



**SCOTTISH  
ARBITRATION  
CENTRE**

**Scottish Arbitration Centre**

# **Rules 2023**

**Effective from 18 May 2023**

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# Article 1. Scope of Application

- 1.1 The Scottish Arbitration Centre Rules (the “Rules”) shall govern an arbitration where an agreement to arbitrate, or submission to arbitration, provides that these Rules apply to arbitration of disputes, claims or differences, or provides for arbitration by the Scottish Arbitration Centre or words to similar effect. The parties to such an agreement or submission irrevocably undertake to submit any such dispute(s) to arbitration in accordance with the version of these Rules in force at the time of commencement of the arbitration.
- 1.2 In case of any doubt as to the interpretation of the Rules, they shall be interpreted according to Scots law, irrespective of: (a) the Seat of arbitration; (b) the parties’ choice (if any) of the substantive law of the contract; or (c) the law of the arbitration agreement, howsoever determined.
- 1.3 Where the parties have designated a Scottish Arbitration Centre body or person to perform a function that is delegated to the Scottish Arbitration Centre, that function shall be performed by the Scottish Arbitration Centre.

# Article 2. Interpretation

- 2.1 References in the Rules to the “Centre” are to the Scottish Arbitration Centre, the Court of the Scottish Arbitration Centre (“COSAC”), the Registrar to the Court of the Scottish Arbitration Centre (the “Registrar”) or any committee, sub-committee or other body or person specifically delegated by it to perform the functions referred to herein, or, where applicable, to the Chief Executive of the Centre for the time being and other staff members of the Centre.
- 2.2 COSAC shall have the power to interpret all provisions of the Rules. The Arbitral Tribunal shall interpret the Rules insofar as they relate to its powers and duties in any arbitration commenced under the Rules. In the event of any inconsistency between such interpretation and any interpretation by COSAC, COSAC’s interpretation shall prevail.
- 2.3 COSAC has no obligation to give reasons for any decision it makes in respect of any arbitration commenced under the Rules. All decisions made by COSAC under the Rules are final and, to the extent permitted by any applicable law, not subject to appeal.
- 2.4 References in the Rules to “Claimant” include one or more claimants and references to “Respondent” include one or more respondents.
- 2.5 References to “additional party” include one or more additional parties and references to “party” or “parties” include claimants, respondents or additional parties.
- 2.6 References in the Rules to the “Arbitral Tribunal” include one or more arbitrators appointed in accordance with the Rules.
- 2.7 References in the Rules to “award” include, inter alia, an interim, interlocutory, provisional, part or partial award.

## Article 3. Court and Registrar

- 3.1** The functions of COSAC under the Rules shall be performed in its name by the President of COSAC (or any of its Vice Presidents) or by a division of three or more members of COSAC appointed by its President or any Vice President.
- 3.2** The functions of the Registrar shall be performed under the supervision of COSAC by the Registrar or any deputy Registrar.
- 3.3** All communications in the arbitration to COSAC from any party, authorised representative of a party, arbitrator, Arbitral Tribunal, Arbitral Tribunal secretary or expert to the Arbitral Tribunal shall be addressed to (or copied to) the Registrar and shall be copied to all other parties.

## Article 4. Notices and Calculation of Periods of Time

- 4.1** Any notice or other written communication pursuant to the Rules shall be deemed to be received by a party or the Arbitral Tribunal or by the Centre if:
- (a) delivered by hand, registered post or courier service to:
    - (i) the address of the addressee or its representative as notified in writing by the addressee or specified in any applicable agreement between the relevant parties;
    - (ii) in the absence of (i), to any address of which the sender is aware by whatever means; or
    - (iii) in the absence of (i) or (ii), to any last known address of the addressee; or
  - (b) transmitted by any means of electronic communication that provides a record of its transmission, including the time and date, to:
    - (i) the email address (or equivalent) of that person or its representative as notified in writing by the addressee or specified in any applicable agreement between the relevant parties; or
    - (ii) in the absence of (i), to any such email address (or equivalent) of which the sender is aware by whatever means.
- 4.2** Any such notice or written communication shall be deemed to be received on the earliest day when it is delivered pursuant to Article 4.1(a) or transmitted pursuant to Article 4.1(b). For this purpose, the date shall be determined according to the local time at the place of receipt. Where such notice or written communication is being delivered or transmitted to more than one party, such notice or written communication shall be deemed to be received when it is delivered or transmitted pursuant to Article 4.1(a) or (b) above to the last intended recipient.
- 4.3** For the purposes of calculating a period of time under the Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received or deemed to be received. If the last day of such period is an official holiday or a

non-business day at the place of receipt, the period shall be extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time shall be included in calculating the period.

- 4.4 If the circumstances of the case so justify, and subject to the Arbitral Tribunal's determination, the Centre may abridge or extend any time limit provided for in the Rules, as well as any time limits that it has set.

## **Article 5. Seat of Arbitration**

- 5.1 In the absence of any express or implied choice of the Seat of arbitration by the parties, by choosing the Rules the parties shall be taken for all purposes to have agreed to have selected Scotland as the Seat of the arbitration (the "Seat"), subject to the right of the Arbitral Tribunal in its absolute discretion to determine another Seat to be more appropriate, which determination when made shall be irrevocable.
- 5.2 The choice or determination of the Seat of arbitration pursuant to Article 5.1 shall not prejudice the right of the Arbitral Tribunal to hold hearings elsewhere than at the Seat, as it deems appropriate, subject to any agreement between the parties.
- 5.3 Any award made by the Arbitral Tribunal shall be treated for all purposes as having been made at the Seat, regardless as to where it is signed by the Arbitral Tribunal members.

