

**NCAC**

មជ្ឈមណ្ឌលជាតិនៃមជ្ឈត្តការផ្នែកពាណិជ្ជកម្ម  
NATIONAL COMMERCIAL ARBITRATION CENTRE



# ARBITRATION RULES

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28 March 2021



## Foreword

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Commercial arbitration has now truly become a viable choice in Cambodia for parties seeking to resolve their disputes out of court, and this trend is expected to grow significantly in the years to come. As of December 2020, the National Commercial Arbitration Centre (NCAC) has received and administered 25 cases, including international cases, under the 2014 NCAC Arbitration Rules with the aggregate sums in dispute exceeding USD 72 million.

With the aims to stay up to date with the regional and global developments in commercial arbitration as well as to better serve its users, the NCAC embarked on a process to amend its 2014 NCAC Arbitration Rules. The new arbitration rules were adopted on 28 March 2021 and are set to be effective from 28 June 2021. This is a result of many months of hard work in research, analysis, and revisions, where there were multiple consultations with legal practitioners as well as both highly-experienced local and foreign arbitrators.

Some of the major amendments include the changes that allow the NCAC to administer cases and to provide other services under arbitration rules other than the NCAC Arbitration Rules, and the possibility for the parties to shorten the time limits specified in the NCAC Arbitration Rules if they so agree. A provision has been included to further address the independence and impartiality of arbitrators by empowering the Tribunal to take any measure necessary to avoid a conflict of interest of an arbitrator arising from a change in party representation after the constitution of

the Tribunal. The 2021 NCAC Arbitration Rules also set a new way of determining the commencement date of arbitration proceedings, in which it will come in handy, especially with regard to disputes having multiple respondents. In addition, in responding to the growing demands of electronic communication means uses in this new normal environment, the new Rules officialise the use of videoconference or similar means of communication technology in all arbitration proceedings. The new Rules further set the time limit for the tribunal in declaring arbitration proceedings closed so that the parties can have better expectation in term of timeline toward to the award issuance.

Moreover, the 2021 NCAC Arbitration Rules introduce the Expedited Procedure and the Emergency Arbitrator features for the first time. Any party may request for the Expedited Procedure if the sum in dispute does not exceed the equivalent amount of USD 3 million, if the parties so agree, or in case of exceptional urgency. Under this Expedited Procedure, the final award will be made within 270 calendar days from the date the Tribunal is constituted. Prior to the constitution of the Tribunal, any party may apply for an interim measure from an Emergency Arbitrator, whose decision on the application is made within 15 calendar days from the appointment date of the Emergency Arbitrator.

Through the new Rules, users are further offered with a more flexible, efficient, and transparent process in resolving their disputes at the NCAC.

BUN Youdy  
*President*  
National Commercial Arbitration Centre

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## CHAPTER 1

# General Rules

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### Article 1. Definitions

The terms used in the Arbitration Rules are defined as follows:

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

**Emergency Arbitrator** means an arbitrator appointed in accordance with Article 12 of the Rules (*Acceptance of the Appointment and Proceedings Committee*).

**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 as adopted on 28 March 2021.

**Tribunal** means the arbitral tribunal constituted either composed of 1 (one) or more arbitrators.

### Article 2. Scope of Application

#### 2.1. *Application of the Rules, application of other rules and other services*

- (a) The Rules shall apply if the parties have agreed to refer their disputes to arbitration administered by NCAC or to arbitration under the Rules of NCAC or words of agreement to the same effect.
- (b) Article 2.1(a) does not apply if:
  - (i) the Appointment and Proceedings Committee decides to accept administering an arbitration under rules other than the Rules in case the parties have so agreed; or

- (ii) the parties to arbitration agreement name NCAC as appointing authority, or request certain administrative services from NCAC, without subjecting the arbitration to the provisions contained in the Rules.
- (c) Where Article 2.1(b) applies, the parties shall be deemed to agree to all necessary measures that may be taken by NCAC to ensure compatibility of other rules agreed by the parties and NCAC structure.

## *2.2. Date of effect*

The Rules shall come into effect on the date set forth under Article 74.2. Unless otherwise agreed by the parties, the Rules shall apply to any arbitration falling within Article 2.1(a) 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 provision of the Rules is 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 the Rules*

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

## **Article 3. Representation**

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

Once the Tribunal is constituted and after it has afforded an opportunity to the parties to comment in writing within 15 (fifteen) calendar days, the Tribunal may take any measure necessary, including the exclusion of new party representative(s) from participating in whole or in part in the arbitral proceedings to avoid a conflict of interest of an arbitrator arising from the change or the addition of new party representative(s).

## **Article 4. Communications and Simultaneous Copies**

### *4.1. In writing*

For the purposes of the 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 communication*

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 its representative:

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

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, application for Emergency Arbitrator, application for Expedited Procedure, and all kinds of applications, submissions, statements, requests, and objections) to:

- (a) the General Secretariat, such party shall simultaneously send a copy to the other party and, if constituted, to the Tribunal;
- (b) the Tribunal, such party 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 it has complied with the first paragraph of this Article 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 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 a party-appointed arbitrator, except such communication is made:

- (a) to inform 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.

## Article 5. Time Limits

### 5.1. Calculation of period of time

For the purpose of calculating a period of time under the Rules, such period shall begin to run on the day following the day on which a communication is received in accordance with Article 4 (*Communications and 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.

Unless otherwise determined by the General Secretariat or the Tribunal, the term 'day' or 'date' refers to a period between 08:00 a.m. to 05:00 p.m. Cambodian Time (GMT+7). Any point of time after 05:00 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 of public institutions determined by the Royal Government of Cambodia 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:
  - (i) the time limits specified in Chapter 2 (*Commencement of Arbitration*), Chapter 4 (*Constitution of the Tribunal*), Chapter 7 (*Costs*) and Chapter 8 (*Other Rules*); and
  - (ii) 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:
  - (i) the time limits specified in Chapter 5 (*Arbitration Proceedings*);
  - (ii) the time limit specified in Article 53.2 (*Decision on correction, amplification, interpretation and additional award*); and
  - (iii) any time limits that it has set.
- (c) The parties may agree to shorten the various time limits as specified in the Rules. Any such agreement entered into subsequent to the constitution of the Tribunal shall become effective only upon the approval of the Tribunal.

## Article 6. Fair, Expeditious and Efficient Proceedings and No Delays

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

## CHAPTER 2

# Commencement of Arbitration

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### **Article 7. Commencement of Arbitration**

#### *7.1. Notice of Arbitration*

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

- (a) a statement that the dispute be referred to arbitration;
- (b) the name(s), address(es), telephone number(s), facsimile number(s), email address(es), and other addresses of electronic means of communication, if known, of the parties to the arbitration and their representative(s), 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(s) 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 Article 33.1 (*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 of the case registration fee through cheque or transfer to the designated bank account of NCAC,

#### *7.2. Accompanying application for Expedited Procedure*

The Notice of Arbitration may be accompanied by an Application for Expedited Procedure referred to in Article 9 (*Expedited Procedure*).

