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**THE ARBITRATION ACT**

THE ARBITRATION (ARBITRAL PROCEEDINGS PROCEDURE)  
REGULATIONS, 2020

In exercise of the power conferred upon the Minister by section 62 of the Arbitration Act, and every other power hereunto enabling, the following Regulations are hereby made:—

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| Citation.       | 1. These Regulations may be cited as the Arbitration (Arbitral Proceedings Procedure) Regulations, 2020.  |
| Interpretation. | 2. In these Regulations—<br>“appointing authority” means any person or institution designated pursuant to regulation 10(1) to appoint an arbitrator;<br>“claimant” means a person who initiates recourse to arbitration proceedings under these regulations by communicating a notice of arbitration to the respondent pursuant to regulations 4 and 7; |

“default appointing authority” means any entity designated by the Minister responsible for justice pursuant to regulation 11 to undertake the functions of the appointing authority referred to in these regulations where the parties to arbitration proceedings fail to designate an appointing authority pursuant to regulation 10(1);

“deposit” means any monetary sum fixed and requested by the arbitral tribunal from the parties to arbitration proceedings pursuant to regulation 46 as an advance for the cost of arbitration referred to in regulation 43;

“electronic” has the meaning assigned to it by section 2 of the Electronic Transaction Act;

“respondent” means the party to whom a notice of arbitration is communicated by the claimant pursuant to regulation 7(1).

Scope of application.

3.—(1) Subject to paragraph (2), where parties have agreed in writing to submit a dispute which has arisen or may arise between them in respect of a defined legal relationship, whether contractual or not, to arbitration under the Arbitration Act, the arbitration shall be conducted in accordance with these Regulations.

(2) These Regulations shall govern the arbitration except—

- (a) that where any of these regulations conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail; and
- (b) to the extent that a written agreement between the parties provides for the modification of the application or effect of any provision of these Regulations to that arbitration.

Receipt of written communications.

4.—(1) Any notice or other communication required to be given or made under these Regulations may be transmitted by any means of communication that provides or allows for a record of its transmission.

(2) Where an address for service has been designated by a party specifically for the purpose of receiving notices or other communication in respect of the matter concerned or authorized by the arbitral tribunal, communications to that party shall be delivered at that address, and if so delivered shall be deemed to have been received.

(3) Delivery of any notice or other communication by electronic means such as facsimile or electronic mail shall only be made to an address designated by a party or authorized by the arbitral tribunal, for that purpose.

(4) In the absence of any designation or authorization referred to in paragraph (2) or (3), a notice or other communication shall be deemed to have been received if it is delivered—

- (a) to the addressee personally or to the addressee's authorized representative; or
- (b) to the addressee's place of business, habitual residence or mailing address.

(5) If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs (2), (3) or (4), a notice or other communication for the purpose of these Regulations shall be deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered post or any other means that provides a record of delivery or of attempted delivery.

(6) A notice or other communication, for the purpose of these Regulations shall be deemed to have been received on the day it is delivered in accordance with paragraphs (2), (3), (4) or (5), as the case may require.

(7) For the purpose of these Regulations—

- (a) a notice of arbitration transmitted by electronic means shall be deemed to have been received on the day when it reaches the addressee's electronic mail address; and
- (b) any other type of notice or other communication transmitted by electronic means shall be deemed to have been received on the day it is sent.

Calculation  
of time.

5.—(1) For the purpose of calculating any period of time under these Regulations specified to run from the time of delivery of a notice, such period shall begin to run on the day following the day when the notice is received.

(2) If the last day of any period of time under these regulations is a public general holiday or a non-business day at the residence or place of business of the addressee, the period shall be extended until the first business day that follows.

(3) Public general holidays or non-business days occurring during the running of any period of time under these Regulations shall be included in calculating the period.

Waiver of  
right to  
object and  
exclusion of  
liability.

6.—(1) A party who knows that any provision of, or requirement under, these Regulations or the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating its objection to non-compliance without undue delay shall be deemed to have waived its right to object, unless such party can show that, under the circumstances, its failure to object was justified.

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(2) Save for intentional wrongdoing, the arbitrators, the appointing authority and any person appointed by the arbitral tribunal shall not be liable for any act or omission in connection with the arbitration, and no action shall be brought by any person in respect thereof.