## **Article 6. Request for Arbitration**

- 6.1 Any party wishing to commence an arbitration under the Rules ("Claimant") shall file a written request for arbitration (the "Request") to the Registrar (such Request being in compliance with the requirements set out in Article 6.4 below), together with confirmation that the filing fee as set out in Schedule of Fees has been or will be paid forthwith.
- 6.2 The arbitration shall be treated as having been commenced for all purposes on the date upon which the Request (including all accompanying documents) is received by the Registrar (the "Commencement Date"), provided that if the Centre has not received the filing fee within seven days thereafter, the Commencement Date will be the date of the Centre's actual receipt of the filing fee, subject to the discretion of the Registrar to determine otherwise.
- 6.3 The Claimant shall, at the same time as it files the Request with the Centre, send a copy of the Request and accompanying documents to any intended respondent ("Respondent"), and shall notify the Centre that it has done so, specifying the mode of service employed and the date of service.
- 6.4 The Request shall include the following:
- (a) the names, nationalities and addresses (including where known the email address(es)) of the parties to the intended proceedings;

- (b) the name, address and other contact details (including, where known, any email address(es)) of the Claimant and any other person(s) representing the Claimant;
- (c) a brief description of the dispute which the Claimant seeks to refer to arbitration including (if appropriate) a general statement of the remedy or relief sought and any cause(s) of action;
- (d) either (having regard to Article 8.1):
  - (i) proposals for the appointment of the sole arbitrator referred to in Article 9; or
  - (ii) notification of the appointment of an arbitrator referred to in Article 10; or
  - (iii) a request that COSAC should make the appointment on behalf of the Claimant or the parties;
- (e) a copy of any arbitration agreement(s) that is/are invoked and (if appropriate) a reference to any agreement(s) out of or in relation to which the dispute arises;
- (f) confirmation of, or proposals as to, the Seat; and
- (g) an indication of the amount claimed, if any and to the extent that it may be quantified at the time of the Request.

**6.5** Any issues as to the adequacy of the Request (in terms of its compliance with Article 6.4 or otherwise) shall be determined finally by the Arbitral Tribunal once constituted.

## Article 7. Answer

**7.1** Within 28 days of receipt of the Request, or such other period as may be agreed between the parties or permitted by the Registrar or the Arbitral Tribunal, any Respondent shall send to the Registrar and the Claimant its response to the Request (the “Answer”).

**7.2** The Answer shall include the following:

- (a) name, email address and telephone number of the Respondent and the same details for those representing the Respondent as required in Article 6.4 for the Claimant;
- (b) any corrections to the name, nationality, description, address or other contact details of the Respondent to those contained in the Request;
- (c) any comments as to the nature and circumstances of the dispute giving rise to the claims and the basis upon which the claims are made;
- (d) any response to the relief sought;
- (e) if a counterclaim is included, a brief description of such counterclaim, a general statement of the remedy or relief sought, and any cause(s) of action; and
- (f) either (having regard to Article 8.1):
  - (i) if the Arbitral Tribunal is formed of a sole arbitrator, agreement to the Claimant’s proposed sole arbitrator, or its proposals for the appointment of such arbitrator, or the Respondent’s proposals as to the identity of, or for the appointment of, such arbitrator; or

- (ii) (if the Arbitral Tribunal is formed of three arbitrators) notification of the appointment (or confirmation that the Respondent wishes to delegate the making of the appointment) an arbitrator referred to in Article 10 or of the Respondent's proposals for the appointment of the Arbitral Tribunal.

**7.3** Any issues arising from a failure to serve an Answer, or to do so timeously, or (if served) as to the adequacy of an Answer shall be determined by the Arbitral Tribunal once constituted.

**7.4** If and insofar as necessary, the Registrar shall proceed with the constitution of the Arbitral Tribunal without prejudice to any allegation of defectiveness as to the Request or Answer.

## **Article 8. Appointment of Arbitral Tribunal – Equality, Diversity and Neutrality**

**8.1** In proposing or appointing any arbitrator under the Rules, the parties, their counsel, any appointed arbitrator and COSAC shall have regard to the Equal Representation in Arbitration Pledge and R.E.A.L. (Racial Equality for Arbitration Lawyers).

**8.2** Without prejudice to the parties' right to submit their dispute in accordance with the tenets of any particular religion, any prior purported agreement between the parties as to the gender, race, or ethnicity of any arbitrator shall be of no effect. In all other respects, the parties agreed method or criteria for the selection of arbitrators shall be taken into account.

**8.3** Where the parties are of different nationalities, COSAC shall, in appointing any sole or presiding arbitrator, take into account:

- (a) the nationalities of the parties and other arbitrators; and
- (b) the desirability, in the case of a sole arbitrator or Chair, of appointing an arbitrator of a nationality other than that of the parties.

**8.4** For the purpose of Article 8.3, nationality shall include:

- (a) in the case of an individual, the person's country of principal residence or citizenship;
- (b) in the case of any incorporated entity (including but not limited to a company, corporation, partnership, limited partnership or charity), the country of incorporation or the principal country of business of that entity.

