

# RULES OF ARBITRATION

Adopted by the Board of the Danish Institute of Arbitration and in force as from 13 April 2021

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## **Introductory Provisions**

### *The Danish Institute of Arbitration*

#### **Article 1**

(1) The Danish Institute of Arbitration (hereafter referred to as the DIA) is a non-profit and independent body, which provides administrative services in relation to settlement of disputes in accordance with the “Rules of Arbitration” (hereafter referred to as the Rules). The DIA is composed of a Council of Representatives and a Board, as well as a Secretariat. The Chair and the Vice-Chair of the Board constitute the Chair’s Committee. The Secretariat is led by a Secretary-General. Further rules of the organisation of the DIA are set forth in Appendix 1.

(2) The Rules have been prepared in Danish and English. In arbitrations where the procedural language is Danish, the Danish version of the Rules shall apply. In all other cases, the English version of the Rules shall apply.

### *The Arbitration Agreement*

#### **Article 2**

Where the parties have agreed that their dispute is to be determined on the basis of the DIA’s rules, such parties shall be deemed to have agreed that the arbitration shall be determined by the rules that apply on the date when the Statement of Claim is submitted to the DIA, see Art. 4, unless otherwise agreed.

### *Written Communication and Time Limits*

#### **Article 3**

(1) Written communication in the case shall be made by e-mail or by other electronic means, unless the DIA or the Arbitral Tribunal decides otherwise, or mandatory law, the Rules or other agreement between the parties provide otherwise.

(2) Communication from the DIA or the Arbitral Tribunal shall be deemed as received by a party when it is sent to the party, the party’s legal counsel or other representative by e-mail or by other means that provides a record of the transmission to the address or last known address of the party, the party’s legal counsel or other representative, or if proven to have reached one of them.

(3) Time limits set by the Secretariat or the Arbitral Tribunal shall be deemed to expire at midnight Danish time, unless the DIA or the Arbitral Tribunal decides otherwise or the parties agree otherwise. The DIA or the Arbitral Tribunal may, at the request of a party or on its own motion, extend or reduce a time limit, which it has respectively set.

## **Commencing the Arbitration**

### *Content of Statement of Claim*

#### **Article 4**

(1) A party wishing to have a dispute settled by arbitration in accordance with the Rules shall submit a Statement of Claim to the DIA.

(2) The date on which the DIA receives the Statement of Claim shall be deemed as the date the arbitration commenced.

(3) The Statement of Claim shall as a minimum contain the following:

(a) The name, address, telephone number and e-mail address of the parties as well as any VAT and company registration number.

(b) The name, address, telephone number and e-mail address of the legal counsel or other representative(s) for the respective parties.

(c) The relief or remedy sought by the Claimant.

(d) An indication of the total economic value of any quantified claims and an estimate of the economic value of any other claims, see Appendix 2, Art. 2.

(e) A statement of the facts and legal points supporting the relief or remedy sought.

(f) A reference to the documents, reports and other evidence upon which the Claimant intends to rely.

(g) As far as possible, an indication of the witness(es) whom the Claimant intends to present and/or call, including the topic of testimonies of such witness(es).

(h) An indication of whether the Claimant intends to appoint its own expert witness(es) to submit reports to the Arbitral Tribunal.

(i) Any comments regarding the place of arbitration, the applicable rules of law as well as the language(s) of the arbitration.

(j) Any comments regarding the number of arbitrators and who is appointed, indicating name, address, telephone number and e-mail address, as well as any information about a jointly appointed President of the Arbitral Tribunal.

(k) Proof of payment of registration fee, see Art. 9.

### *Language at Submission of Statement of Claim*

#### **Article 5**

The Statement of Claim shall be submitted in the language, which the parties have agreed. In the absence of such agreement, or if there is otherwise disagreement between the parties regarding the language, the Statement of Claim shall be submitted in the language that is used in the parties' arbitration agreement, without prejudice to the decision of the Arbitral Tribunal further to Art. 26 (1).

### *Form of Statement of Claim*

#### **Article 6**

(1) Documents etc. referred to in the Statement of Claim, including the arbitration agreement, shall be attached.

(2) If the Statement of Claim and any exhibits are submitted as physical documents, they shall be accompanied by the number of copies by which one copy can be delivered to each of the other parties, the DIA and each arbitrator.

(3) If the Statement of Claim and any exhibits are submitted as physical documents, the Secretariat or the Arbitral Tribunal may decide that the Statement of Claim and any exhibits shall be submitted by electronic means as well. If the Statement of Claim and any exhibits are submitted by electronic means, the Secretariat or the Arbitral Tribunal may decide that the Statement of Claim and any exhibits shall be submitted as physical documents as well in the number of copies mentioned in par. (2).

### *Missing Information in Statement of Claim*

#### **Article 7**

If the Statement of Claim does not comply with the requirements in Art. 4 - 6, the Secretariat may set a time limit for compliance. Failure to supply missing elements before the expiry of the time limit may cause the Secretariat to terminate the proceedings.

### *Acknowledgement of Receipt of Statement of Claim*

#### **Article 8**

The Secretariat shall inform the parties of the date it received the Statement of Claim and any exhibits, and shall send the Statement of Claim and any exhibits to the Respondent. A copy of the Rules shall be sent to the parties at the same time.

### *Registration Fees*

#### **Article 9**

(1) The Statement of Claim shall be accompanied by the payment to the DIA of a registration fee, the amount of which is set forth in the Schedule of Fees and Charges of the DIA, which applies at the time of the submission of the Statement of Claim, see Art. 4. The Schedule of Fees and Charges of the DIA is available on the DIA's website. The registration fee is non-refundable.

(2) If the DIA is not in receipt of the registration fee by the time it receives the Statement of Claim, the Secretariat shall set a time limit for payment of the fee. Failure to effect payment by the expiry of the time limit may cause the Secretariat to terminate the proceedings.

(3) If cases or claims are consolidated, or there is a joinder of an additional party, or if a counterclaim is submitted, a registration fee shall also be paid to the DIA for each new claim, new case, or additional party. Par. (1) and (2) shall apply with the modifications, which follow from the nature of the case.

## **Deposit**

### *Deposit at the Commencement of the Arbitration*

#### **Article 10**

(1) In addition to the registration fee mentioned in Art. 9, the parties shall, before the expiry of a time limit set by the Secretariat, pay to the DIA a cash deposit as security for the estimated costs of the arbitration, including the fees of the arbitrator(s) and an administrative charge of the DIA. Interest is not added to the deposit.

(2) The Secretariat shall set the amount of the deposit in accordance with the scales in the Schedule of Fees and Charges of the DIA, which applies at the time of the submission of the Statement of Claim, see Art. 4. The Schedule of Fees and Charges of the DIA is available on the DIA's website.

(3) The Claimant and the Respondent will usually be asked to pay identical parts of the deposit, unless the Secretariat decides otherwise. In the event that a party does not pay its share, the other party must pay the outstanding amount in order for the case to be processed. The paying party may request the Arbitral Tribunal to render a separate award regarding reimbursement by the defaulting party of its share of the deposit.

(4) Failure to pay the deposit before the expiry of the time limit may cause the Secretariat to terminate the proceedings.

(5) If the Respondent advances a counterclaim, par. (1) – (4) shall correspondingly apply to the counterclaim.

### *Deposit at the Appointment of an Expert*

#### **Article 11**

The party requesting the Arbitral Tribunal to appoint an expert, see Art. 35, shall pay an additional cash deposit to the DIA as security for the costs that are expected in connection with the work of the expert, unless the Secretariat decides otherwise. When the expert has been appointed, he or she shall produce an estimate of the costs likely to arise out of his or her work and submit it to the Secretariat. The expert shall refrain from starting any work in the case until the deposit has been paid. If it becomes clear that the deposit is insufficient to cover the costs, the expert shall report this to the Secretariat as soon as possible. Interest is not added to the deposit.



### *Adjustment to the Deposit and Security for Costs*

#### **Article 12**

(1) The Secretariat may decide that the deposit shall be adjusted and that an additional deposit shall be paid before the case continues. This applies for instance in cases where the amount in dispute is modified, the case is more difficult or more complex than originally anticipated, or if there is consolidation of cases or claims or joinder of an additional party.

