

# BCDR-AAA draft arbitration rules 2016

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## **1 Scope**

- 1.1** Where parties have agreed in writing to arbitrate disputes under the rules of arbitration of the Bahrain Chamber for Dispute Resolution (the “Chamber”), or BCDR, or BCDR-AAA, or have provided for the arbitration of a dispute by the Bahrain Chamber for Dispute Resolution, or BCDR, or BCDR-AAA without designating particular rules, the arbitration shall take place in accordance with these rules, as they may have been amended by the Chamber to take effect before the date of commencement of the arbitration (the “Rules”). The Rules include the Fee Schedule as may be separately amended from time to time by the Chamber.
- 1.2** The Chamber shall be the administrator of such arbitrations.
- 1.3** These Rules govern the arbitration, provided that where any such rule is in conflict with any provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

## **2 Request for Arbitration**

- 2.1** A party wishing to initiate an arbitration under the Rules (if one, the “Claimant”; if more than one, each a “Claimant”) shall submit to the Chamber, and at the same time to all other parties to the arbitration (if one, the “Respondent”; if more than one, each a “Respondent”), a written Request for Arbitration (the “Request”).
- 2.2** The Request shall include, or be accompanied by:
- (a) the name, postal address, e-mail address, and facsimile and telephone number of each Claimant and of its legal representative, if any, and the name and postal address, and if and to the extent known, the e-mail address, and facsimile and telephone numbers of all other parties to the arbitration, and of their legal representatives;
  - (b) a copy of the arbitration agreement conforming to Article 1.1 (the “Arbitration Agreement”);
  - (c) a copy of any contract out of or in relation to which the dispute arises;
  - (d) a statement summarizing the nature and circumstances of the dispute;
  - (e) a statement summarizing the relief or remedy sought and the estimated monetary value of any claim;
  - (f) if the Arbitration Agreement, or any other written agreement, calls for

nomination of arbitrators by the parties, the full name, postal address, e-mail address and, if known, facsimile and telephone numbers of the arbitrator nominated by the Claimant;

(g) a statement as to any proposals, or agreement among the parties, as to the constitution of the arbitral tribunal, the seat of the arbitration, and the language(s) of the arbitration;

(h) the filing fee prescribed by the Fee Schedule (the “Filing Fee”); and

(i) confirmation that copies of the Request and all accompanying documents have been or are being submitted to all other parties, together with proof of the means of such submission.

**2.3** The Request may, but need not, be submitted to the Chamber using the Chamber’s online filing forms located at [www.bcdr-aaa.org](http://www.bcdr-aaa.org)

### **3 Date of commencement**

Provided always that the Chamber is *prima facie* satisfied that an arbitration agreement conforming to Article 1.1 may exist, the arbitration shall be deemed to have commenced on the date on which the Chamber receives the Request and the Filing Fee, and the Chamber shall advise all the parties accordingly, in writing.

### **4 Response to the Request**

**4.1** Within 30 days after the commencement of the arbitration, the Respondent shall submit to the Chamber, and at the same time to all other parties to the arbitration, a written Response to the Request (the “Response”).

**4.2** The Response shall include or be accompanied by:

(a) the name and postal address, e-mail address, and facsimile and telephone numbers of each Respondent, and of each Respondent’s legal representatives (if any);

(b) confirmation or denial, in full or in part, of any claim made by the Claimant in the Request;

(c) a statement summarizing the relief or remedy sought and the estimated monetary value of any counterclaim that the Respondent proposes to make, together with the Filing Fee prescribed by the Fee Schedule;

(d) if the Arbitration Agreement, or any other written agreement, calls for

nomination of arbitrators by the parties, the full name, postal address, e-mail address and, if known, facsimile and telephone numbers of the arbitrator nominated by the Respondent;

(e) any response to any statement made by the Claimant in the Request as to the constitution of the arbitral tribunal, the seat of the arbitration, and the language(s) of the arbitration; and

(f) confirmation that copies of the Response and all accompanying documents have been or are being submitted to all other parties, together with proof of the means of such submission.

**4.3** The Response may, but need not, be submitted to the Chamber using the Chamber's online filing forms located at [www.bcdr-aaa.org](http://www.bcdr-aaa.org)

**4.4** The Chamber may extend the time limit established in this Article for the submission of any Response if it considers such extension justified.

**4.5** Failure by a Respondent to submit a Response shall not prevent the arbitration from proceeding.

## **5 Written communications and time limits**

**5.1** Any written communication by any party (including its legal representatives), by the arbitral tribunal, or by the Chamber, to any or all of these may be delivered personally; by registered courier; by registered mail; or by e-mail, facsimile, or any other form of electronic communication that provides a record of its transmission.

**5.2** For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a written communication is received by the addressee. If the last day of such period is an official holiday or a non-business day at the place of the intended recipient, the period is extended until the first business day that follows. Official holidays and non-business days occurring during the running of the period of time are included in calculating the period.

**5.3** A written communication shall be treated as having complied with any time limit if it is sent, in accordance with the provisions of this Article, prior to or on the date of the expiry of the time-limit.

**5.4** Unless otherwise ordered by the arbitral tribunal, any written communication delivered to an address notified by any party for these purposes, or if no such notice has been given, to the last known address of such party, shall be treated as

having been received by that party.

**5.5** Once the arbitral tribunal has been appointed, the parties, including their legal representatives, may communicate in writing directly with the arbitral tribunal with simultaneous copies to all other parties and to the Chamber.

## **6 Number and nationality of arbitrators**

**6.1** The arbitral tribunal shall consist of one or three arbitrators. If the parties do not agree in writing on the number of arbitrators, one arbitrator shall be appointed unless the Chamber determines in its discretion that three arbitrators should be appointed because of the complexity of the case and any other circumstances of the dispute.

