

# International Labour Arbitration and Conciliation Rules

## INTRODUCTION

The International Labour Arbitration and Conciliation Rules (“Rules”) have been drafted in order to reflect best practices for speedy and efficient resolution of disputes arising under international labour agreements. Specifically:

- (1) The Rules are focused on resolving disputes arising under agreements negotiated by multinational corporations (“MNCs”) and brands, global unions and allied non-profit organizations. The primary task is contract interpretation, bearing in mind that the contracts at issue specifically intend to promote rights as well as commerce. The Rules also account for the fact that global labour agreements are likely to promote collaborative settlements and encourage exchange of information and dispute resolution prior to arbitration, often under the auspices of a joint oversight body that monitors compliance with contract commitments.
- (2) The Rules account for the fact that parties to global labour agreements, while negotiating as equals, are not similarly situated in terms of resources or their ability to discover and address contract violations. Global unions and non-profits acting on behalf of workers, including the most vulnerable workers in the global economy, cannot invest disproportionate funds into the costly systems of arbitration that govern international disputes between corporate actors. Nor can they afford the time required by such procedures: left unremedied, violations of international labour agreements threaten the economic security, rights, and even the lives of workers. MNCs bring their own concerns to dispute resolution under labour agreements, as proceedings often involve sensitive business information and can have reputational consequences. All parties to international labour agreements share an interest in resolving disputes efficiently, fairly, and effectively.
- (3) The Rules both reflect lessons learned by parties to arbitrations arising from international labour agreements and seek to incorporate progress made in recent years to adapt the tools of international arbitration to serve more stakeholders in the global economy. The parties to the Bangladesh Accord, in moving forward to arbitrate two disputes in 2016-17 pursuant to their arbitration agreement, highlighted the challenges of labour arbitration under the UNCITRAL Arbitration Rules designed for commercial actors and disputes centered around pecuniary claims rather than worker rights and safety. The 2019 Hague Rules on Business and Human Rights Arbitration made important improvements to adapt the UNCITRAL Arbitration Rules to disputes that concern the human rights – including labour rights – impacts of business activities. In addition, nearly every major mechanism for global conciliation and arbitration, including UNCITRAL, has invested in developing procedures to meet the need for expedition voiced by many stakeholders, including MNCs. Those efforts have informed the content of these Rules.

## **PREAMBLE**

1. The International Labour Arbitration and Conciliation Rules (“Rules”) provide a mechanism for resolving disputes arising under global labour agreements, including worker supply chain agreements, and other contracts that promote and protect the rights of workers in global commerce.
2. The Rules are based on the 2019 Hague Rules on Business and Human Rights Arbitration (“Hague Rules”), with changes to accommodate the particular characteristics of disputes arising from international labour agreements. The Rules address the need for speed and efficiency in resolving labour disputes while still providing the arbitral tribunal with discretion to ensure rights-compatibility and procedural fairness. As with the Hague Rules, arbitration and conciliation under these Rules is intended to provide:
  - (a) For the possibility of a remedy for those affected by the human rights impacts of business activities, as set forth in Pillar III of the United Nations Guiding Principles on Business and Human Rights (the “UN Guiding Principles”), serving as a grievance mechanism consistent with Principle 31 of the UN Guiding Principles; and
  - (b) Businesses with a mechanism for addressing adverse human rights impacts with which they are involved, as set forth in Pillar II and Principles 11 and 13 of the UN Guiding Principles.
3. Arbitration under the Rules is not meant as a general substitute for State-based judicial or non-judicial mechanisms.
4. The settlement of disputes by collaborative settlement mechanisms, such as mediation, conciliation, negotiation and facilitation is encouraged, including at any stage of an arbitration proceeding that has already been commenced.
5. Nothing in these Rules should be read as creating new international legal obligations or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with respect to human rights.

## SECTION I. INTRODUCTORY RULES

### Scope of application

#### Article 1

1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under these Rules, then such disputes shall be settled in accordance with these Rules as in force on the date of commencement of the proceedings and subject to such modification as the parties may expressly agree upon in writing. The Rules include the Code of Conduct for Arbitrators appended to the Hague Rules (the “Code of Conduct”). The characterization of the dispute as relating to international labour agreements is not necessary for jurisdiction where all the parties to the arbitration have agreed to settle a dispute under these Rules.

