

BRUNEI DARUSSALAM ARBITRATION CENTRE (BDAC)

Established on 24 December 2014, the objective of BDAC is to promote the adoption of arbitration and mediation services in resolving commercial issues and disputes as a speedier alternative to the usual settlement through civil proceedings in court.

BDAC provides arbitration facilities as well as administrative services and mediation to meet the needs of domestic and international consumers. It is an independent and non-profit making centre with a broad mandate necessary to administer domestic and international arbitration in Brunei Darussalam.

It is governed by the Board of Directors which consists of members from the public and private sectors, and its office is located on the 8th Floor of the Brunei Economic Development Board Building at Jalan Kumbang Pasang, Bandar Seri Begawan, Brunei Darussalam.

Brunei Darussalam Arbitration Centre (BDAC)

Arbitration Rules

The BDAC Arbitration Rules (hereinafter referred to as the “Rules”) shall be the UNCITRAL Arbitration Rules as modified in accordance with the rules set out below. “Rule” shall refer to Part I of the Rules and “Article” shall refer to Part II of the Rules.

PART I

Rule 1 – General

1. Where parties have agreed in writing to arbitrate their disputes in accordance with the Rules, then:
 - i.
 - a. such disputes shall be settled or resolved by arbitration in accordance with the Rules; and
 - b. The arbitration shall be conducted and administered by the Brunei Darussalam Arbitration Centre (hereinafter referred to as “BDAC”) in accordance with the Rules.
 - ii. Where the seat of arbitration is Brunei Darussalam, section 36, section 45 and section 49 of the Arbitration Order, 2009 shall not apply.
2. The Rules applicable to the arbitration shall be those in force at the time of commencement of the arbitration unless the parties have agreed otherwise.
3. For avoidance of any doubt, in so far as there is any conflict between Part I and Part II of the Rules, the provisions in Part I shall prevail.

Rule 2 – Commencement of Arbitration

1. The party or parties initiating recourse to arbitration under the Rules shall be required to submit a written request to the Chairman of the BDAC together with a copy of the Notice of Arbitration served on the Respondent pursuant to Article 3 and shall be accompanied by the following:
 - a. a copy of the written arbitration clause; and contractual documentation in which the arbitration clause is contained or in respect of which the arbitration arises;
 - b. confirmation to the Chairman of the BDAC that the Notice of Arbitration has been or is being served on all other parties to the arbitration by one or more means of service to be identified in such confirmation; and

- c. a non-refundable registration fee amounting to B\$600.00 in international arbitration (as defined in Rule 4(4)(c) of the Rules) and B\$300.00 in domestic arbitration.
2. The date of receipt by the Chairman of the BDAC of the request complete with all the accompanying documentation and non-refundable registration fee shall be treated as the date on which the arbitration has commenced for all purposes.

Rule 3 – Notification and Pleadings

1. All documents served pursuant to Articles 3, 4, 20, 21, 22, 23 and 24 shall be served on the Chairman of the BDAC at the time of such service on the other party or immediately thereafter.

Rule 4 – Appointment

1. Where the parties have agreed to the Rules, the Chairman of the BDAC shall be the appointing authority.
2. “Arbitral tribunal” means a sole arbitrator or a panel of arbitrators and includes an emergency arbitrator appointed pursuant to Schedule 2.
3. Parties are free to determine the number of arbitrators.
4. Where the parties fail to determine the number of arbitrators, the arbitral tribunal shall:
 - a. in the case of an international arbitration, consist of a sole arbitrator; and
 - b. in the case of a domestic arbitration consist of a sole arbitrator;
 - c. “international arbitration” means an arbitration where –
 - a. one of the parties to an arbitration agreement, at the time of the conclusion of that agreement, has its place of business in any State other than Brunei Darussalam;
 - b. one of the following is situated in any State other than Brunei Darussalam in which the parties have their places of business:
 - i. the seat of arbitration if determined in, or pursuant to, the arbitration agreement;
 - ii. any place where a substantial part of the obligations of any commercial or other relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or

- c. the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one State.
5. Unless the parties have agreed otherwise, the procedure for the appointment of a sole arbitrator shall be:
 - a. if the parties have agreed that a sole arbitrator is to be appointed, the parties are free to mutually agree on the sole arbitrator;
 - b. if within 30 days of the other party's receipt of the Notice of Arbitration, the parties have not reached an agreement on the appointment of the sole arbitrator, either party may request for the sole arbitrator to be appointed by the Chairman of the BDAC.
6. Unless the parties have agreed otherwise, the procedure for the appointment of 3 arbitrators shall be:
 - a. if the parties have agreed that 3 arbitrators are to be appointed, each party shall appoint 1 arbitrator. The 2 arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal;
 - b. 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 Chairman of the BDAC to appoint the second arbitrator;
 - c. if within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the Chairman of the BDAC.
7. Where the BDAC upon the request of a party is to appoint a sole, presiding, second, substitute or emergency arbitrator, the Chairman of the BDAC shall appoint such arbitrator in accordance with the Rules and in doing so may exercise all powers and discretions specified in the Rules.
8. Where the parties have agreed that any arbitrator is to be appointed by one or more parties, or by any authority agreed by the parties, including where the arbitrators have already been appointed, that agreement shall be treated as an agreement to nominate an arbitrator under these Rules and shall be subject to appointment by the Chairman of the BDAC in his discretion.
9. Where the Chairman of the BDAC is to appoint any arbitrator, the Chairman of the BDAC may at his discretion seek such information from the parties as he may think fit.