**6.2** Where the parties are of different nationalities, a person who has the nationality of any of the parties may be appointed as a sole or presiding arbitrator only with the written agreement of all the parties or, absent such agreement, if the Chamber so determines, taking account of all the circumstances of the dispute.

## **7 Appointment of arbitrators**

**7.1** Where a sole arbitrator is to be appointed, the parties may jointly nominate the arbitrator in writing, for appointment by the Chamber.

**7.2** If, within 10 days after the submission of the Response, or if no Response is submitted, within 10 days after the time for submission of a Response has elapsed, the parties have not jointly nominated an arbitrator:

(a) the Chamber shall, as soon as practicable, send to each party simultaneously an identical list containing the names of at least three arbitrators considered by the Chamber to be suitable for appointment;

(b) within 15 days after the receipt of the list, each party shall return the list to the Chamber after having struck out from the list the name(s) to which it objects and having ranked any remaining names in order of preference;

(c) after the expiry of the 15-day time limit, the Chamber shall, as soon as practicable, appoint a sole arbitrator based on the rankings of the arbitrators on the lists returned to it; and

(d) if any party fails to return the list within the prescribed 15 days, all arbitrators included in the original list shall be deemed to be acceptable to that party.

**7.3** If the appointment cannot for any reason be made in accordance with the procedure set out at Article 7.2, or if the Chamber determines that the procedure is not appropriate, taking account of all the circumstances of the dispute, the

Chamber shall, as soon as practicable, appoint a sole arbitrator of its choosing.

- 7.4** Where three arbitrators are to be appointed, and the Claimant has failed to nominate an arbitrator in accordance with Article 2.2(f), or the Respondent in accordance with Article 4.2(d), the Chamber shall select an arbitrator or arbitrators on behalf of the defaulting party or parties.
- 7.5** The parties may agree in writing on the method for nominating the presiding arbitrator, in which case that procedure will be followed.
- 7.6** If the parties do not agree on a method for the nomination of the presiding arbitrator, or if the nomination cannot for any reason be made in accordance with the agreed procedure, the presiding arbitrator shall be selected by the list procedure set out at Article 7.2, provided that if the Chamber determines that the list procedure is not appropriate, taking account of all the circumstances of the dispute, the selection will be made by the Chamber.
- 7.7** By whichever means the three arbitrators are selected, the Chamber shall appoint the arbitral tribunal as soon as practicable.
- 7.8** Where the dispute is to be referred to three arbitrators, and the parties have agreed in writing that each shall nominate an arbitrator and there are multiple Claimants or Respondents, the multiple parties, whether as Claimant or Respondent, shall each jointly nominate an arbitrator, failing which the Chamber shall appoint the arbitral tribunal without reference to any party's nomination.
- 7.9** When appointing an arbitrator, the Chamber shall consider the nature of the dispute, the applicable law, the seat of the arbitration, the language of the arbitration, the nationalities of the parties and of the prospective arbitrator, the prospective arbitrator's availability to conduct the arbitration, any relationships of the prospective arbitrator with the parties and any other arbitrators, and all other circumstances of the dispute.
- 7.10** The appointment of the arbitral tribunal shall be promptly confirmed by the Chamber to the parties in a written notice of appointment.

## **8 Impartiality and independence of arbitrators**

- 8.1** All arbitrators shall be and shall remain at all times impartial and independent of the parties, and no arbitrator shall act as advocate for any party.
- 8.2** No party or anyone acting on behalf of any party shall have any *ex parte* communication relating to the dispute with any candidate arbitrator, except to advise the candidate of the general nature of the dispute and to discuss the candidate's qualifications, availability, and impartiality and independence, or to discuss the suitability of candidates for nomination as presiding arbitrator where the parties or party-nominated arbitrators are to participate in that selection.
- 8.3** After the appointment of the arbitral tribunal, no party or anyone acting on behalf of any party shall have any *ex parte* communication with the arbitral tribunal or

any of its members.

- 8.4** Prior to accepting appointment, an arbitrator shall provide to the Chamber a curriculum vitae and shall sign a statement of independence in which the arbitrator shall disclose to the Chamber any circumstances that may give rise to justifiable doubts as to his or her impartiality or independence and shall confirm his or her availability to conduct the arbitration in timely fashion.
- 8.5** The Chamber shall either provide the arbitrator's declaration to the parties prior to the appointment of the arbitral tribunal, notifying a time limit for any comments thereon or shall, at its discretion, proceed with the appointment and provide the declaration at the time it notifies the parties of the appointment of the arbitral tribunal, without prejudice to any party's entitlement to challenge an arbitrator pursuant to Article 9.
- 8.6** If, at any stage during the arbitration, circumstances arise that may give rise to justifiable doubts as to an arbitrator's independence or impartiality, the arbitrator shall disclose such circumstances to the parties, to any other members of the arbitral tribunal and to the Chamber, without delay .
- 8.7** Disclosure by an arbitrator does not necessarily indicate belief by the arbitrator that the disclosed information does in fact give rise to justifiable doubts as to the arbitrator's impartiality or independence.

## **9 Challenge of an arbitrator**

- 9.1** An arbitrator may be challenged by a party if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, provided that, following the appointment of the arbitral tribunal, a party may only challenge an arbitrator nominated by it, or in whose appointment it has participated, for reasons of which it becomes aware after the appointment of the arbitral tribunal.
- 9.2** A party that intends to challenge an arbitrator shall submit to the Chamber, to all other parties and to the arbitral tribunal its written challenge, stating the facts and circumstances on which the challenge is made, within 15 days after the date on which it becomes aware of those facts and circumstances. A party that fails to challenge an arbitrator within these 15 days waives its right to make the challenge.
- 9.3** The appointment of an arbitrator who is challenged shall be revoked by the Chamber if the arbitrator resigns or if all parties agree in writing to the challenge. Neither case shall imply the acceptance of the validity of the challenge.
- 9.4** If within 15 days after the date of receipt of the challenge all parties do not agree to the challenge or the challenged arbitrator does not resign, the Chamber shall determine the challenge, having requested, if it considers it to be necessary and appropriate, further information on the challenge from the challenged arbitrator, the parties and any other members of the arbitral tribunal.



