



International Center for Letter of Credit Arbitration, Inc. (ICLOCA) Rules of Arbitration

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(ICLOCA)

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INTERNATIONAL CENTER FOR LETTER OF CREDIT ARBITRATION, INC.

I. INTRODUCTION

Letters of credit have achieved their status as a universally recognized means of assurance of payment because their documentary character lends itself to summary payment or, in the event of a dispute, summary resolution. Because letter of credit law and practice is highly specialized and often counter-intuitive to the general commercial lawyer, the judicial process has not generally afforded the speedy, final, certain and sound relief desired by parties to a letter of credit dispute. For similar reasons, this observation also applies to independent guarantees, documentary collections, funds transfers and other mechanisms for the assurance of payment in trade and commerce.

It is the goal of these Rules and the arbitration system with which they are linked to provide an expedited, principled, and final resolution of disputes involving trade finance by recognized experts in law and practice in a cost efficient manner.

These Rules are modelled upon the highly successful and time-tested UNCITRAL Arbitration Rules with modifications necessitated by the use of expert arbitrators, the frequent possibility of summary disposition, and the use of an administrative center.

International Center for Letter of Credit Arbitration

The International Center for Letter of Credit Arbitration (the “Center”) was founded as a result of an initiative from within the letter of credit community. The Center has been created after extensive consultation with corporate, legal and banking representatives throughout the United States and the world. The Center was formally established in September of 1996 and is located in metropolitan Washington, D.C.

The Center has two main purposes, namely, to act as an administrative authority and a resource center for information, training, and research for letter of credit related disputes.

ICLOCA Arbitration Council

The ICLOCA Arbitration Council is composed of representatives of the private and public sectors. Its role is to provide advice and make recommendations to the Center on matters of planning and policy.

ICLOCA Consultative Council

The ICLOCA Consultative Council is composed of leading experts in the fields of arbitration and letters of credit. The principal function of this body is to provide advisory opinions to the Center on non-routine issues where the Rules require a decision by the Center during the course of the administration of an arbitration, such as, the challenge, release or replacement of an arbitrator and certain questions concerning arbitrator fees. When this is required, the Center will convene an *ad hoc* committee composed of members of the Consultative Council. In special circumstances the Center may also appoint an outside expert who is not a member of the Consultative Council to serve on an *ad hoc* committee.

II. ICLOCA SERVICES

What type of disputes may be referred to the Center under these Rules?

The Center was created to assist in the resolution of disputes arising out of international banking operations including letters of credit, confirmations or advices, documentary collections, funds transfers, and similar matters.

What are the available means of dispute resolution?

The Rules provide for one type of dispute resolution, arbitration. Arbitration is designed to lead to a binding and enforceable resolution of the dispute outside the court system. The Center will, upon request, provide assistance in conciliation and other ADR methods.

Who may refer disputes to the Center?

The services of the Center are available to all persons. There is no requirement that a person be affiliated in any way with any State, business sector or organization. Individuals and entities having a recognized legal personality may submit disputes to the Center for arbitration.

How to refer disputes to the arbitration?

There are two circumstances in which a dispute might be referred to arbitration under the ICLOCA Rules and administered by the Center.

(1) A clause may be inserted into the undertaking or agreement providing that all future disputes arising out of, in connection with or relating to that undertaking or agreement be submitted to the Center for resolution under these Rules.

(2) An existing dispute may also be referred to the Center for resolution by agreement of the parties, even if there was no advance agreement to arbitration.

Recommended clauses are contained in section VI.

Under either circumstance, once a dispute has arisen, a party desiring arbitration gives written notice to the Center and the other party in the form of a "Notice of Arbitration." (See article 3)

What is the system of arbitration established under these Rules?

The primary characteristic of this system is that the arbitration is conducted by experts from the relevant fields of international banking operations under procedures which facilitate summary disposition with the assistance of an established administrative center.

What is the role of the Center under the Rules?

The Center serves as administrative resource for the arbitration, an appointing authority for the arbitral tribunal, and an administrator for any challenges to the appointment of an arbitrator

How is the arbitral tribunal constituted?