#### *7.3. 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 Article 25 (*Appointment of Arbitrators*) and Article 26 (*Persons who 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 Article 25 (*Appointment of Arbitrators*) and Article 26 (*Persons who may be Appointed as Arbitrators*); or
- (c) a statement that the Claimant leaves the appointment of an arbitrator to NCAC.

#### *7.4. Accompanying Statement of Claim*

The Notice of Arbitration may be accompanied by the Statement of Claim referred to in Article 37.2 (*Statement of Claim*) and supporting documents.

#### *7.5. 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 Article 7.1 (*Notice of Arbitration*) 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.

#### *7.6. 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(s) at a later date in another Notice of Arbitration.

#### *7.7. Notification of receipt of Notice of Arbitration*

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

### 7.8. Commencement of arbitration proceedings

Unless otherwise agreed by the parties, the arbitration proceedings in respect of a particular dispute shall be deemed to commence on the date from receipt of the complete Notice of Arbitration by the General Secretariat. For avoidance of doubt, the Notice of Arbitration is deemed to be complete when all the requirements of Article 7.1 (*Notice of Arbitration*) are fulfilled or when the General Secretariat determines that there has been substantial compliance with such requirements.

## Article 8. Response by the Respondent

### 8.1. Notice of Response

Within 15 (fifteen) calendar days from receipt of the notification referred to in Article 7.7 (*Notification of receipt of Notice of Arbitration*), the Respondent shall submit to the General Secretariat a Notice of Response which shall contain:

- (a) the name(s), address(es), telephone number(s), facsimile number(s), email address(es), and other addresses of electronic means of communication of the Respondent and its representative(s), if any and 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 claim(s);
- (d) a brief statement of the nature and circumstances of any counterclaim or set-off defence that the Respondent intends to submit and, when possible, an initial quantification of such counterclaim or set-off defence;
- (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 Article 33.1 (*Language of the arbitration proceedings*), the Notice of Response shall be made in the language of arbitration with translation into Khmer or English.

### 8.2. Accompanying Application for Expedited Procedure

If the Claimant has not requested for Expedited Procedure pursuant to Article 7.2 (*Accompanying application for Expedited Procedure*), the Respondent may file for an application for Expedited Procedure referred to in Article 9 (*Expedited Procedure*) by accompanying this application with the Notice of Response.

In the event the Claimant has already requested for Expedited Procedure, the Respondent may comment on such application within 15 (fifteen) calendar days from receipt of such application.

### 8.3. *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 Article 25 (*Appointment of Arbitrators*) and Article 26 (*Persons who 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 Article 25 (*Appointment of Arbitrators*) and Article 26 (*Persons who may be Appointed as Arbitrators*); or
- (c) a statement that the Respondent leaves the appointment of an arbitrator to NCAC.

### 8.4. *Accompanying Statement of Defence and 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 Defence, which may also contain any counterclaim or set-off defence, referred to in Article 37.4 (*Statement of Defence and counterclaim*) and supporting documents.

The Notice of Response may be accompanied by a plea as referred to in Article 34 (*Pleas as to the Jurisdiction of the Tribunal*).

### 8.5. *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 Article 8.1 (Notice of Response) are fulfilled, including payment of the case registration fee.

### 8.6. *Failure to submit complete Notice of Response*

The constitution of the Tribunal in accordance with Chapter 4 (*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 defence in the arbitration proceedings.

### 8.7. *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 defence) in the Notice of Response, the Respondent must also pay the case registration fee for such counterclaim, otherwise the counterclaim will not be considered in the arbitration proceedings.

## Article 9. Expedited Procedure

### 9.1. Application for Expedited Procedure

Prior to the constitution of the Tribunal, a party may file an application with the General Secretariat for the arbitration proceedings to be conducted in accordance with the Expedited Procedure under this Article, provided that any of the following criteria is satisfied:

- (a) the sum in dispute does not exceed the equivalent amount of USD3,000,000 (three million), representing the aggregate value of the claim(s), counterclaim(s) and any set-off defence;
- (b) the parties so agree; or
- (c) in cases of exceptional urgency.

### 9.2. Acceptance of the Appointment and Proceedings Committee

Where a party has filed an application under Article 9.1 (*Application for Expedited Procedure*), the Appointment and Proceedings Committee shall decide on the application, after considering the views of the parties, and having regard to the circumstances of the case, whether the arbitration proceedings shall be conducted in accordance with the Expedited Procedure.

If the Appointment and Proceedings Committee accepts the application for Expedited Procedure, the following procedure shall apply:

- (a) the General Secretariat may abbreviate any time limits under the Rules;
- (b) the case shall be referred to a one-member Tribunal, unless the arbitration agreement provides for a three-member Tribunal. If the arbitration agreement provides for a three-member Tribunal, the General Secretariat shall invite the parties to agree to refer the case to a one-member Tribunal. If the parties do not agree, the case shall be referred to three-member Tribunal;
- (c) the Tribunal may, after consulting with the parties, decide if the dispute is to be decided on the basis of documents only, or if a hearing is required for the examination of any witness and expert witness as well as for any oral arguments; and
- (d) the final award shall be made within 270 (two hundred and seventy) calendar days from the date when the Tribunal is constituted unless, in exceptional circumstances, the Appointment and Proceedings Committee extends the time for making such final award.

### 9.3. Conflict in Arbitration Agreement

By agreeing to arbitration under the Rules, the parties agree that, where arbitration proceedings are conducted in accordance with the Expedited Procedure under this Article 9 (*Expedited Procedure*), the rules and procedures set forth in Article 9.2 (*Acceptance of the Appointment and Proceedings Committee*) shall apply even in cases where the arbitration agreement contains contrary terms.

#### 9.4. *Cessation of Expedited Procedure*

Upon application by a party and after giving the parties the opportunity to comment, the Tribunal may, having regard to any further information as may subsequently become available, and after consulting with the Appointment and Proceedings Committee, order that the arbitration proceedings shall no longer be conducted in accordance with the Expedited Procedure. Where the Tribunal decides to approve the application under this Article 9.4 (*Cessation of Expedited Procedure*), the arbitration shall continue to be conducted by the same Tribunal that was constituted to conduct the arbitration in accordance with the Expedited Procedure.



## CHAPTER 3

# Emergency Arbitrator

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### **Article 10. Application for Interim Measure Issued by Emergency Arbitrator**

Prior to the constitution of the Tribunal, a party wishing to seek an emergency interim measure may file an application for interim measure issued by Emergency Arbitrator with the General Secretariat by accompanying with or following the filing of a Notice of Arbitration. The party shall send a copy of the application to all other parties at the same time as it files the application for emergency interim measure. The application for interim measure issued by Emergency Arbitrator shall include:

- (a) the nature of the measure sought;
- (b) the reasons why the party making the application is entitled to such measure; and
- (c) a statement certifying that all other parties have been provided with a copy of the application or, if not, an explanation of the steps taken in good faith to provide a copy or notification to all other parties.

