

## **2017 DIAC RULES**

### **INTRODUCTORY PROVISIONS**

#### **Article (1)**

##### **Definitions**

- 1.1 The following words and phrases shall have the meaning assigned thereto unless the context indicates otherwise:
- “Answer” means the answer to the request for arbitration
  - “Appendix” means the DIAC Appendix - Costs of Arbitration
  - “Centre” or “DIAC” means the Dubai International Arbitration Centre
  - “Claimant” means the party initiating an arbitration
  - “DIAC Rules” or the “Rules” means the 2017 DIAC Rules
  - “Executive Committee” or “EC” means the DIAC Executive Committee
  - “Request” means the written request for arbitration
  - “Respondent” means the party against which an arbitration is initiated
  - “Secretariat” means the DIAC Secretariat
  - “Party” or “party” means Claimant or Respondent
  - “Parties” or “parties” means Claimant and Respondent
  - “Table” means the DIAC Table of Fees and Costs
  - “Tribunal” means the arbitral tribunal composed of one or more arbitrators
- 1.2 Words used in singular include the plural and vice versa, as the context may require. Similarly, words such as Claimant, Respondent, arbitrator, representative and party shall be construed as gender-neutral.

#### **Article (2)**

##### **Scope**

- 2.1 Where the parties have agreed to submit their existing or future dispute to arbitration under the DIAC Rules, they shall be deemed to have submitted to arbitration in accordance with the DIAC Rules in effect on the date of the submission of the Request, unless they have expressly agreed to submit to the DIAC Rules in effect on another date.
- 2.2 The Rules shall govern the arbitration and shall be considered as supplementary to any agreement referred to in Article 2.1 above, save where the Rules conflict with a mandatory provision of the procedural law applicable to the arbitration.

#### **Article (3)**

##### **Written Notifications or Correspondence and Time Limits**

- 3.1 All correspondence from any party or arbitrator to the Centre shall be addressed to the Secretariat.
- 3.2 All submissions made by any party to the Centre shall be sent in a number of hard copies equal to the number required to provide one copy for each arbitrator, one copy for each party other than the party making the submission and one for the Centre, until such time as the Tribunal is constituted. Absent any agreement on the number of arbitrators, submissions shall be made to the Centre in three hard copies or if the party considers that three arbitrators should be appointed, in five hard copies and one additional copy for each additional Claimant and/or Respondent in the event that there is more than one Claimant and/or Respondent.
- 3.3 After the notification by the Centre of the constitution of the Tribunal and transfer of file, all correspondence between the Tribunal and the parties shall take place directly between them,

copying the Centre. All submissions made by the parties shall be sent to the Centre in soft copy/electronic version only, unless otherwise requested.

- 3.4 All notifications and correspondence from the Secretariat or the Tribunal shall be made to the last known address of the party or its representative, as provided by such party or by the other party to the Centre.
- 3.5 Such notifications and correspondence may be made by delivery against receipt, registered post, courier or transmitted by fax, email or any other means of telecommunication that provides a record of the sending thereof.
- 3.6 Notifications and correspondence shall be deemed to have been made on the day they were received by the party itself or its representative, or would have been received if made in accordance with Article 3.5.
- 3.7 If a party duly summoned in accordance with Articles 3.4, 3.5 and 3.6 fails to appear and participate, the proceedings will continue their normal course.
- 3.8 For the purpose of calculating a period of time under the Rules, such period shall begin to run on the day following the day when a notice or other correspondence is received or deemed to be received as indicated in Article 3.6. If the last day of such period is an official holiday or a non-business day in Dubai or in the country where the notification or correspondence is deemed to have been made, the period is extended until the first business day which follows. Days are considered calendar days so official holidays or non-business days occurring during the running of the period of time are included in calculating the period. Any reference to months is also considered as calendar months.
- 3.9 Any deadline falling on a non-business day or official holiday in Dubai or the seat of arbitration, will be extended until the first business day which follows in such place.

## **COMMENCING THE ARBITRATION**

### **Article (4)**

#### **Request for Arbitration**

- 4.1 Any party wishing to commence an arbitration under the DIAC Rules shall send to the Centre a Request which shall include:
- a. A demand that the dispute be referred to arbitration under the DIAC Rules;
  - b. The name in full, description, address and other contact details including telephone, fax number and email address of each party to the arbitration and of the Claimant's representative (if any);
  - c. Any relevant agreements between the parties, particularly the agreement which contains the arbitration agreement in respect of which the claim arises;
  - d. Where claims arise under more than one arbitration agreement, an indication to which arbitration agreement each claim pertains;
  - e. A brief description of the nature and circumstances of the dispute giving rise to the claim;
  - f. A preliminary statement of the relief sought and, to the extent possible, an indication of any amount claimed;
  - g. All relevant particulars concerning the number of arbitrators and their choice in accordance with Articles 12, 13 and 15, and if the arbitration agreement calls for party nomination of arbitrators, the name and contact details of the Claimant's nominee;
  - h. All relevant particulars concerning the seat and language of arbitration in accordance with Articles 25 and 26; and
  - i. comments on the applicable law(s) governing the merits.
- 4.2 The Request may also include the statement of claim referred to in Article 28.
- 4.3 The Request (including all accompanying documents) shall be submitted to the Centre in the number of hard copies required by Article 3.2.
- 4.4 Together with the Request, the Claimant shall make payment of the registration fee required by Article 1.1 of the Appendix in force on the date the Request is submitted. In the event that the Claimant fails to comply with this requirement within the time limit granted by the Secretariat, the file will be closed without prejudice to the Claimant's right to submit the same claim at a later date in another request.
- 4.5 The Secretariat shall notify the Request to the Respondent at its last known address provided by the Claimant in the Request, in compliance with Articles 3.4 and 3.5. Failing notification by courier to the Respondent, the Secretariat shall, after reasonable inquiries, re-notify the Request through any other means deemed appropriate pursuant to Article 3.5.
- 4.6 The date of receipt by the Centre of the Request in the number of copies required by Article 3.2 and the payment of the registration fee pursuant to Article 4.4, shall be treated as the date on which the arbitration proceedings have commenced.

### **Article (5)**

#### **Answer to the Request**

- 5.1 Within 30 days of receipt of the Request from the Centre, the Respondent shall submit to the Centre an Answer which shall include the following:
- a. Its name in full, description, address and other contact details including telephone, fax number and email address of itself or its representative (if any);
  - b. Its preliminary comments as to the nature and circumstances of the dispute giving rise to the claim;

- c. Its preliminary response to the relief sought by the Claimant;
  - d. All objections known or that should be known concerning the validity, existence, scope or applicability of the arbitration agreement;
  - e. Any comments concerning the number of arbitrators and their choice in light of the Claimant's proposals and in accordance with Articles 12, 13 and 15, and if the arbitration agreement calls for party nomination of arbitrators, the name and contact details of the Respondent's nominee; and
  - f. Any comments on the seat and language of arbitration, and the applicable law(s) governing the merits.
- 5.2 If the Claimant has filed a statement of claim with the Request pursuant to Article 4.2, the Answer may also be accompanied by the statement of defence referred to in Article 29.
- 5.3 The Answer (including all accompanying documents) shall be submitted to the Centre in the number of hard copies required by Article 3.2.
- 5.4 With its Answer, or at a later stage in the proceedings if the Tribunal decides that the delay was justified under the circumstances, the Respondent may make a counterclaim arising out of the same contract or a set-off, and shall provide:
- a. A brief description of the nature and circumstances of the dispute giving rise to the counterclaim and/or set-off; and
  - b. A preliminary statement of the relief sought, including, to the extent possible, an indication of any amount counterclaimed and/or sought to be set-off.
- 5.5 If the Respondent has submitted a counterclaim and/or set-off with its Answer, the Respondent shall make payment of the registration fee required by Article 1.1 of the Appendix in force on the date the Answer is submitted, together with its Answer. In the event that the Respondent fails to comply with this requirement, the submission of the counterclaim and/or set-off shall be invalid, without prejudice to the Respondent's right to submit the same claim at a later date in another Request.
- 5.6 Failure by the Respondent to submit an Answer shall not prevent the arbitration from proceeding pursuant to the Rules. However, if the arbitration agreement calls for party nomination of arbitrators, failure to send an Answer or to nominate an arbitrator within the time limit granted by the Secretariat or at all, will constitute an irrevocable waiver of that party's right to nominate an arbitrator.
- 5.7 The Secretariat may grant the Respondent an extension of time for filing the Answer and any counterclaim and/or set-off of up to 14 days (or such further exceptional period deemed appropriate), provided the application for extension contains the Respondent's comments concerning the number of arbitrators, their choice and the nomination of an arbitrator if that is required in accordance with Articles 12 and 13. If the Respondent fails to provide such comments within the time limit granted, the Secretariat shall proceed with the appointment of the Tribunal in accordance with the Rules.
- 5.8 The Secretariat shall communicate the Respondent's Answer and any counterclaim and/or set-off to the Claimant. The Claimant shall be given an opportunity to comment on any objections or pleas advanced by the Respondent within a time limit granted by the Secretariat. Alternatively, the Claimant's comments on the Respondent's Answer and any counterclaim and/or set-off may be submitted directly to the Tribunal.

