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**Astana International Financial Centre**  
**International Arbitration Centre**  
**Arbitration and Mediation Rules**  
**2018**

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## PART I – SCOPE OF APPLICATION AND INTERPRETATION

### Article 1 Scope of Application and Interpretation

1.1 The AIFC International Arbitration Centre is an independent legal entity in the Astana International Financial Centre established by Article 14 of the Constitutional Statute of the Republic of Kazakhstan “*On the Astana International Financial Centre*” no. 438-V 3PK dated 7 December 2015 (as amended) and Regulation 48 of the AIFC Arbitration Regulations 2017.

1.2 In these Rules:

- (1) ‘**AIAC**’ means the AIFC International Arbitration Centre;
- (2) ‘**AIFC**’ means the Astana International Financial Centre;
- (3) ‘**Award**’ includes a partial, interim or final award and an award of an Emergency Arbitrator;
- (4) ‘**Chairman**’ means the Chairman of the AIAC;
- (5) ‘**Practice Direction**’ means a Practice Direction issued by the Chairman under Article 54(2) of the Arbitration Regulations to supplement, regulate and implement these Rules;
- (6) ‘**Registrar**’ means the Registrar of the AIAC and includes any Deputy Registrar;
- (7) ‘**Registry**’ has the meaning and functions provided by Article 52 of the Regulations;
- (8) ‘**Arbitration Regulations**’ means the AIFC Arbitration Regulations 2017;
- (9) ‘**Rules**’ means these AIFC International Arbitration Centre Arbitration and Mediation Rules issued by the Chairman under Article 54(1) of the Arbitration Regulations; and
- (10) ‘**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 and any singular noun shall be understood to include the plural as and when appropriate.

1.3 The AIAC administers the resolution of disputes under these Rules.

1.4 These Rules are made by the Chairman of the AIAC and shall come into force on 1 January 2018 and, unless otherwise agreed by the parties, shall apply to any arbitration or mediation which is commenced on or after that date.

## **PART II – ARBITRATION**

### **Article 2 Overriding Objective and Application**

- 2.1 The overriding objective of this Part of these Rules is to obtain the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense.
- 2.2 Where parties have agreed to refer any dispute to the AIAC or to arbitration under the AIAC Rules, the parties shall be deemed to have agreed that the arbitration shall be conducted pursuant to and administered by the AIAC in accordance with this Part of these Rules, or such amended rules as are in force at the date of the commencement of the arbitration or, if earlier, the filing of an application for the appointment of an Emergency Arbitrator.
- 2.3 Unless the parties otherwise agree, and subject to Article 27.11, the Registrar and the Tribunal shall keep the arbitration and any Award confidential.
- 2.4 Throughout the proceedings, the parties, the Chairman, the AIAC, the Registrar and the Tribunal shall act in accordance with the overriding objective and in the spirit of these Rules.

### **Article 3 Time and Notices**

- 3.1 Time periods specified in these Rules shall start to run on the day following the day when a notice or communication is received, unless the Registrar or the Tribunal specifically provide otherwise.
- 3.2 Unless the Registrar or Tribunal provide otherwise, or unless the parties agree otherwise and inform the Registrar and Tribunal (if applicable) in writing, any period of time is to be calculated in accordance with Alma-Ata Time (UTC+6).
- 3.3 If the last day of any such period is an official holiday or a non-business day at the place where the notice or communication is received, the period shall be extended until the first business day which follows.
- 3.4 Official holidays and non-business days occurring during the running of the period of time shall otherwise be included for the purposes of calculating the period.
- 3.5 Any notice or other communication required under these Rules shall be in writing (a '**written communication**').
- 3.6 Any written communication may be delivered personally or transmitted by any method (including any electronic method) that provides a record of the written communication's delivery.
- 3.7 Unless otherwise agreed by the parties:
  - (1) any written communication is deemed to have been received if it is delivered:
    - (a) in person to the addressee or an authorised representative of the addressee;

- (b) to the addressee's place of business, habitual residence or published mailing address (including a published email address);
    - (c) to any address agreed by the parties;
    - (d) in accordance with previous practice between the parties; or
    - (e) if, after reasonable efforts, none of the above methods are possible, to the addressee's last-known place of business or habitual residence;
  - (2) any written communication is deemed to have been received on the day it is delivered in accordance with this Article.
- 3.8 Except where these Rules provide otherwise, the Registrar may extend any time limit set out in these Rules.

#### **Article 4 Request for Arbitration**

- 4.1 A party that wishes to commence an arbitration under these Rules (**the Claimant**) against any other party or parties (**Respondents**) must file with the Registrar a Request for Arbitration.
- 4.2 A Request for Arbitration must be filed with the Registrar in electronic format in accordance with any relevant Practice Direction.
- 4.3 A Request for Arbitration must contain:
- (1) the names, addresses, telephone and fax numbers (if applicable) and email addresses of all the parties and of their legal representatives;
  - (2) a short summary of the dispute;
  - (3) a short statement of the relief sought by the Claimant, including a statement of the estimated monetary value of the claim;
  - (4) a copy or citation of the arbitration agreement sought to be invoked;
  - (5) a statement of any proposed procedural matters relating to the arbitration, which may include:
    - (a) the seat of the arbitration;
    - (b) the language of the arbitration; and
    - (c) the number of arbitrators, their qualifications and identities;
  - (6) the name, address, telephone number and email address of any arbitrator appointed or proposed by the Claimant;
- 4.4 Together with the Request for Arbitration, the Claimant must confirm that the applicable registration fee has been or is being paid to the Registry.
- 4.5 If the registration fee is not paid at the time the Claimant files its Request for Arbitration, the Registrar will set a time period within which the Claimant must pay the registration fee. If the registration fee is not paid within this time period, the Registrar will undertake no further action on the Request for Arbitration.

- 4.6 The Claimant shall at the same time as it files its Request for Arbitration send a copy of the Request for Arbitration and all accompanying documents to the Respondent(s) and shall notify the Registrar of the date on which this was done and the method of delivery.
- 4.7 Unless the parties agree otherwise, an arbitration is commenced on the date on which a Request for Arbitration substantially complying with Article 4.3 is received by the Registrar (**'the Commencement Date'**) and the parties are deemed to so agree, for the purposes of the Arbitration Regulations, Article 31. The AIAC shall notify the parties of the Commencement Date.

