



**ARBITRATION RULES
OF
THE NATIONAL COMMERCIAL ARBITRATION CENTRE
OF
CAMBODIA**

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CHAPTER 1 GENERAL RULES

Rule 1.- Definitions

As used in these Arbitration Rules:

Appointment Committee means a committee of NCAC which is empowered to appoint arbitrator(s) and to perform any other functions according to these Rules.

General Secretariat means the General Secretariat of NCAC.

NCAC means the National Commercial Arbitration Centre of Cambodia.

Rules means the Arbitration Rules of the National Commercial Arbitration Centre.

Tribunal means the arbitral tribunal constituted under these Rules, either composed of 1 (one) or more arbitrators appointed by the parties or by the NCAC Appointment Committee.

Rule 2.- Scope of application

2.1 Application of the Rules

These Rules shall apply if the parties have agreed to refer their disputes to arbitration by NCAC or to arbitration under the Rules of NCAC (or words of agreement to the same effect).

2.2 Date of effect

These Rules shall come into effect on the date set forth under Rule 57 (*Final Provision*) and shall apply to any arbitration for which the Notice of Arbitration is received by the General Secretariat on or after that date.

2.3 Conflict with the law governing the arbitration

If any of these Rules are in conflict with any mandatory provision of the Law on Commercial Arbitration of Cambodia (when the seat of the arbitration is in Cambodia) or of another law governing the arbitration (when the seat is outside Cambodia), that provision shall prevail.

2.4 Derogation from Rules

If they so agree, the parties may derogate from provisions of these Rules where permitted hereunder.

Rule 3.- Representation

A party may be represented by any person of her/his choice in the arbitration proceedings under these Rules, subject to such proof of authority as the General Secretariat or Tribunal may require.

Rule 4.- Communications, simultaneous copies

4.1 *In writing*

For the purposes of these Rules, any communication (including any notice, notification, statement, request, proposal, document submission, order or direction) shall be in writing except for oral communications during hearing(s) and meeting(s) convened by the Tribunal.

4.2 *Means of communications*

Such written communication may be made by hand, registered post, courier, fax, email or any other means of communication that provides a record of its delivery.

4.3 *Delivery and receipt*

A communication is deemed to have been received if it is delivered to the addressee or her/his representative:

- a- Personally or at her/his designated address;
- b- In the absence of (a-), at her/his habitual residence or current place of business or mailing address;
- c- If by electronic means, at the email address or fax number of the addressee or her/his representative; or
- d- If none of addresses specified in (a-) to (c-) can be found after making reasonable inquiry, then at her/his last known residence or last known place of business or mailing address.

The communication is deemed to have been received on the day it is so delivered. For this purpose, the date shall be determined according to the local time at the place of receipt.

4.4 *Simultaneous copies*

When a party sends a communication (including, but not limited to, the Notice of Arbitration, Notice of Response, submissions, statements, requests, and objections) to:

- a- the General Secretariat, she/he shall simultaneously send a copy to the other party and, if constituted, to the Tribunal.
- b- the Tribunal, she/he shall simultaneously send a copy to the other party and to the General Secretariat.

A party shall, if so requested by the General Secretariat or the Tribunal, show that she/he has complied with the first paragraph of this Rule 4.4 (*Simultaneous copies*).

In case of a multiple-member Tribunal, any communication to the Tribunal must be sent to each of the arbitrators.

When the General Secretariat sends a communication to 1 (one) party, it shall simultaneously send a copy to the other party and, if constituted, to the Tribunal. When the Tribunal sends a communication to 1 (one) party, it shall simultaneously send a copy to the other party and to the General Secretariat.

4.5 *No ex parte communication*

No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any arbitrator or with any candidate for appointment as party-appointed arbitrator, except:

- a- to advise the arbitrator or candidate of the general nature of the controversy and of the anticipated arbitration proceedings;
- b- to discuss the arbitrator or candidate's qualifications, availability or independence in relation to the parties; or
- c- to discuss the suitability of the arbitrator or candidate for selection as a presiding arbitrator where the parties or party-appointed arbitrators are to participate in that selection.

No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any candidate for presiding arbitrator.

Rule 5.- Time limits

5.1 *Calculation of period of time*

For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day on which a communication is received in accordance with Rule 4 (*Communications, simultaneous copies*) or following the day on which the act or event which initiates such period of time occurs, and shall include the entire last day of the period so computed. For the purpose of these Rules, the term 'day' or 'date' refers to a period between 07:00 a.m. to 07:00 p.m. Any point of time after 07:00 p.m. shall be deemed as falling on the next day or next date.

If the last day of such period is a non-business day at the place of receipt, the period is extended until the first business day which follows. For the avoidance of doubt, Saturdays, Sundays and public holidays are considered non-business days in Cambodia.

5.2 *Modification of time limits*

- a- The General Secretariat may, if the circumstances so justify and by notifying the parties, modify:
 - a.1- the time limits specified in Chapter 2 (*Commencement of Arbitration*), Chapter 3 (*Constitution of the Tribunal*), Chapter 6 (*Costs*) and Chapter 7 (*Other Rules*); and
 - a.2- any time limits that the General Secretariat has power or is empowered to set.
- b- The Tribunal may, if the circumstances so justify and by notifying the parties, modify:
 - b.1- the time limits specified in Chapter 4 (*Arbitration Proceedings*);
 - b.2- the time limit specified in Rule 38.2 (*Decision on correction, amplification, interpretation, additional award*); and
 - b.3- any time limits that it has set.

Rule 6.- Fair, expeditious and efficient proceedings, no delays

The Tribunal and the parties shall make all reasonable efforts to conduct the arbitration in a fair, expeditious and efficient/cost-effective manner and shall not cause any unnecessary delays.

CHAPTER 2 COMMENCEMENT OF ARBITRATION

Rule 7.- Commencement of Arbitration

7.1 *Notice of Arbitration*

A party wishing to refer a dispute to arbitration (the “**Claimant**”) shall submit to the General Secretariat a Notice of Arbitration which shall contain:

- a- a statement that she/he refers the dispute to arbitration;
- b- the names, addresses, telephone number(s), facsimile number(s) and electronic mail address(es), if known, of the parties to the arbitration and their representatives, if any;
- c- the nationalities or as applicable the corporate identities, if known, of the parties;
- d- a reference to the arbitration clause or the separate arbitration agreement that is invoked and a copy of it;
- e- a reference to the contract or other relationship out of or in connection with which the dispute arises and, when possible, a copy of it;
- f- a brief statement describing the nature and circumstances of the dispute, the relief or remedy sought and, when possible, an initial quantification of the claim that the Claimant intends to submit;
- g- the agreed number of arbitrators or, in the absence of such agreement, a proposed number of arbitrators, which shall be either 1 (one) or 3 (three); and
- h- further statements or proposals, if any, with respect to the conduct of arbitration, including as to the applicable laws, the language of the arbitration proceedings and the agreed or desired qualifications and nationalities of the arbitrators.

Regardless of the language used in the arbitration proceedings pursuant to Rule 18.1 (*Language of the arbitration proceedings*), the Notice of Arbitration shall be made in the language of arbitration with translation into Khmer or English.

The Notice of Arbitration shall be accompanied by payment, by cheque or transfer to the designated bank account of NCAC, of the case registration fee.

7.2 *Inclusion of appointment of arbitrator*

The Notice of Arbitration may also include:

- a- in case of a three-member Tribunal or other multiple-member Tribunal, the appointment of an arbitrator in accordance with Rule 10 (*Appointment of arbitrators*) and Rule 11 (*Persons that may be appointed as arbitrators*);
- b- in case of a one-member Tribunal, the joint appointment (if already agreed by the parties) or otherwise the Claimant’s proposal of an arbitrator in accordance with Rule 10 (*Appointment of arbitrators*) and Rule 11 (*Persons that may be appointed as arbitrators*); or
- c- a statement that the Claimant leaves the appointment of an arbitrator to NCAC.

7.3 *Accompanying Statement of Claim*

The Notice of Arbitration may be accompanied by the Statement of Claim referred to in Rule 22.2 (*Statement of Claim*) and supporting documents.

7.4 *Incompleteness of Notice of Arbitration*

If a Notice of Arbitration is not complete, the General Secretariat may request the Claimant to remedy the defect within an appropriate period of time to be specified by the General Secretariat. For the avoidance of doubt, the Notice of Arbitration is deemed to be complete when all the requirements of Rule 7.1 (*Notice of Arbitration*) above are fulfilled, including payment of the registration fee.

If the Claimant complies with the above request within the applicable or specified period of time, the Notice of Arbitration shall be deemed to have been submitted on the date when the initial version was received by the General Secretariat.

