

# DIAC Arbitration Rules 2007

(Updated on 29 March 2017, from: <http://www.diac.ae/idias/rules/>)

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As of May 7<sup>th</sup> 2007, the new DIAC arbitration rules have come into effect. The new rules have come into effect. The new rules have been issued by Decree No. 11 2007 upon their approval by H.H. the Ruler of Dubai on the 6<sup>th</sup> of May 2007, and their issuance in the Official Gazette, No. 321 on May 7<sup>th</sup>, 2007. All new applications for arbitration submitted to DIAC after the aforementioned date shall be governed by these rules.

The new DIAC arbitration rules now replace the once applicable Rules of Commercial Conciliation and Arbitration of Dubai Chamber of Commerce and Industry No. (2) of 1994. The latter was applicable to all arbitration cases since 1994 until the 7<sup>th</sup> of May 2007.

The new rules are available in both the English and Arabic languages. It was originally drafted in the English language and after its approval by the DIAC Board of trustees it was translated into Arabic, special care being given to the accuracy of its translation.

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## INTRODUCTORY PROVISIONS

### Article (1) Definitions

- 1.1 The following words and phrases shall have the meaning assigned thereto unless the context indicates otherwise:

"**Claimant**" means the party initiating an arbitration;

"**DIAC Rules**" Arbitration Rules of the Dubai International Arbitration Centre

"**Arbitration Agreement**" means an agreement in writing 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 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**" the arbitral tribunal and includes a sole arbitrator or all the arbitrators where more than one is appointed;

"**Executive Committee**" means the Executive Committee of the DIAC;

"*Administrator*" means the Director of the DIAC;

"*Appendix - Cost of Arbitration*" the provisions attached to the Rules that specify the fees and costs of arbitration.

- 1.2 Words used in singular include the plural and vice versa, as the context may require. Similarly, words such as claimant, respondent, arbitrator, representative and party shall be construed as gender-neutral.

## **Article (2)**

### **Scope**

- 2.1 Where the parties have agreed in writing to submit their future or existing disputes to arbitration under the DIAC Rules they shall be deemed to have submitted to arbitration in accordance with the following rules ("the Rules") being those in effect on the date of commencement of the arbitration proceedings or such amended rules as may have been adopted hereafter, unless they have expressly agreed to submit to the Rules in effect on the date of their arbitration agreement.
- 2.2 These Rules shall govern the arbitration and shall be considered as supplementary to any agreement in writing referred to in Article 2 (1) above, 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.

## **Article (3)**

### **Written Notifications or Communications; Time Limits**

- 3.1 All communications from any party or arbitrator to the Centre shall be addressed to the Administrator.
- 3.2 Any notice, documentation or other communication submitted by any party to the Centre shall be sent in a number of copies equal to the number required to provide one copy for each arbitrator, one copy for the other party or parties and one for the Centre until such time as the Tribunal is constituted.
- 3.3 After the notification by the Centre of the establishment of the Tribunal, all communications between the Tribunal and the parties shall take place directly between them (with simultaneous copies to the Centre).
- 3.4 For the purpose of these Rules all notifications, statements and other communications as well as all documentation annexed thereto shall be directed to the addresses of the parties provided by them to the Centre and shall be deemed to have been received if physically delivered to the addressee or its representative at his habitual residence, place of business, mailing address, or if none of these can be found after making reasonable inquiry then at the addressee's last known residence or place of business.

- 3.5 Such notification or communication shall be in writing and shall be delivered by registered post or courier service or transmitted by facsimile transmission, telex, telegram, email or any other means of telecommunication that provides a record of transmission.
- 3.6 A notification or other communication shall be deemed to have been made on the day it is received or, in the case of telecommunications, transmitted in accordance with the preceding paragraph, so long as it is received or transmitted before 6 pm in the country in which the communication was received, otherwise it shall be deemed to have been received on the following day.
- 3.7 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 or deemed to be 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.
- 3.8 The Tribunal shall send to the Centre a copy of each order, award or other decision that it makes.

