

Arbitration Rules

*Approved by the Extraordinary General
Meeting of 19 April 2017*

CIVIL AND COMMERCIAL ARBITRATION COURT

CIMA



C I M A

**CORTE CIVIL Y MERCANTIL
DE ARBITRAJE**

Sworn translation into English

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RECOMMENDED ARBITRATION CLAUSE

"...Any dispute arising from or relating to this contract, including any question regarding its existence, validity, interpretation, scope, performance or termination, shall be finally settled by arbitration [in law/equity], administered by the Civil and Commercial Arbitration Court (CIMA) in accordance with its Statutes and Arbitration Rules in force on the date of submission of the request for arbitration. The Arbitral Tribunal appointed for this purpose shall consist of [...] Arbitrator/ Arbitrators and the language of arbitration shall be [...]. The place of arbitration shall be [...]. The applicable law shall be [...]..."

RECOMMENDED ARBITRATION CLAUSE INCLUDING AN OPTIONAL REVIEW OF THE AWARD BEFORE THE COURT

"...Any dispute arising from or relating to this contract, including any question regarding its existence, validity, interpretation, scope, performance or termination, shall be finally settled by arbitration in law, administered by the Civil and Commercial Arbitration Court (CIMA) in accordance with its Statutes and Arbitration Rules in force on the date of submission of the request for arbitration. The Arbitral Tribunal appointed for this purpose shall consist of [...] Arbitrator/ Arbitrators and the language of arbitration shall be [...]. The place of arbitration shall be [...]. The law applicable will be [...]. The parties expressly agree that any award rendered in the arbitration proceedings may be reviewed at the request of either party, in accordance with the provisions of the Rules, prior or simultaneously to the exercise, before the courts of law of any action to challenge its validity available under the applicable legislative provisions..."

RECOMMENDED ARBITRATION CLAUSE FOR CORPORATE ARBITRATION

"...Any conflict of a corporate nature affecting the Company, its shareholders and/ or its administrators (including by way of example the challenge to corporate resolutions, corporate or individual actions for liability against administrators and disputes relating to the convening of corporate meetings) will be finally decided by arbitration in law, administered by the Civil and Commercial Arbitration Court (CIMA) in accordance with its Statutes and its Rules of Arbitration in force on the date of submission of the request for arbitration. The Arbitral Tribunal appointed for this purpose shall consist of [...] Arbitrator/Arbitrators and the language of arbitration shall be [...]. The place of arbitration shall be [...]. The law applicable will be [...]. The company undertakes to pay without delay the provision of funds that, as a party to the proceedings, it must satisfy to cover the rights of admission by the arbitral institution and the fees and expenses of the Arbitrators..."

Article 1. Scope, application and interpretation of the Rules

1. The Civil and Commercial Arbitration Court (CIMA) (hereinafter, the Court) administers the resolution of disputes by Arbitral Tribunals, in accordance with the provisions of the Arbitration Rules (hereinafter, the Rules) and its Statutes (hereinafter, the Statutes).
2. Unless otherwise provided by the parties, the Court shall apply to all proceedings whose administration is entrusted to the Court the provisions of the Statutes and Rules in force at the time of submission of the request for arbitration (see Rules, Article 5) or of the request for an emergency Arbitrator (see Rules, Annex I) or of the request for the Court to act as appointing authority (see Rules, Annex II).
3. The Court will address any questions raised regarding the interpretation, application and enforcement of the Rules, *ex officio* or at the request of any party.
4. The Court reserves the right to refuse the administration of disputes which contravene its constituent principles, as set out in the Statutes.
5. In the administration of arbitrations entrusted to the Court, the Secretariat shall assist both the Court and the Arbitral Tribunal. The Court shall ensure the appropriate conduct of the arbitral proceeding and the compliance with time limits, as well as the respect –in coordination with the Arbitral Tribunal– of the rights of a fair hearing, presentation of the case and equality of the parties.
6. In the Rules, the term "*Arbitral Tribunal*" refers either to a sole Arbitrator or collegiate Arbitral Tribunal, the term "*parties*" refers to claimants, respondents or additional parties, and the term "*award*" refers, among others, to an interlocutory, final or definitive award.

Article 2. Notifications, Communications and deadlines

1. During the course of any arbitral proceedings, the parties shall notify the Court, the Arbitral Tribunal and the other parties of any change of their names, descriptions, addresses, telephones, faxes or email addresses. These changes will be effective from their receipt by the Court.
2. The Court and the Arbitral Tribunal will deliver any notification to the last known address of the addressee or its representative, as advised to the Court, by any means of communication that provides a record of its transmission.
3. Any notification sent in accordance with the preceding paragraph shall be deemed valid and received by the addressee on the date of dispatch recorded in the chosen means of communication.

4. In cases in which a notification is not achieved, the Court will understand that it has been properly effected when, after a reasonable inquiry by the Court or Arbitral Tribunal, it has been sent to the last known place of business, to the latest advised habitual residence, to the address recorded in the document incorporating the arbitration agreement, to the latest known and advised postal address of the addressee or to the latest email address available, in accordance with the provisions of the Rules.
5. Until the constitution of the Arbitral Tribunal:
 - a. The parties shall transmit to the Court any statement or written communication, with a copy to the opposing parties;
 - b. The parties shall send documents and communications to the Court by any means of communication that provides a record of its transmission;
 - c. Any communication submitted by the parties and attached documents that accompany it should be sent with as many copies as there are parties to the proceeding, with an additional copy for each of the members of the Arbitral Tribunal and another for the Court and copies in digital format; and
 - d. On expiry of the relevant time period, the Court shall promptly transfer the documents and communications received to the other parties, with a copy to the Arbitral Tribunal.
6. From the constitution of the Arbitral Tribunal and if so agreed by the parties, the parties shall send their communications directly to the Arbitral Tribunal –in accordance with their directions– and always with a copy to the opposing parties and to the Court. Should there be no such agreement, communications shall be made as provided in the preceding paragraph.
7. Any time limit will be deemed to be complied with whenever actual transmission to the Court or to the Arbitral Tribunal of the written document or communication is demonstrated within the means of transmission itself, even though receipt only takes place subsequently.
8. Where the parties have agreed to communicate directly with the Arbitral Tribunal, the tribunal shall send the Court a copy of any order or decision issued. Otherwise, the communication of orders and decisions will be made through the Secretariat of the Court.
9. Unless otherwise agreed by the parties, the time periods established in these Rules shall be calculated in calendar days.
10. Time periods will begin to run from the day following that on which the parties or their representatives receive any communication or notification. If the period ends on a non-business day at the place of receipt of the communication or of the notification, the period shall be extended until the next working day.

I. GENERAL PROVISIONS

- 11.** Until the constitution of the Arbitral Tribunal, the Court may justifiably modify the time periods established in the Rules.
- 12.** From the constitution of the Arbitral Tribunal and unless expressly agreed otherwise by the parties, the Arbitrators may -after inviting the parties to express their views- lengthen, extend or shorten any time period established by the Rules or agreed by the parties.
- 13.** Exceptionally, once a time period has expired and provided that the party concerned has so requested within two (2) days following its expiration, the Arbitral Tribunal may grant a reasonable additional period of time by means of a reasoned decision, after considering the relevant circumstances and after hearing the other parties involved (see Rules, Article 29).
- 14.** Unless otherwise agreed by both parties, the month of August is not included in the calculation of any time limit specified in the Rules.

Article 3. Waiver of objections

If a party is aware of the infringement of any provision of the Rules, of any norm of the applicable law, of any procedural order or of any requirement of the arbitration agreement, but does not object within thirty (30) days or otherwise as soon as possible, it will be deemed to have waived its power of challenge provided for in the applicable provisions.

Article 4. Special features of corporate arbitration

- 1.** The special regulations on corporate arbitration contained in this Article will preferentially apply when the object of the dispute is a conflict which has arisen within any corporate entity (whether of capital or otherwise) or a corporation, foundation or association which has an arbitration agreement in its statutes or governing regulations that entrust the Court with the administration of the arbitration pursuant to the Rules.
- 2.** The number of Arbitrators shall be that provided for in the statutes or regulations governing the entity from which the dispute derives. Where there is no such provision, the number and composition of the Arbitral Tribunal will be determined by the Court, in accordance with the provisions of the Rules (see Rules, Article 16).
- 3.** The Court shall constitute the Arbitral Tribunal, appointing each of its members -including the designation of the member who should perform the duties of President- in accordance with the provisions of the Rules, except in those cases in which, after the dispute has arisen, all parties freely agree to an appointment procedure different to that established in the Rules.

4. The Court may postpone the appointment of Arbitrators for a reasonable period of time in those cases in which the same conflict might generate successive requests for arbitration on the same disputed corporate question.
5. If a party files a request for arbitration concerning a corporate conflict for which there is already a pending arbitral proceeding, the Court may decide –at the request of any of the parties– to consolidate the request to the pending proceeding first in time and, if necessary, to suspend the proceeding (see Rules, Article 14).

