

# Vilnius Court of Commercial Arbitration (VCCA)

## Rules of Arbitration

Approved by the Vilnius Court of Commercial Arbitration,  
a permanent court of arbitration,  
pursuant to the decision of the Board of the Court  
of December 8, 2003  
(revised on March 26, 2008)

### **VILNIUS COURT OF COMMERCIAL ARBITRATION**

#### **RULES OF ARBITRATION**

##### DEFINITIONS

Arbitration shall mean settlement of disputes by natural and legal persons who, pursuant to mutual agreement, address or undertake to address third person(s) for settlement of disputes without referring the case to the national court, provided the third person(s) are either mutually agreed on by the parties in question or appointed in accordance with the procedures under applicable law.

Vilnius Court of Commercial Arbitration (Court of Arbitration) shall mean a permanent arbitration body in charge of providing for the settlement of disputes in the manner agreed on by the parties to the dispute.

Chairman of the Court of Arbitration shall mean a person appointed in accordance with the procedure set out in the statute of the Court of Arbitration and who is responsible for managing the arbitration procedures and administering the activities of the Court of Arbitration.

Arbitral Tribunal shall mean one or more arbitrators appointed in accordance with the established procedure and empowered to settle dispute(s) between parties.

Arbitration fees shall mean the fees to cover the services by arbitrators and the Court of Arbitration and also to cover the expenses relating to the provision of the aforesaid services. Arbitration fees shall include a registration fee, an administration fee and a compensation fee.

Registration fee shall mean an amount payable upon the filing of a complaint with the Court of Arbitration, i.e. upon submitting a request for arbitration to the Secretariat of the Court. The fee shall cover the expenses incurred during the preparation of the case for arbitration proceedings.

Administration fee shall mean an amount payable for each complaint filed with the Court and shall cover the arbitrator(s) fees, the salaries paid to the staff of the Secretariat of the Court of Arbitration and other expenses generally incurred by the arbitration institutions.

Compensation fee shall mean an amount payable for the services of experts, interpreters and/or translators and also for covering the expenses incurred by arbitrators, witnesses, experts, interpreters and translators due to their participation in dispute settlement by arbitration, including their travel costs, accommodation and other expenses.

## CHAPTER I GENERAL PROVISIONS

### **Article 1. Legal Basis and Scope of the Rules**

1. These Rules of Arbitration, hereinafter referred to as the Rules, were set out by the Vilnius Court of Commercial Arbitration, a permanent arbitration body, and approved in conformity with the provisions of the Law on Commercial Arbitration of the Republic of Lithuania of April 2, 1996.
2. These Rules shall be applicable to the settling of commercial disputes irrespective of the national or international character of arbitration, in situations where the disputing parties either agree in writing to transfer their disputes for settlement to the Vilnius Court of Commercial Arbitration or to settle disputes by arbitration in accordance with these Rules.
3. These Rules shall be considered part of any arbitration agreement and shall be applicable insofar as they conform to the legislation governing the arbitration procedure.
4. Issues relating to the arbitration procedure which are not regulated by the applicable arbitration law, these Rules, or the arbitration agreement shall be resolved by the Arbitral Tribunal responsible for resolving the dispute or the Chairman of the Court of Arbitration if the Tribunal has not yet been formed.
5. The official languages of the Court of Arbitration shall be Lithuanian, English, and Russian. The Court of Arbitration shall only accept documents prepared in one of these languages.

### **Article 2. Disputes to Be Settled by Arbitration**

The Court of Arbitration shall hear and settle commercial disputes arising from both contractual and non-contractual legal relations with the exception of disputes that cannot be settled by arbitration.

### **Article 3. Limitations to the Rules**

1. For the purpose of resolving their dispute parties may agree in writing to depart from certain provisions of these Rules, with the exception of provisions on arbitration fees. Where such agreements are made, the Arbitral Tribunal shall either settle the dispute in accordance with the procedure established in the arbitration agreement of the parties or follow the procedure under these Rules, taking into account the limitations imposed by the parties to the dispute.
2. Parties may agree on the following issues:
  - 1) the number of arbitrators
  - 2) the procedure for appointment of arbitrator(s)
  - 3) the procedure for challenge of arbitrator(s)
  - 4) the place of arbitration
  - 5) the language of arbitration
  - 6) the mode of proceedings (either hearings or written proceedings may be agreed)
  - 7) the time limits for submission of applications for arbitration (claims) and Answer(s) to the claims
  - 8) other issues, provided they conform with the applicable law.

### **Article 4. Notifications and Time Limits**

1. Unless otherwise agreed, the parties shall agree the following:

1) Written notification shall be deemed to have been made when the notification has been delivered to the addressee in person, to the commercial enterprise of the addressee, his place of residence or to the indicated postal address. When discovery of none of the aforementioned is possible, written notification shall be deemed to have been made provided the notification has been sent to the last address of the commercial enterprise of the addressee, to his place of residence or postal address by registered post or other means of communication that provide a record of the sending thereof. All notifications sent by post, telegram, facsimile transmission or electronic mail shall be considered written notifications.

2) Notification shall be deemed to have been made on the day it is received.

2. Periods of time specified in or fixed under these Rules shall start to run on the day following the date the communication, notification, summons or proposal is received. When the date of expiration of the period is an official holiday or a non-business day in the country where the notification is deemed to have been made, the term shall expire on the first following business day. The term shall include official holidays and non-business days.