## **COMMENCING THE ARBITRATION**

### **Article (4)**

#### **Request for Arbitration**

- 4.1 Any party wishing to commence an arbitration under the DIAC Rules shall send to the Centre a written request for arbitration ("the Request") which shall include:
  - a. A demand that the dispute be referred to arbitration under the DIAC Rules;
  - b. The name in full, description and address, including telephone, fax number, email address and other communication references of each of the parties to the arbitration and of the representative of the Claimant;
  - c. A copy of the Arbitration Agreement invoked by the Claimant, together with a copy of the contractual documentation in which the Arbitration Agreement is contained or in respect of which the arbitration arises;
  - d. A brief description of the nature and circumstances of the dispute giving rise to the claim;
  - e. A preliminary statement of the relief sought and, to the extent possible, an indication of any amount(s) claimed; and
  - f. All relevant particulars concerning the number of arbitrators and their choice in accordance with Articles 8, 9, 10, 11, and 12, and if the Arbitration Agreement calls for party nomination of arbitrators, the name, address,

telephone and facsimile numbers and email address (if known) of the Claimant's nominee.

- 4.2 The Request may also include:
  - a. The Statement of Claim referred to in Article 23;
  - b. A proposal as to the place of arbitration and the language of the arbitration; and
  - c. Any comments as to the applicable rules of law.
- 4.3 The Request (including all accompanying documents) shall be submitted to the Centre in the number of copies required by Article 3(2) above.
- 4.4 Together with the Request, the Claimant shall make payment of the Registration Fee required by Appendix - Cost of Arbitration in force on the date the Request is submitted. In the event that the Claimant fails to comply with this requirement, the Request shall be deemed invalid.
- 4.5 The Centre shall send a copy of the Request and the documents annexed thereto to the Respondent.
- 4.6 The date of receipt by the Centre of the Request in the number of copies required by Article 3(2) and the Registration Fee shall be treated as the date on which the arbitration proceedings have commenced.

#### **Article (5)**

##### **Answer to the Request; Counterclaims**

- 5.1 Within 30 days of receipt of the Request from the Centre, the Respondent shall submit to the Centre an Answer to the Request ("the Answer") which shall include the following:
  - a. Its name in full, description and address, telephone, fax numbers, email address and other communication, reference for itself and its representative;
  - b. Its preliminary comments as to the nature and circumstances of the dispute giving rise to the claim(s);
  - c. Its preliminary response to the relief sought by the Claimant;
  - d. Any objection concerning the validity or applicability of the Arbitration Agreement;
  - e. Any comments concerning the number of arbitrators and their choice in light of the Claimant's proposals and in accordance with Articles 8 and 9, and if the arbitration agreement calls for party nomination of arbitrators, the name, address, telephone facsimile numbers and email address (if known) of the Respondent's nominee; and
  - f. Any comments as to the place of arbitration, the applicable rules of law

and the language of the arbitration.

- 5.2 If the Claimant has filed a Statement of Claim with the Request for Arbitration pursuant to Article 4 (2)(a), the Answer to the Request may also be accompanied by the Statement of Defence referred to in Article 24.
- 5.3 The Answer (including all accompanying documents) shall be submitted to the Centre in three copies, or if the parties have agreed or the Respondent considers that three arbitrators should be appointed, in five copies.
- 5.4 With its Answer, 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 arising out of the same contract, and shall provide:
  - a. A brief description of the nature and circumstances of the dispute giving rise to the counterclaim(s); and
  - b. A preliminary statement of the relief sought, including, to the extent possible, an indication of any amount(s) counterclaimed.
- 5.5 If the Respondent has submitted a counterclaim with its Answer, the Respondent shall make payment of the Registration Fee required by Appendix - Cost of Arbitration in force on the date the Answer is submitted together with its Answer. In the event that the Respondent fails to comply with this requirement, the submission of the counterclaim shall be invalid, without prejudice to the right of the Respondent to submit the same claim at a later date in another Request.
- 5.6 Failure by the Respondent to submit an Answer shall not prevent the arbitration from proceeding pursuant to the Rules. However, if the Arbitration Agreement calls for party nomination of arbitrators, failure to send an Answer or to nominate an arbitrator within the time provided or at all will constitute an irrevocable waiver of that party's right to nominate an arbitrator.
- 5.7 The Administrator may grant the Respondent an extension of time of up to 14 days for filing the Answer and any counterclaim, provided that the application for such an extension contains the Respondent's comments concerning the number of arbitrators, their choice and the nomination of an arbitrator if that was required in accordance with Articles 8 and 9. If the Respondent fails to do so, the Centre shall proceed with the appointment of the Tribunal in accordance with these Rules.
- 5.8 The Centre shall communicate the Respondent's Answer and any counterclaim to the Claimant. The Claimant shall be given an opportunity to comment on any objections or pleas advanced by the Respondent.