2. The parties agree that any dispute that is submitted to arbitration under these Rules shall be deemed to have arisen out of a commercial relationship or transaction for the purposes of Article I of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”).

3. 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.

4. The parties acknowledge that the human rights standards and principles expressed in the UN Guiding Principles and the Organisation for Economic Cooperation and Development Guidelines for Multinational Enterprises set forth a minimum standard of conduct. Depending on the circumstances, business enterprises may need to consider additional standards. Nothing in these Rules should be understood to limit or exempt a party from fulfilling its obligations and duties under the applicable law and other instruments relating to human rights.

5. Without prejudice to the right of any party to commence or continue an arbitration under these Rules, the parties shall endeavor to resolve any dispute in good faith through negotiation, conciliation, mediation, facilitation or other collaborative settlement mechanisms. Such settlement may be agreed at any time, including after arbitration proceedings under these Rules have been commenced.

6. For the purposes of these Rules:

- (a) “arbitral tribunal” means a sole arbitrator or panel of arbitrators appointed under these rules;
- (b) “arbitration agreement” means one or more agreements to refer disputes to arbitration under these Rules;
- (c) “day” means, unless otherwise stated, a calendar day;
- (d) “PCA” means the International Bureau of the Permanent Court of Arbitration at The Hague, including where relevant its Secretary-General and all other officers and employees; and

- (e) “they”, “them”, “their” are used as both singular and plural pronouns.

## **Permanent Court of Arbitration**

### **Article 2**

1. The PCA shall serve as registry and administer the proceedings in accordance with these Rules.
2. In exercising its functions under these Rules, the PCA may require from any party, arbitrator, conciliator, or mediator the information it deems necessary and it shall give the parties and, where appropriate, the arbitrators, conciliators, or mediators an opportunity to present their views in any manner they consider appropriate. Unless otherwise directed by the PCA, all such communications to and from the PCA shall also be provided by the sender to all other parties.
3. The PCA may, at its sole discretion, extend or abridge any period of time agreed by the parties or prescribed under Sections I, II, V, and VI of these Rules.

### **Notice and calculation of periods of time**

#### **Article 3**

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.
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;
  - (b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee, or through diplomatic channels in the case of a State.
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.

## **Representation and assistance**

### **Article 4**

1. 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, to the PCA and to the arbitral tribunal. The parties' 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 PCA or 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.

2. Where a party faces barriers to access to remedy, including a lack of awareness of the mechanism, lack of adequate representation, language, literacy, costs, physical location or fears of reprisal, the arbitral tribunal shall, without compromising its independence and impartiality, ensure that such party is given an effective opportunity to present its case in fair and efficient proceedings.

## **Notice of arbitration**

### **Article 5**

1. The party or parties initiating recourse to arbitration (the "claimant") shall communicate to the other party or parties (the "respondent") and the PCA a notice of arbitration. The PCA shall then notify the parties of the date of receipt of the notice of arbitration and invite the respondent to submit a response to the notice of arbitration.

2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the PCA.

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) Identification of the arbitration agreement that is invoked;
- (d) Identification of any rule, decision, agreement, contract, convention, treaty, constituent instrument of an organization or agency or relationship out of, or in relation to which, the dispute arises;
- (e) A description of the claim and the facts supporting it, and an indication of the amount involved, if any;
- (f) The points at issue;

- (g) The relief or remedy sought, including any interim relief;
- (h) The legal grounds or arguments supporting the claim; and
- (i) A proposal for the appointment of the sole arbitrator, the language and place of arbitration, if the parties have not previously agreed thereon.

4. A copy of any rule, decision, agreement, contract, convention, treaty, constituent instrument of an organization or agency, or a description of any relationship out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the notice of arbitration.

5. The notice of arbitration should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

6. 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 6**

1. Within 30 days of its receipt of the notice of arbitration, the respondent shall communicate to the PCA and 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 5, paragraphs 3 (c) to (i).

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) The information specified in Article 5, paragraphs 3 (e) to (h) in respect of counterclaims or claims for the purpose of a set-off, if any;
- (c) A notice of arbitration in accordance with Article 5 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.