3. On account of the complexity of a particular case or the international nature of commercial arbitration the terms set out under these Rules may be extended by either the Arbitral Tribunal or the Chairman of the Court of Arbitration if the Tribunal has not yet been formed.

## **Article 5. Representation**

1. Parties may act in the case either independently or through their representatives.

2. A party appointing a representative shall communicate his surname, name, address, telephone and electronic mail to the Court of Arbitration in writing.

3. A party may be represented by an attorney or any other person.

4. An authorized representative shall provide proof of authorization to the Court of Arbitration and to the Arbitral Tribunal.

## **Article 6. Principles of Arbitration**

The Arbitral Tribunal shall hear and resolve disputes within the scope of its competence in accordance with the principles of autonomy of the parties to the dispute, procedural equality, competition, the principle of party disposition (free exercise by the parties of their rights), confidentiality, economy, cooperation and expeditiousness.

## **Article 7. Arbitration Fees**

1. The Claimant shall pay a fixed registration fee upon the submission of his claim. The claim shall not be prepared for settlement by arbitration before the payment of the registration fee is made. The registration fee shall be nonrefundable.

2. The Claimant shall pay an advance administration fee for every claim filed with the Court of Arbitration. Until the administration fee is paid, the case shall not be transferred to the Arbitral Tribunal and substantive Tribunal proceedings with regard to that claim shall not commence.

3. The registration and administration fee rates, the procedure for the payment and distribution of the aforesaid fees and of the compensation fee as well as the rules of procedure for covering other arbitration expenses shall be set out by the Board of the Court of Arbitration. The fee rates and the fee payment and distribution procedure set out by the Board of the Court of Arbitration shall be an integral part of these Rules.

4. The arbitration fees shall be credited to the party for whom the arbitral decision is made at the expense of the party against whom the arbitral decision is made, unless otherwise agreed by the parties. Should the claim be partially accepted, the parties shall share the arbitration fees in proportion to their accepted and rejected claims. When the dispute is amicably settled parties shall share the arbitration fees in proportion to the accepted and rejected claims, unless the amicable agreement between the parties provides otherwise.

## **Article 8. Filing the Procedural Documents**

1. The Court of Arbitration shall provide both parties to the dispute with all the submitted procedural documents. After the Arbitral Tribunal is formed, the Chairman thereof shall provide both parties with all the submitted documents and forward one copy of each document to the Court of Arbitration.

2. After the case is transferred to the Arbitral Tribunal and irrespective of the procedure adopted for dispute settlement by arbitration, each party shall immediately and directly provide the other party and the Court of Arbitration with all the documents or other data it submits to the Arbitral Tribunal.

## **CHAPTER II INITIATING THE PROCEEDINGS**

### **Article 9. Filing the Claim**

1. A party wishing to have recourse to arbitration (the Claimant) shall initiate the arbitration proceedings by filing a claim with the Court of Arbitration and paying the registration fee.

2. The arbitration proceedings are deemed to commence when a claim complying with the requirements under this Article is filed with the Court of Arbitration, unless the parties otherwise agree.

3. The claim shall contain the following information:

- 1) the full name, code, address, telephone number, fax number and electronic mail address of each of the parties
- 2) the name and surname (company name), address, telephone number, fax number and electronic mail address of the representative of the Claimant, where the Claimant is acting through a representative
- 3) a reference to the arbitration agreement
- 4) a reference to the agreement giving rise to the dispute
- 5) a description of the nature and circumstances of the dispute giving rise to the claim
- 6) the sum in dispute and the procedure for the calculation thereof
- 7) the facts and circumstances substantiating the claim
- 8) the legal basis for the issues giving rise to the claim
- 9) the amount claimed
- 10) the proposed number of arbitrators and their appointment procedures, the place and language of arbitration, unless provided for in the arbitration agreement; and the address, telephone number, fax number and nationality of the arbitrator(s) designated by the Claimant.

4. Upon submitting the claim, the Claimant shall also submit the original arbitration agreement and an agreement that governs the relations giving rise to the dispute, or copies of the aforementioned agreements, and the proof of payment of a registration fee.

5. Along with the claim, the Claimant may submit all the documents he considers to be necessary and references to the documents or other evidence he may wish to submit at a later stage.

6. The claim and the documents annexed thereto as well as all other necessary documents submitted to the Arbitral Tribunal shall be in the agreed language of arbitration and as many

authorized copies thereof shall be submitted as necessary to provide the other party and the Court of Arbitration with one copy each and to furnish one copy per arbitrator.

7. Unless the parties otherwise agree, each party to the dispute may change or modify its claims or counterclaims during the arbitration proceedings, provided the Arbitral Tribunal does not refuse to allow such changes or modifications due to the late submission thereof or due to the unnecessary delay they may cause to the resolution of the dispute.

#### **Article 10. Actions of the Chairman of the Court of Arbitration**

1. After the Court of Arbitration receives a Request for arbitration complying with the requirements under Article 9 of these Rules and a document certifying the payment of the registration fee, the Chairman of the Court of Arbitration shall make a decision concerning the transfer of the dispute to the Court of Arbitration, and shall send notification thereof to the Respondent together with the claim.

2. In the event that the Request for arbitration fails to comply with the requirements under Article 9 and/or the registration fee is not paid, the Chairman of the Court of Arbitration shall not proceed with the claim and shall fix a reasonable term for the Claimant to comply with the requirements.