1. Number of arbitrators

Unless the parties agree otherwise, the arbitral tribunal will consist of one arbitrator. (Article 5)

2. How are the arbitrators appointed?

If there is one arbitrator, he or she will be appointed by the Center unless the parties agree on an appointment (Article 6)

3. Mechanism for Appointment from the List of Accredited Arbitrators

In order to ensure the expertise of the arbitrator in international banking operations and his or her training in arbitration matters, the Center maintains a list of Accredited Arbitrators. If an arbitrator is appointed from outside the List, the appointment must be confirmed by the Center in order to ensure that ICLOCA arbitrations are conducted by internationally recognized experts. (Article 8). Even if appointed by one party, the arbitrator does not represent that party. (Articles 4, 9 &10)

4. Challenges to Arbitrators

The Rules provide that their arbitrator may be challenged if circumstances exist that give rise to justifiable doubts concerning his or her independence or impartiality (see Articles 10 to 13).

Before deciding on a challenge, the Center may seek the advice of any member or members of the Consultative Council.

5. The Dispute Resolution Procedure

Arbitration is a procedure whereby a dispute is submitted to a non judicial arbitral tribunal composed of one or more arbitrators who render a decision that is binding on the parties. With regard to letters of credit and similar undertakings, arbitration arises by the incorporation of an arbitration clause into a letter of credit or other undertaking or by the submission of an existing dispute by agreement of the parties. If the clause adopts the ICLOCA Rules, the Rules set forth the procedure to be followed including selection of the arbitral tribunal, its powers, the rights and obligations of the parties, and the role of the Center.

Are arbitral awards final?

Decisions rendered by the arbitral tribunal in the form of an award are final and binding on the parties and not subject to an appeal on the merits to a court of law. In the majority of cases involving international arbitration, the parties comply with the award without the need to seek court enforcement. Where court enforcement is necessary, the procedure is relatively straightforward by virtue of the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. More than 110 Countries (including the U.S.) are party to the New York Convention, which obliges contracting States to recognize and enforce foreign arbitral awards, with a few very limited and specified exceptions.

What administrative services are provided by the Center?

In addition to its role in the appointment process, the Center

- receives the various papers filed until the creation of the arbitral tribunal (Article 15)
- determines the place of arbitration unless agreed upon by the parties (Article 16)
- will assist with the logistical support for arbitration.
- receives the award, promulgates it, and makes any necessary filing.

Stenographic Transcripts and Interpretation

At the request of the parties or the arbitral tribunal, the Center will assist the arbitral tribunal in making arrangements for stenographic transcripts or interpretation of hearings. These costs are not included in the administrative fee and will be billed separately.

Fees and Deposits

The Center will make all arrangements concerning the amounts of arbitrator's fees and administrative fees and costs, including advance deposits for those fees and costs (see articles 38 and 41). All fees are collected by and paid to the Center. For complete details regarding the schedules for registration, administrative and arbitrator's fees, see section V.

Other Services

The Center will consider providing other appropriate administrative services upon request.

III. CONFERENCES AND TRAINING PROGRAMS

The Center organizes conferences and seminars designed for the letter of credit community introducing the ICLOCA system and on specific issues related to the resolution of letter of credit disputes. It also conducts training programs specifically designed for arbitrators, so as to perfect their skills in conducting proceedings and writing awards. The training programs are designed for a limited number of participants and are intended to teach skills and provide valuable insight into the arbitration of disputes under the ICLOCA Rules. Details regarding these conferences and training programs are available from the Center.

IV. ICLOCALIST OF ACCREDITED ARBITRATORS

The Center maintains a list of persons who are specially qualified to act as arbitrators under its Rules (see Article 8). This List contains information on each person's experience and specialized expertise in the various aspects of letter of credit law, practice and related areas.

This List is the primary source used by the Center when it is called upon to make recommendations or appointments. The parties can appoint an arbitrator from outside the Center's List, but any such appointment is subject to confirmation by the Center. Parties may obtain a copy of the ICLOCA List of Accredited Arbitrators from the Center.

V. FEE SCHEDULES FOR ICLOCA ARBITRATION

Note: Unless otherwise stated, all fees are expressed and payable in United States dollars.

REGISTRATION FEES to be paid by the Claimant when filing (non refundable): To cover the cost of initiating the arbitration, a registration fee of \$1,000 shall be payable. For this purpose, counterclaims are treated separately.