### **Administrative conference**

#### **Article 7**

1. As soon as practicable, and in any event within 21 days of commencement of the arbitration, the PCA may hold an administrative conference to facilitate discussion and agreement on conciliation of the dispute, arbitrator selection, the location and language(s) of proceedings, requests for interim relief, and any other administrative matters. The conference may be held

by means of communication that do not require physical presence (such as telephone or videoconference). If a tribunal has been constituted, the administrative conference may take place as part of the case management conference pursuant to Article 17, paragraph 3.

2. At or prior to the administrative conference, the PCA shall invite the parties to engage in conciliation in accordance with Article 49, except where:

- (a) the parties have already engaged in a formal process of conciliation or mediation, including any process required by the international labour agreement prior to accessing arbitration;
- (b) the parties agree that conciliation would be fruitless; or
- (c) the PCA considers that conciliation would not advance the resolution of the dispute.

## **SECTION II. COMPOSITION OF THE ARBITRAL TRIBUNAL**

### **Appointment of Arbitrators (Articles 8 to 10)**

#### **Article 8**

1. If the parties have not previously agreed on the number of arbitrators, and if within 7 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be more than one arbitrator, a sole arbitrator shall be appointed.

2. If within 14 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator, the parties have not reached agreement thereon, a sole arbitrator shall be appointed by the PCA.

3. The PCA shall appoint the sole arbitrator as promptly as possible. In making the appointment, the PCA shall use the following list-procedure, unless the parties agree on another method or unless the PCA determines in its discretion that the use of the list-procedure is not appropriate for the case:

- (a) The PCA shall communicate to each of the parties an identical list containing at least three names;
- (b) The parties are encouraged to agree upon an arbitrator from that list, and shall advise the PCA in case of agreement;
- (c) If, within 7 days after the receipt of this list or such other period as may be set by the PCA, the parties have not agreed on an arbitrator, each party may return the list to the PCA 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;
- (d) The PCA 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;
- (e) If for any reason the appointment cannot be made according to this procedure, the PCA may exercise its discretion in appointing the sole arbitrator.

4. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one, the arbitrators shall be appointed according to the method agreed upon by the parties.

#### **Article 9**

In the event of any failure to constitute the arbitral tribunal under these Rules or any other method of nomination or appointment of arbitrators agreed by the parties, or where the PCA considers that such method creates a significant risk of unequal treatment or unfairness, the PCA shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

#### **Article 10**

1. Unless otherwise agreed by the parties or unless the PCA determines in its discretion that it is not appropriate for the case, the appointment of arbitrators under these Rules shall be made in accordance with the following:

- (a) No person who has previously been involved in the dispute in any capacity may be appointed as an arbitrator;
- (b) Persons appointed to serve as arbitrators under these Rules shall be persons of high moral character, who may be relied upon to exercise independent and impartial judgment. Without prejudice to Articles 11 to 13, in assessing the impartiality, independence or qualifications of arbitrators, the parties, the arbitrators and the PCA shall apply the Code of Conduct;
- (c) The arbitrators shall have demonstrated expertise in international dispute resolution and in areas relevant to the dispute, which may include, depending on the circumstances of the case, business and human rights law and practice, international human rights law, international labour law and labour standards, relevant national and international law and knowledge of or experience in the relevant field, industry, or cultural context.

2. The arbitrators shall comply with the Code of Conduct.

3. The Parties, arbitrators and the PCA shall take into account the advisability of forming a diverse tribunal.

#### **Disclosures by and challenge of arbitrators (Articles 11 to 13)**

#### **Article 11**

When a person is approached in connection with their possible appointment as an arbitrator, they shall disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. An arbitrator, from the time of their 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 them of these circumstances. In assessing the circumstances likely to give rise to justifiable doubts as to their impartiality or



independence, a person approached in connection with their possible appointment as an arbitrator shall be guided by the highest international standards as reflected in the Code of Conduct.

### **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 or if the arbitrator does not possess the qualifications agreed to by the parties in their arbitration agreement.
2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.
3. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of their performing their 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 14 days after it has been notified of the appointment of the challenged arbitrator, or within 14 days after the circumstances mentioned in Articles 11 and 12 became known to that party.
2. The notice of challenge shall be communicated to the PCA and copied 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. The arbitrator may also, after the challenge, withdraw from their office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
4. If, within 14 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 PCA shall decide on the challenge.
5. Unless otherwise agreed by the parties, the PCA shall give reasons for the decision on the challenge.
6. The arbitral tribunal may continue the arbitral proceedings, notwithstanding any pending challenge to an arbitrator.