#### **Article 11. Arbitration Fees: Calculation and Payment Procedures**

1. The Chairman of the Court of Arbitration shall fix the arbitration fees in the light of the sum in dispute, the effective arbitration fee rates approved by the Board of the Court of Arbitration and the foreseeable future expenses relating to the proceedings. The Chairman shall order the Claimant (or both parties if they have agreed on a procedure for paying the arbitration fees) to pay the arbitration fees in advance within a period of 30 days. The fixed amount shall be deemed to have been paid on the date it is credited to the bank account of the Court of Arbitration.

2. On account of the increased arbitration expenses or an increase of the sum in dispute, the Chairman of the Court of Arbitration may, at any stage of the arbitral proceedings, charge additional sums to be paid by the Claimant (or both parties, if they had agreed on payment of the arbitration fees). Should the advance compensation fee paid by the parties exceed the expenses of the Court of Arbitration required to cover the services of experts, interpreters and/or translators, and also the expenses incurred by arbitrators, witnesses, experts, interpreters and translators due to their participation in the arbitration, including their travel costs, accommodation and other expenses, the excess amount shall be returned to the party/parties which had paid the advance within 30 days from the date of the arbitral award made by the Arbitral Tribunal. Should the excess amount be equal or inferior to the bank transfer tax, this amount shall be nonrefundable.

3. In the event that a Respondent submits a counterclaim, he shall also pay an administration fee upon submission thereof. In the event that a party submits a debt inclusion requirement relating to a claim or a counterclaim, this requirement may be taken into account in calculating the administration fee.

4. The case shall be transferred for substantive hearing, provided that the fixed arbitration fees have been paid in advance. Should there be different amounts fixed for the Claimant and the Respondent under paragraph 3 of this Article, the parties shall be granted the right to arrange for the payment of the aforesaid amounts in equal parts.

5. If parties to the dispute have agreed on the procedure for payment of arbitration fees and either of the parties fails to comply with the aforesaid procedure and pay its share, this share may be paid by the other party.

6. When both parties to the dispute fail to pay the fees fixed by the Chairman of the Court of Arbitration within a fixed period of time, the claim (counterclaim) file may be closed upon the expiration of the aforesaid term in accordance with the provisions under Article 37 of these Rules.

7. Instead of the amounts indicated in this Article, the Chairman of the Court of Arbitration may accept a bank guarantee from one or both parties to the dispute ensuring that these amounts shall be paid by the bank.

## **Article 12. Answer to the Claim**

1. Having made the decision to commence the arbitration proceedings, the Chairman of the Court of Arbitration shall forward one copy of the claim with its annexes to the Respondent and shall set a period of 30 days for the Respondent to file its Answer to the claim, unless parties agree on another deadline for the submission of an Answer.

2. The Respondent's Answer to the claim shall contain the following information:

1) his comments regarding the claim, the circumstances substantiating the claim and other issues and the possibility of resolution of the dispute by arbitration

2) the legal and factual basis underlying the Respondent's arguments

3) the arbitrator(s) he appoints, their addresses, telephone number, fax number and nationality, and also his own representative, and the address, telephone number, fax number and electronic mail address thereof.

4) the documents and other evidence to substantiate the Answer.

3. The Respondent may annex to his Answer to the claim all documents substantiating and giving grounds to the defence of his position or reference to the documents and other evidence he may wish to submit at a later date.

4. The Court of Arbitration must receive as many copies of the Answer with the annexes attached thereto, as are necessary for it to provide one copy for each arbitrator and one copy to the Court of Arbitration. The Respondent shall send one copy of the Answer to the claim with the annexes attached thereto directly to the Claimant.

5. A failure to file an Answer to the claim within the fixed period of time will not delay a hearing. In this case, the Arbitral Tribunal shall not treat the failure to submit an Answer as an admission of the submitted claim. When the arbitration agreement provides for the appointment of arbitrators by each of the parties to the dispute, a failure to file an Answer to the claim within the fixed period of time shall be deemed a refusal to appoint an arbitrator.

6. Should it be necessary, the Chairman of the Court of Arbitration or the Arbitral Tribunal may request the parties to exchange their comments.

7. Unless the parties have otherwise agreed, each of the parties shall have the right to submit new evidence or grounds throughout the arbitration, with the exception of cases where the Arbitral Tribunal recognises that the party failed to submit them earlier without a valid reason.

## **Article 13. Counterclaims**

The Respondent may file a counterclaim arising from the legal relations giving rise to the dispute and governed by the arbitration agreement together with its Answer to the claim or instead of the Answer. A counterclaim submitted after the expiration of the fixed deadline may be accepted, provided that the Arbitral Tribunal recognizes that the submission thereof at a later date is justified by valid reasons.

## CHAPTER III

### COMPOSITION OF ARBITRAL TRIBUNAL

#### **Article 14. Number of Arbitrators**

1. Parties may agree on the number of arbitrators and the procedure for their appointment. Should parties fail to agree on the number of arbitrators, three arbitrators shall be appointed. Every arbitrator must be and remain impartial and independent of the parties involved in the arbitration.
2. Unless the parties have otherwise agreed, in an arbitration with three arbitrators each party shall appoint one arbitrator within a fixed period of 30 days and the two arbitrators thus appointed shall, not later than within a period of 10 days, appoint the third arbitrator who shall preside over the Arbitral Tribunal and act as chairman. Upon a request from the parties, the Court of Arbitration shall send them a list of arbitrators approved by the Court of Arbitration. Parties shall retain the right to appoint arbitrators not listed in the aforesaid list.
3. In an arbitration with two or more Claimants and/or Respondents, arbitrators shall be appointed as agreed by the parties and in a manner that allows appointing one arbitrator to represent the Claimants and one arbitrator to represent the Respondents. The two arbitrators thus appointed shall nominate the third arbitrator within a period of 10 days.
4. All the names, surnames, addresses, telephone numbers, fax numbers and nationality of the nominated arbitrators shall be submitted.