## **Article (6)**

### **Separability of the Arbitration Agreement and Jurisdiction to Determine the Existence and Validity of the Arbitration Agreement**

- 6.1 The Tribunal shall have jurisdiction regardless of any allegation that the underlying main contract is non-existent, cancelled, rescinded, terminated and/or null and void, provided that the Tribunal upholds the validity of the arbitration agreement.
- 6.2 Upon application of a party, the Tribunal may suspend the proceedings to allow one or more requirements of the arbitration agreement to be satisfied.
- 6.3 If any party raises one or more pleas concerning the existence, validity, scope or applicability of the arbitration agreement, such plea(s) shall be directly decided by the Tribunal, unless the Secretariat decides to refer the matter to the EC, prior to the constitution of the Tribunal. In such case, the EC may decide that the arbitration shall proceed if it is *prima facie* satisfied that an arbitration agreement may exist. If the EC is not so satisfied, the parties shall be notified that the arbitration cannot proceed. In the latter event, any party retains the right to request any court having jurisdiction to determine whether or not there is a binding arbitration agreement.
- 6.4 The EC shall take a *prima facie* decision on the existence, validity, scope or applicability of the arbitration agreement, should the Secretariat refer the matter to it, whether or not a party has made such a plea.
- 6.5 A plea that the Tribunal does not have jurisdiction shall be raised not later than in the statement of defence, subject to Article 5.1.d. With respect to a counterclaim, in any reply to the counterclaim.
- 6.6 The Tribunal may either rule on a plea concerning its jurisdiction as a preliminary question or decide to proceed with the arbitration and rule on such a plea in the final award.

## **Article (7)**

### **Representation**

- 7.1 The parties may be represented or assisted by persons of their choice, irrespective of their nationality or professional qualifications. The names and contact details of such representatives shall be included in the Request and the Answer, as required by Articles 4 and 5.
- 7.2 Each party shall ensure that its representative has sufficient time available to carry out her/his duties ethically and professionally and to enable the arbitration to proceed expeditiously.
- 7.3 At any time the Tribunal may require from any party proof of authority granted to its representative in such a form as the Tribunal may determine and to its full satisfaction.
- 7.4 Prior to the constitution of the Tribunal, the Secretariat may also require from any party's representative proof of authority in such form as the Secretariat may deem appropriate. The validity of the proof of authority submitted by the parties, will ultimately be determined by the Tribunal.
- 7.5 Any assent given by a party regarding the validity of the other party's proof of authority submitted, shall not be withdrawn at a later stage and shall be deemed to have been validly made, unless otherwise determined by the Tribunal.

## **MULTIPLE CONTRACTS, MULTIPLE PARTIES, CONSOLIDATION AND JOINDER**

### **Article (8)**

#### **Multiple Contracts**

Subject to the provisions of Article 6.3, claims arising out of or in connection with more than one contract may be made in a single arbitration, provided that:

- a. the parties to the contracts consent to a single arbitration to be conducted in accordance with the Rules;  
or
- b. the contracts contain arbitration agreements referring such disputes to arbitration to be conducted in accordance with the Rules, the arbitration agreements are compatible, and:
  - i. the disputes arise out of the same legal relationship(s); or
  - ii. such contracts consist of a principal contract and its ancillary contract(s); or
  - iii. the disputes arise out of the same transaction or series of related transactions;or
- c. the claims involve multiple contracts between the parties originating from the same economic relationship.

### **Article (9)**

#### **Multiple Parties**

9.1 Where there are multiple parties, whether as Claimants or Respondents, and where the dispute is to be referred to a three-member Tribunal, the multiple Claimants, jointly, and the multiple Respondents, jointly, shall each nominate an arbitrator for appointment by the EC pursuant to Article 13 of the Rules.

9.2 In the absence of such a joint nomination and/or where all the parties are unable to agree to a method for the constitution of the Tribunal, the EC shall either:

- a. appoint an arbitrator on behalf of the multiple Claimants or multiple Respondents which failed to make a joint nomination; or
- b. appoint the entire Tribunal pursuant to Article 13 of the Rules.

In any such case, the EC shall give due consideration to any provisions of the arbitration agreement and the relevant circumstances of the case that are brought to its attention before the decision is made.

### **Article (10)**

#### **Consolidation**

10.1 Upon application by a party, the EC may consolidate two or more arbitrations under the Rules into a single arbitration, where:

- a. all the parties to the arbitrations consent to consolidation;  
or
- b. all 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); or
  - ii. such contracts consist of a principal contract and its ancillary contract(s); or
  - iii. the disputes arise out of the same transaction or series of related transactions;or

- d. the claims involve multiple contracts between the parties that originate from the same economic relationship.
- 10.2 If the application for consolidation is granted by the EC, the arbitrations shall be consolidated into the arbitration that commenced first. In such cases, the parties to all such arbitrations shall be deemed to have waived their right to nominate an arbitrator, and the EC may revoke the appointment of any arbitrator already appointed. The EC shall appoint the Tribunal in respect of the consolidated proceedings in accordance with the Rules.
- 10.3 Consolidation shall not apply where the parties have expressly agreed to opt out of consolidation.

## **Article (11)**

### **Joinder**

- 11.1 Upon application by a party, the EC may allow one or more additional parties to be joined in the arbitration as Claimant or Respondent provided that:
  - a. at any time during the proceedings, all parties (inclusive of the additional party to be joined) have consented in writing to the joinder and the arbitral tribunal agrees; or
  - b. prior to the full constitution of the Tribunal, the additional party to be joined is a party to the agreement containing the arbitration agreement or where the additional party to be joined is not a party to the agreement containing the arbitration agreement, all parties (inclusive of the additional party to be joined) have consented in writing to the joinder.
- 11.2 In the case referred to in Article 11.1.b, Article 9.2 shall apply *mutatis mutandis*.
- 11.3 A request for joinder shall be submitted to the Secretariat and a copy shall be sent directly to all parties to the arbitration and the additional party to be joined. The date on which the request is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of arbitration against the additional party.
- 11.4 All parties to the arbitration and the additional party to be joined shall have a right to respond to the request for joinder, and must do so within 15 days of receiving the request, or such other period as determined by the Secretariat.
- 11.5 The EC may reject an application for joinder on the basis that it is not appropriate to join the additional party at the relevant time or that there is insufficient information to make a conclusive determination. The EC's decision to reject an application for joinder under this article is without prejudice to any party's or non-party's application to the Tribunal (upon its formation) to join the additional party. It is also without prejudice to the Tribunal's power to later decide any question regarding its jurisdiction.
- 11.6 Where the EC allows a request for joinder, the additional party will be allowed to make claims against any other party or any party will be allowed to make claims against the additional party. If the additional party makes a claim, it shall also make payment of the registration fee for such claims.

## **THE TRIBUNAL**

### **Article (12)**

#### **Number of Arbitrators**

- 12.1 The Tribunal shall consist of such number of arbitrators as has been agreed by the parties. If there is more than one arbitrator, their number shall be uneven.
- 12.2 Where the parties have not agreed on the number of arbitrators, the Tribunal shall consist of a sole arbitrator, except where the EC at its discretion determines that, in view of all the circumstances of the dispute, a Tribunal composed of three members is appropriate.
- 12.3 In case the Tribunal is composed of a sole arbitrator, the parties may agree to jointly nominate the arbitrator within 30 days from the date the Request or the decision to submit the matter to a sole arbitrator is notified, or within such additional time as may be allowed by the Secretariat or agreed by the parties. Absent any agreement between the parties, the EC shall appoint the sole arbitrator.
- 12.4 If the parties have agreed upon a mechanism for nomination of the sole arbitrator, such mechanism shall be followed to the extent that it is capable of operating at the time and compatible with the Rules, subject to confirmation and appointment by the EC. In the event that the nomination mechanism is not capable of operating or not compatible with the Rules, the parties agree that the sole arbitrator shall be nominated and appointed by the EC.
- 12.5 In case the Tribunal is composed of three arbitrators, each party shall nominate a co-arbitrator in the Request and the Answer or within the time limit granted by the Secretariat or agreed by the parties. If a party fails to nominate a co-arbitrator within the time limit granted by the Secretariat or as agreed by the parties, the EC shall appoint an arbitrator on behalf of the defaulting party in accordance with Article 13.
- 12.6 In case the Tribunal is composed of more than one arbitrator, the parties' agreement on the nomination process shall be followed to the extent that it is capable of operating at the time and compatible with the Rules. Failing an agreement by the parties, the EC will decide on the nomination and appointment process pursuant to Article 13.