Rule 5 – Challenge to the Arbitrators

1. An arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess any requisite qualification on which the parties agreed.
2. A party may challenge the arbitrator nominated by him only for reasons of which he becomes aware of after the appointment has been made.
3. The party who intends to challenge an arbitrator shall send notice of challenge within 15 days after the receipt of the notice of appointment of the challenged arbitrator or within 15 days after the circumstances mentioned in Rule 5(1) or Rule 5(2) became known to that party.
4. The notice of challenge shall be sent simultaneously to the other party, to the arbitrator who is challenged, to the other members of the arbitral tribunal, if any, and copied to the Chairman of the BDAC. The notice shall be in writing and shall state the reasons for the challenge. The Chairman of the BDAC may order suspension of the arbitration until the challenge is resolved.
5. When an arbitrator is challenged by one party, the other party may agree to the challenge. The challenged arbitrator may also withdraw from his office. In neither case does this imply acceptance of the validity of the grounds of the challenge.
6. If within 14 days of the receipt of the notice of challenge, the other party does not agree to the challenge and the arbitrator who is being challenged does not withdraw voluntarily, the Chairman of the BDAC shall decide on the challenge.
7. Upon such withdrawal or sustainment of the challenge, the substitute arbitrator shall be appointed in accordance with the procedure provided in Rule 4.
8. The Chairman of the BDAC may fix the costs of the challenge and may direct by whom and how such costs should be borne.

Rule 6 – Seat of Arbitration

1. The parties may agree on the seat of arbitration. Failing such agreement, the seat of arbitration shall be Brunei Darussalam unless the arbitral tribunal determines, having regard to all the circumstances of the case, that another seat is more appropriate.
2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by parties, the arbitral tribunal may also meet at any location it considers appropriate for any purpose, including hearings.

Rule 7 – Interim Relief

1. The arbitral tribunal may, at the request of a party grant interim measures pursuant to Article 26.
2. A party in need of emergency interim relief prior to the constitution of the arbitral tribunal may apply for such relief pursuant to the procedures set forth in Schedule 2.

Rule 8 – Consolidation of Proceedings and Concurrent Hearings

1. The parties may agree –
 - a. that the arbitration proceedings shall be consolidated with other arbitration proceedings; or
 - b. that concurrent hearings shall be held, on such terms as may be agreed.
2. Unless the parties agree to confer such power on the arbitral tribunal, the tribunal has no power to order consolidation of arbitration proceedings or concurrent hearings.

Rule 9 – Facilities

The Chairman of the BDAC shall as far as possible, at the request of the arbitral tribunal or either party, make available, or arrange for, such facilities and assistance for the conduct of the arbitral proceedings as may be required, including suitable accommodation for sittings of the arbitral tribunal, secretarial assistance, transcription services, video conferencing and interpretation facilities.

Rule 10 – Arbitration Procedure

The arbitral tribunal may conduct the arbitration in such manner as it considers appropriate and without prejudice to the generality of the foregoing may, unless all parties to the arbitration otherwise agree, limit the time available for each party to present its case.

Rule 11 – Awards

1. The arbitral tribunal shall render its final award within a period which is limited to 3 months. Such time limit shall start to run from the date of the closing of final oral or written submissions. The arbitral tribunal shall inform the Chairman of the BDAC of such date.
2. Such time limit may be extended by the arbitral tribunal with the consent of the parties and upon consultation with the Chairman of the BDAC.
3. The Chairman of the BDAC may further extend the time limit in the absence of consent between the parties notwithstanding its expiry.

4. The arbitral tribunal shall deliver sufficient copies of the completed award to the Chairman of the BDAC. The award shall only be released to the parties upon full settlement of the costs of arbitration.
5. BDAC shall notify the parties of its receipt of the award from the arbitral tribunal. The award shall be deemed to have been received by the parties upon collection by hand by an authorised representative or upon delivery by registered mail.
6. In the event the parties reach a settlement after the commencement of the arbitration, the arbitral tribunal shall, if so requested by the parties, record the settlement in the form of an award made by consent of the parties. If the parties do not require a consent award, the parties shall inform the Chairman of the BDAC that a settlement has been reached. The arbitration shall only be deemed concluded and the arbitral tribunal discharged upon full settlement of the costs of arbitration.
7. By agreeing to arbitration under these Rules, the parties undertake to carry out the award immediately and without delay, and they also irrevocably waive their rights to any form of appeal, review or recourse to any state court or other judicial authority insofar as such waiver may be validly made and the parties further agree that an award shall be final and binding on the parties from the date it is made.
8. Unless the parties have agreed otherwise, the arbitral tribunal may:
 - a. award interest on any sum of money ordered to be paid by the award on the whole or any part of the period between the date on which the cause of action arose and to the date of realisation of the award; and
 - b. determine the rate of interest.
9. An “award” as referred to herein shall include an interim, partial or final award and an award of an emergency arbitrator.

