3) The Arbitrator may order a party to finally state its claims for relief and the facts and evidence relied on. At the expiration of the time for such statement, the party may not amend its claim for relief nor adduce additional facts or evidence, unless the Arbitrator, for compelling reasons, so permits.

Article 31 Amendments

At any time prior to the close of proceedings pursuant to Article 41, a party may amend or supplement its claim, counterclaim, defence or set-off provided its case, as amended or supplemented, is still comprised by the arbitration agreement, unless the Arbitrator considers it inappropriate to allow such amendment or supplement having regard to the delay in making it, the prejudice to the other party or any other relevant circumstances.

Article 32 Evidence

(1) The admissibility, relevance, materiality and weight of evidence shall be for the Arbitrator to determine.

(2) The Arbitrator may order a party to identify the documentary evidence it intends to rely on and specify the circumstances intended to be proved by such evidence.

(3) At the request of a party, or exceptionally on its own motion, the Arbitrator may order a party to produce any documents or other evidence that may be relevant to the case and material to its outcome.

Article 33 Hearings

(1) A hearing shall be held only at the request of a party and if the Arbitrator considers the reasons for the request to be compelling.

(2) The Arbitrator shall, in consultation with the parties, determine the date, time and location of any hearing and shall provide the parties with reasonable notice thereof.

(3) Unless otherwise agreed by the parties, hearings will be held in private.

Article 34 Witnesses

(1) In advance of any hearing, the Arbitrator may order the parties to identify each witness or expert they intend to call and specify the circumstances intended to be proved by each testimony.

(2) The testimony of witnesses or party-appointed experts may be submitted in the form of signed statements.

(3) Any witness or expert, on whose testimony a party seeks to rely, shall attend a hearing for examination, unless otherwise agreed by the parties.

Article 35 Experts appointed by the Arbitrator

(1) After consulting the parties, the Arbitrator may appoint one or more experts to report to the Arbitrator on specific issues set out by the Arbitrator in writing.

(2) Upon receipt of a report from an expert the Arbitrator has appointed, the Arbitrator shall send a copy of the report to the parties and shall give the parties an opportunity to submit written comments on the report.

(3) Upon the request of a party, the parties shall be given an opportunity to examine any expert appointed by the Arbitrator at a hearing.

Article 36 Default

(1) If a party, without good cause, fails to make a written submission in accordance with Article 30, fails to appear at a hearing, or otherwise fails to avail itself of the opportunity to present its case, the Arbitrator may proceed with the arbitration and make an award.

(2) If a party, without good cause, fails to comply with any provision of, or requirement under, these Rules or any procedural order given by the Arbitrator, the Arbitrator may draw such inferences as it considers appropriate.

Article 37 Waiver

A party who, during the arbitration, fails to object without delay to any failure to comply with the arbitration agreement, these Rules or other rules applicable to the proceedings, shall be deemed to have waived the right to object to such failure.

Article 38 Interim measures

(1) The Arbitrator may, at the request of a party, grant any interim measures the Arbitrator deems appropriate.

(2) The Arbitrator may order the party requesting an interim measure to provide appropriate security in connection with the measure.

(3) An interim measure shall take the form of an order or an award.

(4) Provisions with respect to interim measures requested before arbitration has commenced, or before a case has been referred to an Arbitrator, are set out in Appendix II.

(5) A request for interim measures made by a party to a judicial authority is not incompatible with the arbitration agreement or with these Rules.

Article 39 Security for costs

(1) The Arbitrator may, in exceptional circumstances and at the request of a party, order any Claimant or Counterclaimant to provide security for costs in any manner the Arbitrator deems appropriate.

(2) In determining whether to order security for costs, the Arbitrator shall have regard to:

(i) the prospects of success of the claims, counterclaims and defences;
(ii) the Claimant's or Counterclaimant's ability to comply with an adverse costs award and the availability of assets for enforcement of an adverse costs award;
(iii) whether it is appropriate in all the circumstances of the case to order one party to provide security; and
(iv) any other relevant circumstances.

(3) If a party fails to comply with an order to provide security, the Arbitrator may stay or dismiss the party's claims in whole or in part.

(4) Any decision to stay or to dismiss the party's claims shall take the form of an order or an award.

Article 40 Summary procedure

(1) A party may request that the Arbitrator decide one or more issues of fact or law by way of summary procedure, without necessarily undertaking every procedural step that might otherwise be adopted for the arbitration.

(2) A request for summary procedure may concern issues of jurisdiction, admissibility or the merits. It may include, for example, an assertion that:

(i) an allegation of fact or law material to the outcome of the case is manifestly unsustainable;
(ii) even if the facts alleged by the other party are assumed to be true, no award could be rendered in favour of that party under the applicable law; or
(iii) any issue of fact or law material to the outcome of the case is, for any other reason, suitable to determination by way of summary procedure.

(3) The request shall specify the grounds relied on and the form of summary procedure proposed, and demonstrate that such procedure is efficient and appropriate in all the circumstances of the case.

(4) After providing the other party an opportunity to submit comments, the Arbitrator shall issue an order either dismissing the request or fixing the summary procedure in the form the Arbitrator deems appropriate.

(5) In determining whether to grant a request for summary procedure, the Arbitrator shall have regard to all relevant circumstances, including the extent to which the summary procedure contributes to a more efficient and expeditious resolution of the dispute.

(6) If the request for summary procedure is granted, the Arbitrator shall seek to make an order or award on the issues under consideration in an efficient and expeditious manner having regard to the circumstances of the case, while giving each party an equal and reasonable opportunity to present its case pursuant to Article 24 (2).

Article 41 Close of proceedings

The Arbitrator shall declare the proceedings closed when the Arbitrator is satisfied that the parties have had a reasonable opportunity to present their cases. In exceptional circumstances, prior to the making of the final award, the Arbitrator may reopen the proceedings on the Arbitrator's own motion, or on the application of a party.

Awards and decisions

Article 42 Making of awards

(1) The Arbitrator shall make the award in writing and sign the award. A party may request a reasoned award no later than at the closing statement.

(2) An award shall include the date of the award and the seat of arbitration in accordance with Article 26.

(3) The Arbitrator shall deliver a copy of the award to each of the parties and to the SCC without delay.

Article 43 Time limit for final award

The final award shall be made no later than three months from the date the case was referred to the Arbitrator pur-

suant to Article 23. The Board may extend this time limit upon a reasoned request from the Arbitrator, or if otherwise deemed necessary, having due regard to the expedited nature of the proceedings.

Article 44 Separate award

The Arbitrator may decide a separate issue or part of the dispute in a separate award.

Article 45 Settlement or other grounds for termination of the arbitration

(1) If the parties reach a settlement before the final award is made, the Arbitrator may, at the request of both parties, make a consent award recording the settlement.

(2) If the arbitration is terminated for any other reason before the final award is made, the Arbitrator shall issue an award recording the termination.

Article 46 Effect of an award

An award shall be final and binding on the parties when rendered. By agreeing to arbitration under these Rules, the parties undertake to carry out any award without delay.

Article 47 Correction and interpretation of an award

(1) Within 30 days of receiving an award, a party may, upon notice to the other party, request that the Arbitrator correct any clerical, typographical or computational errors in the award, or provide an interpretation of a specific point or part of the award. After giving the other party an opportunity to comment on the request and if the Arbitrator considers the request justified, the Arbitrator shall make the correction or provide the interpretation within 30 days of receiving the request.

(2) The Arbitrator may correct any error of the type referred to in paragraph (1) above on the Arbitrator's own motion within 30 days of the date of an award.

(3) Any correction or interpretation of an award shall be in writing and shall comply with the requirements of Article 42.

Article 48 Additional award

Within 30 days of receiving an award, a party may, upon notice to the other party, request that the Arbitrator make an additional award on claims presented in the arbitration but not determined in the award. After giving the other party an opportunity to comment on the request and if the Arbitrator considers the request justified, the Arbitrator shall make the additional award within 30 days of receiving the request. When deemed necessary, the Board may extend this 30 day time limit.

Costs of the Arbitration

Article 49 Costs of the Arbitration

(1) The Costs of the Arbitration consist of:

(i) the Fee of the Arbitrator;
(ii) the Administrative Fee; and
(iii) the expenses of the Arbitrator and the SCC.

(2) Before making the final award, the Arbitrator shall request that the Board finally determine the Costs of the Arbitration. The Board shall finally determine the Costs of the Arbitration in accordance with the Schedule of Costs (Appendix III) in force on the date of commencement of the arbitration pursuant to Article 8.

(3) In finally determining the Costs of the Arbitration, the Board shall have regard to the extent to which the Arbitrator has acted in an efficient and expeditious manner, the complexity of the dispute and any other relevant circumstances.

(4) If the arbitration is terminated before the final award is made pursuant to Article 45, the Board shall finally determine the Costs of the Arbitration having regard to the stage of the arbitration, the work performed by the Arbitrator and any other relevant circumstances.

(5) The Arbitrator shall include in the final award the Costs of the Arbitration as finally determined by the Board and specify the fees and expenses of the Arbitrator and the SCC.

(6) Unless otherwise agreed by the parties, the Arbitrator shall, at the request of a party, apportion the Costs of the Arbitration between the parties, having regard to the outcome of the case, each party's contribution to the efficiency and expeditiousness of the arbitration and any other relevant circumstances.

(7) The parties are jointly and severally liable to the Arbitrator and to the SCC for the Costs of the Arbitration.

Article 50 Costs incurred by a party

Unless otherwise agreed by the parties, the Arbitrator may in the final award, at the request of a party, order one party to pay any reasonable costs incurred by another party, including costs for legal representation, having regard to the outcome of the case, each party's contribution to the efficiency and expeditiousness of the arbitration and any other relevant circumstances.

Article 51 Advance on Costs

(1) The Board shall determine an amount to be paid by the parties as an Advance on Costs.

(2) The Advance on Costs shall correspond to the estimated amount of the Costs of Arbitration pursuant to Article 49 (1).

(3) Each party shall pay half of the Advance on Costs, unless separate advances are determined. Where counterclaims or set-offs are submitted, the Board may decide that each party shall pay advances corresponding to its claims. Where an additional party is joined to the arbitration pursuant to Article 14, the Board may determine each party's share of the Advance on Costs as it deems appropriate, having regard to the circumstances of the case.

(4) At the request of the Arbitrator, or if otherwise deemed necessary, the Board may order parties to pay additional advances during the course of the arbitration.

(5) If a party fails to make a required payment, the Secretariat shall give the other party an opportunity to do so within a specified period of time. If the payment is not made within that time, the Board shall dismiss the case in whole or in part. If the other party makes the required payment, the Arbitrator may, at the request of that party, make a separate award for reimbursement of the payment.

(6) At any stage during the arbitration or after the Award has been made, the Board may draw on the Advance on Costs to cover the Costs of the Arbitration.

(7) The Board may decide that part of the Advance on Costs may be provided in the form of a bank guarantee or other form of security.

Miscellaneous

Article 52 Exclusion of liability

Neither the SCC, the Arbitrator, the administrative secretary, nor any expert appointed by the Arbitrator, is liable to any party for any act or omission in connection with the arbitration unless such act or omission constitutes wilful misconduct or gross negligence.

APPENDIX I

ORGANISATION

Article 1 About the SCC

The Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC") is a body providing administrative services in relation to the settlement of disputes. The SCC is part of the Stockholm Chamber of Commerce, but is independent in exercising its functions in the administration of disputes. The SCC is composed of a board of directors (the "Board") and a secretariat (the "Secretariat").

Article 2 Function of the SCC

The SCC does not itself decide disputes. The function of the SCC is to:

(i) administer domestic and international disputes in accordance with the SCC Rules and other procedures or rules agreed upon by the parties; and
(ii) provide information concerning arbitration and mediation matters.

Article 3 The Board

The Board shall be composed of one chairperson, a maximum of three vice-chairpersons and a maximum of 12 additional members. The Board includes both Swedish and non-Swedish nationals.

Article 4 Appointment of the Board

The Board shall be appointed by the Board of Directors of the Stockholm Chamber of Commerce (the "Board of Directors"). The members of the Board shall be appointed for a period of three years and, unless exceptional circumstances apply, are only eligible for re-appointment in their respective capacities for one further three-year period.

Article 5 Removal of a member of the Board

In exceptional circumstances, the Board of Directors may remove a member of the Board. If a member resigns or is removed during a term of office, the Board of Directors shall appoint a new member for the remainder of the term.

Article 6 Function of the Board

The function of the Board is to take the decisions required of the SCC in administering disputes under the SCC Rules and any other rules or procedures agreed upon by the parties. Such decisions include decisions on the jurisdiction of the SCC, determination of advances on costs, appointment of arbitrators, decisions upon challenges to arbitrators, removal of arbitrators and the fixing of arbitration costs.

Article 7 Decisions by the Board

Two members of the Board form a quorum. If a majority is not attained, the Chairperson has the casting vote. The Chairperson or a Vice Chairperson may take decisions on behalf of the Board in urgent matters. A committee of the Board may be appointed to take certain decisions on behalf of the Board. The Board may delegate decisions to the Secretariat, including decisions on advances on costs, extension of time for rendering an award, dismissal for non-payment of registration fee, release of arbitrators and fixing of arbitration costs. Decisions by the Board are final.

Article 8 The Secretariat

The Secretariat acts under the direction of a Secretary General. The Secretariat carries out the functions assigned to it under the SCC Rules. The Secretariat may also take decisions delegated to it by the Board.

Article 9 Procedures

The SCC shall maintain the confidentiality of the arbitration and the award and shall deal with the arbitration in an impartial, efficient and expeditious manner.

APPENDIX II

EMERGENCY ARBITRATOR

Article 1 Emergency Arbitrator

(1) A party may apply for the appointment of an Emergency Arbitrator until the case has been referred to the Arbitrator pursuant to Article 23 of the Rules for Expedited Arbitrations.

(2) The powers of the Emergency Arbitrator shall be those set out in Article 38 (1)-(3) of the Rules for Expedited Arbitrations. Such powers terminate on referral of the case to the Arbitrator pursuant to Article 23 of the Rules for Expedited Arbitrations, or when an emergency decision ceases to be binding according to Article 9 (4) of this Appendix.

Article 2 Application for the appointment of an Emergency Arbitrator

An application for the appointment of an Emergency Arbitrator shall include:

(i) the names, addresses, telephone numbers and e-mail addresses of the parties and their counsel;
(ii) a summary of the dispute;
(iii) a statement of the interim relief sought and the reasons therefor;
(iv) a copy or description of the arbitration agreement or clause under which the dispute is to be settled;
(v) comments on the seat of the emergency proceedings, the applicable law(s) and the language(s) of the proceedings; and
(vi) proof of payment of the costs for the emergency proceedings pursuant to Article 10 (1) of this Appendix.

Article 3 Notice

As soon as an application for the appointment of an Emergency Arbitrator has been received, the Secretariat shall send the application to the other party.

Article 4 Appointment of the Emergency Arbitrator

(1) The Board shall seek to appoint an Emergency Arbitrator within 24 hours of receipt of the application.

(2) An Emergency Arbitrator shall not be appointed if the SCC manifestly lacks jurisdiction over the dispute.

(3) Article 20 of the Rules for Expedited Arbitrations applies to the challenge of an Emegency Arbitrator, except that a challenge must be made within 24 hours from the time the circumstances giving rise to the challenge became known to the party.

(4) An Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless otherwise agreed by the parties.

Article 5 Seat of the emergency proceedings

The seat of the emergency proceedings shall be that which has been agreed upon by the parties as the seat of the arbitration. If the seat of the arbitration has not been agreed by the parties, the Board shall determine the seat of the emergency proceedings.

Article 6 Referral to the Emergency Arbitrator

Once an Emergency Arbitrator has been appointed, the Secretariat shall promptly refer the application to the Emergency Arbitrator.

Article 7 Conduct of the emergency proceedings

Article 24 of the Rules for Expedited Arbitrations shall apply to the emergency proceedings, taking into account the urgency inherent in such proceedings.

Article 8 Emergency decisions on interim measures

(1) Any emergency decision on interim measures shall be made no later than 5 days from the date the application was referred to the Emergency Arbitrator pursuant to Article 6 of this Appendix. The Board may extend this time limit upon a reasoned request from the Emergency Arbitrator, or if otherwise deemed necessary.

(2) Any emergency decision on interim measures shall:

(i) be made in writing;
(ii) state the date when it was made, the seat of the emergency proceedings and the reasons upon which the decision is based; and
(iii) be signed by the Emergency Arbitrator.

(3) The Emergency Arbitrator shall promptly deliver a copy of the emergency decision to each of the parties and to the SCC.

Article 9 Binding effect of emergency decisions

(1) An emergency decision shall be binding on the parties when rendered.

(2) At the reasoned request of a party, the Emergency Arbitrator may amend or revoke the emergency decision.

(3) By agreeing to arbitration under the Rules for Expedited Arbitrations, the parties undertake to comply with any emergency decision without delay.

(4) The emergency decision ceases to be binding if:

(i) the Emergency Arbitrator or an Arbitrator so decides;
(ii) an Arbitrator makes a final award;
(iii) arbitration is not commenced within 30 days from the date of the emergency decision; or
(iv) the case is not referred to an Arbitrator within 90 days from the date of the emergency decision.

(5) An Arbitrator is not bound by the decision(s) and reasons of the Emergency Arbitrator.

Article 10 Costs of the emergency proceedings

(1) The party applying for the appointment of an Emergency Arbitrator shall pay the costs set out in paragraph (2) (i) and (ii) below upon filing the application.

(2) The costs of the emergency proceedings include:

(i) the fee of the Emergency Arbitrator which amounts to EUR 16,000;
(ii) the application fee of EUR 4,000; and
(iii) the reasonable costs incurred by the parties, including costs for legal representation.

(3) At the request of the Emergency Arbitrator, or if otherwise deemed appropriate, the Board may decide to increase or reduce the costs set out in paragraph (2) (i) and (ii) above, having regard to the nature of the case, the work performed by the Emergency Arbitrator and the SCC and any other relevant circumstances.

(4) If payment of the costs set out in paragraph (2) (i) and (ii) above is not made in due time, the Secretariat shall dismiss the application.

(5) At the request of a party, the Emergency Arbitrator shall in the emergency decision apportion the costs of the emergency proceedings between the parties.

(6) The Emergency Arbitrator shall apply the principles of Articles 49 (6) and 50 of the Rules for Expedited Arbitrations when apportioning the costs of the emergency proceedings.

APPENDIX III

[Editor's Note: For information on fees please go to https://sccinstitute.com/our-services/calculator/].

Chapter 36

Swiss Arbitration Centre[1] (2021)

About the Swiss Arbitration Centre

History

The Swiss Arbitration Centre is the leading institution for international and domestic commercial arbitration and mediation services in Switzerland – for more than 150 years.

For many years, arbitration and mediation services were rendered by the individual chambers of commerce and industry in Switzerland. In 2007, the chambers of commerce and industry of Basel, Bern, Geneva, Ticino, Vaud, Zurich and later Neuchâtel and Central Switzerland (the "Chambers") launched the Swiss Chambers' Arbitration Institution (SCAI) as an association incorporated under Swiss Law to administer their arbitration cases.

In 2021, the Chambers strengthened and formalised their cooperation with the Swiss Arbitration Association (ASA – Association Suiss de l'Arbitrage) for the further development of the SCAI. the SCAI was converted into a Swiss company and renamed Swiss Arbitration Centre Ltd. (the "Swiss Arbitration Centre").

Organization

The Board of Directors of the Swiss Arbitration Centre is composed of four members nominated by ASA and three members nominated by the Chambers. It is in charge of supervising the operations and ensuring the compliance with applicable laws. It has no role in the management of cases but appoints the members of the Arbitration Court and the Advisory Council for Mediation.

The Arbitration Court is an independent body responsible for the administration of arbitration cases under the Swiss Rules of International Arbitration, which is assisted in its work by the Secretariat. The Arbitration Court is composed of 25 experienced arbitration practitioners. It renders decisions, inter alia, on the seat of the arbitration, consolidation of proceedings, challenges, removals and replacements of arbitrators.

The Advisory Council for Mediation, consisting of four members experienced in alternative dispute resolution, provides guidance and assistance on mediation cases administered by the Secretariat under the Swiss Rules of Mediation.

The Secretariat has offices in Geneva and Zurich. Cases are administered in English, French, German, and Italian.

The Swiss Rules

The Swiss Arbitration Centre administers cases under the Swiss Rules of International Arbitration and the Swiss Rules of Mediation (the "Swiss Rules").

The Swiss Rules of International Arbitration are based on the UNCITRAL Arbitration Rules. They were first made available in 2004 and revised in 2012 in order to render more user-friendly and cost-efficient arbitration services. Due to the renaming of the institution and for the continued purpose of providing an efficient and reliable framework for arbitration proceedings to users around the world, a light revision took place in 2021. The revision amended, inter alia, provisions on multi-party and multi-contract proceedings, remote hearings and the possibility of paperless filing.

The expedited procedure has traditionally been a popular feature of the Swiss Rules of International Arbitration. Around 40% of the caseload has been subject to this procedure. Under the expedited procedure, awards must be made within six months from the date on which the file is transmitted to the arbitrators. This procedure may be agreed upon by the parties in all cases and is the default procedure for disputes not exceeding CHF 1 million.

In 2007, the Swiss Rules of Commercial Mediation first entered into force in order to offer an alternative means of dispute resolution. The Swiss Rules of Commercial Mediation were amended and renamed Swiss Rules of Mediation in 2019. In 2021, the Swiss Rules of Mediation have been adjusted to reflect the renaming of the institution from the

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SCAI to the Swiss Arbitration Centre.

In 2014, rules for acting as Appointing Authority in UNCITRAL or other Ad Hoc Arbitration Proceedings were adopted and equally adjusted to the renaming of the institution in 2021.

Fee structure in arbitration cases
The registration fee, administrative costs and arbitrators' fees are calculated based on the amount in dispute, pursuant to Appendix B of the Swiss Rules. No administrative costs are charged for cases where the amount in dispute is less than CHF 300,000. The cost-calculator on the Swiss Arbitration Centre's website allows to easily determine the potential range of costs.

Statistics
Since 2004, more than 1,350 arbitration cases have been submitted under the Swiss Rules of International Arbitration, almost 90% of them being international and 70% being administered in English. Around 30% of the parties are domiciled in Switzerland, the rest coming from all over the world, in particular from Western Europe and an increasing number from the Middle East and Asia. Matters in dispute mainly concern purchase and sale of goods, commodities or shares, corporate, M&A, joint ventures, services, distribution and agency, as well construction-related contracts.

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Swiss Rules of International Arbitration (Swiss Rules)

Model Arbitration Clause

Any dispute, controversy, or claim arising out of, or in relation to, this contract, including regarding the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Arbitration Centre

in force on the date on which the Notice of Arbitration is submitted in accordance with those Rules.

The number of arbitrators shall be ... ("one", "three", "one or three");
The seat of the arbitration shall be ... (name of city in Switzerland, unless the parties agree on a city in another country); The arbitration proceedings shall be conducted in … (insert desired language).

Introduction

(a) The Swiss Rules of International Arbitration (the "Swiss Rules" or the "Rules") were first made available to users of arbitration services in 2004 by the Chambers of Commerce and Industry of Basel, Bern, Geneva, Ticino, Vaud, Zurich and later Neuchâtel and Central Switzerland (the "Chambers of Commerce"). The Swiss Rules were based on the UNCITRAL Arbitration Rules with a lean and professional institutional administration and were drafted in cooperation with the Swiss Arbitration Association ("ASA"). In order to administer arbitrations under the Swiss Rules, the Chambers of Commerce founded the Swiss Chambers' Arbitration Institution ("SCAI"), an association under Swiss law.

(b) The Swiss Rules replaced the individual arbitration rules of the Chambers of Commerce. They were amended in 2012, and again in 2021, with the continued purpose of providing an efficient and reliable framework for arbitration proceedings to users around the world.

(c) In 2021, the Chambers of Commerce strengthened and formalised their cooperation with ASA for the further development of the SCAI. The SCAI was converted into a Swiss company and renamed Swiss Arbitration Centre Ltd. (the "Swiss Arbitration Centre"). Arbitration agreements referring to the SCAI or the Chambers of Commerce remain valid and binding and will be recognised and applied by the Swiss Arbitration Centre, as legal successor of the SCAI.

(d) Arbitrations under the Swiss Rules are administered by the Arbitration Court (the "Court") of the Swiss Arbitration Centre, which is comprised of experienced international arbitration practitioners. The Court renders decisions as provided for under these Rules. It may delegate to one or more members or committees the power to take certain decisions pursuant to its Internal Rules and may issue Guidelines and Practice Notes to implement and supplement these Rules.[1] The Court is assisted in its work by the Secretariat of the Court (the "Secretariat").

(e) The Swiss Arbitration Centre provides domestic and international arbitration services, as well as other dispute resolution services, relating to disputes arising under any applicable rules of law, in Switzerland or elsewhere.

RULES OF ARBITRATION

SECTION I. INTRODUCTORY RULES

SCOPE OF APPLICATION
Article 1

1. These Rules shall govern arbitrations where an arbitration clause or agreement to arbitrate (the "Arbitration Agreement") refers to these Rules, administered by the Swiss Arbitration Centre or previously by SCAI, or to the arbitration rules of the Chambers of Commerce and Industry of Basel, Bern, Central Switzerland, Geneva, Neuchâtel, Ticino, Vaud, Zurich, or of any further Chamber of Commerce or other entity that may adhere to or refer its cases to these Rules.

2. This version of the Rules, in force as from 1 June 2021, shall apply to all arbitration proceedings in which the Notice of Arbitration is submitted on or after that date, unless the parties have agreed otherwise.

3. These Rules shall govern the arbitration, except if one of their provisions conflicts with a provision of the law applicable to the arbitration from which the parties cannot derogate, in which case that provision shall prevail.

4. By submitting their dispute to arbitration under these Rules, the parties confer on the Court, to the fullest extent permitted under the law applicable to the arbitration, all powers required for the purpose of supervising the arbitration proceedings otherwise vested in the competent judicial authority, including the power to extend the term of office of the arbitral tribunal and to decide on the challenge of an arbitrator on grounds not provided for in these Rules.

5. The seat of arbitration may be in Switzerland or elsewhere.

1 The Internal Rules, Guidelines and Practice Notes are available on the website www.swissarbitration.org/centre/arbitration/arbitration-rules.

NOTICE, CALCULATION OF TIME LIMITS
Article 2

1. For the purposes of these Rules, any notice, including a notification, communication, or proposal, is deemed to have been received if and when it is delivered to the addressee, or to its habitual residence, place of business, postal or electronic address, or, if none of these can be identified after making a reasonable inquiry, to the addressee's last known residence, place of business, or postal or electronic address.

2. A time limit under these Rules shall begin to run on the day following the day on which a notice, notification, communication, or proposal is received. If the last day of such time limit is an official holiday or a non-business day at the residence or place of business of the addressee, the time limit is extended until the first business day which follows. Official holidays or non-business days are included in the calculation of a time limit.

3. If the circumstances so justify, the Court may extend or shorten any time limit set out in these Rules.

NOTICE OF ARBITRATION
Article 3

1. The party or parties initiating arbitration (the "Claimant") shall submit a Notice of Arbitration to the Secretariat at any of the addresses, postal or electronic, listed in Appendix A. No hard copies of the Notice of Arbitration shall be required, unless the Secretariat requests otherwise or the Claimant requests that the Secretariat notify a hard copy to the other party or parties (the "Respondent") in lieu of or in addition to an electronic copy. In case of hard copies, the Claimant shall provide the Secretariat with a sufficient number of copies of the Notice of Arbitration for each Respondent, each arbitrator and the Secretariat.

2. Arbitration proceedings shall be deemed to commence on the date on which the Notice of Arbitration is received by the Secretariat.