### **Article 11. Cost of Application for an Interim Measure Issued by Emergency Arbitrator**

Any application for interim measure issued by Emergency Arbitrator shall be accompanied by payment of cost of application for an interim measure issued by Emergency Arbitrator including the application fee and the Emergency Arbitrator fees and expenses for proceedings pursuant to NCAC Fee Schedule. In exceptional circumstances, the General Secretariat may increase the amount of the cost of application for an interim measure issued by Emergency Arbitrator requested from the party making the application. If the additional costs are not paid within the time limit set by the General Secretariat, the application shall be considered as withdrawn.

#### **Article 12. Acceptance of the Appointment and Proceedings Committee**

If the Appointment and Proceedings Committee accepts the application for interim measure issued by Emergency Arbitrator, the Appointment and Proceedings Committee shall appoint an Emergency Arbitrator within 3 (three) calendar days from the date of receipt received by the General Secretariat of such application and payment of the interim measure issued by Emergency Arbitrator fees.

#### **Article 13. Seat of Arbitration**

If the parties have agreed on the seat of the arbitration, such seat shall be the seat of the proceedings for interim measure issued by Emergency Arbitrator. Failing such an agreement, the seat of the proceedings for emergency interim measure shall be Phnom Penh, Cambodia, without prejudice to the Tribunal's determination of the seat of the arbitration under Article 31 (*Seat of Arbitration*).

#### **Article 14. Disclosure**

Prior to accepting appointment, a prospective Emergency Arbitrator shall disclose to the General Secretariat any circumstances that may give rise to justifiable doubts as to her/his impartiality or independence. Any challenge to the appointment of the Emergency Arbitrator must be made within 2 (two) calendar days of the communication by the General Secretariat to the parties of the appointment of the Emergency Arbitrator and the circumstances disclosed.

#### **Article 15. Emergency Arbitrator as to the Future Arbitration Proceedings**

The Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless otherwise agreed by the parties.

#### **Article 16. Schedule of Interim Measure Issued by Emergency Arbitrator**

The Emergency Arbitrator shall, as soon as possible but, in any event, within 2 (two) calendar days of her/his appointment, establish a schedule for consideration of the application for interim measure issued by Emergency Arbitrator. Such schedule shall provide a reasonable opportunity for the parties to present their case. The Emergency Arbitrator may conduct the proceedings by videoconference, telephone or using other communications technology with participants in one or more geographical places or in a combined form or on the basis of documents and other materials only as alternatives to a hearing in person. The Emergency Arbitrator shall have the powers vested in the Tribunal pursuant to the Rules, including without limitation to the authority to rule on her/his own jurisdiction, without prejudice to the Tribunal's determination.

#### **Article 17. Power of the Emergency Arbitrator**

The Emergency Arbitrator shall have the power to order or award any interim measure that she/he deems necessary, including preliminary orders that may be made pending any hearing or any proceedings by videoconference, telephone or documents and other materials by the parties. The Emergency Arbitrator shall give summary reasons for her/his decision in writing. The Emergency Arbitrator may modify or terminate the preliminary order, the interim order or award for good cause.

#### **Article 18. Issuance of Order or Award by Emergency Arbitrator**

The Emergency Arbitrator shall make her/his interim order or award within 15 (fifteen) calendar days from the date of her/his appointment unless, in exceptional circumstances, the General Secretariat may extend the time. No interim order or award shall be issued by the Emergency Arbitrator until it has been scrutinized and approved by the General Secretariat as to its form.

For the avoidance of doubt, such time period above shall include the time period of at least 02 (two) calendar days for the General Secretariat to scrutinize the interim order or award to be issued by Emergency Arbitrator.

#### **Article 19. Power of the Tribunal to Review, Modify, Suspend or Terminate the Order or Award issued by Emergency Arbitrator**

The Emergency Arbitrator shall have no power to act after the Tribunal is constituted. The Tribunal may review to modify, suspend or terminate any interim order or award issued by the Emergency Arbitrator, including a ruling on its own jurisdiction. The Tribunal is not bound by the reasons given by the Emergency Arbitrator. Any interim order or award issued by Emergency Arbitrator shall, in any event, cease to be binding if the Tribunal is not constituted within 90 (ninety) calendar days of such order or award or when the Tribunal makes a final award or if the claim(s) is withdrawn.

#### **Article 20. Condition on Provision of Order and Award**

Any interim order or award issued by Emergency Arbitrator may be conditioned on provision by the party seeking such measure of appropriate security.

#### **Article 21. Effect and Implementation of Order or Award Issued by Emergency Arbitrator**

The parties agree that an order or award issued by Emergency Arbitrator pursuant to this Chapter 3 (*Emergency Arbitrator*) shall be binding on the parties from the date it is made, and undertake to carry out the interim order or award immediately and without delay. The parties also irrevocably waive their rights to any form of appeal, review or recourse to any competent court or other judicial authority with respect to such order or award insofar as such waiver may be validly made.

## **Article 22. Apportionment of Costs**

The costs associated with any application pursuant to this Chapter 3 (*Emergency Arbitrator*) may initially be apportioned by the Emergency Arbitrator, subject to the power of the Tribunal to determine finally the apportionment of such costs.

## **Article 23. Other Provisions on Emergency Arbitrator**

The Rules shall apply as appropriate to any proceeding pursuant to this Chapter 3 (*Emergency Arbitrator*), taking into account the urgency of such a proceeding. The Emergency Arbitrator may decide in what manner the Rules shall apply as appropriate, and her/his decision shall be final and not subject to appeal, review or recourse.

The General Secretariat may abbreviate any time limits under the Rules in applications made pursuant to proceedings commenced under Article 5.2 (*Modification of time limits*) and Chapter 3 (*Emergency Arbitrator*).

## CHAPTER 4

# Constitution of the Tribunal

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### **Article 24. 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.

### **Article 25. Appointment of Arbitrators**

#### *25.1. Deviating party agreement*

The parties may agree on a procedure for appointment of the Tribunal which is different from the procedure provided for under Article 25.2 (*Appointment of three-member Tribunal or other multiple-member Tribunal*) to Article 25.6 (*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 from receipt of the notification of Notice of Response referred to in Article 8.7 (*Notification of receipt of Notice of Response*), the appointment shall be made pursuant to Article 25.2 (*Appointment of three-member Tribunal or other multiple-member Tribunal*) to Article 25.6 (*No appeal*).

#### *25.2. 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 from receipt of the notification of Notice of Response referred to in Article 8.7 (*Notification of receipt of Notice of Response*), or within 15 (fifteen) calendar days after the expiry date of the applicable period mentioned in Article 25.1 (*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, the Appointment and Proceedings Committee shall appoint such arbitrator(s) or/and such presiding arbitrator.