(2) The President of the Arbitral Tribunal or the Sole Arbitrator respectively, shall keep in contact with the Secretariat about the developments in the case to ensure that the deposit is sufficient on an ongoing basis. This applies particularly prior to the holding of oral hearings or decisions regarding particularly cost-demanding activities.

(3) At the request of a party the Arbitral Tribunal may decide that another party shall provide security for any costs, which the Arbitral Tribunal may impose upon this other party in a final award. Failure by the other party to provide security may cause the Arbitral Tribunal to close or stay the processing of that party's claims, except for claims for dismissal or acquittal.

#### **Statement of Defence and Counterclaim(s)**

##### *Statement of Defence and Any Counterclaim(s)*

#### **Article 13**

(1) Unless the parties have agreed otherwise, the Respondent shall before the expiry of a time limit set by the Secretariat of at least 30 calendar days submit a Statement of Defence containing as a minimum the following:

- (a) The Respondent's name, address, telephone number and e-mail address as well as any VAT and company registration number.
- (b) The name, address, telephone number and e-mail address of the legal counsel or other representative(s) for the Respondent.
- (c) The Respondent's response to the relief or remedy sought and any counterclaims.
- (d) An indication of the total economic value of any quantified counterclaims and an estimate of the economic value of any other counterclaims, see Appendix 2, Art. 2.
- (e) The arbitration agreement shall be enclosed if a counterclaim is covered by another arbitration agreement than mentioned in Art. 6 (1). Proof of payment of the registration fee regarding counterclaim(s) in accordance with Art. 9 (3) shall also be submitted.
- (f) A statement of the facts and legal points supporting the Respondent's response.
- (g) A reference to the documents, reports and other evidence upon which the Respondent intends to rely.

(h) As far as possible, an indication of the witness(es), whom the Respondent intends to present and/or call, including the topic of testimonies of such witness(es).

(i) An indication of whether the Respondent intends to appoint its own expert witness(es) to submit reports to the Arbitral Tribunal.

(j) Any comments regarding the place of arbitration, the applicable rules of law as well as the language(s) of the arbitration.

(k) Any comments regarding the number of arbitrators and who is appointed, including name, address, telephone number and e-mail address, as well as any information about a jointly appointed President of the Arbitral Tribunal.

(2) The provisions of Art. 5 and 6 shall correspondingly apply.

(3) Upon a reasoned request the Secretariat may extend the time limit for submitting the Statement of Defence, and at the same time continue the process of constituting the Arbitral Tribunal, see Art. 18 and 19.

(4) If the Statement of Defence does not comply with the requirements in par. (1) and (2), the Secretariat may set a time limit for compliance. Failure to supply the information mentioned in par. (1) (e) regarding counterclaims before the expiry of the time limit may cause the Secretariat to terminate the proceedings regarding the counterclaim(s).

(5) The Secretariat shall inform the parties of the date it received the Statement of Defence and any exhibits and shall send the Statement of Defence and any exhibits to the Claimant.

(6) If, without showing reasonable cause, the Respondent fails to submit a Statement of Defence, the Arbitral Tribunal shall continue the arbitration without treating such failure in itself as an admission of the Claimant's claim(s).

#### *Claimant's Reply to Counterclaim(s)*

### **Article 14**

(1) Unless the parties have agreed otherwise, the Claimant shall before the expiry of a time limit set by the Secretariat of at least 30 calendar days submit a Reply to Counterclaim(s). The provisions of Art. 5 and 6 shall correspondingly apply.

(2) If, without showing reasonable cause, the Claimant fails to submit a Reply to Counterclaim(s), the Arbitral Tribunal shall continue the arbitration without treating such failure in itself as an admission of the Respondent's counterclaim(s).

## **Consolidation and Joinder of Additional Parties**

### *Consolidation of Arbitrations*

#### **Article 15**

(1) Where a Statement of Claim is submitted in an arbitration under the Rules and the parties are parties in another arbitration already pending under the Rules, the Chair's Committee may decide, at the request of a party and after consultation of the other parties and any Arbitral Tribunal constituted in the already pending arbitration, that the new arbitration shall be consolidated with the already pending arbitration.

(2) The provisions in par. (1) shall correspondingly apply if a Statement of Claim is submitted in an arbitration under the Rules between parties, which are not identical to the parties in another already pending arbitration under the Rules.

(3) When rendering its decision in accordance with par. (1) or (2), the Chair's Committee shall take into account the specific circumstances, including the concluded arbitral agreement(s), the mutual connection between the arbitrations and/or the parties, and the progress already made in the pending arbitration.

(4) If the Chair's Committee decides to consolidate the new arbitration with the pending arbitration in accordance with par. (1), the arbitrations shall be conducted by the Arbitral Tribunal, which is already constituted or will be constituted in the arbitration that was commenced first, see Art. 4.

(5) If the Chair's Committee decides to consolidate the new arbitration with the pending arbitration in accordance with par. (2), the parties in both arbitrations shall be deemed to have waived their right to appoint an arbitrator, and the Chair's Committee shall revoke the confirmation of arbitrators already confirmed. All members of the Arbitral Tribunal shall be appointed by the Chair's Committee, unless the appointment(s) can be made in accordance with another procedure, which is agreed between the parties.

(6) If it is decided to consolidate the new arbitration with the pending arbitration in accordance with par. (2), the Arbitral Tribunal once constituted shall decide, after consultation of the parties, whether the procedural steps already taken in the arbitrations are to be repeated for the Arbitral Tribunal.

(7) The party requesting the consolidation, see par. (1) or (2), shall at the same time pay a registration fee, see Art. 9 (3).

(8) Any decision of the Chair's Committee in accordance with par. (1) or (2) is without prejudice to the Arbitral Tribunal's power to rule on its own jurisdiction, see Art. 25.

### *Joinder of Additional Parties*

#### **Article 16**

(1) A party in an arbitration pending under the Rules may request that a third party join as an additional party in the arbitration. Likewise, a third party may request to join as an additional party in an arbitration pending under Rules.

(2) A request in accordance with par. (1) shall be submitted before the referral of the case to the Arbitral Tribunal, see Art. 24, unless the parties have agreed otherwise or particular circumstances apply. The request shall be in accordance with the requirements in Art. 4 - 6 that shall apply with the modifications, which follow the nature of the case. The Secretariat shall inform the parties of the date it received the request and any exhibits and shall send the request and any exhibits to the third party/the parties.

(3) If the third party and/or a party objects to the request to join the additional party, the Arbitral Tribunal shall decide on the objection, after consultation of the third party and the parties. If the case has not been referred to the Arbitral Tribunal, see Art. 24, the Chair's Committee may decide on the objection after consultation as described in order to avoid delay. When rendering the decision, the Arbitral Tribunal or the Chair's Committee respectively shall take into account the specific circumstances, including the parties' concluded arbitral agreement(s), the connection between the claims and the connection between third party and the parties.

(4) If the joinder of the third party occurs after a request from a party, see par. (1), first sentence, and the joined third party cannot agree to the appointment of the members of the Arbitral Tribunal made by the original parties in the arbitration, the members of the Arbitral Tribunal are released and the Chair's Committee shall revoke the confirmation of the already confirmed members of the Arbitral Tribunal. All members of the Arbitral Tribunal shall be appointed by the Chair's Committee, unless the appointment(s) can be made in accordance with another procedure, which is agreed between the parties, including the third party concerned.

(5) If the joinder of the third party, see par. (1), second sentence, occurs after the case has been referred to the Arbitral Tribunal, see Art. 24, the third party is required to agree to the appointment of the members of the Arbitral Tribunal made by the original parties to the case.

(6) The party requesting a third party to join as an additional party in the case, see par. (1), shall at the same time pay a registration fee, see Art. 9 (3). This correspondingly applies to the third party requesting to join as an additional party.

(7) The decision of the Chair's Committee in accordance with par. (3) second sentence is without prejudice to the Arbitral Tribunal's power to rule on its own jurisdiction, see Art. 25.

#### *Multiple Contracts in a Single Arbitration*

### **Article 17**

(1) The parties in a single arbitration may make different claims against each other in connection with more than one contract, unless this is excluded in the parties' arbitration agreement(s).