Article 5. Initiation of the arbitration

1. A party wishing to initiate arbitration in accordance with the Rules shall address its request for arbitration to the Court by submission presented at its offices or sent by post, courier or email.
2. Upon receipt of the request for arbitration and after confirming that it satisfies the requirements, the Court shall record the date on which it was filed in the register provided for such purpose and shall notify the claimant and the respondent of the date of the request for arbitration and the date on which it was filed at the Court. In the event that the request for arbitration has been sent by email, the submission date shall be the date of receipt on the server of the Court.
3. For all purposes, the arbitration shall commence on the date of receipt by the Court of the request for arbitration.

Article 6. Request for arbitration

1. The request for arbitration shall include -at least- the following information:
 - a. The designation of the parties to the dispute, including their full names or company names, addresses, telephones, faxes, emails and other relevant contact details for their identification. Where entities belong to a group of companies, this circumstance shall be stated;
 - b. The designation and identification of representatives of the claimant during the arbitral proceeding (see Rules, Article 10);
 - c. A transcript of the arbitration agreement relied upon as the basis of the request for arbitration;
 - d. Where the request for arbitration is made on the basis of more than one arbitration agreement, the identification of the particular arbitration agreement applicable to each claim of the request for arbitration;
 - e. A brief description of the nature and circumstances of the dispute to substantiate the claim made, which may be supplemented or modified until the signature of the Terms of Reference (see Rules, Article 24);
 - f. A preliminary statement of the claimant's claims and, to the extent possible, an indication of the amount initially claimed;
 - g. Any comments or proposals on the number of Arbitrators and the criteria to be followed for appointment (see Rules, Article 16);
 - h. An indication of the place of arbitration and the language of the proceedings;
 - i. In an arbitration of law, an indication of the legal rules applicable to the merits of the dispute (see Rules, Article 28);

- j. As many copies as parties to the proceedings there may be and members of the Arbitral Tribunal are expected to be appointed (see Rules, Article 2); and
 - k. Proof of payment of the admission fee (see Rules, Annex III).
2. In the event that the Court detects the omission of any of these basic requirements in the request for arbitration, it shall invite the claimant to correct them within a reasonable period of time prior to its delivery to the respondent for the latter to formulate its response to the request for arbitration. If the claimant does not correct these omissions within the period given for that purpose, the Court may terminate the arbitration, without prejudice to the right of the claimant to subsequently file the same claims in a new request for arbitration.
 3. After having received a sufficient number of copies and proof of payment of the admission fee, the Court shall forward the request for arbitration to the respondent for its response.

Article 7. Response to the request for arbitration

1. The respondent shall reply to the request for arbitration within twenty (20) days from the date of receipt from the Court.
2. The response to the request for arbitration shall include –at least– the following information:
 - a. The full name or company name, address, telephones, faxes, emails and other relevant contact details of the respondent, for its correct identification. Where entities belong to a group of companies, this circumstance shall be stated;
 - b. The designation and identification of representatives of the respondent during the arbitral proceedings (see Rules, Article 10);
 - c. Any comments or objection to the arbitration agreement relied upon as the basis of the request for arbitration;
 - d. Any comment on the nature and circumstances of the dispute to substantiate the claim made in the request for arbitration, which may be supplemented or modified until the signing of the Terms of Reference (see Rules, Article 24);
 - e. A preliminary statement of the claims of the respondent, if any;
 - f. Any comments or proposals on the number of Arbitrators and the criteria to be followed for appointment (see Rules, Article 16);
 - g. Any indication or comment on the place of arbitration, the language of the proceedings and the legal rules applicable to the merits of the dispute proposed in the request for arbitration; and
 - h. Sufficient copies for all parties to the proceedings, and the members of the Arbitral Tribunal expected to be appointed (see Rules, Article 2).

II. INITIAL PHASE OF THE ARBITRATION

3. In the event that the Court detects the omission of any of these basic requirements in the response to the request for arbitration, it shall invite the respondent to correct them within a reasonable period of time.
4. The Court may grant the respondent an extension of time to file the response to the request for arbitration, provided that the application for extension filed by the respondent contains comments and proposals on the number of Arbitrators and their choice. Otherwise, the Court shall proceed in accordance with the provisions of the Rules. In any case, the period of extension shall not exceed twenty (20) days, and its determination shall be at the discretion of the Court.
5. The response to the request for arbitration shall be submitted in writing to the Court, in accordance with the provisions of the Rules (see Rules, Article 2). Failure to submit the response to the request for arbitration within the applicable time period or the lack of any response shall not suspend the proceeding.

Article 8. Notice of counterclaim and response

1. Any notice of counterclaim shall be submitted with the response to the request for arbitration, containing -at least- the following information:
 - a. A transcript of the arbitration agreement relied upon as the basis of the counterclaim and its relation to the main claim included in the request for arbitration;
 - b. In the event that the notice of counterclaim is made on the basis of more than one arbitration agreement, the identification of the particular arbitration agreement applicable to each counterclaim;
 - c. A brief description of the nature and circumstances of the dispute to substantiate the counterclaim made, which may be supplemented or modified until the signature of the Terms of Reference (see Rules, Article 24); and
 - d. A preliminary statement of the claims of the counterclaimant and, to the extent possible, an indication of the amount initially claimed in the notice of counterclaim.
2. The claimant shall formulate its response to the notice of counterclaim within twenty (20) days from the date of receipt from the Court. Prior to the delivery of the file to the Arbitral Tribunal and on the basis of the request of the claimant, the Court may extend the time for filing the response to the notice of counterclaim. In any case, the period of extension shall not exceed twenty (20) days, stating, if it considers convenient, the procedural consequences that it deems appropriate, in accordance with the provisions of the Rules. Within this time limit, the Court will determine an extension at its discretion.

3. After the notice of counterclaim, the Court will require that the parties pay the corresponding advance funds, in accordance with the provisions of Annex III of the Rules.

Article 9. Preliminary assessment of the existence of an arbitration

1. In those cases in which the respondent does not submit any response to the request for arbitration or where any party formulates objections to the existence, validity or scope of the arbitration agreement, or any other which, if upheld, would preclude examining the cause of action, the arbitration shall proceed to the extent that the Court accepts, prima facie, the existence of an arbitration agreement. The Court's decision will not prejudice the admissibility or merits of the objections raised by the parties, which shall be finally decided by the Arbitral Tribunal in accordance with the provisions of the Rules.
2. In the event that the Court does not accept, prima facie, the possible existence of an arbitration agreement and decides that arbitration should not proceed, it shall communicate its decision to the parties, without prejudice to the presentation by the parties of their claims relating to the arbitral agreement to the competent courts of law.

Article 10. Representation

1. Throughout the arbitral proceedings, the parties may be represented and advised by persons of their choice, regardless, particularly, of their nationality or profession.
2. Each party shall ensure the availability of their representatives, in order to avoid unnecessary delays in the arbitration process.
3. The Arbitral Tribunal may demand at any time –on its own initiative or at the request of a party– sufficient accreditation of the power of representation in such manner as the Arbitral Tribunal deems appropriate.

Article 11. Plurality of contracts

Requests for arbitration involving various related contracts containing the same arbitration agreement and raising similar factual or legal issues or claims, may be consolidated by the Court in a single arbitration proceeding, regardless of whether such requests have been made under one or more arbitration agreements, provided that the party or parties involved expressly request the consolidation, in accordance with the provisions of the Rules (see Rules, Article 14).

Article 12. Plurality of parties

The parties may only make claims against one or more other parties if they have done so in the request for arbitration or in the notice of counterclaim. In that event, the Court shall serve all parties concerned in order to seek their responses (see Rules, Article 7). The appointment of the Arbitral Tribunal shall be in accordance with the provisions of Article 16 of the Rules.

Article 13. Incorporation of additional parties

1. At the request of any party and after assessment of the relevant circumstances, the Court may allow the intervention of one or more third parties as additional parties to an arbitration procedure, provided that the requesting party makes this application in its first submission to the Court –in accordance with the Rules– and proves that the third party or parties invited to join are parties to the arbitration agreement on which the dispute is based.
2. The party seeking the incorporation of a third party as an additional party to the arbitration proceedings shall address its request to the Court, in accordance with the provisions of Article 6 of the Rules and including –at least– the reference of the existing arbitration, to which it wishes to include the third party or parties as additional parties.

3. The date of receipt of the application by the Court shall be considered the date of commencement of arbitration for the additional party (see Rules, Article 5).
4. Unless expressly agreed otherwise by the parties to the arbitration and the third party invited to join as an additional party to the proceedings, the Court shall reject the inclusion of any additional party subsequent to the appointment of the first member of a collegiate Arbitral Tribunal or to the confirmation of a sole Arbitrator. Any party accepted as an intervening party in the arbitration proceedings shall be bound by the award finally delivered.

Article 14. Consolidation of proceedings

1. The parties may request the Court to consolidate one or more arbitration proceedings with an existing one.
2. The party seeking consolidation shall submit a request for consolidation before the appointment of the first member of a collegiate Arbitral Tribunal or of the confirmation of a sole Arbitrator.
3. In its request for consolidation, the claimant shall demonstrate to the Court the existence of the factual elements required: (i) that the claims of the parties have been made under the same arbitration agreement; (ii) that the parties have agreed to appoint the same sole Arbitrator or the same collegiate Arbitral Tribunal; and (iii) that the seats of arbitration of the proceedings for which consolidation is sought are the same.
4. Upon receipt of the request for consolidation and prior to its decision, the Court shall seek the response of the parties and of the Arbitrators already appointed. In a reasoned decision on the requested consolidation, the Court shall weigh all the relevant circumstances, including the connection between the proceedings, the compatibility of invoked agreements and stage of the proceedings which are sought to be consolidated.
5. If the consolidation is accepted by the Court, the procedure will continue as part of the earliest arbitration, whose Arbitral Tribunal shall, from this time, have exclusive jurisdiction to hear and decide upon the controversy raised in the consolidated proceedings.