Notice of  
arbitration.

7.—(1) A party initiating recourse to arbitration under these regulations (hereinafter called the “claimant”) shall communicate to the other party (hereinafter called the “respondent”) a notice of arbitration which shall include—

- (a) a demand that the dispute be referred to arbitration;
- (b) the names and contact details of the parties to the arbitration and their representatives, if any;
- (c) a reference to the arbitration agreement that is invoked;
- (d) a reference to the contract, treaty, statute or other legal instrument out of or in relation to which the dispute arises or, in the absence of such agreement, contract, treaty, statute or other legal instrument, a brief statement describing the nature of the relationship between the parties and how the parties are bound by the arbitration agreement;
- (e) a copy of the arbitration agreement, contract, treaty, statute or other legal instrument;
- (f) a brief description of the claim and an estimate of the value of the dispute, if any;
- (g) the relief or remedy sought; and
- (h) a proposal as to the number of arbitrators, language and place of arbitration, if not previously agreed upon by the parties;

(2) The notice of arbitration may also include—

- (a) a proposal for the designation of an appointing authority referred to in regulation 10(1);
- (b) a proposal for the appointment of a sole arbitrator referred to in regulation 13(1); and
- (c) notification of the appointment of an arbitrator referred to in regulation 14 or 15.

(3) The date of receipt of the complete notice of arbitration by the respondent shall be deemed to be the date of commencement of the arbitration.

(4) For the avoidance of doubt, the notice of arbitration is deemed to be complete when all the requirements of paragraph (1) are fulfilled.

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(5) The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, and any such controversy shall be finally resolved by the arbitral tribunal.

Response to  
the notice of  
arbitration.

8.—(1) The respondent shall within thirty days after receipt of the notice of arbitration, communicate to the claimant a response to the notice of arbitration which shall include—

- (a) the name and contact details of each respondent; and
- (b) a response to the information set forth in the notice of arbitration pursuant to regulation 7(1) (c) to (h).

(2) The response to the notice of arbitration may also include—

- (a) any plea that an arbitral tribunal to be constituted under these regulations lacks jurisdiction;
- (b) a proposal for the designation of an appointing authority referred to in regulation 10(1);
- (c) a proposal for the appointment of a sole arbitrator referred to in regulation 13(1);
- (d) notification of the appointment of an arbitrator referred to in regulation 14 or 15;
- (e) a brief description of any counterclaims or claims for the purpose of a set-off (if any), including, where relevant, an indication of the amounts involved, and the relief or remedy sought;
- (f) a notice of arbitration in accordance with regulation 7, where the respondent formulates a claim against a party to the arbitration agreement other than the claimant.

(3) The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, and any such controversy shall be finally resolved by the arbitral tribunal.

Representa-  
tion and  
assistance.

9.—(1) The parties may be represented or assisted by any person during the arbitral proceedings.

(2) A party shall advise the other parties and the arbitral tribunal of—

- (a) the names and addresses of those persons who are representing or assisting it; and
- (b) the capacity in which each of those persons is acting.

(3) Where a person acts as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such form as the arbitral tribunal may determine.

Designating an appointing authority.

10.—(1) Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, one of whom shall serve as appointing authority pursuant to agreement or designation under paragraph (2).

(2) If all parties have not agreed on the choice of an appointing authority within thirty days after a proposal made in accordance with paragraph (1) has been received by all other parties, any party may request the default designating authority to designate the appointing authority.

(3) Where these Regulations provide for a period of time within which a party shall refer a matter to an appointing authority and no appointing authority has been agreed on or designated, the period shall be suspended from the date on which a party initiates the procedure for agreeing on or designating an appointing authority until the date of such agreement or designation.

(4) Except as referred to in paragraphs (8) to (12) of regulation 44, if the appointing authority refuses to act, or if it fails to appoint an arbitrator within thirty days after it receives a party's request to do so, fails to act within any other period provided by these Regulations, or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party's request to do so, any party may request the default appointing authority to designate a substitute appointing authority.

Designating a default designating authority.

11. The Minister responsible for justice shall designate, by order published in the *Gazette*, an institution to act as the default designating authority and to carry out the functions of the designating authority referred to in these Regulations.

Appointment of arbitrators.

