Arbitration Rules of the
Singapore International Arbitration Centre

SIAC Rules

6th Edition, 1 August 2016

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1 Scope of Application and Interpretation

1.1 Where the parties have agreed to refer their disputes to SIAC for arbitration or to arbitration in accordance with the SIAC Rules, the parties shall be deemed to have agreed that the arbitration shall be conducted pursuant to and administered by SIAC in accordance with these Rules.

1.2 These Rules shall come into force on 1 August 2016 and, unless otherwise agreed by the parties, shall apply to any arbitration which is commenced on or after that date.

1.3 In these Rules:

"Award" includes a partial, interim or final award and an award of an Emergency Arbitrator;

"Committee of the Court" means a committee consisting of not less than two members of the Court appointed by the President (which may include the President);

"Court" means the Court of Arbitration of SIAC and includes a Committee of the Court;

"Emergency Arbitrator" means an arbitrator appointed in accordance with paragraph 3 of Schedule 1;

"Practice Notes" mean the guidelines published by the Registrar from time to time to supplement, regulate and implement these Rules;

"President" means the President of the Court and includes any Vice President and the Registrar;

"Registrar" means the Registrar of the Court and includes any Deputy Registrar;

"Rules" means the Arbitration Rules of the Singapore International Arbitration Centre (6th Edition, 1 August 2016);

"SIAC" means the Singapore International Arbitration Centre; and

"Tribunal" includes a sole arbitrator or all the arbitrators where more than one arbitrator is appointed.

Any pronoun in these Rules shall be understood to be gender-neutral. Any singular noun shall be understood to refer to the plural in the appropriate circumstances.

2 Notice and Calculation of Periods of Time

2.1 For the purposes of these Rules, any notice, communication or proposal shall be in writing. Any such notice, communication or proposal may be delivered by hand, registered post or courier service, or transmitted by any form of electronic communication (including electronic mail and facsimile), or delivered by any other appropriate means that provides a record of its delivery. Any notice, communication or proposal shall be deemed to have been received if it is delivered: (i) to the addressee personally or to its authorised representative; (ii) to the addressee's habitual residence, place of business or designated address; (iii) to any address agreed by the parties; (iv) according to the practice of the parties in prior dealings; or (v) if, after reasonable efforts, none of these can be found, then at the addressee's last-known residence or place of business.

2.2 Any notice, communication or proposal shall be deemed to have been received on the day it is delivered in accordance with Rule 2.1.

2.3 For the purpose of calculating any period of time under these Rules, such period shall begin to run on the day following the day when a notice, communication or proposal is deemed to have been received. Unless the Registrar or the Tribunal determines otherwise, any period of time under these Rules is to be calculated in accordance with Singapore Standard Time (GMT +8).

2.4 Any non-business days at the place of receipt shall be included in calculating any period of time under these Rules. If the last day of any period of time under these Rules is not a business day at the place of receipt in accordance with Rule 2.1, the period is extended until the first business day which follows.

2.5 The parties shall file with the Registrar a copy of any notice, communication or proposal concerning the arbitral proceedings.

2.6 Except as provided in these Rules, the Registrar may at any time extend or abbreviate any time limits prescribed under these Rules.

3 Notice of Arbitration

3.1 A party wishing to commence an arbitration under these Rules (the "Claimant") shall file with the Registrar a Notice of Arbitration which shall include:

a. a demand that the dispute be referred to arbitration;

b. the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of the parties to the arbitration and their representatives, if any;

c. a reference to the arbitration agreement invoked and a copy of the arbitration agreement;

d. a reference to the contract or other instrument (e.g. investment treaty) out of or in relation to which the dispute arises and, where possible, a copy of the contract or other instrument;

e. a brief statement describing the nature and circumstances of the dispute, specifying the relief claimed and, where possible, an initial quantification of the claim amount;

f. a statement of any matters which the parties have previously agreed as to the conduct of the arbitration or with respect to which the Claimant wishes to make a proposal;

g. a proposal for the number of arbitrators if not specified in the arbitration agreement;

h. unless otherwise agreed by the parties, the nomination of an arbitrator if the arbitration agreement provides for three arbitrators, or a proposal for a sole arbitrator if the arbitration agreement provides for a sole arbitrator;

i. any comment as to the applicable rules of law;

j. any comment as to the language of the arbitration; and

k. payment of the requisite filing fee under these Rules.

3.2 The Notice of Arbitration may also include the Statement of Claim referred to in Rule 20.2.

3.3 The date of receipt of the complete Notice of Arbitration by the Registrar shall be deemed to be the date of commencement of the arbitration. For the avoidance of doubt, the Notice of Arbitration is deemed to be complete when all the requirements of Rule 3.1 and Rule 6.1(b) (if applicable) are fulfilled or when the Registrar determines that there has been substantial compliance with such requirements. SIAC shall notify the parties of the commencement of the arbitration.

3.4 The Claimant shall, at the same time as it files the Notice of Arbitration with the Registrar, send a copy of the Notice of Arbitration to the Respondent, and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

4 Response to the Notice of Arbitration

4.1 The Respondent shall file a Response with the Registrar within 14 days of receipt of the Notice of Arbitration. The Response shall include:

a. a confirmation or denial of all or part of the claims, including, where possible, any plea that the Tribunal lacks jurisdiction;

b. a brief statement describing the nature and circumstances of any counterclaim, specifying the relief claimed and, where possible, an initial quantification of the counterclaim amount;

c. any comment in response to any statements contained in the Notice of Arbitration under Rule 3.1 or any comment with respect to the matters covered in such Rule;

d. unless otherwise agreed by the parties, the nomination of an arbitrator if the arbitration agreement provides for three arbitrators or, if the arbitration agreement provides for a sole arbitrator, comments on the Claimant's proposal for a sole arbitrator or a counter-proposal; and

e. payment of the requisite filing fee under these Rules for any counterclaim.

4.2 The Response may also include the Statement of Defence and a Statement of Counterclaim, as referred to in Rule 20.3 and Rule 20.4.

4.3 The Respondent shall, at the same time as it files the Response with the Registrar, send a copy of the Response to the Claimant, and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

5 Expedited Procedure

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

a. the amount in dispute does not exceed the equivalent amount of S$6,000,000, representing the aggregate of the claim, counterclaim and any defence of set-off;

b. the parties so agree; or

c. in cases of exceptional urgency.

The party applying for the arbitral proceedings to be conducted in accordance with the Expedited Procedure under this Rule 5.1 shall, at the same time as it files an application for the proceedings to be conducted in accordance with the Expedited Procedure with the Registrar, send a copy of the application to the other party and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

5.2 Where a party has filed an application with the Registrar under Rule 5.1, and where the President determines, after considering the views of the parties, and having regard to the circumstances of the case, that the arbitral proceedings shall be conducted in accordance with the Expedited Procedure, the following procedure shall apply:

a. the Registrar may abbreviate any time limits under these Rules;

b. the case shall be referred to a sole arbitrator, unless the President determines otherwise;

c. the Tribunal may, in consultation with the parties, decide if the dispute is to be decided on the basis of documentary evidence only, or if a hearing is required for the examination of any witness and expert witness as well as for any oral argument;

d. the final Award shall be made within six months from the date when the Tribunal is constituted unless, in exceptional circumstances, the Registrar extends the time for making such final Award; and

e. the Tribunal may state the reasons upon which the final Award is based in summary form, unless the parties have agreed that no reasons are to be given.

5.3 By agreeing to arbitration under these Rules, the parties agree that, where arbitral proceedings are conducted in accordance with the Expedited Procedure under this Rule 5, the rules and procedures set forth in Rule 5.2 shall apply even in cases where the arbitration agreement contains contrary terms.

5.4 Upon application by a party, and after giving the parties the opportunity to be heard, the Tribunal may, having regard to any further information as may subsequently become available, and in consultation with the Registrar, order that the arbitral proceedings shall no longer be conducted in accordance with the Expedited Procedure. Where the Tribunal decides to grant an application under this Rule 5.4, the arbitration shall continue to be conducted by the same Tribunal that was constituted to conduct the arbitration in accordance with the Expedited Procedure.

6 Multiple Contracts

6.1 Where there are disputes arising out of or in connection with more than one contract, the Claimant may:

a. file a Notice of Arbitration in respect of each arbitration agreement invoked and concurrently submit an application to consolidate the arbitrations pursuant to Rule 8.1; or

b. file a single Notice of Arbitration in respect of all the arbitration agreements invoked which shall include a statement identifying each contract and arbitration agreement invoked and a description of how the applicable criteria under Rule 8.1 are satisfied. The Claimant shall be deemed to have commenced multiple arbitrations, one in respect of each arbitration agreement invoked, and the Notice of Arbitration under this Rule 6.1(b) shall be deemed to be an application to consolidate all such arbitrations pursuant to Rule 8.1.

6.2 Where the Claimant has filed two or more Notices of Arbitration pursuant to Rule 6.1(a), the Registrar shall accept payment of a single filing fee under these Rules for all the arbitrations sought to be consolidated. Where the Court rejects the application for

consolidation, in whole or in part, the Claimant shall be required to make payment of the requisite filing fee under these Rules in respect of each arbitration that has not been consolidated.

6.3 Where the Claimant has filed a single Notice of Arbitration pursuant to Rule 6.1(b) and the Court rejects the application for consolidation, in whole or in part, it shall file a Notice of Arbitration in respect of each arbitration that has not been consolidated, and the Claimant shall be required to make payment of the requisite filing fee under these Rules in respect of each arbitration that has not been consolidated.

7 Joinder of Additional Parties

7.1 Prior to the constitution of the Tribunal, a party or non-party to the arbitration may file an application with the Registrar for one or more additional parties to be joined in an arbitration pending under these Rules as a Claimant or a Respondent, provided that any of the following criteria is satisfied:

a. the additional party to be joined is *prima facie* bound by the arbitration agreement; or

b. all parties, including the additional party to be joined, have consented to the joinder of the additional party.

7.2 An application for joinder under Rule 7.1 shall include:

a. the case reference number of the pending arbitration;

b. the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of all parties, including the additional party to be joined, and their representatives, if any, and any arbitrators who have been nominated or appointed in the pending arbitration;

c. whether the additional party is to be joined as a Claimant or a Respondent;

d. the information specified in Rule 3.1(c) and Rule 3.1(d);

e. if the application is being made under Rule 7.1(b), identification of the relevant agreement and, where possible, a copy of such agreement; and

f. a brief statement of the facts and legal basis supporting the application.

The application for joinder is deemed to be complete when all the requirements of this Rule 7.2 are fulfilled or when the Registrar determines that there has been substantial compliance with such requirements. SIAC shall notify all parties, including the additional party to be joined, when the application for joinder is complete.

7.3 The party or non-party applying for joinder under Rule 7.1 shall, at the same time as it files an application for joinder with the Registrar, send a copy of the application to all parties, including the additional party to be joined, and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

7.4 The Court shall, after considering the views of all parties, including the additional party to be joined, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for joinder under Rule 7.1. The Court's decision to grant an application for joinder under this Rule 7.4 is without prejudice to the Tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision. The Court's decision to reject an application for joinder under this Rule 7.4, in whole or in part, is without prejudice to any party's or non-party's right to apply to the Tribunal for joinder pursuant to Rule 7.8.

7.5 Where an application for joinder is granted under Rule 7.4, the date of receipt of the complete application for joinder shall be deemed to be the date of commencement of the arbitration in respect of the additional party.

7.6 Where an application for joinder is granted under Rule 7.4, the Court may revoke the appointment of any arbitrators appointed prior to the decision on joinder. Unless otherwise agreed by all parties, including the additional party joined, Rule 9 to Rule 12 shall apply as appropriate, and the respective timelines thereunder shall run from the date of receipt of the Court's decision under Rule 7.4.

7.7 The Court's decision to revoke the appointment of any arbitrator under Rule 7.6 is without prejudice to the validity of any act done or order or Award made by the arbitrator before his appointment was revoked.

7.8 After the constitution of the Tribunal, a party or non-party to the arbitration may apply to the Tribunal for one or more additional parties to be joined in an arbitration pending under these Rules as a Claimant or a Respondent, provided that any of the following criteria is satisfied:

a. the additional party to be joined is *prima facie* bound by the arbitration agreement; or

b. all parties, including the additional party to be joined, have consented to the joinder of the additional party.

Where appropriate, an application to the Tribunal under this Rule 7.8 may be filed with the Registrar.

7.9 Subject to any specific directions of the Tribunal, the provisions of Rule 7.2 shall apply, *mutatis mutandis*, to an application for joinder under Rule 7.8.

7.10 The Tribunal shall, after giving all parties, including the additional party to be joined, the opportunity to be heard, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for joinder under Rule 7.8. The Tribunal's decision to grant an application for joinder under this Rule 7.10 is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision.

7.11 Where an application for joinder is granted under Rule 7.10, the date of receipt by the Tribunal or the Registrar, as the case may be, of the complete application for joinder shall be deemed to be the date of commencement of the arbitration in respect of the additional party.

7.12 Where an application for joinder is granted under Rule 7.4 or Rule 7.10, any party who has not nominated an arbitrator or otherwise participated in the constitution of the Tribunal shall be deemed

to have waived its right to nominate an arbitrator or otherwise participate in the constitution of the Tribunal, without prejudice to the right of such party to challenge an arbitrator pursuant to Rule 14.

7.13 Where an application for joinder is granted under Rule 7.4 or Rule 7.10, the requisite filing fee under these Rules shall be payable for any additional claims or counterclaims.

8 Consolidation

8.1 Prior to the constitution of any Tribunal in the arbitrations sought to be consolidated, a party may file an application with the Registrar to consolidate two or more arbitrations pending under these Rules into a single arbitration, provided that any of the following criteria is satisfied in respect of the arbitrations to be consolidated:

a. all parties have agreed to the consolidation;

b. all the claims in the arbitrations are made under the same arbitration agreement; or

c. the arbitration agreements are compatible, and: (i) the disputes arise out of the same legal relationship(s); (ii) the disputes arise out of contracts consisting of a principal contract and its ancillary contract(s); or (iii) the disputes arise out of the same transaction or series of transactions.

8.2 An application for consolidation under Rule 8.1 shall include:

a. the case reference numbers of the arbitrations sought to be consolidated;

b. the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of all parties and their representatives, if any, and any arbitrators who have been nominated or appointed in the arbitrations sought to be consolidated;

c. the information specified in Rule 3.1(c) and Rule 3.1(d);

d. if the application is being made under Rule 8.1(a), identification of the relevant agreement and, where possible, a copy of such agreement; and

e. a brief statement of the facts and legal basis supporting the application.

8.3 The party applying for consolidation under Rule 8.1 shall, at the same time as it files an application for consolidation with the Registrar, send a copy of the application to all parties and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

8.4 The Court shall, after considering the views of all parties, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for consolidation under Rule 8.1. The Court's decision to grant an application for consolidation under this Rule 8.4 is without prejudice to the Tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision. The Court's decision to reject an application for consolidation under this Rule 8.4, in whole or in part, is without prejudice to any party's right to apply to the Tribunal for consolidation pursuant to Rule 8.7. Any arbitrations that are not consolidated shall continue as separate arbitrations under these Rules.

8.5 Where the Court decides to consolidate two or more arbitrations under Rule 8.4, the arbitrations shall be consolidated into the arbitration that is deemed by the Registrar to have commenced first, unless otherwise agreed by all parties or the Court decides otherwise having regard to the circumstances of the case.

8.6 Where an application for consolidation is granted under Rule 8.4, the Court may revoke the appointment of any arbitrators appointed prior to the decision on consolidation. Unless otherwise agreed by all parties, Rule 9 to Rule 12 shall apply as appropriate, and the respective timelines thereunder shall run from the date of receipt of the Court's decision under Rule 8.4.

8.7 After the constitution of any Tribunal in the arbitrations sought to be consolidated, a party may apply to the Tribunal to consolidate two or

more arbitrations pending under these Rules into a single arbitration, provided that any of the following criteria is satisfied in respect of the arbitrations to be consolidated:

a. all parties have agreed to the consolidation;

b. all the claims in the arbitrations are made under the same arbitration agreement, and the same Tribunal has been constituted in each of the arbitrations or no Tribunal has been constituted in the other arbitration(s); or

c. the arbitration agreements are compatible, the same Tribunal has been constituted in each of the arbitrations or no Tribunal has been constituted in the other arbitration(s), and: (i) the disputes arise out of the same legal relationship(s); (ii) the disputes arise out of contracts consisting of a principal contract and its ancillary contract(s); or (iii) the disputes arise out of the same transaction or series of transactions.

8.8 Subject to any specific directions of the Tribunal, the provisions of Rule 8.2 shall apply, *mutatis mutandis*, to an application for consolidation under Rule 8.7.

8.9 The Tribunal shall, after giving all parties the opportunity to be heard, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for consolidation under Rule 8.7. The Tribunal's decision to grant an application for consolidation under this Rule 8.9 is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision. Any arbitrations that are not consolidated shall continue as separate arbitrations under these Rules.

8.10 Where an application for consolidation is granted under Rule 8.9, the Court may revoke the appointment of any arbitrators appointed prior to the decision on consolidation.

8.11 The Court's decision to revoke the appointment of any arbitrator under Rule 8.6 or Rule 8.10 is without prejudice to the validity of any act done or order or Award made by the arbitrator before his appointment was revoked.

8.12 Where an application for consolidation is granted under Rule 8.4 or Rule 8.9, any party who has not nominated an arbitrator or otherwise participated in the constitution of the Tribunal shall be deemed to have waived its right to nominate an arbitrator or otherwise participate in the constitution of the Tribunal, without prejudice to the right of such party to challenge an arbitrator pursuant to Rule 14.

9 Number and Appointment of Arbitrators

9.1 A sole arbitrator shall be appointed in any arbitration under these Rules unless the parties have otherwise agreed; or it appears to the Registrar, giving due regard to any proposals by the parties, that the complexity, the quantum involved or other relevant circumstances of the dispute, warrants the appointment of three arbitrators.

9.2 If the parties have agreed that any arbitrator is to be appointed by one or more of the parties, or by any third person including by the arbitrators already appointed, that agreement shall be deemed an agreement to nominate an arbitrator under these Rules.

9.3 In all cases, the arbitrators nominated by the parties, or by any third person including by the arbitrators already appointed, shall be subject to appointment by the President in his discretion.

9.4 The President shall appoint an arbitrator as soon as practicable. Any decision by the President to appoint an arbitrator under these Rules shall be final and not subject to appeal.

9.5 The President may appoint any nominee whose appointment has already been suggested or proposed by any party.

9.6 The terms of appointment of each arbitrator shall be fixed by the Registrar in accordance with these Rules and any Practice Notes for the time being in force, or in accordance with the agreement of the parties.

10 Sole Arbitrator

10.1 If a sole arbitrator is to be appointed, either party may propose to the other party the names of one or more persons to serve as the sole arbitrator. Where the parties have reached an agreement on the nomination of a sole arbitrator, Rule 9.3 shall apply.

10.2 If within 21 days after the date of commencement of the arbitration, or within the period otherwise agreed by the parties or set by the Registrar, the parties have not reached an agreement on the nomination of a sole arbitrator, or if at any time either party so requests, the President shall appoint the sole arbitrator.

11 Three Arbitrators

11.1 If three arbitrators are to be appointed, each party shall nominate one arbitrator.

11.2 If a party fails to make a nomination of an arbitrator within 14 days after receipt of a party's nomination of an arbitrator, or within the period otherwise agreed by the parties or set by the Registrar, the President shall proceed to appoint an arbitrator on its behalf.

11.3 Unless the parties have agreed upon another procedure for appointing the third arbitrator, or if such agreed procedure does not result in a nomination within the period agreed by the parties or set by the Registrar, the President shall appoint the third arbitrator, who shall be the presiding arbitrator.

12 Multi-Party Appointment of Arbitrator(s)

12.1 Where there are more than two parties to the arbitration, and a sole arbitrator is to be appointed, the parties may agree to jointly nominate the sole arbitrator. In the absence of such joint nomination having been made within 28 days of the date of commencement of the arbitration or within the period otherwise agreed by the parties or set by the Registrar, the President shall appoint the sole arbitrator.

12.2 Where there are more than two parties to the arbitration, and three arbitrators are to be appointed, the Claimant(s) shall jointly nominate one arbitrator and the Respondent(s) shall jointly nominate one arbitrator. The third arbitrator, who shall be the presiding arbitrator, shall be appointed in accordance with Rule 11.3. In the absence of both such joint nominations having been made within 28 days of the date of commencement of the arbitration or within the period otherwise agreed by the parties or set by the Registrar, the President shall appoint all three arbitrators and shall designate one of them to be the presiding arbitrator.

13 Qualifications of Arbitrators

13.1 Any arbitrator appointed in an arbitration under these Rules, whether or not nominated by the parties, shall be and remain at all times independent and impartial.

13.2 In appointing an arbitrator under these Rules, the President shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations that are relevant to the impartiality or independence of the arbitrator.

13.3 The President shall also consider whether the arbitrator has sufficient availability to determine the case in a prompt and efficient manner that is appropriate given the nature of the arbitration.

13.4 A nominated arbitrator shall disclose to the parties and to the Registrar any circumstances that may give rise to justifiable doubts as to his impartiality or independence as soon as reasonably practicable and in any event before his appointment.

13.5 An arbitrator shall immediately disclose to the parties, to the other arbitrators and to the Registrar any circumstances that may give rise to justifiable doubts as to his impartiality or independence that may be discovered or arise during the arbitration.

13.6 No party or person acting on behalf of a party shall have any *ex parte* communication relating to the case with any arbitrator or with any candidate for appointment as party-nominated arbitrator, except to

advise the candidate of the general nature of the controversy and of the anticipated proceedings; to discuss the candidate's qualifications, availability or independence in relation to the parties; or to discuss the suitability of candidates for selection as the presiding arbitrator where the parties or party-nominated arbitrators are to participate in that selection. No party or person acting on behalf of a party shall have any *ex parte* communication relating to the case with any candidate for presiding arbitrator.

14 Challenge of Arbitrators

14.1 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess any requisite qualification on which the parties have agreed.

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

15 Notice of Challenge

15.1 A party that intends to challenge an arbitrator shall file a notice of challenge with the Registrar in accordance with the requirements of Rule 15.2 within 14 days after receipt of the notice of appointment of the arbitrator who is being challenged or within 14 days after the circumstances specified in Rule 14.1 or Rule 14.2 became known or should have reasonably been known to that party.

15.2 The notice of challenge shall state the reasons for the challenge. The date of receipt of the notice of challenge by the Registrar shall be deemed to be the date the notice of challenge is filed. The party challenging an arbitrator shall, at the same time as it files a notice of challenge with the Registrar, send the notice of challenge to the other party, the arbitrator who is being challenged and the other members of the Tribunal (or if the Tribunal has not yet been constituted, any appointed arbitrator), and shall notify the Registrar that it has done so, specifying the mode of service employed and the date of service.

15.3 The party making the challenge shall pay the requisite challenge fee under these Rules in accordance with the applicable Schedule of Fees. If the party making the challenge fails to pay the challenge fee within the time limit set by the Registrar, the challenge shall be considered as withdrawn.

15.4 After receipt of a notice of challenge under Rule 15.2, the Registrar may order a suspension of the arbitral proceedings until the challenge is resolved. Unless the Registrar orders the suspension of the arbitral proceedings pursuant to this Rule 15.4, the challenged arbitrator shall be entitled to continue to participate in the arbitration pending the determination of the challenge by the Court in accordance with Rule 16.

15.5 Where an arbitrator is challenged by a party, the other party may agree to the challenge, and the Court shall remove the arbitrator if all parties agree to the challenge. The challenged arbitrator may also voluntarily withdraw from office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

15.6 If an arbitrator is removed or withdraws from office in accordance with Rule 15.5, a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced. This procedure shall apply even if, during the process of appointing the challenged arbitrator, a party failed to exercise its right to nominate an arbitrator. The time limits applicable to the nomination and appointment of the substitute arbitrator shall commence from the date of receipt of the agreement of the other party to the challenge or the challenged arbitrator's withdrawal from office.

16 Decision on Challenge

16.1 If, within seven days of receipt of the notice of challenge under Rule 15, the other party does not agree to the challenge and the arbitrator who is being challenged does not withdraw voluntarily from office, the Court shall decide the challenge. The Court may request comments on the challenge from the parties, the challenged arbitrator and the other members of the Tribunal (or if the Tribunal

has not yet been constituted, any appointed arbitrator), and set a schedule for such comments to be made.

16.2 If the Court accepts the challenge to an arbitrator, the Court shall remove the arbitrator, and a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced. The time limits applicable to the nomination and appointment of the substitute arbitrator shall commence from the date of the Registrar's notification to the parties of the decision by the Court.

16.3 If the Court rejects the challenge to an arbitrator, the challenged arbitrator shall continue with the arbitration.

16.4 The Court's decision on any challenge to an arbitrator under this Rule 16 shall be reasoned, unless otherwise agreed by the parties, and shall be issued to the parties by the Registrar. Any such decision on any challenge by the Court shall be final and not subject to appeal.

17 Replacement of an Arbitrator

17.1 Except as otherwise provided in these Rules, in the event of the death, resignation, withdrawal or removal of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced.

17.2 In the event that an arbitrator refuses or fails to act or perform his functions in accordance with the Rules or within prescribed time limits, or in the event of any *de jure* or *de facto* impossibility by an arbitrator to act or perform his functions, the procedure for challenge and replacement of an arbitrator provided in Rule 14 to Rule 16 and Rule 17.1 shall apply.

17.3 The President may, at his own initiative and in his discretion, remove an arbitrator who refuses or fails to act or to perform his functions in accordance with the Rules or within prescribed time limits, or in the event of a *de jure* or *de facto* impossibility of an arbitrator to act or perform his functions, or if the arbitrator does not conduct or

participate in the arbitration with due diligence and/or in a manner that ensures the fair, expeditious, economical and final resolution of the dispute. The President shall consult the parties and the members of the Tribunal, including the arbitrator to be removed (or if the Tribunal has not yet been constituted, any appointed arbitrator) prior to the removal of an arbitrator under this Rule.

18 Repetition of Hearings in the Event of Replacement of an Arbitrator

If the sole or presiding arbitrator is replaced in accordance with the procedure in Rule 15 to Rule 17, any hearings held previously shall be repeated unless otherwise agreed by the parties. If any other arbitrator is replaced, any hearings held previously 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 relating solely to that Award shall not be repeated, and the Award shall remain in effect.

19 Conduct of the Proceedings

19.1 The Tribunal shall conduct the arbitration in such manner as it considers appropriate, after consulting with the parties, to ensure the fair, expeditious, economical and final resolution of the dispute.

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

19.3 As soon as practicable after the constitution of the Tribunal, the Tribunal shall conduct a preliminary meeting with the parties, in person or by any other means, to discuss the procedures that will be most appropriate and efficient for the case.

19.4 The Tribunal may, in its discretion, direct the order of proceedings, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

19.5 Unless otherwise agreed by the parties, the presiding arbitrator may make procedural rulings alone, subject to revision by the Tribunal.

19.6 All statements, documents or other information supplied to the Tribunal and/or the Registrar by a party shall simultaneously be communicated to the other party.

19.7 The President may, at any stage of the proceedings, request the parties and the Tribunal to convene a meeting to discuss the procedures that will be most appropriate and efficient for the case. Such meeting may be conducted in person or by any other means.

20 Submissions by the Parties

20.1 Unless the Tribunal determines otherwise, the submission of written statements shall proceed as set out in this Rule.

20.2 Unless already submitted pursuant to Rule 3.2, the Claimant shall, within a period of time to be determined by the Tribunal, send to the Respondent and the Tribunal a Statement of Claim setting out in full detail:

a. a statement of facts supporting the claim;

b. the legal grounds or arguments supporting the claim; and

c. the relief claimed together with the amount of all quantifiable claims.

20.3 Unless already submitted pursuant to Rule 4.2, the Respondent shall, within a period of time to be determined by the Tribunal, send to the Claimant and the Tribunal a Statement of Defence setting out in full detail:

a. a statement of facts supporting its defence to the Statement of Claim;

b. the legal grounds or arguments supporting such defence; and

c. the relief claimed.

20.4 If a Statement of Counterclaim is made, the Claimant shall, within a period of time to be determined by the Tribunal, send to the Respondent and the Tribunal a Statement of Defence to Counterclaim setting out in full detail:

a. a statement of facts supporting its defence to the Statement of Counterclaim;

b. the legal grounds or arguments supporting such defence; and

c. the relief claimed.

20.5 A party may amend its claim, counterclaim or other submissions unless the Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim or counterclaim may not be amended in such a manner that the amended claim or counterclaim falls outside the scope of the arbitration agreement.

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

20.7 All submissions referred to in this Rule shall be accompanied by copies of all supporting documents which have not previously been submitted by any party.

20.8 If the Claimant fails within the time specified to submit its Statement of Claim, the Tribunal may issue an order for the termination of the arbitral proceedings or give such other directions as may be appropriate.

20.9 If the Respondent fails to submit its Statement of Defence, or if at any point any party fails to avail itself of the opportunity to present its case in the manner directed by the Tribunal, the Tribunal may proceed with the arbitration.

21 Seat of the Arbitration

21.1 The parties may agree on the seat of the arbitration. Failing such an agreement, the seat of the arbitration shall be determined by the Tribunal, having regard to all the circumstances of the case.

21.2 The Tribunal may hold hearings and meetings by any means it considers expedient or appropriate and at any location it considers convenient or appropriate.

22 Language of the Arbitration

22.1 Unless otherwise agreed by the parties, the Tribunal shall determine the language to be used in the arbitration.

22.2 If a party submits a document written in a language other than the language(s) of the arbitration, the Tribunal, or if the Tribunal has not been constituted, the Registrar, may order that party to submit a translation in a form to be determined by the Tribunal or the Registrar.

23 Party Representatives

23.1 Any party may be represented by legal practitioners or any other authorised representatives. The Registrar and/or the Tribunal may require proof of authority of any party representatives.

23.2 After the constitution of the Tribunal, any change or addition by a party to its representatives shall be promptly communicated in writing to the parties, the Tribunal and the Registrar.

24 Hearings

24.1 Unless the parties have agreed on a documents-only arbitration or as otherwise provided in these Rules, the Tribunal shall, if either party so requests or the Tribunal so decides, hold a hearing for the presentation of evidence and/or for oral submissions on the merits of the dispute, including any issue as to jurisdiction.

24.2 The Tribunal shall, after consultation with the parties, set the date, time and place of any meeting or hearing and shall give the parties reasonable notice.

24.3 If any party fails to appear at a meeting or hearing without showing sufficient cause for such failure, the Tribunal may proceed with the arbitration and may make the Award based on the submissions and evidence before it.

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

25 Witnesses

25.1 Before any hearing, the Tribunal may require the parties to give notice of the identity of witnesses, including expert witnesses, whom the parties intend to produce, the subject matter of their testimony and its relevance to the issues.

25.2 The Tribunal may allow, refuse or limit the appearance of witnesses to give oral evidence at any hearing.

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

25.4 The Tribunal may direct the testimony of witnesses to be presented in written form, either as signed statements or sworn affidavits or any other form of recording. Subject to Rule 25.2, any party may request that such a witness should attend for oral examination. If the witness fails to attend for oral examination, the Tribunal may place such weight on the written testimony as it thinks fit, disregard such written testimony, or exclude such written testimony altogether.

25.5 It shall be permissible for any party or its representatives to interview any witness or potential witness (that may be presented by that party) prior to his appearance to give oral evidence at any hearing.

26 Tribunal-Appointed Experts

26.1 Unless otherwise agreed by the parties, the Tribunal may:

a. following consultation with the parties, appoint an expert to report on specific issues; and

b. require a party to give any expert appointed under Rule 26.1(a) any relevant information, or to produce or provide access to any relevant documents, goods or property for inspection.

26.2 Any expert appointed under Rule 26.1(a) shall submit a report in writing to the Tribunal. Upon receipt of such written report, the Tribunal shall deliver a copy of the report to the parties and invite the parties to submit written comments on the report.

26.3 Unless otherwise agreed by the parties, if the Tribunal considers it necessary or at the request of any party, an expert appointed under Rule 26.1(a) shall, after delivery of his written report, participate in a hearing. At the hearing, the parties shall have the opportunity to examine such expert.

27 Additional Powers of the Tribunal

Unless otherwise agreed by the parties, in addition to the other powers specified in these Rules, and except as prohibited by the mandatory rules of law applicable to the arbitration, the Tribunal shall have the power to:

a. order the correction or rectification of any contract, subject to the law governing such contract;

b. except as provided in these Rules, extend or abbreviate any time limits prescribed under these Rules or by its directions;

c. conduct such enquiries as may appear to the Tribunal to be necessary or expedient;

d. order the parties to make any property or item in their possession or control available for inspection;

e. order the preservation, storage, sale or disposal of any property or item which is or forms part of the subject matter of the dispute;

f. order any party to produce to the Tribunal and to the other parties for inspection, and to supply copies of, any document in their possession or control which the Tribunal considers relevant to the case and material to its outcome;

g. issue an order or Award for the reimbursement of unpaid deposits towards the costs of the arbitration;

h. direct any party or person to give evidence by affidavit or in any other form;

i. direct any party to take or refrain from taking actions to ensure that any Award which may be made in the arbitration is not rendered ineffectual by the dissipation of assets by a party or otherwise;

j. order any party to provide security for legal or other costs in any manner the Tribunal thinks fit;

k. order any party to provide security for all or part of any amount in dispute in the arbitration;

l. proceed with the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with the Tribunal's orders or directions or any partial Award or to attend any meeting or hearing, and to impose such sanctions as the Tribunal deems appropriate in relation to such failure or refusal;

m. decide, where appropriate, any issue not expressly or impliedly raised in the submissions of a party 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;

n. determine the law applicable to the arbitral proceedings; and

o. determine any claim of legal or other privilege.

28 Jurisdiction of the Tribunal

28.1 If any party objects to the existence or validity of the arbitration agreement or to the competence of SIAC to administer an arbitration, before the Tribunal is constituted, the Registrar shall determine if such objection shall be referred to the Court. If the Registrar so determines, the Court shall decide if it is *prima facie* satisfied that the arbitration shall proceed. The arbitration shall be terminated if the Court is not so satisfied. Any decision by the Registrar or the Court that the arbitration shall proceed is without prejudice to the power of the Tribunal to rule on its own jurisdiction.

28.2 The Tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration agreement. An arbitration agreement which forms part of a contract shall 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 entail *ipso jure* the invalidity of the arbitration agreement, and the Tribunal shall not cease to have jurisdiction by reason of any allegation that the contract is non-existent or null and void.

28.3 Any objection that the Tribunal:

a. does not have jurisdiction shall be raised no later than in a Statement of Defence or in a Statement of Defence to a Counterclaim; or

b. is exceeding the scope of its jurisdiction shall be raised within 14 days after the matter alleged to be beyond the scope of the Tribunal's jurisdiction arises during the arbitral proceedings.

The Tribunal may admit an objection raised by a party outside the time limits under this Rule 28.3 if it considers the delay justified. A party is not precluded from raising an objection under this Rule 28.3 by the fact that it has nominated, or participated in the nomination of, an arbitrator.

28.4 The Tribunal may rule on an objection referred to in Rule 28.3 either as a preliminary question or in an Award on the merits.

28.5 A party may rely on a claim or defence for the purpose of a set-off to the extent permitted by these Rules and the applicable law.

29 Early Dismissal of Claims and Defences

29.1 A party may apply to the Tribunal for the early dismissal of a claim or defence on the basis that:

a. a claim or defence is manifestly without legal merit; or

b. a claim or defence is manifestly outside the jurisdiction of the Tribunal.

29.2 An application for the early dismissal of a claim or defence under Rule 29.1 shall state in detail the facts and legal basis supporting the application. The party applying for early dismissal shall, at the same time as it files the application with the Tribunal, send a copy of the application to the other party, and shall notify the Tribunal that it has done so, specifying the mode of service employed and the date of service.

29.3 The Tribunal may, in its discretion, allow the application for the early dismissal of a claim or defence under Rule 29.1 to proceed. If the application is allowed to proceed, the Tribunal shall, after giving the parties the opportunity to be heard, decide whether to grant, in whole or in part, the application for early dismissal under Rule 29.1.

29.4 If the application is allowed to proceed, the Tribunal shall make an order or Award on the application, with reasons, which may be in summary form. The order or Award shall be made within 60 days of the date of filing of the application, unless, in exceptional circumstances, the Registrar extends the time.

30 Interim and Emergency Interim Relief

30.1 The Tribunal may, at the request of a party, issue an order or an Award granting an injunction or any other interim relief it deems appropriate. The Tribunal may order the party requesting interim relief to provide appropriate security in connection with the relief sought.

30.2 A party that wishes to seek emergency interim relief prior to the constitution of the Tribunal may apply for such relief pursuant to the procedures set forth in Schedule 1.

30.3 A request for interim relief made by a party to a judicial authority prior to the constitution of the Tribunal, or in exceptional circumstances thereafter, is not incompatible with these Rules.

31 Applicable Law, *Amiable Compositeur* and *Ex Aequo et Bono*

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

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

31.3 In all cases, the Tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any applicable usage of trade.

32 Award

32.1 The Tribunal shall, as promptly as possible, after consulting with the parties and upon being satisfied that the parties have no further relevant and material evidence to produce or submission to make with respect to the matters to be decided in the Award, declare the proceedings closed. The Tribunal's declaration that the proceedings are closed shall be communicated to the parties and to the Registrar.

32.2 The Tribunal may, on its own motion or upon application of a party but before any Award is made, re-open the proceedings. The Tribunal's decision that the proceedings are to be re-opened shall be communicated to the parties and to the Registrar. The Tribunal shall close any re-opened proceedings in accordance with Rule 32.1.

32.3 Before making any Award, the Tribunal shall submit such Award in draft form to the Registrar. Unless the Registrar extends the period of time or unless otherwise agreed by the parties, the Tribunal shall submit the draft Award to the Registrar not later than 45 days from the date on which the Tribunal declares the proceedings closed. The Registrar may, as soon as practicable, suggest modifications as to the form of the Award and, without affecting the Tribunal's liberty to decide the dispute, draw the Tribunal's attention to points of substance. No Award shall be made by the Tribunal until it has been approved by the Registrar as to its form.

32.4 The Award shall be in writing and shall state the reasons upon which it is based unless the parties have agreed that no reasons are to be given.

32.5 Unless otherwise agreed by the parties, the Tribunal may make separate Awards on different issues at different times.

32.6 If any arbitrator fails to cooperate in the making of the Award, having been given a reasonable opportunity to do so, the remaining arbitrators may proceed. The remaining arbitrators shall provide written notice of such refusal or failure to the Registrar, the parties and the absent arbitrator. In deciding whether to proceed with the arbitration in the absence of an arbitrator, the remaining arbitrators may take into account, among other things, the stage of the arbitration, any explanation provided by the absent arbitrator for his refusal to participate and the effect, if any, upon the enforceability of the Award should the remaining arbitrators proceed without the absent arbitrator. The remaining arbitrators shall explain in any Award made the reasons for proceeding without the absent arbitrator.

32.7 Where there is more than one arbitrator, the Tribunal shall decide by a majority. Failing a majority decision, the presiding arbitrator alone shall make the Award for the Tribunal.

32.8 The Award shall be delivered to the Registrar, who shall transmit certified copies to the parties upon full settlement of the costs of the arbitration.

32.9 The Tribunal may award simple or compound interest on any sum which is the subject of the arbitration at such rates as the parties may have agreed or, in the absence of such agreement, as the Tribunal determines to be appropriate, in respect of any period which the Tribunal determines to be appropriate.

32.10 In the event of a settlement, and if the parties so request, the Tribunal may make a consent Award recording the settlement. If the parties do not require a consent Award, the parties shall confirm to the Registrar that a settlement has been reached, following which the Tribunal shall be discharged and the arbitration concluded upon full settlement of the costs of the arbitration.

32.11 Subject to Rule 33 and Schedule 1, by agreeing to arbitration under these Rules, the parties agree that any Award shall be final and binding on the parties from the date it is made, and undertake to carry out the Award immediately and without delay. The parties also irrevocably waive their rights to any form of appeal, review or recourse to any State court or other judicial authority with respect to such Award insofar as such waiver may be validly made.

32.12 SIAC may, with the consent of the parties and the Tribunal, publish any Award with the names of the parties and other identifying information redacted.

33 Correction of Awards, Interpretation of Awards and Additional Awards

33.1 Within 30 days of receipt of an Award, a party may, by written notice to the Registrar and the other party, request the Tribunal to correct in the Award any error in computation, any clerical or typographical error or any error of a similar nature. If the Tribunal considers the request to be justified, it shall make the correction within 30 days of receipt of the request. Any correction, made in the original Award or in a separate memorandum, shall constitute part of the Award.

33.2 The Tribunal may correct any error of the type referred to in Rule 33.1 on its own initiative within 30 days of the date of the Award.

33.3 Within 30 days of receipt of an Award, a party may, by written notice to the Registrar and the other party, request the Tribunal to make an additional Award as to claims presented in the arbitration but not dealt with in the Award. If the Tribunal considers the request to be justified, it shall make the additional Award within 45 days of receipt of the request.

33.4 Within 30 days of receipt of an Award, a party may, by written notice to the Registrar and the other party, request that the Tribunal give an interpretation of the Award. If the Tribunal considers the request to be justified, it shall provide the interpretation in writing within 45 days after receipt of the request. The interpretation shall form part of the Award.

33.5 The Registrar may, if necessary, extend the period of time within which the Tribunal shall make a correction of an Award, interpretation of an Award or an additional Award under this Rule.

33.6 The provisions of Rule 32 shall apply in the same manner with the necessary or appropriate changes in relation to a correction of an Award, interpretation of an Award and to any additional Award made.

34 Fees and Deposits

34.1 The Tribunal's fees and SIAC's fees shall be ascertained in accordance with the Schedule of Fees in force at the time of commencement of the arbitration. The parties may agree to alternative methods of determining the Tribunal's fees prior to the constitution of the Tribunal.

34.2 The Registrar shall fix the amount of deposits payable towards the costs of the arbitration. Unless the Registrar directs otherwise, 50% of such deposits shall be payable by the Claimant and the remaining 50% of such deposits shall be payable by the Respondent. The Registrar may fix separate deposits on costs for claims and counterclaims, respectively.

34.3 Where the amount of the claim or the counterclaim is not quantifiable at the time payment is due, a provisional estimate of the costs of the arbitration shall be made by the Registrar. 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.

34.4 The Registrar may from time to time direct parties to make further deposits towards the costs of the arbitration.

34.5 Parties are jointly and severally liable for the costs of the arbitration. Any party is free to pay the whole of the deposits towards the costs of the arbitration should the other party fail to pay its share.

34.6 If a party fails to pay the deposits directed by the Registrar either wholly or in part:

a. the Tribunal may suspend its work and the Registrar may suspend SIAC's administration of the arbitration, in whole or in part; and

b. the Registrar may, after consultation with the Tribunal (if constituted) and after informing the parties, set a time limit on the expiry of which the relevant claims or counterclaims shall be considered as withdrawn without prejudice to the party reintroducing the same claims or counterclaims in another proceeding.

34.7 In all cases, the costs of the arbitration shall be finally determined by the Registrar at the conclusion of the proceedings. If the claim and/or counterclaim is not quantified, the Registrar shall finally determine the costs of the arbitration, as set out in Rule 35, in his discretion. The Registrar shall have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration concluded. In the event that the costs of the arbitration determined are less than the deposits made, there shall be a refund in such proportions as the parties may agree, or failing an agreement, in the same proportions as the deposits were made.

34.8 All deposits towards the costs of the arbitration shall be made to and held by SIAC. Any interest which may accrue on such deposits shall be retained by SIAC.

34.9 In exceptional circumstances, the Registrar may direct the parties to pay an additional fee, in addition to that prescribed in the applicable Schedule of Fees, as part of SIAC's administration fees.

35 Costs of the Arbitration

35.1 Unless otherwise agreed by the parties, 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.

35.2 The term "costs of the arbitration" includes:

a. the Tribunal's fees and expenses and the Emergency Arbitrator's fees and expenses, where applicable;

b. SIAC's administration fees and expenses; and

c. the costs of any expert appointed by the Tribunal and of any other assistance reasonably required by the Tribunal.

36 Tribunal's Fees and Expenses

36.1 The fees of the Tribunal shall be fixed by the Registrar in accordance with the applicable Schedule of Fees or, if applicable, with the method agreed by the parties pursuant to Rule 34.1, and the stage of the proceedings at which the arbitration concluded. In exceptional circumstances, the Registrar may determine that an additional fee over that prescribed in the applicable Schedule of Fees shall be paid.

36.2 The Tribunal's reasonable out-of-pocket expenses necessarily incurred and other allowances shall be reimbursed in accordance with the applicable Practice Note.

37 Party's Legal and Other Costs

The Tribunal shall have the authority to order in its Award that all or a part of the legal or other costs of a party be paid by another party.

38 Exclusion of Liability

38.1 Any arbitrator, including any Emergency Arbitrator, any person appointed by the Tribunal, including any administrative secretary and any expert, the President, members of the Court, and any directors, officers and employees of SIAC, shall not be liable to any person for any negligence, act or omission in connection with any arbitration administered by SIAC in accordance with these Rules.

38.2 SIAC, including the President, members of the Court, directors, officers, employees or any arbitrator, including any Emergency Arbitrator, and any person appointed by the Tribunal, including any administrative secretary and any expert, shall not be under any obligation to make any statement in connection with any arbitration administered by SIAC in accordance with these Rules. No party shall seek to make the President, any member of the Court, director, officer, employee of SIAC, or any arbitrator, including any Emergency Arbitrator, and any person appointed by the Tribunal, including any administrative secretary and any expert, act as a witness in any legal proceedings in connection with any arbitration administered by SIAC in accordance with these Rules.

39 Confidentiality

39.1 Unless otherwise agreed by the parties, a party and any arbitrator, including any Emergency Arbitrator, and any person appointed by the Tribunal, including any administrative secretary and any expert, shall at all times treat all matters relating to the proceedings and the Award as confidential. The discussions and deliberations of the Tribunal shall be confidential.

39.2 Unless otherwise agreed by the parties, a party or any arbitrator, including any Emergency Arbitrator, and any person appointed by the Tribunal, including any administrative secretary and any expert, shall not, without the prior written consent of the parties, disclose to a third party any such matter except:

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 the request or requirement of any regulatory body or other authority;

e. pursuant to an order by the Tribunal on application by a party with proper notice to the other parties; or

f. for the purpose of any application under Rule 7 or Rule 8 of these Rules.

39.3 In Rule 39.1, "matters relating to the proceedings" includes the existence of the proceedings, and the pleadings, evidence and other materials in the arbitral proceedings and all other documents produced by another party in the proceedings or the Award arising from the proceedings, but excludes any matter that is otherwise in the public domain.

39.4 The Tribunal has the power to take appropriate measures, including issuing an order or Award for sanctions or costs, if a party breaches the provisions of this Rule.