3. The Notice of Arbitration shall include the following:
(a) a demand that the dispute be referred to arbitration;
(b) the names, addresses, telephone numbers, and e-mail addresses of each of the parties and, where applicable, of their representatives;
(c) identification of the Arbitration Agreement that is invoked;
(d) identification of the contract(s) or other legal instrument(s) out of, or in relation to, which the dispute arises (the "Contract");
(e) the general nature of the claim and an indication of the amount involved, if any;
(f) the relief or remedy sought;
(g) a proposal as to the number of arbitrators (one or three), the manner in which the arbitral tribunal shall be constituted, the language, and the seat of the arbitration if the parties have not previously agreed thereon;
(h) the designation of an arbitrator, where the Arbitration Agreement or Article 11(1) so requires;
(i) confirmation of payment to the relevant account listed in Appendix A of the Registration Fee as required by Appendix B (Schedule of Costs) in force on the date the Notice of Arbitration is submitted.

4. The Notice of Arbitration may also include:
(a) the Claimant's proposal for the appointment of a sole arbitrator referred to in Article 10;
(b) the Statement of Claim referred to in Article 20.

5. If the Notice of Arbitration is incomplete or the Registration Fee is not paid, the Secretariat may set an appropriate time limit within which this may be remedied. The Secretariat may also request the Claimant to submit a translation of the Notice of Arbitration within the same time limit if it is not submitted in English, German, French, or Italian. If the Claimant complies with such directions within the applicable time limit, the Notice of Arbitration shall be deemed to have been validly filed on the date on which the initial version was received by the Secretariat. If the Claimant fails to comply with such directions within the applicable time limit, the Notice of Arbitration will be deemed to be withdrawn, without prejudice to the Claimant's right to resubmit it at a later date.

6. The Secretariat shall notify the Notice of Arbitration together with any exhibits to the Respondent without delay.

ANSWER TO THE NOTICE OF ARBITRATION
Article 4

1. Within 30 days from the date of receipt of the Notice of Arbitration, the Respondent shall submit to the Secretariat an Answer to the Notice of Arbitration. Article 3(1) shall apply mutatis mutandis. The Answer to the Notice of Arbitration shall, to the extent possible, include the following:
(a) the name, address, telephone number, and e-mail address of the Respondent and, where applicable, of its representative(s);
(b) any plea of lack of jurisdiction;
(c) the Respondent's comments on the particulars set forth in the Notice of Arbitration referred to in Article 3(3)(e);

(d) the Respondent's answer to the relief or remedy sought in the Notice of Arbitration referred to in Article 3(3)(f);
(e) the Respondent's proposal as to the number of arbitrators (one or three), the manner in which the arbitral tribunal shall be constituted, the language, and the seat of the arbitration referred to in Article 3(3)(g);
(f) the designation of an arbitrator, where the Arbitration Agreement or Article 11(1) so requires.

2. The Answer to the Notice of Arbitration may also include:
(a) the Respondent's proposal for the appointment of a sole arbitrator referred to in Article 10;
(b) the Statement of Defence referred to in Article 21.

3. Articles 3(5) and (6) shall apply to the Answer to the Notice of Arbitration mutatis mutandis.

4. Any counterclaim or set-off defence shall in principle be raised with the Answer to the Notice of Arbitration. Article 3(3) shall apply mutatis mutandis.

5. If no counterclaim, claim under Article 6(1) or set-off defence is raised or no Answer to the Notice of Arbitration is submitted, or if there is no indication of the amount of such claim or defence, the Court may rely exclusively on the Notice of Arbitration in order to determine the possible application of Article 42(1) (Expedited Procedure).

ADMINISTRATION OF CLAIMS
Article 5

1. If the Respondent does not submit an Answer to the Notice of Arbitration, or if the Respondent raises an objection to the arbitration being administered under these Rules or any other jurisdictional objection, including that claims made under more than one Arbitration Agreement may not be determined together, the arbitration shall proceed with all claims, unless and to the extent the Court determines that:
(a) there is manifestly no Arbitration Agreement referring to these Rules; or
(b) where claims are made under more than one Arbitration Agreement, the Arbitration Agreements are manifestly incompatible.

2. The Court's decision to proceed with claims is without prejudice to the arbitral tribunal's power to render any decision as provided for in Article 23.

CROSS-CLAIM, JOINDER, INTERVENTION
Article 6

1. A party asserting a claim against another party other than a claim in the Notice of Arbitration or a counterclaim in the Answer to the Notice of Arbitration (cross-claim), or a party asserting a claim against an additional party (joinder), or an additional party asserting a claim against an existing party (intervention), shall do so by submitting a notice of claim. Article 3 shall apply mutatis mutandis.

2. Prior to the constitution of the arbitral tribunal, such notice of claim shall be submitted to the Secretariat. The Secretariat shall notify it together with any exhibits to the addressee of the claim, all other parties and any confirmed arbitrator. Any objection to the application of these Rules to the claim or any other jurisdictional objection, including that claims made under more than one Arbitration Agreement may not be detemined together, shall be raised by the addressee of the claim or any other party within 15 days from the date of receipt of the notice of claim. Article 5 shall apply mutatis mutandis.

3. After the constitution of the arbitral tribunal, any cross-claim, request for joinder or request for intervention shall be decided by the arbitral tribunal, after consulting with all parties, taking into account all relevant circumstances.

4. Where a third person requests or is requested by a party to participate in the arbitration proceedings in a capacity other than an additional party, the arbitral tribunal, after consulting with all parties and the third person, shall decide on whether to permit such participation and on its modalities, taking into account all relevant circumstances.

CONSOLIDATION
Article 7

1. Upon request of a party and after consulting with all parties and any confirmed arbitrator, the Court may consolidate arbitration proceedings pending under these Rules.

2. When rendering its decision, the Court shall take into account all relevant circumstances, including the links between the claims and the progress already made in the respective proceedings.

3. Where the Court decides to consolidate proceedings in which one or more arbitrators have been confirmed by the Court, and absent an agreement of all parties in all proceedings on the constitution of the arbitral tribunal in the consolidated proceedings, the Court may revoke the confirmation or appointment of arbitrators and apply the provisions of Section II (Composition of the Arbitral Tribunal). The parties to all proceedings shall be deemed to have waived their right to designate an arbitrator. Unless all parties agree or the Court decides otherwise, the proceedings shall be consolidated into the arbitration commenced first.

SECTION II. COMPOSITION OF THE ARBITRAL TRIBUNAL

CONFIRMATION OF ARBITRATORS
Article 8

1. All designations of an arbitrator are subject to confirmation by the Court, upon which the appointments shall become effective. The reasons for a decision by the Court on the confirmation of an arbitrator need not be communicated.

2. Where a designation is not confirmed, the Court may either:
(a) invite the party or parties concerned, or, as the case may be, the arbitrators, to make a new designation within a reasonable time limit; or
(b) in exceptional circumstances, proceed directly with the appointment.

3. The Court shall have all powers to address any failure in the constitution of the arbitral tribunal under these Rules and may, in particular, revoke any appointment made, appoint or reappoint any of the arbitrators and designate one of them as the presiding arbitrator.

4. If, before the arbitral tribunal is constituted, the parties agree on a settlement of the dispute, or the continuation of the arbitration proceedings becomes unnecessary or impossible for other reasons, the Secretariat shall give advance notice to the parties that the Court may terminate the proceedings. Any party may request that the Court proceed with the constitution of the arbitral tribunal in accordance with these Rules in order that the arbitral tribunal determine and apportion the costs not agreed upon by the parties.

5. Once the Registration Fee and Provisional Deposit have been paid in accordance with Appendix B (Schedule of Costs) and all arbitrators have been confirmed, the Secretariat shall transmit the file to the arbitral tribunal without delay.

NUMBER OF ARBITRATORS
Article 9

1. If the parties have not agreed upon the number of arbitrators, the Court shall decide whether the case shall be referred to a sole arbitrator or to a three-member arbitral tribunal, taking into account all relevant circumstances.

2. The Court shall refer the case to a sole arbitrator, unless the complexity of the subject matter, the amount in dispute or other relevant circumstances justify that the case be referred to a three-member arbitral tribunal.

3. If the Arbitration Agreement provides for an arbitral tribunal composed of more than one arbitrator, and this appears inappropriate in view of the amount in dispute or of other circumstances, the Court shall invite the parties to agree to refer the case to a sole arbitrator.

4. Where the amount in dispute does not exceed CHF 1,000,000 (one million Swiss francs), Article 42(1) (Expedited Procedure) shall apply.

APPOINTMENT OF A SOLE ARBITRATOR
Article 10

1. Where the parties have agreed that the dispute shall be referred to a sole arbitrator, they shall jointly designate the sole arbitrator within 30 days from the date on which the Notice of Arbitration was received by the Respondent, unless the parties' agreement provides otherwise.

2. Where the parties have not agreed upon the number of arbitrators and the Court decides that the dispute shall be referred to a sole arbitrator, the parties shall jointly designate the sole arbitrator within 30 days from the date of receipt of the Court's decision.

3. If the parties fail to designate the sole arbitrator within the applicable time limit, the Court shall proceed with the appointment.

APPOINTMENT OF ARBITRATORS
Article 11

1. Where a dispute between two parties is referred to a three-member arbitral tribunal, each party shall designate one arbitrator, unless the parties have agreed otherwise.

2. If one party in a two-party dispute fails to designate an arbitrator within the time limit set by the Court or resulting from the Arbitration Agreement, the Court shall appoint the arbitrator. Unless the parties' agreement provides otherwise, the two arbitrators so appointed shall designate, within 30 days from the confirmation of the second arbitrator, a third arbitrator who shall act as the presiding arbitrator of the arbitral tribunal. Failing such designation, the Court shall appoint the presiding arbitrator.

3. In multi-party proceedings, the arbitral tribunal shall be constituted in accordance with the parties' agreement.

4. If the parties have not agreed upon a procedure for the constitution of the arbitral tribunal in multi-party proceed-

ings, the Court shall set a time limit for the Claimant and for the Respondent (or group of parties) to each designate an arbitrator. If each group of parties has designated an arbitrator, Article 11(2) shall apply to the designation of the presiding arbitrator.

5. Where a party or group of parties fails to designate an arbitrator in multi-party proceedings, the Court may appoint some or all of the arbitrators, and shall designate the presiding arbitrator.

INDEPENDENCE, IMPARTIALITY AND DISCLOSURES OF ARBITRATORS
Article 12

1. Any arbitrator conducting an arbitration under these Rules shall be and shall remain impartial and independent throughout the proceedings.

2. Before appointment or confirmation, prospective arbitrators shall disclose to the Secretariat any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. The Secretariat shall provide such information to the parties and set a time limit within which they may comment.

3. After appointment or confirmation, each arbitrator shall have the duty to promptly disclose to the Secretariat and to the parties any such circumstances arising in the course of the proceedings.

CHALLENGE OF AN ARBITRATOR
Article 13

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

2. A party intending to challenge an arbitrator shall send a notice of challenge to the Secretariat with a copy to the other parties and the arbitral tribunal within 15 days after the circumstances giving rise to the challenge became known to that party.

3. If, within 15 days from the date of the notice of challenge, the parties do not agree to the challenge, or the challenged arbitrator does not withdraw, the Court shall decide on the challenge.

REMOVAL OF AN ARBITRATOR
Article 14

11. If an arbitrator fails to perform his or her functions, the Court may, on its own initiative or upon request of the other arbitrators or a party, revoke the appointment of that arbitrator.

2. The arbitrator shall first have an opportunity to present his or her position to the Court.

REPLACEMENT OF AN ARBITRATOR
Article 15

1. Subject to Article 15(2), in all instances in which an arbitrator has to be replaced, a replacement arbitrator shall be designated or appointed pursuant to the procedure provided for in Articles 10 and 11 within the time limit set by the Court. Such procedure shall apply even if a party or the arbitrators failed to make the required designation during the initial appointment process.

2. In exceptional circumstances, the Court may, after consulting with the parties and any remaining arbitrators:
(a) directly appoint the replacement arbitrator; or
(b) after the closure of the proceedings, authorise the remaining arbitrator(s) to proceed with the arbitration and make any decision or award.

3. If an arbitrator is replaced, the proceedings shall resume at the stage reached when the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

SECTION III. ARBITRAL PROCEEDINGS

GENERAL PROVISIONS
Article 16

1. All participants in the arbitration proceedings shall act in good faith and make every effort to contribute to the efficient conduct of the proceedings and to avoid unnecessary costs and delays. The parties undertake to comply with any award or order made by the arbitral tribunal or emergency arbitrator without delay.

2. Any communication by a party to the arbitral tribunal shall at the same time be sent to all other parties. The Secretariat shall receive an electronic copy of all communications between the parties and the arbitral tribunal.

3. The arbitral tribunal may, with the consent of the parties, appoint a secretary. Articles 12 and 13 shall apply to the secretary mutatis mutandis.

4. The parties may be represented or assisted by persons of their choice. Proof of authority of a representative may be requested at any time. The arbitral tribunal may oppose the appointment of a new representative where this would risk jeopardising the impartiality or independence of the arbitral tribunal.

SEAT OF THE ARBITRATION
Article 17

1. If the parties have not determined the seat of the arbitration, or if the designation of the seat is unclear or incomplete, the Court shall determine the seat of the arbitration, taking into account all relevant circumstances, or shall request the arbitral tribunal to determine it.

2. Without prejudice to the determination of the seat of the arbitration, the arbitral tribunal may decide where the proceedings shall be conducted. In particular, it may hear witnesses and hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.

3. The arbitral tribunal may meet at any place it deems appropriate for the inspection of goods, other property, or documents. The parties shall be given sufficient notice to enable them to be present at such an inspection.

4. The award shall be deemed to be made at the seat of the arbitration.

LANGUAGE
Article 18

Subject to an agreement of the parties, the arbitral tribunal shall, promptly after its constitution, determine the language or languages to be used in the proceedings.

ORGANISATION AND CONDUCT OF THE PROCEEDINGS
Article 19

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, including by adopting measures for the efficiency of the arbitration proceedings, provided that it ensures equal treatment of the parties and their right to be heard.

2. As soon as practicable after receiving the file from the Secretariat, the arbitral tribunal shall hold an initial conference with the parties to discuss the organisation of the arbitration proceedings, including rules of procedure, as well as issues of data protection and cybersecurity to the extent needed to ensure an appropriate level of compliance and security.

3. At the initial conference or promptly thereafter, the arbitral tribunal shall prepare a procedural timetable setting forth the steps to be undertaken in the course of the proceedings, including time limits for written submissions, supporting evidence, and the dates of any hearings, as well as an estimate of the time required by the arbitral tribunal for its main decisions.

4. The arbitral tribunal may hold further organisational conferences as appropriate throughout the proceedings to consult with the parties and ensure efficient case management.

5. With the agreement of each of the parties, the arbitral tribunal may take steps to facilitate the settlement of the dispute before it. Any such agreement by a party shall constitute a waiver of its right to challenge an arbitrator's impartiality based on the arbitrator's participation and knowledge acquired in taking the agreed steps.

6. At any time during the arbitration proceedings the parties may agree to resolve their dispute, or any portion of it, by mediation, including under the Swiss Rules of Mediation, or any other forms of alternative dispute resolution. Unless the parties agree otherwise, the arbitration proceedings will be stayed during that period.

STATEMENT OF CLAIM
Article 20

1. Within a time limit to be determined by the arbitral tribunal, and unless the Statement of Claim was contained in the Notice of Arbitration, the Claimant shall communicate its Statement of Claim in writing to the Respondent and to each of the arbitrators.

2. The Statement of Claim shall include the following particulars:
(a) the names and addresses of the parties;
(b) a statement of the facts supporting the claim;
(c) the points at issue;
(d) the relief or remedy sought.

3. The Claimant shall in principle annex to its Statement of Claim all documents and other evidence on which it relies, including a copy of the Contract.

STATEMENT OF DEFENCE
Article 21

1. Within a time limit to be determined by the arbitral tribunal, and unless the Statement of Defence was contained in the Answer to the Notice of Arbitration, the Respondent shall communicate its Statement of Defence in writing to the Claimant and to each of the arbitrators.

2. The Statement of Defence shall reply to the particulars of the Statement of Claim set out in Article 20(2). If the Respondent raises an objection to the jurisdiction or to the proper constitution of the arbitral tribunal, the Statement of Defence shall contain the factual and legal basis of such objection. The Respondent shall in principle annex to its Statement of Defence all documents and other evidence on which it relies.

3. Article 20(2) shall apply mutatis mutandis to a counterclaim and a set-off defence.

AMENDMENTS TO THE CLAIM OR DEFENCE
Article 22

During the course of the arbitration proceedings, a party may amend or supplement its claim or defence, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it, the prejudice to the other parties, or any other circumstances.

OBJECTIONS TO THE JURISDICTION OF THE ARBITRAL TRIBUNAL
Article 23

1. The arbitral tribunal shall have the power to rule on any objections to its jurisdiction, including regarding the existence, validity or scope of the Arbitration Agreement, and on any objections that claims made under more than one Arbitration Agreement should not be determined together.

2. The arbitral tribunal shall have the power to determine the existence or the validity of the Contract of which an Arbitration Agreement forms part. A decision by the arbitral tribunal that the Contract is null and void shall not automatically entail the invalidity of the Arbitration Agreement.

3. Any objection to the jurisdiction of the arbitral tribunal shall be raised prior to any defence on the merits, unless the arbitral tribunal allows a later objection in exceptional circumstances.

4. The arbitral tribunal shall rule on any objection to its jurisdiction as a preliminary question, unless it appears more appropriate to rule on such objection in an award on the merits.

5. The arbitral tribunal shall have jurisdiction to hear a set-off defence even if the relationship out of which the defence is said to arise does not fall within the scope of the Arbitration Agreement, or falls within the scope of another Arbitration Agreement or forum selection clause.

FURTHER WRITTEN STATEMENTS
Article 24

The arbitral tribunal shall decide, after consulting with the parties, which further written submissions, if any, in addition to the Statement of Claim and the Statement of Defence, shall be submitted by the parties and shall set the time limits for such written submissions..

TIME LIMITS
Article 25

1. The time limits for written submissions, including for the Statement of Claim and the Statement of Defence, shall be set by the arbitral tribunal after consulting with the parties. A time limit shall not exceed 45 days, unless the complexity of the case or other circumstances justify a longer time limit.

2. The arbitral tribunal may extend any time limit if it considers that an extension is justified.

EVIDENCE
Article 26

1. The arbitral tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence, as well as the burden of proof.

2. At any time during the arbitration proceedings, the arbitral tribunal may require the parties to produce documents, exhibits, or other evidence within a time limit set by the arbitral tribunal.

HEARINGS
Article 27

1. At any stage of the proceedings, the arbitral tribunal may hold a hearing for the presentation of evidence by witnesses or experts, or for oral argument. It shall issue directions in this respect after consulting with the parties.

2. Any hearings may be held in person or remotely by videoconference or other appropriate means, as decided by the arbitral tribunal after consulting with the parties.

3. Any person may be a witness in the arbitration. It is not improper for a party, its officers, employees, legal advisors, or counsel to interview witnesses or potential witnesses.

4. Prior to a hearing and within a time limit set by the arbitral tribunal, the evidence of witnesses and experts may be presented in the form of written statements or reports signed by them.

5. At the hearing, witnesses and experts may be heard and examined in the manner set by the arbitral tribunal. The arbitral tribunal may direct that witnesses or experts be examined through means that do not require their physical presence at the hearing (including by videoconference).

6. Arrangements shall be made for the translation of oral statements made at a hearing and for a record of the hearing to be provided if this is deemed necessary by the arbitral tribunal having regard to the circumstances of the case, or if the parties so agree.

7. Hearings shall be private, unless the parties agree otherwise.

TRIBUNAL-APPOINTED EXPERTS
Article 28

1. The arbitral tribunal, after consulting with the parties, may appoint one or more experts to report to it, in writing, on specific issues. Articles 12 and 13 shall apply mutatis mutandis.

2. The expert's terms of reference shall be established by the arbitral tribunal. The parties shall give the expert any relevant information or produce for the expert's inspection any relevant documents or goods that the expert may require of them. Any dispute between a party and the expert as to the relevance of the required information, documents or goods shall be referred to the arbitral tribunal.

3. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in the report.

4. At the request of any party, the expert, after delivery of the report, may be heard at a hearing during which the parties shall have the opportunity to be present and to examine the expert. Article 27 shall apply to such proceedings.

INTERIM MEASURES
Article 29

1. At the request of a party, the arbitral tribunal may grant any interim measures it deems necessary or appropriate. Upon the application of any party or, in exceptional circumstances and with prior notice to the parties, on its own initiative, the arbitral tribunal may also modify, suspend or terminate any interim measures granted.

2. Interim measures may be granted in the form of an interim award. The arbitral tribunal shall be entitled to order the provision of appropriate security.

3. In exceptional circumstances, the arbitral tribunal may rule on a request for interim measures by way of a preliminary order before the request has been communicated to any other party, provided that such communication is made at the latest together with the preliminary order and that the other parties are immediately granted an opportunity to be heard.

4. The arbitral tribunal may rule on claims for compensation for any damage caused by an unjustified interim measure or preliminary order.

5. By submitting their dispute to arbitration under these Rules, the parties do not waive any right that they may have under the applicable laws to submit a request for interim measures to a judicial authority. A request for interim measures addressed by any party to a judicial authority shall not be deemed to be incompatible with the Arbitration Agreement, or to constitute a waiver of that agreement.

DEFAULT
Article 30

1. If, within the time limit set by the arbitral tribunal, the Claimant has failed to communicate its claim without showing sufficient cause for such failure, the arbitral tribunal shall terminate the arbitration proceedings. If, within the time limit set by the arbitral tribunal, the Respondent has failed to communicate its defence without showing sufficient cause for such failure, the proceedings shall continue.

2. If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If one of the parties, duly invited to produce documentary or other evidence, fails to do so within the time limit set by the arbitral tribunal, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the basis of the evidence before it.

CLOSURE OF PROCEEDINGS
Article 31

1. When it is satisfied that the parties have had a reasonable opportunity to present their respective cases on matters to be decided in an award, the arbitral tribunal may declare the proceedings closed with regard to such matters.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon the application of a party, to reopen the proceedings on the matters with regard to which the proceedings were closed pursuant to Article 31(1) at any time before the award on such matters is made.

RIGHT TO OBJECT AND WAIVER
Article 32

If a party becomes aware that any provision of, or requirement under, these Rules or any other applicable procedural rule has not been complied with, it shall promptly object to such non-compliance, failing which it shall be deemed to have waived its right to object.

SECTION IV. THE AWARD

DECISIONS
Article 33

1. If the arbitral tribunal is composed of more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators. If there is no majority, the award shall be made by the presiding arbitrator alone.

2. If authorised by the arbitral tribunal, the presiding arbitrator may decide on questions of procedure.

FORM AND EFFECT OF THE AWARD
Article 34

1. In addition to making a final award, the arbitral tribunal may make interim or partial awards.

2. The award shall be made in writing and shall be final and binding on the parties.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons or only summary reasons are to be given.

4. An award shall be signed by the arbitrators and it shall specify the seat of the arbitration and the date on which the award was made. Where the arbitral tribunal is composed of more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

5. Originals of the award signed by the arbitrators shall be notified by the Secretariat to the parties, provided that the costs referred to in Article 38(a), (b), (c), (f) and (g) have been paid in full. The Secretariat shall retain an original copy of the award

APPLICABLE LAW, EX AEQUO ET BONO
Article 35

1. The arbitral tribunal shall decide the case by applying the rules of law agreed upon by the parties or, in the absence of a choice of law, by applying the rules of law with which the dispute has the closest connection.

2. The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur only if the parties have expressly authorised the arbitral tribunal to do so.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the Contract and shall take into account any trade usages applicable to the transaction.

SETTLEMENT OR OTHER GROUNDS FOR TERMINATION
Article 36

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall terminate the arbitration proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

2. If, before the award is made, the continuation of the arbitration proceedings becomes unnecessary or impossible for any reason not mentioned in Article 36(1), the arbitral tribunal shall give advance notice to the parties that it may terminate the proceedings. The arbitral tribunal shall have the power to do so, unless a party raises justifiable grounds for objection.

3. Copies of the decision terminating the proceedings, signed by the arbitrators, shall be communicated by the

arbitral tribunal to the parties and to the Secretariat. Where an arbitral award on agreed terms is made, Articles 34(2), (4) and (5) shall apply mutatis mutandis.

INTERPRETATION OR CORRECTION OF THE AWARD, ADDITIONAL AWARD
Article 37

1. Within 30 days after the receipt of the award, a party, with notice to the Secretariat and to the other parties, may request that the arbitral tribunal:
(a) give an interpretation of the award;
(b) correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature;
(c) make an additional award as to claims presented in the arbitration proceedings but omitted from the award.

2. The arbitral tribunal may set a time limit, in principle not exceeding 30 days, for the other party to comment on the request.

3. The interpretation shall be given or any correction shall be made in writing within 45 days after the receipt of the request. If the arbitral tribunal considers the request for an additional award to be justified, it shall complete its award within 60 days after the receipt of the request. The Court may extend these time limits.

4. The arbitral tribunal may within 30 days after the communication of the award make corrections on its own initiative.

5. Articles 34(2) to (5) shall apply mutatis mutandis to any interpretation, corrections or additional award.

DETERMINATION OF COSTS
Article 38

The final award or decision terminating the proceedings shall contain a determination of the costs of the arbitration. If appropriate, the arbitral tribunal may make that determination in another decision. The term "costs" includes only:
(a) the fees of the arbitral tribunal, to be stated separately for each arbitrator and, if applicable, for any secretary, to be determined in accordance with Article 39;
(b) the travel and other expenses incurred by the arbitral tribunal and, if applicable, by any secretary;
(c) the costs of expert advice and of other assistance required by the arbitral tribunal;
(d) the costs of witnesses and experts, to the extent such costs are approved by the arbitral tribunal;
(e) the legal and other costs incurred in connection with the arbitration, if such costs were claimed during the arbitration proceedings and the arbitral tribunal determines the amount of such costs to be reasonable;
(f) the Registration Fee and the Administrative Costs in accordance with Appendix B (Schedule of Costs);
(g) the Registration Fee, the fees and expenses of any emergency arbitrator, and the costs of expert advice and of other assistance required by such emergency arbitrator, determined in accordance with Article 43(9).

FEES AND EXPENSES OF ARBITRATORS
Article 39

1. The fees and expenses of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter of the arbitration, the time spent and any other relevant circumstances of the case, including the diligence and efficiency of the arbitral tribunal.

2. The fees and expenses of the arbitral tribunal shall be determined in accordance with Appendix B (Schedule of Costs). In the event of a discontinuation of the arbitration proceedings, the fees of the arbitral tribunal may be lower than the minimum amount foreseen in Appendix B (Schedule of Costs).

3. No additional costs may be charged by an arbitral tribunal for interpretation or correction of its award, or for an additional award, or where an award is remitted to the arbitral tribunal following the decision of a judicial authority, unless they are justified by the circumstances.

4. The arbitral tribunal shall decide on the allocation of its fees among its members. The presiding arbitrator shall in principle receive between 40 % and 50 % and each co-arbitrator between 25 % and 30 % of the total fees, in view of the time and efforts spent by each arbitrator.

5. Before making an award, a decision terminating the proceedings, or a decision on a request under Article 37, the arbitral tribunal shall submit to the Secretariat a draft thereof for approval or adjustment by the Court of the determination on costs made pursuant to Articles 38(a) to (c) and (f). Any such approval or adjustment shall be binding upon the arbitral tribunal.

ALLOCATION OF COSTS
Article 40

The costs of the arbitration shall in principle be borne by the unsuccessful party. The arbitral tribunal may apportion

any of the costs of the arbitration among the parties if it determines that such apportionment is reasonable, taking into account the circumstances of the case, including the parties' contributions to the efficient conduct of the proceedings and the avoidance of unnecessary costs and delays.

