CIArb ARBITRATIONRULES

(Bermuda)

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The Chartered Institute of Arbitrators is a learned society that works in the public interest to promote and facilitate the use of Alternative Dispute Resolution (ADR) mechanisms. Founded in 1915 and with a Royal Charter granted in 1979, it is a UK- based membership charity that has gained international presence in more than 100 countries and has more than 14,000 professionally qualified members around the world. The Bermuda Branch has been in operation since 1996. While the Chartered Institute of Arbitrators has used its best efforts in preparing this publication, it makes no representations or warranties with respect to the accuracy or completeness of its content and specifically disclaims any implied warranties of merchantability or fitness for a particular purpose.

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INTRODUCTION

The Chartered Institute of Arbitrators ("CIArb") last revised its Arbitration Rules in 2000. When considering how to update its rules, the CIArb recognised that the 2010 version of the UNCITRAL Arbitration Rules ("UNCITRAL Rules") provide a comprehensive set of procedural rules which are widely used for *ad hoc* international arbitrations and which can be adopted by arbitral institutions who wish to act as appointing authority.

The CIArb has decided that, instead of drafting a completely new set of rules, it would adopt the UNCITRAL Rules with itself as the appointing authority. The CIArb Bermuda Rules have further adapted the UNCITRAL Rules to include waiver of the parties' right of appeal and a checklist of suggested matters to be considered at the case management conference but have not included emergency arbitrator provisions.

EXPLANATORY NOTES

1 — Scope of application

The CIArb Arbitration (Bermuda) Rules may be adopted in an arbitration agreement entered into at any time before or after a dispute has arisen, which provides that any dispute between the parties shall be referred to arbitration in accordance with these Rules.

2 — Services offered by the CIArb

The CIArb Arbitration (Bermuda) Rules stipulate that the CIArb will be the appointing authority. Each request for the appointment of an arbitrator pursuant to these Rules must be accompanied by a non- refundable fee.* The CIArb shall not proceed with the appointment unless the specified payment has been received.

* For current fees, please refer to the CIArb's website.

3 — Applications

Applications for the appointment of an arbitrator may be submitted by email to the Appointments Committee of the Chartered Institute of Arbitrators (Bermuda Branch), which will make the appointment following consultation with the DAS (defined below).

CIArb ARBITRATION (BERMUDA) RULES

Section I. Introductory rules

Article 1 — Scope of application

1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the CIArb Arbitration (Bermuda) Rules ("the Rules") then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.

2. These Rules shall come into force on 14 May 2019.

3. These Rules shall govern the arbitration except that, where any of these Rules are in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, such a provision shall prevail.

4. All communications with and applications to the CIArb under these Rules shall be in English. The CIArb may request from the parties a translation of any document written in a language other than English, where such document is required for the CIArb to fulfil its mandate under these Rules.

5. In these Rules:

   a) "arbitral tribunal" or "tribunal" includes one or more arbitrators;

   b) "award" includes, *inter alia*, an interim, partial, costs or final award;

   c) "CIArb" means the "Chartered Institute of Arbitrators (Bermuda Branch)". The functions of the CIArb under the arbitration agreement shall be performed in its name by the Chairperson or the Selections Committee of the CIArb;

   d) "claim" or "claims" includes any claim, counterclaim, or claim for set-off by any party against any other party;

   e) "DAS" means "Dispute Appointment Service of the Chartered Institute of Arbitrators";

   f) "party" or "parties" includes claimants, respondents and other persons subject to the jurisdiction of the tribunal; and

   g) "place of arbitration" means the seat of arbitration.

Article 2 — Notice and calculation of periods of time

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.

2. If an address has been designated by a party specifically for this purpose or authorised by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorised.

3. In the absence of such designation or authorisation, a notice is:

   a) received if it is physically delivered to the addressee; or

   b) deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.

4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.

6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Article 3 — Notice of arbitration

1. The party or parties initiating recourse to arbitration (hereinafter called the "claimant") shall communicate to the other party or parties (hereinafter called "the respondent") a notice of arbitration.

2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.