### **Replacement of an arbitrator**

#### **Article 14**

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 Article 8, paragraph 3 or paragraph 4, as applicable. 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.

## **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 their functions, unless the arbitral tribunal decides otherwise.

## **Exclusion of liability**

### **Article 16**

The parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the PCA 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 expenses and to provide a fair, efficient, culturally appropriate and rights-compatible process for resolving the parties' dispute.

2. Unless otherwise agreed by the parties, the arbitral tribunal shall render its final award within 180 days from the commencement of the arbitration. The PCA may, upon the request of the arbitral tribunal, extend this time limit.

3. As soon as practicable after its constitution, the arbitral tribunal shall hold a case management conference with the parties. Discussions at the case management conference may include, without limitation, the following matters:

- (a) The timetable for the arbitration;
- (b) The rules of evidence;
- (c) The regime of transparency;
- (d) The organization and conduct of the hearing; and
- (e) The fees and expenses of the arbitral tribunal.

4. The arbitral tribunal may decide in consultation with the parties to hold such additional procedural meetings as appropriate.

5. Subject to paragraph 2, the arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time agreed by the parties or prescribed under Sections III and IV of these Rules.

6. Without compromising its independence and impartiality, the arbitral tribunal may take steps to facilitate the settlement of the dispute before it. The parties agree that the arbitral tribunal's facilitation of settlement in accordance with this paragraph will not be asserted by any party as grounds for the challenge of any of the arbitrators or for the set aside or refusal of enforcement of any award rendered by the arbitral tribunal.

7. Unless the parties agree otherwise, the arbitral tribunal shall decide whether to hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. The hearing shall in principle take place within 30 days of the case management conference. The arbitral tribunal may decide, after consulting the parties, that any hearing will be conducted through means of communication that do not require physical presence (such as telephone or videoconference).

8. In order to protect the identity of a party or its representatives where it may be sensitive in the circumstances of the case, the arbitral tribunal may designate specific representatives of other parties who may be informed of the identity of a party or the representatives of a party who request such designation. The party or its representatives requesting the designation shall demonstrate a legitimate interest in such a designation. All representatives so designated shall observe confidentiality in connection with this identity.

9. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties and the PCA. 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.

## **Multiparty claims**

### **Article 18**

1. In so far as possible, claims with significant common legal and factual issues shall be heard together. The arbitral tribunal may adopt special procedures appropriate to the number, character, amount and subject matter of the particular claims under consideration.

2. The arbitral tribunal may allow one or more third persons to join in the arbitration as a party provided such person is a party to or a third party beneficiary of the underlying legal instrument that includes the relevant arbitration agreement, unless, after giving all parties and the person or persons to be joined the opportunity to be heard, the arbitral tribunal finds that joinder should not be permitted. Third persons so joined shall become parties to the arbitration agreement for the purposes of the arbitration. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

3. Notwithstanding paragraph 2, where a third person is a party to or a relevant third party beneficiary of the arbitration agreement, the arbitral tribunal shall not deny the joinder solely on the basis that such joinder might prejudice other parties.

## **Place of arbitration**

### **Article 19**

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be The Hague unless otherwise determined by the PCA 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 deliberate in person or by any means of communication it deems appropriate, whether physical or electronic. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings in person or through means of communication that do not require physical presence (such as telephone or videoconference).

## **Language**

### **Article 20**

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings.
2. The arbitral tribunal may order that any 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.

## **Amendments to the claim or defence**

### **Article 21**

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.

## **Objections to the jurisdiction of the arbitral tribunal**

### **Article 22**

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 the arbitration clause.
2. A party is not precluded from raising a plea that the arbitral tribunal does not have jurisdiction 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 admit a later plea if it considers the delay justified.

### **Further written statements**

#### **Article 23**

The arbitral tribunal shall decide which further written statements shall be required from the parties or may be presented by them, although the arbitral tribunal shall in principle allow post-hearing written submissions. The arbitral tribunal shall fix the periods of time for communicating such statements, which shall in principle not exceed 15 days, and may also set requirements concerning the length and form of such statements.