DEPOSIT OF COSTS
Article 41

1. The arbitral tribunal, once constituted, and after consulting with the Court, shall request each party to deposit an equal amount as an advance for the costs referred to in Articles 38(a) to (c) and the Administrative Costs referred to in Article 38(f). Any Provisional Deposit paid in accordance with Appendix B (Schedule of Costs) shall be considered as a partial payment of the Claimant's deposit.

2. Where a Respondent submits a counterclaim, or it otherwise appears appropriate in the circumstances, the arbitral tribunal may in its discretion establish separate deposits.

3. During the course of the arbitration proceedings, the arbitral tribunal may, after consulting with the Court, request supplementary deposits from the parties.

4. If the required deposits are not paid in full within 15 days after the receipt of the request, or another time limit set by the arbitral tribunal if appropriate in the circumstances, the arbitral tribunal shall notify the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitration proceedings in whole or in respect of certain claims or parties.

5. In its final award or decision terminating the proceedings, the arbitral tribunal shall issue to the parties a statement of account of the deposits received. Any unused amount shall be returned to the parties in proportion to their respective contributions, unless the parties have agreed otherwise.

SECTION V. OTHER PROVISIONS

EXPEDITED PROCEDURE
Article 42

1. The Expedited Procedure provisions shall apply to all cases in which:
(a) the parties so agree; or
(b) the amount in dispute, representing the aggregate of all claims (or any set-off defence), does not exceed CHF 1,000,000 (one million Swiss francs), unless the Court decides otherwise, taking into account all relevant circumstances.

2. The Expedited Procedure shall be conducted in accordance with the foregoing provisions of these Rules, subject to the following changes:
(a) The case shall be referred to a sole arbitrator, unless the Arbitration Agreement provides for more than one arbitrator.
(b) If the Arbitration Agreement provides for an arbitral tribunal composed of more than one arbitrator, the Secretariat shall invite the parties to agree to refer the case to a sole arbitrator. If the parties do not agree to refer the case to a sole arbitrator, the fees of the arbitrators shall be determined in accordance with Appendix B (Schedule of Costs), but shall in no event be less than the fees resulting from the hourly rate set out in Section 2.7 of Appendix B.
(c) After the submission of the Answer to the Notice of Arbitration, the parties shall in principle be entitled to submit only a Statement of Claim, a Statement of Defence (and counterclaim) and, where applicable, a Statement of Defence in reply to the counterclaim (or any set-off defence).
(d) Unless the dispute is decided on the basis of documetary evidence only, a single hearing shall be held for the examination of witnesses and experts or for oral argument.
(e) The final award shall be made within six months from the date on which the arbitral tribunal received the file from the Secretariat. In exceptional circumstances, the Court may extend this time limit.
(f) The arbitral tribunal may state the reasons upon which the award is based in summary form.

3. At any time during the arbitration proceedings, the parties may agree that the provisions set out in Article 42(2) shall no longer apply.

EMERGENCY RELIEF
Article 43

1. Unless the parties have agreed otherwise, a party requiring urgent interim measures pursuant to Article 29 before the arbitral tribunal is constituted may submit to the Secretariat an application for emergency relief proceedings (the "Application"). In addition to the particulars set out in Articles 3(3)(b) to (e), the Application shall include:
(a) a statement of the interim measures sought and the reasons therefor, in particular the reason for the purported urgency;
(b) comments on the language, the seat of arbitration, and the applicable law;

(c) confirmation of payment to the relevant account listed in Appendix A of the Registration Fee and of the deposit for emergency relief proceedings as required by Appendix B (Schedule of Costs).

2. As soon as possible after receipt of the Application, the Registration Fee, and the deposit for emergency relief proceedings, the Court shall appoint and transmit the file to a sole emergency arbitrator, unless:
(a) there is manifestly no Arbitration Agreement referring to these Rules, or
(b) it appears more appropriate to proceed with the constitution of the arbitral tribunal and refer the Application to it.

3. If the Application is submitted before the Notice of Arbitration, the Court shall terminate the emergency relief proceedings if the Notice of Arbitration is not submitted within 10 days from the receipt of the Application. In exceptional circumstances, the Court may extend this time limit.

4. Articles 12 to 14 shall apply to the emergency arbitrator, except that the time limits set out in Articles 13(2) and (3) are shortened to three days.

5. If the parties have not determined the seat of the arbitration, or if the designation of the seat is unclear or incomplete, the seat of the arbitration for the emergency relief proceedings shall be determined by the Court without prejudice to the determination of the seat of the arbitration pursuant to Article 17(1).

6. The emergency arbitrator may conduct the emergency relief proceedings in such a manner as the emergency arbitrator considers appropriate, taking into account the urgency inherent in such proceedings and ensuring that each party has a reasonable opportunity to be heard on the Application.

7. The decision on the Application shall be notified by the emergency arbitrator to the parties within 15 days from the date on which the emergency arbitrator received the file from the Secretariat. This time limit may be extended by agreement of the parties or, in appropriate circumstances, by the Court. The decision on the Application may be made even if in the meantime the file has been transmitted to the arbitral tribunal.

8. A decision of the emergency arbitrator shall have the same effects as a decision pursuant to Article 29. Any interim measure granted by the emergency arbitrator may be modified, suspended or terminated by the emergency arbitrator or, after transmission of the file to it, by the arbitral tribunal.

9. The decision on the Application shall include a determination of costs as referred to in Article 38(g). Before rendering the decision on the Application, the emergency arbitrator shall submit to the Secretariat a draft thereof for approval or adjustment by the Court of the determination of costs. The costs shall be payable out of the deposit for emergency relief proceedings. The determination of costs pursuant to Articles 38(d) and (e) and the apportionment of all costs among the parties shall be decided by the arbitral tribunal. If no arbitral tribunal is constituted, the determination of costs pursuant to Articles 38(d) and (e) and the apportionment of all costs shall be decided by the emergency arbitrator in a separate award.

10. Any measure granted by the emergency arbitrator ceases to be binding on the parties either upon the termination of the emergency relief proceedings pursuant to Article 43(3), upon the termination of the arbitration proceedings, or upon the making of a final award, unless the arbitral tribunal expressly decides otherwise in the final award.

11. The emergency arbitrator may not serve as arbitrator in any arbitration relating to the dispute in respect of which the emergency arbitrator has acted, unless otherwise agreed by the parties.

CONFIDENTIALITY
Article 44

1. Unless the parties expressly agree in writing to the contrary, the parties undertake to keep confidential all awards and orders as well as all materials submitted by another party in the framework of the arbitration proceedings not already in the public domain, except and to the extent that a disclosure may be required of a party by a legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a judicial authority. This undertaking also applies to the arbitrators, the tribunal-appointed experts, the secretary to the arbitral tribunal, the members of the board of directors of the Swiss Arbitration Centre, the members of the Court and the Secretariat.

2. The deliberations of the arbitral tribunal are confidential.

3. No award or other decision of the arbitral tribunal may be published, whether in its entirety or in the form of excerpts or a summary, unless all parties agree and the names of the parties, the members of the arbitral tribunal and any information allowing for the identification of the dispute are redacted.

EXCLUSION OF LIABILITY
Article 45

1. Neither the members of the board of directors of the Swiss Arbitration Centre, the members of the Court and the Secretariat, the arbitrators, the tribunal-appointed experts, nor the secretary of the arbitral tribunal shall be liable for any act or omission in connection with an arbitration conducted under these Rules, except if the act or omission is shown to constitute intentional wrongdoing or gross negligence.

2. After the award or decision terminating the proceedings has been made and the possibilities of correction, interpretation or additional award have lapsed or have been exhausted, neither the members of the board of the Swiss Arbitration Centre, the members of the Court and the Secretariat, the arbitrators, the tribunal-appointed experts, nor the secretary of the arbitral tribunal shall be under an obligation to make statements to any person about any matter concerning the arbitration. No party shall seek to make any of these persons a witness in any legal or other proceedings arising out of the arbitration.

APPENDIX A:
Offices and Bank Account of the Secretariat of the Arbitration Court

BANK ACCOUNT
For updated information on our bank account details please visit our website on the following page: www.swissarbitration.org/centre/arbitration/arbitration-logistics

All payments must be made in Swiss francs (CHF) and received net of any banking fees.

ADDRESSES OF THE SECRETARIAT OF THE ARBITRATION COURT:
Swiss Arbitration Centre Boulevard du Théâtre 4 1204
Geneva Switzerland
Phone: +41 22 819 91 57
E-mail: centre@swissarbitration.org

Swiss Arbitration Centre Löwenstrasse 11 - P.O. Box 8021
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Lugano
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APPENDIX B:
Schedule of Costs

[Editor's note: For information on fees, please go to www.swissarbitration.org/centre/arbitration/arbitration-rules.]

Chapter 37

UNCITRAL Arbitration Clause and Rules (2013) Expedited Rules (2021)

SAMPLE CLAUSE

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force.

Note – Parties should consider adding:

(a) The appointing authority shall be … [name of institution or person];
(b) The number of arbitrators shall be … [one or three];
(c) The place of arbitration shall be … [town and country];
(d) The language(s) to be used in the arbitral proceedings shall be …;
(e) The law governing the proceedings shall be….

Possible waiver statement

Note. If the parties wish to exclude recourse against the arbitral award that may be available under the applicable law, they may consider adding a provision to that effect as suggested below, considering, however, that the effectiveness and conditions of such an exclusion depend on the applicable law.

Waiver

> The parties hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under the applicable law.

Model statements of independence pursuant to article 11 of the Rules

No circumstances to disclose

> I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties and the other arbitrators of any such circumstances that may subsequently come to my attention during this arbitration.

Circumstances to disclose

> I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made pursuant to article 11 of the UNCITRAL Arbitration Rules of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances. [Include statement.] I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the parties and the other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration.

Note. Any party may consider requesting from the arbitrator the following addition to the statement of independence:

> I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules.

RULES OF ARBITRATION

Contents

Section I. Introductory rules

Scope of application

Article 1

1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.

2. The parties to an arbitration agreement concluded after 15 August 2010 shall be presumed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules. That presumption does not apply where the arbitration agreement has been concluded by accepting after 15 August 2010 an offer made before that date.

3. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

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 Treatybased Investor-State Arbitration ("Rules on Transparency"), subject to article 1 of the Rules on Transparency.

5. The Expedited Arbitration Rules in the appendix shall apply to the arbitration where the parties so agree.

Notice and calculation of periods of time

Article 2

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.

2. If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. De-

livery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorized.
3. In the absence of such designation or authorization, a notice is:

(*a*) Received if it is physically delivered to the addressee; or
(*b*) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.

4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.

6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Notice of arbitration

Article 3

1. The party or parties initiating recourse to arbitration (hereinafter called the "claimant") shall communicate to the other party or parties (hereinafter called the "respondent") a notice of arbitration.

2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

3. The notice of arbitration shall include the following:

(*a*) A demand that the dispute be referred to arbitration;
(*b*) The names and contact details of the parties;
(*c*) Identification of the arbitration agreement that is invoked;
(*d*) Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
(*e*) A brief description of the claim and an indication of the amount involved, if any;
(*f*) The relief or remedy sought;
(*g*) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.

4. The notice of arbitration may also include:

(*a*) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;
(*b*) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;
(*c*) Notification of the appointment of an arbitrator referred to in article 9 or 10.

5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

Response to the notice of arbitration

Article 4

1. Within 30 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall include:

(*a*) The name and contact details of each respondent;
(*b*) A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3(c) to (g).

2. The response to the notice of arbitration may also include:

(*a*) Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;
(*b*) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;
(*c*) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;
(*d*) Notification of the appointment of an arbitrator referred to in article 9 or 10;
(*e*) A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;

(*f*) A notice of arbitration in accordance with article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

Representation and assistance

Article 5

Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine.

Designating and appointing authorities

Article 6

1. Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, including the Secretary-General of the Permanent Court of Arbitration at The Hague (hereinafter called the "PCA"), one of whom would serve as appointing authority.

2. If all parties have not agreed on the choice of an appointing authority within 30 days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request the Secretary-General of the PCA to designate the appointing authority.

3. Where these Rules provide for a period of time within which a party must refer a matter to an appointing authority and no appointing authority has been agreed on or designated, the period is suspended from the date on which a party initiates the procedure for agreeing on or designating an appointing authority until the date of such agreement or designation.

4. Except as referred to in article 41, paragraph 4, if the appointing authority refuses to act, or if it fails to appoint an arbitrator within 30 days after it receives a party's request to do so, fails to act within any other period provided by these Rules, or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party's request to do so, any party may request the Secretary-General of the PCA to designate a substitute appointing authority.

5. In exercising their functions under these Rules, the appointing authority and the Secretary-General of the PCA may require from any party and the arbitrators the information they deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority and the Secretary-General of the PCA shall also be provided by the sender to all other parties.

6. When the appointing authority is requested to appoint an arbitrator pursuant to articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.

7. The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

Section II. Composition of the arbitral tribunal

Number of arbitrators

Article 7

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.

2. Notwithstanding paragraph 1, if no other parties have responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with article 9 or 10, the appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, paragraph 2, if it determines that, in view of the circumstances of the case, this is more appropriate.

Appointment of arbitrators (articles 8 to 10)

Article 8

1. If the parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other

parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.

2. The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:

(*a*) The appointing authority shall communicate to each of the parties an identical list containing at least three names;
(*b*) Within 15 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;
(*c*) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
(*d*) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

Article 9

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.

2. If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the appointing authority to appoint the second arbitrator.

3. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under article 8.

Article 10

1. For the purposes of article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.

2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.

3. In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

Disclosures by and challenge of arbitrators (articles 11 to 13)

Article 11

When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

Article 12

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

3. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

Article 13

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in

articles 11 and 12 became known to that party.
2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.

3. When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority.

Replacement of an arbitrator

Article 14

1. Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.

2. If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

Repetition of hearings in the event of the replacement of an arbitrator

Article 15

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

Exclusion of liability

Article 16

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the appointing authority and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

Section III. Arbitral proceedings

General provisions

Article 17

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.

2. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.

3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

4. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.

5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should

not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

Place of arbitration

Article 18

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.

2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

Language

Article 19

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Statement of claim

Article 20

1. The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this article.

2. The statement of claim shall include the following particulars:

(*a*) The names and contact details of the parties;
(*b*) A statement of the facts supporting the claim;
(*c*) The points at issue;
(*d*) The relief or remedy sought;
(*e*) The legal grounds or arguments supporting the claim.

3. A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.

4. The statement of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

Statement of defence

Article 21

1. The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in article 4 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this article.

2. The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (art. 20, para. 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.

3. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.

4. The provisions of article 20, paragraphs 2 to 4, shall apply to a counterclaim, a claim under article 4, paragraph 2 (f), and a claim relied on for the purpose of a set-off.

Amendments to the claim or defence

Article 22

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other

circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

Pleas as to the jurisdiction of the arbitral tribunal

Article 23

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

Further written statements

Article 24

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

Periods of time

Article 25

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

Interim measures

Article 26

1. The arbitral tribunal may, at the request of a party, grant interim measures.

2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:

(*a*) Maintain or restore the status quo pending determination of the dispute;
(*b*) Take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself;
(*c*) Provide a means of preserving assets out of which a subsequent award may be satisfied; or
(*d*) Preserve evidence that may be relevant and material to the resolution of the dispute.

3. The party requesting an interim measure under paragraphs 2 (a) to (c) shall satisfy the arbitral tribunal that:

(*a*) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
(*b*) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

4. With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.

5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.

8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Evidence

Article 27

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.

2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.

4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Hearings

Article 28

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.

3. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.

4. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

Experts appointed by the arbitral tribunal

Article 29

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.

3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.

5. At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate

the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of article 28 shall be applicable to such proceedings.

Default

Article 30

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:

(*a*) The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;

(*b*) The respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

2. If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Closure of hearings

Article 31

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

Waiver of right to object

Article 32

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

Section IV. The award

Decisions

Article 33

1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.

2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

Form and effect of the award

Article 34

1. The arbitral tribunal may make separate awards on different issues at different times.

2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

5. An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.

6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

Applicable law, amiable compositeur

Article 35

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.

2. The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized the arbitral tribunal to do so.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

Settlement or other grounds for termination

Article 36

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 34, paragraphs 2, 4 and 5, shall apply.

Interpretation of the award

Article 37

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 34, paragraphs 2 to 6, shall apply.

Correction of the award

Article 38

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.

2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.

3. Such corrections shall be in writing and shall form part of the award. The provisions of article 34, paragraphs 2 to 6, shall apply.

Additional award

Article 39

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.

2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.

3. When such an award or additional award is made, the provisions of article 34, paragraphs 2 to 6, shall apply.

Definition of costs

Article 40

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.

2. The term "costs" includes only:

(*a*) The fees of the arbitral tribunal to be stated sepa-

rately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;
(*b*) The reasonable travel and other expenses incurred by the arbitrators;
(*c*) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
(*d*) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
(*e*) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
(*f*) Any fees and expenses of the appointing authority as well as the fees and expenses of the Secretary-General of the PCA.

3. In relation to interpretation, correction or completion of any award under articles 37 to 39, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

Fees and expenses of arbitrators

Article 41

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.

2. If there is an appointing authority and it applies or has stated that it will apply a schedule or particular method for determining the fees for arbitrators in international cases, the arbitral tribunal in fixing its fees shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case.

3. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If, within 45 days of receipt of such a referral, the appointing authority finds that the proposal of the arbitral tribunal is inconsistent with paragraph 1, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal.

4. (*a*) When informing the parties of the arbitrators' fees and expenses that have been fixed pursuant to article 40, paragraphs 2 (a) and (b), the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated;
(*b*) Within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the appointing authority. If no appointing authority has been agreed upon or designated, or if the appointing authority fails to act within the time specified in these Rules, then the review shall be made by the Secretary-General of the PCA;
(*c*) If the appointing authority or the Secretary-General of the PCA finds that the arbitral tribunal's determination is inconsistent with the arbitral tribunal's proposal (and any adjustment thereto) under paragraph 3 or is otherwise manifestly excessive, it shall, within 45 days of receiving such a referral, make any adjustments to the arbitral tribunal's determination that are necessary to satisfy the criteria in paragraph 1. Any such adjustments shall be binding upon the arbitral tribunal;
(*d*) Any such adjustments shall either be included by the arbitral tribunal in its award or, if the award has already been issued, be implemented in a correction to the award, to which the procedure of article 38, paragraph 3, shall apply.

5. Throughout the procedure under paragraphs 3 and 4, the arbitral tribunal shall proceed with the arbitration, in accordance with article 17, paragraph 1.

6. A referral under paragraph 4 shall not affect any determination in the award other than the arbitral tribunal's fees and expenses; nor shall it delay the recognition and enforcement of all parts of the award other than those relating to the determination of the arbitral tribunal's fees and expenses.

Allocation of costs

Article 42

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

Deposit of costs

Article 43

1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for

the costs referred to in article 40, paragraphs 2 (a) to (c).

2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.

3. If an appointing authority has been agreed upon or designated, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority, which may make any comments to the arbitral tribunal that it deems appropriate concerning the amount of such deposits and supplementary deposits.

4. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

5. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

UNCITRAL Expedited Arbitration Rules

Scope of application

Article 1

Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Expedited Arbitration Rules ("Expedited Rules"), such disputes shall be settled in accordance with the UNCITRAL Arbitration Rules as modified by these Expedited Rules and subject to such modification as the parties may agree.1

Article 2

1. At any time during the proceedings, the parties may agree that the Expedited Rules shall no longer apply to the arbitration.

2. At the request of a party, the arbitral tribunal may, in exceptional circumstances and after inviting the parties to express their views, determine that the Expedited Rules shall no longer apply to the arbitration. The arbitral tribunal shall state the reasons upon which that determination is based.

3. When the Expedited Rules no longer apply to the arbitration pursuant to paragraph 1 or 2, the arbitral tribunal shall remain in place and conduct the arbitration in accordance with the UNCITRAL Arbitration Rules.

Conduct of the parties and the arbitral tribunal

Article 3

1. The parties shall act expeditiously throughout the proceedings.

2. The arbitral tribunal shall conduct the proceedings expeditiously taking into account the fact that the parties agreed to refer their dispute to expedited arbitration and the time frames in the Expedited Rules.

3. The arbitral tribunal may, after inviting the parties to express their views and taking into account the circumstances of the case, utilize any technological means as it considers appropriate to conduct the proceedings, including to communicate with the parties and to hold consultations and hearings remotely.

Notice of arbitration and statement of claim

Article 4

1. A notice of arbitration shall also include:

(a) A proposal for the designation of an appointing authority, unless the parties have previously agreed thereon; and

(b) A proposal for the appointment of an arbitrator.

2. When communicating its notice of arbitration to the respondent, the claimant shall also communicate its statement of claim.

3. The claimant shall communicate the notice of arbitration and the statement of claim to the arbitral tribunal as soon as it is constituted.

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1 Unless otherwise agreed by the parties, the following articles in the UNCITRAL Arbitration Rules do not apply to expedited arbitration: article 3(4)(a) and (b); article 6(2); article 7; article 8(l); first sentence of article 20(I); article 21(1); article 21(3); article 22; and second sentence of article

Response to the notice of arbitration and statement of defence

Article 5

1. Within 15 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall also include responses to the information set forth in the notice of arbitration pursuant to article 4(1)(a) and (b) of the Expedited Rules.

2. The respondent shall communicate its statement of defence to the claimant and the arbitral tribunal within 15 days of the constitution of the arbitral tribunal.

Designating and appointing authorities

Article 6

1. If all parties have not agreed on the choice of an appointing authority 15 days after a proposal for the designation of an appointing authority has been received by all other parties, any party may request the Secretary-General of the Permanent Court of Arbitration (hereinafter called the "PCA") to designate the appointing authority or to serve as appointing authority.

2. When making the request under article 6(4) of the UNCITRAL Arbitration Rules, a party may request the Secretary-General of the PCA to serve as appointing authority.

3. If requested to serve as appointing authority in accordance with paragraph 1 or 2, the Secretary-General of the PCA will serve as appointing authority unless it determines that in view of the circumstances of the case, it is more appropriate to designate an appointing authority.

Number of arbitrators

Article 7

Unless otherwise agreed by the parties, there shall be one arbitrator.

Appointment of a sole arbitrator

Article 8

1. A sole arbitrator shall be appointed jointly by the parties.

2. If the parties have not reached agreement on the appointment of a sole arbitrator 15 days after a proposal has been received by all other parties, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority in accordance with article 8(2) of the UNCITRAL Arbitration Rules.

Consultation with the parties

Article 9

Promptly after and within 15 days of its constitution, the arbitral tribunal shall consult the parties, through a case management conference or otherwise, on the manner in which it will conduct the arbitration.

Discretion of the arbitral tribunal with regard to periods of time

Article 10

Subject to article 16 of the Expedited Rules, the arbitral tribunal may at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under the UNCITRAL Arbitration Rules and the Expedited Rules or agreed by the parties.

Hearings

Article 11

The arbitral tribunal may, after inviting the parties to express their views and in the absence of a request to hold hearings, decide that hearings shall not be held.

Counterclaims or claims for the purpose of set off

Article 12

1. A counterclaim or a claim for the purpose of a set-off shall be made no later than in the statement of defence provided that the arbitral tribunal has jurisdiction over it.

2. The respondent may not make a counterclaim or rely on a claim for the purpose of a set-off at a later stage in the arbitral proceedings, unless the arbitral tribunal considers it appropriate to allow such claim having regard to the delay in making it or prejudice to other parties or any other circumstances.

Amendments and supplements to a claim or defence

Article 13

During the course of the arbitral proceedings, a party may not amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it appropriate to allow such amendment or supplement having regard to when it is requested or prejudice to other parties or any other

circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

Further written statements

Article 14

The arbitral tribunal may, after inviting the parties to express their views, decide whether any further written statement shall be required from the parties or may be presented by them.

Evidence

Article 15

1. The arbitral tribunal may decide which documents, exhibits or other evidence the parties should produce. The arbitral tribunal may reject any request, unless made by all parties, to establish a procedure whereby each party can request another party to produce documents.

2. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, shall be presented in writing and signed by them.

3. The arbitral tribunal may decide which witnesses, including expert witnesses, shall testify to the arbitral tribunal if hearings are held.

Period of time for making the award

Article 16

1. The award shall be made within six months from the date of the constitution of the arbitral tribunal unless otherwise agreed by the parties.

2. The arbitral tribunal may, in exceptional circumstances and after inviting the parties to express their views, extend the period of time established in accordance with paragraph 1. The extended period of time shall not exceed a total of nine months from the date of the constitution of the arbitral tribunal.

3. If the arbitral tribunal concludes that it is at risk of not rendering an award within nine months from the date of the constitution of the arbitral tribunal, it shall propose a final extended time limit, state the reasons for the proposal, and invite the parties to express their views within a fixed period of time. The extension shall be adopted only if all parties express their agreement to the proposal within the fixed period of time.

4. If there is no agreement to the extension in paragraph 3, any party may make a request that the Expedited Rules no longer apply to the arbitration. After inviting the parties to express their views, the arbitral tribunal may determine to continue to conduct the arbitration in accordance with the UNCITRAL Arbitration Rules.

Text of annexes to the UNCITRAL Expedited Arbitration Rules

Model arbitration clause for contracts

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Expedited Arbitration Rules.

Note: Parties should consider adding:

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

(b) The place of arbitration shall be ... [town and country];

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

Model statement

Note. Parties should consider requesting from the arbitrator the following addition to the statement of independence pursuant to article 11 of the UNCITRAL Arbitration Rules:

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently, expeditiously and in accordance with the time limits in the UNCITRAL Arbitration Rules and the UNCITRAL Expedited Arbitration Rules.

Chapter 38

Vienna International Abritral Centre Rules of Arbitration (VIAC)[1] (2021)

About VIAC

Mission Statement

The premier institution in CEE/SEE. The Vienna International Arbitral Centre ("VIAC") is the premier arbitral institution in Central and South-Eastern Europe, and one of the leading institutions globally. Benefiting from Austria's historic role as a neutral gateway between East and West, the VIAC has administered over 1,600 international disputes across all sectors and industries.

The VIAC was established as an independent center in 1975 for the resolution of international commercial disputes, through arbitration and mediation. Since 2018, the VIAC also administers domestic arbitrations in Austria; and as of 2021, the VIAC has implemented a special set of rules for the settlement of investment disputes, bringing its expertise and flexibility to the effective resolution of disputes between states and state-owned entities and investors.

Modern, cost-effective and flexible. With its arbitration and mediation rules, the VIAC offers a modern framework to resolve disputes. The Vienna Rules place a premium on flexible and cost-effective proceedings that incentivize arbitrators to provide high-quality and expeditious decision-making, while providing the parties with the assurance of tried-and-tested regulations and a highly-experienced and independent Board to safeguard the fairness of the arbitral process.

Thought leadership. The VIAC plays an important role in defining, evolving and implementing best practices in all areas of arbitration, in the region and beyond. Engaged in a constant exchange with practitioners, commercial users and academics, the VIAC is at the forefront of arbitral practice, including through its industry-leading commitment to diversity and the promotion of innovative and greener case management solutions.

Representing one of Europe's leading arbitral institutions, the Vienna International Arbitral Centre ("VIAC") serves as a focal point for the settlement of commercial disputes in the regional and international community. It has greatly benefited from its traditional position in a neutral country between east and west. Founded in 1975 as a department of the Austrian Federal Economic Chamber ("AFEC"), the VIAC has in recent years enjoyed a steadily increasing caseload from a diverse range of parties spanning Europe, the Americas, and Asia.

The VIAC has administered over 1,600 proceedings since its inception and is thereby one of the most experienced arbitration centers in the region. The center benefits from a robust global network of leading arbitrators experienced in international arbitration under the Vienna Rules. Austria has adopted the UNICTRAL Model Law as its law of arbitration in 2006 with minor changes. As of 2018, the VIAC has taken over also administration of purely domestic disputes which had previously been vested with regional arbitration courts. This move fosters the VIAC's position also within Austria as the leading arbitral institution.