### **Article (13)**

#### **Appointment of Tribunal**

- 13.1 Any arbitrator conducting an arbitration under the Rules shall be and remain impartial and independent of the parties involved in the arbitration.
- 13.2 Where the arbitration agreement provides that each party is to appoint an arbitrator, such agreement shall be construed as an agreement for each party to nominate an arbitrator for appointment by the EC under the Rules.
- 13.3 Where the parties have agreed that the Claimant shall nominate an arbitrator and the Claimant fails to do so in the Request or within any specified time limit in the arbitration agreement or any additional time as may be allowed by the Secretariat or as agreed by the parties, the EC may appoint an arbitrator on behalf of the Claimant in accordance with the Rules.
- 13.4 Where the parties have agreed that the Respondent is to nominate an arbitrator and the Respondent fails to do so in the Answer, in any request for extension of time to file the Answer or within any specified time limit in the arbitration agreement or additional time as may be allowed by the Secretariat or as agreed by the parties, the EC may appoint an arbitrator on behalf of the Respondent in accordance with the Rules.
- 13.5 In case of a three-member Tribunal, each party shall nominate a co-arbitrator for appointment by the EC in the manner prescribed in Article 13. The following applies to the appointment of the chairperson:



- a. If the parties have agreed upon a mechanism for nomination of the chairperson, such mechanism shall be followed to the extent that it is capable of operating at the time and compatible with the Rules, subject to confirmation and appointment by the EC, in the manner prescribed in this Article. In the event that the agreed nomination mechanism is not capable of operating or not compatible with the Rules, the parties agree that the chairperson shall be nominated and appointed by the EC.
  - b. In the absence of any agreed mechanism, the co-arbitrators shall agree upon the third arbitrator who shall act as chairperson, subject to confirmation and appointment by the EC, as prescribed in this Article.
  - c. Should the co-arbitrators fail to agree upon a third arbitrator within 15 days from the date of notification of the EC's decision of appointment of the last co-arbitrator or any additional time as may be exceptionally allowed by the Secretariat or as agreed by the parties, the EC shall appoint the chairperson.
- 13.6 All arbitrators shall be appointed by the EC, taking into account any mechanism or method of nomination agreed upon by the parties.
- 13.7 The EC may decline to appoint any nominee proposed by a party if it considers the nominee to be lacking independence, impartiality, availability or otherwise unsuitable. In such case, the EC may request from that party a new nomination within a specified time limit or additional time as may be exceptionally allowed by the Secretariat. If that party fails to nominate an arbitrator or if the EC declines to appoint the alternative nominee, the EC shall appoint the arbitrator on behalf of that party.
- 13.8 Before appointment by the EC, a prospective arbitrator shall sign a declaration containing a statement of acceptance, impartiality and independence, availability of time, nationality and provide the Secretariat with an up-to-date *curriculum vitae*. By signing such declaration, an arbitrator undertakes a continuing duty to disclose to the EC, the other members of the Tribunal and to the parties, any circumstances which might be of such nature as to call into question or give rise to reasonable doubts as to the arbitrator's impartiality, independence and/or availability. If any prospective arbitrator makes any such disclosure, the Secretariat shall communicate it to the parties and other members of the Tribunal and fix a time limit for any comments thereon.
- 13.9 Before appointment by the EC, a prospective arbitrator shall also provide a written confirmation of willingness to serve on the basis of the fees and expenses as fixed by the Secretariat in the advance on costs.
- 13.10 In appointing the Tribunal, the EC shall give due consideration to the nature of the transaction, the nature and circumstances of the dispute, the nationality, location and language of the parties and (if more than two) the number of parties.

## **Article (14)**

### **Alternative Appointment Process**

- 14.1 If the parties fail to jointly appoint a sole arbitrator, have not stipulated any method of appointment and agree to this alternative appointment process, the arbitrator shall be appointed in the following manner:
- 14.2 The Centre shall send simultaneously to each party an identical list of at least 3 names of suitable candidates.
- 14.3 Each party shall have 7 days from the transmittal date in which to strike any names to which it objects, number the remaining names in order of preference, and return the list.
- 14.4 The parties shall not exchange their respective lists nor any comments thereon.

- 14.5 If a party fails to return the list within the time specified, all candidates named therein shall be deemed accepted by that party.
- 14.6 From among the candidates who have been approved on both lists, and in accordance with the indicated order of mutual preference, the selected candidate shall be invited to serve as arbitrator. The candidate's appointment will be subject to the EC's approval. If the parties fail to agree on any of the persons named or if a selected candidate is unable to act or if for any other reason the appointment cannot be made from the list, the EC shall have the power to decide whether to repeat the alternative appointment process or make a direct appointment.
- 14.7 The provisions of this Article apply *mutatis mutandis* to the appointment of a chairperson, when the co-arbitrators fail to jointly nominate the chairperson and they so request. In such a case, the co-arbitrators will receive the list and shall decide on the order of preference.

## **Article (15)**

### **Nationality of Arbitrators**

- 15.1 Where the parties are of different nationalities, a sole arbitrator or chairperson of the Tribunal shall not have the same nationality as any party unless the parties who are not of the same nationality as the proposed arbitrator, having been notified, do not object within the time limit granted by the Secretariat.
- 15.2 For the purpose of this Article, a person who is a citizen of two or more states shall be treated as a national of each state.

## **Article (16)**

### **Emergency Arbitrator**

- 16.1 A party in need of emergency relief may, concurrent with or following the filing of a Request but prior to the constitution of the Tribunal, make an application for emergency interim relief. The party shall notify the Secretariat and all other parties in writing of the nature of the relief sought and the reasons why such relief is required on an emergency basis. The application shall also set forth the reasons why the party considers it is entitled to such relief. Such notice must include a statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify the other parties. The application shall also be accompanied by the payment of a non-refundable registration fee in accordance with Article 1.1 to the Appendix.
- 16.2 The EC shall, if it decides to accept the application, seek to appoint an emergency arbitrator within 3 business days of receipt by the Secretariat of such application and payment of registration fee.
- 16.3 Before appointment, a prospective emergency arbitrator shall disclose to the Secretariat any circumstances which may give rise to justifiable doubts as to her/his impartiality or independence. Any challenge to the emergency arbitrator once appointed must be made within 1 business day of the communication by the Secretariat to the parties of the appointment and the circumstances disclosed.
- 16.4 An emergency arbitrator may not act as an arbitrator in any future arbitration related to the dispute, unless agreed by the parties.
- 16.5 The emergency arbitrator shall, as soon as possible but in any event within 2 business days of appointment, establish a schedule for consideration of the application for emergency relief. Such schedule shall provide a reasonable opportunity to all parties to be heard, but may provide for proceedings by telephone or video conference or on written submissions as alternatives to a formal hearing. The emergency arbitrator shall have the powers vested in the Tribunal pursuant to the Rules, including the authority to rule on her/his own jurisdiction.

- 16.6 The emergency arbitrator shall have the power to order or award any interim relief deemed necessary. The emergency arbitrator shall reason all decisions in writing. The emergency arbitrator may modify or vacate the interim award or emergency relief order.
- 16.7 The emergency arbitrator shall be considered *functus officio* after the Tribunal is constituted. The Tribunal may reconsider, modify or vacate the interim award or emergency relief order issued by the emergency arbitrator. The Tribunal is not bound by the reasons given by the emergency arbitrator. Any 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.
- 16.8 Any interim award or emergency relief order may be subject to the provision of appropriate security.
- 16.9 An order or award pursuant to this provision shall be binding on the parties. By agreeing to arbitration under the Rules, the parties undertake to comply with such order or award without delay.
- 16.10 The costs associated with any application pursuant to this provision shall initially be apportioned by the emergency arbitrator, subject to the power of the Tribunal to make a final determination of the apportionment of such costs.
- 16.11 The Rules shall apply *mutatis mutandis* and as appropriate to the proceeding under this Article, taking into account the inherent urgency of such proceedings.
- 16.12 By agreeing to arbitration under the Rules, the Parties are deemed to expressly agree to the appointment and powers of an emergency arbitrator in accordance with the Rules.