ADMINISTRATIVE FEES The administrative fees are the costs of administering the arbitration in addition to the registration fee. They are fixed at the end of the proceedings in the Award (Articles 38-40). As a rule, the Center will request from the parties in accordance with Article 41 deposits as advance payments of the likely cost of the arbitration as estimated at the beginning of the proceedings and supplemented as necessary during the course of the arbitration.

1. Where the amount of the claim or counter-claim is not specified, the Center shall determine an appropriate administrative fee.
2. The amount of a counterclaim will be added to the amount of the claim for the purpose of calculating the administrative fee only if the portion of the deposit assessed to the respondent is paid within 30 days of the assessment. Otherwise the counterclaim shall be stricken from the proceeding and must be filed separately.
3. Should the amount at issue increase during the pendency of the arbitration, the administrative fee will be recalculated accordingly.
4. Where the amount of the claim is expressed in a currency other than United States Dollars, for the purposes of calculating the administrative fee, the claimed amount will be converted into an amount specified in United States Dollars on the basis of the official United Nations' exchange rate prevailing on the date of submission of the Notice of Arbitration.

Amount of Claim	Administrative Fee
Up to \$100,000	\$1,500
\$100,001 - \$500,000	\$1,500 + 1.25%
\$500,001 - \$1,000,000	\$6,500 + 0.80%
\$1,000,001 - \$2,000,000	\$10,500 + 0.40%
\$2,000,001 - \$5,000,000	\$14,500 + 0.10%
\$5,000,001 - \$10,000,000	\$17,500 + 0.05%
Over \$10,000,000	\$20,000 + 0.03%
	(maximum of \$40,000)

ARBITRATOR FEES In addition to the Administrative fees, the fees of the arbitrators must be paid. These fees are to be paid directly to the Center:

1. For the purpose of calculating the amount of the claims, the value of any counter-claim is added to the amount of the claim.
2. For the purpose of calculating the amount of the arbitrator's fee, the percentage figure is applied to each successive part of the amount of the claim or counter-claim.

3. Where a claim or counter-claim is not for a monetary amount, the Center shall, after consultation with the arbitrator(s) and the parties, determine an appropriate value for the claim and counter-claim for the purpose of determining the arbitrator’s fee.

4. Arbitrator fees will be fixed within the range indicated in this schedule by the Center in consultation with the arbitrator(s) and parties based upon the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case (see article 39).

5. Where the amount of the claim is expressed in a currency other than United States Dollars, for the purposes of calculating the administrative fee, the claimed amount will be converted into an amount specified in United States Dollars on the basis of the official United Nations exchange rate prevailing on the date of submission of the Notice of Arbitration.

Sole Arbitrator Fees

Three Arbitrators’ Fees (The fee will be divided between the three arbitrators according to a formula set by the Center.)

Amount of Claim	Minimum Arbitrators Fee	Maximum Arbitrators Fee
Up to \$50,000	\$1,000	10% (of amount but not below minimum)
\$50,001 - \$100,000	\$1,000 + 1.50% (of amount over \$50,000)	\$4,000 + 2.50% (of amount over \$50,000)
\$100,001 - \$500,000	\$1,750 + 0.80% (of amount over \$100,000)	\$5,250 + 2% (of amount over \$100,000)
\$500,001 - \$1,000,000	\$4,950 + 0.50% (of amount over \$500,000)	\$13,250 + 1.50% (of amount over \$500,000)
\$1,000,001 - \$2,000,000	\$7,450 + 0.30% (of amount over \$1,000,000)	\$20,750 + 1% (of amount over \$1,000,000)
\$2,000,001 - \$5,000,000	\$10,450 + 0.20% (of amount over \$2,000,000)	\$30,750 + 0.50% (of amount over \$2,000,000)
\$5,000,001 - \$10,000,000	\$16,450 + 0.10% (of amount over \$5,000,000)	\$45,750 + 0.30% (of amount over \$5,000,000)
Over \$10,000,000	\$21,450 + 0.05% (of amount over \$10,000,000)	\$60,750 + 0.10%