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[1] *Republished with the kind permission of the Vienna International Arbitral Centre. Copyright 2021. All rights reserved. These rules went in force as of July 1, 2021. The mediation rules and all annexes are omitted from these rules. The mediation rules and all annexes, including fees, are available at: https://www.viac.eu/en/arbitration-rules. The model arbitration clause, contained in Annex 1, is forth before the rules.*

MODEL ARBITRATION CLAUSE

Where the parties wish to submit a dispute to arbitration in accordance with the Vienna Rules, they may conclude an arbitration clause in the following form:

All disputes or claims arising out of or in connection with this contract, including disputes relating to its validity, breach, termination or nullity, shall be finally settled under the Rules of Arbitration (Vienna Rules} of the Vienna International Arbitral Centre (VIAC} of the Austrian Federal Economic Chamber by one or three arbitrators appointed in accordance with the said Rules.
Parties may wish to stipulate the following in the arbitration clause:

[1] the number of arbitrators [one or three] [Article 17 Vienna Rules];

[21[the language[s] to be used in the arbitral proceedings [Article 26 Vienna Rules];

[3] the substantive law applicable to the contractual relationship, the substantive law applicable to the arbitration agreement [Article 27 Vienna Rules], and the rules applicable to the proceedings [Article 28 Vienna Rules];

[4] the applicability of the provisions on expedited proceedings [Article 45 Vienna Rules];

[5] the scope of the arbitrators· confidentiality [Article 16 paragraph 2 Vienna Rules] and its extension regarding parties, representatives and experts.

[6] If the parties wish to conduct Arb-Med-Arb proceedings, the following addition to the model arbitration clause should be included:

Furthermore, the parties agree to jointly consider, after due initiation of the arbitration, to conduct proceedings in accordance with the Mediation Rules of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber (Vienna Mediation Rules). Settlements that are generated in such proceedings shall be referred to the arbitral tribunal appointed in the arbitration. The arbitral tribunal may render an award on agreed terms reflecting the content of the settlement (Article 37 paragraph 1 Vienna Rules).

VIAC ARBITRATION RULES

VIENNA RULES | in force as of 1 July 2021

GENERAL PROVISIONS

VIAC AND APPLICABLE VERSION OF THE VIENNA RULES

Article 1

(1) The Vienna International Arbitral Centre ("VIAC") is the Permanent International Arbitration Institution of the Austrian Federal Economic Chamber.2 VIAC administers domestic and international arbitrations as well as proceedings pursuant to other alternative dispute resolution methods, if the parties have agreed upon the VIAC Rules of Arbitration ("Vienna Rules"), the VIAC Rules of Mediation ("Vienna Mediation Rules"), the VIAC Rules of Investment Arbitration ("Vienna Investment Arbitration Rules"), the VIAC Rules of Investment Mediation ("Vienna Investment Mediation Rules"); or if it has been otherwise agreed or foreseen that VIAC should serve as the administering institution.

(2) Unless the parties have agreed otherwise, the Vienna Rules shall apply in the version in effect at the time of the commencement of the arbitration (Article 7 paragraph 1) if the parties, before or after the dispute has arisen, have agreed to submit their dispute to the Vienna Rules.

(3) The Board may refuse to administer proceedings if the arbitration agreement deviates fundamentally from and is incompatible with the Vienna Rules.

BOARD

Article 2

(1) The Board of VIAC shall consist of a minimum of five members. The members of the Board shall be appointed for a term of up to five years by the Extended Presiding Committee of the Austrian Federal Economic Chamber upon recommendation by the President of VIAC. Members may be appointed for consecutive terms.

(2) The members of the Board shall elect from among their number a President and up to two Vice Presidents. In the event the President is prevented from performing his

2 Acc to Sec 139 paragraph 2 of the Federal Statute on the Economic Chambers 1998 ("Wirtschaftskammergesetz 1998"), Federal Law Gazette I No. 103/1998 as amended by Federal Law Gazette I No. 73/2017

duties, such duties shall be assumed by a Vice President in accordance with the Internal Rules of the Board (Annex 2).

(3) Members of the Board, who are or were involved in an arbitration administered by VIAC in any capacity whatsoever, may not be present at, or participate in any way in deliberations or decisions pertaining to those proceedings. This shall not impair the existence of a quorum of the Board.

(4) The members of the Board shall perform their duties to the best of their knowledge and ability and in performing their duties they shall be independent and not be bound by any instructions. They have the duty to keep confidential all information acquired in the course of their duties.

(5) The Board may establish and amend its own Internal Rules (Annex 2).

ADVISORY BOARD

Article 3

The Board may establish Advisory Boards that assist the Board in an advisory capacity. Advisory Boards consist of arbitration and/or mediation experts who may be invited by the Board.

SECRETARY GENERAL, DEPUTY SECRETARY GENERAL AND SECRETARIAT

Article 4

(1) Upon recommendation of the Board of VIAC, the Secretary General and the Deputy Secretary General of VIAC shall be appointed by the Extended Presiding Committee of the Austrian Federal Economic Chamber for a term of up to five years. The Secretary General and Deputy Secretary General may be appointed for consecutive terms. Upon expiration of the term, if no renewal of the appointment has been made, the Secretary General and the Deputy Secretary General shall remain in office until a new appointment has been made.

(2) The Secretariat manages the administrative matters of VIAC under the direction of the Secretary General and the Deputy Secretary General except for matters which are reserved to the Board. If a Deputy Secretary General has been appointed, the Deputy Secretary General may render decisions that fall within the competence of the Secretary General if the Secretary General is unable to perform his duties, or with authorization by the Secretary General.

(3) Members of the Secretariat, who are or were involved in an arbitration administered by VIAC in any capacity whatsoever, may not be present at, or participate in any way in deliberations or decisions pertaining to those proceedings.

(4)The Secretary General and the Deputy Secretary General shall perform their duties to the best of their knowledge and ability and shall not be bound by any instructions. They have the duty to keep confidential all information acquired in the course of their duties.

(5) If the Secretary General and the Deputy Secretary General become unable to exercise their duties, the Board members shall appoint from their number a member to perform the relevant duties. For as long as the appointee serves as Secretary General, the membership of the appointee in the Board shall be suspended.

LANGUAGES OF CORRESPONDENCE

Article 5

The correspondence of the parties with the Board and Secretariat shall be in German or English.

DEFINITIONS

Article 6

(1) In the Vienna Rules

1.1 party or parties refer to one or more claimants, respondents or one or more third parties joined to the arbitration in a statement of claim;

1.2 claimant refers to one or more claimants;

1.3 respondent refers to one or more respondents;

1.4 third party refers to one or more third parties who are neither a claimant nor respondent in the pending arbitration and whose joinder to this arbitration has been requested;

1.5 arbitral tribunal refers to a sole arbitrator or a panel of three arbitrators;

1.6 arbitrator refers to one or more arbitrators;

1.7 co-arbitrator refers to any member of a panel of arbitrators except its chairperson;

1.8 award refers to any final, partial or interim award;

1.9 third-party funding refers to any agreement entered into with a natural or legal person who is not a party to the proceedings or a party representative (Article 13),

to fund or provide any other material support to a party, directly or indirectly financing part or all of the costs of the proceedings either through a donation or a grant, or in exchange for remuneration or reimbursement that is wholly or partially dependent upon the outcome of the proceedings.*

*The wording "or in return for any premium payment" was deleted with retroactive effect as of 1 July 2021 to correct an editorial error.

(2) To the extent the terms used in the Vienna Rules refer to natural persons, the form chosen shall apply to all In practice, the terms in these rules shall be used in a gender-specific manner.

(3) References to "Articles" without further specification relate to the relevant articles of the Vienna Rules.

COMMENCEMENT OF THE ARBITRATION

STATEMENT OF CLAIM

Article 7

(1) The arbitral proceedings shall be initiated by submitting a statement of claim. The proceedings shall commence on the date of receipt of the statement of claim by the Secretariat of VIAC or by an Austrian Regional Economic Chamber in hardcopy form or in electronic form (Article 12 paragraph 1); hereby, the proceedings become The Secretariat informs the other parties of the receipt of the statement of claim.

(2) The statement of claim shall contain the following information:

2.1 the full names, addresses, including electronic mail addresses, and other contact details of the parties and any comment on the parties' nationalities;

2.2 a statement of the facts and a specific request for relief;

2.3 the monetary value of each individual claim at the time of submission of the statement of claim if the relief requested is not exclusively for a specific sum of money;

2.4 particulars regarding the number of arbitrators in accordance with Article 17;

2.5 the nomination of an arbitrator if the dispute shall be decided by a panel of three arbitrators, or a request that the arbitrator be appointed by the Board; and

2.6 particulars regarding the arbitration agreement and its content.

(3) If the statement of claim does not comply with paragraph 2 of this Article, or if a copy of the statement of claim or the exhibits is missing (Article 12 paragraph 1), the Secretary General may request that the claimant remedy the defect within a time-period set by the Secretary General. If the claimant complies with the order to remedy the defect within the set deadline, the statement of claim shall be deemed to have been submitted on the date on which it was first received. If the claimant does not comply with the order to remedy the defect within the set deadline, the Secretary General may declare the proceedings terminated (Article 34 paragraph 3). This shall not prevent the claimant from raising the same claims at a later time in another proceeding.

(4) The Secretary General shall transmit the statement of claim to the respondent if no order to remedy pursuant to paragraph 3 of this Article was issued or if the claimant complied with such an order.

ANSWER TO THE STATEMENT OF CLAIM

Article 8

(1) The Secretary General shall request the respondent to submit to the Secretariat an answer to the statement of claim (Article 12 paragraph 3) within a period of 30 days upon receipt of the statement of claim.

(2) The answer to the statement of claim shall contain the following information:

2.1 the full name, address, including electronic mail address, and other contact details of the respondent and any comment on the parties' nationalities;

2.2 comments on the request for relief and the facts upon which the statement of claim is based, as well as the respondent's specific request for relief;

2.3 particulars regarding the number of arbitrators in accordance with Article 17; and

2.4 the nomination of an arbitrator if the dispute shall be decided by a panel of three arbitrators, or a request that the arbitrator be appointed by the Board.

COUNTERCLAIM

Article 9

(1) Claims by the respondent against the claimant may be raised as counterclaims in the same proceedings.

(2) Articles 7, 10 and 11 apply to counterclaims.

(3) The arbitral tribunal may return the counterclaim to the Secretariat to be addressed in separate proceedings if:

3.1 the parties are not identical; or

3.2 a counterclaim submitted after the answer to the statement of claim would result in a substantial delay in the main proceedings.

(4) The arbitral tribunal shall give the claimant the opportunity to submit an answer to an admitted counterclaim. Article 8 applies to an answer to the counterclaim.

REGISTRATION FEE

Article 10

(1) The claimant shall pay the registration fee net of any charges in the amount stipulated in Annex 3 within the time limit set by the Secretary General. Likewise, in the case of joinder of a third party (Article 14), the requesting party shall pay a registration.

(2) If there are more than two parties to the arbitration, the registration fee shall be increased by 10 percent for each additional party, up to a maximum increase of 50 percent.

(3) The registration fee is non-refundable. The registration fee shall not be deducted from the paying party's advance on costs.

(4) The statement of claim and any request for joinder of a third party shall be sent to the other parties only after full payment of the registration. The Secretary General may grant a reasonable extension of the time period for payment of the registration fee. If payment is not effected by the deadline, the Secretary General may declare the proceedings terminated (Article 34 paragraph 3). This shall not prevent the claimant from raising the same claims at a later time in another proceeding.

(5) If proceedings under the Vienna Mediation Rules are commenced before, during or after arbitral proceedings under the Vienna Rules between the same parties and concerning the same subject matter, no further registration fee will be charged in the subsequently commenced proceedings.

TRANSMISSION OF FILE

Article 11

The Secretary General shall transmit the file to the arbitral tribunal if:

- the Secretariat has received the statement of claim (counterclaim) in accordance with the requirements of Article 7; and

- all members of the arbitral tribunal have been appointed; and

- the advance on costs pursuant to Article 42 has been paid in full.

WRITTEN COMMUNICATIONS, TIME LIMITS AND DISPOSAL OF FILE

Article 12

(1) A statement of claim, including exhibits, shall be submitted in electronic form and in hardcopy form in the number of copies necessary to provide each party with a copy.

(2) After transmission of the file to the arbitral tribunal, all written communications and exhibits shall be sent to each party and each arbitrator in the manner stipulated by the arbitral tribunal. The Secretariat shall receive all written communications between the arbitral tribunal and the parties in electronic form.

(3) Written communications shall be sent in hardcopy form by registered mail, letter with confirmation of receipt, courier service, or in electronic form, or by any other means of communication that provides a record of sending.

(4) Written communications shall be sent to the address of the addressee for whom it is intended, as last notified. Once a party has appointed a representative, the written communication shall be sent to the representative's address, as last notified.

(5) Written communications shall be deemed to have been received on the day:

5.1 the addressee has actually received the written communication; or

5.2 receipt can be presumed if the written communication was sent in accordance with paragraphs 3 and 4 of this Article.

(6) If a statement of claim against multiple respondents cannot be transmitted to all respondents, upon request of the claimant the arbitration shall proceed only against those respondents that received the statement of claim. Upon request of the claimant the statement of claim against the remaining respondents shall be addressed in a separate proceeding.

(7) Time limits shall start to run on the day following the day of receipt (paragraph 5) of the respective written communication triggering the commencement of the time limit. If this day is an official holiday or a non-business day at the place of receipt, the time limit shall start to run on the next business day. Official holidays or non-business days falling during a time period shall not interrupt the continuation or extend the time limit. If the last day of the time limit is an official holiday or a non-business day at the place of receipt, the time limit shall end on the next business day.

(8) A time limit relating to any written communication is satisfied if it is sent in the manner stipulated in paragraphs 3 and 4 of this Article on the last day of the time limit. Time limits may be extended where sufficient grounds for such extension are considered to exist.

(9) After termination of the proceedings (Article 34), the Secretariat may dispose of the entire file of a case, with the exception of decisions (Article 35).

REPRESENTATIVES

Article 13

In the proceedings before the arbitral tribunal, the parties may be represented or advised by persons of their choice. The Secretary General or the arbitral tribunal may at any time request evidence that the representative has the authority to represent the party.

THIRD-PARTY FUNDING

Article 13a

(1) A party shall disclose the existence of any third-party funding and the identity of the third-party funder in its statement of claim or its answer to the statement of claim, or immediately upon concluding a third-party funding arrangement.

(2) If a party discloses third-party funding prior to the constitution of the arbitral tribunal, the Secretary General shall inform any arbitrator nominated for appointment or already appointed of such disclosure for purposes of completing the arbitrator declaration (Article 16 paragraph 3).

JOINDER OF THIRD PARTIES AND CONSOLIDATION

JOINDER OF THIRD PARTIES

Article 14

(1) The joinder of a third party in an arbitration, as well as the manner of such joinder, shall be decided by the arbitral tribunal upon the request of a party or a third party after hearing all parties and the third party to be joined as well as after considering all relevant circumstances.

(2) The request for joinder shall contain the following information:

2.1 the full name, address, including electronic mail address, and other contact details of the third party;

2.2 the grounds upon which the request for joinder is based; and

2.3 the requested manner of joinder of the third party.

(3) If a request for joinder of a third party is made with a statement of claim,

3.1 it shall be submitted to the Secretariat. The provisions of Article 7 et seqq shall apply by analogy. The Secretary General shall transmit the statement of claim to the third party to be joined as well as to the other parties for comments;

3.2 the third party may participate in the constitution of the arbitral tribunal pursuant to Article 18 if no arbitrator has yet been appointed; and

3.3 the arbitral tribunal shall return the statement of claim with a request for joinder of a third party to the Secretariat to be treated in separate proceedings if the arbitral tribunal refuses, in accordance with paragraph 1, to grant a request for joinder of a third party made with a statement of claim3 In this case, the Board may

revoke any confirmed nomination or appointment of arbitrators and order the renewed constitution of the arbitral tribunal or arbitral tribunals in accordance with Article 17 et seqq, if the third party participated in the constitution of the arbitral tribunal in accordance with paragraph 3.2.

CONSOLIDATION

Article 15

(1) Upon a party's request, two or more arbitral proceedings may be consolidated if:

1.1 the parties agree to the consolidation; or

1.2 the same arbitrator(s) was/were nominated or appointed;

and the place of arbitration is the same.

(2) The Board shall decide on a request for consolidation after hearing the parties and the arbitrators already appointed. The Board shall consider all relevant circumstances in its decision, including the compatibility of the arbitration agreements and the respective stage of the arbitral proceedings.

ARBITRAL TRIBUNAL

GENERAL PROVISIONS

Article 16

(1) The parties shall be free to designate the persons they wish to nominate as arbitrators Any person with full legal capacity may act as arbitrator, provided the parties have not agreed upon any particular additional qualification requirements. The arbitrators have a contractual relationship with the parties and shall render their services to the parties.

(2) The arbitrators shall perform their mandate independently of the parties, impartially and to the best of their knowledge and ability, and shall not be bound by any instruction. They have the duty to keep confidential all information acquired in the course of their duties.

(3) A person who intends to accept an appointment as an arbitrator shall, before his appointment, sign and submit to the Secretary General a declaration in the form made available by VIAC confirming his (i) impartiality and independence; (ii) availability; (iii) qualification; (iv) acceptance of office; and (v) submission to the Vienna Rules.

(4) An arbitrator shall disclose by written declaration all circumstances that could give rise to doubts as to his impartiality, independence or availability or that conflict with the agreement of the parties. The duty to immediately disclose such circumstances continues to apply throughout the arbitration.

(5) Members of the Board may be nominated as arbitrators by the parties or co-arbitrators, but shall not be appointed as arbitrators by the Board.

(6) The conduct of any or all arbitrators (Article 28 paragraph 1) may be taken into consideration by the Secretary General in determining the arbitrators' fees (Article 44 paragraphs 2, 8 and 11).

CONSTITUTION OF THE ARBITRAL TRIBUNAL

Article 17

(1) The parties may agree whether the arbitral proceedings will be conducted by a sole arbitrator or a panel of three arbitrators. The parties may also agree on the manner of appointment of the arbitrators. In the absence of an agreement, paragraphs 2 to 6 of this Article shall apply.

(2) Absent agreement on the number of arbitrators, the Board shall determine whether the dispute will be decided by a sole arbitrator or by a panel of three arbitrators. In so doing, the Board shall take into consideration the complexity of the case, the amount in dispute, and the parties' interest in an expeditious and cost-efficient decision.

(3) If the dispute is to be resolved by a sole arbitrator, the parties shall jointly nominate a sole arbitrator and indicate the arbitrator's name, address, including electronic mail address, and other contact details within 30 days after receiving the Secretary General's request. If such nomination is not made within this time period, the sole arbitrator shall be appointed by the Board.

(4) If the dispute is to be resolved by a panel of arbitrators, each party shall nominate an arbitrator (the claimant in the statement of claim and the respondent in the answer to the statement of claim). If a party fails to do so, the Secretary General shall request that party to submit the name, ad-

dress, including electronic mail address, and other contact details of its nominee within 30 days after receiving the request. If such nomination is not made within this time period, that arbitrator shall be appointed by the Board.

(5) If the dispute is to be resolved by a panel of arbitrators, the co-arbitrators shall jointly nominate a chairperson and indicate his name, address, including electronic mail address, and other contact details within 30 days after receiving the Secretary General's request. If such nomination is not made within this time period, the chairperson shall be appointed by the Board.

(6) The parties are bound by their nomination of arbitrator once the nominated arbitrator has been confirmed by the Secretary General or the Board (Article 19).

CONSTITUTION OF THE ARBITRAL TRIBUNAL IN MULTI-PARTY PROCEEDINGS

Article 18

(1) The constitution of the arbitral tribunal in multi-party proceedings shall be conducted in accordance with Article 17, with the following additional provisions:

(2) If the dispute is to be resolved by a panel of arbitrators, the side of claimant and the side of respondent shall each jointly nominate an arbitrator.

(3) Participation of a party in the joint nomination of an arbitrator shall not constitute consent to multi-party arbitration. If the admissibility of a multi-party arbitration is disputed, the arbitral tribunal shall decide thereon upon request after hearing all parties as well as after considering all relevant circumstances.

(4) If pursuant to paragraph 2 of this Article a joint arbitrator is not nominated within the set time period, the Board shall appoint the arbitrator for the defaulting party/parties. In exceptional cases, after granting the parties the opportunity to comment, the Board may revoke appointments already made and appoint new co-arbitrators or all arbitrators.

CONFIRMATION OF THE NOMINATION

Article 19

(1) After an arbitrator has been nominated, the Secretary General shall obtain the arbitrator's declarations pursuant to Article 16 paragraphs 3 and 4. The Secretary General shall forward a copy of these statements to the parties. The Secretary General shall confirm the nominated arbitrator if no doubts exist as to the impartiality and independence of the arbitrator and the ability to carry out the mandate. The Secretary General shall inform the Board of such confirmation at the subsequent meeting of the Board.

(2) If deemed necessary by the Secretary General, the Board shall decide whether to confirm a nominated arbitrator. Prior to the decision of the Board, the Secretary General may request comments from the arbitrator to be confirmed and from the parties. All comments shall be communicated to the parties and the arbitrator.

(3) Upon confirmation the nominated arbitrator shall be deemed appointed.

(4) If the Secretary General or the Board refuses to confirm a nominated arbitrator, the Secretary General shall request the party/parties entitled to nominate the arbitrator, or the co-arbitrators to nominate a different arbitrator or chairperson within 30 days. Articles 16 to 18 shall apply by analogy. If the Secretary General or the Board refuses to confirm the newly nominated arbitrator, the right to nominate shall lapse and the Board shall appoint the arbitrator.

CHALLENGE OF ARBITRATORS

Article 20

(1) After his appointment, an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if the arbitrator does not fulfil the qualifications agreed by the parties. A party may challenge the arbitrator whom it nominated, or in whose nomination it has participated, only for reasons of which the party became aware after the nomination or its participation in the nomination.

(2) A party's challenge of an appointed arbitrator shall be submitted to the Secretariat within 15 days from the date the party making the challenge became aware of the grounds for the challenge. The challenge shall specify the grounds for the challenge and include corroborating materials to substantiate the challenge.

(3) If the challenged arbitrator does not resign, the Board shall rule on the challenge. Before the Board makes a decision, the Secretary General shall request comments from the challenged arbitrator and the other party/parties. The Secretary General may also request comments from other persons. All comments shall be communicated to the parties and the arbitrators.

(4) The arbitral tribunal, including the challenged arbitrator, may continue the arbitration while the challenge is pending. The arbitral tribunal may not issue an award until after the Board has ruled on the challenge.

PREMATURE TERMINATION OF THE ARBITRATOR'S MANDATE

Article 21

(1) The mandate of an arbitrator terminates prematurely if:

1.1 the parties so agree; or

1.2 the arbitrator resigns; or

1.3 the arbitrator dies; or

1.4 the arbitrator was successfully challenged; or

1.5 the arbitrator is removed from office by the Board.

(2) Either party may request that an arbitrator be removed from office if the arbitrator is prevented from performing his duties more than temporarily or otherwise fails to perform his duties, including also the duty to proceed without any undue delay. The party shall submit the request to the Secretariat. If it is apparent to the Board that any incapacity is not merely temporary, or that the arbitrator is not performing his duties, the Board may remove an arbitrator from office even without a party's request. The Board shall decide on the removal after granting the parties and the affected arbitrator the opportunity to comment.

EFFECTS OF THE PREMATURE TERMINATION OF THE ARBITRATOR'S MANDATE

Article 22

(1) If an arbitrator's mandate terminates prematurely (Article 21), the arbitrator shall be replaced. The appointment of a substitute arbitrator shall be made in accordance with the appointment procedure agreed by the parties. Absent any such agreement, the Secretary General shall request that

1.1 the parties, in the case of a sole arbitrator; or,

1.2 the remaining co-arbitrators, in the case of the chairperson of a tribunal; or,

1.3 the nominating party or the party on whose behalf the arbitrator was appointed, when the arbitrator was nominated by a party or was appointed on behalf of a party;

nominate a substitute arbitrator within 30 days – in the cases addressed by paragraphs 1.1 and 1.2 of this Article jointly – and indicate the nominee's name, address, including electronic mail address, and other contact details. Articles 16 to 18 apply by analogy. If such nomination is not made within this time period, the Board shall appoint the substitute arbitrator. If a substitute arbitrator is successfully challenged (Article 21 paragraph 1.4), the right to nominate a substitute arbitrator shall lapse and the Board shall appoint the substitute arbitrator.

(2) If an arbitrator's mandate terminates prematurely pursuant to Article 21, the new arbitral tribunal shall determine, after requesting comments from the parties, whether and to what extent previous stages of the arbitration shall be repeated.

(3) The cost implications of the premature termination of the arbitrator's mandate and of the appointment of a substitute arbitrator shall be based on Article 42 paragraph 12 and Article 44 paragraph 11.

CHALLENGE OF EXPERTS

CHALLENGE OF EXPERTS

Article 23

Article 20 paragraphs 1 and 2 shall apply by analogy to the challenge of experts appointed by the arbitral tribunal. The arbitral tribunal shall decide the challenge.

JURISDICTION OF THE ARBITRAL TRIBUNAL

JURISDICTION OF THE ARBITRAL TRIBUNAL

Article 24

(1) A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than the first pleading on the merits. A party is not precluded from raising such an objection by the fact that it has nominated an arbitrator pursuant to Article 17 or has participated in the nomination of an arbitrator pursuant to Article 18. An objection that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to exceed the scope of its authority is raised during the arbitration. A later objection shall be barred in both cases; however, if the arbitral tribunal considers the delay to be sufficiently excused, it may admit a later objection.

(2) The arbitral tribunal shall decide on its own jurisdiction. The decision on jurisdiction may be made together with the decision on the merits or in a separate award. Where the arbitral tribunal declines jurisdiction, it shall, upon the request of one of the parties, decide on the parties' cost obligations.

PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL

PLACE OF ARBITRATION

Article 25

(1) The parties are free to agree on the place of arbitration. Absent party agreement, the place of arbitration shall be Vienna.

(2) The arbitral tribunal may deliberate or take procedural actions at any location it deems appropriate, without thereby resulting in a change of the place of arbitration.

LANGUAGE OF THE PROCEEDINGS

Article 26

Absent party agreement on the language(s) of the arbitration, immediately after transmission of the file, the arbitral tribunal shall determine the language(s) having due regard to all circumstances, including the language of the contract.

APPLICABLE LAW, AMIABLE COMPOSITEUR

Article 27

(1) The arbitral tribunal shall decide the dispute in accordance with the law or rules of law agreed upon by the parties. Unless the parties have expressly agreed otherwise, any agreement as to a given national law or national legal system shall be construed as a direct reference to that national substantive law and not to the national conflict-of-laws rules.

(2) If the parties have not determined the applicable law or rules of law, the arbitral tribunal shall apply the applicable law or rules of law which it considers appropriate.

(3) The arbitral tribunal shall decide ex aequo et bono or as amiable compositeur only in cases where the parties have expressly authorized it to do so.

CONDUCT OF THE ARBITRATION

Article 28

(1) The arbitral tribunal shall conduct the arbitration in accordance with the Vienna Rules and the agreement of the parties in an efficient and cost-effective manner, but otherwise at its own discretion. The arbitral tribunal shall treat the parties fairly. The parties shall be granted the right to be heard at every stage of the proceedings.

(2) Upon prior notice, the arbitral tribunal may inter alia consider pleadings, the submission of evidence, and requests for the taking of evidence to be admissible only up to a certain point in time of the proceedings.

(3) At any stage of the proceedings, the arbitral tribunal is entitled to facilitate the parties' endeavors to reach a settlement.