40 Decisions of the President, the Court and the Registrar

40.1 Except as provided in these Rules, the decisions of the President, the Court and the Registrar with respect to all matters relating to an arbitration shall be conclusive and binding upon the parties and the Tribunal. The President, the Court and the Registrar shall not be required to provide reasons for such decisions, unless the Court determines otherwise or as may be provided in these Rules. The parties agree that the discussions and deliberations of the Court are confidential.

40.2 Save in respect of Rule 16.1 and Rule 28.1, the parties waive any right of appeal or review in respect of any decisions of the President, the Court and the Registrar to any State court or other judicial authority.

41 General Provisions

41.1 Any party that proceeds with the arbitration without promptly raising any objection to a failure to comply with any provision of these Rules, or of any other rules applicable to the proceedings, any direction given by the Tribunal, or any requirement under the arbitration agreement relating to the constitution of the Tribunal or the conduct of the proceedings, shall be deemed to have waived its right to object.

41.2 In all matters not expressly provided for in these Rules, the President, the Court, the Registrar and the Tribunal shall act in the spirit of these Rules and shall make every reasonable effort to ensure the fair, expeditious and economical conclusion of the arbitration and the enforceability of any Award.

41.3 In the event of any discrepancy or inconsistency between the English version of these Rules and any other languages in which these Rules are published, the English version shall prevail.

Schedule 1

Emergency Arbitrator

1. A party that wishes to seek emergency interim relief may, concurrent with or following the filing of a Notice of Arbitration but prior to the constitution of the Tribunal, file an application for emergency interim relief with the Registrar. The party shall, at the same time as it files the application for emergency interim relief, send a copy of the application to all other parties. The application for emergency interim relief shall include:

   a. the nature of the relief sought;

   b. the reasons why the party is entitled to such relief; 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.

2. Any application for emergency interim relief shall be accompanied by payment of the non-refundable administration fee and the requisite deposits under these Rules towards the Emergency Arbitrator's fees and expenses for proceedings pursuant to this Schedule 1. In appropriate cases, the Registrar may increase the amount of the deposits requested from the party making the application. If the additional deposits are not paid within the time limit set by the Registrar, the application shall be considered as withdrawn.

3. The President shall, if he determines that SIAC should accept the application for emergency interim relief, seek to appoint an Emergency Arbitrator within one day of receipt by the Registrar of such application and payment of the administration fee and deposits.

4. If the parties have agreed on the seat of the arbitration, such seat shall be the seat of the proceedings for emergency interim relief.

Failing such an agreement, the seat of the proceedings for emergency interim relief shall be Singapore, without prejudice to the Tribunal's determination of the seat of the arbitration under Rule 21.1.

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

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

7. The Emergency Arbitrator shall, as soon as possible but, in any event, within two days of his appointment, establish a schedule for consideration of the application for emergency interim relief. Such schedule shall provide a reasonable opportunity for the parties to be heard, but may provide for proceedings by telephone or video conference or on written submissions as alternatives to a hearing in person. The Emergency Arbitrator shall have the powers vested in the Tribunal pursuant to these Rules, including the authority to rule on his own jurisdiction, without prejudice to the Tribunal's determination.

8. The Emergency Arbitrator shall have the power to order or award any interim relief that he deems necessary, including preliminary orders that may be made pending any hearing, telephone or video conference or written submissions by the parties. The Emergency Arbitrator shall give summary reasons for his decision in writing. The Emergency Arbitrator may modify or vacate the preliminary order, the interim order or Award for good cause.

9. The Emergency Arbitrator shall make his interim order or Award within 14 days from the date of his appointment unless, in exceptional circumstances, the Registrar extends the time. No interim order or Award shall be made by the Emergency Arbitrator until it has been approved by the Registrar as to its form.

10. The Emergency Arbitrator shall have no power to act after the Tribunal is constituted. The Tribunal may reconsider, modify or vacate any interim order or Award issued by the Emergency Arbitrator, including a ruling on his own jurisdiction. The Tribunal is not bound by the reasons given by the Emergency Arbitrator. Any interim order or Award issued by the Emergency Arbitrator shall, in any event, cease to be binding if the Tribunal is not constituted within 90 days of such order or Award or when the Tribunal makes a final Award or if the claim is withdrawn.

11. Any interim order or Award by the Emergency Arbitrator may be conditioned on provision by the party seeking such relief of appropriate security.

12. The parties agree that an order or Award by an Emergency Arbitrator pursuant to this Schedule 1 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 State court or other judicial authority with respect to such Award insofar as such waiver may be validly made.

13. The costs associated with any application pursuant to this Schedule 1 may initially be apportioned by the Emergency Arbitrator, subject to the power of the Tribunal to determine finally the apportionment of such costs.

14. These Rules shall apply as appropriate to any proceeding pursuant to this Schedule 1, taking into account the urgency of such a proceeding. The Emergency Arbitrator may decide in what manner these Rules shall apply as appropriate, and his decision as to such matters is final and not subject to appeal, review or recourse. The Registrar may abbreviate any time limits under these Rules in applications made pursuant to proceedings commenced under Rule 30.2 and Schedule 1.

Schedule of Fees

(All sums stated are in Singapore dollars)

This Schedule of Fees is effective as of 1 August 2016 and is applicable to all arbitrations commenced on or after 1 August 2016.

Filing Fee[+] (Non-Refundable)

Singapore Parties	S$2,140*
Overseas Parties	S$2,000

+ A filing fee is applicable to all arbitrations administered by SIAC, and to each claim or counterclaim.

** Fee includes 7% GST.*

Administration Fees

The administration fee calculated in accordance with the Schedule below applies to all arbitrations administered by SIAC and is the maximum amount payable to SIAC.

Sum in Dispute (S$)	Administration Fees (S$)
Up to 50,000	3,800
50,001 to 100,000	3,800 + 2.200% excess over 50,000
100,001 to 500,000	4,900 + 1.200% excess over 100,000
500,001 to 1,000,000	9,700 + 1.000% excess over 500,000
1,000,001 to 2,000,000	14,700 + 0.650% excess over 1,000,000
2,000,001 to 5,000,000	21,200 + 0.320% excess over 2,000,000
5,000,001 to 10,000,000	30,800 + 0.160% excess over 5,000,000
10,000,001 to 50,000,000	38,800 + 0.095% excess over 10,000,000
50,000,001 to 80,000,000	76,800 + 0.040% excess over 50,000,000
80,000,001 to 100,000,000	88,800 + 0.031% excess over 80,000,000
Above 100,000,000	95,000

The administration fee does not include the following:

- Fees and expenses of the Tribunal;
- Usage cost of facilities and support services for and in connection with any hearing (e.g. hearing rooms and equipment, transcription and interpretation services); and
- SIAC's administrative expenses.

SIAC will charge a minimum administration fee of S$3,800, payable for all cases, unless the Registrar otherwise determines.

Arbitrator's Fees
For arbitrations conducted pursuant to and administered under these Rules, the fee calculated in accordance with the Schedule below is the maximum amount payable to each arbitrator, unless the parties have agreed to an alternative method of determining the Tribunal's fees pursuant to Rule 34.1.

Sum in Dispute (S$)	Arbitrator's Fees (S$)
Up to 50,000	6,250
50,001 to 100,000	6,250 + 13.800% excess over 50,000
100,001 to 500,000	13,150 + 6.500% excess over 100,000
500,001 to 1,000,000	39,150 + 4.850% excess over 500,000
1,000,001 to 2,000,000	63,400 + 2.750% excess over 1,000,000
2,000,001 to 5,000,000	90,900 + 1.200% excess over 2,000,000
5,000,001 to 10,000,000	126,900 + 0.700% excess over 5,000,000
10,000,001 to 50,000,000	161,900 + 0.300% excess over 10,000,000
50,000,001 to 80,000,000	281,900 + 0.160% excess over 50,000,000
80,000,001 to 100,000,000	329,900 + 0.075% excess over 80,000,000
100,000,001 to 500,000,000	344,900 + 0.065% excess over 100,000,000
Above 500,000,000	605,000 + 0.040% excess over 500,000,000 up to a maximum of 2,000,000

Emergency Interim Relief Fees
The following fees shall be payable in an application for emergency interim relief under Rule 30.2 and Schedule 1 to these Rules:

An application under Rule 30.2 and Schedule 1 must be accompanied by a payment of the following:

1. Administration Fee for Emergency Arbitrator Applications (Non-Refundable):

Singapore Parties	S$5,350*
Overseas Parties	S$5,000

** Fee includes 7% GST.*

2. **Emergency Arbitrator's Fees and Deposits:** The deposits towards the Emergency Arbitrator's fees and expenses shall be fixed at S$30,000, unless the Registrar determines otherwise pursuant to Schedule 1 to these Rules. The Emergency Arbitrator's fees shall be fixed at S$25,000, unless the Registrar determines otherwise pursuant to Schedule 1 to these Rules.

Challenge Fee (Non-Refundable)
A party submitting a notice of challenge shall make payment of the following challenge fee pursuant to Rule 15.3:

Singapore Parties	S$8,560*
Overseas Parties	S$8,000

** Fee includes 7% GST.*

Other Fees

Arb-Med-Arb Fees

Arbitration		S$2,000
Arb-Med-Arb	**Singapore Parties**	SIAC S$2,140* + SIMC S$1,000 = S$3,140
	Overseas Parties	SIAC S$2,000 + SIMC S$1,000 = S$3,000

** SIAC Fee includes 7% GST.*

Appointment Fees (Non-Refundable)
The appointment fee is payable where a request for appointment of arbitrator(s) is made in an *ad hoc* case. The fee is payable by the party requesting the appointment. A request for appointment must be accompanied by payment of the appointment fee prescribed below.

	1 arbitrator	**2 arbitrator**	**3 arbitrator**
Singapore Parties	S$3,210*	S$4,280*	S$5,350*
Overseas Parties	S$3,000	S$4,000	S$5,000

** SIAC Fee includes 7% GST.*

Assessment or Taxation Fees
At the end of an arbitration, or after an issue has been decided in the course of the arbitration, the arbitrator usually makes an order for the legal cost incurred by a party (or a part of the legal cost) to be paid by the other party. The arbitrator usually fixes the amount of the cost to be paid.

SIAC prefers that the arbitrator does so. But if he or she does not do so, and the parties cannot agree on the amount, the Registrar of SIAC may be asked to assess the amount for the parties. This process is sometimes called "taxation" of costs. The party that requires the Registrar's services pays a fee according to the amount of costs claimed.

Sum in Dispute (S$)	**Assessment or Taxation Fees (S$)**
Up to 50,000	5,000
50,001 to 100,000	5,000 + 2% excess over 50,000
100,001 to 250,000	6,000 + 1.5% excess over 100,000
250,001 to 500,000	8,250 + 1% excess over 250,000
500,001 to 1,000,000	10,750 + 0.5% excess over 500,000
Above 1,000,000	13,250 + 0.25% excess over 1,000,000
Maximum	25,000

- The fee is payable at the time of request for taxation.
- The above fees do not include 7% GST as may be applicable.
- The above schedule of assessment or taxation fees is effective as of 1 August 2015.

SIAC Model Clause

(Revised as of 1 September 2015)

In drawing up international contracts, we recommend that parties include the following arbitration clause:

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be [Singapore].*

The Tribunal shall consist of _____ ** arbitrator(s).

The language of the arbitration shall be _____ .

Applicable Law Clause

Parties should also include an applicable law clause. The following is recommended:

This contract is governed by the laws of _____ .***

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* *Parties should specify the seat of arbitration of their choice. If the parties wish to select an alternative seat to Singapore, please replace "[Singapore]" with the city and country of choice (e.g., "[City, Country]").*

** *State an odd number. Either state one, or state three.*

*** *State the country or jurisdiction.*

Expedited Procedure Model Clause

(Revised as of 1 September 2015)

In drawing up international contracts, we recommend that parties include the following arbitration clause:

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The parties agree that any arbitration commenced pursuant to this clause shall be conducted in accordance with the Expedited Procedure set out in Rule 5.2 of the SIAC Rules.

The seat of the arbitration shall be [Singapore].*

The Tribunal shall consist of one arbitrator.

The language of the arbitration shall be _____ .

See Applicable Law clause recommendation on previous page

* *Parties should specify the seat of arbitration of their choice. If the parties wish to select an alternative seat to Singapore, please replace "[Singapore]" with the city and country of choice (e.g., "[City, Country]").*

SIAC-SIMC Arb-Med-Arb Protocol ("AMA Protocol")

(As of 5 November 2014)

1. This AMA Protocol shall apply to all disputes submitted to the Singapore International Arbitration Centre ("SIAC") for resolution under the Singapore Arb-Med-Arb Clause or other similar clause ("AMA Clause") and/or any dispute which parties have agreed to submit for resolution under this AMA Protocol. Under the AMA Protocol, parties agree that any dispute settled in the course of the mediation at the Singapore International Mediation Centre ("SIMC") shall fall within the scope of their arbitration agreement.

2. A party wishing to commence an arbitration under the AMA Clause shall file with the Registrar of SIAC a notice of arbitration in accordance with the arbitration rules applicable to the arbitration proceedings ("Arbitration Rules"), which Arbitration Rules shall be either: (i) the Arbitration Rules of the SIAC (as may be revised from time to time); or (ii) the UNCITRAL Arbitration Rules (as may be revised from time to time) where parties have agreed that SIAC shall administer such arbitration.

3. The Registrar of SIAC will inform SIMC of the arbitration commenced pursuant to an AMA Clause within 4 working days from the commencement of the arbitration, or within 4 working days from the agreement of the parties to refer their dispute to mediation under the AMA Protocol. SIAC will send to SIMC a copy of the notice of arbitration.

4. The Tribunal shall be constituted by SIAC in accordance with the Arbitration Rules and/or the parties' arbitration agreement.

5. The Tribunal shall, after the exchange of the Notice of Arbitration and Response to the Notice of Arbitration, stay the arbitration and inform the Registrar of SIAC that the case can be submitted for mediation at SIMC. The Registrar of SIAC will send the case file with all documents lodged by the parties to SIMC for mediation at SIMC.

Upon SIMC's receipt of the case file, SIMC will inform the Registrar of SIAC of the commencement of mediation at SIMC (the "Mediation Commencement Date") pursuant to the SIMC Mediation Rules. All subsequent steps in the arbitration shall be stayed pending the outcome of mediation at SIMC.

6. The mediation conducted under the auspices of SIMC shall be completed within 8 weeks from the Mediation Commencement Date, unless, the Registrar of SIAC in consultation with the SIMC extends the time. For the purposes of calculating any time period in the arbitration proceeding, the time period will stop running at the Mediation Commencement Date and resume upon notification of the Registrar of SIAC to the Tribunal of the termination of the mediation proceeding.

7. At the termination of the 8-week period (unless the deadline is extended by the Registrar of SIAC) or in the event the dispute cannot be settled by mediation either partially or entirely at any time prior to the expiration of the 8-week period, SIMC shall promptly inform the Registrar of SIAC of the outcome of the mediation, if any.

8. In the event that the dispute has not been settled by mediation either partially or entirely, the Registrar of SIAC will inform the Tribunal that the arbitration proceeding shall resume. Upon the date of the Registrar's notification to the Tribunal, the arbitration proceeding in respect of the dispute or remaining part of the dispute (as the case may be) shall resume in accordance with the Arbitration Rules.

9. In the event of a settlement of the dispute by mediation between the parties, SIMC shall inform the Registrar of SIAC that a settlement has been reached. If the parties request the Tribunal to record their settlement in the form of a consent award, the parties or the Registrar of the SIAC shall refer the settlement agreement to the Tribunal and the Tribunal may render a consent award on the terms agreed to by the parties.

Financial Matters

10. Parties shall pay a non-refundable case filing fee as set out in Appendix B of the SIMC Mediation Rules to SIAC for all cases under this AMA Protocol.

11. Where a case is commenced pursuant to the AMA Clause and where parties have agreed to submit their dispute for resolution under the AMA Protocol before the commencement of arbitration proceedings, this filing fee is payable to SIAC upon the filing of the notice of arbitration. Otherwise, the portion of the filing fee remaining unpaid in respect of the mediation shall be payable to SIAC upon the submission of the case for mediation at SIMC.

12. Parties shall also pay to SIAC, upon request, an advance on the estimated costs of the arbitration ("Arbitration Advance") as well as administrative fees and expenses for the mediation ("Mediation Advance") in accordance with SIAC and SIMC's respective Schedule of Fees (collectively "the Deposits"). The quantum of the Deposits will be determined by the Registrar of SIAC in consultation with SIMC.

13. Where a case is commenced pursuant to the AMA Clause and where parties have agreed to submit their dispute for resolution under the AMA Protocol before the commencement of arbitration proceedings, the Mediation Advance shall be paid with the Arbitration Advance requested by SIAC. Otherwise, the Mediation Advance shall be paid upon the submission of the case for mediation at SIMC.

14. Without prejudice to the Arbitration Rules, any party is free to pay the Deposits of the other party, should the other party fail to pay its share. The Registrar of SIAC shall inform SIMC if the Deposits remain wholly or partially unpaid.

15. SIAC is authorised to make payment of the Mediation Advance to SIMC from the Deposits or the Arbitration Advance held by SIAC without further reference to the parties.

The Singapore Arb-Med-Arb Clause

(As of 1 September 2015)

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be [Singapore].*

The Tribunal shall consist of _____ ** arbitrator(s).

The language of the arbitration shall be _____ .

The parties further agree that following the commencement of arbitration, they will attempt in good faith to resolve the Dispute through mediation at the Singapore International Mediation Centre ("SIMC"), in accordance with the SIAC-SIMC Arb-Med-Arb Protocol for the time being in force. Any settlement reached in the course of the mediation shall be referred to the arbitral tribunal appointed by SIAC and may be made a consent award on agreed terms.

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* *Parties should specify the seat of arbitration of their choice. If the parties wish to select an alternative seat to Singapore, please replace "[Singapore]" with the city and country of choice (e.g., "[City, Country]").*

** *State an odd number. Either state one, or state three.*

Payment Information

1. Payments may be made by a local cheque payable to "***Singapore International Arbitration Centre***". All cheques should be sent directly to:

   Singapore International Arbitration Centre
   28 Maxwell Road
   #03-01
   Singapore 069120
   Attn: Accounts Department

2. Payments may also be made by bank transfer to our bank account (**please absorb bank charges**). Details are as follows:

Name of Beneficiary	: Singapore International Arbitration Centre
Name of Bank	: United Overseas Bank Limited
Bank Branch	: Coleman Branch
Bank address	: 1 Coleman Street, #01-14 & B1-19, The Adelphi, Singapore 179803
Bank a/c	: 302-313-540-8
Swift code	: UOVBSGSG

   For easy identification of the remittance, parties are requested to include in their remittance details "Case Reference Number - Claimant / Respondent". To help us with tracking the deposits, we request that you send us a copy of the remittance record as soon as the funds are transferred. Please note that SIAC's policy is to accept payments from the party or its authorised representative (e.g. the party's counsel).

   Parties are advised to check with SIAC for the latest bank account details before making any bank transfer. For payments in currencies other than Singapore Dollars, parties are also advised to check with SIAC.

Singapore International Arbitration Centre
28 Maxwell Road #03-01
Maxwell Chambers Suites
Singapore 069120

T +65 6713 9777
F +65 6713 9778
corpcomms@siac.org.sg

www.siac.org.sg

SIAC
Singapore International Arbitration Centre

Arbitration Rules of the
Singapore International Arbitration Centre

SIAC Rules

7th Edition, 1 January 2025

Singapore International Arbitration Centre Arbitration Rules

7th Edition, 1 January 2025

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SECTION I. INTRODUCTORY RULES

1. Scope of Application

1.1 Where the parties have agreed by contract or otherwise to refer their disputes to SIAC for arbitration or to arbitration in accordance with the SIAC Rules, the parties shall be deemed to have agreed that the arbitration shall be conducted pursuant to and administered by SIAC in accordance with these Rules.

1.2 These Rules shall apply to domestic and international arbitrations commenced under a contract, treaty, or other instrument.

1.3 These Rules shall include the Schedules attached thereto which shall form part of the Rules and shall be read together as appropriate.

1.4 The Registrar may from time to time issue *Practice Notes* as guidance to supplement and implement these Rules.

1.5 These Rules shall come into force on 1 January 2025 and, unless otherwise agreed by the parties, shall apply to any arbitration which is commenced on or after that date.

1.6 These Rules shall govern the conduct and administration of the arbitration, except that, where any such rule is in conflict with any provision of law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

2. Definitions

2.1 Terms used in these Rules shall be defined as follows:

additional party	A party who is the subject of an application for joinder in accordance with Rule 18
amount in dispute	The aggregate of any claim, counterclaim, cross-claim or set-off filed in the arbitration which quantum is determined by the Registrar for the purpose of SIAC's administration of the arbitration
award	Includes an interim, interlocutory, consent, partial, final or additional award and an award of an Emergency Arbitrator
Challenge Filing Fee	The applicable fee to file a Notice of Challenge in accordance with Rule 27.1 and the Schedule of Fees
Claim Filing Fee	The applicable fee to file a Notice of Arbitration in accordance with Rule 6.3(i) and the Schedule of Fees
Claimant	A party initiating recourse to arbitration under these Rules and which may include one or more claimants
Code of Ethics	SIAC's *Code of Ethics for Arbitrators* in force at the date of commencement of the arbitration
Committee of the SIAC Court	A Committee consisting of not fewer than two members of the SIAC Court

Direct Economic Interest	Means an interest in the arbitration proceedings resulting from the provision by a third-party funder to (i) a party in the arbitration proceedings, (ii) an affiliate of that party or (iii) a law firm representing that party, of funding for, or indemnity against the award to be rendered in the arbitration proceedings, either individually or as part of a specific range of cases where such provision of support or financing is provided in exchange for either remuneration or reimbursement that is wholly or partially dependent on the outcome of the arbitration proceedings
EA Filing Fee	The applicable fee to file an application for the appointment of an Emergency Arbitrator in accordance with Rule 12.1, Schedule 1, and the Schedule of Fees
Emergency Arbitrator or EA	An Emergency Arbitrator appointed in accordance with Rule 12.1 and paragraph 7 or paragraph 26 of Schedule 1
Filing Fees	Include the Challenge Filing Fee, Claim Filing Fee, EA Filing Fee, Joinder Filing Fee, and any other applicable filing fee in accordance with the Schedule of Fees
Joinder Filing Fee	The applicable fee to file an application for joinder in accordance with Rule 18 and the Schedule of Fees
Notice	A Notice of Arbitration, including all accompanying documents, filed in accordance with Rule 6
party or parties	Include the Claimant, Respondent, and any Additional Party

Practice Notes	The Practice Notes published by the Registrar as guidance to supplement and implement these Rules, in force at the date of commencement of the arbitration
President	The President of the SIAC Court
Registrar	The Registrar of the SIAC Court and includes any Deputy Registrar
Respondent	A party against whom a Claimant seeks recourse to arbitration under these Rules and includes one or more respondents
Response	A Response to the Notice, including all accompanying documents, filed in accordance with Rule 7
Rules	Arbitration Rules of the Singapore International Arbitration Centre (7th Edition, 1 January 2025)
Schedule of Fees	The SIAC Schedule of Fees in force at the date of commencement of the arbitration
Schedules	Schedules 1, 2, and 3 of these Rules and any additional schedules as may be published by SIAC from time to time
seat of the arbitration	The seat, meaning the legal place, of the arbitration
SIAC	The Singapore International Arbitration Centre
SIAC Board	The Board of Directors of SIAC
SIAC Court	The Court of Arbitration of SIAC
SIAC Gateway	The case management system hosted by SIAC and accessible at the website of SIAC
SIAC Secretariat	The case management and administration team of SIAC

SIAC-SIMC AMA Protocol	The SIAC-SIMC Arbitration-Mediation-Arbitration Protocol
SIMC	The Singapore International Mediation Centre
Tribunal	Refers to a panel of one or more arbitrators appointed in the arbitration
third-party funder	Refers to any person, either legal or natural, who is not a party to the arbitration proceedings but who has a Direct Economic Interest in the outcome of the arbitration proceedings
third-party funding agreement	Means an agreement between a third-party funder and a party, an affiliate of that party, or a law firm representing that party
Vice President	One or more Vice Presidents of the SIAC Court
written communications	Include notices, and any notification, communication or proposal, data messages, electronic communications, applications, pleadings, witness statements, expert reports, decisions, rulings, orders, awards, and other correspondence and documents that are produced, submitted, or exchanged in the arbitration

3. Interpretation

3.1 Rule headings are for reference only and are not to be used for the purpose of interpretation.

3.2 Any singular noun shall be understood to refer to the plural in appropriate circumstances and *vice versa*.

3.3 Save as may relate to powers exercisable by the Tribunal, the Registrar shall have the power to interpret any provision under these Rules.

3.4 Prior to the constitution of the Tribunal or the appointment of an Emergency Arbitrator, the Registrar shall determine the acceptance and ordering of any procedural applications.

3.5 In all matters not expressly provided for in these Rules, the SIAC Court, the President, the Vice President, the Registrar, the SIAC Secretariat, and any Emergency Arbitrator and Tribunal shall act in the spirit of these Rules and shall endeavour to ensure:

(a) the fairness of the proceedings;

(b) the expeditious and cost-effective conduct of the arbitration proportionate to the complexity of the claim and the amount in dispute; and

(c) the enforceability of any award.

3.6 The parties shall attempt to agree on any procedural matters not expressly provided for in these Rules, taking into account the principles set out at Rule 3.5(a) - Rule 3.5(c), before seeking a decision from the SIAC Secretariat or the Tribunal on such matters.

3.7 In the event of any discrepancy or inconsistency between the English version of these Rules and any other languages in which these Rules are published, the English version shall prevail.

4. Communications

4.1 Unless otherwise required under these Rules, the parties shall deliver all written communications to all parties, the Tribunal, and the SIAC Secretariat in accordance with Rule 4.3 or Rule 4.4. Such written communications may be delivered by any means of communication that provides or allows for a record of transmission, including by hand, registered mail or courier service, email, or any other means which provides a record of the attempt to deliver it.

4.2 Upon notification of the commencement of the arbitration and at any stage of the arbitration thereafter, after considering the views of the parties and the Tribunal, the Registrar may direct the parties to upload all written communications to SIAC Gateway.

4.3 Any written communication shall be delivered using the contact details designated for the purpose of the arbitration by the parties or their representatives, the Tribunal, or the SIAC Secretariat, or by upload to SIAC Gateway upon the direction of the Registrar under Rule 4.2.

4.4 In the absence of such designation or direction under Rule 4.3, any written communications shall be deemed to be received if they are delivered:

(a) to the addressee personally or to its authorised representative;

(b) to the addressee's place of business, habitual residence, or mailing address; or

(c) according to the practice of the parties in prior dealings.

If, after making a reasonable inquiry, delivery cannot be effected under (a) – (c) above, written communications shall be deemed to be received if they are delivered to the addressee's last-known place of business, habitual residence, or mailing address.

4.5 Any application under these Rules shall be delivered to all other parties, the Tribunal, and the SIAC Secretariat with confirmation of the date and mode of delivery.

4.6 Any written communication to the parties shall be deemed to have been received by the parties on the day that it was delivered in accordance with Rule 4.3 or Rule 4.4.

5. Periods of Time

5.1 For the purpose of calculating any period of time under these Rules, such period shall commence from the day following the receipt of a written communication or the deemed receipt of such written communication. Unless the Registrar or the Tribunal determines otherwise, any period of time under these Rules is to be calculated with reference to Singapore Standard Time (GMT +8).

5.2 Any statutory holidays or non-business days at the place of receipt shall be included in the calculation of any period of time under these Rules. If the last day of any period of time under these Rules is a statutory holiday or non-business day at the place of receipt, the period of time shall be extended until the first business day at the place of receipt which follows.

5.3 Except as otherwise provided in these Rules, the Registrar may at any time extend or abridge any period of time under these Rules.

SECTION II. COMMENCEMENT OF ARBITRATION

6. Notice of Arbitration

6.1 The Claimant shall deliver a Notice of Arbitration to the Registrar and the Respondent. Subject to compliance with Rule 4 of these Rules, the Claimant may file the Notice online with the SIAC Secretariat through SIAC Gateway.

6.2 The date on which the Notice is received by the Registrar shall be deemed to be the date of commencement of the arbitration. The SIAC Secretariat shall notify the parties of the commencement of the arbitration.

6.3 The Notice shall include the following:

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

(b) the identity and contact details of the parties to the arbitration and their representatives, if any;

(c) the date and mode of delivery of the Notice to the Respondent;

(d) a copy or description of the arbitration agreement invoked;

(e) a copy or description of the contract, treaty or other instrument out of or in connection with which the dispute arises;

(f) a statement describing the nature and circumstances of the dispute, including the relief sought and an initial estimate of the claim amount;

(g) any comment as to the applicable rules of law, seat of the arbitration, language of the arbitration, number of arbitrators, and procedure for the constitution of the Tribunal;

(h) a statement on the existence of any third-party funding agreement and the identity and contact details of the third-party funder; and

(i) payment of the Claim Filing Fee.

6.4 The Notice may include:

(a) any comment on the adoption of amicable dispute resolution methods such as mediation under the SIAC-SIMC AMA Protocol for the settlement of all or part of the dispute; and

(b) the Statement of Claim in accordance with Rule 33.2.

6.5 The Registrar shall determine whether the Notice complies or substantially complies with the requirements under Rule 6.3.

6.6 If the Registrar determines that the Notice does not comply or substantially comply with any of the requirements under Rule 6.3, or the Claim Filing Fee is not paid upon the filing of the Notice, the Registrar may set a period of time for the Claimant to remedy the deficiency in the Notice or to make payment of the Claim Filing Fee. If the Claimant fails to do so within the period of time set by the Registrar, the Registrar may terminate the arbitration without prejudice to the Claimant filing a Notice in another proceeding.

7. Response to the Notice of Arbitration

7.1 The Respondent shall deliver a Response to the Notice to the Registrar and the Claimant within 14 days from the date of commencement of the arbitration or the date of the Respondent's receipt of the Notice, whichever is later. The Response shall include the following:

(a) the identity and contact details of the Respondent and its representatives;

(b) the date and mode of delivery of the Response to the Claimant;

(c) a brief statement describing the nature and circumstances of the dispute and a confirmation or denial of all or part of the claims;

(d) any objection to jurisdiction under Rule 8.1 and/or Rule 31.2;

(e) a statement describing the nature and circumstances of any counterclaim, cross-claim, or set-off, including the relief claimed and an initial estimate of the claim amount;

(f) any comment as to the applicable rules of law, seat of the arbitration, language of the arbitration, number of arbitrators, and procedure for the constitution of the Tribunal; and

(g) a statement on the existence of any third-party funding agreement and the identity and contact details of the third-party funder.

7.2 If the Claimant has filed a Statement of Claim with the Notice pursuant to Rule 6.4, the Respondent may, but is not required to, include a Statement of Defence and Statement of Counterclaim in accordance with Rule 33.3.

7.3 The Response may include any comment on the adoption of amicable dispute resolution methods such as mediation under the SIAC-SIMC AMA Protocol for the settlement of all or part of the dispute.

7.4 The failure of the Respondent to submit its Response will not prevent the SIAC Court, the President, the Vice President, the Registrar, or the SIAC Secretariat from making any decision under these Rules and proceeding with the administration of the arbitration.

8. *Prima Facie* Jurisdictional Objection

8.1 If the Respondent fails to submit a Response, or any party objects to the existence, validity, or applicability of the arbitration agreement, the arbitration shall proceed and any question of jurisdiction shall be determined by the Tribunal unless the Registrar determines, prior to the constitution of the Tribunal, that the matter shall be referred to the SIAC Court for a *prima facie* determination under Rule 8.2.

8.2 Where the Registrar refers a matter to the SIAC Court under Rule 8.1, the SIAC Court shall determine, on a *prima facie* basis, whether and to what extent the arbitration shall proceed. Any decision by the Registrar or the SIAC Court that the arbitration shall proceed is without prejudice to the power of the Tribunal to rule on its own jurisdiction.

8.3 In the event that the SIAC Court determines that the arbitration shall not proceed, in whole or in part, the Registrar shall terminate the arbitration in accordance with the decision of the SIAC Court.

9. Amendments to the Notice or Response

9.1 Prior to the constitution of the Tribunal, a party may amend, modify, or supplement the Notice, the Response, or any procedural application under these Rules with the leave of the Registrar.

10. Representation

10.1 A party may be self-represented or represented or assisted by any person of its choice, including legal counsel, advocates, agents, or any other authorised representatives, subject to any applicable law.

10.2 Prior to the constitution of the Tribunal, the Registrar may direct any party representative to provide proof of authority in a form to be determined by the Registrar. Any question as to the validity of this proof of authority shall ultimately be determined by the Tribunal.

10.3 Prior to the constitution of the Tribunal, any change or addition by a party to its representatives must be communicated to the Registrar and the other parties.

10.4 After the constitution of the Tribunal, the Tribunal may direct any party representative to provide proof of authority in a form to be determined by the Tribunal.

10.5 After the constitution of the Tribunal, any change by a party to its representatives must be first proposed to the Tribunal. The Tribunal may, after considering the views of the parties, allow the proposed change of representatives. The Tribunal may withhold approval of any proposed change to a party's representatives where such change could compromise the composition of the Tribunal or the integrity of the proceedings. In considering such a proposal, the Tribunal shall take into account, *inter alia*, the general principle that a party may be represented by a representative of its choice, the stage which the arbitration has reached, and the efficiency likely to result from maintaining the composition of the Tribunal.

11. Administrative Conference

11.1 Prior to the constitution of the Tribunal, the Registrar may, at his or her discretion, conduct administrative conferences with the parties to discuss any procedural or administrative directions to be made by the Registrar under these Rules. The administrative conference may be conducted by videoconference, teleconference, or any other form of electronic communication.

SECTION III. PROCEDURAL APPLICATIONS

12. Emergency Arbitrator

12.1 Prior to the constitution of the Tribunal, a party may apply for the appointment of an Emergency Arbitrator in accordance with the procedure set out in Schedule 1.

13. Streamlined Procedure

13.1 The arbitration shall be conducted in accordance with the Streamlined Procedure set out in Schedule 2 where:

(a) the parties have agreed to the application of the Streamlined Procedure prior to the constitution of the Tribunal; or

(b) the amount in dispute in the arbitration does not exceed the equivalent amount of S$1,000,000 prior to the constitution of the Tribunal, unless the President determines upon application of a party that the Streamlined Procedure shall not apply to the arbitration.

13.2 The SIAC Secretariat shall inform the parties where the arbitration is to be conducted in accordance with the Streamlined Procedure pursuant to Rule 13.1.

13.3 The parties may agree to exclude the application of this Rule 13, by agreement in writing.

14. Expedited Procedure

14.1 The arbitration shall be conducted in accordance with the Expedited Procedure set out in Schedule 3 where the parties have agreed to the application of the Expedited Procedure prior to the constitution of the Tribunal. Unless the parties have agreed to a previous edition of the SIAC Rules, any agreement by the parties to the application of the Expedited Procedure under a previous rule reference shall be deemed to be an agreement for the application of the Expedited Procedure for the purpose of this rule.

14.2 At the time of filing the Notice or the Response, or at any time prior to the constitution of the Tribunal, a party may file an application with the Registrar for the arbitration to be conducted in accordance with the Expedited Procedure where:

(a) at the time of the application, the amount in dispute does not exceed the equivalent amount of S$10,000,000 but exceeds the equivalent amount of S$1,000,000;

(b) at the time of the application, the amount in dispute does not exceed the equivalent amount of S$1,000,000 and the President has determined under Rule 13.1(b) that the Streamlined Procedure shall not apply to the arbitration; or

(c) the circumstances of the case warrant the application of the Expedited Procedure.

14.3 The President shall, after considering the views of the parties, determine whether to grant an application under Rule 14.2. Where the President grants the application, the Expedited Procedure set out in Schedule 3 shall apply.

14.4 The parties may agree to exclude the application of this Rule 14, by agreement in writing.

15. Multiple Contracts

15.1 Where disputes arise out of or in connection with more than one arbitration agreement, the Claimant shall:

(a) file a separate Notice in respect of each arbitration agreement invoked;

(b) file a separate Notice in respect of each arbitration agreement invoked and concurrently submit an application to consolidate the arbitrations in accordance with Rule 16.1; or

(c) file a single Notice in respect of all the arbitration agreements invoked and the Notice shall be deemed to be an application to consolidate all such arbitrations in accordance with Rule 16.1. In addition to the requirements under Rule 6.3, the Notice shall include a statement identifying the relevant contracts and the claims arising out of or in connection with each arbitration agreement invoked.

15.2 Subject to compliance with Rule 6.3, the Claimant shall be deemed to have commenced multiple arbitrations, one in respect of each arbitration agreement invoked, and the Registrar shall assign a separate case reference for each arbitration agreement invoked.

15.3 Where the Claimant has filed the Notices pursuant to Rule 15.1(b), the Registrar shall accept payment of a single Claim Filing Fee for all the arbitrations sought to be consolidated. If the SIAC Court rejects the application for consolidation under Rule 16.4, in whole or in part, the Claimant shall be required to make payment of the Claim Filing Fee in respect of each case reference that was not consolidated.

15.4 Where the Claimant has filed a single Notice pursuant to Rule 15.1(c), the Registrar shall accept payment of a single Claim Filing Fee for all the arbitrations sought to be consolidated. If the SIAC Court rejects the application for consolidation under Rule 16.4, in whole or in part, the Claimant shall file a Notice in accordance with Rule 6 and make payment of the Claim Filing Fee in respect of each case reference that was not consolidated.

16. Consolidation

16.1 Prior to the constitution of any Tribunal in the arbitrations sought to be consolidated, a party may file an application with the Registrar to consolidate two or more arbitrations filed under Rule 15.1, or otherwise pending under these Rules, into a single arbitration where:

(a) all parties have agreed to the consolidation;

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

(c) the arbitration agreements are compatible, and: (i) the disputes arise out of or in connection with the same legal relationship(s); (ii) the disputes arise out of or in connection with contracts consisting of a principal contract and its ancillary contract(s); or (iii) the disputes arise out of or in connection with the same transaction or series of transactions.

16.2 An application for consolidation under Rule 16.1 shall include:

(a) the date and mode of delivery of the application on all parties and any appointed arbitrators;

(b) the case reference numbers of the arbitrations sought to be consolidated, where available;

(c) the identity and contact details of the parties and their representatives, and any arbitrators who have been nominated or appointed in the arbitrations sought to be consolidated;

(d) the information specified in Rule 6.3(d) and Rule 6.3(e);

(e) a statement on the existence of any third-party funding agreement in respect of the arbitrations sought to be consolidated and the identity and contact details of the third-party funder; and

(f) a statement of the facts and legal basis supporting the application.

16.3 The Registrar may order a stay of any of the arbitrations sought to be consolidated pending the decision of the SIAC Court on the application for consolidation.

16.4 The SIAC Court shall, after considering the views of the parties, decide whether to grant, in whole or in part, an application for consolidation under Rule 16.1. Where an application for consolidation is made under Rule 16.1(a) by agreement of all parties, the President shall decide the application and the decision of the President shall be deemed to be a decision of the SIAC Court.

16.5 The SIAC Court's decision to grant an application for consolidation under Rule 16.4 is without prejudice to the Tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision. The SIAC Court's decision to reject an application for consolidation under Rule 16.4 is without prejudice to any party's right to apply to the Tribunal for consolidation pursuant to Rule 16.8. Any arbitrations that are not consolidated shall continue as separate arbitrations.

16.6 Where the SIAC Court decides to consolidate two or more arbitrations under Rule 16.4, the arbitrations shall be consolidated into the arbitration that is deemed by the Registrar to have commenced first, unless otherwise agreed by all parties or the SIAC Court decides otherwise. For the purpose of the administration of the consolidated arbitration, the SIAC Court will designate the parties in the consolidated arbitration as claimant(s) and respondent(s).

16.7 Where an application for consolidation is granted under Rule 16.4, the President may, after considering the views of the parties, revoke the appointment of any arbitrators who were appointed prior to the SIAC Court's decision on consolidation. Unless the Registrar determines otherwise, the appointment provisions under these Rules shall apply as appropriate, and any timelines thereunder shall run from the date of receipt of the SIAC Court's decision under Rule 16.4.

16.8 After the constitution of a Tribunal in any of the arbitrations sought to be consolidated, a party may apply to the Tribunal to consolidate two or more arbitrations pending under these Rules into a single arbitration where:

(a) all parties have agreed to the consolidation;

(b) all the claims, counterclaims, and cross-claims in the arbitrations are made under the same arbitration agreement, and the same Tribunal has been constituted in each of the arbitrations or no Tribunal has been constituted in the other arbitration(s); or

(c) the arbitration agreements are compatible, the same Tribunal has been constituted in each of the arbitrations or no Tribunal has been constituted in the other arbitration(s), and: (i) the disputes arise out of or in connection with the same legal relationship(s); (ii) the disputes arise out of or in connection with contracts consisting of a principal contract and its ancillary contract(s); or (iii) the disputes arise out of or in connection with the same transaction or series of transactions.

16.9 Subject to any specific directions of the Tribunal, the provisions of Rule 16.2 shall apply, *mutatis mutandis*, to an application for consolidation under Rule 16.8.

16.10 The Tribunal shall, after giving all parties the opportunity to be heard, decide whether to grant, in whole or in part, an application for consolidation under Rule 16.8. The Tribunal's decision to grant an application for consolidation under this Rule 16.10 is without prejudice to the Tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision. Any arbitrations that are not consolidated shall continue as separate arbitrations.

16.11 Where an application for consolidation is granted under Rule 16.10, the President may, after considering the views of the parties, revoke the appointment of any arbitrators who were appointed prior to the Tribunal's decision on consolidation.

16.12 The President's decision to revoke the appointment of any arbitrator under Rule 16.7 or Rule 16.11 is without prejudice to the validity of any act done or any decision, ruling, order, or award made by the arbitrator before his or her appointment was revoked.

16.13 Where an application for consolidation is granted under Rule 16.4 or Rule 16.10, any party which did not have the opportunity to nominate an arbitrator or otherwise participate in the constitution of the Tribunal shall be deemed to have waived any such right, without prejudice to the right of such party to challenge an arbitrator pursuant to Rule 26.

17. Coordinated Proceedings

17.1 Where the same Tribunal is constituted in two or more arbitrations, and a common question of law or fact arises out of or in connection with all the arbitrations, a party to the arbitrations may apply to the Tribunal for the arbitrations to be coordinated such that:

(a) the arbitrations shall be conducted concurrently or sequentially;

(b) the arbitrations shall be heard together and any procedural aspects shall be aligned; or

(c) any of the arbitrations shall be suspended pending a determination in any of the other arbitrations.

17.2 The Tribunal shall determine the application under Rule 17.1 after giving all parties to the arbitrations an opportunity to be heard and having regard to the obligations of confidentiality under Rule 59.

17.3 Unless otherwise agreed by the parties, any coordinated arbitrations shall remain separate proceedings, and the Tribunal shall issue separate decisions, rulings, orders, and awards in each arbitration.

18. Joinder

18.1 At the time of filing the Notice or the Response, or at any time prior to the constitution of the Tribunal, a party or non-party to the arbitration may file an application with the Registrar for the joinder of one or more additional parties to an arbitration pending under these Rules as a claimant or a respondent (each, an "additional party") where:

(a) all parties, including the additional party, have agreed to the joinder of the additional party; or

(b) the additional party is *prima facie* bound by the arbitration agreement.

18.2 An application for joinder under Rule 18.1 shall include:

(a) the date and mode of delivery of the application to all parties, including the additional party;

(b) the case reference number of the pending arbitration;

(c) the identity and contact details of all parties, including the additional party, and their representatives;

(d) submissions on whether the additional party shall be designated as a claimant or a respondent;

(e) the information specified in Rule 6.3(d) and Rule 6.3(e);

(f) a statement on the existence of a third-party funding agreement in respect of any party including the additional party, and the identity and contact details of the third-party funder;

(g) a statement of the facts and legal basis supporting the application; and

(h) payment of the Joinder Filing Fee.

18.3 The Registrar shall determine whether the application for joinder complies or substantially complies with the requirements under Rule 18.2. The SIAC Secretariat shall notify all parties, including the additional party, when the application for joinder is complete.

18.4 If the Registrar determines that the application for joinder does not comply or substantially comply with any of the requirements under Rule 18.2, or if the Joinder Filing Fee is not paid upon the filing of the application, the Registrar may set a period of time for the deficiency in the application to be remedied. If the applicant fails to do so within the period of time set by the Registrar, the Registrar may deem the application to be withdrawn on a without prejudice basis.

18.5 The SIAC Court shall, after considering the views of all parties, including the additional party, decide whether to grant, in whole or in part, an application for joinder under Rule 18.1. Where an application for joinder is made under Rule 18.1(a) by agreement of all parties (including the additional party), the President shall decide the application and the decision of the President shall be deemed to be a decision of the SIAC Court.

18.6 The SIAC Court's decision to grant an application for joinder under Rule 18.5 is without prejudice to the Tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision. The SIAC Court's decision to reject an application for joinder under Rule 18.5 is without prejudice to any party's or non-party's right to apply to the Tribunal for joinder in accordance with Rule 18.10.

18.7 Where an application for joinder is granted under Rule 18.5, the date of receipt by the Registrar of the complete joinder application shall be deemed to be the date of commencement of the arbitration in respect of the additional party.

18.8 Where an application for joinder is granted under Rule 18.5, the President may revoke the appointment of any arbitrators who were appointed prior to the SIAC Court's decision on joinder. Unless the Registrar determines otherwise, the appointment provisions under these Rules shall apply as appropriate, and any timelines thereunder shall run from the date of receipt of the SIAC Court's decision under Rule 18.5.

18.9 The President's decision to revoke the appointment of any arbitrator under Rule 18.8 is without prejudice to the validity of any act done or any decision, ruling, order, or award made by the arbitrator before his or her appointment was revoked.

18.10 After the constitution of the Tribunal, a party or non-party to the arbitration may apply to the Tribunal for the joinder of one or more additional parties to an arbitration pending under these Rules as a claimant or a respondent (each, an "additional party") where:

(a) all parties, including the additional party, have agreed to the joinder of the additional party; or

(b) the additional party is *prima facie* bound by the arbitration agreement.

18.11 Subject to any specific directions of the Tribunal, the provisions of Rule 18.2 shall apply, *mutatis mutandis*, to an application for joinder under Rule 18.10. Where appropriate, an application to the Tribunal under Rule 18.10 may be filed with the Registrar who shall deliver the application to the Tribunal.

18.12 The Tribunal shall, after giving all parties, including the additional party, the opportunity to be heard, decide whether to grant, in whole or in part, an application for joinder under Rule 18.10.

18.13 The Tribunal's decision to grant an application for joinder under Rule 18.12 is without prejudice to the Tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision.

