



THE ASSOCIATION OF ARBITRATORS (SOUTHERN AFRICA)

**RULES FOR THE CONDUCT OF ARBITRATIONS
2013 EDITION
STANDARD PROCEDURE RULES
(ANNOTATED VERSION, SHOWING DIFFERENCES TO
UNCITRAL ARBITRATION RULES, 2010)**

[UNCITRAL Arbitration Rules (as revised in 2010)]
STANDARD PROCEDURE RULES

Section I. Introductory rules

Scope of application and interpretation^[*]

Article 1

1. Where parties have agreed in writing that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the [UNCITRAL Arbitration Rules] Association's Rules for the Conduct of Arbitration, then such disputes shall be settled in accordance with these Standard Procedure Rules subject to such modification as the parties may agree in writing.

2. For purposes paragraph 1 an agreement in writing includes an electronic communication if the information contained in it is accessible so as to be useable for subsequent reference.

3. For purposes of paragraph (2), "electronic communication" means a communication by means of data messages and "data message" means data generated, sent, received or stored by electronic means and includes a stored record.

4. These Rules shall come into force on 1 January 2013 and unless the parties have agreed otherwise, shall apply to any arbitration which is commenced on or after that date.

~~[2. The parties to an arbitration agreement concluded after 15 August 2010 shall be presumed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules. That presumption does not apply where the arbitration agreement has been concluded by accepting after 15 August 2010 an offer made before that date.]~~

[3] 5. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

6. In these Rules:

"Agreement" means the written agreement entered into between the parties.

[* - A model arbitration clause for contracts can be found in the annex to the Rules.]

“Association” refers to the Association of Arbitrators (Southern Africa) or a non-profit company incorporated as its successor.

“Arbitral tribunal” includes a sole arbitrator or all the arbitrators where more than one are appointed.

“Interim measure” refers to an interim measure as defined in article 26, paragraph 2.

Notice and calculation of periods of time

Article 2

1. A notice, including a notification, communication or proposal, may be transmitted by [~~any means of communication that provides or allows for a record of its transmission~~] document, facsimile or e-mail.

2. If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by [~~electronic means such as~~] facsimile or e-mail may only be made to an address so designated or authorized.

3. In the absence of such designation or authorization, a notice is:
(a) Received if it is physically delivered to the addressee; or
(b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.

4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee’s last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee’s electronic address.

6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Notice of arbitration

Article 3

1. The party or parties initiating recourse to arbitration (hereinafter called the “claimant”) shall communicate to the other party or parties (hereinafter called the “respondent”) a notice of arbitration.

2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent. This deeming provision shall not derogate from a party’s right to contend for an earlier date with respect to the interruption of any applicable time bar such as prescription.

3. The notice of arbitration shall include the following:

- (a) A demand that the dispute be referred to arbitration;
- (b) The names and contact details of the parties;
- (c) The name and contact details of any arbitrator already agreed upon by the parties;
- (d) Identification of the arbitration agreement that is invoked;
- (e) Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
- (f) A brief description of the claim and an indication of the amount involved, if any;
- (g) The relief or remedy sought;
- (h) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.

4. The notice of arbitration may also include:

[(a) — A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;]

(b) A proposal for the appointment of a sole arbitrator referred to in article 8[~~, paragraph 1~~];

(c) Notification of the appointment of an arbitrator referred to in article 9 or 10.

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

Response to the notice of arbitration

Article 4

1. Within 30 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall include:

(a) The name and contact details of each respondent;

(b) A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3 (c) to ~~(g)~~ (h).

2. The response to the notice of arbitration may also include:

(a) Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;

~~[(b) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;]~~

(b) A proposal for the appointment of a sole arbitrator referred to in article 8~~, paragraph 1~~;

(c) Notification of the appointment of an arbitrator referred to in article 9 or 10;

(d) A brief description of 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;

(e) A notice of arbitration in accordance with article 3 in case 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, which shall be ~~finally~~ resolved by the arbitral tribunal.

Representation [~~and assistance~~]

Article 5

Each party may be represented [~~or assisted~~] by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. [~~Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act 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 a form as the arbitral tribunal may determine.