## **Article (17)**

### **Expedited Formation**

- 17.1 On or after the commencement of the arbitration, any party may submit an application for the expedited formation of the Tribunal, including the appointment of any replacement arbitrator where appropriate.
- 17.2 Any such application shall be made to the Secretariat in writing, copied to all other parties to the arbitration and shall set out the specific grounds for exceptional urgency in constituting the Tribunal.
- 17.3 The Secretariat may, in its complete discretion, adjust any time limit under the Rules for the constitution of the Tribunal, including service of the Answer and any matters or documents deemed to be missing from the Request.
- 17.4 For a Tribunal to be appointed and the file transferred, payment of the advance on costs shall be made pursuant to Article 2.4 of the Appendix.

## **Article (18)**

### **Expedited Proceedings**

- 18.1 Prior to the full constitution of the Tribunal, a party may file an application for arbitral proceedings to be conducted on an expedited basis.
- 18.2 Expedited proceedings may apply if:
- a. the amount in dispute is below AED 2,000,000 (exclusive of interest and legal representation costs); or
  - b. the parties expressly agree; or
  - c. in cases of exceptional urgency; or
  - d. if considered appropriate by the EC, based on the overall circumstances of the dispute.
- 18.3 In such case:

- a. a Tribunal consisting of a sole arbitrator will be appointed (unless exceptionally determined otherwise by the EC), within 7 days of the advance on costs being fully paid or such time as exceptionally extended by the Secretariat;
- b. the Secretariat may shorten any time limit under the Rules as deemed appropriate;
- c. in addition to the Request and the Answer, the parties shall only submit simultaneous and succinct statements of claim and defense within 15 days from the date the file is transferred to the Tribunal, unless otherwise directed so by the Tribunal after consultation with the parties;
- d. the dispute shall be decided on the basis of documents only, unless the Tribunal decides otherwise after consultation with the parties;
- e. the award shall be made within 3 months from the transfer of file to the Tribunal, unless extended by the EC on exceptional grounds.

## **Article (19)**

### **Replacement of Arbitrators**

- 19.1 An arbitrator shall be replaced upon death, upon acceptance by the EC of the arbitrator's resignation, upon acceptance by the EC of a challenge, or upon acceptance by the EC of a request of all the parties.
- 19.2 An arbitrator shall also be replaced on the EC's own initiative when it decides that the arbitrator is prevented *de jure* or *de facto* from fulfilling the arbitrator's functions, or that the arbitrator is not fulfilling those functions in accordance with the Rules or within the prescribed time limits.
- 19.3 When, on the basis of information that has come to its attention, the EC considers applying Article 19.2, it shall decide on the matter after the arbitrator concerned, the parties and any other members of the Tribunal have had an opportunity to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.
- 19.4 When an arbitrator is to be replaced, the EC has discretion to decide whether or not to follow the original nominating process. Once reconstituted, and after having invited the parties to comment, the Tribunal shall determine if and to what extent prior proceedings shall be repeated before the reconstituted Tribunal.
- 19.5 After the closing of the proceedings, instead of replacing an arbitrator who has died or been removed by the EC pursuant to Articles 19.1 or 19.2, the EC may decide, when it considers it appropriate, that the remaining arbitrators shall continue the arbitration. In making such determination, the EC shall take into account the views of the remaining arbitrators and of the parties and such other matters that it considers appropriate in the circumstances.

## **Article (20)**

### **Challenge of Arbitrators**

- 20.1 A challenge of an arbitrator, whether for an alleged lack of impartiality or independence, or otherwise, shall be made by the submission to the Secretariat of a written statement specifying the facts and circumstances on which the challenge is based.
- 20.2 For a challenge to be admissible, it must be submitted by a party either within 15 days from receipt by that party of the notification of the appointment or confirmation of the arbitrator, or within 15 days from the date when the party making the challenge became aware of the facts and circumstances on which the challenge is based provided such date is after the receipt of such notification.
- 20.3 The EC shall decide on the admissibility and, at the same time, if necessary, on the merits of a challenge after the Secretariat has afforded an opportunity to the arbitrator concerned, the other party or parties and any other members of the Tribunal to comment in writing within a

suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.

## **Article (21)**

### **Power of Majority to Continue the Proceedings**

- 21.1 If any member of a Tribunal refuses or persistently fails without showing good cause to participate in the arbitration, the other arbitrators shall have the power to continue the arbitration, including making an award, notwithstanding the failure of the absent arbitrator to participate, provided that the reason for the decision to proceed in the absence of one arbitrator is stated in any award or decision of the remaining arbitrators.
- 21.2 In determining whether or not to continue the arbitration, the other arbitrators shall take into consideration the stage of the arbitration, any explanation given by the non-participating arbitrator, the possible effect on the recognition and enforcement of any award rendered by the remaining arbitrators, and such other matters as they consider appropriate in the circumstances of the case.
- 21.3 In the event that the participating arbitrators decide to proceed without a non-participating arbitrator, they shall send a reasoned notice to the EC, the parties, and to the non-participating arbitrator. The participating arbitrators can only proceed without the non-participating arbitrator with the express approval of the EC. Absent such approval, the EC shall declare the office of the non-participating arbitrator vacant and appoint a replacement arbitrator.
- 21.4 In the event that the other arbitrators determine to continue only with the non-participating arbitrator being replaced, they shall notify the parties and the EC. In such event, the EC shall declare the office of the non-participating arbitrator vacant and appoint a replacement arbitrator.

## **THE PROCEEDINGS**

### **Article (22)**

#### **General Provisions**

- 22.1 The overriding objective of the Rules is for all proceedings to be conducted justly, fairly, impartially, efficiently and proportionally.
- 22.2 In all cases, the Tribunal shall act fairly and impartially and shall ensure that each party is given an adequate opportunity to present its case. The Tribunal shall always ensure that the proceedings are conducted in an expeditious and efficient manner, taking into consideration the circumstances of the dispute and the parties' requirements.
- 22.3 In all matters not expressly provided for in the Rules, the Centre, the Tribunal and the parties shall act in the spirit of the Rules and shall make reasonable efforts to ensure that any award(s) made are enforceable at law.

### **Article (23)**

#### **Transmission of the File to the Tribunal**

The Centre shall transmit a copy of the file to the Tribunal as soon as it has been appointed, provided the advance on costs fixed has been paid.

### **Article (24)**

#### **Modification of Time Limits**

- 24.1 The parties may agree to modify the time limits set out in the arbitration agreement or the Rules. Any such agreement entered into after the appointment of the Tribunal shall become effective only upon the approval of the Tribunal.
- 24.2 The Tribunal may, on the application of any party or on its own initiative and provided that it has given the parties reasonable opportunity to state their views, modify any time limit for purely procedural matters in the arbitration including the Tribunal's own directions. No time limits within the EC's exclusive discretion under the Rules can be modified by the Tribunal.
- 24.3 The EC may, on its own initiative or at the request of a party, extend any time limit if it decides that it is necessary to do so for the Tribunal or the Centre to fulfil their responsibilities in accordance with the Rules.

### **Article (25)**

#### **Seat of Arbitration and Place of Hearings**

- 25.1 The parties may agree in writing on the seat of arbitration. In the absence of such a choice, the seat of arbitration shall be the Dubai International Financial Centre (DIFC).
- 25.2 The Tribunal may, after consultation with the parties, conduct hearings or meetings at any place, be it in person or through the means that it considers appropriate (including electronic means of communication). If such place is different from the seat of arbitration, the hearings or meetings shall nonetheless be treated for all purposes as having been conducted at the seat of arbitration. The Tribunal may deliberate wherever it considers appropriate.
- 25.3 The Award shall be deemed to have been made at the seat of arbitration.

### **Article (26)**

#### **Language**

- 26.1 Unless otherwise agreed by the parties, the initial language of arbitration shall be the language of the arbitration agreement.