ESTABLISHING THE FACTS OF THE CASE

Article 29

(1) If the arbitral tribunal considers it necessary, it may on its own initiative collect evidence, question parties or witnesses, request the parties to submit evidence, and call experts. Article 43 shall apply if costs are incurred as a result of the taking of evidence and, in particular, the appointment of experts.

(2) The arbitration shall proceed notwithstanding the failure of any party to participate.

ORAL HEARING

Article 30

(1) Unless the parties have agreed otherwise, the arbitral tribunal shall decide whether the proceedings should be conducted orally or in writing. If the parties have not excluded an oral hearing, upon any party's request the arbitral tribunal shall hold such a hearing at an appropriate stage of the proceedings. Having due regard to the views of the parties and the specific circumstances of the case, the arbitral tribunal may decide to hold an oral hearing in person or by other means. The parties shall in any case have the opportunity to acknowledge and comment on the requests and pleadings of the other parties and on the result of the evidentiary proceedings.

(2) The date of the oral hearing shall be fixed by the sole arbitrator or the chairperson. Hearings shall not be open to the public. The sole arbitrator or the chairperson shall prepare and sign minutes of the hearing, which shall contain at a minimum a summary of the hearing and its results.

DUTY TO OBJECT

Article 31

If a party has knowledge of a violation by the arbitral tribunal of a provision of the Vienna Rules or other provisions applicable to the proceedings, it shall immediately file an objection with the arbitral tribunal, failing which the party shall be deemed to have waived its right to object.

CLOSURE OF THE PROCEEDINGS AND TIME FOR RENDERING THE AWARD

Article 32

(1) As soon as the arbitral tribunal is convinced that the parties have had sufficient opportunity to make submissions and to offer evidence, the arbitral tribunal shall declare the proceedings closed as to the matters to be decided in the award. The arbitral tribunal may reopen the proceedings at any time.

(2) The award shall be rendered no later than three months after the last hearing concerning matters to be decided in an award or the filing of the last authorized submission concerning such matters, whatever is the later. The Secretary General may extend the time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative. Exceeding the time limit for the award will not render the arbitration agreement invalid or deprive the arbitral tribunal of its jurisdiction.

INTERIM AND CONSERVATORY MEASURES /SECURITY FOR COSTS

Article 33

(1) Unless the parties have agreed otherwise, as soon as the file has been transmitted to the arbitral tribunal (Article 11), the arbitral tribunal may, at the request of a party, order interim or conservatory measures against another party as well as amend, suspend or revoke any such measures. The other parties shall be heard before the arbitral tribunal renders any decision on interim or conservatory measures. The arbitral tribunal may require any party to provide appropriate security in connection with such a measure. The parties shall comply with such orders, irrespective of whether they are enforceable before national courts.

(2) Any orders for interim or conservatory measures pursuant to this Article shall be in writing. In an arbitration with more than one arbitrator, the signature of the chairperson shall suffice. If the chairperson is hindered from acting, the signature of another arbitrator shall suffice, provided the arbitrator signing the order records the reasons for the absence of the chairperson's signature.

(3) Unless the parties have agreed otherwise, orders for interim or conservatory measures shall state the reasons upon which they are based. The order shall identify the date on which it was issued and the place of arbitration.

(4) Orders for interim and conservatory measures shall be retained in the same manner as awards (Article 36 paragraph 5).

(5) The provisions of paragraphs 1 to 4 of this Article do not prevent the parties from applying to any competent national authority for interim or conservatory A request to a national authority to order such measures or to enforce such measures already ordered by the arbitral tribunal shall not constitute an infringement or waiver of the arbitration agreement and shall not affect the powers of the arbitral tribunal. The parties shall immediately inform the Secretariat and the arbitral tribunal of any such request as well as of all measures ordered by the national authority.

(6) The arbitral tribunal may, at the request of a party, order any party asserting a claim or counterclaim to provide security for costs, if the requesting party shows cause that the recoverability of a potential claim for costs is, with a sufficient degree of probability, at risk. When deciding on a request for security for costs, the arbitral tribunal shall give all parties the opportunity to present their views.

(7) If a party fails to comply with an order by the arbitral tribunal for security for costs, the arbitral tribunal may, upon request, suspend in whole or in part, or terminate the proceedings (Article 34 paragraph 2.4).

MEANS OF TERMINATION OF THE PROCEEDINGS

Article 34

Arbitral proceedings are terminated:

(1) by the rendering of the final award (Articles 36 and 37 paragraph 1); or

(2) by an order of the arbitral tribunal, if

2.1 the claimant withdraws its statement of claim, unless the respondent objects and a legitimate interest of the respondent in obtaining a final resolution of the dispute exists;

2.2 the parties agree to the termination of the arbitration and communicate this agreement to the arbitral tribunal and to the Secretary General;

2.3 the continuation of the proceedings has become impossible, in particular because the parties to the arbitration do not pursue the arbitration further despite a written order from the arbitral tribunal, which refers to the possibility of terminating the arbitration;

2.4 a party fails to comply with an order by the arbitral tribunal for security for costs (Article 33 paragraph 7); or

(3) by a declaration of the Secretary General

3.1 for failure to comply with an order to remedy (Article 7 paragraph 3) or a payment order (Article 10 paragraph 4 and Article 42 paragraphs 11 and 12);

3.2 in case of paragraphs 2.1 to 2.3 if the file has not yet been transmitted to the arbitral tribunal.

DECISIONS OF THE ARBITRAL TRIBUNAL

Article 35

(1) Every award and every other decision of the arbitral tribunal requires a majority ruling of its panel members. If the arbitrators cannot form a majority, the chairperson shall decide.

(2) The chairperson may decide questions of procedure alone if so authorized by the co-arbitrators.

ARBITRAL AWARD

Article 36

(1) Awards shall be in writing. Awards shall state the reasons on which they are based unless all parties have agreed in writing or in the oral hearing that the award may exclude the reasons.

(2) The award shall identify the date on which it was issued and the place of arbitration (Article 25).

(3) All original copies of an award shall be signed by all arbitrators. The signature of the majority of the arbitrators shall suffice if the award states that one of the arbitrators refused to sign or was prevented from signing by an impediment that could not be overcome within a reasonable period of time. If the award is a majority award and not a unanimous award, this shall be stated upon request of the dissenting arbitrator.

(4) All original copies of the award shall be signed by the Secretary General and bear the VIAC stamp, which shall confirm that it is an award of VIAC, rendered and signed by one or more arbitrators appointed under the Vienna Rules.

(5) The Secretary General shall transmit the award to the parties in hardcopy form. If it is not possible or feasible to send the award in hardcopy form within a reasonable time, or if the parties so agree, the Secretariat may send a copy of the award in electronic form. In this case a copy of the award in hardcopy form may be sent at a later stage. Article 12 paragraphs 3, 4 and 5 apply. The Secretariat shall retain an original copy of the award and the documentation of proof of sending.

(6) Upon request of a party, the sole arbitrator or chairperson (or in case he is prevented from acting, another arbitrator) or, in case they are prevented from doing so, the Secretary General shall confirm that the award is final and binding on all original copies.

(7) By agreeing to the Vienna Rules, the parties undertake to comply with the terms of the award.

AWARD ON AGREED TERMS AND RECORDED SETTLEMENT

Article 37

(1) Upon request of the parties, the arbitral tribunal may render an award (Article 36) on agreed terms reflecting the content of a settlement which they have reached.

(2) The parties may request that the content of a settlement which they have reached be recorded by the arbitral tribunal. In this case, the proceedings are terminated in accordance with Article 34 paragraph 2.2.

DECISION ON COSTS

Article 38

(1) When the proceedings are terminated, upon request of a party, the arbitral tribunal shall set forth, in the final

award or by separate award, the costs of the arbitration as determined by the Secretary General pursuant to Article 44 paragraph 1.1 and determine the amount of the appropriate costs of the parties pursuant to Article 44 paragraph 1.2, as well as other additional expenses pursuant to Article 44 paragraph 1.3.

(2) The arbitral tribunal shall also establish who will bear the costs of the proceedings or the apportionment of these costs. Unless the parties have agreed otherwise, the arbitral tribunal shall decide on the allocation of costs according to its own discretion. The conduct of any or all parties as well as their representatives (Article 13), and in particular their contribution to the conduct of efficient and cost-effective proceedings, may be taken into consideration by the arbitral tribunal in its decision on costs according to this Article.

(3) Notwithstanding paragraphs 1 and 2, upon request by a party, the arbitral tribunal may at any stage during the arbitral proceedings make decisions on costs pursuant to Article 44 paragraphs 1.2 and 1.3 and order payment.

CORRECTION, CLARIFICATION AND SUPPLEMENTATION OF THE ARBITRAL AWARD

Article 39

(1) Within 30 days of receipt of the award, any party may file the following applications with the Secretariat for the arbitral tribunal:

1.1 to correct any computational, typographical, printing or similar errors in the award;

1.2 to clarify specific parts of the award;

1.3 to render an additional award on claims made in the arbitration but not resolved in the award.

(2) The arbitral tribunal shall decide on such an application. The other parties shall be heard before the arbitral tribunal makes its decision. The arbitral tribunal shall set a time limit for comments, which should not exceed 30 days. The Secretary General may determine an advance on costs to cover additional expenses and fees of the arbitral tribunal and administrative fees (Article 42 paragraph 12). The additional arbitrators' fees and additional administrative fees are determined by the Secretary General according to his own discretion.

(3) Upon its own initiative, the arbitral tribunal may issue corrections pursuant to paragraph 1.1 or supplementations pursuant to paragraph 1.3 of this Article within 30 days of the date of the award.

(4) Article 36 applies to the supplementation of the award. Corrections and clarifications shall be issued in the form of an addendum and shall constitute an integral part of the arbitral award.

REMISSION TO THE ARBITRAL TRIBUNAL

Article 40

When a national court remits proceedings to the arbitral tribunal, the provisions of the Vienna Rules on the arbitral proceedings shall apply by analogy. The Secretary General and the Board may take any measures necessary to enable the arbitral tribunal to comply with the requirements of the remission. The Secretary General may determine an advance on costs to cover additional expenses and fees of the arbitral tribunal and administrative fees (Article 42 paragraph 12). The additional arbitrators' fees and additional administrative fees are determined by the Secretary General according to his own discretion.

PUBLICATION OF AWARDS

Article 41

The Board and the Secretary General may publish anonymized summaries or extracts of awards in legal journals or VIAC's own publications, unless a party has objected to publication within 30 days upon receipt of the award.

COSTS

ADVANCE ON COSTS

Article 42

(1) The Secretary General shall fix the advance on costs for VIAC's prospective administrative fees, the prospective arbitrators' fees and the prospective expenses, including any applicable value-added tax, separately for claims and counterclaims.

(2) Claims raised by way of set-off (Article 44 paragraph 6) shall – for the purpose of calculating the advance on costs – be treated as separate claims to the extent that these claims may require the arbitral tribunal to consider additional matters.

(3) For requests for joinder (Article 14), the Secretary General may fix separate advances on costs (paragraph 1) having regard to the circumstances of the case.

(4) The advance on costs shall be paid in equal shares by the parties prior to the transmission of the file to the arbi-

tral tribunal within 30 days upon receipt of the request for payment.

(5) In multi-party proceedings, one half of the advance on costs shall be paid jointly by the claimants and one half jointly by the respondents, unless otherwise determined by the Secretary General having regard to the circumstances of the case.

(6) Where counterclaims or claims by way of set-off are submitted and separate advances on costs are fixed, the Secretary General may decide that each party shall pay the advance on costs corresponding to its claims.

(7) Where the Secretary General has previously fixed advances on costs pursuant to paragraph 1 to 3, these shall be replaced by the advances fixed pursuant to paragraphs 5 and 6 and the amount of any advance paid previously by any party shall be credited towards its share of advances as determined by the Secretary General pursuant to paragraphs 5 and 6.

(8) By agreeing to the Vienna Rules, the parties mutually undertake to bear their respective share of the advance on costs pursuant to this Article.

(9) If the advance on costs allocated to one party is not received or is not received in full within the time limit specified, the Secretary General shall inform the other party/parties and request payment of the outstanding amount within 30 days upon receipt of the request. This shall not affect the obligation of the non-paying party to bear its share of the advance on costs pursuant to this Article.

(10) If a party fails to fulfil its share of the payment obligations pursuant to this Article, and if the other party/parties pay(s) the respective share pursuant to paragraph 9 of this Article, upon the paying party's/parties' request and to the extent it finds that it has jurisdiction over the dispute the arbitral tribunal may order the non-paying party, by an award or other appropriate form, to reimburse the paying party/parties for the share accruing on it/them. This shall not affect the arbitral tribunal's authority and obligation to determine the final allocation of costs pursuant to Article 38.

(11) In principle, the arbitral tribunal shall only address the claims or counterclaims, for which the advance on costs has been paid in full. If a payment is not made within the deadline set by the Secretary General, the arbitral tribunal may suspend the arbitral proceedings in whole or in part, or the Secretary General may terminate the arbitral proceedings (Article 34 paragraph 3) with respect to the relevant claims. This shall not prevent the parties from raising the same claims at a later time in another proceeding.

(12) If an additional advance on costs is necessary and determined accordingly by the Secretary General, the procedure as outlined in paragraphs 1 to 11 of this Article shall apply. Until payment of the additional advance on costs, in principle, the arbitral tribunal shall not address the claims that led to the increase or additional advance on costs. If a payment is not made within the deadline set by the Secretary General, the arbitral tribunal may suspend the arbitral proceedings in whole or in part, or the Secretary General may terminate the arbitral proceedings (Article 34 paragraph 3).

ADVANCE ON COSTS FOR ADDITIONAL PROCEDURAL COSTS

Article 43

(1) If the arbitral tribunal considers necessary certain procedural steps that would have cost implications, such as the appointment of experts, interpreters, or translators, a verbatim transcript of the proceedings, a site visit, or relocation of the hearing, then the arbitral tribunal shall notify the Secretary General and arrange for these prospective costs to be covered.

(2) The arbitral tribunal may undertake the procedural steps provided for in paragraph 1 of this Article only once the prospective costs are sufficiently covered.

(3) The arbitral tribunal shall decide which consequences for the proceedings shall arise, if any, from a failure to pay a required advance on costs pursuant to this Article.

(4) All orders related to the procedural steps mentioned in paragraph 1 of this Article shall be undertaken by the arbitral tribunal for and on the account of the parties.

COMPOSITION AND CALCULATION OF THE PROCEDURAL COSTS

Article 44

(1) The costs of the arbitration consist of:

1.1 the administrative fees of VIAC, the arbitrators' fees and the reasonable expenses (such as arbitrators' or tribunal secretary's travel and subsistence costs, costs for

sending of communications, rent, court reporter fees), including any applicable value-added tax; as well as

1.2 the parties' costs, i.e. the reasonable expenses of the parties for their legal representation; and

1.3 other expenses related to the arbitration, in particular those listed in Article 43 paragraph 1.

(2) The Secretary General shall calculate the administrative fees and the arbitrators' fees on the basis of the schedule of fees (Annex 3) according to the amount in dispute and determine these fees together with the expenses at the end of the proceedings (paragraph 1.1 of this Article). Prior to termination of the arbitral proceedings, the Secretary General may make payments on account to the arbitrators in consideration of the stage of the proceedings. The arbitral tribunal shall determine and fix the costs and other expenses outlined in paragraphs 1.2 and 1.3 of this Article in the award (Article 38).

(3) In fixing the amount in dispute, the Secretary General may deviate from the parties' determination if the parties have made only a partial claim or if a party has clearly undervalued its claim or assigned no value to it.

(4) If more than two parties are involved in an arbitration, the amount of administrative fees and arbitrators' fees listed in Annex 3 shall be increased by 10 percent for each additional party, up to a maximum increase of 50 percent. This increased amount will then be the basis for a further increase or decrease according to paragraph 8 of this Article.

(5) For counterclaims (Article 9), the Secretary General shall calculate and determine the administrative fees and arbitrators' fees separately.

(6) For claims raised by way of set-off against the principal claims, the Secretary General may calculate and determine the administrative and arbitrators' fees separately to the extent that these claims have required the arbitral tribunal to consider additional matters.

(7) For requests for joinder of third parties (Article 14), the Secretary General may calculate and determine the administrative fees and arbitrators' fees separately, having regard to the circumstances of the case.

(8) The arbitrators' fees listed in Annex 3 apply to sole arbitrators. The total fee for a panel of arbitrators is two-and-a-half times the rate of a sole arbitrator. The Secretary General may increase the arbitrators' fees according to his own discretion by a maximum total of 40 percent vis-à-vis the schedule of fees (Annex 3), in particular for especially complex cases or for especially efficient conduct of proceedings; conversely, the Secretary General may decrease the arbitrators' fees by a maximum total of 40 percent, in particular for inefficient conduct of proceedings.

(9) The fees listed in Annex 3 comprise all partial and interim decisions such as awards on jurisdiction, partial awards, decisions on the challenge of experts, orders for conservatory or interim measures, other decisions including additional procedural steps in setting aside proceedings, and procedural orders.

(10) A reduction in the amount in dispute shall be taken into consideration in the calculation of the administrative and arbitrators' fees only if the reduction was made before transmission of the file to the arbitral tribunal.

(11) If the proceedings or the arbitrator's mandate are prematurely terminated, the Secretary General may reduce the administrative and the arbitrators' fees according to his own discretion in consideration of the stage of the proceedings at the time of termination. If arbitral proceedings under the Vienna Rules are commenced before, during or after proceedings under the Vienna Mediation Rules between the same parties and concerning the same subject matter, the Secretary General may apply this paragraph by analogy for the calculation of the arbitrators' fees.

(12) If proceedings under the Vienna Mediation Rules are commenced before, during, or after arbitral proceedings under the Vienna Rules between the same parties and concerning the same subject matter, the administrative fees of the preceding proceedings shall be deducted from the administrative fees in the subsequently commenced proceedings.

(13) The fees listed in Annex 3 do not include value added tax, which may apply to the arbitrator's fees. Upon accepting their mandate, those arbitrators whose fees are subject to value added tax shall inform the Secretary General of the prospective amount of value added tax.

MISCELLANEOUS PROVISIONS

EXPEDITED PROCEEDINGS

Article 45

(1) The supplementary rules on expedited proceedings apply if the parties have expressly included them in their arbitration agreement or if the parties subsequently agree on their application. Such party agreement on the conduct of expedited proceedings shall occur no later than the submission of the answer to the statement of claim.

(2) Unless the rules on expedited proceedings provide otherwise, the general provisions of the Vienna Rules shall apply with the following deviations:

(3) The time limit for payment of the advance on costs pursuant to Article 42 shall be reduced to 15 days.

(4) Counterclaims or set-off-claims are admissible only until the expiry of the time limit for submission of the answer to the statement of claim.

(5) Expedited proceedings shall be conducted by a sole arbitrator, unless the parties have agreed on a panel of arbitrators.

(6) If the dispute is to be decided by a sole arbitrator, the parties shall jointly nominate a sole arbitrator within 15 days of receiving such a request from the Secretary General. If the parties fail to nominate the sole arbitrator within this time limit, the Board shall appoint the sole arbitrator.

(7) Where the dispute is to be decided by a panel of arbitrators, the claimant shall nominate an arbitrator in its statement of claim. The respondent shall nominate an arbitrator within 15 days of receipt of a request from the Secretary General. The arbitrators nominated by the parties shall nominate a chairperson within 15 days of receipt of a request from the Secretary General. If an arbitrator is not nominated within this time period, the Board shall appoint the arbitrator.

(8) The arbitral tribunal shall render a final award within six months of transmission of the file, unless the proceedings are prematurely terminated. The Secretary General may extend the time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative. Exceeding the time limit for the award will not render the arbitration agreement invalid or deprive the arbitral tribunal of its jurisdiction.

(9) The arbitration shall be administered in such a manner that the arbitral tribunal can render a final award within six months after the transmission of the file. Unless the arbitral tribunal determines otherwise, the following provisions shall apply:

9.1 After the submission of the statement of claim and the answer to the statement of claim, the parties will exchange only one further written submission.

9.2 The parties shall make all factual arguments in their written submissions and all written evidence shall be attached to the written submissions.

9.3 To the extent requested by a party or deemed necessary by the arbitral tribunal, the arbitral tribunal shall hold a single oral hearing, in which all evidence will be taken and all legal issues addressed.

9.4 No written submissions shall be filed after the oral hearing.

DISCLAIMER AND WAIVER OF IMMUNITY

Article 46

(1) The liability of the arbitrator, the tribunal secretary, the Secretary General, the Deputy Secretary General, the Board and its members, as well as the Austrian Federal Economic Chamber and its employees for any act or omission in relation to the arbitration is excluded, unless such act or omission constitutes willful misconduct or gross negligence.

(2) By agreeing to submit a dispute to arbitration pursuant to the Vienna Rules, a party shall be deemed to have waived any right of immunity from jurisdiction in respect of proceedings relating to the arbitration to which such party might otherwise be entitled. A waiver of immunity relating to the enforcement of an arbitral award must be expressed separately.

TRANSITIONAL PROVISION

Article 47

This version of the Vienna Rules, which enters into force on 1 July 2021, shall apply to all proceedings that commence after 30 June 2021.

EDITOR'S NOTE: For information on fees, please go to Cost Calculator - Vienna International Arbitral Centre (viac.eu)

Chapter 39

World Intellectual Property Organization (WIPO) Arbitration and Mediation Center[1] (2021)

WIPO Arbitration and Mediation Center

The WIPO Arbitration and Mediation Center ('WIPO Center') was established in 1994 as part of the World Intellectual Property Organization ('WIPO'), a specialized agency of the United Nations with 193 member states dedicated to developing a balanced and accessible international intellectual property ('IP') system. With offices in Geneva and Singapore, the role of the WIPO Center is to enable private parties to efficiently resolve their domestic or cross-border IP and technology disputes out of court through mediation, arbitration and expert determination.

Developed by leading experts in cross-border dispute settlement, the alternative dispute resolution ('ADR') procedures offered by the WIPO Center are recognized as particularly appropriate for cross-border IP and technology disputes. Effective July 1, 2021, the updated WIPO ADR Rules provide further guidance on the online conduct of WIPO proceedings. This concerns both the electronic filing of new WIPO ADR cases, as well as the electronic submission of any case communication. Since early 2020, WIPO case parties have relied almost exclusively on virtual meetings and hearings, including an increase in their use of the WIPO eADR online case management platform. The updated WIPO ADR Rules further introduce certain disclosure requirements concerning the identity of third-party funders, at an early stage of the proceedings.

The WIPO Center also is the leading provider of time- and cost-efficient mechanisms to resolve internet domain name disputes, without the need for court litigation. This service includes the WIPO-initiated Uniform Domain Name Dispute Resolution Policy ('UDRP'), under which the WIPO Center has processed over 54,000 cases.

The WIPO Center has administered over 850 mediation, arbitration and expert determination cases. These cases have involved disputes on a wide range of IP and technology matters such as art, copyright, information technology, joint venture, patent infringements and licenses, research and development ('R&D') agreements, technology transfer, software development and licensing, publishing and digital copyright, trademark issues, distribution, franchising, sports and TV distribution rights. The WIPO ADR services have been used by multinational corporations, SMEs, artists, inventors, R&D centers, universities and collecting societies. Some 70% of WIPO cases are international in scope. Amounts in dispute have varied between 15,000 USD and one billion USD. The WIPO ADR procedures seek to create positive opportunities for party settlement. To date, 70% of WIPO Mediation cases and 33% of WIPO Arbitration cases have concluded in a settlement between the parties.

The WIPO Center also provides procedural advice to parties on the types of clauses to resolve future disputes for insertion in a contract, and to facilitate the submission of an existing dispute to WIPO ADR (WIPO Good Offices services). For this purpose, the WIPO Center makes available recommended mediation, arbitration, expedited arbitration, expert determination clauses and submission agreements which parties may use as basis for submitting their dispute to the WIPO Center, as well as an online Clause Generator.

The WIPO Center also develops operational and legal frameworks for tailored dispute resolution procedures. Such procedures may relate to disputes arising in a specific industry sector, such as art and cultural heritage, B2B data disputes, digital copyright and content, fashion, film and media, information and communication technology ('ICT') including disputes concerning the determination of fair, reasonable and non-discriminatory ('FRAND') licensing terms, R&D and technology transfer, life sciences, SMEs and trade fairs. In that capacity, the WIPO Center collaborates with relevant stakeholders from specific business sectors, and provides targeted adaptations of the standard WIPO Rules, specific model clauses and fees, as well as separate lists of neutrals with expertise in the concerned business area. The WIPO Center also collaborates with national IP offices to raise awareness of the advantages of ADR options to prevent and resolve IP and technology disputes.

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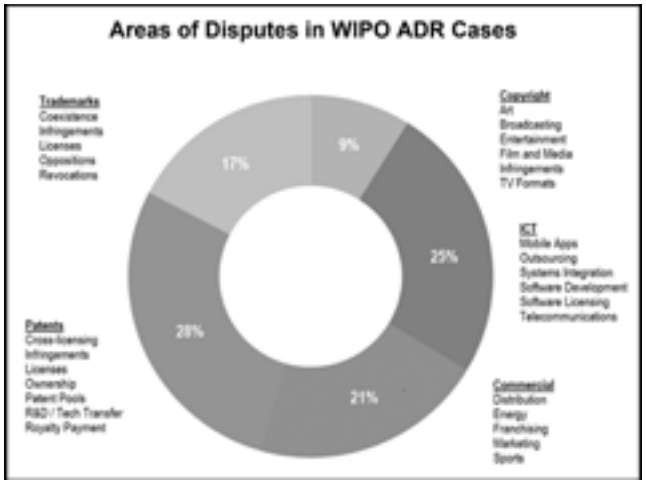

- **WIPO Arbitration Clause**

Future Disputes: WIPO Arbitration Clause

Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules. The arbitral tribunal shall consist of [a sole arbitrator] [three arbitrators]. The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute, controversy or claim shall be decided in accordance with the law of [specify jurisdiction].

Existing Disputes: WIPO Arbitration Submission Agreement

We, the undersigned parties, hereby agree that the following dispute shall be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules:

[brief description of the dispute]

The arbitral tribunal shall consist of [a sole arbitrator] [three arbitrators]. The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute shall be decided in accordance with the law of [specify jurisdiction].

- **WIPO Expedited Arbitration clause**

Future Disputes: WIPO Expedited Arbitration Clause

Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute, controversy or claim shall be decided in accordance with the law of [specify jurisdiction].

Existing Disputes: WIPO Expedited Arbitration Submission Agreement

We, the undersigned parties, hereby agree that the following dispute shall be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules:

[brief description of the dispute]

The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute shall be decided in accordance with the law of [specify jurisdiction].

- **WIPO Mediation Followed, in the Absence of a Settlement, by [Expedited] Arbitration Clause**

Future Disputes: WIPO Mediation Followed, in the Absence of a Settlement, by [Expedited] Arbitration Clause

Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be [specify place]. The language to be used in the mediation shall be [specify language].

If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within [60] [90] days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO [Expedited] Arbitration Rules. Alternatively, if, before the expiration of the said period of [60] [90] days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO [Expedited] Arbitration Rules. [The arbitral tribunal shall consist of [a sole arbitrator] [three arbitrators].]* The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The

dispute, controversy or claim referred to arbitration shall be decided in accordance with the law of [specify jurisdiction]. (* The WIPO Expedited Arbitration Rules provide that the arbitral tribunal shall consist of a sole arbitrator.)

Existing Disputes: WIPO Mediation Followed, in the Absence of a Settlement, by [Expedited] Arbitration Submission Clause

We, the undersigned parties, hereby agree to submit to mediation in accordance with the WIPO Mediation Rules the following dispute:

[brief description of the dispute]

The place of mediation shall be [specify place]. The language to be used in the mediation shall be [specify language].