VI. MODEL CLAUSES FOR ARBITRATION UNDER ICLOCA RULES OF ARBITRA-

Amount of Claim	Minimum Arbitrators' Fee	Maximum Arbitrators' Fee
Up to \$50,000	\$2,500	20.00% (of amount, but not below the minimum)
\$50,001-\$100,000	\$2,500 + 3.75% (of amount over \$50,000)	\$10,000 + 6.25% (of amount over \$50,000)
\$100,001-\$500,000	\$4,375 + 2.00% (of amount over \$100,000)	\$13,125 + 5.00% (of amount over \$100,000)
\$500,001-\$1,000,000	\$12,375 + 1.25% (of amount over \$500,000)	\$33,125 + 3.75% (of amount over \$500,000)
\$1,000,001-\$2,000,000	\$18,625 + 0.75% (of amount over \$1,000,000)	\$51,875 + 2.50% (of amount over \$1,000,000)
\$2,000,001-\$5,000,000	\$26,125 + 0.50% (of amount over \$2,000,000)	\$76,875 + 1.25% (of amount over \$2,000,000)
\$5,000,001-\$10,000,000	\$41,125 + 0.25% (of amount over \$5,000,000)	\$114,375 + 0.75% (of amount over \$5,000,000)
Over \$10,000,000	\$53,625 + 0.125% (of amount over \$10,000,000)	\$151,875 + 0.25% (of amount over \$10,000,000)

TION

A. Arbitration Clause for Future Disputes

1. To be inserted into a letter of credit, confirmation, advice, or other independent guarantee, counter-guarantee, collection letter, or reimbursement instructions:

Suggested form:

Any dispute, controversy or claim arising out of or relating to this undertaking or the dishonor, termination or invalidity thereof shall be finally settled by arbitration administered by the International Center for Letter of Credit Arbitration, Inc., under its Rules of Arbitration (1996).

Abbreviated form:

The Center encourages the parties at the time of drafting their arbitration clause to use and where appropriate elaborate on the form suggested. If it is absolutely necessary to utilize a shorter form, the following language is suggested: *All disputes subject to arbitration under ICLOCA Rules of Arbitration (1996).*

2. To be inserted into a reimbursement agreement/application:

Any dispute, controversy or claim arising out of or in relation to this reimbursement agreement or application or the letter of credit issued pursuant to it, or the breach, dishonor, termination or invalidity thereof, shall be finally settled by arbitration administered by the International Center for Letter of Credit Arbitration, Inc., under its Rules of Arbitration (1996).

B. Submission of Existing Dispute (Submission Agreement)

3. To be inserted into a signed agreement to arbitrate a currently existing dispute:

We, the undersigned, hereby agree to submit to arbitration administered by the International Center for Letter of Credit Arbitration, Inc., under its Rules of Arbitration (1996), the following controversy:

[insert a description of the dispute].

We further agree to perform this agreement to arbitrate and to observe these Rules.

**INTERNATIONAL CENTER FOR LETTER OF CREDIT ARBITRATION, INC.
(ICLOCA)
RULES OF ARBITRATION FOR
LETTER OF CREDIT DISPUTES
AUGUST 1996**

These Rules are based on the UNCITRAL Arbitration Rules and are primarily designed for arbitration of disputes involving letters of credit and similar mechanisms for the assurance of payment such as independent guarantees, documentary collections and funds transfers, under the auspices of the International Center for Letter of Credit Arbitration, Inc.

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PREAMBLE

Letters of credit have achieved their status as a universally recognized means of assurance of payment because their documentary character lends itself to summary payment or, in the event of a dispute, summary resolution. Because letter of credit law and practice is highly specialized and often counter-intuitive to the general commercial lawyer, the judicial process has not generally afforded the speedy, certain and sound relief desired by parties to a letter of credit dispute. For similar reasons, this observation also applies to independent guarantees, documentary collections, funds transfers and other mechanisms for the assurance of payment in trade

and commerce.

It is the goal of these Rules and the arbitration system with which they are linked to provide an expedited, principled resolution of disputes involving trade finance by recognized experts in law and practice in a cost efficient manner.

These Rules are modelled upon the highly successful and time-tested UNCITRAL Arbitration Rules with modifications necessitated by the expert arbitrators, the frequent possibility of summary disposition based upon documentary and stipulated evidence common in this field, and the use of an administrative center.

**ARTICLE 1
SCOPE OF APPLICATION**

1. Where a letter of credit, independent guarantee, collection instruction, reimbursement undertaking, or other agreement or undertaking (whether independent or not)(hereinafter called the “undertaking”) provides that it is subject to arbitration under these Rules or that disputes shall be submitted to arbitration by the International Center for Letter of Credit Arbitration, Inc. (hereinafter called the “Center”), disputes, controversies or claims relating

to the undertaking, whether domestic or international, between any two or more persons causing it to be issued, issuing it or acting upon it shall be settled in accordance with these Rules subject to any modification.