## **Article (6)**

### **Separability of Arbitration Agreement and Jurisdiction to Determine Existence and Validity of Arbitration Agreement**

- 6.1 Unless otherwise agreed by the parties, an Arbitration Agreement which forms or was intended to form part of another agreement shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, or did not come into existence or has become ineffective, and the Arbitration Agreement shall for that purpose be treated as a distinct agreement.
- 6.2 If any party raises one or more pleas concerning the existence, validity, scope or applicability of the arbitration agreement, then the Executive Committee may decide, without prejudice to the admissibility or merits of the plea or pleas, that the arbitration shall proceed if it is prima facie satisfied that an arbitration agreement may exist under the Rules. In such a case, any decision as to the jurisdiction of the Tribunal shall be taken by the Tribunal itself. If the Executive Committee is not so satisfied, the parties shall be notified that the arbitration cannot proceed. In such a case, any party retains the right to ask any court having jurisdiction whether or not there is a binding arbitration agreement.
- 6.3 A plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defence or, with respect to a counterclaim, in any reply to the counterclaim.
- 6.4 In general, the Tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the Tribunal may proceed with the arbitration and rule on such a plea in the arbitral award.

## **Article (7)**

### **Representation**

- 7.1 The parties may be represented or assisted by persons of their choice, irrespective of, in particular, nationality or professional qualification. The names, addresses and telephone, fax, e-mail other communication references of such representatives shall be included in the Request and/or the Answer, as required by Articles 4 and 5 above.
- 7.2 Each party shall ensure that its representatives have sufficient time available to carry out his duties and enable the arbitration to proceed expeditiously.
- 7.3 At any time the Tribunal may require from any party proof of authority granted to its representative(s) in such form as the Tribunal may determine.

## THE TRIBUNAL

### Article (8)

#### Number of Arbitrators

- 8.1 The Tribunal shall consist of such number of arbitrators as has been agreed by the parties. If there is more than one arbitrator, their number shall be uneven.
- 8.2 Where the parties have not agreed on the number of arbitrators, the Tribunal shall consist of a sole arbitrator, except where the Centre in its discretion determines that, in view of all the circumstances of the dispute, a Tribunal composed of three members is appropriate.

### Article (9)

#### Appointment of the Tribunal

- 9.1 All arbitrators conducting an arbitration under these Rules shall be and remain impartial and independent of the parties; and shall not act as advocates for any party in the arbitration.
- 9.2 Where the Arbitration Agreement provides that each party is to appoint an arbitrator, such agreement shall be construed as an agreement to nominate an arbitrator for appointment by the Centre under these Rules.
- 9.3 Where the parties have agreed that the Claimant shall nominate an arbitrator, and the Claimant fails to do so in the Request or within any specified time limit, the Centre may proceed to appoint an arbitrator in accordance with these Rules.
- 9.4 Where the parties have agreed that the Respondent is to nominate an arbitrator and the Respondent fails to do so in the Answer, or within any specified time limit, the Centre may proceed and appoint an arbitrator in accordance with these Rules.
- 9.5 In the case of a three-member Tribunal, each party shall nominate one arbitrator for appointment by the Centre in the manner prescribed in this article. The following applies to the appointment of the Chairman:
  - (a) If the parties have agreed upon a mechanism for appointment of the Chairman, that procedure shall be followed, subject to confirmation and appointment by the Centre, in the manner prescribed in this article.
  - (b) In the absence of any agreed procedure, the two party nominated arbitrators shall agree upon the third arbitrator who shall act as Chairman, subject to confirmation and appointment by the Centre, as prescribed in this article.
  - (c) Should the party-nominated arbitrators fail to agree upon a third arbitrator within 15 days of appointment of the last arbitrator, the Centre shall appoint a Chairman.