## **Article 5 Answer**

- 5.1 Within:
- (1) 28 days of receipt of the Request of Arbitration; or
  - (2) such other period as the parties agree or the Registrar directs;
- the Respondent shall file an Answer to the Request for Arbitration with the Registrar and send a copy to the Claimant.
- 5.2 The Answer should contain:
- (1) any objections concerning the existence, validity or applicability of the arbitration agreement;
  - (2) an admission or denial of the relief sought in the Request for Arbitration;
  - (3) a preliminary statement of any counterclaims or defences by way of set-off, including a statement of the estimated monetary value of such counterclaims or set-offs;
  - (4) where any counterclaims or set-offs are made under a different agreement to that containing the arbitration agreement, a description of each agreement and any arbitration agreement under which each counterclaim or set-off is made;
  - (5) a statement of any comments on procedural matters relating to the arbitration, which may include:
    - (a) the seat of the arbitration;
    - (b) the language of the arbitration; and
    - (c) the number of arbitrators, their qualifications and identities.
  - (6) the name, address, telephone number and email address of any arbitrator appointed or proposed by the Respondent.
- 5.3 Failure by a Respondent to submit an Answer shall not prevent the arbitration from proceeding.

## Article 6 Multiple Parties and Contracts

### Joinder

- 6.1 Where more than two parties are bound by the arbitration agreement, one or more parties may request an arbitration in the same Request against one or more respondents (whether or not jointly represented), and references in these Rules and any relevant arbitration agreement to 'Claimant' and 'Respondent' shall be interpreted to include the plural as applicable.
- 6.2 A party to an arbitration may apply to join one or more additional parties to the arbitration as a Claimant or as a Respondent, if all parties, including the additional party, consent to the joinder of the additional party.
- 6.3 An application under Article 6.2 should be made to the Tribunal as soon as practicable after its constitution.
- 6.4 An application under Article 6.2 should:
- (1) be in writing;
  - (2) be sent to all other parties and the additional party (if applicable);
  - (3) be made as soon as possible; and
  - (4) contain:
    - (a) the names, addresses, telephone and fax numbers (if applicable) and email addresses of all the parties (including additional parties) and of their legal representatives;
    - (b) a statement as to whether the additional party is sought to be joined as a Claimant or a Respondent;
    - (c) a copy or citation of either:
      - (i) the arbitration agreement to which the additional party is bound and which is sought to be invoked; or
      - (ii) the consent of the additional party to joinder pursuant to Article 6.2;
    - (d) a brief statement of the facts and legal basis supporting the application; and
    - (e) a statement of any further relevant comments on procedural matters relating to the arbitration.
- 6.5 The Tribunal shall, after considering the views of all parties, including the additional party to be joined, and having regard to the overriding objective, decide whether to grant, in whole or in part, any application for joinder under this Article.
- 6.6 Where an application for joinder is granted under this Article, the date of receipt of the application for joinder by the Tribunal may be deemed to be the date of commencement of the arbitration in respect of the additional party.

6.7 Where an application for joinder is granted, the requisite filing fee under any applicable Practice Direction shall be payable for any additional claims or counterclaims.

### **Multiple contracts**

6.8 Parties may make claims arising out of or in connection with more than one contract in a single arbitration.

6.9 Any party may object to all of the claims being made being determined in a single arbitration. Any such objection should be made to the Tribunal as soon as practicable.

### **Consolidation**

6.10 At the request of a party the Tribunal may decide to consolidate a newly commenced arbitration with a pending arbitration, if:

- (1) the parties agree to consolidate;
- (2) all the claims are made under the same arbitration agreement; or
- (3) where the claims are made under more than one arbitration agreement, the relief sought arises out of the same transaction or series of transactions and the Registrar considers the arbitration agreements to be compatible.

6.11 In deciding whether to consolidate, the Tribunal shall consult with the parties and any constituted Arbitral Tribunal and shall have regard to:

- (1) the stage of the pending arbitration;
- (2) the efficiency and expeditiousness of the proceedings; and
- (3) any other relevant circumstances.

6.12 Where the Tribunal decides to consolidate, any arbitrator already appointed may be released. Such release shall not affect the validity of any act done or order or Award made by the arbitrator before his appointment was revoked.

## **Article 7 Jurisdiction of the Tribunal**

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

7.2 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 necessarily entail 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.

7.3 Any objection that the Tribunal does not have jurisdiction shall be raised as soon as practicable and no later than in a Statement of Defence or in a Statement of Defence to a Counterclaim.

7.4 Any objection that the Tribunal is exceeding the scope of its jurisdiction shall be raised within 10 days after the matter alleged to be beyond the scope of the Tribunal's jurisdiction arises during the arbitral proceedings.

7.5 The Tribunal may rule on an objection referred to in Articles 7.3 and 7.4 either as a preliminary question or in an Award on the merits.

## **Article 8 Number and Appointment of Arbitrators**

8.1 The parties may agree on the number of arbitrators provided the number of arbitrators is one or three.

8.2 Where the parties have not agreed a number of arbitrators, there shall be a sole arbitrator, unless the complexity of the claim calls for three arbitrators.

8.3 The parties may agree on a procedure for the appointment of the Tribunal, including an application to the Chairman of the AIAC.

8.4 Where the parties have not agreed on a procedure for the appointment of the Tribunal, or where the parties have not followed such a procedure within any relevant time limit (either agreed or set by the AIAC Chairman), the Tribunal shall be appointed as follows:

(1) Where the Tribunal is to consist of a sole arbitrator, the Registrar will ask the parties jointly to appoint a sole arbitrator within 10 days for appointment. If the parties fail jointly to appoint a sole arbitrator, the AIAC Chairman will appoint a sole arbitrator;

(2) Where the Tribunal is to consist of more than one arbitrator and there are two parties to the arbitration, each party shall appoint an equal number of arbitrators within 10 days of the AIAC Chairman's request for such appointment. The AIAC Chairman will appoint the Chairman of the Tribunal. If a party fails to appoint an arbitrator within the said 10 days the AIAC Chairman shall appoint an arbitrator on that party's behalf;

(3) Where the Tribunal is to consist of more than one arbitrator and there are more than two parties to the arbitration, the Claimants jointly and the Respondents jointly shall appoint an equal number of arbitrators within 10 days of the AIAC Chairman's request for such appointment. The AIAC Chairman will appoint the Chairman of the Tribunal. If the Claimants or the Defendants fail jointly to nominate an arbitrator within the said 10 days, the AIAC Chairman shall appoint the whole Tribunal;

(4) If the parties are not all of the same nationality, the sole arbitrator or the Chairman of the Tribunal shall be of a different nationality to that of any of the parties, unless the parties agree otherwise.