### *25.3. 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 from receipt of the notification on complete Notice of Response referred to in Article 8.7 (*Notification of receipt of Notice of Response*), or within 15 (fifteen) calendar days after the expiry date of the applicable period mentioned in Article 25.1 (*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, the Appointment and Proceedings Committee shall appoint a sole arbitrator to constitute the Tribunal.

### *25.4. 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 Article 25.2 (*Appointment of three-member Tribunal or other multiple-member Tribunal*), the Appointment and Proceedings Committee shall appoint, on behalf of the failing party, 1 (one) or more arbitrator(s) in accordance with Article 25.5 (*Failure to appoint arbitrators and 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, the Appointment and Proceedings 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 Article 25.3 (*Appointment of one-member Tribunal*), the Appointment and Proceedings Committee shall appoint the arbitrator in accordance with Article 25.5 (*Failure to appoint arbitrators and appointment by NCAC*).

### *25.5. Failure to appoint arbitrators and appointment by NCAC*

Failing the notification to the General Secretariat of an appointment within the period mentioned in Article 25.2 (*Appointment of three-member Tribunal or other multiple-member Tribunal*) or Article 25.3 (*Appointment of one-member Tribunal*), or in the event that a party wishes to leave the appointment to NCAC, the Appointment and Proceedings 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 and Proceedings Committee shall not appoint any member of the NCAC Executive Board or of the Appointment and Proceedings Committee.

#### 25.6. *No appeal*

Subject to Article 26 (*Persons who may be Appointed as Arbitrators*), the Appointment and Proceedings Committee shall make any required or requested appointment of arbitrator(s) as soon as practicable. Subject to Article 28 (*Challenge of Arbitrators*), an appointment or decision of the Appointment and Proceedings Committee under the Rules shall be final and not subject to any appeal.

#### 25.7. *Notification of constitution of the 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.

### **Article 26. Persons who may be Appointed as Arbitrators**

26.1. 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 recognised by NCAC.

26.2. The following further requirements shall apply:

- (a) any person appointed as an arbitrator shall submit a signed statement:
  - (i) that she/he is willing and available to act as arbitrator; and
  - (ii) that she/he is and shall remain impartial and independent and that she/he has made and shall make the disclosure as referred to in Article 27.2 (*Disclosure*).
- (b) any person appointed as an arbitrator referred to under Article 26.1(b) shall comply with the following conditions:
  - (i) add to the statements under Article 26.2(a):
    - evidence of 3 (three) awards and evidence of the current arbitrator membership certified by the local or international commercial arbitration institution recognised by NCAC; and
    - a confirmation of agreement to and compliance with the NCAC Code of Conduct and other applicable rules.
  - (ii) NCAC satisfies that such person fulfills the requirements under the NCAC Internal Rules with respect to incompatibility to act as arbitrator.

- 26.3. In any case, within 7 (seven) calendar days after receiving notice of arbitrator appointment from the party(ies), the General Secretariat may 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.
- 26.4. If the concerned party(ies) refuse or fail to appoint a new and qualified arbitrator within the 7 (seven) calendar days, the Appointment and Proceedings 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.

## **Article 27. Independence and Impartiality of Arbitrators and Disclosure**

### *27.1. Independence and impartiality*

Arbitrators acting under the 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 the Rules for requesting or issuing any correction, amplification, interpretation or additional award.

### *27.2. 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.

### *27.3. NCAC Code of Conduct*

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

## **Article 28. Challenge of Arbitrators**

### *28.1. 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.



### *28.2. Notice of challenge, time limit and challenge fee*

A party who intends to challenge an arbitrator shall submit a notice of her/his challenge with the reasons for the challenge to the Tribunal, the other party or parties, and the General Secretariat within 15 (fifteen) calendar days from receipt of the notification referred to in Article 25.7 (*Notification of constitution of the Tribunal*) or within 15 (fifteen) calendar days after she/he became aware of the circumstances mentioned in Article 28.1 (*Relevant circumstances*).

Any filing of notice of challenge shall be accompanied by payment of challenge fee to NCAC pursuant to the NCAC Fee Schedule.

Where the Notice of Challenge is submitted by more than one party, those parties shall pay the fee in equal shares, unless the parties agree otherwise. Any party is free to pay the whole challenge fee should the other party fail to pay its share. If the challenge fee is not paid by one of the parties filing the Notice of Challenge, the General Secretariat shall so inform and order the other party to pay the required payment within a period of time set by the General Secretariat.

If the whole challenge fee is not made within a period of time set in this Rules, the Tribunal shall consider such challenge as withdrawn without prejudice to the party reintroducing the same challenge later.

### *28.3. 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) calendar days following its receipt of the notice of challenge and confirmation by the General Secretariat on the receipt of full payment of the challenge fee set in Article 28.2 (*Notice of challenge, time limit and challenge fee*).

### *28.4. 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 from 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 days from receipt of the refusal notice. In case the

Tribunal decides to reject the challenge, the challenging party may appeal to NCAC, through the General Secretariat, within 30 (thirty) calendar days from receipt of the Tribunal decision.

#### *28.5. Decision on challenge by NCAC*

The Appointment and Proceedings 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 and Proceedings Committee rejects the challenge, the arbitrator shall continue her/his duties as arbitrator. If the Appointment and Proceedings Committee sustains the challenge, the arbitrator's mandate is terminated effectively on the date of the decision and Article 30 (*Replacement of Arbitrators*) shall apply.

#### *28.6. No appeal and notification*

The decision of the Appointment and Proceedings 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 the Appointment and Proceedings Committee's decision.

### **Article 29. Failure or Impossibility to Act**

#### *29.1. Termination of arbitrator's mandate requested 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 is terminated 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 the Rules, any party may submit to the General Secretariat a request that the Appointment and Proceedings Committee decides on the termination of the mandate.

#### *29.2. 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.

#### *29.3. Decision on request by the Appointment and Proceedings Committee*

The Appointment and Proceedings 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 and Proceedings Committee rejects the request, the arbitrator shall continue her/his duties as arbitrator. If the Appointment and Proceedings Committee approves the request, the arbitrator's mandate is terminated effective the day of the decision and Article 30 (*Replacement of Arbitrators*) shall apply.

#### *29.4. No Appeal and Notification*

The decision of the Appointment and Proceedings 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 the Appointment and Proceedings Committee decision.

### **Article 30. Replacement of Arbitrators**

#### *30.1. 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 the Rules.

#### *30.2. Appointment of substitute arbitrator by the parties*

Subject to Article 30.3 (*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 Article 25 (*Appointment of Arbitrators*) that was followed for the appointment of the arbitrator being replaced, commencing no later than 15 (fifteen) calendar 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.