**9.5** The Chamber's decision, which shall be in writing and shall include reasons, shall be transmitted to the challenged arbitrator, to the parties and to any other members of the arbitral tribunal.

**9.6** If the appointment of an arbitrator is revoked as a consequence of a challenge, the Chamber shall determine whether any fees and expenses should be paid to the arbitrator for his or her services.

**9.7** The costs of any challenge shall form part of the costs of the arbitration for the purposes of Article 33.

## **10 Replacement of an arbitrator**

**10.1** The appointment of an arbitrator shall be revoked by the Chamber and that arbitrator shall be replaced if:

(a) an arbitrator tenders his or her resignation and the Chamber accepts the resignation;

(b) an arbitrator is to be removed following a challenge;

(c) all the parties request the Chamber in writing, stating reasons, that the appointment be revoked;

(d) two arbitrators on a three-member arbitral tribunal give notice, pursuant to Article 12.5, of their decision not to continue the arbitration without the participation of the third member of the arbitral tribunal, and the absent arbitrator is to be replaced; or

(e) the Chamber on its own initiative determines that an arbitrator is no longer able to fulfil his or her functions, is not acting independently or impartially towards a party, or is not participating in the arbitration in accordance with the arbitral tribunal's duty under Article 13.2.

**10.2** When the Chamber is considering replacing an arbitrator pursuant to Article 10.1(e), it shall invite that arbitrator, the parties and any other members of the arbitral tribunal to provide comments in writing within a reasonable period of time as specified by the Chamber.

**10.3** When an arbitrator is to be replaced pursuant to Article 10.1, or in the case of the death of an arbitrator, the Chamber may but is not required to follow the original nominating procedure.

**10.4** Once the arbitral tribunal has been reconstituted, the proceedings shall be resumed at the stage at which the replaced arbitrator ceased performing his or her functions, unless the arbitral tribunal decides otherwise after giving the parties a reasonable opportunity to comment.

## **11 Emergency measures of protection**

- 11.1** At any time concurrent with or following submission of a Request, and prior to the appointment of the arbitral tribunal, any party may apply in writing to the Chamber, with simultaneous copy to all other parties, for the appointment of an emergency arbitrator to grant emergency relief, setting out the nature of the relief sought; the reasons why such relief is required on an emergency basis; and the legal basis of the applicant party's entitlement to such relief. Such application may be made by any of the means set out in Article 5.1 and shall include a statement certifying that all other parties have been notified of the application.
- 11.2** Any such application shall be accompanied by the Additional Filing Fee prescribed by the Fee Schedule, without which the application shall be treated as not having been received.
- 11.3** Subject to Articles 3, and 11.1 and 11.2, within two business days following receipt of an application for emergency relief, or as soon as practicable thereafter, the Chamber shall appoint a single emergency arbitrator to consider the application.
- 11.4** Prior to accepting appointment, a prospective emergency arbitrator shall disclose to the Chamber any circumstances that may give rise to justifiable doubts as to the impartiality or independence of the emergency arbitrator. In the event any such circumstances are disclosed, the Chamber shall not proceed with the appointment, but shall appoint an arbitrator who knows of no such circumstances. If, notwithstanding the above, a party wishes to challenge the appointment of the emergency arbitrator, such challenge shall be made within one business day of the communication by the Chamber to the parties of the appointment of the emergency arbitrator, and the challenge shall be determined by the Chamber and notified to the parties in writing, within two additional working days, or as soon as practicable thereafter.
- 11.5** The emergency arbitrator may conduct the emergency proceedings as he or she considers suitable to the nature and circumstances of the application, and shall, as soon as possible, and in any event within two business days after appointment, establish, and communicate to the parties in writing, a schedule for the determination of the application for emergency relief. Such schedule shall provide a reasonable opportunity to all parties to be heard on the application, and may provide for an oral hearing, in person or by telephone or video conference; and/or for written submissions.
- 11.6** The emergency arbitrator shall have the authority vested in the arbitral tribunal under Article 24, including the authority to rule on his or her own jurisdiction, and may rule on any dispute concerning the existence, validity or applicability of this Article.

- 11.7** The emergency arbitrator shall have the power to order or award any interim or conservatory measure that he or she deems necessary, including injunctive relief and measures for the protection or conservation of property. Any such measure may take the form of an interim award or of an order, either of which shall include reasons. Any interim award or order shall have the same effect as an interim measure made pursuant to Article 23 and shall be binding on the parties when rendered. The parties undertake to comply with any such interim award or order without delay.
- 11.8** The emergency arbitrator shall decide the application for emergency measures as soon as practicable, but no later than 10 days after his or her appointment, unless this time limit is extended by written agreement of all parties, or, on the application of the emergency arbitrator (giving reasons for the extension requested) by the Chamber.
- 11.9** An order or award of the emergency arbitrator may be made conditional upon the provision of appropriate security by the party applying for emergency relief.
- 11.10** The signed order or award of the emergency arbitrator shall be transmitted by the emergency arbitrator to the Chamber, which shall communicate the order or award to the parties as soon as practicable.
- 11.11** The emergency arbitrator shall have no further power to act after the arbitral tribunal has been appointed.
- 11.12** An application for interim measures made by a party to a judicial authority shall not be deemed incompatible with this Article or with the Arbitration Agreement, or a waiver of the right to arbitrate.
- 11.13** The costs associated with any application for emergency relief shall initially be apportioned by the emergency arbitrator, subject to the power of the arbitral tribunal to determine finally the apportionment of such costs in an award.
- 11.14** Once the arbitral tribunal has been appointed, the arbitral tribunal may confirm, reconsider, modify or vacate the interim award or order for emergency relief issued by the emergency arbitrator.
- 11.15** The emergency arbitrator may not serve as a member of the arbitral tribunal.

