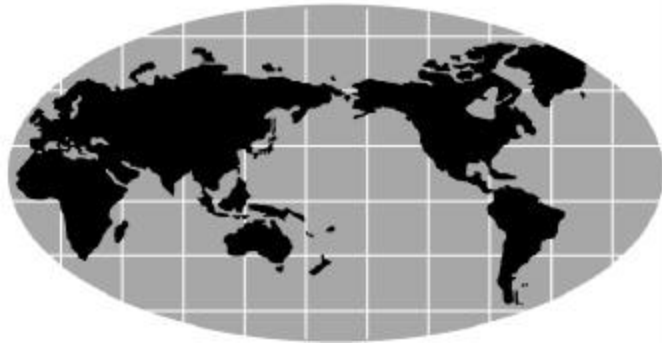


**MULTILATERAL INVESTMENT  
GUARANTEE AGENCY**

**M I G A**

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**Rules of Arbitration for Disputes  
Under Contracts of Guarantee**

January 1990

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## CHAPTER I. INTRODUCTION

### Article 1. Scope of Application

1.1 Where the parties to a contract of guarantee concluded between an investor and the Multilateral Investment Guarantee Agency have agreed that a dispute in relation to such contract shall be submitted to arbitration under the Rules of Arbitration for Disputes under Contracts of Guarantee of the Multilateral Investment Guarantee Agency, the dispute shall be settled in accordance with these Rules.

### Article 2. Definitions

2.1 In these Rules:

- (a) “**Contract**” means the particular contract of guarantee to which these Rules are made applicable;
- (b) “**Guarantee Holder**” means the party receiving the guarantee provided for in the Contract;
- (c) “**MIGA**” means the Multilateral Investment Guarantee Agency;
- (d) “**Home Country**” means the country or countries whose membership in MIGA made the Guarantee Holder eligible, under Article 13 of the Convention Establishing MIGA, to receive the guarantee provided for in Contract; and

- (e) **“Host Country”** means the country in whose territories the investment project to which the Contract relates is located.

## **CHAPTER II. INSTITUTION OF PROCEEDINGS**

### **Article 3. The Notice**

3.1 A party wishing to institute arbitration proceedings (hereinafter called the “**Claimant**”) shall send a notice to that effect in writing to the Secretary-General of the Permanent Court of Arbitration at The Hague (hereinafter called the “**Secretary-General**”). The notice shall be dated and shall be signed by the party sending it.

3.2 The notice may be given jointly by the parties to the dispute.

### **Article 4. Contents of the Notice**

4.1 The notice shall:

- (a) designate precisely each party to the dispute and state the address of each;
- (b) set forth the relevant provisions of the Contract embodying the agreement of the parties to refer the dispute to arbitration (hereinafter called the “arbitration provisions of the Contract”); and
- (c) contain information concerning the issues in dispute and an indication of the amount involved, if any.

4.2 The notice shall in addition set forth any provisions agreed by the parties regarding the number of arbitrators and the method of their appointment, as well as any other provisions agreed concerning the settlement of the dispute.

4.3 The notice shall be accompanied by five additional signed copies.

#### **Article 5. Registration of the Notice**

5.1 As soon as the Secretary-General shall have satisfied himself that the notice conforms in form and substance to the provisions of Article 4 of these Rules, he shall register the notice in the Arbitration Register provided for in Article 58 and on the same day dispatch to the parties a certificate of registration. He shall also transmit a copy of the notice and of the accompanying documentation (if any) to the other party to the dispute (hereinafter called the “**Respondent**”).

#### **Article 6. Certificate of Registration**

6.1 The certificate of registration of a notice shall:

- (a) record that the notice is registered and indicate the date of the registration and of the dispatch of that notice;



- (b) notify each party that all communications in connection with the proceeding will be sent to the address stated in the notice, unless another address is indicated to the Secretary-General;
- (c) unless such information has already been provided, invite the parties to communicate to the Secretary-General any provisions agreed by them regarding the number and the method of appointment of the arbitrator; and
- (d) invite the parties to proceed, as soon as possible, to constitute an Arbitral Tribunal in accordance with Chapter III of these Rules.

### **CHAPTER III. THE TRIBUNAL**

#### **Article 7. General Provisions**

7.1 In the absence of agreement between the parties regarding the number of arbitrators and the method of their appointment, the Tribunal shall consist of three arbitrators, one arbitrator appointed by each party and the third, who shall be the President of the Tribunal, appointed by agreement of the parties, all in accordance with Article 10 of these Rules.

7.2 Upon the dispatch of the certificate of registration of the notice for arbitration, the parties shall promptly proceed to constitute a Tribunal.