18.14 Where an application for joinder is granted under Rule 18.12, the date of receipt by the Registrar or the Tribunal, as the case may be, of the complete joinder application shall be deemed to be the date of commencement of the arbitration in respect of the additional party.

18.15 Where an application for joinder is granted, in whole or in part, under Rule 18.5 or Rule 18.12, any party which did not have the opportunity to nominate an arbitrator or otherwise participate in the constitution of the Tribunal shall be deemed to have waived any such right, without prejudice to the right of such party to challenge an arbitrator pursuant to Rule 26.

18.16 Where an application for joinder is granted under Rule 18.5 or Rule 18.12, the parties and additional party may make claims, counterclaims, cross-claims, or set-offs against any other party in accordance with the provisions set out in Rule 6 and Rule 7.

SECTION IV. CONSTITUTION OF THE TRIBUNAL

19. Rules on Appointment

19.1 Unless otherwise agreed by the parties, the Tribunal shall comprise one or three arbitrators. In the event that the parties have not agreed on the number of arbitrators, a sole arbitrator shall be appointed unless the Registrar determines, after considering the views of the parties, that the dispute warrants the appointment of three arbitrators.

19.2 If the parties have agreed that an arbitrator is to be appointed by any or all of the parties, the arbitrators already appointed, or any third person, body or organisation, that agreement shall be deemed an agreement to nominate an arbitrator under these Rules and shall be subject to appointment by the President in accordance with Rule 19.4.

19.3 The President may appoint any arbitrator whose appointment has been suggested or proposed by any or all of the parties, the arbitrators already appointed, or any third person, body or organisation.

19.4 In all cases, any arbitrator nominated by any or all of the parties, the arbitrators already appointed, or any third person, body or organisation, shall be subject to appointment by the President. The President may, after considering the views of the parties, the arbitrators already appointed, or the relevant third person, body or organisation, refuse to appoint any arbitrator under this Rule 19.4.

19.5 In appointing an arbitrator under these Rules, the President shall take into account any agreed qualifications and such considerations that are relevant to the impartiality or independence of the arbitrator.

19.6 The President shall consider whether the arbitrator has sufficient availability to conduct the arbitration in a prompt and efficient manner appropriate to the nature of the dispute.

19.7 Where the parties are of different nationalities, the President shall appoint a sole arbitrator or a presiding arbitrator of a different nationality than the parties, unless the parties have otherwise agreed or the President determines it to be appropriate otherwise, taking into account any proposals by the parties and the circumstances of the case.

19.8 The Registrar may, after considering the views of the parties, extend any timelines for appointment prescribed under these Rules or otherwise agreed by the parties.

19.9 If, under the terms of an appointment procedure agreed by the parties, the appointment cannot be effected on those terms, the President shall appoint the arbitrator(s).

19.10 If, under the terms of an appointment procedure agreed by the parties, there is a substantial risk of unequal treatment that may risk affecting the validity or enforceability of the award, the President may, after considering the views of the parties, take any necessary measure to constitute an independent and impartial Tribunal. In such case, each party shall be deemed to have waived any right to nominate an arbitrator or otherwise participate in the constitution of the Tribunal, and the President may revoke the appointment of any arbitrators.

19.11 The terms of appointment of each arbitrator shall be fixed by the Registrar in accordance with these Rules and the *Practice Notes* for the time being in force. Prior to the constitution of the Tribunal, the parties may agree to alternative methods of determining the Tribunal's fees. No change to the method of determining the Tribunal's fees will be allowed after the constitution of the Tribunal.

19.12 The Tribunal shall be deemed to be constituted on the date so notified by the SIAC Secretariat to the parties.

19.13 Any decision by the President or the Registrar on appointment shall be final and not subject to appeal.

20. Disclosure

20.1 All arbitrators appointed under these Rules shall be and shall remain at all times independent and impartial, and conduct themselves in accordance with these Rules, SIAC's *Code of Ethics* and the *Practice Notes* for the time being in force. All arbitrators appointed under these Rules must sign a Statement of Acceptance, Independence, Impartiality, and Availability.

20.2 Prior to their appointment, prospective arbitrators shall disclose in writing to the Registrar any circumstances which may give rise to justifiable doubts as to their impartiality or independence and indicate if they do not possess any qualifications agreed by the parties.

20.3 After their appointment, arbitrators have a continuing obligation to immediately disclose in writing to the Registrar, the parties, and the other arbitrators any circumstances which may give rise to justifiable doubts as to their impartiality or independence.

21. Sole Arbitrator

21.1 Where a sole arbitrator is to be appointed, the parties may jointly nominate the sole arbitrator within 21 days from the date of commencement of the arbitration or within the period of time otherwise agreed by the parties or set by the Registrar.

21.2 If the parties are not able to jointly nominate the sole arbitrator within 21 days from the date of commencement of the arbitration or within the period of time otherwise agreed by the parties or set by the Registrar, the President shall appoint the sole arbitrator.

22. Three Arbitrators

22.1 Where three arbitrators are to be appointed, the Claimant shall nominate an arbitrator within 14 days from the date of commencement of the arbitration or within the period of time otherwise agreed by the parties or set by the Registrar, and the Respondent shall nominate an arbitrator within 14 days of the receipt of the Claimant's nomination of an arbitrator or within the period of time otherwise agreed by the parties or set by the Registrar.

22.2 If a party fails to nominate an arbitrator within the timelines under Rule 22.1, the President shall appoint an arbitrator on its behalf.

22.3 The presiding arbitrator shall be appointed by the President, unless the parties have agreed upon another procedure for the nomination of the presiding arbitrator or if such agreed procedure does not result in a nomination of the presiding arbitrator within the period agreed by the parties or set by the Registrar.

23. Multi-Party Appointment of Three Arbitrators

23.1 Where there are more than two parties to the arbitration and three arbitrators are to be appointed, the Claimant(s) shall jointly nominate an arbitrator and the Respondent(s) shall jointly nominate an arbitrator within 28 days from the date of commencement of the arbitration or within the period of time otherwise agreed by the parties or set by the Registrar. The presiding arbitrator shall be appointed in accordance with Rule 22.3.

23.2 In the absence of joint nominations from both the Claimant(s) and the Respondent(s) having been made within 28 days from the date of commencement of the arbitration or within the period otherwise agreed by the parties or set by the Registrar, the President shall appoint all three arbitrators and designate the presiding arbitrator.

24. Tribunal Secretary

24.1 In accordance with this Rule 24 and the *Practice Notes* for the time being in force:

(a) the Tribunal may, after considering the views of the parties and in consultation with the Registrar, appoint a Tribunal Secretary; or

(b) the Tribunal may, after considering the views of the parties and with the approval of the Registrar, appoint a member of the SIAC Secretariat as a Tribunal Secretary.

24.2 The duties of disclosure under Rule 20 shall apply, *mutatis mutandis*, to the appointment of any Tribunal Secretary.

24.3 The Tribunal shall not delegate any of its decision-making functions to the Tribunal Secretary. All tasks carried out by the Tribunal Secretary shall be carried out on behalf of, and under the supervision of, the Tribunal.

24.4 A Tribunal Secretary may be removed by the Tribunal. Where a member of the SIAC Secretariat is appointed as a Tribunal Secretary, the Tribunal shall consult with the Registrar before removing the Tribunal Secretary.

24.5 A party who wishes to challenge a Tribunal Secretary shall file a Notice of Challenge within 7 days from the date of the notice of appointment of the Tribunal Secretary or within 7 days from the date that the circumstances specified in Rule 26.1 which apply herein *mutatis mutandis*, became known or should have reasonably been known to that party.

24.6 Any challenge to the Tribunal Secretary shall be decided by the President after considering the views of the parties, the challenged Tribunal Secretary, and the Tribunal. The President shall not be required to provide reasons for the decision. The President's decision on any challenge to a Tribunal Secretary shall be final and not subject to appeal under these Rules.

24.7 In the event of the death, incapacity, resignation, withdrawal, or removal of a Tribunal Secretary during the course of the arbitration, a substitute Tribunal Secretary may be appointed in accordance with the procedure set out in Rule 24.1 and the *Practice Notes* for the time being in force.

24.8 The Tribunal shall determine the terms of appointment of the Tribunal Secretary in accordance with the *Practice Notes* for the time being in force and after considering the views of the parties.

25. Communications with the Tribunal

25.1 All communications from the parties to the Tribunal shall be made in accordance with Rule 4 and any relevant direction by the Tribunal.

25.2 Prior to the constitution of the Tribunal, a party or its representative shall not engage in any *ex parte* communications relating to the arbitration with any prospective arbitrator, including any candidate for appointment as a party-nominated arbitrator, except to:

(a) discuss the general nature of the dispute and of the anticipated proceedings;

(b) discuss the candidate's qualifications, availability, or independence, in respect of the prospective appointment; or

(c) discuss the suitability of candidates for selection as the presiding arbitrator where the parties or party-nominated arbitrators are, by agreement of the parties, to participate in that process.

A party or its representative shall not engage in any *ex parte* communications relating to the arbitration with any candidate for presiding arbitrator.

25.3 After the constitution of the Tribunal, a party or its representative shall not engage in any *ex parte* communications relating to the arbitration with any arbitrator.

SECTION V. CHALLENGE, REMOVAL AND REPLACEMENT OF ARBITRATORS

26. Challenge of Arbitrators

26.1 An arbitrator may be challenged if:

(a) circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence;

(b) the arbitrator does not possess any requisite qualification on which the parties have agreed; or

(c) the arbitrator becomes *de jure* or *de facto* unable to perform his or her functions.

26.2 A party may challenge its nominated arbitrator under Rule 26.1 only for reasons of which the party becomes aware after the appointment has been made.

27. Notice of Challenge

27.1 A party who wishes to challenge an arbitrator shall file a notice of challenge with the Registrar:

(a) within 15 days from the date of receipt of the notice of appointment of the arbitrator who is being challenged; or

(b) within 15 days from the date that the reasons specified in Rule 26.1 became known or should have reasonably been known to that party.

27.2 The notice of challenge shall include a statement of the facts and legal basis supporting the challenge and shall include payment of the Challenge Filing Fee in accordance with the Schedule of Fees. The date of receipt of the notice of challenge by the Registrar shall be deemed to be the date the notice of challenge is filed.

27.3 If the Challenge Filing Fee is not paid upon the filing of the application, the Registrar may set a period of time for the challenging party to make payment. If payment is not made within this period of time, the Registrar may deem the application to be withdrawn on a without prejudice basis.

27.4 After receipt of a notice of challenge under Rule 27.1, the Registrar may order the suspension of the arbitration until the challenge is resolved. Unless the Registrar orders the suspension of the arbitration pursuant to this Rule 27.4, the challenged arbitrator shall be entitled to continue to participate in the arbitration pending the determination of the challenge by the SIAC Court in accordance with Rule 28.

27.5 If within seven (7) days from the date the notice of challenge is filed, all other parties agree to the challenge or the challenged arbitrator voluntarily withdraws from office, the SIAC Court may direct that a substitute arbitrator be appointed in accordance with Rule 30.1. In neither case does this imply acceptance of the validity of the grounds for the challenge.

28. Decision on Challenge

28.1 If the challenge is not resolved in accordance with Rule 27.5, the SIAC Court shall decide the challenge after considering the views of the parties, the challenged arbitrator, and any appointed arbitrators.

28.2 If the SIAC Court accepts the challenge, the SIAC Court shall remove the arbitrator, and a substitute arbitrator shall be appointed in accordance with Rule 30.1.

28.3 If the SIAC Court rejects the challenge, the challenged arbitrator shall continue with the arbitration.

28.4 The SIAC Court's decision on the challenge to an arbitrator under this Rule 28 shall be reasoned and shall be delivered by the SIAC Secretariat to the parties, the challenged arbitrator, and the Tribunal or any appointed arbitrators.

28.5 The SIAC Court's decision on the challenge shall be final and not subject to appeal under these Rules.

28.6 If a challenge is filed against an arbitrator who is a member of the SIAC Board or the SIAC Court, a Committee of the SIAC Court shall be constituted to decide the challenge which shall include one member who is not a member of the SIAC Board or the SIAC Court.

28.7 The parties shall be deemed to have agreed that SIAC may publish any decision of the SIAC Court on a challenge, with the names of the parties and all other identifying information redacted.

29. Removal

29.1 The SIAC Court may remove an arbitrator, after considering the views of the parties, the arbitrator whose removal is being considered, and the other arbitrators, if the SIAC Court determines that:

(a) the arbitrator has not complied with these Rules, the SIAC *Code of Ethics,* or the *Practice Notes* for the time being in force; or

(b) the arbitrator has not conducted, or participated in, the arbitration in a manner that ensures the fair, expeditious, and economical resolution of the dispute.

30. Replacement

30.1 Except as otherwise provided in these Rules, in the event of the death, incapacity, resignation, withdrawal, or removal of an arbitrator by the SIAC Court during the course of the arbitration, a substitute arbitrator shall be appointed in accordance with the procedure applicable to the nomination and appointment of the arbitrator being replaced. This procedure shall apply even if, during the process of appointing the arbitrator, a party failed to exercise its right to nominate an arbitrator. The time limits applicable to the nomination and appointment of the substitute arbitrator shall commence from the date of receipt by the parties of the notification of the arbitrator's death, incapacity, resignation, withdrawal, or removal.

30.2 Where the Tribunal comprises three or more arbitrators, the SIAC Court may determine, as appropriate and after considering the views of the parties and the remaining arbitrators, that the remaining arbitrators shall proceed with the arbitration without appointing a substitute arbitrator under Rule 30.1.

30.3 If any arbitrator is replaced under these Rules, the Tribunal shall decide, after considering the views of the parties, whether any hearings held previously shall be repeated. Unless the Tribunal decides otherwise after considering the views of the parties, any hearings held previously relating solely to a decision, ruling, order, or award shall not be repeated and the decision, ruling, order, or award shall remain in effect.

SECTION VI. THE PROCEEDINGS

31. Jurisdiction of the Tribunal

31.1 The Tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, validity, applicability, or scope of the arbitration agreement. An arbitration agreement which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is non-existent or null and void shall not entail automatically the invalidity of the arbitration agreement.

31.2 Any objection that:

(a) the Tribunal does not have jurisdiction shall be raised no later than in a Statement of Defence or with respect to a counterclaim, in a Statement of Defence to a Counterclaim; or

(b) the Tribunal is exceeding the scope of its jurisdiction shall be raised within 15 days from the date that the matter alleged to be beyond the scope of the Tribunal's jurisdiction arises during the arbitration.

The Tribunal may admit an objection raised by a party outside the time limits under this Rule 31.2 if it considers the delay to be justified. A party is not precluded from raising an objection under this Rule 31.2 by the fact that it has nominated, or participated in the nomination of, an arbitrator.

31.3 The Tribunal may rule on an objection referred to in Rule 31.2 either as a preliminary question or in a decision or award on the merits.

32. Conduct of the Proceedings

32.1 The parties and the Tribunal shall be deemed to have agreed that the arbitration is to be conducted with diligence and professionalism and further to the principles set out in Rule 3.5(a) – Rule 3.5(c).

32.2 The Tribunal shall have the power to conduct the arbitration in such manner as it considers appropriate. In exercising its procedural discretion, the Tribunal shall at all times act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.

32.3 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 a determination.

32.4 As soon as practicable after the constitution of the Tribunal, the Tribunal shall convene a first case management conference with the parties to discuss the procedures that will be most appropriate and efficient for the case. At the first case management conference, the Tribunal may additionally consult with the parties on:

(a) the potential for the settlement of all or part of the dispute, including through the adoption of amicable dispute resolution methods such as mediation under the SIAC-SIMC AMA Protocol; and

(b) whether it would be appropriate to adopt environmentally sustainable procedures for the arbitration.

32.5 Any case management conference may be conducted in-person, in hybrid form, or by videoconference, teleconference, or any other form of electronic communication.

32.6 The Tribunal shall have the power to direct and schedule the order of proceedings, bifurcate proceedings, order page limits on submissions, exclude cumulative or irrelevant testimony or other evidence and direct the parties to focus their presentations on issues the determination of which could dispose of all or part of the case.

32.7 Unless otherwise agreed by the parties, the presiding arbitrator may make procedural rulings alone, subject to any later revision by the full Tribunal.

32.8 The President may request the parties and the Tribunal to attend an administrative conference to identify and discuss the procedures that will be most appropriate and efficient for the case. The administrative conference may be conducted by videoconference, teleconference, or any other form of electronic communication.

33. Written Submissions

33.1 Unless the Tribunal determines otherwise, after considering the views of the parties, the submission of written submissions shall proceed as set out in this Rule 33.

33.2 Unless already submitted pursuant to Rule 6.4, the Claimant shall, within a period of time to be determined by the Tribunal, deliver to the Respondent, the Tribunal, and the SIAC Secretariat, a Statement of Claim setting out:

(a) a statement of facts supporting the claim;

(b) the legal grounds or arguments supporting the claim; and

(c) the relief sought.

33.3 Unless already submitted pursuant to Rule 7.2, the Respondent shall, within a period of time to be determined by the Tribunal, deliver to the Claimant, the Tribunal, and the SIAC Secretariat, a Statement of Defence (and Statement of Counterclaim, if any) setting out:

(a) a statement of facts supporting the defence to the Statement of Claim and the Statement of Counterclaim (if any);

(b) the legal grounds or arguments supporting the defence, counterclaim, cross-claim, or set-off; and

(c) the relief sought.

33.4 If a Statement of Counterclaim is submitted, the Claimant shall, within a period of time to be determined by the Tribunal, deliver to the Respondent, the Tribunal, and the SIAC Secretariat, a Statement of Defence to Counterclaim setting out:

(a) a statement of facts supporting the Statement of Defence to Counterclaim;

(b) the legal grounds or arguments supporting the defence, cross-claim, or set-off; and

(c) the relief sought.

33.5 A party may amend its claim or defence, including a counterclaim, cross-claim, or set-off with leave of the Tribunal. The Tribunal shall grant such leave unless it considers it inappropriate to allow such amendment having regard to when it is requested or the prejudice to the other parties or any other circumstances. A claim or defence, including a counterclaim, cross-claim, or set-off, may not be amended in such a manner that the amended claim or defence, including a counterclaim, cross-claim, or set-off, falls outside the scope of the arbitration agreement.

33.6 The Tribunal may, after considering the views of the parties, decide which further written submissions are required from the parties or may be presented by them.

33.7 All submissions referred to in this Rule 33 shall be accompanied by copies of all supporting documents which have not previously been submitted by any party. The Tribunal may direct, after considering the views of the parties, that written submissions shall be accompanied by copies of supporting witness statements and expert reports.

34. Issues for Determination

34.1 The Tribunal shall, in consultation with the parties, and at the appropriate stages of the arbitration, use reasonable efforts to identify the issues to be determined in the arbitration and record them in a procedural order.

35. Applicable Law

35.1 The Tribunal shall apply the law or rules of law chosen by the parties as applicable to the substance of the dispute. Failing such choice by the parties, the Tribunal shall apply the law or rules of law which it determines to be appropriate.

35.2 The Tribunal shall make decisions in accordance with the terms of the contract and shall take into account any applicable usages of trade applicable to the relevant transactions.

35.3 The Tribunal shall assume the powers of an *amiable compositeur* or decide *ex aequo et bono* only if the parties have expressly authorised it to do so.

36. Seat of the Arbitration

36.1 The parties may agree on the seat of the arbitration. Failing such an agreement, the Tribunal shall determine the seat of arbitration.

37. Language of the Arbitration

37.1 The parties may agree on the language or languages of the arbitration. Failing such an agreement, the Tribunal shall determine the language or languages of the arbitration.

37.2 If a party submits a document written in a language other than the language of the arbitration, the Registrar or the Tribunal, as appropriate, may order that party to submit a translation in a form to be determined by the Registrar or the Tribunal.

37.3 For the purpose of the administration of the arbitration, the Registrar may, after considering the views of the parties, determine the language or languages of the communications between the SIAC Secretariat and the parties and the SIAC Secretariat and the Tribunal.

38. Third-Party Funding

38.1 A party shall disclose the existence of any third-party funding agreement and the identity and contact details of the third-party funder in its Notice or Response or as soon as practicable upon concluding a third-party funding agreement.

38.2 The funded party shall as soon as practicable notify the Tribunal, the parties, and the Registrar of any changes to the third-party funding agreement in respect of which disclosures had previously been made under Rule 38.1.

38.3 After the constitution of the Tribunal, a party shall not enter into a third-party funding agreement which may give rise to a conflict of interest with any member of the Tribunal. In such circumstances, the Tribunal may direct the party to withdraw from the third-party funding agreement.

38.4 The Tribunal may order the disclosure of the information referred to in Rule 38.1 and, after considering the views of the parties, may make such orders for disclosure in respect of the third-party funding agreement as it sees fit including in respect of details of the third-party funder's interest in the outcome of the proceedings and whether the third-party funder has committed to undertake adverse costs liability.

38.5 The disclosure and existence of a third-party funding agreement on its own shall not be taken as an indication of the financial status of a party.

38.6 The Tribunal may take into account any third-party funding agreement in apportioning costs under these Rules.

38.7 The Tribunal may take appropriate measures, including issuing an order or award for sanctions, damages, or costs, if a party does not comply with any obligations or orders for disclosure under this Rule 38.

39. Hearings

39.1 Unless the parties have agreed that the dispute will be decided on the basis of written submissions and any accompanying documentary evidence or as otherwise provided in these Rules, the Tribunal shall, if either party so requests or the Tribunal so decides, hold a hearing for the presentation of evidence by witnesses, including expert witnesses, and/or for oral argument.

39.2 The Tribunal shall, after considering the views of the parties, set the date, time, and format of any hearing and shall give the parties reasonable notice. The hearing may be conducted in-person, at a location determined by the Tribunal as appropriate after consulting with the parties, in hybrid form, or by videoconference, teleconference, or any other form of electronic communication.

39.3 Unless otherwise agreed by the parties, all hearings shall be conducted in private, and any recordings, transcripts, or documents used in relation to the arbitration shall be subject to the confidentiality provisions in Rule 59.

39.4 The Tribunal may deliberate in any manner and at any location it considers appropriate. Any anticipated expenses for the Tribunal's deliberations must be approved in advance by the Registrar.

40. Witnesses

40.1 Prior to any hearing, the Tribunal may direct the parties to give notice of the identity of witnesses, including expert witnesses, whom the parties intend to produce, the subject matter of their testimony, and its relevance to the issues.

40.2 The Tribunal shall have the power to order or refuse to allow the appearance of witnesses to give oral evidence at any hearing or to limit oral witness testimony at any hearing.

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

40.4 The Tribunal may direct the testimony of witnesses to be presented in written form, either as signed or sworn statements or any other form of recording. Subject to Rule 40.2, any party may request that such a witness attend a hearing for oral examination, whether in-person, by videoconference, teleconference, or any other form of electronic communication. If the witness fails to attend for oral examination, the Tribunal may determine the weight to be placed on such written testimony, disregard such written testimony, or exclude such written testimony altogether.

40.5 Subject to any applicable laws or regulations, in respect of any witness or potential witness whose evidence it intends to adduce, a party or its representatives:

(a) may interview any such witness or potential witness;

(b) assist such witness or potential witness in the preparation of a witness statement or expert report; and

(c) meet such witness prior to his or her appearance to give oral evidence at any hearing.

A party and its representatives should seek to ensure that the evidence of fact witnesses reflects their own account of the relevant facts and the evidence of experts reflects their genuinely held opinions.

41. Tribunal-appointed experts

41.1 The Tribunal may, after considering the views of the parties, appoint one or more experts to report on issues within the scope of the disputes or to otherwise assist the Tribunal.

41.2 The Tribunal shall consult with the parties on the terms of appointment and fees of the expert.

41.3 Any expert appointed under Rule 41.1 shall provide a signed declaration relating to his or her qualifications, impartiality and independence, prior to his or her appointment, in a form to be determined by the Tribunal. The Tribunal shall determine any objection by a party to the expert's qualifications, impartiality, or independence.

41.4 The parties shall give any expert appointed under Rule 41.1 all relevant information and produce or provide access to any relevant documents, goods or property for inspection.

41.5 Any expert appointed under Rule 41.1 shall submit a report in writing to the Tribunal. Upon receipt of such written report, the Tribunal shall deliver a copy of the report to the parties and the SIAC Secretariat, and the Tribunal shall invite the parties to submit written comments on the report.

41.6 If any party so requests or the Tribunal so decides, an expert appointed under Rule 41.1 shall, after delivery of his or her written report, attend for oral examination at a hearing, whether in-person, or by videoconference, teleconference, or any other form of electronic communication.

42. Closure of the Proceedings

42.1 The Tribunal shall, as soon as practicable after the last directed oral or written submissions in respect of matters to be decided in an award, and upon being satisfied that the parties have no further relevant and material evidence to produce or submissions to make with respect to such matters, declare the proceedings closed. The Tribunal's declaration that the proceedings are closed shall be in writing and communicated to the parties and the SIAC Secretariat.

42.2 The Tribunal may, on its own motion or upon application of a party but before any award is made, reopen the proceedings. The Tribunal's decision that the proceedings are to be reopened shall be in writing and communicated to the parties and to the SIAC Secretariat.

43. Suspension, Settlement, and Termination

43.1 The Registrar or the Tribunal, as appropriate, may suspend an arbitration in accordance with such terms as the parties have agreed or as otherwise provided in these Rules. The Registrar or the Tribunal may, after considering the views of the parties, order the tolling of any timelines.

43.2 In the event of a settlement, the Tribunal shall issue an order terminating the arbitration or, if the parties so request, the Tribunal may record the settlement in the form of a consent award on agreed terms. The Tribunal is not obliged to provide reasons for a consent award or to include the settlement terms in the consent award.

43.3 The Tribunal shall, after considering the views of the parties, issue an order terminating the arbitration where:

(a) the Claimant withdraws its claim, unless the Respondent objects thereto and the Tribunal recognises a legitimate interest on the Respondent's part in obtaining a final settlement of the dispute or any orders as to costs;

(b) the parties agree on the termination of the arbitration;

(c) the Tribunal finds that the continuation of the arbitration has become unnecessary or impossible; or

(d) the Registrar has deemed the relevant claims, counterclaims, or cross-claims to be withdrawn for non-payment of deposits in accordance with Rule 56.5(b).

43.4 Prior to the constitution of the Tribunal, the Registrar shall have the power to terminate an arbitration in accordance with these Rules.

43.5 An order of the Tribunal or the Registrar terminating the arbitration under this Rule 43 shall be effective on the date of such order, unless otherwise ordered by the Tribunal or the Registrar.

44. Non-participation and Non-compliance

44.1 If the Claimant fails to submit a Statement of Claim within the time specified by the Tribunal, the Tribunal may, after considering the views of the parties, issue an order terminating the arbitration in accordance with Rule 43, unless there are remaining matters which require determination.

44.2 If the Respondent fails to submit a Statement of Defence within the time specified by the Tribunal, or if at any point any party fails to avail itself of the opportunity to present its case in the manner directed by the Tribunal, the Tribunal may proceed with the arbitration without treating such failure in itself as an admission of any allegations.

44.3 If, without showing sufficient cause, any party fails or refuses to comply with these Rules or with any direction, decision, ruling, order, or award of the Tribunal, or to attend any meeting or hearing, the Tribunal may proceed with the arbitration. In these circumstances, the Tribunal may impose such sanctions as it deems appropriate and make an award on the evidence before it.

SECTION VII. POWERS OF THE TRIBUNAL

45. Interim Relief

45.1 Unless otherwise agreed by the parties, the Tribunal may, at the request of a party, issue an order or an award granting any interim or conservatory relief it deems appropriate. The Tribunal may order the party requesting interim or conservatory relief to provide appropriate security in connection with the relief sought.

45.2 A request for interim or conservatory relief made by a party to a judicial authority is not incompatible with these Rules and shall not be considered a breach or waiver of the arbitration agreement. Any such application to a judicial authority and any decision taken thereon must be promptly notified to the Tribunal and the Registrar.

46. Preliminary Determination

46.1 A party may apply to the Tribunal for a final and binding preliminary determination of any issue that arises for determination in the arbitration where:

(a) the parties agree that the Tribunal may determine such an issue on a preliminary basis;

(b) the applicant is able to demonstrate that the determination of the issue on a preliminary basis is likely to contribute to savings of time and costs and a more efficient and expeditious resolution of the dispute; or

(c) the circumstances of the case otherwise warrant the determination of the issue on a preliminary basis.

46.2 An application for preliminary determination under Rule 46.1 shall state the facts and legal basis supporting the application.

46.3 The Tribunal shall, after giving the parties the opportunity to be heard, decide whether to proceed with the application for preliminary determination.

46.4 If the application for preliminary determination is allowed to proceed, the Tribunal shall:

(a) determine the procedure for making such preliminary determination, having regard to the circumstances of the case and the need to provide the parties a reasonable opportunity to present their cases; and

(b) make a decision, ruling, order, or award on the application, with reasons which may be in summary form, within 90 days from the date of filing of the application, unless the Registrar extends the time.

46.5 Nothing in this Rule 46 shall limit the Tribunal's inherent powers to direct a preliminary determination of any issue that arises for determination in the arbitration.

47. Early Dismissal of Claims and Defences

47.1 A party may apply to the Tribunal for the early dismissal of a claim or defence where:

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

(b) a claim or defence is manifestly outside the jurisdiction of the Tribunal.

47.2 An application for early dismissal under Rule 47.1 shall state the facts and legal basis supporting the application.

47.3 The Tribunal shall determine whether the application for early dismissal under Rule 47.1 is allowed to proceed.

47.4 If the application for early dismissal is allowed to proceed, the Tribunal shall, after giving the parties the opportunity to be heard, make a decision, ruling, order, or award on the application, with reasons which may be in summary form. The decision, ruling, order, or award shall be made within 45 days from the date of filing the application, unless the Registrar extends the time.

48. Security for Costs

48.1 A party may apply to the Tribunal for an order that any party asserting a claim, counterclaim, or cross-claim provide security for legal costs and expenses and the costs of the arbitration.

48.2 If a party fails to comply with an order to provide such security, the Tribunal may make any consequential direction as appropriate.

48.3 A party shall promptly disclose any material change in the circumstances upon which the Tribunal has ordered security under Rule 48.1.

48.4 The Tribunal may, after considering the views of the parties, modify or revoke its order on security under Rule 48.1.

49. Security for Claims

49.1 A party may apply to the Tribunal for an order that any party responding to a claim, counterclaim, or cross-claim provide security against the relevant claim.

49.2 If a party fails to comply with an order to provide such security, the Tribunal may make any consequential direction as appropriate.

49.3 A party shall promptly disclose any material change in the circumstances upon which the Tribunal has ordered security under Rule 49.1.

49.4 The Tribunal may, after considering the views of the parties, modify or revoke its order on security under Rule 49.1.

50. Additional Powers of the Tribunal

50.1 Unless otherwise agreed by the parties, the Tribunal shall have the power to decide all procedural and evidential matters.

50.2 In addition to the other powers specified in these Rules, unless otherwise agreed by the parties or prohibited by the mandatory rules of any applicable law, the Tribunal shall have the power to:

(a) direct any party to give evidence by affidavit or in any other form;

(b) administer oaths or take affirmations of the parties and witnesses;

(c) conduct such enquiries as may appear to the Tribunal to be necessary or expedient;

(d) determine whether, and to what extent, the Tribunal should itself take the initiative in ascertaining the facts or the law;

(e) order the correction or rectification of any contract, subject to the law governing such contract;

(f) order any party to produce to the Tribunal and to the other parties for inspection, in a manner to be determined by the Tribunal, any document, property, or item in its possession or control which the Tribunal considers relevant to the case and material to its outcome;

(g) order the preservation, storage, sale, or disposal, of any document, property, or item which is or forms part of the subject matter of the dispute;

(h) direct any party to take or refrain from taking actions to ensure that any award which may be made in the arbitration is not rendered ineffectual by the dissipation of assets by a party or otherwise;

(i) decide, where appropriate, any issue not expressly or impliedly raised in the submissions of a party provided such issue has been clearly brought to the notice of all other parties and all other parties have been given an adequate opportunity to respond or provide submissions;

(j) determine the procedural law or any other law applicable to the arbitration;

(k) determine any claim of legal or other privilege;

(l) make any necessary directions, including a suspension of proceedings, for the parties to adopt any amicable dispute resolution methods such as mediation under the SIAC-SIMC AMA Protocol; and

(m) except as provided in these Rules, extend or abridge any period of time prescribed under these Rules or by its directions.

SECTION VIII. THE AWARD

51. Making of the Award

51.1 The Tribunal may make more than one award at different points in time during the arbitration on different aspects of the matters to be determined.

51.2 Where there is more than one arbitrator, the Tribunal shall decide by a majority. Failing a majority decision, the presiding arbitrator alone shall make the award for the Tribunal.

51.3 If any arbitrator fails to participate in the making of the award, having been given a reasonable opportunity to do so, the remaining arbitrators may proceed. The remaining arbitrators shall provide written notice of such failure to the Registrar, the parties, and the absent arbitrator. In deciding whether to proceed with the arbitration in the absence of an arbitrator, the remaining arbitrators may take into account, *inter alia*, the stage of the arbitration, any explanation provided by the absent arbitrator for his or her failure to participate, and the effect, if any, upon the enforceability of the award should the remaining arbitrators proceed without the absent arbitrator. The remaining arbitrators shall explain, in any award made, the reasons for proceeding without the absent arbitrator.

51.4 Unless otherwise agreed by the parties, the Tribunal shall specify in the final award the Registrar's determination of the costs of the arbitration and the Tribunal's decision on the apportionment of the costs of the arbitration.

51.5 Subject to any applicable law, the Tribunal may award simple or compound interest from such date, at such rate, and with such rest as the Tribunal considers appropriate, for:

(a) the whole or any part of any sum awarded or sum at issue in the arbitration; and

(b) any costs awarded in the arbitration.

In making its award on interest, the Tribunal shall take into account any agreement by the parties on interest.

51.6 The parties shall be deemed to have agreed that any award shall be final and binding on the parties from the date it is made, and the parties undertake to carry out the award immediately and without delay. The parties hereby irrevocably waive their rights to any form of appeal, review, or recourse to any court or other judicial authority with respect to such award insofar as such waiver may be validly made.

51.7 Unless otherwise agreed by the parties, and insofar as not prohibited by any applicable law, every award shall be final and binding between the parties in respect of the claims, counterclaims, cross-claims, and set-offs determined and, where appropriate, the issues of fact and law that it determines in order to rule on the parties' claims, counterclaims, cross-claims, and set-offs.

52. Form of the Award

52.1 The award shall be made in writing and shall be signed by the arbitrator(s). In an arbitration with more than one arbitrator, the signatures of the majority of the members of the Tribunal shall suffice, provided that the reason for any omitted signature is stated in the award.

52.2 The Tribunal may, after considering the views of the parties, and in consultation with the Registrar, determine that it is appropriate for:

(a) the award to be signed in counterpart; or

(b) the award to be signed electronically.

52.3 The award shall state the reasons upon which it is based, unless the award is by consent under Rule 43.2.

52.4 The award shall be deemed to be made at the seat of the arbitration and on the date stated therein.

52.5 The Tribunal shall deliver the award to the SIAC Secretariat, who shall deliver the award to the parties upon settlement of the costs of the arbitration.

52.6 At the request of a party, the Registrar may authenticate any award or arbitration agreement or certify any paper copies thereof.

53. Scrutiny of the Award

53.1 Within 30 days of the date of submission of the last directed oral or written submission in respect of the matters to be decided in an award, the Tribunal shall provide the parties and the SIAC Secretariat with an estimate of the time within which it proposes to submit the draft award for scrutiny under Rule 53.2.

53.2 Before making the award, the Tribunal shall submit such award in draft form to the SIAC Secretariat and inform the parties of the date of submission. The Tribunal shall submit the draft award to the SIAC Secretariat not later than 90 days from the date of submission of the last directed oral or written submission in respect of the proceedings to which the award pertains, unless the Registrar determines otherwise.

53.3 The Registrar may, as soon as practicable, suggest modifications as to the form of the draft award and, without affecting the Tribunal's liberty to decide the dispute, draw the Tribunal's attention to points of substance. The SIAC Secretariat shall inform the parties when the Registrar has completed the scrutiny.

53.4 No award shall be issued until it has been approved by the Registrar as to its form.

54. Correction, Interpretation, and Additional Awards

54.1 Within 30 days from the date of receipt of an award, a party may, by written notice to the Registrar, the Tribunal, and the other party, request the Tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature. After considering the views of the parties on the request, if the Tribunal considers the request to be justified, it shall make the correction within 30 days from the date of receipt of the request. Any correction, made in the original award or in a separate memorandum, shall form part of the award.

54.2 The Tribunal may correct any error of the type referred to in Rule 54.1 on its own initiative within 30 days from the date of receipt of the award.

54.3 Within 30 days from the date of receipt of an award, a party may, by written notice to the Registrar, the Tribunal, and the other party, request the Tribunal to give an interpretation of a specific point or part of the award. After considering the views of the parties on the request, if the Tribunal considers the request to be justified, it shall give the interpretation in writing within 30 days from the date of receipt of the request. Any interpretation shall form part of the award.

54.4 Within 30 days from the date of receipt of an award, a party may, by written notice to the Registrar, the Tribunal, and the other party, request the Tribunal to make an additional award as to claims presented in the arbitration but not addressed in the award. After considering the views of the parties on the request, if the Tribunal considers the request to be justified, it shall make the additional award within 60 days from the date of receipt of the request.

54.5 The Registrar may extend the period of time within which the Tribunal may make a correction of an award, interpretation of an award, or an additional award under this Rule 54.

54.6 The provisions of Rule 53 shall apply, *mutatis mutandis*, to a correction, interpretation, or an additional award.

54.7 The Registrar may determine that additional costs of arbitration shall apply under this Rule 54 in relation to the Tribunal's fees and expenses and SIAC's administration fees and expenses.

55. Remission

55.1 Where a court remits an award to the Tribunal, these Rules shall apply as appropriate to the administration of the arbitration in accordance with the terms of such remission. The Registrar may take any necessary steps to enable the Tribunal to comply with the terms of such remission and may determine that additional costs of arbitration shall apply under this Rule 55.1 in relation to the Tribunal's fees and expenses and SIAC's administration fees and expenses.

SECTION IX. DEPOSITS AND COSTS

56. Deposits

56.1 The Registrar shall fix the deposits payable towards the estimated costs of the arbitration calculated in accordance with the amount in dispute under the Schedule of Fees. Unless the Registrar otherwise directs, 50 percent of such deposits shall be payable by the Claimant(s) and 50 percent of such deposits shall be payable by the Respondent(s). The Registrar may fix separate deposits for a claim, counterclaim, or cross-claim.

56.2 Where the amount in dispute is not quantifiable at the time the deposits are due, the Registrar shall make a provisional estimate of the costs of the arbitration and call for the deposits thereon. This estimate may be adjusted upon the quantification of the amount in dispute or in light of such information as may subsequently become available.

56.3 The Registrar may at any time direct the parties to make further or additional deposits towards the estimated costs of the arbitration.

56.4 Parties are jointly and severally liable for the costs of the arbitration. In the event that a party does not pay the deposits as directed, the Registrar may direct the other party to make payment of the deposits on its behalf.

56.5 If a party fails to pay the deposits as directed, the Registrar may:

(a) direct the Tribunal and the SIAC Secretariat to suspend the conduct and administration of the arbitration in whole or in part; and/or

(b) set a time limit on the expiry of which the relevant claim, counterclaim, or cross-claim shall be considered as withdrawn on a without prejudice basis.

56.6 All deposits towards the estimated costs of the arbitration shall be made to and held by SIAC. Any interest which may accrue on such deposits shall be retained by SIAC.

56.7 If a party pays the deposits towards the estimated costs of arbitration on behalf of another party, the Tribunal may issue an order or award for the reimbursement of such deposits paid.

57. Costs of the Arbitration

57.1 The Registrar shall determine the costs of the arbitration at the conclusion of the arbitration in accordance with the Schedule of Fees and the Practice Notes for the time being in force.

57.2 Under these Rules, the term "*costs of the arbitration*" shall comprise:

(a) the Tribunal's fees and expenses;

(b) SIAC's administration fees and expenses;

(c) the Emergency Arbitrator's fees and expenses;

(d) the Tribunal Secretary's fees and expenses;

(e) the costs of any expert appointed by the Tribunal and of any other assistance reasonably required by the Tribunal; and

(f) the Filing Fees.

57.3 The costs of the arbitration shall include any applicable government or statutory taxes.

57.4 The Tribunal's fees and SIAC's fees shall be subject to the maximum limits based on the amount in dispute in accordance with the Schedule of Fees. The Registrar shall have the power to:

(a) determine that the maximum limits calculated in accordance with the Schedule of Fees shall be maintained notwithstanding an amendment to the amount in dispute; and

(b) determine that an additional fee over and above the maximum limits prescribed in the Schedule of Fees shall apply to the Tribunal's fees and SIAC's fees.

57.5 In the event that the costs of the arbitration as determined by the Registrar are less than the deposits paid by the parties, there shall be a refund to the parties of their respective unutilised deposits or in such proportions as the parties may agree.

57.6 The Tribunal's reasonable expenses and other allowances shall be reimbursed in accordance with the *Practice Notes* for the time being in force.

57.7 The Registrar may from time to time allow an interim payment to the Tribunal in accordance with these Rules and the *Practice Notes* for the time being in force.

57.8 The Registrar's determination of the costs of the arbitration shall be final and not subject to appeal or review under these Rules.

58. Legal and Other Costs

58.1 The Tribunal shall have the power to order in the award that all or a part of a party's legal or other costs shall be paid by another party. In exercising its power, the Tribunal shall take into account such circumstances as it considers relevant including the conduct of the parties during the proceedings.

SECTION X. GENERAL PROVISIONS

59. Confidentiality

59.1 Unless otherwise agreed by the parties, or as otherwise provided in these Rules, the parties, and any party representative, witness or expert, third-party funder, the members of any Tribunal, any Emergency Arbitrator, and any person appointed by a Tribunal, including any Tribunal Secretary and any Tribunal-appointed expert, the SIAC Court, the President, the Vice President, the Registrar, and the SIAC Secretariat shall be under a continuing obligation to treat all matters relating to the proceedings as confidential.

59.2 The discussions and deliberations of the Tribunal, the SIAC Court, and the SIAC Secretariat shall be confidential.

59.3 Unless otherwise agreed by the parties, or as otherwise provided in these Rules, the parties, and any party representative, witness or expert, third-party funder, the members of any Tribunal, any Emergency Arbitrator, and any person appointed by a Tribunal, including any Tribunal Secretary and any Tribunal-appointed expert, shall not, without the prior written consent of the parties, disclose to a third party any such matter except:

(a) for the purpose of making an application to any competent court of any jurisdiction to challenge or enforce 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 jurisdiction which are binding on the party making the disclosure or the request or requirement of any regulatory body or other authority;

(e) pursuant to an order by the Tribunal on application by a party with proper notice to the parties; or

(f) for the purpose of any application under these Rules.

59.4 In Rule 59.1, "*matters relating to the proceedings*" includes the existence of the arbitration, the deliberations of the Tribunal, the pleadings, evidence, submissions, and all other materials and written communications produced and submitted by the parties in the arbitration, and any decision, ruling, order, or award, save where the information is, without any breach of Rule 59.1 and Rule 59.2, otherwise in the public domain.

59.5 The Tribunal has the power to enforce any obligation of confidentiality on the parties under these Rules, in accordance with the applicable law or pursuant to the parties' agreement, and may issue an order or award for sanctions, damages, or costs and take measures to protect trade secrets.

60. Publication

60.1 SIAC may, with the agreement in writing of all parties, publish any decision, ruling, order, or award of a Tribunal with the names of the parties and other identifying information redacted.

61. Information Security

61.1 As soon as practicable after the commencement of the arbitration, any party may propose and seek to agree on reasonable measures to protect the information that is shared, stored, or processed in relation to the arbitration.

61.2 At the first case management conference and any other appropriate stage of the proceedings, the Tribunal shall discuss with the parties the information security measures described in Rule 61.1. The Tribunal may, after considering the views of the parties, give directions to the parties in that regard, taking into account the circumstances of the case and relevant best practices on information security, including cybersecurity and cyber resilience.

61.3 The Tribunal shall have the power to take appropriate measures, including issuing an order or award for sanctions, damages, or costs, if a party does not take necessary steps to comply with the information security measures agreed by the parties and/or directed by the Tribunal.

62. Document Retention

62.1 SIAC shall maintain an archive of each arbitration commenced under these Rules for a minimum of six (6) years from the date the final award was issued or the arbitration was terminated unless otherwise requested by a party to maintain an archive of an arbitration for a longer period. SIAC may thereafter dispose of such documents in a confidential manner without notice to the parties or the Tribunal.

63. Decisions by SIAC

63.1 Except as provided in these Rules, the decisions of the SIAC Court, the President, the Vice President, the Registrar, and the SIAC Secretariat with respect to all matters relating to an arbitration shall be conclusive and binding upon the parties and the Tribunal. Except as provided in these Rules, the SIAC Court, the President, the Vice President, the Registrar, and the SIAC Secretariat are not required to provide reasons for such decisions but may provide such reasons at the joint request of the parties.

63.2 The SIAC Court may delegate its powers under these Rules to a Committee of the SIAC Court.

63.3 At the President's request, or if for any reason the President is unable to act, the Vice President or the Registrar is authorised to exercise the powers of the President under these Rules.

63.4 The parties waive any right of appeal or review in respect of any decisions of the SIAC Court, the President, the Vice President, the Registrar, and the SIAC Secretariat to any court or other judicial authority insofar as such waiver can be validly made.

64. Waiver

64.1 If a party knows or ought to have reasonably known that any provision of these Rules, an agreement of the parties including any agreement relating to the constitution of the Tribunal or the conduct of the proceedings, or any other rules applicable to the proceedings, or any direction given in relation to the arbitration has not been complied with, and does not state its objection in writing before the expiry of any time limit provided in these Rules for such objection, or in the absence of such time limit, within 15 days from the date of such knowledge, it shall be deemed to have irrevocably waived any right to object.

65. Exclusion of Liability

65.1 The parties shall be deemed to have agreed that SIAC (including its officers and employees), members of the SIAC Board, members of the SIAC Court, the President, the Vice President, the Registrar, the SIAC Secretariat, the members of any Tribunal, any Emergency Arbitrator, and any person appointed by a Tribunal, including any Tribunal Secretary and any Tribunal-appointed expert, shall not be liable to any person howsoever for any negligence or any act or omission including any decision, determination, or ruling or alleged failure to make any decision, determination, or ruling, or any mistake in law, fact or procedure made during the course of the arbitration, except to the extent that it can be demonstrated that such act or omission or mistake was carried out fraudulently, and the parties shall be deemed to have further agreed that such exclusion of liability as agreed upon in this Rule 65.1 is fair and reasonable.