3. The notice of arbitration shall include the following:

   a) a demand that the dispute be referred to arbitration;

   b) the names and contact details of the parties;

   c) identification of the arbitration agreement that is invoked;

   d) identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;

   e) a brief description of the claim and an indication of the amount involved, if any;

   f) the relief or remedy sought; and

   g) a proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.

4. The notice of arbitration may also include:

   a) a proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;

   b) notification of the appointment of an arbitrator referred to in article 9 or 10.

5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

Article 4 — Response to the notice of arbitration

1. Within 30 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall include:

   a) the name and contact details of each respondent; and

   b) a response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3 (c) to (g).

2. The response to the notice of arbitration may also include:

   a) any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;

   b) a proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;

c) notification of the appointment of an arbitrator referred to in article 9 or 10;

d) a brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;

e) a notice of arbitration in accordance with article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

Article 5 — Representation and assistance

Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for the purposes of representation or assistance. Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine.

Article 6 — Appointing authority

1. Unless otherwise agreed by the parties, the CIArb shall perform the functions of the appointing authority.

2. The CIArb shall be entitled to charge administrative fees for its services as set out in Appendix III to these Rules as in force at the date of commencement of the arbitration and any amendment thereto or substitution thereof during the course of the arbitration.

3. In exercising its functions under these Rules, the CIArb may require from any party and the arbitrators the information it deems necessary and it shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner it considers appropriate. All such communications to and from the CIArb shall also be provided by the sender to all other parties.

4. Any party wishing to request the CIArb to appoint an shall complete the relevant application form available on the CIArb's website and send it to the CIARB by hand or by email to the email address referred to in the application form. The request shall be accompanied by copies of the notice of arbitration and, if it exists, any response to the notice of arbitration and any other relevant documents or information specified in the application form.

5. The CIArb shall have regard to such considerations that are likely to secure the appointment of an impartial and independent arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality

other than the nationalities of the parties.

Section II. Composition of the arbitral tribunal

Article 7 — Number of arbitrators

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.

2. Notwithstanding paragraph 1, if no other parties have responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with article 9 or 10, the CIArb may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, paragraph 2, if it determines that, in view of the circumstances of the case, this is more appropriate.

Appointment of arbitrators (articles 8 to 10)

Article 8

1. If the parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the CIArb.

2. The CIArb shall appoint the sole arbitrator as promptly as possible. In making the appointment, the CIArb shall use the following list- procedure, unless the parties agree that the list-procedure should not be used or unless the CIArb determines in its discretion that the use of the list-procedure is not appropriate for the case:

    a) the CIArb shall communicate to each of the parties an identical list containing at least three names;

    b) within 15 days following receipt of the list, each party shall return the list to the CIArb after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;

    c) after the expiration of the above period, the CIArb shall make its appointment from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;

    d) if for any reason the appointment cannot be made according to this procedure, the CIArb may repeat the procedure or appoint the arbitrator without further recourse to the parties.

3. The request to appoint an arbitrator submitted to the CIArb shall be accompanied by payment of the

appointment fee, by cheque or transfer to the bank account of the CIArb, as required in Appendix III in force on the date when the request is filed with the CIArb. If the applicant fails to pay the required fee upon filing a request for appointment of an arbitrator or any deadline set by the CIArb, the CIArb shall decline to proceed with the request and shall inform the parties that it has closed the file without prejudice to the claimant's right to submit the same claim(s) at a later stage. The appointment fee is not refundable.

4. Arbitrators are usually selected from the CIArb's Bermuda Panel of Arbitrators after consultation with the DAS. However, the CIArb may appoint an arbitrator who is not on the CIArb's Bermuda Panel of Arbitrators if it considers, in its sole discretion, that it is appropriate to do so.

Article 9

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.

2. If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the CIArb to appoint the second arbitrator.

3. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the presiding arbitrator, the presiding arbitrator shall be appointed by the CIArb in the same way as a sole arbitrator would be appointed under article 8.

Article 10

1. For the purposes of article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.

2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.

3. In the event of any failure to constitute the arbitral tribunal under these Rules, the CIArb shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

Disclosures by and challenges to arbitrators (articles 11 to 13)

Article 11

When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall

disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

Article 12

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

Article 13

A party that intends to challenge an arbitrator shall utilize the statutory provisions contained in the Arbitration Act 1986 or the Bermuda International Conciliation and Arbitration Act 1993 as applicable.

