

RULES FOR ARBITRATION BETWEEN THE BANK FOR INTERNATIONAL SETTLEMENTS AND PRIVATE PARTIES

Effective March 23, 2001

Scope of Application and Definitions

Article 1

1. These Rules shall govern an arbitration between the Bank for International Settlements and one or more private parties as contemplated by its Statutes [as of 8 January 2001], except that where any of these Rules is in conflict with a provision of Article 54 of the Statutes of the Bank for International Settlements, Article XV of the Agreement of The Hague of 20 January 1930, Annex XII to the Agreement of The Hague of 20 January 1930, or Chapter III of the Hague Convention of 1907 for the Pacific Settlement of International Disputes (except in so far as the latter is modified by the provisions of said Agreement or Annex XII), that provision shall prevail.

2. The Rules shall be subject to such modification as the parties to any such arbitration may agree in writing insofar as those modifications are consistent with the Agreement of The Hague of 20 January 1930, Annex XII to the Agreement of The Hague of 20 January 1930, or Chapter III of the Hague Convention of 1907 for the Pacific Settlement of International Disputes (except in so far as the latter is modified by the provisions of said Agreement or Annex XII).

3. The meaning of the terms used in these Rules shall be the following, unless the contrary is expressly stated:

a) “The Tribunal” or “the Arbitration Tribunal”: the Tribunal established pursuant to Article XV of the Agreement of The Hague of 20 January 1930;

(b) “Chairman”: the Chairman of the Tribunal;

(c) “The Bank” or “BIS”: Bank for International Settlements, having its seat at Basel, Switzerland;

d) “1930 Hague Agreement”: the Agreement of The Hague of 20 January 1930, including Annex XII thereto;

(e) “Annex XII”: Annex XII to the Agreement of The Hague of 20 January 1930 entitled “Arbitration. Rules of Procedure”;

(f) “1907 Hague Convention”: the Hague Convention of 1907 for the Pacific Settlement of International Disputes, and, in particular, its Chapter III (Articles 51 to 85) to which reference is made in Article 1 of Annex XII to the Agreement of The Hague of 20 January 1930; and

(g) “Terms of Submission”: as understood in the 1930 Agreement, the question or questions to be submitted to the Tribunal and the specific procedures to be followed;

(h) “Secretary”: the person appointed from time to time by the Tribunal to fulfill the functions assigned to him or her by Annex XII, the 1907 Hague Convention, these Rules and the Tribunal.¹

Notice, Calculation of Periods of Time

Article 2

1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is delivered at the seat of the Bank for International Settlements and, as far as any other party is concerned, at that party's habitual residence, place of business, mailing address, e-mail address or, if none of these can be found after making reasonable inquiry, then at the party's last-known residence or place of business or mailing address. Notice shall be deemed to have been received on the day it is so delivered.

2. Copies of any such notice shall be sent to the Secretary of the Tribunal.

3. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day when a notice, notification, communication or proposal is received by the Secretary of the Tribunal. If the day 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

¹ By decision of 17 January 2001, the Tribunal appointed as Secretary, Mrs. Phyllis P. Hamilton, International Bureau of the Permanent Court of Arbitration, Peace Palace, Carnegieplein 2, 2517 KJ, The Hague, The Netherlands.

are included in calculating the period.

Notice of Arbitration

Article 3

1. The party initiating recourse to arbitration (hereinafter called the 'claimant') shall give to the other party (hereinafter called the 'respondent') and to the Secretary of the Tribunal a Notice of Arbitration.

2. The Notice of Arbitration shall include the following:

- (a) A demand that the dispute be referred to arbitration;
- (b) The names, addresses and telephone, facsimile or other communication references of the parties to the arbitration;
- (c) A reference to the arbitration clause or the separate arbitration agreement that is invoked;
- (d) A reference to the agreement or relationship out of or in relation to which the dispute arises;
- (e) A brief description of the nature and circumstances of the dispute; and
- (f) A statement of the relief sought and an indication, to the extent possible, of any amount claimed.

3. The Notice of Arbitration may also include the Statement of Claim referred to in Article 13.

4. Arbitral proceedings shall be deemed to commence on the date on which the Notice of Arbitration is received by the Secretary of the Tribunal. The Secretary shall certify in writing the date of the receipt to both the claimant and the respondent.

