ARBITRATION RULES

ARBITRATION RULES OF THE ASIA-PACIFIC CENTRE
FOR ARBITRATION & MEDIATION
ALONG WITH FEE SCHEDULE

APCAM
ASIA PACIFIC CENTRE FOR
ARBITRATION & MEDIATION

APCAM ARBITRATION RULES

WITH
ARBITRATION FEE SCHEDULE

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PREAMBLE

ASIA-PACIFIC CENTRE FOR ARBITRATION AND MEDIATION (APCAM)

ARBITRATION RULES

[w.e.f. 06 August 2020]

Preamble

APCAM Arbitration is based on the Arbitration Rules published by the Asia-Pacific Centre for Arbitration & Mediation ("APCAM"), which is intended to provide maximum flexibility to parties and ensure maximum efficacy in arbitration proceedings, aiding resolution of disputes quickly and economically through international arbitration.

APCAM Arbitration Rules are intended to provide effective arbitration services through the use of administered arbitration on global standards. The Rules attempts to balance institutionalisation with party autonomy, so that issues which deal with the legality and integrity of proceedings are integrated within the Rules and conducted in a systematic way with efficient administrative control. Being an international ADR centre having arbitration centres in various Asia-Pacific countries, the APCAM Arbitration Rules aims to help the business community to resolve their international commercial and business disputes by arbitration under

a single set of Arbitration Rules governed by a uniform fee structure in all the constituent countries. The Rules reflect the best practices and latest developments in international arbitration, which allow the procedure to be as short and provides a cost structure and management to keep the services cost-effective. UNCITRAL Arbitration Rules 2010 shall supplement these Rules in relation to any issues not covered under these Rules. If there is any discrepancy between these Rules and UNCITRAL Rules, these Rules shall prevail. The costs and expenses of arbitration will be governed by the Fee Schedule under the APCAM Arbitration Rules.

For administered arbitration by APCAM, there should be an APCAM arbitration clause in their contract or in the absence of any such clause there should be an agreement between the parties to arbitrate under the respective arbitration clauses of the constituent institutional members of APCAM, as under their arbitration rules.

Further information about APCAM services, rules and procedures, please see the website www.apcam.asia.

Part - I
ARBITRATION

Part I
ARBITRATION

Rule 1
Scope and application

(1) Where parties have agreed in writing to arbitrate their disputes between them in respect of a defined legal relationship, whether contractual or not, by the Asia-Pacific Centre For Arbitration And Mediation (hereinafter referred to as "APCAM") or under the Arbitration Rules of the Asia-Pacific Centre For Arbitration And Mediation (hereinafter referred to as "APCAM Arbitration Rules"), then —

(a) It is deemed that the parties have made these Rules as part of their arbitration agreement and such disputes shall be settled or resolved by arbitration in accordance with the Rules and parties shall be legally bound to comply with these Rules; and

(b) The arbitration shall be conducted and administered by the APCAM in accordance with the Rules.

(2) The Rules applicable to the arbitration shall be those in force at the time of commencement of the arbitration unless the parties have agreed otherwise.

(3) These Rules shall govern the arbitration except that where any of these Rules are in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

(4) Nothing in these Rules shall prevent the parties to a dispute or arbitration agreement from naming APCAM as appointing authority, or from requesting certain administrative services from APCAM, without subjecting the arbitration to these Rules.

(5) Definitions of specific terms used under the Rules may be referred to in Schedule-1.

Rule 2
Commencement of Arbitration

(1) The party or parties initiating recourse to arbitration under the Rules shall be required to make a Request for Arbitration to APCAM, which shall include the following —

(a) The names, addresses, telephone numbers and e-mail addresses of the parties and their counsel;

(b) The brief facts in dispute relied on by the Claimant;

(c) The relief sought, including an estimate of the monetary value of the claims;

(d) Copy or description of the arbitration agreement or clause under which the dispute is to be resolved and Notice of Arbitration served on the Respondent and the Reply to the Notice of Arbitration received from the Respondent, if any;

(e) Comments on the number of arbitrators and the seat of arbitration; and

(f) If applicable, the name, address, telephone number and e-mail address of the arbitrator appointed by the Claimant.

(2) Upon filing the Request for Arbitration, the Claimant shall pay the appropriate registration/ filing fee as provided in the APCAM Arbitration Fee Schedule, in force on the date of filing of the Request.

(3) If the registration/ filing fee is not paid upon filing the Request for Arbitration, APCAM shall set a time period within which the Claimant shall pay the fee. If the fee is not paid within this time period, APCAM shall dismiss the Request for Arbitration.

(4) The date of receipt of Notice of Arbitration by the Respondent shall be deemed to be the commencement of arbitration.

(5) The date of acceptance by APCAM of the Request for Arbitration, complete with all the accompanying documentation and the appropriate filing fee and verification that the submission is proper, shall be treated as the date on which the institutional arbitration has commenced for all purposes under these Rules.

Rule 3
Response to Request and Decision

(1) APCAM shall send a copy of the Request for Arbitration and any attached documents to the

Respondent. APCAM shall set a time period of fifteen days within which the Respondent shall submit a Response to the Request to APCAM.

(2) The Response to the Request, shall include the following —

(a) Any objections concerning the existence, validity or applicability of the arbitration agreement; however, failure to object shall not preclude the Respondent from raising such objections at any time up to and including the submission of the Statement of Defence;

(b) A preliminary statement of any counterclaim or set-off and the grounds on which it is based, including an estimate of the monetary value thereof;

(c) Comments on the number of arbitrators and the seat of arbitration; and

(d) If applicable, the name, address, telephone number and e-mail address of the arbitrator appointed by the Respondent.

(3) If APCAM receives a Response as per sub-rule (2), it shall be sent to the Claimant and the Claimant may be given an opportunity to submit comments on the Response, having regard to the circum-stances of the case, within a period of seven days.

(4) APCAM may request further details from either party regarding the Request or Response, having regard to the circum-stances of the case.

(5) If the Claimant fails to comply with a request for further details, APCAM may dismiss the case.

(6) Failure by the Respondent to submit a Response as per sub-rule (2) or (4) shall not prevent the arbitration from proceeding.

(7) Based on the Request, Response or any further details, APCAM shall take a decision to proceed with arbitration or if APCAM manifestly lacks jurisdiction over the dispute, dismiss the Request.

Rule 4
Notice and Calculation of Periods of Time

(1) A notice, including a notification, communication or proposal, may be transmitted by any means of communication including electronic communications that provides or allows for a record of its transmission.

(2) If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail or other similar means may only be made to an address so designated or authorized.

(3) In the absence of such designation or authorization, a notice is —

(a) Received if it is physically delivered to the addressee; or

(b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.

(4) If, after reasonable efforts, delivery cannot be effected in accordance with sub-rules (2) or (3), a notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

(5) A notice shall be deemed to have been received on the day it is delivered in accordance with sub-rules (2), (3) or (4), or attempted to be delivered in accordance with sub-rule (4). A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.

(6) For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Rule 5
Number of Arbitrators

(1) Where the parties have agreed to the Rules, APCAM shall be the Appointing Authority.

(2) Parties are free to determine the number of arbitrators (either one or three) subject to the law governing the arbitration.

(3) In general, the dispute under these Rules shall be decided by a sole arbitrator unless, otherwise agreed by the parties.

(4) A dispute shall be decided by three arbitrators if the parties have agreed to do so or APCAM, in the absence of an agreement between the parties, taking into account the parties' intentions, the amount in question, the complexity or other relevant factors of the dispute, considers it appropriate to appoint three arbitrators.

(5) Notwithstanding sub-rule (4), if no other parties have responded to a party's proposal to appoint an arbitrator in accordance with Rules 5 and 6, APCAM may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in Rule 5, if it determines that, in view of the circumstances of the case, that would be more appropriate.

Rule 6
Appointment of Sole Arbitrator

(1) If the parties have agreed that a sole arbitrator is to be appointed and if within twenty-one days after receipt by all other parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by APCAM.

(2) APCAM shall appoint the sole arbitrator as promptly as possible and at any rate within a period of twenty-one days. In making the appointment, APCAM shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless APCAM determines in its discretion that the use of the list-procedure is not appropriate for the case:

(a) APCAM shall communicate to each of the parties an identical list containing at least three names;

(b) Within fourteen days after the receipt of this list, each party may return the list to APCAM after having deleted the name or names to which it objects and number the remaining names on the list in the order of its preference;

(c) After the expiration of the above period of time APCAM shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;

(d) If for any reason the appointment cannot be made according to this procedure, APCAM may exercise its discretion in appointing the sole arbitrator however the sole arbitrator shall not be a national of any party to the dispute.

Rule 7
Appointment of Three Arbitrators

(1) If three arbitrators are to be appointed, each party shall appoint, in the Notice of Arbitration and the Reply to the Notice of Arbitration, respectively, one arbitrator.

(2) If within twenty-one days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first

party of the arbitrator it has appointed, the first party may request APCAM to appoint the second arbitrator and APCAM shall appoint the second arbitrator by exercising its discretion, within fourteen days.

(3) After appointment of the two arbitrators, the presiding arbitrator shall be appointed by APCAM in consultation with the two arbitrators, and if no consensus is reached within twenty-one days, the presiding arbitrator shall be appointed in the same way as a sole arbitrator would be appointed under Rule 5.

(4) Where three arbitrators are to be appointed and there are multiple parties as Claimant or as Respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as Claimant or as Respondent, shall appoint one arbitrator each.

(5) If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.

(6) In the event of any failure to constitute the arbitral tribunal as agreed by the parties, APCAM shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

Rule 8
Challenge to the Arbitrators

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

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

Explanation — The grounds given in the "IBA Guidelines on Conflicts of Interest in International Arbitration" shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator or whether such person is ineligible to become an arbitrator.

(3) A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

(4) In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in sub-rules (1), (2) and (3) shall apply.

(5) A party that intends to challenge an arbitrator shall send notice of its challenge within fifteen days after it has been notified of the appointment of the challenged arbitrator, or within fifteen days after the circumstances mentioned in sub-rules (1), (2) and (3) became known to that party.

(6) The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.

(7) When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

(8) If, within fifteen days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within twenty-one days from the date of the notice of challenge, it shall seek a decision on the challenge by the APCAM.

(9) Upon such withdrawal or sustainment of the challenge, the substitute arbitrator shall be appointed in accordance with the procedure provided in Rules 6 and 7, as the case may be.

Rule 9
Seat, Venue and Language of Arbitration

(1) The parties may agree on the seat of arbitration. Failing such agreement, the seat of arbitration shall be determined by the arbitral tribunal having

regard to the circumstances of the case. The award shall be deemed to have been made at the seat of arbitration.

(2) The parties may agree on the applicable law to be applied by the arbitral tribunal in the resolution of the dispute. Failing such agreement, the applicable law shall be determined by the arbitral tribunal having regard to the seat of arbitration and circumstances of the case.

(3) The venue of arbitration may be fixed by APCAM, as it considers appropriate for deliberations and hearings. The arbitration shall nonetheless be considered for all purposes as an arbitration conducted at the seat.

(4) The parties may agree on the language of arbitration. Failing such agreement, the arbitral tribunal or APCAM shall determine the language or languages of the arbitration and its conduct, having due regard to all relevant circumstances of the case, including the language of the agreement and the language suitable to the parties to the agreement.

Rule 10
Notifications; Time Limits and Representation

(1) All pleadings and other written communications submitted by any party, as well as all documents annexed thereto, shall be filed in sufficient numbers to provide one copy for each arbitrator(s), and to all other parties and one for APCAM. If the party has served the copy to the other parties, then the party shall file such documents/confirmation to APCAM that the copies have been served on all other parties to the arbitration by such means of service to be identified in such confirmation.

(2) A copy of any communication to or from the Arbitral Tribunal by or to the parties shall be sent to APCAM.

(3) If the circumstances of the case so justify and for sufficient reasons, APCAM may amend the time limits provided for in these Rules, as well as any time limits that it has set. APCAM shall not amend any time limits set by the Arbitral Tribunal unless it directs otherwise.

(4) The time periods established in this Rules are to be strictly enforced and a Party's untimely Claim, Response, Request, Demand, Notice or Submission may be denied solely because it is untimely.

(5) The parties may be represented or assisted by a counsel/ consultant/ adviser of their choice. The parties shall confer upon such advisers the necessary authority to represent them in the arbitral proceedings and file such authority before APCAM.

Provided, the arbitral tribunal or APCAM, may at any time after the commencement of the arbitration, require proof of authority of any party's counsel/ consultant/ adviser or any participant, if it deems fit.

(6) If any of the parties are not able to be present personally, they can be represented through their authorised persons or power of attorney holders.

Rule 11
Case Management Procedure

(1) After the constitution of the arbitral tribunal, APCAM shall notify the arbitral tribunal about its constitution.

(2) A meeting would be convened by APCAM or the sole arbitrator or the President of the arbitral tribunal as the case may be to discuss procedural matters.

(3) The Case Management Procedure will be finalised, in consultation with the parties. The normal time-frame would be as follows —

(a) For filing Claim statement by the claimant: Twenty-one days

(b) For filing Statement of defence and counter claim, if any by the respondent: Twenty-one days

(c) For filing Reply and statement of defence, if any by the claimant: Fifteen days

(d) For filing Rejoinder, if any by the respondent: Fifteen days

The case management time frame shall be extended only in exceptional circumstances.

Rule 12
Interim Arbitral Tribunal ("Emergency Arbitrator") and Arb-Med-Arb Procedure ("AMA Procedure")

(1) A party in need of emergency interim relief may appoint an Emergency Arbitrator pursuant to the procedures set forth in Schedule-2. The Application under Schedule-2 may, in addition to emergency interim relief, include a request to submit the case to mediation according to the AMA Procedure under Schedule-3.

(2) Where a party invokes the AMA Procedure under Schedule-3 of the Rules, an Emergency Arbitrator shall be appointed to commence with the procedure so provided under said Schedule.

Rule 13
Interim and Preliminary Reliefs

(1) A party may anytime during the arbitration proceedings, apply to the Emergency Arbitrator or the arbitral tribunal for any interim relief, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to —

(a) Maintain or restore the status quo pending determination of the dispute;

(b) Take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;

(c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or

(d) Preserve evidence that may be relevant and material to the resolution of the dispute.

(2) A party may, without notice to any other party, make a request for an interim measure as under sub-rule (1), together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

(3) The emergency arbitrator or the arbitral tribunal may grant a preliminary order only if it considers

that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.

Provided, the emergency arbitrator or the arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the emergency arbitrator or the arbitral tribunal considers it inappropriate or unnecessary to do so.