7.5 *Failure to submit complete Notice of Arbitration*

If the Claimant fails to timely submit the complete Notice of Arbitration, the General Secretariat shall close the file without prejudice to the right of the Claimant to submit the same claim at a later date in another Notice of Arbitration.

7.6 *Notification of receipt of Notice of Arbitration*

The General Secretariat shall notify the parties when it has received the complete Notice of Arbitration.

7.7 *Commencement of Arbitration Proceeding*

Unless otherwise agreed by the parties, the arbitration proceedings in respect of a particular dispute commence on the date on which the General Secretariat's notification of the complete Notice of Arbitration for that dispute to be referred to arbitration is received by a respondent (the "**Respondent**").

Rule 8.- Response by Respondent

8.1 *Notice of Response*

Within 15 (fifteen) calendar days of receipt of the notification referred to in Rule 7.6 (*Notification of receipt of Notice of Arbitration*), the Respondent shall submit to the General Secretariat a Notice of Response which shall contain:

- a- the names, addresses, telephone number(s), facsimile number(s) and email address(es) of the Respondent and her/his representative, if any, if different from those noted in the Notice of Arbitration;
- b- the nationalities or as applicable the corporate identities of the parties, if known and if different from those noted in the Notice of Arbitration;
- c- a brief confirmation or denial of all or part of the claims;
- d- a brief statement of the nature and circumstances of any counterclaim or set-off defense that the Respondent intends to submit and, when possible, an initial quantification of such counterclaim or set-off defense;

- e- the agreed number of arbitrators or, in the absence of such agreement, a proposed number of arbitrators, which shall be either 1 (one) or 3 (three); and
- f- further statements or proposals, if any, with respect to the conduct of arbitration, including as to the applicable laws, the language of the arbitration proceedings and the required qualifications and nationalities of the arbitrators, or in response to statements or proposals contained in the Notice of Arbitration.

Regardless of the language used in the arbitration proceedings pursuant to Rule 18.1 (*Language of the arbitration proceedings*), the Notice of Response shall be made in the language of arbitration with translation in Khmer or English.

8.2 *Inclusion of appointment of arbitrator*

The Notice of Response may also include:

- a- in case of a three-member Tribunal or other multiple-member Tribunal, the appointment of an arbitrator in accordance with Rule 10 (*Appointment of arbitrators*) and Rule 11 (*Persons that may be appointed as arbitrators*);
- b- in case of a one-member Tribunal, the joint appointment (if already agreed to by the parties) or otherwise a response to the Claimant's proposal of an arbitrator in accordance with Rule 10 (*Appointment of arbitrators*) and Rule 11 (*Persons that may be appointed as arbitrators*); or
- c- a statement that the Respondent leaves the appointment of an arbitrator to the NCAC Appointment Committee.

8.3 *Accompanying Statement of Defense, jurisdiction plea*

If the Notice of Arbitration was accompanied by the Statement of Claim, the Notice of Response may be accompanied by the Statement of Defense (which may also contain any counterclaim or set-off defense) referred to in Rule 22.3 (*Statement of Defense, counterclaim*) and supporting documents. The Notice of Response may also be accompanied by a plea as referred to in Rule 19 (*Plea as to the jurisdiction of the Tribunal*).

8.4 *Incompleteness of Notice of Response*

If the Notice of Response is incomplete, the General Secretariat may request the Respondent to remedy the defect within an appropriate period of time to be specified by the General Secretariat. For the avoidance of doubt, the Notice of Response is deemed to be complete when all the requirements of Rule 8.1 (*Notice of Response*) are fulfilled, including payment of the registration fee.

8.5 *Failure to submit complete Notice of Response*

The constitution of the Tribunal in accordance with Chapter 3 (*Constitution of the Tribunal*) shall not be impeded by a failure of the Respondent to timely submit the complete Notice of Response. Such a failure, however, shall not preclude the Respondent from denying any claim or from advancing a counterclaim or set-off defense in the arbitration proceedings.

8.6 *Notification of receipt of Notice of Response*

The General Secretariat shall notify the parties when it has received the complete Notice of Response or, in the absence thereof, of the expiry date of the applicable period of time for the submission of such Notice of Response.

In case the Respondent makes any counterclaim (including set-off defense) in her/his Notice of Response, the Respondent must also pay the case registration fee for such counterclaim, otherwise her/his counterclaim will not be considered in the arbitration proceedings.

CHAPTER 3 CONSTITUTION OF THE TRIBUNAL

Rule 9.- Number of arbitrators

In all cases, the Tribunal shall be composed of an odd number of arbitrator(s). The Tribunal shall consist of 3 (three) arbitrators unless the parties have agreed otherwise.

Rule 10.- Appointment of arbitrators

10.1 *Deviating party agreement*

The parties may agree on a procedure for appointment of the Tribunal which is different from the procedure provided for under Rules 10.2 (*Appointment of three-member Tribunal or other multiple-member Tribunal*) to 10.6 (*No appeal*). However, if the Tribunal has not been appointed within the period of time agreed by the parties or, if the parties have not agreed on a period of time, within 30 (thirty) calendar days after receipt of the notification of Notice of Response referred to in Rule 8.6 (*Notification of receipt of Notice of Response*), the appointment shall be made pursuant to Rules 10.2 (*Appointment of three-member Tribunal or other multiple-member Tribunal*) to 10.6 (*No appeal*).

10.2 *Appointment of three-member Tribunal or other multiple-member Tribunal*

In case of a three-member Tribunal or other multiple-member Tribunal, each of the parties shall, if they have not done so in the Notice of Arbitration or in the Notice of Response, within 15 (fifteen) calendar days after receipt of the notification of Notice of Response referred to in Rule 8.6 (*Notification of receipt of Notice of Response*), or within 15 (fifteen) calendar days after the expiry date of the applicable period mentioned in Rule 10.1 (*Deviating party agreement*), equally appoint 1 (one) arbitrator or more arbitrators. The arbitrators so appointed shall, within 15 (fifteen) calendar days after the last of them has been appointed, jointly appoint another arbitrator who shall act as the presiding arbitrator of the Tribunal.

If either party fails to appoint the required arbitrator(s) or the party-appointed arbitrators fail to appoint a presiding arbitrator within the applicable period specified herein, NCAC, through its Appointment Committee, shall appoint such arbitrator(s) or/and shall designate 1 (one) of the appointed arbitrators to act as the presiding arbitrator.

10.3 *Appointment of one-member Tribunal*

In case of a one-member Tribunal, the parties shall, if they have not done so in the Notice of Arbitration or Notice of Response, within 15 (fifteen) calendar days after receipt of the notification on complete Notice of Response referred to in Rule 8.6 (*Notification of receipt of Notice of Response*), or within 15 (fifteen) calendar days after the expiry date of the applicable period mentioned in Rule 10.1 (*Deviating party agreement*), jointly appoint the sole arbitrator. If both parties fail to make a joint appointment of a sole arbitrator within the applicable period specified herein, NCAC, through its Appointment Committee, shall appoint a sole arbitrator to constitute a Tribunal.

10.4 *Multi-party appointment of arbitrators*

If there are more than 2 (two) parties in the arbitration, and a three-member Tribunal or other multiple-member Tribunal is to be appointed, the multiple Claimants shall jointly appoint 1 (one) or more arbitrator(s) and the multiple Respondents shall jointly appoint 1 (one) or more arbitrator(s). If either side fails to make such joint appointment within the applicable period mentioned in Rule 10.2 (*Appointment of three-member Tribunal or other multiple-member Tribunal*), NCAC, through its Appointment Committee, shall appoint, on behalf of the failing party, 1 (one) or more arbitrator(s) in accordance with Rule 10.5 (*Failure to appoint arbitrators, appointment by NCAC*). The arbitrators so appointed shall, within 15 (fifteen) calendar days after the last of them has been appointed, jointly appoint another arbitrator who shall act as the presiding arbitrator of the Tribunal.

If the arbitrators so appointed fail to appoint a presiding arbitrator within the applicable period specified herein, NCAC, through its Appointment Committee, shall appoint another arbitrator to act as the presiding arbitrator.

If there are more than 2 (two) parties in the arbitration, and a one-member Tribunal is to be appointed, all parties are to agree on an arbitrator. If such joint appointment has not been made within the applicable period mentioned in Rule 10.3 (*Appointment of one-member Tribunal*), NCAC, through its Appointment Committee, shall appoint the arbitrator in accordance with Rule 10.5 (*Failure to appoint arbitrators, appointment by NCAC*).