12.—(1) Where the parties have proposed to appoint an arbitrator, such appointment shall be subject to confirmation by the appointing authority, upon which the appointment shall be effective.

(2) The appointing authority, in exercising its functions under these Regulations, may require from any party and the proposed arbitrators any information the appointing authority deems necessary and shall give the parties and, where appropriate, the proposed arbitrators, an opportunity to present their views in any manner the appointing authority considers appropriate.

(3) Where the appointing authority is requested to appoint an arbitrator pursuant to regulations 13, 14, 15 or 19 the party making the request shall submit to the appointing authority copies of the notice of arbitration and any response to the notice of arbitration.

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(4) In confirming or appointing arbitrators, the appointing authority shall have due regard to—

- (a) considerations likely to secure the appointment of an independent and impartial arbitrator; and
- (b) the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties,

(5) Subject to paragraphs (6) and (7), the parties are free to determine the number of arbitrators.

(6) Where the parties have not previously agreed on the number of arbitrators and if within thirty days after the respondent's receipt of the notice of arbitration the parties fail to agree that there shall be a sole arbitrator, three arbitrators shall be appointed.

(7) The appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in regulation 13(3), if the appointing authority considers it appropriate to do so in any case where—

- (a) no other parties have responded to a party's proposal to appoint a sole arbitrator within the timeframe stipulated in paragraph (6); or
- (b) the party or parties concerned have failed to appoint a second arbitrator in accordance with regulation 14 or 15.

Appointment  
of a sole  
arbitrator.

13.—(1) If the parties agree that a sole arbitrator shall be appointed—

- (a) either party may propose to the other name of one or more persons acceptable to serve as the sole arbitrator; and
- (b) regulation 12(1) to (4) applies.

(2) Where the parties fail to reach an agreement on a sole arbitrator within thirty days after the proposal is made under paragraph (1), a sole arbitrator shall, at the request of a party, be appointed as promptly as possible by the appointing authority in accordance with the procedure in paragraph (3).

(3) In making the appointment of a sole arbitrator, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or the appointing authority determines, in its discretion, that the use of the list-procedure is not appropriate for the case—

- (a) the appointing authority shall communicate to each of the parties an identical list of candidates containing at least three names;

- (b) within fifteen days after the receipt of the list or within the period otherwise agreed by the parties or set by the appointing authority, each party may return the list to the appointing authority, after having deleted the name or names to which it objects and numbering the remaining names on the list in the order of its preference; and
- (c) after the expiration of the time stipulated in sub-paragraph (b) the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it taking into account the order of preference indicated by each party.

(4) If for any reason the appointment of a sole arbitrator cannot be made according to the procedure referred to in paragraph (3) the appointing authority may exercise its discretion in appointing the sole arbitrator.

Appointment  
of three  
arbitrators.

14.—(1) Where three arbitrators are to be appointed by virtue of regulation 12(6), each party shall propose the appointment of one arbitrator and the two arbitrators so appointed shall propose the appointment of the third arbitrator who will act as presiding arbitrator of the arbitral tribunal.

(2) If within thirty days after the receipt of a party's notification of the appointment of an arbitrator, the other party has not notified the first party of the arbitrator it has appointed, the first party may request the appointing authority to appoint the second arbitrator.

(3) If within thirty days after the appointment of the second arbitrator, or such other period as may be set by the appointing authority, the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority in accordance with the list-procedure provided for in regulation 13(3), as if the references to a "sole arbitrator" in that provision were reference to a "presiding arbitrator".

Appointment  
of arbitrators  
in cases not  
covered by  
regulations  
13 and 14.

15.—(1) For the purposes of regulation 14(1), where three arbitrators shall be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, as claimant or respondent, as the case may be, shall propose the appointment of an arbitrator.

(2) If the parties have agreed that the arbitral tribunal shall be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.

(3) In the event of any failure to constitute an arbitral tribunal under these Regulations, the appointing authority shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.



Arbitrator's  
independ-  
ence,  
impartiality  
and dis-  
closure.

16.—(1) An arbitrator shall be, and remain at all times, independent and impartial.

(2) Where a person is proposed for appointment as an arbitrator, that person shall disclose to the parties and the appointing authority, as soon as reasonably practicable and in any event before his appointment, any circumstances likely to give rise to justifiable doubts as to the person's impartiality or independence.