Article 15. General provisions

1. The rules provided in this Title of the Rules shall only be applied by the Court in the absence of an agreement of the parties on the system for the appointment of Arbitrators. In any case, and except for the objections recognized in the Rules and the Statutes, the Arbitrators proposed or appointed should be included in the list of Arbitrators of the Court.
2. The parties may freely determine the number of members of the arbitral tribunal.
3. The decisions of the Court on the appointment, confirmation, challenge, removal or replacement of Arbitrators shall be final.

Article 16. Appointment, number and constitution

1. In absence of an agreement of the parties regarding the number of Arbitrators, the Court shall appoint a sole Arbitrator, unless the circumstances of the dispute require a collegiate Arbitral Tribunal.
2. Where the parties have agreed to a sole Arbitrator and have not reached agreement on the candidate, the sole Arbitrator shall be appointed by the Court in accordance with the Rules and the Statutes, taking into account the circumstances and according to the following system:
 - a. The Court shall notify to each of the parties an identical list of eight (8) potential candidates;
 - b. Within the five (5) days subsequent to receipt of the list, each of the parties will inform the Court of its position on the proposed candidates, listing five (5) names in order of preference; and
 - c. Within the five (5) days subsequent to the receipt of each of the abovementioned lists, the Court shall appoint the sole Arbitrator from amongst the persons approved on the lists returned, considering –in all cases– the best preference established by the parties.

If for any reason the appointment of the Arbitrator cannot be made under this procedure, the Court will exercise its discretion in appointing the sole Arbitrator.

3. In the event that the parties choose a collegiate Arbitral Tribunal, the number of members shall be three. Each of the parties –in the request for arbitration and in the response to the request for arbitration– may appoint an Arbitrator from the members of the list of Arbitrators of the Court. Once confirmed by the Court, the two Arbitrators shall choose a third Arbitrator, who shall act as President of the party-appointed Arbitral Tribunal.

Should neither of the parties appoint their corresponding Arbitrator, the Arbitrators for each party shall be appointed by the Court. Should only one of the parties not appoint an Arbitrator, this Arbitrator shall be appointed by the Court. In either case, such Arbitrator or Arbitrators appointed by the Court shall be so on a strict rotation basis, as set forth in the Statutes, unless justified circumstances were to compel the non-application of said rotation.

If, within ten (10) days after the appointment of the second party-appointed Arbitrator, the two Arbitrators fail to agree on the choice of the presiding Arbitrator, the Court will proceed to its appointment, in accordance with the procedure specified in paragraph 2 of this Article and with the provisions of Article 18 of the Statutes.

4. Unless otherwise agreed by the parties, in cases where (i) there is plurality of claimants or respondents, and (ii) the Arbitral Tribunal should be collegiate, the various parties will act jointly, in their capacity as claimants or respondents, in the appointment of their respective party Arbitrators (see Rules, Article 12). In these circumstances, the Court shall invite the parties to constitute the collegiate Arbitral Tribunal within a non-extendible period of ten (10) days, in accordance with the procedure specified in paragraph 3 of this Article.

Where after the period stipulated in the preceding paragraph, the parties fail to constitute the collegiate Arbitral Tribunal in accordance with the Rules and the Statutes, the Court shall constitute the collegiate Arbitral Tribunal, naming all its members -including the appointment of the person to perform the duties of President- and revoke any appointment already made. In this case, the Court shall be at liberty to choose any person it sees fit to act as Arbitrator, applying the provisions of the Rules and of the Statutes.

5. The third parties authorized to be incorporated as an additional party to the arbitral proceedings may appoint an Arbitrator, together with the other members of the party which they have joined and in accordance with the provisions of the Rules and of the Statutes (see Rules, Article 13).
6. At the request of all parties and in special specific cases, the Court may authorize the appointment of Arbitrators outside their list, based on criteria of professional excellence in the subject matter and on the complexity, significance and importance of the matter in dispute.

Article 17. Communication between parties and candidates for Arbitrator

The parties or their representatives may only communicate with a candidate for Arbitrator with the sole purpose of determining their skills, knowledge of the subject matter, availability, experience and potential conflicts of interest.

Article 18. Availability, impartiality and independence

1. Every Arbitrator must be and remain independent and impartial during the arbitration and should not have any personal, business or professional relationship whatsoever with the parties and their representatives.
2. Within ten (10) days of being informed by the Court of their appointment, an Arbitrator shall disclose any circumstances likely to create justifiable doubts as to their impartiality, independence or availability, by means of a signed statement. From the time of appointment and throughout the entire procedure, all Arbitrators shall disclose promptly to the parties, to the Court and to the other Arbitrators –in the case of collegiate tribunals– any new circumstances.
3. Acceptance of the appointment by a person nominated to act as Arbitrator shall include the commitment to sufficient availability for the efficient conduct of the arbitration proceeding, in accordance with the provisions of the Rules.
4. The concealment of all or any objective circumstances affecting their availability, impartiality or independence by a candidate from the parties, the Court or the other Arbitrators shall entitle the Court to deny, where applicable, confirmation of the proposed candidate. Should the concealed circumstance giving rise to a conflict of interest come to be known to a party who challenges the Arbitrator concerned on this basis, the previous concealment will be an element to be weighed by the Court in its decision, depending on the circumstances of the case.
5. Unless expressly agreed in writing by the parties, no Arbitrator may have previously acted as Mediator, Conciliator or Arbitrator in a substantially similar dispute between the parties, and no Mediator, Conciliator or Negotiator may be proposed as a candidate for Arbitrator in an arbitration involving the same dispute where they have already acted in that capacity.

Article 19. Appointment and confirmation of Arbitrators

1. The Court shall confirm the appointment of party-appointed Arbitrators, sole Arbitrators and the Presidents of collegiate Arbitral Tribunals –carried out by the parties, jointly or individually, pursuant to the Rules– provided that the candidates have no reservations as to their availability, impartiality or independence or, should they have made a declaration of any reservation, this has not been the subject of any objections by the parties. The Court shall notify such decisions to the parties and to the Arbitrators.
2. The Court shall ensure compliance with conditions as to the capacity of Arbitrators, and transparency in their appointment, as well as their independence and availability.

3. The Court will assess the relevant circumstances in cases of repeated appointments of one or more Arbitrators by one of the parties or its affiliates or by their representatives or by other members of the Arbitral Tribunal, and in doing so will respect the rights of a fair hearing, presentation of their case and equality of the parties.

Article 20. Abandonment, resignation, removal and replacement of Arbitrators

1. Should a member of an Arbitral Tribunal abandon the participation in the arbitration proceedings, the remaining members of the collegiate Arbitral Tribunal shall communicate this to the Court without delay as soon as it is known. From the moment of receipt of communication about this situation, the Court will suspend the proceeding until a replacement of the Arbitrator is appointed, pursuant to the provisions of the Rules on appointment of Arbitrators. In the event that the replacement of the Arbitrator involved takes place after the closing of the proceeding (see Rules, Article 40), the Court –having sought the views of the parties and of the other members of the Arbitral Tribunal and having analysed the relevant circumstances– may decide to continue the proceedings with the remaining Arbitrators.
2. Any Arbitrator may resign from its appointment for justified reasons, which will be evaluated by the Court.
3. The parties may jointly and justifiably revoke the appointment of the Arbitrator, notifying this decision to the Court without delay.
4. At the request of one of the parties or on its own initiative, the Court may revoke the appointment of an Arbitrator:
 - a. In the event of there being grounds, demonstrated in fact or in law, that prevent the Arbitrator concerned from exercising their functions in accordance with the Statutes, with the Rules or with the applicable laws;
 - b. In the event that, despite the declaration of availability of an Arbitrator, the Court accepts –ex officio or upon request by any of the parties– the existence of undue delays in the arbitral proceeding; or
 - c. In the event that the Arbitrator fails to fulfil its duties in accordance with the provisions of the Statutes, the Rules or statutory provisions in force.

In any of these cases, and before taking any decision, the Court shall give the parties an opportunity to express their views.

5. In the event that the Arbitrator or any Arbitrator appointed does not accept their appointment, abstains, accepts a challenge or is separated by the Court, the Court shall invite the party concerned to appoint a replacement in accordance with Article 16 of the Rules.
6. On appointment of the replacement or replacements, the Arbitral Tribunal, after hearing the parties, shall decide on the status of the procedure and on the convenience, where appropriate, of repeating part of the procedure.
7. Except with the decision of the Arbitral Tribunal or with the agreement of the parties, in the event of the replacement of an Arbitrator, the proceeding shall continue from the time the replaced Arbitrator ceased to perform their functions, adapting -where appropriate- the time periods established in the procedural calendar.