- 26.2 In the event that the arbitration agreement is written in more than one language, unless the arbitration agreement provides for a prevailing language or that the arbitration proceedings shall be conducted in more than one language, the EC may decide which of those languages shall be the initial language of arbitration.
- 26.3 Failing an agreement by the parties on the language of arbitration, upon its formation, the Tribunal shall have the power to finally determine the language or languages of arbitration having due regard to any observations from the parties and all relevant circumstances of the case.
- 26.4 The Tribunal may order that any documents submitted in languages other than the language of arbitration be accompanied by a translation in whole or in part into the language of arbitration. The translations may be official or unofficial, to the satisfaction of the Tribunal.

## **Article (27)**

### **Preliminary Meeting**

Within 30 days from the date of the transmission of the file to the Tribunal, as provided in Article 23, the Tribunal shall contact the parties with a view to setting the date for a preliminary meeting. The preliminary meeting can be held in person or by electronic means of communication, as determined by the Tribunal. The Tribunal shall, after consultation with the parties, fix a timetable for the submission of documents, statements and pleadings as hereinafter provided. The procedural timetable and any modifications thereto shall be communicated to the EC and the parties.

## **Article (28)**

### **Statement of Claim**

- 28.1 Unless the statement of claim was submitted together with the Request, the Claimant shall within 30 days of receipt of notification from the Centre of the appointment of the Tribunal, or such other time limit as may be allowed by the Tribunal after consultation with the parties, submit its statement of claim to the Respondent and the Tribunal with a copy to the Centre as provided in Articles 3.2 and 3.3.
- 28.2 The statement of claim shall contain a comprehensive statement of the facts and legal arguments supporting the claim, including a statement of the relief sought.
- 28.3 The statement of claim shall be accompanied by copies of the essential evidence upon which the Claimant intends to rely, together with a schedule of such documents.

## **Article (29)**

### **Statement of Defence**

- 29.1 The Respondent shall, within 30 days of receipt of the statement of claim or such other time limit as may be allowed by the Tribunal after consultation with the parties, submit its statement of defence to the Claimant and to the Tribunal with a copy to the Centre as provided in Articles 3.2 and 3.3.
- 29.2 The statement of defence shall contain a comprehensive statement of the facts and legal arguments supporting the defence, including a statement of the relief sought.
- 29.3 The statement of defence shall be accompanied by copies of the essential evidence upon which the Respondent intends to rely together with a schedule of such documents.
- 29.4 Any counterclaim or set-off by the Respondent shall be made or asserted in the statement of defence or, in exceptional circumstances, at a later stage in the arbitral proceedings if so decided by the Tribunal. Any such counterclaim or set-off shall contain the same particulars and evidence as those specified in Article 29.2 and 29.3.

## **Article (30)**

### **Further Written Statements**

- 30.1 The Tribunal may, at its discretion, allow or request further written statements in addition to the statement of claim and statement of defence and shall fix the periods of time for submission of any such statements.
- 30.2 In the event that a counterclaim and/or set-off has been made or asserted, the Claimant shall reply to the particulars thereof. The time limits set out in Article 29.1 shall apply to such a reply, unless otherwise determined by the Tribunal.

## **Article (31)**

### **New Claims, Amendment to the Statement of Claim or Defence and Withdrawal of Claims**

- 31.1 After the submission of the statement of claim, statement of defence and counterclaim and/or set-off, no party shall make new claims or counterclaims, unless authorized to do so by the Tribunal or agreed by the parties. In such a case, the Tribunal shall consider the nature of such new claims, the stage of the arbitration, the delay in making them, the prejudice that might be caused to the other party and any other relevant circumstances. Variations to quantifications of claims or counterclaims shall not be considered as new claims or counterclaims.
- 31.2 The withdrawal of all claims made by the Claimant or counterclaims/set-off by the Respondent will only take place when all parties involved expressly agree to the termination of proceedings, or failing any agreement, a final order or award in relation thereto is issued by the Tribunal.

## **Article (32)**

### **Burden of Proof and Evidence**

- 32.1 Each party shall have the burden of proving the facts relied on to support its claim or defence.
- 32.2 The Tribunal shall have the power to decide, after consulting with the parties, on the rules of evidence to be applied. Such power includes the admissibility, relevance or weight of any material tendered by a party on any matter of fact or expert opinion, and to determine the time, manner and form in which such material should be exchanged between the parties and presented to the Tribunal.
- 32.3 The Tribunal may, at any time during the arbitration whether at the request of a party or on its own initiative, order a party to produce such documents or other evidence within such a period of time as the Tribunal considers necessary or appropriate. It may order a party to make available to the Tribunal or to an expert appointed by it or to the other party, any property in its possession or control for inspection or testing.
- 32.4 The Tribunal may, at the request of a party or on its own initiative, inspect or require the inspection of any document, site or property as it deems appropriate.

## **Article (33)**

### **Hearings**

- 33.1 If either party so requests, the Tribunal shall hold a hearing for the presentation of evidence by witnesses or for oral argument or for both. In the absence of a request, the Tribunal has the discretionary power to decide whether to hold such a hearing or hearings and determine their duration. If no hearings are held, the proceedings shall be conducted on the basis of documents and other materials alone.
- 33.2 In the event of a hearing, the Tribunal shall consult with the parties and give them adequate advance notice of the date, time and place or means thereof.



- 33.3 Unless the Tribunal directs or the parties agree otherwise, all meetings and hearings shall be held in private. Persons not involved in the proceedings shall not be admitted to the hearings without the approval of the Tribunal and the parties.
- 33.4 The Tribunal shall determine whether, and if so, in what form a record shall be made of any hearing. The Tribunal will also determine how the cost of such record and other related costs will be allocated between the parties, unless otherwise agreed by them.
- 33.5 If any of the parties, although duly notified, fails to appear without valid excuse, the Tribunal shall have the power to proceed with the hearing and the arbitration.

#### **Article (34)**

##### **Witnesses**

- 34.1 If witnesses are to be heard, each party shall communicate to the Tribunal and to the other party within the period of time established by the Tribunal and in any event at least 15 days before the hearing, the identities and addresses of the witnesses it intends to call, the subject matter of their testimonies and its relevance to the issues in dispute, the languages in which such witnesses will give their testimony and any other matter requested by the Tribunal.
- 34.2 The Tribunal has discretion, on the grounds of avoiding duplication or lack of relevance, to limit the appearance of any witness, whether witness of fact or expert witness.
- 34.3 Any witness who gives oral evidence may be questioned, by each of the parties under the supervision and direction of the Tribunal. The Tribunal may put questions to the witness at any stage of the examination.
- 34.4 The testimony of witnesses may, either at the discretion of a party or as directed by the Tribunal, be submitted in written form, whether by way of signed statements, sworn affidavits or otherwise, in which case the Tribunal may make the admissibility of the testimony conditional upon the witnesses being made available for oral testimony.
- 34.5 A party shall be responsible for the practical arrangements, costs and availability of any witness it calls, and bear the consequences of non-appearance.
- 34.6 The Tribunal shall determine whether any witness shall retire during any part of the hearing, particularly during the testimony of other witnesses.
- 34.7 The Tribunal shall only require witnesses who have submitted a written statement and who have been requested to provide oral testimony during the hearing, to swear an oath prior to giving oral evidence, subject to any mandatory provisions of the applicable procedural law. The Tribunal shall have the authority to accept oaths and conduct examinations in person or by electronic means including telephone or video conference or a combination thereof, provided it has first satisfied itself of the identity of the witness.

#### **Article (35)**

##### **Experts Appointed by the Tribunal**

- 35.1 The Tribunal may, after consultation with the parties, appoint one or more independent experts to report to it on specific issues required by the Tribunal. A copy of the expert's terms of appointment, established by the Tribunal, having due regard to any observations of the parties, shall be communicated to the parties. Any such expert shall be required to sign an appropriate confidentiality undertaking.
- 35.2 The Tribunal may require a party to give any such expert all relevant information and documents or provide access to goods, property or site for inspection by the expert. Any dispute between a party and the expert as to the relevance of the requested information, goods or property shall be decided by the Tribunal.

- 35.3 Upon receipt of the expert's report, the Tribunal shall provide a copy of the report to the parties, who shall be given the opportunity to comment on the report. A party may examine any document upon which the expert has relied in such a report.
- 35.4 The parties shall be given an opportunity to question the expert at a hearing. At the hearing, the parties may present expert witnesses to testify on the issues in dispute.
- 35.5 The opinion of other experts on the issues submitted to the Tribunal's expert shall be subject to the Tribunal's appreciation of those issues in the context of all the circumstances of the case, unless the parties have agreed that the determination of the Tribunal's expert shall be conclusive in respect of any specific issue.
- 35.6 The fees and expenses of any expert appointed by the Tribunal under this Article shall be paid by the parties in accordance with the Appendix.