#### **Article 15. Arbitrator(s) Appointed by the Chairman of the Court of Arbitration**

1. Unless parties agree otherwise, the following rules shall apply for the appointment of the arbitrator(s) by the Chairman of the Court of Arbitration:
  - 1) 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 Chairman of the Court of Arbitration,
  - 2) if a party fails to appoint the arbitrator within a fixed period of 30 days, the appointment shall be made, upon request of a party, by the Chairman of the Court of Arbitration,
  - 3) if the two arbitrators appointed by the parties to the dispute fail to agree on the third arbitrator within 10 days from the date of appointment of the last arbitrator, the third arbitrator shall be appointed by the Chairman of the Court of Arbitration.
2. Where, under an appointment procedure agreed on by the parties,
  - 1) a party fails to act as required under such procedure, or
  - 2) the parties, or two arbitrators, are unable to reach an agreement upon the nomination of a third arbitrator expected of them under such procedure, or
  - 3) a third party fails to perform any function entrusted to it under such procedure,any party may request the Chairman of the Court of Arbitration to take the necessary measure to nominate an arbitrator, unless the agreement concerning the appointment procedure provides other means for securing the appointment.
3. The decisions of the Chairman of the Court of Arbitration falling within his competence under paragraphs 1 and 2 of this Article are final and shall not be subject to appeal.
4. In appointing an arbitrator due regard shall be paid 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. The authority appointing the arbitrator may also take into account the experience of the candidate as well as the possibility of appointing an arbitrator of a nationality other than those of the parties.
5. Where, pursuant to the agreement of the parties, the Court of Arbitration is selected to perform the function of a dispute salving body, the party requesting the appointment of an

arbitrator shall provide the Chairman of the Court of Arbitration with authorised copies of an arbitration notification and/or of the claim and of the arbitration agreement. The Chairman of the Court of Arbitration may request either party to submit any information he considers indispensable for the fulfillment of his functions.

6. The Chairman of the Court of Arbitration shall appoint an arbitrator from the list of arbitrators recommended by the Court of Arbitration.

7. Each arbitrator shall be appointed pursuant to the decision passed by the Chairman of the Court of Arbitration. Authorized copies of the document thereof shall be sent to the newly appointed arbitrator and the parties to the dispute. The aforementioned decision shall contain the information specified in paragraph 4 of Article 14 of these Rules.

#### **Article 16. Responsibility of the Chairman of the Court of Arbitration to Check for Grounds for Challenge**

1. Where a person is approached in connection with his possible appointment as an arbitrator, he shall disclose to the parties and the Court of Arbitration 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. The Chairman of the Court of Arbitration must check whether an appointed arbitrator has the qualifications required of the arbitrator by the agreement of the parties and whether he meets the requirements laid down in the Law on Commercial Arbitration of the Republic of Lithuania. If any grounds for challenging an arbitrator arise, the Chairman of the Court of Arbitration shall inform the parties thereof and shall explicate to them their right to challenge the arbitrator.

3. Before his participation in the arbitral proceedings, an arbitrator appointed by the parties or by the Chairman of the Court of Arbitration shall sign a declaration of independence and impartiality.

#### **Article 17. Challenge of Arbitrators**

1. The challenge of an arbitrator or the termination of his mandate shall be decided by the Arbitral Tribunal without the participation of the challenged arbitrator. In arbitrations with a sole arbitrator or those where the whole Arbitral Tribunal is challenged, the issue shall be resolved by the Chairman of the Court of Arbitration. An arbitrator may be challenged if at least one of the following circumstances giving rise to doubts about the arbitrator's independence or impartiality is present:

- 1) the arbitrator is dependent on a party in terms of office (his work position) or otherwise
- 2) the arbitrator is a relative of either party
- 3) the arbitrator has a direct or indirect interest in the outcome of the proceedings
- 4) the arbitrator participated in the pre-arbitral mediation procedure
- 5) other circumstances give rise to doubts about the arbitrator's independence.

2. An arbitrator may also be challenged if he fails to comply with the qualification requirements specified in the agreement between the parties.

3. A party may challenge an arbitrator appointed by him or who was appointed by agreement of the parties only for reasons of which it becomes aware after the appointment of the arbitrator.

4. Parties are free to agree on a procedure for challenging an arbitrator in compliance with the provisions of this article. Failing such an agreement, a party which intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the Arbitral Tribunal or after becoming aware of any circumstance referred to in paragraphs 1 and 2 of this Article,



send a written statement of the reasons for the challenge to the Arbitral Tribunal and the Court of Arbitration. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the Arbitral Tribunal without the participation of the challenged arbitrator shall decide on the challenge. Where the Arbitral Tribunal consists of a sole arbitrator or where the whole Arbitral Tribunal is challenged, the matter shall be resolved by the Chairman of the Court of Arbitration.

5. If a challenge under any procedure agreed on by the parties or under the procedure of paragraph 4 of this Article is not successful, the challenging party may request, within 30 days after having received notice of the decision rejecting the challenge, the Chairman of the Court of Arbitration 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. However, the Award can only be made after the Chairman of the Court of Arbitration decides on the challenge.