7.3 The Tribunal shall consist of a sole arbitrator or any uneven number of arbitrators appointed as the parties shall agree.

7.4 If the Tribunal shall not have been constituted within 90 days after the certificate of registration of the notice for arbitration has been dispatched by the Secretary-General, or such other period as the parties may agree, the Secretary-General, or such other period as the parties may agree, the Secretary-General shall, at the request of either party, appoint the arbitrator or arbitrators not yet appointed and, unless the President shall already have been designated or is to be designated later, designate an arbitrator to be President of the Tribunal.

7.5 Except as the parties shall otherwise agree, no person who had previously acted as a conciliator or arbitrator in any proceeding for the settlement of the dispute may be appointed as a member of the Tribunal.

**Article 8. Nationality of Arbitrators**

8.1 Except as the parties shall otherwise agree, arbitrators shall be nationals of countries other than the Home Country and the Host Country.

**Article 9. Qualifications of Arbitrators**

9.1 Arbitrators shall be persons of high moral character and recognized competence in the fields of law, commerce, industry or finance, who may be relied upon to exercise independent judgment.

**Article 10. Method of Constituting the Tribunal in the  
Absence of Agreement between the Parties**

10.1 If the parties have not agreed upon the number of arbitrator and the method of their appointment within 60 days after the registration of the notice, the Secretary-General shall, upon the request of either party promptly inform the parties that the Tribunal is to be constituted in accordance with the following procedure:

- (a) the Claimant shall, in a communication to the Respondent:

- (i) name two persons, identifying one of them as the arbitrator appointed by it, and the other as the arbitrator proposed to be the President of the Tribunal; and
  - (ii) invite the Respondent to concur in the appointment of the arbitrator proposed to be the President of the Tribunal and to appoint another arbitrator;
- (b) promptly upon receipt of this communication the Respondent shall, in its reply:
- (i) name a person as the arbitrator appointed by it; and
  - (ii) concur in the appointment of the arbitrator proposed to be the President of the Tribunal or name another person as the arbitrator proposed to be President; and
- (c) promptly upon receipt of the reply containing such a proposal, the Claimant shall notify the Respondent whether it concurs in the appointment of the arbitrator proposed by that party to be the President of the Tribunal.

10.2 The communications provided for in paragraph 10.1 of this Article shall be made or promptly confirmed in writing and shall either be transmitted through the Secretary-General or directly between the parties with a copy to the Secretary-General.

**Article 11. Appointment of Arbitrators and Designation  
of President of Tribunal by the Secretary-General**

11.1 Promptly upon receipt of a request made by a party pursuant to Article 7.4 of these Rules, the Secretary-General shall send a copy thereof to the other party.

11.2 The Secretary-General shall use his best efforts to comply with that request within 30 days after its receipt, or such longer period as the parties may agree. Before he proceeds to make appointments or a designation, he shall consult both parties as far as possible.

11.3 The Secretary-General shall promptly notify the parties of any appointment or designation made by him under these Rules.

**Article 12. Acceptance of Appointment**

12.1 The party or parties concerned shall notify the Secretary-General of the appointment of each arbitrator and indicate the method of his appointment.

12.2 The Secretary-General shall promptly seek an acceptance from each arbitrator appointed under these Rules.

12.3 If an arbitrator fails to accept his appointment within 15 days, the Secretary-General shall promptly notify the parties. Unless the parties agree otherwise, the appointment of another arbitrator shall then proceed in accordance with the method followed for the previous appointment.

**Article 13. Replacement of Arbitrators Prior to Constitution of the Tribunal**

13.1 At any time before the Tribunal is constituted, each party may replace any arbitrator appointed by it and the parties may by common consent agree to replace any arbitrator.

**Article 14. Constitution of the Tribunal**

14.1 The Tribunal shall be deemed to be constituted and the proceeding to have begun on the date the Secretary-General notifies the parties that all the arbitrators have accepted their appointment.

14.2 Before or at the first session of the Tribunal, each arbitrator shall sign a declaration in the following form:

To the best of my knowledge there is no reason why I should not serve on the Arbitral Tribunal constituted with respect to a dispute between \_\_\_\_\_ and the Multilateral Investment Guarantee Agency.

A statement of my past and present professional, business and other relevant relationships (if any) with the parties is attached hereto.

I shall keep confidential all information coming to my knowledge as a result of my participation in this proceeding, as well as the contents of any award made by the Tribunal.

I shall judge fairly as between the parties and shall not accept any instruction or compensation with regard to the proceeding from any source except as provided in the Rules of Arbitration for Disputes under Contracts of Guarantee of the Multilateral Investment Guarantee Agency.