~~[Designating and appointing authorities]~~ The Association as appointing authority

Article 6

~~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, including the Secretary General of the Permanent Court of Arbitration at The Hague (hereinafter called the “PCA”), one of whom would serve as appointing authority.~~

~~2.— If all parties have not agreed on the choice of an appointing authority within 30 days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request the Secretary General of the PCA to designate the appointing authority.~~

~~3.— Where these Rules provide for a period of time within which a party must refer a matter to an appointing authority and no appointing authority has been agreed on or designated, the period is 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 article 41, paragraph 4, if the appointing authority refuses to act, or if it fails to appoint an arbitrator within 30 days after it receives a party’s request to do so, fails to act within any other period provided by these Rules, 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 Secretary General of the PCA to designate a substitute appointing authority.]~~

1. In exercising [~~their~~] its functions under these Rules, the [~~appointing authority and the Secretary General of the PCA~~] Association may require from any party and the arbitrators the information [~~they~~] it deems necessary and [~~they~~] it shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any

manner ~~[they]~~ it considers appropriate. All such communications to and from the ~~[appointing authority and the Secretary General of the PCA]~~ Association shall also be provided by the sender to all other parties.

2. When the ~~[appointing authority]~~ Association is requested to appoint an arbitrator pursuant to articles 8, 9, 10 or 14, the party making the request shall send to the ~~[appointing authority]~~ Association copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.

3. The ~~[appointing authority]~~ Association shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator. ~~[and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.]~~

Section II. Composition of the arbitral tribunal

Number of arbitrators

Article 7

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be ~~[only one]~~ three arbitrators, ~~[three arbitrators]~~ a sole arbitrator shall be appointed.

2. ~~[Notwithstanding paragraph 1,]~~ If no other parties have responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with article 9 or 10, the ~~[appointing authority]~~ Association may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8 ~~[paragraph 2]~~, if it determines that, in view of the circumstances of the case, this is more appropriate.

3. Notwithstanding section 11(1)(b) of the Arbitration Act 42 of 1965, any decision by the parties for purposes of these Rules that the arbitral tribunal shall comprise three arbitrators shall imply that the third arbitrator is the presiding arbitrator and not an umpire.

~~[Appointment of arbitrators (articles 8 to 10)]~~

Appointment of a sole arbitrator

Article 8

~~[1.] [If the parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereon.]~~ Where the tribunal is to comprise of only one arbitrator, if

within 30 days of the receipt of the notice for arbitration the parties have not agreed on the arbitrator, a sole arbitrator [shall] may, at the request of a party, be appointed by the [appointing authority] Association.

~~[2.—The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list procedure, unless the parties agree that the list procedure should not be used or unless 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 containing at least three names;~~

~~(b)—Within 15 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;~~

~~(c)—After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;~~

~~(d)—If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.]~~

Tribunal of three arbitrators

Article 9

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.

2. If within 30 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] Association to appoint the second arbitrator.

3. If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the Association may appoint the presiding arbitrator [shall be appointed by the appointing authority] in the same way as a sole arbitrator would be appointed under article 8.

Tribunals for multi-party arbitrations

Article 10

1. For the purposes of article 9, paragraph 1, where three arbitrators are to 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, whether as claimant or as respondent, shall appoint an arbitrator.

2. If the parties have agreed that the arbitral tribunal is to 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 the arbitral tribunal under these Rules, the ~~[appointing authority shall]~~ Association may, 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.

Disclosures by and challenge of arbitrators^[1] (articles 11 to 13)**

Article 11

1. When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

2. Before accepting appointment, the arbitrator shall also provide a signed statement of availability.

Article 12

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

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

[** Model statements of independence pursuant to article 11 can be found in the annex to the Rules.]

3. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

Article 13

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in articles 11 and 12 became known to that party.

2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.

3. When an arbitrator has been challenged by a party, all parties may agree to the challenge, in which case the arbitrator shall withdraw from his or her office. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the [~~appointing authority~~] Association.

Replacement of an arbitrator

Article 14

1. Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.

2. If, at the request of a party, the [~~appointing authority~~] Association 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 appoint a substitute arbitrator, the [~~appointing authority~~] Association 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.

Repetition of hearings in the event of the replacement of an arbitrator

Article 15

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal, after consultation with the parties, decides otherwise.

Exclusion of liability

Article 16

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the ~~[appointing authority]~~ Association and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

Section III. Arbitral proceedings

General provisions

Article 17

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.

~~[2. — As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.]~~

2. Within 30 days of its constitution, the arbitral tribunal shall convene a preliminary meeting with the parties and shall notify the parties of the time and venue. The arbitral tribunal may direct that the preliminary meeting be conducted through means of telecommunication that do not require the physical presence of the parties. The arbitral tribunal, after inviting the parties to express their views, shall establish the provisional timetable for the arbitration.

3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or

whether the proceedings shall be conducted on the basis of documents and other materials.