Article 14 — Replacement of an arbitrator

1. Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.

2. If, at the request of a party, the CIArb determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the CIArb may, after giving an opportunity to the parties and the remaining arbitrators to express their views, appoint the substitute arbitrator.

Article 15 — Repetition of hearings in the event of the replacement of an arbitrator

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

Article 16 — Exclusion of liability

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitral tribunal, the CIArb, including the Chairperson, the DAS and its employees, and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

Section III. Arbitral proceedings

Article 17 — General provisions

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.

   As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. It may also address the matters contained in the Appendix to these Rules. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.

2. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

3. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.

4. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

Article 18 — Place of arbitration

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.

2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

Article 19 — Language

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 20 — Statement of claim

1. The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this article.

2. The statement of claim shall include the following particulars:

    a) the names and contact details of the parties;

    b) a statement of the facts supporting the claim;

    c) the points at issue;

    d) the relief or remedy sought; and

    e) the legal grounds or arguments supporting the claim.

3. A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.

4. The statement of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

Article 21 — Statement of defence

1. The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in article 4 as a statement of defence, provided that the response

to the notice of arbitration also complies with the requirements of paragraph 2 of this article.

2. The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (article 20, paragraph 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.

3. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.

4. The provisions of article 20, paragraphs 2 to 4, shall apply to a counterclaim, a claim under article 4, paragraph 2 (e), and a claim relied on for the purpose of a set-off.

Article 22 — Amendments to the claim or defence

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

Article 23 — Pleas as to the jurisdiction of the arbitral tribunal

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed or participated in the appointment of an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

Article 24 — Further written statements

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

Article 25 — Periods of time

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

Article 26 — Interim measures

1. The arbitral tribunal may, at the request of a party, grant interim measures.

2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:

    a) maintain or restore the *status quo* pending the determination of the dispute;

    b) take action that would prevent, or refrain from taking action that is likely to cause (i) current or imminent harm or (ii) prejudice to the arbitral process itself;

    c) provide a means of preserving assets out of which a subsequent award may be satisfied; or

    d) preserve evidence that may be relevant and material to the resolution of the dispute.

3. The party requesting an interim measure shall satisfy the arbitral tribunal that:

    a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

    b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

4. With regard to a request for an interim measure under paragraph 3 (d), the requirements in paragraphs 4 (a) and (b) shall apply only to the extent that the arbitral tribunal considers appropriate.

5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of

any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.

8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or as a waiver of that agreement.

Article 27 — Evidence

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.

2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.

4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Article 28 — Hearings

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal. Hearings shall be held *in camera* unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.

3. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

Article 29 — Experts appointed by the arbitral tribunal

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.

3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.

5. At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of article 28 shall be applicable to such proceedings.

Article 30 — Default

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:

    a) the claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to doso;

    b) the respondent has failed to communicate its response to the notice of arbitration or its statement of

defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

2. If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If a party duly invited by the arbitral tribunal to produce documents, exhibits or other evidence fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Article 31 — Closure of hearings

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

Article 32 — Waiver of right to object

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such a party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

Section IV. The award

Article 33 — Decisions

1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.

2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorises, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

Article 34 — Form and effect of the award

1. The arbitral tribunal may make separate awards on different issues at different times.

2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay. By adopting these Rules, the parties waive their right to any form of appeal or recourse to a court or other judicial authority insofar as such waiver is valid under the applicable law.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

5. An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.

6. Copies of the award signed by the arbitrators shall be communicated to the parties and the CIArb by the arbitral tribunal.

Article 35 — Applicable law, *amiable compositeur*

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.

2. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorised the arbitral tribunal to do so.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

Article 36 — Settlement or other grounds for termination

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties and the CIArb. Where an arbitral

award on agreed terms is made, the provisions of article 34, paragraphs 2, 4 and 5 shall apply.

Article 37 — Interpretation of the award

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.

2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 34, paragraphs 2 to 6 shall apply.

Article 38 — Correction of the award

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.

2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.