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

that provision shall prevail.

3. The Center shall act as appointing authority

and administer arbitrations conducted under these Rules.

ARTICLE 2
NOTICE, CALCULATION OF PERIODS OF TIME

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at its place of business, mailing address or habitual residence, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known place of business or residence. Notice shall be deemed to have been received on the day it is so delivered.

2. For the purposes of calculating a period of time under these Rules, such period shall begin to

run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the place of business or residence of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

3. The Center or the arbitral tribunal may, at the request of the parties or on its own motion, extend the periods of time referred to in these Rules or set by it in accordance with these Rules.

ARTICLE 3
NOTICE OF ARBITRATION

1. The party initiating recourse to arbitration (hereinafter called the "claimant") shall give a notice of arbitration in writing to the Center and to the other party (hereinafter called the "respondent"). In these Rules the terms "claimant", "respondent", "person" and "party" used in the singular include the plural as the context may require.

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

3. The notice of arbitration shall include the following:

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

(b) A reference to the arbitration clause or the separate arbitration agreement that is invoked;

(c) A proposal as to the number of arbitrators (i.e. one or three) if the parties have not previously agreed thereon;

(d) The statement of claim referred to in article 18.

4. The notice of arbitration shall be accompanied by payment of the registration fee set by the Center.

ARTICLE 4
REPRESENTATION

The parties may be represented by persons of their choice. The names and addresses of such persons must be communicated in writing to the other

party, the Center and, after its establishment, the arbitral tribunal.

SECTION II: COMPOSITION OF THE ARBITRAL TRIBUNAL

**ARTICLE 5
NUMBER OF ARBITRATORS**

If the parties have not agreed on whether the arbitral tribunal shall be composed of one or three arbitrators within fifteen days after the commencement of the arbitration, there shall be a sole arbitrator.

**ARTICLE 6
APPOINTMENT OF A SOLE ARBITRATOR**

1. Where a sole arbitrator is to be appointed, the arbitrator shall be appointed jointly by the parties.
2. If, within thirty days after the commencement of the arbitration, the parties have not agreed upon the arbitrator, the appointment shall be made by the Center as promptly as possible.
3. In making the appointment, the Center shall have due regard to the expertise and competence required and, for that reason, to the advisability of selecting an arbitrator from the List of Accredited Arbitrators established by it.

**ARTICLE 7
APPOINTMENT OF THREE ARBITRATORS**

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the tribunal.
2. If a party within thirty days after the commencement of the arbitration has not appointed an arbitrator, the arbitrator shall be promptly appointed by the Center in accordance with article 6, paragraph 3.
3. If within thirty days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be promptly appointed by the Center in accordance with article 6, paragraph 3.
4. If there is more than one claimant or respondent and three arbitrators are to be appointed, the claimants or respondents, as the case may be, shall jointly appoint an arbitrator. If within thirty days after the commencement of the arbitration, they have not made a joint appointment for whatever reason, any appointment previously made by the other party shall be deemed to be void, and the Center shall promptly appoint all three arbitrators in accordance with article 6, paragraph 3 and designate the presiding arbitrator.

**ARTICLE 8
CONFIRMATION OF APPOINTMENT**

1. The Center shall maintain a List of Accredited Arbitrators (hereinafter called the "List") and qualifications of the appointee and with the appointee's acceptance of appointment.
2. Where a person not listed in the Center's List is appointed under article 6 paragraph 1 or article 7, paragraph 1, the appointment is subject to confirmation by the Center which shall be provided by an appointing person with the full name, address
3. If the Center does not confirm the appointment of an arbitrator, it shall notify the appointing person or persons who shall have ten days to appoint another arbitrator from the Center List. In the case of a failure to do so, the Center shall

appoint an arbitrator in the same way as a sole arbitrator would be appointed under article 6, paragraph 3.

4. The Center shall notify the parties of the establishment of the arbitral tribunal.

ARTICLE 9 DISCLOSURE

Prospective arbitrators shall disclose to those who approach them in connection with their possible appointment any circumstances likely to give rise to justifiable doubts as to their impartiality or

independence. Arbitrators, once appointed or chosen, shall disclose such circumstances to the parties and to the Center unless they have already been informed of these circumstances.