- 9.6 All arbitrators shall be appointed by the Centre, according due regard to any method of appointment agreed upon in writing by the parties.
- 9.7 The Centre may decline to appoint any nominee proposed by a party if it considers the nominee to be lacking independence, impartiality or otherwise unsuitable. In such case, the Centre may request from that party a new nomination within 21 days from the date of receiving notification of the Centre's decision. If that party failed to nominate an arbitrator or if the Centre refused to appoint the nominated arbitrator, the Centre shall appoint the arbitrator.
- 9.8 Before appointment by the Centre, each prospective arbitrator shall provide to the Centre a full CV and a Statement of Independence in the form prescribed by the Centre. By signing such form, each arbitrator shall undertake a continuing duty to disclose to the Centre, the other members of the Tribunal and to the parties any circumstances that may arise during the course of the arbitration that are likely, in the eyes of the parties, to give rise to justifiable doubts as to his independence or impartiality.
- 9.9 Before appointment by the Centre, each prospective arbitrator shall also provide written confirmation of willingness to serve on the basis of the fees included in the DIAC Table of Fees and Costs as attached to the Rules.
- 9.10 In appointing the Tribunal the Centre shall give due consideration to the nature of the transaction, the nature and circumstances of the dispute, the nationality, location and languages of the parties and (if more than two) the number of parties.

#### **Article (10)**

##### **Nationality of Arbitrators**

- 10.1 Where the parties are of different nationalities, a sole arbitrator or chairman of the Tribunal shall not have the same nationality as any party unless the parties who are not of the same nationality as the proposed arbitrator all agree otherwise in writing.
- 10.2 For the purpose of this Article, a person who is a citizen of two or more states shall be treated as a of each state.

#### **Article (11)**

##### **Multiple Parties**

- 11.1 Where there are multiple parties, whether as Claimant or Respondent, and where the dispute is to be referred to a three arbitrator Tribunal, the multiple Claimants, jointly, and the multiple Respondents, jointly, shall nominate an arbitrator for appointment by the Centre pursuant to Article 9.
- 11.2 In the absence of such a joint nomination and where all the parties are unable to agree to a method for the constitution of the Tribunal, the Centre may appoint the Tribunal and shall designate one of them to act as Chairman. In such case the Centre shall give due consideration to any



provisions of the Arbitration Agreement concerning the number of arbitrators to be appointed.

## **Article (12)**

### **Expedited Formation**

- 12.1** On or after the commencement of the arbitration, any party may apply to the Centre for the expedited formation of the Tribunal, including the appointment of any replacement arbitrator where appropriate.
- 12.2** Any such application shall be made to the Centre in writing, copied to all other parties to the arbitration and shall set out the specific grounds for exceptional urgency in establishing the Tribunal.
- 12.3** The Centre may, in its complete discretion, adjust any time-limit under these Rules for formation of the Tribunal, including service of the Answer and of any matters or documents adjudged to be missing from the Request.

## **Article (13)**

### **Revocation of Arbitrator's Appointment**

- 13.1** If an arbitrator gives written notice of his desire to resign as arbitrator to the Centre or if any arbitrator dies, becomes unable or unfit to serve, the Centre may revoke that arbitrator's appointment. The Centre shall decide upon the amount of fees and expenses (if any) to be paid for the former arbitrator's services as it may consider appropriate in all the circumstances.
- 13.2** If any arbitrator acts in deliberate violation of the Arbitration Agreement (including these Rules) or does not act fairly and impartially as between the parties or does not conduct or participate in the arbitration with reasonable diligence, avoiding unnecessary delay or expense the Centre may deem that the arbitrator is unfit to serve.
- 13.3** An arbitrator may be challenged by any party if circumstances exist that give rise to justifiable doubts as to his impartiality or independence. A party may challenge an arbitrator it has nominated, or in whose appointment procedures it has participated, only for reasons of which it becomes aware after the appointment has been made.
- 13.4** A party who intends to challenge an arbitrator shall, within 15 days of the formation of the Tribunal or (if later) within 15 days of becoming aware of any circumstances referred to in paragraphs 2 and 3 above send a written statement of the reasons for its challenge to the Centre, the Tribunal and all other parties. Unless the challenged arbitrator withdraws or all other parties agree to the challenge within 15 days of receipt of the written statement, the Centre shall decide on the challenge.

**Article (14)**  
**Replacement of Arbitrators**

- 14.1** If an appointed arbitrator is to be replaced for any reason, the Centre shall have a complete discretion to decide whether or not to follow the appointment process prescribed in Article 9 above.
- 14.2** If the Centre should so decide, any opportunity given to a party to make a re-nomination shall be waived if not exercised within 21 days from the date of notification of that decision, after which the Centre shall appoint the replacement arbitrator.
- 14.3** Once reconstituted, and having invited the parties to comment, the reconstituted Tribunal shall determine if and to what extent prior proceedings shall be repeated.