Any arbitrator failing to sign such a declaration by the end of the first session of the Tribunal shall be deemed to have resigned.

**Article 15. Replacement of Arbitrators after Constitution of the Tribunal**

15.1 After a Tribunal has been constituted and proceedings have begun, its composition shall remain unchanged; provided, however, that if an arbitrator should die, become incapacitated, resign or be disqualified, the resulting vacancy shall be filled as provided in this Article and Article 18 of these Rules.

15.2 An arbitrator who becomes incapacitated shall, as soon as possible, notify the other members of the Tribunal, and the Secretary-General thereof.

15.3 An arbitrator may resign by submitting his resignation to the other members of the Tribunal and the Secretary-General. If the arbitrator was appointed by one of the parties, the Tribunal shall promptly consider the reasons for his resignation and decide whether it consents thereto. The Tribunal shall promptly notify the Secretary-General of its decision.

**Article 16. Disqualification of Arbitrators**

16.1 A party may propose to a Tribunal the disqualification of any of its members on account of any fact indicating a manifest lack of the qualities required by Article 9 of these Rules, or on the ground that he was ineligible for appointment to the Tribunal under Article 8 of these Rules.



16.2 A party proposing the disqualification of an arbitrator shall promptly, and in any event the proceeding is declared closed, file its proposal with the Secretary-General, stating its reasons therefor.

16.3 The Secretary-General shall forthwith:

- (a) transmit the proposal to the members of the Tribunal; and
- (b) notify the other party of the proposal.

16.4 The arbitrator to whom the proposal relates may, without delay, furnish explanations to the Tribunal or the Secretary-General, as the case may be.

16.5 The decision on any proposal to disqualify an arbitrator shall be taken by the other members of the Tribunal except that where those members are equally divided, or in the case of a proposal to disqualify a sole arbitrator, or a majority of the arbitrators, the Secretary-General shall take that decision.

16.6 Whenever the Secretary-General has to decide on a proposal to disqualify an arbitrator, he shall take that decision within 30 days after he has received the proposal.

16.7 The proceeding shall be suspended until a decision has been taken on the proposal.

**Article 17. Procedure during a Vacancy on the Tribunal**

17.1 The Secretary-General shall forthwith notify the parties of the disqualification, death, incapacity or resignation of an arbitrator and of the consent, if any, of the Tribunal to a resignation.

17.2 Upon the notification by the Secretary-General of a vacancy on the Tribunal, the proceeding shall be or remain suspended until the vacancy has been filled.

**Article 18. Filling Vacancies on the Tribunal**

18.1 Except as provided in paragraph 2 of this Article, a vacancy resulting from the disqualification, death, incapacity or resignation of an arbitrator shall be promptly filled by the same method by which his appointment had been made.

18.2 In addition to filling vacancies relating to arbitrators appointed by him, the Secretary-General shall:

- (a) fill a vacancy caused by the resignation, without the consent of the Tribunal, of an arbitrator appointed by a party; or

- (b) at the request of either party, fill any other vacancy, if no new appointment is made and accepted within 30 days of the notification of the vacancy by the Secretary-General.

18.3 In filling a vacancy the party or the Secretary-General, as the case may be, shall observe the provisions of these Rules with respect to the appointment of arbitrators. Article 14(2) of these Rules shall apply *mutatis mutandis* to the newly appointed arbitrator.

**Article 19. Resumption of Proceeding after Filling a Vacancy**

19.1 As soon as a vacancy on the Tribunal has been filled, the proceeding shall continue from the point it had reached at the time the vacancy occurred. The newly appointed arbitrator may, however, require that the oral procedure be recommenced, if this had already been started.

## **CHAPTER IV. WORKING OF THE TRIBUNAL**

### **Article 20. Sessions of the Tribunal**

20.1 The Tribunal shall meet for its first session within 60 days after its constitution or such other period as the parties may agree. The dates of that session shall be fixed by the President of the Tribunal after consultation with its members and the Secretary-General, and with the parties as far as possible. If, upon its constitution, the Tribunal has no President, such dates shall be fixed by the Secretary-General after consultation with the members of the Tribunal, and with the parties as far as possible.

20.2 Subsequent session shall be convened by the President within time limits determined by the Tribunal. The dates of such sessions shall be fixed by the President of the Tribunal after consultation with its members and the Secretary-General, and with the parties as far as possible.

20.3 The Tribunal shall meet at the Hague. It may decide to hold meetings elsewhere after consultation with the Secretary-General and, as far as possible, with the parties.

20.4 The Secretary-General shall notify the members of the Tribunal and the parties of the dates and place of the sessions of the Tribunal in good time.