(2) If a party objects to include the claim(s) as mentioned in par. (1), the Arbitral Tribunal shall decide on the objection after consultation of the parties. If the case has not been referred to the Arbitral Tribunal, see Art. 24, the Chair's Committee may, after the consultation of the parties, decide on the objection in order to avoid delay.

(3) When rendering the decision in accordance with par. (2), the Arbitral Tribunal or the Chair's Committee respectively, shall take into account the specific circumstances, including the mutual

connection between the made claims and the applicable contracts, and the progress already made in the arbitration regarding the pending claim(s).

(4) The party wishing to make an additional claim or claims in an arbitration, see par. (1), shall at the same time pay a registration fee, see Art. 9 (3).

(5) The decision of the Chair's Committee in accordance with par. (2), second sentence is without prejudice to the Arbitral Tribunal's power to rule on its own jurisdiction, see Art. 25.

## **Appointment and Confirmation of Arbitrator(s)**

### *Number of Arbitrators and President of the Arbitral Tribunal*

#### **Article 18**

(1) If the parties have not agreed otherwise, the Arbitral Tribunal shall consist of one arbitrator, unless the Chair's Committee, at the request of a party or on its own motion and after consultation of the parties, decides that the arbitration shall be decided by an Arbitral Tribunal composed of three arbitrators. In its decision the Chair's Committee shall take into account the complexity of the case, the amount in dispute and other circumstances.

(2) The President of the Arbitral Tribunal or the Sole Arbitrator respectively, shall hold a law degree.

### *Appointment and Confirmation*

#### **Article 19**

(1) The members of the Arbitral Tribunal shall be confirmed by the Chair's Committee for an individual arbitration.

(2) Where the case is to be decided by a Sole Arbitrator, the parties may jointly appoint the Sole Arbitrator before the expiry of a time limit set by the Secretariat.

(3) Where it is stipulated in the arbitration agreement between the parties that a case is to be decided by three arbitrators, the Claimant may appoint an arbitrator in the Statement of Claim. The Respondent may also appoint an arbitrator before the expiry of the time limit for the submission of the Statement of Defence, see Art. 13 (1). The third arbitrator, who shall be the President of the Arbitral Tribunal, may be appointed jointly by the parties before the expiry of the time limit for the submission of the Statement of Defence, see Art. 13 (1).

(4) Where the Chair's Committee decides that the dispute shall be decided by an Arbitral Tribunal composed of three arbitrators, see Art. 18 (1), the Secretariat shall set a time limit for the parties' appointment of arbitrators in accordance with par. (3).

(5) The Chair's Committee may omit to confirm an appointed arbitrator in accordance with Art. 21 (3) and (4). In such case the party/parties may appoint another arbitrator before the expiry of a time limit set by the Secretariat, unless the Chair's Committee decides otherwise with regard to the delay that this may cause.

(6) Where there are multiple Claimants, they shall act jointly in appointing an arbitrator. The same shall correspondingly apply if there are multiple Respondents. Failing such joint appointment by the Claimants or the Respondents respectively, all members of the Arbitral Tribunal shall be appointed by the Chair's Committee, unless the appointment(s) can be made in accordance with another procedure, which is agreed between the parties.

(7) Where not all parties in the case have the same nationality, the President of the Arbitral Tribunal/the Sole Arbitrator, shall be of a nationality and be domiciled in a country other than those of any party and the other arbitrators, unless the parties agree otherwise. If a party does not object before the expiry of a time limit set by the Secretariat, the Chair's Committee may decide to deviate from the first sentence of this paragraph.

(8) Besides the appointments by the Chair's Committee mentioned in Art. 15 (5) and 16 (4), the Chair's Committee shall appoint the arbitrator(s) if:

- (a) the parties have agreed that the arbitrator(s) shall be appointed by the DIA,
- (b) a party has not appointed an arbitrator,
- (c) the parties have failed to appoint jointly a President of the Arbitral Tribunal/Sole Arbitrator, or
- (d) an arbitrator has not been appointed in accordance with par. (6).

#### *Availability, Impartiality and Independence*

#### **Article 20**

(1) Any person appointed arbitrator shall be available, impartial and independent.

(2) Before being confirmed as an arbitrator, the arbitrator shall sign the DIA's Declaration of Acceptance, Impartiality and Independence etc., which he or she shall send to the Secretariat. At the same time, the arbitrator shall disclose in writing circumstances, which may give rise to justifiable doubts regarding the arbitrator's availability, impartiality or independence. The arbitrator shall also provide information regarding his or her professional and educational background (CV/résumé). The Secretariat shall send the declaration and the CV/résumé to the parties and set a time limit for any comments.

(3) During the arbitration the arbitrator shall immediately disclose in writing to the other arbitrators, the parties and the Secretariat circumstances that should have been disclosed, see par. (2), had they existed at the time.

(4) A party must immediately inform in writing the Secretariat, the Arbitral Tribunal and the other parties of the identity of any third party, which has entered into an arrangement regarding funding of any costs in relation to the case and under which it has an economic interest in the outcome of the case.

#### *Challenge of Arbitrator(s)*

#### **Article 21**

(1) A party may only challenge an arbitrator if it finds that circumstances exist, which give rise to justifiable doubts regarding the impartiality or independence of the arbitrator, or if the party finds that

the arbitrator does not possess the qualifications agreed between the parties. A challenge shall be submitted in writing to the Secretariat within 15 calendar days of the party having become aware of the appointment of the arbitrator and the circumstances on which the challenge is based.

(2) The Secretariat shall notify the parties and the challenged arbitrator of its receipt of the challenge setting a time limit for any comments. A copy of the notification shall be sent to the other arbitrators, if any, at the same time.

(3) The Chair's Committee shall decide on the challenge, unless the challenged arbitrator resigns or the parties agree that the arbitrator shall not be confirmed or that the arbitrator's duties shall cease.

(4) Even in the absence of a challenge mentioned in par. (1), the Chair's Committee may not confirm an arbitrator or may decide to revoke the arbitrator's confirmation if the Chair's Committee finds that there are justifiable doubts regarding the impartiality or independence of the arbitrator, or if it finds that the arbitrator does not possess the qualifications agreed between the parties.

#### *Replacement of Arbitrator(s)*

### **Article 22**

(1) If an arbitrator resigns, dies or for other reasons is replaced, another arbitrator shall be appointed in accordance with the same rules as those that applied to the arbitrator having resigned, etc., unless the Chair's Committee decides otherwise with regard to the delay that this may cause.

(2) If the arbitration does not proceed in a timely and efficient manner, or if an arbitrator's other duties according to the Rules are not fulfilled owing to that arbitrator, a party may request the Chair's Committee to replace the arbitrator. Even in the absence of such a request, the Chair's Committee may decide to replace an arbitrator on the grounds mentioned in the first sentence of this paragraph.

(3) If an arbitrator is replaced, the Arbitral Tribunal shall decide, after consultation of the parties, whether the procedural steps already taken in the arbitration are to be repeated before the newly constituted Arbitral Tribunal. If an arbitrator is replaced at a stage of the arbitration where the holding of the oral hearing(s) has occurred, the Chair's Committee may decide that the arbitration is to be decided by the remaining arbitrators, after consultation of the parties and the remaining arbitrators.

#### *Changes in Representation*

### **Article 23**

(1) A party shall immediately inform in writing the Secretariat, the Arbitral Tribunal and the other party or parties of any changes or addition regarding its representation.

(2) If justifiable doubts as to an arbitrator's impartiality and independence arise from a change or addition in the parties' representation, the Chair's Committee may, after consultation of the Arbitral Tribunal and the parties, exclude the new or additional representation from participating in the arbitration, if the changes are not based on reasonable grounds.

## **Conduct of the Arbitration**

### *Referral to the Arbitral Tribunal*

#### **Article 24**

When the deposit has been paid and the arbitrator(s) has been confirmed the Secretariat shall refer the case to the Arbitral Tribunal. From such referral, all correspondence shall occur directly between the Arbitral Tribunal and the parties, with copies to the Secretariat, which shall follow the developments in the case so that, if necessary, it may assist the Arbitral Tribunal and the parties in ensuring that the case progresses in a timely and efficient manner.