**8.5** For the purposes of this Rule, Scotland is a country

## **Article 9. Appointment of Sole Arbitrator**

**9.1** If there is no agreement on the number of arbitrators, the parties shall be taken to have agreed to appoint a sole arbitrator.

**9.2** If within 28 days after receipt by the Registrar of the Answer, or such later date as the parties may agree, the parties have not reached an agreement on the choice of a sole arbitrator, the sole arbitrator shall be appointed by COSAC as soon as practicable thereafter. Such appointment will not be confirmed until such time as the Registrar

has received the declaration referred to in Article 12.2(b).

**9.3** In making any such appointment, COSAC shall have regard to Article 8 of the Rules and to any other relevant factors, including, but not limited to, the nature and circumstances of the dispute, the value involved, the location and any relevant language issues.

## **Article 10. Appointment of Three-Member Arbitral Tribunal**

**10.1** Subject to any agreement between the parties as to the manner in which the Arbitral Tribunal members shall be appointed, the following provisions shall apply.

**10.2** If three arbitrators are to be appointed, the Claimant and Respondent shall each appoint an arbitrator in the Request and Answer in accordance with Article 6 and Article 7, respectively. Within 28 days of receipt by the two such appointed arbitrators of the Request and Answer the two arbitrators thus appointed shall choose the third arbitrator, who will act as the presiding arbitrator of the Arbitral Tribunal. For this limited purpose, it shall not be improper or inappropriate for either party-appointed arbitrator to consult unilaterally with their appointing party in relation to the identity or characteristics of the presiding arbitrator.

**10.3** Where there are three or more parties, if the dispute is to be resolved by three arbitrators, (if applicable) the Claimants shall jointly appoint an arbitrator and the Respondents acting jointly shall appoint one arbitrator and the appointments shall be made in accordance with Article 10.2.

**10.4** Should there be any failure in the process of appointment by either a party, or by the parties acting jointly or by the nominated arbitrators, such that the tribunal is not constituted within 28 days of receipt by the Registrar of the Answer, the parties and/or arbitrators (as appropriate) may request, and the Registrar may grant, an extension of no more than 28 days. Thereafter, any appointments which remain outstanding and necessary for the appointment of the Arbitral Tribunal shall be made promptly by COSAC having regard to Article 8 and to any other relevant factors, including, but not limited to, the nature and circumstances of the dispute, the value involved, the location and any relevant issues.

## **Article 11. Expedited Formation of Arbitral Tribunal**

**11.1** In a case of exceptional urgency, and notwithstanding any prior written agreement upon the procedure for the appointment of the Arbitral Tribunal, any party may apply to the Registrar for the expedited formation of the Arbitral Tribunal under this Article.

**11.2** Such an application shall be made to the Registrar by email, together with a copy of the Request (if made by a Claimant) or a copy of the Answer (if made by a Respondent), and shall be delivered or notified forthwith to all other parties to the arbitration. The application shall set out the specific grounds for exceptional urgency requiring the expedited formation of the Arbitral Tribunal.



**11.3** COSAC shall determine the application as expeditiously as possible in the circumstances. If the application is granted, for the purpose of forming the Arbitral Tribunal the Registrar may amend any period of time stipulated under the Rules or stipulated in any prior agreement of the parties.

## **Article 12. Impartiality, Independence and the Duty of Disclosure**

**12.1** Any arbitrator appointed under the Rules shall be and remain impartial and independent of the parties.

**12.2** Any individual appointed as an arbitrator under the Rules shall have their attention drawn to this Article and shall at the time of accepting any invitation to be appointed, furnish to the Centre:

(a) a brief written summary of their qualifications and professional positions (past and present);

(b) a written declaration stating:

(i) whether there are any circumstances currently known to the candidate which might reasonably be considered relevant when considering whether the arbitrator is impartial or independent and, if so, specifying in full such circumstances in the declaration; and

(ii) whether the candidate is ready, willing and able to devote sufficient time, diligence and industry to ensure the expeditious and efficient conduct of the arbitration.

**12.3** Each arbitrator shall assume a continuing duty, throughout their tenure (as defined in Article 14 below) until the end of their appointment forthwith to disclose in writing any circumstances becoming known to that arbitrator after the date of their written declaration under Article 12.2 (and by way of an updated declaration) which would or might give rise in the mind of any party to any justifiable doubts as to their impartiality or independence, to be delivered to the Centre, any other members of the Arbitral Tribunal and all parties.

**12.4** If, in the light of such disclosure or otherwise, the Centre at any time reasonably concludes that justifiable doubts as to an arbitrator's impartiality or independence exist, any such appointment already made may be revoked pursuant to Article 14. If the revocation is of an arbitrator appointed by a party, that party will be at liberty to make a substitute appointment within 14 days of notification of the revocation.

## **Article 13. General Duties**

**13.1** The Arbitral Tribunal must—

(a) be impartial and independent;

(b) treat the parties fairly; and

(c) conduct the arbitration—

(i) without unnecessary delay; and

(ii) without incurring unnecessary expense.

(d) Treat the parties fairly which includes giving each party a reasonable opportunity to put its case and to deal with the other party's case.

**13.2** The parties must ensure that the arbitration is conducted:

(a) without unnecessary delay; and;

(b) without incurring unnecessary expense.