Provided further that, immediately after the emergency arbitrator or the arbitral tribunal passes a preliminary order, the emergency arbitrator or the arbitral tribunal shall give notice to all parties of the request for the interim measure, along with the copy of the application for the preliminary order, the preliminary order, if any, and all other communications, between any party and the emergency arbitrator or the arbitral tribunal in relation thereto.

(4) If an order is passed under sub-rule (3), the emergency arbitrator or the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time and shall decide promptly on any objection to the preliminary order.

(5) A preliminary order passed under sub-rule (3) shall expire after twenty days from the date on which it was issued. However, the emergency arbitrator or the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.

Rule 14
Expedited Fast-track Procedure

(1) Prior to the full constitution of the arbitral tribunal, a party may apply to APCAM in writing for the arbitral proceedings to be conducted in accordance with the Expedited Fast-track Procedure under this Rule, where any of the following criteria is satisfied —

(a) The amount in the dispute does not exceed the equivalent of US$ One million only, representing the aggregate of the claim, counterclaim and any set-off defence; or

(b) The parties so agree.

(2) When a party has applied to APCAM under sub-rule (1), and when APCAM determines, after considering the views of the parties, that the arbitral proceedings shall be conducted in accordance with the Expedited Fast-track Procedures, the following procedures shall apply —

(a) APCAM may abridge any time limits under these Rules;

(b) The case shall be referred to a sole arbitrator, unless APCAM determines otherwise;

(c) Unless the parties agree that the dispute shall be decided on the basis of documentary evidence only, the arbitral tribunal shall hold a hearing for the examination of all witnesses as well as for any argument;

(d) APCAM shall determine the time for making the award, considering the case at hand but, not exceeding 6 months, unless, in exceptional circumstances, APCAM extends the time for a period not exceeding a further period of 3 months; and

(e) The arbitral tribunal shall state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons are to be given.

Rule 15
Consolidation of Proceedings and Concurrent Hearings

(1) At the request of a party, APCAM may decide to consolidate a newly commenced arbitration with a pending arbitration, if:

(a) The parties agree to consolidate;

(b) All the claims are made under the same arbitration agreement; or

(c) Where the claims are made under more than one arbitration agreement, the relief sought arises out of the same transaction or series of transactions and APCAM considers the arbitration agreements to be compatible.

(2) In deciding whether to consolidate, APCAM shall consult with the parties and the Arbitral Tribunal and shall have regard to:

(a) The stage of the pending arbitration;

(b) The efficiency and expeditiousness of the proceedings; and

(c) Any other relevant circumstances.

(3) Where APCAM decides to consolidate, APCAM may release any Arbitrator already appointed.

(4) The parties may agree to have concurrent hearings of different arbitration proceedings, if:

(a) If the Arbitral Tribunal of different arbitration proceedings are the same;

(b) If the claims made in the different arbitration proceedings arise under the same arbitration agreement; or

(c) If the claims are made under more than one arbitration agreement, the relief sought arises out of the same transaction or series of transactions.

(5) In deciding whether to have concurrent hearings, the Arbitral Tribunal shall consult with the parties and APCAM and shall have regard to:

(a) The stage of the pending arbitrations in different proceedings;

(b) The efficiency and expeditiousness of concurrent hearing; and

(c) Any other relevant circumstances.

Rule 16
Facilities

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

Rule 17
Arbitration Procedure

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

(2) If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

(3) At the end of evidentiary hearings and/or as the case may be, oral submissions, the arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses, including experts whether appointed by parties or the arbitral tribunal as the case may be, to be heard or submissions to make and, if there are none, it may declare the hearings closed.

Explanation – The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

(4) Except in the case of fast-track arbitration, the arbitral tribunal shall complete the arbitral process, within 9 months from the date of reference, unless, in exceptional circumstances, APCAM extends the time for a period not exceeding a further period of 3 months.

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

(6) A party can opt to initiate and/or conduct the arbitration process in the following matters, in consultation with APCAM —

(a) In the case of Emergency Arbitration or Arbitration under the AMA Procedure, interim or preliminary measures, filings and conducting of sessions; or

(b) In the case of Fast-track arbitration, for commencement of arbitration, appointment of arbitrators and filing of applications. For other processes, the parties can agree with the consent of the arbitral tribunal, at any stage of an arbitration proceedings to opt procedures comprising both online and offline elements; or

(c) In the case of regular arbitration, for commencement of arbitration and filing of applications. For other processes, the parties can agree with the consent of the arbitral tribunal, at any stage of an arbitration proceedings to opt procedures comprising both online and offline elements.

(7) In case the parties or the arbitral tribunal deems fit, hearing may be conducted via video conferencing or other electronic means and in such cases the arbitral tribunal shall adopt the protocol as under Schedule 4 and as under the Seoul Protocol on Video Conferencing.

Rule 18
Consultation on Evidentiary Issues

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

(2) The arbitral tribunal shall consult the parties at the earliest appropriate time in the arbitral proceedings and invite them to consult each other with a view to agreeing on an efficient, economical and fair process for the taking of evidence.

(3) The consultation on evidentiary issues may address the scope, timing and manner of the taking of evidence, including —

(a) The preparation and submission of witness statements and expert reports;

(b) The taking of oral testimony at any evidentiary hearing;

(c) The requirements, procedure and format applicable to the production of documents;

(d) The level of confidentiality protection to be afforded to evidence in the arbitration; and

(e) The promotion of efficiency, economy and conservation of resources in connection with the taking of evidence.

(4) The arbitral tribunal is encouraged to identify to the parties, as soon as it considers it to be appropriate, any issues:

(a) That the arbitral tribunal may regard as relevant to the case and material to its outcome; and / or

(b) For which a preliminary determination may be appropriate.

(5) Within the time ordered by the arbitral tribunal, each party shall identify the witnesses on whose testimony it intends to rely and the subject matter of that testimony.

(6) Any person may present evidence as a witness, including a party or a party's officer, employee or other representative.

(7) The arbitral tribunal may order each party to submit within a specified time to the arbitral tribunal and to the other party's witness statements by each witness on whose testimony it intends to rely.

(8) Each witness statement shall contain —

(a) The full name and address of the witness, a statement regarding his or her present and past relationship (if any) with any of the parties, and a description of his or her background, qualifications, training and experience, if such a description may be relevant to the dispute or to the contents of the statement;

(b) A full and detailed description of the facts, and the source of the witness's information

as to those facts, sufficient to serve as that witness's evidence in the matter in dispute. Documents on which the witness relies that have not already been submitted shall be provided;

(c) A statement as to the language in which the witness statement was originally prepared and the language in which the witness anticipates giving testimony at the evidentiary hearing;

(d) An affirmation of the truth of the witness statement; and

(e) The signature of the witness and its date and place.

(9) A party may rely on an expert appointed by it ("party-appointed expert") as a means of evidence on specific issues. Within the time ordered by the arbitral tribunal —

(a) Each party shall identify any party-appointed expert on whose testimony it intends to rely and the subject-matter of such testimony; and

(b) The party-appointed expert shall submit an expert report.

(10) Any party may, with the prior approval of the arbitral tribunal. submit to the arbitral tribunal and to the other parties revised or additional witness statements, including statements from persons not previously named as witnesses or experts.

(11) Within the time ordered by the arbitral tribunal, each party shall inform the arbitral tribunal and

the other parties of the witnesses or experts whose appearance it requests. Each witness or expert shall appear for testimony at the evidentiary hearing if such person's appearance has been requested by any party or by the arbitral tribunal.

(12) The arbitral tribunal may request any person to give oral or written evidence on any issue that the arbitral tribunal considers to be relevant to the case and material to its outcome. Any witness or expert called and questioned by the arbitral tribunal may also be questioned by the parties.

(13) If a witness or expert whose appearance has been requested pursuant to sub-rule (11) fails without a valid reason to appear for testimony at an evidentiary hearing, the arbitral tribunal shall disregard any witness statement or expert report related to that evidentiary hearing by that witness unless, in exceptional circumstances, the arbitral tribunal decides otherwise.

(14) If a party wishes to present evidence from a person who will not appear voluntarily at its request, the party may, within the time ordered by the arbitral tribunal, ask it to take whatever steps are legally available to obtain the testimony of that person, or seek leave from the arbitral tribunal to take such steps itself. The arbitral tribunal shall decide on this request and shall take, authorize the requesting party to take or order any other party to take, such steps as the arbitral tribunal considers appropriate.

Explanation —This Rules is applicable on experts appointed by the arbitral tribunal as well as the parties.

Rule 19
Early Dismissal of Claims and Defences

(1) A party may apply to the Arbitral Tribunal to decide by way of summary procedure, without necessarily undertaking every procedural step that might otherwise be adopted for the arbitration, on the basis that —

(a) A claim or defence is manifestly without legal merit; or

(b) A claim or defence is manifestly outside the jurisdiction of the arbitral tribunal.

Explanation – An application under sub-rule (1) can be filed on the same grounds raised by any party, in spite of a decision already rendered by APCAM under Rule 3(7).

(2) An application for the early dismissal of a claim or defence under sub-rule (1) shall state in detail the facts and legal basis supporting the application. The party applying for early dismissal shall, at the same time as it files the application with the arbitral tribunal, send a copy of the application to the other party, and shall notify the arbitral tribunal that it has done so, specifying the mode of service employed and the date of service.

(3) The arbitral tribunal may, in its discretion, allow the application for the early dismissal of a claim or defence under sub-rule (1) to proceed. If the application is allowed to proceed, the arbitral tribunal shall, after giving the parties the opportunity to be heard, decide whether to grant, in whole or in part, the application for early dismissal under sub-rule (1).

(4) In determining whether to grant a request for summary procedure, the arbitral tribunal shall

have regard to all relevant circumstances, including the extent to which the summary procedure contributes to a more efficient and expeditious resolution of the dispute.

(5) If the application is allowed to proceed, the arbitral tribunal shall make an order or Award on the application, with reasons, which may be in summary form. The order or Award shall be made within sixty days of the date of filing of the application, unless, in exceptional circumstances, APCAM extends the time.

Rule 20
Awards

(1) The arbitral tribunal shall render its final award within a period which is limited to forty-five days. Such time limit shall start to run from the date of the closing of final oral or written submissions. The arbitral tribunal shall inform APCAM of such date.

(2) Such time limit may be extended by the arbitral tribunal with the consent of the parties and upon consultation with APCAM, in exceptional circumstances, but not exceeding a further period of forty-five days.

(3) The arbitral tribunal shall deliver the completed award to APCAM. The award shall only be released to the parties upon full settlement of the costs of arbitration.

(4) APCAM shall notify the parties of its receipt of the award from the arbitral tribunal. The award shall be deemed to have been received by the parties upon collection by hand by an authorised representative or upon delivery by registered mail or by secure electronic means.

(5) In the event the parties reach a settlement after the commencement of the arbitration, the arbitral tribunal shall, if so requested by the parties, record the settlement in the form of an award made by consent of the parties. If the parties do not require a consent award, the parties shall inform APCAM that a settlement has been reached. The arbitration shall only be deemed to be concluded, and the arbitral tribunal to be discharged, only upon full payment of the costs of arbitration.

(6) By agreeing to arbitration under these Rules, it is agreed that the award shall be final and binding on the parties from the date it is made. The parties undertake to carry out the award immediately and without delay.

(7) Unless the parties have agreed otherwise, the arbitral tribunal may —

(a) Award interest on any sum of money ordered to be paid by the award on the whole or any part of the period between the date on which the cause of action arose and to the date of realisation of the award; and

(b) Determine the rate of interest.

Rule 21
Interpretation, Correction or Additional Award

(1) Within fifteen days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award. The interpretation shall be given in writing that shall form part of the award.

(2) Within fifteen days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical

error, or any error or omission of a similar nature. The arbitral tribunal may also make such corrections on its own initiative. Such corrections shall be in writing and shall form part of the award.

(3) Within fifteen days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal. Such additional award shall be in writing and shall form part of the award.

(4) The arbitral tribunal shall make the interpretation or correction or additional award, if so justified, within a period of thirty days after the receipt of such request.

Rule 22
Scrutiny of the Award

(1) If so agreed by the parties, APCAM shall notify a Scrutiny Board, consisting of one or more legal experts or senior arbitrators and before signing any award, the arbitral tribunal shall submit the award in draft form to APCAM.

Explanation — In case the parties cannot agree in the number of members of the Scrutiny Board, the number shall be one.

(2) The draft award would be submitted to the Scrutiny Board and they may lay down modifications as to the form of the award and, without affecting the arbitral tribunal's liberty of decision, may also draw its attention to points of substance.

(3) The Scrutiny Board shall return the award with comments within fifteen days from the date of submission to APCAM and APCAM shall immediately forward the same to the arbitral tribunal.

Rule 23
Costs

(1) The arbitral tribunal shall fix the costs of arbitration as per the APCAM Arbitration Fee Schedule.

(2) If the arbitration is abandoned, suspended or concluded, by agreement or otherwise, before the final award is made, the parties shall be jointly and severally liable to pay the costs of the arbitration as determined by the arbitral tribunal. In that event, if the costs so determined are less than the deposits made, there shall be a refund in such proportions as the parties may agree, or failing agreement, in the same proportions as the deposits were made.

Rule 24
Fee and Deposits

(1) Subsequent to the commencement of arbitration process, APCAM shall fix a provisional advance deposit in an amount intended to cover the costs of the arbitration. Any such provisional advance deposit shall be paid by the parties in equal shares and will be considered as a partial payment by the parties of any deposits of costs.

(2) The fees of the arbitral tribunal shall be fixed by APCAM in accordance with the APCAM Arbitration Fee Schedule, unless otherwise agreed by the parties and the arbitral tribunal and informed to APCAM within a period of fifteen days from the date of reference.

(3) The administrative costs of the arbitration shall be fixed by APCAM in accordance with the APCAM Arbitration Fee Schedule.

(4) The term "costs" as specified in Rule 23 shall include the expenses reasonably incurred by APCAM in connection with the arbitration, the administrative costs, as well as the costs of the facilities made available by APCAM under Rule 16.

(5) APCAM may direct each party to deposit an equal amount as an advance of the costs referred to in Rule 23, as per the payment schedule mentioned in the APCAM Arbitration Fee Schedule.

(6) During the course of the arbitration proceedings, APCAM may request supplementary deposits from the parties.

(7) In the event that orders under sub-rules (1), (5) or (6) are not complied with, the Tribunal may refuse to hear the claims or counterclaims by the non-complying party, although it may proceed to determine claims or counterclaims by complying parties.