8.5 In appointing any arbitrator, the AIAC Chairman shall have due regard to any qualifications required of the arbitrator agreed by the parties and to the overriding objective.

- 8.6 The AIAC shall establish a list of experienced international arbitrators (“the AIAC Panel”) from which the parties and the AIAC Chairman may make appointments.

## **Article 9 Independence of Arbitrators**

- 9.1 Every arbitrator must be and remain independent and impartial.
- 9.2 Before being appointed, a prospective arbitrator shall disclose to the party proposing to appoint them any circumstances of which they are aware that may give rise to justifiable doubts as to their independence or impartiality.
- 9.3 Once appointed, an arbitrator must submit to the Registrar a signed statement of acceptance, independence, impartiality and availability disclosing any circumstances of which they are aware that may give rise to justifiable doubts as to their independence or impartiality. The Registrar shall send a copy of the statement to the parties and any other arbitrators.
- 9.4 Any appointed arbitrator shall immediately inform the Registrar, the parties, and any other members of the Tribunal of any circumstances which arise or of which he or she becomes aware during the course of the arbitration that may give rise to justifiable doubts as to his independence or impartiality.

## **Article 10 Challenges to Arbitrators**

- 10.1 Subject to the provisions of this Article, a party may challenge any arbitrator if circumstances exist that give rise to justifiable doubts as to that arbitrator’s impartiality or independence or if the arbitrator does not possess the required qualifications agreed by the parties.
- 10.2 A party may challenge an arbitrator it has appointed, or in whose appointment it has participated, only for reasons it becomes aware of after the appointment was made.
- 10.3 A party wishing to challenge an arbitrator shall submit a written statement to the Tribunal stating the reasons for the challenge within 14 days from the date the circumstances giving rise to the challenge became known to the party. The party wishing to challenge must at the same time send a copy of its written statement to all other parties. Failure to challenge an arbitrator within 14 days of becoming aware of the relevant circumstances constitutes a waiver of the party’s right to make the challenge.
- 10.4 Any other party may make written representations to the Tribunal in respect of a challenge. Any such written representations must be sent to all other parties and be made within 14 days of receipt of the challenging party’s written statement.
- 10.5 If all other parties agree to the challenge, the arbitrator shall resign.
- 10.6 In all other cases, the Tribunal shall take a decision on the challenge having regard to the overriding objective.

- 10.7 Any decision of the Tribunal rejecting a challenge shall be without prejudice to any right a party may have to apply within seven days to the AIFC Court under the Arbitration Regulations, Article 22(3).

## **Article 11 Release and Replacement of Arbitrators**

- 11.1 An arbitrator is released from the terms of his or her appointment and ceases to be a member of the Tribunal when:
- (1) an arbitrator delivers a notice of resignation to the Registrar (whether pursuant to Article 10.5 or otherwise);
  - (2) the Tribunal determines to release an arbitrator upon a successful challenge pursuant to Article 10.6;
  - (3) the AIFC Court upholds a challenge under the Arbitration Regulations, Article 22(3); or
  - (4) the arbitrator is otherwise unable or fails to perform his or her functions as an arbitrator.
- 11.2 Where:
- (1) an arbitrator appointed by a party or parties ceases to be a member of the Tribunal pursuant to Article 11.1, that party or those parties shall appoint a replacement arbitrator in accordance with Article 8; and
  - (2) an arbitrator appointed by the AIAC Chairman ceases to be a member of the Tribunal pursuant to Article 11.1, the AIAC Chairman will appoint a replacement arbitrator in accordance with Article 8.
- 11.3 Whenever an arbitrator has been replaced, the newly constituted Tribunal shall decide the extent to which proceedings are to be repeated having regard to the overriding objective.

## **Article 12 Conduct of Arbitral Proceedings**

- 12.1 When:
- (1) the Tribunal has been appointed; and
  - (2) any deposit in respect of costs required by the Registrar or by applicable Practice Direction has been paid;
- the Registrar will refer the case to the Tribunal.
- 12.2 The Tribunal shall conduct the arbitration in such manner as it considers appropriate, subject to the Arbitration Regulations and these Rules and any agreement of the parties.
- 12.3 The Tribunal shall conduct the arbitration in accordance with the overriding objective and shall ensure that each party has an equal and reasonable opportunity to present its case.

- 12.4 As soon as practicable after the constitution of the Tribunal, the Tribunal shall convene a case management conference with the parties, in person or by any other suitable means, to establish, organise and schedule the procedures that will be most appropriate and efficient for the case.
- 12.5 The Tribunal may convene further case management conferences and issue revised timetables as it deems appropriate.
- 12.6 The Tribunal shall send a copy of the timetable and any subsequent modifications of it to the parties and to the Registrar.
- 12.7 Unless otherwise agreed by the parties, the Chairman of the Tribunal may make procedural rulings alone, subject to revision by the Tribunal.
- 12.8 All statements, documents or other information supplied to the Tribunal by a party shall simultaneously be communicated to all other parties.

### **Article 13 Statements of Case**

- 13.1 Unless the Tribunal directs otherwise, the parties shall file statements of case in accordance with this Article.
- 13.2 All statements of case required to be filed in accordance with this Article must be sent to the Tribunal, Registry, and all other parties.
- 13.3 The Claimant shall, within such period of time as is ordered by the Tribunal, file a Statement of Claim that shall contain:
- (1) a statement of the facts on which the Claimant relies in support of its claim;
  - (2) a statement of the legal principles on which the Claimant relies in support of its claim; and
  - (3) a statement of the relief sought by the Claimant, and where such relief is an amount of money, the quantum of such claim.
- 13.4 The Respondent shall, within such period of time as is ordered by the Tribunal, file a Statement of Defence that shall contain:
- (1) any objections concerning the existence, validity, or applicability of the arbitration agreement or any other challenge to the Tribunal's jurisdiction to try the claim;
  - (2) a statement whether, and to what extent, the Respondent admits or denies the Claimant's claim; and
  - (3) where the Respondent denies all or part of the Claimant's claim:
    - (a) a statement of the facts on which the Respondent relies in defence to the Claimant's claim; and
    - (b) a statement of any legal principles on which the Defendant relies in defence to the Claimant's claim.