10.5 *Failure to appoint arbitrators, appointment by NCAC*

Failing the notification to the General Secretariat of an appointment within the period mentioned in Rule 10.2 (*Appointment of three-member Tribunal or other multiple-member Tribunal*) or Rule 10.3 (*Appointment of one-member Tribunal*), or in the event that a party wishes to leave the appointment to NCAC, NCAC, through its Appointment Committee, shall appoint such arbitrator with due regard to any qualifications, including nationality, required of or proposed for the arbitrator by the parties and to the particulars of the dispute. In such case, the Appointment Committee shall not appoint any member of the NCAC Executive Board or of the Appointment Committee.

10.6 *No appeal*

Subject to Rule 11 (*Persons that may be appointed as arbitrators*), NCAC, through its Appointment Committee, shall make any required or requested appointment of arbitrator(s) as soon as practicable. Subject to Rule 13 (*Challenge of arbitrators*), an appointment or decision of the Appointment Committee under these Rules shall be final and not subject to any appeal.

10.7 *Notification of constitution of Tribunal*

All appointments shall be made by notification to the General Secretariat. As soon as all arbitrators have been appointed, the General Secretariat shall notify the parties that the Tribunal has been constituted and inform the parties of the names and contact details of the appointed arbitrator(s). It shall then send the file to the Tribunal.

Rule 11.- Persons that may be appointed as arbitrators

- 11.1 Parties, or arbitrators appointed by the parties, may appoint as arbitrator the following:
- a- any arbitrator who is registered with NCAC; or
 - b- any person who has served or is registered as a commercial arbitrator of any local or international commercial arbitration institution.
- 11.2 The following further requirements apply:
- a- any person appointed as an arbitrator shall submit a signed statement
 - a.1- that she/he is willing and available to act as arbitrator; and
 - a.2- that she/he is and shall remain impartial and independent and that she/he has made and shall make the disclosures as referred to in Rule 12.2 (*Disclosure*).
 - b- any person appointed as an arbitrator referred to under Rule 11.1 (b-) shall add to the statements under Rule 11.2 (a-):
 - b.1- evidence of award issued by her/him within 24 (twenty-four) months prior to the appointment, or certification of current arbitrator membership; and
 - b.2- a confirmation that she/he agrees to and shall abide by the NCAC Code of Conduct and other applicable rules of NCAC, including these Rules.
- 11.3 In any case, within 7 (seven) calendar days after receiving notice of arbitrator appointment from the party(ies), the General Secretariat may, upon the decision of the Appointment Committee, notify the concerned party(ies) in writing of a lack of any required qualification as specified above. The concerned party(ies) shall consider and decide about the arbitrator appointment within 7 (seven) calendar days from receipt of such notification.
- 11.4 If the concerned party(ies) refuse or fail to appoint a new and qualified arbitrator within the 7 (seven) calendar days, the Appointment Committee shall have the power to appoint arbitrator(s) for the concerned role(s), as in the case the party(ies) fail to appoint arbitrator(s), within 15 (fifteen) calendar days from receipt of the notice of rejection.

Rule 12.- Independence and impartiality of arbitrators, disclosure

- 12.1 *Independence and impartiality*
- Arbitrators acting under these Rules shall be independent and impartial and shall not act as advocate for, or adviser to, any party from the time of appointment as arbitrator until the end of the entire arbitration proceedings for the case, which is when final award is issued and including the period allowed or set under these Rules for requesting or issuing any correction, amplification, interpretation or additional award.

12.2 *Disclosure*

A prospective arbitrator shall disclose, without delay, to those who approach her/him in connection with her/his possible appointment, any circumstances likely to give rise to justifiable doubts as to her/his independence or impartiality.

An arbitrator, once appointed, shall disclose without delay such circumstances to the parties, the General Secretariat and any other members of the Tribunal.

If, at any stage during the arbitration, new circumstances emerge that may give rise to such doubts, an arbitrator shall immediately disclose those circumstances to the parties, the General Secretariat and to any other members of the Tribunal.

12.3 *NCAC Code of Conduct*

Any arbitrator acting under these Rules shall abide by the NCAC Code of Conduct for Arbitrators.

Rule 13.- Challenge of arbitrators

13.1 *Relevant circumstances*

An arbitrator may be challenged if there is any circumstance that gives rise to justifiable doubts as to her/his independence or impartiality. An arbitrator may also be challenged if she/he does not possess the qualifications agreed to by the parties.

A party may challenge an arbitrator appointed by him/her, or in whose appointment she/he participated, only for reasons of which she/he becomes aware after the appointment has been made.

13.2 *Notice of challenge, time limit*

A party who intends to challenge an arbitrator shall submit a notice of her/his challenge to the Tribunal, the other party or parties, and the General Secretariat within 15 (fifteen) calendar days after receipt of the notification referred to in Rule 10.7 (*Notification of constitution of Tribunal*) or within 15 (fifteen) calendar days after she/he became aware of the circumstances mentioned in Rule 13.1 (*Relevant circumstances*).

The notice shall state the reasons for the challenge.

13.3 *Comments on challenge*

The challenged arbitrator, the other party and any other members of the Tribunal, if any, may submit comments on the challenge to the Tribunal, the other party or parties, and the General Secretariat within fifteen 15 (fifteen) days following its receipt of the notice of challenge.

13.4 *Withdrawal by the challenged arbitrator and decision by the Tribunal*

When an arbitrator has been challenged by 1 (one) party, the other party may agree to the challenge and, if there is such agreement, the arbitrator shall withdraw. The challenged arbitrator may also withdraw in the absence of such agreement. In neither case does withdrawal imply acceptance of the validity of the grounds for the challenge.

The challenged arbitrator shall notify the parties, any other members of the Tribunal and the General Secretariat of her/his response to the challenge within 7 (seven) calendar

days after receipt of the comments on the challenge or from the lapse of the period provided for submission of comments.

In the case of a one-member Tribunal, if the challenged arbitrator gives notice to the challenging party that she/he refuses to withdraw from the Tribunal, the challenging party may appeal to NCAC, through its General Secretariat, within 30 (thirty) calendar days from receipt of the refusal notice.

In the case of a multiple-member Tribunal, if the challenged arbitrator notifies the other members of the Tribunal that she/he refuses to withdraw from the Tribunal, the Tribunal shall decide about the challenge within 7 (seven) calendar day from receipt of the refusal notice. In case the Tribunal decides to reject the challenge, the challenging party may appeal to NCAC, through its General Secretariat, within 30 (thirty) calendar days from the receipt of the Tribunal decision.

13.5 *Decision on challenge by NCAC*

NCAC, through its Appointment Committee, shall decide on appeal concerning the challenge of arbitrator within 15 (fifteen) calendar days after the date of the appeal received by the General Secretariat.

If the Appointment Committee rejects the challenge, the arbitrator shall continue her/his duties as arbitrator. If the Appointment Committee sustains the challenge, the arbitrator's mandate is terminated effectively on the date of the decision and Rule 15 (*Replacement of arbitrators*) shall apply.

13.6 *No Appeal and Notification*

The decision of NCAC, through its Appointment Committee, does not need to be reasoned. It shall be final and not be subject to any appeal. The General Secretariat shall notify the parties and the Tribunal of NCAC decision.

Rule 14.- Failure or impossibility to act

14.1 *Termination of arbitrator's mandate, request by a party*

In the event that an arbitrator becomes *de jure* or *de facto* unable to perform her/his functions, or for other reasons fails to act without undue delay, her/his mandate terminates if she/he withdraws or if the parties agree on the termination. Such withdrawal or agreement does not imply acceptance of the validity of the aforementioned grounds for withdrawal.

Otherwise, if a controversy remains concerning any of these grounds, or if an arbitrator fails to perform her/his mandate in accordance with these Rules, any party may submit to the General Secretariat a request that NCAC, through its Appointment Committee, decides on the termination of the mandate.

14.2 *Comments on request*

The arbitrator, the other party and any other members of the Tribunal may submit comments on the request to the General Secretariat within 15 (fifteen) calendar days of their receipt of the request.

- 14.3 *Decision on request by NCAC Appointment Committee*
NCAC, through its Appointment Committee, shall decide on the request within 15 (fifteen) calendar days after the expiry date of the period for the submission of the comments.
If the Appointment Committee rejects the request, the arbitrator shall continue her/his duties as arbitrator. If the Appointment Committee approves the request, the arbitrator's mandate is terminated effective the day of the decision and Rule 15 (*Replacement of arbitrators*) shall apply.
- 14.4 *No Appeal and Notification*
The decision of NCAC, through its Appointment Committee, does not have to be reasoned. It shall be final and not be subject to any appeal. The General Secretariat shall notify the parties and the Tribunal of NCAC decision.