We further agree that, if, and to the extent that, the dispute has not been settled pursuant to the mediation within [60] [90] days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO [Expedited] Arbitration Rules. Alternatively, if, before the expiration of the said period of [60] [90] days, either party fails to participate or to continue to participate in the mediation, the dispute shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO [Expedited] Arbitration Rules. [The arbitral tribunal shall consist of [a sole arbitrator] [three arbitrators].]* The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute referred to arbitration shall be decided in accordance with the law of [specify jurisdiction]. (* The WIPO Expedited Arbitration Rules provide that the arbitral tribunal shall consist of a sole arbitrator.)

WIPO ARBITRATION RULES

- **(Effective from July 1, 2021)**

Table of Contents

I. GENERAL PROVISIONS

Abbreviated Expressions

Article 1
In these Rules:

"Arbitration Agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them; an Arbitration Agreement may be in the form of an arbitration clause in a contract or in the form of a separate contract;

"Claimant" means the party initiating an arbitration;

"Respondent" means the party against which the arbitration is initiated, as named in the Request for Arbitration;

"Tribunal" includes a sole arbitrator or all the arbitrators where more than one is appointed;

"WIPO" means the World Intellectual Property Organization;

"Center" means the WIPO Arbitration and Mediation Center.

Words used in the singular include the plural and vice versa, as the context may require.

Scope of Application of Rules

Article 2

Where an Arbitration Agreement provides for arbitration under the WIPO Arbitration Rules, these Rules shall be deemed to form part of that Arbitration Agreement and the dispute shall be settled in accordance with these Rules, as in effect on the date of the commencement of the arbitration, unless the parties have agreed otherwise.

Article 3

(a) These Rules shall govern the arbitration, except that, where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

(b) The law applicable to the arbitration shall be determined in accordance with Article 61(b).

Notices and Periods of Time

Article 4

(a) Any notice or other communication that may or is required to be given under these Rules shall be in writing and shall be delivered by email or other means of electronic communication that provide a record thereof, unless a party decides to use also expedited postal or courier service.

(b) A party's last known residence or place of business shall be a valid address for the purpose of any notice or other communication in the absence of any notification of a change by that party. Communications may in any event be addressed to a party in the manner stipulated or, failing such a stipulation, according to the practice followed in the course of the dealings between the parties.

(c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day it is delivered in accordance with paragraphs (a) and (b) of this Article.

(d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched, in accordance with paragraphs (a) and (b) of this Article, prior to or on the day of the expiration of the time limit.

(e) For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice or other communication is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running

of the period of time are included in calculating the period.

(f) The parties may agree to reduce or extend the periods of time referred to in Articles 11, 15(b), 16(b), 17(b), 17(c), 18, 19(b)(iii), 41(a) and 42(a).

(g) The Center may, at the request of a party or on its own motion, extend the periods of time referred to in Articles 11, 15(b), 16(b), 17(b), 17(c), 18, 19(b)(iii), 69(d), 70(e) and 72(e).

Documents Required to be Submitted to the Center

Article 5

(a) Until the notification by the Center of the establishment of the Tribunal, any written statement, notice or other communication required or allowed under these Rules shall be submitted by a party to the Center and a copy thereof shall at the same time be transmitted by that party to the other party.

(b) Where a party decides to use expedited postal or courier service for the transmission of any written statement, notice or other communication so sent to the Center, it shall send it in a number of copies equal to the number required to provide one copy for each envisaged arbitrator and one for the Center.

(c) After the notification by the Center of the establishment of the Tribunal, any written statements, notices or other communications shall be submitted by a party directly to the Tribunal and a copy thereof shall at the same time be supplied by that party to the other party.

(d) The Tribunal shall send to the Center a copy of each order or other decision that it makes.

II. COMMENCEMENT OF THE ARBITRATION

Request for Arbitration

Article 6

The Claimant shall transmit the Request for Arbitration to the Center and to the Respondent.

Article 7

The date of commencement of the arbitration shall be the date on which the Request for Arbitration is received by the Center.

Article 8

The Center shall inform the Claimant and the Respondent of the receipt by it of the Request for Arbitration and of the date of the commencement of the arbitration.

Article 9

The Request for Arbitration shall contain:

(i) a demand that the dispute be referred to arbitration under the WIPO Arbitration Rules;

(ii) the names, addresses and telephone, e-mail or other communication references of the parties and of the representative of the Claimant;

(iii) a copy of the Arbitration Agreement and, if applicable, any separate choice-of-law clause;

(iv) a brief description of the nature and circumstances of the dispute, including an indication of the rights and property involved and the nature of any technology involved;

(v) a statement of the relief sought and an indication, to the extent possible, of any amount claimed;

(vi) any nomination that is required by, or observations that the Claimant considers useful in connection with, Articles 14 to 20; and

(vii) if applicable, the identity of any third party funder. If a funding agreement is concluded at a later stage of the proceedings, the identity of the third party funder shall be disclosed promptly to the parties, the Center, and the Tribunal.

Article 10

The Request for Arbitration may also be accompanied by the Statement of Claim referred to in Article 41.

Answer to the Request

Article 11

(a) Within 30 days from the date on which the Respondent receives the Request for Arbitration

from the Claimant, the Respondent shall address to the Center and to the Claimant an Answer to the Request which shall contain comments on any of the elements in the Request for Arbitration and may include indications of any counter-claim or set-off.

(b) The Answer to the Request shall contain, if applicable, the identity of any third party funder. If a funding agreement is concluded at a later stage of the proceedings, the identity of the third party funder shall be disclosed promptly to the parties, the Center, and the Tribunal.

Article 12

If the Claimant has filed a Statement of Claim with the Request for Arbitration pursuant to Article 10, the Answer to the Request may also be accompanied by the Statement of Defense referred to in Article 42.

Representation

Article 13

(a) The parties may be represented by persons of their choice, irrespective of, in particular, nationality or professional qualification. The names, addresses and telephone, e-mail or other communication references of representatives shall be communicated to the Center, the other party and, after its establishment, the Tribunal.

(b) Each party shall ensure that its representatives have sufficient time available to enable the arbitration to proceed expeditiously.

(c) The parties may also be assisted by persons of their choice.

III. COMPOSITION AND ESTABLISHMENT OF THE TRIBUNAL

Number and Appointment of Arbitrators

Article 14

(a) The Tribunal shall consist of such number of arbitrators as has been agreed by the parties.

(b) Where the parties have not agreed on the number of arbitrators, the Tribunal shall consist of a sole arbitrator, except where the Center in its discretion determines that, in view of all the circumstances of the case, a Tribunal composed of three members is appropriate.

(c) Any nomination of an arbitrator made by the parties pursuant to Articles 16, 17 and 18 shall be confirmed by the Center provided that the requirements of Articles 22 and 23 have been met. The appointment shall be effective upon the Center's notification to the parties.

Appointment Pursuant to Procedure Agreed Upon by the Parties

Article 15

(a) If the parties have agreed on a procedure for the appointment of the arbitrator or arbitrators, that procedure shall be followed.

(b) If the Tribunal has not been established pursuant to such procedure within the period of time agreed upon by the parties or, in the absence of such an agreed period of time, within 45 days after the commencement of the arbitration, the Tribunal shall be established or completed, as the case may be, in accordance with Article 19.

Appointment of a Sole Arbitrator

Article 16

(a) Where a sole arbitrator is to be appointed and the parties have not agreed on an appointment procedure, the sole arbitrator shall be nominated jointly by the parties.

(b) If the nomination of the sole arbitrator is not made within the period of time agreed upon by the parties or, in the absence of such an agreed period of time, within 30 days after the commencement of the arbitration, the sole arbitrator shall be appointed in accordance with Article 19.

Appointment of Three Arbitrators

Article 17

(a) Where three arbitrators are to be appointed and the parties have not agreed upon an appointment procedure, the arbitrators shall be appointed in accordance with this Article.

(b) The Claimant shall nominate an arbitrator in its Request for Arbitration. The Respondent shall

nominate an arbitrator within 30 days from the date on which it receives the Request for Arbitration. The two arbitrators shall, within 20 days after the appointment of the second arbitrator nominate a third arbitrator, who shall be the presiding arbitrator.

(c) Notwithstanding paragraph (b), where three arbitrators are to be appointed as a result of the exercise of the discretion of the Center under Article 14(b), the Claimant shall, by notice to the Center and to the Respondent, nominate an arbitrator within 15 days after the receipt by it of notification by the Center that the Tribunal is to be composed of three arbitrators. The Respondent shall nominate an arbitrator within 30 days after the receipt by it of the said notification. The two arbitrators shall, within 20 days after the appointment of the second arbitrator, nominate a third arbitrator, who shall be the presiding arbitrator.

(d) If the nomination of any arbitrator is not made within the applicable period of time referred to in the preceding paragraphs, that arbitrator shall be appointed in accordance with Article 19.

Appointment of Three Arbitrators in Case of Multiple Claimants or Respondents

Article 18

Where:

(i) there are multiple Claimants and/or multiple Respondents; and

(ii) three arbitrators are to be appointed;

the multiple Claimants, jointly, in the Request for Arbitration, shall nominate an arbitrator, and/or the multiple Respondents, jointly, within 30 days after receiving the Request for Arbitration, shall nominate an arbitrator, as the case may be. If a joint nomination is not made within the applicable period of time, the Center shall appoint one or both arbitrators. The two arbitrators shall, within 20 days after the appointment of the second arbitrator, nominate a third arbitrator, who shall be the presiding arbitrator.

Default Appointment

Article 19

(a) If a party has failed to nominate an arbitrator as required under Articles 15, 17 or 18, the Center shall forthwith make the appointment.

(b) If the sole or presiding arbitrator has not been appointed as required under Articles 15, 16, 17 or 18, the appointment shall take place in accordance with the following procedure:

(i) The Center shall send to each party an identical list of candidates. The list shall normally comprise the names of at least three candidates in alphabetical order. The list shall include or be accompanied by a statement of each candidate's qualifications. If the parties have agreed on any particular qualifications, the list shall contain the names of candidates that satisfy those qualifications.

(ii) Each party shall have the right to delete the name of any candidate or candidates to whose appointment it objects and shall number any remaining candidates in order of preference.

(iii) Each party shall return the marked list to the Center within 20 days after the date on which the list is received by it. Any party failing to return a marked list within that period of time shall be deemed to have assented to all candidates appearing on the list.

(iv) As soon as possible after receipt by it of the lists from the parties, or failing this, after the expiration of the period of time specified in the previous subparagraph, the Center shall, taking into account the preferences and objections expressed by the parties, appoint a person from the list as sole or presiding arbitrator.

(v) If the lists which have been returned do not show a person who is acceptable as arbitrator to both parties, the Center shall be authorized to appoint the sole or presiding arbitrator. The Center shall similarly be authorized to do so if a person is not able or does not wish to accept the Center's invitation to be the sole or presiding arbitrator, or if there appear to be other reasons precluding that person from being the sole or presiding arbitrator, and there does not remain on the lists a person who is acceptable as arbitrator to both parties.

(c) Notwithstanding the procedure provided in paragraph (b), the Center shall be authorized to appoint the sole or presiding arbitrator otherwise if it determines in its discretion that the procedure described in that paragraph is not appropriate for the case.

Nationality of Arbitrators

Article 20

(a) An agreement of the parties concerning the nationality of arbitrators shall be respected.

(b) If the parties have not agreed on the nationality of the sole or presiding arbitrator, such arbitrator shall, in the absence of special circumstances such as the need to appoint a person having particular qualifications, be a national of a country other than the countries of the parties.

Communication Between Parties and Candidates for Appointment as Arbitrator

Article 21

No party or anyone acting on its behalf shall have any *ex parte* communication with any candidate for appointment as arbitrator except to discuss the candidate's qualifications, availability or independence in relation to the parties.

Impartiality and Independence

Article 22

(a) Each arbitrator shall be impartial and independent.

(b) Each prospective arbitrator shall, before accepting appointment, disclose to the parties, the Center and any other arbitrator who has already been appointed any circumstances that might give rise to justifiable doubt as to the arbitrator's impartiality or independence, or confirm in writing that no such circumstances exist.

(c) If, at any stage during the arbitration, new circumstances arise that might give rise to justifiable doubt as to any arbitrator's impartiality or independence, the arbitrator shall promptly disclose such circumstances to the parties, the Center and the other arbitrators.

Availability, Acceptance and Notification

Article 23

(a) Each arbitrator shall, by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the arbitration to be conducted and completed expeditiously.

(b) Each prospective arbitrator shall accept appointment in writing and shall communicate such acceptance to the Center.

(c) The Center shall notify the parties of the appointment of each member of the Tribunal and of the establishment of the Tribunal.

Challenge of Arbitrators

Article 24

(a) Any arbitrator may be challenged by a party if circumstances exist that give rise to justifiable doubt as to the arbitrator's impartiality or independence.

(b) A party may challenge an arbitrator whom it has nominated or in whose nomination it concurred, only for reasons of which it becomes aware after the nomination has been made.

Article 25

A party challenging an arbitrator shall send notice to the Center, the Tribunal and the other party, stating the reasons for the challenge, within 15 days after being notified of that arbitrator's appointment or after becoming aware of the circumstances that it considers give rise to justifiable doubt as to that arbitrator's impartiality or independence.

Article 26

When an arbitrator has been challenged by a party, the other party shall have the right to respond to the challenge and shall, if it exercises this right, send, within 15 days after receipt of the notice referred to in Article 25, a copy of its response to the Center, the party making the challenge and any appointed arbitrator.

Article 27

The Tribunal may, in its discretion, suspend or continue the arbitral proceedings during the pendency of the challenge.

Article 28

The other party may agree to the challenge or the arbitrator may voluntarily withdraw. In either case, the arbitrator shall be replaced without any implication that the grounds for the challenge are valid.

Article 29

If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on

the challenge shall be made by the Center in accordance with its internal procedures. Such a decision is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision.

Release from Appointment

Article 30

At the arbitrator's own request, an arbitrator may be released from appointment as arbitrator either with the consent of the parties or by the Center.

Article 31

Irrespective of any request by the arbitrator, the parties may jointly release the arbitrator from appointment as arbitrator. The parties shall promptly notify the Center of such release.

Article 32

At the request of a party or on its own motion, the Center may release an arbitrator from appointment as arbitrator if the arbitrator has become *de jure* or *de facto* unable to fulfill, or fails to fulfill, the duties of an arbitrator. In such a case, the parties shall be offered the opportunity to express their views thereon and the provisions of Articles 26 to 29 shall apply *mutatis mutandis*.

Replacement of an Arbitrator

Article 33

(a) Whenever necessary, a substitute arbitrator shall be appointed pursuant to the procedure provided for in Articles 15 to 19 that was applicable to the appointment of the arbitrator being replaced.

(b) In the event that an arbitrator nominated by a party has either been successfully challenged on grounds which were known or should have been known to that party at the time of nomination, or has been released from appointment as arbitrator in accordance with Article 32, the Center shall have the discretion not to permit that party to make a new nomination. If it chooses to exercise this discretion, the Center shall make the substitute appointment.

(c) Pending the replacement, the arbitral proceedings shall be suspended, unless otherwise agreed by the parties.

Article 34

Whenever a substitute arbitrator is appointed, the Tribunal shall, having regard to any observations of the parties, determine in its sole discretion whether all or part of any prior hearings are to be repeated.

Truncated Tribunal

Article 35

(a) If an arbitrator on a three-person Tribunal, though duly notified and without good cause, fails to participate in the work of the Tribunal, the two other arbitrators shall, unless a party has made an application under Article 32, have the power in their sole discretion to continue the arbitration and to make any award, order or other decision, notwithstanding the failure of the third arbitrator to participate. In determining whether to continue the arbitration or to render any award, order or other decision without the participation of an arbitrator, the two other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the third arbitrator for such non-participation, and such other matters as they consider appropriate in the circumstances of the case.

(b) In the event that the two other arbitrators determine not to continue the arbitration without the participation of a third arbitrator, the Center shall, on proof satisfactory to it of the failure of the arbitrator to participate in the work of the Tribunal, declare the office vacant, and a substitute arbitrator shall be appointed by the Center in the exercise of the discretion defined in Article 33, unless the parties agree otherwise.

Pleas as to the Jurisdiction of the Tribunal

Article 36

(a) The Tribunal shall have the power to hear and determine objections to its own jurisdiction, including any objections with respect to form, existence, validity or scope of the Arbitration Agreement examined pursuant to Article 61(c).

(b) The Tribunal shall have the power to determine the existence or validity of any contract of which the Arbitration Agreement forms part or to which it relates.

(c) A plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defense or, with respect to a counter-claim or a set-off, the Statement of Defense thereto, failing which any such plea shall be barred in the subsequent arbitral proceedings or before any court. A plea that the Tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The Tribunal may, in either case, admit a later plea if it considers the delay justified.

(d) The Tribunal may rule on a plea referred to in paragraph (c) as a preliminary question or, in its sole discretion, decide on such a plea in the final award.

(e) A plea that the Tribunal lacks jurisdiction shall not preclude the Center from administering the arbitration.

IV. CONDUCT OF THE ARBITRATION

General Powers of the Tribunal

Article 37

(a) Subject to Article 3, the Tribunal may conduct the arbitration in such manner as it considers appropriate.

(b) In all cases, the Tribunal shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case.

(c) The Tribunal shall ensure that the arbitral procedure takes place with due expedition. It may, at the request of a party or on its own motion, extend in exceptional cases a period of time fixed by these Rules, by itself or agreed to by the parties. In urgent cases, such an extension may be granted by the presiding arbitrator alone.

Place of Arbitration

Article 38

(a) Unless otherwise agreed by the parties, the place of arbitration shall be decided by the Center, taking into consideration any observations of the parties and the circumstances of the arbitration.

(b) The Tribunal may, after consultation with the parties, conduct hearings at any place that it considers appropriate. It may deliberate wherever it deems appropriate.

(c) The award shall be deemed to have been made at the place of arbitration.

Language of Arbitration

Article 39

(a) Unless otherwise agreed by the parties, the language of the arbitration shall be the language of the Arbitration Agreement, subject to the power of the Tribunal to determine otherwise, having regard to any observations of the parties and the circumstances of the arbitration.

(b) The Tribunal may order that any documents submitted in languages other than the language of arbitration be accompanied by a translation in whole or in part into the language of arbitration.

Preparatory Conference

Article 40

The Tribunal shall, in general within 30 days after its establishment, conduct a preparatory conference with the parties by telephone, videoconference or using online tools, or in any suitable format for the purpose of organizing and scheduling the subsequent proceedings in a time and cost efficient manner.

Statement of Claim

Article 41

(a) Unless the Statement of Claim accompanied the Request for Arbitration, the Claimant shall, within 30 days after receipt of notification from the Center of the establishment of the Tribunal, communicate its Statement of Claim to the Respondent and to the Tribunal.

(b) The Statement of Claim shall contain a comprehensive statement of the facts and legal arguments supporting the claim, including a statement of the relief sought.

(c) The Statement of Claim shall, to as large an extent as possible, be accompanied by the evidence upon which the Claimant relies, together with a schedule of such evidence. Where the evidence is especially voluminous, the Claimant may add a reference to further evidence it is prepared to submit.

Statement of Defense

Article 42

(a) The Respondent shall, within 30 days after receipt of the Statement of Claim or within 30 days after receipt of notification from the Center of the establishment of the Tribunal, whichever occurs later, communicate its Statement of Defense to the Claimant and to the Tribunal.

(b) The Statement of Defense shall reply to the particulars of the Statement of Claim required pursuant to Article 41(b). The Statement of Defense shall be accompanied by the evidence upon which the Respondent relies, in the manner described in Article 41(c).

(c) Any counter-claim or set-off by the Respondent shall be made or asserted in the Statement of Defense or, in exceptional circumstances, at a later stage in the arbitral proceedings if so determined by the Tribunal. Any such counter-claim or set-off shall contain the same particulars as those specified in Article 41(b) and (c).

Further Written Statements

Article 43

(a) In the event that a counter-claim or set-off has been made or asserted, the Claimant shall reply to the particulars thereof. Article 42(a) and (b) shall apply *mutatis mutandis* to such reply.

(b) The Tribunal may, in its discretion, allow or require further written statements.

Amendments to Claims or Defense

Article 44

Subject to any contrary agreement by the parties, a party may amend or supplement its claim, counter-claim, defense or set-off during the course of the arbitral proceedings, unless the Tribunal considers it inappropriate to allow such amendment having regard to its nature or the delay in making it and to the provisions of Article 37(b) and (c).

Communication Between Parties and Tribunal

Article 45

Except as otherwise provided in these Rules or permitted by the Tribunal, no party or anyone acting on its behalf may have any *ex parte* communication with any arbitrator with respect to any matter of substance relating to the arbitration, it being understood that nothing in this paragraph shall prohibit *ex parte* communications which concern matters of a purely organizational nature, such as the physical facilities, the use of online tools, place, date or time of the hearings.

Joinder

Article 46

At the request of a party, the Tribunal may order the joinder of an additional party to the arbitration provided all parties, including the additional party, agree. Any such order shall take account of all relevant circumstances, including the stage reached in the arbitration. The request shall be addressed together with the Request for Arbitration or the Answer to the Request, as the case may be, or, if a party becomes aware at a later stage of circumstances that it considers relevant for a joinder, within 15 days after acquiring that knowledge.

Consolidation

Article 47

Where an arbitration is commenced that concerns a subject matter substantially related to that in dispute in other arbitral proceedings pending under these Rules or involving the same parties, the Center may order, after consulting with all concerned parties and any Tribunal appointed in the pending proceedings, to consolidate the new arbitration with the pending proceedings, provided all parties and any appointed Tribunal agree. Such consolidation shall take into account all relevant circumstances, including the stage reached in the pending proceedings.

Interim Measures of Protection and Security for Claims and Costs

Article 48

(a) At the request of a party, the Tribunal may issue any provisional orders or take other interim measures it deems necessary, including injunctions and measures for the conservation of goods which form part of the subject matter in dispute, such as an order for their deposit with a third person or for the sale of perishable goods. The Tribunal may make the granting of such measures subject to appropriate security being furnished by the requesting party.

(b) At the request of a party, the Tribunal may order the other party to provide security, in a form to be determined by the Tribunal, for the claim or counter claim, as well as for costs referred to in Article 74.

(c) Measures and orders contemplated under this Article may take the form of an interim award.

(d) A request addressed by a party to a judicial authority for interim measures or for security for the claim or counter-claim, or for the implementation of any such measures or orders granted by the Tribunal, shall not be deemed incompatible with the Arbitration Agreement, or deemed to be a waiver of that Agreement.

Emergency Relief Proceedings

Article 49

(a) Unless otherwise agreed by the parties, the provisions of this Article shall apply to arbitrations conducted under Arbitration Agreements entered on or after June 1, 2014.

(b) A party seeking urgent interim relief prior to the establishment of the Tribunal may submit a request for such emergency relief to the Center. The request for emergency relief shall include the particulars set out in Article 9(ii) to (iv), as well as a statement of the interim measures sought and the reasons why such relief is needed on an emergency basis. The Center shall inform the other party of the receipt of the request for emergency relief.

(c) The date of commencement of the emergency relief proceedings shall be the date on which the request referred to in paragraph (b) is received by the Center.

(d) The request for emergency relief shall be subject to proof of payment of the administration fee and of the initial deposit of the emergency arbitrator's fees in accordance with the Schedule of Fees applicable on the date of commencement of the emergency relief proceedings.

(e) Upon receipt of the request for emergency relief, the Center shall promptly, normally within two days, appoint a sole emergency arbitrator. Articles 22 to 29 shall apply *mutatis mutandis* whereby the periods of time referred to in Articles 25 and 26 shall be three days.

(f) The emergency arbitrator shall have the powers vested in the Tribunal under Article 36(a) and (b), including the authority to determine its own jurisdiction. Article 36(e) shall apply *mutatis mutandis*.

(g) The emergency arbitrator may conduct the proceedings in such manner as it considers appropriate, taking due account of the urgency of the request. The emergency arbitrator shall ensure that each party is given a fair opportunity to present its case. The emergency arbitrator may provide for proceedings by telephone, videoconference or online tools, or on written submissions as alternatives to a hearing.

(h) If the parties have agreed upon the place of arbitration, that place shall be the place of the emergency relief proceedings. In the absence of such agreement, the place of the emergency relief proceedings shall be decided by the Center, taking into consideration any observations made by the parties and the circumstances of the emergency relief proceedings.

(i) The emergency arbitrator may order any interim measure it deems necessary. The emergency arbitrator may make the granting of such orders subject to appropriate security being furnished by the requesting party. Article 48(c) and (d) shall apply *mutatis mutandis*. Upon request, the emergency arbitrator may modify or terminate the order.

(j) The emergency arbitrator shall terminate emergency relief proceedings if arbitration is not commenced within 30 days from the date of commencement of the emergency relief proceedings.

(k) The costs of the emergency relief proceedings shall be initially fixed and apportioned by the emergency arbitrator in consultation with the Center, in accordance with the Schedule of Fees applicable on the date of commencement of the emergency relief proceedings, subject to the Tribunal's power to make a final determination of the apportionment of such costs under Article 73(c).

(l) Unless otherwise agreed by the parties, the emergency arbitrator may not act as an arbitrator in any arbitration relating to the dispute.

(m) The emergency arbitrator shall have no further powers to act once the Tribunal is established. Upon request by a party, the Tribunal may modify or terminate any measure ordered by the emergency arbitrator.

Evidence

Article 50

(a) The Tribunal shall determine the admissibility, relevance, materiality and weight of evidence.

(b) At any time during the arbitration, the Tribunal may, at the request of a party or on its own motion, order a party to produce such documents or other evidence as it considers necessary or appropriate and may order a party to make available to the Tribunal or to an expert appointed by it or to the other party any property in its possession or control for inspection or testing.

Experiments

Article 51

(a) A party may give notice to the Tribunal and to the other party at any reasonable time before a hearing that specified experiments have been conducted on which it intends to rely. The notice shall specify the purpose of the experiment, a summary of the experiment, the method employed, the results and the conclusion. The other party may by notice to the Tribunal request that any or all such experiments be repeated in its presence. If the Tribunal considers such request justified, it shall determine the timetable for the repetition of the experiments.

(b) For the purposes of this Article, "experiments" shall include tests or other processes of verification.

Site Visits

Article 52

The Tribunal may, at the request of a party or on its own motion, inspect or require the inspection of any site, property, machinery, facility, production line, model, film, material, product or process as it deems appropriate. A party may request such an inspection at any reasonable time prior to any hearing, and the Tribunal, if it grants such a request, shall determine the timing and arrangements for the inspection.

Agreed Primers and Models

Article 53

The Tribunal may, where the parties so agree, determine that they shall jointly provide:

(i) a technical primer setting out the background of the scientific, technical or other specialized information necessary to fully understand the matters in issue; and

(ii) models, drawings or other materials that the Tribunal or the parties require for reference purposes at any hearing.

Disclosure of Trade Secrets and Other Confidential Information

Article 54

(a) For the purposes of this Article, confidential information shall mean any information, regardless of the medium in which it is expressed, which is:

(i) in the possession of a party;

(ii) not accessible to the public;

(iii) of commercial, financial or industrial significance; and

(iv) treated as confidential by the party possessing it.

(b) A party invoking the confidentiality of any information it wishes or is required to submit in the arbitration, including to an expert appointed by the Tribunal, shall make an application to have the information classified as confidential by notice to the Tribunal, with a copy to the other party. Without disclosing the substance of the information, the party shall give in the notice the reasons for which it considers the information confidential.

(c) The Tribunal shall determine whether the information is to be classified as confidential and of such a nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party invoking its confidentiality. If the Tribunal so determines, it shall decide under which conditions and to whom the confidential information may in part or in whole be disclosed and shall require any person to whom

the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.