### *Jurisdiction of the Arbitral Tribunal*

#### **Article 25**

(1) The Arbitral Tribunal shall rule on its own jurisdiction, including in relation to any objections with respect to the existence or validity of the arbitration agreement(s). For that purpose an arbitration clause which constitutes a term of a contract shall be considered in this context as a separate agreement that is independent of the other terms of the contract. A decision by the Arbitral Tribunal to the effect that the contract is invalid shall not entail in itself that the arbitration clause is invalid.

(2) Objections to the jurisdiction of the Arbitral Tribunal shall be raised no later than in the Respondent's Statement of Defence/Claimant's Reply to Counterclaim(s). A party shall not be precluded from raising an objection to the jurisdiction of the Arbitral Tribunal by appointing or otherwise participating in the appointment of an arbitrator. Objections regarding whether, during the arbitration, the Arbitral Tribunal exceeds its jurisdiction shall be made as soon as the matter alleged to be beyond the Arbitral Tribunal's jurisdiction is raised. The Arbitral Tribunal may in either case allow a later objection if it considers the delay justified.

(3) The Arbitral Tribunal may make a separate decision on issues relating to its jurisdiction, or it may decide the issue in the award on the merits of the case.

(4) Objections to the jurisdiction of the Arbitral Tribunal cannot later be relied upon in a claim for setting aside the award or as a reason for refusing recognition or enforcement of the award, unless the nature of the dispute is such that it cannot be decided by arbitration.

### *Procedural Language and Applicable Rules of Law*

#### **Article 26**

(1) The parties may agree on the language(s) to be used in the arbitration. Failing such agreement, the Arbitral Tribunal shall determine the language(s) to be used, after consultation of the parties. If the case has not been referred to the Arbitral Tribunal, see Art. 24, the initial language of the arbitration shall be the same language as the language used in the parties' arbitration agreement.

(2) The Arbitral Tribunal may decide that written evidence shall be accompanied by a translation into the language(s) agreed between the parties or as determined by the Arbitral Tribunal.

(3) The Arbitral Tribunal shall decide the case in accordance with the rules of law chosen by the parties as applicable to a decision of the merits of the case. Failing a designation by the parties of the



rules of law applicable to the decision of the merits of the case, the Arbitral Tribunal shall apply the rules which it considers appropriate after consultation of the parties.

(4) The Arbitral Tribunal shall only decide the case as amiable compositeur or ex aequo et bono if the parties have expressly authorised it to do so.

(5) The Arbitral Tribunal shall in any event decide the case in accordance with the provisions of the contract and take into account trade usages applicable to the case.

#### *Place of Arbitration*

##### **Article 27**

The place of arbitration shall be Copenhagen, Denmark, unless otherwise agreed between the parties.

#### *Fundamental Principles*

##### **Article 28**

(1) The Arbitral Tribunal shall be fair and impartial and shall ensure that parties are treated with equality and that each party is given a full opportunity to present its case. The Arbitral Tribunal and the parties shall ensure that the case is conducted within a reasonable time and in an efficient and cost-conscious manner.

(2) The conduct of the arbitration shall be governed by the Rules. Where the Rules are silent, the conduct of the arbitration shall be governed by what the parties have otherwise agreed or, failing such agreement, by what the Arbitral Tribunal considers appropriate. The Arbitral Tribunal may, for instance, determine the admissibility, relevance, materiality and weight of any evidence.

(3) All submissions, documents and expert reports obtained by the parties themselves and other information that are submitted to the Arbitral Tribunal or the DIA by a party shall at the same time be communicated to the other party or parties. Expert reports or documents related to the arbitration and which the Arbitral Tribunal or the DIA has received directly from third parties shall also be communicated to the parties.

(4) At the request of a party, the Arbitral Tribunal may make decisions regarding the confidentiality of the arbitration proceedings or of any other matters in connection with the arbitration and take measures to protect trade secrets and confidential information.

#### *Place for Holding Oral Hearings and Meetings*

##### **Article 29**

(1) Unless otherwise agreed between the parties, the Arbitral Tribunal may decide after consultation of the parties that any meetings, including oral hearings, are to be held at any place it considers appropriate taking into account the circumstances of the case.

(2) Unless the parties have agreed otherwise, meetings, including oral hearings, see Art. 37, shall be held in private.

(3) The Arbitral Tribunal shall prepare minutes of meetings held, including oral hearings, stating the time and place of the meeting, the participants of the meeting, and the decisions made during the meeting. These minutes shall be sent to the parties and the DIA.

#### *Secretary of the Arbitral Tribunal*

#### **Article 30**

(1) The Arbitral Tribunal may appoint a secretary. The secretary shall be impartial and independent. The Arbitral Tribunal shall ensure that the secretary remains impartial and independent at all stages of the arbitration.

(2) Before being appointed as secretary, the secretary shall sign the DIA's Declaration of Acceptance, Impartiality and Independence etc., which he or she will send to the Secretariat with a copy to the Arbitral Tribunal. At the same time, the secretary shall disclose in writing circumstances, which may give rise to justifiable doubts regarding the secretary's impartiality or independence. The secretary shall also provide information regarding his or her professional and educational background (CV/résumé). The Secretariat shall send the declaration and the CV/résumé to the parties and set a time limit for any comments.

(3) The Arbitral Tribunal decides on any challenges of the appointment of the secretary.

(4) Any fee payable to the secretary is not a part of the costs of the arbitration and is solely a matter between the secretary and the Arbitral Tribunal. Any arbitration-related expenses of the secretary are, however, considered as part of the costs of the arbitration.

(5) The secretary of the Arbitral Tribunal may only be present during the Arbitral Tribunal's deliberations if all members of the Arbitral Tribunal accept this.

#### *Absence from Oral Hearings and Meetings*

#### **Article 31**

If, without showing reasonable cause, a party fails to appear at a meeting, including an oral hearing, or to produce evidence, the Arbitral Tribunal may continue the arbitration and make an arbitral award on the basis of what is available to it.

#### *Preparatory Meeting*

#### **Article 32**

The Arbitral Tribunal shall as soon as possible convene a preparatory meeting with the parties. The meeting may be held using telecommunication. In the notice convening the meeting the Arbitral Tribunal shall set out the particular issues to be addressed at the meeting, such as:

- (a) The position of the parties in relation to the facts and the legal points of the case, including a determination of which facts and legal points are undisputed, and which facts and legal points shall require the taking of evidence.

- (b) The procedure for the taking of evidence, including an indication of the parties' own expert witnesses, submissions of written witness statements, etc.
- (c) The organisation of, and a timeframe for, the remaining part of the preparatory stage of the proceedings, including a timetable for any exchange of additional written submissions.
- (d) Requests to a party regarding the submission of factual information, including the production of documents or other evidence, see also Art. 33.
- (e) Requests for obtaining expert reports or opinions by organisations or authorities.
- (f) The formulation of questions to experts, appointed by the Arbitral Tribunal or jointly by the parties, to organisations or authorities.
- (g) The costs that may accrue from the case, including the need to make decisions involving particularly cost-demanding activities.
- (h) The organisation of an oral hearing, including the date, time and location.

#### *Submission of Documents and Other Evidence.*

#### **Article 33**

At the request of a party, the Arbitral Tribunal may order another party to produce documents or other evidence that are in the possession of the other party and that the Arbitral Tribunal considers may be relevant to the case. If that other party fails without a valid reason to comply with the order, the Arbitral Tribunal may draw significance from this to the advantage of the requesting party when the Arbitral Tribunal assesses the evidence.

#### *Time Limits for the Submission of Documents and Other Evidence*

#### **Article 34**

The parties shall produce documents or other evidence in support of their claims and give the other party or parties and the Arbitral Tribunal notice of the witness(es) and expert(s) that the party wishes to give testimony, in accordance with the time limits set by the DIA or the Arbitral Tribunal. Failure to comply with a time limit may cause the Arbitral Tribunal to reject admission of the corresponding evidence, unless the Arbitral Tribunal considers the failure justified or if special circumstances exist.