**13.3** General duties of the parties

The parties must ensure that the arbitration is conducted:

(a) without unnecessary delay and

(b) without incurring unnecessary expense.

## Article 14. Tenure of Appointment

**14.1** Once appointed, an arbitrator's tenure continues unless and until:

(a) they have completed their final award and there remain no matters left to be determined between the parties in the arbitration, subject to:

(b) any application for clarification, correction or interpretation pursuant to Article 32;

(c) any order made by COSAC or any competent court remitting any award to the Arbitral Tribunal;

(i) the arbitrator resigns or dies; or

(ii) the arbitrator's appointment is revoked pursuant to Article 15 below.

**14.2** Any arbitrator who wishes to resign pursuant to Article 14.1 must first notify the parties and the Centre of their intention and the reasons for their resignation.

## Article 15. Confidentiality

**15.1** Subject to any agreement between the parties to the contrary, neither the Centre, COSAC, the Registrar nor the Arbitral Tribunal nor any arbitrator nor any party shall disclose any confidential information relating to the arbitration unless the disclosure:

(a) is authorised expressly or impliedly, by the parties (or can reasonably be considered as having been so authorised);

(b) is required by the Arbitral Tribunal or is otherwise made to assist or enable the Arbitral Tribunal to conduct the arbitration;

(c) is required—

(i) in order to comply with any enactment or rule of law;

(ii) for the proper performance of the discloser's public functions; or

(iii) in order to enable any public body or office-holder to perform public functions properly.

(d) can reasonably be considered as being needed to protect a party's lawful interests;

(e) is in the public interest;

(f) is necessary in the interests of justice; or

(g) is made in circumstances in which the discloser would have absolute privilege had the disclosed information been defamatory.

**15.2** The Centre, COSAC, Registrar, the Arbitral Tribunal and the parties must take reasonable steps to prevent unauthorised disclosure of confidential information by any third party involved in the conduct of the arbitration.

**15.3** "Confidential information", in relation to an arbitration, means any information relating to:

(a) the dispute;

(b) the arbitral proceedings; or

(c) the award.

which is not, and has never been, in the public domain.

## Article 16. Revocation of Appointment

**16.1** An arbitrator's appointment may only be revoked in the following circumstances:

(a) upon a written request in writing made jointly by all parties;

(b) following an order for removal made by any competent court;

(c) by COSAC, either:

(i) pursuant to:

(1) the arbitrator's resignation pursuant to Article 14.2; or

(2) a successful challenge under Article 17, or a decision by the COSAC pursuant to Article 12.4 or Article 17;

(d) where COSAC considers that the arbitrator has failed or is unwilling or unable to carry out their duties under these Rules.

**16.2** Any such revocation takes effect upon the arbitrator being notified of the revocation.

## Article 17. Challenge to Appointment of Arbitrator

**17.1** Any party (the "Complainant") who, either before or after disclosure of the circumstances referred to in Article 12.2(b)(i) or Article 12.3, intends to challenge the appointment of an arbitrator shall, in the first instance, notify all other parties and the Centre of its intention and of the grounds of its challenge.

**17.2** A challenge may only be made if:

- (a) it is made on the ground that the arbitrator—
  - (i) has failed to act impartially or there are justifiable doubts as to their impartiality or independence;
  - (ii) has otherwise misconducted themselves in the arbitration; or
  - (iii) does not have a qualification which the parties agreed (before the arbitrator's appointment) that the arbitrator must have.
- (b) it states the facts or the grounds on which it is based;
- (c) it is made to the Registrar, the Arbitral Tribunal and to all other parties within 14 days of the Complainant becoming aware of the grounds of challenge.

**17.3** Within seven days of receipt of such challenge, any other party shall notify the Complainant, the Registrar and all other parties of its response, if any, to the challenge. Any response must state whether a party accepts or contests the challenge.

**17.4** An arbitrator whose appointment is subject to a challenge shall within 7 days of receipt of that challenge inform the Registrar and all parties whether (a) they accept or contest the challenge; and (b) regardless of whether they accept the challenge, whether they wish to resign their appointment. For the avoidance of doubt, neither acceptance of the challenge by the parties nor resignation by an arbitrator under this provision shall imply acceptance, by the arbitrator, of the validity of the grounds for challenge.

**17.5** Within 14 days of receipt of a challenge, if the challenge has not been accepted and the arbitrator has not resigned the Registrar shall remit the challenge to COSAC.

**17.6** COSAC shall have the power to request such further information for its decision as it considers necessary from any party and the Arbitral Tribunal.

**17.7** Within 14 days of receipt of such challenge (or such further period as the Centre reasonably deems necessary), COSAC shall rule upon the challenge as the case may be in a written decision (the "Decision") and such Decision shall be final and binding upon the parties, subject to any further appeal to any competent court.

**17.8** Should the Decision result in the revocation of the appointment of the arbitrator concerned, the Arbitral Tribunal shall be reconstituted in accordance with Article 19.

## **Article 18. Arbitrator's Fees and Expenses When Tenure Ends**

**18.1** Where an arbitrator's tenure ends pursuant to Article 14, Article 16 or Article 17, COSAC may, on an application by any party or the arbitrator concerned, make such order as it thinks fit:

- (a) about the arbitrator's entitlement (if any) to fees and expenses; and
- (b) about the repayment of fees or expenses already paid to the arbitrator.