**Article 21. Sittings of the Tribunal**

21.1 The President of the Tribunal shall conduct its hearings and preside at its deliberations.

21.2 Except as the parties otherwise agree, the presence of a majority of the members of the Tribunal shall be required at its sittings.

21.3 The President of the Tribunal shall fix the date and hour of its sittings.

**Article 22. Deliberations of the Tribunal**

22.1 The deliberations of the Tribunal shall take place in private and remain secret.

22.2 Only members of the Tribunal shall take part in its deliberations. No other person shall be admitted unless the Tribunal decides otherwise.

**Article 23. Decisions of the Tribunal**

23.1 Any award or other decision of the Tribunal shall be made by a majority of the votes of all its members. Abstention by any member of the Tribunal shall count as a negative vote.

**Article 24. Incapacity of the President**

24.1 If at any time the President of the Tribunal should be unable to act, his functions shall be performed by one of the other members of the Tribunal, acting in the order in which the Secretary-General had received the notice of their acceptance of their appointment to the Tribunal.

**Article 25. Representation of the Parties**

25.1 Each party may be represented or assisted by agents, counsel or advocates whose names and authority shall be notified by that party to the Secretary-General, who shall promptly inform the Tribunal and the other party.

25.2 For the purposes of these Rules, the expression “party” includes, where the context so admits, and agent, counsel or advocate authorized to represent that party.

## **CHAPTER V. GENERAL PROCEDURAL PROVISIONS**

### **Article 26. Procedural Orders**

26.1 The Tribunal shall make the orders required for the conduct of the proceeding.

### **Article 27. Preliminary Procedural Consultation**

27.1 As early as possible after the constitution of a Tribunal, its President shall endeavor to ascertain the views of the parties regarding questions of procedure. For this purpose he may request the parties to meet him. He shall, in particular, seek their views on the following matters:

- (a) the number of members of the Tribunal required to constitute a quorum at its sittings;
- (b) the language or languages to be used in the proceeding;
- (c) the number and sequence of the pleadings and the time limits within which they are to be filed;
- (d) the number of copies desired by each party of instruments filed by the other;
- (e) dispensing with the written or oral procedure; and

- (f) the manner in which the cost of the proceeding is to be apportioned.

### **Article 28. Pre-Hearing Conference**

28.1 At the request of the Secretary-General or at the discretion of the President of the Tribunal, a pre-hearing conference between the Tribunal and the parties may be held to arrange for an exchange of information and the stipulation of uncontested facts in order to expedite the proceeding.

28.2 At the request of the parties, a pre-hearing conference between the Tribunal and the parties, duly represented by their authorized representatives, may be held to consider the issues in dispute with a view to reaching an amicable settlement.

### **Article 29. Procedural Languages**

29.1 The parties may agree on the use of one or two language to be used in the proceeding or, in the absence of such agreement, each party may select a language for this purpose; provided always that the Tribunal, after consultation with the Secretary-General, gives its approval for the language or languages selected under this paragraph.

29.2 If two procedural languages are approved for the proceeding, any instrument may be filed in either such language. Statements made before the Tribunal or by one of its members in one procedural language shall, unless the Tribunal decides to dispense therewith, be interpreted into the



other procedural language. The orders and the award of the Tribunal shall be rendered and the minutes kept in both procedural languages, both versions being equally authentic.

29.3 The Tribunal may authorize the use of a language other than a procedural language for a specified part of the proceeding. In such event it shall determine to what extent translation and interpretation into and from the procedural language or languages is required.

### **Article 30. Means of Communication**

30.1 During the pendency of the proceeding, the Secretary-General shall be the official Channel of communications among the parties and the Tribunal, except that:

- (a) the parties may communicate with each other unless the communication is one required by these Rules; and
- (b) the members of the Tribunal shall communicate directly with each other.

30.2 Instruments and documents shall be introduced into the proceeding by transmitting them to the Secretary-General, who shall retain the original for his files and arrange for appropriate distribution of copies.

**Article 31. Copies of Instruments**

31.1 Except as otherwise provided by the Tribunal after consultation with the parties and the Secretary-General, every notice, request, pleading, application, written observation or other instrument shall be filed in the form of a signed original accompanied by the following number of additional copies:

- (a) before the number of members of the Tribunal has been determined: five; and
- (b) after the number of members of the Tribunal has been determined: two more than the number of its members.

**Article 32. Supporting Documentation**

32.1 Documentation filed in support of any notice, request, pleading, application, written observation or other instrument introduced into the proceeding shall consist of one original and of the number of additional copies equal to the number of additional copies required of the instrument to which the documentation relates. The original shall, unless otherwise agreed by the parties or ordered by the Tribunal, consist of the complete document or of a copy or extract duly certified by a public official.