ARTICLE 10 CHALLENGE OF ARBITRATORS

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

only for reasons of which it becomes aware after the appointment has been made.

2. A party may challenge an arbitrator whom it has appointed or to whose appointment it has agreed

3. Decisions of the Center as to the appointment, confirmation, challenge or replacement of an arbitrator shall be final.

ARTICLE 11 PROCEDURE FOR CHALLENGE

1. A party who intends to challenge an arbitrator shall send notice of its challenge within fifteen days after the appointment of the challenged arbitrator has been notified to the challenging party or within fifteen days after the circumstances mentioned in articles 9 and 10 became known to that party.

3. When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from office. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in article 6 or 7 shall be used in full for the appointment of the arbitrator being replaced, even if during the process of appointing the challenged arbitrator a party had failed to exercise its right to appoint or to participate in the appointment.

2. The challenge shall be notified to the other party, to the arbitrator who is challenged, to the other members of the arbitral tribunal and to the Center. The notification shall be in writing and shall state the reasons for the challenge.

ARTICLE 12 RELEASE FROM APPOINTMENT

1. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made by the Center.

substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in article 6 or 7.

2. If the Center sustains the challenge, a

ARTICLE 13
REPLACEMENT OF AN ARBITRATOR

1. In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 6 to 9 that was applicable to the appointment or choice of the arbitrator being replaced.
2. In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of him or her performing their functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding articles shall apply.

ARTICLE 14
REPETITION OF HEARINGS IN THE EVENT OF THE REPLACEMENT OF AN ARBITRATOR

- If under articles 11 to 13 the sole or presiding arbitrator is replaced, any hearings held previously shall be repeated; if any other arbitrator is replaced, such prior hearings may be repeated at the discretion of the arbitral tribunal.

SECTION III: ARBITRAL PROCEEDINGS

ARTICLE 15
GENERAL PROVISIONS

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting its case.
2. The arbitral tribunal shall decide whether to hold hearings for the presentation of evidence by witnesses, including expert witnesses, or oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials.
3. All documents or information supplied to the arbitral tribunal by one party shall at the same time be communicated by that party to the other party and the Center. The arbitral tribunal shall send a copy of any communication with the parties to the Center.
4. Except as otherwise provided in these Rules or permitted by the arbitral tribunal, no party or anyone acting on its behalf may have any *ex parte* communication with any arbitrator with respect to any matter of substance relating to the arbitration, it being understood that nothing in this paragraph shall prohibit *ex parte* communications which concern matters of a purely organizational nature, such as the physical facilities, place, date or time of the hearings.

ARTICLE 16
PLACE OF ARBITRATION

1. Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the Center having due regard to the circumstances of the arbitration. However, the arbitral tribunal may meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such place.
2. The award shall be deemed to be made at the place of arbitration.

ARTICLE 17
LANGUAGE

1. The language to be used in the proceedings is the one chosen by the parties. Failing such choice, the language to be used is that of the undertaking at issue unless and until the arbitral tribunal determines otherwise. This determination shall apply to the notice of arbitration, the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language to be used in such hearings.

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

ARTICLE 18
STATEMENT OF CLAIM

The statement of claim shall include the following particulars:

- (a) The names and addresses of the parties;
- (b) A statement of the facts supporting the claim;
- (c) The points at issue;

- (d) The relief or remedy sought;
- (e) A copy, if applicable, of the undertaking upon which the claim is based. The claimant may annex other relevant documents relied upon in its claim, or may add a reference to the documents or other evidence to be submitted.

ARTICLE 19
STATEMENT OF DEFENCE

1. Within thirty days after the commencement of the arbitration, the respondent shall communicate its statement of defence in writing to the claimant and the Center.

2. The statement of defence shall reply to the particulars (b), (c) and (d) of the statement of claim (article 18). The respondent may annex to the statement of defence the documents relied upon for its defence.

3. In the statement of defence, or at a later stage

in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counter-claim arising out of or relating to the same or related undertaking or rely on a claim arising out of or relating to the same or related undertaking for the purpose of a set-off.