## Article 19. Reconstitution of Arbitral Tribunal

**19.1** Where any arbitrator's tenure ends before the conclusion or termination of the arbitration proceedings, the Arbitral Tribunal must be reconstituted—

- (a) in accordance with the procedure used to constitute the original Arbitral Tribunal; or
- (b) where that procedure fails, by the Registrar in accordance with Article 10.4.

**19.2** It is for the reconstituted Arbitral Tribunal (and if formed of three arbitrators, by majority thereof) to decide the extent, if any, to which previous proceedings (including any award issued, appointment made, or other act done by the previous Arbitral Tribunal) should stand.

**19.3** The reconstituted Arbitral Tribunal's ruling under this Article does not affect a party's right to object or appeal against any decision or award made before reconstitution, on any ground which arose before the Arbitral Tribunal made its decision or award.

## Article 20. Jurisdiction of Arbitral Tribunal

**20.1** The Arbitral Tribunal may rule on any matter that is relevant to its own jurisdiction, including but not limited to:

- (a) whether there is a valid arbitration agreement;
- (b) whether the Arbitral Tribunal is properly constituted; and
- (c) what matters have been submitted to arbitration in accordance with the arbitration agreement.

**20.2** Any party (the "Challenger") may challenge the Arbitral Tribunal's jurisdiction on the ground that the Arbitral Tribunal does not have, or has exceeded, its jurisdiction in relation to any matter.

**20.3** Any such jurisdictional objection must be made by the Challenger—

- (a) before, or as soon as is reasonably practicable after, the matter to which the objection relates is first raised in the arbitration, but in any event not later than the time the Challenger files any defence to the claim or counterclaim or any other submission on the merits of the dispute); or
- (b) where the Arbitral Tribunal considers that circumstances justify a later challenge, by such later time as it permits; but, in any case, not later than when the Arbitral Tribunal makes its final award.

**20.4** Subject to the parties' agreement otherwise, the Arbitral Tribunal may rule on an objection independently from dealing with the subject-matter of the dispute in the form of an award on jurisdiction only, or as part of an award on the merits, and the Arbitral Tribunal's decision as to which of these alternatives it shall adopt shall be final.

## Article 21. Consolidation of Proceedings and Joinder of Parties

**21.1** Any party to an arbitration commenced under the Rules may request COSAC to order the consolidation of the arbitration with any other arbitration commenced under the Rules ("Consolidation Order"), provided that at the time of such request, at least one of the following conditions are satisfied:

- (a) all the parties to the arbitrations have so agreed in writing;
- (b) the claims or disputes in question arise out of or in connection with the same arbitration agreement(s); or
- (c) the claims or disputes in question arise between the same parties or out of the same transaction or series of transactions and COSAC considers the arbitration agreements to be compatible.

**21.2** In making its determination as to whether to make a Consolidation Order, COSAC shall consider the views of all parties and all the circumstances of the case, including whether an Arbitral Tribunal has been appointed in either of the arbitrations and, if so, whether the same or different persons have been appointed.

**21.3** Any party to an arbitration commenced under the Rules may request the Arbitral Tribunal once formed, or if one has not been formed, by COSAC, to order the joinder of any other party ("Joinder Order"), provided the requesting party and the prospective party have both agreed in writing, and there has been no significant step taken in the proceedings beyond the filing of an Answer.

**21.4** In making its determination as to whether to make a Joinder Order, the Arbitral Tribunal and/or COSAC, shall consider the views of all parties and all circumstances of the case.

## Article 22. Data Protection and Information Security

**22.1** Any processing of personal data by the Centre and the Arbitral Tribunal is subject to applicable data protection legislation.

**22.2** As soon as practicable after it has been constituted, and having regard to (a) the ICCA-IBA Roadmap to Data Protection in International Arbitration and (b) the ICCA-NYC Bar-CPR Protocol on Cybersecurity in International Arbitration, the Arbitral Tribunal shall consider whether it is appropriate to adopt (and if so, to make directions in respect of):

- (a) any specific information security measures to protect the physical and electronic information shared in the arbitration; and
- (b) any means to address the processing of personal data produced or exchanged in the arbitration in light of applicable data protection or equivalent legislation.

## Article 23. Environmental Impact

**23.1** The parties, their counsel or other representatives, the Arbitral Tribunal and the Centre shall be mindful of the environmental impact of the arbitration, and in particular shall, at the commencement of proceedings, consider the application of Green Protocols as developed by The Campaign for Green Arbitration and as amended from time to time.

## Article 24. Party Representation

**24.1** A party may be represented in the arbitration by a lawyer or any other person.

**24.2** Each party shall ensure that the names of any legal or other representatives are included in the Request and/or Answer.

**24.3** If a party wishes either to change or introduce a legal or other representative after service of the Answer that party shall notify the Registrar, the Arbitral Tribunal and any other party as soon as reasonably practicable.

**24.4** Save in the case of an introduction or change of person at the same law firm or professional practice as previously notified, any such introduction or change of legal (or other) representative shall only be effective if the Arbitral Tribunal provides its written approval, which approval may be withheld only on the grounds that the Arbitral Tribunal reasonably considers that the introduction or change would give rise to justifiable doubts as to the impartiality of the Arbitral Tribunal or any member of the Arbitral Tribunal.

**24.5** The Arbitral Tribunal may at any time request any party to provide written evidence of the authority granted to any named legal or other representative.