65.2 The parties shall be deemed to have agreed that SIAC (including its officers and employees), members of the SIAC Board, members of the SIAC Court, the President, the Vice President, the Registrar, the SIAC Secretariat, the members of any Tribunal, any Emergency Arbitrator, any person appointed by a Tribunal, including any Tribunal Secretary and any Tribunal-appointed expert, shall not be under any obligation to make any statement in connection with any arbitration administered by SIAC in accordance with these Rules, and no party shall seek to make, summon, join, subpoena, or otherwise involve any of these persons or bodies as a party or a witness in any judicial, arbitration, administrative, or any other proceedings related to the arbitration or otherwise.

SCHEDULE 1. EMERGENCY ARBITRATOR PROCEDURE

Application for Emergency Interim Relief

1. A party requiring emergency interim or conservatory relief in accordance with Rule 12.1 may file an application with the Registrar for the appointment of an Emergency Arbitrator ("Application").

2. An Application may be filed:

   (a) prior to the filing of the Notice;

   (b) concurrent with the filing of the Notice; or

   (c) any time after the filing of the Notice or the Response but prior to the constitution of the Tribunal.

3. The Application shall include:

   (a) any Notice which has been filed in the arbitration and the supporting documents thereon;

   (b) the identity and contact details of the parties to the arbitration and their representatives;

   (c) a statement certifying that all parties have been provided with a copy of the Application or, if not, an explanation of the steps taken to provide a copy or notification of the Application to all parties;

   (d) a copy or description of the arbitration agreement invoked;

   (e) a copy or description of the contract or other instrument out of or in connection to which the dispute arises;

   (f) a description of the circumstances giving rise to the Application and of the underlying dispute referred or to be referred to arbitration;

(g) a statement of the emergency interim or conservatory relief sought and the reasons why such relief is required on an emergency basis and cannot await the constitution of the Tribunal;

(h) any comment as to the applicable rules of law, seat of the arbitration and the language of the arbitration for the emergency proceedings;

(i) a statement on the existence of any third-party funding agreement and the identity and contact details of the third-party funder; and

(j) English translations of any documents filed in a language other than in English.

4. The Application shall be accompanied by payment of the EA Filing Fee and the deposits towards the Emergency Arbitrator's fees and expenses in accordance with the Schedule of Fees.

5. The Registrar may call for additional deposits from the applicant towards the Emergency Arbitrator's fees and expenses. If the additional deposits are not paid within the period of time set by the Registrar, the Application shall be considered as withdrawn on a without prejudice basis.

6. If the Application is filed under paragraph 2(a) of this Schedule 1, and the Notice is not filed within 7 days from the date of the Registrar's receipt of the Application, the Application shall be considered as withdrawn on a without prejudice basis unless the Registrar extends the time.

Appointment of Emergency Arbitrator

7. If the President determines that SIAC shall accept the Application, the President shall seek to appoint an Emergency Arbitrator within 24 hours from the later of:

(a) the date of receipt by the Registrar of the Application; or

(b) the date of receipt of payment of the EA Filing Fee and deposits.

8. The duties of disclosure under Rule 20 shall apply, *mutatis mutandis*, to the appointment of an Emergency Arbitrator.

Challenge of Emergency Arbitrator

9. A party who wishes to challenge an Emergency Arbitrator shall file a notice of challenge with the Registrar:

   (a) within 24 hours from the date of receipt of the notice of appointment of the Emergency Arbitrator; or

   (b) within 24 hours from the date that the circumstances specified in Rule 26.1 became known or should have reasonably been known to that party.

   A party is not permitted to challenge an Emergency Arbitrator after the constitution of the Tribunal.

10. If within 24 hours from the date the notice of challenge is filed, the other party agrees to the challenge or the challenged Emergency Arbitrator voluntarily withdraws from office, the SIAC Court may direct that a substitute Emergency Arbitrator be appointed in accordance with Rule 30.1 and Schedule 1. In neither case does this imply acceptance of the validity of the grounds for the challenge.

11. The procedure for challenge and replacement of an arbitrator provided in Rule 27, Rule 28, and Rule 30, shall apply, *mutatis mutandis*, to a challenge to an Emergency Arbitrator, save that the SIAC Court may determine that no reasons are to be provided for its decision on the challenge.

Conduct of Emergency Interim Relief Proceedings

12. If the parties have agreed on the seat of the arbitration, such seat shall be the seat of the emergency interim relief proceedings. Failing such an agreement, the seat of the emergency interim relief proceedings shall be Singapore, without prejudice to the Tribunal's determination of the seat of the arbitration in accordance with Rule 36.1.

13. The Emergency Arbitrator shall have the power to conduct the emergency interim relief proceedings in such manner as the Emergency Arbitrator considers appropriate, taking into account the inherent urgency of emergency interim relief proceedings. The Emergency Arbitrator shall have all the powers vested in the Tribunal pursuant to these Rules, including the power to rule on its own jurisdiction, without prejudice to the Tribunal's determination.

14. The Emergency Arbitrator shall establish a schedule for consideration of the Application within 24 hours after its appointment. In the event a party does not participate in the emergency proceedings, the Emergency Arbitrator may conduct the proceedings in the party's absence.

15. Unless the parties have agreed that the Application shall be decided on the basis of written submissions and any accompanying documentary evidence, the Emergency Arbitrator shall, if either party so requests or the Emergency Arbitrator so decides, hold a hearing for determination of the Application. Taking into account the inherent urgency of emergency interim relief proceedings, the hearing may be conducted in-person, in hybrid form, or by videoconference, teleconference, or any other form of electronic communication.

Order or Award

16. The Emergency Arbitrator shall have the power to make a preliminary order pending the provision of any written submissions or consideration of the Application.

17. The Emergency Arbitrator shall have the power to order or award any interim relief that the Emergency Arbitrator deems necessary. The Emergency Arbitrator shall make the order or award within 14 days from the date of the Emergency Arbitrator's appointment unless the Registrar extends the time. No order or award shall be made by the Emergency Arbitrator until it has been approved by the Registrar in accordance with Rule 53.

18. The Emergency Arbitrator may make an order or award subject to such conditions as the Emergency Arbitrator deems appropriate, including requiring the provision of appropriate security.

19. Prior to the constitution of the Tribunal, the Emergency Arbitrator, on its own initiative or upon the reasoned request of a party, shall have the power to:

(a) reconsider, modify, or vacate any order or award; and

(b) make an additional order or award as to any claim for emergency interim relief presented in the emergency interim relief proceedings but not decided in any order or award of the Emergency Arbitrator.

20. An order or award issued by the Emergency Arbitrator shall cease to be binding:

(a) if the parties so agree;

(b) if the Emergency Arbitrator or the Tribunal so decides;

(c) if the Application is considered as withdrawn in accordance with paragraph 5 or paragraph 6 of this Schedule 1;

(d) if the Tribunal is not constituted within 90 days from the date of the order or award, unless the Registrar extends the time;

(e) if the claims in the arbitration are withdrawn or the arbitration is terminated prior to the issuance of the final award; or

(f) upon issuance of the final award, unless the Tribunal determines otherwise.

21. The Emergency Arbitrator shall have no power to act after the Tribunal is constituted. The Tribunal may affirm, reconsider, modify, or vacate any order or award issued by the Emergency Arbitrator, including a ruling on its jurisdiction. The Tribunal shall not be bound by the reasons given by the Emergency Arbitrator.

22. An Emergency Arbitrator may not act as an arbitrator in the arbitration, unless otherwise agreed by the parties.

23. The parties shall be deemed to have agreed that an order or award by an Emergency Arbitrator pursuant to this Schedule 1 shall be binding on the parties from the date it is made, and the parties undertake to carry out the order or award immediately and without delay. The parties hereby irrevocably waive their rights to any form of appeal, review, or recourse to any court or other judicial authority with respect to such order or award insofar as such waiver may be validly made.

Costs of Emergency Interim Relief Proceedings

24. The costs associated with any Application pursuant to this Schedule 1 may initially be apportioned by the Emergency Arbitrator, subject to the power of the Tribunal to finally determine the apportionment of such costs.

Protective preliminary order application

25. Unless otherwise agreed by the parties, a party may file an Application without complying with paragraph 3(c) of this Schedule 1, and without notice to the other parties, to make a request for the appointment of an Emergency Arbitrator to consider a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the emergency interim or conservatory measure requested (a "protective preliminary order application").

26. If the President determines that SIAC shall accept a protective preliminary order application under paragraph 25 of this Schedule 1, the President shall appoint an Emergency Arbitrator in accordance with the timelines in paragraph 7 of this Schedule 1.

27. The Emergency Arbitrator shall determine the protective preliminary order application within 24 hours after its appointment.

28. The order of the Emergency Arbitrator in respect of the protective preliminary order application shall be delivered by the Emergency Arbitrator to the SIAC Secretariat. The SIAC Secretariat shall transmit the Emergency Arbitrator's order to all parties to the arbitration.

29. The applicant shall promptly and, in any event, within 12 hours of the transmission by the SIAC Secretariat of the Emergency Arbitrator's order in respect of the protective preliminary order application, deliver a copy of all the case papers filed in the arbitration, the Emergency Arbitrator's order, and all other communications, including the content of any oral communication at any hearing, between the applicant and the Emergency Arbitrator, to all the parties, and provide a statement to the Registrar and the Emergency Arbitrator certifying that it has done so, or if not accomplished, an explanation of the steps taken to do so.

30. Any preliminary order granted by the Emergency Arbitrator in respect of the protective preliminary order application shall expire 3 days after the date on which it was issued if the applicant fails to furnish the statement or explanation within such time as stipulated under paragraph 29 of this Schedule 1.

31. The Emergency Arbitrator shall provide an opportunity to any party against whom a protective preliminary order is directed to present its case at the earliest practicable time.

32. The Emergency Arbitrator shall decide promptly on any objection to the protective preliminary order.

33. A protective preliminary order shall expire 14 days after the date on which it was issued by the Emergency Arbitrator. The Emergency Arbitrator may, in accordance with the procedures in this Schedule 1, issue an order or award adopting or modifying the protective preliminary order, or granting such other emergency interim relief as appropriate, after all parties have been given an opportunity to present their cases.

34. If the President rejects the request to appoint an Emergency Arbitrator to consider a protective preliminary order application:

    (a) such decision will be communicated to all parties by the SIAC Secretariat; and

    (b) the applicant shall promptly comply with paragraph 3(c) of this Schedule 1.

The protective preliminary order application shall thereafter be dealt with as an Application in accordance with this Schedule 1, and the procedures set out in this Schedule 1 shall apply, save that the timeline provided for in paragraph 7 shall run from the date of the applicant's compliance with paragraph 3(c) of this Schedule 1.

General Provisions

35. The Registrar may extend or abridge any period of time under this Schedule 1.

36. These Rules shall apply as appropriate to any arbitration pursuant to this Schedule 1, taking into account the inherent urgency of emergency interim relief proceedings. The Emergency Arbitrator may decide the manner in which this Schedule 1 shall apply as appropriate, and except as otherwise provided under these Rules, the Emergency Arbitrator's decision as to such matters is final and not subject to appeal, review, or recourse.

SCHEDULE 2. STREAMLINED PROCEDURE

Appointment of Sole Arbitrator

1. In all arbitrations conducted under this Schedule 2, a sole arbitrator shall be appointed.

2. The parties may jointly nominate the sole arbitrator within 3 days from the date of the SIAC's Secretariat's notification to the parties under Rule 13.2 that the Streamlined Procedure shall apply to the arbitration.

3. If the parties are not able to jointly nominate the sole arbitrator within 3 days from the date of the SIAC's Secretariat's notification to the parties under Rule 13.2 that the Streamlined Procedure shall apply to the arbitration, or if at any time a party so requests, the President shall appoint the sole arbitrator as soon as practicable.

4. The duties of disclosure under Rule 20 shall apply, *mutatis mutandis*, to the appointment of a sole arbitrator under this Schedule 2.

Challenge of Sole Arbitrator

5. A party who wishes to challenge an arbitrator appointed under the Streamlined Procedure shall file a notice of challenge with the Registrar:

   (a) within 3 days from the date of receipt of the notice of appointment of the arbitrator; or

   (b) within 3 days from the date that the reasons specified in Rule 26.1 became known or should have reasonably been known to that party.

6. If within 3 days after the date the notice of challenge is filed, the other party agrees to the challenge or the challenged arbitrator voluntarily withdraws from office, the SIAC Court may direct that a substitute arbitrator be appointed in accordance with Rule 30.1 and Schedule 2. In neither case does this imply acceptance of the validity of the grounds for the challenge.

7. The procedure for challenge and replacement of an arbitrator provided in Rule 27, Rule 28, and Rule 30 shall apply, *mutatis mutandis*, to a challenge to an arbitrator under this Schedule 2, save that the SIAC Court may determine that no reasons are to be provided for its decision on the challenge.

Conduct of Streamlined Proceedings

8. Within 5 days from the date of constitution of the Tribunal, the Tribunal shall conduct a case management conference with the parties to discuss the timetable for the conduct of the proceedings including the determination of any interlocutory applications.

9. The Tribunal shall have the power to conduct the streamlined proceedings in such manner as the Tribunal considers appropriate, taking into account the timelines under the Streamlined Procedure.

10. In exercising its procedural discretion under this Schedule 2, the Tribunal may set a time limit on the expiry of which the parties shall not be entitled to file any interlocutory applications without leave of the Tribunal.

11. Unless the Tribunal determines otherwise, after considering the views of the parties:

    (a) the arbitration shall be decided on the basis of written submissions and any accompanying documentary evidence;

    (b) no party shall be entitled to make requests for document production; and

    (c) no party shall be entitled to file any fact or expert witness evidence.

12. No hearing shall be conducted unless the Tribunal determines that a hearing is necessary under the circumstances or a party requests a hearing and the Tribunal accepts the request. Any such hearing shall be conducted by videoconference, teleconference, or any other form of electronic communication unless the parties agree or the Tribunal determines that it is appropriate to conduct an in-person or hybrid hearing.

Award

13. The Tribunal shall state the reasons upon which any award is based in summary form, unless the Parties have agreed that no reasons are to be given.

14. The provisions of Rule 53 shall apply to an arbitration conducted under this Schedule 2 subject to such modifications to the timelines prescribed under that provision as may be directed by the Registrar.

15. The final award shall be made within 3 months from the date of constitution of the Tribunal, unless the Registrar extends the time for making such final award.

Costs

16. The Tribunal's fees and SIAC's fees shall not exceed 50 percent of the maximum limits based on the amount in dispute in accordance with the Schedule of Fees, unless the Registrar determines otherwise.

General Provisions

17. The parties shall be deemed to have agreed that, where the arbitration is conducted in accordance with the Streamlined Procedure, the rules and procedures set out in Rule 13 and Schedule 2 shall apply and take precedence over any inconsistent or contrary terms in the arbitration agreement including a term providing for the appointment of a Tribunal comprising more than one arbitrator.

18. Any application under Rule 46 or Rule 47 shall not be allowed in an arbitration conducted under the Streamlined Procedure.

19. The Registrar may extend or abridge any time limits under this Schedule 2.

20. The Tribunal may, in consultation with the parties, and with the approval of the Registrar, order that the arbitration shall no longer be conducted in accordance with the Streamlined Procedure. Notwithstanding such an order by the Tribunal, the arbitration shall continue to be conducted by the same Tribunal that was constituted to conduct the arbitration in accordance with the Streamlined Procedure.

21. These Rules shall apply as appropriate to any arbitration pursuant to this Schedule 2, taking into account the streamlined nature of the proceedings. The Tribunal may decide the manner in which this Schedule 2 shall apply as appropriate, and the Tribunal's decision as to such matters is final and not subject to appeal, review, or recourse.

SCHEDULE 3. EXPEDITED PROCEDURE

Appointment of Tribunal

1. In all arbitrations conducted under this Schedule 3, a sole arbitrator shall be appointed unless the President determines otherwise.

2. The Tribunal shall be constituted in accordance with the appointment provisions under these Rules which shall apply as appropriate.

Conduct of Proceedings

3. In an arbitration conducted under this Schedule 3:

   (a) the dispute shall be decided on the basis of written submissions and any accompanying documentary evidence, unless any party requests a hearing or the Tribunal decides that a hearing would be appropriate;

   (b) the Tribunal shall hold any hearing by videoconference, teleconference, or any other form of electronic communication unless the parties agree or the Tribunal determines that it is appropriate to conduct an in-person or hybrid hearing;

   (c) the Tribunal shall have the power to adopt any procedural mechanisms as it considers appropriate taking into account the timelines under the Expedited Procedure; and

   (d) the Tribunal may, after considering the views of the parties, decide not to allow requests for document production or to limit the number, length, and scope, of written submissions and written witness evidence.

Award

4. The Tribunal shall state the reasons upon which any award is based in summary form, unless the Parties have agreed that no reasons are to be given.

5. The provisions of Rule 53 shall apply to an arbitration conducted under this Schedule 3 subject to such modifications to the timelines prescribed under that provision as may be directed by the Registrar.

6. The final award shall be made within 6 months from the date of constitution of the Tribunal, unless the Registrar extends the time for making such final award.

General Provisions

7. The parties shall be deemed to have agreed that, where an arbitration is conducted in accordance with the Expedited Procedure, the rules and procedures set out in Rule 14 and Schedule 3 shall apply and take precedence over any inconsistent or contrary terms in the arbitration agreement including a term providing for the appointment of a Tribunal comprising more than one arbitrator.

8. The Tribunal may, in consultation with the parties and the Registrar, order that the arbitration shall no longer be conducted in accordance with the Expedited Procedure. Notwithstanding such an order by the Tribunal, the arbitration shall continue to be conducted by the same Tribunal that was constituted to conduct the arbitration in accordance with the Expedited Procedure.

9. The Registrar may extend or abridge any time limits under this Schedule 3.

10. These Rules shall apply as appropriate to any arbitration pursuant to this Schedule 3, taking into account the expedited nature of the proceedings. The Tribunal may decide the manner in which this Schedule 3 shall apply as appropriate, and the Tribunal's decision as to such matters is final and not subject to appeal, review, or recourse.

Schedule of Fees

This Schedule of Fees is effective as of 1 January 2025 and is applicable to all arbitrations commenced on or after 1 January 2025.

All sums stated are in Singapore dollars.

Case Filing Fee (Non-refundable)

A filing fee is applicable to all arbitrations administered by SIAC.

Singapore Parties	S$3,270*
Overseas Parties	S$3,000

** Fee includes 9% GST.*

Administration Fees

The administration fees calculated in accordance with the Schedule below apply to all arbitrations administered by SIAC and is the maximum amount payable to SIAC.

Sum in Dispute (S$)	Administration Fees (S$)
Up to 100,000	5,000
100,001 to 500,000	5,000 + 1.250% excess over 100,000
500,001 to 1,000,000	10,000 + 1.000% excess over 500,000
1,000,001 to 2,000,000	15,000 + 0.900% excess over 1,000,000
2,000,001 to 5,000,000	24,000 + 0.400% excess over 2,000,000
5,000,001 to 10,000,000	36,000 + 0.240% excess over 5,000,000
10,000,001 to 50,000,000	48,000 + 0.080% excess over 10,000,000

Sum in Dispute (S$)	Administration Fees (S$)
50,000,001 to 100,000,000	80,000 + 0.036% excess over 50,000,000
100,000,001 to 250,000,000	98,000 + 0.008% excess over 100,000,000
250,000,001 to 500,000,000	110,000 + 0.008% excess over 250,000,000
500,000,001 to 1,000,000,000	130,000 + 0.004% excess over 500,000,000
Above 1,000,000,000	150,000

SIAC will charge a minimum administration fee of S$5,000 in regular cases; and S$2,500 in streamlined cases, unless the Registrar otherwise determines.

The administration fees do not include the following:

- Fees and expenses of the Tribunal
- Usage cost of facilities and support services for and in connection with any hearing (e.g., hearing rooms and equipment, transcription and interpretation services etc)
- SIAC's administrative expenses
- 9% GST as may be applicable
- Fees and expenses of an emergency arbitrator
- Fees and expenses of a tribunal secretary

Arbitrator's Fees

For arbitrations administered by SIAC, the fee calculated in accordance with the Schedule below is the maximum amount payable to each arbitrator.

Sum in Dispute (S$)	Arbitrator's Fees (S$)
Up to 50,000	5,000
50,001 to 100,000	10,000
100,001 to 500,000	10,000 + 6.250% excess over 100,000
500,001 to 1,000,000	35,000 + 5.000% excess over 500,000

Sum in Dispute (S$)	Arbitrator's Fees (S$)
1,000,001 to 2,000,000	60,000 + 2.500% excess over 1,000,000
2,000,001 to 5,000,000	85,000 + 1.500% excess over 2,000,000
5,000,001 to 10,000,000	130,000 + 0.800% excess over 5,000,000
10,000,001 to 50,000,000	170,000 + 0.300% excess over 10,000,000
50,000,001 to 80,000,000	290,000 + 0.150% excess over 50,000,000
80,000,001 to 100,000,000	365,000 + 0.070% excess over 100,000,000
100,000,001 to 500,000,000	470,000 + 0.060% excess over 250,000,000
500,000,001 to 1,000,000,000	620,000 + 0.040% excess over 500,000,000
Above 1,000,000,000	820,000 + 0.040% excess over 1,000,000,000 up to a maximum of 2,000,000

The above Arbitrator's Fees do not include 9% GST or its equivalent in the relevant jurisdiction, as may be applicable. Subject to the application of any applicable Double Taxation Agreement, withholding tax will apply to income derived by non-resident arbitrators from arbitration work carried out in Singapore beginning from 1 April 2023.

EA Filing Fee

The following fees shall be payable for an application for emergency interim relief under Rule 12.1 and Schedule 1 of the SIAC Rules 2025. An application under Rule 12.1 and Schedule 1 must be accompanied by a payment of:

1. **Administration Fee for Emergency Arbitrator Applications (Non-Refundable):**

Singapore Parties	S$5,450*
Overseas Parties	S$5,000

** Fee includes 9% GST.*

2. **Emergency Arbitrator's Fees and Deposits:** The deposit towards the Emergency Arbitrator's fees and expenses shall be fixed at S$30,000, unless the Registrar determines otherwise pursuant to Schedule 1 to the SIAC Rules. The Emergency Arbitrator's fees shall be fixed at S$25,000, unless the Registrar determines otherwise pursuant to Schedule 1 of the SIAC Rules.

Challenge Filing Fee (Non-Refundable)

A party submitting a notice of challenge in cases administered by SIAC shall make payment of the following Challenge Filing Fee:

Challenge Filing Fee (Non-Refundable):

Singapore Parties	S$10,900*
Overseas Parties	S$10,000

** Fee includes 9% GST.*

Joinder Filing Fee (Non-Refundable)

A party submitting an application for joinder under Rule 18.1 of the SIAC Rules 2025 shall make payment of the following Joinder Filing Fee:

Joinder Filing Fee (Non-Refundable):

Singapore Parties	S$5,450*
Overseas Parties	S$5,000

** Fee includes 9% GST.*

Other Fees

Arb-Med-Arb Fees

Arb-Med-Arb	Singapore Parties	SIAC S$3,270* + SIMC S$1,000 = S$4,270
	Overseas Parties	SIAC S$3,000 + SIMC S$1,000 = S$4,000

** SIAC Fee includes 9% GST.*

Appointment Fees (Non-Refundable)

The appointment fee is payable where a request for appointment of arbitrator(s) is made in an ad hoc case. The fee is payable by the party requesting the appointment. A request for appointment must be accompanied by payment of the appointment fee prescribed below.

	1 arbitrator	2 arbitrators	3 arbitrators
Singapore Parties	S$5,450*	S$8,720*	S$10,900*
Overseas Parties	S$5,000	S$8,000	S$10,000

** Fees include 9% GST.*

Authentication & Certification Service

SIAC's charges for the authentication and certification of arbitration awards made in Singapore, or arbitration agreements, are as follows (w.e.f 1 Jan 2025):

Authentication / CertificationFee	S$250.00 (for each authenticated/ certified copy)
Incidentals	S$25.23
9% GST	S$24.77
Total	**S$300.00**

Assessment or Taxation Fees

Under the Singapore International Arbitration Act 1994 ("**IAA**"), the Registrar of the Court of Arbitration of SIAC ("**Registrar**") is the statutory taxation authority. Pursuant to Article 21 of the IAA, "[a]*ny costs directed by an award to be paid are, unless the award otherwise directs, assessable by the* [Registrar]". The process is sometimes called "**taxation**" of costs.

As a general practice, SIAC encourages the Tribunal to specify in an award and the dispositif, the total amount awarded or apportioned in respect of the costs of arbitration and the parties' legal and other costs, and provide reasons in the award for the awarding or apportionment of these amounts to / among the parties. However, if the Tribunal does not assess or apportion the costs in an award, and the parties fail to reach an agreement on the amount to be borne by each party, the Registrar may be requested to assess the amount for the parties pursuant to Article 21 of the IAA.

The party that requires the Registrar's taxation services pays a fee according to the amount of costs claimed in accordance with the table below:

Amount of Costs Claimed (S$)	Assessment or Taxation Fee (S$)
Up to 50,000	5,000
50,001 – 100,000	5,000 + 2% of excess over 50,000
100,001 – 250,000	6,000 + 1.5% of excess over 100,000
250,001 – 500,000	8,250 + 1% of excess over 250,000
500,001 – 1,000,000	10,750 + 0.5% of excess over 500,000
Above 1,000,000	13,250 + 0.25% of excess over 1,000,000
Maximum	25,000

The fee is payable at the time of request for taxation or assessment.
The above fees do not include 9% GST as may be applicable.
The above schedule of assessment or taxation fees is effective as of 1 January 2025.

Payment Information

Payments may be made by a local cheque from a Singapore bank payable to "**Singapore International Arbitration Centre**" or by bank transfer to our bank account. Please note that cheques from overseas banks will not be accepted. For bank details, please contact us at +65 6713 9777 or casemanagement@siac.org.sg.

All cheques should be sent directly to:

Singapore International Arbitration Centre
28 Maxwell Road #03-01
Maxwell Chambers Suites
Singapore 069120

Attn: Accounts Department (**Please indicate party name/case reference number if available at the back of the cheque**)

SIAC-SIMC Arb-Med-Arb Protocol ("AMA Protocol")

(As of 5 November 2014)

1. This AMA Protocol shall apply to all disputes submitted to the Singapore International Arbitration Centre ("SIAC") for resolution under the Singapore Arb-Med-Arb Clause or other similar clause ("AMA Clause") and/or any dispute which parties have agreed to submit for resolution under this AMA Protocol. Under the AMA Protocol, parties agree that any dispute settled in the course of the mediation at the Singapore International Mediation Centre ("SIMC") shall fall within the scope of their arbitration agreement.

2. A party wishing to commence an arbitration under the AMA Clause shall file with the Registrar of SIAC a notice of arbitration in accordance with the arbitration rules applicable to the arbitration proceedings ("Arbitration Rules"), which Arbitration Rules shall be either: (i) the Arbitration Rules of the SIAC (as may be revised from time to time); or (ii) the UNCITRAL Arbitration Rules (as may be revised from time to time) where parties have agreed that SIAC shall administer such arbitration.

3. The Registrar of SIAC will inform SIMC of the arbitration commenced pursuant to an AMA Clause within 4 working days from the commencement of the arbitration, or within 4 working days from the agreement of the parties to refer their dispute to mediation under the AMA Protocol. SIAC will send to SIMC a copy of the notice of arbitration.

4. The Tribunal shall be constituted by SIAC in accordance with the Arbitration Rules and/or the parties' arbitration agreement.

5. The Tribunal shall, after the exchange of the Notice of Arbitration and Response to the Notice of Arbitration, stay the arbitration and inform the Registrar of SIAC that the case can be submitted for mediation at SIMC. The Registrar of SIAC will send the case file with all documents lodged by the parties to SIMC for mediation at SIMC.

   Upon SIMC's receipt of the case file, SIMC will inform the Registrar of SIAC of the commencement of mediation at SIMC (the "Mediation Commencement Date") pursuant to the SIMC Mediation Rules. All subsequent steps in the arbitration shall be stayed pending the outcome of mediation at SIMC.

6. The mediation conducted under the auspices of SIMC shall be completed within 8 weeks from the Mediation Commencement Date, unless, the Registrar of SIAC in consultation with the SIMC extends the time. For the purposes of calculating any time period in the arbitration proceeding, the time period will stop running at the Mediation Commencement Date and resume upon notification of the Registrar of SIAC to the Tribunal of the termination of the mediation proceeding.

7. At the termination of the 8-week period (unless the deadline is extended by the Registrar of SIAC) or in the event the dispute cannot be settled by mediation either partially or entirely at any time prior to the expiration of the 8-week period, SIMC shall promptly inform the Registrar of SIAC of the outcome of the mediation, if any.

8. In the event that the dispute has not been settled by mediation either partially or entirely, the Registrar of SIAC will inform the Tribunal that the arbitration proceeding shall resume. Upon the date of the Registrar's notification to the Tribunal, the arbitration proceeding in respect of the dispute or remaining part of the dispute (as the case may be) shall resume in accordance with the Arbitration Rules.

9. In the event of a settlement of the dispute by mediation between the parties, SIMC shall inform the Registrar of SIAC that a settlement has been reached. If the parties request the Tribunal to record their settlement in the form of a consent award, the parties or the Registrar of the SIAC shall refer the settlement agreement to the Tribunal and the Tribunal may render a consent award on the terms agreed to by the parties.

Financial Matters

10. Parties shall pay a non-refundable case filing fee as set out in Appendix B of the SIMC Mediation Rules to SIAC for all cases under this AMA Protocol.

11. Where a case is commenced pursuant to the AMA Clause and where parties have agreed to submit their dispute for resolution under the AMA Protocol before the commencement of arbitration proceedings, this filing fee is payable to SIAC upon the filing of the notice of arbitration. Otherwise, the portion of the filing fee remaining unpaid in respect of the mediation shall be payable to SIAC upon the submission of the case for mediation at SIMC.

12. Parties shall also pay to SIAC, upon request, an advance on the estimated costs of the arbitration ("Arbitration Advance") as well as administrative fees and expenses for the mediation ("Mediation Advance") in accordance with SIAC and SIMC's respective Schedule of Fees (collectively "the Deposits"). The quantum of the Deposits will be determined by the Registrar of SIAC in consultation with SIMC.

13. Where a case is commenced pursuant to the AMA Clause and where parties have agreed to submit their dispute for resolution under the AMA Protocol before the commencement of arbitration proceedings, the Mediation Advance shall be paid with the Arbitration Advance requested by SIAC. Otherwise, the Mediation Advance shall be paid upon the submission of the case for mediation at SIMC.

14. Without prejudice to the Arbitration Rules, any party is free to pay the Deposits of the other party, should the other party fail to pay its share. The Registrar of SIAC shall inform SIMC if the Deposits remain wholly or partially unpaid.

15. SIAC is authorised to make payment of the Mediation Advance to SIMC from the Deposits or the Arbitration Advance held by SIAC without further reference to the parties.

SIAC Restructuring and Insolvency Arbitration Protocol ("RIA Protocol")
(As of 26 August 2025)

Application of this Protocol

1. This Protocol shall apply to any dispute that parties have agreed to submit to arbitration under it where the dispute:

   (a) arises out of or in connection with any matters pertaining to a law relating to restructuring, adjustment of debt, or insolvency;

   (b) arises out of, in connection with, or in anticipation of, any insolvency proceedings, including on the recommendation of a court or an insolvency officeholder; or

   (c) does not arise in anticipation of or in relation to any insolvency proceedings.

2. For the purposes of this Protocol:

   (a) "insolvency proceedings" mean and include any judicial or administrative proceeding, including an interim proceeding, pursuant to a law relating to insolvency or adjustment of debt, in which proceeding the assets and affairs of a person or entity are subject to, or will be subject to, control or supervision by a court, for the purpose of reorganisation or liquidation;

   (b) "court" means a court, tribunal, or other adjudicative body, in any jurisdiction, for matters relating to restructuring, adjustment of debt, or insolvency;

   (c) "insolvency officeholder" means a person appointed under any law relating to restructuring, adjustment of debt, or insolvency, to administer, manage, or oversee any insolvency proceedings and includes, but is not limited to, liquidators, administrators, administrative receivers, trustees in bankruptcy, receivers, insolvency professionals or practitioners, supervisors of voluntary arrangements, judicial managers, resolution professionals, or any person performing an equivalent function and acting in a fiduciary or court-supervised capacity under the applicable law.

3. By agreeing to submit a dispute to arbitration under this Protocol, the parties agree that:

   (a) subject to the modifications set out in this Protocol and any specific directions of the Tribunal, the SIAC Rules for the time being in force shall apply, *mutatis mutandis*, to an arbitration conducted under this Protocol; and

   (b) where an arbitration is conducted in accordance with this Protocol, the rules and procedures set out in this Protocol shall apply and take precedence over any contrary provisions in the applicable SIAC Rules.

4. Unless otherwise stated in this Protocol, any term that has been defined in the applicable SIAC Rules that is used in this Protocol shall have the same meaning as under the applicable SIAC Rules.

Response to Notice of Arbitration

5. The Respondent shall file a Response to the Notice of Arbitration with the Registrar and send a copy of the Response to the Claimant within seven days from the date of commencement of the arbitration under this Protocol.

Seat of Arbitration and Governing Law of Arbitration Agreement

6. In any arbitration conducted under this Protocol, unless the parties agree otherwise or the Tribunal determines otherwise:

   (a) the seat of arbitration shall be Singapore; and

   (b) the law governing the agreement of the parties to submit disputes to arbitration under this Protocol shall be Singapore law.

Appointment of Arbitrators

7. A sole arbitrator shall be appointed in any arbitration under this Protocol unless the Registrar determines, after considering the views of the parties, that the complexity, the quantum involved, or other relevant circumstances of the dispute, warrants the appointment of three arbitrators.

8. In the event a sole arbitrator is to be appointed, the parties may jointly nominate the sole arbitrator. In the absence of such joint nomination being made within 14 days of the date of commencement of the arbitration under this Protocol or within the period otherwise agreed by the parties or set by the Registrar, or if at any time any party so requests, the President shall appoint the sole arbitrator.

9. In the event three arbitrators are to be appointed:

   (a) The Claimant shall nominate an arbitrator within seven days from the date of commencement of the arbitration under this Protocol or within the period of time otherwise agreed by the parties or set by the Registrar, and the Respondent shall nominate an arbitrator within seven days of the receipt of the Claimant's nomination of an arbitrator or within the period of time otherwise agreed by the parties or set by the Registrar.

   (b) If a party fails to make a nomination of an arbitrator within the timelines under Paragraph 9(a), the President shall appoint an arbitrator on its behalf.

   (c) The presiding arbitrator shall be appointed by the President, unless the parties have agreed upon another procedure for the nomination of the presiding arbitrator or if such agreed procedure does not result in a nomination of the presiding arbitrator within the period agreed by the parties or set by the Registrar.

10. Where there are more than two parties to the arbitration, and three arbitrators are to be appointed, the Claimant(s) shall jointly nominate an arbitrator and the Respondent(s) shall jointly nominate an arbitrator within 15 days from the date of commencement of the arbitration under this Protocol or within the period of time otherwise agreed by the parties or set by the Registrar. The third arbitrator, who shall be the presiding arbitrator, shall be appointed in accordance with Paragraph 9(c). In the absence of joint nominations from both the Claimant(s) and the Respondent(s) being made within 15 days of the date of commencement of the arbitration under this Protocol or within the period otherwise agreed by the parties or set by the Registrar, the President shall appoint all three arbitrators and shall designate one of them to be the presiding arbitrator.

11. Any arbitrator nominated or appointed under this Protocol may, but is not required to be, an arbitrator listed under the SIAC Specialist Panel for Restructuring and Insolvency Disputes.

12. Unless the parties agree otherwise, the Tribunal shall not appoint a Tribunal Secretary in an arbitration under this Protocol.

Challenge to Arbitrators

13. A party who wishes to challenge an arbitrator shall file a notice of challenge with the Registrar:

    (a) within three days from the date of receipt of the notice of appointment of the arbitrator who is being challenged; or

    (b) within three days from the date that the reasons for challenge of an arbitrator specified in the SIAC Rules became known or should have reasonably been known to that party.

14. If within three days after the date the notice of challenge is filed, all other parties agree to the challenge or the challenged arbitrator voluntarily withdraws from office, the SIAC Court may direct that a substitute arbitrator be appointed in accordance with this Protocol and the SIAC Rules. In neither case does this imply acceptance of the validity of the grounds for the challenge.

15. The procedures for challenge and replacement of an arbitrator in the applicable SIAC Rules shall apply, *mutatis mutandis*, to a challenge of an arbitrator under this Protocol, save that the SIAC Court may determine that no reasons are to be provided in a decision on the challenge.

Mediation

16. The Tribunal may, at the joint request of the parties, suspend the proceedings for a period of up to three weeks to allow the parties to resolve their dispute, in whole or in part, through mediation. The Tribunal may extend the period of suspension at the request of a party.

17. Subject to any applicable law, no member of the Tribunal may act as a mediator in respect of the dispute or any part thereof, unless agreed by all parties in writing.

18. Where the parties agree to attempt resolution of their dispute through mediation, if the dispute:

    (a) has not been settled by mediation, the Tribunal shall resume the arbitration proceedings in respect of the dispute or any remaining part of the dispute; or

    (b) has been settled by mediation, the parties may request the Tribunal to record their settlement in the form of a consent award on the terms agreed by the parties.

19. Where the Tribunal is requested to make a consent award on terms agreed by the parties, the Tribunal shall seek to ensure that the matters dealt with in the consent award are:

    (a) within the scope of the arbitration agreement and the Tribunal's jurisdiction; and

    (b) not contrary to any applicable law or otherwise contrary to public policy.

Conduct of Proceedings

20. Within seven days from the date of constitution of the Tribunal, the Tribunal shall conduct a case management conference with the parties to discuss:

    (a) the timetable for the conduct of the proceedings, including the determination of any interlocutory applications;

    (b) the parties' views on the joinder of any third party to the arbitration;

    (c) the parties' views on any issue that may be appropriate for preliminary determination;

    (d) any objections to the jurisdiction of the Tribunal or the validity, enforceability, or scope of the agreement to arbitrate; and

    (e) the potential for the settlement of all or part of the dispute, including through the adoption of amicable dispute resolution methods such as mediation.

21. The Tribunal shall have the power to conduct the proceedings in such manner as the Tribunal considers appropriate, taking into account the timelines under this Protocol.

22. In exercising its procedural discretion under this Protocol, the Tribunal may set a time limit on the expiry of which, the parties shall not be entitled to file any interlocutory applications without leave of the Tribunal.

23. The Registrar may extend or abridge any time limit under this Protocol.

Award

24. The final award shall be made as soon as practicable and, in any event, within six months from the date of constitution of the Tribunal, unless the parties agree otherwise or the Registrar extends the time for making such final award.

25. The Tribunal may, in consultation with the parties and the Registrar, order that the time limit for making the final award under Paragraph 24 shall no longer apply in the arbitration. Notwithstanding such an order by the Tribunal, the arbitration shall continue to be conducted by the same Tribunal that was constituted to conduct the arbitration.

26. Before making any award, the Tribunal shall submit such award in draft form to the Registrar and inform the parties of the date of submission. The Tribunal shall submit the draft award to the Registrar not later than 30 days from the date of submission of the last directed oral or written submission in respect of the proceedings to which the award pertains, unless the Registrar extends the time for such submission.

27. The Registrar may, as soon as practicable, suggest modifications as to the form of the draft award and, without affecting the Tribunal's liberty to decide the dispute, draw the Tribunal's attention to points of substance. No award shall be issued until it has been approved by the Registrar as to its form.

28. The Tribunal shall state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons are to be given.

General Provisions

29. Notwithstanding any provisions on confidentiality in the applicable SIAC Rules, a party may:

    (a) request the Tribunal to provide an additional and amended copy of any decision, ruling, order, or award that does not reveal any matter, including the identity of any party to the proceedings or any other information that any party to the proceedings reasonably wishes to remain confidential;

    (b) disclose such additional and amended copy of a decision, ruling, order, or award in any relevant insolvency proceedings; and

    (c) with the leave of the Tribunal, disclose the status and progress of any arbitration conducted under this Protocol, in any relevant insolvency proceedings.

30. The parties hereby agree that they shall not raise, and insofar as such waiver can be validly made, expressly waive, any objection to the arbitrability of any dispute, claim, or controversy submitted to arbitration under this Protocol, or any objection as to the scope of arbitrable issues or any argument that the dispute falls outside the scope of arbitration. The parties further agree that the Tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, validity, applicability, or scope of the arbitration agreement, the arbitrability of any claim, and any objections as to whether a dispute is subject to arbitration under this agreement.

31. This Protocol and the applicable SIAC Rules shall apply as appropriate to any arbitration conducted under this Protocol, taking into account the nature and purpose of the proceedings. The Tribunal may decide the manner in which this Protocol and the SIAC Rules shall apply to any arbitration conducted under this Protocol.

SIAC Model Clauses
(Revised as of 26 August 2025)

1. SIAC Model Clause

We recommend that parties include the following arbitration agreement in their contracts:

> Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.
>
> The seat of the arbitration shall be [Singapore].*
>
> The Tribunal shall consist of _____ arbitrator(s).^
>
> The language of the arbitration shall be _____.
>
> The law governing this arbitration agreement shall be _____. #
>
> [In respect of any court proceedings in Singapore commenced under the International Arbitration Act 1994 in relation to the arbitration, the parties agree (a) to commence such proceedings before the Singapore International Commercial Court ("the SICC"); and (b) in any event, that such proceedings shall be heard and adjudicated by the SICC.] **

Parties should also include an applicable law clause. The following language is recommended:

> APPLICABLE LAW
>
> 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 Singapore, please replace "[Singapore]" with the city and country of choice (e.g., "[City, Country]").

^ State an odd number. Either state one, or state three.

State the country or jurisdiction. We recommend that parties agree on the law governing the arbitration agreement. This law potentially governs matters including the formation, existence, enforceability, legality, scope, and validity of the arbitration agreement, and the arbitrability of disputes arising from it.

** Parties may wish to agree to the supervisory jurisdiction of the Singapore International Commercial Court (SICC) for international commercial arbitrations where Singapore is chosen as the seat of arbitration.

^^ State the country or jurisdiction.

2. SIAC UNCITRAL Rules Model Clause

Where parties intend for SIAC to administer an arbitration governed by the UNCITRAL Arbitration Rules, we recommend that they include the following arbitration agreement in their contracts:

> Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules for the time being in force.
>
> The arbitration shall be administered by the Singapore International Arbitration Centre ("SIAC") in accordance with its Practice Note on UNCITRAL cases.
>
> The appointing authority shall be the President or Vice-President of the SIAC Court of Arbitration.
>
> The seat of the arbitration shall be [Singapore]. *
>
> The number of arbitrators shall be _____. ^
>
> The language to be used in the arbitral proceedings shall be _____.
>
> The law governing this arbitration agreement shall be _____. #
>
> [The parties hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under the applicable law.] **
>
> [In respect of any court proceedings in Singapore commenced under the International Arbitration Act 1994 in relation to the arbitration, the parties agree (a) to commence such proceedings before the Singapore International Commercial Court ("the SICC"); and (b) in any event, that such proceedings shall be heard and adjudicated by the SICC.] ^^

_____

* Parties should specify the seat of arbitration of their choice. If the parties wish to select an alternative seat to Singapore, please replace "[Singapore]" with the city and country of choice (e.g., "[City, Country]").

^ State an odd number, such as one or three.

State the country or jurisdiction. We recommend that parties agree on the law governing the arbitration agreement. This law potentially governs matters including the formation, existence, enforceability, legality, scope, and validity of the arbitration agreement, and the arbitrability of disputes arising from it.

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

^^ Parties may wish to agree to the supervisory jurisdiction of the Singapore International Commercial Court (SICC) for international commercial arbitrations where Singapore is chosen as the seat of arbitration.

3. SIAC Expedited Procedure Model Clause

Where parties intend for the application of the SIAC Expedited Procedure to an arbitration arising from their contract, we recommend that parties include the following arbitration agreement in their contract:

> Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.
>
> The parties agree that any arbitration commenced pursuant to this clause shall be conducted in accordance with the Expedited Procedure under Rule 14.1 and Schedule 3 of the SIAC Rules.
>
> The seat of the arbitration shall be [Singapore].*
>
> The Tribunal shall consist of one arbitrator.
>
> The language of the arbitration shall be _____.
>
> The law governing this arbitration agreement shall be _____. ^
>
> [In respect of any court proceedings in Singapore commenced under the International Arbitration Act 1994 in relation to the arbitration, the parties agree (a) to commence such proceedings before the Singapore International Commercial Court ("the SICC"); and (b) in any event, that such proceedings shall be heard and adjudicated by the SICC.] #

Parties should also include an applicable law clause. The following language is recommended:

> APPLICABLE LAW
>
> 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 Singapore, please replace "[Singapore]" with the city and country of choice (e.g., "[City, Country]").

^ State the country or jurisdiction. We recommend that parties agree on the law governing the arbitration agreement. This law potentially governs matters including the formation, existence, enforceability, legality, scope, and validity of the arbitration agreement, and the arbitrability of disputes arising from it.

Parties may wish to agree to the supervisory jurisdiction of the Singapore International Commercial Court (SICC) for international commercial arbitrations where Singapore is chosen as the seat of arbitration.

** State the country or jurisdiction.

4. SIAC Streamlined Procedure Model Clause

Where parties intend for the application of the SIAC Streamlined Procedure to an arbitration arising from their contract, we recommend that parties include the following arbitration agreement in their contract:

> Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.
>
> The parties agree that any arbitration commenced pursuant to this clause shall be conducted in accordance with the Streamlined Procedure under Rule 13.1 and Schedule 2 of the SIAC Rules.
>
> The seat of the arbitration shall be [Singapore].*
>
> The Tribunal shall consist of one arbitrator.
>
> The language of the arbitration shall be _____.
>
> The law governing this arbitration agreement shall be _____. ^
>
> [In respect of any court proceedings in Singapore commenced under the International Arbitration Act 1994 in relation to the arbitration, the parties agree (a) to commence such proceedings before the Singapore International Commercial Court ("the SICC"); and (b) in any event, that such proceedings shall be heard and adjudicated by the SICC.] #

Parties should also include an applicable law clause. The following language is recommended:

> APPLICABLE LAW
>
> 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 Singapore, please replace "[Singapore]" with the city and country of choice (e.g., "[City, Country]").

^ State the country or jurisdiction. We recommend that parties agree on the law governing the arbitration agreement. This law potentially governs matters including the formation, existence, enforceability, legality, scope, and validity of the arbitration agreement, and the arbitrability of disputes arising from it.

Parties may wish to agree to the supervisory jurisdiction of the Singapore International Commercial Court (SICC) for international commercial arbitrations where Singapore is chosen as the seat of arbitration.