## **Article (36)**

### **Provisional Measures**

- 36.1 Subject to any mandatory rules of the applicable procedural law, at the request of a party, the Tribunal may issue any provisional measures it deems necessary, including injunctions and interim and conservatory measures of protection. The Tribunal may make the granting of such measures subject to appropriate security being furnished by the requesting party. By submitting to arbitration under the Rules, the parties shall be deemed to have expressly granted the Tribunal all necessary powers to issue such provisional measures and undertake to immediately comply with them.
- 36.2 Measures and orders contemplated under this Article may take the form of a procedural order or an award.
- 36.3 A request addressed by a party to a competent judicial authority for provisional or conservatory measures, or for security for the claim or counterclaim, or for the implementation of any such measures or orders granted by the Tribunal, shall not be deemed incompatible with or a waiver of the arbitration agreement.
- 36.4 Any such request and any measures taken by the competent judicial authority must be notified without delay to the Secretariat by the party making such a request or seeking such measures. The Secretariat shall inform the Tribunal thereof.

## **Article (37)**

### **Default**

- 37.1 If the Claimant, without showing good cause, fails to participate in the arbitration at any time or fails to submit its statement of claim in accordance with Article 28, the Tribunal may refuse to proceed with the claim. However, this will not prevent the Tribunal from proceeding to determine the rights of the Respondent derived from the claim and/or any counterclaim or set-off raised by the Respondent in the Answer.
- 37.2 If the Respondent, without showing good cause, fails to submit its statement of defence in accordance with Article 29, the Tribunal may nevertheless proceed with the arbitration and make the award.
- 37.3 The Tribunal may also proceed with the arbitration and make the award if a party, without showing good cause, fails to avail itself of the opportunity to present its case within the period of time determined by the Tribunal.
- 37.4 If a party, without showing good cause, fails to comply with any provision of, or requirement under the Rules or any direction given by the Tribunal, the Tribunal may draw the inferences it considers appropriate.

## **Article (38)**

### **Rules of Law Applicable to the Merits**

- 38.1 The Tribunal shall decide the dispute in accordance with the law(s) or rules of law chosen by the parties as applicable to the merits of their dispute. If and to the extent that the Tribunal determines that the parties have made no such choice, the Tribunal shall apply the law(s) or rules of law which it considers to be most appropriate.
- 38.2 Any designation of the law 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.
- 38.3 In all cases, the Tribunal shall decide the dispute having due regard to the terms of any relevant contract and taking into account applicable trade usages.
- 38.4 The Tribunal shall assume the powers of an *amiable compositeur* or decide *ex aequo et bono* only if the parties have expressly agreed in writing to grant it such powers.

## **Article (39)**

### **Closure of Proceedings**

- 39.1 The Tribunal shall declare the proceedings closed when it is satisfied that the parties have had adequate opportunity to present their submissions and evidence.
- 39.2 The Tribunal may, if it considers it necessary owing to exceptional circumstances, decide on its own initiative or upon application of a party to re-open the proceedings it declared closed at any time before the award is made.
- 39.3 Following the closure of proceedings, the Tribunal shall proceed to make its award.
- 39.4 The Tribunal shall inform the Secretariat of the date by which it expects to submit its draft award to the Secretariat pursuant to Article 42.8.

## **Article (40)**

### **Waiver**

A party which knows or must have known that any provision of, or requirement under the Rules or other rules applicable to the proceedings, or any direction given by the Tribunal, has not been complied with and yet proceeds with the arbitration without promptly raising an objection to such non-compliance, shall be deemed to have irrevocably waived its right to object and may not raise that objection later.

## **AWARDS AND TERMINATION OF PROCEEDINGS**

### **Article (41)**

#### **Time Limit for the Award**

- 41.1 By submitting to arbitration under the Rules the parties shall be deemed to have agreed that the provisions of this Article shall apply to the extension of time limit for rendering the final award.
- 41.2 The time limit within which the Tribunal must render its final Award is 6 months from the date the sole arbitrator (or the chairperson in the case of three or more arbitrators) receives the file.
- 41.3 The EC may extend this time limit further, for as many times as it deems necessary, pursuant to a reasoned request from the Tribunal or on its own initiative if it decides that it is necessary to do so.
- 41.4 The parties may extend the time limit for rendering the final award by agreement in writing.
- 41.5 The time limit for the award shall cease to run whenever the arbitration is discontinued or suspended by the Tribunal and shall recommence from the date determined by the Tribunal. For the determination of the latter, the Tribunal shall take into consideration any reasons notified for the discontinuance or suspension, and when they have ceased to exist. If the remaining period is less than a month, it shall be extended to one full month. Additionally and only in exceptional circumstances, the EC may suspend and resume the proceedings when it is not possible for the Tribunal to do so.

### **Article (42)**

#### **The Award**

- 42.1 The Tribunal may make preliminary, interim, interlocutory, partial, final, additional, supplemental or other awards as deemed appropriate.
- 42.2 All awards shall be made in writing and shall be binding on the parties. By agreeing to arbitrate their dispute under the Rules, the parties undertake to comply with any award immediately and without any delay. The parties also waive irrevocably their right to any form of appeal, review or recourse to any state court or other judicial authority, insofar as such waiver may be validly made.
- 42.3 Unless the parties agree otherwise, where there is more than one arbitrator, any award, order or other decision of the Tribunal may be made by a majority.
- 42.4 The award shall state the date on which it was made, as well as the seat of arbitration. All awards shall be deemed to have been signed and issued at the seat of arbitration, without the physical presence of the Tribunal at the seat of arbitration.
- 42.5 The award shall state the reasons on which it is based, unless the parties have agreed that no reasons should be provided and the applicable procedural law does not require the inclusion of such reasons.
- 42.6 The award shall be signed by the Tribunal. The signature of the award by a majority of the arbitrators, or, in the case of orders and directions, signature by the chairperson on behalf of the Tribunal shall be sufficient. Where there is more than one arbitrator and one of them fails to sign without valid cause, the award shall state the reason for the absence of that arbitrator's signature.
- 42.7 If any arbitrator fails to comply with the mandatory provisions of any applicable law relating to the making of the award, having been given a reasonable opportunity to do so, the remaining arbitrators may proceed in her/his absence and state in their award the circumstances of that arbitrator's failure to participate in the making of the award. The non-compliant arbitrator may provide comments on the matter separately.

- 42.8 Within 14 days of the last evidentiary hearing or the last submissions filed by the parties in the absence of a hearing, the Tribunal shall inform the Secretariat of the date by which it expects to submit its final draft award for potential comments.  
Prior to signing any award, the Tribunal shall submit the final draft of the award to the Secretariat, which may provide comments as to form. Without affecting the Tribunal's liberty of decision, the EC may, in exceptional circumstances, draw the Tribunal's attention to points of substance for consideration.
- 42.9 The signed award shall be communicated by the Tribunal to the Secretariat in a number of originals sufficient to provide one for each party, all members of the Tribunal and the Centre. The Secretariat shall formally communicate an original of the award to each party and the Tribunal, provided that the advance on costs has been paid to the Centre in accordance with the Appendix.
- 42.10 The award may be made public with the consent of the parties or may also be made public by the Centre in its redacted form to preserve the anonymity of the parties and the Tribunal.
- 42.11 The arbitration costs and their apportionment between the parties shall be fixed in the award or other order by which the arbitral proceedings are terminated, including a final award on jurisdiction. An award may be rendered solely for costs.
- 42.12 The Tribunal and the Centre shall assist the parties in complying with whatever formalities may be necessary to attain enforceable awards.
- 42.13 The Centre may take any steps deemed necessary to enable the Tribunal to comply with any terms of a direct or indirect court request.
- 42.14 The Centre may request payment of additional expenses, after a final award has been rendered. Such additional expenses will be dealt with and apportioned by the Tribunal in accordance with Article 42.11.