(3) An arbitrator, from the time of appointment as arbitrator and throughout the arbitral proceedings, shall immediately disclose to the parties, the other arbitrators and the appointing authority any circumstances that may give rise to justifiable doubts as to that arbitrator's impartiality or independence unless the disclosure has already been made under paragraph (2).

Challenge of  
arbitrators.

17.—(1) The appointment of an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

(2) A party may challenge the appointment of an arbitrator appointed by it or in whose appointment that party has participated, only for reasons of which that party becomes aware after the appointment has been made.

(3) In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of the arbitrator performing his functions, the procedure in respect of the challenge of an arbitrator as provided in regulation 18 shall apply.

Challenge  
procedure.

18.—(1) A party that intends to challenge the appointment of an arbitrator shall within fifteen days after having been notified of the appointment or after becoming aware of any circumstances referred to in regulation 16(2) and (3) or regulation 17, communicate to all other parties, the challenged arbitrator and the other arbitrators a notice of challenge stating the reasons for the challenge.

(2) Where the appointment of an arbitrator is challenged by a party—

- (a) all parties may agree to the challenge; and
- (b) the challenged arbitrator may also, after the challenge, voluntarily resign the appointment.

(3) If all parties do not agree to the challenge or the challenged arbitrator does not resign within fifteen days from the date of the notice of challenge, the party making the challenge may elect to pursue it.

(4) Subject to paragraph (3) the party making the challenge shall within thirty days from the date of the notice of challenge, seek a decision on the challenge by the appointing authority.

(5) In rendering a decision on the challenge, the appointing authority may indicate the reasons for the decision, unless the parties agree that no reasons shall be given.

Replacement  
of an arbitra-  
tor.

19.—(1) Subject to paragraph (2), where an arbitrator has to be replaced during the course of the arbitral proceedings—

- (a) a substitute arbitrator shall be appointed pursuant to the procedure provided for in regulations 13 to 16; and
- (b) that procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to participate in the appointment.

(2) If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to participate in the appointment of a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views—

- (a) appoint the substitute arbitrator; or
- (b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

(3) Pending the replacement of an arbitrator referred to in paragraph (1), the arbitral proceedings shall be suspended, unless otherwise agreed by the parties.

(4) An order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator shall not be invalid solely because there has been a change in the composition of the tribunal.

Resumption  
of hearings in  
the event of  
the replace-  
ment of an  
arbitrator.

20. Where an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his functions, unless the arbitral tribunal decides otherwise.

General  
provisions.

21.—(1) Subject to these Regulations, an arbitral tribunal has the discretion to conduct the arbitration in the manner it considers appropriate so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.

(2) In the conduct of the arbitration, the parties shall be treated with equality and each party shall be given a fair opportunity at an appropriate stage of the proceedings to present its case.

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(3) The power of an arbitral tribunal under paragraph (1) includes the power to—

- (a) direct the order of proceedings;
- (b) bifurcate proceedings;
- (c) determine the admissibility, relevance, materiality and weight of any evidence; and
- (d) direct the parties to focus their evidence or argument on specific issues which may assist in the disposal of all or part of the dispute.

(4) As soon as practicable after the constitution of an arbitral tribunal and after inviting the parties to express their views, the arbitral tribunal shall—

- (a) discuss the procedure to be followed in the arbitration;
- (b) establish the provisional timetable of the arbitration;
- (c) fix, determine, extend or abridge any periods of time prescribed under these Regulations or agreed by the parties;
- (d) discuss hearing dates; and
- (e) determine any other matter required or permitted under these Regulations to help ensure the efficient progress of the arbitration proceedings.

(5) If at an appropriate stage of the arbitration proceedings any party so requests, the arbitral tribunal shall—

- (a) hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument; and
- (b) in the absence of such a request, decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.

(6) All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.

(7) The arbitral tribunal may, at the request of any party, allow one or more other persons who are parties to the arbitration agreement to be joined as parties in the arbitration, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that the joinder should not be permitted because of prejudice to any of those parties.

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(8) The arbitral tribunal may make a single award or several awards in respect of all parties involved in the arbitration.

Place of arbitration.

22.—(1) The parties may agree on the place of arbitration, and failing such an agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case.