- 13.5 If a Respondent's defence to a claim includes a defence by way of counterclaim, the Respondent's Statement of Defence must include a Statement of Counterclaim that shall contain:
- (1) a statement of the facts on which the Respondent relies in support of its counterclaim;
  - (2) a statement of the legal principles on which the Respondent relies in support of its counterclaim; and
  - (3) a statement of the relief sought by the Respondent, and where such relief is an amount of money, the quantum of such claim.
- 13.6 Where a Respondent files a Statement of Counterclaim, the party against whom the counterclaim is made shall file, within such period of time as is ordered by the Tribunal, a Statement of Defence to Counterclaim containing the relevant matters set out in the subparagraphs of Article 13.4.
- 13.7 The Tribunal may order the parties to submit further Statements of Case at any time.
- 13.8 At any time prior to the close of proceedings in accordance with Article 26 a party may submit an amended or supplemented Statement of Case so long as the party's amended case falls within the relevant arbitration agreement. The Tribunal may refuse to accept an amendment or supplement to a Statement of Case if it would be contrary to the overriding objective to do so.
- 13.9 If a Claimant fails to file a Statement of Claim within the relevant period of time, the Tribunal may dismiss the Claimant's claim and, if no other claims or counterclaims remain, terminate the arbitration.
- 13.10 If a Respondent fails to file a Statement of Defence within the relevant period of time, the Tribunal may proceed with the arbitration and make an award.

## **Article 14 Evidence**

- 14.1 Within such period of time as is ordered by the Tribunal, the parties shall submit to the Tribunal and to the other parties the evidence on which they rely.
- 14.2 The Tribunal may order any party to produce to the Arbitral Tribunal and to other parties documents or copies of documents in their possession, custody or power which the Arbitral Tribunal decides to be relevant.
- 14.3 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.

## **Article 15 Seat**

- 15.1 If the parties do not agree the seat of the arbitration, the seat shall be the AIFC.
- 15.2 The Tribunal may conduct hearings at any place it considers appropriate, including by video conference. The location of such hearings will not alter the seat of the arbitration determined in accordance with Article 15.1.

## **Article 16 Language**

- 16.1 If the parties do not agree the language of the arbitration, the Tribunal will determine the language of the arbitration having regard to the circumstances of the case and the overriding objective.
- 16.2 If a party submits a document written in a language other than the language 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.

## **Article 17 Representatives**

- 17.1 Any party may be represented in an arbitration by legal practitioners or any other person duly authorised by the party.
- 17.2 The Registrar or the Tribunal may require proof of authority of any person to represent a party.
- 17.3 After the constitution of the Tribunal, any change by a party to its representation must be notified to all other parties, the Tribunal and the Registrar.

## **Article 18 Applicable Law**

- 18.1 The Tribunal shall decide the merits of the dispute on the basis of the law in the arbitration agreement. In the absence of such agreement, the Tribunal shall apply the law that it considers most appropriate with regard to the circumstances of the case and the overriding objective.
- 18.2 Any designation by the parties of the law of a given state shall be deemed to refer to the substantive law of that state, not to its conflict of laws rules.

## **Article 19 Hearings**

- 19.1 Unless the parties have agreed to dispense with oral hearings the Tribunal shall hold a hearing for the presentation of evidence and for oral submissions on the merits of the dispute, including on any issue as to jurisdiction.
- 19.2 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.
- 19.3 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 an Award based on the submissions and evidence before it.
- 19.4 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 subject only to Article 27.11.

## **Article 20 Witnesses**

- 20.1 The Tribunal may require the parties to give notice of the identity of witnesses, including expert witnesses, whom the parties intend to produce at any hearing, the subject matter of their testimony and its relevance to the dispute.

- 20.2 The Tribunal may allow, refuse or limit the appearance of witnesses to give oral evidence at any hearing.
- 20.3 Any witness who gives oral evidence at a hearing may be questioned by each of the parties, their representatives and the Tribunal in such manner as the Tribunal may determine.
- 20.4 The Tribunal may direct the testimony of witnesses to be presented in written form, either as signed statements or sworn affidavits or in any other form.
- 20.5 Subject to Article 20.2, 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 evidence as it thinks fit, having regard to the circumstances of the case and the overriding objective.

### **Article 21 Tribunal-appointed Experts**

- 21.1 The Tribunal may, after consulting the parties and with regard to the circumstances of the case and the overriding objective, appoint one or more experts to provide an opinion to the Tribunal on any expert issue set out by the Tribunal in writing.
- 21.2 The Tribunal may require any party to provide any relevant information or make available any relevant documents, goods or property to an expert appointed under Article 21.1.
- 21.3 The Tribunal will, upon receipt of a report from an expert appointed under Article 21.1, provide a copy to all parties.
- 21.4 The parties may:
- (1) make written comments in respect of an expert's report to the Tribunal made under this Article; and
  - (2) examine such expert either by way of written questions or at a hearing as ordered by the Tribunal.

### **Article 22 Sanctions for Default and Waiver**

- 22.1 If a party fails to comply with any provision of, or requirement under, this part of these Rules or any procedural order given by the Tribunal, the Tribunal may draw such inferences as it considers appropriate.
- 22.2 A party who, during the arbitration, fails to object without delay to any failure to comply with the arbitration agreement, these Rules or any other rules applicable to the proceedings, or any procedural order given by the Tribunal, shall be deemed to have waived the right to object to such failure.

### **Article 23 Additional Powers of the Tribunal**

- 23.1 Unless otherwise agreed by the parties, in addition to the 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:

- (1) order the correction or rectification of any contract, subject to the law governing such contract;
- (2) extend or abbreviate any time limits prescribed under these Rules or by its procedural orders;
- (3) conduct such enquiries as may appear to the Tribunal to be necessary or expedient;
- (4) order the parties to make any property or item in their possession or control available for inspection;
- (5) order the preservation, storage, sale or disposal of any property or item which is or forms part of the subject matter of the dispute;
- (6) 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;
- (7) issue an order or Award for the reimbursement of any unpaid deposits towards the costs of the arbitration;
- (8) direct any party or person to give evidence by affidavit or in any other form;
- (9) 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;
- (10) order any party to provide security for legal or other costs by way of deposit or bank guarantee or in any other manner and upon such terms as the Tribunal thinks fit;
- (11) order any party to provide security for all or part of any amount in dispute in the arbitration by way of deposit or bank guarantee or in any other manner and upon such terms as the Tribunal thinks fit;
- (12) 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;
- (13) 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; and
- (14) determine any claim of legal or other privilege.