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

5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

Place of arbitration

Article 18

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.

2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

Language

Article 19

1. Subject to ~~an~~ any prior agreement by the parties on the issue, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Statement of claim

Article 20

1. The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this article.

2. The statement of claim shall include the following particulars:

- (a) The names and contact details of the parties;
- (b) A statement of the facts supporting the claim;
- (c) The points at issue;
- (d) The relief or remedy sought;
- (e) The legal grounds or arguments supporting the claim.

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 [~~should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them~~] shall be accompanied by all relevant documents relied upon by the claimant to sustain an averment in the statement of claim.

Statement of defence

Article 21

1. The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in article 4 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this article.

2. The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (art. 20, para. 2). The statement of defence [~~should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them~~] shall be accompanied by all

relevant documents relied upon by the respondent to sustain an averment in its statement of defence.

3. In its statement of defence, or at a later stage in the arbitral 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 provided that the arbitral tribunal has jurisdiction over it.

4. The provisions of article 20, paragraphs 2 to 4, shall apply to a counterclaim, a claim under article 4, paragraph 2 [(f)] (e), and a claim relied on for the purpose of a set-off.

Amendments to the claim or defence

Article 22

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, 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.

Pleas as to the jurisdiction of the arbitral tribunal

Article 23

1. The 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. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is [~~null shall not entail automatically the invalidity of~~] a nullity shall not automatically invalidate the arbitration clause.

2. A plea that the 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. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

Further written statements

Article 24

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

Periods of time

Article 25

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

Interim measures

Article 26

1. The arbitral tribunal may, at the request of a party, grant interim measures.

2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, 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, (i) current or imminent harm or (ii) 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; or
- (e) Provide security for costs.

3. The party requesting an interim measure under paragraphs 2 (a) to (c) and (e) 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 or defence, as the case may be. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

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

5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

7. 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.

8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement, except that by agreeing to arbitration under these rules, a party will be deemed to have agreed not to apply to any judicial authority for relief available from the arbitral tribunal under paragraphs 2(e) and 10.

10. Subject to paragraphs 3 and 11 and unless the parties agree otherwise, the arbitral tribunal may, on the application of a party, order any claiming or counterclaiming party to provide appropriate security for costs (including additional security) and may stay the arbitration proceedings pending compliance with such order.

11. In the event that the party ordered to provide the security fails to do so within the time stipulated by the arbitral tribunal without sufficient cause being shown, the arbitral tribunal shall terminate the arbitration in relation to that party's claim and, if appropriate, direct that the arbitration proceed to determine the other party's claim.

Evidence

Article 27

1. ~~[Each party shall have the burden of proving the facts relied on to support its claim or defence.]~~ The arbitral tribunal shall proceed within as short a time as possible to establish the facts of the case by all appropriate means.

2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.

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

Hearings

Article 28

1. In the event of an oral hearing, the arbitral tribunal shall give the parties ~~[adequate advance]~~ notice of the date, time and place thereof.

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

3. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.

4. 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 (such as videoconference).

Experts appointed by the arbitral tribunal

Article 29

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

2. The expert shall, [~~in principle~~] before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, 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. The arbitral tribunal shall decide promptly what, if any, action to take.

3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.

5. At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of article 28 shall be applicable to such proceedings.

Default

Article 30

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:

(a) The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;

(b) The respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph 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.

2. If a party, duly notified under these Rules, fails to [~~appear at~~] attend a hearing or other meeting, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration or meeting.

3. 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

Article 31

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

Waiver of right to object

Article 32

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

Section IV. The award

Decisions

Article 33

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. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

Form and effect of the award

Article 34

1. The arbitral tribunal may make separate awards on different issues at different times.

2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

5. Unless the parties otherwise agree, the arbitral tribunal shall make its award as soon as practicable, but in any event within 60 days after the closure of the hearing, or the submission of the last document to the arbitral tribunal in the event that there is no hearing, provided that the parties, at the request of arbitral tribunal, can extend this period in writing signed by them. The Association may also, at the request of the arbitral tribunal, extend this period by means of a written notice to the parties and the arbitral tribunal.

~~[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. Unless the parties expressly agree in writing to the contrary, the parties undertake as a general principle to keep confidential all awards in their arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain - save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.

~~[6]~~ 7. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

8. Notwithstanding the provisions of article 34.5, the arbitral tribunal shall only be obliged to communicate its award after receipt of payment of all its fees and expenses.

Applicable law, *amiable compositeur*

Article 35

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

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

3. 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.