(2) The award shall be deemed to have been made at the place of arbitration.

(3) Unless otherwise agreed by the parties, the arbitral tribunal may meet at any location it considers appropriate for deliberations among its members, hearing witnesses, experts or parties or for inspection of documents, goods or other property.

Language of arbitration.

23.—(1) Unless the parties otherwise agree, until the arbitral tribunal has been constituted, the parties shall use the language of the arbitration agreement in all communications related to the arbitration.

(2) Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language to be used in the proceedings, having regard to submissions of the parties and the language of the arbitration agreement.

(3) Unless otherwise specified by the arbitral tribunal, the determination under paragraph (2) shall apply to the statement of claim, the statement of defence, any further written statements, hearings, any arbitral award, decision or other communication by the arbitral tribunal.

(4) The arbitral tribunal may order that documentary evidence annexed to the statement of claim or statement of defence, any supplementary documents or exhibits submitted during the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language agreed upon by the parties or determined by the arbitral tribunal under paragraph (3).

Statement of claim.

24.—(1) The claimant shall within a period of time specified by the arbitral tribunal communicate to the respondent and each arbitrator its statement of claim in writing setting out in full detail—

- (a) the names and contact details of the parties;
- (b) a statement of the facts supporting the claim;
- (c) the points in issue;
- (d) the legal grounds or arguments supporting the claim;
- (e) the relief or remedy sought, together with the amount of all quantifiable claims; and

(f) any witness statements or expert reports supporting the claim.

(2) The claimant may elect to treat its notice of arbitration referred to in regulation 7 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs (1), (3) and (4).

(3) A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.

(4) The statement of claim shall be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

Statement of  
defence. 25.—(1) The respondent shall within a period of time specified by the arbitral tribunal communicate to the claimant and to each arbitrator its statement of defence.

(2) The respondent may elect to treat its response, to the notice of arbitration, referred to in regulation 8 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph (3).

(3) The statement of defence shall reply to the information set forth in the statement of claim pursuant to regulation 24(1)(b) to (f) and shall be accompanied by all documents and other evidence relied upon by the respondent or contain references to them.

(4) In its statement of defence, or at a later stage in the arbitration proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off in any case where the arbitral tribunal has jurisdiction to determine that counterclaim or claim.

(5) The provisions of regulation 24(1), (3) and (4) shall apply to a counterclaim, a claim under regulation 8(2)(f) and a claim relied on for the purpose of a set-off.

Amendments  
to the claim  
or defence. 26.—(1) Subject to paragraph (2), a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making the amendment, the prejudice to other parties, or any other circumstances.

(2) A claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal or the scope of the arbitration clause or separate arbitration agreement.

Pleas as to the jurisdiction of the arbitral tribunal.

27.—(1) An arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement and for that purpose—

- (a) an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
- (b) a decision by the arbitral tribunal that the contract is null and void shall not entail automatically the invalidity of the arbitration clause.

(2) A plea that an arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off.

(3) A party shall not be precluded from raising a plea under paragraph (2) by the fact that it has appointed, or participated in the appointment of, an arbitrator.

(4) A plea that an arbitral tribunal is exceeding the scope of its jurisdiction shall be raised as soon as the matter alleged to be beyond the scope of its jurisdiction is raised during the arbitral proceedings.

(5) The arbitral tribunal may, in either case referred to in paragraph (2) or (4) admit a later plea if it considers the delay justified.

(6) The arbitral tribunal may rule on a plea referred to in paragraph (2) or (4) either as a preliminary question or in an arbitral award on the substance of the dispute.

(7) The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge before a court as to its jurisdiction.

Further written statements.

28. An arbitral tribunal may require or permit the presentation of further written statements from the parties, in addition to the statement of claim and the statement of defence, and shall fix the periods of time for communicating those statements.

Time limits.

29. An arbitral tribunal may extend or abridge a period of time required in these Regulations or fixed or determined by itself where it considers it to be just and appropriate in all the circumstances.

Interim measures.

30.—(1) Unless otherwise agreed by the parties in writing, the arbitral tribunal may, at the request of a party, grant interim measures.