Rule 15.- Replacement of arbitrators

- 15.1 *Reasons for replacement*
An arbitrator shall be replaced upon that arbitrator's death, upon the arbitrator's withdrawal or resignation, or upon the termination of her/his mandate for any other reason in accordance with these Rules.
- 15.2 *Appointment of substitute arbitrator by a party*
Subject to Rule 15.3 (*Appointment of substitute arbitrator by NCAC*), whenever an arbitrator has to be replaced during the course of the arbitration proceedings, a substitute arbitrator shall be appointed pursuant to the same procedure provided for in Rule 10 (*Appointment of Arbitrators*) that was followed for the appointment of the arbitrator being replaced, commencing no later than 15 (fifteen) days upon receipt by the concerned party of notice of required replacement. No party shall be prevented from participating in such appointment by reason of her/his earlier failure to participate in the appointment of the arbitrator being replaced.
- 15.3 *Appointment of substitute arbitrator by NCAC*
If, at the request of a party to the General Secretariat, NCAC, through its Appointment Committee, determines that, in view of the exceptional circumstances of the case, to ensure expeditious arbitration proceedings, or to avoid unnecessary delay, NCAC, through its Appointment Committee, may, after giving an opportunity to the parties and the remaining arbitrators to express their views, make the appointment of the substitute arbitrator instead.
- 15.4 *Consequences of replacement of arbitrators*
If an arbitrator of a one-member Tribunal or the presiding arbitrator of a multiple-member Tribunal is replaced, any hearings held previously shall be repeated unless otherwise agreed by the parties. If any other arbitrator of a multiple-member Tribunal is replaced, such prior hearings may be repeated at the discretion of the Tribunal after consulting with the parties. If the Tribunal has issued an interim or partial award, any hearings related solely to that award shall not be repeated, and the award shall remain in effect.

CHAPTER 4 ARBITRATION PROCEEDINGS

Rule 16.- Seat of arbitration

The seat of all arbitrations conducted under these Rules shall be Phnom Penh, Cambodia, unless the parties have agreed otherwise or the Tribunal determines, having regard to all the circumstances of the case, that another seat is more appropriate. As provided for in Rule 24.3 (*Place of meetings and hearings*), the place of the seat does not determine at which place the Tribunal may hold meetings and hearings.

Rule 17.- Applicable law, *amiable compositeur*

17.1 *Applicable law*

Parties are free to agree upon the law to be applied by the Tribunal and the Tribunal shall apply such law to the substance of the dispute. In the absence of such agreement, the Tribunal shall apply the law which it determines to be appropriate.

17.2 *Amiable compositeur, ex aequo et bono*

The Tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if and to the extent that the parties have expressly authorized the Tribunal to do so.

17.3 *Contract provisions, trade usages*

In all cases, the Tribunal shall take account of the provisions of the contract, if any, and the relevant trade usages.

Rule 18.- Language

18.1 *Language of the arbitration proceedings*

The parties are free to agree on the 1 (one) or more language(s) to be used in the arbitration proceedings. In the absence of such agreement, the language shall be determined by the Tribunal, due regard being given to all relevant circumstances, including the language of the contract.

18.2 *Translation*

The Tribunal may order a party to provide a translation of any written or oral communications into such language(s) and in such form as the Tribunal deems appropriate.

18.3 *Language of arbitral award or order*

If the language(s) of arbitration proceedings either chosen by the parties or determined by the Tribunal in accordance with Rule 18 (*Language*) is a language other than Khmer or English, the language of any award or order issued by the Tribunal shall be either in Khmer or English after consultation with the parties.

Rule 19.- Pleas as to the jurisdiction of the Tribunal

19.1 *Determination of NCAC jurisdiction prior to constitution of Tribunal*

If a party objects to the existence or validity of the arbitration agreement or to the competence of NCAC to administer arbitration for the case before the Tribunal is appointed, NCAC, through the Appointment Committee, shall determine if such an objection is properly submitted to NCAC. If the Appointment Committee determines that NCAC has no competence to administer arbitration for the case, the Appointment Committee may decide to terminate the arbitration proceedings. Any decision by the Appointment Committee is without prejudice to the power of the Tribunal to rule on its own jurisdiction.

19.2 *Tribunal ruling on its own jurisdiction*

The Tribunal shall have the power to rule on its own jurisdiction, including on any objections with respect to the existence, validity or scope of the arbitration agreement.

If the Tribunal rules that it has jurisdiction, any party may request, within 30 (thirty) calendar days after having received notice of that ruling, the competent court to decide the matter, after which such a ruling shall not be subject to any appeal. While a request for a court decision on the question of Tribunal's jurisdiction is pending, the Tribunal may continue the arbitration proceedings and make an award.

19.3 *Contract and arbitration clause*

If an arbitration clause forms part of a contract, it shall, for the purposes of this Rule 19 (*Plea as to the jurisdiction of the Tribunal*) be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

19.4 *Plea that Tribunal has no jurisdiction*

A plea that the Tribunal does not have jurisdiction shall be raised before submission of the Statement of Defense for any jurisdictional issue related to the claim(s) or before submission of the Statement of Defense to a Counterclaim for any jurisdictional issue related to the counterclaim. However, the Tribunal may admit a later plea if it considers the delay justified.

A party is not precluded from raising the above plea by the fact that it has appointed, or participated in the appointment of, an arbitrator.

19.5 *Plea that Tribunal is exceeding its jurisdiction*

A plea that during the arbitration proceedings the Tribunal is exceeding its jurisdiction shall be raised as soon as the matter alleged to be beyond its jurisdiction arises. However, the Tribunal may admit a later plea if it considers the delay justified.

19.6 *Ruling on plea as preliminary question or in award on merits*

The Tribunal may rule on a plea concerning its jurisdiction as a preliminary question or in an award on the merits.

Rule 20.- Conduct of the arbitration proceedings, general

20.1 *Conduct of arbitration proceedings, orders and directions*

The Tribunal shall, after consulting with the parties, conduct the arbitration in such a manner as it considers appropriate to ensure the fair, expeditious, cost-effective and final resolution of the dispute, having regard to the complexity and value of the dispute (sum in dispute). In all cases, the Tribunal shall act so that the parties are treated with equality and that each party is given a reasonable opportunity to present her/his case.

The Tribunal may make such orders or give such directions as it deems fit insofar as they are not inconsistent with these Rules or the applicable law governing the arbitration. As provided for in Rule 4.1 (*In writing*), any such orders and directions shall be in writing.

Unless stated otherwise by the Tribunal, the parties undertake to carry out any such orders or directions without delay.

20.2 *Preliminary meeting and additional Meetings*

The Tribunal may as soon as practicable conduct a preliminary meeting with the parties, in person or by other means, for the purpose of organizing and scheduling the subsequent arbitration proceedings or/and to discuss the procedures that will be most appropriate and cost-effective for the case.

In addition to a preliminary meeting, the Tribunal may also convene additional meetings, for example, for the purpose of inspecting any concerned site, objects or documents as referred to in Rule 25.2 (*Inquiries, orders and examination of evidence*) or reviewing the progress of the arbitration. The provisions of Rule 24 (*Hearings, meetings*) shall apply to any such additional meetings.

20.3 *Exploring amicable resolution*

Before or at the preliminary meeting, the Tribunal shall confer with the parties for the purpose of exploring whether the possibility of an amicable resolution of the dispute exists, and shall assist the parties in any manner it deems appropriate.

20.4 *Bifurcation of arbitration proceedings*

The Tribunal may at its discretion, after consultation with the parties, bifurcate arbitration proceedings and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

20.5 *Third party joinder*

The Tribunal shall have the power to allow a third party to be joined as a party in the arbitration, provided that all parties, including the third party, have consented to such joinder in writing. In such case, the Tribunal may make a single final award or separate awards resolving all disputes between all parties.

Rule 21.- Consolidation of arbitrations

21.1 *Conditions for consolidation*

The General Secretariat may, at the request of a party and with the agreement of all the other parties, consolidate 2 (two) or more arbitrations initiated under these Rules into a

single arbitration. The General Secretariat may adjust (increase or reduce) the administration fee and Tribunal fee based on the circumstance, stage and impact of the consolidation on the services of NCAC and of the Tribunal.

21.2 *Relevant circumstances*

In deciding whether to consolidate, the General Secretariat may take into account any circumstances it considers to be relevant, including:

- a- whether all of the claims in the arbitrations are made under the same arbitration agreement;
- b- whether, if the claims are made under different arbitration agreements, the arbitrations are between the same parties, the disputes in the arbitrations arise in connection with the same legal relationship, and the arbitration agreements are deemed compatible; and
- c- whether arbitrators have already been appointed in more than 1 (one) of the arbitrations and, if so, whether the same or different persons have been appointed.