#### *30.3. Appointment of substitute arbitrator by NCAC*

If, at the request of a party to the General Secretariat, the Appointment and Proceedings Committee determines that, in view of the exceptional circumstances of the case, to ensure expeditious arbitration proceedings, or to avoid unnecessary delay, the Appointment and Proceedings 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.

#### *30.4. 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 5

# Arbitration Proceedings

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### **Article 31.** Seat of Arbitration

The seat of all arbitrations conducted under the Rules shall be Phnom Penh, Cambodia, unless otherwise agreed by the parties or the Tribunal determines, having regard to all the circumstances of the case, that another seat is more appropriate. As provided for in Article 39.3 (*Place of meetings and hearings*), the place of the seat does not determine at which place the Tribunal may hold meetings and hearings.

### **Article 32.** Applicable Law and *Amiable Compositeur*

#### *32.1. Applicable law*

The parties are free to agree upon the law or rules of law to be applied by the Tribunal as applicable to the substance of the dispute. In the absence of such agreement, the Tribunal shall apply the law or rules of law which it determines to be appropriate.

#### *32.2. Ex aequo et bono and amiable compositeur*

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

#### *32.3. Contract provisions and trade usages*

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

## **Article 33. Language**

### *33.1. Language of the arbitration proceedings*

The parties are free to agree on the 1 (one) or more languages 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.

### *33.2. 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.

### *33.3. 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 Article 33 (*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 consulting with the parties.

## **Article 34. Pleas as to the Jurisdiction of the Tribunal**

### *34.1. Determination of NCAC jurisdiction prior to constitution of the 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, the Appointment and Proceedings Committee shall decide if it is *prima facie* satisfied that the arbitration shall proceed within 15 (fifteen) calendar days from receipt of the notification of such objection. The arbitration shall be terminated if the Appointment and Proceedings Committee is not so satisfied. Any decision by the Appointment and Proceedings Committee that the arbitration shall proceed is without prejudice to the power of the Tribunal to rule on its own jurisdiction.

### *34.2. 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 the Tribunal's jurisdiction is pending, the Tribunal may continue the arbitration proceedings and make an award.

### *34.3. Contract and arbitration clause*

If an arbitration clause forms part of a contract, it shall, for the purposes of this Article 34 (*Pleas 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.

#### *34.4. Plea that the Tribunal has no jurisdiction*

A plea that the Tribunal does not have jurisdiction shall be raised before submission of the Statement of Defence for any jurisdictional issue related to the claim(s) or before submission of the Statement of Defence to Counterclaim for any jurisdictional issue related to the counterclaim(s). 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.

#### *34.5. Plea that the 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.

#### *34.6. 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.

### **Article 35. General Provisions on the Conduct of the Arbitration Proceedings**

#### *35.1. 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 the Rules or the applicable law governing the arbitration. As provided for in Article 4.1 (*In writing*), any such orders and directions shall be in writing.

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

#### *35.2. 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 organising 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 Article 40.2 (*Inquiries, orders and examination of evidences*) or reviewing the progress of the arbitration.

Article 39 (*Hearings and Meetings*) shall apply to any such preliminary meeting and additional meetings under this provision.

### *35.3. 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.

### *35.4. Bifurcation of arbitration proceedings*

The Tribunal may at its discretion, after consulting 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.

### *35.5. 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.

## **Article 36. Consolidation of Arbitrations**

### *36.1. 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 the Rules into a single arbitration. The General Secretariat may adjust (increase or reduce) the administration fee and the Tribunal's fee based on the circumstance, stage and impact of the consolidation on the services of NCAC and of the Tribunal.

### *36.2. 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.

### *36.3. Consolidation into the first arbitration received or commenced*

Unless otherwise agreed by the 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.

## **Article 37. Submissions by the Parties**

### *37.1. Submissions*

Unless the Tribunal, after consulting with the parties, determines otherwise, the submission of statements shall proceed as specified in this Article 37 (*Submissions by the Parties*).

### *37.2. Statement of Claim*

Unless already submitted pursuant to Article 7.4 (*Accompanying Statement of Claim*) the Claimant shall, within a period of time to be determined by the Tribunal, submit a Statement of Claim setting out in full detail:

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

### *37.3. Statement of Defence and counterclaim(s)*

Unless already submitted pursuant to Article 8.4 (*Accompanying Statement of Defence and jurisdiction plea*) the Respondent shall, within a period of time to be determined by the Tribunal, submit a Statement of Defence 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 Defence may also contain any counterclaim or set-off defence provided that it falls within the jurisdiction of the Tribunal, which shall comply with the requirements of Article 37.2 (*Statement of Claim*).

### *37.4. Statement of Defence to Counterclaim*

If a counterclaim is made, the Claimant shall, within a period of 30 (thirty) calendar days from receipt of the Statement of Defence, submit a Statement of Defence to Counterclaim, which shall comply with the requirements of Article 37.3 (*Statement of Defence and counterclaim(s)*).

### *37.5. 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.

### *37.6. Supporting documents*

Submissions referred to in this Article 37 (*Submissions by the Parties*) shall be accompanied by copies of all supporting documents which have not previously been submitted by any party.



### *37.7. Default and 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 the 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.

## **Article 38. Revocation of Claim, Amendment to Claim and Defence**

### *38.1. Revocation of claim*

The Claimant shall have the right to revoke its claim(s) upon notice to the Tribunal, unless the Respondent objects thereto and the Tribunal recognises a legitimate interest on its 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.

### *38.2. Amendment to claim and defence*

During the arbitration proceedings, any party may amend or supplement its claim(s), defence(s), counterclaim or set-off defence(s), 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(s) or defence(s) if the amended or supplemented claim(s) or defence(s) would fall outside the jurisdiction of the Tribunal.

## **Article 39. Hearings and Meetings**

### *39.1. Hearings*

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(s) at an appropriate stage of the arbitration proceedings, if so requested by a party.

In case oral hearing(s) shall be conducted, the Tribunal may decide, after consulting with the parties, and on the basis of the relevant facts and circumstances of the case, that any hearing will be conducted by physical attendance or remotely by videoconference, telephone or using other communications technology with participants in one or more geographical places (or in a combined form).

### *39.2. Additional hearings*

Unless otherwise agreed by the parties, 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.

### *39.3. Place of meetings and hearings*

Regardless of the seat of arbitration referred to in Article 31 (*Seat of Arbitration*), the Tribunal may hold meetings and hearings by any means and at any location it considers appropriate.

### *39.4. 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.

### *39.5. 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.

### *39.6. Presence at hearings, translation and recording*

The Tribunal shall be in full charge of the hearings, at which all the parties shall be entitled to participate. Save with the approval of the Tribunal and the parties, persons not involved in the proceedings shall not be admitted.

All hearings shall be in private unless otherwise agreed by the parties. As provided for in Article 33.2 (*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.

## **Article 40. General Provisions on Evidence**

### *40.1. Burden of proof*

Each party shall have the burden of proving the facts, applicable rules and any trade usage relied on to support its claim(s), counterclaim(s) or defence(s).