## Article 25. Statements of Case

**25.1** The Arbitral Tribunal shall determine the format, manner and timing of the exchange and service of statements of case (pleadings), having regard to any agreement between the parties, and to any applicable law.

**25.2** Each party shall include any documents on which it wishes to rely with its statement of case and shall ensure that any statement of case so exchanged shall simultaneously be served on the Arbitral Tribunal.

## Article 26. Arbitral Tribunal's Powers: General

**26.1** The Arbitral Tribunal shall, subject to giving the parties a reasonable opportunity to state their views, have but not be limited to the following powers upon such terms as the Arbitral Tribunal may decide:

- (a) to direct the form, timing and manner of exchange of submissions and (subject to subparagraphs (d) and (e) below) evidence by the parties;

- (b) to accept (or refuse) any application to amend any formal pleading or submission (including a Request or Answer) submitted by a party, taking into account all the circumstances, including the promptness of the application, and the scope of the amendment(s) sought to be made by reference to the issues already before the Arbitral Tribunal for determination;
- (c) to appoint an expert or experts to assist the Arbitral Tribunal, provided that in any case the parties first agree in writing as to the identity, role, and level of fees and/or expenses of such person and that they shall be payable in the same manner as the Arbitral Tribunal members' fees and expenses;
- (d) to determine the extent, timing, manner and content of any process by which parties are required to produce to other parties documents or copies of documents or to produce original documents for inspection that are within the possession or control of a party (and for this purpose, a document is in a party's control if that party has the legal right to acquire the document or a copy of the document from a third party);
- (e) to make such directions as it sees fit for the timing and manner of presentation of fact and expert evidence, including the form of witness statements/expert reports, the length of any hearing and the length and sequencing of cross-examination and re-examination, and witness conferencing;
- (f) to determine the weight and materiality of any evidence submitted by any party in whatever form;
- (g) (if and insofar as any such permission is required) to permit any party to make any application to the competent court in respect of requiring any witness to attend the hearing to give evidence or produce documents;
- (h) insofar as the parties have not expressly or impliedly chosen the law applicable to any issue arising in the arbitration, to determine the law applicable to such issue.
- (i) to order the parties to disclose the existence of any third-party funding arrangements, including the third-party funder's economic interest in the outcome of the arbitral proceedings and to require parties to disclose any change in circumstances throughout the course of the arbitral proceedings;
- (j) to determine the stage at which any issues arising in the arbitration shall be decided upon and in what manner;
- (k) to determine any issue summarily including by making a final award on the issue without a hearing;
- (l) to determine in what manner any discrete legal or other costs and expenses arising in the arbitration shall be paid in relation to any issue which the Arbitral Tribunal determines;
- (m) to order any party to give security for the legal costs and expenses of any other party (and security for such proportion of the Arbitral Tribunal's incurred and anticipated fees and expenses as the Arbitral Tribunal thinks fit) in such manner and on such terms as the Arbitral Tribunal shall direct (although such security shall not be ordered merely on the basis that the party against whom such an order is sought is a foreign corporation or individual) and to dismiss any claim or



defence if the party ordered to provide such security fails to do so within such time as is ordered by the Arbitral Tribunal; and

- (n) when considering whether and if so to make any order as to costs and expenses other than in an award, to take into account all the circumstances, including the reasonableness or otherwise of any party's conduct, proportionality in relation both the amount in dispute and any other party's costs and expenses.

## **Article 27. Advance Payment for Costs**

- 27.1** The Registrar may direct the parties, in such proportions and at such times as it considers appropriate, to make one or more payments in order to secure payment of the Arbitration Costs under Article 34 ("Advance Payment for Costs"). Such payments by the parties may be applied by the Centre to pay any item of such Arbitration Costs (including the Centre's own fees and expenses) in accordance with the Rules. The filing fee paid by the Claimant is separate to the Claimant's share of the Advance Payment for Costs.
- 27.2** Once paid (and regardless of the identity of the paying party), the Advance Payment for Costs shall be disbursed or otherwise applied by the Centre in accordance with the Rules.
- 27.3** In the event that, at the conclusion of the arbitration, the Advance Payment for Costs exceeds the total amount of the Arbitration Costs under Article 34.1, the excess amount shall be transferred to the parties in such proportions as the parties may agree in writing or, failing such agreement, in the same proportions and to the same parties as the Advance Payment for Costs was paid, subject to any order of the Arbitral Tribunal.
- 27.4** The Centre will make reasonable attempts to contact the parties in order to arrange for the transfer of the excess amount, using the contact details provided to the Centre during the proceedings. If a response is not received from a party so contacted within 30 days, the Centre will provide that party with written notice of its intention to retain the excess amount. If no response is received within a further 60 days, the party will be deemed irrevocably to have waived any right to claim and/or receive the excess amount.
- 27.5** The Arbitral Tribunal should not proceed with the arbitration without having ascertained from the Registrar that the Centre is or will be in requisite funds as regards outstanding and future Arbitration Costs.
- 27.6** In the event that a party fails or refuses to make any payment on account of the Arbitration Costs as directed by the Registrar, the Registrar may direct the other party or parties to effect a further Advance Payment for Costs in an equivalent amount to allow the arbitration to proceed (subject to any order or award on Arbitration Costs).
- 27.7** In such circumstances, the party effecting the further Advance Payment for Costs may request the Arbitral Tribunal to make an order or award in order to recover that amount as a debt immediately due and payable to that party by the defaulting party, together with any interest.
- 27.8** The Arbitral Tribunal may order that any claiming, counterclaiming or cross-claiming party makes any such payment directed by the Registrar in full within such timescale as the Arbitral Tribunal considers appropriate.