Rule 12 – Costs

1. The term “costs” as specified in Article 40 shall include the expenses reasonably incurred by BDAC in connection with the arbitration, the administrative costs of BDAC as well as the costs of the facilities made available by BDAC under Rule 9 above.
2. Unless otherwise agreed by the parties and the arbitral tribunal pursuant to Rule 12(4), the fees of the arbitral tribunal shall be fixed by the Chairman of the BDAC in accordance with the Schedule of Fees.
3. As a general rule, Appendix A1 (BND scale) shall apply to international arbitrations (as defined in Rule 4(4)(c)) and Appendix A2 (BND scale) shall apply to domestic arbitrations.
4. Notwithstanding the above, all the parties and the arbitral tribunal are at liberty to agree on the fees and expenses of the arbitral tribunal within the period of 30 days after the

appointment of the arbitral tribunal and the arbitral tribunal shall inform the Chairman of the BDAC.

5. The administrative costs of the arbitration shall be fixed by the Chairman of the BDAC in accordance with the Schedule of Fees. As a general rule, Appendix B1 (BND scale) shall apply to international arbitrations [as defined in Rule 4(4)(c)] and Appendix B2 (BND scale) shall apply to domestic arbitrations.
6. The fees of the arbitral tribunal and administrative costs of the arbitration under Rule 12(3), (4) and (5) above may, in exceptional, unusual or unforeseen circumstances, be adjusted from time to time at the discretion of the Chairman of the BDAC.
7. The fees of the arbitral tribunal and the administrative costs of arbitration under the Schedule of Fees are determined based on the amount in dispute. For the purpose of calculating the amount in dispute, the value of any counter-claim and/or set-off will be added to the amount of the claim.
8. Where a claim or counterclaim does not state a monetary amount, an appropriate value for the claim or counterclaim shall be settled by the Chairman of the BDAC in consultation with the arbitral tribunal and the parties for the purpose of computing the arbitrator's fees and the administrative costs.
9. Notwithstanding Rule 13, the arbitral tribunal may determine the proportion of costs to be borne by the parties.

Rule 13 – Deposits

In lieu of the provisions of Article 43, the following provisions shall apply:

1. Subsequent to the commencement of arbitration in accordance with Rule 2, the Chairman of the BDAC shall fix a provisional advance deposit in an amount intended to cover the costs of the arbitration. Any such provisional advance deposit shall be paid by the parties in equal shares and will be considered as a partial payment by the parties of any deposits of costs fixed by the Chairman of the BDAC under Rule 12.
2. Such provisional advance deposit shall be payable within 21 days upon request from BDAC. In the event that any of the parties fail to pay such deposit, the Chairman of the BDAC shall so inform the parties in order that one or another of them may make the required payment. The arbitral tribunal shall not proceed with the arbitral proceedings until such provisional advance deposit is paid in full.
3. Upon fixing of the fees of the arbitral tribunal and administrative costs of arbitration by the Chairman of the BDAC pursuant to Rule 12, including the fees and expenses of the arbitral tribunal, if any, pursuant to Rule 12(4), the Chairman of the BDAC shall prepare an estimate of the fees and expenses of the arbitral tribunal and the administrative costs of the arbitration which the parties shall bear equally. Within 21 days of written notification by

the Chairman of the BDAC of such estimate, each party shall deposit its share of the estimate with BDAC.

4. During the course of the arbitral proceedings the Chairman of the BDAC may request further deposits from the parties which shall be paid by the parties in equal shares within 21 days of such request.
5. Notwithstanding Rule 13(4), where counterclaims are submitted by the respondent, the Chairman of the BDAC may fix separate deposits on costs for the claims and counterclaims. When the Chairman of the BDAC has fixed separate advance preliminary deposits on costs, each of the parties shall pay the advance preliminary deposit corresponding to its claims.
6. If the required deposits are not paid in full, the Chairman of the BDAC shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal, after consultation with the Chairman of the BDAC, may order the suspension or termination of the arbitral proceedings or any part thereof.
7. Notwithstanding the above, the Chairman of the BDAC shall have the discretion to determine the proportion of deposits required to be paid by the parties.
8. The Chairman of the BDAC may apply the deposits towards the administrative costs of BDAC, fees of the arbitrator and the arbitrator's out-of-pocket and per diem expenses in such manner and at such times as the Chairman thinks fit.
9. After the award has been made, the Chairman of the BDAC shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties based on the parties' respective contributions.