(d) In exceptional circumstances, in lieu of itself determining whether the information is to be classified as confidential and of such nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party invoking its confidentiality, the Tribunal may, at the request of a party or on its own motion and after consultation with the parties, designate a confidentiality advisor who will determine whether the information is to be so classified, and, if so, decide under which conditions and to whom it may in part or in whole be disclosed. Any such confidentiality advisor shall be required to sign an appropriate confidentiality undertaking.

(e) The Tribunal may also, at the request of a party or on its own motion, appoint the confidentiality advisor as an expert in accordance with Article 57 in order to report to it, on the basis of the confidential information, on specific issues designated by the Tribunal without disclosing the confidential information either to the party from whom the confidential information does not originate or to the Tribunal.

Hearings

Article 55

(a) If either party so requests, the Tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral argument or for both. In the absence of a request, the Tribunal shall decide whether to hold such a hearing or hearings. The Tribunal shall decide, after consultation with the parties, whether the hearing will be conducted by videoconference, using online tools, or in-person. If no hearings are held, the proceedings shall be conducted on the basis of documents and other materials alone.

(b) In the event of a hearing, the Tribunal shall give the parties adequate advance notice of the date, time, videoconference or online tools to be used, or place.

(c) Unless the parties agree otherwise, all hearings shall be in private.

(d) The Tribunal shall determine whether and, if so, in what form a record shall be made of any hearing.

Witnesses

Article 56

(a) Before any hearing, the Tribunal may require either party to give notice of the identity of witnesses it wishes to call, whether witness of fact or expert witness, as well as of the subject matter of their testimony and its relevance to the issues.

(b) The Tribunal has discretion, on the grounds of redundance and irrelevance, to limit or refuse the appearance of any witness.

(c) Any witness who gives oral evidence may be questioned, under the control of the Tribunal, by each of the parties. The Tribunal may put questions at any stage of the examination of the witnesses.

(d) The testimony of witnesses may, either at the choice of a party or as directed by the Tribunal, be submitted in written form, whether by way of signed statements, sworn affidavits or otherwise, in which case the Tribunal may make the admissibility of the testimony conditional upon the witnesses being made available for oral testimony.

(e) A party shall be responsible for the practical arrangements, cost and availability of any witness it calls.

(f) The Tribunal shall determine whether any witness shall retire during any part of the proceedings, particularly during the testimony of other witnesses.

Experts Appointed by the Tribunal

Article 57

(a) The Tribunal may, at the preparatory conference or at a later stage, and after consultation with the parties, appoint one or more independent experts to report to it on specific issues designated by the Tribunal. A copy of the expert's terms of reference, established by the Tribunal, having regard to any observations of the parties, shall be communicated to the parties. Any such expert shall be required to sign an appropriate confidentiality undertaking.

(b) Subject to Article 54, upon receipt of the expert's report, the Tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion

on the report. A party may, subject to Article 54, examine any document on which the expert has relied in such a report.

(c) At the request of a party, the parties shall be given the opportunity to question the expert at a hearing. At this hearing, the parties may present expert witnesses to testify on the points at issue.

(d) The opinion of any expert on the issue or issues submitted to the expert shall be subject to the Tribunal's power of assessment of those issues in the context of all the circumstances of the case, unless the parties have agreed that the expert's determination shall be conclusive in respect of any specific issue.

Default

Article 58

(a) If the Claimant, without showing good cause, fails to submit its Statement of Claim in accordance with Article 41, the Tribunal shall terminate the proceedings.

(b) If the Respondent, without showing good cause, fails to submit its Statement of Defense in accordance with Article 42, the Tribunal may nevertheless proceed with the arbitration and make the award.

(c) The Tribunal may also proceed with the arbitration and make the award if a party, without showing good cause, fails to avail itself of the opportunity to present its case within the period of time determined by the Tribunal.

(d) If a party, without showing good cause, fails to comply with any provision of, or requirement under, these Rules or any direction given by the Tribunal, the Tribunal may draw the inferences therefrom that it considers appropriate.

Closure of Proceedings

Article 59

(a) The Tribunal shall declare the proceedings closed when it is satisfied that the parties have had adequate opportunity to present submissions and evidence.

(b) The Tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to re-open the proceedings it declared to be closed at any time before the award is made.

Waiver

Article 60

A party which knows that any provision of these Rules, any requirement under the Arbitration Agreement, or any direction given by the Tribunal, has not been complied with, and yet proceeds with the arbitration without promptly recording an objection to such non-compliance, shall be deemed to have waived its right to object.

V. AWARDS AND OTHER DECISIONS

Laws Applicable to the Substance of the Dispute, the Arbitration and the Arbitration Agreement

Article 61

(a) The Tribunal shall decide the substance of the dispute in accordance with the law or rules of law chosen by the parties. Any designation of the law of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules. Failing a choice by the parties, the Tribunal shall apply the law or rules of law that it determines to be appropriate. In all cases, the Tribunal shall decide having due regard to the terms of any relevant contract and taking into account applicable trade usages. The Tribunal may decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized it to do so.

(b) The law applicable to the arbitration shall be the arbitration law of the place of arbitration, unless the parties have expressly agreed on the application of another arbitration law and such agreement is permitted by the law of the place of arbitration.

(c) An Arbitration Agreement shall be regarded as effective if it conforms to the requirements concerning form, existence, validity and scope of either the law or rules of law applicable in accordance with paragraph (a), or the law applicable in accordance with paragraph (b).

Currency and Interest

Article 62

(a) Monetary amounts in the award may be expressed in any currency.

(b) The Tribunal may award simple or compound interest to be paid by a party on any sum awarded against that party. It shall be free to determine the interest at such rates as it considers to be appropriate, without being bound by legal rates of interest, and shall be free to determine the period for which the interest shall be paid.

Decision-Making

Article 63

Unless the parties have agreed otherwise, where there is more than one arbitrator, any award, order or other decision of the Tribunal shall be made by a majority. In the absence of a majority, the presiding arbitrator shall make the award, order or other decision as if acting as sole arbitrator.

Form and Notification of Awards

Article 64

(a) The Tribunal may make separate awards on different issues at different times.

(b) The award shall be in writing and shall state the date on which it was made, as well as the place of arbitration in accordance with Article 38(a).

(c) The award shall state the reasons on which it is based, unless the parties have agreed that no reasons should be stated and the law applicable to the arbitration does not require the statement of such reasons.

(d) The award shall be signed by the arbitrator or arbitrators. The signature of the award by a majority of the arbitrators, or, in the case of Article 63, second sentence, by the presiding arbitrator, shall be sufficient. Where an arbitrator fails to sign, the award shall state the reason for the absence of the signature.

(e) The Tribunal may consult the Center with regard to matters of form, particularly to ensure the enforceability of the award.

(f) The award shall be communicated by the Tribunal to the Center in a number of originals sufficient to provide one for each party, the arbitrator or arbitrators and the Center. The Center shall formally communicate an original of the award to each party and the arbitrator or arbitrators.

(g) At the request of a party, the Center shall provide it, at cost, with a copy of the award certified by the Center. A copy so certified shall be deemed to comply with the requirements of Article IV(1)(a) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, June 10, 1958.

Time Period for Delivery of the Final Award

Article 65

(a) The arbitration should, wherever reasonably possible, be heard and the proceedings declared closed within not more than nine months after either the delivery of the Statement of Defense or the establishment of the Tribunal, whichever event occurs later. The final award should, wherever reasonably possible, be made within three months thereafter.

(b) If the proceedings are not declared closed within the period of time specified in paragraph (a), the Tribunal shall send the Center a status report on the arbitration, with a copy to each party. It shall send a further status report to the Center, and a copy to each party, at the end of each ensuing period of three months during which the proceedings have not been declared closed.

(c) If the final award is not made within three months after the closure of the proceedings, the Tribunal shall send the Center a written explanation for the delay, with a copy to each party. It shall send a further explanation, and a copy to each party, at the end of each ensuing period of one month until the final award is made.

Effect of Award

Article 66

(a) By agreeing to arbitration under these Rules, the parties undertake to carry out the award without delay, and waive their right to any form of appeal or recourse to a court of law or other judicial

authority, insofar as such waiver may validly be made under the applicable law.

(b) The award shall be effective and binding on the parties as from the date it is communicated by the Center pursuant to Article 64(f), second sentence.

Settlement or Other Grounds for Termination

Article 67

(a) The Tribunal may suggest that the parties explore settlement, including by commencing mediation, at such times as the Tribunal may deem appropriate.

(b) If, before the award is made, the parties agree on a settlement of the dispute, the Tribunal shall terminate the arbitration and, if requested jointly by the parties, record the settlement in the form of a consent award. The Tribunal shall not be obliged to give reasons for such an award.

(c) If, before the award is made, the continuation of the arbitration becomes unnecessary or impossible for any reason not mentioned in paragraph (b), the Tribunal shall inform the parties of its intention to terminate the arbitration. The Tribunal shall have the power to issue such an order terminating the arbitration, unless a party raises justifiable grounds for objection within a period of time to be determined by the Tribunal.

(d) The consent award or the order for termination of the arbitration shall be signed by the arbitrator or arbitrators in accordance with Article 64(d) and shall be communicated by the Tribunal to the Center in a number of originals sufficient to provide one for each party, the arbitrator or arbitrators and the Center. The Center shall formally communicate an original of the consent award or the order for termination to each party and the arbitrator or arbitrators.

Correction of the Award and Additional Award

Article 68

(a) Within 30 days after receipt of the award, a party may, by notice to the Tribunal, with a copy to the Center and the other party, request the Tribunal to correct in the award any clerical, typographical or computational errors. If the Tribunal considers the request to be justified, it shall make the correction within 30 days after receipt of the request. Any correction, which shall take the form of a separate memorandum, signed by the Tribunal in accordance with Article 64(d), shall become part of the award.

(b) The Tribunal may correct any error of the type referred to in paragraph (a) on its own initiative within 30 days after the date of the award.

(c) A party may, within 30 days after receipt of the award, by notice to the Tribunal, with a copy to the Center and the other party, request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but not dealt with in the award. Before deciding on the request, the Tribunal shall give the parties an opportunity to be heard. If the Tribunal considers the request to be justified, it shall, wherever reasonably possible, make the additional award within 60 days of receipt of the request.

VI. FEES AND COSTS

Fees of the Center

Article 69

(a) The Request for Arbitration shall be subject to the payment to the Center of a non-refundable registration fee. The amount of the registration fee shall be fixed in the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Center.

(b) Any counter-claim by a Respondent shall be subject to the payment to the Center of a non-refundable registration fee. The amount of the registration fee shall be fixed in the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Center.

(c) No action shall be taken by the Center on a Request for Arbitration or counter-claim until the registration fee has been paid.

(d) If a Claimant or Respondent fails, within 15 days after a reminder in writing from the Center, to pay the registration fee, it shall be deemed to have withdrawn its Request for Arbitration or counter-claim, as the case may be.

Article 70

(a) An administration fee shall be payable by the Claimant to the Center within 30 days after the Claimant has received notification from the Center of the amount to be paid.

(b) In the case of a counter-claim, an administration fee shall also be payable by the Respondent to the Center within 30 days after the Respondent has received notification from the Center of the amount to be paid.

(c) The amount of the administration fee shall be calculated in accordance with the Schedule of Fees applicable on the date of commencement of the arbitration.

(d) Where a claim or counter-claim is increased, the amount of the administration fee may be increased in accordance with the Schedule of Fees applicable under paragraph (c), and the increased amount shall be payable by the Claimant or the Respondent, as the case may be.

(e) If a party fails, within 15 days after a reminder in writing from the Center, to pay any administration fee due, it shall be deemed to have withdrawn its claim or counter-claim, or its increase in claim or counter-claim, as the case may be.

(f) The Tribunal shall, in a timely manner, inform the Center of the amount of the claim and any counter-claim, as well as any increase thereof.

Fees of the Arbitrators

Article 71

The amount and currency of the fees of the arbitrators and the modalities and timing of their payment shall be fixed by the Center, after consultation with the arbitrators and the parties, in accordance with the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Center.

Deposits

Article 72

(a) Upon receipt of notification from the Center of the establishment of the Tribunal, the Claimant and the Respondent shall each deposit an equal amount as an advance for the costs of arbitration referred to in Article 73. The amount of the deposit shall be determined by the Center.

(b) In the course of the arbitration, the Center may require that the parties make supplementary deposits.

(c) If the required deposits are not paid in full within 30 days after receipt of the corresponding notification, the Center shall so inform the parties in order that one or other of them may make the required payment.

(d) Where the amount of the counter-claim greatly exceeds the amount of the claim or involves the examination of significantly different matters, or where it otherwise appears appropriate in the circumstances, the Center in its discretion may establish two separate deposits on account of claim and counter-claim. If separate deposits are established, the totality of the deposit on account of claim shall be paid by the Claimant and the totality of the deposit on account of counter-claim shall be paid by the Respondent.

(e) If a party fails, within 15 days after a reminder in writing from the Center, to pay the required deposit, it shall be deemed to have withdrawn the relevant claim or counter-claim.

(f) After the award has been made, the Center shall, in accordance with the award, render an accounting to the parties of the deposits received and return any unexpended balance to the parties or require the payment of any amount owing from the parties.

Award of Costs of Arbitration

Article 73

(a) In its award, the Tribunal shall fix the costs of arbitration, which shall consist of:

(i) the arbitrators' fees;

(ii) the properly incurred travel, communication and other expenses of the arbitrators;

(iii) the costs of expert advice and such other assistance required by the Tribunal pursuant to these Rules; and

(iv) such other expenses as are necessary for the conduct of the arbitration proceedings, such as the cost of meeting and hearing facilities.

(b) The aforementioned costs shall, as far as possible, be debited from the deposits required under Article 72.

(c) The Tribunal shall, subject to any agreement of the parties, apportion the costs of arbitration and the registration and administration fees of the Center between the parties in the light of all the circumstances and the outcome of the arbitration.

Award of Costs Incurred by a Party

Article 74

In its award, the Tribunal may, subject to any contrary agreement by the parties and in the light of all the circumstances and the outcome of the arbitration, order a party to pay the whole or part of reasonable expenses incurred by the other party in presenting its case, including those incurred for legal representatives and witnesses.

VII. CONFIDENTIALITY

Confidentiality of the Existence of the Arbitration

Article 75

(a) Except to the extent necessary in connection with a court challenge to the arbitration or an action for enforcement of an award, no information concerning the existence of an arbitration may be unilaterally disclosed by a party to any third party unless it is required to do so by law or by a competent regulatory body, and then only:

(i) by disclosing no more than what is legally required; and

(ii) by furnishing to the Tribunal and to the other party, if the disclosure takes place during the arbitration or to the other party alone, if the disclosure takes place after the termination of the arbitration, details of the disclosure and an explanation of the reason for it.

(b) Notwithstanding paragraph (a), a party may disclose to a third party the names of the parties to the arbitration and the relief requested for the purpose of satisfying any obligation of good faith or candor owed to that third party.

Confidentiality of Disclosures Made During the Arbitration

Article 76

(a) In addition to any specific measures that may be available under Article 54, any documentary or other evidence given by a party or a witness in the arbitration shall be treated as confidential and, to the extent that such evidence describes information that is not in the public domain, shall not be used or disclosed to any third party by a party whose access to that information arises exclusively as a result of its participation in the arbitration for any purpose without the consent of the parties or order of a court having jurisdiction.

(b) For the purposes of this Article, a witness called by a party shall not be considered to be a third party. To the extent that a witness is given access to evidence or other information obtained in the arbitration in order to prepare the witness's testimony, the party calling such witness shall be responsible for the maintenance by the witness of the same degree of confidentiality as that required of the party.

Confidentiality of the Award

Article 77

The award shall be treated as confidential by the parties and may only be disclosed to a third party if and to the extent that:

(i) the parties consent; or

(ii) it falls into the public domain as a result of an action before a national court or other competent authority; or

(iii) it must be disclosed in order to comply with a legal requirement imposed on a party or in order to establish or protect a party's legal rights against a third party.

Maintenance of Confidentiality by the Center and Arbitrator

Article 78

(a) Unless the parties agree otherwise, the Center and the arbitrator shall maintain the confidentiality of the arbitration, the award and, to the extent that they describe information that is not in the public

domain, any documentary or other evidence disclosed during the arbitration, except to the extent necessary in connection with a court action relating to the award, or as otherwise required by law.

(b) Notwithstanding paragraph (a), the Center may include information concerning the arbitration in any aggregate statistical data that it publishes concerning its activities, provided that such information does not enable the parties or the particular circumstances of the dispute to be identified.

VIII. MISCELLANEOUS

Exclusion of Liability

Article 79

Except in respect of deliberate wrongdoing, the arbitrator or arbitrators, WIPO and the Center shall not be liable to a party for any act or omission in connection with the arbitration.

Waiver of Defamation

Article 80

The parties and, by acceptance of appointment, the arbitrator agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the arbitration shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this Article may be pleaded as a bar to any such action.

Schedule of Fees and Costs
Arbitration/Expedited Arbitration

[Editor's note: Please go to https://www.wipo.int/amc/en/arbitration/fees/ for the latest fee information.]

WIPO Expedited Arbitration Rules
(Effective from July 1, 2021)

I. GENERAL PROVISIONS

II. COMMENCEMENT OF THE ARBITRATION

III. COMPOSITION AND ESTABLISHMENT OF THE TRIBUNAL

IV. CONDUCT OF THE ARBITRATION

I. GENERAL PROVISIONS

Abbreviated Expressions

Article 1

In these Rules:

"Arbitration Agreement" means an agreement by the parties to submit to arbitration all or certain disputes that have arisen or that may arise between them; an Arbitration Agreement may be in the form of an arbitration clause in a contract or in the form of a separate contract;

"Claimant" means the party initiating an arbitration;

"Respondent" means the party against which the arbitration is initiated, as named in the Request for Arbitration;

"Tribunal" means the sole arbitrator;

"WIPO" means the World Intellectual Property Organization;

"Center" means the WIPO Arbitration and Mediation Center.

Words used in the singular include the plural and vice versa, as the context may require.

Scope of Application of Rules

Article 2

Where an Arbitration Agreement provides for arbitration under the WIPO Expedited Arbitration Rules, these Rules shall be deemed to form part of that Arbitration Agreement and the dispute shall be settled in accordance with these Rules, as in effect on the date of the commencement of the arbitration, unless the parties have agreed otherwise.

Article 3

(a) These Rules shall govern the arbitration, except that, where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

(b) The law applicable to the arbitration shall be determined in accordance with Article 55(b).

Notices and Periods of Time

Article 4

(a) Any notice or other communication that may or is required to be given under these Rules shall be in writing and shall be delivered by email or other means of electronic communication that provide a record thereof, unless a party decides to use also expedited postal or courier service.

(b) A party's last known residence or place of business shall be a valid address for the purpose of any notice or other communication in the absence of any notification of a change by that party. Communications may in any event be addressed to a party in the manner stipulated or, failing such a stipulation, according to the practice followed in the course of the dealings between the parties.

(c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day it is delivered in accordance with paragraphs (a) and (b) of this Article.

(d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched, in accordance with paragraphs (a) and (b) of this Article, prior to or on the day of the expiration of the time limit.

(e) For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice or other communication is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day that follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

(f) The parties may agree to reduce or extend the periods of time referred to in Articles 11, 14(b)(iii), 37(a), 49(b) and 51(a).

(g) The Center may, at the request of a party or on its own motion, extend the periods of time referred

to in Articles 11, 14(b)(iii), 37(a), 49(b), 51(a), 62(e) and 64(e).

(h) The Center may, in consultation with the parties, reduce the period of time referred to in Article 11.

Documents Required to be Submitted to the Center

Article 5

(a) Until the notification by the Center of the establishment of the Tribunal, any written statement, notice or other communication required or allowed under these Rules shall be submitted by a party to the Center and a copy thereof shall at the same time be transmitted by that party to the other party.

(b) Where a party decides to use expedited postal or courier service for the transmission of any written statement, notice or other communication so sent to the Center, it shall send it in a number of copies equal to the number required to provide one copy for the Tribunal and one to the Center

(c) After the notification by the Center of the establishment of the Tribunal, any written statements, notices or other communications shall be submitted by a party directly to the Tribunal and a copy thereof shall at the same time be supplied by that party to the other party.

(d) The Tribunal shall send to the Center a copy of each order or other decision that it makes.

II. COMMENCEMENT OF THE ARBITRATION

Request for Arbitration

Article 6

The Claimant shall transmit the Request for Arbitration to the Center and to the Respondent.

Article 7

The date of commencement of the arbitration shall be the date on which the Request for Arbitration, together with the Statement of Claim as required by Article 10, is received by the Center.

Article 8

The Center shall inform the Claimant and the Respondent of the receipt by it of the Request for Arbitration and Statement of Claim and of the date of the commencement of the arbitration.

Article 9

The Request for Arbitration shall contain:

(i) a demand that the dispute be referred to arbitration under the WIPO Expedited Arbitration Rules;

(ii) the names, addresses and telephone, e-mail or other communication references of the parties and of the representative of the Claimant;

(iii) a copy of the Arbitration Agreement and, if applicable, any separate choice-of-law clause;

(iv) any observations that the Claimant considers useful in connection with Articles 14 and 15; and

(v) if applicable, the identity of any third party funder. If a funding agreement is concluded at a later stage of the proceedings, the identity of the third party funder shall be disclosed promptly to the parties, the Center, and the Tribunal.

Article 10

The Request for Arbitration shall be accompanied by the Statement of Claim in conformity with Article 35(a) and (b).

Answer to the Request and Statement of Defense

Article 11

(a) Within 20 days from the date on which the Respondent receives the Request for Arbitration and Statement of Claim from the Claimant, the Respondent shall address to the Center and to the Claimant an Answer to the Request which shall contain comments on any of the items in the Request for Arbitration.

(b) The Answer to the Request shall contain, if applicable, the identity of any third party funder. If a funding agreement is concluded at a later stage of the proceedings, the identity of the third party

funder shall be disclosed promptly to the parties, the Center, and the Tribunal.

Article 12

The Answer to the Request shall be accompanied by the Statement of Defense in conformity with Article 36(a) and (b).

Representation

Article 13

(a) The parties may be represented by persons of their choice, irrespective of, in particular, nationality or professional qualification. The names, addresses and telephone, e-mail or other communication references of representatives shall be communicated to the Center, the other party and, after its establishment, the Tribunal.

(b) Each party shall ensure that its representatives have sufficient time available to enable the arbitration to proceed expeditiously.

(c) The parties may also be assisted by persons of their choice.

III. COMPOSITION AND ESTABLISHMENT OF THE TRIBUNAL

Number and Appointment of Arbitrators

Article 14

(a) The Tribunal shall consist of a sole arbitrator who shall be nominated by the parties, subject to confirmation of the appointment by the Center in accordance with Articles 17 and 18. The appointment shall be effective upon the Center's notification to the parties.

(b) If the nomination of the arbitrator is not made within 15 days after the commencement of the arbitration, the appointment shall take place in accordance with the following procedure:

(i) The Center shall send to each party an identical list of candidates. The list shall normally comprise the names of at least three candidates in alphabetical order. The list shall include or be accompanied by a statement of each candidate's qualifications. If the parties have agreed on any particular qualifications, the list shall contain the names of candidates that satisfy those qualifications.

(ii) Each party shall have the right to delete the name of any candidate or candidates to whose appointment it objects and shall number any remaining candidates in order of preference.

(iii) Each party shall return the marked list to the Center within seven days after the date on which the list is received by it. Any party failing to return a marked list within that period of time shall be deemed to have assented to all candidates appearing on the list.

(iv) As soon as possible after receipt by it of the lists from the parties, or failing this, after the expiration of the period of time specified in the previous subparagraph, the Center shall, taking into account the preferences and objections expressed by the parties, appoint a person from the list as arbitrator.

(v) If the lists which have been returned do not show a person who is acceptable as arbitrator to both parties, the Center shall be authorized to appoint the arbitrator. The Center shall similarly be authorized to do so if a person is not able or does not wish to accept the Center's invitation to be the arbitrator, or if there appear to be other reasons precluding that person from being the arbitrator, and there does not remain on the lists a person who is acceptable as arbitrator to both parties.

(c) Notwithstanding the procedure provided in paragraph (b), the Center shall be authorized to appoint the arbitrator otherwise if it determines in its discretion that the procedure described in that paragraph is not appropriate for the case.

Nationality of Arbitrator

Article 15

(a) An agreement of the parties concerning the nationality of the arbitrator shall be respected.

(b) If the parties have not agreed on the nationality of the arbitrator, the arbitrator shall, in the absence of special circumstances, such as the need to appoint a person having particular qualifications, be a national of a country other than the countries of the parties.

Communication Between Parties and Candidates for Appointment as Arbitrator

Article 16

No party or anyone acting on its behalf shall have any *ex parte* communication with any candidate for appointment as arbitrator except to discuss the candidate's qualifications, availability or independence in relation to the parties.

Impartiality and Independence

Article 17

(a) The arbitrator shall be impartial and independent.

(b) The prospective arbitrator shall, before accepting appointment, disclose to the parties and the Center any circumstances that might give rise to justifiable doubt as to the arbitrator's impartiality or independence, or confirm in writing that no such circumstances exist.

(c) If, at any stage during the arbitration, new circumstances arise that might give rise to justifiable doubt as to the arbitrator's impartiality or independence, the arbitrator shall promptly disclose such circumstances to the parties and the Center.

Availability, Acceptance and Notification

Article 18

(a) The arbitrator shall, by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the arbitration to be conducted and completed expeditiously.

(b) The prospective arbitrator shall accept appointment in writing and shall communicate such acceptance to the Center.

(c) The Center shall notify the parties of the establishment of the Tribunal.

Challenge of Arbitrator

Article 19

(a) The arbitrator may be challenged by a party if circumstances exist that give rise to justifiable doubt as to the arbitrator's impartiality or independence.

(b) A party may challenge an arbitrator in whose nomination it concurred, only for reasons of which it becomes aware after the nomination has been made.

Article 20

A party challenging the arbitrator shall send notice to the Center, the Tribunal and the other party, stating the reasons for the challenge, within seven days after being notified of the arbitrator's appointment pursuant to Article 18(c) or after becoming aware of the circumstances that it considers give rise to justifiable doubt as to the arbitrator's impartiality or independence.

Article 21

When the arbitrator has been challenged by a party, the other party shall have the right to respond to the challenge and shall, if it exercises this right, send, within seven days after receipt of the notice referred to in Article 20, a copy of its response to the Center, the party making the challenge and the arbitrator.

Article 22

The Tribunal may, in its discretion, suspend or continue the arbitral proceedings during the pendency of the challenge.

Article 23

The other party may agree to the challenge or the arbitrator may voluntarily withdraw. In either case, the arbitrator shall be replaced without any implication that the grounds for the challenge are valid.

Article 24

If the other party does not agree to the challenge and the arbitrator does not withdraw, the decision on the challenge shall be made by the Center in accordance with its internal procedures. Such a decision is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision.

Release from Appointment

Article 25

At the arbitrator's own request, the arbitrator may be released from appointment as arbitrator either with the consent of the parties or by the Center.

Article 26

Irrespective of any request by the arbitrator, the parties may jointly release the arbitrator from appointment as arbitra-

tor. The parties shall promptly notify the Center of such release.

Article 27

At the request of a party or on its own motion, the Center may release the arbitrator from appointment as arbitrator if the arbitrator has become *de jure* or *de facto* unable to fulfill, or fails to fulfill, the duties of an arbitrator. In such a case, the parties shall be offered the opportunity to express their views thereon and the provisions of Articles 21 to 24 shall apply *mutatis mutandis*.

Replacement of Arbitrator

Article 28

(a) Whenever necessary, a substitute arbitrator shall be appointed pursuant to the procedure provided for in Article 14 that was applicable to the appointment of the arbitrator being replaced.

(b) Pending the replacement, the arbitral proceedings shall be suspended, unless otherwise agreed by the parties.