**27.9** Failure by a claiming, counterclaiming or cross-claiming party to comply with such an order of the Arbitral Tribunal may be treated by the Arbitral Tribunal as a withdrawal from the arbitration of the claim, counterclaim or cross-claim respectively, thereby removing such claim, counterclaim or cross-claim (as the case may be) from the scope of the Arbitral Tribunal's jurisdiction under the Arbitration Agreement, subject to any terms decided by the Registrar or the Arbitral Tribunal as to the reinstatement of the claim, counterclaim or cross-claim in the event of subsequent payment by the claiming, counterclaiming or cross-claiming party. Such a withdrawal shall not preclude the claiming, counterclaiming or cross-claiming party from defending as a respondent any claim, counterclaim or cross-claim made by another party.

## **Article 28. Arbitral Tribunal's Power: the Award**

**28.1** The Arbitral Tribunal shall have the power:

- (a) to make a partial award or awards in relation to any discrete issues arising in the arbitration, and including any award in respect of any sum by way of an interim payment;
- (b) to make a provisional award in relation to any matter in respect of which the Arbitral Tribunal would have the power to grant a final award, which shall be binding upon the parties pending the Arbitral Tribunal's issue of its final award on the matter in question;
- (c) to make any award of a declaratory or injunctive nature;
- (d) order the rectification or reduction of any deed or other document (other than a decree or order of the court) to the extent permitted by the law governing the deed or document;
- (e) to order (in accordance with Article 34) that all or part of any party's legal or other costs and expenses be paid by any other party in relation to any issue which has been determined in that party's favour;
- (f) to order any party in any award to repay any other party such advances as the other party has made towards the Arbitral Tribunal's fees and expenses;
- (g) subject to any agreement between the parties, to award damages in any currency the Arbitral Tribunal considers fit, having regard to all the circumstances, including the currency of any contract between the parties;
- (h) to award any pre-award interest on the whole or part of any sum awarded by the Arbitral Tribunal, provided this is due and claimed pursuant to any relevant statutory or other enactment or pursuant to any agreement between the parties or otherwise;
- (i) to award any post-award interest on any sum or part of a sum awarded by the Arbitral Tribunal, providing that this is claimed by the party in whose favour the award is being made in relation to interest; and/or

- (j) to apply such interest type (simple or compound) and rate (as a percentage) as any such statutory or other enactment or the parties' agreement provides, or, failing such provision, as the Arbitral Tribunal considers fit in all the circumstances.

## Article 29. Form of the Award

- 29.1** Each original copy of the award made by the Arbitral Tribunal must contain the signatures of at least a majority of its members, or in the case of an Arbitral Tribunal consisting of a sole arbitrator, of the sole arbitrator.
- 29.2** Provided all parties agree, any arbitrator's signature will be treated for all purposes as valid if it represents the usual signature of that arbitrator, even if it is applied to or inserted in the award by any electronic means.
- 29.3** Before signing any award, the Arbitral Tribunal must first consult with the Registrar in relation to the following matters:
- (a) how many original copies are to be signed; and
  - (b) the date that should be placed upon the award.
- 29.4** The award shall be in writing and state:
- (a) the date on which it is made (by reference to the date it is to be received by the Centre for onward transmission to the parties);
  - (b) the reasons given for the conclusions reached in the award (unless otherwise agreed by the parties)
  - (c) whether the award is a unanimous award or a majority award;
  - (d) the Seat (usually expressed as a city and country) in which the arbitration is or has been proceeding.
- 29.5** Once all original copies of the award have been signed and dated in accordance with this Article, they shall be delivered immediately by the Arbitral Tribunal to the Centre for onward transmission to the parties.
- 29.6** The award should, except for in exceptional circumstances, be written and signed within three months of the date of the final hearing, or (if later) the date of the last authorised substantive written submission by any party.

## Article 30. Consent Awards

- 30.1** Should the parties notify the Arbitral Tribunal that they have finally settled their dispute and require an award recording the settlement terms (a "Consent Award"), the Arbitral Tribunal, shall, unless it has reasonable grounds for refusing (which it shall immediately communicate to the parties), proceed to prepare such Consent Award.
- 30.2** Any such Consent Award shall contain an express statement on its face that it is an award made at the parties' request and with their consent.

**30.3** A Consent Award need not contain, and may or may not include, a determination in relation to the costs of the arbitration, including the Arbitral Tribunal's and the Centre's fees and expenses.

**30.4** If the parties confirm that they do not require a Consent Award, on written confirmation by the parties to the Arbitral Tribunal and the Centre that they have reached a final settlement, the Arbitral Tribunal shall be discharged, their tenure over, and the arbitration proceedings shall stand as terminated, subject to payment by the parties of any the Arbitration Costs, as determined in accordance with Article 34 below.

## **Article 31. Right to Withhold Award**

**31.1** The Centre shall not send any copy, or transmit any electronic copy, of an award to the parties unless and until satisfied that it has sufficient funds with which to discharge all outstanding fees and expenses of the Arbitral Tribunal and those of the Centre.