#### **Article 18. Replacement of Arbitrators**

1. Upon the death of an arbitrator, his resignation or challenge during the arbitration, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced. Until the replacement of an arbitrator, the proceedings shall be suspended. In the event of an arbitrator being challenged or resigning, the Court of Arbitration may, depending on the general practice of the arbitration institution and the nature of the circumstances of the case, refrain from paying the arbitrator, or may decide to make a partial payment of the fee to the arbitrator.

2. If a sole arbitrator or the presiding arbitrator is to be replaced, all prior proceedings shall be repeated before the reconstituted Arbitral Tribunal, unless the parties agree to continue the proceedings that had already been commenced. Upon the replacement of a part of the Arbitral Tribunal, the prior proceedings may be repeated pursuant to the decision of the Arbitral Tribunal.

#### **Article 19. Transfer of Cases to Arbitral Tribunal**

1. The case for settlement by arbitration shall be transferred to the Arbitral Tribunal after the Arbitral Tribunal is formed and the parties have paid the fixed arbitration fees.

2. All the documents submitted by the parties to the Arbitral Tribunal shall also be sent to the other party/parties to the dispute and to the Court of Arbitration.

### **CHAPTER IV ARBITRAL PROCEEDINGS**

#### **Article 20. Place of Arbitration**

1. Parties may agree on the place of arbitration. Failing such an agreement, the Arbitral Tribunal shall determine the place of arbitration, after taking into account the circumstances of the case and consulting with the parties.

2. 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. The parties shall be notified within a reasonable time in advance about the time and place of the hearing of the Arbitral Tribunal in order to enable them to participate in the aforementioned activities.

#### **Article 21. Language of Arbitration**

1. Parties are free to agree on the language to be used in the arbitral proceedings.

2. Should parties fail to reach such an agreement, the Arbitral Tribunal shall determine the language or languages to be used in the proceedings, taking into account the circumstances of the case and the language(s) of the arbitration agreement. 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.

3. The Arbitral Tribunal may order that any documentary evidence or other document shall be accompanied by a translation into the language or languages agreed on by the parties or determined by the Arbitral Tribunal.

4. Should it be necessary, an interpreter or a translator may be employed to interpret and/or translate throughout the proceedings.

## **Article 22. Rules Governing Arbitral Proceedings**

1. The proceedings before the Arbitral Tribunal shall be governed by the rules of procedure agreed on by the parties, the rules of procedure determined under the laws of the place of arbitration, and these Rules.

2. Where the parties fail to agree on the procedure to be followed by the Arbitral Tribunal in conducting the proceedings, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate.

3. The resolution of disputes by the Arbitral Tribunal shall be impartial and expeditious. Every party shall be provided with a reasonable opportunity to participate in the proceedings.

4. In an arbitration with three or more arbitrators, the presiding arbitrator may resolve procedural issues independently, provided he is so authorized by other arbitrators.

5. Unless the parties otherwise agree, the Arbitral Tribunal shall hear the case in camera. Should the Arbitral Tribunal or any of the parties so wish, interpreters and/or translators may participate in the hearing, and witnesses and experts may give evidence. Save with the approval of the parties, other persons not participating in the proceedings shall not be admitted.

## **Article 23. Modes of Arbitration**

1. Parties are free to agree whether to hold oral hearings or to limit the proceedings to examining the documentary evidence and other materials the parties submit. If the parties fail to agree on the mode of arbitration, oral hearings shall be held.

2. Where the parties have agreed that the proceedings shall take place in their absence, the Arbitral Tribunal shall hold oral hearings at an appropriate stage if so requested by a party and if an application thereof is submitted not later than before the end of the examination of the materials of the proceedings.

## **Article 24. Jurisdiction of Arbitral Tribunal**

1. Before commencing the proceedings, the Arbitral Tribunal may rule on its own jurisdiction or authority with regard to the resolution of the dispute, 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 from a party that the Arbitral Tribunal does not have jurisdiction shall be raised not later than the submission of the Answer to the claim. A party is not precluded from raising such a plea by the fact that he participated in the appointment of an arbitrator.

3. 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 also admit such a plea at a later date if it considers the delay to be justified.

## **Article 25. Preliminary Hearing**

1. The party/parties to the dispute or the Arbitral Tribunal may call for a preliminary hearing. The place and time of the hearing and the issues to be discussed therein shall be communicated to the parties in advance, within a reasonable time allowing for their due preparation but not later than 10 days before the beginning of the hearing. The failure of either of or both the parties to present themselves before the Arbitral Tribunal will not delay a preliminary hearing, unless the parties have provided otherwise. Pursuant to an agreement of the parties, the preliminary hearing may be conducted using the means of instantaneous communication, i.e. teleconferencing. Immediately after the hearing, an arbitral decision shall be made in writing and sent to the parties and the Court of Arbitration. Parties may submit their comments within a period of 20 days after the date of sending the arbitral decision thereto.

2. A preliminary hearing shall resolve the issues that were not agreed on by the parties in their arbitration agreement. Specifically, the following matters may be resolved:

- 1) the procedures and time limits for the exchange of evidence and other documents between the parties
- 2) the kinds of evidence and the procedure for the collection thereof, e.g. the matter of ruling on an expert report
- 3) the date, time, place and rules of procedure governing the main hearing
- 4) clarification of the claims and Answers to the claims submitted by the parties
- 5) other issues.