Article 29

Whenever a substitute arbitrator is appointed, the Tribunal shall, having regard to any observations of the parties, determine in its sole discretion whether all or part of any prior hearings are to be repeated.

Pleas as to the Jurisdiction of the Tribunal

Article 30

(a) The Tribunal shall have the power to hear and determine objections to its own jurisdiction, including any objections with respect to form, existence, validity or scope of the Arbitration Agreement examined pursuant to Article 55(c).

(b) The Tribunal shall have the power to determine the existence or validity of any contract of which the Arbitration Agreement forms part or to which it relates.

(c) A plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defense or, with respect to a counter-claim or a set-off, the Statement of Defense thereto, failing which any such plea shall be barred in the subsequent arbitral proceedings or before any court. A plea that the Tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The Tribunal may, in either case, admit a later plea if it considers the delay justified.

(d) The Tribunal may rule on a plea referred to in paragraph (c) as a preliminary question or, in its sole discretion, decide on such a plea in the final award.

(e) A plea that the Tribunal lacks jurisdiction shall not preclude the Center from administering the arbitration.

IV. CONDUCT OF THE ARBITRATION

General Powers of the Tribunal

Article 31

(a) Subject to Article 3, the Tribunal may conduct the arbitration in such manner as it considers appropriate.

(b) In all cases, the Tribunal shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case.

(c) The Tribunal shall ensure that the arbitral procedure takes place with due expedition. It may, at the request of a party or on its own motion, extend in exceptional cases a period of time fixed by these Rules, by itself or agreed to by the parties.

Place of Arbitration

Article 32

(a) Unless otherwise agreed by the parties, the place of arbitration shall be decided by the Center, taking into consideration any observations of the parties and the circumstances of the arbitration.

(b) The Tribunal may, after consultation with the parties, conduct hearings at any place that it considers appropriate. It may deliberate wherever it deems appropriate.

(c) The award shall be deemed to have been made at the place of arbitration.

Language of Arbitration

Article 33

(a) Unless otherwise agreed by the parties, the language of the arbitration shall be the language of the Arbitration Agreement, subject to the power of the Tribunal to determine otherwise, having regard to any observations of the parties and the circumstances of the arbitration.

(b) The Tribunal may order that any documents submitted in languages other than the language of arbitration be accompanied by a translation in whole or in part into the language of arbitration.

Preparatory Conference

Article 34

The Tribunal shall, in general within 15 days after its establishment, conduct a preparatory conference with the parties in any suitable format, including telephone, video-conference or online tools, for the purpose of organizing and scheduling the subsequent proceedings in a time and cost efficient manner.

Statement of Claim

Article 35

(a) The Statement of Claim shall contain a comprehensive statement of the facts and legal arguments supporting the claim, including a statement of the relief sought.

(b) The Statement of Claim shall, to as large an extent as possible, be accompanied by the evidence upon which the Claimant relies, together with a schedule of such evidence. Where the evidence is especially voluminous, the Claimant may add a reference to further evidence it is prepared to submit.

Statement of Defense

Article 36

(a) The Statement of Defense shall reply to the particulars of the Statement of Claim required pursuant to Article 35(a). The Statement of Defense shall be accompanied by the evidence upon which the Respondent relies, in the manner described in Article 35(b).

(b) Any counter-claim or set-off by the Respondent shall be made or asserted in the Statement of Defense or, in exceptional circumstances, at a later stage in the arbitral proceedings if so determined by the Tribunal. Any such counter-claim or set-off shall contain the same particulars as those specified in Article 35(a) and (b).

Further Written Statements

Article 37

(a) In the event that a counter-claim or set-off has been made or asserted, the Claimant shall reply to the particulars thereof within 20 days from the date on which the Claimant receives such counter-claim or set-off. Article 36(a) shall apply *mutatis mutandis* to such reply.

(b) The Tribunal may, in its discretion, allow or require further written statements.

Amendments to Claims or Defense

Article 38

Subject to any contrary agreement by the parties, a party may amend or supplement its claim, counter-claim, defense or set-off during the course of the arbitral proceedings, unless the Tribunal considers it inappropriate to allow such amendment having regard to its nature or the delay in making it and to the provisions of Article 31(b) and (c).

Communication Between Parties and Tribunal

Article 39

Except as otherwise provided in these Rules or permitted by the Tribunal, no party or anyone acting on its behalf may have any *ex parte* communication with the Tribunal with respect to any matter of substance relating to the arbitration, it being understood that nothing in this paragraph shall prohibit *ex parte* communications that concern matters of a purely organizational nature, such as the physical facilities, the use of online tools, place, date or time of the hearings.

Joinder

Article 40

At the request of a party, the Tribunal may order the joinder of an additional party to the arbitration provided all parties, including the additional party, agree. Any such

order shall take account of all relevant circumstances, including the stage reached in the arbitration. The request shall be addressed together with the Request for Arbitration or the Answer to the Request, as the case may be, or, if a party becomes aware at a later stage of circumstances that it considers relevant for a joinder, within 15 days after acquiring that knowledge.

Consolidation

Article 41

Where an arbitration is commenced that concerns a subject matter substantially related to that in dispute in other arbitral proceedings pending under these Rules or involving the same parties, the Center may order, after consulting with all concerned parties and any Tribunal appointed in the pending proceedings, to consolidate the new arbitration with the pending proceedings, provided all parties and any appointed Tribunal agree. Such consolidation shall take into account all relevant circumstances, including the stage reached in the pending proceedings.

Interim Measures of Protection and Security for Claims and Costs

Article 42

(a) At the request of a party, the Tribunal may issue any provisional orders or take other interim measures it deems necessary, including injunctions and measures for the conservation of goods which form part of the subject matter in dispute, such as an order for their deposit with a third person or for the sale of perishable goods. The Tribunal may make the granting of such measures subject to appropriate security being furnished by the requesting party.

(b) At the request of a party, the Tribunal may order the other party to provide security, in a form to be determined by the Tribunal, for the claim or counter-claim, as well as for costs referred to in Article 66.

(c) Measures and orders contemplated under this Article may take the form of an interim award.

(d) A request addressed by a party to a judicial authority for interim measures or for security for the claim or counter-claim, or for the implementation of any such measures or orders granted by the Tribunal, shall not be deemed incompatible with the Arbitration Agreement, or deemed to be a waiver of that Agreement.

Emergency Relief Proceedings

Article 43

(a) Unless otherwise agreed by the parties, the provisions of this Article shall apply to arbitrations conducted under Arbitration Agreements entered on or after June 1, 2014.

(b) A party seeking urgent interim relief prior to the establishment of the Tribunal may submit a request for such emergency relief to the Center. The request for emergency relief shall include the particulars set out in Article 9(ii) to (iv), as well as a statement of the interim measures sought and the reasons why such relief is needed on an emergency basis. The Center shall inform the other party of the receipt of the request for emergency relief.

(c) The date of commencement of the emergency relief proceedings shall be the date on which the request referred to in paragraph (b) is received by the Center.

(d) The request for emergency relief shall be subject to proof of payment of the administration fee and of the initial deposit of the emergency arbitrator's fees in accordance with the Schedule of Fees applicable on the date of commencement of the emergency relief proceedings.

(e) Upon receipt of the request for emergency relief, the Center shall promptly, normally within two days, appoint a sole emergency arbitrator. Articles 17 to 24 shall apply *mutatis mutandis* whereby the periods of time referred to in Articles 20 and 21 shall be three days.

(f) The emergency arbitrator shall have the powers vested in the Tribunal under Article 30(a) and (b), including the authority to determine its own jurisdiction. Article 30(e) shall apply *mutatis mutandis*.

(g) The emergency arbitrator may conduct the proceedings in such manner as it considers appropriate, taking due account of the urgency of the request. The emergency arbitrator shall ensure that each party is given a fair opportunity to present its case. The emergency arbitrator may provide for proceedings by telephone, videoconference or online tools, or on written submissions as alternatives to a hearing.

(h) If the parties have agreed upon the place of arbitration, that place shall be the place of the

emergency relief proceedings. In the absence of such agreement, the place of the emergency relief proceedings shall be decided by the Center, taking into consideration any observations made by the parties and the circumstances of the emergency relief proceedings.

(i) The emergency arbitrator may order any interim measure it deems necessary. The emergency arbitrator may make the granting of such orders subject to appropriate security being furnished by the requesting party. Article 42(c) and (d) shall apply *mutatis mutandis*. Upon request, the emergency arbitrator may modify or terminate the order.

(j) The emergency arbitrator shall terminate emergency relief proceedings if arbitration is not commenced within 30 days from the date of commencement of the emergency relief proceedings.

(k) The costs of the emergency relief proceedings shall be initially fixed and apportioned by the emergency arbitrator in consultation with the Center, in accordance with the Schedule of Fees applicable on the date of commencement of the emergency relief proceedings, subject to the Tribunal's power to make a final determination of the apportionment of such costs under Article 65(c).

(l) Unless otherwise agreed by the parties, the emergency arbitrator may not act as an arbitrator in any arbitration relating to the dispute.

(m) The emergency arbitrator shall have no further powers to act once the Tribunal is established. Upon request by a party, the Tribunal may modify or terminate any measure ordered by the emergency arbitrator.

Evidence

Article 44

(a) The Tribunal shall determine the admissibility, relevance, materiality and weight of evidence.

(b) At any time during the arbitration, the Tribunal may, at the request of a party or on its own motion, order a party to produce such documents or other evidence as it considers necessary or appropriate and may order a party to make available to the Tribunal or to an expert appointed by it or to the other party any property in its possession or control for inspection or testing.

Experiments

Article 45

(a) A party may give notice to the Tribunal and to the other party at any reasonable time before a hearing that specified experiments have been conducted on which it intends to rely. The notice shall specify the purpose of the experiment, a summary of the experiment, the method employed, the results and the conclusion. The other party may by notice to the Tribunal request that any or all such experiments be repeated in its presence. If the Tribunal considers such request justified, it shall determine the timetable for the repetition of the experiments.

(b) For the purposes of this Article, "experiments" shall include tests or other processes of verification.

Site Visits

Article 46

The Tribunal may, at the request of a party or on its own motion, inspect or require the inspection of any site, property, machinery, facility, production line, model, film, material, product or process as it deems appropriate. A party may request such an inspection at any reasonable time prior to any hearing, and the Tribunal, if it grants such a request, shall determine the timing and arrangements for the inspection.

Agreed Primers and Models

Article 47

The Tribunal may, where the parties so agree, determine that they shall jointly provide:

(i) a technical primer setting out the background of the scientific, technical or other specialized information necessary to understand fully the matters in issue; and

(ii) models, drawings or other materials that the Tribunal or the parties require for reference purposes at any hearing.

Disclosure of Trade Secrets and Other Confidential Information

Article 48

(a) For the purposes of this Article, confidential information shall mean any information, regardless of the medium in which it is expressed, which is:

(i) in the possession of a party;

(ii) not accessible to the public;

(iii) of commercial, financial or industrial significance; and

(iv) treated as confidential by the party possessing it.

(b) A party invoking the confidentiality of any information it wishes or is required to submit in the arbitration, including to an expert appointed by the Tribunal, shall make an application to have the information classified as confidential by notice to the Tribunal, with a copy to the other party. Without disclosing the substance of the information, the party shall give in the notice the reasons for which it considers the information confidential.

(c) The Tribunal shall determine whether the information is to be classified as confidential and of such a nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party invoking its confidentiality. If the Tribunal so determines, it shall decide under which conditions and to whom the confidential information may in part or in whole be disclosed and shall require any person to whom the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.

(d) In exceptional circumstances, in lieu of itself determining whether the information is to be classified as confidential and of such nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party invoking its confidentiality, the Tribunal may, at the request of a party or on its own motion and after consultation with the parties, designate a confidentiality advisor who will determine whether the information is to be so classified, and, if so, decide under which conditions and to whom it may in part or in whole be disclosed. Any such confidentiality advisor shall be required to sign an appropriate confidentiality undertaking.

(e) The Tribunal may also, at the request of a party or on its own motion, appoint the confidentiality advisor as an expert in accordance with Article 51 in order to report to it, on the basis of the confidential information, on specific issues designated by the Tribunal without disclosing the confidential information either to the party from whom the confidential information does not originate or to the Tribunal.

Hearings

Article 49

(a) If either party so requests, the Tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral argument or for both. In the absence of a request, the Tribunal shall decide whether to hold such a hearing or hearings. The Tribunal shall decide, after consultation with the parties, whether the hearing will be conducted by telephone, videoconference or using online tools, or in-person. If no hearings are held, the proceedings shall be conducted on the basis of documents and other materials alone.

(b) If a hearing is held, it shall be convened within 30 days after the receipt by the Claimant of the Answer to the Request and the Statement of Defense. The Tribunal shall give the parties adequate advance notice of the date, time and place, and videoconference or online tools to be used, or place of the hearing. Except in exceptional circumstances, hearings may not exceed three days. Each party shall be expected to bring to the hearing such persons as necessary to adequately inform the Tribunal of the dispute.

(c) Unless the parties agree otherwise, all hearings shall be in private.

(d) The Tribunal shall determine whether and, if so, in what form a record shall be made of any hearing.

(e) Within such short period of time after the hearing as is agreed by the parties or, in the absence of such agreement, determined by the Tribunal, each party may communicate to the Tribunal and to the other party a post-hearing brief.

Witnesses

Article 50

(a) Before any hearing, the Tribunal may require either party to give notice of the identity of witnesses it wishes to call, whether witness of fact or expert witness, as well as of the subject matter of their testimony and its relevance to the issues.

(b) The Tribunal has discretion, on the grounds of redundance and irrelevance, to limit or refuse the appearance of any witness.

(c) Any witness who gives oral evidence may be questioned, under the control of the Tribunal, by each of the parties. The Tribunal may put questions at any stage of the examination of the witnesses.

(d) The testimony of witnesses may, either at the choice of a party or as directed by the Tribunal, be submitted in written form, whether by way of signed statements, sworn affidavits or otherwise, in which case the Tribunal may make the admissibility of the testimony conditional upon the witnesses being made available for oral testimony.

(e) A party shall be responsible for the practical arrangements, cost and availability of any witness it calls.

(f) The Tribunal shall determine whether any witness shall retire during any part of the proceedings, particularly during the testimony of other witnesses.

Experts Appointed by the Tribunal

Article 51

(a) The Tribunal may, at the preparatory conference or at a later stage, and after consultation with the parties, appoint one or more independent experts to report to it on specific issues designated by the Tribunal. A copy of the expert's terms of reference, established by the Tribunal, having regard to any observations of the parties, shall be communicated to the parties. Any such expert shall be required to sign an appropriate confidentiality undertaking. The terms of reference shall include a requirement that the expert report to the Tribunal within 30 days of receipt of the terms of reference.

(b) Subject to Article 48, upon receipt of the expert's report, the Tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party may, subject to Article 48, examine any document on which the expert has relied in such a report.

(c) At the request of a party, the parties shall be given the opportunity to question the expert at a hearing. At this hearing, the parties may present expert witnesses to testify on the points at issue.

(d) The opinion of any expert on the issue or issues submitted to the expert shall be subject to the Tribunal's power of assessment of those issues in the context of all the circumstances of the case, unless the parties have agreed that the expert's determination shall be conclusive in respect of any specific issue.

Default

Article 52

(a) If the Claimant, without showing good cause, fails to submit its Statement of Claim in accordance with Articles 10 and 35, the Center shall not be required to take any action under Article 8.

(b) If the Respondent, without showing good cause, fails to submit its Statement of Defense in accordance with Articles 11, 12 and 36, the Tribunal may nevertheless proceed with the arbitration and make the award.

(c) The Tribunal may also proceed with the arbitration and make the award if a party, without showing good cause, fails to avail itself of the opportunity to present its case within the period of time determined by the Tribunal.

(d) If a party, without showing good cause, fails to comply with any provision of, or requirement under, these Rules or any direction given by the Tribunal, the Tribunal may draw the inferences therefrom that it considers appropriate.

Closure of Proceedings

Article 53

(a) The Tribunal shall declare the proceedings closed when it is satisfied that the parties have had adequate opportunity to present submissions and evidence.

(b) The Tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to re-open the proceedings it declared to be closed at any time before the award is made.

Waiver

Article 54

A party which knows that any provision of these Rules, any requirement under the Arbitration Agreement or any direction given by the Tribunal, has not been complied with, and yet proceeds with the arbitration without promptly recording an objection to such non-compliance, shall be deemed to have waived its right to object.

V. AWARDS AND OTHER DECISIONS

Laws Applicable to the Substance of the Dispute, the Arbitration and the Arbitration Agreement

Article 55

(a) The Tribunal shall decide the substance of the dispute in accordance with the law or rules of law chosen by the parties. Any designation of the law of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules. Failing a choice by the parties, the Tribunal shall apply the law or rules of law that it determines to be appropriate. In all cases, the Tribunal shall decide having due regard to the terms of any relevant contract and taking into account applicable trade usages. The Tribunal may decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized it to do so.

(b) The law applicable to the arbitration shall be the arbitration law of the place of arbitration, unless the parties have expressly agreed on the application of another arbitration law and such agreement is permitted by the law of the place of arbitration.

(c) An Arbitration Agreement shall be regarded as effective if it conforms to the requirements concerning form, existence, validity and scope of either the law or rules of law applicable in accordance with paragraph (a), or the law applicable in accordance with paragraph (b).

Currency and Interest

Article 56

(a) Monetary amounts in the award may be expressed in any currency.

(b) The Tribunal may award simple or compound interest to be paid by a party on any sum awarded against that party. It shall be free to determine the interest at such rates as it considers to be appropriate, without being bound by legal rates of interest, and shall be free to determine the period for which the interest shall be paid.

Form and Notification of Awards

Article 57

(a) The Tribunal may make separate awards on different issues at different times.

(b) The award shall be in writing and shall state the date on which it was made, as well as the place of arbitration in accordance with Article 32(a).

(c) The award shall state the reasons on which it is based, unless the parties have agreed that no reasons should be stated and the law applicable to the arbitration does not require the statement of such reasons.

(d) The award shall be signed by the arbitrator. Where the arbitrator fails to sign, the award shall state the reason for the absence of the signature.

(e) The Tribunal may consult the Center with regard to matters of form, particularly to ensure the enforceability of the award.

(f) The award shall be communicated by the Tribunal to the Center in a number of originals sufficient to provide one for each party, the arbitrator and the Center. The Center shall formally communicate an original of the award to each party and the arbitrator.

(g) At the request of a party, the Center shall provide it, at cost, with a copy of the award certified by the Center. A copy so certified shall be deemed to comply with the requirements of Article IV(1)(a) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, June 10, 1958.

Time Period for Delivery of the Final Award

Article 58

(a) The arbitration should, wherever reasonably possible, be heard and the proceedings declared closed within not more than three months after either the delivery of the Statement of Defense or the establishment of the Tribunal, whichever event occurs later. The final award should, wherever reasonably possible, be made within one month thereafter.

(b) If the proceedings are not declared closed within the period of time specified in paragraph (a), the Tribunal shall send the Center a status report on the arbitration, with a copy to each party. It shall send a further status report to the Center, and a copy to each party, at the end of each ensuing period of one month during which the proceedings have not been declared closed.

(c) If the final award is not made within one month after the closure of the proceedings, the Tribunal shall send the Center a written explanation for the delay, with a copy to each party. It shall send a further explanation, and a copy to each party, at the end of each ensuing period of one month until the final award is made.

Effect of Award

Article 59

(a) By agreeing to arbitration under these Rules, the parties undertake to carry out the award without delay, and waive their right to any form of appeal or recourse to a court of law or other judicial authority, insofar as such waiver may validly be made under the applicable law.

(b) The award shall be effective and binding on the parties as from the date it is communicated by the Center pursuant to Article 57(f), second sentence.

Settlement or Other Grounds for Termination

Article 60

(a) The Tribunal may suggest that the parties explore settlement, including by commencing mediation, at such times as the Tribunal may deem appropriate.

(b) If, before the award is made, the parties agree on a settlement of the dispute, the Tribunal shall terminate the arbitration and, if requested jointly by the parties, record the settlement in the form of a consent award. The Tribunal shall not be obliged to give reasons for such an award.

(c) If, before the award is made, the continuation of the arbitration becomes unnecessary or impossible for any reason not mentioned in paragraph (b), the Tribunal shall inform the parties of its intention to terminate the arbitration. The Tribunal shall have the power to issue such an order terminating the arbitration, unless a party raises justifiable grounds for objection within a period of time to be determined by the Tribunal.

(d) The consent award or the order for termination of the arbitration shall be signed by the arbitrator in accordance with Article 57(d) and shall be communicated by the Tribunal to the Center in a number of originals sufficient to provide one for each party, the arbitrator and the Center. The Center shall formally communicate an original of the consent award or the order for termination to each party and the arbitrator.

Correction of the Award and Additional Award

Article 61

(a) Within 30 days after receipt of the award, a party may, by notice to the Tribunal, with a copy to the Center and the other party, request the Tribunal to correct in the award any clerical, typographical or computational errors. If the Tribunal considers the request to be justified, it shall make the correction within 30 days after receipt of the request. Any correction, which shall take the form of a separate memorandum, signed by the Tribunal in accordance with Article 57(d), shall become part of the award.

(b) The Tribunal may correct any error of the type referred to in paragraph (a) on its own initiative within 30 days after the date of the award.

(c) A party may, within 30 days after receipt of the award, by notice to the Tribunal, with a copy to the Center and the other party, request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but not dealt with in the award. Before deciding on the request, the Tribunal shall give the parties an opportunity to be heard. If the Tribunal considers the request to be justified, it shall, wherever

reasonably possible, make the additional award within 30 days of receipt of the request.

VI. FEES AND COSTS

Fees of the Center

Article 62

(a) The Request for Arbitration shall be subject to the payment to the Center of an administration fee. The amount of the administration fee shall be calculated in accordance with the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Center.

(b) Any counter-claim by a Respondent shall be subject to the payment to the Center of an administration fee. The amount of the administration fee shall be calculated in accordance with the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Center.

(c) No action shall be taken by the Center on a Request for Arbitration or counter claim until the administration fee has been paid.

(d) Where a claim or counter-claim is increased, the amount of the administration fee may be increased in accordance with the applicable Schedule of Fees, and the increased amount shall be payable by the Claimant or the Respondent, as the case may be.

(e) If a party fails, within 15 days after a reminder in writing from the Center, to pay any administration fee due, it shall be deemed to have withdrawn its claim or counter-claim, or its increase in claim or counter-claim, as the case may be.

(f) The Tribunal shall, in a timely manner, inform the Center of the amount of the claim and any counter-claim, as well as any increase thereof.

Fees of the Arbitrator

Article 63

The amount and currency of the fees of the arbitrator and the modalities and timing of their payment shall be fixed by the Center after consultation with the arbitrator and the parties, in accordance with the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Center.

Deposits

Article 64

(a) Upon receipt of notification from the Center of the establishment of the Tribunal, the Claimant and the Respondent shall each deposit an equal amount as an advance for the costs of arbitration referred to in Article 65. The amount of the deposit shall be determined by the Center.

(b) In the course of the arbitration, the Center may require that the parties make supplementary deposits.

(c) If the required deposits are not paid in full within 20 days after receipt of the corresponding notification, the Center shall so inform the parties in order that one or other of them may make the required payment.

(d) Where the amount of the counter-claim greatly exceeds the amount of the claim or involves the examination of significantly different matters, or where it otherwise appears appropriate in the circumstances, the Center in its discretion may establish two separate deposits on account of claim and counter-claim. If separate deposits are established, the totality of the deposit on account of claim shall be paid by the Claimant and the totality of the deposit on account of counter-claim shall be paid by the Respondent.

(e) If a party fails, within 15 days after a reminder in writing from the Center, to pay the required deposit, it shall be deemed to have withdrawn the relevant claim or counter-claim.

(f) After the award has been made, the Center shall, in accordance with the award, render an accounting to the parties of the deposits received and return any unexpended balance to the parties or require the payment of any amount owing from the parties.

Award of Costs of Arbitration

Article 65

(a) In its award, the Tribunal shall fix the costs of arbitration, which shall consist of:

(i) the arbitrator's fees;

(ii) the properly incurred travel, communication and other expenses of the arbitrator;

(iii) the costs of expert advice and such other assistance required by the Tribunal pursuant to these Rules; and

(iv) such other expenses as are necessary for the conduct of the arbitration proceedings, such as the cost of meeting and hearing facilities.

(b) The aforementioned costs shall, as far as possible, be debited from the deposits required under Article 64.

(c) The Tribunal shall, subject to any agreement of the parties, apportion the costs of arbitration and the registration and administration fees of the Center between the parties in the light of all the circumstances and the outcome of the arbitration.

Award of Costs Incurred by a Party

Article 66

In its award, the Tribunal may, subject to any contrary agreement by the parties and in the light of all the circumstances and the outcome of the arbitration, order a party to pay the whole or part of reasonable expenses incurred by the other party in presenting its case, including those incurred for legal representatives and witnesses.

VII. CONFIDENTIALITY

Confidentiality of the Existence of the Arbitration

Article 67

(a) Except to the extent necessary in connection with a court challenge to the arbitration or an action for enforcement of an award, no information concerning the existence of an arbitration may be unilaterally disclosed by a party to any third party unless it is required to do so by law or by a competent regulatory body, and then only:

(i) by disclosing no more than what is legally required; and

(ii) by furnishing to the Tribunal and to the other party, if the disclosure takes place during the arbitration, or to the other party alone, if the disclosure takes place after the termination of the arbitration, details of the disclosure and an explanation of the reason for it.

(b) Notwithstanding paragraph (a), a party may disclose to a third party the names of the parties to the arbitration and the relief requested for the purpose of satisfying any obligation of good faith or candor owed to that third party.

Confidentiality of Disclosures Made During the Arbitration

Article 68

(a) In addition to any specific measures that may be available under Article 48, any documentary or other evidence given by a party or a witness in the arbitration shall be treated as confidential and, to the extent that such evidence describes information that is not in the public domain, shall not be used or disclosed to any third party by a party whose access to that information arises exclusively as a result of its participation in the arbitration for any purpose without the consent of the parties or order of a court having jurisdiction.

(b) For the purposes of this Article, a witness called by a party shall not be considered to be a third party. To the extent that a witness is given access to evidence or other information obtained in the arbitration in order to prepare the witness's testimony, the party calling such witness shall be responsible for the maintenance by the witness of the same degree of confidentiality as that required of the party.

Confidentiality of the Award

Article 69

The award shall be treated as confidential by the parties and may only be disclosed to a third party if and to the extent that:

(i) the parties consent; or

(ii) it falls into the public domain as a result of an action before a national court or other competent authority; or

(iii) it must be disclosed in order to comply with a legal requirement imposed on a party or in order to establish or protect a party's legal rights against a third party.

Maintenance of Confidentiality by the Center and Arbitrator

Article 70

(a) Unless the parties agree otherwise, the Center and the arbitrator shall maintain the confidentiality of the arbitration, the award and, to the extent that they describe information that is not in the public domain, any documentary or other evidence disclosed during the arbitration, except to the extent necessary in connection with a court action relating to the award, or as otherwise required by law.

(b) Notwithstanding paragraph (a), the Center may include information concerning the arbitration in any aggregate statistical data that it publishes concerning its activities, provided that such information does not enable the parties or the particular circumstances of the dispute to be identified.

VIII. MISCELLANEOUS

Exclusion of Liability

Article 71

Except in respect of deliberate wrongdoing, the arbitrator, WIPO and the Center shall not be liable to a party for any act or omission in connection with the arbitration.

Waiver of Defamation

Article 72

The parties and, by accepting appointment, the arbitrator agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the arbitration shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this Article may be pleaded as a bar to any such action.

Schedule of Fees and Costs

[Editor's note: Please go to https://www.wipo.int/amc/en/arbitration/fees/ for the latest fee information.]