### **Article (43)**

#### **Interpretation, Correction and Additional Award**

- 43.1 Within 30 days of receipt of the award, a party may, by written notice to the Tribunal with a copy to the Centre and the other party, request the Tribunal to give an interpretation of the award. If the Tribunal considers the request to be justified, after inviting the other party's comments, it shall provide its interpretation within 30 days of receipt of the request. Any interpretation, which shall take the form of a supplemental award, is deemed to be part of the final award.
- 43.2 Within 30 days of receipt of the award, a party may, by written notice to the Tribunal with a copy to the Centre and the other party, request the Tribunal to correct any clerical, typographical, computational or other errors in the award. If the Tribunal considers the request to be justified, after inviting the other party's comments, it shall make the correction within 30 days of receipt of the request. Any correction, which shall take the form of a supplemental award, is deemed to be part of the award.
- 43.3 The Tribunal may correct any error of the type referred to in Article 43.2 on its own initiative within 30 days after the date of the award.
- 43.4 Within 30 days of receipt of the award, a party may, by written notice to the Tribunal with a copy to the Centre and the other party, request the Tribunal to make an additional award in respect of claims or counterclaims presented in the arbitration but not dealt with in any award. Before deciding on the request, the Tribunal shall give the parties an opportunity to be heard. If the Tribunal considers the request to be justified, it shall, wherever reasonably possible, make the additional award within 60 days of receipt of the request. The additional award is deemed to be part of the final award.

43.5 The provisions of Article 42 apply *mutatis mutandis* to supplemental and additional awards.

43.6 In case additional expenses are incurred by the Tribunal for the rendering of a supplemental or additional award, their allocation between the parties shall be decided by the Tribunal in the respective award, which will be deemed to be part of the final award.

#### **Article (44)**

##### **Settlement**

44.1 If before a final decision on all merits is made, the parties agree on a settlement of the dispute, the Tribunal shall terminate the arbitration. If requested jointly by the parties, the Tribunal may record the settlement in the form of a termination order or consent award. Such award shall contain a statement that it is an award made by the parties' consent.

44.2 The termination order or consent award shall be signed by the Tribunal and shall be communicated by the Tribunal to the Secretariat in a number of originals sufficient to provide one for each party, each member of the Tribunal and the Centre. The Secretariat shall formally communicate an original of the termination order or consent award to each party and each member of the Tribunal.

#### **Article (45)**

##### **Other Grounds for Termination**

The Tribunal may, at any time after considering the parties' comments, issue an order to terminate the proceedings if it determines that in the circumstances the proceedings cannot continue. In such case, the Tribunal may determine and apportion the arbitration costs, subject to Article 2.12 of the Appendix.

## **MISCELLANEOUS**

### **Article (46)**

#### **Functions of the Centre and the EC**

- 46.1 Any matter not expressly referred to in the Rules, will be decided by the EC. The EC shall have exclusive competence to interpret the Rules.
- 46.2 The reasoning for the EC's decisions will remain confidential, unless otherwise requested by a party and deemed appropriate by the EC or unless otherwise provided for in the Rules.
- 46.3 EC decisions shall not be subject to reconsideration, unless new evidence is provided which the providing party could not timely provide for reasons not attributable to that party.
- 46.4 The administration of all cases will be made by the Centre in accordance with the Rules and the Centre's internal policies.

### **Article (47)**

#### **Exclusion of Liability**

No member of the Tribunal or person appointed by the Tribunal, the EC and its members, nor the Centre or any of its employees or personnel shall be liable to any person or any party for any act or omission in connection with the arbitration. No party shall seek to make any Tribunal member, the EC, the Centre and/or any of its employees or personnel act as a witness in any legal proceedings in connection with an arbitration governed by the Rules.

### **Article (48)**

#### **Confidentiality**

- 48.1 Unless all parties expressly agree in writing to the contrary and subject to Article 42.10, the parties undertake as a general principle to keep confidential all awards and orders in their arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain – save and to the extent that disclosure may be required from a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in *bona fide* legal proceedings before a state court or other judicial authority.
- 48.2 The deliberations of the Tribunal are likewise confidential to its members, except where an explanation of an arbitrator's refusal to participate in the arbitration is required by the other members of the Tribunal under Articles 19, 20 and 21 of the Rules.

### **Article (49)**

#### **Amending the Appendix - Cost of Arbitration**

The Board of Trustees, upon a proposal from the EC, may from time to time amend the Appendix.

### **Article (50)**

#### **Tribunal's Power to Sanction Counsel Conduct**

In order to promote the good and equal conduct of the parties and their representatives during arbitral proceedings conducted under the Rules, the Tribunal is vested with the authority to impose sanctions when there is an attempt to unfairly obstruct the arbitration or jeopardize the award; when knowingly they make any false statements, procure or assist in the preparation of, or rely upon, any false evidence; or when they conceal or assist in the concealment of any document.

### **Article (51)**

#### **Disposal of Documents**

The Centre will maintain an archive of any award rendered indefinitely, and will keep a copy of all correspondence and submissions for a maximum of 5 years from the date the Request is filed. Thereafter, all correspondence, submissions and any other documents deposited with DIAC will be destroyed in a confidential manner, unless any party or arbitrator requests in writing 30 days before the 5 year time limit lapses, that DIAC returns copies of specific documents deposited by said party or arbitrator. DIAC would ask the party or arbitrator making such a request to bear any expenses incurred by DIAC in connection with the return of any documents.

#### **Article (52)**

##### **Shariah-Compliant Arbitration**

The Centre will maintain a list of arbitrators qualified in Islamic Law. The Centre shall make appointments from such list where the arbitration agreement so mandates or where the parties so agree. Any award made by such Tribunal shall be in accordance with mandatory provisions of Shariah law as mandated by the parties, the arbitration agreement and/or the applicable law. The Rules shall apply to the proceedings, in addition to the present provision.

#### **Article (53)**

##### **Third-party funding**

- 53.1 The Tribunal may order the disclosure of the existence and details of a party's third-party funding arrangement, including details of the identity of the funder, the funder's interest in the outcome of the proceedings, and whether or not the funder has committed to undertake adverse costs liability.
- 53.2 The Tribunal may take into account any third-party funding arrangements in apportioning the costs of the arbitration.
- 53.3 The Tribunal may make adverse costs orders against third-party funders when deemed appropriate.



## **CONCILIATION**

### **Article (54)**

#### **Conciliation Proceedings**

- 54.1 A party wishing to submit its dispute to conciliation may file an application to the Secretariat for conciliation proceedings to be conducted under this provision. A registration fee will be payable in accordance with Article 1.1 of the Appendix.
- 54.2 The application shall include a description of the facts and relevant circumstances of the dispute, together with the supporting documents.
- 54.3 The Secretariat shall notify the other party of the application for conciliation within 7 days from the date of its receipt. The other party shall submit a reply within the following 15 days.
- 54.4 Should the other party agree to submit the dispute to conciliation, irrespective of any other dispute settlement mechanism available to the parties, a conciliator shall be appointed by the EC. The fees and expenses payable to the conciliator will be determined by the EC on a case-by-case basis. The administrative fees will also be fixed by the EC.
- 54.5 The parties may object to the conciliator appointed within 7 days of the notification of appointment by the EC. The conciliation proceedings shall commence immediately after expiration of this period.
- 54.6 The conciliator shall study the dispute and summon the parties before hearing their arguments.
- 54.7 The conciliator shall bring together the views of the parties when possible, and upon their agreement to the final terms of settlement, a record thereof shall be signed by the conciliator and the parties.
- 54.8 The proceedings shall conclude within 2 months from the appointment of the conciliator, unless otherwise extended by the parties or the EC.
- 54.9 If the attempt of conciliation fails, the dispute shall be considered no longer pending before the Centre and the rights of the parties shall not be affected in any manner by what was presented or written during the course of the conciliation proceedings.
- 54.10 At the request of any of the parties, the Centre shall issue a certificate stating that the dispute was referred to it but that attempts for conciliation failed, without any further comments or consideration of the merits.

## APPENDIX COSTS OF ARBITRATION

### Article (1)

#### Registration Fee

- 1.1 Each Request to commence arbitration, or to introduce a counterclaim and/or set-off, must be accompanied by the applicable non-refundable registration fee, in accordance with Article 5 to the Appendix.
- 1.2 The Centre shall proceed only with respect to those claims, counterclaims and/or set-off with regard to which the registration fee has been paid.