Article 21. Challenge

1. An Arbitrator may be challenged if demonstrated circumstances of such a nature that could generate justifiable doubts as to their impartiality or independence were to exist. The Arbitrator, after his appointment, shall disclose to the parties without delay, any new circumstances. At any time during the arbitration, either party may request the Arbitrators to clarify their relationship with any of the other parties.
2. A party who intends to challenge an Arbitrator shall notify its decision to the Court within fifteen (15) days from the date on which it was notified of the appointment of the Arbitrator or from the date on which it became aware of any of the circumstances which substantiate such challenge, provided they have become known after the Arbitrator's appointment or confirmation.
3. The parties should address the submission in which the challenge is made to the Court, justifying their reasons. The Court shall forward the submission to the challenged Arbitrator, to the other Arbitrators and to the other parties.
4. The Court shall have the power to continue or suspend the proceeding during the challenge, after having considered all relevant circumstances.
5. The Arbitrator challenged or the party who has proposed them may accept the challenge. In any such cases, the Arbitrator shall be replaced according to the provisions of the Rules (see Rules, Article 20), without this implying acceptance of the validity or the basis of the grounds on which the challenge is made.
6. In the event that the Arbitrator challenged does not accept the challenge made, the Court will make a reasoned decision about the matter, after hearing the parties, in accordance with the provisions of the Rules and Statutes.

Article 22. Administrative Secretary of the Arbitral Tribunal

1. At any time during the arbitration proceedings and after seeking the express views of the parties, the Arbitral Tribunal may propose the appointment of an administrative Secretary. If any of the parties object to the proposal, the Arbitral Tribunal shall not proceed with the appointment.
2. The administrative Secretary of the Arbitral Tribunal shall act, at all times, under the strict supervision of the Arbitral Tribunal and according to the directions and instructions given them. The Arbitral Tribunal shall, at all times, be responsible for the conduct of its administrative Secretary in relation with the arbitration.
3. Under no circumstances shall the Arbitral Tribunal delegate its decision-making functions or the performance of any of its essential duties to its administrative Secretary, who will not participate in the deliberations of the Arbitral Tribunal.
4. The appointment of an administrative Secretary of the Arbitral Tribunal shall not involve any additional cost to the parties. The Arbitral Tribunal shall not request of the Court any compensation for the activities of its administrative Secretary.

Article 23. Delivery of the arbitration file

The Secretariat shall forward the case file to the Arbitral Tribunal for the purposes of the proceeding when, (i) the constitution of the Arbitral Tribunal has been confirmed, pursuant to the provisions of the Rules and of the Statutes, and (ii) the effective payment by the parties of the provision of funds for expenses requested by the Court has been confirmed.

Article 24. Terms of Reference and calendar for the arbitration procedure

1. After the request for arbitration and its response and, where appropriate, the notice of counterclaim and that of its response have been made, the Arbitral Tribunal shall prepare the Terms of Reference, based on the latest allegations and documents in the arbitration file and with the following minimum content:
 - a. The identification of the members of the Arbitral Tribunal;
 - b. The names, addresses and description of the parties, as well as their respective representatives;
 - c. The arbitration agreement relied upon as the basis of the request for arbitration;
 - d. The identification of the place of arbitration, the language of the proceeding and the substantive and procedural legal rules applicable to the dispute;
 - e. The description of the scope of the dispute and, –if appropriate– the identification of the disputed issues to resolve, which must necessarily include a brief description and quantification of the respective claims and positions of the parties, as well as any application or other matter already raised at that time; and
 - f. The schedule for the arbitration procedure, empowering the Arbitral Tribunal to modify it, when circumstances so require it and always within the limits of the Rules.
2. The Arbitral Tribunal may invite the parties to a meeting, in order to jointly prepare the Terms of Reference and the calendar in accordance with recommended techniques for the efficient management and development of arbitral procedure.
3. The signature of the Terms of Reference does not imply the acceptance or acquiescence by any of the parties of the respective positions of the adverse parties contained therein. The Arbitral Tribunal, with the parties, should sign the Terms of Reference, which shall be referred to the Court for approval within a maximum period of one (1) month from the date of receipt of the arbitration file (see Rules, Article 23). The Court may extend this period on the basis of a reasoned request of the Arbitral Tribunal or ex officio.
4. In the event that one of the parties refuses to participate in the preparation or signature of the Terms of Reference, the Arbitral Tribunal shall submit the Terms of Reference to the Court for approval. Once approved, the Arbitral Tribunal shall continue the arbitral proceeding (see Rules, Article 38).

Article 25. Applicable procedural rules

1. Unless otherwise agreed by the parties, the arbitral proceeding shall be governed by the provisions of the Rules, with the amendments, procedures or rules that the parties, where applicable, may agree among themselves or with the Arbitral Tribunal.
2. Where the Rules do not provide for any question raised during the arbitration, the Arbitral Tribunal –after having heard the parties– shall decide thereon in accordance with the contents of the Terms of Reference, with the provisions of the Rules, and with the legislation applicable to arbitration.

Article 26. Place of arbitration

1. Unless otherwise agreed by the parties, the Court shall fix the place of arbitration, having regard to the circumstances of the case and the observations of the parties.
2. The Terms of Reference, the procedural orders, any other decisions taken by the Arbitral Tribunal in the proceeding and any award shall be deemed made and signed at the place of arbitration.

Article 27. Language or languages of arbitration

1. The arbitration proceeding shall be conducted in the language or languages agreed upon by the parties in the arbitration agreement or in the Terms of Reference.
2. In the absence of an agreement of the parties, until the constitution of the Arbitral Tribunal, the Court may determine the language of the arbitration.
3. Unless otherwise agreed by the parties, the Arbitral Tribunal, when established, shall finally determine the language or languages to be used for all procedural purposes.
4. Unless otherwise established by agreement, the parties shall provide a translation into the language of the proceeding of all documents submitted to the Arbitral Tribunal written in any language other than that determined to be used in the arbitration. The parties shall agree in good faith on the extent and preparation of the translations of these documents.
5. Witnesses may testify in their native language, provided that the party proposing the witness provides for, where appropriate, its translation to the satisfaction of the Arbitral Tribunal.

Article 28. Legal standards applicable to the dispute

1. In the analysis of the dispute, the Arbitral Tribunal shall apply the substantive legal rules agreed by the parties in the arbitration agreement or the Terms of Reference. In the absence of such determination, the Arbitral Tribunal shall apply the rules of law that it considers appropriate.
2. The Arbitral Tribunal shall decide in equity (*ex aequo et bono*) only with the prior express agreement and authorization of the parties.
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 trade usages applicable to the case.

1. Preliminary proceedings of the arbitration

Article 29. Management of the arbitration proceedings

1. Having signed the Terms of Reference, subject to the powers and authority conferred by the Rules and the law applicable to the arbitration and unless otherwise agreed by the parties, the Arbitral Tribunal –in coordination with the Court and with the parties– will direct and move forward at its discretion, and with due expedition and efficacy, all the arbitral procedure, respecting the principles of collegiality, equality, and the rights of a fair hearing and presentation by a party of their case.
2. In light of the relevant circumstances during the proceeding, the Arbitral Tribunal shall be able to modify the procedure, in order to ensure full respect for the principles of the right to a fair hearing, equality and the right of a party to present their case.
3. The Arbitral Tribunal and the parties shall, insofar as possible and subject to availability, conduct hearings on the premises of the Court or where the Court directs. With the prior agreement of the parties, certain procedures may be held at any other appropriate public or private institution, with which the Court has concluded the necessary agreements for this purpose, or at any other place approved by the Secretary.
4. Unless otherwise agreed by the parties, the hearings shall be private and they shall be held in camera.
5. The Arbitral Tribunal shall direct the conduct of the hearings.
6. The Arbitral Tribunal and the parties shall ensure that the Court has records of all procedural steps.

Article 30. Substantive arguments of the parties

1. After signature of the Terms of Reference, the parties shall present their respective written submissions in the form and time specified by the Arbitral Tribunal and the parties to the procedural calendar (see Rules, Article 24).
2. The submissions shall contain at least (i) a detailed description of the facts and legal grounds on which the parties base their respective claims and (ii) a statement of the evidence that it is intended to rely upon, whether documentary, testimonial, expert or of any other kind (see Rules, Article 31).

3. Following conclusion of the exchange of arguments agreed in the procedural calendar, and in all cases prior to the staging of the hearing to organise the examination of evidence, as provided in Article 31 of this regulation, the parties may present their definitive proposal of evidence, on which the arbitrator shall rule, taking into account the connection with the object of the dispute and the appropriateness of the petition.