** State the country or jurisdiction.

5. SIAC-SIMC Arb-Med-Arb Model Clause ("Arb-Med-Arb Clause")

Arb-Med-Arb is a process where a dispute is first referred to arbitration before mediation is attempted. If parties are able to settle their dispute through mediation, their mediated settlement may be recorded as a consent award. The consent award is generally accepted as an arbitral award, and, subject to any local legislation and/or requirements, is generally enforceable in over 170 countries under the New York Convention. If parties are unable to settle their dispute through mediation, they may continue with the arbitration proceedings.

Parties wishing to utilise this tiered dispute resolution mechanism as administered by SIAC and the Singapore International Mediation Centre ("SIMC"), may consider incorporating the following Arb-Med-Arb Clause in their contracts:

> Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.
>
> The seat of the arbitration shall be [Singapore]. *
>
> The Tribunal shall consist of _____^ arbitrator(s).
>
> The language of the arbitration shall be _____.
>
> The law governing this arbitration agreement shall be _____. #
>
> The parties further agree that following the commencement of arbitration, they will attempt in good faith to resolve the Dispute through mediation at the Singapore International Mediation Centre ("SIMC"), in accordance with the SIAC-SIMC Arb-Med-Arb Protocol for the time being in force. Any settlement reached in the course of the mediation shall be referred to the arbitral tribunal appointed by SIAC and may be made a consent award on agreed terms.

[In respect of any court proceedings in Singapore commenced under the International Arbitration Act 1994 in relation to the arbitration, the parties agree (a) to commence such proceedings before the Singapore International Commercial Court ("the SICC"); and (b) in any event, that such proceedings shall be heard and adjudicated by the SICC.] **

---

* Parties should specify the seat of arbitration of their choice. If the parties wish to select an alternative seat to Singapore, please replace "[Singapore]" with the city and country of choice (e.g., "[City, Country]").

^ State an odd number. Either state one, or state three.

State the country or jurisdiction. We recommend that parties agree on the law governing the arbitration agreement. This law potentially governs matters including the formation, existence, enforceability, legality, scope, and validity of the arbitration agreement, and the arbitrability of disputes arising from it.

** Parties may wish to agree to the supervisory jurisdiction of the Singapore International Commercial Court (SICC) for international commercial arbitrations where Singapore is chosen as the seat of arbitration.

6. SIAC FedArb Model Clause

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force, which rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be Palo Alto, California.

The Tribunal shall consist of _____* arbitrator(s). The arbitrator(s) shall be selected from the FedArb IP Panel of Arbitrators and/or SIAC IP Panel of Arbitrators.

The language of the arbitration shall be _____.

The law governing this arbitration agreement shall be _____. ^

This contract is governed by the laws of _____#

_____

* State an odd number. Either state one, or state three.

^ State the country or jurisdiction. We recommend that parties agree on the law governing the arbitration agreement. This law potentially governs matters including the formation, existence, enforceability, legality, scope, and validity of the arbitration agreement, and the arbitrability of disputes arising from it.

State the country or jurisdiction.

7. SIAC RIA Protocol Model Clauses

a. Model Clause for reference of disputes to arbitration under the SIAC RIA Protocol where the disputes have already arisen

For disputes that have arisen which parties wish to refer to arbitration conducted in accordance with the SIAC Rules and the SIAC RIA Protocol, we recommend that parties adopt and amend the following language for their agreement as an arbitration agreement. Parties should include a definition of the term 'disputes' to include all issues or claims that have arisen which are sought to be referred to arbitration. A proposed definition is included here.

"Disputes" shall mean any and all disputes, claims, controversies or differences of any kind whatsoever that arise out of or relate to [*describe the nature of issues or claims that are sought to be referred to arbitration*].

The Disputes including any question regarding the existence, validity or termination of this agreement, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules"), for the time being in force, which rules are deemed to be incorporated by reference in this clause. The arbitration shall be conducted in accordance with the SIAC Restructuring and Insolvency Arbitration Protocol ("SIAC RIA Protocol").

The seat of the arbitration shall be [Singapore].*

The Tribunal shall consist of _____ arbitrator(s).^

The language of the arbitration shall be _____.

The law governing this arbitration agreement shall be [Singapore].#

[In respect of any court proceedings in Singapore commenced under the International Arbitration Act 1994 in relation to the arbitration, the parties agree (a) to commence such proceedings before the Singapore International Commercial Court ("the SICC"); and (b) in any event, that such proceedings shall be heard and adjudicated by the SICC.] **

Note: The SIAC RIA Protocol provides that, unless the parties agree otherwise or the tribunal determines otherwise, Singapore shall be the seat of the arbitration, and Singapore law shall govern the agreement of the parties to submit disputes to arbitration under the SIAC RIA Protocol. Parties are free to agree on a different seat of arbitration or a different law to govern the agreement to arbitrate disputes under the SIAC RIA Protocol.

* If parties wish to select an alternative seat to Singapore, please replace "[Singapore]" with the city and country of choice (e.g., "[City, Country]").

^ State an odd number. Either state one, or state three.

If parties wish to select an alternative law to govern the agreement to arbitrate, please state the country or jurisdiction. We recommend that parties agree on the law governing the arbitration agreement. This law potentially governs matters including the formation, existence, enforceability, legality, scope, and validity of the arbitration agreement, and the arbitrability of disputes arising from it.

** Parties may wish to agree to the supervisory jurisdiction of the Singapore International Commercial Court (SICC) for international commercial arbitrations where Singapore is chosen as the seat of arbitration.

b. Model Clause for reference of disputes to arbitration under the SIAC RIA Protocol where such disputes may arise in the future

For any disputes that may arise in the future to be referred to arbitration conducted in accordance with the SIAC Rules and the SIAC RIA Protocol, we recommend that parties include the following arbitration agreement in their contracts:

Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules"), for the time being in force, which rules are deemed to be incorporated by reference in this clause. The arbitration shall be conducted in accordance with the SIAC Restructuring and Insolvency Arbitration Protocol ("SIAC RIA Protocol").

The seat of the arbitration shall be [Singapore].*

The Tribunal shall consist of _____ arbitrator(s).^

The language of the arbitration shall be _____.

The law governing this arbitration agreement shall be [Singapore].#

[In respect of any court proceedings in Singapore commenced under the International Arbitration Act 1994 in relation to the arbitration, the parties agree (a) to commence such proceedings before the Singapore International Commercial Court ("the SICC"); and (b) in any event, that such proceedings shall be heard and adjudicated by the SICC.] **

Parties should also include an applicable law clause. The following language is recommended:

APPLICABLE LAW

This contract is governed by the laws of [Singapore].^^

_____

Note: The SIAC RIA Protocol provides that, unless the parties agree otherwise or the tribunal determines otherwise, Singapore shall be the seat of the arbitration, and Singapore law shall govern the agreement of the parties to submit disputes to arbitration under the SIAC RIA Protocol. Parties are free to agree on a different seat of arbitration or a different law to govern the agreement to arbitrate disputes under the SIAC RIA Protocol.

* If parties wish to select an alternative seat to Singapore, please replace "[Singapore]" with the city and country of choice (e.g., "[City, Country]").

^ State an odd number. Either state one, or state three.

If parties wish to select an alternative law to govern the agreement to arbitrate, please state the country or jurisdiction. We recommend that parties agree on the law governing the arbitration agreement. This law potentially governs matters including the formation, existence, enforceability, legality, scope, and validity of the arbitration agreement, and the arbitrability of disputes arising from it.

** Parties may wish to agree to the supervisory jurisdiction of the Singapore International Commercial Court (SICC) for international commercial arbitrations where Singapore is chosen as the seat of arbitration.

^^ State the country or jurisdiction.

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Where The World Arbitrates

UNCITRAL Model Law on International Commercial Arbitration

1985

With amendments as adopted in 2006

UNITED NATIONS

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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

UNCITRAL Model Law on International Commercial Arbitration

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Contents

Resolutions adopted by the General Assembly

40/72. Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law

The General Assembly,

Recognizing the value of arbitration as a method of settling disputes arising in international commercial relations,

Convinced that the establishment of a model law on arbitration that is acceptable to States with different legal, social and economic systems contributes to the development of harmonious international economic relations,

Noting that the Model Law on International Commercial Arbitration[1] was adopted by the United Nations Commission on International Trade Law at its eighteenth session, after due deliberation and extensive consultation with arbitral institutions and individual experts on international commercial arbitration,

Convinced that the Model Law, together with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards[2] and the Arbitration Rules of the United Nations Commission on International Trade Law[3] recommended by the General Assembly in its resolution 31/98 of 15 December 1976, significantly contributes to the establishment of a unified legal framework for the fair and efficient settlement of disputes arising in international commercial relations,

1. *Requests* the Secretary-General to transmit the text of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, together with the *travaux préparatoires* from the eighteenth session of the Commission, to Governments and to arbitral institutions and other interested bodies, such as chambers of commerce;

2. *Recommends* that all States give due consideration to the Model Law on International Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice.

112th plenary meeting
11 December 1985

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[1] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I.

[2] United Nations, *Treaty Series*, vol. 330, No. 4739, p. 38.

[3] United Nations publication, Sales No. E.77.V.6.

[*on the report of the Sixth Committee (A/61/453)*]

61/33. Revised articles of the Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, and the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958

The General Assembly,

Recognizing the value of arbitration as a method of settling disputes arising in the context of international commercial relations,

Recalling its resolution 40/72 of 11 December 1985 regarding the Model Law on International Commercial Arbitration,[1]

Recognizing the need for provisions in the Model Law to conform to current practices in international trade and modern means of contracting with regard to the form of the arbitration agreement and the granting of interim measures,

Believing that revised articles of the Model Law on the form of the arbitration agreement and interim measures reflecting those current practices will significantly enhance the operation of the Model Law,

Noting that the preparation of the revised articles of the Model Law on the form of the arbitration agreement and interim measures was the subject of due deliberation and extensive consultations with Governments and interested circles and would contribute significantly to the establishment of a harmonized legal framework for a fair and efficient settlement of international commercial disputes,

Believing that, in connection with the modernization of articles of the Model Law, the promotion of a uniform interpretation and application of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958,[2] is particularly timely,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for formulating and adopting the revised articles of its Model Law on International Commercial Arbitration on the form of the arbitration agreement and interim measures, the text of which is contained in annex I to the report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session,[3] and recommends that all States give favourable consideration to the enactment of the revised articles of the Model Law, or the revised Model Law on International Commercial Arbitration of the United Nations Commission on

[1] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I.

[2] United Nations, *Treaty Series*, vol. 330, No. 4739.

[3] *Official Records of the General Assembly, Sixty-first Session, Supplement No. 17* (A/61/17).

International Trade Law, when they enact or revise their laws, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;

2. *Also expresses its appreciation* to the United Nations Commission on International Trade Law for formulating and adopting the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958,[2] the text of which is contained in annex II to the report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session;[3]

3. *Requests* the Secretary-General to make all efforts to ensure that the revised articles of the Model Law and the recommendation become generally known and available.

64th plenary meeting
4 December 2006

Part One

UNCITRAL Model Law on International Commercial Arbitration

(United Nations documents A/40/17, annex I and A/61/17, annex I)

(As adopted by the United Nations Commission on International Trade Law on 21 June 1985, and as amended by the United Nations Commission on International Trade Law on 7 July 2006)

CHAPTER I. GENERAL PROVISIONS

Article 1. Scope of application[1]

(1) This Law applies to international commercial[2] arbitration, subject to any agreement in force between this State and any other State or States.

(2) The provisions of this Law, except articles 8, 9, 17 H, 17 I, 17 J, 35 and 36, apply only if the place of arbitration is in the territory of this State.

(Article 1(2) has been amended by the Commission at its thirty-ninth session, in 2006)

(3) An arbitration is international if:

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

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[1]Article headings are for reference purposes only and are not to be used for purposes of interpretation.

[2]The term "commercial" should be given a wide interpretation so as to cover matters arising from all relationships of a commercial nature, whether contractual or not. Relationships of a commercial nature include, but are not limited to, the following transactions: any trade transaction for the supply or exchange of goods or services; distribution agreement; commercial representation or agency; factoring; leasing; construction of works; consulting; engineering; licensing; investment; financing; banking; insurance; exploitation agreement or concession; joint venture and other forms of industrial or business cooperation; carriage of goods or passengers by air, sea, rail or road.

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

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

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

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

(4) For the purposes of paragraph (3) of this article:

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

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

(5) This Law shall not affect any other law of this State by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Law.

Article 2. Definitions and rules of interpretation

For the purposes of this Law:

(a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

(b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(c) "court" means a body or organ of the judicial system of a State;

(d) where a provision of this Law, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;

(e) where a provision of this Law refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

(f) where a provision of this Law, other than in articles 25*(a)* and 32(2) *(a)*, refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.

Article 2 A. International origin and general principles

(As adopted by the Commission at its thirty-ninth session, in 2006)

(1) In the interpretation of this Law, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.

(2) Questions concerning matters governed by this Law which are not expressly settled in it are to be settled in conformity with the general principles on which this Law is based.

Article 3. Receipt of written communications

(1) Unless otherwise agreed by the parties:

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

Article 4. Waiver of right to object

A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

Article 5. Extent of court intervention

In matters governed by this Law, no court shall intervene except where so provided in this Law.

Article 6. Court or other authority for certain functions of arbitration assistance and supervision

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by ... [Each State enacting this model law specifies the court, courts or, where referred to therein, other authority competent to perform these functions.]

CHAPTER II. ARBITRATION AGREEMENT

Option I

Article 7. Definition and form of arbitration agreement

(As adopted by the Commission at its thirty-ninth session, in 2006)

(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing.

(3) An arbitration agreement is in writing if its content is recorded in any form, whether or not the arbitration agreement or contract has been concluded orally, by conduct, or by other means.

(4) The requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; "electronic communication" means any communication that the parties make by means of data messages; "data message" means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including, but not

limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.

(5) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

(6) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.

Option II

Article 7. Definition of arbitration agreement

(As adopted by the Commission at its thirty-ninth session, in 2006)

"Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.

Article 8. Arbitration agreement and substantive claim before court

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

Article 9. Arbitration agreement and interim measures by court

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

Article 10. Number of arbitrators

(1) The parties are free to determine the number of arbitrators.

(2) Failing such determination, the number of arbitrators shall be three.

Article 11. Appointment of arbitrators

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties,

(a) a party fails to act as required under such procedure, or

(b) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(c) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no

appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

Article 12. Grounds for challenge

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

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Article 13. Challenge procedure

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

Article 14. Failure or impossibility to act

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12(2).

Article 15. Appointment of substitute arbitrator

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

Article 16. Competence of arbitral tribunal to rule on its jurisdiction

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

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the

matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

CHAPTER IV A. INTERIM MEASURES AND PRELIMINARY ORDERS

(As adopted by the Commission at its thirty-ninth session, in 2006)

Section 1. Interim measures

Article 17. Power of arbitral tribunal to order interim measures

(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.

(2) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:

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

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

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

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

Article 17 A. Conditions for granting interim measures

(1) The party requesting an interim measure under article 17(2)*(a)*, *(b)* and *(c)* shall satisfy the arbitral tribunal that:

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

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

(2) With regard to a request for an interim measure under article 17(2)*(d)*, the requirements in paragraphs (1)*(a)* and *(b)* of this article shall apply only to the extent the arbitral tribunal considers appropriate.

Section 2. Preliminary orders

Article 17 B. Applications for preliminary orders and conditions for granting preliminary orders

(1) Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.

(2) The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.

(3) The conditions defined under article 17A apply to any preliminary order, provided that the harm to be assessed under article 17A(1)*(a)*, is the harm likely to result from the order being granted or not.

Article 17 C. Specific regime for preliminary orders

(1) Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for

the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.

(2) At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.

(3) The arbitral tribunal shall decide promptly on any objection to the preliminary order.

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

(5) A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court. Such a preliminary order does not constitute an award.

Section 3. Provisions applicable to interim measures and preliminary orders

Article 17 D. Modification, suspension, termination

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

Article 17 E. Provision of security

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

(2) The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

Article 17 F. Disclosure

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

(2) The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case. Thereafter, paragraph (1) of this article shall apply.

Article 17 G. Costs and damages

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

Section 4. Recognition and enforcement of interim measures

Article 17 H. Recognition and enforcement

(1) An interim measure issued by an arbitral tribunal shall be recognized as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the competent court, irrespective of the country in which it was issued, subject to the provisions of article 17 I.

(2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the court of any termination, suspension or modification of that interim measure.

(3) The court of the State where recognition or enforcement is sought may, if it considers it proper, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.

Article 17 I. Grounds for refusing recognition or enforcement[3]

(1) Recognition or enforcement of an interim measure may be refused only:

(a) At the request of the party against whom it is invoked if the court is satisfied that:

(i) Such refusal is warranted on the grounds set forth in article 36(1)*(a)*(i), (ii), (iii) or (iv); or

(ii) The arbitral tribunal's decision with respect to the provision of security in connection with the interim measure issued by the arbitral tribunal has not been complied with; or

(iii) The interim measure has been terminated or suspended by the arbitral tribunal or, where so empowered, by the court of the State in which the arbitration takes place or under the law of which that interim measure was granted; or

(b) If the court finds that:

(i) The interim measure is incompatible with the powers conferred upon the court unless the court decides to reformulate the interim measure to the extent necessary to adapt it to its own powers and procedures for the purposes of enforcing that interim measure and without modifying its substance; or

(ii) Any of the grounds set forth in article 36(1)*(b)*(i) or (ii), apply to the recognition and enforcement of the interim measure.

(2) Any determination made by the court on any ground in paragraph (1) of this article shall be effective only for the purposes of the application to recognize and enforce the interim measure. The court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

Section 5. Court-ordered interim measures

Article 17 J. Court-ordered interim measures

A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in

[3]The conditions set forth in article 17 I are intended to limit the number of circumstances in which the court may refuse to enforce an interim measure. It would not be contrary to the level of harmonization sought to be achieved by these model provisions if a State were to adopt fewer circumstances in which enforcement may be refused.

the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

Article 18. Equal treatment of parties

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

Article 19. Determination of rules of procedure

(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

Article 20. Place of arbitration

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

Article 21. Commencement of arbitral proceedings

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

Article 22. Language

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Article 23. Statements of claim and defence

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

Article 24. Hearings and written proceedings

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Article 25. Default of a party

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

Article 26. Expert appointed by arbitral tribunal

(1) Unless otherwise agreed by the parties, the arbitral tribunal

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

Article 27. Court assistance in taking evidence

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence.

The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

Article 28. Rules applicable to substance of dispute

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

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

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

Article 29. Decision-making by panel of arbitrators

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

Article 30. Settlement

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

Article 31. Form and contents of award

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

Article 32. Termination of proceedings

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

Article 33. Correction and interpretation of award; additional award

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

(a) a party, with notice to the other party, may request the arbitral

tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)*(a)* of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

Article 34. Application for setting aside as exclusive recourse against arbitral award

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not

valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of this State; or

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Law from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Law; or

(b) the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the award is in conflict with the public policy of this State.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

Article 35. Recognition and enforcement

(1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the

competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the original award or a copy thereof. If the award is not made in an official language of this State, the court may request the party to supply a translation thereof into such language.[4]

(Article 35(2) has been amended by the Commission at its thirty-ninth session, in 2006)

Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

[4]The conditions set forth in this paragraph are intended to set maximum standards. It would, thus, not be contrary to the harmonization to be achieved by the model law if a State retained even less onerous conditions.

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)*(a)*(v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

Part Two

Explanatory Note by the UNCITRAL secretariat on the 1985 Model Law on International Commercial Arbitration as amended in 2006[1]

1. The UNCITRAL Model Law on International Commercial Arbitration ("the Model Law") was adopted by the United Nations Commission on International Trade Law (UNCITRAL) on 21 June 1985, at the end of the eighteenth session of the Commission. The General Assembly, in its resolution 40/72 of 11 December 1985, recommended "that all States give due consideration to the Model Law on International Commercial Arbitration, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice". The Model Law was amended by UNCITRAL on 7 July 2006, at the thirty-ninth session of the Commission (see below, paragraphs 4, 19, 20, 27, 29 and 53). The General Assembly, in its resolution 61/33 of 4 December 2006, recommended "that all States give favourable consideration to the enactment of the revised articles of the UNCITRAL Model Law on International Commercial Arbitration, or the revised UNCITRAL Model Law on International Commercial Arbitration, when they enact or revise their laws (…)".

2. The Model Law constitutes a sound basis for the desired harmonization and improvement of national laws. It covers all stages of the arbitral process from the arbitration agreement to the recognition and enforcement of the arbitral award and reflects a worldwide consensus on the principles and important issues of international arbitration practice. It is acceptable to States of all regions and the different legal or economic systems of the world. Since its adoption by UNCITRAL, the Model Law has come to represent the accepted international legislative standard for a modern arbitration law and a significant number of jurisdictions have enacted arbitration legislation based on the Model Law.

3. The form of a model law was chosen as the vehicle for harmonization and modernization in view of the flexibility it gives to States in preparing new arbitration laws. Notwithstanding that flexibility, and in order to increase the likelihood of achieving a satisfactory degree of harmonization, States are encouraged to make

[1]This note was prepared by the secretariat of the United Nations Commission on International Trade Law (UNCITRAL) for informational purposes only; it is not an official commentary on the Model Law. A commentary prepared by the Secretariat on an early draft of the Model Law appears in document A/CN.9/264 (reproduced in UNCITRAL Yearbook, vol. XVI — 1985, United Nations publication, Sales No. E.87.V.4).

as few changes as possible when incorporating the Model Law into their legal systems. Efforts to minimize variation from the text adopted by UNCITRAL are also expected to increase the visibility of harmonization, thus enhancing the confidence of foreign parties, as the primary users of international arbitration, in the reliability of arbitration law in the enacting State.

4. The revision of the Model Law adopted in 2006 includes article 2 A, which is designed to facilitate interpretation by reference to internationally accepted principles and is aimed at promoting a uniform understanding of the Model Law. Other substantive amendments to the Model Law relate to the form of the arbitration agreement and to interim measures. The original 1985 version of the provision on the form of the arbitration agreement (article 7) was modelled on the language used in article II (2) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) ("the New York Convention"). The revision of article 7 is intended to address evolving practice in international trade and technological developments. The extensive revision of article 17 on interim measures was considered necessary in light of the fact that such measures are increasingly relied upon in the practice of international commercial arbitration. The revision also includes an enforcement regime for such measures in recognition of the fact that the effectiveness of arbitration frequently depends upon the possibility of enforcing interim measures. The new provisions are contained in a new chapter of the Model Law on interim measures and preliminary orders (chapter IV A).

A. Background to the Model Law

5. The Model Law was developed to address considerable disparities in national laws on arbitration. The need for improvement and harmonization was based on findings that national laws were often particularly inappropriate for international cases.

1. Inadequacy of domestic laws

6. Recurrent inadequacies to be found in outdated national laws include provisions that equate the arbitral process with court litigation and fragmentary provisions that fail to address all relevant substantive law issues. Even most of those laws that appear to be up-to-date and comprehensive were drafted with domestic arbitration primarily, if not exclusively, in mind. While this approach is understandable in view of the fact that even today the bulk of cases governed by arbitration law would be of a purely domestic nature, the unfortunate consequence is that traditional local concepts are imposed on international cases and the needs of modern practice are often not met.

7. The expectations of the parties as expressed in a chosen set of arbitration rules or a "one-off" arbitration agreement may be frustrated, especially by mandatory provisions of applicable law. Unexpected and undesired restrictions found in national

laws may prevent the parties, for example, from submitting future disputes to arbitration, from selecting the arbitrator freely, or from having the arbitral proceedings conducted according to agreed rules of procedure and with no more court involvement than appropriate. Frustration may also ensue from non-mandatory provisions that may impose undesired requirements on unwary parties who may not think about the need to provide otherwise when drafting the arbitration agreement. Even the absence of any legislative provision may cause difficulties simply by leaving unanswered some of the many procedural issues relevant in arbitration and not always settled in the arbitration agreement. The Model Law is intended to reduce the risk of such possible frustration, difficulties or surprise.

2. Disparity between national laws

8. Problems stemming from inadequate arbitration laws or from the absence of specific legislation governing arbitration are aggravated by the fact that national laws differ widely. Such differences are a frequent source of concern in international arbitration, where at least one of the parties is, and often both parties are, confronted with foreign and unfamiliar provisions and procedures. Obtaining a full and precise account of the law applicable to the arbitration is, in such circumstances often expensive, impractical or impossible.

9. Uncertainty about the local law with the inherent risk of frustration may adversely affect the functioning of the arbitral process and also impact on the selection of the place of arbitration. Due to such uncertainty, a party may hesitate or refuse to agree to a place, which for practical reasons would otherwise be appropriate. The range of places of arbitration acceptable to parties is thus widened and the smooth functioning of the arbitral proceedings is enhanced where States adopt the Model Law, which is easily recognizable, meets the specific needs of international commercial arbitration and provides an international standard based on solutions acceptable to parties from different legal systems.

B. Salient features of the Model Law

1. Special procedural regime for international commercial arbitration

10. The principles and solutions adopted in the Model Law aim at reducing or eliminating the above-mentioned concerns and difficulties. As a response to the inadequacies and disparities of national laws, the Model Law presents a special legal regime tailored to international commercial arbitration, without affecting any relevant treaty in force in the State adopting the Model Law. While the Model Law was designed with international commercial arbitration in mind, it offers a set of basic rules that are not, in and of themselves, unsuitable to any other type of arbitration. States may thus consider extending their enactment of the Model Law to cover also domestic disputes, as a number of enacting States already have.

(a) Substantive and territorial scope of application

11. Article 1 defines the scope of application of the Model Law by reference to the notion of "international commercial arbitration". The Model Law defines an arbitration as international if "the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States" (article 1 (3)). The vast majority of situations commonly regarded as international will meet this criterion. In addition, article 1 (3) broadens the notion of internationality so that the Model Law also covers cases where the place of arbitration, the place of contract performance, or the place of the subject-matter of the dispute is situated outside the State where the parties have their place of business, or cases where the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country. Article 1 thus recognizes extensively the freedom of the parties to submit a dispute to the legal regime established pursuant to the Model Law.

12. In respect of the term "commercial", the Model Law provides no strict definition. The footnote to article 1 (1) calls for "a wide interpretation" and offers an illustrative and open-ended list of relationships that might be described as commercial in nature, "whether contractual or not". The purpose of the footnote is to circumvent any technical difficulty that may arise, for example, in determining which transactions should be governed by a specific body of "commercial law" that may exist in some legal systems.

13. Another aspect of applicability is the territorial scope of application. The principle embodied in article 1 (2) is that the Model Law as enacted in a given State applies only if the place of arbitration is in the territory of that State. However, article 1 (2) also contains important exceptions to that principle, to the effect that certain articles apply, irrespective of whether the place of arbitration is in the enacting State or elsewhere (or, as the case may be, even before the place of arbitration is determined). These articles are the following: articles 8 (1) and 9, which deal with the recognition of arbitration agreements, including their compatibility with interim measures ordered by a court, article 17 J on court-ordered interim measures, articles 17 H and 17 I on the recognition and enforcement of interim measures ordered by an arbitral tribunal, and articles 35 and 36 on the recognition and enforcement of arbitral awards.

14. The territorial criterion governing most of the provisions of the Model Law was adopted for the sake of certainty and in view of the following facts. In most legal systems, the place of arbitration is the exclusive criterion for determining the applicability of national law and, where the national law allows parties to choose the procedural law of a State other than that where the arbitration takes place, experience shows that parties rarely make use of that possibility. Incidentally, enactment of the Model Law reduces any need for the parties to choose a "foreign" law, since the Model Law grants the parties wide freedom in shaping the rules of the arbitral proceedings. In addition to designating the law governing the arbitral procedure, the territorial criterion is of considerable practical importance in respect of articles 11, 13, 14, 16, 27 and 34, which entrust State courts at the place of

arbitration with functions of supervision and assistance to arbitration. It should be noted that the territorial criterion legally triggered by the parties' choice regarding the place of arbitration does not limit the arbitral tribunal's ability to meet at any place it considers appropriate for the conduct of the proceedings, as provided by article 20 (2).

(b) Delimitation of court assistance and supervision

15. Recent amendments to arbitration laws reveal a trend in favour of limiting and clearly defining court involvement in international commercial arbitration. This is justified in view of the fact that the parties to an arbitration agreement make a conscious decision to exclude court jurisdiction and prefer the finality and expediency of the arbitral process.

16. In this spirit, the Model Law envisages court involvement in the following instances. A first group comprises issues of appointment, challenge and termination of the mandate of an arbitrator (articles 11, 13 and 14), jurisdiction of the arbitral tribunal (article 16) and setting aside of the arbitral award (article 34). These instances are listed in article 6 as functions that should be entrusted, for the sake of centralization, specialization and efficiency, to a specially designated court or, with respect to articles 11, 13 and 14, possibly to another authority (for example, an arbitral institution or a chamber of commerce). A second group comprises issues of court assistance in taking evidence (article 27), recognition of the arbitration agreement, including its compatibility with court-ordered interim measures (articles 8 and 9), court-ordered interim measures (article 17 J), and recognition and enforcement of interim measures (articles 17 H and 17 I) and of arbitral awards (articles 35 and 36).

17. Beyond the instances in these two groups, "no court shall intervene, in matters governed by this Law". Article 5 thus guarantees that all instances of possible court intervention are found in the piece of legislation enacting the Model Law, except for matters not regulated by it (for example, consolidation of arbitral proceedings, contractual relationship between arbitrators and parties or arbitral institutions, or fixing of costs and fees, including deposits). Protecting the arbitral process from unpredictable or disruptive court interference is essential to parties who choose arbitration (in particular foreign parties).

2. Arbitration agreement

18. Chapter II of the Model Law deals with the arbitration agreement, including its recognition by courts.

(a) Definition and form of arbitration agreement

19. The original 1985 version of the provision on the definition and form of arbitration agreement (article 7) closely followed article II (2) of the New York

Convention, which requires that an arbitration agreement be in writing. If the parties have agreed to arbitrate, but they entered into the arbitration agreement in a manner that does not meet the form requirement, any party may have grounds to object to the jurisdiction of the arbitral tribunal. It was pointed out by practitioners that, in a number of situations, the drafting of a written document was impossible or impractical. In such cases, where the willingness of the parties to arbitrate was not in question, the validity of the arbitration agreement should be recognized. For that reason, article 7 was amended in 2006 to better conform to international contract practices. In amending article 7, the Commission adopted two options, which reflect two different approaches on the question of definition and form of arbitration agreement. The first approach follows the detailed structure of the original 1985 text. It confirms the validity and effect of a commitment by the parties to submit to arbitration an existing dispute ("*compromis*") or a future dispute ("*clause compromissoire*"). It follows the New York Convention in requiring the written form of the arbitration agreement but recognizes a record of the "contents" of the agreement "in any form" as equivalent to traditional "writing". The agreement to arbitrate may be entered into in any form (e.g. including orally) as long as the content of the agreement is recorded. This new rule is significant in that it no longer requires signatures of the parties or an exchange of messages between the parties. It modernizes the language referring to the use of electronic commerce by adopting wording inspired from the 1996 UNCITRAL Model Law on Electronic Commerce and the 2005 United Nations Convention on the Use of Electronic Communications in International Contracts. It covers the situation of "an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another". It also states that "the reference in a contract to any document" (for example, general conditions) "containing an arbitration clause constitutes an arbitration agreement in writing provided that the reference is such as to make that clause part of the contract". It thus clarifies that applicable contract law remains available to determine the level of consent necessary for a party to become bound by an arbitration agreement allegedly made "by reference". The second approach defines the arbitration agreement in a manner that omits any form requirement. No preference was expressed by the Commission in favour of either option I or II, both of which are offered for enacting States to consider, depending on their particular needs, and by reference to the legal context in which the Model Law is enacted, including the general contract law of the enacting State. Both options are intended to preserve the enforceability of arbitration agreements under the New York Convention.

20. In that respect, the Commission also adopted, at its thirty-ninth session in 2006, a "Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958" (A/61/17, Annex 2).[2] The General Assembly, in its resolution 61/33 of 4 December 2006 noted that "in connection with the modernization of articles of the Model Law, the promotion of a uniform interpretation and application of the Convention on the Recognition and

[2]Reproduced in Part Three hereafter.

Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, is particularly timely". The Recommendation was drafted in recognition of the widening use of electronic commerce and enactments of domestic legislation as well as case law, which are more favourable than the New York Convention in respect of the form requirement governing arbitration agreements, arbitration proceedings, and the enforcement of arbitral awards. The Recommendation encourages States to apply article II (2) of the New York Convention "recognizing that the circumstances described therein are not exhaustive". In addition, the Recommendation encourages States to adopt the revised article 7 of the Model Law. Both options of the revised article 7 establish a more favourable regime for the recognition and enforcement of arbitral awards than that provided under the New York Convention. By virtue of the "more favourable law provision" contained in article VII (1) of the New York Convention, the Recommendation clarifies that "any interested party" should be allowed "to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement".

(b) Arbitration agreement and the courts

21. Articles 8 and 9 deal with two important aspects of the complex relationship between the arbitration agreement and the resort to courts. Modelled on article II (3) of the New York Convention, article 8 (1) of the Model Law places any court under an obligation to refer the parties to arbitration if the court is seized with a claim on the same subject-matter unless it finds that the arbitration agreement is null and void, inoperative or incapable of being performed. The referral is dependent on a request, which a party may make not later than when submitting its first statement on the substance of the dispute. This provision, where adopted by a State enacting the Model Law, is by its nature binding only on the courts of that State. However, since article 8 is not limited in scope to agreements providing for arbitration to take place in the enacting State, it promotes the universal recognition and effect of international commercial arbitration agreements.

22. Article 9 expresses the principle that any interim measures of protection that may be obtained from courts under their procedural law (for example, pre-award attachments) are compatible with an arbitration agreement. That provision is ultimately addressed to the courts of any State, insofar as it establishes the compatibility between interim measures possibly issued by any court and an arbitration agreement, irrespective of the place of arbitration. Wherever a request for interim measures may be made to a court, it may not be relied upon, under the Model Law, as a waiver or an objection against the existence or effect of the arbitration agreement.

3. Composition of arbitral tribunal

23. Chapter III contains a number of detailed provisions on appointment, challenge, termination of mandate and replacement of an arbitrator. The chapter illustrates the

general approach taken by the Model Law in eliminating difficulties that arise from inappropriate or fragmentary laws or rules. First, the approach recognizes the freedom of the parties to determine, by reference to an existing set of arbitration rules or by an ad hoc agreement, the procedure to be followed, subject to the fundamental requirements of fairness and justice. Secondly, where the parties have not exercised their freedom to lay down the rules of procedure or they have failed to cover a particular issue, the Model Law ensures, by providing a set of suppletive rules, that the arbitration may commence and proceed effectively until the dispute is resolved.

24. Where under any procedure, agreed upon by the parties or based upon the suppletive rules of the Model Law, difficulties arise in the process of appointment, challenge or termination of the mandate of an arbitrator, articles 11, 13 and 14 provide for assistance by courts or other competent authorities designated by the enacting State. In view of the urgency of matters relating to the composition of the arbitral tribunal or its ability to function, and in order to reduce the risk and effect of any dilatory tactics, short time-periods are set and decisions rendered by courts or other authorities on such matters are not appealable.

4. Jurisdiction of arbitral tribunal

(a) Competence to rule on own jurisdiction

25. Article 16 (1) adopts the two important (not yet generally recognized) principles of "*Kompetenz-Kompetenz*" and of separability or autonomy of the arbitration clause. "*Kompetenz-Kompetenz*" means that the arbitral tribunal may independently rule on the question of whether it has jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement, without having to resort to a court. Separability means that an arbitration clause shall be treated as an agreement independent of the other terms of the contract. As a consequence, a decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause. Detailed provisions in paragraph (2) require that any objections relating to the arbitrators' jurisdiction be made at the earliest possible time.

26. The competence of the arbitral tribunal to rule on its own jurisdiction (i.e. on the foundation, content and extent of its mandate and power) is, of course, subject to court control. Where the arbitral tribunal rules as a preliminary question that it has jurisdiction, article 16 (3) allows for immediate court control in order to avoid waste of time and money. However, three procedural safeguards are added to reduce the risk and effect of dilatory tactics: short time-period for resort to court (30 days), court decision not appealable, and discretion of the arbitral tribunal to continue the proceedings and make an award while the matter is pending before the court. In those cases where the arbitral tribunal decides to combine its decision on jurisdiction with an award on the merits, judicial review on the question of jurisdiction is available in setting aside proceedings under article 34 or in enforcement proceedings under article 36.

(b) Power to order interim measures and preliminary orders

27. Chapter IV A on interim measures and preliminary orders was adopted by the Commission in 2006. It replaces article 17 of the original 1985 version of the Model Law. Section 1 provides a generic definition of interim measures and sets out the conditions for granting such measures. An important innovation of the revision lies in the establishment (in section 4) of a regime for the recognition and enforcement of interim measures, which was modelled, as appropriate, on the regime for the recognition and enforcement of arbitral awards under articles 35 and 36 of the Model Law.

28. Section 2 of chapter IV A deals with the application for, and conditions for the granting of, preliminary orders. Preliminary orders provide a means for preserving the status quo until the arbitral tribunal issues an interim measure adopting or modifying the preliminary order. Article 17 B (1) provides that "a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested". Article 17 B (2) permits an arbitral tribunal to grant a preliminary order if "it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure". Article 17 C contains carefully drafted safeguards for the party against whom the preliminary order is directed, such as prompt notification of the application for the preliminary order and of the preliminary order itself (if any), and an opportunity for that party to present its case "at the earliest practicable time". In any event, a preliminary order has a maximum duration of twenty days and, while binding on the parties, is not subject to court enforcement and does not constitute an award. The term "preliminary order" is used to emphasize its limited nature.

29. Section 3 sets out rules applicable to both preliminary orders and interim measures.

30. Section 5 includes article 17 J on interim measures ordered by courts in support of arbitration, and provides that "a court shall have the same power of issuing an interim measure in relation to arbitration proceedings irrespective of whether their place is in the territory of the enacting State, as it has in relation to proceedings in courts". That article has been added in 2006 to put it beyond any doubt that the existence of an arbitration agreement does not infringe on the powers of the competent court to issue interim measures and that the party to such an arbitration agreement is free to approach the court with a request to order interim measures.

5. Conduct of arbitral proceedings

31. Chapter V provides the legal framework for a fair and effective conduct of the arbitral proceedings. Article 18, which sets out fundamental requirements of procedural justice, and article 19 on the rights and powers to determine the rules of procedure, express principles that are central to the Model Law.

(a) Fundamental procedural rights of a party

32. Article 18 embodies the principles that the parties shall be treated with equality and given a full opportunity of presenting their case. A number of provisions illustrate those principles. For example, article 24 (1) provides that, unless the parties have agreed that no oral hearings be held for the presentation of evidence or for oral argument, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party. It should be noted that article 24 (1) deals only with the general entitlement of a party to oral hearings (as an alternative to proceedings conducted on the basis of documents and other materials) and not with the procedural aspects, such as the length, number or timing of hearings.

33. Another illustration of those principles relates to evidence by an expert appointed by the arbitral tribunal. Article 26 (2) requires the expert, after delivering his or her written or oral report, to participate in a hearing where the parties may put questions to the expert and present expert witnesses to testify on the points at issue, if such a hearing is requested by a party or deemed necessary by the arbitral tribunal. As another provision aimed at ensuring fairness, objectivity and impartiality, article 24 (3) provides that all statements, documents and other information supplied to the arbitral tribunal by one party shall be communicated to the other party, and that any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties. In order to enable the parties to be present at any hearing and at any meeting of the arbitral tribunal for inspection purposes, they shall be given sufficient notice in advance (article 24 (2)).

(b) Determination of rules of procedure

34. Article 19 guarantees the parties' freedom to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings, subject to a few mandatory provisions on procedure, and empowers the arbitral tribunal, failing agreement by the parties, to conduct the arbitration in such a manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

35. Autonomy of the parties in determining the rules of procedure is of special importance in international cases since it allows the parties to select or tailor the rules according to their specific wishes and needs, unimpeded by traditional and possibly conflicting domestic concepts, thus obviating the earlier mentioned risk of frustration or surprise (see above, paras. 7 and 9). The supplementary discretion of the arbitral tribunal is equally important in that it allows the tribunal to tailor the conduct of the proceedings to the specific features of the case without being hindered by any restraint that may stem from traditional local law, including any domestic rule on evidence. Moreover, it provides grounds for displaying initiative in solving any procedural question not regulated in the arbitration agreement or the Model Law.

36. In addition to the general provisions of article 19, other provisions in the Model Law recognize party autonomy and, failing agreement, empower the arbitral tribunal to decide on certain matters. Examples of particular practical importance in international cases are article 20 on the place of arbitration and article 22 on the language to be used in the proceedings.

(c) Default of a party

37. The arbitral proceedings may be continued in the absence of a party, provided that due notice has been given. This applies, in particular, to the failure of the respondent to communicate its statement of defence (article 25 *(b)*). The arbitral tribunal may also continue the proceedings where a party fails to appear at a hearing or to produce documentary evidence without showing sufficient cause for the failure (article 25 *(c)*). However, if the claimant fails to submit its statement of claim, the arbitral tribunal is obliged to terminate the proceedings (article 25 *(a)*).

38. Provisions that empower the arbitral tribunal to carry out its task even if one of the parties does not participate are of considerable practical importance. As experience shows, it is not uncommon for one of the parties to have little interest in cooperating or expediting matters. Such provisions therefore provide international commercial arbitration its necessary effectiveness, within the limits of fundamental requirements of procedural justice.

6. Making of award and termination of proceedings

(a) Rules applicable to substance of dispute

39. Article 28 deals with the determination of the rules of law governing the substance of the dispute. Under paragraph (1), the arbitral tribunal decides the dispute in accordance with the rules of law chosen by the parties. This provision is significant in two respects. It grants the parties the freedom to choose the applicable substantive law, which is important where the national law does not clearly or fully recognize that right. In addition, by referring to the choice of "rules of law" instead of "law", the Model Law broadens the range of options available to the parties as regards the designation of the law applicable to the substance of the dispute. For example, parties may agree on rules of law that have been elaborated by an international forum but have not yet been incorporated into any national legal system. Parties could also choose directly an instrument such as the United Nations Convention on Contracts for the International Sale of Goods as the body of substantive law governing the arbitration, without having to refer to the national law of any State party to that Convention. The power of the arbitral tribunal, on the other hand, follows more traditional lines. When the parties have not chosen the applicable law, the arbitral tribunal shall apply the law (i.e., the national law) determined by the conflict-of-laws rules that it considers applicable.

40. Article 28 (3) recognizes that the parties may authorize the arbitral tribunal to decide the dispute *ex aequo et bono* or as *amiables compositeur*. This type of arbitration (where the arbitral tribunal may decide the dispute on the basis of principles it believes to be just, without having to refer to any particular body of law) is currently not known or used in all legal systems. The Model Law does not intend to regulate this area. It simply calls the attention of the parties on the need to provide clarification in the arbitration agreement and specifically to empower the arbitral tribunal. However, paragraph (4) makes it clear that in all cases where the dispute relates to a contract (including arbitration *ex aequo et bono*) the arbitral tribunal must decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

(b) Making of award and other decisions

41. In its rules on the making of the award (articles 29-31), the Model Law focuses on the situation where the arbitral tribunal consists of more than one arbitrator. In such a situation, any award and other decision shall be made by a majority of the arbitrators, except on questions of procedure, which may be left to a presiding arbitrator. The majority principle applies also to the signing of the award, provided that the reason for any omitted signature is stated.

42. Article 31 (3) provides that the award shall state the place of arbitration and shall be deemed to have been made at that place. The effect of the deeming provision is to emphasize that the final making of the award constitutes a legal act, which in practice does not necessarily coincide with one factual event. For the same reason that the arbitral proceedings need not be carried out at the place designated as the legal "place of arbitration", the making of the award may be completed through deliberations held at various places, by telephone or correspondence. In addition, the award does not have to be signed by the arbitrators physically gathering at the same place.

43. The arbitral award must be in writing and state its date. It must also state the reasons on which it is based, unless the parties have agreed otherwise or the award is "on agreed terms" (i.e., an award that records the terms of an amicable settlement by the parties). It may be added that the Model Law neither requires nor prohibits "dissenting opinions".

7. Recourse against award

44. The disparity found in national laws as regards the types of recourse against an arbitral award available to the parties presents a major difficulty in harmonizing international arbitration legislation. Some outdated laws on arbitration, by establishing parallel regimes for recourse against arbitral awards or against court decisions, provide various types of recourse, various (and often long) time periods for exercising the recourse, and extensive lists of grounds on which recourse may be based.

That situation (of considerable concern to those involved in international commercial arbitration) is greatly improved by the Model Law, which provides uniform grounds upon which (and clear time periods within which) recourse against an arbitral award may be made.

(a) Application for setting aside as exclusive recourse

45. The first measure of improvement is to allow only one type of recourse, to the exclusion of any other recourse regulated in any procedural law of the State in question. Article 34 (1) provides that the sole recourse against an arbitral award is by application for setting aside, which must be made within three months of receipt of the award (article 34 (3)). In regulating "recourse" (i.e., the means through which a party may actively "attack" the award), article 34 does not preclude a party from seeking court control by way of defence in enforcement proceedings (articles 35 and 36). Article 34 is limited to action before a court (i.e., an organ of the judicial system of a State). However, a party is not precluded from appealing to an arbitral tribunal of second instance if the parties have agreed on such a possibility (as is common in certain commodity trades).

(b) Grounds for setting aside

46. As a further measure of improvement, the Model Law lists exhaustively the grounds on which an award may be set aside. This list essentially mirrors that contained in article 36 (1), which is taken from article V of the New York Convention. The grounds provided in article 34 (2) are set out in two categories. Grounds which are to be proven by one party are as follows: lack of capacity of the parties to conclude an arbitration agreement; lack of a valid arbitration agreement; lack of notice of appointment of an arbitrator or of the arbitral proceedings or inability of a party to present its case; the award deals with matters not covered by the submission to arbitration; the composition of the arbitral tribunal or the conduct of arbitral proceedings are contrary to the effective agreement of the parties or, failing such agreement, to the Model Law. Grounds that a court may consider of its own initiative are as follows: non-arbitrability of the subject-matter of the dispute or violation of public policy (which is to be understood as serious departures from fundamental notions of procedural justice).

47. The approach under which the grounds for setting aside an award under the Model Law parallel the grounds for refusing recognition and enforcement of the award under article V of the New York Convention is reminiscent of the approach taken in the European Convention on International Commercial Arbitration (Geneva, 1961). Under article IX of the latter Convention, the decision of a foreign court to set aside an award for a reason other than the ones listed in article V of the New York Convention does not constitute a ground for refusing enforcement. The Model Law takes this philosophy one step further by directly limiting the reasons for setting aside.

48. Although the grounds for setting aside as set out in article 34 (2) are almost identical to those for refusing recognition or enforcement as set out in article 36 (1), a practical difference should be noted. An application for setting aside under article 34 (2) may only be made to a court in the State where the award was rendered whereas an application for enforcement might be made in a court in any State. For that reason, the grounds relating to public policy and non-arbitrability may vary in substance with the law applied by the court (in the State of setting aside or in the State of enforcement).