## **12 Majority power to continue**

- 12.1** If an arbitrator fails without good cause, or refuses, to participate in the arbitration, the other arbitrators shall have the power to continue the arbitration, including making an award, notwithstanding the failure of the absent arbitrator to participate, provided that the reason for the decision to proceed in the absence of one arbitrator shall be stated in any award of the remaining arbitrators.

**12.2** In determining whether to continue the arbitration without the participation of an arbitrator, the participating arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the absent arbitrator for his or her non-participation, the possible effect on the recognition and enforcement of any award rendered by the remaining arbitrators, and such other matters as they consider appropriate in the circumstances of the case.

**12.3** In the event that the participating arbitrators decide to proceed without a non-participating arbitrator, they shall give written notice, with reasons, to the Chamber, to all the parties, and to the non-participating arbitrator.

**12.4** The participating arbitrators shall not proceed without the non-participating arbitrator without the written approval of the Chamber. Absent such approval, the Chamber shall declare the office of the non-participating arbitrator vacant, and a replacement arbitrator shall be appointed pursuant to the provisions of Article 10.

**12.5** In the event that the remaining arbitrators determine at any time not to continue the arbitration without the participation of the absent arbitrator, they shall give written notice to the Chamber and to all parties of this decision, and the Chamber shall declare the office of the non-participating arbitrator vacant, and a replacement arbitrator shall be appointed pursuant to the provisions of Article 10.

### **13 Conduct of the arbitration**

**13.1** Subject to these Rules, the arbitral tribunal may conduct the arbitration in whatever manner it considers appropriate, including making decisions on preliminary issues and bifurcation of the proceedings, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

**13.2** The arbitral tribunal shall conduct the proceedings with a view to expediting the resolution of the dispute, avoiding unnecessary delay and expense.

**13.3** The arbitral tribunal shall, promptly after being appointed, conduct a preliminary conference with the parties for the purpose of organizing, scheduling, and agreeing to procedures, including the setting of deadlines for any submissions by the parties. In establishing procedures for the case, the arbitral tribunal and the parties may consider how technology, including electronic communications, could be used to increase the efficiency and economy of the proceedings.

**13.4** The parties shall make every effort to avoid unnecessary delay and expense in the arbitration. The arbitral tribunal may allocate costs, draw adverse inferences, and take such additional steps as may be necessary to protect the efficiency and integrity of the arbitration.

## **14 Further written statements**

**14.1** Subject to any alternative written agreement between all the parties, or alternative directions of the arbitral tribunal, the parties shall submit the following further written statements in accordance with the timetable set out in this Article.

**14.2** Within 30 days after receipt by the Claimant of the written notification of the appointment of the arbitral tribunal by the Chamber, the Claimant shall:

(a) submit to all other parties and to the arbitral tribunal, with copy to the Chamber, a Statement of Claim, setting out in detail the remedies sought and the amount of any monetary claim, together with the factual and legal basis for its entitlement to such remedies, and accompanied by all documents essential to its claim; or

(b) give notice in writing to all other parties and to the arbitral tribunal that the Request shall stand as its Statement of Claim.

**14.3** Within 30 days after receipt of the Claimant's Statement of Claim, or notice that the Request shall stand as the Statement of Claim, the Respondent shall:

(a) submit to all other parties and to the arbitral tribunal, with copy to the Chamber, a Statement of Defense, and Counterclaim (if any), setting out in detail its defense to the claim, and, in the case of any counterclaim, the remedies sought and the amount of any monetary claim, together with the factual and legal basis for its defense and for its entitlement to any remedies counterclaimed, and in either case accompanied by all documents essential to its defense and any counterclaim; or

(b) give notice in writing to all other parties and to the arbitral tribunal that the Response to the Request shall stand as its Statement of Defense, and its Counterclaim (if any).

**14.4** Within 30 days after receipt of the Respondent's Statement of Defense, and Counterclaim (if any), or notice that the Response to the Request shall stand as the Statement of Defense, and Counterclaim (if any), the Claimant shall submit to all other parties and to the arbitral tribunal, with copy to the Chamber, a Statement of Reply to the Statement of Defense and, if applicable, a Statement of Defense to Counterclaim; accompanied by all documents essential to its reply and defense.

**14.5** Within 30 days after receipt of the Claimant's Statement of Reply, and Defense to Counterclaim (if any), the Respondent shall submit to all other parties and to the arbitral tribunal, with copy to the Chamber, a Statement of Rejoinder to the Statement of Reply and, if applicable, a Statement of Reply to the Defense to Counterclaim, together with all documents essential to this reply.

**14.6** Within 30 days after receipt of the Respondent's Statement of Rejoinder, and Reply to the Defense to Counterclaim (if any), the Claimant shall submit to all

other parties and to the arbitral tribunal, with copy to the Chamber, a Statement of Rejoinder to the Statement of Reply to the Defense to Counterclaim, together with all documents essential to this rejoinder.

**14.7** If the Respondent fails to submit a Statement of Defense, or the Claimant a Statement of Defense to Counterclaim, or if any party fails to present its case as set out in this Article, or as otherwise directed by the arbitral tribunal, the arbitral tribunal may nonetheless proceed with the arbitration, including the making of an award or awards.