## **Article 24 Interim Relief**

24.1 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.

- 24.2 The Tribunal may order the party requesting interim relief to provide appropriate security by way of deposit or bank guarantee or in any other manner and upon such terms as the Tribunal thinks fit in connection with the relief sought.
- 24.3 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 Article 32.
- 24.4 A party in whose favour an interim order or Award has been granted may, with the written permission of the Tribunal, request from the AIFC Court of First Instance an order enforcing the Tribunal's order or Award or any part thereof. Any request for permission or enforcement made under this Article must be simultaneously copied to all other parties.
- 24.5 Unless the Tribunal at any time directs otherwise, the party making a request to the AIFC Court of First Instance under Article Article 24 shall be entitled to recover in the arbitration any legal costs and AIFC Court of First Instance fees reasonably incurred.

## **Article 25 Early Determination**

- 25.1 A party may apply to the Tribunal for the early determination of an issue of fact or law by an abbreviated procedure without undertaking the procedural steps otherwise adopted for the arbitration.
- 25.2 An application under Article 25.1 may include an application for the early dismissal by the Tribunal of a claim or defence where:
- (1) the claim or defence has no real prospect of success; or
  - (2) the claim or defence is manifestly outside the jurisdiction of the Tribunal.
- 25.3 The application must:
- (1) specify the grounds relied on and the form of abbreviated procedure proposed;
  - (2) explain why that procedure is compatible with the overriding objective; and
  - (3) be sent to the Tribunal, the Registrar and all other parties.
- 25.4 After providing all other parties an opportunity to submit comments, the Tribunal may issue an order either dismissing the request or fixing the expedited procedure in the form it deems appropriate.
- 25.5 In determining whether to grant a request for early determination, the Tribunal shall have regard to all the circumstances of the case and the overriding objective.

## **Article 26 Close of Proceedings**

26.1 The Tribunal shall declare the proceedings closed when it is satisfied that the parties have had a reasonable opportunity to present their cases. In exceptional circumstances, prior to the making of the final award, the Tribunal may reopen the proceedings on its own motion, or on the application of a party.

## **Article 27 Awards**

27.1 Where the Tribunal consists of more than one arbitrator, any Award or other decision shall be made by a majority of the arbitrators or, failing a majority, by the Chairman of the Tribunal.

27.2 The Tribunal shall make its Award in writing, and, unless otherwise agreed by the parties, shall state the reasons upon which the Award is based.

27.3 The Tribunal may make separate Awards on different issues at different times.

27.4 An award shall:

- (1) state the date of the Award;
- (2) state the seat of the arbitration; and
- (3) be signed by the arbitrator(s).

27.5 If an arbitrator fails to sign an award, the signatures of the majority of the arbitrators or, failing a majority, of the Chairman of the Tribunal shall be sufficient, provided that the reason for the omission of the signature is stated in the award.

27.6 The Tribunal shall send a copy of the award to each of the parties and to the Registrar.

27.7 If any arbitrator fails to participate in the deliberations of the Tribunal on any issue having been given a reasonable opportunity to do so, such failure will not preclude a decision being taken by the other arbitrators.

27.8 The Tribunal may award simple or compound interest on any sum which is awarded in 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 parties agree or the Tribunal determines to be appropriate.

27.9 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 released and the arbitration concluded upon full settlement of the Costs of the Arbitration.

27.10 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 carry out the Award without delay. The parties 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.

- 27.11 The AIAC may, with the consent of the Tribunal, publish any Award with the names of the parties and other identifying information redacted.
- 27.12 Where a party objects to the publication of an Award in accordance with Article 27.11:
- (1) They may apply to the Tribunal for an order that the relevant Award be sealed stating the reasons why such an order is required; and
  - (2) The Tribunal may seal the Award even if its publication in anonymised form would be inconsistent with the overriding objective.
- 27.13 A final Award will normally be made not later than six months from the date the case was referred to the Tribunal pursuant to Article 12.1. The Registrar may extend this time limit upon request by the Tribunal.

## **Article 28 Correction of Awards and Additional Awards**

- 28.1 Within 30 days of receiving an Award, a party may, upon notice to all other parties, request that the Tribunal correct any clerical, typographical or computational errors in the Award, or provide an interpretation of a specific point or part of the Award.
- 28.2 After giving the other party an opportunity to comment on a request under Article 28.1, and if the Tribunal considers the request justified, it may make any correction or provide any interpretation within 30 days of receiving the request so to do.
- 28.3 The Tribunal may correct any error of the type referred to in Article 28.1 on its own motion within 30 days of the date of an Award.
- 28.4 Any correction or interpretation of an Award shall be in writing and shall comply with the requirements of Article 27.
- 28.5 Within 30 days of receiving an Award, a party may, upon notice to the other party, request that the Tribunal make an additional Award on claims presented in the arbitration but not determined in the Award.
- 28.6 After giving the other party an opportunity to comment on the request for an additional Award under Article 28.5, and if the Tribunal considers the request justified, it shall make the additional Award within 60 days of receiving the request.
- 28.7 Any additional Award shall be in writing and shall comply with the requirements of Article 27.
- 28.8 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 Article.

## **Article 29 Costs**

- 29.1 The Costs of the Arbitration consist of:
- (1) the fees of the Tribunal;

- (2) the Administrative Fee of the AIAC; and
  - (3) the expenses of the Tribunal and the AIAC.
- 29.2 The parties are jointly and severally liable for the Costs of the Arbitration.
- 29.3 The Costs of the Arbitration shall be ascertained in accordance with the Schedule of Fees and any relevant Practice Direction in force at the time of commencement of the arbitration.
- 29.4 The Registrar shall fix the amount of the deposit 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.
- 29.5 The Registrar may from time to time direct parties to make further deposits towards the Costs of the Arbitration.
- 29.6 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.
- 29.7 If a party fails to pay the deposits directed by the Registrar either wholly or in part:
  - (1) the Tribunal may suspend its work and the Registrar may suspend the AIAC's administration of the arbitration, in whole or in part; and
  - (2) 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.
- 29.8 The Costs of the Arbitration shall be finally determined by the Registrar at the conclusion of the proceedings. 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. Any accrued interest shall be retained by the AIAC.
- 29.9 Unless otherwise agreed by the parties:
  - (1) the Tribunal shall state in the Award the total amount of the Costs of the Arbitration; and
  - (2) the Tribunal shall determine in the Award the apportionment of the Costs of the Arbitration as between the parties.
- 29.10 The Tribunal has the power to order in its Award that all or a part of the legal or other costs of a party be paid by another party.