**Article (15)**  
**Power of Majority to Continue Proceedings**

- 15.1** If any member of a Tribunal refuses or persistently fails to participate in the deliberations, the other arbitrators shall have the power, upon having given written notice of such refusal or failure to the Centre, the parties and the defaulting arbitrator, to continue the deliberations and make any decision, ruling or award, notwithstanding the absence of the remaining arbitrator.
- 15.2** In determining whether to continue the arbitration, the other arbitrators shall take into account the stage of the arbitration, any explanation given by the defaulting arbitrator for his non-participation and such other matters as they consider appropriate in the circumstances. The reasons for such determination shall be stated in any decision, ruling or award made by the other arbitrators without the participation of the defaulting arbitrator.
- 15.3** In the event that the other arbitrators determine at any time not to continue the arbitration without the participation of the defaulting arbitrator, the other arbitrators shall notify in writing the parties and the Centre of such determination; and in that event, the other arbitrators or any party may refer the matter to the Centre for the revocation of the appointment of that arbitrator and the appointment of a replacement arbitrator under Article 14 above.

**Article (16)**  
**Functions of the Centre**

In appointing the Tribunal under Articles (8), (9), (11), (12), (13), (14) and (15), the function of the Centre shall be performed by the Executive Committee.

## **THE PROCEEDINGS**

### **Article (17) General Provisions**

- 17.1** The proceedings before the Tribunal shall be governed by these Rules and, where these Rules are silent, by any rules which the parties or, failing them, the Tribunal may determine.
- 17.2** In all cases, the Tribunal shall act fairly and impartially and ensure that each party is given a full opportunity to present its case.

### **Article (18) Transmission of the File to the Tribunal**

The Centre shall transmit a copy of the file to the Tribunal as soon as it has been constituted, provided always that any advance on costs requested by the Centre at this stage has been paid.

### **Article (19) Modification of Time Limits**

- 19.1** The parties may agree to shorten the time limits set out in the Arbitration Agreement or these Rules. Any such agreement entered into subsequent to the constitution of the Tribunal shall become effective only upon the approval of the Tribunal.
- 19.2** The Tribunal shall have the power, on the application of any party or of its own motion, to extend any time-limit provided by the Arbitration Agreement or these Rules for the conduct of the arbitration or the Tribunal's own orders, so long as it has given both parties a reasonable opportunity to state their views.
- 19.3** The Executive Committee, on its own initiative, may extend any time limit if it decides that it is necessary to do so in order that the Tribunal or the Executive Committee may fulfil their responsibilities in accordance with these Rules.

### **Article (20) Place of Arbitration**

- 20.1** The parties may agree in writing on the seat of the arbitration. In the absence of such a choice, the seat of arbitration shall be Dubai, unless the Executive Committee determines in view of all the circumstances, and after having given the parties an opportunity to make written comment, that another seat is more appropriate.
- 20.2** The Tribunal may, after consultation with the parties, conduct hearings or meetings at any place that it considers appropriate. The Tribunal may

deliberate wherever it considers appropriate.

- 20.3 The award shall be deemed to have been made at the seat of the arbitration.

#### **Article (21) Language**

- 21.1 Unless otherwise agreed by the parties, the initial language of the arbitration shall be the language of the Arbitration Agreement.
- 21.2 In the event that the Arbitration Agreement is written in more than one language, the Executive Committee may, unless the Arbitration Agreement provides that the arbitration proceedings shall be conducted in more than one language, decide which of those languages shall be the initial language of the arbitration.
- 21.3 Upon its formation, the Tribunal shall have the power to determine the language or languages of the arbitration having regard to any observations of the parties and all relevant circumstances of the case.
- 21.4 The Tribunal may order that any documents submitted in languages other than the language of the arbitration be accompanied by a translation in whole or in part into the language of arbitration.

#### **Article (22) Preliminary Meeting**

Within thirty days from the date of the transmission of the file to the Tribunal, as provided in Article 18, the Tribunal shall, notify the parties of the date of a preliminary meeting with them and the venue thereof. The Tribunal shall fix a timetable for the submission of documents, statements and pleadings as hereinafter provided.

#### **Article (23) Statement of Claim**

- 23.1 Unless the Statement of Claim was submitted with the Request, the Claimant shall, within 30 days of receipt of notification from the Centre of the establishment of the Tribunal or such later time limit as the Tribunal may allow, submit its Statement of Claim to the Respondent and to the Tribunal with a copy to the Centre.
- 23.2 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.
- 23.3 The Statement of Claim shall be accompanied by the documentary evidence upon which the Claimant intends to rely, together with a schedule of such

documents.