(2) For the purpose of these Regulations, an interim measure is any temporary measure by which, at any time prior to the issuance of the final arbitral award by which the dispute is finally decided, the arbitral tribunal orders a party to—

- (a) maintain or restore the *status quo* pending determination of the dispute;
- (b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself;
- (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or
- (d) preserve evidence that may be relevant and material to the resolution of the dispute.

Conditions  
for granting  
interim  
measures.

31.—(1) The party requesting an interim measure under regulation 30(2) (a), (b) or (c) shall satisfy the arbitral tribunal that—

- (a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
- (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim.

(2) A determination under paragraph (1)(b) shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

(3) With regard to a request for an interim measure under regulation 30(2)(d), the requirements in paragraphs (1)(a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.

(4) The arbitral tribunal may modify, suspend or terminate an interim measure it has granted—

- (a) upon application of any party; or
- (b) in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

(5) The arbitral tribunal may require the party requesting an interim measure to provide appropriate security for all or part of the amount in dispute and the legal or other cost, upon such terms as the arbitral tribunal considers appropriate.

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(6) In the event that a party does not comply with any order to provide security pursuant to paragraph (5), the arbitral tribunal may stay that party's claims or counterclaims or dismiss them in an award.

(7) An order to provide security under paragraph (5) may take the form of an interim award and, in that event, shall be considered an arbitral award.

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

(9) The party requesting an interim measure may be liable for any costs and damages to any party, caused by the measure, if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted.

(10) The arbitral tribunal may award costs and damages under paragraph (9) at any point during the proceedings.

(11) A request for interim measures addressed by any party to a court shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Evidence. 32.—(1) Each party shall have the burden of proving the facts relied on to support its claim or defence.

(2) An individual may be presented as a witness, including an expert witness, by a party and may testify to the arbitral tribunal on any issue of fact or expertise, notwithstanding that the individual is a party to the arbitration or in any way related to a party.

(3) Unless otherwise directed by the arbitral tribunal, statements by a witness, including an expert witness, shall be in writing and signed by the witness.

(4) The arbitral tribunal may—

- (a) require the parties, at any time during the arbitral proceedings, to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine; and
- (b) after consultation with the parties, perform a site visit.

(5) The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

(6) All statements, documents or other information supplied to, or applications made to, the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which



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the arbitral tribunal may rely in making its decision shall be communicated to the parties.

Hearings.

33.—(1) The arbitral 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 thereof.

(2) If any party fails to appear at a hearing without showing cause for such failure, the arbitral tribunal may proceed with the arbitration in the absence of the party and may make the award based on the submissions and evidence before it.

(3) Witnesses, including expert witnesses, may be heard under the conditions, and examined in the manner, set by the arbitral tribunal.

(4) Hearings in arbitration proceedings shall be held in camera unless the parties agree otherwise.

(5) The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not be required to retire.

(6) The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (for example, video conference).

Witnesses.

34.—(1) The arbitral tribunal may allow, refuse or limit the appearance of witnesses to give oral evidence at any hearing in the arbitration.

(2) The arbitral tribunal may direct the evidence of witnesses to be presented in written form, either as signed statements or sworn affidavits or any other form of recording.

Tribunal  
appointed  
experts.

35.—(1) Unless otherwise agreed by the parties, the arbitral tribunal may—

(a) following consultation with the parties, appoint one or more independent experts to report on specific issues to be determined by the arbitral tribunal; and

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

(2) Any dispute between a party and an expert appointed under paragraph (1)(a), as to the relevance of the required information or the production of it, shall be referred to the arbitral tribunal for decision.

(3) The arbitral tribunal shall establish the expert's terms of reference and communicate a copy of the terms of reference to the parties.

(4) Before accepting an appointment under paragraph (1)(a), the expert shall submit to the arbitral tribunal and the parties a description of his qualifications and a statement of his impartiality and independence.

(5) The parties shall inform the arbitral tribunal, within the time ordered by the tribunal, whether they have any objections as to the expert's qualifications, impartiality or independence and the arbitral tribunal shall decide promptly whether to accept any such objections.

(6) After an expert's appointment under paragraph (1)(a), a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made.

(7) Where an objection is made under paragraph (6), the arbitral tribunal shall decide promptly what, if any, action shall be taken.