21.3 *Consolidation into the first arbitration received or commenced*

Unless otherwise agreed by all parties, when arbitrations are consolidated, they shall be consolidated into the arbitration for which the Notice of Arbitration was received first by the General Secretariat if none of the arbitration cases has commenced yet, or for which arbitration proceedings commenced first if the arbitration cases have commenced.

Rule 22.- Submissions by the parties

22.1 *Submissions*

Unless the Tribunal, in consultation with the parties, determines otherwise, the submission of statements shall proceed as set out in this Rule 22 (*Submissions by the parties*).

22.2 *Statement of Claim*

Unless already submitted pursuant to Rule 7.3 (*Accompanying Statement of Claim*) the Claimant shall, within 30 (thirty) calendar days after receipt of the notification referred to in Rule 10.7 (*Notification of constitution of Tribunal*), submit a Statement of Claim setting out in full detail:

- a- the facts supporting the claim;
- b- the legal grounds or arguments supporting the claim; and
- c- the relief or remedy sought together with the amount of all quantifiable claims.

22.3 *Statement of Defense, Counterclaim*

Unless already submitted pursuant to Rule 8.3 (*Accompanying Statement of Defense, jurisdiction plea*) the Respondent shall, within 30 (thirty) calendar days after receipt of the Statement of Claim, submit a Statement of Defense setting out in full detail:

- a- which of the facts and contentions of law in the Statement of Claim she/he admits;

- b- which of the facts and contentions of law in the Statement of Claim she/he denies and on what grounds; and
- c- on what other facts and contentions of law she/he relies.

The Statement of Defense may also contain any counterclaim or set-off defense (provided that it falls within the jurisdiction of the Tribunal), which shall comply with the requirements of Rule 22.2 (*Statement of Claim*).

22.4 *Statement of Defense to Counterclaim*

If a counterclaim is made, the Claimant shall, within a period of 30 (thirty) calendar days after receipt of the Statement of Defense, submit a Statement of Defense to the Counterclaim, which shall comply with the requirements of Rule 22.3 (*Statement of Defense, counterclaim*).

22.5 *Further submissions*

The Tribunal shall decide which further submissions, if any, shall be required from the parties or may be presented by them. The Tribunal shall fix the periods of time for communicating such submissions.

22.6 *Supporting documents*

Submissions referred to in this Rule 22 (*Submissions by the parties*) shall be accompanied by copies of all supporting documents which have not previously been submitted by any party.

22.7 *Default, non-compliance with the Rules*

If the Claimant, without showing sufficient cause, fails to submit her/his Statement of Claim within the applicable period of time, the Tribunal shall issue an order for the termination of the arbitration proceedings, if appropriate after deciding on any remaining matters that may need to be resolved.

In all other cases, if any party, without showing sufficient cause, fails or refuses to submit any required statement, to attend any hearing or meeting, or to otherwise comply with these Rules or the Tribunal's orders, directions or awards, the Tribunal may make such inferences as it deems appropriate, proceed with the arbitration and make an award based on the submissions and evidence before it.

Rule 23.- Revocation of claim, amendment to claim and defense

23.1 *Revocation of claim*

The Claimant shall have the right to revoke her/his claim upon notice to the Tribunal, unless the Respondent objects thereto and the Tribunal recognizes a legitimate interest on her/his part in obtaining a final decision on the dispute. The Tribunal shall issue an order for termination of the arbitration proceedings in case of such revocation of the claim.

23.2 *Amendment to claim and defense*

During the arbitration proceedings, any party may amend or supplement her/his claim, defense, counterclaim or set-off defense, unless the Tribunal considers it inappropriate to allow such amendment or supplement because of undue delay to the arbitration proceedings, prejudice to the other party or any other circumstances. However, a party may not amend or supplement such claim or defense if the amended or supplemented claim or defense would fall outside the jurisdiction of the Tribunal.

Rule 24.- Hearings, meetings

24.1 *Hearing*

Unless the parties have agreed on hearing manner (oral hearing or based on documents and other materials only), the Tribunal shall decide whether to hold oral hearing(s), or conduct the arbitration proceedings on the basis of documents and other materials only.

However, the Tribunal shall hold oral hearing at an appropriate stage of the arbitration proceedings, if so requested by a party.

24.2 *Additional hearings*

Unless the parties have agreed otherwise, the Tribunal may decide at any stage prior to issuing a final award if the circumstances of the arbitration require that additional hearings be held.

24.3 *Place of meetings and hearings*

Regardless of the seat of arbitration referred to in Rule 16 (*Seat of arbitration*), the Tribunal may hold meetings and hearings by any means and at any location it considers appropriate.

24.4 *Notice of hearings*

The Tribunal shall fix the date, time, place and means of any hearing and shall give the parties reasonable advance notice thereof in any event no less than 15 (fifteen) calendar days prior to the hearing date.

If any party to the arbitration proceedings fails to appear at oral hearing without showing sufficient cause for such failure, the Tribunal may proceed with the arbitration and may make an award based on the submissions and evidence before it.

24.5 *Prior list of issues or questions*

At least 15 (fifteen) calendar days prior to a hearing date, the Tribunal may provide the parties with a list of issues or questions to which it wishes them to give special consideration.

24.6 *Presence at hearings, translation, recording*

The parties shall be entitled to be present at any oral hearing. All hearings shall be in private unless the parties have agreed otherwise. As provided for in Rule 18.2 (*Translation*), the Tribunal may order that a translation be provided of any oral or written communication made or submitted during the hearing.

The Tribunal may decide if, and in what form, oral hearing shall be recorded.

Rule 25.- Evidence, general

25.1 *Burden of proof*

Each party shall have the burden of proving the facts, applicable rules and any trade usage relied on to support her/his claim, counter-claim or defense.

25.2 *Inquiries, orders and examination of evidence*

The Tribunal may at any time during the arbitration proceedings conduct such inquiries as it deems necessary or appropriate, or order any party within such period as the Tribunal shall require, among other things:

- a- to produce documents, exhibits or other evidence;
- b- to provide an index or summary of the documents, exhibits or other evidence which that party has presented or intends to present;
- c- to make any site, object or documents under her/his control available for inspection by the Tribunal, the other party, or any expert appointed by the Tribunal; and
- d- to arrange for samples to be taken from, or any observation to be made of or experiment conducted upon, any site, object or documents under her/his control.

A party is entitled to examine any evidence presented by the other party.

25.3 *Admissibility of evidence*

The Tribunal shall determine the admissibility, relevance, materiality and weight of all evidence. Evidence need not be admissible in law.

Rule 26.- Witnesses

26.1 *Advance notice by the parties*

Before any hearing the Tribunal may require each party to give notice of the identities of the witnesses, which in this Rule 26 (*Witnesses*) shall include expert-witnesses, she/he intends to call, the subject matter and relevance of their testimony, and the language in which such witnesses will give their testimony.

26.2 *Allowing, limiting or refusing appearance of witnesses*

The Tribunal has discretion to allow, limit or refuse the appearance of witnesses.

26.3 *Testimony in written form*

The Tribunal may direct the testimony of witnesses to be presented in written form or any other form of recording. Subject to Rule 26.2 (*Allowing, limiting or refusing appearance of witnesses*), any party may request that such a witness attend oral examination. If the witness fails to attend, the Tribunal may place such weight on the written testimony as it thinks fit, disregard it or exclude it all together.

26.4 *Questioning of witnesses*

Any witness who gives oral evidence may be questioned by the Tribunal and each of the parties in such manner as the Tribunal shall determine.

26.5 *Oath or affirmation*

A witness may be required by the Tribunal to testify under oath or affirmation.

26.6 *Witness to retire*

The Tribunal may require any witness to exit the hearing during the testimony of other witnesses.

Rule 27.- Experts appointed by the Tribunal

27.1 *Appointment of expert*

Unless the parties have agreed otherwise, the Tribunal may, following consultation with the parties, appoint 1 (one) or more independent experts to report to the Tribunal on specific issues, which are determined by the Tribunal, in writing. The Tribunal shall provide the parties with a copy of such determination.

The Tribunal may require a party to give such expert any relevant information, or to produce or provide access to any relevant sites, goods, properties or documents for her/his inspection.

27.2 *Written report, comments by parties*

Any expert so appointed shall submit a written report to the Tribunal. Upon receipt of such report, the Tribunal shall deliver a copy thereof to the parties and invite them to submit written comments on it.

27.3 *Participation of expert in hearing*

If the Tribunal considers it necessary and unless the parties have agreed otherwise, any such expert shall, after delivery of her/his written report, participate in a hearing. At the hearing, the parties shall have the opportunity to question him/her.

Rule 28.- Interim measures

28.1 *Interim measures*

At the request of a party, the Tribunal may, by reasoned award or order, grant interim measures at any time prior to the date of the final award.