Rule 25
Mediation to Arbitration

Where the parties have referred their dispute to mediation under APCAM Mediation Rules and they have failed to reach a settlement and thereafter proceed to arbitration under the Rules, then one-half of the administrative fee paid to APCAM for the mediation proceedings shall be credited towards the administrative fee of the arbitration.

Rule 26
Confidentiality

(1) The arbitral tribunal, the parties, all experts, all witnesses and the Administrator and other staff of APCAM shall keep confidential all matters relating to the arbitral proceedings including any award except where disclosure is necessary for

purposes of implementation and enforcement or to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to challenge an award in bona fide legal proceedings before a court or other judicial authority.

(2) For the purpose of sub-rule (1), "matters relating to the proceedings" means the existence of the proceedings, and the pleadings, evidence and other materials in the arbitration proceedings and all other documents produced by another party in the proceedings or the award arising from the proceedings, but excludes any matter that is otherwise in the public domain.

Rule 27
Exclusion of Liability and Waiver

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

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

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

Rule 28
General Provisions

(1) Under these Rules a decision to be taken by APCAM, shall be taken by the Administrator. The

Administrator may, if required delegate such of its duties and functions to a Registrar and the Registrar may decide such issues so specifically authorized by the Administrator.

(2) The Administrator shall issue a certified copy of any document filed in the proceedings, if a party seeks for the same.

(3) APCAM may destroy all documents served on it pursuant to the Rules after the expiry of a period of two years after the date of the last correspondence received by APCAM relating to the arbitration.

(4) The Fee structure under the Rules shall be fee published by APCAM in the APCAM Arbitration Fee Schedule as on the date of submission of arbitration. The current fee schedule of APCAM, mentioned in Schedule-7, may be modified and notified by APCAM from time to time or published in its official web site.

(5) Any of the above procedures may be altered by the Administrator, in his sole discretion, to fit the circumstances of a particular case. Any matter not specifically addressed by these rules, or any conflict or ambiguity in these rules, will be decided by the Administrator. The Administrator, in his sole discretion, has authority to prepare forms, resolve procedural disputes, impose time limits on the parties, and otherwise require a party to take action or refrain from taking action.

(6) In the case of arbitration referred by other ADR Institutions or in the case of administration of arbitration of disputes which is to be jointly administered by APCAM and any other institution, the rules, including the fee schedule may be decided by APCAM jointly with the other institution.

(7) In case of domestic arbitration, where the parties have adopted the APCAM Rules, the parties have deemed to agree to conduct the domestic arbitration as per the Domestic Arbitration Rules of the APCAM constituent institution member in the respective country.

(8) APCAM shall have the power and authority to effectuate the purposes of these Rules, including establishing appropriate rules and procedures governing arbitrations and altering, amending or modifying these Rules in accordance with the applicable law.

(9) All decisions taken by APCAM in the matter of prima-facie jurisdiction, lack of jurisdiction, administrative matters, time-frames and institutional matters under these Rules are final and binding on the parties.

(10) In all matters not expressly provided for in these Rules, APCAM, the arbitral tribunal and the parties shall act in the spirit of these Rules and shall make every reasonable effort to ensure that any award is legally enforceable.

(11) In the event a court of competent jurisdiction finds any portion of these Rules to be in violation of any law in force or otherwise unenforceable, that portion shall not be effective and the remainder of the Rules shall remain effective.

Rule 29
Relationship with UNCITRAL Arbitration Rules

UNCITRAL Arbitration Rules 2010 (Part-II) shall supplement these Rules in relation to any issues not covered under these Rules. If there is any discrepancy between these Rules and UNCITRAL Rules, these Rules shall prevail.

Part - II
UNCITRAL ARBITRATION RULES

Part II
UNITRAL ARBITRATION RULES
(As revised in 2010)

Section I. Introductory Rules

Scope of Application
Article 1

1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.

2. The parties to an arbitration agreement concluded after 15 August 2010 shall be presumed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules. That presumption does not apply where the arbitration agreement has been concluded by accepting after 15 August 2010 an offer made before that date.

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

Notice and Calculation of Periods of Time
Article 2

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.

2. If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorized.

3. In the absence of such designation or authorization, a notice is —

   (a) Received if it is physically delivered to the addressee; or

   (b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.

4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

5. A notice shall be deemed to have been received on the day it is delivered in accordance with

paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.

6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Notice of Arbitration
Article 3

1. The party or parties initiating recourse to arbitration (hereinafter called the "Claimant") shall communicate to the other party or parties (hereinafter called the "Respondent") a Notice of Arbitration.

2. Arbitral proceedings shall be deemed to commence on the date on which the Notice of Arbitration is received by the respondent.

3. The Notice of Arbitration shall include the following —

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

   (b) The names and contact details of the parties;

(c) Identification of the arbitration agreement that is invoked;

(d) Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;

(e) A brief description of the claim and an indication of the amount involved, if any;

(f) The relief or remedy sought;

(g) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.

2. The Notice of Arbitration may also include —

(a) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;

(b) A proposal for the appointment of a sole arbitrator referred to in Article 8, paragraph 1;

(c) Notification of the appointment of an arbitrator referred to in Article 9 or 10.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the Notice of Arbitration, which shall be finally resolved by the arbitral tribunal.

Response to the Notice of Arbitration
Article 4

1. Within 30 days of the receipt of the Notice of Arbitration, the respondent shall communicate to

the claimant a Response to the Notice of Arbitration, which shall include:

(a) The name and contact details of each respondent;

(b) A response to the information set forth in the notice of arbitration, pursuant to Article 3, paragraphs 3 (c) to (g).

2. The Response to the Notice of Arbitration may also include:

(a) Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;

(b) A proposal for the designation of an appointing authority referred to in Article 6, paragraph 1;

(c) A proposal for the appointment of a sole arbitrator referred to in Article 8, paragraph 1;

(d) Notification of the appointment of an arbitrator referred to in Article 9 or 10;

(e) A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;

(f) A Notice of Arbitration in accordance with Article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a Response to the Notice of Arbitration, or an incomplete or late response to the Notice of Arbitration, which shall be finally resolved by the arbitral tribunal.

Representation and Assistance Article 5

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

Designating and Appointing Authorities Article 6

1. Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, including the Secretary-General of the Permanent Court of Arbitration at The Hague (hereinafter called the "PCA"), one of whom would serve as appointing authority.

2. If all parties have not agreed on the choice of an appointing authority within 30 days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request the Secretary-General of the PCA to designate the appointing authority.

3. Where these Rules provide for a period of time within which a party must refer a matter to an appointing authority and no appointing authority has been agreed on or designated, the period is suspended from the date on which a party initiates the procedure for agreeing on or designating an appointing authority until the date of such agreement or designation.

4. Except as referred to in Article 41, paragraph 4, if the appointing authority refuses to act, or if it fails to appoint an arbitrator within 30 days after it receives a party's request to do so, fails to act within any other period provided by these Rules, or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party's request to do so, any party may request the Secretary General of the PCA to designate a substitute appointing authority.

5. In exercising their functions under these Rules, the appointing authority and the Secretary-General of the PCA may require from any party and the arbitrators the information they deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority and the Secretary-General of the PCA shall also be provided by the sender to all other parties.

6. When the appointing authority is requested to appoint an arbitrator pursuant to Articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the Notice of Arbitration and, if it exists, any Response to the Notice of Arbitration.

7. The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

Section II. Composition of the Arbitral Tribunal

Number of Arbitrators
Article 7

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.

2. Notwithstanding paragraph 1, if no other parties have responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with Article 9 or 10, the appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in Article 8, paragraph 2, if it determines that, in view of the circumstances of the case, this is more appropriate.

Appointment of Arbitrators (Articles 8 to 10)
Article 8

1. If the parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt

by all other parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.

2. The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case —

   (a) The appointing authority shall communicate to each of the parties an identical list containing at least three names;

   (b) Within 15 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;

   (c) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;

   (d) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

Article 9

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.

2. If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the appointing authority to appoint the second arbitrator.

3. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under Article 8.

Article 10

1. For the purposes of Article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.

2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.

3. In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

Disclosures by and Challenge of Arbitrators[1] (Articles 11 to 13)

Article 11

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

Article 12

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

2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

3. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in Article 13 shall apply.

[1] Model statements of independence pursuant to Article 11 can be found in the annex to the Rules

Article 13

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in Articles 11 and 12 became known to that party.

2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.

3. When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority.

Replacement of an Arbitrator
Article 14

1. Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Articles 8 to 11 that was

applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.

2. If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

Repetition of Hearings in the event of the Replacement of an Arbitrator
Article 15

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

Exclusion of Liability
Article 16

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

Section III. Arbitral Proceedings

General Provisions
Article 17

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

2. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.

3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

4. All communications to the arbitral tribunal by one party shall be communicated by that party to all

other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.

2. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

Place of Arbitration
Article 18

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.

2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

Language
Article 19

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used

in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

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

Statement of Claim
Article 20

1. The claimant shall communicate its Statement of Claim in writing to the respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its Notice of Arbitration referred to in Article 3 as a statement of claim, provided that the Notice of Arbitration also complies with the requirements of paragraphs 2 to 4 of this Article.

2. The Statement of Claim shall include the following particulars —

   (a) The names and contact details of the parties;

   (b) A statement of the facts supporting the claim;

   (c) The points at issue;

   (d) The relief or remedy sought;

(e) The legal grounds or arguments supporting the claim.

3. A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the Statement of Claim.

4. The Statement of Claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

Statement of Defence
Article 21

1. The respondent shall communicate its Statement of Defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its Response to the Notice of Arbitration referred to in Article 4 as a Statement of Defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this Article.

2. The Statement of Defence shall reply to the particulars (b) to (e) of the Statement of Claim (art. 20, para. 2). The Statement of Defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.

3. In its Statement of Defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a Counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.

4. The provisions of Article 20, paragraphs 2 to 4, shall apply to a counterclaim, a claim under Article 4, paragraph 2 (f), and a claim relied on for the purpose of a set-off.

Amendments to the Claim or Defence Article 22

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

Pleas as to the Jurisdiction of the Arbitral Tribunal Article 23

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-

off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

2. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

Further Written Statements
Article 24

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

Periods of Time
Article 25

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

Interim Measures
Article 26

1. The arbitral tribunal may, at the request of a party, grant interim measures.

2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to —

   (a) Maintain or restore the status quo pending determination of the dispute;

   (b) Take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself;

   (c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or

   (d) Preserve evidence that may be relevant and material to the resolution of the dispute.

3. The party requesting an interim measure under paragraphs 2 (a) to (c) shall satisfy the arbitral tribunal that —

   (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and

(b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

4. With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.

5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.

8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Evidence
Article 27

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

2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.

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

4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Hearings
Article 28

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.

3. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses,

including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.

4. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

Experts appointed by the Arbitral Tribunal Article 29

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.

3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.

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

Default
Article 30

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause —

   (a) The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;

   (b) The respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings

continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

2. If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Closure of Hearings
Article 31

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

Waiver of Right to Object
Article 32

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

Section IV. The Award

Decisions
Article 33

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

2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

Form and Effect of the Award
Article 34

1. The arbitral tribunal may make separate awards on different issues at different times.

2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

5. An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.

6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

Applicable Law, *Amiable Compositeur* Article 35

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.

2. The arbitral tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized the arbitral tribunal to do so.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

Settlement or Other Grounds for Termination Article 36

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the

parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of Article 34, paragraphs 2, 4 and 5, shall apply.

Interpretation of the Award
Article 37

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.

2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 34, paragraphs 2 to 6, shall apply.

Correction of the Award
Article 38

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.

2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.

3. Such corrections shall be in writing and shall form part of the award. The provisions of Article 34, paragraphs 2 to 6, shall apply.

Additional Award
Article 39

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.

2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.

3. When such an award or additional award is made, the provisions of Article 34, paragraphs 2 to 6, shall apply.

Definition of Costs
Article 40

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.

2. The term “costs” includes only —

   (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be

fixed by the tribunal itself in accordance with Article 41;

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

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

(d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

(e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;

(f) Any fees and expenses of the appointing authority as well as the fees and expenses of the Secretary-General of the PCA.

2. In relation to interpretation, correction or completion of any award under Articles 37 to 39, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

Fees and Expenses of Arbitrators
Article 41

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.

2. If there is an appointing authority and it applies or has stated that it will apply a schedule or particular

method for determining the fees for arbitrators in international cases, the arbitral tribunal in fixing its fees shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case.

3. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If, within 45 days of receipt of such a referral, the appointing authority finds that the proposal of the arbitral tribunal is inconsistent with paragraph 1, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal.

4. (a) When informing the parties of the arbitrators' fees and expenses that have been fixed pursuant to article 40, paragraphs 2 (a) and (b), the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated;

(b) Within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the appointing authority. If no appointing authority has been agreed upon or designated, or if the appointing authority fails to act within the time specified in these Rules, then the review shall be made by the Secretary-General of the PCA;

(c) If the appointing authority or the Secretary-General of the PCA finds that the arbitral

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

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

5. Throughout the procedure under paragraphs 3 and 4, the arbitral tribunal shall proceed with the arbitration, in accordance with article 17, paragraph 1.

6. A referral under paragraph 4 shall not affect any determination in the award other than the arbitral tribunal's fees and expenses; nor shall it delay the recognition and enforcement of all parts of the award other than those relating to the determination of the arbitral tribunal's fees and expenses.

Allocation of Costs
Article 42

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

Deposit of Costs
Article 43

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

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

3. If an appointing authority has been agreed upon or designated, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority, which may make any comments to the arbitral tribunal that it deems appropriate concerning the amount of such deposits and supplementary deposits.

4. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

5. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Annex

Possible Waiver Statement

Note. If the parties wish to exclude recourse against the arbitral award that may be available under the applicable law, they may consider adding a provision to that effect as suggested below, considering, however, that the effectiveness and conditions of such an exclusion depend on the applicable law.

Waiver

The parties hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under the applicable law.

Model Statements of Independence pursuant to Article 11 of the Rules

No Circumstances to Disclose

I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties and the other arbitrators of any such circumstances that may subsequently come to my attention during this arbitration.

Circumstances to Disclose

I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made pursuant to Article 11 of the UNCITRAL Arbitration Rules of (a) my past and present professional, business and other relationships with the parties and (b) any other

relevant circumstances. [Include statement.] I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the parties and the other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration.

Note. Any party may consider requesting from the arbitrator the following addition to the statement of independence:

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules.

Part - III
SCHEDULES

Schedule-1
DEFINITIONS

In this Rules, unless the context otherwise requires —

(a) "Administrator" means the APCAM official assigned under these Rules who shall perform all the functions to be done by APCAM as required under these Rules.