Representation

Article 4

1 Each Party shall appoint a representative. The claimant shall notify the appointment of its representative in the Notice of Arbitration. The respondent shall notify in writing the other Party,

the Tribunal and the Secretary of the appointment of its representative upon receipt of the certification referred to in Article 3(4). In the event that during the arbitration a Party replaces its representative, that Party shall immediately notify in writing the other Party, the Tribunal and the Secretary.

2 Any notice, including a notification, communication or proposal, between the Parties and the Tribunal or between the Parties themselves shall be conducted through these representatives, without prejudice to the requirement of Article 2(2).

Challenge of Arbitrators

Article 5

1. When the Tribunal is seised of a case, in accord with Article 3(4), each member of the Tribunal shall execute a Declaration of Impartiality and Independence and deposit it with the Secretary of the Tribunal.

2. If a member of the Tribunal believes that there is a reason for recusing him or herself in a particular case, that member shall notify the Chairman of the Tribunal and shall withdraw from that case.

3. If a member indicates in his or her Declaration that there is a fact or relationship which may give rise to questions about his or her impartiality or independence but which the member does not believe actually impairs his or her independence and impartiality nor warrants recusal, the Secretary of the Tribunal shall convey this information to the parties to the case.

Article 6

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

Article 7

1. A party which intends to challenge an arbitrator shall send to the Secretary of the Tribunal notice of its challenge within thirty days of receipt of the information in the Declaration of Impartiality of the arbitrator in question. Thereafter, a party may also challenge an arbitrator within 30 days of receiving information that would give rise to justifiable doubts as to the arbitrator's impartiality or independence, on condition that such information could not have been reasonably secured earlier.

2. The notification shall be in writing and shall state the reasons for the challenge.

3. The arbitrator may, after the challenge, withdraw from the Tribunal. This does not imply acceptance of the validity of the grounds for the challenge.
4. If the challenged arbitrator does not withdraw, the Tribunal shall invite the other party to express its views.
5. The decision on the challenge shall be made by the Tribunal under its regular voting rules. In case of a tie, the Chairman shall cast the deciding vote. In a case in which the Chairman is challenged, the deciding vote shall be cast by the oldest member of the Tribunal.

Replacement of an Arbitrator

Article 8

1. In the event of the death or resignation of a member of the Tribunal during the course of the arbitral proceedings, that member shall be replaced in accord with the provisions of the 1930 Agreement.
2. In the event that a member of the Tribunal fails to act or in the event of the de jure or de facto impossibility of his or her performing his or her functions, the arbitrator shall be replaced in accord with the provisions of the 1930 Agreement.
3. If a member of the Tribunal recuses himself or herself or is recused by the Tribunal, that member shall be replaced for that case according to the appointment procedures of the 1930 Agreement, unless the parties agree that the Tribunal may decide the case without that member, with the deciding vote to be cast by the Chairman or the oldest member of the Tribunal as the case may be.

Arbitral Proceedings

Article 9

1. Subject to these Rules, the 1930 Hague Agreement, the 1907 Convention and the Terms of Submission, the Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting its case.
2. There shall be a written and oral proceedings.
3. Any request or communication addressed to the Tribunal by one of the parties shall be

communicated at the same time to the other party or parties. The Tribunal may order the parties to send copies of documents and other materials directly to the members of the Tribunal. The provisions of this paragraph shall be without prejudice to the provisions of Article 2.

Place of Arbitration

Article 10

1. The Tribunal shall sit at The Hague or such other place as may be fixed by the Tribunal.
2. After inviting the views of the parties, the Tribunal may meet at any place it deems appropriate for the inspection of property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.

Language

Article 11

1. The written proceedings shall be in either English or French. It shall, however, be open to any member of the Tribunal to require that any pleading or other document (including any translation) delivered in one of those languages be translated into another and, if necessary, duly certified.
2. The representatives of the parties may address the Tribunal in their own language, subject to the right of any member of the Tribunal or the other party or parties to require a translation in English or French.
3. The Tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the Tribunal.

Preparatory Conference on Terms of Submission

Article 12

1. Upon receipt by the Secretary of the Tribunal of the Notice of Arbitration, the Secretary of the Tribunal shall arrange a preparatory conference with the parties to conclude the Terms of Submission in accord with Article XV(6) of the 1930 Hague Agreement.