#### *Experts Appointed by the Arbitral Tribunal*

#### **Article 35**

(1) After consultation of the parties, the Arbitral Tribunal may appoint one or more experts to report to it on specific issues to be determined by the Arbitral Tribunal. The Arbitral Tribunal may order a party to give the expert(s) all relevant information and grant him or her access to inspect documents and other evidence. The report(s) submitted by the expert(s) shall be communicated to the parties by the Arbitral Tribunal. At the request of a party or the Arbitral Tribunal, the expert(s), appointed by the Arbitral Tribunal or jointly by the parties, and after submission of the corresponding report(s), shall participate in an oral hearing, where the parties have the opportunity to put questions to the expert(s) and to present and/or call their own expert witness(es) regarding the applicable issue(s).

(2) Any person appointed an expert by the Arbitral Tribunal or jointly by the parties shall be available, impartial and independent.

(3) Before being appointed, the expert shall sign a Declaration of Acceptance, Impartiality and Independence etc., which he or she will send to the Secretariat. At the same time, the expert shall disclose in writing any circumstances, which may give rise to justifiable doubts regarding his or her availability, impartiality or independence. The expert shall also provide information regarding his or her professional and educational background (CV/résumé). The Secretariat shall send the declaration and the CV/résumé to the parties and set a time limit for any comments.

(4) After the appointment and during the arbitration the expert shall immediately disclose in writing to the Arbitral Tribunal, the parties and the Secretariat any circumstances that should have been disclosed, see par. (3), had they existed at the time.

(5) At the request of the Arbitral Tribunal or by a joint request of the parties, the DIA shall provide one or more candidates for appointment as expert(s). For each candidate provided in accordance with the first sentence, a fee shall be paid to the DIA, the amount of which is set forth in the Schedule of Fees and Charges of the DIA, which applies at the time of the submission of the Statement of Claim, see Art. 4. The Schedule of Fees and Charges of the DIA is available on the DIA's website. A fee shall also be paid to the DIA, the amount of which is set forth in the Schedule of Fees and Charges of the DIA mentioned in the second sentence, where the DIA is requested to charge and administer the deposit in a case mentioned in Art. 11, first sentence, even if the DIA has not proposed the expert(s) but if for instance the parties jointly or a business organisation have. The fees paid to the DIA mentioned in the second and fourth sentences of this paragraph shall be paid by the requesting party or parties, unless otherwise decided by the DIA. Regarding an expert's estimate of the expected costs of his or her work, see Art. 11, second sentence.

(6) The Arbitral Tribunal decides on any challenges of the appointment of the expert(s).

(7) After consultation of the parties, the Arbitral Tribunal shall set the fee payable to the expert(s).

#### *Interim Measures*

##### **Article 36**

At the request of a party, the Arbitral Tribunal may order another party to take such interim measures as the Arbitral Tribunal may consider necessary in respect of the nature of the dispute. The Arbitral Tribunal may require a party to provide appropriate security accordingly.

#### *Oral Hearing(s)*

##### **Article 37**

(1) The Arbitral Tribunal shall decide whether to hold an oral hearing or oral hearings, or whether the proceedings shall be conducted on the basis of written submissions only. However, the Arbitral Tribunal shall hold an oral hearing or oral hearings at an appropriate stage of the proceedings, if a party requests it. If applicable, the Arbitral Tribunal shall, after consultation of the parties, determine the date, time and location of an oral hearing or oral hearings and shall provide the parties with reasonable notice of such.

(2) At the request of a party the Arbitral Tribunal may decide, after consultation of the other parties, that a testimony before the Arbitral Tribunal is given using telecommunication, if this is found reliable and appropriate. Furthermore, at the request of a party the Arbitral Tribunal may decide, after consultation of the other parties, that the holding of an oral hearing or oral hearings is done fully or partially using telecommunication, if this is found reliable and appropriate and if special circumstances justify it.

### *Closing of Proceedings*

#### **Article 38**

When it finds that the case has been sufficiently presented, the Arbitral Tribunal shall close the arbitration proceedings in order to render an award.

### **The Arbitral Award**

#### *Form and Content of the Award*

#### **Article 39**

(1) As soon as possible upon conclusion of the oral hearing(s), and, as far as possible, no later than six months from the referral of the case to the Arbitral Tribunal, see Art. 24, a draft version of the arbitral award shall be submitted to the Secretariat for the purpose of scrutiny mentioned in Art. 43. If the draft award cannot be submitted before the expiry of the time limit, the Arbitral Tribunal shall notify the parties and the Secretariat of the time when the draft award may be expected.

(2) The award shall state its date and the place of arbitration. Unless the parties have agreed otherwise, the award shall contain a presentation of the facts of the case, including the claims and arguments made by the parties and, to the extent necessary, a rendition of the testimonies made. The award shall also contain a detailed statement of the reasons upon which it is based.

(3) The award shall be in writing and shall be signed by the arbitrator(s). Where the Arbitral Tribunal is composed of more than one arbitrator, the signatures of the majority of the members of the Arbitral Tribunal shall suffice, provided that the reason for any omitted signature is stated in the award.

(4) Where the Arbitral Tribunal is composed of more than one arbitrator, the award shall be made by a majority decision. If there is no majority, the President of the Arbitral Tribunal shall have the casting vote.

(5) An arbitrator who finds himself or herself to be in a minority regarding the reasons given and/or the outcome of the case shall be entitled to have his or her vote noted in the award.

#### *Decision on Costs*

#### **Article 40**

(1) The award shall state the costs of the arbitration and the proportions in which they shall be borne by the parties. The costs of the arbitration include the fees and any arbitration-related expenses of experts appointed by the Arbitral Tribunal, the fees and any arbitration-related expenses of each of the

arbitrators, as well as the registration fee, administrative charge and arbitration-related expenses payable to the DIA.

(2) The Secretariat shall make the final calculation of the costs of the arbitration. The costs stated in the award shall equal the amount set by the Secretariat. The costs stated in the award shall fall due for payment at the time of the date of the award, unless otherwise is stated in the award. Any excess amount of the deposit is reimbursed.

(3) The award shall state whether or not a party shall compensate another party wholly or partially for costs incurred by that other party in relation to the arbitration.

(4) In its decision on costs, the Arbitral Tribunal shall take into account among other things the outcome of the case, the amount of the costs incurred by each party in the arbitration to the extent that information of the amount of the costs is submitted, any agreement between the parties, the disputed amount and whether each party has contributed to the completion of the arbitration within a reasonable time and in an efficient and cost-conscious manner.

(5) The provisions in par. (1) – (4) shall correspondingly apply if the Arbitral Tribunal terminates the arbitration in accordance with Art. 46.

#### *Fees of the Arbitrator(s)*

#### **Article 41**

The fees of the arbitrator(s) shall be set by the Chair's Committee on the basis of a reasoned written proposal by the President of the Arbitral Tribunal regarding the total amount of the fees and the proportions in which they should be allocated between the tribunal members after consultation of the other arbitrators, or by the Sole Arbitrator. The fees of the arbitrator(s) shall be set in accordance with Appendix 2, Art. 4.

#### *Liability for Costs*

#### **Article 42**

The parties shall be jointly and severally liable for the total costs of the arbitration regardless of how the costs have been allocated in the award, by agreement or by other decision, and whether or not the amount exceeds the deposit paid. If this means that one party has to pay for another party, the former shall have a right of recourse against the latter.

#### *The Secretariat's Scrutiny of the Award*

#### **Article 43**

Before the rendering of the award, including the awards mentioned in Art. 10 (3), third sentence, Art. 12 (3), Art. 31, Art. 38 - 40, Art. 44 and Art. 47, the Arbitral Tribunal shall send the draft award to the Secretariat, which shall scrutinise it. The Secretariat may propose modifications as to the form of the award and, without affecting the Arbitral Tribunal's jurisdiction, draw the Arbitral Tribunal's attention to other issues, including issues of importance regarding the award's validity, recognition and enforcement. Notwithstanding the scrutiny by the Secretariat, the responsibility for the content of the award lies exclusively with the Arbitral Tribunal.