**Article (24)**  
**Statement of Defence**

- 24.1** The Respondent shall, within 30 days of receipt of the Statement of Claim or within 30 days of receipt of notification from the Centre of the establishment of the Tribunal, whichever occurs later, submit its Statement of Defence to the Claimant and to the Tribunal with a copy to the Centre.
- 24.2** The Statement of Defence shall be accompanied by the documentary evidence upon which the Respondent intends to rely together with a schedule of such documents.
- 24.3** Any counter-claim by the Respondent shall be made or asserted in the Statement of Defence or, in exceptional circumstances, at a later stage in the arbitral proceedings if so determined by the Tribunal. Any such counter-claim shall contain the same particulars and documentary evidence as those specified in Article 23 (2) and (3).

**Article (25)**  
**Further Written Statements**

- 25.1** The Tribunal may, in its discretion, allow or require further written statements in addition to the Statement of Claim and Statement of Defence and shall fix the periods of time for submission of such statements.
- 25.2** In the event that a counter-claim has been made or asserted, the Claimant shall reply to the particulars thereof. The time limits set out in Article 24 (1) shall apply to such reply.
- 25.3** The periods of time fixed by the Tribunal for the communication of written statements (including the Statement of Claim and Statement of Defence) should not exceed forty-five days. However, the Tribunal may extend the time-limits if it concludes that an extension is justified.

**Article (26)**  
**New Claims and Amendments to the Statements of Claim or Defence**

- 26.1** Subject to any contrary agreement by the parties, either party may amend or supplement its claim, counter-claim, defence during the course of the arbitration, unless the Tribunal considers it inappropriate to allow such amendment having regard to its nature, the delay in making it, the prejudice that may be caused to the other party any other relevant circumstances.
- 26.2** After the submission of the Statement of Claim and Defence and Counterclaim, no party shall make new claims or counterclaims, unless authorised to do so by the Tribunal, which shall consider the nature of such

new claims or counterclaims, the stage of the arbitration and any other relevant circumstances.

## **Article (27)**

### **Burden of Proof and Evidence**

- 27.1** Each party shall have the burden of proving the facts relied on to support its claim or defence.
- 27.2** The Tribunal shall have the power to decide on the rules of evidence to be applied including the admissibility, relevance or weight of any material tendered by a party on any matter of fact or expert opinion; and to determine the time, manner and form in which such material should be exchanged between the parties and presented to the Tribunal.
- 27.3** 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 within such a period of time as the Tribunal 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.
- 27.4** The Tribunal may, at the request of a party or on its own motion, inspect or require the inspection of any site or property, as it deems appropriate.

## **Article (28)**

### **Hearings**

- 28.1** 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 and establish the time limits thereof. If no hearings are held, the proceedings shall be conducted on the basis of documents and other materials alone.
- 28.2** In the event of a hearing, the Tribunal shall give the parties adequate advance notice of the date, time and place thereof.
- 28.3** Unless the parties agree otherwise in writing or the Tribunal directs otherwise, all meetings and hearings shall be held in private.
- 28.4** The Tribunal shall determine whether and, if so, in what form a record shall be made of any hearing.
- 28.5** If any of the parties, although duly summoned, fails to appear without valid excuse, the Tribunal shall have the power to proceed with the hearing.

## **Article (29)**

### **Witnesses**

- 29.1 If witnesses are to be heard, at least fifteen days before the hearing each party shall communicate to the Tribunal and to the other party the identities and addresses of the witnesses he intends to call, the subject matter of their testimonies and its relevance to the issues in arbitration, and the languages in which such witnesses will give their testimony.
- 29.2 The Tribunal has discretion, on the grounds of avoiding duplication or lack of relevance, to limit the appearance of any witness, whether witness of fact or expert witness.
- 29.3 Any witness who gives oral evidence may be questioned, by each of the parties under the control of the Tribunal. The Tribunal may put questions at any stage of the examination of the witnesses.
- 29.4 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.
- 29.5 A party shall be responsible for the practical arrangements, cost and availability of any witness it calls.
- 29.6 The Tribunal shall determine whether any witness shall retire during any part of the proceedings, particularly during the testimony of other witnesses.
- 29.7 The Tribunal shall require witnesses to swear an oath before the Tribunal before giving evidence in accordance with any mandatory provisions of the applicable procedural law.