Rule 14 – Mediation to Arbitration

Where the parties have referred their dispute to mediation under BDAC's Mediation Procedure and they have failed to reach a settlement and thereafter proceed to arbitration, then one-half of the administrative costs paid to BDAC for the mediation shall be credited towards the administrative costs of the arbitration.

Rule 15 – Confidentiality

1. The arbitral tribunal, the parties, all experts, all witnesses and BDAC shall keep confidential all matters relating to the arbitral proceedings including any award except where disclosure is necessary for purposes of implementation and enforcement or to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to challenge an award in bona fide legal proceedings before a state court or other judicial authority.

2. In this Rule, “matters relating to the proceedings” means the existence of the proceedings, and the pleadings, evidence and other materials in the arbitration proceedings and all other documents produced by another party in the proceedings or the award arising from the proceedings, but excludes any matter that is otherwise in the public domain.

Rule 16 – No Liability

Neither BDAC nor the arbitral tribunal shall be liable to any party for any act or omission related to the conduct of the arbitral proceedings.

Rule 17 – Non-Reliances

The parties and the arbitral tribunal agree that statements or comments whether written or oral made in the course of the arbitral proceedings shall not be relied upon to institute or commence or maintain any action for defamation, libel, slander or any other complaint.

PART II

BDAC UNCITRAL Rules

Section I – INTRODUCTORY RULES

*Scope of Application**

Article 1

1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.
2. The parties to an arbitration agreement concluded after 15 August 2010 shall be presumed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules. That presumption does not apply where the arbitration agreement has been concluded by accepting after 15 August 2010 an offer made before that date.
3. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

* A model arbitration clause for contracts can be found in the Schedule 3 to the Rules.

Notice and Calculation of Periods of Time

Article 2

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.
2. If an address has been designated by a party specifically for this purpose or 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 email 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.

Notice of Arbitration

Article 3 –

1. The party or parties initiating recourse to arbitration (hereinafter called the "claimant") shall communicate to the other party or parties (hereinafter called the "respondent") a notice of arbitration.
2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.
3. The notice of arbitration shall include the following:
 - a. a demand that the dispute be referred to arbitration;
 - b. the names and contact details of the parties;
 - c. identification of the arbitration agreement that is invoked;
 - d. identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
 - e. a brief description of the claim and an indication of the amount involved, if any;
 - f. the relief or remedy sought;
 - g. a proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.

4. The notice of arbitration may also include:
 - a. a proposal for the designation of an appointing authority referred to in Article 6, paragraph 1;
 - b. a proposal for the appointment of a sole arbitrator referred to in Article 8, paragraph 1;
 - c. Notification of the appointment of an arbitrator referred to in Articles 9 or 10.
5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

Response to the Notice of Arbitration

Article 4

1. Within 30 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall include:
 - a. the name and contact details of each respondent;
 - b. a response to the information set forth in the notice of arbitration, pursuant to Article 3, paragraphs 3 (c) to (g).
2. The response to the notice of arbitration may also include:
 - a. any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;
 - b. a proposal for the designation of an appointing authority referred to in Article 6, paragraph 1;
 - c. a proposal for the appointment of a sole arbitrator referred to in Article 8, paragraph 1;
 - d. notification of the appointment of an arbitrator referred to in Articles 9 or 10;
 - e. A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;

- f. A notice of arbitration in accordance with Article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.
3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

Representation and Assistance

Article 5

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

Designating and Appointing Authorities

Article 6

1. Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, including the Secretary-General of the Permanent Court of Arbitration at The Hague (hereinafter called the "PCA"), one of whom would serve as appointing authority.
2. If all parties have not agreed on the choice of an appointing authority within 30 days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request the Secretary-General of the PCA to designate the appointing authority.
3. Where these Rules provide for a period of time within which a party must refer a matter to an appointing authority and no appointing authority has been agreed on or designated, the period is suspended from the date on which a party initiates the procedure for agreeing on or designating an appointing authority until the date of such agreement or designation.
4. Except as referred to in Article 41, paragraph 4, if the appointing authority refuses to act, or if it fails to appoint an arbitrator within 30 days after it receives a party's request to do so, fails to act within any other period provided by these Rules, or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party's request to do so, any party may request the Secretary-General of the PCA to designate a substitute appointing authority.
5. In exercising their functions under these Rules, the appointing authority and the Secretary-General of the PCA may require from any party and the arbitrators the information they

deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority and the Secretary-General of the PCA shall also be provided by the sender to all other parties.

6. When the appointing authority is requested to appoint an arbitrator pursuant to Articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.
7. The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

Section II – COMPOSITION OF THE ARBITRAL TRIBUNAL

Number of Arbitrators

Article 7

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, one arbitrator shall be appointed.
2. Notwithstanding paragraph 1, if no other parties have responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with Article 9 or 10, the appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in Article 8, paragraph 2 if it determines that, in view of the circumstances of the case, this is more appropriate.