### *40.2. 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 its 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 its control.

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

#### *40.3. Admissibility of evidence*

The Tribunal shall determine the admissibility, relevance, materiality and weight of all evidence. The Tribunal is not required to apply the rules of evidence of any applicable law in making such determination.

### **Article 41. Witnesses**

#### *41.1. Advance notice by the parties*

Before any hearing the Tribunal may require each party to give notice of the identities of the witnesses, including expert witnesses under this Article 41 (*Witnesses*), whom the parties intends to call, as well as the subject matter and relevance of their testimony and the language in which such witness will give their testimony.

#### *41.2. Allowing, limiting or refusing appearance of witnesses*

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

#### *41.3. 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 Article 41.2 (*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.

#### *41.4. 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.

#### *41.5. Oath or affirmation*

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

#### *41.6. Witness to retire*

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

## **Article 42. Experts Appointed by the Tribunal**

### *42.1. Appointment of experts*

Unless otherwise agreed by the parties, the Tribunal may, after consulting 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(s) any relevant information, or to produce or provide access to any relevant sites, goods, properties or documents for her/his inspection.

### *42.2. Written reports and comments by the parties*

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

### *42.3. Participation of experts in hearings*

If the Tribunal considers it necessary and unless otherwise agreed by the parties, an expert appointed under Article 42.1 (*Appointment of expert*) shall, after delivery of her/his written report(s), participate in a hearing. At the hearing, the parties shall have the opportunity to question such experts.

## **Article 43. Interim Measures**

### *43.1. 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.

### *43.2. 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.

### *43.3. Request by separate statements*

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 measures 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.

#### *43.4. 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.

#### *43.5. Furnishing of security*

Unless otherwise agreed by the parties, 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.

#### *43.6. Decision by the 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(s). The determination on this possibility shall not affect the discretion of the Tribunal in making any subsequent determination.

#### *43.7. 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.

#### *43.8. Request for interim measures to courts*

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.

#### **Article 44. Closure or Reopening 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. The Tribunal's declaration on the closure of the proceedings shall be communicated to the parties and to the General Secretariat.

The Tribunal shall declare the closure of the arbitration proceedings within 45 (forty five) calendar days from the day of the last hearing or the day of the last authorised submission with respect to matters to be decided in an award. The General Secretariat may, if it deems necessary, on its own initiative or at the Tribunal's request, extend the time limits above.

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.

#### **Article 45. 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 an award by consent. 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.

#### **Article 46. Other Grounds for Termination of Arbitration Proceedings**

Other than for the reasons mentioned elsewhere in the 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.

## CHAPTER 6

# Decision-Making and Awards

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### **Article 47. Decision-Making**

#### *47.1. 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.

#### *47.2. Decision on procedural issues*

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

### **Article 48. 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.

### **Article 49. Form of the Award**

#### *49.1. Written and reasoned award*

An award shall be in writing. Unless otherwise agreed by the parties and subject to Article 45 (*Settlement*), it shall state the reasons on which it is based.

#### *49.2. Place and date*

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

#### 49.3. *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.

#### 49.4. *Cooperation in making the 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.

#### 49.5. *Approval on award format*

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

### **Article 50. Scrutiny**

#### 50.1. *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 otherwise agreed by the parties, 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 from 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 Article 50.1(a) shall not be applicable to an award issued in relation to interim measures as provided in Article 43 (*Interim Measures*) or award by consent as provided in Article 45 (*Settlement*).

#### 50.2. *Submission of draft correction, amplification, interpretation or additional award, for scrutiny*

Before issuing any correction, amplification, interpretation or additional award, referred to in Article 53 (*Correction, Amplification and Interpretation of Award and 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 from 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.

### **Article 51. Issuance of the Award**

Once the Tribunal has issued the award in accordance with Article 49 (*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 Article 64 (*Advances*) or, in the case of final award, the total costs of the arbitration have been fully paid to NCAC.



## **Article 52. Effect and Implementation of the Award**

Subject to Article 53 (*Correction, Amplification and Interpretation of Award and 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 the award 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.

## **Article 53. Correction, Amplification and Interpretation of Award and Additional Award**

### *53.1. Request for correction, amplification, interpretation, or additional award*

Within 30 (thirty) calendar days from 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 from 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 claim(s), 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.

### *53.2. Decision on correction, amplification, interpretation and additional award*

If the Tribunal considers any such request to be justified it shall, within 30 (thirty) calendar days from receipt of the request, make the correction or amplification, or give the interpretation in writing, or issue the additional award. As provided for in Article 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 Article 50 (*Scrutiny*) to Article 52 (*Effect and Implementation of the Award*) shall apply in the same manner with the necessary or appropriate changes made in relation to a correction of the award and to any additional award.

### *53.3. Correction at initiative of the Tribunal*

The Tribunal may also, within 30 (thirty) calendar days after issuance of the award, correct any error referred to in Article 53.1 (*Request for correction, amplification, interpretation or additional award*) on its own initiative.

#### 53.4. Part of the award

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

#### **Article 54. Retention of Case File by the 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.

#### **Article 55. Power of the Tribunal**

In addition to the powers specified elsewhere in the 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 the 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 Article 37 (*Submissions 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.

## CHAPTER 7

# Costs

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### **Article 56. Costs of Arbitration**

#### *56.1. Costs of arbitration and the NCAC Fee Schedule*

The costs of the arbitration shall consist of:

- (a) case registration fee and other filing fees;
- (b) administration fee;
- (c) arbitrator appointment fee;
- (d) the Tribunal's fee;
- (e) fees applicable to Emergency Arbitrator procedures; and
- (f) any expense incurred by the Emergency Arbitrator, the Tribunal and NCAC,

as referred to from Article 56 (*Costs of Arbitration*) to Article 62 (*Expenses Incurred by the Emergency Arbitrator, the 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.

#### *56.2. Amendment and application of the 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 Article 7.1 (*Notice of Arbitration*) is received by the General Secretariat.

#### *56.3. Apportionment of costs of arbitration*

The Tribunal shall specify in the award, the total amount of the costs of the arbitration. Unless otherwise agreed by the parties, 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 Article 64 (*Advances*).

#### *56.4. Joint and several liability*

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

### **Article 57. Case Registration Fee and Other Filing Fees**

#### *57.1. Flat rate*

The case registration fee and any other filing fees are set at a flat rate, as mentioned in the NCAC Fee Schedule.

#### *57.2. 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 counterclaim.

Failure to timely pay in full the case registration fee shall be considered a failure to submit the Notice of Arbitration as specified in Article 7.5 (*Incompleteness of Notice of Arbitration*) or risking that its counterclaim(s) is not considered in the arbitration proceedings.

Any application for any request under the Rules shall be accompanied by the required filing fees as prescribed under the NCAC Fee Schedule. Failure to timely pay in full such filing fees, such application shall not be considered in the arbitration proceedings.