2. Evidentiary phase

Article 31. Organization of the evidence: Principles

1. The Arbitral Tribunal shall hold a meeting with the parties to organize the evidentiary hearing –including, when appropriate, a schedule– and to resolve if necessary other issues relating to its conduct. The Arbitral Tribunal shall invite the parties to agree on the rules and timetable according to which the examination of the proposed witnesses and experts will be carried out, including the possibility of using written statements provided in advance. In the absence of such agreement, the Arbitral Tribunal may, at its discretion, decide the form of the presentation of evidence according to criteria of efficiency, speed and control of expenses.
2. The Arbitral Tribunal –previously seeking the opinion of the parties and of the Court– shall have available the appropriate means for the transcription of the hearing, which shall form part of the procedure, under the custody of the Court, which shall provide copies of these means to the Arbitral Tribunal and to the parties.
3. Each party shall bear the burden of proving the facts relied on to support its claims.
4. After hearing the parties, the Arbitral Tribunal shall decide the form of the proposal, presentation and practice of the evidence in the proceeding.
5. The Arbitral Tribunal shall determine the admissibility, relevance and scope of the evidence offered by the parties and assess its relevance, using, where appropriate, non-binding guidelines recommended for arbitral proceedings.
6. The Arbitral Tribunal, in agreement with the Court and the parties, shall determine the procedures for summoning of witnesses and experts (see Rules, Article 41).
7. At any time during the proceeding and within the period that it determines, the Arbitral Tribunal may request from the parties information about the dispute, inviting them to disclose, provide or submit in the proceeding or to the experts, evidence in their possession or under their control or identify

sources of relevant evidence of which they have knowledge. In all these cases, the Arbitral Tribunal shall identify, with reasonable precision, the evidence required and justify the reasons for its disclosure, provision or submission, such as their evidential relevance in relation to the determination of the dispute. Confidential information shall be subject to the provisions of the Rules on the subject (see Rules, Title IX).

8. On completion of the procedural steps, the Arbitral Tribunal shall have the power to decide on such provision, taking into account the legitimate interests of the other party, including confidentiality and the circumstances in the case.

The Arbitral Tribunal and the opposing party shall ensure the confidentiality of all documents submitted by another party, which will only be used in relation to the arbitration in question.

9. After consulting the parties and if no hearing is requested, the Arbitral Tribunal shall have the power to decide the dispute on the basis of the documents and other evidence submitted by the parties and forming part of the arbitral proceeding.
10. After consulting the parties and unless agreed otherwise, the Arbitral Tribunal may take evidence, examine goods or assets under dispute that are difficult or impossible to transfer to the place of arbitration in any other place. In such cases, the parties shall bear the costs in equal shares, subject to subsequent determination in the award.
11. The Arbitral Tribunal may inspect any place connected with the dispute. In such case, the Arbitral Tribunal –after having consulted the parties and the Court– shall issue a resolution to that effect, defining at least the object and scope of the visit, its duration, the persons who shall attend, the dates on which the inspection will take place and the procedure for the taking of evidence. In such a case, the parties shall bear the costs in equal shares, subject to subsequent determination in the award.
12. The Arbitral Tribunal will freely assess the evidence produced during the proceeding.

Article 32. Witness evidence

1. Witnesses shall be proposed by the parties in their submissions, briefly justifying the reasons for which each party considers that the witness should give evidence (see Rules, Article 30).
2. The parties may request the testimony of a person as a witness (including executives, employees or other representatives of the parties, except if they are involved as Lawyers in the proceeding, in accordance with Article 10 of the Rules) before the Arbitral Tribunal on any issue of fact relating to the dispute.

VI. ARBITRATION PROCEDURE

3. Before commencing their testimony, the Arbitral Tribunal shall ensure there is no factual or legal impediment that hinders the witness from complying with its obligation to tell the truth.
4. The Arbitral Tribunal shall have the discretion to:
 - a. Reasonably reject the appearance of a witness, if it considers that the facts on which they were to give evidence have been proven or are irrelevant;
 - b. Reasonably limit the right of a party to question a witness, if it considers that a certain issue has already been sufficiently covered by other evidence, including witness, or it is irrelevant; and
 - c. Order reasonably the further appearance of a witness to ask additional questions as it considers appropriate.
5. The Arbitral Tribunal –in agreement with the Court– may hear testimony by means of audiovisual media that do not require the physical presence of witnesses at the hearing, without undermining the due procedural guarantees.
6. Witnesses may respond in their native language, accompanied, where appropriate, by an interpreter, the cost of which will be borne by the party proposing the witness (see Rules, Article 27).
7. The Arbitral Tribunal may make such inferences as are appropriate from the lack of cooperation of any party in connection with the appearance of witnesses or the lack of appearance of any witness summoned in a timely manner.

Article 33. Experts

1. The parties may request the ratification or clarification of any report or expert opinion issued regarding the controversy which has been presented with the submissions (see Rules, Article 30).
2. The Arbitral Tribunal may propose to the parties a justified appointment of one or more independent experts to issue an expert opinion, in order to assist the Arbitral Tribunal on any matter which it considers relevant to the resolution of the dispute.
3. The Arbitral Tribunal shall always firstly seek the views of the parties on the appropriateness of this form of proof. If both parties consider it is not necessary, it shall not proceed.
4. The expert proposed by the Arbitral Tribunal shall send to the parties –with copy to the Arbitral Tribunal and to the Court– a description of their qualifications, a declaration of impartiality and independence, the specific scope of their engagement, and an estimate of their professional fees. Within the time limit

set by the Arbitral Tribunal and before the appointment, the parties shall inform the Arbitral Tribunal of any objection they may have regarding the qualifications, impartiality or independence of the expert or the cost of their engagement. The Arbitral Tribunal shall decide without delay on the possible objections raised.

5. Following the appointment of an expert proposed by the Arbitral Tribunal, any party may raise written objections on the qualifications, impartiality or independence of the expert based solely on the existence of circumstances that have become known after its appointment or confirmation. The Arbitral Tribunal shall decide, without delay, on the objections so raised and measures to be taken where appropriate.
6. In the event that the Arbitral Tribunal determines to require this evidence, the parties shall provide the expert with any information or produce for inspection all documents or all of the goods that the expert requires of them. Any dispute between a party and the expert as to the relevance of the required information or production shall be submitted to the Arbitral Tribunal.
7. Upon receipt of the expert's report, the Arbitral Tribunal shall forward a copy thereof to the parties and to the Court. The parties may express their views in writing on the expert opinion. The parties are entitled to examine any document which the expert has referred to in the report.
8. After the delivery of the expert report and at the request of either party, the Arbitral Tribunal, with the parties, will hear the expert or experts at a hearing during which the parties will have the opportunity to seek clarification on the disputed points, using, where appropriate, technical advisors. In doing so, the same rules set out in Article 32 of the Rules shall apply.

Article 34. Other evidence

Before rendering the arbitration award, the Arbitral Tribunal may decide to require such additional evidence as deemed appropriate to resolve the dispute. Once this evidence is taken, the Arbitral Tribunal will grant the parties a common period of five (5) days to summarize and assess the evidence.

3. Incidents

Article 35. Jurisdiction and procedural objections

1. The Arbitral Tribunal may rule in its own jurisdiction, as well as on any objection relating to the existence or validity or scope of the arbitration agreement.

2. The objection to the jurisdiction of the Arbitral Tribunal shall be raised not later than at the time of filing the response to the request for arbitration (see Rules, Article 7). And, where the objection relates to any matter arising from the presentation of the counterclaim, at the time of response to the notice of counterclaim (see Rules, Article 8).
3. The appointment of an Arbitrator by a party or the participation in the appointment or composition of the Arbitral Tribunal shall not prejudice the right of a party to raise this objection.
4. The objection to jurisdiction based on the Arbitral Tribunal exceeding the scope of its mandate shall be objected to, during the arbitral proceeding, as soon as the excess of jurisdiction occurs.
5. The Arbitral Tribunal may only admit later objections where the delay is justified.
6. The Arbitral Tribunal shall decide on the objection raised by interlocutory award, or justified and substantiated with the merits in the final arbitral award, in accordance with the provisions of the Rules. The interlocutory award will be issued within a mandatory period of thirty (30) days from the date of closing of the proceeding in relation to the objection.
7. Except in cases of express court order, the initiation of an action for annulment of an interlocutory award on jurisdiction will not interrupt the development of the arbitral proceeding.

Article 36. Objection of *res iudicata*

1. When in relation to the same dispute, one of the parties requests the Arbitral Tribunal to rule on the same facts already stated, analysed and decided in arbitration or in a prior arbitration or judicial proceeding which has already concluded in the issue of a final arbitral award or judicial decision, the other party may raise the objection of *res iudicata* in order for the Arbitral Tribunal to rule on the matter, prior to the determination of the merits of the case.
2. The party invoking the objection of *res iudicata* must make its claim in writing to the Arbitral Tribunal –with copy to the Court– establishing the following requirements:
 - a. The existence of identity in the parties of the two proceedings;
 - b. The existence of identity in the action brought in the new arbitration and in the arbitral or judicial proceedings previously resolved;
 - c. The existence of identity in the cause of action in such proceedings; and
 - d. The existence of identity between the result of the arbitral or judicial proceedings invoked –and what might follow from it– and the relief sought in the new arbitration proceeding.

3. The raising of this objection will suspend the arbitral proceeding until the Arbitral Tribunal decides thereon.
4. The Arbitral Tribunal shall decide on the objection raised by interlocutory award, or justified and reasoned with the merits in the final arbitral award, in accordance with the provisions of the Rules. The interlocutory award will be issued within a mandatory period of thirty (30) days from the date of closing of the proceeding relating to the objection.
5. In the event that the interlocutory award accepts the proposed objection, the Arbitral Tribunal shall declare terminated the proceedings, without further steps.