## **15 Summary determination**

**15.1** The arbitral tribunal shall have the power, on the written application of a party (with simultaneous copy to all other parties and to the Chamber), to determine on a summary basis any legal or factual issue considered by the applicant party to be material to the outcome of the arbitration

**15.2** The application shall set out the issue or issues asserted to be suitable for summary determination and the specific grounds advanced for such assertion.

**15.3** The arbitral tribunal shall give all other parties to the arbitration a reasonable opportunity to respond to the application, and shall notify the parties of any procedural steps it deems appropriate to its determination, which it shall issue in the form of an order or an award as soon as practicable after the completion of the last of the procedural steps that it has directed.

## **16 Place of arbitration**

**16.1** The parties may agree in writing on the place of arbitration. If they do not agree, the place of arbitration may initially be determined by the Chamber, prior to the appointment of the arbitral tribunal, subject to the power of the arbitral tribunal, once appointed, finally to determine the place of arbitration.

**16.2** The arbitral tribunal may meet at any place it deems appropriate for any purpose, including to conduct hearings, hold conferences, hear witnesses, inspect property or documents, or deliberate, and, if done elsewhere than the place of arbitration, the arbitration shall be deemed conducted at the place of arbitration and any award shall be deemed made at the place of arbitration.

## **17 Language of arbitration**

**17.1** The parties may agree in writing on the language or languages of the arbitration. If they do not agree, the language or languages of the arbitration shall, unless the arbitral tribunal determines otherwise, be the language, languages or prevailing language of the Arbitration Agreement.

**17.2** The arbitral tribunal may order that any documents delivered in another language

shall be accompanied by a translation into the language(s) of the arbitration.

## **18 Party representation**

**18.1** Any party may be represented in the arbitration by any legal representative whose full name, postal address, e-mail address, and telephone number have been notified in writing to the Chamber, to all other parties, and (once appointed) to the arbitral tribunal, provided that there shall be no addition to any party's legal representatives following the appointment of the arbitral tribunal without the prior written approval of the arbitral tribunal.

**18.2** The arbitral tribunal may decline to approve an addition to any party's legal representatives if, on proper disclosure, a relationship exists between the proposed additional legal representative and any member of the arbitral tribunal that would create a conflict of interests jeopardizing the composition of the arbitral tribunal or the integrity of the proceedings.

**18.3** The Chamber and, once appointed, the arbitral tribunal may at any time require written proof of the authority of any named legal representative.

**18.4** Every party shall require its legal representatives to agree that they shall not:

(a) engage in any *ex parte* communication with any member of the arbitral tribunal;

(b) knowingly make any false statement to the arbitral tribunal;

(c) knowingly submit any false witness evidence to the arbitral tribunal, nor encourage or assist any witness to give false evidence;

(d) suppress or conceal any document that the party instructing that legal representative has undertaken, or has been ordered by the arbitral tribunal, to produce; or

(e) otherwise conduct themselves in a manner likely or calculated to obstruct, or jeopardize the integrity of the arbitral proceedings, or to create unnecessary delay or expense.

**18.5** The parties shall confirm to the arbitral tribunal that their legal representatives have so agreed.

**18.6** If the arbitral tribunal, having given the parties a reasonable opportunity to express their views, determines that any legal representative has breached any of

the rules set out at Article 18.4, the arbitral tribunal may:

- (a) issue a written admonition to the legal representative, including a warning as to his or her future conduct in the arbitration;
- (b) draw such inferences as the arbitral tribunal may consider appropriate in considering the evidence or statements relied upon by the legal representative;
- (c) consider any effect that the actions of the legal representative should have on the apportionment of the costs of the arbitration, including the parties' legal costs; and
- (d) take any other measures that the arbitral tribunal considers appropriate to preserve the fairness and integrity of the arbitration.

**18.7** In determining whether to exercise any of the sanctions available under Article 18.6, the arbitral tribunal shall take into account the nature and seriousness of the breach; the potential impact of the exercise of the sanction on the rights of the parties, and on the enforceability of any award; and such other matters as it considers appropriate in the circumstances of the case.

**18.8** The provisions of this Article do not displace any applicable mandatory laws or professional or disciplinary rules.

## **19 Hearings and witnesses**

**19.1** The arbitral tribunal shall give the parties reasonable notice of the date, time, and place of any oral hearing.

**19.2** At least 15 days before the hearing, each party shall give the arbitral tribunal and the other parties the name and address of any witness it intends to present, the subject of the witness's testimony, and the language in which such witness will give his or her testimony.

**19.3** The arbitral tribunal shall determine the manner in which witnesses are examined and who shall be present during witness examination.

**19.4** Unless otherwise agreed by the parties or directed by the arbitral tribunal, evidence of witnesses may be presented in the form of written statements signed by them.

**19.5** In accordance with a schedule set by the arbitral tribunal, each party shall notify the arbitral tribunal and the other parties of the names of any witnesses who have



presented a witness statement whom it wishes to examine.

**19.6** The arbitral tribunal may require any witness to appear at a hearing. If a witness whose appearance has been requested fails to appear without valid excuse as determined by the arbitral tribunal, the arbitral tribunal may disregard any written statement of that witness.

**19.7** The arbitral tribunal may direct that witnesses be examined through means that do not require their physical presence.

**19.8** The arbitral tribunal may direct the order of proof, exclude irrelevant testimony or other evidence, and direct the parties to focus their presentations on issues whose resolution could dispose of all or part of the case.

**19.9** Hearings are private unless the parties agree otherwise or the law provides to the contrary.

**19.10** If a party, duly notified in accordance with Article 19.1, fails to appear at a hearing without showing sufficient cause for such failure to the satisfaction of the arbitral tribunal, the arbitral tribunal may proceed with the hearing.