### **Submission by a third person**

#### **Article 24**

1. After consultation with the parties, the arbitral tribunal may invite or allow a person or entity that is not a party (“third person(s)”) to file a written submission with the arbitral tribunal regarding a matter within the scope of the dispute.

2. A third person wishing to make a submission shall apply to the arbitral tribunal, and shall, in a concise written statement, which is in a language of the arbitration and complies with any page limits set by the arbitral tribunal:

- (a) Describe the third person, including, where relevant, its membership and legal status (e.g., trade association or other non-governmental organization), its general objectives, the nature of its activities and any parent organization (including any organization that directly or indirectly controls the third person);
- (b) Disclose any connection, direct or indirect, which the third person has with any party;
- (c) Provide information on any government, person or organization that has provided to the third person:
  - (i) any financial or other assistance in preparing the submission; or
  - (ii) substantial assistance in either of the two years preceding the application by the third person under this Article (e.g., funding around 20 per cent of its overall operations annually);
- (d) Describe the nature of the interest that the third person has in the arbitration; and
- (e) Identify the specific issues of fact or law in the arbitration that the third person wishes to address in its written submission.

3. In determining whether to allow such a submission, the arbitral tribunal shall take into consideration, among other factors it determines to be relevant:

- (a) Whether the third person has a significant interest in the arbitral proceedings; and

- (b) The extent to which the submission would assist the arbitral tribunal in the determination of a factual or legal issue related to the arbitral proceedings by bringing a perspective, particular knowledge or insight that is different from that of the parties.

4. Notwithstanding paragraphs 1 to 3, the arbitral tribunal shall in principle allow written submissions from the State(s) of nationality of the parties, the State(s) on whose territory the conduct that gave rise to the dispute occurred and the State(s) parties to any treaties applicable to the arbitration.

5. The submission filed by the third person or entity shall:

- (a) Be dated and signed by the person filing the submission on behalf of the third person;
- (b) Be concise, and in no case longer than as authorized by the arbitral tribunal;
- (c) Set out a precise statement of the third person's position on issues; and
- (d) Address only matters within the scope of the dispute.

6. The arbitral tribunal shall ensure that any submission does not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any party. If the arbitral tribunal deems it appropriate to do so, the arbitral tribunal may condition the participation of the third person or entity to the deposit of a reasonable sum to cover the costs of such participation.

7. The arbitral tribunal shall ensure that the parties are given a reasonable opportunity to present their observations on any submission by the third person or entity.

### **Interim measures**

#### **Article 25**

1. The arbitral tribunal may, at the request of a party, take any interim measures it deems necessary, including any measure to prevent serious harm to the enjoyment of rights falling within the subject-matter of the dispute.

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.

3. Such interim measures may be established in any form the arbitral tribunal considers appropriate, including the form of an award.

4. Subject to Article 1, paragraph 4, the arbitral tribunal may, at the request of a party, stipulate an appropriate monetary penalty for non-compliance with its interim measures.
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 or undertakings 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. Subject to Article 1, paragraph 4, and notwithstanding Article 17, paragraph 9, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested. The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure. The arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.
9. 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.
10. 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.

## **Evidence**

### **Article 26**

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.
2. The applicable rules of evidence shall be agreed by the parties. In the absence of agreement by the parties, the arbitral tribunal may organize the taking of evidence in the manner that it deems appropriate to enable each party to effectively present its case, taking into account the parties' views, relevant best practices in the taking of evidence in international dispute resolution and the circumstances of the case, including considerations of fairness, efficiency, cultural appropriateness and rights-compatibility. In organizing the taking of evidence, the arbitral tribunal may limit the scope of the evidence that may be produced by the parties. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.
3. 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.

4. At any time during the arbitral proceedings the arbitral tribunal may, on its own motion or at the request of a party, require any party to produce documents, exhibits, witness statements or other evidence within such a period of time as the arbitral tribunal shall determine. If a party fails to produce documents required by the arbitral tribunal, the arbitral tribunal may draw the consequences it deems appropriate, including an inference that such evidence would be adverse to the interests of that party or a reversal of the burden of proof.

## **Hearings**

### **Article 27**

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. If agreed by the parties, the hearing can be made accessible to the public.