(b) "AMA Procedure" means a hybrid procedure of Arbitration-Mediation-Arbitration Procedure under these Rules, where a party submits disputes for resolution for arbitration under the "Arb-Med-Arb Clause" or "AMA Clause".

(c) "Appointing Authority" means an institution or person and agreed upon and designated by the parties to appoint the arbitrators and under these Rules shall mean APCAM.

(d) "Arbitral Tribunal" means a sole arbitrator or panel of arbitrators appointed for the purpose of resolving a referred dispute by way of arbitration.

Arbitral Tribunal shall also include Interim Arbitral Tribunal or Emergency Arbitrator as appointed under Rule 12, wherever the context so requires.

(e) "Arbitration Agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them to arbitration, which can also be in

the form of a separate agreement or in the form of a clause in the contract between them. Under these Rules, Arbitration Agreement means an agreement wherein the parties have agreed to resolve their disputes under the APCAM Arbitration Rules.

(f) "Arbitration session" means a meeting arranged as under these Rules, between the arbitral tribunal or APCAM and one or more of the parties to the dispute and includes any activity undertaken to arrange or prepare for such a meeting, whether or not the meeting takes place; and includes any follow up on any matter or issue raised in such a meeting.

Meeting includes a meeting conducted by electronic communication, video conferencing or other electronic or digital means.

(g) "Award" includes, inter alia, an interim, partial or final Award, including a Fast-track arbitration award, interpretation, correction or additional award and consent award.

(h) "Commencement of Arbitration" means the date on which a party receives a Notice of Arbitration issued by the other party.

(i) "Commencement of Institutional Arbitration Process" means the date on which a completed and proper Request for Arbitration is accepted by APCAM.

(j) "Communication" means anything said or done or any document or report prepared or any information provided, for the purposes of or in the course of arbitration, and includes communication by arbitral tribunal, APCAM and parties.

Communication includes electronic, online or digital communication.

(k) "Date of Reference" means the date on which the arbitral tribunal receives the intimation about its constitution and it will be deemed to be the date when the arbitral tribunal enters upon reference.

(l) "Emergency Arbitrator" means an interim arbitral tribunal appointed under Schedule-2 or Schedule-3.

(m) "International arbitration" or "Cross-border arbitration" means an arbitration if —

(1) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or

(2) one of the following places is situated outside the State in which the parties have their places of business —

(i) the place of arbitration if determined in, or pursuant to, the arbitration agreement;

(ii) any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or

(3) the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country.

Explanation — For the purposes of above —

(i) if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;

(ii) if a party does not have a place of business, reference is to be made to his habitual residence.

(n) "Notice of Arbitration" means a notice issued by a party to the other, invoking the arbitration agreement and referring the disputes to arbitration.

(o) "Online Arbitration" means arbitration initiated and/or conducted using the electronic platform as agreed by the parties, to be conducted as per the protocol mentioned in Schedule-4.

(p) "Online meeting" or "Virtual meeting" means a meeting arranged as under these Rules, between the arbitral tribunal or APCAM and one or more of the parties for conducting arbitration proceedings by audio-conference, video-conference, or other similar means of communication. The Online meeting has to be conducted as per the protocols mentioned in Schedule-4.

(q) "Party to Arbitration" means any party to an arbitration agreement.

Party may include multiple parties, which includes claimants as well as respondents.

"Claimant" means the party who initiate the recourse to arbitration under these Rules.

"Respondent" means the party against whom the claimant initiates arbitration under these Rules.

(r) "Registrar" means the APCAM official assigned under these Rules who shall perform all the functions to be done by APCAM, as delegated by the Administrator.

(s) "Reply to the Notice of Arbitration" means a reply issued by a party in response to the Notice of Arbitration.

(t) "Request for Arbitration" means the filing of a request to initiate recourse to arbitration under the Rules by the Claimant.

(u) "Response to Request" means a reply issued by the Respondent to the Request of Arbitration.

(v) "Seat/ Place of Arbitration" means the place agreed upon by the parties, which is designated as the jurisdictional place for the arbitration proceedings.

(w) "Venue of Arbitration" means the place agreed upon by the parties for conducting the physical meetings for arbitration proceedings.

Schedule-2
EMERGENCY ARBITRATION

Section 1
Emergency Arbitrator

(1) In the case of exceptional urgency, any party requiring an emergency interim relief may, concurrent with or following the filing of Request for Arbitration but prior to the constitution of the arbitral tribunal, submit the Application for Emergency Arbitration along with an Application for Emergency Arbitrator, to the APCAM for an expedited appointment of an interim arbitral tribunal of an Emergency Arbitrator to conduct emergency proceedings.

(2) An Emergency Arbitrator shall be a sole arbitrator, even if the arbitration agreement of the parties, stipulates more number of arbitrators for arbitration.

Section 2
Application for Emergency Arbitrator

(1) The Application for Emergency Arbitrator shall be submitted in accordance with any means specified in Rule 2. The application shall include the following information —

(a) The names and (in so far as known) the address, telephone and email addresses

of the parties to the Application and of their counsel or legal representative.

(b) A description of circumstances giving rise to the application and of the underlying disputes referred to arbitration.

(c) A statement of the emergency relief sought.

(d) The reasons why the Applicant is entitled to such emergency relief.

(e) Any relevant agreement(s) and, in particular, the arbitration agreement(s).

(f) Comments on the language, the seat of the emergency relief proceedings, and the applicable law.

(g) Confirmation of payment of the amount referred to in the APCAM Arbitration Fee Schedule.

(h) Confirmation that copies of the Application and any exhibits included therewith have been or are being served simultaneously on all other parties to the arbitration by one or more means of service, including electronic means, to be identified in such confirmation.

(2) The Application may contain such other documents or information as the Applicant considers appropriate or as may contribute to the efficient examination of the application.

(3) The Application may, in addition to request for emergency interim relief, include a request to invoke the AMA Procedure under Schedule-3 or preliminary measures as under Rule 13.

(4) The Application shall be filed in sufficient numbers to provide one copy for the arbitrator, plus sufficient copies for serving to all other parties and one for APCAM. If the party has served the copy to the other parties, then the party shall file such documents/confirmation to APCAM that the copies have been served on all other parties to the arbitration by such means of service, including electronic means to be identified in such confirmation.

Section 3
Appointment of Emergency Arbitrator

(1) If APCAM determines that it should accept the Application, APCAM shall seek to appoint an Emergency Arbitrator within three days after the receipt of a duly filed Application.

(2) Once the Emergency Arbitrator has been appointed, APCAM shall so notify the parties to the Application and shall transmit the file to the Emergency Arbitrator. Thereafter, all written communications from the parties shall be submitted directly to the Emergency Arbitrator with a copy to the other party to the Application and APCAM. A copy of any written communication from the Emergency Arbitrator to the parties shall also be copied to APCAM.

(3) For the purpose of challenging an Emergency Arbitrator, Rule 8 shall apply to the Emergency Arbitrator, except that all the time periods set out in Rule 8 shall be abridged to three days.

Section 4
Replacement of Emergency Arbitrator

(1) Where an Emergency Arbitrator is unable to perform or has been successfully challenged or

otherwise removed or has resigned, APCAM shall seek to appoint a substitute Emergency Arbitrator within three days.

(2) If the Emergency Arbitrator is replaced, the emergency relief proceedings shall resume at the stage where the Emergency Arbitrator was replaced or ceased to perform his or her functions, unless the substitute Emergency Arbitrator decides otherwise.

Section 5
Seat and Venue of Emergency Relief

(1) If the parties have agreed on the seat of the arbitration, such seat shall be the seat of the emergency relief proceedings. Where the parties have not agreed on the seat of arbitration, and without prejudice to the reconstituted arbitral tribunal's determination of the seat of arbitration pursuant to Rule 9, the seat of the emergency relief shall be seat of APCAM.

(2) The venue of emergency relief proceedings may be fixed by APCAM, as it considers appropriate. The emergency relief proceedings shall nonetheless be considered for all purposes as an arbitration conducted at the seat.

(3) Any Emergency Decision shall have the same effect as an interim measure and shall be binding on the parties when rendered. By agreeing to arbitration under these Rules, the parties undertake to comply with the Emergency Decision without delay.

(4) The Emergency Arbitrator shall be entitled to order the provision of appropriate security by the party seeking Emergency Relief.

(5) Any Emergency Decision may, upon a reasoned request by a party, be modified, suspended or terminated by the Emergency Arbitrator or the reconstituted arbitral tribunal.

(6) Any Emergency Decision ceases to be binding —

(a) If the Emergency Arbitrator (i.e. the interim arbitral tribunal) or the final arbitral tribunal so decides; or

(b) Upon the final arbitral tribunal rendering a final award unless the arbitral expressly decides otherwise; or

(c) Upon the withdrawal of all claims or the termination of the arbitration before the rendering of a final award.

Section 6
Costs

(1) Any Emergency Decision shall fix the costs of the emergency relief proceedings and decide which of the parties shall bear them or in what proportion they shall be borne by the parties, subject always to the power of the final arbitral tribunal to determine finally the apportionment of such costs in accordance with Rule 23.

(2) The costs of the emergency relief proceedings include APCAM's administrative expenses, the Emergency Arbitrator's fees and expenses and the reasonable and other legal costs incurred by the parties for the emergency relief proceedings.

Section 7
Fees

(1) The fees of the Emergency Arbitrator and the administrative costs of the Emergency Relief Proceedings shall be fixed by APCAM in accordance with the APCAM Arbitration Fee Schedule.

(2) APCAM shall fix a provisional advance deposit as per the APCAM Arbitration Fee Schedule.

Section 8
Termination of Emergency Arbitrator and Reconstitution of Arbitral Tribunal

(1) The mandate of the Emergency Arbitrator shall not terminate till it undergoes reconstitution into the final arbitral tribunal.

(2) When the final arbitral tribunal is ready to substitute the Emergency Arbitrator, thereon, the Emergency Arbitrator's mandate shall be terminated and it will have no further power to act.

(3) The process of constituting the final arbitral tribunal shall run parallel to emergency proceedings, initiated under Schedule-2, according to the regular procedure provided under Rules 6 and 7, except that APCAM may abridge any period of time under the Rules to constitute the final arbitral tribunal as expeditiously as possible in the circumstances.

Section 9
Miscellaneous

(1) The Emergency Arbitrator may not act as arbitrator in any arbitration relating to the dispute that gave

rise to the Application and in respect of which the Emergency Arbitrator has acted, unless otherwise agreed by the parties to the arbitration.

(2) The Emergency Arbitrator Procedures are not intended to prevent any party from seeking urgent interim or conservatory measures from a competent judicial authority at any time.

(3) In all matters not expressly provided for in this Schedule, the Emergency Arbitrator shall act in the spirit of the Rules.

Schedule-3
APCAM ARB-MED-ARB PROCEDURE
(AMA Procedure)

(1) Under this AMA Procedure, parties agree that any dispute settled in the course of mediation at APCAM shall fall within the scope of their arbitration agreement.

(2) A party requiring to commence an arbitration under the AMA Procedure or a party invoking an AMA Clause shall file an Application for Emergency Arbitration with APCAM requesting the Emergency Arbitrator to submit the case to mediation under the AMA Procedure.

(3) The Emergency Arbitrator shall be appointed by APCAM in accordance with the provisions of Schedule-2 and/or the parties' arbitration agreement.

(4) The Emergency Arbitrator shall stay the arbitration and inform APCAM that the case be submitted for mediation. APCAM will initiate mediation pursuant to the APCAM Mediation Rules or as per any other Mediation Rules adopted by the parties. All subsequent steps in the arbitration shall be stayed, subject to paragraph 7, pending the outcome of mediation.

(5) The mediation conducted under APCAM shall be completed within 8 weeks from the Mediation

Commencement Date, unless, APCAM considers it appropriate to extend the time. For the purposes of calculating any time period in the arbitration proceeding, the time period will stop running at the Mediation Commencement Date and resume upon notification of APCAM to the Tribunal of the termination of the mediation proceeding.

(6) After the commencement of the AMA Procedure, in the event —

(a) The dispute has not been settled by mediation either partially or entirely, APCAM will inform the emergency arbitrator or the final arbitral tribunal, as the case may be, that the arbitration proceedings shall resume, unless otherwise agreed by the parties. Upon the date of APCAM's notification to the arbitral tribunal, the arbitration proceeding in respect of the dispute or remaining part of the dispute (as the case may be) shall resume in accordance with the APCAM Arbitration Rules;

(b) The dispute has been settled by mediation between the parties, APCAM will make a formal note that a settlement has been reached. If the parties request the arbitral tribunal to record their settlement in the form of a consent award, the parties or APCAM shall refer the settlement agreement to the arbitral tribunal and the arbitral tribunal may render a consent award on the terms agreed to by the parties.

(7) Notwithstanding the continuation of the mediation proceedings initiated under paragraph 4, the

process of constituting the final arbitral tribunal to replace the Emergency Arbitrator can be initiated by APCAM, if the parties so require, as per the regular procedure provided under Rules 6 and 7, except that APCAM may abridge any period of time under the Rules to constitute the final arbitral tribunal as expeditiously as possible in the circumstances.

(8) The fees of the Emergency Arbitrator and the administrative costs of the AMA Procedure shall be fixed by APCAM in accordance with Section 9 of Schedule-2 and mediation, as per the APCAM Mediation Fee Schedule.

Schedule-4
PROTOCOL ON ONLINE ARBITRATION

Section 1
Virtual Hearing

(1) In case of regular arbitration, if the parties agree, and/or the arbitral tribunal determines, that convening of a physical arbitration session is not possible or feasible, they can opt for virtual hearing in consultation with APCAM.

(2) While fixing virtual hearing, the arbitral tribunal shall consider and discuss with the parties the following —

(a) Logistics of the location of participants, total number of participants, number of remote locations, extent to which any participants will be in the same physical venue, extent to which members of the arbitral tribunal may be in the same physical venue as one another and/or any other participants, availability and control of break out rooms.

(b) If the Witness is located in the Remote Venue and is giving testimony through a web-based video conferencing solution, the audio output device in the Hearing Venue should be of sufficient quality and volume so as to ensure that the testimony can be accurately transcribed or recorded in the Hearing Venue.

(c) Procedures for the taking of evidence from witnesses and experts to ensure that the integrity of any oral testimonial evidence is preserved.

(d) Procedures for hearing and exchange of documents, ensuring that agreed documents are shared online well in advance of the hearing date, so that they are shared to the arbitral tribunal and all the parties.

Explanation — Agreed Documents shall mean the indexed documents filed in the proceedings submitted to the arbitral tribunal for the purposes of the hearing.

(e) Use of virtual transcription and the use of stenographers, translators and interpreters that are capable and able to deliver the necessary level of service in a virtual environment.