Article 37. Precautionary measures

1. Notwithstanding the provisions of Annex I, the Arbitral Tribunal may, at the request of a party, order such interim measures as it deems necessary, considering the circumstances of the case and in particular the existence of a *prima facie* case, the risks of delay and the consequences that may follow from the granting or refusal of the measure. In any case, the measure should be proportionate to its objective.
2. The Arbitral Tribunal may require sufficient security from the claimant for the precautionary measure, as it deems appropriate, to ensure the liability that may arise, if any, from its adoption.
3. The Arbitral Tribunal shall decide on the measures requested, after hearing the parties.

Article 38. Default

1. Even if one of the parties refuses or fails to participate in any stage of the arbitration, by the mere submission to the Rules it is understood that the Arbitral Tribunal may continue the proceeding, in accordance with its provisions.
2. In cases where the claimant fails to submit its substantive claims within the time period set in the procedural calendar, without showing good cause (see Rules, Article 30), the Arbitral Tribunal shall order the termination of the proceedings, unless there are issues whose decision is imperative for the Arbitral Tribunal.
3. In cases in which the respondent, without showing good cause, fails to submit its response to the request for arbitration, or fails to provide its substantive defence within the time period fixed in the procedural calendar, the Arbitral Tribunal may continue the proceedings, but such failure shall not in itself be considered an acceptance of the claimant's allegations.

4. If a party, without showing sufficient cause, fails to produce evidence of any nature duly requested, the Arbitral Tribunal may issue the arbitration award, based on the evidence already available in the arbitration.

4. Conclusions and closure of the proceeding

Article 39. Conclusions

After the hearing of evidence and in compliance with the procedural calendar (see Rules, Article 24), the Arbitral Tribunal shall specify a common period of time for the parties, either orally or in writing as agreed by them or determined by the Arbitral Tribunal, to present their conclusions on the matters at issue, identifying the matters required for their completion. The Arbitral Tribunal shall send a copy of this procedure to the Court.

Article 40. Closure of the proceeding

1. After presentation of the conclusions, the Arbitral Tribunal shall close the proceeding and will inform the Court and the parties of the date on which it undertakes to render the award (see Rules, Article 41 and Article 45).
2. After closure of the proceeding, the parties shall not make any submission, or allegation or present any evidence relating to the issues discussed, unless requested or authorized by the Arbitral Tribunal.
3. This Article shall also apply in cases of the issue of an interlocutory award, in accordance with the provisions of the Rules.

Article 41. Collegiate Arbitral Tribunals: Deliberations, decisions and dissenting vote

1. The collegiate Arbitral Tribunal will meet validly to deliberate if the majority of its members are present and it is proven that all had been previously summoned, in a timely manner, for this purpose.
2. The awards rendered by Arbitral Tribunals must contain the signature of all its members, the signatures of the majority of its members or only its President, provided that in any of the latter two cases, the award states the reasons justifying the absence of such signatures.
3. The deliberations of the collegiate Arbitral Tribunal shall be secret. The Arbitral Tribunal may meet to deliberate at any location it considers appropriate.
4. All the decisions of the collegiate Arbitral Tribunal shall be taken by majority vote of all its members. If it proves impossible to reach a majority following the deliberations, the President of the collegiate Arbitral Tribunal shall deliver his or her reasoned decision as if he were a sole Arbitrator.
5. Any board member of the collegiate Arbitral Tribunal shall inform the Court of any possible anomaly that may occur either in the deliberations or during the proceedings. In the absence of such a communication, it will be understood that all members of the Arbitral Tribunal agree to the procedures conducted and the behaviour of its members, without prejudice to the possible discrepancies in relation to matters at issue; discrepancies which may be recorded through the delivery of an individual vote, whether dissenting or concurring.

Article 42. Procedural orders

1. The Arbitral Tribunal may issue the orders it deems necessary to ensure the appropriate impetus and organization of the arbitration procedure, provided they do not violate any agreement of the parties or provision of the Rules or Statutes.
2. The Arbitral Tribunal (i) may hold conference calls with representatives of some or all parties to define and decide questions of procedure, of organization or any other issue not pertaining to the merits of the case and (ii) may take any decision in relation to procedural matters or questions, organization, administration or development of the proceeding by means of procedural orders.
3. In the case of collegiate Arbitral Tribunals, the President may take these steps –on behalf of the other members and with their prior agreement– or delegate.
4. In these cases, the Arbitral Tribunal will confirm as soon as possible, in writing, to the other parties and to their Lawyers and to the Court, the content and the results of their procedure.

5. The Arbitral Tribunal shall decide any other procedural matters of a different nature, based on the written allegations submitted by the parties and included in the proceeding.

Article 43. Awards

1. The awards may be (i) interlocutory, (ii) final or (iii) definitive.
2. The interlocutory award will focus on procedural issues, such as, *inter alia*, the jurisdiction of the Arbitral Tribunal, the lack of standing of either party or interim measures.
3. The final award will resolve, in whole or in part, the merits of the dispute.
4. The definitive award will be (i) that issued by the Review Tribunal; (ii) the final award that has not been challenged; and (iii) an interlocutory award preventing the continuation of the arbitration proceedings (see Rules, Title VIII).
5. All awards shall be issued in writing, containing the date on which they were issued, indicating the place of arbitration and will be reasoned, except in the case of awards by consent and provided that in such case the parties have expressly agreed that reasoning is not necessary (see Rules, Article 44).
6. In the event that the parties have agreed to review the award, they shall be subject to the provisions of the Rules to this effect (see Rules, Title VIII).
7. The Arbitral Tribunal shall endeavour to issue awards capable of legal enforcement.
8. As a consequence of its submission to the Court, Rules and Statutes of the dispute for resolution, the arbitration award must be complied with by the parties and has the other effects provided by the law of the place of arbitration.

Article 44. Settlement and other forms of termination of the proceedings

1. If during the arbitral proceedings the parties reach an agreement that in whole or in part puts an end to the dispute and this is so communicated to the Arbitral Tribunal and to the Court, the Arbitral Tribunal shall declare the termination of the proceedings with respect to the agreed points, and if both parties so request and the Arbitral Tribunal has no grounds to object, this agreement will be recorded in an award that implements the terms agreed by the parties.

2. If the continuation of the arbitral proceeding becomes unnecessary or impossible for any reason before the award is rendered, the Arbitral Tribunal shall inform the parties of its intention to issue an order terminating the proceedings. The Arbitral Tribunal may issue such an order, unless there are issues pending to rule on.
3. The Arbitral Tribunal shall inform the parties and the Court of the order terminating the proceeding and the award, in the terms agreed by the parties, duly signed by the members of the Arbitral Tribunal. When an award by consent is rendered, the provisions of Article 43 of the Rules shall apply.
4. The arbitral proceeding may also terminate prior to the issuance of an award:
 - a. When the claimant withdraws his claim, unless the respondent objects to this withdrawal;
 - b. When the parties expressly agree to terminate the proceeding; or
 - c. When the Arbitral Tribunal finds it impossible or unnecessary to continue with the arbitration proceeding.

Article 45. Deadline for rendering the award

1. Unless otherwise agreed by the parties, the Arbitral Tribunal shall decide on the dispute within six (6) months from the response to the substantive allegations of the claimant or, where appropriate, to the response to the counterclaim (see Rules, Article 30).
2. Unless otherwise agreed by the parties, this period may be extended by the Arbitral Tribunal, for a period not exceeding two (2) months.
3. Unless otherwise agreed by the parties, the expiry of the period for rendering the final award shall not affect the effectiveness of the arbitration agreement, or the validity of the arbitration award rendered, without prejudice to the liability that may have been incurred by the Arbitral Tribunal.

Article 46. Costs

1. Subject to the terms agreed by the parties, the Arbitral Tribunal shall decide on the award on the costs of the arbitration, including (i) the professional fees and expenses of the representatives and of the experts proposed by the parties, if they have so requested, (ii) the expenses and administrative fees of the Court, (iii) the professional fees of the members of the Arbitral Tribunal and of the experts appointed by it, and (iv) any other expenses incurred during the arbitration proceedings, including the corresponding taxes.

2. For the purposes of their calculation, before deciding on the criterion or criteria that will serve to allocate costs between the parties, the Arbitral Tribunal may request that the parties submit their corresponding invoices for fees and expenses, in the manner the tribunal deems appropriate.
3. The Arbitral Tribunal shall quantify and apportion with reasons the costs of arbitration, based, firstly, on the agreement of the parties. In absence thereof, the Arbitral Tribunal will consider the success or failure of the respective claims and defenses, the degree of cooperation between the parties during the arbitration and any other circumstances that the Arbitral Tribunal deems appropriate.
4. Should the Arbitral Tribunal order the payment of all or part of the costs of the arbitration to a party distinct to the party who has paid the advance on costs, the award will recognize a credit in favour of the latter, noting the amount, pursuant to the provisions of the Rules.
5. In case of settlement or withdrawal and unless otherwise agreed by the parties, the Arbitral Tribunal shall decide on the costs in a discretionary and reasoned manner.

Article 47. Prior scrutiny of the award by the Court

With a minimum of fifteen (15) working days before the period for rendering the award (see Rules, Article 45) and prior to its notification to the parties, the Arbitral Tribunal shall submit a draft award to the Court, which may suggest necessary formal changes to ensure its correctness and efficacy. It may also draw attention to issues related to the merits of the dispute, respecting, at all times, the freedom of decision of the Arbitral Tribunal. No award shall be rendered before being approved, as to form, by the Court.