32.2 Each document which is not in a language approved for the proceeding shall, unless otherwise ordered by the Tribunal, be accompanied by a certified translation into such a language.

**Article 33. Time Limits**

33.1 All time limits specified in these Rules or fixed by a Tribunal or the Secretary-General shall be computed from the date on which representatives or on which the Secretary-General dispatches the pertinent notification or instrument (which date shall be marked on it). The day of such announcement or dispatch shall be excluded from the calculation.

33.2 A time limit shall be satisfied if a notification or instrument dispatched by a party is delivered to the Secretary-General before the close of business on the indicated date or, if that day is a Saturday, a Sunday, a public holiday observed at the place of delivery or a day on which for any reason regular mail delivery is restricted at the place of delivery, then before the close of business on the next subsequent day on which regular mail service is available.

33.3 Any step taken after expiration of the applicable time limit shall be disregarded unless the Tribunal, in special circumstances and after giving the other party an opportunity of stating its views, decides otherwise.

**Article 34. Waiver**

34.1 A party which knows or ought to have known that a provision of these Rules, of any other rules or agreement applicable to the proceeding, or of an order of the Tribunal has not been complied with and which fails to state promptly its objections thereto, shall be deemed to have waived the right to object.

**Article 35. Filling of Gaps**

35.1 If any question of procedure arises which is not covered by these Rules or any rules agreed by the parties, the Tribunal shall decide the question.

## **CHAPTER VI. WRITTEN AND ORAL PROCEDURES**

### **Article 36. Normal Procedures**

36.1 Except if the parties otherwise agree, the proceeding shall comprise two distinct phases:  
a written procedure followed by an oral one.

### **Article 37. Transmission of the Notice**

37.1 As soon as the Tribunal is constituted, the Secretary-Genera shall transmit to each member of the Tribunal a copy of the notice by which the proceeding was commenced, of the supporting documentation, of the received from either party in response thereto.

### **Article 38. The Written Procedure**

38.1 In addition to the request for arbitration, the written procedure shall consist of the following pleadings, filed within time limits set by the Tribunal:

- (a) a memorial by the Claimant;
  
- (b) a counter-memorial by the Respondent;

and, if the parties so agree or the Tribunal deems it necessary:

- (c) a reply by the Claimant; and

(d) a rejoinder by the Respondent.

38.2 If the request was made jointly, each party shall, within the same time limit determined by the Tribunal, file its memorial. However, the parties may instead agree that one of them shall, for the purposes of paragraph (38.1) of this Article, be considered as the Claimant.

38.3 A memorial shall contain: a statement of the relevant facts; a statement of law; and the submissions. A counter-memorial, reply or rejoinder shall contain an admission or denial of the facts stated in the last previous pleading; any additional facts, if necessary; observations concerning the statement of law in the last previous pleading; a statement of law in answer thereto; and the submissions.

### **Article 39. The Oral Procedure**

39.1 The oral procedure shall consist of the hearing by the Tribunal of the parties, their agents, counsel and advocates, and of witnesses and experts.

39.2 The Tribunal shall decide, with the consent of the parties, which other persons besides the parties, their agents, counsel and advocates, witnesses and experts during their testimony, and officers of the Tribunal may attend the hearings.

39.3 The members of the Tribunal may, during the hearings, put questions to the parties their agents, counsel and advocates, and ask them for explanations.

**Article 40. Marshalling of Evidence**

40.1 Without prejudice to the rules concerning the production of documents, each party shall, within time limits fixed by the Tribunal, communicate to the Secretary-General, for transmission to the Tribunal and the other party, precise information regarding the evidence which it intends to produce and that which it intends to request the Tribunal to call for, together with an indication of the points to which such evidence will be directed.

**Article 41. Evidence: General Principles**

41.1 The Tribunal shall be the judge of the admissibility of any evidence adduced and of its probative value.

41.2 The Tribunal may, if it deems it necessary at any stage of the proceeding, call upon the parties to produce documents, witnesses and experts.

**Article 42. Examination of Witnesses and Experts**

42.1 Witnesses and experts shall be examined before the Tribunal by the parties under the control of its President. Questions may also be put to them by any member of the Tribunal.

**Article 43. Witnesses and Experts: Special Rules**

43.1 Notwithstanding Article 42, the Tribunal may:

- (a) admit evidence given by a witness or expert in a written deposition;
- (b) with the consent of both parties, arrange for the examination of a witness or expert otherwise than before the Tribunal itself. The Tribunal shall define the procedure to be followed. The parties may participate in the examination. Minutes shall be kept in accordance with Article 44 of these Rules, *mutatis mutandis*; and
- (c) appoint one or more experts, define their terms of reference, examine their reports and hear from them in person.