8. Recognition and enforcement of awards

49. The eighth and last chapter of the Model Law deals with the recognition and enforcement of awards. Its provisions reflect the significant policy decision that the same rules should apply to arbitral awards whether made in the country of enforcement or abroad, and that those rules should follow closely the New York Convention.

(a) Towards uniform treatment of all awards irrespective of country of origin

50. By treating awards rendered in international commercial arbitration in a uniform manner irrespective of where they were made, the Model Law distinguishes between "international" and "non-international" awards instead of relying on the traditional distinction between "foreign" and "domestic" awards. This new line is based on substantive grounds rather than territorial borders, which are inappropriate in view of the limited importance of the place of arbitration in international cases. The place of arbitration is often chosen for reasons of convenience of the parties and the dispute may have little or no connection with the State where the arbitration legally takes place. Consequently, the recognition and enforcement of "international" awards, whether "foreign" or "domestic", should be governed by the same provisions.

51. By modelling the recognition and enforcement rules on the relevant provisions of the New York Convention, the Model Law supplements, without conflicting with, the regime of recognition and enforcement created by that successful Convention.

(b) Procedural conditions of recognition and enforcement

52. Under article 35 (1) any arbitral award, irrespective of the country in which it was made, shall be recognized as binding and enforceable, subject to the provisions of article 35 (2) and of article 36 (the latter of which sets forth the grounds on which recognition or enforcement may be refused). Based on the above consideration of the limited importance of the place of arbitration in international cases and the desire of overcoming territorial restrictions, reciprocity is not included as a condition for recognition and enforcement.

53. The Model Law does not lay down procedural details of recognition and enforcement, which are left to national procedural laws and practices. The Model Law merely sets certain conditions for obtaining enforcement under article 35 (2). It was amended in 2006 to liberalize formal requirements and reflect the amendment made to article 7 on the form of the arbitration agreement. Presentation of a copy of the arbitration agreement is no longer required under article 35 (2).

(c) Grounds for refusing recognition or enforcement

54. Although the grounds on which recognition or enforcement may be refused under the Model Law are identical to those listed in article V of the New York Convention, the grounds listed in the Model Law are relevant not only to foreign awards but to all awards rendered in the sphere of application of the piece of legislation enacting the Model Law. Generally, it was deemed desirable to adopt, for the sake of harmony, the same approach and wording as this important Convention. However, the first ground on the list as contained in the New York Convention (which provides that recognition and enforcement may be refused if "the parties to the arbitration agreement were, under the law applicable to them, under some incapacity") was modified since it was viewed as containing an incomplete and potentially misleading conflict-of-laws rule.

Further information on the Model Law may be obtained from:

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Part Three

Recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, adopted by the United Nations Commission on International Trade Law on 7 July 2006 at its thirty-ninth session

The United Nations Commission on International Trade Law,

Recalling General Assembly resolution 2205 (XXI) of 17 December 1966, which established the United Nations Commission on International Trade Law with the object of promoting the progressive harmonization and unification of the law of international trade by, inter alia, promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade,

Conscious of the fact that the different legal, social and economic systems of the world, together with different levels of development, are represented in the Commission,

Recalling successive resolutions of the General Assembly reaffirming the mandate of the Commission as the core legal body within the United Nations system in the field of international trade law to coordinate legal activities in this field,

Convinced that the wide adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York on 10 June 1958,[1] has been a significant achievement in the promotion of the rule of law, particularly in the field of international trade,

Recalling that the Conference of Plenipotentiaries which prepared and opened the Convention for signature adopted a resolution, which states, inter alia, that the Conference "considers that greater uniformity of national laws on arbitration would further the effectiveness of arbitration in the settlement of private law disputes",

Bearing in mind differing interpretations of the form requirements under the Convention that result in part from differences of expression as between the five equally authentic texts of the Convention,

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[1]United Nations, *Treaty Series*, vol. 330, No. 4739.

Taking into account article VII, paragraph 1, of the Convention, a purpose of which is to enable the enforcement of foreign arbitral awards to the greatest extent, in particular by recognizing the right of any interested party to avail itself of law or treaties of the country where the award is sought to be relied upon, including where such law or treaties offer a regime more favourable than the Convention,

Considering the wide use of electronic commerce,

Taking into account international legal instruments, such as the 1985 UNCITRAL Model Law on International Commercial Arbitration,[2] as subsequently revised, particularly with respect to article 7,[3] the UNCITRAL Model Law on Electronic Commerce,[4] the UNCITRAL Model Law on Electronic Signatures[5] and the United Nations Convention on the Use of Electronic Communications in International Contracts,[6]

Taking into account also enactments of domestic legislation, as well as case law, more favourable than the Convention in respect of form requirement governing arbitration agreements, arbitration proceedings and the enforcement of arbitral awards,

Considering that, in interpreting the Convention, regard is to be had to the need to promote recognition and enforcement of arbitral awards,

1. *Recommends* that article II, paragraph 2, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, be applied recognizing that the circumstances described therein are not exhaustive;

2. *Recommends also* that article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, should be applied to allow any interested party to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement.

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[2]*Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I, and United Nations publication, Sales No. E.95.V.18.

[3]Ibid., *Sixty-first Session, Supplement No. 17* (A/61/17), annex I.

[4]Ibid., *Fifty-first Session, Supplement No. 17* (A/51/17), annex I, and United Nations publication, Sales No. E.99.V.4, which contains also an additional article 5 bis, adopted in 1998, and the accompanying Guide to Enactment.

[5]Ibid., *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), annex II, and United Nations publication, Sales No. E.02.V.8, which contains also the accompanying Guide to Enactment.

[6]General Assembly resolution 60/21, annex.

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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

United Nations Convention on Contracts for the International Sale of Goods

UNITED NATIONS
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Contents

1. United Nations Convention on Contracts for the International Sale of Goods

PREAMBLE

The States Parties to this Convention,

Bearing in mind the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order,

Considering that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States,

Being of the opinion that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade,

Have agreed as follows:

Part I. Sphere of application and general provisions

CHAPTER I. SPHERE OF APPLICATION

Article 1

(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

(a) when the States are Contracting States; or

(b) when the rules of private international law lead to the application of the law of a Contracting State.

(2) The fact that the parties have their places of business in different States is to be disregarded whenever this fact does not appear either from the contract or from any dealings between, or from information disclosed by, the parties at any time before or at the conclusion of the contract.

(3) Neither the nationality of the parties nor the civil or commercial character of the parties or of the contract is to be taken into consideration in determining the application of this Convention.

Article 2

This Convention does not apply to sales:

(a) of goods bought for personal, family or household use, unless the seller, at any time before or at the conclusion of the contract, neither knew nor ought to have known that the goods were bought for any such use;

(b) by auction;

(c) on execution or otherwise by authority of law;

(d) of stocks, shares, investment securities, negotiable instruments or money;

(e) of ships, vessels, hovercraft or aircraft;

(f) of electricity.

Article 3

(1) Contracts for the supply of goods to be manufactured or produced are to be considered sales unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for such manufacture or production.

(2) This Convention does not apply to contracts in which the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services.

Article 4

This Convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention, it is not concerned with:

(a) the validity of the contract or of any of its provisions or of any usage;

(b) the effect which the contract may have on the property in the goods sold.

Article 5

This Convention does not apply to the liability of the seller for death or personal injury caused by the goods to any person.

Article 6

The parties may exclude the application of this Convention or, subject to article 12, derogate from or vary the effect of any of its provisions.

CHAPTER II. GENERAL PROVISIONS

Article 7

(1) In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in international trade.

(2) Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law.

Article 8

(1) For the purposes of this Convention statements made by and other conduct of a party are to be interpreted according to his intent where the other party knew or could not have been unaware what that intent was.

(2) If the preceding paragraph is not applicable, statements made by and other conduct of a party are to be interpreted according to the understanding that a reasonable person of the same kind as the other party would have had in the same circumstances.

(3) In determining the intent of a party or the understanding a reasonable person would have had, due consideration is to be given to all relevant circumstances of the case including the negotiations, any practices which the parties have established between themselves, usages and any subsequent conduct of the parties.

Article 9

(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

(2) The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned.

Article 10

For the purposes of this Convention:

(a) if a party has more than one place of business, the place of business is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;

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

Article 11

A contract of sale need not be concluded in or evidenced by writing and is not subject to any other requirement as to form. It may be proved by any means, including witnesses.

Article 12

Any provision of article 11, article 29 or Part II of this Convention that allows a contract of sale or its modification or termination by agreement or any offer, acceptance or other indication of intention to be made in any form other than in writing does not apply where any party has his place of business

in a Contracting State which has made a declaration under article 96 of this Convention. The parties may not derogate from or vary the effect of this article.

Article 13

For the purposes of this Convention "writing" includes telegram and telex.

Part II. Formation of the contract

Article 14

(1) A proposal for concluding a contract addressed to one or more specific persons constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance. A proposal is sufficiently definite if it indicates the goods and expressly or implicitly fixes or makes provision for determining the quantity and the price.

(2) A proposal other than one addressed to one or more specific persons is to be considered merely as an invitation to make offers, unless the contrary is clearly indicated by the person making the proposal.

Article 15

(1) An offer becomes effective when it reaches the offeree.

(2) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

Article 16

(1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before he has dispatched an acceptance.

(2) However, an offer cannot be revoked:

(a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or

(b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

Article 17

An offer, even if it is irrevocable, is terminated when a rejection reaches the offeror.

Article 18

(1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.

(2) An acceptance of an offer becomes effective at the moment the indication of assent reaches the offeror. An acceptance is not effective if the indication of assent does not reach the offeror within the time he has fixed or, if no time is fixed, within a reasonable time, due account being taken of the circumstances of the transaction, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

(3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by performing an act, such as one relating to the dispatch of the goods or payment of the price, without notice to the offeror, the acceptance is effective at the moment the act is performed, provided that the act is performed within the period of time laid down in the preceding paragraph.

Article 19

(1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects orally to the discrepancy or dispatches a notice to that effect. If he does not so object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

(3) Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or the settlement of disputes are considered to alter the terms of the offer materially.

Article 20

(1) A period of time for acceptance fixed by the offeror in a telegram or a letter begins to run from the moment the telegram is handed in for dispatch or from the date shown on the letter or, if no such date is shown, from the date shown on the envelope. A period of time for acceptance fixed by the offeror by telephone, telex or other means of instantaneous communication, begins to run from the moment that the offer reaches the offeree.

(2) Official holidays or non-business days occurring during the period for acceptance are included in calculating the period. However, if a notice of acceptance cannot be delivered at the address of the offeror on the last day of the period because that day falls on an official holiday or a non-business day at the place of business of the offeror, the period is extended until the first business day which follows.

Article 21

(1) A late acceptance is nevertheless effective as an acceptance if without delay the offeror orally so informs the offeree or dispatches a notice to that effect.

(2) If a letter or other writing containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without delay, the offeror orally informs the offeree that he considers his offer as having lapsed or dispatches a notice to that effect.

Article 22

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

Article 23

A contract is concluded at the moment when an acceptance of an offer becomes effective in accordance with the provisions of this Convention.

Article 24

For the purposes of this Part of the Convention, an offer, declaration of acceptance or any other indication of intention "reaches" the addressee

when it is made orally to him or delivered by any other means to him personally, to his place of business or mailing address or, if he does not have a place of business or mailing address, to his habitual residence.

Part III. Sale of goods

CHAPTER I. GENERAL PROVISIONS

Article 25

A breach of contract committed by one of the parties is fundamental if it results in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the party in breach did not foresee and a reasonable person of the same kind in the same circumstances would not have foreseen such a result.

Article 26

A declaration of avoidance of the contract is effective only if made by notice to the other party.

Article 27

Unless otherwise expressly provided in this Part of the Convention, if any notice, request or other communication is given or made by a party in accordance with this Part and by means appropriate in the circumstances, a delay or error in the transmission of the communication or its failure to arrive does not deprive that party of the right to rely on the communication.

Article 28

If, in accordance with the provisions of this Convention, one party is entitled to require performance of any obligation by the other party, a court is not bound to enter a judgement for specific performance unless the court would do so under its own law in respect of similar contracts of sale not governed by this Convention.

Article 29

(1) A contract may be modified or terminated by the mere agreement of the parties.

(2) A contract in writing which contains a provision requiring any modification or termination by agreement to be in writing may not be otherwise modified or terminated by agreement. However, a party may be precluded by his conduct from asserting such a provision to the extent that the other party has relied on that conduct.

CHAPTER II. OBLIGATIONS OF THE SELLER

Article 30

The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention.

Section I. Delivery of the goods and handing over of documents

Article 31

If the seller is not bound to deliver the goods at any other particular place, his obligation to deliver consists:

(a) if the contract of sale involves carriage of the goods—in handing the goods over to the first carrier for transmission to the buyer;

(b) if, in cases not within the preceding subparagraph, the contract relates to specific goods, or unidentified goods to be drawn from a specific stock or to be manufactured or produced, and at the time of the conclusion of the contract the parties knew that the goods were at, or were to be manufactured or produced at, a particular place—in placing the goods at the buyer's disposal at that place;

(c) in other cases—in placing the goods at the buyer's disposal at the place where the seller had his place of business at the time of the conclusion of the contract.

Article 32

(1) If the seller, in accordance with the contract or this Convention, hands the goods over to a carrier and if the goods are not clearly identified to the contract by markings on the goods, by shipping documents or otherwise, the seller must give the buyer notice of the consignment specifying the goods.

(2) If the seller is bound to arrange for carriage of the goods, he must make such contracts as are necessary for carriage to the place fixed by means of transportation appropriate in the circumstances and according to the usual terms for such transportation.

(3) If the seller is not bound to effect insurance in respect of the carriage of the goods, he must, at the buyer's request, provide him with all available information necessary to enable him to effect such insurance.

Article 33

The seller must deliver the goods:

(a) if a date is fixed by or determinable from the contract, on that date;

(b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the buyer is to choose a date; or

(c) in any other case, within a reasonable time after the conclusion of the contract.

Article 34

If the seller is bound to hand over documents relating to the goods, he must hand them over at the time and place and in the form required by the contract. If the seller has handed over documents before that time, he may, up to that time, cure any lack of conformity in the documents, if the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

Section II. Conformity of the goods and third-party claims

Article 35

(1) The seller must deliver goods which are of the quantity, quality and description required by the contract and which are contained or packaged in the manner required by the contract.

(2) Except where the parties have agreed otherwise, the goods do not conform with the contract unless they:

(a) are fit for the purposes for which goods of the same description would ordinarily be used;

(b) are fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgement;

(c) possess the qualities of goods which the seller has held out to the buyer as a sample or model;

(d) are contained or packaged in the manner usual for such goods or, where there is no such manner, in a manner adequate to preserve and protect the goods.

(3) The seller is not liable under subparagraphs *(a)* to *(d)* of the preceding paragraph for any lack of conformity of the goods if, at the time of the conclusion of the contract, the buyer knew or could not have been unaware of such lack of conformity.

Article 36

(1) The seller is liable in accordance with the contract and this Convention for any lack of conformity which exists at the time when the risk passes to the buyer, even though the lack of conformity becomes apparent only after that time.

(2) The seller is also liable for any lack of conformity which occurs after the time indicated in the preceding paragraph and which is due to a breach of any of his obligations, including a breach of any guarantee that for a period of time the goods will remain fit for their ordinary purpose or for some particular purpose or will retain specified qualities or characteristics.

Article 37

If the seller has delivered goods before the date for delivery, he may, up to that date, deliver any missing part or make up any deficiency in the quantity of the goods delivered, or deliver goods in replacement of any non-conforming goods delivered or remedy any lack of conformity in the goods delivered, provided that the exercise of this right does not cause the buyer unreasonable inconvenience or unreasonable expense. However, the buyer retains any right to claim damages as provided for in this Convention.

Article 38

(1) The buyer must examine the goods, or cause them to be examined, within as short a period as is practicable in the circumstances.

(2) If the contract involves carriage of the goods, examination may be deferred until after the goods have arrived at their destination.

(3) If the goods are redirected in transit or redispatched by the buyer without a reasonable opportunity for examination by him and at the time of the conclusion of the contract the seller knew or ought to have known of the possibility of such redirection or redispatch, examination may be deferred until after the goods have arrived at the new destination.

Article 39

(1) The buyer loses the right to rely on a lack of conformity of the goods if he does not give notice to the seller specifying the nature of the lack of conformity within a reasonable time after he has discovered it or ought to have discovered it.

(2) In any event, the buyer loses the right to rely on a lack of conformity of the goods if he does not give the seller notice thereof at the latest within a period of two years from the date on which the goods were actually handed over to the buyer, unless this time limit is inconsistent with a contractual period of guarantee.

Article 40

The seller is not entitled to rely on the provisions of articles 38 and 39 if the lack of conformity relates to facts of which he knew or could not have been unaware and which he did not disclose to the buyer.

Article 41

The seller must deliver goods which are free from any right or claim of a third party, unless the buyer agreed to take the goods subject to that right or claim. However, if such right or claim is based on industrial property or other intellectual property, the seller's obligation is governed by article 42.

Article 42

(1) The seller must deliver goods which are free from any right or claim of a third party based on industrial property or other intellectual property, of which at the time of the conclusion of the contract the seller knew or could not have been unaware, provided that the right or claim is based on industrial property or other intellectual property:

(a) under the law of the State where the goods will be resold or otherwise used, if it was contemplated by the parties at the time of the conclusion of the contract that the goods would be resold or otherwise used in that State; or

(b) in any other case, under the law of the State where the buyer has his place of business.

(2) The obligation of the seller under the preceding paragraph does not extend to cases where:

(a) at the time of the conclusion of the contract the buyer knew or could not have been unaware of the right or claim; or

(b) the right or claim results from the seller's compliance with technical drawings, designs, formulae or other such specifications furnished by the buyer.

Article 43

(1) The buyer loses the right to rely on the provisions of article 41 or article 42 if he does not give notice to the seller specifying the nature of the right or claim of the third party within a reasonable time after he has become aware or ought to have become aware of the right or claim.

(2) The seller is not entitled to rely on the provisions of the preceding paragraph if he knew of the right or claim of the third party and the nature of it.

Article 44

Notwithstanding the provisions of paragraph (1) of article 39 and paragraph (1) of article 43, the buyer may reduce the price in accordance with article 50 or claim damages, except for loss of profit, if he has a reasonable excuse for his failure to give the required notice.

Section III. Remedies for breach of contract by the seller

Article 45

(1) If the seller fails to perform any of his obligations under the contract or this Convention, the buyer may:

(a) exercise the rights provided in articles 46 to 52;

(b) claim damages as provided in articles 74 to 77.

(2) The buyer is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the seller by a court or arbitral tribunal when the buyer resorts to a remedy for breach of contract.

Article 46

(1) The buyer may require performance by the seller of his obligations unless the buyer has resorted to a remedy which is inconsistent with this requirement.

(2) If the goods do not conform with the contract, the buyer may require delivery of substitute goods only if the lack of conformity constitutes a fundamental breach of contract and a request for substitute goods is made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

(3) If the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A request for repair must be made either in conjunction with notice given under article 39 or within a reasonable time thereafter.

Article 47

(1) The buyer may fix an additional period of time of reasonable length for performance by the seller of his obligations.

(2) Unless the buyer has received notice from the seller that he will not perform within the period so fixed, the buyer may not, during that period, resort to any remedy for breach of contract. However, the buyer is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 48

(1) Subject to article 49, the seller may, even after the date for delivery, remedy at his own expense any failure to perform his obligations, if he can do so without unreasonable delay and without causing the buyer unreasonable inconvenience or uncertainty of reimbursement by the seller of expenses

advanced by the buyer. However, the buyer retains any right to claim damages as provided for in this Convention.

(2) If the seller requests the buyer to make known whether he will accept performance and the buyer does not comply with the request within a reasonable time, the seller may perform within the time indicated in his request. The buyer may not, during that period of time, resort to any remedy which is inconsistent with performance by the seller.

(3) A notice by the seller that he will perform within a specified period of time is assumed to include a request, under the preceding paragraph, that the buyer make known his decision.

(4) A request or notice by the seller under paragraph (2) or (3) of this article is not effective unless received by the buyer.

Article 49

(1) The buyer may declare the contract avoided:

(a) if the failure by the seller to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) in case of non-delivery, if the seller does not deliver the goods within the additional period of time fixed by the buyer in accordance with paragraph (1) of article 47 or declares that he will not deliver within the period so fixed.

(2) However, in cases where the seller has delivered the goods, the buyer loses the right to declare the contract avoided unless he does so:

(a) in respect of late delivery, within a reasonable time after he has become aware that delivery has been made;

(b) in respect of any breach other than late delivery, within a reasonable time:

(i) after he knew or ought to have known of the breach;

(ii) after the expiration of any additional period of time fixed by the buyer in accordance with paragraph (1) of article 47, or after the seller has declared that he will not perform his obligations within such an additional period; or

(iii) after the expiration of any additional period of time indicated by the seller in accordance with paragraph (2) of article 48, or after the buyer has declared that he will not accept performance.

Article 50

If the goods do not conform with the contract and whether or not the price has already been paid, the buyer may reduce the price in the same proportion as the value that the goods actually delivered had at the time of the delivery bears to the value that conforming goods would have had at that time. However, if the seller remedies any failure to perform his obligations in accordance with article 37 or article 48 or if the buyer refuses to accept performance by the seller in accordance with those articles, the buyer may not reduce the price.

Article 51

(1) If the seller delivers only a part of the goods or if only a part of the goods delivered is in conformity with the contract, articles 46 to 50 apply in respect of the part which is missing or which does not conform.

(2) The buyer may declare the contract avoided in its entirety only if the failure to make delivery completely or in conformity with the contract amounts to a fundamental breach of the contract.

Article 52

(1) If the seller delivers the goods before the date fixed, the buyer may take delivery or refuse to take delivery.

(2) If the seller delivers a quantity of goods greater than that provided for in the contract, the buyer may take delivery or refuse to take delivery of the excess quantity. If the buyer takes delivery of all or part of the excess quantity, he must pay for it at the contract rate.

CHAPTER III. OBLIGATIONS OF THE BUYER

Article 53

The buyer must pay the price for the goods and take delivery of them as required by the contract and this Convention.

Section I. Payment of the price

Article 54

The buyer's obligation to pay the price includes taking such steps and complying with such formalities as may be required under the contract or any laws and regulations to enable payment to be made.

Article 55

Where a contract has been validly concluded but does not expressly or implicitly fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have impliedly made reference to the price generally charged at the time of the conclusion of the contract for such goods sold under comparable circumstances in the trade concerned.

Article 56

If the price is fixed according to the weight of the goods, in case of doubt it is to be determined by the net weight.

Article 57

(1) If the buyer is not bound to pay the price at any other particular place, he must pay it to the seller:

(a) at the seller's place of business; or

(b) if the payment is to be made against the handing over of the goods or of documents, at the place where the handing over takes place.

(2) The seller must bear any increase in the expenses incidental to payment which is caused by a change in his place of business subsequent to the conclusion of the contract.

Article 58

(1) If the buyer is not bound to pay the price at any other specific time, he must pay it when the seller places either the goods or documents controlling their disposition at the buyer's disposal in accordance with the

contract and this Convention. The seller may make such payment a condition for handing over the goods or documents.

(2) If the contract involves carriage of the goods, the seller may dispatch the goods on terms whereby the goods, or documents controlling their disposition, will not be handed over to the buyer except against payment of the price.

(3) The buyer is not bound to pay the price until he has had an opportunity to examine the goods, unless the procedures for delivery or payment agreed upon by the parties are inconsistent with his having such an opportunity.

Article 59

The buyer must pay the price on the date fixed by or determinable from the contract and this Convention without the need for any request or compliance with any formality on the part of the seller.

Section II. Taking delivery

Article 60

The buyer's obligation to take delivery consists:

(a) in doing all the acts which could reasonably be expected of him in order to enable the seller to make delivery; and

(b) in taking over the goods.

Section III. Remedies for breach of contract by the buyer

Article 61

(1) If the buyer fails to perform any of his obligations under the contract or this Convention, the seller may:

(a) exercise the rights provided in articles 62 to 65;

(b) claim damages as provided in articles 74 to 77.

(2) The seller is not deprived of any right he may have to claim damages by exercising his right to other remedies.

(3) No period of grace may be granted to the buyer by a court or arbitral tribunal when the seller resorts to a remedy for breach of contract.

Article 62

The seller may require the buyer to pay the price, take delivery or perform his other obligations, unless the seller has resorted to a remedy which is inconsistent with this requirement.

Article 63

(1) The seller may fix an additional period of time of reasonable length for performance by the buyer of his obligations.

(2) Unless the seller has received notice from the buyer that he will not perform within the period so fixed, the seller may not, during that period, resort to any remedy for breach of contract. However, the seller is not deprived thereby of any right he may have to claim damages for delay in performance.

Article 64

(1) The seller may declare the contract avoided:

(a) if the failure by the buyer to perform any of his obligations under the contract or this Convention amounts to a fundamental breach of contract; or

(b) if the buyer does not, within the additional period of time fixed by the seller in accordance with paragraph (1) of article 63, perform his obligation to pay the price or take delivery of the goods, or if he declares that he will not do so within the period so fixed.

(2) However, in cases where the buyer has paid the price, the seller loses the right to declare the contract avoided unless he does so:

(a) in respect of late performance by the buyer, before the seller has become aware that performance has been rendered; or

(b) in respect of any breach other than late performance by the buyer, within a reasonable time:

(i) after the seller knew or ought to have known of the breach; or

(ii) after the expiration of any additional period of time fixed by the seller in accordance with paragraph (1) of article 63, or after the buyer has declared that he will not perform his obligations within such an additional period.

Article 65

(1) If under the contract the buyer is to specify the form, measurement or other features of the goods and he fails to make such specification either on the date agreed upon or within a reasonable time after receipt of a request from the seller, the seller may, without prejudice to any other rights he may have, make the specification himself in accordance with the requirements of the buyer that may be known to him.

(2) If the seller makes the specification himself, he must inform the buyer of the details thereof and must fix a reasonable time within which the buyer may make a different specification. If, after receipt of such a communication, the buyer fails to do so within the time so fixed, the specification made by the seller is binding.

CHAPTER IV. PASSING OF RISK

Article 66

Loss of or damage to the goods after the risk has passed to the buyer does not discharge him from his obligation to pay the price, unless the loss or damage is due to an act or omission of the seller.

Article 67

(1) If the contract of sale involves carriage of the goods and the seller is not bound to hand them over at a particular place, the risk passes to the buyer when the goods are handed over to the first carrier for transmission to the buyer in accordance with the contract of sale. If the seller is bound to hand the goods over to a carrier at a particular place, the risk does not pass to the buyer until the goods are handed over to the carrier at that place. The fact that the seller is authorized to retain documents controlling the disposition of the goods does not affect the passage of the risk.

(2) Nevertheless, the risk does not pass to the buyer until the goods are clearly identified to the contract, whether by markings on the goods, by shipping documents, by notice given to the buyer or otherwise.

Article 68

The risk in respect of goods sold in transit passes to the buyer from the time of the conclusion of the contract. However, if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage. Nevertheless, if at the time of the conclusion of the contract of sale the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer, the loss or damage is at the risk of the seller.

Article 69

(1) In cases not within articles 67 and 68, the risk passes to the buyer when he takes over the goods or, if he does not do so in due time, from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery.

(2) However, if the buyer is bound to take over the goods at a place other than a place of business of the seller, the risk passes when delivery is due and the buyer is aware of the fact that the goods are placed at his disposal at that place.

(3) If the contract relates to goods not then identified, the goods are considered not to be placed at the disposal of the buyer until they are clearly identified to the contract.

Article 70

If the seller has committed a fundamental breach of contract, articles 67, 68 and 69 do not impair the remedies available to the buyer on account of the breach.

CHAPTER V. PROVISIONS COMMON TO THE OBLIGATIONS OF THE SELLER AND OF THE BUYER

Section I. Anticipatory breach and instalment contracts

Article 71

(1) A party may suspend the performance of his obligations if, after the conclusion of the contract, it becomes apparent that the other party will not perform a substantial part of his obligations as a result of:

(a) a serious deficiency in his ability to perform or in his creditworthiness; or

(b) his conduct in preparing to perform or in performing the contract.

(2) If the seller has already dispatched the goods before the grounds described in the preceding paragraph become evident, he may prevent the handing over of the goods to the buyer even though the buyer holds a document which entitles him to obtain them. The present paragraph relates only to the rights in the goods as between the buyer and the seller.

(3) A party suspending performance, whether before or after dispatch of the goods, must immediately give notice of the suspension to the other party and must continue with performance if the other party provides adequate assurance of his performance.

Article 72

(1) If prior to the date for performance of the contract it is clear that one of the parties will commit a fundamental breach of contract, the other party may declare the contract avoided.

(2) If time allows, the party intending to declare the contract avoided must give reasonable notice to the other party in order to permit him to provide adequate assurance of his performance.

(3) The requirements of the preceding paragraph do not apply if the other party has declared that he will not perform his obligations.

Article 73

(1) In the case of a contract for delivery of goods by instalments, if the failure of one party to perform any of his obligations in respect of any instalment constitutes a fundamental breach of contract with respect to that instalment, the other party may declare the contract avoided with respect to that instalment.

(2) If one party's failure to perform any of his obligations in respect of any instalment gives the other party good grounds to conclude that a fundamental breach of contract will occur with respect to future instalments, he may declare the contract avoided for the future, provided that he does so within a reasonable time.

(3) A buyer who declares the contract avoided in respect of any delivery may, at the same time, declare it avoided in respect of deliveries already made or of future deliveries if, by reason of their interdependence, those deliveries could not be used for the purpose contemplated by the parties at the time of the conclusion of the contract.

Section II. Damages

Article 74

Damages for breach of contract by one party consist of a sum equal to the loss, including loss of profit, suffered by the other party as a consequence of the breach. Such damages may not exceed the loss which the party in breach foresaw or ought to have foreseen at the time of the conclusion of the contract, in the light of the facts and matters of which he then knew or ought to have known, as a possible consequence of the breach of contract.

Article 75

If the contract is avoided and if, in a reasonable manner and within a reasonable time after avoidance, the buyer has bought goods in replacement or the seller has resold the goods, the party claiming damages may recover the difference between the contract price and the price in the substitute transaction as well as any further damages recoverable under article 74.

Article 76

(1) If the contract is avoided and there is a current price for the goods, the party claiming damages may, if he has not made a purchase or resale under article 75, recover the difference between the price fixed by the contract and the current price at the time of avoidance as well as any further damages recoverable under article 74. If, however, the party claiming damages has avoided the contract after taking over the goods, the current price at the time of such taking over shall be applied instead of the current price at the time of avoidance.

(2) For the purposes of the preceding paragraph, the current price is the price prevailing at the place where delivery of the goods should have been made or, if there is no current price at that place, the price at such other place as serves as a reasonable substitute, making due allowance for differences in the cost of transporting the goods.

Article 77

A party who relies on a breach of contract must take such measures as are reasonable in the circumstances to mitigate the loss, including loss of profit, resulting from the breach. If he fails to take such measures, the party in breach may claim a reduction in the damages in the amount by which the loss should have been mitigated.

Section III. Interest

Article 78

If a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74.

Section IV. Exemptions

Article 79

(1) A party is not liable for a failure to perform any of his obligations if he proves that the failure was due to an impediment beyond his control and that he could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it, or its consequences.

(2) If the party's failure is due to the failure by a third person whom he has engaged to perform the whole or a part of the contract, that party is exempt from liability only if:

(a) he is exempt under the preceding paragraph; and

(b) the person whom he has so engaged would be so exempt if the provisions of that paragraph were applied to him.

(3) The exemption provided by this article has effect for the period during which the impediment exists.

(4) The party who fails to perform must give notice to the other party of the impediment and its effect on his ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, he is liable for damages resulting from such non-receipt.

(5) Nothing in this article prevents either party from exercising any right other than to claim damages under this Convention.

Article 80

A party may not rely on a failure of the other party to perform, to the extent that such failure was caused by the first party's act or omission.

Section V. Effects of avoidance

Article 81

(1) Avoidance of the contract releases both parties from their obligations under it, subject to any damages which may be due. Avoidance does not affect any provision of the contract for the settlement of disputes or any other provision of the contract governing the rights and obligations of the parties consequent upon the avoidance of the contract.

(2) A party who has performed the contract either wholly or in part may claim restitution from the other party of whatever the first party has supplied or paid under the contract. If both parties are bound to make restitution, they must do so concurrently.

Article 82

(1) The buyer loses the right to declare the contract avoided or to require the seller to deliver substitute goods if it is impossible for him to make restitution of the goods substantially in the condition in which he received them.

(2) The preceding paragraph does not apply:

(a) if the impossibility of making restitution of the goods or of making restitution of the goods substantially in the condition in which the buyer received them is not due to his act or omission;

(b) if the goods or part of the goods have perished or deteriorated as a result of the examination provided for in article 38; or

(c) if the goods or part of the goods have been sold in the normal course of business or have been consumed or transformed by the buyer in the course of normal use before he discovered or ought to have discovered the lack of conformity.

Article 83

A buyer who has lost the right to declare the contract avoided or to require the seller to deliver substitute goods in accordance with article 82 retains all other remedies under the contract and this Convention.

Article 84

(1) If the seller is bound to refund the price, he must also pay interest on it, from the date on which the price was paid.

(2) The buyer must account to the seller for all benefits which he has derived from the goods or part of them:

(a) if he must make restitution of the goods or part of them; or

(b) if it is impossible for him to make restitution of all or part of the goods or to make restitution of all or part of the goods substantially in the condition in which he received them, but he has nevertheless declared the contract avoided or required the seller to deliver substitute goods.

Section VI. Preservation of the goods

Article 85

If the buyer is in delay in taking delivery of the goods or, where payment of the price and delivery of the goods are to be made concurrently, if he fails to pay the price, and the seller is either in possession of the goods or otherwise able to control their disposition, the seller must take such steps as are reasonable in the circumstances to preserve them. He is entitled to retain them until he has been reimbursed his reasonable expenses by the buyer.

Article 86

(1) If the buyer has received the goods and intends to exercise any right under the contract or this Convention to reject them, he must take such steps to preserve them as are reasonable in the circumstances. He is entitled to retain them until he has been reimbursed his reasonable expenses by the seller.

(2) If goods dispatched to the buyer have been placed at his disposal at their destination and he exercises the right to reject them, he must take

possession of them on behalf of the seller, provided that this can be done without payment of the price and without unreasonable inconvenience or unreasonable expense. This provision does not apply if the seller or a person authorized to take charge of the goods on his behalf is present at the destination. If the buyer takes possession of the goods under this paragraph, his rights and obligations are governed by the preceding paragraph.

Article 87

A party who is bound to take steps to preserve the goods may deposit them in a warehouse of a third person at the expense of the other party provided that the expense incurred is not unreasonable.

Article 88

(1) A party who is bound to preserve the goods in accordance with article 85 or 86 may sell them by any appropriate means if there has been an unreasonable delay by the other party in taking possession of the goods or in taking them back or in paying the price or the cost of preservation, provided that reasonable notice of the intention to sell has been given to the other party.

(2) If the goods are subject to rapid deterioration or their preservation would involve unreasonable expense, a party who is bound to preserve the goods in accordance with article 85 or 86 must take reasonable measures to sell them. To the extent possible he must give notice to the other party of his intention to sell.

(3) A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them. He must account to the other party for the balance.

PART IV. FINAL PROVISIONS

Article 89

The Secretary-General of the United Nations is hereby designated as the depositary for this Convention.

Article 90

This Convention does not prevail over any international agreement which has already been or may be entered into and which contains provisions

concerning the matters governed by this Convention, provided that the parties have their places of business in States parties to such agreement.

Article 91

(1) This Convention is open for signature at the concluding meeting of the United Nations Conference on Contracts for the International Sale of Goods and will remain open for signature by all States at the Headquarters of the United Nations, New York until 30 September 1981.

(2) This Convention is subject to ratification, acceptance or approval by the signatory States.

(3) This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

(4) Instruments of ratification, acceptance, approval and accession are to be deposited with the Secretary-General of the United Nations.

Article 92

(1) A Contracting State may declare at the time of signature, ratification, acceptance, approval or accession that it will not be bound by Part II of this Convention or that it will not be bound by Part III of this Convention.

(2) A Contracting State which makes a declaration in accordance with the preceding paragraph in respect of Part II or Part III of this Convention is not to be considered a Contracting State within paragraph (1) of article 1 of this Convention in respect of matters governed by the Part to which the declaration applies.

Article 93

(1) If a Contracting State has two or more territorial units in which, according to its constitution, different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may amend its declaration by submitting another declaration at any time.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, and if the place of business of a party is located in that State, this place of business, for the purposes of this Convention, is considered not to be in a Contracting State, unless it is in a territorial unit to which the Convention extends.

(4) If a Contracting State makes no declaration under paragraph (1) of this article, the Convention is to extend to all territorial units of that State.

Article 94

(1) Two or more Contracting States which have the same or closely related legal rules on matters governed by this Convention may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States. Such declarations may be made jointly or by reciprocal unilateral declarations.

(2) A Contracting State which has the same or closely related legal rules on matters governed by this Convention as one or more non-Contracting States may at any time declare that the Convention is not to apply to contracts of sale or to their formation where the parties have their places of business in those States.

(3) If a State which is the object of a declaration under the preceding paragraph subsequently becomes a Contracting State, the declaration made will, as from the date on which the Convention enters into force in respect of the new Contracting State, have the effect of a declaration made under paragraph (1), provided that the new Contracting State joins in such declaration or makes a reciprocal unilateral declaration.

Article 95

Any State may declare at the time of the deposit of its instrument of ratification, acceptance, approval or accession that it will not be bound by subparagraph (1)*(b)* of article 1 of this Convention.

Article 96

A Contracting State whose legislation requires contracts of sale to be concluded in or evidenced by writing may at any time make a declaration in accordance with article 12 that any provision of article 11, article 29, or Part II of this Convention, that allows a contract of sale or its modification or termination by agreement or any offer, acceptance, or other indication of intention to be made in any form other than in writing, does not apply where any party has his place of business in that State.

Article 97

(1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

(2) Declarations and confirmations of declarations are to be in writing and be formally notified to the depositary.

(3) A declaration takes effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force takes effect on the first day of the month following the expiration of six months after the date of its receipt by the depositary. Reciprocal unilateral declarations under article 94 take effect on the first day of the month following the expiration of six months after the receipt of the latest declaration by the depositary.

(4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of the receipt of the notification by the depositary.

(5) A withdrawal of a declaration made under article 94 renders inoperative, as from the date on which the withdrawal takes effect, any reciprocal declaration made by another State under that article.

Article 98

No reservations are permitted except those expressly authorized in this Convention.

Article 99

(1) This Convention enters into force, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of deposit of the tenth instrument of ratification, acceptance, approval or accession, including an instrument which contains a declaration made under article 92.

(2) When a State ratifies, accepts, approves or accedes to this Convention after the deposit of the tenth instrument of ratification, acceptance, approval or accession, this Convention, with the exception of the Part excluded, enters into force in respect of that State, subject to the provisions of paragraph (6) of this article, on the first day of the month following the expiration of twelve months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

(3) A State which ratifies, accepts, approves or accedes to this Convention and is a party to either or both the Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Formation Convention) and the Convention relating to a Uniform Law on the International Sale of Goods done at The Hague on 1 July 1964 (1964 Hague Sales Convention) shall at the same time denounce, as the case may be, either or both the 1964 Hague Sales Convention and the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(4) A State party to the 1964 Hague Sales Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part II of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Sales Convention by notifying the Government of the Netherlands to that effect.

(5) A State party to the 1964 Hague Formation Convention which ratifies, accepts, approves or accedes to the present Convention and declares or has declared under article 92 that it will not be bound by Part III of this Convention shall at the time of ratification, acceptance, approval or accession denounce the 1964 Hague Formation Convention by notifying the Government of the Netherlands to that effect.

(6) For the purpose of this article, ratifications, acceptances, approvals and accessions in respect of this Convention by States parties to the 1964 Hague Formation Convention or to the 1964 Hague Sales Convention shall not be effective until such denunciations as may be required on the part

of those States in respect of the latter two Conventions have themselves become effective. The depositary of this Convention shall consult with the Government of the Netherlands, as the depositary of the 1964 Conventions, so as to ensure necessary coordination in this respect.

Article 100

(1) This Convention applies to the formation of a contract only when the proposal for concluding the contract is made on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)*(a)* or the Contracting State referred to in subparagraph (1)*(b)* of article 1.

(2) This Convention applies only to contracts concluded on or after the date when the Convention enters into force in respect of the Contracting States referred to in subparagraph (1)*(a)* or the Contracting State referred to in subparagraph (1)*(b)* of article 1.

Article 101

(1) A Contracting State may denounce this Convention, or Part II or Part III of the Convention, by a formal notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

DONE at Vienna, this day of eleventh day of April, one thousand nine hundred and eighty, in a single original, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized by their respective Governments, have signed this Convention.

II. Explanatory Note by the UNCITRAL Secretariat on the United Nations Convention on Contracts for the International Sale of Goods

This note has been prepared by the Secretariat of the United Nations Commission on International Trade Law for informational purposes; it is not an official commentary on the Convention.

Introduction

1. The United Nations Convention on Contracts for the International Sale of Goods provides a uniform text of law for international sales of goods. The Convention was prepared by the United Nations Commission on International Trade Law (UNCITRAL) and adopted by a diplomatic conference on 11 April 1980.

2. Preparation of a uniform law for the international sale of goods began in 1930 at the International Institute for the Unification of Private Law (UNIDROIT) in Rome. After a long interruption in the work as a result of the Second World War, the draft was submitted to a diplomatic conference in The Hague in 1964, which adopted two conventions, one on the international sale of goods and the other on the formation of contracts for the international sale of goods.

3. Almost immediately upon the adoption of the two conventions there was widespread criticism of their provisions as reflecting primarily the legal traditions and economic realities of continental Western Europe, which was the region that had most actively contributed to their preparation. As a result, one of the first tasks undertaken by UNCITRAL on its organization in 1968 was to enquire of States whether or not they intended to adhere to those conventions and the reasons for their positions. In the light of the responses received, UNCITRAL decided to study the two conventions to ascertain which modifications might render them capable of wider acceptance by countries of different legal, social and economic systems. The result of this study was the adoption by diplomatic conference on 11 April 1980 of the

United Nations Convention on Contracts for the International Sale of Goods, which combines the subject matter of the two prior conventions.

4. UNCITRAL's success in preparing a Convention with wider acceptability is evidenced by the fact that the original eleven States for which the Convention came into force on 1 January 1988 included States from every geographical region, every stage of economic development and every major legal, social and economic system. The original eleven States were: Argentina, China, Egypt, France, Hungary, Italy, Lesotho, Syria, United States, Yugoslavia and Zambia.

5. As of 1 September 2010, 76 States are parties to the Convention. The current updated status of the Convention is available on the UNCITRAL website.[1] Authoritative information on the status of the Convention, as well as on related declarations, including with respect to territorial application and succession of States, may be found on the United Nations Treaty Collection on the Internet.[2]

6. The Convention is divided into four parts. Part One deals with the scope of application of the Convention and the general provisions. Part Two contains the rules governing the formation of contracts for the international sale of goods. Part Three deals with the substantive rights and obligations of buyer and seller arising from the contract. Part Four contains the final clauses of the Convention concerning such matters as how and when it comes into force, the reservations and declarations that are permitted and the application of the Convention to international sales where both States concerned have the same or similar law on the subject.

Part One. Scope of application and general provisions

A. Scope of application

7. The articles on scope of application indicate both what is covered by the Convention and what is not covered. The Convention applies to contracts of sale of goods between parties whose places of business are in different States and either both of those States are Contracting States or the rules of private international law lead to the law of a Contracting State. A few States have availed themselves of the authorization in article 95 to declare that they would apply the Convention only in the former and not in the latter of these two situations. As the Convention becomes more widely adopted, the

[1] www.uncitral.org/uncitral/en/uncitral_texts/sale_goods/1980CISG_status.html.
[2] http://treaties.un.org/.

practical significance of such a declaration will diminish. Finally, the Convention may also apply as the law applicable to the contract if so chosen by the parties. In that case, the operation of the Convention will be subject to any limits on contractual stipulations set by the otherwise applicable law.

8. The final clauses make two additional restrictions on the territorial scope of application that will be relevant to a few States. One applies only if a State is a party to another international agreement that contains provisions concerning matters governed by this Convention; the other permits States that have the same or similar domestic law of sales to declare that the Convention does not apply between them.

9. Contracts of sale are distinguished from contracts for services in two respects by article 3. A contract for the supply of goods to be manufactured or produced is considered to be a sale unless the party who orders the goods undertakes to supply a substantial part of the materials necessary for their manufacture or production. When the preponderant part of the obligations of the party who furnishes the goods consists in the supply of labour or other services, the Convention does not apply.

10. The Convention contains a list of types of sales that are excluded from the Convention, either because of the purpose of the sale (goods bought for personal, family or household use), the nature of the sale (sale by auction, on execution or otherwise by law) or the nature of the goods (stocks, shares, investment securities, negotiable instruments, money, ships, vessels, hovercraft, aircraft or electricity). In many States some or all of such sales are governed by special rules reflecting their special nature.

11. Several articles make clear that the subject matter of the Convention is restricted to formation of the contract and the rights and duties of the buyer and seller arising from such a contract. In particular, the Convention is not concerned with the validity of the contract, the effect which the contract may have on the property in the goods sold or the liability of the seller for death or personal injury caused by the goods to any person.

B. Party autonomy

12. The basic principle of contractual freedom in the international sale of goods is recognized by the provision that permits the parties to exclude the application of this Convention or derogate from or vary the effect of any of its provisions. This exclusion will occur, for example, if parties choose the law of a non-contracting State or the substantive domestic law of a contracting State as the law applicable to the contract. Derogation from the Convention

will occur whenever a provision in the contract provides a different rule from that found in the Convention.

C. Interpretation of the Convention

13. This Convention for the unification of the law governing the international sale of goods will better fulfil its purpose if it is interpreted in a consistent manner in all legal systems. Great care was taken in its preparation to make it as clear and easy to understand as possible. Nevertheless, disputes will arise as to its meaning and application. When this occurs, all parties, including domestic courts and arbitral tribunals, are admonished to observe its international character and to promote uniformity in its application and the observance of good faith in international trade. In particular, when a question concerning a matter governed by this Convention is not expressly settled in it, the question is to be settled in conformity with the general principles on which the Convention is based. Only in the absence of such principles should the matter be settled in conformity with the law applicable by virtue of the rules of private international law.

D. Interpretation of the contract; usages

14. The Convention contains provisions on the manner in which statements and conduct of a party are to be interpreted in the context of the formation of the contract or its implementation. Usages agreed to by the parties, practices they have established between themselves and usages of which the parties knew or ought to have known and which are widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned may all be binding on the parties to the contract of sale.