Explanation — The parties or the arbitral tribunal shall inform APCAM at-least three days in advance for availing the above service.

(f) Confirming the parties' agreement on proceeding with a virtual hearing or recording the reason for proceeding with a virtual hearing absent such agreement by the parties.

(3) Once the above procedures are finalised, the arbitral tribunal shall issue a procedural order, recording the details as under sub-section (b) and consult with APCAM about the scheduling of the virtual hearing.

Section 2
Examination of Witness

(1) In case of giving evidence by witnesses in an online arbitration session —

(a) Only those persons present in the Remote Venue shall be the Witness giving evidence (with his/her counsel, if applicable) and interpreters, if any. Each Party shall provide the identities of every individual in the room to the other Party/Parties and to the arbitral tribunal prior to the video conference and the tribunal shall take steps to verify the identity of each individual present at the start of the video conference.

(b) The Witness shall give his/her evidence sitting at an empty desk and the Witness's face shall be clearly visible.

(2) The arbitral tribunal may terminate the video conference at any time if the tribunal deems the video conference so unsatisfactory that it is unfair to either Party to continue.

(3) No recordings of the video conference shall be taken without leave of the arbitral tribunal.

Provided, if allowed, any recordings of the video conference shall be circulated to the arbitral tribunal and the Parties within 24 hours of the end of the video conference.

Section 3
Online Security and Presumptions

(1) The digital platform used for online arbitration should ensure the following features and safety measures —

(a) Allow the parties to opt for textual communications – chat rooms, audio conferencing or video conferencing.

(b) Allow the parties facilities for online waiting rooms and general discussion rooms.

(c) The entry to the rooms is restricted to registered parties only, with list of participants issued to all participating parties and password protected.

(d) Ensure that communications are private and confidential and recording of any communication whatsoever, is not permitted.

(e) In case of video conferencing, all participants shall keep their videos on at all times and will be required to provide a 360-degree view of their location so as to make sure there is no other participant or illicit recording device present at the location so as to maintain the confidentiality of the online arbitration proceedings.

(2) During online arbitration, if a party is not able to get connectivity or if loses connectivity or faces interruptions during the arbitration session, all the parties and the arbitral tribunal shall be notified of the said fact by the Digital Administrator and the Sole Arbitrator/ Presiding Arbitrator or the Digital Administrator shall notify the disconnected party through SMS or digital notification on registered mobile phones or on their registered email address and seek clarification from such disconnected party.

Provided that if a party, without intimation, gets disconnected from an ongoing mediation session for fifteen continuous minutes or more, it shall be deemed as a connectivity issue.

(3) If a party has not attended the arbitration session as per the sitting schedule on the online platform, it shall not prima-facie be considered as an absence, but shall be presumed as a disruption or interruption in connectivity. The Sole Arbitrator/ Presiding Arbitrator shall contact the non-appeared party through email, notification, telephone or any other recognized medium of communication and clarify the position. In case the party does not respond to such email, within a period of three days, it shall be considered as a failure of the party to attend the proceedings.

Schedule-5
SEOUL PROTOCOL ON VIDEO CONFERENCING IN INTERNATIONAL ARBITRATION

Introduction.

This Protocol on Video Conferencing in International Arbitration (Protocol) is intended to serve as a guide to best practice for planning, testing and conducting video conferences in international arbitration.

Definitions.

Agreed Bundle of Documents — shall mean the agreed and indexed documents submitted to the Tribunal for the purposes of the hearing.

Hearing Venue — shall mean the site of the hearing, being the site of the requesting authority, typically where the majority of the participants are located.

Observer — shall mean any individual who is present in the Venue other than the Parties, Tribunal, Witness, interpreter, as described in Article 3.

Party / Parties — shall mean the party or parties to the arbitration.

Remote Venue — shall mean the site where the remote Witness is located to provide his/her evidence (i.e. not the Hearing Venue), typically where a minority of the participants are located.

Tribunal — shall mean the arbitral tribunal.

Venue — shall mean a video conferencing location, including the Hearing Venue and the Remote Venue(s).

Witness — shall mean the individual who is the subject of the examination by video, including fact witnesses and experts.

Article 1 – Witness Examination Generally

1.1 The Parties shall ensure that any and all Venues meet the logistical and technological requirements as stated in this Protocol.

1.2 The video conferencing system at the Venue shall allow a reasonable part of the interior of the room in which the Witness is located to be shown on screen, while retaining sufficient proximity to clearly depict the Witness.

1.3 The Witness shall give his/her evidence sitting at an empty desk or standing at a lectern, and the Witness's face shall be clearly visible.

1.4 As a general principle, the Witness shall give his/her evidence during the course of the hearing under the direction of the Tribunal. Only under exceptional circumstances and subject to the direction of the Tribunal would evidence from a Witness be given/conducted outside of the hearing.

1.5 A computer with email facilities and a printer should be located at all Venues.

1.6 The parties shall ensure that an agreed translation of the oath to be administered is placed before the Witness in the remote hearing room.

1.7 The Tribunal may terminate the video conference at any time if the Tribunal deems the video conference so unsatisfactory that it is unfair to either Party to continue.

Article 2 –Video Conferencing Venue

2.1 To the extent possible, and as may be agreed to by the Parties or ordered by the Tribunal, the video conference shall occur at a Venue which meets the following minimum standards:

a. The Parties shall use best efforts to ensure that the connection between the Hearing Venue and the Remote Venue is as smooth as possible, with sounds and images being accurately and properly aligned so as to minimize any delays. This principle applies equally to situations where there is more than one Remote Venue. Where a connection between additional Venues is required (for example when an interpreter is connected from a third location), the connection may be established through the use of a third party video conferencing bridge service, such as multi-point control units or third party router vendors that interlink and connect multiple video conferencing systems together in a single conference.

b. The Venue shall have at least one on-call individual with adequate technical knowledge to assist in planning, testing and conducting the video conference.

c. The Venue shall be in a location that provides for fair, equal and reasonable right of access to the Parties and their related

persons, as appropriate. Similarly, cross-border connections should be adequately safeguarded so as to prevent unlawful interception by third parties, for example, by IP-to-IP encryption.

2.2 The Parties shall use their best efforts to ensure the security of the participants of the video conferencing, including the Witnesses, Observers, interpreters, and experts, among others.

Article 3 – Observers

3.1 During the course of the video conference, the only persons present in the Remote Venue shall be the Witness giving evidence (with his/her counsel, if applicable), interpreters, paralegals to assist with the documents, and representatives from each Party's legal team on a watching brief. Each Party shall provide the identities of every individual in the room to the other Party/Parties and to the Tribunal prior to the video conference and the Tribunal shall take steps to verify the identity of each individual present at the start of the video conference.

Article 4 – Documents

4.1 All documents on the record which the Witness will refer to during the course of his/her evidence must be clearly identified, paginated and made available to the Witness.

4.2 The Party whose Witness is giving evidence by video conference shall provide an unmarked copy (without any annotations, notes or mark-ups) of the Agreed Bundle of Documents (or such volumes of the Agreed Bundle of Documents as the Parties agree or are required) at the start of the examination of the Witness.

4.3 The Parties may agree on utilizing a shared virtual document repository (i.e. document server) to be made available via computers at all Venues, provided that the Parties use best efforts to ensure the security of the documents (i.e. from unlawful interception or retention by third parties).

4.4 If available, a separate display screen/window (other than the screen/window used to display the video transmission) shall be used to show the relevant documents to the Witness during the course of questioning.

Article 5 – Technical Requirements

5.1 The video conference shall be of sufficient quality so as to allow for clear video and audio transmission of the Witness, the Tribunal and the Parties, and there shall be compatibility between the hardware and software used at the Venues. While the Parties and the Tribunal may agree on the technical requirements for the video conferencing, as a guide, minimum transmission speeds should not be less than 256 kbs/second, 30 frames/second, and the minimum resolution should be HD standard. The Hearing Venue should also be equipped with both ISDN and IP communication line capabilities and all Venues should be equipped with appropriate portable equipment in the event of unforeseen technical complications.

5.2 For any individual participating in the video conference, there shall be sufficient microphones to allow for the amplification of the individual's voice, as well as sufficient microphones to allow for the transcription of the individual's testimony as appropriate. There shall also be adequate placement and control of the cameras to ensure that all participants can be seen.

5.3 Article 5.2 shall apply to interpreters or other participants referred to in Article 3.1, as appropriate.

5.4 There shall be appropriate microphones and connections to allow for the amplification of the relevant persons at the Hearing Venue so that the Witness and Observers may adequately hear the relevant individual(s) at the Hearing Venue.

5.5 Under appropriate circumstances, Parties may agree to use web-based video conferencing solutions instead of ISDN or IP communication lines. When using a web-based video conferencing solution, the Venue should provide for a sufficiently large screen that can project the video transmission displayed through the video conferencing solution and ensure that the Ethernet or wireless internet connection is secure and stable throughout the proceedings.

5.6 If the Witness is located in the Remote Venue and is giving testimony through a web-based video conferencing solution, the audio output device in the Hearing Venue should be of sufficient quality and volume so as to ensure that the testimony can be accurately transcribed or recorded in the Hearing Venue.

5.7 For additional detail on technical specifications, please refer to Annex I.

Article 6 – Test Conferencing and Audio-Conferencing Backup

6.1 As a general principle, testing of all video conferencing equipment shall be conducted at least twice: once in advance of the commencement of the hearing, and once immediately prior to the video conference itself.

6.2 The Parties shall ensure that there are adequate backups in place in the event that the video conference fails. At a minimum, these should include cable back-ups, teleconferencing, or alternative methods of video/audio conferencing.

Article 7 – Interpretation

7.1 The Parties shall ensure that interpretation services are made available to the Witness, if applicable.

7.2 As a general principle, consecutive interpretation shall be preferred to simultaneous interpretation.

Article 8 - Recordings

8.1 No recordings of the video conference shall be taken without leave of the Tribunal.

8.2 Any recordings of the video conference shall be circulated to the Tribunal and the Parties within 24 hours of the end of the video conference.

Article 9 - Preparatory Arrangements

9.1 To the extent possible, the Parties should make the request to the Tribunal to use video conferencing at the hearing at least 72 hours before the commencement of hearing. The Party who requests the use of video conferencing (the "Requesting Party") should liaise with the appropriate individuals to ensure the video conferencing can be conducted smoothly. This includes the booking of video conferencing facilities and notifying all participants of the video conferencing arrangements. The Requesting Party shall bear the extra costs of the video conferencing facilities, if any.

9.2 The Parties shall endeavour to agree on the seating plan so as to allow each participant to be able to see the participants with whom they will be speaking to during the video conference.

9.3 Where an interpreter is required during the video conference, the interpreter shall be briefed by the appointing Party before the commencement of the hearing, including in relation to this Protocol and the arrangements for video conferencing that may impact or require adjustment of their interpretation service.

9.4 Before the commencement of the hearing, the Parties shall inform the participants of any backup plans in case of communication or technological breakdowns.

Annex 1 Technical Specifications

Video conferencing equipment used should meet minimum industry standards in order to ensure the efficient and smooth operation of each hearing. The common industry standards recommended by the International Telecommunications Union - the United Nations specialized agency in the field of telecommunications, are listed below, and is intended to serve as a guideline as to the technical specifications that each Venue adopting video conferencing should entail.

Video

- For ISDN-based networks:
  - H.320 Standard (umbrella recommendation for narrow-band video conferencing over circuit-switched networks i.e. N-ISDN, SW56, dedicated networks); and

- H.310 Standard (wide-band (MPEG-2) video conferencing over ATM and B-ISDN)

♦ For video over Internet/LAN-conferencing:

- H.323 Standard (narrow-band video conferencing over non-guaranteed quality-of-service packet networks (Internet, LAN, etc.))

Data Conference / Data Collaboration

♦ T.120 Standard.

Audio

♦ Standards for audio coding:

- G.711 (3kHZ audio-coding within 64 kbit/s)
- G.722 (7kHZ audio-coding within 48 or 56 kbit/s)

♦ Echo-cancellation microphones with a frequency range of 100-7,000 Hz, audio muting, on/off switch and full-duplex audio.

♦ H.281 (umbrella standard for local and far-end camera control protocol for ISDN (H.320) video conferencing calls, with camera(s) that have the ability to pan, tilt and zoom, both manually and using pre-sets).

Picture

♦ H.263 (video coding for low bitrate communication i.e. less than 64 Kbps);

♦ H.264 (new video codec standard that offers major improvements to image quality. Picture

quality standard of 30 frames per second Common Intermediate Format (CIF) at between 336 and 384 kbps); or

- H.239 (Picture-in-picture (PIP) or DuoVideo H.239. H.239 defines the role management and additional media channels for H.300-series multimedia terminals, and allows endpoints that support H.239 to receive and transmit multiple, separate media streams)

Channels, bandwidth and bridging

- Minimum of six channels for room video-conferencing systems using ISDN that has the capacity to use 3 ISDN lines.

- Standards for Codecs:

  - H.261 (full motion video coding for audiovisual services at p x 64 Kbps);
  - H.263 (video coding for low bitrate communication i.e. less than 64 Kbps); or
  - H.264 (new video codec standard that offers major improvements to image quality. Picture quality standard of 30 frames per second Common Intermediate Format (CIF) at between 336 and 384 kbps).

- Bandwidth on Demand Inter-Networking Group (BONDING) standards (ISDN and H.320 only) for inverse multiplexers.

- H.243 (the H.320/H.323 Standard for Bridging Technology).

- H.460 (the standard for the traversing of H.323 videoconferencing signals across firewalls and network address translation (NAT)).

Schedule-6
IBA GUIDELINES ON CONFLICTS OF INTEREST IN INTERNATIONAL ARBITRATION 2014

[The Guidelines were adopted by resolution of the IBA Council on Thursday 23 October 2014. The Guidelines are available for download at: www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx]

Introduction

1. Arbitrators and party representatives are often unsure about the scope of their disclosure obligations. The growth of international business, including larger corporate groups and international law firms, has generated more disclosures and resulted in increased complexity in the analysis of disclosure and conflict of interest issues. Parties have more opportunities to use challenges of arbitrators to delay arbitrations, or to deny the opposing party the arbitrator of its choice. Disclosure of any relationship, no matter how minor or serious, may lead to unwarranted or frivolous challenges. At the same time, it is important that more information be made available to the parties, so as to protect awards against challenges based upon alleged failures to disclose, and to promote a level playing field among parties and among counsel engaged in international arbitration.