**Article 44. Minutes**

44.1 The Secretary-General shall keep minutes of all hearings; these shall include:

- (a) the place, date and time of the hearing;
- (b) the names of the members of the Tribunal present;



- (c) the designation of each party present;
- (d) the names of the agents, counsel and advocates present;
- (e) the names, descriptions and addresses of the witnesses and experts heard;
- (f) a summary record of the evidence produced;
- (g) a summary record of the statements made by the parties;
- (h) a summary record of questions put to the parties by the members of the Tribunal, as well as of the replies thereto; and
- (i) any order made or announced by the Tribunal.

44.2 The minutes of the hearing shall be signed by the President of the Tribunal and the Secretary-General. These minutes alone shall be authentic. They shall not be published without consent of the parties.

44.3 The Tribunal may, and at the request of a party shall, order that the hearings be more fully recorded, in which event items (f), (g), and (h) listed in paragraph (44.1) of this Article may be omitted from the minutes.

**Article 45. Closure of the Proceeding**

45.1 When the presentation of the case by the parties is completed, the proceeding shall be declared closed.

45.2 Exceptionally, the Tribunal may, before the award has been rendered, reopen the proceeding on the ground that new evidence is forthcoming of such a nature as to constitute a decisive factor, or that there is a vital need for clarification on certain specific points.

## **CHAPTER VII. PARTICULAR PROCEDURES**

### **Article 46. Objections to Competence**

46.1 The Tribunal shall have the power to rule on its competence. For the purposes of this Article, the arbitration provisions of the Contract shall be separable from the other terms of the Contract.

46.2 Any objection that the dispute is not within the competence of the Tribunal shall be filed with the Secretary-General as soon as possible after the constitution of the Tribunal and in any event no later than the expiration of the time limit fixed for the filing of the counter-memorial or, if the objection relates to an ancillary claim, for the filing of the rejoinder—unless the facts on which the objection is based are unknown to the party at that time.

46.3 The Tribunal may on its own initiative consider, at any stage of the proceeding, whether the dispute before it is within its competence.

46.4 Upon the formal raising of an objection relating to the dispute, the proceeding on the merits shall be suspended. The Tribunal may deal with the objection as a preliminary question or join it to the merits of the dispute. If the Tribunal overrules the objection or joins it to the merits, the proceeding on the merits shall be resumed. If the Tribunal decides that the dispute is not within its competence, it shall issue an order to that effect, stating the grounds for its decision.

**Article 47. Provisional Measures of Protection**

47.1 Unless the arbitration provisions of the Contract otherwise provide, either party may at any time during the proceeding request that provisional measures for the preservation of its rights be ordered by the Tribunal. The Tribunal shall give priority to the consideration of such a request.

47.2 The Tribunal may also recommend provisional measures on its own initiative or recommend measures other than those specified in a request. It may at any time modify or revoke its recommendations.

47.3 The Tribunal shall order or recommend provisional measures, or any modification or revocation thereof, only after giving each party an opportunity of presenting its observations.

47.4 Nothing in this Article shall prevent the parties, provided that they have so stipulated in the Contract, from applying to any competent judicial authority for interim or conservatory measures.

**Article 48. Ancillary Claims**

48.1 Except as the parties otherwise agree, a party may present an incidental or additional claim or counter-claim, provided that such ancillary claim is within the scope of the arbitration provisions of the Contract.

48.2 An incidental or additional claim shall be presented not later than in the reply and a counter-claim no later than in the counter-memorial, unless the Tribunal, upon justification by the party

presenting the ancillary claim and upon considering any objection of the other party, authorizes the presentation of the claim at a later stage in the proceeding.

#### **Article 49. Default**

49.1 If a party fails to appear or to present its case at any stage of the proceeding, the other party may request the Tribunal to deal with the questions submitted to it and to render an award.

49.2 Whenever such a request is made by a party the Tribunal shall promptly notify the defaulting party thereof. Unless the Tribunal is satisfied that party does not intend to appear or to present its case in the proceeding, it shall, at the same time, grant a period of grace and to this end:

- (a) if that party had failed to file a pleading or any other instrument within the time limit fixed therefor, fix a new time limit for its filing; or
- (b) if that party had failed to appear or present its case at a hearing, fix a new date for the hearing.

The period of grace shall not, without the consent of the other party, exceed 60 days.