#### *57.3. Non-refundable*

The case registration fee is non-refundable.

### **Article 58. Administration Fee**

#### *58.1. Determination of administration fee*

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

### *58.2. 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 defence, the General Secretariat shall include the amount thereof in the calculation of the sum in dispute only insofar as the set-off defence requires significant additional work for the Tribunal.

### *58.3. Amendment to claim and defence*

If the amount of the claim(s), counterclaim(s) or set-off defence(s) (if relevant) is reduced in accordance with Article 38.2 (*Amendment to claim and defence*), the administration fee shall not be reduced. If the amount of the claim(s), counterclaim(s) or set-off defence(s) (if relevant) is increased in accordance with Article 38.2 (*Amendment to claim and defence*), the administration fee shall also be increased in accordance with the NCAC Fee Schedule.

### *58.4. Unquantifiable sum in dispute*

Where the sum in dispute (the amount of the claim(s) or the counterclaim(s)) 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 estimate may be adjusted in light of such information as may subsequently become available.

### *58.5. 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.

## **Article 59. 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 the Appointment and Proceedings Committee.

## **Article 60. The Tribunal's Fee**

### *60.1. Determination of the Tribunal's fee*

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

#### *60.2. 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 defence, the General Secretariat shall include the amount thereof in the calculation of the sum in dispute only insofar as the set-off defence requires significant additional work for the Tribunal.

#### *60.3. Amendment to claim and defence*

If the amount of the claim(s), counterclaim(s) or set-off defence(s) (if relevant) is reduced in accordance with Article 38.2 (*Amendment to claim and defence*), the Tribunal's fee shall not be reduced. If the amount of the claim(s), counterclaim(s) or set-off defence(s) (if relevant) is increased in accordance with Article 38.2 (*Amendment to claim and defence*), the Tribunal's fee shall also be increased in accordance with the NCAC Fee Schedule.

#### *60.4. Unquantifiable sum in dispute*

Where the sum in dispute (the amount of the claim(s) or the counterclaim(s)) 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 estimate may be adjusted in light of such information as may subsequently become available.

#### *60.5. No separate agreements with any party on fee and expenses*

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

#### *60.6. Internal distribution of the Tribunal's 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's 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's 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.

#### *60.7. 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 her/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 they had completed the case.

#### *60.8. Adjustment of the Tribunal's fee*

The Tribunal's 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's 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's fee prescribed in the NCAC Fee Schedule.

#### **Article 61. Fees Applicable to Emergency Arbitrator Procedures**

A party making an application for an interim measure issued by Emergency Arbitrator shall pay the fees applicable to Emergency Arbitrator procedures as prescribed in NCAC Fee Schedule. Such fees shall be paid in full at the time of submission of the application.

#### **Article 62. Expenses Incurred by the Emergency Arbitrator, the Tribunal and NCAC**

The expenses incurred by the Emergency Arbitrator, 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 Emergency Arbitrator, the Tribunal or of other assistance required by the Emergency Arbitrator or the Tribunal, respectively; 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.

#### **Article 63. 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.

## **Article 64. Advances**

### *64.1. 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 Article 57.2 (*Timely payment*).

The General Secretariat shall determine the amount of the advance. Unless otherwise agreed by the parties, 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.

### *64.2. 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.

### *64.3. 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 consulting with the Tribunal, direct the Tribunal to suspend work and set a time limit on the expiry of which the relevant claim(s) or counterclaim(s) shall be considered as withdrawn without prejudice to the party reintroducing the same claim(s) or counterclaim(s) 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(s) or the counterclaim(s) 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 the Rules remain either wholly or in part unpaid.

### *64.4. 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.

### *64.5. Accounting of advance, return of unspent balance and interest*

After a final award, award by consent 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.



*64.6. 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.

**Article 65. Costs of Arbitration Conducted under Rules other than the Rules**

Unless otherwise determined by the General Secretariat, the NCAC Fee Schedule shall also apply to the arbitration administered by NCAC under rules other than the Rules.

## CHAPTER 8

# Other Rules

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### **Article 66. Confidentiality**

#### *66.1. Privacy of arbitration proceedings*

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

#### *66.2. Confidentiality of the Tribunal's deliberations*

The deliberations of the Tribunal shall be confidential.

#### *66.3. Secrecy and 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.

#### 66.4. 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.

#### Article 67. Publication of the Award

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.

#### Article 68. 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 its objection or, if a time limit is provided therein, within such period of time, shall be deemed to have waived its right to object.

Subject to Article 53 (*Correction, Amplification and Interpretation of Award and Additional Award*), by agreeing to arbitration under the 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.

#### Article 69. 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 the Rules expressly agree to pursue that matter exclusively before NCAC. Any decision on such matter made by NCAC under the 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.

#### Article 70. Unforeseen Matters

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

#### **Article 71. Exclusion of Liability**

NCAC including its members, directors, advisors, secretary and personnel, Emergency Arbitrator 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 the Rules or exercise any function as provided under the Rules; and
- (b) shall not be under any obligation to make any statement in connection with an arbitration conducted under the Rules, or exercise any function as provided under the 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 the Rules or exercise any function as provided under the Rules.

#### **Article 72. Amendments to the Rules**

The Rules may from time to time be amended by NCAC. Unless otherwise stated, an agreement to arbitrate, as referred to in Article 2.1(a), 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.

#### **Article 73. Practice Guidelines**

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

## CHAPTER 9

# Final Provisions

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### Article 74. Final Provisions

- 74.1. The Rules are adopted by the General Assembly of NCAC on 28 March 2021.  
Any provisions that are contrary to the Rules shall be abrogated.
- 74.2. The Rules shall become effective from 28 June 2021 onwards.

Phnom Penh, 28 March 2021

**National Commercial Arbitration Centre**

**President**



**BUN Youdy**

## ANNEX 1

# NCAC Fee Schedule

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*(See also the Chapter 7 “Costs” in the NCAC Arbitration Rules)*

### 1. Case Registration Fee

- 1.1 When submitting a Notice of Arbitration or any counterclaim, the Claimant or Counter-claimant shall respectively pay a case registration fee of USD500 (five hundred) for registering its claim(s) or counterclaim(s).
- 1.2 If the Claimant or Counter-claimant fails to pay the registration fee, NCAC will not proceed with the arbitration for the claim(s) or the counterclaim(s).
- 1.3 The case registration fee is non-refundable.

### 2. Third Party Joinder Application Fee

- 2.1 When submitting an application for third party joinder pursuant to Article 35.5 (*Third party joinder*), the party filing such application shall pay a third party joinder application fee of USD500 (five hundred).
- 2.2 If the party filing such application fails to pay such application fee, such application for third party joinder shall not be considered in the arbitration proceedings.
- 2.3 The third party joinder application fee is non-refundable.