Appointment of Arbitrators (articles 8 to 10)

Article 8

1. If the parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.
2. The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:

- a. The appointing authority shall communicate to each of the parties an identical list containing at least three names;
- b. Within 15 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;
- c. After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
- d. If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

Article 9

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.
2. If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the appointing authority to appoint the second arbitrator.
3. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under Article 8.

Article 10

1. For the purposes of Article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.
2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.
3. In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

Disclosures by and Challenge of Arbitrators (articles 11 to 13)

Article 11

When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

Disclosures by and Challenge of Arbitrators

Article 12

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.
3. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

Disclosures by and Challenge of Arbitrators

Article 13

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in Articles 11 and 12 became known to that party.
2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.
3. When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority.

Replacement of an Arbitrator

Article 14

1. Subject to paragraph (2), in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.
2. If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorise the other arbitrators to proceed with the arbitration and make any decision or award.

Repetition of Hearings in the Event of the Replacement of an Arbitrator

Article 15

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

Exclusion of Liability

Article 16

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the appointing authority and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

Section III – ARBITRAL PROCEEDINGS

General Provisions

Article 17

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

2. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.
3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
4. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.
5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

Place of Arbitration

Article 18

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.
2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

Language

Article 19

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.
2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course

of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Statement of Claim

Article 20

1. The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in Article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this article.
2. The statement of claim shall include the following particulars:
 - a. The names and contact details of the parties;
 - b. A statement of the facts supporting the claim;
 - c. The points at issue;
 - d. The relief or remedy sought;
 - e. The legal grounds or arguments supporting the claim.
3. A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.
4. The statement of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

Statement of Defence

Article 21

1. The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in Article 4 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this Article.
2. The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (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) (f) and a claim relied on for the purpose of a set-off.

Amendments to the Claim or Defence

Article 22

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

Pleas as to the Jurisdiction of the Arbitral Tribunal

Article 23

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.
2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

Further Written Statements

Article 24

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

Periods of Time

Article 25

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

Interim Measures

Article 26

1. The arbitral tribunal may, at the request of a party, grant interim measures.
2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:
 - a. Maintain or restore the status quo pending determination of the dispute;
 - b. Take action that would prevent, or refrain from taking action that is likely to cause,
 - i. current or imminent harm or
 - ii. prejudice to the arbitral process itself;
 - c. Provide a means of preserving assets out of which a subsequent award may be satisfied; or
 - d. Preserve evidence that may be relevant and material to the resolution of the dispute.
3. The party requesting an interim measure under paragraphs 2 (a) to (c) shall satisfy the arbitral tribunal that:
 - a. Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

- b. There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
4. With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.
5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.
6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.
9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Evidence

Article 27

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.
2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.
3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.
4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Hearings

Article 28

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.
2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.
3. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.
4. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as video conferencing).

Experts Appointed by the Arbitral Tribunal

Article 29

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.
3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.

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

Default

Article 30

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:
 - a. The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;
 - b. The respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.
2. If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Closure of Hearings

Article 31

1. The arbitral tribunal may enquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.
2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

Waiver of Right to Object

Article 32

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

Section IV – THE AWARD

Decisions

Article 33

1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorises, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

Form and Effect of the Award

Article 34

1. The arbitral tribunal may make separate awards on different issues at different times.
2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.
3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.
5. An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.
6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

Applicable Law, Amiable Compositeur

Article 35

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.
2. The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly 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.

Settlement or Other Grounds for Termination

Article 36

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.
3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of Article 34, paragraphs 2, 4 and 5 shall apply.

Interpretation of the Award

Article 37

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 34, paragraphs 2 to 6, shall apply.

Correction of the Award

Article 38

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.
2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
3. Such corrections shall be in writing and shall form part of the award. The provisions of Article 34, paragraphs 2 to 6, shall apply.

Additional Award

Article 39

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.
2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.
3. When such an award or additional award is made, the provisions of Article 34, paragraph 2 to 6, shall apply.

Definition of Costs

Article 40

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.
2. The term “costs” includes only:
 - a. The fees of the arbitral tribunal to be stated 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 such expenses are approved by the arbitral tribunal;
 - e. The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
 - f. Any fees and expenses of the appointing authority as well as the fees and expenses of the Secretary-General of the PCA.
3. In relation to interpretation, correction or completion of any award under Articles 37 to 39, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

Fees and Expenses of Arbitrators

Article 41

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.
2. If there is an appointing authority and it applies or has stated that it will apply a schedule or particular method for determining the fees for arbitrators in international cases, the arbitral tribunal in fixing its fees shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case.
3. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If, within 45 days of receipt of such a referral, the appointing authority finds that the proposal of the arbitral tribunal is inconsistent with paragraph 1, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal.
4. (a) When informing the parties of the arbitrators' fees and expenses that have been fixed pursuant to Article 40, paragraphs 2 (a) and (b), the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated.