## **Article 30 Limitation of Liability**

- 30.1 Any arbitrator, including any Emergency Arbitrator appointed in accordance with Article 32, any person appointed by the Tribunal, including any administrative secretary and any expert, the Chairman, Registrar, and any directors, officers and employees of the AIAC, shall not be liable to any person for any negligence, act or omission in connection with any arbitration administered by the AIAC in accordance with this Part of these Rules unless they are shown to have caused damage by intentional and deliberate wrongdoing.
- 30.2 The AIAC, including the Chairman, Registrar, 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 the AIAC.
- 30.3 No party shall be entitled to make the Chairman, Registrar, any director, officer, employee of the AIAC, 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 the AIAC in accordance with this Part of these Rules.

## **Article 31 Expedited Procedure**

- 31.1 Prior to the constitution of the Tribunal, a party may file an application with the Registry for the arbitral proceedings to be conducted in accordance with the Expedited Procedure under this Article, if:
- (1) the amount in dispute does not exceed the aggregate equivalent of USD 5,000,000, including the claim, counterclaim and any defence of set-off;
  - (2) the parties so agree; or
  - (3) in cases of exceptional urgency.
- 31.2 The party applying for the arbitral proceedings to be conducted in accordance with the Expedited Procedure under this Article shall, at the same time as it files its application with the Registrar, send a copy of the application to the other parties.
- 31.3 Where a party has filed an application with the Registrar under this Article, and where the Registrar determines, after considering the views of the parties, and having regard to the circumstances of the case and the overriding objective, that the arbitral proceedings shall be conducted in accordance with the Expedited Procedure and thereafter:
- (1) the case shall be referred to a sole arbitrator, unless the AIAC Chairman determines otherwise;

- (2) the Tribunal may, in consultation with the parties and having regard to the overriding objective, decide whether 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 and/or as for any oral argument;
  - (3) the final Award shall be made within 6 months from the date when the Tribunal is constituted unless, in exceptional circumstances, the Registrar extends the time for making such final Award; and
  - (4) 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.
- 31.4 By agreeing to arbitration under this Part of these Rules, the parties agree that, where arbitral proceedings are conducted in accordance with the Expedited Procedure under this Article, the rules and procedures set forth in Article 31.3 shall apply even in cases where the arbitration agreement contains contrary terms.
- 31.5 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 to the overriding objective, and in consultation with the Registrar, order that the arbitral proceedings shall no longer be conducted in accordance with the Expedited Procedure.
- 31.6 Where the Tribunal decides to grant an application under Article 31.5, the arbitration shall continue to be conducted by the same Tribunal that was constituted to conduct the arbitration in accordance with the Expedited Procedure.

## **Article 32 Emergency Arbitrators**

- 32.1 A party that wishes to seek emergency interim relief may, concurrent with or following the filing of a Request for Arbitration but prior to the constitution of the Tribunal, file an application for emergency interim relief with the Registrar.
- 32.2 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.
- 32.3 The application for emergency interim relief shall state:
- (1) the nature of the relief sought;
  - (2) the reasons why the party claims to be entitled to such relief; and
  - (3) 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.

- 32.4 Any application for emergency interim relief shall be accompanied by payment of any administration fee prescribed by Practice Direction and the requisite deposits under these Rules towards the Emergency Arbitrator's fees and expenses for proceedings pursuant to this Article. 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.
- 32.5 The Registrar shall, if he determines that the AIAC should accept the application for emergency interim relief, ask the AIAC Chairman to appoint an Emergency Arbitrator within one day of receipt by the Registrar of such application and payment of the administration fee and deposits and the AIAC Chairman will do so.
- 32.6 If the parties have agreed on the seat of the arbitration, such seat shall be the seat of the proceedings for emergency interim relief.
- 32.7 If the parties have not agreed on the seat of the arbitration, the seat of the proceedings for emergency interim relief shall be the AIFC, without prejudice to the Tribunal's determination of the seat of the arbitration under Article 15.
- 32.8 Prior to accepting appointment, a prospective Emergency Arbitrator shall disclose to the Registrar and to the parties 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.
- 32.9 An Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless otherwise agreed by the parties.
- 32.10 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.
- 32.11 The Emergency Arbitrator shall have the powers vested in the Tribunal under these Rules, including the authority to rule on his own jurisdiction.
- 32.12 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.
- 32.13 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.
- 32.14 The Emergency Arbitrator shall give summary reasons for his decision in writing.

- 32.15 The Emergency Arbitrator may modify or vacate the preliminary order, the interim order or Award for good cause after hearing the parties thereon.
- 32.16 The Emergency Arbitrator shall have no power to act after the Tribunal is constituted. After hearing the parties thereon, 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.
- 32.17 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.
- 32.18 Any interim order or Award by the Emergency Arbitrator may be conditional on the provision by the party seeking such relief of appropriate security.
- 32.19 The parties agree that an order or Award by an Emergency Arbitrator pursuant to this Article shall be binding on the parties from the date it is made, and undertake to carry out the interim order or Award without delay. Subject to Article 32.16 above, the parties also 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.
- 32.20 The costs associated with any application pursuant to this Article may initially be determined and apportioned by the Emergency Arbitrator, subject to the power of the Tribunal to determine finally the apportionment of such costs.
- 32.21 The Registrar may abbreviate any time limits under this Article.

## PART III – MEDIATION

### Article 33 Overriding Objective and Application

- 33.1 This Part of these Rules provides for the appointment of a neutral third party ('a mediator') to assist parties in settling a dispute through a structured negotiation process ('a mediation').
- 33.2 The overriding objective of this Part of these Rules is to facilitate the prompt, consensual and cost-effective settlement of disputes.