## **20 Exchange of information**

**20.1** The arbitral tribunal shall manage the exchange of information between the parties with a view to maintaining efficiency and economy, and at any time during the proceedings, the arbitral tribunal may order the parties to produce documents, exhibits, or other evidence it deems necessary or appropriate.

**20.2** The parties may provide the arbitral tribunal with their views on the appropriate level of information exchange, but the arbitral tribunal retains final authority in this regard.

**20.3** The parties shall exchange all documents upon which each intends to rely on a schedule set by the arbitral tribunal, insofar as these have not been submitted in accordance with Article 14.

**20.4** The arbitral tribunal may, upon written application, require a party to make available to all other parties documents in that party's possession not otherwise available to the party seeking the documents, that are reasonably believed to exist and to be relevant and material to the outcome of the arbitration. Requests for documents shall contain a description of specific documents or classes of documents, along with an explanation of their relevance and materiality to the outcome of the arbitration.

- 20.5** The arbitral tribunal may make any exchange of information that is subject to claims of commercial or technical confidentiality conditional upon appropriate measures to protect such confidentiality.
- 20.6** When documents to be exchanged are maintained in electronic form, the party in possession of such documents may make them available in the form most convenient and economical for it (including paper copies), unless the arbitral tribunal determines, on written application, that there is a compelling need for access to the documents in a different form. Requests for documents maintained in electronic form should be narrowly focused and structured to make searching for them as economical as possible as to time and cost.
- 20.7** The arbitral tribunal may, on written application, require a party to permit inspection on reasonable notice of relevant premises or objects.
- 20.8** In resolving any dispute about pre-hearing exchanges of information, the arbitral tribunal shall require a requesting party to justify the time and expense that its request may involve and may make granting such a request conditional upon the payment of part or all of the cost of producing the information by the party seeking the information. The arbitral tribunal may also allocate the costs of providing information among the parties, either in an interim order or in an award.
- 20.9** Documents or information submitted to the arbitral tribunal by one party shall at the same time be transmitted by that party to all parties and, unless otherwise instructed by the Chamber, to the Chamber.
- 20.10** The arbitral tribunal shall determine the admissibility, relevance, materiality, and weight of any evidence.
- 20.11** In the event a party fails to comply with an order for information exchange, the arbitral tribunal may draw adverse inferences and may take such failure into account in allocating costs.

## **21 Privilege**

The arbitral tribunal shall take into account applicable principles of privilege, such as those involving the confidentiality of communications between a lawyer and client. When the parties, their counsel, or their documents would be subject under applicable law to different rules of privilege, the arbitral tribunal should, to the extent possible, apply the same rule to all parties, giving preference to the rule that provides the highest level of protection.

## **22 Tribunal-appointed experts**

**22.1** The arbitral tribunal, after consultation with the parties, may appoint one or more independent experts to report to the arbitral tribunal, in writing, on issues designated by the arbitral tribunal and to be communicated to the parties.

**22.2** The parties shall provide such expert with any relevant information or produce for inspection any relevant documents or goods that the expert may require. Any dispute between a party and the expert as to the relevance of the requested information or goods shall be referred to the arbitral tribunal for determination.

**22.3** Upon receipt of an expert's report, the arbitral tribunal shall send a copy of the report to all parties and shall give the parties an opportunity to express, in writing, their opinion of the report. A party may examine any document on which the expert has relied in such report.

**22.4** At the request of any party, the arbitral tribunal shall give the parties an opportunity to question the expert at a hearing, at which the parties may present expert witnesses to testify on the points at issue.

## **23 Interim measures of protection**

**23.1** On the written application of any party, the arbitral tribunal may order or award any interim or conservatory measures it deems necessary, including injunctive relief and measures for the protection or conservation of property.

**23.2** Such interim measures may take the form of an interim order or award, either of which shall include reasons. Any such order or award may be made conditional on the provision by the applicant party of security for the costs of the application on such terms and in such form as the arbitral tribunal deems appropriate.

**23.3** The arbitral tribunal may in its discretion allocate costs associated with applications for interim relief in any interim order or award.

**23.4** An application for emergency relief prior to the appointment of the arbitral tribunal may be made as provided for in Article 11.

**23.5** An application for interim measures made by a party to a judicial authority shall not be deemed incompatible with this Article, or with the Arbitration Agreement, or a waiver of the right to arbitrate.

## **24 Arbitral jurisdiction**

**24.1** The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, scope, or validity of the Arbitration Agreement, or with respect to whether all of the claims and counterclaims made in the arbitration may be determined in a single arbitration.

**24.2** The arbitral tribunal shall have the power to determine the existence or validity of a contract of which the Arbitration Agreement forms a part. Such Arbitration Agreement shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not for that reason alone render invalid the Arbitration Agreement.

**24.3** A party shall raise an objection to arbitral jurisdiction no later than the time that the Statement of Defense is due if the objection relates to a claim, and no later than the time that the Statement of Defense to Counterclaim is due if the objection relates to a counterclaim. The arbitral tribunal has the power to extend these time limits and may rule on any objection under this Article as a preliminary matter or as part of the final award.

**24.4** Subject to Article 3, issues regarding arbitral jurisdiction raised prior to the appointment of the arbitral tribunal shall not preclude the Chamber from proceeding with administration and shall be referred to the arbitral tribunal, once appointed, for determination.

## **25 Joinder**

**25.1** At any time following the Chamber's notice of the commencement of the arbitration pursuant to Article 3, and before the appointment of the arbitral tribunal:

(a) a party wishing to join an additional party to the arbitration shall submit to the Chamber, and at the same time to all other parties to the arbitration and to the additional party, a written request for arbitration against the additional party (the "Request for Joinder"), including or accompanied by all the items prescribed for a Request by Article 2.2, and stating expressly its wish that the additional party be joined in the arbitration; and

(b) the time limit, form and contents of the response to the Request for Joinder (the "Response to Request for Joinder") shall be as prescribed for a Response by Article 4.