## **Article 26. Interim Conservatory Measures**

1. Unless the parties have otherwise agreed, the Arbitral Tribunal may, at the request of a party, order the other party to pay a security. Should the party fail to comply with such an order, or should it be necessary to apply other interim conservative measures, the Arbitral Tribunal may, at the request of a party, address a national court of the place of the Arbitral Tribunal regarding the application of the interim conservatory measures, unless the agreement between the parties provides otherwise.

2. A party may independently address any competent national court of any party with a request to apply interim conservatory measures, where the failure to apply such measures may hinder or prevent further enforcement of the arbitral Award(s). 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. Any such request by a party and any measures taken by the national court must be communicated immediately to the Secretariat of the Court of Arbitration. The Secretariat shall immediately inform the Arbitral Tribunal thereof.

3. The party requesting the application of interim conservatory measures shall give grounds for its request.

## **Article 27. Modification to Relief Sought and to Elements of the Claim**

1. Unless the parties have otherwise agreed, the Claimant may modify or change the subject or the basis of his claim and decrease or increase the amount of the claim (the relief sought) before the commencement of the main hearing.
2. The Respondent may amend or supplement his defense documented in the Answer to the claim or his counterclaims before the commencement of the main hearing.
3. Should the amount of either the claim or the counterclaim increase, the Chairman of the Court of Arbitration shall order the parties to pay the additional amounts.

## **Article 28. Evidence**

1. In arbitration, evidence shall mean written documents and other written evidence, material evidence, the expert report and the evidence given by the witnesses.
2. Every party shall provide proof of the circumstances and facts that support its claim or defense.
3. Where parties fail to agree on the admissibility and/or tangibility of evidence, or on the principles of argument on other related issues, all of the aforesaid issues shall be resolved by the Arbitral Tribunal.
4. The Arbitral Tribunal may order any party to submit within a fixed period of time the evidence to confirm certain facts/circumstances.
5. The Arbitral Tribunal may refuse to accept evidence that is not relevant to the hearing or that is submitted late, if it considers that the party failed to submit the aforesaid evidence earlier without a valid reason and the acceptance thereof may substantially delay the proceedings.
6. The evaluation of the evidence by the Arbitral Tribunal in its Award shall be final and binding.
7. Where necessary, the Arbitral Tribunal may, upon its own initiative or at the request of a party, address the local judicial authority at the place of the Arbitral Tribunal with a request for assistance in collecting evidence.

## **Article 29. Documentary Evidence**

1. After the transmission of the file to the Arbitral Tribunal, the parties shall exchange their documentary evidence.
2. The documentary evidence shall be submitted to the Arbitral Tribunal after being translated into the language of the arbitration.

## **Article 30. Expert Report**

1. Unless otherwise agreed by the parties, the Arbitral Tribunal may appoint one or more experts to report to it on specific issues to be determined by the Arbitral Tribunal.
2. An expert/ experts may also be appointed where it is necessary to clarify matters relating to the applicable law of a foreign state.

3. The parties shall be notified of the appointment of the expert(s). The parties shall provide the expert(s) with the required information and documents.
4. A copy of an expert report must be submitted to the parties before the main hearing commences. The parties may make their comments on the report either orally or in writing.
5. The Arbitral Tribunal may, at the request of a party or where it considers necessary, summon the expert(s) to be questioned during the main hearing. The grounds for the challenge of expert(s) are the same as those for the challenge of arbitrators, as provided for in paragraphs 1 and 2 of Article 17 of these Rules. The Arbitral Tribunal responsible for resolving the dispute between the parties shall decide whether or not the grounds for the challenge of the expert(s) are justified.
6. The Report delivered by the expert(s) shall not be binding on the Arbitral Tribunal and the evaluation thereof shall be based on the principles applicable to the interpretation of evidence.
7. With the approval of the Arbitral Tribunal, parties may invite experts to the hearing on their own initiative. The inviting party shall cover the fees and expenses incurred by the expert(s) invited by them.

### **Article 31. Witnesses**

1. The party requesting the summons and questioning of a witness shall, not later than within 15 days of the hearing, notify the Arbitral Tribunal thereof and submit the name, surname and the place of residence of the witness, the facts of the case that the witness may confirm or refute and the language in which the witness will testify. Should the party fail to fulfil the aforementioned requirements, the Arbitral Tribunal may refuse to summon the witness.
2. Should the witness be unable to attend the hearing, the Arbitral Tribunal may accept and examine written evidence signed by the witness or a report produced after questioning of the witness, provided the witness was questioned by a national court at the request of the Arbitral Tribunal.
3. In an arbitration with several arbitrators, the Arbitral Tribunal may commission one of the arbitrators to interview the witness. In such case, the report of the interview shall be submitted to the Arbitral Tribunal and to the parties to the dispute.

### **Article 32. Material Evidence and Site Inspection**

Should it be necessary, the Arbitral Tribunal, independently or at the request of a party, may inspect the material evidence on site or conduct a site inspection. Parties shall be notified in advance of the place and time of the inspection.

### **Article 33. Waiver of Right to Object**

A party who knows that any provision of these Rules from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and who nevertheless proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is fixed for such actions, within such a period of time, shall be deemed to have waived his right to object, unless a valid reason for such actions is provided.

### **Article 34. Main Hearing**

1. The information about the place, time and date of the main hearing of the Arbitral Tribunal shall be communicated in advance to the parties or to their representatives as well as to the witnesses and experts to be questioned during the hearing.