(b) Within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the appointing authority. If no appointing authority has been agreed upon or designated, or if the appointing authority

fails to act within the time specified in these Rules, then the review shall be made by the Secretary-General of the PCA.

(c) If the appointing authority or the Secretary- General of the PCA finds that the arbitral tribunal's determination is inconsistent with the arbitral tribunal's proposal (and any adjustment thereto) under paragraph 3 or is otherwise manifestly excessive, it shall, within 45 days of receiving such a referral, make any adjustments to the arbitral tribunal's determination that are necessary to satisfy the criteria in paragraph 1. Any such adjustments shall be binding upon the arbitral tribunal.

(d) Any such adjustments shall either be included by the arbitral tribunal in its award or, if the award has already been issued, be implemented in a correction to the award, to which the procedure of Article 38, paragraph 3 shall apply.

5. Throughout the procedure under paragraphs 3 and 4, the arbitral tribunal shall proceed with the arbitration, in accordance with Article 17, paragraph 1.
6. A referral under paragraph 4 shall not affect any determination in the award other than the arbitral tribunal's fees and expenses; nor shall it delay the recognition and enforcement of all parts of the award other than those relating to the determination of the arbitral tribunal's fees and expenses.

Allocation of Costs

Article 42

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

Deposit of Costs

Article 43

1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in Article 40, paragraphs 2 (a) to (c).
2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.

3. If an appointing authority has been agreed upon or designated, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority, which may make any comments to the arbitral tribunal that it deems appropriate concerning the amount of such deposits and supplementary deposits.
4. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
5. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Schedules

Schedule 1 – Schedule of Fees

Appendix A1 - International Arbitrator's Fee (BND)

Amount In Dispute (BND)	Arbitrator's Fees (BND)
Up to 50,000	3,500
From 50,001 to 100,000	3,500 + 8.2% excess over 50,000
From 100,001 to 500,000	7,600 + 3.6% excess over 100,000
From 500,001 to 1,000,000	22,000 + 3.02% excess over 500,000
From 1,000,001 to 2,000,000	37,100 + 1.39% excess over 1,000,000
From 2,000,001 to 5,000,000	51,000 + 0.6125% excess over 2,000,000
From 5,000,001 to 10,000,000	75,500 + 0.35% excess over 5,000,000
From 10,000,001 to 50,000,000	93,000 + 0.181% excess over 10,000,000
From 50,000,001 to 80,000,000	165,300 + 0.0713% excess over 50,000,000
From 80,000,001 to 100,000,000	186,700 + 0.0535% excess over 80,000,000
From 100,000,001 to 500,000,000	197,400 + 0.0386% excess over 100,000,000
Above 500,000,001	351,800 + 0.03% excess over 500,000,000 up to a maximum of 2,000,000

Appendix B1 - International Administrative Costs (BND)

Amount In Dispute (BND)	Administrative Costs (BND)
Up to 50,000	2,050
From 50,001 to 100,000	2,050 + 1.26% excess over 50,000
From 100,001 to 500,000	2,680 + 0.705% excess over 100,000
From 500,001 to 1,000,000	5,500 + 0.5% excess over 500,000
From 1,000,001 to 2,000,000	8,000 + 0.35% excess over 1,000,000
From 2,000,001 to 5,000,000	11,500 + 0.13% excess over 2,000,000
From 5,000,001 to 10,000,000	16,700 + 0.088% excess over 5,000,000
From 10,000,001 to 50,000,000	21,100 + 0.052% excess over 10,000,000
Above 50,000,001	41,900 (maximum)

Appendix A2 - Domestic Arbitrator's Fee (BND)

Amount In Dispute (BND)	Arbitrator's Fees (BND)
Up to 150,000	3,000
From 150,001 to 300,000	3,000 + 7.2667% of excess over 150,000
From 300,001 to 1,500,000	6,000 + 3.1667% of excess over 300,000
From 1,500,001 to 3,000,000	19,000 + 2.66% of excess over 1,500,000
From 3,000,001 to 6,000,000	32,000 + 1.2233% of excess over 3,000,000
From 6,000,001 to 15,000,000	44,000 + 0.7189% of excess over 6,000,000
From 15,000,001 to 30,000,000	66,000 + 0.3080% of excess over 15,000,000
From 30,000,001 to 150,000,000	81,000 + 0.159% of excess over 30,000,000
From 150,000,001 to 240,000,000	145,000 + 0.0628% of excess over 150,000,000
From 240,000,001 to 300,000,000	164,000 + 0.0472% of excess over 240,000,000
From 300,000,001 to 1,500,000,000	173,000 + 0.034% of excess over 300,000,000
Above 1,500,000,000	309,000 + 0.03% of excess over 1,500,000,000 up to a maximum of 2,000,000

Appendix B2 - Domestic Administrative Costs (BND)