3. Such corrections shall be in writing and shall form part of the award. The provisions of article 34, paragraphs 2 to 6, shall apply.

Article 39 — Additional award

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.

2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.

3. When such an award or additional award is made, the provisions of article 34, paragraphs 2 to 6, shall apply.

Article 40 — Definition of costs

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.

2. The term “costs” includes only:

a) the fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;

b) the reasonable travel and other expenses incurred by the arbitrators;

c) the reasonable costs of expert advice and of other assistance required by the arbitral tribunal;

d) the reasonable travel and other expenses of witnesses to the extent that such expenses are approved by the arbitral tribunal;

e) the legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

f) any fees and expenses of the CIArb.

3. In relation to interpretation, correction or completion of any award under articles 37 to 39, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

Article 41 — Fees and expenses of arbitrators

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.

2. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply.

3. When informing the parties of the arbitrators' fees and expenses that have been fixed pursuant to article 40, paragraphs 2 (a) and (b), the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated.

4. The arbitral tribunal shall proceed with the arbitration, in accordance with article 17, paragraph 1.

Article 42 — Allocation of costs

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

Article 43 — Deposit of costs

1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in article 40, paragraphs 2 (a) to (c).

2. During the course of the arbitral proceedings, the arbitral tribunal may request supplementary deposits from the parties.

3. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such a payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

4. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Appendix

Matters for potential consideration by the parties and the arbitral tribunal at the case management conference

In determining the matters to be addressed at the case management conference, the arbitral tribunal and the parties should take into account the size of the parties' claims and the complexity of the dispute. The following checklist identifies matters that the arbitral tribunal and the parties might address at the conference. The list below may be supplemented or modified by either of them in light of the subject matter and issues involved in the case:

1. Applicable arbitration rules

a) any dispute regarding the meaning or applicability of the Rules;

b) any agreements by the parties to opt out of, or modify, any of the applicable Rules.

2. Place of arbitration and applicable procedural law

Any dispute or agreement regarding what arbitration law applies to the proceedings.

3. Applicable substantive law

Any dispute or agreement regarding what substantive law governs the parties' dispute.

4. Language(s), translation and interpretation

a) any dispute or agreement regarding the language(s) of the arbitration proceedings;

b) any need for translation of documents or the use of interpreters in hearings or conferences, and, if so, when and how any of these arrangements will be made and paid for.

5. Tribunal's fees and expenses

Arrangements for the payment of the arbitrators' fees and costs pursuant to article 41.

6. Deposits of costs

Any issues concerning the payment and administration of advance deposits covering arbitrators' fees and expenses.

7. Tribunal's jurisdiction

Any dispute regarding the arbitral tribunal's jurisdiction to decide the issues presented by the parties in their claims, counterclaims and defences.

8. Tribunal's impartiality and independence

a) whether the parties wish to raise any unwaived matters regarding the arbitrators' availability, impartiality and independence;

b) the possible adoption of any guidelines or protocols dealing with conflicts of interest.

9. Interim measures

Whether either party anticipates seeking interim or conservatory measure and, if so, when a request for either type of relief should be filed.

10. Any pending litigation relating to the claims and defences

Any pending litigation relating in any way to the claims, counterclaims and defences asserted in the arbitration proceedings.

11. Representation

The possible adoption of any specific guidelines or protocols dealing with party representation.

12. Confidentiality

Any confidentiality or trade secret concerns that will require particular measures to protect confidential or proprietary information.

13. Communications with the tribunal

The use of electronic means of communication in submissions to the arbitral tribunal and any other communication among the parties and the arbitral tribunal.

14. Defining issues (and early disposition)

a) any threshold or dispositive issues that can be decided efficiently early in the proceedings through the issuance of one or more partial awards;

b) the possible adoption, with respect to the granting of partial dispositive relief, of any specific guidelines or protocols dealing with early disposition of issues.

15. Bifurcation

The possible bifurcation of the proceedings.

16. ADR mechanisms

Whether the parties have considered attempting to either settle or resolve their dispute through any other alternative dispute resolution mechanism.