2. The Arbitral Tribunal shall hear the case in camera. The Arbitral Tribunal may order the removal of any witness(es) or expert(s) when other witnesses or experts testify. The Arbitral Tribunal shall establish the procedure for hearing the witnesses and experts at its own discretion.

### **Article 35. Failure to Appear before the Arbitral Tribunal**

Should any one or both parties, who were duly summoned to the hearing, fail to arrive without a valid reason, the Arbitral Tribunal, where it deems possible, may continue with the proceedings in the absence of a party/ parties on the basis of the submitted materials, unless the parties have agreed otherwise.

### **Article 36. Rules Governing the Hearing**

1. The rules of procedure and the length of the hearing shall be established by the Arbitral Tribunal, with due consideration given to the requests from the parties. Before commencing the hearing, the presiding arbitrator shall enquire of the parties whether there is any possibility of reaching an amicable solution to the dispute.

2. The Arbitral Tribunal may, on its own initiative or at the request of a party, decide to postpone the hearing, if exceptional circumstances so require. In such case, the Arbitral Tribunal shall immediately fix the place, date and time of the next hearing.

3. Unless otherwise agreed by the parties, the hearing of the Arbitral Tribunal shall be rendered in shorthand or an audio recording thereof shall be made. After the hearing, within a time limit fixed by the Arbitral Tribunal, a statement of the hearing shall be drawn up. The statement shall be signed by the presiding arbitrator and the secretary of the hearing. Every party to the dispute may familiarize themselves with the contents of the aforesaid document and receive a copy thereof.

4. The statement of the hearing shall contain the following information:

- 1) the place and date of the hearing
- 2) the surnames, names and company names of the parties to the dispute and their representatives
- 3) the surnames and names of the arbitrators, experts, interpreters and other participants of the hearing
- 4) a brief description of the course of the hearing
- 5) the claims, counterclaims and other major statements of the parties
- 6) the grounds for the pending or closing of proceedings.

### **Article 37. Discontinuation of Proceedings and Dismissal of Application for Arbitration**

1. Either the Arbitral Tribunal or the Chairman of the Court of Arbitration, if the file has not yet been transferred to the Arbitral Tribunal, shall discontinue the proceedings upon the determination of any of the following grounds:

- 1) the reaching of an amicable agreement between the parties, unless the parties require a formal decision
- 2) the death or termination of a party to the agreement, if the transfer of rights pertaining to the legal relations giving rise to the dispute is impossible
- 3) the renouncement of the claim by the Claimant, unless the Respondent objects thereto
- 4) the emergence of facts that render dispute resolution by arbitration impossible.

2. The Arbitral Tribunal or the Chairman of the Court of Arbitration, where the file has not yet been transferred to the Arbitral Tribunal, shall discontinue the proceedings by making a decision stating the grounds for the discontinuation. A copy of the decision shall be sent to the parties. After the discontinuation of the proceedings, the fees paid by the parties shall not be refunded, unless the proceedings are discontinued before the file is transmitted to the Arbitral

Tribunal, in which case the party who had paid the administration fee is eligible for a refund of up to 80 percent thereof.

3. After the discontinuation of the proceedings, the parties may not have recourse to the Court of Arbitration with regard to the dispute between the same parties on the same subject and on the same grounds.

4. The Arbitral Tribunal or the Chairman of the Court of Arbitration, where the file has not yet been transferred to the Arbitral Tribunal, shall dismiss the application for arbitration upon the determination of any of the following grounds:

1) both parties fail to attend the hearing without a valid reason after having been summoned for the second time, and the Arbitral Tribunal considers it impossible to continue the proceedings on the basis of the available materials

2) the parties fail to pay the arbitration fees within a fixed period of time

3) the examination of an application becomes impossible due to reasons independent of the Court of Arbitration.

5. The application shall be dismissed by a grounded decision. A copy thereof shall be sent to the parties. After an application is dismissed, the fees paid by the parties shall not be refunded, except for the case specified in subparagraph 3 of paragraph 4 of this Article, where the dismissal of an application takes place before the file is transmitted to the Arbitral Tribunal, in which case the party that had paid the administration fee may recover up to 50 percent thereof.

6. After the elimination of the conditions constituting the grounds for dismissing the application, the interested party may repeatedly file an application with the Court of Arbitration in accordance with the general procedure.

## CHAPTER V

### ARBITRAL AWARDS AND DECISIONS

#### **Article 38. Arbitral Award: Content and Form**

1. The Arbitral Tribunal shall substantively resolve the dispute by rendering an Award not later than within a period of 6 months after the file is transmitted to the Arbitral Tribunal. The final Award shall be made within as short a time as possible after the main hearing is held. The parties shall be notified of the Award not later than within 10 days from the date of rendering thereof, provided that all the arbitration fees fixed for the parties to the dispute have been paid.

#### **Wording of the Part 1 of Article 38 since March 20, 2006:**

1. The Arbitral Tribunal shall substantively resolve the dispute by rendering an Award not later than within a period of 6 months after the file is transmitted to the Arbitral Tribunal. The final Award shall be made within as short a time as possible after the main hearing is held but no longer than 20 days after the last main hearing and immediately sent to the secretariat of the Court of Arbitration. The parties shall be notified of the Award by the secretariat of the Court of Arbitration, provided that all the arbitration fees fixed for the parties to the dispute have been paid. In exceptional cases Chairman of the Arbitration Court can extend the term to render an Award to 20 days.