2. If and to the extent that the parties cannot agree on the Terms of Submission, the Tribunal shall establish the Terms of Submission for the arbitration.

Statement of Claim

Article 13

1. Unless the Statement of Claim was contained in the Notice of Arbitration, within a period of time to be determined by the Tribunal in accord with the 1930 Hague Agreement, the claimant shall communicate its Statement of Claim in writing to the respondent, to each member of the Tribunal and to the Secretary of the Tribunal.

2. The Statement of Claim shall include:

- (a) A statement of the facts on which the claim is based;
- (b) A statement of law;
- (c) A statement of conclusions;
- (d) A list of the documents in support, which documents shall be attached to the Statement of Claim.

Statement of Defence

Article 14

1. Within a period of time to be determined by the Tribunal in accord with the 1930 Hague Agreement, the respondent shall communicate its Statement of Defence in writing to the claimant, to each member of the Tribunal and to the Secretary of the Tribunal.

2. The Statement of Defence shall affirm or contest the facts stated in the Statement of Claim and shall present a statement of additional facts, if any, a statement of law and conclusions based on the facts stated. Those conclusions may include counter-claims, insofar as the latter come within the jurisdiction of the Tribunal. The respondent shall list the documents in support and shall attach them to the Statement of Defence.

3. The provisions of Article 13, paragraph 2, shall apply to a counter-claim and a claim relied on for the purpose of a set-off.

Amendments to the Claim or Defence

Article 15

During the course of the arbitral proceedings either party may amend or supplement its claim or defence unless the Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

Pleas as to the Jurisdiction of the Tribunal

Article 16

1. The Tribunal shall have the power to decide the question as to its own jurisdiction.
2. A plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defence or, with respect to a counter-claim, in the reply to the counter-claim.
3. In general, the Tribunal may rule on a plea concerning its jurisdiction as a preliminary question. However, the Tribunal may proceed with the arbitration and rule on such a plea in its final award, if, in its judgment, that arrangement best serves the administration of the procedure.

Further Written Statements

Article 17

1. Subject to Article 18, the parties shall have the right to deliver a reply and rejoinder within three weeks after the receipt of the last preceding pleading.
2. Should the Tribunal resort to means of information other than those supplied by the parties, it will allow them to submit arguments on the additional information.

Periods of Time

Article 18

The periods of time fixed by the Tribunal for the communication of written statements (including

the Statement of Claim and Statement of Defence) may be extended either by the agreement of the parties or by a decision of the Chairman of the Tribunal.

Evidence and Hearings

Article 19

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.
2. The parties undertake to supply the Tribunal, as fully as they consider possible, with all the information required for deciding the case.
3. The Tribunal may ask for any supplementary notes, memorials or documents which it thinks desirable. The Tribunal may take note of the refusal of a party to comply.

Article 20

1. The date of the hearing shall be determined by the Chairman and notice thereof shall be given to the parties at least fourteen days prior to the hearing.
2. Hearings shall be held in public.
3. At the hearing, any member of the Tribunal may put such questions to the parties as he or she thinks proper.
4. No oral argument will be received from either party unless the other party is present or has been duly notified.
5. No party may, without the consent of the other party, make use of a document which has not been previously communicated to the other.
6. If witnesses are to be heard, within a time period to be determined by the Tribunal, each party shall communicate to the Tribunal and to the other party the names and addresses of the witnesses it intends to present, the subject upon and the languages in which such witnesses will give their testimony.
7. The Secretary of the Tribunal shall ensure that a verbatim transcript shall be taken of all oral proceedings and shall be supplied with all possible dispatch to the members of the Tribunal and to the parties.
8. The Tribunal may require the retirement of any witness or witnesses during the testimony of

other witnesses.

9. The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Provisional Measures

Article 21

1. Before giving a final decision and without prejudice to the questions at issue, the Chairman of the Tribunal, or, if he or she is unable to act in any case, a member of the Tribunal to be designated by the Chairman, may, on the request of the first party applying therefor, order any appropriate provisional measures in order to safeguard the respective rights of the parties.