28.2 *Purposes of interim measures*

Interim measures are necessary and urgent measures which in no way shall prejudice the final judgment of the Tribunal with regard to the merits of the case. Interim measures include, for example and without limitation, orders:

- a- to maintain or restore the status quo pending resolution of the dispute;
- b- to take action that would prevent, or to refrain from taking action that is likely to cause (i) current or imminent harm or (ii) prejudice to the arbitration process itself;

- c- to provide a means of preserving assets out of which a subsequent award may be satisfied; or
- d- to preserve evidence that may be relevant and material to the resolution of the dispute.

28.3 *Request by separate statement*

A request for interim measures shall be submitted to the Tribunal in a separate statement. The statement shall contain a clear description of the requested interim measure and the reasons for the request and the purported necessity and urgency. If possible, the evidence on which the request is based shall be submitted together with the statement insofar as it has not yet been submitted in the arbitration proceedings.

28.4 *Further procedure*

Upon receipt of a request for interim measures, the Tribunal shall without delay inform the parties how it will proceed, in particular whether a hearing shall be held or further statements shall be required.

28.5 *Furnishing of security*

Unless the parties agreed otherwise, the Tribunal may make the granting of a request for interim measures subject to appropriate security being furnished by the requesting party for covering any cost or damage incurred by the other party as the result of an interim measure granted by the Tribunal.

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

28.6 *Decision by Tribunal*

The Tribunal shall grant a request for interim measures only if it is satisfied that such measures are necessarily and urgently required. If the Tribunal determines that the matter to be decided by an interim measure is not necessary and urgent, it shall reject the request either wholly or partly and may determine that it shall be decided in the arbitration on the merits.

The Tribunal may consider a request for interim measures necessary and urgent if the party requesting the interim measures satisfies 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 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 Tribunal in making any subsequent determination.

28.7 *Modification, suspension or termination of interim measures*

The Tribunal may modify, suspend or terminate an interim measure it has ordered, upon application of any party.

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

28.8 *Request for interim measures to court*

A request for interim measures made prior or during the arbitration proceedings by a party to a court shall not be deemed incompatible with the agreement to arbitrate or as a waiver of that agreement, and shall not affect the relevant powers of the Tribunal.

The party who submits a request for interim measures to a court must as soon as possible notify the Tribunal thereof and of any decision thereon.

Rule 29.- Closure or re-opening of arbitration proceedings

The Tribunal shall, after consulting with the parties, declare the arbitration proceedings closed when it is satisfied that the parties have no further relevant and material evidence to produce or submission to make. Thereafter, no further submissions may be made, nor evidence may be produced.

However, the Tribunal may, in view of exceptional circumstances, on its own initiative or at the request of a party, reopen the arbitration proceedings at any time before the final award is made.

Rule 30.- Settlement

If, before the final award is made, the parties agree on a settlement of the dispute, the Tribunal shall either issue an order for the termination of the arbitration proceedings or, if and to the extent requested by both parties and accepted by the Tribunal, record the settlement in the form of a consent award. The Tribunal is not obliged to give reasons in such an award.

Any such settlement shall include a settlement regarding the payment of the costs of the arbitration.

Rule 31.- Other grounds for termination of arbitration proceedings

Other than for the reasons mentioned elsewhere in these Rules, the Tribunal shall also issue an order for the termination of the arbitration proceedings if the parties agree to such termination or the Tribunal finds that continuation of the arbitration proceedings becomes unnecessary or impossible for any other reason.

Rule 32.- Decision-making

32.1 *Majority decision*

In case of a multiple-member Tribunal any award or other decision shall be made by a majority of all the Tribunal members.

32.2 *Decision on procedural issues*

With the prior authorization of the Tribunal, the presiding arbitrator may decide procedural issues alone.

Rule 33.- Final, interim or partial awards

In addition to making a final award, which resolves all the (remaining) issues, the Tribunal shall be entitled to make interim or partial awards on different issues at different times.

Rule 34.- Form of the award

34.1 *In writing, reasoned*

An award shall be in writing. Unless the parties have agreed otherwise and subject to Rule 30 (*Settlement*), it shall state the reasons on which it is based.

34.2 *Place and date*

An award shall contain the date on which and the place (seat) where it was made.

34.3 *Signing*

An award shall be signed by the arbitrator(s). In case of a multiple-member Tribunal, the signature of the majority of all members of the Tribunal shall suffice provided that the reason for absence of signature of any arbitrator is stated.

34.4 *Cooperation in making an award*

If any arbitrator fails to cooperate in the making of the award, after having been given a reasonable opportunity to do so, the remaining arbitrators shall proceed in her/his absence.

34.5 *Approval on award format*

No award shall be issued by the Tribunal until such an award has been scrutinized and approved by the General Secretariat as to its form.

Rule 35.- Scrutiny

35.1 *Submission of draft award for scrutiny*

a- Before issuing any award, the Tribunal shall submit the award in draft form to the General Secretariat for scrutiny. Unless the General Secretariat extends the timeline upon application of the Tribunal or the parties agreed otherwise, the Tribunal shall, within 45 (forty-five) calendar days from the date on which the Tribunal declares the arbitration proceedings closed, submit the draft award to the General Secretariat.

The General Secretariat may, within 30 (thirty) calendar days of receipt of the draft award, suggest modifications as to the form of the award, and without affecting the Tribunal's liberty of decision, draw its attention to points of substance.

- b- The Rule 35.1 (a-) shall not be applicable to an award issued in relation to interim measures as provided in Rule 28 (*Interim measures*) or consent award as provided in Rule 30 (*Settlement*).

35.2 *Submission of draft correction, amplification, interpretation or additional award, for scrutiny*

Before issuing any correction, amplification, interpretation or additional award, referred to in Rule 38 (*Correction, amplification and interpretation of an award, additional award*), the Tribunal shall submit such award in draft form to the General Secretariat for scrutiny.

The General Secretariat may, within 15 (fifteen) calendar days of receipt of the draft correction, amplification, interpretation or additional award, suggest modifications as to the form of the award, and without affecting the Tribunal's liberty of decision, draw its attention to points of substance.

Rule 36.- Issuance of an award

Once the Tribunal has issued the award in accordance with Rule 34 (*Form of the award*), the General Secretariat shall without delay affix NCAC seal to the award and deliver the award to the parties, provided always that any requisite advance has been paid to NCAC pursuant to Rule 48 (*Advances*) or, in the case of a final award, the total costs of the arbitration have been fully paid to NCAC.

Rule 37.- Effect of the award, implementation

Subject to Rule 38 (*Correction and interpretation of an award, additional award*), an award shall be final and binding on the parties from the date it is issued and sealed.

The parties undertake to carry out awards without delay. The parties acknowledge that they do not have any right of appeal other than pursuant to mandatory provisions of law and they irrevocably waive their rights to any appeal insofar as such waiver may be validly made.

Rule 38.- Correction, amplification and interpretation of an award, additional award

38.1 *Request for correction, amplification, interpretation, or additional award*

Within 30 (thirty) calendar days of the receipt of the award, unless a further period of time has been agreed upon by the parties prior to closing of the arbitration proceedings and with notice to the other party as well as the General Secretariat and the Tribunal, a party may request the Tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any other errors of a similar nature.

Within 30 (thirty) calendar days of the receipt of the award, unless a further period of time has been agreed upon by the parties prior to closing of the arbitration proceedings and with notice to the other party as well as the General Secretariat and the Tribunal, a

party may request the Tribunal to give an interpretation or amplification of a specific point or part of the award.

Unless otherwise agreed by the parties prior to closing of the arbitration proceedings, within no later than 30 (thirty) calendar days after receiving an award as to the claims, the party who has notified another party may request for additional awards presented in the arbitration proceedings but omitted from the award.

The other party may submit comments on such a request within a reasonable period of time set by the Tribunal.

38.2 *Decision on correction, amplification, interpretation, additional award*

If the Tribunal considers any such request to be justified it shall, within 30 (thirty) calendar days after receipt of the request, make the correction or amplification, or give the interpretation in writing, or issue the additional award. As provided for in Rule 5.2 (*Modification of time limits*) if necessary and by notifying the parties, the Tribunal may extend the period of time with which it shall make a correction, amplification, interpretation or additional award.

The provisions of Rule 35 (*Scrutiny*) to Rule 37 (*Effect of the award, implementation*) shall apply in the same manner with the necessary or appropriate changes made in relation to a correction of an award and to any additional award.

38.3 *Correction at initiative of Tribunal*

The Tribunal may also, within 30 (thirty) calendar days after issuance of an award, correct any error referred to in Rule 38.1 (*Request for correction, amplification, interpretation, or additional award*) on its own initiative.