### Article 34 Prior Agreements to Mediate

- 34.1 Where, before a dispute has arisen, parties have agreed to mediate under this Part of these Rules (a '**Prior Agreement**') or otherwise, a party may request a mediation under this Article.
- 34.2 The party or parties that wish to commence a mediation must file a Request for Mediation with the Registry.
- 34.3 A Request for Mediation must be filed with the Registrar in electronic format or in electronic and paper format in accordance with any relevant Practice Direction.
- 34.4 A Request for Mediation should contain:
- (1) the names, addresses, telephone and fax numbers (if applicable) and email addresses of all the parties and of their legal representatives (if known);
  - (2) a short summary of the dispute and the estimated value of any monetary claim;
  - (3) a copy or citation of the Prior Agreement; and
  - (4) the name and contact details of any proposed mediator.
- 34.5 If the Request for Mediation is not made by all parties to the Prior Agreement, the requesting party must send a copy of the Request for Mediation to the other party or parties.
- 34.6 At the same time as filing a Request for Mediation the registration fee prescribed by Practice Direction must be paid. If the registration fee is not paid at the time the Claimant files its Request for Mediation, the Registrar will set a time period within which the Claimant must pay the registration fee. If the registration fee is not paid within this time period, the Registrar will undertake no further action on the Request for Mediation.
- 34.7 The earliest date on which the Request for Mediation is received by the Registry and the registration fee is paid shall be the date on which the mediation commences ('the **Commencement Date**').
- 34.8 The Registrar will appoint a mediator in accordance with Article 36 as soon as practicable after the Commencement Date.

## **Article 35 No Prior Agreement to Mediate**

- 35.1 Where there is no Prior Agreement, a party may request a mediation under this Article.
- 35.2 The party or parties that wish to commence a mediation must file a Request for Mediation with the Registry.
- 35.3 A Request for Mediation must be filed with the Registrar in electronic format in accordance with any relevant Practice Direction.
- 35.4 A Request for Mediation should contain:
- (1) the names, addresses, telephone and fax numbers (if applicable) and email addresses of all the parties and of their legal representatives (if known);
  - (2) a short summary of the dispute and the estimated value of any monetary claim; and
  - (3) the name and contact details of any proposed mediator.
- 35.5 At the same time as filing a Request for Mediation the registration fee prescribed by Practice Direction must be paid. A Request for Mediation in respect of which no registration fee is paid will be disregarded by the Registry.
- 35.6 If the Request for Mediation under this Article is not made by all the parties to the dispute:
- (1) the party or parties wishing to commence the mediation must, at the same time as filing the Request for Mediation with the Registry, send a copy of the Request for Mediation and any accompanying documents to any parties who have not made the Request for Mediation; and
  - (2) a party who receives a copy of the Request for Mediation may, within 14 days of receiving the Request for Mediation, advise the Registrar that they consent to the mediation of the dispute in accordance with this Part of these Rules.
- 35.7 If a party does not consent to mediation in accordance with Article 35.6(2) or does not respond, there shall be no mediation under this Part of these Rules and the Registrar will advise the parties accordingly.
- 35.8 Where there is no Prior Agreement, the date on which the mediation commences (the '**Commencement Date**') shall be:
- (1) Where all the parties to the dispute made the Request for Mediation, the earliest date on which the Request for Mediation is received by the Registry and the registration fee is paid; or
  - (2) The earliest date on which all parties to the dispute have provided consent under Article 35.6(2) and the registration fee is paid.
- 35.9 The Registrar will appoint a mediator in accordance with Article 36 as soon as practicable after the Commencement Date.

## **Article 36 Appointment of a Mediator**

- 36.1 The parties may jointly nominate a mediator for appointment by the Registrar.
- 36.2 In the absence of a joint nomination:
- (1) the Registrar shall, after consulting the parties and with due regard to any nomination by a party or other method or criteria of selection agreed by the parties, propose a list of mediators to the parties;
  - (2) the parties may jointly nominate a mediator from such list for appointment by the Registrar; or
  - (3) failing which, the Registrar shall appoint a mediator from the AIAC Mediator Panel.
- 36.3 Before appointment, the prospective mediator shall provide to the Registrar:
- (1) a curriculum vitae; and
  - (2) a signed declaration that the prospective mediator either:
    - (a) knows of no circumstances capable of giving rise to any justifiable doubt as to the mediator's impartiality or independence; or
    - (b) knows of circumstances capable of giving rise to justifiable doubt as to the mediator's impartiality or independence and that the mediator has disclosed such circumstances as part of his declaration.
- 36.4 The documents referred to in Article 36.3 shall be provided by the Registry to the parties.
- 36.5 Where a mediator has made a disclosure under Article 36.3(2)(b), or where a party otherwise knows of circumstances capable of giving rise to justifiable doubt as to the mediator's impartiality or independence, a party may object to the confirmation of a mediator's appointment within 7 days of receipt of the disclosure.
- 36.6 Where a party makes an objection under Article 36.5, the Registrar will appoint a different mediator in accordance with Articles 36.1 and 36.2.
- 36.7 Where no objection is received to the confirmation of the appointment of a mediator under Article 36.5, the Registrar will confirm the appointment of the mediator and inform the parties of such confirmation.
- 36.8 At the same time as providing the confirmation referred to in Article 36.7, the Registrar will inform the parties of how they should communicate with the mediator. The Registrar may ask the parties to communicate directly with the mediator by electronic or other means or to communicate with the mediator through the Registry by electronic means.
- 36.9 The mediator or the Registrar will liaise with the parties following the confirmation of the mediator's appointment to arrange a date and venue for the first mediation session to take place.

## **Article 37 Position Statements**

- 37.1 Unless the parties agree otherwise, each party should, not later than 7 days before the date of the first scheduled mediation session, provide to the mediator by the method provided under Article 36.8 a document (**'a Position Statement'**) setting out:
- (1) a summary of the background to the dispute;
  - (2) a brief statement of the party's case; and
  - (3) a list of issues to be resolved.
- 37.2 Each party must, at the same time, provide a copy of its Position Statement to every other party.