**25.2** The Chamber shall join the additional party to the existing arbitration, provided that no additional party shall be joined pursuant to Article 25.1 unless the Chamber is *prima facie* satisfied that an arbitration agreement conforming to Article 1.1 may exist between all the parties, including the additional party.

**25.3** At any time following the appointment of the arbitral tribunal, a party wishing to join an additional party to the arbitration shall proceed in the manner prescribed by Article 25.1(a), provided always that:

(a) the additional party shall not be joined after the appointment of the arbitral tribunal unless all parties to the arbitration and the additional party so agree in writing, and further agree that the additional party shall waive any right to participate in the selection of the arbitral tribunal that it would or might have had, had it been joined prior to the appointment of the arbitral tribunal;

(b) the arbitral tribunal shall, after consultation with the parties, determine in its sole discretion whether the additional party should be joined, taking into account the stage of the arbitration; whether joinder would serve the interests of justice and efficiency; and such other matters as it considers appropriate in the circumstances of the case; and

(c) the arbitral tribunal, if it permits joinder, shall determine the time, form and contents of any Response to the Request for Joinder.

**25.4** If joined, the additional party shall be a party to the arbitration for all purposes.

**25.5** A Request for Joinder and a Response to Request for Joinder may, but need not, be submitted to the Chamber using the Chamber's online filing forms located at [www.bcdr-aaa.org](http://www.bcdr-aaa.org)

## **26 Consolidation**

**26.1** If two or more arbitrations subject to these Rules are commenced pursuant to the same arbitration agreement and between the same parties, the Chamber may, in its discretion and after consultation with the parties, consolidate the arbitrations into a single arbitration subject to these Rules, provided that no arbitral tribunal has yet been appointed in any of the arbitrations to be consolidated.

**26.2** Following the appointment of the arbitral tribunal, the arbitral tribunal shall, on the application of any party, and having consulted all the parties, have the power to consolidate two or more arbitrations commenced under these Rules into a single arbitration, provided that no arbitral tribunal has been appointed in the other arbitration or arbitrations, or, if appointed, is the same arbitral tribunal; and

(a) all parties to the arbitrations to be consolidated have agreed in writing to consolidation; or

(b) all claims and counterclaims in the arbitrations are made under the same arbitration agreement; or

(c) if the claims and counterclaims in the arbitrations are made under more than one arbitration agreement, the arbitrations involve the same parties, and the disputes in the arbitrations arise in connection with the same legal relationship, and the arbitral tribunal determines that the arbitration agreements are compatible.

**26.3** In determining whether to consolidate, the arbitral tribunal shall take into account the stage of the arbitrations; whether the consolidation of the arbitrations would serve the interests of justice and efficiency; and such other matters as it considers appropriate in the circumstances of the case.

**26.4** When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed in writing by all parties or the arbitral tribunal determines otherwise.

## **27 Deposits**

**27.1** The Chamber shall from time to time during the arbitration direct the parties to deposit appropriate amounts as an advance for the costs of the arbitration, other than the parties' own legal and other costs.

**27.2** If the deposits requested are not paid promptly and in full, the Chamber shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the proceedings. In the event of non-payment prior to the appointment of the arbitral tribunal, the Chamber may suspend or terminate the proceedings.

**27.3** Failure by a party asserting a claim or counterclaim to pay the required deposits may be deemed by the arbitral tribunal a withdrawal of the claim or counterclaim.

**27.4** After the final award has been made, the Chamber shall render an accounting to the parties for the deposits received and shall return any unexpended balance to the parties in the proportions in which the deposits were paid.

## **28 Fees and expenses of the arbitral tribunal**

**28.1** The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the time spent by the arbitrators, the size and complexity of the case, and any other relevant circumstances, and shall conform to the Fee Schedule.

**28.2** As soon as practicable after the commencement of the arbitration, the Chamber shall designate an appropriate daily or hourly rate in consultation with the arbitrators, and in conformity with the Fee Schedule.

**28.3** Any dispute regarding the fees and expenses of the arbitral tribunal shall be determined by the Chamber.

**29** **Applicable law and remedies**

**29.1** The arbitral tribunal shall apply the rules of law agreed by the parties as applicable to the substance of the dispute. Failing such agreement, the arbitral tribunal shall apply the rules of law it determines to be appropriate.

**29.2** In arbitrations involving the application of contracts, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.

**29.3** The arbitral tribunal shall not decide any dispute as *amiable compositeur* or *ex aequo et bono* unless the parties have expressly authorized it to do so.

**29.4** A monetary award shall be in the currency or currencies of the contract unless the arbitral tribunal considers another currency more appropriate.

**30** **Close of proceedings**

**30.1** Following the last submissions, written or oral, made in accordance with the procedural timetable directed by the arbitral tribunal, the arbitral tribunal shall ask the parties if they have any further submissions. Upon receiving negative replies, or if satisfied that the record is complete, the arbitral tribunal shall declare the arbitral proceedings closed, save for the rendering of the final award.

**30.2** The arbitral tribunal in its discretion, on its own motion, or upon written application of a party, may reopen the arbitral proceedings at any time before the award is made.

**31** **Awards, orders, decisions and rulings**

**31.1** In addition to making a final award, the arbitral tribunal may make interim, interlocutory, or partial awards, orders, decisions, and rulings.

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

**31.3** When the parties or the arbitral tribunal so authorize, the presiding arbitrator may make orders, decisions, or rulings on questions of procedure, including exchanges of information, alone, subject to revision by the arbitral tribunal.