### *Award by Consent*

#### **Article 44**

(1) If, during the arbitration, the parties settle the dispute, the Arbitral Tribunal shall terminate the proceedings. If requested by the parties and the Arbitral Tribunal does not object, the Arbitral Tribunal shall record the settlement in the form of an arbitral award by consent.

(2) An arbitral award by consent shall be made in accordance with Art. 39 and shall state that it is an arbitral award but it shall not be reasoned. Such an award shall have the same status and legal effect as an arbitral award on the merits of the case.

### *Notification of the Award to the Parties*

#### **Article 45**

(1) The Secretariat shall send to the parties the signed award provided that all the costs of the arbitration have been paid to the DIA.

(2) The award shall be binding on the parties. The parties undertake to carry out any award without undue delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made.

### *The Arbitral Tribunal's Final Termination of the Arbitration*

#### **Article 46**

(1) The arbitration terminates by the final award, an award by consent in accordance with Art. 44, or by an order of the Arbitral Tribunal in accordance with par. (2) below.

(2) If the Arbitral Tribunal does not issue an award in the case, the Arbitral Tribunal may issue an order for termination of the arbitration when:

(a) the Claimant withdraws its claim(s), unless the Respondent objects that the arbitration be terminated and the Arbitral Tribunal finds that the Respondent has a legitimate interest in a final determination of the dispute,

(b) the parties agree on the termination of the arbitration, or

(c) the Arbitral Tribunal finds that the continuation of the proceedings has for another reason become unnecessary or impossible.

(3) The jurisdiction of the Arbitral Tribunal ceases with the termination of the arbitration, however see Art. 47 of the Rules and Art. 37 (5) of the Danish Arbitration Act.

### *Correction, Interpretation and Additional Award*

#### **Article 47**

(1) Within 30 calendar days of receiving an arbitral award a party may request from the Arbitral Tribunal:

(a) a correction of an award where, due to a written or calculation error, a typographical error or similar errors, the content of the award is not in accordance with the intention of the Arbitral Tribunal,

(b) an interpretation of a specific point or part of the award, or

(c) the making of an additional award regarding a claim or claims presented to the Arbitral Tribunal and which should have been decided by it, but omitted from the award.

(2) A request for a correction or an interpretation of an arbitral award or for the making of an additional award shall be submitted to the Arbitral Tribunal and to the other parties with a copy to the Secretariat. The Arbitral Tribunal shall decide on the matter after having invited the other parties to comment.

(3) The Arbitral Tribunal may within 30 calendar days of the date of the award correct the award on its own motion, see par. (1) (a), after having invited the parties to comment.

(4) In special circumstances the Arbitral Tribunal may extend the time limits stated in par. (1) and (3).

(5) The provisions in Art. 39 - 43 shall also apply to decisions to correct or interpret the arbitral award as well as to additional awards.

#### **Miscellaneous**

### *Interim Arbitrator and Emergency Arbitrator*

#### **Article 48**

Where the taking of evidence or interim measures cannot await the confirmation of the arbitrator(s) under the Rules, it may be done with assistance from an interim arbitrator or an emergency arbitrator in accordance with the provisions contained in Appendices 3 and 4, respectively.

### *Waiver*

#### **Article 49**

A party who has become aware that a provision of the Rules or a requirement under the arbitration agreement(s) has not been complied with and yet proceeds with the case without stating an objection to such non-compliance without undue delay or, if a time limit is set, before the expiry of that time limit, shall be deemed to have waived the right to object.



### *Confidentiality*

#### **Article 50**

The members of the Arbitral Tribunal, the secretary of the Arbitral Tribunal, see Art. 30, the members of the Board or the Council of Representatives, the Chair's Committee, the Secretariat and the Secretary-General, shall treat all matters relating to the arbitration as confidential. Notwithstanding the first sentence, the decisions made by the Chair's Committee in accordance with Art. 21 (3) and (4) may be published in an anonymous form.

### *Limitation of Liability*

#### **Article 51**

The members of the Arbitral Tribunal, the secretary of the Arbitral Tribunal, see Art. 30, or other persons appointed by the DIA or the Arbitral Tribunal, and the DIA, including the members of the Board, the Council of Representatives, the Chair's Committee, the Secretariat and the Secretary-General shall not be liable for any act or omission in connection with commencement of an arbitration, the processing of an arbitration or an award made by the Arbitral Tribunal, except to the extent such limitation of liability is prohibited by applicable law.

### *Entry into Force*

#### **Article 52**

The Rules are adopted by the Board of the DIA and shall enter into force as of 13 April 2021 and shall apply to arbitrations commenced on 13 April 2021 or thereafter, unless the parties have agreed otherwise, see Art. 2.

## **Appendix 1**

### **The Organisation of the Danish Institute of Arbitration**

#### *Objective of the Danish Institute of Arbitration*

##### **Article 1**

(1) The objective of the DIA is to act for arbitration in accordance with the Rules of Arbitration adopted by the Board, as regards an Arbitral Tribunal, which is confirmed by the Chair's Committee for an individual arbitration.

(2) The DIA is composed of a Council of Representatives and a Board, as well as a Secretariat.

(3) The DIA shall be fair and impartial, and contribute to the parties' equal treatment and that the individual arbitration is conducted in a positive and constructive spirit, within a reasonable time and in an efficient and cost-conscious manner.

(4) Disputes may be determined in accordance with the Rules regardless of the domicile and nationality of the parties.

(5) The DIA may administer cases regarding dispute resolution in accordance with other rules than the Rules, including rules adopted by the International Seed Federation (ISF). Furthermore, the DIA may appoint arbitrators, mediators, appraisers and experts in accordance with other rules than the Rules, including the UNCITRAL Arbitration Rules.

#### *The Chair's Committee*

##### **Article 2**

(1) The Chair and the Vice-Chair of the Board constitute the Chair's Committee of the DIA.

(2) The Chair's Committee carries out the functions and makes the decisions assigned to it under the Rules. If there is no majority for a decision of the Chair's Committee, the Chair shall have the casting vote.

(3) If the Chair and/or the Vice-Chair of the DIA are involved in an individual arbitration or are otherwise prevented from carrying out a function or making a decision, the Chair and/or the Vice-Chair shall not participate in the handling of the arbitration and shall be respectively replaced by another Board member, selected for the individual arbitration by the Secretary-General.

#### *The Secretariat*

##### **Article 3**

(1) The Secretariat of the DIA acts under the direction of a Secretary-General, who shall hold a law degree and have substantial practical experience in dispute resolution.

(2) The Secretariat assists the Chair's Committee and carries out the functions assigned to it under the Rules.

(3) The Secretariat or the Secretary-General may also make decisions delegated to it by the Chair's Committee provided that the Chair's Committee is subsequently informed of the content of such decisions.

### *Archiving*

#### **Article 4**

(1) When the costs of the arbitration have been paid and the arbitration has been terminated, see Art. 46, the Secretariat shall upon the request of a party, return original documents, drawings and similar documents to the parties. Everything else that has been submitted in the arbitration shall remain the property of the DIA.

(2) The DIA shall keep arbitral awards in its archive for a minimum of 10 years.

### *Other Provisions*

#### **Article 5**

The Chair, the Vice-Chair, the Secretary-General and members of the Secretariat cannot be appointed as arbitrators in cases submitted to the DIA. Members of the Board and the Council of Representatives cannot be appointed arbitrators in arbitrations submitted to the DIA, unless this occurs at the proposal of one or more of the parties or pursuant to a procedure agreed upon by the parties.

## **Appendix 2**

### **Administrative Charge and Fees of the Arbitrator(s)**

#### *Introduction*

#### **Article 1**

(1) The administrative charge of the DIA and the fees of the members of the Arbitral Tribunal are calculated in accordance with the Schedule of Fees and Charges of the DIA, which applies at the time of the submission of the Statement of Claim, see Art. 4 of the Rules. The Schedule of Fees and Charges of the DIA is available on the DIA's website.

(2) The Schedule of Fees and Charges of the DIA mentioned in par. (1) and the rules set out in Art. 2 - 4 below apply regardless of whether the dispute is resolved after the holding of an oral hearing or oral hearings or on the basis of written submissions only, and apply regardless of the duration and the nature of the arbitration.