4. The provisions of article 18 shall apply to a counter-claim and a claim relied on for the purpose of a set-off.

ARTICLE 20
AMENDMENTS TO THE CLAIM OR DEFENCE

During the course of the arbitral proceedings any party may amend or supplement its claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other

party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

ARTICLE 21
PLEAS AS TO JURISDICTION AND POWERS OF THE ARBITRAL TRIBUNAL

1. The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.

2. The arbitral tribunal shall have the power to determine the existence or validity of the undertaking of which an arbitration clause forms a part. For the purposes of this article, an arbitration clause which forms part of an undertaking and which provides for arbitration under these Rules shall be treated as independent of the other terms of the undertaking. A decision by the arbitral tribunal that the undertaking is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

3. A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than in the statement of defence or, with respect to a counter-claim, in the reply to the counter-claim. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

4. In general, the arbitral tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in its final award.

ARTICLE 22
FURTHER WRITTEN STATEMENTS

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be

required from the parties or may be presented by them and shall fix the period of time for communicating such statements.

ARTICLE 23
PERIODS OF TIME

The periods of time fixed by the arbitral tribunal for the communication of written statements should not exceed twenty-one days. However, the

arbitral tribunal may extend the time limits if it concludes that an extension is justified.

ARTICLE 24
EVIDENCE

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

2. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence which that party

intends to present in support of the facts in issue set out in its statement of claim or statement of defence.

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

ARTICLE 25
ORAL HEARINGS

1. In the event of a preparatory conference or an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof. The arbitral tribunal may conduct a preparatory conference or a hearing in any manner it deems appropriate including by teleconference, video conference or similar means of communication.
2. If witnesses are to be heard, at least fifteen days before the hearing each party shall communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses it intends to present, the subject upon and the languages in which such witnesses will give their testimony.
3. The Center shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the arbitral tribunal under the circumstances of the case, or if the parties have agreed thereto and, in either case, such request is communicated to the Center at least fifteen days before the hearing.
4. Hearings shall be held *in camera* unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The arbitral tribunal may determine the manner in which witnesses are examined.
5. Evidence of witnesses may also be presented in the form of written statements signed by them.
6. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

ARTICLE 26
INTERIM MEASURES OF PROTECTION

1. At the request of any party, the arbitral tribunal, in its sole discretion may take any interim measures it deems necessary in respect of the subject matter of the dispute, including measures for conservation of the funds, disposition of documents or goods forming the subject matter in dispute, such as ordering their deposit with a third person or the delivery and/or sale of time sensitive goods or documents or ordering that presentation of documents or payment be made or withheld.
2. Such interim measures may be established in the form of an interim award. The arbitral tribunal shall be entitled to require security for such measures.
3. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

ARTICLE 27
EXPERTS

1. The arbitral tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
2. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods required of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
3. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.
4. At the request of either party the expert, after delivery of the report, may be heard at a hearing

where the parties shall have the opportunity to present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of article 25 shall be applicable to such proceedings.

ARTICLE 28
DEFAULT

1. If, within the period of time provided for in article 19 paragraph 1, the respondent has failed to communicate the statement of defence without showing sufficient cause for such failure, the arbitral tribunal shall order that the proceedings continue.
2. If one of the parties, duly notified under these Rules, fails to appear at a hearing without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

ARTICLE 29
CLOSURE OF HEARINGS

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

ARTICLE 30
WAIVER OF RULES

A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

SECTION IV: THE AWARD

ARTICLE 31
DECISIONS

1. When there are three arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide on his or her own, subject to revision, if any, by the arbitral tribunal.

ARTICLE 32
FORM AND EFFECT OF THE AWARD

1. In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory or partial awards.
2. The award shall be made in writing and shall be final and binding on the parties. By submitting the dispute to arbitration by the Center, the parties shall be deemed to have undertaken to carry out the resulting award without delay and to have waived their right to any form of appeal insofar as such waiver can validly be made.
3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
4. The arbitral tribunal may consult the Center with regard to matters of form particularly to ensure the enforceability of the award.
5. An award shall be signed by the arbitrator and it shall contain the date on which it was made and the place of arbitration in accordance with article

16 paragraph 1. Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.