38.4 *Part of the award*

A correction, amplification or interpretation of an award shall form part of the award.

Rule 39.- Case file of General Secretariat

When the Tribunal is satisfied that no further action is required of it, it shall ensure that the General Secretariat has a complete case file.

Rule 40.- Power of the Tribunal

In addition to the powers specified elsewhere in these Rules and not in derogation of the mandatory rules of law applicable to the arbitration, the Tribunal shall have the power to:

- a- order the correction of any contract, but only to the extent required to rectify any mistake which it determines to have been made by all the parties to that contract. This is subject to the condition that the applicable law of the contract allows rectification of such contract;
- b- order the preservation, storage, sale or disposal of any property or item which is or forms part of the subject-matter of the dispute;
- c- on the application of a party, issue an award for unpaid costs of the arbitration;

- d- direct any party to ensure that any award which may be made in the arbitration proceedings is not rendered ineffectual by the dissipation of assets by a party;
- e- order any party to provide security deposits for legal or other costs in any manner the Tribunal thinks fit;
- f- order any party to provide security deposits for all or part of any amount in dispute in the arbitration;
- g- impose sanctions as the Tribunal deems appropriate to any party for failure or refusal to comply with these Rules or with the Tribunal's orders or directions or any partial award or to attend any meeting or hearing;
- h- decide, where appropriate, any issue not expressly or impliedly raised in the submissions filed under Rule 22 (*Submission by the parties*) provided such issue has been clearly brought to the notice of the other party and that other party has been given adequate opportunity to respond;
- i- determine the law applicable to the arbitration proceeding; and
- j- determine any claim or legal or other privilege.

Rule 41.- Costs of arbitration

41.1 *Costs of arbitration, NCAC Fee Schedule*

The costs of the arbitration shall consist of:

- a- registration fee;
- b- administration fee;
- c- arbitrator appointment fee;
- d- Tribunal fee; and
- e- any expenses incurred by the Tribunal, and NCAC,

as referred to from Rule 41 (*Costs of arbitration*) to Rule 46 (*Expenses incurred by Tribunal and NCAC*).

The costs of the arbitration shall be determined by the General Secretariat in accordance with this Chapter and the NCAC Fee Schedule adopted by NCAC in accordance with its Internal Rules. The General Secretariat's determination of the costs of arbitration shall be final. If the arbitration is settled or disposed of without a hearing, the costs of arbitration shall be finally determined by the General Secretariat. The General Secretariat shall give regard to all the circumstances of the case, including the stage of arbitration proceedings at which the arbitration is settled or disposed of. In the event that the costs of arbitration determined are less than the advances made, there shall be a refund in such proportions as the parties may agree, or failing an agreement, in the same proportions as the advances were made.

41.2 *Amendment and Application of NCAC Fee Schedule*

The NCAC Executive Board may amend its Fee Schedule from time to time as it deems appropriate. The NCAC Fee Schedule applicable shall be that in force on the day that the complete Notice of Arbitration in accordance with Rule 7.1 (*Notice of arbitration*) is received by the General Secretariat.

41.3 *Apportionment of costs of arbitration*

The Tribunal shall specify in the award, the total amount of the costs of the arbitration. Unless the parties have agreed otherwise, the Tribunal shall determine in the award the apportionment of the costs of the arbitration among the parties.

Following the foregoing, the Tribunal shall determine the amount payable by 1 (one) party to another. In doing so, it shall take into account the respective amounts of advance paid by the parties to NCAC pursuant to Rule 48 (*Advances*).

41.4 *Joint and several liability*

The parties shall be jointly and severally liable for payment of the total costs of the arbitration to NCAC.

Rule 42.- Registration fee

42.1 *Flat rate*

The registration fee is set at a flat rate, as mentioned in the NCAC Fee Schedule.

42.2 *Timely payment*

The Claimant shall pay the case registration fee when submitting the Notice of Arbitration. The Counter-claimant shall pay additional case registration fee when submitting any counter-claim.

Failure to timely pay in full the case registration fee shall be considered a failure to submit the Notice of Arbitration as set out in Rule 7.4 (*Incompleteness of Notice of Arbitration*) or risking that her/his counterclaim is not considered in the arbitration proceedings.

42.3 *Non-refundable*

The registration fee is non-refundable.

Rule 43.- Administration fee

43.1 *Determination of Administration Fee*

The administration fee is determined based on the sum in dispute, as mentioned in the NCAC Fee Schedule.

43.2 *Calculation of sum in dispute*

The sum in dispute shall be the aggregate value of all claims and counterclaims. If a party makes a set-off defense, the General Secretariat shall include the amount thereof in the calculation of the sum in dispute only insofar as the set-off defense requires significant additional work for the Tribunal.

43.3 *Amendments to claims and defenses*

If the amount of the claim, counterclaim or set-off defense (if relevant) is reduced in accordance with Rule 23.2 (*Amendment to claims and defenses*), the administration fee shall not be reduced. If the amount of the claim, counterclaim or set-off defense (if relevant) is increased in accordance with Rule 23.2 (*Amendment to claims and defenses*), the administration fee shall also be increased in accordance with the NCAC Fee Schedule.

43.4 *When the sum in dispute is not quantifiable*

Where the sum in dispute (the amount of the claim or the counterclaim) is not quantifiable at the time the advance payment for costs of arbitration is due, a provisional estimate of the costs of the arbitration shall be made by the General Secretariat. Such estimate may be based on the nature of the controversy and the circumstances of the case. This estimation may be adjusted in light of such information as may subsequently become available.

43.5 *Adjustment of Administration Fee*

The Administration fee for each particular case may be adjusted by the General Secretariat, taking into account any exceptional circumstances that may, in the opinion of the General Secretariat, justify reducing or increasing the Administration fee prescribed in the NCAC Fee Schedule. Exceptional circumstances may include but are not

limited to substantial less work being done by NCAC because of early termination of the arbitration proceedings or substantial additional services being provided by NCAC. However, in no event shall an increase be more than 30% (thirty percent) of the Administration fee prescribed in the NCAC Fee Schedule.

Rule 44.- Arbitrator appointment fee

If arbitrator appointment by NCAC is required or requested, the concerned party(ies) shall pay NCAC an arbitrator appointment fee prescribed in the NCAC Fee Schedule for the appointment service to be provided by its Appointment Committee.

Rule 45.- Tribunal fee

45.1. *Determination of Tribunal Fee*

The Tribunal fee is determined based on the sum in dispute, as mentioned in the NCAC Fee Schedule. Alternative methods of determining the Tribunal fees may be agreed by the parties prior to the constitution of the Tribunal.

45.2. *Calculation of sum in dispute*

The sum in dispute shall be the aggregate value of all claims and counterclaims. If a party makes a set-off defense, the General Secretariat shall include the amount thereof in the calculation of the sum in dispute only insofar as the set-off defense requires significant additional work for the Tribunal.

45.3. *Amendments to claims and defenses*

If the amount of the claim, counterclaim or set-off defense (if relevant) is reduced in accordance with Rule 23.2 (*Amendment to claims and defenses*), the Tribunal Fee shall not be reduced. If the amount of the claim, counterclaim or set-off defense (if relevant) is increased in accordance with Rule 23.2 (*Amendment to claims and defenses*), the Tribunal fee shall also be increased in accordance with the NCAC Fee Schedule.

45.4. *Sum in dispute is not quantifiable*

Where the sum in dispute (the amount of the claim or the counter claim) is not quantifiable at the time the advance payment for costs of arbitration is due, a provisional estimate of the costs of the arbitration shall be made by the General Secretariat. Such estimate may be based on the nature of the controversy and the circumstances of the case. This estimation may be adjusted in light of such information as may subsequently become available.

45.5. *No separate agreements with any of the parties on fee and expenses*

An arbitrator is entitled only to the allocation of the Tribunal fee and reimbursement of such expenses as determined by the General Secretariat. She/he may not directly or indirectly enter into agreements with, or receive any payments from, any of the parties or their representatives with respect to her/his fee or her/his expenses.

45.6. *Internal distribution of Tribunal fee*

The arbitrators are free to agree on a fee allocation among themselves. In the absence of such agreement, the General Secretariat shall apply the following:

- a- In case of a three-member Tribunal, 40% (forty percent) of the total Tribunal Fee shall be allocated to the presiding arbitrator and the remaining 60% (sixty percent) shall be equally allocated among the other arbitrators.
- b- In case of other multiple-member Tribunal, 5% (five percent) of the total Tribunal Fee shall be specifically reserved to the presiding arbitrator and the remaining 95% (ninety five percent) shall be allocated equally among all the arbitrators, including the presiding arbitrator.