### 3. *Arbitrator Appointment Fee*

- 3.1 When either or both parties fail to appoint arbitrator(s) or when the party-appointed arbitrators fail to appoint a presiding arbitrator pursuant to the NCAC Arbitration Rules, NCAC, through its Appointment and Proceedings Committee, is requested or required to appoint arbitrator(s) for the concerned roles in the Tribunal for the specific case, an arbitrator appointment fee of USD500 (five hundred) per arbitrator to be appointed shall be paid by the concerned party(ies).
- 3.2 The arbitrator appointment fee is applicable either in cases administered by NCAC or ad-hoc cases where Appointment and Proceedings Committee is required to make an arbitrator appointment under the NCAC Arbitration Rules, or when a request for arbitrator(s) appointment is submitted to the General Secretariat.
- 3.3 This arbitrator appointment fee shall not apply to the appointment of any substitute arbitrator where the arbitrator(s) is being replaced in accordance with Article 30 (*Replacement of Arbitrators*) was appointed by the Appointment and Proceedings Committee.
- 3.4 For ad-hoc case, the arbitrator appointment fee shall be paid to the designated bank account of NCAC prior to commencement of appointment service.
- 3.5 The arbitrator appointment fee is non-refundable.

### 4. *Challenge Fee*

- 4.1 When a party submit a Notice of Challenge pursuant to Article 28.2 (*Notice of challenge, time limit and challenge fee*) of the NCAC Arbitration Rules, that party shall pay a challenge fee of USD500 (five hundred).
- 4.2 The challenge fee is non-refundable.

### 5. *Administration Fee*

- 5.1 The administration fee is based on a sliding fee scale, is dependent on the sum in dispute, and shall be charged in accordance with the table below.
- 5.2 The sum in dispute is the aggregate value of all claims and counter-claims. A set-off defence shall be included in the calculation of the sum in dispute and administration fee only insofar as the set-off defence requires significant additional work for NCAC.
- 5.3 The administration fee for each particular case is subject to adjustment 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 substantially less work being done by NCAC because of early termination of the arbitration proceedings or substantially more 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.

## ADMINISTRATION FEE - IN USD

Sum in Dispute		Administration Fee			
Up to	50,000	=	750		
From	50,001	to	100,000	=	1,500
				+	0.80%
					of excess over
					50,000
From	100,001	to	500,000	=	1,900
				+	0.70%
					of excess over
					100,000
From	500,001	to	1,000,000	=	4,700
				+	0.50%
					of excess over
					500,000
From	1,000,001	to	3,000,000	=	7,200
				+	0.20%
					of excess over
					1,000,000
From	3,000,001	to	5,000,000	=	11,200
				+	0.12%
					of excess over
					3,000,000
From	5,000,001	to	10,000,000	=	13,600
				+	0.08%
					of excess over
					5,000,000
From	10,000,001	to	50,000,000	=	17,600
				+	0.04%
					of excess over
					10,000,000
Over	50,000,000			=	33,600



## 6. *Tribunal's Fee*

- 6.1 The Tribunal's fee is based on a sliding fee scale, is dependent on the sum in dispute, and shall be charged in accordance with the table below.
- 6.2 The sum in dispute is the aggregate value of all claims and counterclaims. A set-off defence shall be included in the calculation of the sum in dispute and the Tribunal's fee only insofar as the set-off defence requires significant additional work for the Tribunal.
- 6.3 The Tribunal's fee for each particular case is subject to adjustment 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's 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 substantially more 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's fee prescribed in the NCAC Fee Schedule.

## TRIBUNAL'S FEE - IN USD

Sum in Dispute		Tribunal's Fee (per Arbitrator)			
Up to	50,000	=	1,000		
From	50,001	to	100,000	=	2,750
				+	2%
					of excess over
					50,000
From	100,001	to	500,000	=	3,750
				+	1.7%
					of excess over
					100,000
From	500,001	to	1,000,000	=	10,550
				+	1.5%
					of excess over
					500,000
From	1,000,001	to	3,000,000	=	18,050
				+	0.75%
					of excess over
					1,000,000
From	3,000,001	to	5,000,000	=	33,050
				+	0.50%
					of excess over
					3,000,000
From	5,000,001	to	10,000,000	=	43,050
				+	0.30%
					of excess over
					5,000,000
From	10,000,001	to	50,000,000	=	58,050
				+	0.15%
					of excess over
					10,000,000
Over	50,000,000			=	118,050
				+	0.075%
					of excess over
					50,000,000

7. *Costs of Application for an Interim Measure issued by Emergency Arbitrator*

- 7.1 The application fee for an application to appoint an emergency arbitrator (including appointment fee and any administrative work by the General Secretariat for interim measure issued by emergency arbitrator) to the Appointment and Proceedings Committee under Chapter 3 (*Emergency Arbitrator*) is USD1,500 (one thousand five hundred) and shall be payable in full upon making an application to appoint an emergency arbitrator to the Appointment and Proceedings Committee.
- 7.2 The application fee is non-refundable and does not constitute a part of the NCAC administration fee as stated in item 5 (*Administration Fee*).
- 7.3 The emergency arbitrator fee is USD3,500 (three thousand five hundred) and shall be payable in full upon making an application to appoint an emergency arbitrator to the Appointment and Proceedings Committee.

8. *Date of Effect*

- 8.1 This NCAC Fee Schedule is adopted by the General Assembly of NCAC on 28 March 2021.
- 8.2 This NCAC Fee Schedule shall become effective from 28 June 2021 onwards.

**Notes:** The above fees are exclusive of expenses incurred by NCAC, the Tribunal and the Emergency Arbitrator as well as value added tax (VAT) for NCAC administrative services and withholding tax (WHT) for services of arbitrator(s). Prior to the constitution of the Tribunal, the parties may agree on a different Tribunal's fee as long as the differing fee is acceptable to the Tribunal.

Phnom Penh, 28 March 2021

**National Commercial Arbitration Centre**



**BUN Youdy**

## ANNEX 2

# NCAC Model Clauses

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### Arbitration Clause

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity, performance or termination, shall be referred to and finally resolved by arbitration administered by the National Commercial Arbitration Centre of the Kingdom of Cambodia in accordance with the Arbitration Rules of the National Commercial Arbitration Centre (NCAC Arbitration Rules) being in force at the time of commencement of arbitration, and by reference in this clause, the NCAC Arbitration Rules are deemed to be incorporated as part of this contract.

The seat of the arbitration shall be [Phnom Penh, Cambodia]\*.

The Tribunal shall consist of \_\_\_\_\_ \*\*arbitrator(s).

The language of the arbitration shall be \_\_\_\_\_\*.

### Governing Law Clause

This contract is governed by the laws of \_\_\_\_\_\*\*\*.

\* parties should specify the seat of arbitration of their choice. If the parties wish to select an alternative seat to Cambodia, please replace “[Phnom Penh, Cambodia]” with the city and country of choice (e.g., “[City, Country]”).

\*\* state an odd number

\*\*\* state the country or jurisdiction

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