3. The arbitral tribunal may organize the hearing in the manner that it deems most appropriate to enable each party to effectively present its case, taking into account relevant best practices in the conduct of hearings in international dispute resolution and the circumstances of the case, including considerations of fairness, efficiency, cultural appropriateness and rights-compatibility.

4. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal. If the legitimate interest of a witness based on a demonstrated genuine fear requires restriction of the representatives of the parties who are informed of the identity of the witness, the arbitral tribunal may order such restriction.

5. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses. A witness, including an expert witness, who is also a party to the arbitration shall not, in principle, be asked to retire.

6. The arbitral tribunal may authorize that witnesses, including expert witnesses, be examined through any means of telecommunication that do not require their physical presence at the hearing.

## **Experts appointed by the arbitral tribunal**

### **Article 28**

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 their qualifications and a statement of their 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 their inspection any relevant documents or goods that they 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 their 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 27 shall be applicable to such proceedings.

## **Default**

### **Article 29**

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 pursue its claim in a diligent manner, 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, 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 a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

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 draw the consequences it deems appropriate and make the award on the evidence before it.

## **Closure of hearings**

### **Article 30**

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 31**

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. TRANSPARENCY**

### **Scope of application of transparency provisions**

#### **Article 32**

1. The arbitral tribunal shall have the power, besides its discretionary authority under certain provisions of these Rules, to adapt the requirements of any provision of this Section to the particular circumstances of the case, after consultation with the parties, if such adaptation is necessary to conduct the arbitration in a practical manner and is consistent with the transparency objective of Articles 32 to 36.
2. Where Articles 32 to 36 provide for the arbitral tribunal to exercise discretion, the arbitral tribunal in exercising such discretion shall take into account:
  - (a) The agreement of the parties on transparency and confidentiality;
  - (b) The public interest in transparency in arbitration under these Rules and in the particular arbitral proceedings;
  - (c) The parties' interest in a fair and efficient resolution of their dispute;
  - (d) The safety, privacy and confidentiality concerns of the parties, witnesses, representatives and others involved in or affected by the arbitration proceedings; and
  - (e) The potential for aggravating conflicts between and among relevant stakeholders.
4. In the presence of any conduct, measure or other action having the effect of wholly undermining the transparency objectives of Articles 32 to 36, the arbitral tribunal shall ensure that those objectives prevail.

## **Publication of information at the commencement of arbitral proceedings**

### **Article 33**

Subject to Article 17, paragraph 8, and Article 27, paragraph 4, the PCA shall, promptly after the case management conference referred to in Article 17, paragraph 3, make available to the public information regarding the name of the disputing parties, the economic sector involved and the legal instrument under which the claim is being made.

## **Publication of documents**

### **Article 34**

1. Subject to Article 35, the following documents shall be made available to the public: the notice of arbitration; the response to the notice of arbitration; and the orders, decisions and awards of the arbitral tribunal.

2. Subject to Article 35, the arbitral tribunal may decide, after consultation with the disputing parties, whether and how to make available any other documents provided to, or issued by, the arbitral tribunal not falling within paragraph 1 above.

## **Exceptions to transparency**

### **Article 35**

1. Confidential or protected information, as defined in paragraph 2 and as identified pursuant to the arrangements referred to in paragraphs 3 and 4, shall not be made available to the public pursuant to Articles 33 and 34.

2. Confidential or protected information consists of:

- (a) Names and addresses of the parties and their representatives protected by an order of the arbitral tribunal pursuant to Article 17, paragraph 8, as well as of witnesses protected by an order of the arbitral tribunal pursuant to Article 27, paragraph 4;
- (b) Confidential business information, information that has been classified as secret by a Government or a public international institution and any other information deemed confidential under any other grounds of confidentiality that the arbitral tribunal determines to be compelling;
- (c) Information that is protected against being made available to the public under the arbitration agreement;
- (d) Information that is protected against being made available to the public under any law or rules determined by the arbitral tribunal to be applicable to the disclosure of such information;
- (e) Information the disclosure of which would impede law enforcement; or
- (f) Information the non-disclosure of which is necessary to protect the safety, physical and psychological well-being and privacy of parties, witnesses, representatives and others involved in or affected by the arbitration proceedings.