(8) Any expert appointed under regulation 35(1)(a) shall submit a report in writing to the arbitral tribunal and, upon receipt of such written report, the arbitral tribunal shall communicate a copy of the report to the parties, who shall be—

- (a) given the opportunity to express in writing their opinions on the report; and
- (b) entitled to examine any document on which the expert has relied in the report.

(9) Unless otherwise agreed by the parties, if the arbitral tribunal considers it necessary or at the request of any party, an expert shall, after delivery of his written report, participate in a hearing at which the parties shall have the opportunity to examine the expert and to present other expert witnesses in order to testify on the points at issue.

(10) The provisions of regulation 33 shall apply to a hearing under paragraph (9).

Default of a party.

36. If, within the period of time fixed by these Regulations or the arbitral tribunal, without showing sufficient cause—

- (a) the claimant fails to communicate his statement of claim in accordance with regulation 24(1) or within such further period of time permitted by the arbitral tribunal under regulation 29, the arbitral tribunal shall issue an order terminating the proceeding, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;
- (b) the respondent fails to communicate his response to the notice of arbitration in accordance with regulation 8 or statement of defence in accordance with regulation 25(1) or within such further

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period of time permitted by the arbitral tribunal under regulation 29, the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations, and the provisions of this paragraph shall also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

- (c) if a party, duly notified under these Regulations, fails to appear at a hearing without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
- (d) if a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Closure of hearings.

37.—(1) The arbitral tribunal may close hearings in the arbitration where the parties, on inquiry, have advised that they have no further evidence to give or submissions to be made.

(2) In exceptional circumstances and on its own motion or on an application of a party, the arbitral tribunal may reopen the hearings at any time before the final arbitral award is made.

Decisions.

38.—(1) When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.

(2) Notwithstanding paragraph (1)—

- (a) when there is no majority; or
- (b) if authorised by the arbitral tribunal, the presiding arbitrator may decide questions of procedure, subject to revision by the arbitral tribunal.

Form and effect of the award.

39.—(1) The arbitral tribunal may make separate awards on different issues at different times.

(2) An arbitral award shall be in writing and shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given.

(3) An arbitral award shall—

- (a) be signed by the arbitrators;
- (b) contain the date on which the award was made; and
- (c) indicate the place of arbitration.

(4) For the purpose of paragraph (3)(a), in arbitration proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

(5) An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.

(6) After an arbitral award is made, copies of the award signed by the arbitrators shall be communicated to each party by the arbitral tribunal.

(7) All arbitral awards shall be final and binding on the parties, who shall undertake to carry out the award without delay.

Applicable law, *amiable compositeur* and *ex aequo et bono*.

40.—(1) The arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute.

(2) Failing any designation of the law under paragraph (1) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate.

(3) The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorised the arbitral tribunal to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

Settlement or other grounds for termination.

41.—(1) If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order terminating the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) The arbitral tribunal shall not be obliged to give reasons for an arbitral award on agreed terms issued under paragraph (1).

(3) An arbitral award on agreed terms shall be made in accordance with regulation 39 and shall state that it is an arbitral award on agreed terms.

(4) An arbitral award on agreed terms has the same status and effect as any other arbitral award on the substance of the dispute.

(5) If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not

mentioned in paragraph (1), the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings.

(6) The arbitral tribunal shall have the power to issue an order under paragraph (5) unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.

(7) Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties.

Correction  
and inter-  
pretation of  
the award;  
additional  
award.

42.—(1) Within thirty days after receipt of the arbitral award, a party may with notice to the other parties request the arbitral tribunal to—

- (a) correct in the arbitral award any computation errors, clerical or typographical errors or any other errors of a similar nature; and
- (b) give an interpretation of a specific point or part of the arbitral award.

(2) If the arbitral tribunal considers the request made under paragraph (1) to be justified, it shall make the correction or give the interpretation in writing within forty-five days after the receipt of the request, and the interpretation shall form part of the arbitral award.

(3) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a), on its own initiative, within thirty days after the communication of the award.

(4) The correction referred to in paragraph (3) shall be in writing and shall form part of the award.

(5) A party may, with notice to the other parties, request within thirty days after receipt of the termination order or the arbitral award, the arbitral tribunal to make an award or additional arbitral award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.

(6) If the arbitral tribunal considers the request made under paragraph (5) to be justified, it shall render or complete its award within sixty days after the receipt of the request.