**31.2** If, at the time of delivering the copies of the award to the Centre, it appears as though the Centre is not in sufficient funds with which to discharge all outstanding fees and expenses of the Arbitral Tribunal and the Centre, the Registrar shall write to the parties notifying them of the shortfall and indicating the amounts required to be deposited (and in what proportions) before the award can be released.

## **Article 32. Correction, Clarification and Interpretation of the Award**

**32.1** Within 28 days of the date of an award, the Arbitral Tribunal may correct any clerical, computational or typographical error, or any errors of similar nature contained in the award, provided it first notifies the parties of the errors, and provides the parties with a reasonable time within which to comment on its proposed correction(s).

**32.2** Once any such corrections are made pursuant to Article 32.1, the Arbitral Tribunal shall forward the corrected award to the Centre. Neither the Centre nor the Arbitral Tribunal shall be entitled to any fees or expenses consequent upon such corrections, i.e. if made by the Arbitral Tribunal upon its own initiative.

**32.3** Within 28 days of receipt of any award, any party may in writing request the Arbitral Tribunal to make any correction of the nature contained in Article 32.1, or may request the Arbitral Tribunal to clarify any ambiguity in, or provide its interpretation of any part of, the award.

**32.4** Upon receipt of any such request under Article 32.3, the Arbitral Tribunal shall decide within 7 days whether the request is justified, and upon such decision, shall grant any other party a reasonable time (not exceeding 28 days) to provide its written comments upon the request.

**32.5** Within 14 days of receipt of the comments from the other party (or the last such party) under Article 32.4, the Arbitral Tribunal shall provide its decision on the request to correct, clarify or interpret the award.

**32.6** If, after consulting the parties, the Arbitral Tribunal considers the request to be justified, it shall make the correction, clarification or interpretation by recording it in an addendum to the award. Such addendum will also address any issues of costs arising out of the request, provided the parties have been consulted on this issue. Any such addendum will be treated for all purposes (except insofar as relates to any appeal or challenge against the award) as though it were made on the same date as the unamended award.

**32.7** If, after consulting the parties, the Arbitral Tribunal does not consider the request to be justified it may nevertheless issue a formal addendum dealing with the request, which may record the request and its refusal, and addressing any issues of costs arising out of the request, after consulting the parties.

## **Article 33. Finality of Awards**

**33.1** Subject to Article 32, any awards made by an Arbitral Tribunal are final and binding on the parties.

**33.2** The parties agree to waive any rights to appeal or review to any other court, authority or dispute resolution body to the full extent allowed by law.

**33.3** The parties agree that they shall carry out any awards to their full extent without delay.

**33.4** Articles 33.2 and 33.3 shall be subject to any agreement between the parties to the contrary.

## **Article 34. Arbitration Costs and Legal Costs**

**34.1** The costs of the arbitration other than the legal or other expenses incurred by the parties themselves (the “Arbitration Costs”) shall be determined by COSAC in accordance with the Schedule of Fees. The parties shall be jointly and severally liable to the Centre and the Arbitral Tribunal for such Arbitration Costs.

**34.2** The Arbitral Tribunal shall specify by an order or award the amount of the Arbitration Costs determined by COSAC. The Arbitral Tribunal shall decide the proportions in which the parties shall bear such Arbitration Costs (in the absence of a final settlement of the parties’ dispute regarding liability for such costs). If the Arbitral Tribunal has decided that all or any part of the Arbitration Costs shall be borne by a party other than a party which has already covered such costs by way of a payment to the Centre under Article 27, the latter party shall have the right to recover the appropriate amount of Arbitration Costs from the former party.

**34.3** The Arbitral Tribunal shall also have the power to decide by an order or award that all or part of the legal or other expenses incurred by a party (the “Legal Costs”) be paid by another party. The Arbitral Tribunal shall decide the amount of such Legal Costs on such reasonable basis as it thinks appropriate. The Arbitral Tribunal shall not be required to apply the rates or procedures for assessing such costs practised by any competent court or other legal authority.

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**34.4** The Arbitral Tribunal shall make its decisions on both Arbitration Costs and Legal Costs on the general principle that costs should reflect the parties' relative success and failure in the award or arbitration or under different issues, except where it appears to the Arbitral Tribunal that in the circumstances the application of such a general principle would be inappropriate under the Arbitration Agreement or otherwise. The Arbitral Tribunal may also take into account the conduct of the parties and that of their authorised representatives in the arbitration, including any cooperation in facilitating the proceedings as to time and cost and any non-cooperation resulting in undue delay and unnecessary expense. Any decision on costs by the Arbitral Tribunal shall be made with reasons in the order or award containing such decision (unless it is a Consent Award).

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**34.5** If the arbitration is abandoned, suspended, withdrawn or concluded, by agreement or otherwise, before the final award is made, the parties shall remain jointly and severally liable to pay to the Centre and the Arbitral Tribunal the Arbitration Costs determined by COSAC.

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## **Article 35. Immunity of Arbitrators and the Centre**

**35.1** No arbitrator appointed under the Rules, nor any clerk or tribunal secretary appointed by the Arbitral Tribunal, nor the Centre, COSAC, Registrar nor any of its personnel acting on their behalf, shall be liable for anything done or omitted in the performance, or purported performance, of that person's or body's functions unless the act or omission was in bad faith.

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