## **Article 38 Mediation Bundles**

- 38.1 Unless the parties agree otherwise, the parties should discuss, not later than 14 days before the mediation, the contents of a bundle of documents to be referred to at the mediation (**'the Mediation Bundle'**).
- 38.2 The contents of the Mediation Bundle should be limited to those documents (or extracts from longer documents) that are necessary for the mediator to understand the case or may otherwise need to be referred to at the mediation to facilitate the resolution of the dispute. The Mediation Bundle should not exceed 300 pages of text.
- 38.3 If the parties cannot agree the contents of the Mediation Bundle, those documents that are not agreed should be indicated as such in the contents to the Mediation Bundle.
- 38.4 The Mediation Bundle must be provided to the mediator by the method provided under Article 36.8 not less than 7 days before the date of the first scheduled mediation session.
- 38.5 The Mediation Bundle may be provided in electronic or paper format.

## **Article 39 Conduct of the Mediation**

- 39.1 The mediator may conduct the mediation in such manner as he sees fit, taking into consideration the wishes of the parties and the overriding objective.
- 39.2 The mediator may convene one or more mediation sessions to take place, in consultation with the parties. The mediator may liaise directly with the parties or through the Registry in order to arrange the time and venue of such sessions.
- 39.3 The mediator may convene a mediation session through the use of video-conferencing technology.
- 39.4 When a mediation session is convened, the parties must notify the mediator and all other parties of the identity of the person(s) who shall attend the mediation session on each party's behalf.

- 39.5 At the same time, each party must confirm to the mediator in writing either that:
- (1) one of the persons attending the mediation session on its behalf has authority to settle the dispute; or
  - (2) a person with authority to settle the dispute will be available to be contacted by the person attending the mediation session on the party's behalf at all times during which the mediation session will take place, and the identity, position and contact details of such person with authority.
- 39.6 The mediator may direct the parties to exchange one or more written statements before convening a mediation session, and may therefore set a date to be deemed the first scheduled mediation session for the purposes of the provision of Position Statements and Mediation Bundles under Article 37 and Article 38.
- 39.7 Any private communication between any party (or group of parties) and the mediator during the course of the mediation shall be confidential and may not be communicated to any other party to the mediation or any third party without the express consent of the party (or group of parties) to the private communication.
- 39.8 The parties may agree the language in which any mediation session is conducted. If the parties cannot agree, the mediator shall determine the language in which the mediation session shall be conducted.

#### **Article 40 Conclusion of the Mediation**

- 40.1 A mediation shall be deemed to have ended when:
- (1) a settlement has been signed pursuant to Article 41; or
  - (2) the parties agree to terminate the mediation; or
  - (3) the mediator terminates the mediation; or
  - (4) any time limit for a mediation under a Prior Agreement or subsequently agreed by the parties expires.
- 40.2 A mediator may terminate a mediation under Article 40.1(3) when it appears to the mediator that, in his or her judgment, the mediation is unlikely to resolve the dispute.

#### **Article 41 Settlement**

- 41.1 If the parties agree a settlement of the dispute, the parties may record such settlement in such form as they agree.
- 41.2 A settlement may, but is not required, to be recorded in:
- (1) a signed settlement agreement; or
  - (2) where an arbitration has commenced, by consent award.

## **Article 42 Costs**

- 42.1 In this Article, the '**Costs**' of a mediation comprises:
- (1) the mediator's fee and any expenses of the mediator; and
  - (2) the administrative charges of the Registry as set out by Practice Direction.
- 42.2 As soon as practicable after commencement of the mediation, the Registry will request the parties to provide a deposit to be held on account of the Costs (the '**Deposit**').
- 42.3 The Deposit shall be paid by the parties in equal shares or in such other proportions as they have agreed in writing.
- 42.4 In the event that a party fails to pay its share of the Deposit, another party may make a substitute payment to allow the mediation to proceed without prejudice to any right that party may have to recover such sum from the other party.
- 42.5 A mediator shall not be appointed and the mediation shall not proceed unless and until the Deposit has been paid in full. If the mediation does not proceed and any administrative charges have accrued, absent written agreement otherwise the parties are jointly and severally liable for such administrative charges.
- 42.6 At the conclusion of the mediation, the Registrar shall determine the Costs.
- 42.7 If the Deposit exceeds the Costs, the excess will be reimbursed to the parties in the proportions in which they have contributed to the Costs, or in such other proportions as the parties have agreed in writing.
- 42.8 If the Costs exceed the Deposit, the parties are liable to pay such shortfall in the proportions as the parties may have agreed in writing, or, absent such agreement, jointly and severally.
- 42.9 Any other costs incurred by the parties, whether in regard to legal fees, experts' fees, or expenses of any other nature will not be part of the Costs for the purposes of this Article.

## **Article 43 Court or Arbitral Proceedings**

- 43.1 Unless they have agreed otherwise, the parties may initiate or continue any arbitration or court proceedings in respect of the dispute which is the subject of the mediation.

## **Article 44 Confidentiality and Privacy**

- 44.1 All mediation sessions shall be private, and shall be attended only by the mediator, the parties and those individuals identified pursuant to Article 39.4.
- 44.2 The mediation process and all negotiations, and statements and documents prepared for the purposes of the mediation, shall be confidential and covered by 'without prejudice' or 'offer to settle' privilege.

- 44.3 Unless agreed among the parties, or required by law, neither the mediator nor the parties may disclose to any person any information regarding the mediation or any settlement terms, or the outcome of the mediation.
- 44.4 There shall be no formal record or transcript of the mediation.

#### **Article 45 Limitation of Liability**

- 45.1 Any mediator, the Chairman, Registrar, and any directors, officers and employees of the AIAC, shall not be liable to any person for any negligence, act or omission in connection with any mediation administered by the AIAC in accordance with this Part of these Rules unless they are shown to have caused damage by intentional and deliberate wrongdoing.
- 45.2 The AIAC, including the Chairman, Registrar, directors, officers, and employees, or any mediator, shall not be under any obligation to make any statement in connection with any mediation administered by the AIAC in accordance with this Part of these Rules.
- 45.3 No party shall be entitled to make the Chairman, Registrar, any director, officer, employee of the AIAC, or any mediator, act as a witness in any legal proceedings in connection with any mediation administered by the AIAC in accordance with this Part of these Rules.

Approved by the Chairman of the International Arbitration Centre in accordance with Article 54 of the AIFC Arbitration Regulations 2017:



Ms. Barbara Dohmann QC,  
Chairman, International Arbitration Centre

1 January 2018