49.3 After the expiration of the period of grace or when, in accordance with paragraph (49.2) of this Article, no such period is granted, the Tribunal shall examine whether the

dispute is within its jurisdiction and, if it is satisfied as to its jurisdiction, decide whether the submissions made are well-founded in fact and in law. To this end, it may, at any stage of the proceeding, call on the party appearing to file observations, produce evidence or submit oral explanations.

#### **Article 50. Settlement and Discontinuance**

50.1 If, before the award is rendered, the parties agree on a settlement of the dispute or otherwise to discontinue to proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, or has not yet met, shall, at their written request, in an order to take note of the discontinuance of the proceeding.

50.2 If requested by both parties and accepted by the Tribunal, the Tribunal shall record the settlement in the form of an award. The Tribunal shall not be obliged to give reasons for such an award. The parties will accompany their request with the full and signed text of their settlement.

#### **Article 51. Discontinuance at Request of a Party**

51.1 If a party requests the discontinuance of the proceeding, the Tribunal, or the Secretary-General if the Tribunal has not yet been constituted, shall in an order fix a time limit within which the other party may state whether it opposes the discontinuance. If no objection is made in writing within the time limit, the Tribunal, or if appropriate the Secretary-General, shall in an order take note of the discontinuance of the proceeding. If objection is made, the proceeding shall continue.

**Article 52. Discontinuance for Failure of Parties to Act**

52.1                If the parties fail to take any steps in the proceeding during six consecutive months or such period as they may agree with the approval of the Tribunal, or of the Secretary-General if the Tribunal has not yet been constituted, they shall be deemed to have discontinued the proceeding and the Tribunal, or if appropriate the Secretary-General, shall, after notice to the parties, in an order take note of the discontinuance.

## **CHAPTER VIII. THE AWARD**

### **Article 53. The Award**

53.1 The award shall be made in writing, shall deal with every question submitted to the Tribunal and shall state the reasons upon which it is based.

53.2 The award shall be signed by the members of the Tribunal who voted for it; the date of each signature shall be indicated. Any member of the Tribunal may attach his individual opinion to the award, whether he dissents from the majority or not, or a statement of his dissent.

53.3 The Tribunal shall make every reasonable efforts to ensure that the award is legally enforceable.

### **Article 54. Authentication of the Award: Certified Copies: Date**

54.1 Upon signature by the last arbitrator to sign, the Secretary-General shall promptly:

- (a) authenticate the original text of the award and retain it in his files, together with any individual opinions and statements of dissent; and
- (b) dispatch a certified copy of the award (including individual opinions and statements of dissent) to each party, indicating the date of dispatch on the original text and on all copies.



54.2 The award shall be deemed to have been rendered on the date on which the certified copies were dispatched.

54.3 The award may only be made public with the consent of both parties.

#### **Article 55. Interpretation of the Award**

55.1 Within 45 days after the date of the award either party, with notice to the other party, may request that the Secretary-General obtain from the Tribunal an interpretation of the award.

55.2 The Tribunal shall determine the procedure to be followed.

55.3 The interpretation shall form part of the award, and the provisions of Article 53 and 54 of these Rules shall apply.

#### **Article 56. Correction of the Award**

56.1 Within 45 days after the date of the award either party, with notice to the other party, may request the Secretary-General to obtain from the Tribunal a correction in the award of any clerical, arithmetical or similar errors. The Tribunal may within the same period make such corrections on its own initiative.

56.2 The provisions of Articles 53 and 54 of these Rules shall apply to such corrections.

**Article 57. Supplementary Decisions**

57.1 Within 45 days after the date of the award either party, with notice to the other party may request the Tribunal, through the Secretary-General, to decide any question which it had omitted to decide in the award.

57.2 The Tribunal shall determine the procedure to be followed.

57.3 The decision of the Tribunal shall become part of the award and the provisions of Article 53 and 54 of these Rules shall apply thereto.

**CHAPTER IX. FUNCTIONS OF THE SECRETARY-GENERAL WITH RESPECT TO  
THE ADMINISTRATION OF THE PROCEEDING**

**Article 58. Register and Depository Functions**

58.1 The Secretary-General shall maintain a Register to record the notice for arbitration and all other significant data in respect of the proceeding. The Secretary-General shall retain in his files the original text of the said notice, of all instruments and documents filed or prepared in connection with the proceeding ,and of any award of the Tribunal.

58.2 The Secretary-General shall, upon payment of any charges to be determined by him, make available to the parties certified copies of each award, instruments and documents.

**Article 59. Secretary**

59.1 The Secretary-General may appoint a Secretary for the Tribunal to perform such functions as the Secretary-General may prescribe.