4. The arbitration tribunal may, at the request of a party apply the provisions of any law applicable at the place of the arbitration or which applies to the dispute and which provides for the reduction of any penalty or liquidated damages claim.

Settlement or other grounds for termination

Article 36

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of 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. The arbitral tribunal is not obliged to give reasons for such an award.

2. 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. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.

3. 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. Where an arbitral award on agreed terms is made, the provisions of article 34, paragraphs 2, 4 [~~and 5~~] 6 and 8, shall apply.

Interpretation of the award

Article 37

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.

2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 34, paragraphs 2 to ~~[6]~~ 4 and 6 to 8, shall apply.

Correction of the award

Article 38

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.

2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.

3. Such corrections shall be in writing and shall form part of the award. The provisions of article 34, paragraphs 2 to ~~[6]~~ 4 and 6 to 8, shall apply.

Additional award

Article 39

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.

2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.

3. When such an award or additional award is made, the provisions of article 34, paragraphs 2 to ~~[6]~~ 4 and 6 to 8, shall apply.

Definition of costs

Article 40

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.

2. The term “costs of arbitration” includes only:

(a) The fees of the arbitral tribunal to be stated separately as to each arbitrator [~~and to be fixed by the tribunal itself in accordance with article 41~~];

(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;]~~

~~[(f) (d) Any fees and expenses of the [appointing authority as well as the fees and expenses of the Secretary-General of the PCA] Association.~~

3. In relation to interpretation, correction or completion of any award under articles 37 to 39, the arbitral tribunal may [~~award~~] charge the costs referred to in paragraphs 2 (b) to ~~(f) (d)~~, but no additional fees.

4. The parties are jointly and severally liable to the arbitral tribunal and the Association for the costs of arbitration.

~~[Fees and expenses of arbitrators]~~

Editorial Note: Article 41 of the UNCITRAL Rules, dealing with the fees and expenses of arbitrators, has been deleted in its entirety and the remaining articles have been renumbered accordingly.

Allocation of costs

Article [~~42~~] 41

~~[1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.]~~

1. Unless the parties otherwise agree, the award of costs is in the discretion of the arbitral tribunal. In exercising its discretion, the tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.

2. For purposes of paragraph 1 “costs” includes costs of arbitration as defined in article 40, paragraph 2 and:

(a) The legal and other costs incurred by the parties in relation to the arbitration;

(b) The reasonable travel and other expenses of witnesses.

3. If the arbitral tribunal settles the costs it shall be entitled to employ the services of a professional taxing consultant to assist it in determining the amount of such costs to be awarded. In the event of the arbitral tribunal employing the services of a professional taxing consultant, the costs thereof shall be costs in the cause subject to the arbitral tribunal’s directive as to costs in its final award.

4. If the parties agree or the arbitral tribunal directs that the costs be taxed by the Taxing Master of the Court and the Taxing Master refuses or is unable to tax such costs, then the matter shall revert to the arbitral tribunal, which shall either refer the costs to be taxed by such professional taxing service as may be agreed or, in the absence of agreement, as it may appoint, or make an award of such costs as it deems reasonable in the circumstances.

~~[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.]~~

5. At any time during the arbitral proceedings, the arbitral tribunal may, on the application of a party, make a decision on costs and order payment in an award. For this purpose, costs include a deposit required from one party by the arbitral tribunal and paid by another under article 42, paragraph 3.

6. The arbitral tribunal may direct that recoverable costs of the arbitration, or any part of the arbitral proceedings, should be limited to a specified amount and/or duration of the hearing and/or in any other appropriate manner.

7. Any directive made by the arbitral tribunal under paragraph 6 may be varied at any stage provided that a direction for the limitation of costs or any variation thereof must be made sufficiently in advance of the incurring of costs or the taking of steps to which it relates for the limitation to be taken into account.

8. The arbitral tribunal shall not exercise its powers under paragraphs 6 and 7 without first affording the parties an opportunity to make submissions to it.

Deposit of costs

Article [43] 42

1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in article 40, paragraphs 2 (a) to (c).

2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.

~~[3. If an appointing authority has been agreed upon or designated, and when a party so requests and the appointing authority consents to perform the function, 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 that it deems appropriate concerning the amount of such deposits and supplementary deposits.]~~

3. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

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

Editorial Note: The Annex to the UNCITRAL Rules, containing a model arbitration clause, a possible waiver statement to exclude recourse against the award, and model statements of independence pursuant to article 11 of the Rules, has been omitted in its entirety.