2. Parties, arbitrators, institutions and courts face complex decisions about the information that arbitrators should disclose and the standards to apply to disclosure. In addition, institutions and courts face difficult decisions when an objection or a challenge is made after a disclosure. There is a tension between, on the one hand, the parties' right to disclosure of circumstances that may call into question an arbitrator's impartiality or independence in order to protect the parties' right to a fair hearing, and, on the other hand, the need to avoid unnecessary challenges against arbitrators in order to protect the parties' ability to select arbitrators of their choosing.

3. It is in the interest of the international arbitration community that arbitration proceedings are not hindered by ill-founded challenges against arbitrators and that the legitimacy of the process is not affected by uncertainty and a lack of uniformity in the applicable standards for disclosures, objections and challenges. The 2004 Guidelines reflected the view that the standards existing at the time lacked sufficient clarity and uniformity in their application. The Guidelines, therefore, set forth some 'General Standards and Explanatory Notes on the Standards'. Moreover, in order to promote greater consistency and to avoid unnecessary challenges and arbitrator withdrawals and removals, the Guidelines list specific situations indicating whether they warrant disclosure or disqualification of an arbitrator. Such lists, designated 'Red', 'Orange' and 'Green' (the 'Application Lists'), have been updated and appear at the end of these revised Guidelines.

4. The Guidelines reflect the understanding of the IBA Arbitration Committee as to the best current

international practice, firmly rooted in the principles expressed in the General Standards below. The General Standards and the Application Lists are based upon statutes and case law in a cross-section of jurisdictions, and upon the judgement and experience of practitioners involved in international arbitration. In reviewing the 2004 Guidelines, the IBA Arbitration Committee updated its analysis of the laws and practices in a number of jurisdictions. The Guidelines seek to balance the various interests of parties, representatives, arbitrators and arbitration institutions, all of whom have a responsibility for ensuring the integrity, reputation and efficiency of international arbitration. Both the 2004 Working Group and the Subcommittee in 2012/2014 have sought and considered the views of leading arbitration institutions, corporate counsel and other persons involved in international arbitration through public consultations at IBA annual meetings, and at meetings with arbitrators and practitioners. The comments received were reviewed in detail and many were adopted. The IBA Arbitration Committee is grateful for the serious consideration given to its proposals by so many institutions and individuals.

5. The Guidelines apply to international commercial arbitration and investment arbitration, whether the representation of the parties is carried out by lawyers or non-lawyers, and irrespective of whether or not non-legal professionals serve as arbitrators.

6. These Guidelines are not legal provisions and do not override any applicable national law or arbitral rules chosen by the parties. However, it is hoped that, as was the case for the 2004 Guidelines and other sets of rules and guidelines

of the IBA Arbitration Committee, the revised Guidelines will find broad acceptance within the international arbitration community, and that they will assist parties, practitioners, arbitrators, institutions and courts in dealing with these important questions of impartiality and independence. The IBA Arbitration Committee trusts that the Guidelines will be applied with robust common sense and without unduly formalistic interpretation.

7. The Application Lists cover many of the varied situations that commonly arise in practice, but they do not purport to be exhaustive, nor could they be. Nevertheless, the IBA Arbitration Committee is confident that the Application Lists provide concrete guidance that is useful in applying the General Standards. The IBA Arbitration Committee will continue to study the actual use of the Guidelines with a view to furthering their improvement.

8. In 1987, the IBA published Rules of Ethics for International Arbitrators. Those Rules cover more topics than these Guidelines, and they remain in effect as to subjects that are not discussed in the Guidelines. The Guidelines supersede the Rules of Ethics as to the matters treated here.

PART I
GENERAL STANDARDS REGARDING IMPARTIALITY, INDEPENDENCE AND DISCLOSURE

(1) General Principle

Every arbitrator shall be impartial and independent of the parties at the time of accepting an appointment to serve and shall remain so until the final award has been rendered or the proceedings have otherwise finally terminated.

Explanation to General Standard 1 —

A fundamental principle underlying these Guidelines is that each arbitrator must be impartial and independent of the parties at the time he or she accepts an appointment to act as arbitrator, and must remain so during the entire course of the arbitration proceeding, including the time period for the correction or interpretation of a final award under the relevant rules, assuming such time period is known or readily ascertainable.

The question has arisen as to whether this obligation should extend to the period during which the award may be challenged before the relevant courts. The decision taken is that this obligation should not extend in this manner, unless the final award may be referred back to the original Arbitral Tribunal under the relevant applicable law or relevant institutional rules. Thus, the arbitrator's obligation in this regard ends when the Arbitral Tribunal has rendered the final award, and any correction or interpretation as may be permitted under the relevant rules has been issued, or the time for seeking the same has elapsed, the proceedings have been finally terminated (for example, because of a settlement), or the arbitrator otherwise no longer has jurisdiction. If, after setting aside or other proceedings, the dispute is referred back to the same Arbitral Tribunal, a fresh round of disclosure and review of potential conflicts of interests may be necessary.

(2) Conflicts of Interest

(a) An arbitrator shall decline to accept an appointment or, if the arbitration has already been commenced, refuse to continue to act as an arbitrator, if he or she has any doubt as to his or her ability to be impartial or independent.

(b) The same principle applies if facts or circumstances exist, or have arisen since the appointment, which, from the point of view of a reasonable third person having knowledge of the relevant facts and circumstances, would give rise to justifiable doubts as to the arbitrator's impartiality or independence, unless the parties have accepted the arbitrator in accordance with the requirements set out in General Standard 4.

(c) Doubts are justifiable if a reasonable third person, having knowledge of the relevant facts and circumstances, would reach the conclusion that there is a likelihood that the arbitrator may be influenced by factors other than the merits of the case as presented by the parties in reaching his or her decision.

(d) Justifiable doubts necessarily exist as to the arbitrator's impartiality or independence in any of the situations described in the Non-Waivable Red List.

Explanation to General Standard 2 —

(a) If the arbitrator has doubts as to his or her ability to be impartial and independent, the arbitrator must decline the appointment. This standard should apply regardless of the stage of the proceedings. This is a basic principle that is spelled out in these Guidelines in order to avoid confusion and to foster confidence in the arbitral process.

(b) In order for standards to be applied as consistently as possible, the test for disqualification is an objective one. The wording 'impartiality or independence' derives from the widely adopted Article 12 of the United Nations Commission on International Trade Law

(UNCITRAL) Model Law, and the use of an appearance test based on justifiable doubts as to the impartiality or independence of the arbitrator, as provided in Article 12(2) of the UNCITRAL Model Law, is to be applied objectively (a 'reasonable third person test'). Again, as described in the Explanation to General Standard 3(e), this standard applies regardless of the stage of the proceedings.

(c) Laws and rules that rely on the standard of justifiable doubts often do not define that standard. This General Standard is intended to provide some context for making this determination.

(d) The Non-Waivable Red List describes circumstances that necessarily raise justifiable doubts as to the arbitrator's impartiality or independence. For example, because no one is allowed to be his or her own judge, there cannot be identity between an arbitrator and a party. The parties, therefore, cannot waive the conflict of interest arising in such a situation.

(3) Disclosure by the Arbitrator

(a) If facts or circumstances exist that may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence, the arbitrator shall disclose such facts or circumstances to the parties, the arbitration institution or other appointing authority (if any, and if so required by the applicable institutional rules) and the co arbitrators, if any, prior to accepting his or her appointment or, if thereafter, as soon as he or she learns of them.

(b) An advance declaration or waiver in relation to possible conflicts of interest arising from facts

and circumstances that may arise in the future does not discharge the arbitrator's ongoing duty of disclosure under General Standard 3(a).

(c) It follows from General Standards 1 and 2(a) that an arbitrator who has made a disclosure considers himself or herself to be impartial and independent of the parties, despite the disclosed facts, and, therefore, capable of performing his or her duties as arbitrator. Otherwise, he or she would have declined the nomination or appointment at the outset, or resigned.

(d) Any doubt as to whether an arbitrator should disclose certain facts or circumstances should be resolved in favour of disclosure.

(e) When considering whether facts or circumstances exist that should be disclosed, the arbitrator shall not take into account whether the arbitration is at the beginning or at a later stage.

Explanation to General Standard 3 —

(a) The arbitrator's duty to disclose under General Standard 3(a) rests on the principle that the parties have an interest in being fully informed of any facts or circumstances that may be relevant in their view. Accordingly, General Standard 3(d) provides that any doubt as to whether certain facts or circumstances should be disclosed should be resolved in favour of disclosure. However, situations that, such as those set out in the Green List, could never lead to disqualification under the objective test set out in General Standard 2, need not be disclosed. As reflected in General Standard 3(c), a disclosure does not imply that the disclosed facts are such as to disqualify the arbitrator under General Standard 2. The duty of disclosure under General Standard 3(a) is ongoing in nature.

(b) The IBA Arbitration Committee has considered the increasing use by prospective arbitrators of declarations in respect of facts or circumstances that may arise in the future, and the possible conflicts of interest that may result, sometimes referred to as 'advance waivers'. Such declarations do not discharge the arbitrator's ongoing duty of disclosure under General Standard 3(a). The Guidelines, however, do not otherwise take a position as to the validity and effect of advance declarations or waivers, because the validity and effect of any advance declaration or waiver must be assessed in view of the specific text of the advance declaration or waiver, the particular circumstances at hand and the applicable law.

(c) A disclosure does not imply the existence of a conflict of interest. An arbitrator who has made a disclosure to the parties considers himself or herself to be impartial and independent of the parties, despite the disclosed facts, or else he or she would have declined the nomination, or resigned. An arbitrator making a disclosure thus feels capable of performing his or her duties. It is the purpose of disclosure to allow the parties to judge whether they agree with the evaluation of the arbitrator and, if they so wish, to explore the situation further. It is hoped that the promulgation of this General Standard will eliminate the misconception that disclosure itself implies doubts sufficient to disqualify the arbitrator, or even creates a presumption in favour of disqualification. Instead, any challenge should only be successful if an objective test, as set forth in General Standard 2 above, is met. Under Comment 5 of the Practical Application of the General Standards, a failure to disclose certain facts and circumstances that may, in the eyes of the parties, give rise to doubts

as to the arbitrator's impartiality or independence, does not necessarily mean that a conflict of interest exists, or that a disqualification should ensue.

(d) In determining which facts should be disclosed, an arbitrator should take into account all circumstances known to him or her. If the arbitrator finds that he or she should make a disclosure, but that professional secrecy rules or other rules of practice or professional conduct prevent such disclosure, he or she should not accept the appointment, or should resign.

(e) Disclosure or disqualification (as set out in General Standards 2 and 3) should not depend on the particular stage of the arbitration. In order to determine whether the arbitrator should disclose, decline the appointment or refuse to continue to act, the facts and circumstances alone are relevant, not the current stage of the proceedings, or the consequences of the withdrawal. As a practical matter, arbitration institutions may make a distinction depending on the stage of the arbitration. Courts may likewise apply different standards. Nevertheless, no distinction is made by these Guidelines depending on the stage of the arbitral proceedings. While there are practical concerns, if an arbitrator must withdraw after the arbitration has commenced, a distinction based on the stage of the arbitration would be inconsistent with the General Standards.

(4) Waiver by the Parties

(a) If, within 30 days after the receipt of any disclosure by the arbitrator, or after a party otherwise learns of facts or circumstances that could constitute a potential conflict of interest for an arbitrator, a party

does not raise an express objection with regard to that arbitrator, subject to paragraphs (b) and (c) of this General Standard, the party is deemed to have waived any potential conflict of interest in respect of the arbitrator based on such facts or circumstances and may not raise any objection based on such facts or circumstances at a later stage.

(b) However, if facts or circumstances exist as described in the Non-Waivable Red List, any waiver by a party (including any declaration or advance waiver, such as that contemplated in General Standard 3(b)), or any agreement by the parties to have such a person serve as arbitrator, shall be regarded as invalid.

(c) A person should not serve as an arbitrator when a conflict of interest, such as those exemplified in the Waivable Red List, exists. Nevertheless, such a person may accept appointment as arbitrator, or continue to act as an arbitrator, if the following conditions are met —

(i) all parties, all arbitrators and the arbitration institution, or other appointing authority (if any), have full knowledge of the conflict of interest; and

(ii) all parties expressly agree that such a person may serve as arbitrator, despite the conflict of interest.

(d) An arbitrator may assist the parties in reaching a settlement of the dispute, through conciliation, mediation or otherwise, at any stage of the proceedings. However, before doing so, the arbitrator should receive an express agreement

by the parties that acting in such a manner shall not disqualify the arbitrator from continuing to serve as arbitrator. Such express agreement shall be considered to be an effective waiver of any potential conflict of interest that may arise from the arbitrator's participation in such a process, or from information that the arbitrator may learn in the process. If the assistance by the arbitrator does not lead to the final settlement of the case, the parties remain bound by their waiver. However, consistent with General Standard 2(a) and notwithstanding such agreement, the arbitrator shall resign if, as a consequence of his or her involvement in the settlement process, the arbitrator develops doubts as to his or her ability to remain impartial or independent in the future course of the arbitration.

Explanation to General Standard 4 —

(a) Under General Standard 4(a), a party is deemed to have waived any potential conflict of interest, if such party has not raised an objection in respect of such conflict of interest within 30 days. This time limit should run from the date on which the party learns of the relevant facts or circumstances, including through the disclosure process.

(b) General Standard 4(b) serves to exclude from the scope of General Standard 4(a) the facts and circumstances described in the Non-Waivable Red List. Some arbitrators make declarations that seek waivers from the parties with respect to facts or circumstances that may arise in the future. Irrespective of any such waiver sought by the arbitrator, as provided in General Standard 3(b), facts and circumstances arising in the course of the arbitration should be disclosed to the parties by virtue of the arbitrator's ongoing duty of disclosure.

(c) Notwithstanding a serious conflict of interest, such as those that are described by way of example in the Waivable Red List, the parties may wish to engage such a person as an arbitrator. Here, party autonomy and the desire to have only impartial and independent arbitrators must be balanced. Persons with a serious conflict of interest, such as those that are described by way of example in the Waivable Red List, may serve as arbitrators only if the parties make fully informed, explicit waivers.

(d) The concept of the Arbitral Tribunal assisting the parties in reaching a settlement of their dispute in the course of the arbitration proceedings is well-established in some jurisdictions, but not in others. Informed consent by the parties to such a process prior to its beginning should be regarded as an effective waiver of a potential conflict of interest. Certain jurisdictions may require such consent to be in writing and signed by the parties. Subject to any requirements of applicable law, express consent may be sufficient and may be given at a hearing and reflected in the minutes or transcript of the proceeding. In addition, in order to avoid parties using an arbitrator as mediator as a means of disqualifying the arbitrator, the General Standard makes clear that the waiver should remain effective, if the mediation is unsuccessful. In giving their express consent, the parties should realise the consequences of the arbitrator assisting them in a settlement process, including the risk of the resignation of the arbitrator.