**Article 60. Other Assistance**

60.1 The Secretary-General shall be responsible for making and supervising arrangements for the proceeding.

60.2 The Secretary-General shall provide such other assistance as may be required in connection with all meetings of the Tribunal, in particular in providing or arranging for translation and interpretation services.

## **CHAPTER X. FINANCIAL PROVISIONS**

### **Article 61. Amount Payable upon Commencement of Proceedings**

61.1 The party or parties (if a notice is given jointly) wishing to commence a proceeding shall pay the Secretary-General such amount as the Secretary-General shall determine to cover estimated expenses during the period preceding the constitution of the Tribunal. Any amount paid by a party under this Article shall be credited to such party's advances made in accordance with Article 67.

### **Article 62. Fees and Expenses of the Tribunal**

62.1 Unless the parties and the Tribunal otherwise agree, the fees and expenses of the members of the Tribunal shall be determined on the basis of the rates applicable to arbitration conducted under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

### **Article 63. Administrative Charges**

63.1 The administrative charges in connection with the proceeding shall include, in addition to reimbursement of all direct expenses attributable to the proceeding, such charge for assistance required by the Secretary-General as he may reasonably determine.

**Article 64. Currency of Payment**

64.1 The amounts payable pursuant to Article 61, 62, and 63 of these Rules shall be paid in such currency or currencies as the Secretary-General shall reasonably determine.

**Article 65. Payments to be Made by Secretary-General**

65.1 All payments, including reimbursement of expenses, to the following shall in all cases be made by the Secretary-General and not by or through either party to the proceeding:

- (a) members of the Tribunal;
- (b) witnesses and experts summoned at the initiative of the Tribunal, and not of one of the parties;
- (c) persons (such as nay Secretary for the Tribunal, interpreters, translators, reporters or secretaries) assigned or engaged by the Secretary-General to perform functions for the proceeding; and
- (d) the host of the proceeding.

**Article 66. Payments to be Made to Secretary-General**

66.1 In order to enable the Secretary-General to make the payments provided for in Article 65 of these Rules, as well as to be reimbursed for or to incur other expenses in connection with the proceeding (other than expenses covered by Article 68 of these Rules):

- (a) the parties shall make payments to the Secretary-General as follow:
  - (i) as soon as the Tribunal has been constituted and thereafter before the beginning of each period of six months, the Secretary-General shall estimate the expenses that will be incurred during the following period of six months and request the parties to make an advance payment of this amount and, in the case of the initial request, to pay in addition the estimated amount of expenses incurred prior to the constitution of the Tribunal to the extent it exceeds the amount paid toward such expenses under Article 61 of these Rules; and
  - (ii) if at any time the Secretary-General determines that the advances made by the parties will not cover a revised

estimate of expenses for the applicable period, he shall request the parties to make a supplementary advance payment.

- (b) The Secretary-General shall not be required to provide any service in connection with the proceeding or to pay the fees, allowances or expense of the members of the Tribunal, unless sufficient advance payments shall previously have been made.

**Article 67. Division of Charges**

67.1 Without prejudice to the final decision on the payment of the cost of the proceeding to be made by the Tribunal pursuant to Article 69 of these Rules, and except as provided for in Article 61, each party shall pay one-half of each advance requested by the Secretary-General in connection with the proceeding. All amounts shall be payable at the place and in the currencies specified by the Secretary-General, as soon as a request for payment is made by him. If the amounts requested are not paid in full within 30 days, then the Secretary-General shall inform both parties of the default and give an opportunity to either of them to make the required payment. At any time 15 days after such information is sent, the Secretary-General may move that the Tribunal stay the proceeding, if by the date of such motion any part of the required payment is still outstanding. If the proceeding is stayed or non-payment for a consecutive period in excess of six months, the Secretary-General may after notice to and as far as possible in consultation with the parties, move that the Tribunal discontinue the proceeding.

**Article 68. Special Services to Parties**

68.1 The Secretary-General shall only perform any special service for a party in connection with the proceeding (for example, the provision of translations or copies) if the party shall in advance have deposited an amount sufficient to cover the charge for such service.

**Article 69. Cost of Proceeding**

69.1 Unless the parties otherwise agree, the Tribunal shall decide how and by whom the fees and expenses of the members of the Tribunal, the expenses and charges of the Secretary-General and



the expenses incurred by the parties in connection with the proceeding shall be borne. The Tribunal may, to that end, call on the Secretary-General and the parties to provide it with the information it needs in order to formulate the division of the cost of the proceedings between the parties.

69.2           The decision of the Tribunal pursuant to paragraph (69.1) of this Article shall form part of the award.