45.7. *Fees in case of replacement of arbitrator*

The General Secretariat shall determine the fee of an arbitrator who ceases to act for whatever reasons before termination of the arbitration proceedings and of the arbitrator appointed to replace him, having regard to the work each of them has performed and all other relevant circumstances.

However, in no event shall the total of the fees for the outgoing arbitrator and his replacement arbitrator be more than 120% (one hundred and twenty percent) of the fee that the initially appointed arbitrator would have received if she/he had completed the case.

45.8. *Adjustment of Tribunal Fee*

Tribunal fee for each particular case may be adjusted by the General Secretariat, taking into account any exceptional circumstances that may, in the opinion of the General Secretariat, justify reducing or increasing the Tribunal fee prescribed in the NCAC Fee Schedule. Exceptional circumstances may include, but are not limited to, substantially less work being done by the Tribunal because of early termination of the arbitration proceedings or substantial additional work being done by the Tribunal in relation to contentious requests for interim measures, challenges of an arbitrator or jurisdictional pleas. However, in no event shall an increase be more than 30% (thirty percent) of the Tribunal fee prescribed in the NCAC Fee Schedule.

Rule 46.- Expenses incurred by Tribunal and NCAC

The expenses incurred by the Tribunal and NCAC include:

- a- the actual expenses of the arbitrators incurred to the extent required for the arbitration proceedings, including reasonable expenses for travel, hotels, meals and other necessary expenses;
- b- the costs of experts appointed by the Tribunal or of other assistance required by the Tribunal; and
- c- the costs of facilities made available or additional services provided by NCAC.

The NCAC Executive Board may issue guidelines for the above expenses and the accounting thereof.

Rule 47.- Party's legal and other costs

Unless otherwise agreed by the parties, the Tribunal shall have the authority to order in its award that all or part of the legal or other costs of a party be paid by another party.

Rule 48.- Advances

48.1 *Advance payment for costs of arbitration*

The parties shall pay NCAC an advance for the estimated costs of the arbitration, except for the registration fee which shall be paid in full in accordance with Rule 42.2 (*Timely payment*).

The General Secretariat shall determine the amount of the advance. Unless the parties have agreed otherwise, the amount is payable in equal shares by the Claimant and the Respondent. Payments shall be made by cheque or transfer to the designated bank account of NCAC within 15 (fifteen) calendar days after notification thereof by the General Secretariat.

48.2 *Supplementary advance*

During the course of the arbitration proceedings, including but not limited to the event of an increase of the sum in dispute, a contentious request for interim measures, challenge of an arbitrator or jurisdictional plea, the General Secretariat may request a supplementary advance from the parties, which shall be payable within 15 (fifteen) calendar days after notification thereof by the General Secretariat.

48.3 *Suspension or termination of arbitration proceedings*

If the required advances are not paid in full at the time payment is due, the General Secretariat shall so inform the parties in order that 1 (one) or another of them may make the required payment. If such payment is not made within the period of time set by the General Secretariat the General Secretariat may, after consultation with the Tribunal, direct the Tribunal to suspend work and set a time limit on the expiry of which the relevant claims or counterclaims shall be considered as withdrawn without prejudice to the party reintroducing the same claims or counterclaims in another arbitration proceeding.

Any party is free to pay the whole of the advances on costs of the arbitration in respect of the claim or the counterclaim should the other party fail to pay its share. The Tribunal or the General Secretariat may suspend its work, in whole or in part, or terminate the arbitration proceedings should the advances requested under these Rules remain either wholly or in part unpaid.

48.4 *Interim payments*

The General Secretariat may direct that interim payments shall be made from time to time out of advance funds to cover estimated fees for, or expenses already incurred by, NCAC or arbitrators.

48.5 *Accounting of advance, return of unspent balance, interest*

After a final award, consent award or order for the termination of the arbitration proceedings has been made, the General Secretariat shall render an accounting to the parties of the advance received and utilized. It shall return any unspent balance to the parties in such proportions as the parties may agree, or failing an agreement, in the same proportions as the advances were made. Any interest earned on the advances or any security deposit shall be retained by NCAC as its revenue.

48.6 *No liability for sums not covered by advances or security deposits*

NCAC including its members, directors, advisers, secretary and personnel shall not be liable for the payment of any sum which is not covered by the advances or security deposits.

Rule 49.- Confidentiality

49.1 *Arbitration proceedings closed to public*

Unless the parties agree otherwise, all meetings and hearings shall be in private, and any recordings, transcripts, or documents used shall remain confidential.

49.2 *Tribunal deliberations confidential*

The deliberations of the Tribunal shall be confidential.

49.3 *Secrecy, no disclosure of facts*

All persons involved, directly or indirectly, in the arbitration are bound by secrecy and shall not, without the prior written consent of all the parties, disclose facts related to, or learned through, the arbitration case, except as follows:

- a- for the purpose of making an application to any competent court of any state to enforce or challenge the award;
- b- pursuant to the order of or a subpoena issued by a court of competent jurisdiction;
- c- for the purpose of pursuing or enforcing a legal right or claim;
- d- in compliance with the provisions of the laws of any state which are binding on the party making the disclosure; or
- e- pursuant to an order by the Tribunal on application by a party with proper notice to the other parties.

49.4 *No action for defamation*

The parties and the Tribunal agree that they shall not rely on or use statements or comments, whether written or oral, made in the course of the arbitration proceedings to institute or commence or maintain any action for defamation, libel, slander or any other such complaint.

Rule 50.- Publication of awards

NCAC may publish on its website or otherwise, either in its entirety or in the form of excerpts or a summary, any award under the following conditions:

- a- all references to the parties' names and, if so requested and specified by a party, other details that are likely to enable the public to identify the parties, are deleted; and
- b- no party has objected to such publication within 90 (ninety) calendar days after issuance of the award.

Rule 51.- Waiver of rights

A party who knows that any non-mandatory provision of the law governing the arbitration, or any requirement under the arbitration agreement including Arbitration Rules, has not been complied with and yet proceeds with the arbitration without promptly stating her/his objection or, if a time limit is provided therein, within such period of time, shall be deemed to have waived her/his right to object.

Subject to Rule 38 (*Correction, amplification and interpretation of an award, additional award*), by agreeing to arbitration under these Rules, the parties undertake to carry out the award immediately and without delay, and they also irrevocably waive their rights to any appeal insofar as such waiver may be validly made and the parties further agree that an award shall be final and binding on parties from the date it is made.

Rule 52.- Choice between court and NCAC

When the seat of the arbitration is in Cambodia and parties have following Article 21 (with regard to challenge of an arbitrator) or Article 22 (with regard to termination of an arbitrator's mandate) of the Law on Commercial Arbitration of the Kingdom of Cambodia a choice to pursue a matter either before the Court (Commercial, Appeal or Supreme) or before NCAC, the parties through these Rules expressly agree to pursue that matter exclusively before NCAC. Any decision on such matter made by NCAC under these Rules shall be considered a decision by NCAC under the aforementioned Articles of the Law, which decision thus shall be final and not be subject to any appeal.

Rule 53.- Unforeseen matters

In all matters not expressly addressed in these Rules, NCAC, the Tribunal and the parties shall act in the spirit of these Rules and shall make every effort to ensure the fair, expeditious and cost-effective resolution of the dispute.

Rule 54.- Exclusion of liability

NCAC including its members, directors, advisors, secretary and personnel and the members of the Tribunal:

- a- shall not be liable to any person for any act, omission or negligence in connection with an arbitration conducted under these Rules; and
- b- shall not be under any obligation to make any statement in connection with an arbitration conducted under these Rules and no party shall seek to make any of the above persons act as a witness in any legal proceedings in connection with an arbitration conducted under these Rules.

Rule 55.- Amendments to the Rules

These Rules may from time to time be amended by NCAC. Unless stated otherwise, an agreement to arbitrate, as referred to in Rule 2.1 (*Application of the Rules*), shall mean an agreement to arbitrate under the Rules of NCAC in force on the day that the Notice of Arbitration is received by the General Secretariat.

Rule 56.- Practice guidelines

The NCAC Executive Board may, when necessary or if deemed helpful, issue Practice Guidelines to supplement, regulate and implement these Rules for the purpose of facilitating the administration of arbitrations governed by these Rules.

Rule 57.- Final Provisions

- 57.1 These Rules are adopted by the General Assembly of the NCAC on 11 July 2014. Any provisions that are contrary to these Rules shall be abrogated.
- 57.2 These Rules shall become effective from 11 July 2014 onwards.

**Phnom Penh,
Signature and Seal**

**Chairman of the National Commercial Arbitration Centre
Ros Monin**