E. Form of the contract

15. The Convention does not subject the contract of sale to any requirement as to form. In particular, article 11 provides that no written agreement is necessary for the conclusion of the contract. However, if the contract is in writing and it contains a provision requiring any modification or termination by agreement to be in writing, article 29 provides that the contract may not be otherwise modified or terminated by agreement. The only exception is that a party may be precluded by his conduct from asserting such a provision to the extent that the other person has relied on that conduct.

16. In order to accommodate those States whose legislation requires contracts of sale to be concluded in or evidenced by writing, article 96 entitles those

States to declare that neither article 11 not the exception to article 29 applies where any party to the contract has his place of business in that State.

Part Two. Formation of the contract

17. Part Two of the Convention deals with a number of questions that arise in the formation of the contract by the exchange of an offer and an acceptance. When the formation of the contract takes place in this manner, the contract is concluded when the acceptance of the offer becomes effective.

18. In order for a proposal for concluding a contract to constitute an offer, it must be addressed to one or more specific persons and it must be sufficiently definite. For the proposal to be sufficiently definite, it must indicate the goods and expressly or implicitly fix or make provisions for determining the quantity and the price.

19. The Convention takes a middle position between the doctrine of the revocability of the offer until acceptance and its general irrevocability for some period of time. The general rule is that an offer may be revoked. However, the revocation must reach the offeree before he has dispatched an acceptance. Moreover, an offer cannot be revoked if it indicates that it is irrevocable, which it may do by stating a fixed time for acceptance or otherwise. Furthermore, an offer may not be revoked if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

20. Acceptance of an offer may be made by means of a statement or other conduct of the offeree indicating assent to the offer that is communicated to the offeror. However, in some cases the acceptance may consist of performing an act, such as dispatch of the goods or payment of the price. Such an act would normally be effective as an acceptance the moment the act was performed.

21. A frequent problem in contract formation, perhaps especially in regard to contracts of sale of goods, arises out of a reply to an offer that purports to be an acceptance but contains additional or different terms. Under the Convention, if the additional or different terms do not materially alter the terms of the offer, the reply constitutes an acceptance, unless the offeror without undue delay objects to those terms. If he does not object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

22. If the additional or different terms do materially alter the terms of the contract, the reply constitutes a counter-offer that must in turn be accepted

for a contract to be concluded. Additional or different terms relating, among other things, to the price, payment, quality and quantity of the goods, place and time of delivery, extent of one party's liability to the other or settlement of disputes are considered to alter the terms of the offer materially.

Part Three. Sale of goods

A. Obligations of the seller

23. The general obligations of the seller are to deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention. The Convention provides supplementary rules for use in the absence of contractual agreement as to when, where and how the seller must perform these obligations.

24. The Convention provides a number of rules that implement the seller's obligations in respect of the quality of the goods. In general, the seller must deliver goods that are of the quantity, quality and description required by the contract and that are contained or packaged in the manner required by the contract. One set of rules of particular importance in international sales of goods involves the seller's obligation to deliver goods that are free from any right or claim of a third party, including rights based on industrial property or other intellectual property.

25. In connection with the seller's obligations in regard to the quality of the goods, the Convention contains provisions on the buyer's obligation to inspect the goods. He must give notice of any lack of conformity with the contract within a reasonable time after he has discovered it or ought to have discovered it, and at the latest two years from the date on which the goods were actually handed over to the buyer, unless this time limit is inconsistent with a contractual period of guarantee.

B. Obligations of the buyer

26. The general obligations of the buyer are to pay the price for the goods and take delivery of them as required by the contract and the Convention. The Convention provides supplementary rules for use in the absence of contractual agreement as to how the price is to be determined and where and when the buyer should perform his obligations to pay the price.

C. Remedies for breach of contract

27. The remedies of the buyer for breach of contract by the seller are set forth in connection with the obligations of the seller and the remedies of the seller are set forth in connection with the obligations of the buyer. This makes it easier to use and understand the Convention.

28. The general pattern of remedies is the same in both cases. If all the required conditions are fulfilled, the aggrieved party may require performance of the other party's obligations, claim damages or avoid the contract. The buyer also has the right to reduce the price where the goods delivered do not conform with the contract.

29. Among the more important limitations on the right of an aggrieved party to claim a remedy is the concept of fundamental breach. For a breach of contract to be fundamental, it must result in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the result was neither foreseen by the party in breach nor foreseeable by a reasonable person of the same kind in the same circumstances. A buyer can require the delivery of substitute goods only if the goods delivered were not in conformity with the contract and the lack of conformity constituted a fundamental breach of contract. The existence of a fundamental breach is one of the two circumstances that justifies a declaration of avoidance of a contract by the aggrieved party; the other circumstance being that, in the case of non-delivery of the goods by the seller or non-payment of the price or failure to take delivery by the buyer, the party in breach fails to perform within a reasonable period of time fixed by the aggrieved party.

30. Other remedies may be restricted by special circumstances. For example, if the goods do not conform with the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A party cannot recover damages that he could have mitigated by taking the proper measures. A party may be exempted from paying damages by virtue of an impediment beyond his control.

D. Passing of risk

31. Determining the exact moment when the risk of loss or damage to the goods passes from the seller to the buyer is of great importance in contracts for the international sale of goods. Parties may regulate the issue in their contract either by an express provision or by the use of a trade term such as, for example, an INCOTERM. The effect of the choice of such a term

would be to amend the corresponding provisions of the CISG accordingly. However, for the frequent case where the contract does not contain such a provision, the Convention sets forth a complete set of rules.

32. The two special situations contemplated by the Convention are when the contract of sale involves carriage of the goods and when the goods are sold while in transit. In all other cases the risk passes to the buyer when he takes over the goods or from the time when the goods are placed at his disposal and he commits a breach of contract by failing to take delivery, whichever comes first. In the frequent case when the contract relates to goods that are not then identified, they must be identified to the contract before they can be considered to be placed at the disposal of the buyer and the risk of their loss can be considered to have passed to him.

E. Suspension of performance and anticipatory breach

33. The Convention contains special rules for the situation in which, prior to the date on which performance is due, it becomes apparent that one of the parties will not perform a substantial part of his obligations or will commit a fundamental breach of contract. A distinction is drawn between those cases in which the other party may suspend his own performance of the contract but the contract remains in existence awaiting future events and those cases in which he may declare the contract avoided.

F. Exemption from liability to pay damages

34. When a party fails to perform any of his obligations due to an impediment beyond his control that he could not reasonably have been expected to take into account at the time of the conclusion of the contract and that he could not have avoided or overcome, he is exempted from the consequences of his failure to perform, including the payment of damages. This exemption may also apply if the failure is due to the failure of a third person whom he has engaged to perform the whole or a part of the contract. However, he is subject to any other remedy, including reduction of the price, if the goods were defective in some way.

G. Preservation of the goods

35. The Convention imposes on both parties the duty to preserve any goods in their possession belonging to the other party. Such a duty is of even greater importance in an international sale of goods where the other party is from a

foreign country and may not have agents in the country where the goods are located. Under certain circumstances the party in possession of the goods may sell them, or may even be required to sell them. A party selling the goods has the right to retain out of the proceeds of sale an amount equal to the reasonable expenses of preserving the goods and of selling them and must account to the other party for the balance.

Part Four. Final clauses

36. The final clauses contain the usual provisions relating to the Secretary-General as depositary and providing that the Convention is subject to ratification, acceptance or approval by those States that signed it by 30 September 1981, that it is open to accession by all States that are not signatory States and that the text is equally authentic in Arabic, Chinese, English, French, Russian and Spanish.

37. The Convention permits a certain number of declarations. Those relative to scope of application and the requirement as to a written contract have been mentioned above. There is a special declaration for States that have different systems of law governing contracts of sale in different parts of their territory. Finally, a State may declare that it will not be bound by Part II on formation of contracts or Part III on the rights and obligations of the buyer and seller. This latter declaration was included as part of the decision to combine into one convention the subject matter of the two 1964 Hague Conventions.

Complementary texts

38. The United Nations Convention on Contracts for the International Sale of Goods is complemented by the United Nations Convention on the Limitation Period in the International Sale of Goods, 1974, as amended by a Protocol in 1980 (the Limitation Convention). The Limitation Convention establishes uniform rules governing the period of time within which a party under a contract for the international sale of goods must commence legal proceedings against another party to assert a claim arising from the contract or relating to its breach, termination or validity. The amending Protocol of 1980 ensures that the scope of application of the Limitation Convention is identical to the one of the United Nations Convention on Contracts for the International Sale of Goods.

39. The United Nations Convention on Contracts for the International Sale of Goods is also complemented, with respect to the use of electronic communications,

by the United Nations Convention on the Use of Electronic Communications in International Contracts, 2005 (the Electronic Communications Convention). The Electronic Communications Convention aims at facilitating the use of electronic communications in international trade by assuring that contracts concluded and other communications exchanged electronically are as valid and enforceable as their traditional paper-based equivalents. The Electronic Communications Convention may help to avoid misinterpretation of the CISG that might occur, for example, when a State has lodged a declaration mandating the use of the traditional written form for contracts for the international sale of goods. It may also promote the understanding that the "communication" and/or "writing" under the CISG should be construed so as to include electronic communications. The Electronic Communications Convention is an enabling treaty whose effect is to remove those formal obstacles by establishing the requirements for functional equivalence between electronic and traditional written form.

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UNIDROIT PRINCIPLES OF INTERNATIONAL COMMERCIAL CONTRACTS 2016

PREAMBLE
(Purpose of the Principles)

These Principles set forth general rules for international commercial contracts.

They shall be applied when the parties have agreed that their contract be governed by them.(*)

They may be applied when the parties have agreed that their contract be governed by general principles of law, the *lex mercatoria* or the like.

They may be applied when the parties have not chosen any law to govern their contract.

They may be used to interpret or supplement international uniform law instruments.

They may be used to interpret or supplement domestic law.

They may serve as a model for national and international legislators.

CHAPTER 1 — GENERAL PROVISIONS

ARTICLE 1.1
(Freedom of contract)

The parties are free to enter into a contract and to determine its content.

ARTICLE 1.2
(No form required)

Nothing in these Principles requires a contract, statement or any other act to be made in or evidenced by a particular form. It may be proved by any means, including witnesses.

ARTICLE 1.3
(Binding character of contract)

A contract validly entered into is binding upon the parties. It can only be modified or terminated in accordance with its terms or by agreement or as otherwise provided in these Principles.

ARTICLE 1.4
(Mandatory rules)

Nothing in these Principles shall restrict the application of mandatory rules, whether of national, international or supranational origin, which are applicable in accordance with the relevant rules of private international law.

ARTICLE 1.5
(Exclusion or modification by the parties)

The parties may exclude the application of these Principles or derogate from or vary the effect of any of their provisions, except as otherwise provided in the Principles.

(*) Parties wishing to provide that their agreement be governed by the Principles might use one of the *Model Clauses for the use of the UNIDROIT Principles of International Commercial Contracts* (see http://www.unidroit.org/instruments/commercial-contracts/upicc-model-clauses).

ARTICLE 1.6
(Interpretation and supplementation of the Principles)

(1) In the interpretation of these Principles, regard is to be had to their international character and to their purposes including the need to promote uniformity in their application.

(2) Issues within the scope of these Principles but not expressly settled by them are as far as possible to be settled in accordance with their underlying general principles.

ARTICLE 1.7
(Good faith and fair dealing)

(1) Each party must act in accordance with good faith and fair dealing in international trade.

(2) The parties may not exclude or limit this duty.

ARTICLE 1.8
(Inconsistent behaviour)

A party cannot act inconsistently with an understanding it has caused the other party to have and upon which that other party reasonably has acted in reliance to its detriment.

ARTICLE 1.9
(Usages and practices)

(1) The parties are bound by any usage to which they have agreed and by any practices which they have established between themselves.

(2) The parties are bound by a usage that is widely known to and regularly observed in international trade by parties in the particular trade concerned except where the application of such a usage would be unreasonable.

ARTICLE 1.10
(Notice)

(1) Where notice is required it may be given by any means appropriate to the circumstances.

(2) A notice is effective when it reaches the person to whom it is given.

(3) For the purpose of paragraph (2) a notice "reaches" a person when given to that person orally or delivered at that person's place of business or mailing address.

(4) For the purpose of this Article "notice" includes a declaration, demand, request or any other communication of intention.

ARTICLE 1.11
(Definitions)

In these Principles

– "court" includes an arbitral tribunal;

– where a party has more than one place of business the relevant "place of business" is that which has the closest relationship to the contract and its performance, having regard to the circumstances known to or contemplated by the parties at any time before or at the conclusion of the contract;

– "long-term contract" refers to a contract which is to be performed over a period of time and which normally involves, to a varying degree, complexity of the transaction and an ongoing relationship between the parties;

– "obligor" refers to the party who is to perform an obligation and "obligee" refers to the party who is entitled to performance of that obligation;

– "writing" means any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form.

ARTICLE 1.12
(Computation of time set by parties)

(1) Official holidays or non-business days occurring during a period set by parties for an act to be performed are included in calculating the period.

(2) However, if the last day of the period is an official holiday or a non-business day at the place of business of the party to perform the act, the period is extended until the first business day which follows, unless the circumstances indicate otherwise.

(3) The relevant time zone is that of the place of business of the party setting the time, unless the circumstances indicate otherwise.

CHAPTER 2 — FORMATION AND AUTHORITY OF AGENTS

SECTION 1: FORMATION

ARTICLE 2.1.1
(Manner of formation)

A contract may be concluded either by the acceptance of an offer or by conduct of the parties that is sufficient to show agreement.

ARTICLE 2.1.2
(Definition of offer)

A proposal for concluding a contract constitutes an offer if it is sufficiently definite and indicates the intention of the offeror to be bound in case of acceptance.

ARTICLE 2.1.3
(Withdrawal of offer)

(1) An offer becomes effective when it reaches the offeree.

(2) An offer, even if it is irrevocable, may be withdrawn if the withdrawal reaches the offeree before or at the same time as the offer.

ARTICLE 2.1.4
(Revocation of offer)

(1) Until a contract is concluded an offer may be revoked if the revocation reaches the offeree before it has dispatched an acceptance.

(2) However, an offer cannot be revoked

(a) if it indicates, whether by stating a fixed time for acceptance or otherwise, that it is irrevocable; or

(b) if it was reasonable for the offeree to rely on the offer as being irrevocable and the offeree has acted in reliance on the offer.

ARTICLE 2.1.5
(Rejection of offer)

An offer is terminated when a rejection reaches the offeror.

ARTICLE 2.1.6
(Mode of acceptance)

(1) A statement made by or other conduct of the offeree indicating assent to an offer is an acceptance. Silence or inactivity does not in itself amount to acceptance.

(2) An acceptance of an offer becomes effective when the indication of assent reaches the offeror.

(3) However, if, by virtue of the offer or as a result of practices which the parties have established between themselves or of usage, the offeree may indicate assent by

performing an act without notice to the offeror, the acceptance is effective when the act is performed.

ARTICLE 2.1.7
(Time of acceptance)

An offer must be accepted within the time the offeror has fixed or, if no time is fixed, within a reasonable time having regard to the circumstances, including the rapidity of the means of communication employed by the offeror. An oral offer must be accepted immediately unless the circumstances indicate otherwise.

ARTICLE 2.1.8
(Acceptance within a fixed period of time)

A period of acceptance fixed by the offeror begins to run from the time that the offer is dispatched. A time indicated in the offer is deemed to be the time of dispatch unless the circumstances indicate otherwise.

ARTICLE 2.1.9
(Late acceptance. Delay in transmission)

(1) A late acceptance is nevertheless effective as an acceptance if without undue delay the offeror so informs the offeree or gives notice to that effect.

(2) If a communication containing a late acceptance shows that it has been sent in such circumstances that if its transmission had been normal it would have reached the offeror in due time, the late acceptance is effective as an acceptance unless, without undue delay, the offeror informs the offeree that it considers the offer as having lapsed.

ARTICLE 2.1.10
(Withdrawal of acceptance)

An acceptance may be withdrawn if the withdrawal reaches the offeror before or at the same time as the acceptance would have become effective.

ARTICLE 2.1.11
(Modified acceptance)

(1) A reply to an offer which purports to be an acceptance but contains additions, limitations or other modifications is a rejection of the offer and constitutes a counter-offer.

(2) However, a reply to an offer which purports to be an acceptance but contains additional or different terms which do not materially alter the terms of the offer constitutes an acceptance, unless the offeror, without undue delay, objects to the discrepancy. If the offeror does not object, the terms of the contract are the terms of the offer with the modifications contained in the acceptance.

ARTICLE 2.1.12
(Writings in confirmation)

If a writing which is sent within a reasonable time after the conclusion of the contract and which purports to be a confirmation of the contract contains additional or different terms, such terms become part of the contract, unless they materially alter the contract or the recipient, without undue delay, objects to the discrepancy.

ARTICLE 2.1.13
(Conclusion of contract dependent on agreement on specific matters or in a particular form)

Where in the course of negotiations one of the parties insists that the contract is not concluded until there is agreement on specific matters or in a particular form, no contract is concluded before agreement is reached on those matters or in that form.

ARTICLE 2.1.14
(Contract with terms deliberately left open)

(1) If the parties intend to conclude a contract, the fact that they intentionally leave a term to be agreed upon in further negotiations or to be determined by one of the parties or by a third person does not prevent a contract from coming into existence.

(2) The existence of the contract is not affected by the fact that subsequently

(a) the parties reach no agreement on the term;

(b) the party who is to determine the term does not do so; or

(c) the third person does not determine the term,

provided that there is an alternative means of rendering the term definite that is reasonable in the circumstances, having regard to the intention of the parties.

ARTICLE 2.1.15
(Negotiations in bad faith)

(1) A party is free to negotiate and is not liable for failure to reach an agreement.

(2) However, a party who negotiates or breaks off negotiations in bad faith is liable for the losses caused to the other party.

(3) It is bad faith, in particular, for a party to enter into or continue negotiations when intending not to reach an agreement with the other party.

ARTICLE 2.1.16
(Duty of confidentiality)

Where information is given as confidential by one party in the course of negotiations, the other party is under a duty not to disclose that information or to use it improperly for its own purposes, whether or not a contract is subsequently concluded. Where appropriate, the remedy for breach of that duty may include compensation based on the benefit received by the other party.

ARTICLE 2.1.17
(Merger clauses)

A contract in writing which contains a clause indicating that the writing completely embodies the terms on which the parties have agreed cannot be contradicted or supplemented by evidence of prior statements or agreements. However, such statements or agreements may be used to interpret the writing.

ARTICLE 2.1.18
(Modification in a particular form)

A contract in writing which contains a clause requiring any modification or termination by agreement to be in a particular form may not be otherwise modified or terminated. However, a party may be precluded by its conduct from asserting such a clause to the extent that the other party has reasonably acted in reliance on that conduct.

ARTICLE 2.1.19
(Contracting under standard terms)

(1) Where one party or both parties use standard terms in concluding a contract, the general rules on formation apply, subject to Articles 2.1.20 - 2.1.22.

(2) Standard terms are provisions which are prepared in advance for general and repeated use by one party and which are actually used without negotiation with the other party.

ARTICLE 2.1.20
(Surprising terms)

(1) No term contained in standard terms which is of such a character that the other party could not reasonably have expected it, is effective unless it has been expressly accepted by that party.

(2) In determining whether a term is of such a character regard shall be had to its content, language and presentation.

ARTICLE 2.1.21
(Conflict between standard terms and non-standard terms)

In case of conflict between a standard term and a term which is not a standard term the latter prevails.

ARTICLE 2.1.22
(Battle of forms)

Where both parties use standard terms and reach agreement except on those terms, a contract is concluded on the basis of the agreed terms and of any standard terms which are common in substance unless one party clearly indicates in advance, or later and without undue delay informs the other party, that it does not intend to be bound by such a contract.

SECTION 2: AUTHORITY OF AGENTS

ARTICLE 2.2.1
(Scope of the Section)

(1) This Section governs the authority of a person ("the agent") to affect the legal relations of another person ("the principal") by or with respect to a contract with a third party, whether the agent acts in its own name or in that of the principal.

(2) It governs only the relations between the principal or the agent on the one hand, and the third party on the other.

(3) It does not govern an agent's authority conferred by law or the authority of an agent appointed by a public or judicial authority.

ARTICLE 2.2.2
(Establishment and scope of the authority of the agent)

(1) The principal's grant of authority to an agent may be express or implied.

(2) The agent has authority to perform all acts necessary in the circumstances to achieve the purposes for which the authority was granted.

ARTICLE 2.2.3
(Agency disclosed)

(1) Where an agent acts within the scope of its authority and the third party knew or ought to have known that the agent was acting as an agent, the acts of the agent shall directly affect the legal relations between the principal and the third party and no legal relation is created between the agent and the third party.

(2) However, the acts of the agent shall affect only the relations between the agent and the third party, where the agent with the consent of the principal undertakes to become the party to the contract.

ARTICLE 2.2.4
(Agency undisclosed)

(1) Where an agent acts within the scope of its authority and the third party neither knew nor ought to have known that the agent was acting as an agent, the acts of the agent shall affect only the relations between the agent and the third party.

(2) However, where such an agent, when contracting with the third party on behalf of a business, represents itself to be the owner of that business, the third party, upon discovery of the real owner of the business, may exercise also against the latter the rights it has against the agent.

ARTICLE 2.2.5
(Agent acting without or exceeding its authority)

(1) Where an agent acts without authority or exceeds its authority, its acts do not affect the legal relations between the principal and the third party.

(2) However, where the principal causes the third party reasonably to believe that the agent has authority to act on behalf of the principal and that the agent is acting within the scope of that authority, the principal may not invoke against the third party the lack of authority of the agent.

ARTICLE 2.2.6
(Liability of agent acting without or exceeding its authority)

(1) An agent that acts without authority or exceeds its authority is, failing ratification by the principal, liable for damages that will place the third party in the same position as if the agent had acted with authority and not exceeded its authority.

(2) However, the agent is not liable if the third party knew or ought to have known that the agent had no authority or was exceeding its authority.

ARTICLE 2.2.7
(Conflict of interests)

(1) If a contract concluded by an agent involves the agent in a conflict of interests with the principal of which the third party knew or ought to have known, the principal may avoid the contract. The right to avoid is subject to Articles 3.2.9 and 3.2.11 to 3.2.15.

(2) However, the principal may not avoid the contract

(a) if the principal had consented to, or knew or ought to have known of, the agent's involvement in the conflict of interests; or

(b) if the agent had disclosed the conflict of interests to the principal and the latter had not objected within a reasonable time.

ARTICLE 2.2.8
(Sub-agency)

An agent has implied authority to appoint a sub-agent to perform acts which it is not reasonable to expect the agent to perform itself. The rules of this Section apply to the sub-agency.

ARTICLE 2.2.9
(Ratification)

(1) An act by an agent that acts without authority or exceeds its authority may be ratified by the principal. On ratification the act produces the same effects as if it had initially been carried out with authority.

(2) The third party may by notice to the principal specify a reasonable period of time for ratification. If the principal does not ratify within that period of time it can no longer do so.

(3) If, at the time of the agent's act, the third party neither knew nor ought to have known of the lack of authority, it may, at any time before ratification, by notice to the principal indicate its refusal to become bound by a ratification.

ARTICLE 2.2.10
(Termination of authority)

(1) Termination of authority is not effective in relation to the third party unless the third party knew or ought to have known of it.

(2) Notwithstanding the termination of its authority, an agent remains authorised to perform the acts that are necessary to prevent harm to the principal's interests.

CHAPTER 3 — VALIDITY

SECTION 1: GENERAL PROVISIONS

ARTICLE 3.1.1
(Matters not covered)

This Chapter does not deal with lack of capacity.

ARTICLE 3.1.2
(Validity of mere agreement)

A contract is concluded, modified or terminated by the mere agreement of the parties, without any further requirement.

ARTICLE 3.1.3
(Initial impossibility)

(1) The mere fact that at the time of the conclusion of the contract the performance of the obligation assumed was impossible does not affect the validity of the contract.

(2) The mere fact that at the time of the conclusion of the contract a party was not entitled to dispose of the assets to which the contract relates does not affect the validity of the contract.

ARTICLE 3.1.4
(Mandatory character of the provisions)

The provisions on fraud, threat, gross disparity and illegality contained in this Chapter are mandatory.

SECTION 2: GROUNDS FOR AVOIDANCE

ARTICLE 3.2.1
(Definition of mistake)

Mistake is an erroneous assumption relating to facts or to law existing when the contract was concluded.

ARTICLE 3.2.2
(Relevant mistake)

(1) A party may only avoid the contract for mistake if, when the contract was concluded, the mistake was of such importance that a reasonable person in the same situation as the party in error would only have concluded the contract on materially different terms or would not have concluded it at all if the true state of affairs had been known, and

(a) the other party made the same mistake, or caused the mistake, or knew or ought to have known of the mistake and it was contrary to reasonable commercial standards of fair dealing to leave the mistaken party in error; or

(b) the other party had not at the time of avoidance reasonably acted in reliance on the contract.

(2) However, a party may not avoid the contract if

(a) it was grossly negligent in committing the mistake; or

(b) the mistake relates to a matter in regard to which the risk of mistake was assumed or, having regard to the circumstances, should be borne by the mistaken party.

ARTICLE 3.2.3

(Error in expression or transmission)

An error occurring in the expression or transmission of a declaration is considered to be a mistake of the person from whom the declaration emanated.

ARTICLE 3.2.4

(Remedies for non-performance)

A party is not entitled to avoid the contract on the ground of mistake if the circumstances on which that party relies afford, or could have afforded, a remedy for non-performance.

ARTICLE 3.2.5

(Fraud)

A party may avoid the contract when it has been led to conclude the contract by the other party's fraudulent representation, including language or practices, or fraudulent non-disclosure of circumstances which, according to reasonable commercial standards of fair dealing, the latter party should have disclosed.

ARTICLE 3.2.6

(Threat)

A party may avoid the contract when it has been led to conclude the contract by the other party's unjustified threat which, having regard to the circumstances, is so imminent and serious as to leave the first party no reasonable alternative. In particular, a threat is unjustified if the act or omission with which a party has been threatened is wrongful in itself, or it is wrongful to use it as a means to obtain the conclusion of the contract.

ARTICLE 3.2.7

(Gross disparity)

(1) A party may avoid the contract or an individual term of it if, at the time of the conclusion of the contract, the contract or term unjustifiably gave the other party an excessive advantage. Regard is to be had, among other factors, to

(a) the fact that the other party has taken unfair advantage of the first party's dependence, economic distress or urgent needs, or of its improvidence, ignorance, inexperience or lack of bargaining skill, and

(b) the nature and purpose of the contract.

(2) Upon the request of the party entitled to avoidance, a court may adapt the contract or term in order to make it accord with reasonable commercial standards of fair dealing.

(3) A court may also adapt the contract or term upon the request of the party receiving notice of avoidance, provided that that party informs the other party of its request promptly after receiving such notice and before the other party has reasonably acted in reliance on it. Article 3.2.10(2) applies accordingly.

ARTICLE 3.2.8
(Third persons)

(1) Where fraud, threat, gross disparity or a party's mistake is imputable to, or is known or ought to be known by, a third person for whose acts the other party is responsible, the contract may be avoided under the same conditions as if the behaviour or knowledge had been that of the party itself.

(2) Where fraud, threat or gross disparity is imputable to a third person for whose acts the other party is not responsible, the contract may be avoided if that party knew or ought to have known of the fraud, threat or disparity, or has not at the time of avoidance reasonably acted in reliance on the contract.

ARTICLE 3.2.9
(Confirmation)

If the party entitled to avoid the contract expressly or impliedly confirms the contract after the period of time for giving notice of avoidance has begun to run, avoidance of the contract is excluded.

ARTICLE 3.2.10
(Loss of right to avoid)

(1) If a party is entitled to avoid the contract for mistake but the other party declares itself willing to perform or performs the contract as it was understood by the party entitled to avoidance, the contract is considered to have been concluded as the latter party understood it. The other party must make such a declaration or render such performance promptly after having been informed of the manner in which the party entitled to avoidance had understood the contract and before that party has reasonably acted in reliance on a notice of avoidance.

(2) After such a declaration or performance the right to avoidance is lost and any earlier notice of avoidance is ineffective.

ARTICLE 3.2.11
(Notice of avoidance)

The right of a party to avoid the contract is exercised by notice to the other party.

ARTICLE 3.2.12
(Time limits)

(1) Notice of avoidance shall be given within a reasonable time, having regard to the circumstances, after the avoiding party knew or could not have been unaware of the relevant facts or became capable of acting freely.

(2) Where an individual term of the contract may be avoided by a party under Article 3.2.7, the period of time for giving notice of avoidance begins to run when that term is asserted by the other party.

ARTICLE 3.2.13
(Partial avoidance)

Where a ground of avoidance affects only individual terms of the contract, the effect of avoidance is limited to those terms unless, having regard to the circumstances, it is unreasonable to uphold the remaining contract.

ARTICLE 3.2.14
(Retroactive effect of avoidance)

Avoidance takes effect retroactively.

ARTICLE 3.2.15
(Restitution)

(1) On avoidance either party may claim restitution of whatever it has supplied under the contract, or the part of it avoided, provided that the party concurrently makes restitution of whatever it has received under the contract, or the part of it avoided.

(2) If restitution in kind is not possible or appropriate, an allowance has to be made in money whenever reasonable.

(3) The recipient of the performance does not have to make an allowance in money if the impossibility to make restitution in kind is attributable to the other party.

(4) Compensation may be claimed for expenses reasonably required to preserve or maintain the performance received.

ARTICLE 3.2.16
(Damages)

Irrespective of whether or not the contract has been avoided, the party who knew or ought to have known of the ground for avoidance is liable for damages so as to put the other party in the same position in which it would have been if it had not concluded the contract.

ARTICLE 3.2.17
(Unilateral declarations)

The provisions of this Chapter apply with appropriate adaptations to any communication of intention addressed by one party to the other.

SECTION 3: ILLEGALITY

ARTICLE 3.3.1
(Contracts infringing mandatory rules)

(1) Where a contract infringes a mandatory rule, whether of national, international or supranational origin, applicable under Article 1.4 of these Principles, the effects of that infringement upon the contract are the effects, if any, expressly prescribed by that mandatory rule.

(2) Where the mandatory rule does not expressly prescribe the effects of an infringement upon a contract, the parties have the right to exercise such remedies under the contract as in the circumstances are reasonable.

(3) In determining what is reasonable regard is to be had in particular to:

(a) the purpose of the rule which has been infringed;

(b) the category of persons for whose protection the rule exists;

(c) any sanction that may be imposed under the rule infringed;

(d) the seriousness of the infringement;

(e) whether one or both parties knew or ought to have known of the infringement;

(f) whether the performance of the contract necessitates the infringement; and

(g) the parties' reasonable expectations.

ARTICLE 3.3.2
(Restitution)

(1) Where there has been performance under a contract infringing a mandatory rule under Article 3.3.1, restitution may be granted where this would be reasonable in the circumstances.

(2) In determining what is reasonable, regard is to be had, with the appropriate adaptations, to the criteria referred to in Article 3.3.1(3).

(3) If restitution is granted, the rules set out in Article 3.2.15 apply with appropriate adaptations.

CHAPTER 4 — INTERPRETATION

ARTICLE 4.1
(Intention of the parties)

(1) A contract shall be interpreted according to the common intention of the parties.

(2) If such an intention cannot be established, the contract shall be interpreted according to the meaning that reasonable persons of the same kind as the parties would give to it in the same circumstances.

ARTICLE 4.2
(Interpretation of statements and other conduct)

(1) The statements and other conduct of a party shall be interpreted according to that party's intention if the other party knew or could not have been unaware of that intention.

(2) If the preceding paragraph is not applicable, such statements and other conduct shall be interpreted according to the meaning that a reasonable person of the same kind as the other party would give to it in the same circumstances.

ARTICLE 4.3
(Relevant circumstances)

In applying Articles 4.1 and 4.2, regard shall be had to all the circumstances, including

(a) preliminary negotiations between the parties;
(b) practices which the parties have established between themselves;
(c) the conduct of the parties subsequent to the conclusion of the contract;
(d) the nature and purpose of the contract;
(e) the meaning commonly given to terms and expressions in the trade concerned;
(f) usages.

ARTICLE 4.4
(Reference to contract or statement as a whole)

Terms and expressions shall be interpreted in the light of the whole contract or statement in which they appear.

ARTICLE 4.5
(All terms to be given effect)

Contract terms shall be interpreted so as to give effect to all the terms rather than to deprive some of them of effect.

ARTICLE 4.6
(Contra proferentem rule)

If contract terms supplied by one party are unclear, an interpretation against that party is preferred.

ARTICLE 4.7
(Linguistic discrepancies)

Where a contract is drawn up in two or more language versions which are equally authoritative there is, in case of discrepancy between the versions, a preference for the interpretation according to a version in which the contract was originally drawn up.

ARTICLE 4.8
(Supplying an omitted term)

(1) Where the parties to a contract have not agreed with respect to a term which is important for a determination of their rights and duties, a term which is appropriate in the circumstances shall be supplied.

(2) In determining what is an appropriate term regard shall be had, among other factors, to

(a) the intention of the parties;
(b) the nature and purpose of the contract;
(c) good faith and fair dealing;
(d) reasonableness.

CHAPTER 5 — CONTENT AND THIRD PARTY RIGHTS

SECTION 1: CONTENT

ARTICLE 5.1.1
(Express and implied obligations)

The contractual obligations of the parties may be express or implied.

ARTICLE 5.1.2
(Implied obligations)

Implied obligations stem from

(a) the nature and purpose of the contract;
(b) practices established between the parties and usages;
(c) good faith and fair dealing;
(d) reasonableness.

ARTICLE 5.1.3
(Co-operation between the parties)

Each party shall cooperate with the other party when such co-operation may reasonably be expected for the performance of that party's obligations.

ARTICLE 5.1.4
(Duty to achieve a specific result.
Duty of best efforts)

(1) To the extent that an obligation of a party involves a duty to achieve a specific result, that party is bound to achieve that result.

(2) To the extent that an obligation of a party involves a duty of best efforts in the performance of an activity, that party is bound to make such efforts as would be made by a reasonable person of the same kind in the same circumstances.

ARTICLE 5.1.5
(Determination of kind of duty involved)

In determining the extent to which an obligation of a party involves a duty of best efforts in the performance of an activity or a duty to achieve a specific result, regard shall be had, among other factors, to

(a) the way in which the obligation is expressed in the contract;
(b) the contractual price and other terms of the contract;
(c) the degree of risk normally involved in achieving the expected result;
(d) the ability of the other party to influence the performance of the obligation.

ARTICLE 5.1.6
(Determination of quality of performance)

Where the quality of performance is neither fixed by, nor determinable from, the contract a party is bound to render a performance of a quality that is reasonable and not less than average in the circumstances.

ARTICLE 5.1.7
(Price determination)

(1) Where a contract does not fix or make provision for determining the price, the parties are considered, in the absence of any indication to the contrary, to have made reference to the price generally charged at the time of the conclusion of the contract for such performance in comparable circumstances in the trade concerned or, if no such price is available, to a reasonable price.

(2) Where the price is to be determined by one party and that determination is manifestly unreasonable, a reasonable price shall be substituted notwithstanding any contract term to the contrary.

(3) Where the price is to be fixed by one party or a third person, and that party or third person does not do so, the price shall be a reasonable price.

(4) Where the price is to be fixed by reference to factors which do not exist or have ceased to exist or to be accessible, the nearest equivalent factor shall be treated as a substitute.

ARTICLE 5.1.8
(Termination of a contract for an indefinite period)

A contract for an indefinite period may be terminated by either party by giving notice a reasonable time in advance. As to the effects of termination in general, and as to restitution, the provisions in Articles 7.3.5 and 7.3.7 apply.

ARTICLE 5.1.9
(Release by agreement)

(1) An obligee may release its right by agreement with the obligor.

(2) An offer to release a right gratuitously shall be deemed accepted if the obligor does not reject the offer without delay after having become aware of it.

SECTION 2: THIRD PARTY RIGHTS

ARTICLE 5.2.1
(Contracts in favour of third parties)

(1) The parties (the "promisor" and the "promisee") may confer by express or implied agreement a right on a third party (the "beneficiary").

(2) The existence and content of the beneficiary's right against the promisor are determined by the agreement of the parties and are subject to any conditions or other limitations under the agreement.

ARTICLE 5.2.2
(Third party identifiable)

The beneficiary must be identifiable with adequate certainty by the contract but need not be in existence at the time the contract is made.

ARTICLE 5.2.3
(Exclusion and limitation clauses)

The conferment of rights in the beneficiary includes the right to invoke a clause in the contract which excludes or limits the liability of the beneficiary.

ARTICLE 5.2.4
(Defences)

The promisor may assert against the beneficiary all defences which the promisor could assert against the promisee.

ARTICLE 5.2.5
(Revocation)

The parties may modify or revoke the rights conferred by the contract on the beneficiary until the beneficiary has accepted them or reasonably acted in reliance on them.

ARTICLE 5.2.6
(Renunciation)

The beneficiary may renounce a right conferred on it.

SECTION 3: CONDITIONS

ARTICLE 5.3.1
(Types of condition)

A contract or a contractual obligation may be made conditional upon the occurrence of a future uncertain event, so that the contract or the contractual obligation only takes effect if the event occurs (suspensive condition) or comes to an end if the event occurs (resolutive condition).

ARTICLE 5.3.2
(Effect of conditions)

Unless the parties otherwise agree:

(a) the relevant contract or contractual obligation takes effect upon fulfilment of a suspensive condition;

(b) the relevant contract or contractual obligation comes to an end upon fulfilment of a resolutive condition.

ARTICLE 5.3.3
(Interference with conditions)

(1) If fulfilment of a condition is prevented by a party, contrary to the duty of good faith and fair dealing or the duty of co-operation, that party may not rely on the non-fulfilment of the condition.

(2) If fulfilment of a condition is brought about by a party, contrary to the duty of good faith and fair dealing or the duty of co-operation, that party may not rely on the fulfilment of the condition.

ARTICLE 5.3.4
(Duty to preserve rights)

Pending fulfilment of a condition, a party may not, contrary to the duty to act in accordance with good faith and fair dealing, act so as to prejudice the other party's rights in case of fulfilment of the condition.

ARTICLE 5.3.5
(Restitution in case of fulfilment of a resolutive condition)

(1) On fulfilment of a resolutive condition, the rules on restitution set out in Articles 7.3.6 and 7.3.7 apply with appropriate adaptations.

(2) If the parties have agreed that the resolutive condition is to operate retroactively, the rules on restitution set out in Article 3.2.15 apply with appropriate adaptations.

CHAPTER 6 — PERFORMANCE

SECTION 1: PERFORMANCE IN GENERAL

ARTICLE 6.1.1
(Time of performance)

A party must perform its obligations:

(a) if a time is fixed by or determinable from the contract, at that time;

(b) if a period of time is fixed by or determinable from the contract, at any time within that period unless circumstances indicate that the other party is to choose a time;

(c) in any other case, within a reasonable time after the conclusion of the contract.

ARTICLE 6.1.2
(Performance at one time or in instalments)

In cases under Article 6.1.1(b) or (c), a party must perform its obligations at one time if that performance can be rendered at one time and the circumstances do not indicate otherwise.

ARTICLE 6.1.3
(Partial performance)

(1) The obligee may reject an offer to perform in part at the time performance is due, whether or not such offer is coupled with an assurance as to the balance of the performance, unless the obligee has no legitimate interest in so doing.

(2) Additional expenses caused to the obligee by partial performance are to be borne by the obligor without prejudice to any other remedy.

ARTICLE 6.1.4
(Order of performance)

(1) To the extent that the performances of the parties can be rendered simultaneously, the parties are bound to render them simultaneously unless the circumstances indicate otherwise.

(2) To the extent that the performance of only one party requires a period of time, that party is bound to render its performance first, unless the circumstances indicate otherwise.

ARTICLE 6.1.5
(Earlier performance)

(1) The obligee may reject an earlier performance unless it has no legitimate interest in so doing.

(2) Acceptance by a party of an earlier performance does not affect the time for the performance of its own obligations if that time has been fixed irrespective of the performance of the other party's obligations.

(3) Additional expenses caused to the obligee by earlier performance are to be borne by the obligor, without prejudice to any other remedy.

ARTICLE 6.1.6
(Place of performance)

(1) If the place of performance is neither fixed by, nor determinable from, the contract, a party is to perform:

(a) a monetary obligation, at the obligee's place of business;
(b) any other obligation, at its own place of business.

(2) A party must bear any increase in the expenses incidental to performance which is caused by a change in its place of business subsequent to the conclusion of the contract.

ARTICLE 6.1.7
(Payment by cheque or other instrument)

(1) Payment may be made in any form used in the ordinary course of business at the place for payment.

(2) However, an obligee who accepts, either by virtue of paragraph (1) or voluntarily, a cheque, any other order to pay or a promise to pay, is presumed to do so only on condition that it will be honoured.

ARTICLE 6.1.8
(Payment by funds transfer)

(1) Unless the obligee has indicated a particular account, payment may be made by a transfer to any of the financial institutions in which the obligee has made it known that it has an account.

(2) In case of payment by a transfer the obligation of the obligor is discharged when the transfer to the obligee's financial institution becomes effective.

ARTICLE 6.1.9
(Currency of payment)

(1) If a monetary obligation is expressed in a currency other than that of the place for payment, it may be paid by the obligor in the currency of the place for payment unless
(a) that currency is not freely convertible; or
(b) the parties have agreed that payment should be made only in the currency in which the monetary obligation is expressed.

(2) If it is impossible for the obligor to make payment in the currency in which the monetary obligation is expressed, the obligee may require payment in the currency of the place for payment, even in the case referred to in paragraph (1)(b).

(3) Payment in the currency of the place for payment is to be made according to the applicable rate of exchange prevailing there when payment is due.

(4) However, if the obligor has not paid at the time when payment is due, the obligee may require payment according to the applicable rate of exchange prevailing either when payment is due or at the time of actual payment.

ARTICLE 6.1.10
(Currency not expressed)

Where a monetary obligation is not expressed in a particular currency, payment must be made in the currency of the place where payment is to be made.

ARTICLE 6.1.11
(Costs of performance)

Each party shall bear the costs of performance of its obligations.

ARTICLE 6.1.12
(Imputation of payments)

(1) An obligor owing several monetary obligations to the same obligee may specify at the time of payment the debt to which it intends the payment to be applied.

However, the payment discharges first any expenses, then interest due and finally the principal.

(2) If the obligor makes no such specification, the obligee may, within a reasonable time after payment, declare to the obligor the obligation to which it imputes the payment, provided that the obligation is due and undisputed.

(3) In the absence of imputation under paragraphs (1) or (2), payment is imputed to that obligation which satisfies one of the following criteria in the order indicated:

(a) an obligation which is due or which is the first to fall due;

(b) the obligation for which the obligee has least security;

(c) the obligation which is the most burdensome for the obligor;

(d) the obligation which has arisen first.

If none of the preceding criteria applies, payment is imputed to all the obligations proportionally.

ARTICLE 6.1.13
(Imputation of non-monetary obligations)

Article 6.1.12 applies with appropriate adaptations to the imputation of performance of non-monetary obligations.

ARTICLE 6.1.14
(Application for public permission)

Where the law of a State requires a public permission affecting the validity of the contract or its performance and neither that law nor the circumstances indicate otherwise

(a) if only one party has its place of business in that State, that party shall take the measures necessary to obtain the permission;

(b) in any other case the party whose performance requires permission shall take the necessary measures.

ARTICLE 6.1.15
(Procedure in applying for permission)

(1) The party required to take the measures necessary to obtain the permission shall do so without undue delay and shall bear any expenses incurred.

(2) That party shall whenever appropriate give the other party notice of the grant or refusal of such permission without undue delay.

ARTICLE 6.1.16
(Permission neither granted nor refused)

(1) If, notwithstanding the fact that the party responsible has taken all measures required, permission is neither granted nor refused within an agreed period or, where no period has been agreed, within a reasonable time from the conclusion of the contract, either party is entitled to terminate the contract.

(2) Where the permission affects some terms only, paragraph (1) does not apply if, having regard to the circumstances, it is reasonable to uphold the remaining contract even if the permission is refused.

ARTICLE 6.1.17
(Permission refused)

(1) The refusal of a permission affecting the validity of the contract renders the contract void. If the refusal affects the validity of some terms only, only such terms are void if, having regard to the circumstances, it is reasonable to uphold the remaining contract.

(2) Where the refusal of a permission renders the performance of the contract impossible in whole or in part, the rules on non-performance apply.

SECTION 2: HARDSHIP

ARTICLE 6.2.1
(Contract to be observed)

Where the performance of a contract becomes more onerous for one of the parties, that party is nevertheless bound to perform its obligations subject to the following provisions on hardship.

ARTICLE 6.2.2
(Definition of hardship)

There is hardship where the occurrence of events fundamentally alters the equilibrium of the contract either because the cost of a party's performance has increased or because the value of the performance a party receives has diminished, and

(a) the events occur or become known to the disadvantaged party after the conclusion of the contract;

(b) the events could not reasonably have been taken into account by the disadvantaged party at the time of the conclusion of the contract;

(c) the events are beyond the control of the disadvantaged party; and

(d) the risk of the events was not assumed by the disadvantaged party.

ARTICLE 6.2.3
(Effects of hardship)

(1) In case of hardship the disadvantaged party is entitled to request renegotiations. The request shall be made without undue delay and shall indicate the grounds on which it is based.

(2) The request for renegotiation does not in itself entitle the disadvantaged party to withhold performance.

(3) Upon failure to reach agreement within a reasonable time either party may resort to the court.

(4) If the court finds hardship it may, if reasonable,

(a) terminate the contract at a date and on terms to be fixed, or

(b) adapt the contract with a view to restoring its equilibrium.

CHAPTER 7 — NON-PERFORMANCE

SECTION 1: NON-PERFORMANCE IN GENERAL

ARTICLE 7.1.1
(Non-performance defined)

Non-performance is failure by a party to perform any of its obligations under the contract, including defective performance or late performance.

ARTICLE 7.1.2
(Interference by the other party)

A party may not rely on the non-performance of the other party to the extent that such non-performance was caused by the first party's act or omission or by another event for which the first party bears the risk.

ARTICLE 7.1.3
(Withholding performance)

(1) Where the parties are to perform simultaneously, either party may withhold performance until the other party tenders its performance.

(2) Where the parties are to perform consecutively, the party that is to perform later may withhold its performance until the first party has performed.

ARTICLE 7.1.4
(Cure by non-performing party)

(1) The non-performing party may, at its own expense, cure any non-performance, provided that

(a) without undue delay, it gives notice indicating the proposed manner and timing of the cure;

(b) cure is appropriate in the circumstances;

(c) the aggrieved party has no legitimate interest in refusing cure; and

(d) cure is effected promptly.