17. Written submissions and exhibits

a) the need for submission of a more detailed or amended statement of claim, counterclaim, or defence;

b) any limitations on the length or scope of written submissions;

c) any arrangements that may be made for real-time stenography, electronically searchable transcripts, electronically available and searchable exhibits and briefs containing electronic links to transcript pages, exhibits and authorities;

d) the potential use of summary exhibits intended to supplement or serve as a substitute for voluminous exhibits or collective exhibits.

18. Evidence in international arbitration

The possible adoption of any rules, guidelines or protocols dealing with the taking of evidence in international arbitration.

19. Production of documents

a) whether and to what extent the parties will exchange requests for production of documents;

b) in the event that the parties are to exchange requests for documents, deadlines for objecting to specific requests, for the filing of objections relating to the sufficiency of document production, for responses to such objections, and for a hearing date on such objections should the arbitral tribunal conclude that an oral hearing would be useful;

c) a possible requirement that the parties confer in good faith and attempt to agree on the production of documents and other information prior to seeking a ruling from the arbitral tribunal that certain documents or information should be disclosed;

d) whether the parties wish to agree on a specific standard for the disclosure of documents, in the absence of which the arbitral tribunal shall apply to all document and information requests a standard of materiality of such documents and information to any claim or defence;

e) any issues relating to the production of electronically stored information, including how costs are to be borne for searches for requested information or documents, and how those issues should be resolved.

20. Site inspection

Whether the parties anticipate the need for a site inspection by the arbitral tribunal or a tribunal-appointed expert, and, if so, when the inspection should be conducted and under what procedure.

21. Witnesses and expert witnesses

a) counsels' communications with witnesses in the course of testimony;

b) the possibility that the parties might be able to resolve certain issues with the involvement of their experts;

c) whether the parties will present expert witnesses, and if so, what schedule should be established with respect to the identification of experts and the exchange of expert reports;

d) the potential use of joint written reports by opposing expert witnesses, in which the experts identify and explain points of agreement and disagreement;

e) the potential use of witness panels involving opposing experts or lay witnesses who will testify on the same or similar subject matter;

f) the need or desirability for the arbitral tribunal to appoint one or more experts.

22. Presentation of evidence

a) the order in which the parties will present their evidence and the manner in which such evidence will be presented, including the possibility of the receipt of oral testimony via videoconference or other means.

b) Deadlines for:

i. the identification of all witnesses and the subject matter of their anticipated testimonies;

ii. the exchange of written witness statements; and

iii. the exchange of pre-hearing submissions, including exhibits.

23. Multiple parties

Whether all necessary or appropriate parties have been joined in the arbitration.

24. Consolidation

The existence of additional arbitrations pending between the same or similar parties that might be consolidated or taken into consideration in the interest of efficiency.

25. Dates of subsequent or additional meetings

Whether any additional case management conferences, including a pre- hearing organisational meeting, should be scheduled at this time.

26. Hearing

a) the date, time and place of the arbitration hearing;

b) logistical considerations relating to the place at which the hearing will be conducted, including technological needs and any special needs of the parties, their representatives, the witnesses and the arbitral tribunal members;

c) time limits at the hearing for argument and witness examination;

d) the potential sequestration of witnesses at the hearing;

e) whether, at the arbitration hearing:

i. testimony will be presented in person, in writing, by videoconference, internet, telephonically or by other means;

ii. there will be a stenographic transcript or other record of the proceeding, and, if so, the arrangements that will be made for it.

27. Post-hearing briefs

Whether post-hearing submissions will be filed and, if so, whether any page limits will be imposed.

28. Arbitral awards

a) the form of the arbitration award:

i. an award with no statement of supporting reasons;

ii. an award with a limited statement of supporting reasons; or

iii. an award with a full statement of supporting reasons.

29. Any other business

Any other matter the arbitral tribunal or the parties may wish to address, including the use of any other guidelines and/or protocols where appropriate.

Following the case management conference, the arbitral tribunal should promptly issue a written order memorialsing decisions made and agreements reached in the conference. The order should include, but not be limited to, a timetable setting forth pertinent deadlines, action dates and other scheduling matters dealt with at the conference. In the interest of efficiency and of ensuring a fair and orderly process, the arbitral tribunal may later alter the timetable after consulting with the parties.