#### *Calculation of the Economic Value of the Case*

#### **Article 2**

The fees and the administrative charge in the Schedule of Fees and Charges of the DIA, mentioned in Art. 1, are based on the economic value of the case, which is determined according to the following principles:

(a) The amount in dispute is calculated as the aggregate economic value of all claims. If secondary or alternative claims have been made in respect of a certain issue, the economic value shall be based on the claim with the highest economic value.

(b) If arbitrations are consolidated or a claim is added, the amount in dispute shall be calculated as the sum of the economic value of all arbitrations and claims.

(c) Interest claims shall not be taken into account for the calculation of the economic value of the case. However, if the interest claim or claims exceed the amount of the principal claim(s) then the amount in dispute shall be set at the value of the interest claim(s) instead of the value of the principal claim(s).

(d) Amounts in currencies other than Danish Kroner (DKK) or euro shall be converted to DKK by using the average exchange rate used by the Danish National Bank which applies at the time of the submission of the claim(s).

(e) If the economic value of the case cannot be determined on the basis of the claim(s), or if the determination otherwise gives rise to doubt, the value shall be set at the discretion of the Chair's Committee after consultation of the parties and the Arbitral Tribunal.

## *Administrative Charge*

### **Article 3**

(1) The administrative charge shall be set by the Chair's Committee in accordance with the Schedule of Fees and Charges of the DIA, which applies at the time of the submission of the Statement of Claim, see Art. 4 of the Rules. The Schedule of Fees and Charges of the DIA is available on the DIA's website. However, the Chair's Committee can set the administrative charge at a lower or higher amount, if the scope of work or other exceptional circumstances justify it.

(2) If the arbitration ends before the rendering of a final award on the merits of the case, for instance because a settlement has been reached, or the arbitration is terminated with an award on the formalities of the case, the Chair's Committee shall set a reasonable administrative charge, taking into account the scope of work and other circumstances. If an arbitration ends immediately prior to the final oral hearing on the merits of the case, the administrative charge shall be the full amount as set out in accordance with the Schedule of Fees and Charges of the DIA, mentioned in par. (1), unless the Chair's Committee decides otherwise.

## *Fees of the Arbitrator(s)*

### **Article 4**

(1) The final fees of the arbitrator(s) shall be set by the Chair's Committee on the basis of a reasoned written proposal prepared by the President of the Arbitral Tribunal after consultation of the other arbitrators, or by the Sole Arbitrator, and which shall state the amount of the total fees. The fees of the co-arbitrators are, as a starting point, set at 75% of the fees of the President of the Arbitral Tribunal, which are calculated in accordance with the Schedule of Fees and Charges of the DIA, which applies at the time of submission of the Statement of Claim, see Art. 4 of the Rules. The Schedule of Fees and Charges of the DIA is available on the DIA's website. The mentioned proposal in the first sentence of this paragraph may, however, contain a different allocation between the arbitrators of the total fees of the Arbitral Tribunal.

(2) In addition, when setting the fees, the Chair's Committee shall take into account whether the Arbitral Tribunal has ensured that the deposit paid was sufficient on an ongoing basis, the diligence of the arbitrators, whether the arbitrator(s) managed the arbitration within a reasonable time and in an efficient and cost-conscious manner, including whether the time limit mentioned in Art.39 (1) of the Rules has been complied with, the amount in dispute, the time spent, the complexity of the dispute and other circumstances.

(3) The Chair's Committee may set the fees of the arbitrator(s) at a level below or above that which would result from the application of the Schedule of Fees and Charges of the DIA, mentioned in par. (1), if the scope of work or other exceptional circumstances justify it.

(4) The Chair's Committee may at the request of the Arbitral Tribunal exceptionally pay a fee on account if the scope of the case, its value, the expected duration of the case and the work of the arbitrator(s) justify it. The Chair's Committee sets the amount of the fee after the consultation of the Arbitral Tribunal.

(5) Separate fee arrangements between the parties and the arbitrator(s) are contrary to the Rules.

(6) If the confirmation of an arbitrator is revoked in accordance with Art. 22 of the Rules or an arbitrator is replaced for other reasons, or if an arbitration ends before the rendering of a final award on the merits of the case, for instance because a settlement has been reached or the arbitration is terminated with an award on the formalities of the case, the Chair's Committee shall set a reasonable fee for the arbitrator(s) in question in accordance with par. (1) - (5).

(7) In the event of a request for the correction or interpretation of an award or the making of an additional award, see Art. 47 of the Rules, the Chair's Committee shall, at the request of the Arbitral Tribunal, consider if an additional fee is to be exceptionally granted to the arbitrator(s). The Secretariat may set a time limit for the parties' payment of a cash deposit to the DIA as security for the estimated costs, related to the request for the correction or interpretation of an award or the making of an additional award.

(8) The set fees of the arbitrator(s) do not include any Value Added Tax (VAT) or other taxes or charges etc. that may be applicable to the fees of the arbitrator(s). The parties are responsible for paying such taxes or charges and any reimbursement of such charges or taxes is a matter solely between each arbitrator and the parties.

## **Appendix 3**

### **Taking of Evidence Prior to the Confirmation of the Arbitrator(s)**

#### *Powers of the Interim Arbitrator*

##### **Article 1**

(1) The interim arbitrator has powers to resolve any disputes between the parties regarding the taking of evidence, see Art. 48 of the Rules.

(2) The powers of the interim arbitrator shall cease when:

- (a) the confirmation of the arbitrator(s) occurs in accordance with the Rules, or
- (b) the interim arbitrator considers that the proceedings of the taking of evidence are closed or have become unnecessary or impossible.

(3) The interim arbitrator may require a party to provide appropriate security.

#### *Application for Appointment of an Interim Arbitrator*

##### **Article 2**

(1) An application for the appointment of an interim arbitrator shall as a minimum contain the following information:

- (a) The name, address, telephone number and e-mail address of the parties as well as any VAT and company registration number.
- (b) The name, address, telephone number and e-mail address of the legal counsel or other representative(s) for the respective parties.
- (c) A statement of the facts and legal points, and the documents and other evidence upon which the party intends to rely, as well as any other information necessary for the handling of the application.
- (d) Any comments on the place of the interim arbitrator proceedings, the applicable rules of law as well as the language(s) to be used.

(2) Documents etc. referred to in the application, including the arbitration agreement, shall be attached.

#### *Confirmation of Receipt of the Application*

##### **Article 3**

The Secretariat shall inform the parties of the date of its receipt of the application and any exhibits, and shall send the application and any exhibits to the other parties. At the same time, a copy of the Rules will be sent to the parties.

#### *Appointment of the Interim Arbitrator*

##### **Article 4**

(1) The Chair's Committee shall appoint an interim arbitrator as soon as possible, unless an interim arbitrator manifestly lacks jurisdiction, for instance because the concluded arbitration agreement excludes the use of an interim arbitrator.

(2) The interim arbitrator shall be and during the case shall remain impartial and independent of the parties.

(3) An interim arbitrator may not be appointed arbitrator in any future arbitration regarding the dispute, unless the parties agree otherwise.

#### *Place of the Interim Arbitrator Proceedings*

##### **Article 5**

The place of the interim arbitrator proceedings shall be Copenhagen, Denmark, unless the parties have agreed otherwise.

#### *Referral to the Interim Arbitrator*

##### **Article 6**

When the interim arbitrator is appointed, the Secretariat shall refer the application and any additional correspondence to the interim arbitrator. From such referral, all correspondence shall occur directly between the interim arbitrator and the parties with copies to the Secretariat, which shall follow the developments in the case so that, if necessary, it may assist the interim arbitrator and the parties in ensuring that the case progresses in a timely and efficient manner.

#### *Conduct of the Interim Arbitrator Proceedings and the Decisions of the Interim Arbitrator*

##### **Article 7**

(1) The interim arbitrator proceedings shall be conducted under the Rules, which are applied with the modifications, which follow from the nature of the case.

(2) The decisions of the interim arbitrator shall be binding on the parties and shall be complied with without delay.

(3) The Arbitral Tribunal, which may later be constituted under the Rules, is not bound by the decisions of the interim arbitrator.