(5) Scope

(a) These Guidelines apply equally to tribunal chairs, sole arbitrators and co-arbitrators, howsoever appointed.

(b) Arbitral or administrative secretaries and assistants, to an individual arbitrator or the Arbitral Tribunal, are bound by the same duty of independence and impartiality as arbitrators, and it is the responsibility of the Arbitral Tribunal to ensure that such duty is respected at all stages of the arbitration.

Explanation to General Standard 5 —

(a) Because each member of an Arbitral Tribunal has an obligation to be impartial and independent, the General Standards do not distinguish between sole arbitrators, tribunal chairs, party-appointed arbitrators or arbitrators appointed by an institution.

(b) Some arbitration institutions require arbitral or administrative secretaries and assistants to sign a declaration of independence and impartiality. Whether or not such a requirement exists, arbitral or administrative secretaries and assistants to the Arbitral Tribunal are bound by the same duty of independence and impartiality (including the duty of disclosure) as arbitrators, and it is the responsibility of the Arbitral Tribunal to ensure that such duty is respected at all stages of the arbitration. Furthermore, this duty applies to arbitral or administrative secretaries and assistants to either the Arbitral Tribunal or individual members of the Arbitral Tribunal.

(6) Relationships

(a) The arbitrator is in principle considered to bear the identity of his or her law firm, but when considering the relevance of facts or circumstances to determine whether a potential conflict of interest exists, or whether disclosure

should be made, the activities of an arbitrator's law firm, if any, and the relationship of the arbitrator with the law firm, should be considered in each individual case. The fact that the activities of the arbitrator's firm involve one of the parties shall not necessarily constitute a source of such conflict, or a reason for disclosure. Similarly, if one of the parties is a member of a group with which the arbitrator's firm has a relationship, such fact should be considered in each individual case, but shall not necessarily constitute by itself a source of a conflict of interest, or a reason for disclosure.

(b) If one of the parties is a legal entity, any legal or physical person having a controlling influence on the legal entity, or a direct economic interest in, or a duty to indemnify a party for, the award to be rendered in the arbitration, may be considered to bear the identity of such party.

Explanation to General Standard 6 —

(a) The growing size of law firms should be taken into account as part of today's reality in international arbitration. There is a need to balance the interests of a party to appoint the arbitrator of its choice, who may be a partner at a large law firm, and the importance of maintaining confidence in the impartiality and independence of international arbitrators. The arbitrator must, in principle, be considered to bear the identity of his or her law firm, but the activities of the arbitrator's firm should not automatically create a conflict of interest. The relevance of the activities of the arbitrator's firm, such as the nature, timing and scope of the work by the law firm, and the relationship of the arbitrator with the law firm,

should be considered in each case. General Standard 6(a) uses the term 'involve' rather than 'acting for' because the relevant connections with a party may include activities other than representation on a legal matter. Although barristers' chambers should not be equated with law firms for the purposes of conflicts, and no general standard is proffered for barristers' chambers, disclosure may be warranted in view of the relationships among barristers, parties or counsel. When a party to an arbitration is a member of a group of companies, special questions regarding conflicts of interest arise. Because individual corporate structure arrangements vary widely, a catch-all rule is not appropriate. Instead, the particular circumstances of an affiliation with another entity within the same group of companies, and the relationship of that entity with the arbitrator's law firm, should be considered in each individual case.

(b) When a party in international arbitration is a legal entity, other legal and physical persons may have a controlling influence on this legal entity, or a direct economic interest in, or a duty to indemnify a party for, the award to be rendered in the arbitration. Each situation should be assessed individually, and General Standard 6(b) clarifies that such legal persons and individuals may be considered effectively to be that party. Third-party funders and insurers in relation to the dispute may have a direct economic interest in the award, and as such may be considered to be the equivalent of the party. For these purposes, the terms 'third-party funder' and 'insurer' refer to any person or entity that is contributing funds, or other material support, to the prosecution or defence of the case and that has a direct economic interest in, or a duty to indemnify a party for, the award to be rendered in the arbitration.

Duty of the Parties and the Arbitrator

(a) A party shall inform an arbitrator, the Arbitral Tribunal, the other parties and the arbitration institution or other appointing authority (if any) of any relationship, direct or indirect, between the arbitrator and the party (or another company of the same group of companies, or an individual having a controlling influence on the party in the arbitration), or between the arbitrator and any person or entity with a direct economic interest in, or a duty to indemnify a party for, the award to be rendered in the arbitration. The party shall do so on its own initiative at the earliest opportunity.

(b) A party shall inform an arbitrator, the Arbitral Tribunal, the other parties and the arbitration institution or other appointing authority (if any) of the identity of its counsel appearing in the arbitration, as well as of any relationship, including membership of the same barristers' chambers, between its counsel and the arbitrator. The party shall do so on its own initiative at the earliest opportunity, and upon any change in its counsel team.

(c) In order to comply with General Standard 7(a), a party shall perform reasonable enquiries and provide any relevant information available to it.

(d) An arbitrator is under a duty to make reasonable enquiries to identify any conflict of interest, as well as any facts or circumstances that may reasonably give rise to doubts as to his or her impartiality or independence. Failure to disclose a conflict is not excused by lack of knowledge, if the arbitrator does not perform such reasonable enquiries.

Explanation to General Standard 7 —

(a) The parties are required to disclose any relationship with the arbitrator. Disclosure of such relationships should reduce the risk of an unmeritorious challenge of an arbitrator's impartiality or independence based on information learned after the appointment. The parties' duty of disclosure of any relationship, direct or indirect, between the arbitrator and the party (or another company of the same group of companies, or an individual having a controlling influence on the party in the arbitration) has been extended to relationships with persons or entities having a direct economic interest in the award to be rendered in the arbitration, such as an entity providing funding for the arbitration, or having a duty to indemnify a party for the award.

(b) Counsel appearing in the arbitration, namely the persons involved in the representation of the parties in the arbitration, must be identified by the parties at the earliest opportunity. A party's duty to disclose the identity of counsel appearing in the arbitration extends to all members of that party's counsel team and arises from the outset of the proceedings.

(c) In order to satisfy their duty of disclosure, the parties are required to investigate any relevant information that is reasonably available to them. In addition, any party to an arbitration is required, at the outset and on an ongoing basis during the entirety of the proceedings, to make a reasonable effort to ascertain and to disclose available information that, applying the general standard, might affect the arbitrator's impartiality or independence.

(d) In order to satisfy their duty of disclosure under the Guidelines, arbitrators are required to investigate any relevant information that is reasonably available to them.

PART II
PRACTICAL APPLICATION OF THE GENERAL STANDARDS

1. If the Guidelines are to have an important practical influence, they should address situations that are likely to occur in today's arbitration practice and should provide specific guidance to arbitrators, parties, institutions and courts as to which situations do or do not constitute conflicts of interest, or should or should not be disclosed. For this purpose, the Guidelines categorise situations that may occur in the following Application Lists. These lists cannot cover every situation. In all cases, the General Standards should control the outcome.

2. The Red List consists of two parts: 'a Non-Waivable Red List' (see General Standards 2(d) and 4(b)); and 'a Waivable Red List' (see General Standard 4(c)). These lists are non-exhaustive and detail specific situations that, depending on the facts of a given case, give rise to justifiable doubts as to the arbitrator's impartiality and independence. That is, in these circumstances, an objective conflict of interest exists from the point of view of a reasonable third person having knowledge of the relevant facts and circumstances (see General Standard 2(b)). The Non-Waivable Red List includes situations deriving from the overriding principle that no person can be his or her own judge. Therefore, acceptance of such a situation cannot cure the

conflict. The Waivable Red List covers situations that are serious but not as severe. Because of their seriousness, unlike circumstances described in the Orange List, these situations should be considered waivable, but only if and when the parties, being aware of the conflict of interest situation, expressly state their willingness to have such a person act as arbitrator, as set forth in General Standard 4(c).

3. The Orange List is a non-exhaustive list of specific situations that, depending on the facts of a given case, may, in the eyes of the parties, give rise to doubts as to the arbitrator's impartiality or independence. The Orange List thus reflects situations that would fall under General Standard 3(a), with the consequence that the arbitrator has a duty to disclose such situations. In all these situations, the parties are deemed to have accepted the arbitrator if, after disclosure, no timely objection is made, as established in General Standard 4(a).

4. Disclosure does not imply the existence of a conflict of interest; nor should it by itself result either in a disqualification of the arbitrator, or in a presumption regarding disqualification. The purpose of the disclosure is to inform the parties of a situation that they may wish to explore further in order to determine whether objectively that is, from the point of view of a reasonable third person having knowledge of the relevant facts and circumstances – there are justifiable doubts as to the arbitrator's impartiality or independence. If the conclusion is that there are no justifiable doubts, the arbitrator can act. Apart from the situations covered by the Non-Waivable Red List, he or she can also act if there is no timely objection

by the parties or, in situations covered by the Waivable Red List, if there is a specific acceptance by the parties in accordance with General Standard 4(c). If a party challenges the arbitrator, he or she can nevertheless act, if the authority that rules on the challenge decides that the challenge does not meet the objective test for disqualification.

5. A later challenge based on the fact that an arbitrator did not disclose such facts or circumstances should not result automatically in non-appointment, later disqualification or a successful challenge to any award. Nondisclosure cannot by itself make an arbitrator partial or lacking independence: only the facts or circumstances that he or she failed to disclose can do so.

6. Situations not listed in the Orange List or falling outside the time limits used in some of the Orange List situations are generally not subject to disclosure. However, an arbitrator needs to assess on a case-by-case basis whether a given situation, even though not mentioned in the Orange List, is nevertheless such as to give rise to justifiable doubts as to his or her impartiality or independence. Because the Orange List is a non-exhaustive list of examples, there may be situations not mentioned, which, depending on the circumstances, may need to be disclosed by an arbitrator. Such may be the case, for example, in the event of repeat past appointments by the same party or the same counsel beyond the three-year period provided for in the Orange List, or when an arbitrator concurrently acts as counsel in an unrelated case in which similar issues of law are raised. Likewise, an appointment made by the same party or the same counsel appearing before

an arbitrator, while the case is ongoing, may also have to be disclosed, depending on the circumstances. While the Guidelines do not require disclosure of the fact that an arbitrator concurrently serves, or has in the past served, on the same Arbitral Tribunal with another member of the tribunal, or with one of the counsel in the current proceedings, an arbitrator should assess on a case-by-case basis whether the fact of having frequently served as counsel with, or as an arbitrator on, Arbitral Tribunals with another member of the tribunal may create a perceived imbalance within the tribunal. If the conclusion is 'yes', the arbitrator should consider a disclosure.

7. The Green List is a non-exhaustive list of specific situations where no appearance and no actual conflict of interest exists from an objective point of view. Thus, the arbitrator has no duty to disclose situations falling within the Green List. As stated in the Explanation to General Standard 3(a), there should be a limit to disclosure, based on reasonableness; in some situations, an objective test should prevail over the purely subjective test of 'the eyes' of the parties.

8. The borderline between the categories that comprise the Lists can be thin. It can be debated whether a certain situation should be on one List instead of another. Also, the Lists contain, for various situations, general terms such as 'significant' and 'relevant'. The Lists reflect international principles and best practices to the extent possible. Further definition of the norms, which are to be interpreted reasonably in light of the facts and circumstances in each case, would be counterproductive.

1. Non-Waivable Red List

1.1 There is an identity between a party and the arbitrator, or the arbitrator is a legal representative or employee of an entity that is a party in the arbitration.

1.2 The arbitrator is a manager, director or member of the supervisory board, or has a controlling influence on one of the parties or an entity that has a direct economic interest in the award to be rendered in the arbitration.

1.3 The arbitrator has a significant financial or personal interest in one of the parties, or the outcome of the case.

1.4 The arbitrator or his or her firm regularly advises the party, or an affiliate of the party, and the arbitrator or his or her firm derives significant financial income therefrom.

2. Waivable Red List

2.1 Relationship of the arbitrator to the dispute

2.1.1 The arbitrator has given legal advice, or provided an expert opinion, on the dispute to a party or an affiliate of one of the parties.

2.1.2 The arbitrator had a prior involvement in the dispute.

2.2 Arbitrator's direct or indirect interest in the dispute

2.2.1 The arbitrator holds shares, either directly or indirectly, in one of the parties, or an affiliate of one of the parties, this party or an affiliate being privately held.

2.2.2 A close family member[2] of the arbitrator has a significant financial interest in the outcome of the dispute.

2.2.3 The arbitrator, or a close family member of the arbitrator, has a close relationship with a non-party who may be liable to recourse on the part of the unsuccessful party in the dispute.

2.3 Arbitrator's relationship with the parties or counsel

2.3.1 The arbitrator currently represents or advises one of the parties, or an affiliate of one of the parties.

2.3.2 The arbitrator currently represents or advises the lawyer or law firm acting as counsel for one of the parties.

2.3.3 The arbitrator is a lawyer in the same law firm as the counsel to one of the parties.

2.3.4 The arbitrator is a manager, director or member of the supervisory board, or has a controlling influence in an affiliate[3] of one of the parties, if the affiliate is directly involved in the matters in dispute in the arbitration.

2.3.5 The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.

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[2] Throughout the Application Lists, the term 'close family member' refers to a: spouse, sibling, child, parent or life partner, in addition to any other family member with whom a close relationship exists.

[3] Throughout the Application Lists, the term 'affiliate' encompasses all companies in a group of companies, including the parent company.

2.3.6 The arbitrator's law firm currently has a significant commercial relationship with one of the parties, or an affiliate of one of the parties.

2.3.7 The arbitrator regularly advises one of the parties, or an affiliate of one of the parties, but neither the arbitrator nor his or her firm derives a significant financial income therefrom.

2.3.8 The arbitrator has a close family relationship with one of the parties, or with a manager, director or member of the supervisory board, or any person having a controlling influence in one of the parties, or an affiliate of one of the parties, or with a counsel representing a party.

2.3.9 A close family member of the arbitrator has a significant financial or personal interest in one of the parties, or an affiliate of one of the parties.

3. Orange List

3.1 Previous services for one of the parties or other involvement in the case

3.1.1 The arbitrator has, within the past three years, served as counsel for one of the parties, or an affiliate of one of the parties, or has previously advised or been consulted by the party, or an affiliate of the party, making the appointment in an unrelated matter, but the arbitrator and the party, or the affiliate of the party, have no ongoing relationship.

3.1.2 The arbitrator has, within the past three years, served as counsel against one of the parties, or an affiliate of one of the parties, in an unrelated matter.