Article 48. Notification of the award

1. The Court shall notify the award to the parties in the manner and within the time period agreed by the parties, or failing that, by personal delivery to each of them of a signed copy in accordance with the provisions of the Rules (see Rules, Article 2). The same rule will apply to any correction, clarification, supplement or rectification, extra petita, of the award.
2. Either party may, at their expense, request the notarization of the award.

Article 49. Correction, clarification, supplementation and rectification of the award

1. Within ten (10) days following the notification of the award, either party may request the Arbitral Tribunal:
 - a. To correct any computational, clerical, typographical or similar error;
 - b. To clarify a point or a particular part of the award;
 - c. To supplement the award with regard to claims and defenses brought forward and not addressed in the award; or
 - d. To rectify the partial *extra petita* of the award, when the Arbitral Tribunal has decided over issues not subject to its decision or issues not subject to arbitration.
2. Any request for correction, clarification, supplementation, or rectification of an award shall be made in writing to the Court, and should at least include the following:
 - a. Identify the award in question;
 - b. Indicate the date of the request;
 - c. In a correction request, identify the specific points in the award in relation to which there is a discrepancy;
 - d. In a request to clarify or supplement the award, identify the specific points in the award over which a clarification, interpretation or supplement is sought, establishing in a reasoned manner the factual and legal grounds on which the request is based; and
 - e. In a request to rectify the award, identify the specific points of the award in relation to which it is considered that the Arbitral Tribunal has resolved issues that were not submitted to its decision or susceptible of arbitration, establishing in a reasoned manner the factual and legal grounds on which the request is based.
3. The Court may request the relevant advances on costs in respect of any request for clarification, supplementation or rectification for *extra petita* of an award, to the parties.
4. After hearing the other parties, the Arbitral Tribunal will decide on the requests for the correction of errors and clarification within ten (10) days, and requests for supplementation and for rectification *extra petita*, within twenty (20) days.
5. Within ten (10) days following the date of the award, the Arbitral Tribunal may correct *ex officio* any computational, clerical or typographical or similar error.

VII. ORDERS AND AWARDS

6. The Arbitral Tribunal shall issue an additional decision in respect of corrections, clarifications, supplementation or rectification extra petita of the award, in accordance with the provisions of Article 43 of the Rules, which, from that date, will become an integral part of the award.
7. If the arbitration is international, the ten (10) and twenty (20) days specified in the preceding paragraphs shall be terms of one (1) and two (2) months, respectively.

Article 50. Custody and preservation of the arbitration file

1. After rendering the award, the Court will keep custody of and preserve the arbitration file.
2. One (1) year after the issuance of the award, the Court shall give notice to the parties or their representatives so that they may request, within fifteen (15) days, a schedule and the delivery, at their own expense, of the documents presented. From that time, the Court will only have the obligation to preserve one copy of the award, the Terms of Reference and procedural decisions and orders made by the Arbitral Tribunal, which shall be kept in the file provided for that purpose.
3. While the Court's obligation to keep custody and preserve the arbitration file is in effect, either party may request a schedule and delivery, at its expense, of the original documents which have been presented.

Article 51. Limitation of liability

1. Within the limits established by the applicable law of the seat of arbitration, Arbitrators, any person appointed by the Arbitral Tribunal, the emergency Arbitrator, the Court, its members and its employees shall not be liable to any person for any facts, acts or omissions in relation with the administered arbitration, except for damages arising from the proven existence of willful misconduct, recklessness or bad faith.
2. Under no circumstances will the Court's preliminary examination of the award imply any liability to the Court with regard to its content.

Article 52. Optional review of the award

1. Any party to the dispute may seek review of the award rendered before the Court, provided that this option is explicitly stated in the arbitration agreement, at the stage of the request and response to the request for arbitration, or at a later time, if the parties so agree.
2. By submission to the Rules, the parties undertake not to request enforcement until the review is resolved.
3. The review of the award will not prevent the parties from bringing an action for annulment of the award before the competent courts.

Article 53. Awards subject to review

1. Only final awards will be subject to review.
2. Interim awards and awards or decisions rendered by emergency Arbitrators shall not be subject to review.

Article 54. Grounds for review

Review of the award will only be possible (i) when there is a manifest disregard of the substantive law on which the decision is based; or (ii) when the award is based on a clearly erroneous assessment of the facts, which have been of decisive importance.

Article 55. Deadline for filing a request for review

1. The request for review of the award may only be submitted to the Court within twenty (20) days from the date of notification of the award or, if applicable, from the date of notification of the additional decision on the correction, clarification, supplementation or rectification *extrapetita* or the deadlines established for such effect (see Rules, Article 2 and Article 56).
2. If, at the time of filing a request for review, the additional decision on correction, clarification, supplement or rectification for *extra petita* was still pending, the Arbitral Tribunal will suspend the proceeding until the request is resolved.
3. The party seeking review must fully pay the advance on costs established in the court fees, in accordance with the provisions of the Rules (see Rules, Annex III) and without prejudice to the final decision on costs to be adopted by the Review Tribunal (see Rules, Article 60).

Article 56. Request for review and opposition

1. Any request for review of an award shall be made in writing to the Court, and should contain at least the following:
 - a. Identification of the award in question;
 - b. The date of the request;
 - c. The full name or company name, description, address, telephone and other relevant contact details of the claimant, for its correct identification;
 - d. The designation and identification of the representatives of the party seeking review;
 - e. The statement of the reasons in support of its review; and
 - f. As many copies as there are parties to the proceedings, one copy for the Court and another one for each of the members of the Review Tribunal.
2. Within twenty (20) days from the date of receipt of the request for review, the respondent party shall file its response, which shall include the following:
 - a. Identify the award in question;
 - b. State the date of response to the review;
 - c. The full name or company name, description, address, telephone and other relevant contact details of the respondent, for its correct identification;
 - d. The designation and identification of the respondent's representatives;
 - e. A statement of the reasons in support of its response, if any; and
 - f. As many copies as there are parties to the proceedings, one copy for the Court and another one for each of the members of the Review Tribunal.

Article 57. Composition of the Review Tribunal

1. The Review Tribunal shall consist of three (3) Arbitrators.
2. The Review Tribunal shall be chaired by the President of the Court or, failing that, by the Arbitrator who, in each case, is appointed by the Governing Committee, under the proposal of the President of the Court and pursuant to the Statutes.
3. Following receipt of the request for review and response, each party shall appoint one of the co-members of the Review Tribunal, in the manner set out in Article 16 of the Rules.

4. The members of the Review Tribunal, once they have accepted their appointment, shall be permanently available to act when called on for that purpose. The members of the Review Tribunal shall not have intervened -as Arbitrators, Mediators or Lawyers- in the arbitration proceedings in respect of which the challenged award has been rendered.
5. Article 19, Article 20 and Article 21 of the Rules shall apply.

Article 58. Referral of the review file

The Court will refer the case file to the Review Tribunal, after verification of the effective payment of the advances on costs for expenditures requested by the Court and compliance with all requirements of the Rules for its filing.

Article 59. Decision of the Review Tribunal

1. Having received the case file, the Review Tribunal may exceptionally agree to taking of evidence to the extent it deems necessary for the better resolution of the review requested. In this case, it will consider the appropriate- ness of summoning the parties to a hearing for the parties to present their closing submissions and will then close the proceedings. In the event that the Review Tribunal does not agree to taking of evidence, it will directly close the review proceeding.
2. After closing the proceeding, the parties shall refrain from submitting any further submission, allegation or evidence relating to the issues in dispute, unless required to do so by the Review Tribunal.
3. The Review Tribunal will issue its decision within forty-five (45) days following the date of closing of the proceeding. The Court may extend this deadline, in a reasoned manner, for a maximum of fifteen (15) days.
4. The Review Tribunal may confirm or modify the terms of the award, including its dispositive part.
5. The award of the Review Tribunal shall be final and will prevail in the event that it modifies the award whose review is requested.
6. Within ten (10) days following the notification of the definitive award by the Review Tribunal, either party may request of the Court:
 - a. The correction of any computational, clerical, typographical or similar error;
 - b. The clarification of a point or of a particular part of the definitive award; and
 - c. Any other claim permitted under the applicable law.

7. The procedure for all requests for the correction or clarification of a definitive award of the Review Tribunal shall follow the procedure laid down in Article 49 of the Rules.

Article 60. Costs

The Review Tribunal shall decide on the costs of the review proceeding, in accordance with the provisions of the Rules, in light of the success or failure of the claims made by the parties, respecting, in all cases, the criteria established by the parties.

Article 61. Withdrawal, settlement and other forms of termination

In cases of withdrawal, settlement and other forms of termination of the review proceeding, the Review Tribunal shall be guided by the provisions of Article 44 of the Rules.

Article 62. Measures to ensure confidentiality

1. During the arbitral proceeding and at the request of either party, the Court or the Arbitral Tribunal may take the measures deemed appropriate to ensure the confidentiality and, where appropriate, the secrecy of any matters relating to the dispute.
2. The Arbitral Tribunal, the parties and their advisers and representatives and the Court will be required to protect any confidential information made known through the arbitral proceeding.