Any determination as to whether information is confidential or protected shall be made by the arbitral tribunal after consultation with the parties.

3. The arbitral tribunal, after consultation with the parties, shall make arrangements to prevent any confidential or protected information from being made available to the public, including by putting in place, as appropriate:

- (a) Time limits in which a party or third person shall give notice that it seeks protection for such information in documents;
- (b) Procedures for the prompt designation and redaction of the particular confidential or protected information in such documents; and
- (c) Procedures for holding hearings in private to the extent required.

4. Where the arbitral tribunal determines that information should not be redacted from a document, or that a document should not be prevented from being made available to the public, any party or third person that voluntarily introduced the document into the record shall be permitted to withdraw all or part of the document from the record of the arbitral proceedings.

5. The arbitral tribunal may, on its own initiative or upon the application of a party, after consultation with the parties where practicable, take appropriate measures to restrain or delay the publication of information pursuant to Articles 33 and 34 where such publication would jeopardize the integrity of the arbitral process because it could hamper the collection or production of evidence, lead to the intimidation of witnesses, parties, representatives or members of the arbitral tribunal, or in comparably exceptional circumstances.

### **Publication as a source of continuous learning**

#### **Article 36**

The PCA shall regularly publish general information about arbitration under these Rules as a source of continuous learning, including industry sector, names of arbitrators, outcome of cases and costs.

## **SECTION V. THE AWARD**

### **Decisions**

#### **Article 37**

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 38**

1. The arbitral tribunal may make separate awards on different issues at different times.
2. An award may order monetary compensation and non-monetary relief, including restitution, rehabilitation, satisfaction, injunctive relief, specific performance and the provision of guarantees of non-repetition. An award may also contain recommendations for other measures that may assist in resolving the underlying dispute and preventing future disputes or the repetition of harm, which shall be binding only if agreed by the parties.
3. 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. Subject to Article 1, paragraph 4, the arbitral tribunal may, at the request of a party, stipulate any penalty, monetary or otherwise, it deems appropriate for non-compliance with any non-monetary relief contained in its award.
4. The arbitral tribunal shall state the reasons upon which the award is based and shall satisfy itself that the award is human rights-compatible.
5. 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.
6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

## **Applicable law**

### **Article 39**

1. The arbitral tribunal shall apply the law, rules of law or standards designated by the parties as applicable to the substance of the dispute.
2. Failing such designation by the parties, the arbitral tribunal shall apply the law or rules of law which it determines to be appropriate.
3. The arbitral tribunal shall decide on the basis of the applicable law unless the parties have expressly authorized the arbitral tribunal to do otherwise.
4. In all cases, the arbitral tribunal shall decide in accordance with the terms of the applicable agreement(s), if any, and shall take into account any usage of trade applicable to the transaction, including any business and human rights standards or instruments that may have become usages of trade.

## **Settlement or other grounds for termination**

### **Article 40**

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 but must be unanimously satisfied that such an award is human rights-compatible.

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 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 38, paragraphs 3, 5 and 6, shall apply.

### **Interpretation of the award**

#### **Article 41**

1. Within 14 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 14 days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 38, paragraphs 3 to 6, shall apply.

### **Correction of the award**

#### **Article 42**

1. Within 14 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 14 days of receipt of the request.

2. The arbitral tribunal may within 14 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 38, paragraphs 3 to 6, shall apply.

### **Additional award**

#### **Article 43**

1. Within 14 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 30 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 38, paragraphs 3 to 6, shall apply.

### **Definition of costs**

#### **Article 44**

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” includes only:

- (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the arbitral tribunal itself in accordance with Article 45;
- (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) Any fees and expenses of the PCA.

3. In relation to interpretation, correction or completion of any award under Articles 41 to 43, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

### **Fees and expenses of arbitrators**

#### **Article 45**

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators, the cost burden on each party and any other relevant circumstances of the case, including any agreements by the parties, such as those on controlling costs and financing options.

2. If the PCA establishes a schedule or particular method for determining the fees and expenses for arbitrators, the arbitral tribunal shall apply that schedule or method in determining its fees and expenses.

3. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the PCA for review. If

the PCA finds that the proposal of the arbitral tribunal is inconsistent with paragraphs 1 or 2, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal.