3.1.3 The arbitrator has, within the past three years, been appointed as arbitrator on two or more occasions by one of the parties, or an affiliate of one of the parties.[4]

3.1.4 The arbitrator's law firm has, within the past three years, acted for or against one of the parties, or an affiliate of one of the parties, in an unrelated matter without the involvement of the arbitrator.

3.1.5 The arbitrator currently serves, or has served within the past three years, as arbitrator in another arbitration on a related issue involving one of the parties, or an affiliate of one of the parties.

3.2 Current services for one of the parties

3.2.1 The arbitrator's law firm is currently rendering services to one of the parties, or to an affiliate of one of the parties, without creating a significant commercial relationship for the law firm and without the involvement of the arbitrator.

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[4] It may be the practice in certain types of arbitration, such as maritime, sports or commodities arbitration, to draw arbitrators from a smaller or specialised pool of individuals. If in such fields it is the custom and practice for parties to frequently appoint the same arbitrator in different cases, no disclosure of this fact is required, where all parties in the arbitration should be familiar with such custom and practice.

3.2.2 A law firm or other legal organisation that shares significant fees or other revenues with the arbitrator's law firm renders services to one of the parties, or an affiliate of one of the parties, before the Arbitral Tribunal.

3.2.3 The arbitrator or his or her firm represents a party, or an affiliate of one of the parties to the arbitration, on a regular basis, but such representation does not concern the current dispute.

3.3 Relationship between an arbitrator and another arbitrator or counsel

3.3.1 The arbitrator and another arbitrator are lawyers in the same law firm.

3.3.2 The arbitrator and another arbitrator, or the counsel for one of the parties, are members of the same barristers' chambers.

3.3.3 The arbitrator was, within the past three years, a partner of, or otherwise affiliated with, another arbitrator or any of the counsel in the arbitration.

3.3.4 A lawyer in the arbitrator's law firm is an arbitrator in another dispute involving the same party or parties, or an affiliate of one of the parties.

3.3.5 A close family member of the arbitrator is a partner or employee of the law firm representing one of the parties, but is not assisting with the dispute.

3.3.6 A close personal friendship exists between an arbitrator and a counsel of a party.

3.3.7 Enmity exists between an arbitrator and counsel appearing in the arbitration.

3.3.8 The arbitrator has, within the past three years, been appointed on more than three occasions by the same counsel, or the same law firm.

3.3.9 The arbitrator and another arbitrator, or counsel for one of the parties in the arbitration, currently act or have acted together within the past three years as co-counsel.

3.4 Relationship between arbitrator and party and others involved in the arbitration

3.4.1 The arbitrator's law firm is currently acting adversely to one of the parties, or an affiliate of one of the parties.

3.4.2 The arbitrator has been associated with a party, or an affiliate of one of the parties, in a professional capacity, such as a former employee or partner.

3.4.3 A close personal friendship exists between an arbitrator and a manager or director or a member of the supervisory board of: a party; an entity that has a direct economic interest in the award to be rendered in the arbitration; or any person having a controlling influence, such as a controlling shareholder interest, on one of the parties or an affiliate of one of the parties or a witness or expert.

3.4.4 Enmity exists between an arbitrator and a manager or director or a member of the supervisory board of: a party; an entity that has a direct economic interest in the award; or any person having a controlling influence in one of the parties or an affiliate of one of the parties or a witness or expert.has a direct economic interest in the award; or any person having a controlling influence in one of the parties or an affiliate of one of the parties or a witness or expert.

3.4.5 If the arbitrator is a former judge, he or she has, within the past three years, heard a significant case involving one of the parties, or an affiliate of one of the parties.

3.5 Other circumstances

3.5.1 The arbitrator holds shares, either directly or indirectly, that by reason of number or denomination constitute a material holding in one of the parties, or an affiliate of one of the parties, this party or affiliate being publicly listed.

3.5.2 The arbitrator has publicly advocated a position on the case, whether in a published paper, or speech, or otherwise.

3.5.3 The arbitrator holds a position with the appointing authority with respect to the dispute.

3.5.4 The arbitrator is a manager, director or member of the supervisory board, or has a controlling influence on an affiliate of one of the parties, where the affiliate is not directly involved in the matters in dispute in the arbitration.

4. Green List

4.1 Previously expressed legal opinions

4.1.1 The arbitrator has previously expressed a legal opinion (such as in a law review article or public lecture) concerning an issue that also arises in the arbitration (but this opinion is not focused on the case).

4.2 Current services for one of the parties

4.2.1 A firm, in association or in alliance with the arbitrator's law firm, but that does not share significant fees or other revenues with the arbitrator's law firm, renders services to one of the parties, or an affiliate of one of the parties, in an unrelated matter.

4.3 Contacts with another arbitrator, or with counsel for one of the parties

4.3.1 The arbitrator has a relationship with another arbitrator, or with the counsel for one of the parties, through membership in the same professional association, or social or charitable organisation, or through a social media network.

4.3.2 The arbitrator and counsel for one of the parties have previously served together as arbitrators.

4.3.3 The arbitrator teaches in the same faculty or school as another arbitrator or counsel to one of the parties, or serves as an officer of a professional association or social or charitable organisation with another arbitrator or counsel for one of the parties.

4.3.4 The arbitrator was a speaker, moderator or organiser in one or more conferences, or participated in seminars or working parties of a professional, social or charitable organisation, with another arbitrator or counsel to the parties.

4.4 Contacts between the arbitrator and one of the parties

4.4.1 The arbitrator has had an initial contact with a party, or an affiliate of a party (or their counsel) prior to appointment, if this contact is limited to the arbitrator's availability and qualifications to serve, or to the names of possible candidates for a chairperson, and did not address the merits or procedural aspects of the dispute, other than to provide the arbitrator with a basic understanding of the case.

4.4.2 The arbitrator holds an insignificant amount of shares in one of the parties, or an affiliate of one of the parties, which is publicly listed.

4.4.3 The arbitrator and a manager, director or member of the supervisory board, or any person having a controlling influence on one of the parties, or an affiliate of one of the parties, have worked together as joint experts, or in another professional capacity, including as arbitrators in the same case.

4.4.4 The arbitrator has a relationship with one of the parties or its affiliates through a social media network.

Schedule-7
APCAM INTERNATIONAL
ARBITRATION FEE SCHEDULE

REGISTRATION CHARGES

Filing Fee

Arbitration*: € 1000.00

Filing of Applications

AMA Procedure*: € 250.00
Emergency Arbitrator*: € 250.00
Interpretation, correction or additional Award: € 350.00
Scrutiny of Award: € 350.00
Miscellaneous applications: € 100.00

[*In case of multi-party arbitration involving more than 5 parties, filing fee will be determined by APCAM based on the number of parties.]

ARBITRAL TRIBUNAL FEE

(Per Arbitrator)

Quantum of Claim (In Euro)	Arbitrator Fee (In Euro)	Arbitrator Category
Up to 50,000.00	2500.00	AAA
	3500.00	ACA
	4500.00	AICA
From 50,001.00 to 500,000.00	2500.00 Plus 2% excess of 50,000.00	AAA
	3500.00 Plus 3% excess of 50,000.00	ACA
	4500.00 Plus 4% excess of 50,000.00	AICA

Quantum of Claim (In US$)	Arbitrator Fee (In US$)	Arbitrator Category
From 500,001.00 to 1,000,000.00	11,500.00 Plus 1% excess of 500,000.00	AAA
	17,000.00 Plus 1.5% excess of 500,000.00	ACA
	22,500.00 Plus 2% excess of 500,000.00	AICA
From 1,000,001.00 to 5,000,000.00	24,500.00 Plus 0.5% excess of 1,000,000.00	ACA
	32,500.00 Plus 0.75% excess of 1,000,000.00	AICA
From 5,000,001.00 to 10,000,000.00	44,500.00 Plus 0.2% excess of 5,000,000.00	ACA
	62,500.00 Plus 0.25% excess of 5,000,000.00	AICA
More than 10,000,000.00	54,500.00 Plus 0.05% excess of 10,000,000.00 with a ceiling of 100,000.00	ACA
	75,000.00 Plus 0.075% excess of 10,000,000.00 with a ceiling of 150,000.00	AICA

- In case the Arbitral Tribunal is a Sole Arbitrator, she/ he will be entitled to an additional 15% of the above Fee schedule
- In case of Fast Track Arbitration, the fee will be75% of the above Fee schedule
- For disputes which cannot be quantified, the fee will be finalised by APCAM based on the facts
- As per Rule 23(2) parties and the tribunal are free to agree on different fees
- For Payment Schedule, see below

Additional Fees for the Arbitral Tribunal
(Per Arbitrator)

Interpretation, correction or additional Award

Up to € 50,000.00:	€ 750.00
From € 50,001.00 to € 1,000,000.00:	€ 1250.00
More than € 1,000,000.00:	€ 2500.00

Scrutiny Fees
(Per Member)

Up to € 50,000.00:	€ 1000.00
From € 50,001.00 to € 1,000,000.00:	€ 1500.00
More than € 1,000,000.00:	€ 2500.00

Emergency Arbitrator Fees
(Emergency & AMA Procedure)

Up to € 50,000.00:	ACA	€1000.00
	AICA	€1250.00
From € 50,001.00 to € 1,000,000.00:	ACA	€1750.00
	AICA	€2250.00
More than € 1,000,000.00:	ACA	€3000.00
	AICA	€3500.00

- For disputes which cannot be quantified, the fee will be finalised by APCAM based on the facts

Travel, Boarding & Lodging for Arbitrators
(Per Member)

Local Sitting:	Travelling allowance of € 75.00 per sitting.
Outstation Sitting:	Actuals by Air and out-of-pocket expenses at actuals for boarding, lodging and local transport subject to maximum of € 350.00/ day.

APCAM ADMINISTRATIVE FEE

Quantum of Claim (In Euro)	Administrative Fee (In Euro)
Upto 50,000.00	2000.00
From 50,001.00 to 500,000.00	2000.00 Plus 0.75% excess of 50,000.00
From 500,001.00 to 1,000,000.00	5375.00 Plus 0.35% excess of 50,000.00
From 1,000,001.00 to 5,000,000.00	7125.00 Plus 0.10% excess of 1,000,000.00
From 5,000,001.00 to 10,000,000.00	11,125.00 Plus 0.05% excess of 5,000,000.00
More than 10,000,000.00	13,625.00 Plus 0.02% excess of 10,000,000.00 with a ceiling of 25,000.00
• For disputes which cannot be quantified, the fee will be finalised by APCAM based on the facts • For Payment Schedule, see below	

Emergency Arbitration & Administrative Fees
(Emergency & AMA Procedure)

Up to € 50,000.00: € 750.00

From € 50,001.00 to
€ 1,000,000.00: € 1250.00

More than € 1,000,000.00: € 2000.00

- For disputes which cannot be quantified, the fee will be finalised by APCAM based on the facts

FEE PAYMENT SCHEDULE

Registration Charges

- Filing fee to be paid by the Claimant on filing of Notice of Arbitration.
- Application filing fee to be paid by the party making the application.

Arbitral Tribunal & Administrative Fee

- 25% to be deposited by the Claimant at the time of filing the Claim statement.
- 25% to be deposited by the respondent at the time of filing the Response or Statement of Defense.
- 30% to be deposited by the Parties [Claimant and Respondent(s)] equally within 10 days of the completion of pleadings.
- 20% to be deposited by the Parties [Claimant and Respondent(s)] equally before the hearing date.
- Balance to be deposited by the Parties [Claimant and Respondent(s)] within 10 days after the matter is reserved for award.

In case of emergency arbitration, the entire fee to be deposited by the Party making the application at the time of filing the application.

Rentals of Conference Rooms

The parties shall also pay rentals for the conference rooms and the related miscellaneous charges as fixed by the centre. Miscellaneous charges shall include transcription, translation, stenography, interpretation, copying and similar services and also refreshment charges.

Schedule-8
RECOMMENDED CLAUSES

FUTURE DISPUTES

Parties to a contract who wish to have any future disputes referred to arbitration under the APCAM Arbitration Rules may insert in the contract a clause in the following form:

Suggested Arbitration Clause

"Any dispute, difference or controversy arising out of or in connection with this contract, including any question regarding its existence, operation, termination, validity or breach thereof shall be referred to and finally resolved by arbitration as per the applicable arbitration law of the seat of arbitration and shall be conducted by the Asia-Pacific Centre for Arbitration & Mediation ("APCAM"), in accordance with their Arbitration Rules ("APCAM Arbitration Rules") for the time being in force."

Suggested Med-Arb Clause

"Any dispute, difference or controversy arising out of or in connection with this contract shall first be referred to mediation at the Asia-Pacific Centre for Arbitration & Mediation ("APCAM") and in accordance with its applicable Mediation Rules ("APCAM Mediation Rules"). If the mediation is abandoned by the mediator or is otherwise concluded without the dispute or difference

being resolved, then such dispute, difference or controversy shall be referred to and determined by arbitration as per the applicable arbitration law of the seat of arbitration by APCAM in accordance with its Arbitration Rules".

Suggested Arb-Med-Arb Clause

"Any dispute, difference or controversy arising out of or in connection with this contract, including any question regarding its existence, operation, termination, validity or breach thereof shall be referred to and finally resolved by arbitration as per the applicable arbitration law of the seat of arbitration and shall be conducted by the Asia-Pacific Centre for Arbitration & Mediation ("APCAM"), in accordance with their Arbitration Rules ("APCAM Arbitration Rules") for the time being in force.

It is further agreed that following the commencement of arbitration, the parties will attempt in good faith to resolve such dispute, difference or controversy through mediation, as per the APCAM Arb-Med-Arb Procedure for the time being in force. Any settlement reached in the course of mediation shall be referred to the arbitral tribunal appointed by APCAM and may be made a consent award on agreed terms".

* The parties may consider adding —

- The number of arbitrators;
- The seat and venue of arbitration;
- The law applicable for arbitration;
- The language of arbitration.

APPLICABILITY OF APCAM ARBITRATION RULES IN ARBITRATIONS ARISING OUT OF OTHER ARBITRATION CLAUSES

Where any agreement, submission or reference provides for arbitration by any of the constituent member institutes of the Asia-Pacific Centre for Arbitration & Mediation ("APCAM"), and if such institution provides under their Rules that international or cross-border disputes would be governed by APCAM Arbitration Rules, then such international or cross-border disputes shall be conducted in accordance with the APCAM Arbitration Rules, including the APCAM Arbitration Fee Schedule.

Arbitration Rules of the
Asia-Pacific Centre for Arbitration & Mediation

For more details:
Email: info@apcam.asia
www.apcam.asia