(7) The provisions of regulation 39(2) to (7) shall apply to a correction or interpretation of the arbitral award and to an additional arbitral award made under this regulation as they apply to the original award.

Cost of  
arbitration.

43.—(1) The arbitral tribunal shall fix the cost of arbitration in the final award and, if it deems appropriate, in another decision.

(2) For the purposes of this regulation—

“cost” includes—

- (a) the fees of the arbitral tribunal, which shall to be stated separately as to each arbitrator and fixed by the tribunal itself in accordance with regulation 44;
- (b) the reasonable travel and other expenses incurred by the arbitrators;
- (c) the reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
- (d) the reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
- (e) the legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable; and
- (f) any fees and expenses of the appointing authority.

(3) In relation to interpretation, correction or completion of any award under regulation 42, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

Fees and  
expenses of  
the arbitrator.

44.—(1) The arbitrators shall be entitled to recover fees and expenses that are reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators, experts or assistants appointed by the arbitral tribunal and any other relevant circumstances of the case.

(2) Where the appointing authority applies a schedule or particular method for determining the fees for arbitrators in international cases, the arbitral tribunal in fixing its fees shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case.

(3) Promptly after its constitution, the arbitral tribunal shall inform the parties how it proposes to determine its fees and expenses, including any rates it intends to apply.

(4) Within fifteen days after receiving the proposal referred to in paragraph (3), any party may refer the proposal to the appointing authority for review.

(5) If, within forty five days after receipt of a referral from any party, the appointing authority finds that the proposal of the arbitral tribunal is inconsistent with the criteria stipulated in paragraph (1), it shall make any

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necessary adjustments thereto, which shall be binding upon the arbitral tribunal.

(6) When informing the parties of the arbitrators' fees and expenses that have been fixed pursuant to regulation 43(2)(a) and (b), the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated.

(7) Within fifteen days after receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the appointing authority.

(8) If no appointing authority has been agreed upon or designated, or if the appointing authority fails to act within the time specified in these regulations, then the review shall be made by the default appointing authority.

(9) If the appointing authority or default appointing authority finds that the arbitral tribunal's determination is inconsistent with the arbitral tribunal's proposal and any adjustment thereto under paragraph (3) or is otherwise manifestly excessive, it shall, within forty five days after receiving such a referral, make any adjustments to the arbitral tribunal's determination that are necessary to satisfy the criteria in paragraph (1), and any such adjustments shall be binding upon the arbitral tribunal.

(10) The adjustments referred to in paragraph (9) shall either be included by the arbitral tribunal in its award or, if the award has already been issued, be implemented in a correction to the award, to which the procedure of regulation 39(3) to (7) and regulation 41 shall apply.

(11) The arbitral tribunal shall proceed with the arbitration, in accordance with regulation 21(1) and (2) while the procedure stipulated in paragraphs (3) to (10) is being undertaken.

(12) A referral under paragraph (7) shall not affect any determination in the award other than the arbitral tribunal's fees and expenses, nor shall it delay the recognition and enforcement of all parts of the award other than those relating to the determination of the arbitral tribunal's fees and expenses.

Allocation of  
cost.

45.—(1) The costs of arbitration shall be borne by the unsuccessful party unless the arbitral tribunal determines that it is appropriate, taking into account the circumstances of the case, to apportion the costs between the parties.

(2) The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

Deposit of  
cost.

46.—(1) The arbitral tribunal may, at the time it is constituted, request each party to deposit an equal amount or amounts in such proportions as it may determine as an advance for the costs referred to in regulation 43(2)(a) to (f).

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(2) The arbitral tribunal may, during the course of the arbitral proceedings, request supplemental deposits from the parties.

(3) Where a party so requests, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority, which may make any comments to the arbitral tribunal it deems appropriate concerning the amount of those deposits and supplemental deposits.

(4) If the required deposits are not paid in full within thirty days after receipt of the request, the arbitral tribunal shall inform the parties in order that one or other of the parties may make the required payment.

(5) If the required payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

(6) After a termination order or final arbitral award has been made, the arbitral tribunal shall, render an accounting to the parties of the deposits received and return any unexpended balance.

Dated this 3rd day of March, 2020.

DELROY CHUCK  
Minister of Justice.