4. (a) When informing the parties of the arbitrators' fees and expenses that have been fixed pursuant to Article 44, paragraphs 2 (a) and (b), the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated;
- (b) Within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the PCA;
- (c) If the PCA finds that the arbitral tribunal's determination is inconsistent with the arbitral tribunal's proposal (and any adjustment thereto) under paragraph 3 or is otherwise manifestly excessive, it shall make any adjustments to the arbitral tribunal's determination that are necessary to satisfy the criteria in paragraph 1. Any such adjustments shall be binding upon the arbitral tribunal;
- (d) Any such adjustments shall either be included by the arbitral tribunal in its award or, if the award has already been issued, be implemented in a correction to the award, to which the procedure of Article 42, paragraph 3, shall apply.

5. Throughout the procedure under paragraphs 3 and 4, the arbitral tribunal shall proceed with the arbitration, in accordance with Article 17, paragraph 1.

6. A referral under paragraph 4 shall not affect any determination in the award other than the arbitral tribunal's fees and expenses; nor shall it delay the recognition and enforcement of all parts of the award other than those relating to the determination of the arbitral tribunal's fees and expenses.

## **Allocation of costs**

### **Article 46**

1. Except as provided in paragraph 2, 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, including the conduct of the parties in the arbitration, the financial burden on each party and the public interest, if any.

2. The costs of legal representation and assistance referred to in Article 44, paragraph 2 (e), shall in principle be borne by the party or parties that incurred such costs. However, the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

3. The PCA may, in consultation with the arbitral tribunal, allocate some or all of the costs of the arbitration to any fund available to the parties for dispute resolution, including without limitation funds established pursuant to the international labour agreement giving rise to the arbitration.



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

### **Deposit of costs**

#### **Article 47**

1. The arbitral tribunal, on its establishment, may request the parties to deposit an advance for the costs referred to in Article 44, paragraphs 2 (a) to (c) and (f). During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.

2. The amount of the deposit requested from each party may differ and should in any case be reasonable, taking into account the amount in dispute, the complexity of the subject matter, the estimated time to be spent by the arbitrators, the cost burden on each party and any other relevant circumstances of the case, including any agreements by the parties such as those on controlling costs and financing options. The arbitral tribunal shall ensure that the amount of the deposit does not constitute an undue obstacle to any party's participation in the proceedings.

3. The arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only upon approval of the PCA.

4. If the required deposits are not paid in full within 30 days after the receipt of the request, or such other period as may be set by the arbitral tribunal, 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.

5. 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.

## **SECTION VI. MISCELLANEOUS PROVISIONS**

### **Third party funding**

#### **Article 48**

1. Where a party or a third person making submissions in accordance with Article 24 benefits from any form of funding or financial assistance for the participation in the proceedings, such party or third person shall promptly disclose to all other parties and to the arbitral tribunal the name and contact details of the source of the funding or financial assistance.

2. Notwithstanding paragraph 1, upon request of the funded party, the arbitral tribunal may determine that such information shall not be disclosed to the other parties or made available to the public.

3. The arbitral tribunal may take into account any such funding when making its determinations on costs and deposits in the arbitration.

## **Conciliation and other forms of collaborative settlement**

### **Article 49**

1. At any time during the course of the arbitral proceedings, parties may agree in writing to resort to conciliation, mediation, negotiation, or other facilitation methods to resolve their dispute. Unless otherwise agreed by the parties, the arbitration shall not be suspended.
2. Any conciliator, mediator or other facilitator shall be appointed by agreement of the parties. If the parties fail to agree, the mediator or other facilitator shall be appointed by the PCA using the list procedure described in Article 8, paragraph 3.
3. The parties shall agree on the rules that will govern the procedure and may for this purpose agree to apply a particular set of existing conciliation or mediation rules. In the absence of agreement by the parties, the conciliator, mediator or other facilitator shall determine the procedure.
4. No conciliator, mediator or other facilitator may participate in the arbitral proceedings in any capacity, including as arbitrator, expert, representative, adviser or otherwise.
5. All offers, admissions or other statements by the parties, or recommendations by the conciliator, mediator or other facilitator, made during the course of the settlement proceedings shall be inadmissible as evidence in the arbitral proceedings, unless otherwise agreed by the parties.