Amount In Dispute (BND)	Administrative Costs (BND)
Up to 150,000	1,800
From 150,001 to 300,000	1,800 + 1.0667% excess over 150,000
From 300,001 to 1,500,000	2,300 + 0.625% excess over 300,000
From 1,500,001 to 3,000,000	4,800 + 0.44% excess over 1,500,000
From 3,000,001 to 6,000,000	7,000 + 0.3067% excess over 3,000,000
From 6,000,001 to 15,000,000	10,000 + 0.1522% excess over 6,000,000
From 15,000,001 to 30,000,000	14,000 + 0.0773% excess over 15,000,000
From 30,000,001 to 150,000,000	18,000 + 0.0458% excess over 30,000,000
Above 150,000,001	36,000 (maximum)

Appendix C - Emergency Interim Relief Costs and Fees

The following fees shall be payable upon making an application under Rule 7 and Schedule 2 for an emergency interim relief:

1. Administration Costs for Emergency Interim Relief Applications (non-refundable):

International Arbitration BND2,000.00

Domestic Arbitration BND1,600.00

2. Emergency Arbitrator's Fees:

International Arbitration BND14,000.00

Domestic Arbitration BND 10,000.00

Appendix D - Notes on Schedule of Fees

1. Registration Fees

1. The registration fee as specified in Rule 2(1) (c), is non-refundable and does not constitute part of BDAC's administrative costs.
2. The registration fee shall be payable by the claimant in full and shall not be subjected to any deductions.

2. Arbitral Tribunal Fees

1. The fees payable to the arbitrator do not include any possible taxes such as service tax, withholding tax or other taxes or charges applicable to the arbitrator's fees. Parties have a duty to pay any such taxes or charges; however the recovery of any such taxes or charges is a matter solely between the arbitrator and the parties.
2. Arbitrator's expenses:
 - a. An arbitrator shall be entitled to claim for reasonable out-of-pocket expenses relating to reasonable travel, living and other miscellaneous expenses whilst attending to the arbitration proceedings.
 - b. The arbitral tribunal's reasonable out- of-pocket expenses necessarily incurred shall be borne by the parties and reimbursed at costs.
 - c. The expenses will be reimbursed upon submission and verification by BDAC of the supporting invoices and receipts in original.
 - d. An arbitrator who is required to travel outside his place of residence will be reimbursed with business class airfare, subject to the submission of invoice or receipt in original to BDAC for verification.
 - e. In addition to the out-of-pocket expenses, a per diem of shall be paid to an arbitrator who is required to travel outside his place of residence, whenever overnight accommodation is required. Where no overnight accommodation is required, a per diem of shall be paid.

- f. The expenses covered by the per diem above shall include the following items which are not claimable as out-of-pocket expenses:
 - Hotel accommodation;
 - Meals/beverages;
 - Laundry/dry cleaning/ironing;
 - City transportation (excluding airport transfers);
 - Communication costs (telephone, faxes, internet usage etc.); and
 - Tips.
3. Any disbursement towards the arbitrator's out-of-pocket and per diem expenses shall be additional to the arbitrator's fees and do not form part of the advance preliminary deposits. Parties shall bear these costs separately in equal shares upon request from BDAC.
4. Payment of fees to arbitrator:
 - a. The arbitrator's fees shall only be payable upon the delivery of the award to BDAC in accordance with Rule 11.
 - b. The arbitrator shall not be entitled to any interim fees.
 - c. Where the arbitral tribunal constitutes more than one arbitrator, the chairman of the arbitral tribunal shall receive 40% of the total arbitrator's fee and the co-arbitrators shall receive the remaining 60% in equal shares.
 - d. Where an arbitration matter is settled or disposed of before the commencement of hearing, the costs of the arbitration shall be determined by the Chairman of the BDAC.

3. BDAC Administrative Costs

1. The BDAC administrative costs shall be calculated in accordance with the Appendix B1 and B2 of the Schedule of Fees, as the case may be.
2. The BDAC administrative costs shall be payable by the parties in equal shares and shall form a part of the advance preliminary deposit.
3. The BDAC administrative costs are not inclusive of other services such as rental of facilities, refreshments, secretarial assistance, transcription services, videoconferencing and interpretation services which shall be chargeable on the requesting party separately.

4. Advance Preliminary Deposit

1. Advance preliminary deposit and/or additional deposits shall include the following:
 - a. Fees of the arbitral tribunal [for a panel of more than one arbitrator, the total arbitrator's fee shall be derived by multiplying the amount of an arbitrator's fees with the number of the arbitrators].
 - b. BDAC administrative costs (as per Schedule of Fees).
 - c. Bank charges amounting to BND50.00 for domestic arbitrations or BND150.00 for international arbitrations.
2. The advance preliminary deposit and additional deposits, if any, shall be payable by the parties in equal shares pursuant to Rule 13.