## **Article (30)**

### **Experts Appointed by the Tribunal**

- 30.1 The Tribunal may, 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.
- 30.2 The Tribunal may require a party to give any such expert any relevant information, documents, or provide access to goods, property or site for inspection by the expert. 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.
- 30.3 Upon receipt of the expert's report, the Tribunal shall provide a copy of the report to the parties, who shall be given the opportunity to express, in writing, their opinion on the report. A party may examine any document on

which the expert has relied in such a report.

- 30.4 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.
- 30.5 The opinion of any expert on the issue or issues submitted to the Tribunal 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 Tribunal Appointed expert's determination shall be conclusive in respect of any specific issue.
- 30.6 The fees and expenses of any expert appointed by the Tribunal under this Article shall be paid out by the parties in accordance with the Appendix - Cost of Arbitration.

### **Article (31) Interim and Conservatory Measures of Protection**

- 31.1 Subject to any mandatory rules of the applicable law, at the request of a party, the Tribunal may issue any provisional orders or take other interim or conservatory 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.
- 31.2 Measures and orders contemplated under this Article may take the form of an interim or provisional award.
- 31.3 A request addressed by a party to a competent judicial authority for interim or conservatory 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, or a waiver of, the Arbitration Agreement.
- 31.4 Any such request and any measures taken by the competent judicial authority must be notified without delay to the Centre by the party making such a request or seeking such measures. The Centre shall inform the Tribunal thereof.



**Article (32)**  
**Default**

- 32.1** If the Claimant, without showing good cause, fails to submit its Statement of Claim in accordance with Article 23, the Tribunal may refuse to proceed with the claim. This will not, however, prevent the Tribunal from proceeding to determine any counterclaim raised by the Respondent in the Answer.
- 32.2** If the Respondent, without showing good cause, fails to submit its Statement of Defence in accordance with Article 24, the Tribunal may nevertheless proceed with the arbitration and make the award.
- 32.3** 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.
- 32.4** 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.

**Article (33)**  
**Rules of Law Applicable to the Merits**

- 33.1** The Tribunal shall decide the 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 Tribunal determines that the parties have made no such choice, the Tribunal shall apply the law(s) or rules of law which it considers to be most appropriate.
- 33.2** 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.
- 33.3** In all cases, the Tribunal shall decide the dispute having due regard to the terms of any relevant contract and taking into account applicable trade usages.
- 33.4** The Tribunal shall assume the powers of an amiable compositeur or decide ex aequo et bono only if the parties have expressly agreed in writing to give it such powers.

**Article (34)**  
**Closure of Proceedings**

- 34.1** The Tribunal shall declare the proceedings closed when it is satisfied that the parties have had adequate opportunity to present submissions and evidence.
- 34.2** 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.

- 34.3** Following closure of the proceedings, the Tribunal shall proceed to make its award.

### **Article (35) Waiver**

A party which knows that any provision of, or requirement under, these Rules, or other rules applicable to the proceedings, or any direction given by the Tribunal, has not been complied with, and yet proceeds with the arbitration without promptly raising an objection to such non-compliance, shall be deemed to have irrevocably waived its right to object.

## **THE AWARDS**

### **Article (36) Time limit for the award**

- 36.1** By submitting to arbitration under these Rules the parties shall so deemed to have agreed that the provisions of this Article shall apply to extending the time limit for rendering the final award.
- 36.2** The time limit within which the Tribunal must render its final Award is six months from the date the sole arbitrator (or the Chairman in the case of three arbitrators) receives the file.
- 36.3** The Tribunal may, on its own initiative, extend the time-limit for up to additional six months.
- 36.4** The Executive Committee may extend this time limit further pursuant to a reasoned request from the Tribunal or on its own initiative if it decides that it is necessary to do so.
- 36.5** The period specified as aforesaid shall cease to run whenever the arbitration is discontinued or suspended before the Tribunal and shall recommence from the date on which the Tribunal is notified that the reason for which the arbitration was suspended or terminated has ceased to exist. If the remaining period is less than a month, it shall be extended to one full month.