6. Copies of the award signed by the arbitrators shall be communicated to the Center which shall communicate an original of the award to each party and to each arbitrator.
7. If the arbitration law of the country where the award is made requires that the award be filed or registered, the Center shall comply with this requirement within the period of time required by law.
8. The Center may publish the award only with the consent of the parties or in sanitized form, that is, with such deletions or modifications that are necessary to mask the identity of the parties, and after having given the parties thirty days in which to comment upon the sanitized version.

ARTICLE 33
APPLICABLE LAW, AMIABLE COMPOSITEUR

1. The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.
2. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the arbitral tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.
3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the undertaking and

shall take into account generally accepted international rules, usages and practices.

4. Monetary amounts in the award may be expressed in any currency. The arbitral tribunal may award simple or compound interest to be paid by a party on any sum awarded against that party. It shall be free to determine the interest at such rates as it considers to be appropriate, without being bound by legal rates of interest, and shall be free to determine the period for which the interest shall be paid. The arbitral tribunal may not award exemplary or punitive damages.

ARTICLE 34
SETTLEMENT OR OTHER GROUNDS FOR TERMINATION

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the

arbitral proceedings or, if requested by both parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed

terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless a party raises

justifiable grounds for objection.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the Center which shall communicate an original of the award to each party and to each arbitrator. Where an arbitral award on agreed terms is made, the provisions of article 32, paragraphs 2, 4, 5, 7 and 8, shall apply.

ARTICLE 35 INTERPRETATION OF THE AWARD

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request that the arbitral tribunal give an interpretation of a specific point or part of the award.

2. The interpretation shall be given in writing

within thirty days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 32, paragraphs 2 to 7, shall apply.

ARTICLE 36 CORRECTION OF THE AWARD

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature.

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

2. Such corrections shall be in writing, and the provisions of article 32, paragraphs 2 to 7, shall apply.

ARTICLE 37 ADDITIONAL AWARD

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.

2. If the arbitral tribunal considers the request

for an additional award to be justified and considers that the omission can be rectified without any further hearing or evidence, it shall complete its award within sixty days after the receipt of the request.

3. When an additional award is made, the provisions of article 32, paragraphs 2 to 7, shall apply.

ARTICLE 38 COSTS

The arbitral tribunal shall state the costs of arbitration in its award. The term “costs” includes only:

(a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the Center in accordance with article 39;

(b) The travel and other expenses incurred by the arbitrators;

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

(d) The travel and other expenses of

witnesses to the extent such expenses are approved by the arbitral tribunal;

(e) The costs for legal representation and assistance of the successful party if such costs were claimed during the arbitral

proceedings, and only to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

(f) Any fees and expenses of the Center in accordance with its schedule of fees.

ARTICLE 39 FEES OF THE ARBITRAL TRIBUNAL

The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the

time spent by the arbitrators and any other relevant circumstances of the case.

ARTICLE 40 APPORTIONMENT OF COSTS

1. Except as provided in paragraph 2, the costs of arbitration shall in principle be born by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. With respect to the costs of legal representation and assistance referred to in article 38, paragraph (e), the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may

apportion such costs between the parties if it determines that apportionment is reasonable.

3. When the arbitral tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in article 38 and article 39 in the text of that order or award.

4. No additional fees may be charged by an arbitral tribunal for interpretation or correction or completion of its award under articles 35 to 37.

ARTICLE 41 DEPOSIT OF COSTS

1. The Center may request each party to deposit an equal amount as an advance for the costs referred to in article 38, paragraphs (a), (b), (c), (d) and (f).

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

3. If the required deposits are not paid in full within twenty-one days after the receipt of the request, the Center shall so inform the parties in order that

one or another of them may make the required payment. If such payment is not made, the Center may order the suspension or termination of the arbitral proceedings.

4. After the proceedings are terminated or the award has been made, the Center shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

ARTICLE 42
EXCLUSION OF LIABILITY

Except in respect of deliberate wrongdoing, in connection with the arbitration including the failure
the members of the arbitral tribunal and the Center to act in response to a request for interim relief.
shall not be liable to a party for any act or omission

ARTICLE 43
WAIVER OF DEFAMATION

The parties and, by acceptance of the course of the arbitration shall not be relied upon
appointment, the members of the arbitral tribunal to found or maintain any action for defamation, libel,
agree that any statements or comments, whether slander or any related complaint, and this article may
written or oral, made or used by them or the respective be pleaded as a bar to any such action.
representatives of the parties in preparation for or in