### Article (2)

#### Costs of Arbitration

- 2.1 The arbitration costs shall include *inter alia* the Centre's registration fee, the advance on costs, the fees and expenses of any Tribunal or party-appointed expert, the legal representation fees and other party costs, to the extent reasonably incurred.
- 2.2 The advance on costs consists of the administrative fees for the claim and any counterclaim/set-off and the Tribunal's fees and expenses. The Secretariat shall fix the advance on costs corresponding to the amount of the dispute, in accordance with the Table in force at the time of the commencement of the arbitration. This amount may be subject to readjustment at any time during the arbitration pursuant to Article 3 of the Appendix.
- 2.3 If the amounts in dispute were not specified in the claim or the counterclaim/set-off, the Secretariat may fix the advance on costs at its discretion on the basis of a preliminary quantification of the amount in dispute.
- 2.4 The advance on costs fixed shall be payable in equal shares by the Claimant and Respondent, unless separate advances on costs are fixed. If either party fails to pay its share, the other party at the request of the Secretariat shall substitute for the other party's share. Payment shall be in cash, by providing an unconditional bank guarantee or by another method acceptable to the EC.
- 2.5 Where, apart from the claims, counterclaims and/or set-off are submitted, the Secretariat may fix separate advances on costs for the claims and the counterclaims and/or set-off.
- 2.6 Where the Secretariat has fixed separate advances on costs, each of the parties shall pay the advance on costs corresponding to its claims.
- 2.7 The case file shall not be transmitted to the Tribunal unless the advance on costs fixed has been fully paid.
- 2.8 The Tribunal shall inform the Secretariat of any increase in the amount of the claims or counterclaims/set-off.
- 2.9 When the Secretariat is satisfied that a request for payment of the advance on costs has not been complied with whether before or after the transfer of the file to the Tribunal, the Secretariat may refer the matter to the EC either to suspend the proceedings or set a final time limit on the expiration of which the relevant claims or counterclaims/set-off shall be considered withdrawn. A party shall not be prevented, on the grounds of such withdrawal, from introducing the same claims or counterclaims/set-off at a later date in another Request. If any party wishes to make an objection to this measure, it must make a request prior to the referral of the matter to the EC.
- 2.10 If one party claims a right to a set-off with regard to any claim, such set-off shall be taken into account in determining the advance on costs in the same way as a separate claim insofar as it may require the Tribunal to consider additional matters. The EC shall take any final decision in this respect should a controversy arise.

- 2.11 Before any expertise ordered by the Tribunal can be commenced, the parties, or one of them, shall pay the costs fixed by the Tribunal sufficient to cover the expected fees and expenses of the experts.
- 2.12 If an arbitration terminates before a final decision on the merits is made or when a consent award is issued, the EC shall fix the advance on costs at its discretion, taking into consideration the stage reached in the proceedings and any other relevant circumstances, in accordance with Article 3 of the Appendix.
- 2.13 The parties will be reimbursed any balance left in the respective case account, after the administrative fees, and the Tribunal's fees and expenses have been paid.
- 2.14 Amounts paid to the Tribunal do not include any possible taxes or charges, applicable to the Tribunal's fees. The parties have a duty to pay any such taxes or charges. However, the recovery of any such taxes or charges is a matter solely between the Tribunal and the parties.

### **Article (3)**

#### **Fixing the Tribunal's Fees**

- 3.1 In setting the Tribunal's fees pursuant to Article 2 of the Appendix, the EC shall take into consideration the diligence of the Tribunal, the rapidity of the proceedings, and the complexity of the dispute, so as to arrive at a figure within the limits specified in the Table or, in exceptional circumstances, at a figure higher or lower than those limits.
- 3.2 The EC may, at any time during the arbitration, fix the fees of the Tribunal at a figure higher or lower than that which would result from the application of the Table due to the circumstances of the case. For this purpose, the EC should take into account the fluctuation in the amount in dispute, changes in the amount of the Tribunal's estimated expenses, or the evolving difficulty or complexity of the proceedings or any other relevant circumstances deemed appropriate. The EC shall determine how such increase will be allocated between the parties.
- 3.3 No additional fees may be charged by the Tribunal for the issuance of additional or supplemental awards.
- 3.4 When the Tribunal is composed of three members, unless the Tribunal advises the Secretariat of a different allocation, the Secretariat shall fix the Tribunal's total fees so that the chairperson receives 40% and each co-arbitrator 30%. The EC may decide on a different allocation based on the circumstances of the case.
- 3.5 Following a final decision on the merits rendered by the Tribunal, save for a consent award, the Tribunal will be entitled to the full payment of its fees, unless the EC determines otherwise.
- 3.6 The EC may reconsider and reduce the fees payable to the Tribunal in exceptional circumstances, after the draft award has been submitted for comments pursuant to Article 42.8, should it consider that the time spent for the issuance of the award exceeded a reasonable time frame. The EC shall take into consideration the complexity of the dispute, the parties' conduct and the overall diligence of the Tribunal.

### **Article (4)**

#### **Decision on the Costs of Arbitration**

- 4.1 The Tribunal may make decisions on the costs of arbitration at any time during the proceedings.
- 4.2 The final award shall fix the costs of arbitration and decide which of the parties shall bear them or in what proportion they shall be borne by the parties, subject to Article 2.12 of the Appendix.
- 4.3 Any dispute regarding the advance on costs shall be determined by the EC.

### **Article (5)**

#### **Table of Fees and Costs**

The Table of Fees and Costs determines the registration, administrative and the Tribunal's fees in accordance with the total amount in the dispute, and provides maximum and minimum limits. The DIAC Board of Trustees may amend this Table from time to time, as it may deem necessary.

**Article (6)**

**Fees for appointing adjudicators, arbitrators, experts, mediators or deciding on a challenge of an arbitrator, in arbitrations which are not subject to the Rules**

- 6.1 An application to the Centre to appoint *inter alia* adjudicators, arbitrators, experts, mediators or to decide on a challenge against an arbitrator or the like, in arbitrations that are not subject to the Rules shall be subject to payment of a non-refundable fee determined from time to time by the Board of Trustees.
- 6.2 An application made under Article 6.1 shall be governed *mutatis mutandis* by the relevant provision of the Rules.

## DIAC Table of Fees and Costs \*

Increase in the Tribunal Fees as of 1 July 2011

Pursuant to Article 49 of the Rules and the decision of the Board of Trustees dated 4 April 2011, the Tribunal Fees are increased as of 1 July 2011.

The Disputed Amount in Dirhams	The Centre's Administrative Fees	Tribunal Fees in Dirhams and in Percentage	
		Minimum Amount	Maximum Amount
Up to 200,000	5,000	8,500	8% of the disputed amount (maximum amount shall be 26,000)
200,001 – 500,000	10,000	8,500 + 1.5% of the amount exceeding 200,001	26,000 + 7.5% of the amount exceeding 200,001
500,001 – 1,000,000	20,000	13,500 + 1% of the amount exceeding 500,001	51,000 + 5% of the amount exceeding 500,001
1,000,001 – 2,500,000	30,000	18,500 + 0.5% of the amount exceeding 1,000,001	78,000 + 4% of the amount exceeding 1,000,001
2,500,001 – 5,000,000	40,000	32,000 + 0.5% of the amount exceeding 2,500,001	141,000 + 3% of the amount exceeding 2,500,001
5,000,001 – 10,000,000	50,000	47,000 + 0.3% of the amount exceeding 5,000,001	212,500 + 2% of the amount exceeding 5,000,001
10,000,001 – 20,000,000	75,000	67,000 + 0.2% of the amount exceeding 10,000,001	305,000 + 1% of the amount exceeding 10,000,001
20,000,001 – 50,000,000	100,000	92,000 + 0.15% of the amount exceeding 20,000,001	400,500 + 0.4% of the amount exceeding 20,000,001
50,000,001 – 100,000,000	150,000	114,500 + 0.1% of the amount exceeding 50,000,001	540,000 + 0.3% of the amount exceeding 50,000,001
100,000,001 – 150,000,000	180,000	138,000 + 0.059% of the amount exceeding 100,000,001	630,000 + 0.2280% of the amount exceeding 100,000,001
150,000,001 – 200,000,000	210,000	160,000 + 0.330% of the amount exceeding 150,000,001	717,000 + 0.1570% of the amount exceeding 150,000,001
200,000,001 – 250,000,000	240,000	180,000 + 0.0210% of the amount exceeding 200,000,001	794,000 + 0.1150% of the amount exceeding 200,000,001

Over 250,000,000	270,000	192,000 + 0.0100% of the amount exceeding 250,000,000	852,500 + 0.0400% of the amount exceeding 250,000,000
* All amounts are in AED			

Note: the Tribunal's expenses are calculated separately and in addition to the administrative and the Tribunal's fees.