Schedule 2 – Emergency Arbitrator

1. A party in need of emergency interim relief may, concurrent with or following the filing of a Notice of Arbitration but prior to the constitution of the arbitral tribunal, make an application for emergency interim relief. The application for emergency relief shall be made in writing and shall be sent simultaneously to the appointed Chairman of BDAC and all other parties to the arbitration. The application for emergency interim relief shall include:
 - a. Applicant's name, description, address and contact details of other parties;
 - b. Name, description and address of people representing the applicant;
 - c. Description of circumstances giving rise to the application;
 - d. Reasons why the applicant requires the emergency relief;
 - e. A statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify the other parties;
 - f. The relevant arbitration clause or arbitration agreement; and
 - g. An application fee pursuant to Appendix C.
2. The appointed Chairman of BDAC shall, if he determines that BDAC should accept the application, seek to appoint an emergency arbitrator within 2 business days (meaning working days and not including weekends and public holidays) of receipt by the appointed Chairman of BDAC of such application and payment of any required fee.
3. Prior to accepting appointment, a prospective emergency arbitrator shall disclose to the appointed Chairman of BDAC any circumstance that may give rise to justifiable doubts as to his impartiality or independence.
4. An emergency arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless agreed by the parties.
5. Once the emergency arbitrator has been appointed, BDAC shall so notify the parties. Thereafter, all written communications from the parties shall be submitted directly to the emergency arbitrator with a copy to the other party and BDAC.
6. In the event there is any challenge to the appointment of the emergency arbitrator, it must be made within one business day of the communication by the appointed Chairman of BDAC to the parties of the appointment of the emergency arbitrator or the circumstances disclosed. Rule 5 shall apply to the emergency arbitrator, except that the time limits set out in the Rules 5(3) and 5(6) are reduced to one business day.

7. Upon withdrawal or sustainment of the challenge, the substitute emergency arbitrator shall be appointed in accordance with the procedure provided in Rule 4.
8. If the parties have agreed on the seat of arbitration, such seat shall be the seat of the emergency interim relief proceedings. Where the parties have not agreed on the seat of arbitration, and without prejudice to the arbitral tribunal's determination of the seat of arbitration pursuant Rule 6, the seat of the emergency interim relief proceedings shall be Brunei Darussalam.
9. The emergency arbitrator shall, as soon as possible but in any event within 2 business days of appointment, establish a schedule for consideration of the application for emergency interim relief. Such schedule shall provide a reasonable opportunity to all parties to be heard, but may provide for proceedings by telephone conference or on written submissions as alternatives to a formal hearing. The emergency arbitrator shall have the powers vested in the arbitral tribunal pursuant to these Rules, including the authority to rule on his own jurisdiction, and shall resolve any disputes over the application of this Schedule 2.
10. The emergency arbitrator shall have the power to order or award any interim relief that he deems necessary. The emergency arbitrator shall give reasons for his decision in writing.
11. Any order or award of the emergency arbitrator shall be made within 15 days from the date of appointment notification to parties and this period of time may be extended by agreement of the parties or, in appropriate circumstances, by the appointed Chairman of BDAC.
12. The emergency arbitrator shall deliver sufficient copies of the order or award to the appointed Chairman of BDAC.
13. The BDAC shall notify the parties of its receipt of the order or award from the arbitral tribunal. The order or award shall be deemed to have been received by the parties upon collection by hand by an authorised representative or upon delivery by registered mail.
14. Upon the constitution of the arbitral tribunal:
 - a. The emergency arbitrator shall have no further power to act;
 - b. The arbitral tribunal may reconsider, modify or vacate the interim award or order of emergency interim relief issued by the emergency arbitrator; and
 - c. The arbitral tribunal is not bound by the reasons given by the emergency arbitrator.
15. Any order or award issued by the emergency arbitrator shall cease to be binding:
 - a. if the arbitral tribunal is not constituted within 90 days of such order or award;
 - b. when the arbitral tribunal makes a final award; or

- c. if the claim is withdrawn.
- 16. Any interim award or order of emergency interim relief may be conditional on provision of appropriate security by the party seeking such relief.
- 17. An order or award pursuant to this Schedule 2 shall be binding on the parties when rendered. By agreeing to arbitration under these Rules, the parties undertake to comply with such an order or award without delay.
- 18. The costs associated with any application pursuant to this Schedule 2 shall initially be apportioned by the emergency arbitrator, subject to the power of the arbitral tribunal to determine the final apportionment of such costs.
- 19. The decision of the emergency arbitrator as to such matters is final and not subject to appeal.

Schedule 3 – Model Arbitration Clause

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof shall be settled by arbitration in accordance with BDAC Arbitration Rules.

Schedule 4 – Form of Agreement

Parties wishing to substitute an existing arbitration clause for one referring the dispute to arbitration under the BDAC Arbitration Rules may adopt the following form of agreement:

“The parties hereby agree that the dispute arising out of the contract dated _____ shall be settled by arbitration under the BDAC Arbitration Rules.”

This form may also be used where a contract does not contain an arbitration clause.