2. The Award rendered by the Arbitral Tribunal shall be made in writing and signed by the arbitrator(s) conducting the proceedings. In arbitral proceedings with three or more arbitrators, the signatures of a majority of arbitrators shall suffice with indication of the reasons for failure of the remaining arbitrators to sign the Award. An arbitrator(s) who refuses to sign the Award may submit his written Separate Opinion to be appended thereto.

3. The Award of the Arbitral Tribunal shall include the following information:

- 1) the date and place of rendering the Award
- 2) the surname(s) of the arbitrator(s), the parties to the dispute, their place of residence or headquarters, the representatives of the parties, the substance of the claims and counterclaims
- 3) a short description of the proceedings
- 4) the grounds for the Award, unless the parties agree that the presentation of the grounds is unnecessary, or if the arbitral Award is rendered on conditions amicably agreed on by the parties
- 5) the conclusion of the Arbitral Tribunal as to the full, or partial acceptance of the claim, or rejection thereof
- 6) the grounds and procedure for appealing the arbitral Award
- 7) the total sum of arbitration fees, the expenses of the proceedings, their distribution among the parties, and the interest rates.

4. Before signing the final Award, the Arbitral Tribunal shall submit it in draft form to the Court of Arbitration in order for it to assess whether the Award complies with the formal requirements of the Court. After receiving the draft Award, the Court of Arbitration shall submit its assessment within a period not exceeding 10 days.

5. After rendering the final Award, the Arbitral Tribunal shall transmit the file and all the copies of the Award to the Court of Arbitration. The Court of Arbitration shall send the Award to the parties. The file and one copy of the Award shall be deposited with the Court of Arbitration for a period of 10 years.

6. After the Arbitral Tribunal renders the Award thereby substantively resolving the dispute, or makes a decision on the discontinuation of the proceedings, or a decision regarding the dismissal of the application, the mandates of the arbitrators shall terminate, with the exception of cases provided for in Article 40 of these Rules.

7. The Award of the Arbitral Tribunal shall be binding on the parties from the date it is received by them. The Award of the Arbitral Tribunal shall be final and parties shall undertake to carry out the Award in corpore.

#### **Wording of the Part 7 of Article 38 since March 26, 2008:**

7. The Arbitral Award shall come to effect from the moment it is made. The Arbitral Award is made from the moment it is written and signed. The Award of Arbitral Tribunal shall be final and parties shall undertake to carry out the Award in corpore.

#### **Article 39. Making of the Award**

1. When the Arbitral Tribunal is composed of more than one arbitrator, an Award is given by a majority decision. Every arbitrator must provide his opinion relating to the Award. The arbitrators may express opinions on the Award orally or in writing.

2. Neither the Arbitral Tribunal nor the Court of Arbitration may publish the Award or make it public without the consent of both parties to the dispute.

#### **Article 40. Correction and Interpretation of Award. Additional Award**

1. Within a period of 30 days after the receipt of the Award, unless the parties otherwise agree, either party may:

- 1) with notice to the other party, request the Arbitral Tribunal to correct any errors in computation, any clerical or typographical errors or any errors of similar nature
- 2) with notice to the other party, request the Arbitral Tribunal to give an interpretation of the Award or any of its parts or paragraphs.



2. If the Arbitral Tribunal considers the request to be justified, the Arbitral Tribunal shall make the correction or give the interpretation within 30 days from the date of receipt of such request. The interpretation shall form an integral part of the Award.

3. Within 30 days from the date of making the Award, the Arbitral Tribunal may on its own initiative correct the errors of the kind referred to in the subparagraph of paragraph 1 of this Article.

4. Unless the parties have otherwise agreed, either party, with notice to the other party, may, within 30 days of receipt of the Award, file a request with the Arbitral Tribunal for an additional Award relating to the claims presented in the arbitral proceedings but omitted from the Award. If the Arbitral Tribunal considers such an application to be justified, it shall, within a period of 30 days, examine the aforementioned claims and render an additional Award.

5. Where necessary, the Arbitral Tribunal may extend the time limit fixed for correcting the errors, for providing the interpretation(s), or for making an additional Award in accordance with the provisions under paragraphs 1, 2 or 4 of this Article.

6. The requirements of Article 38 of these Rules shall apply for the correction of errors and for the interpretation of the Award or the additional Award.

7. The interpretation(s) or modification(s) of the Award shall not result in substantive changes thereof.

#### **Article 41. Decisions of the Arbitral Tribunal**

1. The Arbitral Tribunal shall make decisions on all matters relating to the dispute that fail to be substantively resolved.

2. When arbitrators transfer matters for resolution to the presiding arbitrator, the decisions on the aforesaid matters shall be made by the presiding arbitrator alone. In other cases, decisions shall be made by a majority of votes.

3. A decision of the Arbitral Tribunal shall contain the following information:

- 1) the name(s) and surname(s) of the arbitrator(s), the date and time of the making of the decision
- 2) the file name or file number
- 3) the names and addresses of the parties
- 4) the matter on which the decision is made
- 5) the grounds for the decision, unless the parties agree otherwise
- 6) the conclusion of the arbitrator(s).

#### **Article 42. Modifications of Rules**

1. The Board of the Court of Arbitration may change the present Rules at any time. Amendments and supplements to the present Rules shall not be retroactive.

2. The provisions of the present Rules that are in effect at the time when the Court of Arbitration receives the claim shall be binding, unless the parties in their arbitration agreement provide for the application of the provisions of the Rules effective at the time of the conclusion of the arbitration agreement.