(2) The right to cure is not precluded by notice of termination.

(3) Upon effective notice of cure, rights of the aggrieved party that are inconsistent with the non-performing party's performance are suspended until the time for cure has expired.

(4) The aggrieved party may withhold performance pending cure.

(5) Notwithstanding cure, the aggrieved party retains the right to claim damages for delay as well as for any harm caused or not prevented by the cure.

ARTICLE 7.1.5
(Additional period for performance)

(1) In a case of non-performance the aggrieved party may by notice to the other party allow an additional period of time for performance.

(2) During the additional period the aggrieved party may withhold performance of its own reciprocal obligations and may claim damages but may not resort to any other remedy. If it receives notice from the other party that the latter will not perform within that period, or if upon expiry of that period due performance has not been made, the aggrieved party may resort to any of the remedies that may be available under this Chapter.

(3) Where in a case of delay in performance which is not fundamental the aggrieved party has given notice allowing an additional period of time of reasonable length, it may terminate the contract at the end of that period. If the additional period allowed is not of reasonable length it shall be extended to a reasonable length. The aggrieved party may in its notice provide that if the other party fails to perform within the period allowed by the notice the contract shall automatically terminate.

(4) Paragraph (3) does not apply where the obligation which has not been performed is only a minor part of the contractual obligation of the non-performing party.

ARTICLE 7.1.6
(Exemption clauses)

A clause which limits or excludes one party's liability for non-performance or which permits one party to render performance substantially different from what the other party reasonably expected may not be invoked if it would be grossly unfair to do so, having regard to the purpose of the contract.

ARTICLE 7.1.7
(Force majeure)

(1) Non-performance by a party is excused if that party proves that the non-performance was due to an impediment beyond its control and that it could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

(2) When the impediment is only temporary, the excuse shall have effect for such period as is reasonable having regard to the effect of the impediment on the performance of the contract.

(3) The party who fails to perform must give notice to the other party of the impediment and its effect on its ability to perform. If the notice is not received by the other party within a reasonable time after the party who fails to perform knew or ought to have known of the impediment, it is liable for damages resulting from such non-receipt.

(4) Nothing in this Article prevents a party from exercising a right to terminate the contract or to withhold performance or request interest on money due.

SECTION 2: RIGHT TO PERFORMANCE

ARTICLE 7.2.1
(Performance of monetary obligation)

Where a party who is obliged to pay money does not do so, the other party may require payment.

ARTICLE 7.2.2
(Performance of non-monetary obligation)

Where a party who owes an obligation other than one to pay money does not perform, the other party may require performance, unless

(a) performance is impossible in law or in fact;

(b) performance or, where relevant, enforcement is unreasonably burdensome or expensive;

(c) the party entitled to performance may reasonably obtain performance from another source;

(d) performance is of an exclusively personal character; or

(e) the party entitled to performance does not require performance within a reasonable time after it has, or ought to have, become aware of the non-performance.

ARTICLE 7.2.3
(Repair and replacement of defective performance)

The right to performance includes in appropriate cases the right to require repair, replacement, or other cure of defective performance. The provisions of Articles 7.2.1 and 7.2.2 apply accordingly.

ARTICLE 7.2.4
(Judicial penalty)

(1) Where the court orders a party to perform, it may also direct that this party pay a penalty if it does not comply with the order.

(2) The penalty shall be paid to the aggrieved party unless mandatory provisions of the law of the forum provide otherwise. Payment of the penalty to the aggrieved party does not exclude any claim for damages.

ARTICLE 7.2.5
(Change of remedy)

(1) An aggrieved party who has required performance of a non-monetary obligation and who has not received performance within a period fixed or otherwise within a reasonable period of time may invoke any other remedy.

(2) Where the decision of a court for performance of a non-monetary obligation cannot be enforced, the aggrieved party may invoke any other remedy.

SECTION 3: TERMINATION

ARTICLE 7.3.1
(Right to terminate the contract)

(1) A party may terminate the contract where the failure of the other party to perform an obligation under the contract amounts to a fundamental non-performance.

(2) In determining whether a failure to perform an obligation amounts to a fundamental non-performance regard shall be had, in particular, to whether

(a) the non-performance substantially deprives the aggrieved party of what it was entitled to expect under the contract unless the other party did not foresee and could not reasonably have foreseen such result;

(b) strict compliance with the obligation which has not been performed is of essence under the contract;

(c) the non-performance is intentional or reckless;

(d) the non-performance gives the aggrieved party reason to believe that it cannot rely on the other party's future performance;

(e) the non-performing party will suffer disproportionate loss as a result of the preparation or performance if the contract is terminated.

(3) In the case of delay the aggrieved party may also terminate the contract if the other party fails to perform before the time allowed it under Article 7.1.5 has expired.

ARTICLE 7.3.2
(Notice of termination)

(1) The right of a party to terminate the contract is exercised by notice to the other party.

(2) If performance has been offered late or otherwise does not conform to the contract the aggrieved party will lose its right to terminate the contract unless it gives notice to the other party within a reasonable time after it has or ought to have become aware of the offer or of the non-conforming performance.

ARTICLE 7.3.3
(Anticipatory non-performance)

Where prior to the date for performance by one of the parties it is clear that there will be a fundamental non-performance by that party, the other party may terminate the contract.

ARTICLE 7.3.4
(Adequate assurance of due performance)

A party who reasonably believes that there will be a fundamental non-performance by the other party may demand adequate assurance of due performance and may meanwhile withhold its own performance. Where this assurance is not provided within a reasonable time the party demanding it may terminate the contract.

ARTICLE 7.3.5
(Effects of termination in general)

(1) Termination of the contract releases both parties from their obligation to effect and to receive future performance.

(2) Termination does not preclude a claim for damages for non-performance.

(3) Termination does not affect any provision in the contract for the settlement of disputes or any other term of the contract which is to operate even after termination.

ARTICLE 7.3.6
(Restitution with respect to contracts to be performed at one time)

(1) On termination of a contract to be performed at one time either party may claim restitution of whatever it has supplied under the contract, provided that such party concurrently makes restitution of whatever it has received under the contract.

(2) If restitution in kind is not possible or appropriate, an allowance has to be made in money whenever reasonable.

(3) The recipient of the performance does not have to make an allowance in money if the impossibility to make restitution in kind is attributable to the other party.

(4) Compensation may be claimed for expenses reasonably required to preserve or maintain the performance received.

ARTICLE 7.3.7
(Restitution with respect to long-term contracts)

(1) On termination of a long-term contract restitution can only be claimed for the period after termination has taken effect, provided the contract is divisible.

(2) As far as restitution has to be made, the provisions of Article 7.3.6 apply.

SECTION 4: DAMAGES

ARTICLE 7.4.1
(Right to damages)

Any non-performance gives the aggrieved party a right to damages either exclusively or in conjunction with any other remedies except where the non-performance is excused under these Principles.

ARTICLE 7.4.2
(Full compensation)

(1) The aggrieved party is entitled to full compensation for harm sustained as a result of the non-performance. Such harm includes both any loss which it suffered and any gain of which it was deprived, taking into account any gain to the aggrieved party resulting from its avoidance of cost or harm.

(2) Such harm may be non-pecuniary and includes, for instance, physical suffering or emotional distress.

ARTICLE 7.4.3
(Certainty of harm)

(1) Compensation is due only for harm, including future harm, that is established with a reasonable degree of certainty.

(2) Compensation may be due for the loss of a chance in proportion to the probability of its occurrence.

(3) Where the amount of damages cannot be established with a sufficient degree of certainty, the assessment is at the discretion of the court.

ARTICLE 7.4.4
(Foreseeability of harm)

The non-performing party is liable only for harm which it foresaw or could reasonably have foreseen at the time of the conclusion of the contract as being likely to result from its non-performance.

ARTICLE 7.4.5

(Proof of harm in case of replacement transaction)

Where the aggrieved party has terminated the contract and has made a replacement transaction within a reasonable time and in a reasonable manner it may recover the difference between the contract price and the price of the replacement transaction as well as damages for any further harm.

ARTICLE 7.4.6

(Proof of harm by current price)

(1) Where the aggrieved party has terminated the contract and has not made a replacement transaction but there is a current price for the performance contracted for, it may recover the difference between the contract price and the price current at the time the contract is terminated as well as damages for any further harm.

(2) Current price is the price generally charged for goods delivered or services rendered in comparable circumstances at the place where the contract should have been performed or, if there is no current price at that place, the current price at such other place that appears reasonable to take as a reference.

ARTICLE 7.4.7

(Harm due in part to aggrieved party)

Where the harm is due in part to an act or omission of the aggrieved party or to another event for which that party bears the risk, the amount of damages shall be reduced to the extent that these factors have contributed to the harm, having regard to the conduct of each of the parties.

ARTICLE 7.4.8

(Mitigation of harm)

(1) The non-performing party is not liable for harm suffered by the aggrieved party to the extent that the harm could have been reduced by the latter party's taking reasonable steps.

(2) The aggrieved party is entitled to recover any expenses reasonably incurred in attempting to reduce the harm.

ARTICLE 7.4.9

(Interest for failure to pay money)

(1) If a party does not pay a sum of money when it falls due the aggrieved party is entitled to interest upon that sum from the time when payment is due to the time of payment whether or not the non-payment is excused.

(2) The rate of interest shall be the average bank short-term lending rate to prime borrowers prevailing for the currency of payment at the place for payment, or where no such rate exists at that place, then the same rate in the State of the currency of payment. In the absence of such a rate at either place the rate of interest shall be the appropriate rate fixed by the law of the State of the currency of payment.

(3) The aggrieved party is entitled to additional damages if the non-payment caused it a greater harm.

ARTICLE 7.4.10

(Interest on damages)

Unless otherwise agreed, interest on damages for non-performance of non-monetary obligations accrues as from the time of non-performance.

ARTICLE 7.4.11
(Manner of monetary redress)

(1) Damages are to be paid in a lump sum. However, they may be payable in instalments where the nature of the harm makes this appropriate.

(2) Damages to be paid in instalments may be indexed.

ARTICLE 7.4.12
(Currency in which to assess damages)

Damages are to be assessed either in the currency in which the monetary obligation was expressed or in the currency in which the harm was suffered, whichever is more appropriate.

ARTICLE 7.4.13
(Agreed payment for non-performance)

(1) Where the contract provides that a party who does not perform is to pay a specified sum to the aggrieved party for such non-performance, the aggrieved party is entitled to that sum irrespective of its actual harm.

(2) However, notwithstanding any agreement to the contrary the specified sum may be reduced to a reasonable amount where it is grossly excessive in relation to the harm resulting from the non-performance and to the other circumstances.

CHAPTER 8 — SET-OFF

ARTICLE 8.1
(Conditions of set-off)

(1) Where two parties owe each other money or other performances of the same kind, either of them ("the first party") may set off its obligation against that of its obligee ("the other party") if at the time of set-off,

(a) the first party is entitled to perform its obligation;

(b) the other party's obligation is ascertained as to its existence and amount and performance is due.

(2) If the obligations of both parties arise from the same contract, the first party may also set off its obligation against an obligation of the other party which is not ascertained as to its existence or to its amount.

ARTICLE 8.2
(Foreign currency set-off)

Where the obligations are to pay money in different currencies, the right of set-off may be exercised, provided that both currencies are freely convertible and the parties have not agreed that the first party shall pay only in a specified currency.

ARTICLE 8.3
(Set-off by notice)

The right of set-off is exercised by notice to the other party.

ARTICLE 8.4
(Content of notice)

(1) The notice must specify the obligations to which it relates.

(2) If the notice does not specify the obligation against which set-off is exercised, the other party may, within a reasonable time, declare to the first party the obligation to which set-off relates. If no such declaration is made, the set-off will relate to all the obligations proportionally.

ARTICLE 8.5
(Effect of set-off)

(1) Set-off discharges the obligations.

(2) If obligations differ in amount, set-off discharges the obligations up to the amount of the lesser obligation.

(3) Set-off takes effect as from the time of notice.

CHAPTER 9 — ASSIGNMENT OF RIGHTS, TRANSFER OF OBLIGATIONS, ASSIGNMENT OF CONTRACTS

SECTION 1: ASSIGNMENT OF RIGHTS

ARTICLE 9.1.1
(Definitions)

"Assignment of a right" means the transfer by agreement from one person (the "assignor") to another person (the "assignee"), including transfer by way of security, of the assignor's right to payment of a monetary sum or other performance from a third person ("the obligor").

ARTICLE 9.1.2
(Exclusions)

This Section does not apply to transfers made under the special rules governing the transfers:

(a) of instruments such as negotiable instruments, documents of title or financial instruments, or

(b) of rights in the course of transferring a business.

ARTICLE 9.1.3
(Assignability of non-monetary rights)

A right to non-monetary performance may be assigned only if the assignment does not render the obligation significantly more burdensome.

ARTICLE 9.1.4
(Partial assignment)

(1) A right to the payment of a monetary sum may be assigned partially.

(2) A right to other performance may be assigned partially only if it is divisible, and the assignment does not render the obligation significantly more burdensome.

ARTICLE 9.1.5
(Future rights)

A future right is deemed to be transferred at the time of the agreement, provided the right, when it comes into existence, can be identified as the right to which the assignment relates.

ARTICLE 9.1.6
(Rights assigned without individual specification)

A number of rights may be assigned without individual specification, provided such rights can be identified as rights to which the assignment relates at the time of the assignment or when they come into existence.

ARTICLE 9.1.7

(Agreement between assignor and assignee sufficient)

(1) A right is assigned by mere agreement between the assignor and the assignee, without notice to the obligor.

(2) The consent of the obligor is not required unless the obligation in the circumstances is of an essentially personal character.

ARTICLE 9.1.8

(Obligor's additional costs)

The obligor has a right to be compensated by the assignor or the assignee for any additional costs caused by the assignment.

ARTICLE 9.1.9

(Non-assignment clauses)

(1) The assignment of a right to the payment of a monetary sum is effective notwithstanding an agreement between the assignor and the obligor limiting or prohibiting such an assignment. However, the assignor may be liable to the obligor for breach of contract.

(2) The assignment of a right to other performance is ineffective if it is contrary to an agreement between the assignor and the obligor limiting or prohibiting the assignment. Nevertheless, the assignment is effective if the assignee, at the time of the assignment, neither knew nor ought to have known of the agreement. The assignor may then be liable to the obligor for breach of contract.

ARTICLE 9.1.10

(Notice to the obligor)

(1) Until the obligor receives a notice of the assignment from either the assignor or the assignee, it is discharged by paying the assignor.

(2) After the obligor receives such a notice, it is discharged only by paying the assignee.

ARTICLE 9.1.11

(Successive assignments)

If the same right has been assigned by the same assignor to two or more successive assignees, the obligor is discharged by paying according to the order in which the notices were received.

ARTICLE 9.1.12

(Adequate proof of assignment)

(1) If notice of the assignment is given by the assignee, the obligor may request the assignee to provide within a reasonable time adequate proof that the assignment has been made.

(2) Until adequate proof is provided, the obligor may withhold payment.

(3) Unless adequate proof is provided, notice is not effective.

(4) Adequate proof includes, but is not limited to, any writing emanating from the assignor and indicating that the assignment has taken place.

ARTICLE 9.1.13

(Defences and rights of set-off)

(1) The obligor may assert against the assignee all defences that the obligor could assert against the assignor.

(2) The obligor may exercise against the assignee any right of set-off available to the obligor against the assignor up to the time notice of assignment was received.

ARTICLE 9.1.14
(Rights related to the right assigned)

The assignment of a right transfers to the assignee:

(a) all the assignor's rights to payment or other performance under the contract in respect of the right assigned, and

(b) all rights securing performance of the right assigned.

ARTICLE 9.1.15
(Undertakings of the assignor)

The assignor undertakes towards the assignee, except as otherwise disclosed to the assignee, that:

(a) the assigned right exists at the time of the assignment, unless the right is a future right;

(b) the assignor is entitled to assign the right;

(c) the right has not been previously assigned to another assignee, and it is free from any right or claim from a third party;

(d) the obligor does not have any defences;

(e) neither the obligor nor the assignor has given notice of set-off concerning the assigned right and will not give any such notice;

(f) the assignor will reimburse the assignee for any payment received from the obligor before notice of the assignment was given.

SECTION 2: TRANSFER OF OBLIGATIONS

ARTICLE 9.2.1
(Modes of transfer)

An obligation to pay money or render other performance may be transferred from one person (the "original obligor") to another person (the "new obligor") either

(a) by an agreement between the original obligor and the new obligor subject to Article 9.2.3, or

(b) by an agreement between the obligee and the new obligor, by which the new obligor assumes the obligation.

ARTICLE 9.2.2
(Exclusion)

This Section does not apply to transfers of obligations made under the special rules governing transfers of obligations in the course of transferring a business.

ARTICLE 9.2.3
(Requirement of obligee's consent to transfer)

The transfer of an obligation by an agreement between the original obligor and the new obligor requires the consent of the obligee.

ARTICLE 9.2.4
(Advance consent of obligee)

(1) The obligee may give its consent in advance.

(2) If the obligee has given its consent in advance, the transfer of the obligation becomes effective when a notice of the transfer is given to the obligee or when the obligee acknowledges it.

ARTICLE 9.2.5
(Discharge of original obligor)

(1) The obligee may discharge the original obligor.

(2) The obligee may also retain the original obligor as an obligor in case the new obligor does not perform properly.

(3) Otherwise the original obligor and the new obligor are jointly and severally liable.

ARTICLE 9.2.6

(Third party performance)

(1) Without the obligee's consent, the obligor may contract with another person that this person will perform the obligation in place of the obligor, unless the obligation in the circumstances has an essentially personal character.

(2) The obligee retains its claim against the obligor.

ARTICLE 9.2.7

(Defences and rights of set-off)

(1) The new obligor may assert against the obligee all defences which the original obligor could assert against the obligee.

(2) The new obligor may not exercise against the obligee any right of set-off available to the original obligor against the obligee.

ARTICLE 9.2.8

(Rights related to the obligation transferred)

(1) The obligee may assert against the new obligor all its rights to payment or other performance under the contract in respect of the obligation transferred.

(2) If the original obligor is discharged under Article 9.2.5(1), a security granted by any person other than the new obligor for the performance of the obligation is discharged, unless that other person agrees that it should continue to be available to the obligee.

(3) Discharge of the original obligor also extends to any security of the original obligor given to the obligee for the performance of the obligation, unless the security is over an asset which is transferred as part of a transaction between the original obligor and the new obligor.

SECTION 3: ASSIGNMENT OF CONTRACTS

ARTICLE 9.3.1

(Definitions)

"Assignment of a contract" means the transfer by agreement from one person (the "assignor") to another person (the "assignee") of the assignor's rights and obligations arising out of a contract with another person (the "other party").

ARTICLE 9.3.2

(Exclusion)

This Section does not apply to the assignment of contracts made under the special rules governing transfers of contracts in the course of transferring a business.

ARTICLE 9.3.3

(Requirement of consent of the other party)

The assignment of a contract requires the consent of the other party.

ARTICLE 9.3.4

(Advance consent of the other party)

(1) The other party may give its consent in advance.

(2) If the other party has given its consent in advance, the assignment of the contract becomes effective when a notice of the assignment is given to the other party or when the other party acknowledges it.

ARTICLE 9.3.5

(Discharge of the assignor)

(1) The other party may discharge the assignor.

(2) The other party may also retain the assignor as an obligor in case the assignee does not perform properly.

(3) Otherwise the assignor and the assignee are jointly and severally liable.

ARTICLE 9.3.6

(Defences and rights of set-off)

(1) To the extent that the assignment of a contract involves an assignment of rights, Article 9.1.13 applies accordingly.

(2) To the extent that the assignment of a contract involves a transfer of obligations, Article 9.2.7 applies accordingly.

ARTICLE 9.3.7

(Rights transferred with the contract)

(1) To the extent that the assignment of a contract involves an assignment of rights, Article 9.1.14 applies accordingly.

(2) To the extent that the assignment of a contract involves a transfer of obligations, Article 9.2.8 applies accordingly.

CHAPTER 10 — LIMITATION PERIODS

ARTICLE 10.1

(Scope of the Chapter)

(1) The exercise of rights governed by the Principles is barred by the expiration of a period of time, referred to as "limitation period", according to the rules of this Chapter.

(2) This Chapter does not govern the time within which one party is required under the Principles, as a condition for the acquisition or exercise of its right, to give notice to the other party or to perform any act other than the institution of legal proceedings.

ARTICLE 10.2

(Limitation periods)

(1) The general limitation period is three years beginning on the day after the day the obligee knows or ought to know the facts as a result of which the obligee's right can be exercised.

(2) In any event, the maximum limitation period is ten years beginning on the day after the day the right can be exercised.

ARTICLE 10.3

(Modification of limitation periods by the parties)

(1) The parties may modify the limitation periods.

(2) However they may not

(a) shorten the general limitation period to less than one year;

(b) shorten the maximum limitation period to less than four years;

(c) extend the maximum limitation period to more than fifteen years.

ARTICLE 10.4

(New limitation period by acknowledgement)

(1) Where the obligor before the expiration of the general limitation period acknowledges the right of the obligee, a new general limitation period begins on the day after the day of the acknowledgement.

(2) The maximum limitation period does not begin to run again, but may be exceeded by the beginning of a new general limitation period under Article 10.2(1).

ARTICLE 10.5

(Suspension by judicial proceedings)

(1) The running of the limitation period is suspended

(a) when the obligee performs any act, by commencing judicial proceedings or in judicial proceedings already instituted, that is recognised by the law of the court as asserting the obligee's right against the obligor;

(b) in the case of the obligor's insolvency when the obligee has asserted its rights in the insolvency proceedings; or

(c) in the case of proceedings for dissolution of the entity which is the obligor when the obligee has asserted its rights in the dissolution proceedings.

(2) Suspension lasts until a final decision has been issued or until the proceedings have been otherwise terminated.

ARTICLE 10.6

(Suspension by arbitral proceedings)

(1) The running of the limitation period is suspended when the obligee performs any act, by commencing arbitral proceedings or in arbitral proceedings already instituted, that is recognised by the law of the arbitral tribunal as asserting the obligee's right against the obligor. In the absence of regulations for arbitral proceedings or provisions determining the exact date of the commencement of arbitral proceedings, the proceedings are deemed to commence on the date on which a request that the right in dispute should be adjudicated reaches the obligor.

(2) Suspension lasts until a binding decision has been issued or until the proceedings have been otherwise terminated.

ARTICLE 10.7

(Alternative dispute resolution)

The provisions of Articles 10.5 and 10.6 apply with appropriate modifications to other proceedings whereby the parties request a third person to assist them in their attempt to reach an amicable settlement of their dispute.

ARTICLE 10.8

(Suspension in case of force majeure, death or incapacity)

(1) Where the obligee has been prevented by an impediment that is beyond its control and that it could neither avoid nor overcome, from causing a limitation period to cease to run under the preceding Articles, the general limitation period is suspended so as not to expire before one year after the relevant impediment has ceased to exist.

(2) Where the impediment consists of the incapacity or death of the obligee or obligor, suspension ceases when a representative for the incapacitated or deceased party or its estate has been appointed or a successor has inherited the respective party's position. The additional one-year period under paragraph (1) applies accordingly.

ARTICLE 10.9

(Effects of expiration of limitation period)

(1) The expiration of the limitation period does not extinguish the right.

(2) For the expiration of the limitation period to have effect, the obligor must assert it as a defence.

(3) A right may still be relied on as a defence even though the expiration of the limitation period for that right has been asserted.

ARTICLE 10.10
(Right of set-off)

The obligee may exercise the right of set-off until the obligor has asserted the expiration of the limitation period.

ARTICLE 10.11
(Restitution)

Where there has been performance in order to discharge an obligation, there is no right of restitution merely because the limitation period has expired.

CHAPTER 11 — PLURALITY OF OBLIGORS AND OF OBLIGEES

SECTION 1: PLURALITY OF OBLIGORS

ARTICLE 11.1.1
(Definitions)

When several obligors are bound by the same obligation towards an obligee:

(a) the obligations are joint and several when each obligor is bound for the whole obligation;

(b) the obligations are separate when each obligor is bound only for its share.

ARTICLE 11.1.2
(Presumption of joint and several obligations)

When several obligors are bound by the same obligation towards an obligee, they are presumed to be jointly and severally bound, unless the circumstances indicate otherwise.

ARTICLE 11.1.3
(Obligee's rights against joint and several obligors)

When obligors are jointly and severally bound, the obligee may require performance from any one of them, until full performance has been received.

ARTICLE 11.1.4
(Availability of defences and rights of set-off)

A joint and several obligor against whom a claim is made by the obligee may assert all the defences and rights of set-off that are personal to it or that are common to all the co-obligors, but may not assert defences or rights of set-off that are personal to one or several of the other co-obligors.

ARTICLE 11.1.5
(Effect of performance or set-off)

Performance or set-off by a joint and several obligor or set-off by the obligee against one joint and several obligor discharges the other obligors in relation to the obligee to the extent of the performance or set-off.

ARTICLE 11.1.6
(Effect of release or settlement)

(1) Release of one joint and several obligor, or settlement with one joint and several obligor, discharges all the other obligors for the share of the released or settling obligor, unless the circumstances indicate otherwise.

(2) When the other obligors are discharged for the share of the released obligor, they no longer have a contributory claim against the released obligor under Article 11.1.10.

ARTICLE 11.1.7
(Effect of expiration or suspension of limitation period)

(1) Expiration of the limitation period of the obligee's rights against one joint and several obligor does not affect:

(a) the obligations to the obligee of the other joint and several obligors; or

(b) the rights of recourse between the joint and several obligors under Article 11.1.10.

(2) If the obligee initiates proceedings under Articles 10.5, 10.6 or 10.7 against one joint and several obligor, the running of the limitation period is also suspended against the other joint and several obligors.

ARTICLE 11.1.8
(Effect of judgment)

(1) A decision by a court as to the liability to the obligee of one joint and several obligor does not affect:

(a) the obligations to the obligee of the other joint and several obligors; or

(b) the rights of recourse between the joint and several obligors under Article 11.1.10.

(2) However, the other joint and several obligors may rely on such a decision, except if it was based on grounds personal to the obligor concerned. In such a case, the rights of recourse between the joint and several obligors under Article 11.1.10 are affected accordingly.

ARTICLE 11.1.9
(Apportionment among joint and several obligors)

As among themselves, joint and several obligors are bound in equal shares, unless the circumstances indicate otherwise.

ARTICLE 11.1.10
(Extent of contributory claim)

A joint and several obligor who has performed more than its share may claim the excess from any of the other obligors to the extent of each obligor's unperformed share.

ARTICLE 11.1.11
(Rights of the obligee)

(1) A joint and several obligor to whom Article 11.1.10 applies may also exercise the rights of the obligee, including all rights securing their performance, to recover the excess from all or any of the other obligors to the extent of each obligor's unperformed share.

(2) An obligee who has not received full performance retains its rights against the co-obligors to the extent of the unperformed part, with precedence over co-obligors exercising contributory claims.

ARTICLE 11.1.12
(Defences in contributory claims)

A joint and several obligor against whom a claim is made by the co-obligor who has performed the obligation:

(a) may raise any common defences and rights of set-off that were available to be asserted by the co-obligor against the obligee ;

(b) may assert defences which are personal to itself ;

(c) may not assert defences and rights of set-off which are personal to one or several of the other co-obligors.

ARTICLE 11.1.13
(Inability to recover)

If a joint and several obligor who has performed more than that obligor's share is unable, despite all reasonable efforts, to recover contribution from another joint and several obligor, the share of the others, including the one who has performed, is increased proportionally.

SECTION 2: PLURALITY OF OBLIGEES

ARTICLE 11.2.1
(Definitions)

When several obligees can claim performance of the same obligation from an obligor:

(a) the claims are separate when each obligee can only claim its share;

(b) the claims are joint and several when each obligee can claim the whole performance;

(c) the claims are joint when all obligees have to claim performance together.

ARTICLE 11.2.2
(Effects of joint and several claims)

Full performance of an obligation in favour of one of the joint and several obligees discharges the obligor towards the other obligees.

ARTICLE 11.2.3
(Availability of defences against joint and several obligees)

(1) The obligor may assert against any of the joint and several obligees all the defences and rights of set-off that are personal to its relationship to that obligee or that it can assert against all the co-obligees, but may not assert defences and rights of set-off that are personal to its relationship to one or several of the other co-obligees.

(2) The provisions of Articles 11.1.5, 11.1.6, 11.1.7 and 11.1.8 apply, with appropriate adaptations, to joint and several claims.

ARTICLE 11.2.4
(Allocation between joint and several obligees)

(1) As among themselves, joint and several obligees are entitled to equal shares, unless the circumstances indicate otherwise.

(2) An obligee who has received more than its share must transfer the excess to the other obligees to the extent of their respective shares.

Convention on the Recognition and Enforcement of Foreign Arbitral Awards

(New York, 1958)

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Convention on the Recognition and Enforcement of Foreign Arbitral Awards

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Introduction

Objectives

Recognizing the growing importance of international arbitration as a means of settling international commercial disputes, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the Convention) seeks to provide common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards. The term "non-domestic" appears to embrace awards which, although made in the state of enforcement, are treated as "foreign" under its law because of some foreign element in the proceedings, e.g. another State's procedural laws are applied.

The Convention's principal aim is that foreign and non-domestic arbitral awards will not be discriminated against and it obliges Parties to ensure such awards are recognized and generally capable of enforcement in their jurisdiction in the same way as domestic awards. An ancillary aim of the Convention is to require courts of Parties to give full effect to arbitration agreements by requiring courts to deny the parties access to court in contravention of their agreement to refer the matter to an arbitral tribunal.

Key provisions

The Convention applies to awards made in any State other than the State in which recognition and enforcement is sought. It also applies to awards "not considered as domestic awards". When consenting to be bound by the Convention, a State may declare that it will apply the Convention *(a)* in respect to awards made only in the territory of another Party and *(b)* only to legal relationships that are considered "commercial" under its domestic law.

The Convention contains provisions on arbitration agreements. This aspect was covered in recognition of the fact that an award could be refused enforcement on the grounds that the agreement upon which it was based might not be recognized. Article II (1) provides that Parties shall recognize

written arbitration agreements. In that respect, UNCITRAL adopted, at its thirty-ninth session in 2006, a Recommendation that seeks to provide guidance to Parties on the interpretation of the requirement in article II (2) that an arbitration agreement be in writing and to encourage application of article VII (1) to allow any interested party to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement.

The central obligation imposed upon Parties is to recognize all arbitral awards within the scheme as binding and enforce them, if requested to do so, under the lex fori. Each Party may determine the procedural mechanisms that may be followed where the Convention does not prescribe any requirement.

The Convention defines five grounds upon which recognition and enforcement may be refused at the request of the party against whom it is invoked. The grounds include incapacity of the parties, invalidity of the arbitration agreement, due process, scope of the arbitration agreement, jurisdiction of the arbitral tribunal, setting aside or suspension of an award in the country in which, or under the law of which, that award was made. The Convention defines two additional grounds upon which the court may, on its own motion, refuse recognition and enforcement of an award. Those grounds relate to arbitrability and public policy.

The Convention seeks to encourage recognition and enforcement of awards in the greatest number of cases as possible. That purpose is achieved through article VII (1) of the Convention by removing conditions for recognition and enforcement in national laws that are more stringent than the conditions in the Convention, while allowing the continued application of any national provisions that give special or more favourable rights to a party seeking to enforce an award. That article recognizes the right of any interested party to avail itself of law or treaties of the country where the award is sought to be relied upon, including where such law or treaties offer a regime more favourable than the Convention.

Entry into force

The Convention entered into force on 7 June 1959 (article XII).

How to become a party

The Convention is closed for signature. It is subject to ratification, and is open to accession by any Member State of the United Nations, any other

State which is a member of any specialized agency of the United Nations, or is a Party to the Statute of the International Court of Justice (articles VIII and IX).

Optional and/or mandatory declarations and notifications

When signing, ratifying or acceding to the Convention, or notifying a territorial extension under article X, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Party to the Convention. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration (article I).

Denunciation/Withdrawal

Any Party may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of the receipt of the notification by the Secretary-General (article XIII).

Part one

UNITED NATIONS CONFERENCE ON INTERNATIONAL COMMERCIAL ARBITRATION, NEW YORK, 20 MAY–10 JUNE 1958

Excerpts from the Final Act of the United Nations Conference on International Commercial Arbitration[1]

"1. The Economic and Social Council of the United Nations, by resolution 604 (XXI) adopted on 3 May 1956, decided to convene a Conference of Plenipotentiaries for the purpose of concluding a convention on the recognition and enforcement of foreign arbitral awards, and to consider other possible measures for increasing the effectiveness of arbitration in the settlement of private law disputes.

[…]

"12. The Economic and Social Council, by its resolution convening the Conference, requested it to conclude a convention on the basis of the draft convention prepared by the Committee on the Enforcement of International Arbitral Awards, taking into account the comments and suggestions made by Governments and non-governmental organizations, as well as the discussion at the twenty-first session of the Council.

"13. On the basis of the deliberations, as recorded in the reports of the working parties and in the records of the plenary meetings, the Conference prepared and opened for signature the Convention on the Recognition and Enforcement of Foreign Arbitral Awards which is annexed to this Final Act.

[…]

"16. In addition the Conference adopted, on the basis of proposals made by the Committee on Other Measures as recorded in its report, the following resolution:

[1]The full text of the Final Act of the United Nations Conference on International Commercial Arbitration (E/CONF.26/8Rev.1) is available at http://www.uncitral.org

"*The Conference*,

"*Believing* that, in addition to the convention on the recognition and enforcement of foreign arbitral awards just concluded, which would contribute to increasing the effectiveness of arbitration in the settlement of private law disputes, additional measures should be taken in this field,

"*Having considered* the able survey and analysis of possible measures for increasing the effectiveness of arbitration in the settlement of private law disputes prepared by the Secretary-General (document E/CONF.26/6),

"*Having given particular attention* to the suggestions made therein for possible ways in which interested governmental and other organizations may make practical contributions to the more effective use of arbitration,

"*Expresses the following views* with respect to the principal matters dealt with in the note of the Secretary-General:

"1. It considers that wider diffusion of information on arbitration laws, practices and facilities contributes materially to progress in commercial arbitration; recognizes that work has already been done in this field by interested organizations,[2] and expresses the wish that such organizations, so far as they have not concluded them, continue their activities in this regard, with particular attention to coordinating their respective efforts;

"2. It recognizes the desirability of encouraging where necessary the establishment of new arbitration facilities and the improvement of existing facilities, particularly in some geographic regions and branches of trade; and believes that useful work may be done in this field by appropriate governmental and other organizations, which may be active in arbitration matters, due regard being given to the need to avoid duplication of effort and to concentrate upon those measures of greatest practical benefit to the regions and branches of trade concerned;

"3. It recognizes the value of technical assistance in the development of effective arbitral legislation and institutions; and suggests that interested Governments and other organizations endeavour to furnish such assistance, within the means available, to those seeking it;

"4. It recognizes that regional study groups, seminars or working parties may in appropriate circumstances have productive results; believes that consideration should be given to the advisability of the convening of

[2]For example, the Economic Commission for Europe and the Inter-American Council of Jurists.

such meetings by the appropriate regional commissions of the United Nations and other bodies, but regards it as important that any such action be taken with careful regard to avoiding duplication and assuring economy of effort and of resources;

"5. It considers that greater uniformity of national laws on arbitration would further the effectiveness of arbitration in the settlement of private law disputes, notes the work already done in this field by various existing organizations,[3] and suggests that by way of supplementing the efforts of these bodies appropriate attention be given to defining suitable subject matter for model arbitration statutes and other appropriate measures for encouraging the development of such legislation;

"*Expresses the wish* that the United Nations, through its appropriate organs, take such steps as it deems feasible to encourage further study of measures for increasing the effectiveness of arbitration in the settlement of private law disputes through the facilities of existing regional bodies and non-governmental organizations and through such other institutions as may be established in the future;

"*Suggests* that any such steps be taken in a manner that will assure proper coordination of effort, avoidance of duplication and due observance of budgetary considerations;

"*Requests* that the Secretary-General submit this resolution to the appropriate organs of the United Nations."

[3]For example, the International Institute for the Unification of Private Law and the Inter-American Council of Jurists.

CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Article I

1. This Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of differences between persons, whether physical or legal. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.

2. The term "arbitral awards" shall include not only awards made by arbitrators appointed for each case but also those made by permanent arbitral bodies to which the parties have submitted.

3. When signing, ratifying or acceding to this Convention, or notifying extension under article X hereof, any State may on the basis of reciprocity declare that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another Contracting State. It may also declare that it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the national law of the State making such declaration.

Article II

1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.

2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.

3. The court of a Contracting State, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed.

Article III

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.

Article IV

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

Article V

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) The recognition or enforcement of the award would be contrary to the public policy of that country.

Article VI

If an application for the setting aside or suspension of the award has been made to a competent authority referred to in article V (1) *(e)*, the authority before which the award is sought to be relied upon may, if it considers it proper, adjourn the decision on the enforcement of the award and may also, on the application of the party claiming enforcement of the award, order the other party to give suitable security.

Article VII

1. The provisions of the present Convention shall not affect the validity of multilateral or bilateral agreements concerning the recognition and enforcement of arbitral awards entered into by the Contracting States nor deprive any interested party of any right he may have to avail himself of an arbitral award in the manner and to the extent allowed by the law or the treaties of the country where such award is sought to be relied upon.

2. The Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 shall cease to have effect between Contracting States on their becoming bound and to the extent that they become bound, by this Convention.

Article VIII

1. This Convention shall be open until 31 December 1958 for signature on behalf of any Member of the United Nations and also on behalf of any other State which is or hereafter becomes a member of any specialized agency of the United Nations, or which is or hereafter becomes a party to the Statute of the International Court of Justice, or any other State to which an invitation has been addressed by the General Assembly of the United Nations.

2. This Convention shall be ratified and the instrument of ratification shall be deposited with the Secretary-General of the United Nations.

Article IX

1. This Convention shall be open for accession to all States referred to in article VIII.

2. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article X

1. Any State may, at the time of signature, ratification or accession, declare that this Convention shall extend to all or any of the territories for the international relations of which it is responsible. Such a declaration shall take effect when the Convention enters into force for the State concerned.

2. At any time thereafter any such extension shall be made by notification addressed to the Secretary-General of the United Nations and shall take effect as from the ninetieth day after the day of receipt by the Secretary-General of the United Nations of this notification, or as from the date of entry into force of the Convention for the State concerned, whichever is the later.

3. With respect to those territories to which this Convention is not extended at the time of signature, ratification or accession, each State concerned shall consider the possibility of taking the necessary steps in order

to extend the application of this Convention to such territories, subject, where necessary for constitutional reasons, to the consent of the Governments of such territories.

Article XI

In the case of a federal or non-unitary State, the following provisions shall apply:

(a) With respect to those articles of this Convention that come within the legislative jurisdiction of the federal authority, the obligations of the federal Government shall to this extent be the same as those of Contracting States which are not federal States;

(b) With respect to those articles of this Convention that come within the legislative jurisdiction of constituent states or provinces which are not, under the constitutional system of the federation, bound to take legislative action, the federal Government shall bring such articles with a favourable recommendation to the notice of the appropriate authorities of constituent states or provinces at the earliest possible moment;

(c) A federal State Party to this Convention shall, at the request of any other Contracting State transmitted through the Secretary-General of the United Nations, supply a statement of the law and practice of the federation and its constituent units in regard to any particular provision of this Convention, showing the extent to which effect has been given to that provision by legislative or other action.

Article XII

1. This Convention shall come into force on the ninetieth day following the date of deposit of the third instrument of ratification or accession.

2. For each State ratifying or acceding to this Convention after the deposit of the third instrument of ratification or accession, this Convention shall enter into force on the ninetieth day after deposit by such State of its instrument of ratification or accession.

Article XIII

1. Any Contracting State may denounce this Convention by a written notification to the Secretary-General of the United Nations. Denunciation

shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Any State which has made a declaration or notification under article X may, at any time thereafter, by notification to the Secretary-General of the United Nations, declare that this Convention shall cease to extend to the territory concerned one year after the date of the receipt of the notification by the Secretary-General.

3. This Convention shall continue to be applicable to arbitral awards in respect of which recognition or enforcement proceedings have been instituted before the denunciation takes effect.

Article XIV

A Contracting State shall not be entitled to avail itself of the present Convention against other Contracting States except to the extent that it is itself bound to apply the Convention.

Article XV

The Secretary-General of the United Nations shall notify the States contemplated in article VIII of the following:

(a) Signatures and ratifications in accordance with article VIII;

(b) Accessions in accordance with article IX;

(c) Declarations and notifications under articles I, X and XI;

(d) The date upon which this Convention enters into force in accordance with article XII;

(e) Denunciations and notifications in accordance with article XIII.

Article XVI

1. This Convention, of which the Chinese, English, French, Russian and Spanish texts shall be equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit a certified copy of this Convention to the States contemplated in article VIII.

Part two

RECOMMENDATION REGARDING THE INTERPRETATION OF ARTICLE II, PARAGRAPH 2, AND ARTICLE VII, PARAGRAPH 1, OF THE CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

General Assembly resolution 61/33 of 4 December 2006

The General Assembly,

Recognizing the value of arbitration as a method of settling disputes arising in the context of international commercial relations,

Recalling its resolution 40/72 of 11 December 1985 regarding the Model Law on International Commercial Arbitration,[1]

Recognizing the need for provisions in the Model Law to conform to current practices in international trade and modern means of contracting with regard to the form of the arbitration agreement and the granting of interim measures,

Believing that revised articles of the Model Law on the form of the arbitration agreement and interim measures reflecting those current practices will significantly enhance the operation of the Model Law,

Noting that the preparation of the revised articles of the Model Law on the form of the arbitration agreement and interim measures was the subject of due deliberation and extensive consultations with Governments and interested circles and would contribute significantly to the establishment of a harmonized legal framework for a fair and efficient settlement of international commercial disputes,

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[1] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I.

Believing that, in connection with the modernization of articles of the Model Law, the promotion of a uniform interpretation and application of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958,[2] is particularly timely,

1. *Expresses its appreciation* to the United Nations Commission on International Trade Law for formulating and adopting the revised articles of its Model Law on International Commercial Arbitration on the form of the arbitration agreement and interim measures, the text of which is contained in annex I to the report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session,[3] and recommends that all States give favourable consideration to the enactment of the revised articles of the Model Law, or the revised Model Law on International Commercial Arbitration of the United Nations Commission on International Trade Law, when they enact or revise their laws, in view of the desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice;

2. *Also expresses its appreciation* to the United Nations Commission on International Trade Law for formulating and adopting the recommendation regarding the interpretation of article II, paragraph 2, and article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, 10 June 1958,[2] the text of which is contained in annex II to the report of the United Nations Commission on International Trade Law on the work of its thirty-ninth session;[3]

3. *Requests* the Secretary-General to make all efforts to ensure that the revised articles of the Model Law and the recommendation become generally known and available.

64th plenary meeting
4 December 2006

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[2]United Nations, *Treaty Series*, vol. 330, No. 4739.

[3]*Official Records of the General Assembly, Sixty-first Session, Supplement No. 17* (A/61/17).

RECOMMENDATION REGARDING THE INTERPRETATION OF ARTICLE II, PARAGRAPH 2, AND ARTICLE VII, PARAGRAPH 1, OF THE CONVENTION ON THE RECOGNITION AND ENFORCEMENT OF FOREIGN ARBITRAL AWARDS, DONE IN NEW YORK, 10 JUNE 1958, ADOPTED BY THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON 7 JULY 2006 AT ITS THIRTY-NINTH SESSION

The United Nations Commission on International Trade Law,

Recalling General Assembly resolution 2205 (XXI) of 17 December 1966, which established the United Nations Commission on International Trade Law with the object of promoting the progressive harmonization and unification of the law of international trade by, inter alia, promoting ways and means of ensuring a uniform interpretation and application of international conventions and uniform laws in the field of the law of international trade,

Conscious of the fact that the different legal, social and economic systems of the world, together with different levels of development, are represented in the Commission,

Recalling successive resolutions of the General Assembly reaffirming the mandate of the Commission as the core legal body within the United Nations system in the field of international trade law to coordinate legal activities in this field,

Convinced that the wide adoption of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York on 10 June 1958,[4] has been a significant achievement in the promotion of the rule of law, particularly in the field of international trade,

Recalling that the Conference of Plenipotentiaries which prepared and opened the Convention for signature adopted a resolution, which states, inter alia, that the Conference "considers that greater uniformity of national laws on arbitration would further the effectiveness of arbitration in the settlement of private law disputes",

Bearing in mind differing interpretations of the form requirements under the Convention that result in part from differences of expression as between the five equally authentic texts of the Convention,

Taking into account article VII, paragraph 1, of the Convention, a purpose of which is to enable the enforcement of foreign arbitral awards to

[4]United Nations, *Treaty Series*, vol. 330, No. 4739.

the greatest extent, in particular by recognizing the right of any interested party to avail itself of law or treaties of the country where the award is sought to be relied upon, including where such law or treaties offer a regime more favourable than the Convention,

Considering the wide use of electronic commerce,

Taking into account international legal instruments, such as the 1985 UNCITRAL Model Law on International Commercial Arbitration,[5] as subsequently revised, particularly with respect to article 7,[6] the UNCITRAL Model Law on Electronic Commerce,[7] the UNCITRAL Model Law on Electronic Signatures[8] and the United Nations Convention on the Use of Electronic Communications in International Contracts,[9]

Taking into account also enactments of domestic legislation, as well as case law, more favourable than the Convention in respect of form requirement governing arbitration agreements, arbitration proceedings and the enforcement of arbitral awards,

Considering that, in interpreting the Convention, regard is to be had to the need to promote recognition and enforcement of arbitral awards,

1. *Recommends* that article II, paragraph 2, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, be applied recognizing that the circumstances described therein are not exhaustive;

2. *Recommends also* that article VII, paragraph 1, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, 10 June 1958, should be applied to allow any interested party to avail itself of rights it may have, under the law or treaties of the country where an arbitration agreement is sought to be relied upon, to seek recognition of the validity of such an arbitration agreement.

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[5] *Official Records of the General Assembly, Fortieth Session, Supplement No. 17* (A/40/17), annex I, and United Nations publication, Sales No. E.95.V.18.

[6] Ibid., *Sixty-first Session, Supplement No. 17* (A/61/17), annex I.

[7] Ibid., *Fifty-first Session, Supplement No. 17* (A/51/17), annex I, and United Nations publication, Sales No. E.99.V.4, which contains also an additional article 5 bis, adopted in 1998, and the accompanying Guide to Enactment.

[8] Ibid., *Fifty-sixth Session, Supplement No. 17* and corrigendum (A/56/17 and Corr.3), annex II, and United Nations publication, Sales No. E.02.V.8, which contains also the accompanying Guide to Enactment.

[9] General Assembly resolution 60/21, annex.

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