Article 63. Disclosure of the award

1. The award may only be made public with the consent of all of the parties or when one party has a legal obligation to disclose it, in order to protect or exercise a right or as a result of a legal proceeding before a court or other competent authority.
2. The Court will publish on its website the awards resolving corporate conflicts which are registrable, maintaining the names of the Arbitrators, but deleting all references to the names of the parties and data which might readily identify them, and provided that neither party has objected expressly to the publication within a period of thirty (30) days from the date on which the award was rendered.

Additional and transitory provisions

1. The Rules will apply to arbitrations where the request is registered with the Court as from January 1, 2015.
2. The proceedings initiated before the entry into force of the Rules shall continue to be governed, until their full completion, by the previous Rules. However, the parties –expressly and by common agreement– may agree to submit the future award to review proceeding established in the Rules at any time prior to that in which the award is notified (see Rules, Title VIII).

Article 1. Purpose

From the submission of the request for arbitration until the transfer of the case file to the Arbitral Tribunal (see Rules, Article 23) either party may request from the Court the appointment of an emergency Arbitrator for the adoption of urgent interim measures.

Article 2. Powers

The powers of the emergency Arbitrator shall be those established in Article 37 of the Rules. Such powers shall cease upon the transfer of the case file to the Arbitral Tribunal or otherwise when provided for by the Rules.

Article 3. Request

The request shall include –at least– the following information:

- a. The designation of the parties to the dispute, including their full names or company names, description, address, telephone and other relevant contact details for their identification. Where entities belong to a group of companies, this circumstance shall be stated;
- b. The designation and identification of the representatives of the claimant;
- c. A transcript of the arbitration agreement invoked as the basis of the request;
- d. A brief description of the nature and circumstances of the urgency affecting the dispute which substantiate the application;
- e. A reasoned explanation of the nature, quantification, grounds and scope of the interim relief requested;
- f. An indication of the place of arbitration and the language of the proceedings;
- g. Sufficient copies for all parties to the proceedings, one copy for the Court and another one for the emergency Arbitrator (see Rules, Article 2); and
- h. Proof of payment of the admission fee (see Rules, Annex III).

Article 4. Notification and referral of the case file

Unless the Court is manifestly lacking in jurisdiction (see Rules, Article 9), as soon as a request for appointment of an emergency Arbitrator is received and once compliance with the requirements of the Rules for its filing is verified, the Court will send a copy of the request to the other party, and the case file to the emergency Arbitrator.

Article 5. Appointment

1. The Court shall appoint an emergency Arbitrator within seventy-two (72) hours following notification of the request for appointment. The Court shall inform the parties of the appointment made.
2. Once the emergency Arbitrator is appointed, the parties may challenge the appointment within twenty-four (24) hours as from the receipt of the notification of the appointment by the Court, in accordance with the relevant provisions of the Rules.
3. Unless expressly agreed in writing by the parties, no emergency Arbitrator may have previously acted as Mediator, Conciliator or Negotiator in the same dispute between the parties, and no emergency Arbitrator may be proposed as a candidate to act as Arbitrator in an arbitration deriving from the same dispute where he or she has already acted in that capacity.

Article 6. Seat

The seat of the emergency procedure will be that agreed by the parties as the seat of arbitration. In the absence of such agreement, the Court shall definitively determine the seat of the emergency procedure (see Rules, Article 26).

Article 7. Procedure

During the proceedings the provisions of Titles V and VI of the Rules shall apply, duly adapted to the intrinsic urgency of the time limits for requests of this nature.

Article 8. Decision and effects

1. Any emergency decision on interim measures will be taken within a period not exceeding thirty (30) days from the date of referral of the case file by the Court to the emergency Arbitrator. The Court may in its discretion extend this period upon reasoned request by the emergency Arbitrator.
2. Whether in the form of award or order, all decisions of the emergency Arbitrator on interim measures shall be made in writing and shall be reasoned and shall include the signature of the emergency Arbitrator, the date of adoption of the measure and the seat of the emergency proceedings. The decision shall be binding only on the parties. Its content and scope may be ratified, amended or repealed by the Arbitral Tribunal then constituted.

3. The emergency Arbitrator shall send a copy of the decision to the parties and to the Court for incorporation into the arbitration file.
4. The Arbitral Tribunal may modify or revoke an emergency decision, upon reasoned request of either party.
5. The parties agree to comply, without delay, with any decision made by the emergency Arbitrator.
6. The emergency decision will lose its binding nature for the parties where so expressly provided by the emergency Arbitrator or by the Arbitral Tribunal, and also where no arbitration is commenced under the provisions of the Rules within thirty (30) days from the date of adoption of the decision by the emergency Arbitrator.

Article 9. Costs of the proceedings

The emergency Arbitrator shall rule on the costs of the request for emergency interim measures in accordance with the provisions of the Rules (see Rules, Article 46).

Article 1. Appointing authority

The Court may exercise its powers as appointing authority of Arbitrators in cases in which one or more parties to an arbitration procedure which is not administered by the Court requests it in writing.

Article 2. Request

The petitioner shall forward the request to the Court, containing –at least– the following information:

- a. A copy of the notice of the arbitration in which the appointment of one or more members of the Arbitral Tribunal is sought and, where appropriate, of the response to that notice;
- b. A transcript of the arbitration agreement under which the notice of arbitration is made, together with proof of its existence;
- c. The justification for the Court to appoint one or more members of the Arbitral Tribunal, in accordance with the provisions of the Rules;
- d. All relevant particulars and any observations or proposals relating to the number of Arbitrators and their selection criteria; and
- e. The proof of payment of the amount for expenses and fees of the Court. The request will not be processed until this amount has been received by the Court (see Rules, Annex III).

Article 3. Administrative procedure

1. In the exercise of the functions assigned by the Rules and in accordance with the Statutes, having received the request and before taking any decision, the Court may invite any of the parties and the Arbitrators to provide information and make any statement they consider appropriate in this regard. All communications between a party and the Court will also be communicated by the sender to the other parties, in accordance with the Rules.
2. The Court will consider the application of those criteria it considers relevant for the appointment of independent and impartial Arbitrators and with sufficient availability, assessing, in light of the existing circumstances and unless otherwise specified by the parties, the advisability of appointing an Arbitrator of a nationality different to that of the parties.
3. The Court reserves the right to refrain from exercising its powers as appointing authority when, in its opinion, circumstances that make its intervention in this role inadvisable exist.

Provision of funds

1. Any request for arbitration must be accompanied by payment to the Court of the non-refundable amount indicated in the table of fees.
2. If the request for arbitration is not accompanied by the written proof of payment of the admission fee, the Court may set a deadline of no more than ten (10) days for the claimant to pay the fee. Once the fee is paid, the request for arbitration shall be considered validly filed on the date of registration (see Rules, Article 5).
3. If the respondent party or parties do not submit, with their request for arbitration or response to the request for arbitration, proof of having made the requested provision of funds, the preceding paragraph shall apply. The Court shall proceed similarly should the respondent party or parties make any counterclaim, both as regards the provision of funds required from the counterclaiming respondent, and the response to the counterclaim made by the claimant.
4. The Court will indicate the provisional amount of the dispute and shall require the parties to make the appropriate provision of funds for the administration of the arbitration, the fees of the Arbitral Tribunal and the expenses of the proceeding, including corresponding taxes applicable. The payment of such provisions of funds should be justified by the parties before forwarding the allegations to the claimant. The decisions of the Court on the amount in dispute or regarding the determination of the provisions of funds shall be final. It is for the Arbitral Tribunal to set, in a reasoned manner, the definitive amount of the arbitral proceedings prior to the closure of the proceedings.
5. During the arbitration proceedings, the Court, *ex officio* or at the request of the Arbitral Tribunal, may request the payment of additional provisions of funds by the parties.
6. It rests exclusively with the Court to assign the payments made to the provision of funds and to determine the professional fees of the Arbitrators. The Court shall quantify the professional fees of the Arbitral Tribunal applying the table of fees and taking into account the amount and complexity of the dispute, as well as the dedication and diligence of the Arbitral Tribunal.
7. Unless otherwise agreed, the claimant and the respondent shall make payment of the provision of funds in equal shares, subject to allocation and final settlement, included in the award.

- 8.** If at any time during the arbitration, the parties fail to pay in full the provisions, the Court will require the party in default to make the outstanding payment within ten (10) days. If the payment is not made within that period, the Court shall notify the default to the other party so that, if it deems appropriate, it may make the outstanding payment within ten (10) days. Should neither party make the outstanding payment, the Court, or as the case may be, the Arbitral Tribunal may refuse to continue with the proceedings. In this case, and after deducting the amount corresponding to administrative costs and, where applicable, fees for Arbitrators, the Court shall reimburse each party the amount advanced in excess.
- 9.** In the event that a party has paid the provisions previously requested from the other party, the Court –or the Arbitral Tribunal, if it is already constituted– may issue an order to declare the credit the former holds against the latter, without prejudice to declaring it, if appropriate, in the award.

Arbitration Rules

*Approved by the Extraordinary General
Meeting of 19 April 2017*

CIVIL AND COMMERCIAL ARBITRATION COURT

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