## *Deposit and Costs*

### **Article 8**

- (1) The party applying for the appointment of an interim arbitrator shall pay a cash deposit to the DIA as security for the estimated costs of the interim arbitrator proceedings.
- (2) The Secretariat shall set the amount of the deposit. Failure by a party to pay the deposit demanded by the Secretariat within a time limit of five calendar days of receiving notice of its amount may cause the Secretariat to terminate the proceedings. At any time the Secretariat may decide that the deposit be adjusted and that any additional amount shall be paid before the proceedings continue.
- (3) The costs of the interim arbitrator proceedings include the fee and any arbitration-related expenses of the interim arbitrator and the administrative charge and any arbitration-related expenses of the DIA. The administrative charge of the DIA amounts to one third of the fee of the interim arbitrator, unless the Chair's Committee decides otherwise. The fee of the interim arbitrator shall be set by the Chair's Committee upon a reasoned written proposal made by the interim arbitrator in accordance with the principles of Appendix 2 applied with the modifications, which follow from the nature of the case.
- (4) Upon the request of a party, the costs of the interim arbitrator proceedings may be finally apportioned between the parties by the Arbitral Tribunal that may later be constituted in accordance with the Rules.

## *Appointment of Experts*

### **Article 9**

- (1) Upon the request of a party and after consultation of the other parties, the interim arbitrator may decide to appoint one or more experts to report to it on specific issues.
- (2) Upon the request of the interim arbitrator or a joint request of the parties, the DIA shall provide one or more candidates for appointment as expert(s). The DIA shall charge a fee for the appointment of each such expert. The fee shall be in accordance with the Schedule of Fees and Charges of the DIA, which applies at the time of the application mentioned in Art. 2. The Schedule of Fees and Charges of the DIA is available on the DIA's website.
- (3) An additional fee shall be paid to the DIA, the amount of which is set out in the Schedule of Fees and Charges of the DIA mentioned in par. (2), in cases where the DIA is requested to charge and administer a deposit for costs that are expected in connection with the work in the case of an expert, even if the DIA has not proposed the expert(s), but if for instance the parties jointly or a business organisation have.
- (4) The requesting party or parties shall pay the fees mentioned in par. (2) and (3), unless otherwise decided by the Secretariat.

## **Appendix 4**

### **Interim Measures to be Granted Prior to the Confirmation of the Arbitrator(s)**

#### *Powers of the Emergency Arbitrator*

##### **Article 1**

(1) The emergency arbitrator may, upon the request of a party, grant any interim measure that he or she deems to be necessary in respect of the nature of the dispute, see Art. 48 of the Rules.

(2) The powers of the emergency arbitrator shall cease when:

- (a) the confirmation of the arbitrator(s) occurs in accordance with the Rules,
- (b) arbitration is not commenced within 30 calendar days from the date of the emergency arbitrator's decision, or
- (c) the emergency arbitrator considers that the granting of interim measures has become unnecessary or impossible.

(3) The emergency arbitrator may require a party to provide appropriate security.

#### *Application for Appointment of an Emergency Arbitrator*

##### **Article 2**

(1) An application for the appointment of an emergency arbitrator shall as a minimum contain the following information:

- (a) The name, address, telephone number and e-mail address of the parties as well as any VAT and company registration number.
- (b) The name and address, telephone number and e-mail address of the legal counsel or other representative(s) for the respective parties.
- (c) A statement of the interim measure(s) sought.
- (d) A statement of the facts and legal points, and the documents and other evidence upon which the party intends to rely, as well as any other information necessary for the handling of the application, including comments regarding why the interim measure(s) cannot await the confirmation of the arbitrator(s) in accordance with the Rules.
- (e) Any comments on the place of the emergency arbitrator proceedings, the applicable rules of law as well as the language(s) to be used.
- (f) Proof of any payment of a deposit pursuant to Art. 10 below.

(2) Documents etc. referred to in the application, including the arbitration agreement, shall be attached in the form of original documents or copies.

### *Confirmation of Receipt of the Application*

#### **Article 3**

The Secretariat shall inform the parties of the date of its receipt of the application and any exhibits, and shall send the application and any exhibits to the other parties. At the same time, a copy of the Rules will be sent to the parties.

### *Appointment of the Emergency Arbitrator*

#### **Article 4**

(1) The Chair's Committee shall appoint an emergency arbitrator as soon as possible, unless an emergency arbitrator manifestly lacks jurisdiction, for instance because the concluded arbitration agreement excludes the use of an emergency arbitrator.

(2) The emergency arbitrator shall be and during the case shall remain impartial and independent of the parties.

(3) An emergency arbitrator may not be appointed arbitrator in any future arbitration regarding the dispute, unless the parties agree otherwise.

### *Place of the Emergency Arbitrator Proceedings*

#### **Article 5**

The place of the emergency arbitrator proceedings shall be Copenhagen, Denmark, unless the parties have agreed otherwise.

### *Referral to the Emergency Arbitrator*

#### **Article 6**

When the emergency arbitrator is appointed, the Secretariat shall refer the application and any additional correspondence to the emergency arbitrator. From such referral, all correspondence shall occur directly between the emergency arbitrator and the parties with copies to the Secretariat, which shall follow the developments in the case so that, if necessary, it may assist the emergency arbitrator and the parties in ensuring that the case progresses in a timely and efficient manner.

### *Conduct of the Emergency Arbitrator Proceedings*

#### **Article 7**

The emergency arbitrator proceedings shall be conducted in accordance with the Rules, which are applied with the modifications, which follow from the nature of the case.

### *Decision of the Emergency Arbitrator*

#### **Article 8**

(1) The emergency arbitrator shall make a decision in accordance with Art. 1(1) as soon as possible and not later than 14 calendar days from the date the application was referred, see Art. 6. If a decision is not made before the expiry of the time limit mentioned in the first sentence of this paragraph, the emergency arbitrator shall notify the parties and the Secretariat of when a decision may be expected.

(2) The decision of the emergency arbitrator shall be dated, in writing, reasoned, signed and state the place of the emergency arbitrator proceedings.

(3) The decision of the emergency arbitrator shall be sent to the parties and the Secretariat.

### *Binding Effect of the Decision*

#### **Article 9**

(1) The decision of the emergency arbitrator shall be binding on the parties and shall be complied with without delay.

(2) The decision of the emergency arbitrator shall cease to be binding where:

(a) the emergency arbitrator or the arbitrator(s) confirmed in accordance with the Rules so decide,

(b) a final award on the merits of the case is made by the arbitrator(s), confirmed in accordance with the Rules, or

(c) an arbitration, in accordance with the Rules, is not commenced within 30 calendar days from the date of the decision of the emergency arbitrator.

(3) The Arbitral Tribunal, which may later be constituted under the Rules, is not bound by the decisions of the emergency arbitrator.

### *Deposit and Costs*

#### **Article 10**

(1) The party applying for the appointment of an emergency arbitrator shall pay a cash deposit to the DIA as security for the estimated costs of the emergency arbitrator proceedings. The amount of the cash deposit, mentioned in first sentence of this paragraph, shall be in accordance with the Schedule of Fees and Charges of the DIA, which applies at the time of the application mentioned in Art. 2. The Schedule of Fees and Charges of the DIA is available on the DIA's website.

(2) Failure by a party to pay the deposit no later than the day after submitting the application mentioned in Art. 2 may cause the Secretariat to terminate the proceedings. At any time the Secretariat may demand that the deposit be adjusted and that any additional amount shall be paid before the proceedings continue.

(3) The costs of the emergency arbitrator proceedings include the fee and any arbitration-related expenses of the emergency arbitrator and an administrative charge and any arbitration-related expenses of the DIA. The administrative charge of the DIA amounts to one third of the fee of the emergency arbitrator, unless the Chair's Committee decides otherwise. The fee of the emergency arbitrator shall be set by the Chair's Committee upon a reasoned written proposal made by the emergency arbitrator in accordance with the principles of Appendix 2 applied with the modifications, which follow from the nature of the case.

(4) Upon the request of a party, the costs of the emergency arbitrator proceedings may be finally apportioned between the parties by the Arbitral Tribunal that may later be constituted in accordance with the Rules.