### **Article (37) The Award**

- 37.1** The Tribunal may make preliminary, interim, interlocutory, partial or final awards.
- 37.2** All awards shall be made in writing and shall be final and binding on the parties. By agreeing to arbitration under these Rules, the parties undertake to carry out any award immediately and without any delay; and the parties also

waive irrevocably their right to any form of appeal, review or recourse to any state court or other judicial authority, insofar as such waiver may be validly made.

- 37.3** 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 Chairman of the Tribunal shall make the award, order or other decision alone.
- 37.4** The award shall state the date on which it was made, as well as the seat of arbitration.
- 37.5** 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.
- 37.6** The award shall be signed by the Tribunal. The signature of the award by a majority of the arbitrators, or, in the case of paragraph (3), second sentence, by the Chairman, shall be sufficient. Where there is more than one arbitrator and one of them fails to sign without valid cause, the award shall state the reason for the absence of the signature.
- 37.7** If any arbitrator fails to comply with the mandatory provisions 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 in his absence and state in their award the circumstances of the other arbitrator's failure to participate in the making of the award.
- 37.8** The award shall be communicated by the Tribunal to the Centre in a number of originals sufficient to provide one for each party, all members of the Tribunal and the Centre. The Centre shall formally communicate an original of the award to each party and the arbitrator or arbitrators, provided that the arbitration costs and fees have been paid to the Centre in accordance with Appendix - Cost of Arbitration.
- 37.9** The award may be made public only with the consent of the parties.
- 37.10** The Arbitration Costs and fees, in accordance with Appendix - Cost of Arbitration, and their apportionment between the parties shall be fixed in the award or other order by which the arbitral proceedings are terminated. An award may be rendered solely for costs.

**Article (38)**  
**Interpretation, Correction and Additional Award**

- 38.1** Within 30 days of receipt of the final award, the parties may, by a joint written notice to the Tribunal, with a copy to the Centre, request the Tribunal to give an interpretation of the award. If the Tribunal considers the request to be justified, it shall provide interpretation within 30 days of receipt of the request. Any interpretation, which shall take the form of a supplemental award signed by the Tribunal, shall become part of the final award.

- 38.2** Within 30 days of receipt of the award, a party may, by written notice to the Tribunal, with a copy to the Centre and the other party, request the Tribunal to correct any clerical, typographical or computational errors in the award. If the Tribunal considers the request to be justified, it shall make the correction within 30 days of receipt of the request. Any correction which shall take the form of a supplemental award signed by the Tribunal, shall become part of the award.
- 38.3** The Tribunal may correct any error of the type referred to in paragraph (2) on its own initiative within 30 days after the date of the award.
- 38.4** A party may, within 30 days of receipt of the award, by written notice to the Tribunal, with a copy to the Centre and the other party, request the Tribunal to make an additional award in respect of claims or counterclaims presented in the arbitration but not dealt with in any 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.

## **MISCELLANEOUS**

### **Article (39)**

#### **Settlement or Other Grounds for Termination**

- 39.1** 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 written consent award. Such award contains a statement that it is an award made by the parties' consent.
- 39.2** The consent award, or the order for termination of the arbitration, shall be signed by the Tribunal and shall be communicated by the Tribunal to the Centre in a number of originals sufficient to provide one for each party, the Tribunal and the Centre. The Centre shall formally communicate an original of the consent award or the order for termination to each party and the Tribunal.

### **Article (40)**

#### **Liability**

No member of the Tribunal or of the Executive Committee, nor the Centre and its employees, nor any expert to the Tribunal shall be liable to any person for any act or omission in connection with the arbitration.

### **Article (41)**

#### **Confidentiality**

- 41.1** Unless all parties expressly agree in writing to the contrary, the parties undertake as a general principle to keep confidential all awards and orders in their arbitration, together with all materials in the proceedings 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 bona fide legal proceedings before a state court or other judicial authority.

- 41.2** The deliberations of the Tribunal are likewise confidential to its members, except where an explanation of an arbitrator's refusal to participate in the arbitration is required of the other members of the Tribunal under Articles 13, 14 and 15 of the Rules.

#### **Article (42)**

##### **Amending the Appendix - Cost of Arbitration**

The Board of Trustees, on the bases of a proposal by the Executive Committee, may from time to time amend the provisions of the Appendix - Costs of Arbitration.

#### **Article (43)**

##### **General Rule**

In all matters not expressly provided for in these Rules, the Centre, the Tribunal and the parties shall act in the spirit of these Rules and shall make reasonable efforts to attain the Award is enforceable at law.