**32** **Time, form and effect of award**

- 32.1** The arbitral tribunal shall make every effort to deliberate and issue its final award as soon as possible after the close of proceedings, and unless otherwise agreed by the parties, specified by law, or determined by the Chamber, the final award shall be made no later than 60 days from the date of the close of proceedings.
- 32.2** Awards shall be made in writing, and the arbitral tribunal shall state the reasons upon which an award is based, unless the parties have agreed in writing that no reasons need be given.
- 32.3** An award shall be signed by the arbitral tribunal and shall state the date on which the award was made and the place of arbitration pursuant to Article 16. Where there is more than one arbitrator and any of them fails to sign an award, the award shall include or be accompanied by a statement of the reason for the absence of such signature.
- 32.4** Awards shall be final and binding on the parties, who shall carry out any award without delay and, absent agreement otherwise, waive irrevocably their right to any form of appeal, review, or recourse to any court or other judicial authority, insofar as such waiver can validly be made.
- 32.5** The signed award shall be transmitted by the arbitral tribunal to the Chamber, which shall communicate the award to the parties as soon as practicable.
- 32.6** If the applicable law requires an award to be filed or registered, the arbitral tribunal shall cause such requirement to be satisfied. It is the responsibility of the parties to bring such requirements or any other procedural requirements of the place of arbitration concerning an award to the attention of the arbitral tribunal.

### **33 Costs of arbitration**

- 33.1** The arbitral tribunal shall fix the costs of the arbitration in its final award or, if it deems appropriate, in any other order or award. The arbitral tribunal may allocate such costs among the parties if it determines that allocation is reasonable, taking into account the circumstances of the case and any matter prescribed by these Rules that may affect such allocation.
- 33.2** Such costs may include:
- (a) the fees and expenses of the arbitrators;
  - (b) the costs of assistance required by the arbitral tribunal, including its experts;
  - (c) the fees and expenses of the Chamber;



- (d) the reasonable legal and other costs incurred by the parties;
- (e) any costs incurred in connection with a notice for interim or emergency relief pursuant to Articles 11 or 23;
- (f) any costs incurred in connection with an application for joinder or consolidation pursuant to Articles 25 and 26; and
- (g) any costs associated with the exchange of information pursuant to Article 20.

### **34 Interpretation or correction of the award**

**34.1** Within 30 days after the receipt of an award, any party, with notice to the other party, may request the arbitral tribunal to interpret the award or correct any clerical, typographical, or computational errors or make an additional award as to claims or counterclaims presented in the proceedings but omitted from the award.

**34.2** If the arbitral tribunal considers such a request justified after considering the contentions of the parties, it shall comply with such request within 30 days after receipt of the parties' last submissions in respect of the requested interpretation, correction, or additional award. Any interpretation, correction, or additional award made by the arbitral tribunal shall be in writing and shall include reasons and shall form part of the award.

**34.3** The arbitral tribunal on its own initiative may, within 30 days of the date of the award, correct any clerical, typographical, or computational errors or make an additional award as to claims presented in the proceedings but omitted from the award.

**34.4** The parties shall be responsible for all costs associated with any request for interpretation, correction, or an additional award, and the arbitral tribunal may allocate such costs.

### **35 Settlement and other reasons for termination**

**35.1** If the parties settle the dispute before a final award is made, the arbitral tribunal shall terminate the arbitration and, if requested by all parties, may record the settlement in the form of a consent award, in writing, on agreed terms, and stating that the award is made by consent. The arbitral tribunal is not obliged to give reasons for such award.

**35.2** If continuation of the arbitration becomes unnecessary or impossible for any other

reason, the arbitral tribunal shall inform the parties of its intention to terminate the arbitration. The arbitral tribunal shall thereafter issue an order terminating the arbitration, unless a party raises justifiable grounds for objection.

**35.3** If the arbitration is discontinued for any reason before a final award is made, the parties shall remain jointly and severally liable for the costs of arbitration specified in Articles 33.2(a); (b); (c); (e); (f); and (g), until such costs have been paid in full.

### **36 Waiver**

A party who knows of any non-compliance with any provision or requirement of the Rules or the Arbitration Agreement, and proceeds with the arbitration without promptly stating its objections in writing to the Chamber (before the appointment of the arbitral tribunal), or the arbitral tribunal (after its appointment), waives the right to object.

### **37 Confidentiality**

**37.1** Confidential information disclosed during the arbitration by the parties or by witnesses shall not be divulged by an arbitrator or by the Chamber. Unless otherwise agreed in writing by the parties or required by applicable law, the members of the arbitral tribunal and the Chamber shall keep confidential all matters relating to the arbitration or the award.

**37.2** An award may be made public only with the consent of all parties or as required by law, except that the Chamber may publish or otherwise make publicly available selected awards, orders, decisions, and rulings that have become public in the course of enforcement or otherwise and, unless otherwise agreed in writing by the parties, may publish selected awards, orders, decisions, and rulings that have been edited to conceal the names of the parties and other identifying details.

**37.3** Unless the parties agree in writing otherwise, the arbitral tribunal may make orders concerning the confidentiality of the arbitration or any matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.

### **38 Limitation of liability**

**38.1** None of the members of the arbitral tribunal, any emergency arbitrator, any expert to the arbitral tribunal, and the Chamber (including its officers and employees) shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules, except where such act or omission is shown by that party to be the consequences of conscious and deliberate wrongdoing, or to the extent that any part of this limitation of liability is shown to be prohibited by any applicable law.

**38.2** None of the members of the arbitral tribunal, any emergency arbitrator, any expert to the arbitral tribunal, and the Chamber (including its officers and employees) shall be under any legal obligation to make any statement about the arbitration, and no party shall seek to make any of these persons a party or witness in any judicial or other proceedings relating to the arbitration.