2. The Tribunal shall be entitled to require security for the costs of such measures.

Experts

Article 22

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

2. The parties shall give the expert any relevant information or produce for his/her inspection any relevant documents that he or she may request of them. Any dispute between a party and such expert as to the relevance and appropriateness of the required information or production shall be referred to the Tribunal for decision.

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

4. At the request of either 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 either party may present expert witnesses in order to testify on the points at issue. The provisions of Article 20 shall be applicable to such proceedings.

Failure to Appear or to Make Submissions

Article 23

1. If, within the period of time fixed by the Tribunal, the claimant has failed to communicate its claim without showing sufficient cause for such failure, the Tribunal shall issue an order for the termination of the arbitral proceedings. If, within the period of time fixed by the Tribunal, the respondent has failed to communicate its Statement of Defence without showing sufficient cause for such failure, the Tribunal shall order that the proceedings continue.
2. If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the Tribunal may proceed with the arbitration.
3. If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the Tribunal may make the award on the evidence before it.

Closure of Hearings

Article 24

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

Waiver of Rules

Article 25

A party which knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

Applicable Law

Article 26

The Tribunal shall apply the instruments relevant to the case as well as other relevant principles of law.

The Award

Article 27

1. Any award or other decision of the Tribunal shall be made by a majority of the members of the Tribunal subject to the provisions of Article 8(3).
2. In the case of questions of procedure, when the Tribunal so authorizes, the Chairman may decide on his or her own, subject to revision, if any, by the Tribunal.
3. For all the purposes of the arbitration up to the commencement of the oral proceedings, the Chairman or any two members of the Tribunal appointed by him shall be qualified to take in the name and on behalf of the Tribunal any decisions which the Tribunal is authorized to take.

Form and Effect of the Award

Article 28

1. In addition to making a final award, the Tribunal shall be entitled to make interim, interlocutory, or partial awards.
2. The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.
3. The award shall state the reasons upon which it is based.
4. A member of the Tribunal may attach a separate or dissenting opinion.
5. The award shall be signed by the members of the Tribunal and shall contain the date on which and the place where the award was made. Where a member of the Tribunal fails to sign, the award shall state the reason for the absence of the signature(s).
6. The award shall be read out in public sitting, the representatives of the parties being present or having been duly notified.
7. Copies of the award signed by the members of the Tribunal shall be communicated to the parties by the Secretary of the Tribunal.

Settlement or Other Grounds for Termination

Article 29

1. If, before the award is made, the parties agree on a settlement of the dispute, the Tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Tribunal is not obliged to give reasons for such an award.
2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The Tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.
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 to the parties by the Secretary of the Tribunal. Where an arbitral award on agreed terms is made, the provisions of Article 28, paragraphs 2 and 4 to 7, shall apply.

Interpretation of the Award

Article 30

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request that the Tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 28, paragraphs 2 to 7.

Correction of the Award

Article 31

1. Within thirty days after the receipt of the award, either party, with notice to the other party, may request the Tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The Tribunal may within thirty days after the communication of the award make such corrections on its own initiative.
2. Such corrections shall be in writing, and the provisions of Article 28, paragraphs 2 to 7, shall apply.

Additional Award

Article 32

1. Within sixty (60) days after the receipt of the award, either party, with notice to the other party, may request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
2. If the Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty (60) days after the receipt of the request.
3. When an additional award is made, the provisions of Article 28, paragraphs 2 to 7, shall apply.

Costs

Article 33

The Tribunal shall fix the costs of arbitration in its award. The term 'costs' includes:

- (a) The fees of the Tribunal to be fixed by the Tribunal itself;
- (b) The travel and other expenses incurred by the arbitrators;
- (c) The costs of expert advice and of other assistance required by the Tribunal;
- (d) the fees and expenses of the Secretary of the Tribunal and the International Bureau.

Deposit of Costs

Article 34

1. The Secretary of the Tribunal, following the commencement of the arbitration, shall request each party to deposit an equal amount as an advance for the costs referred to in Article 33. All amounts deposited by the parties pursuant to this paragraph and paragraph 2 of this Article shall be directed to the International Bureau and disbursed by it for such costs, including, inter alia, fees to the arbitrators, the Secretary of the Tribunal and the International Bureau.
2. During the course of the arbitral proceedings the Tribunal may request supplementary deposits from the parties.

3. If the requested deposits are not paid in full within sixty (60) days after the receipt of the request, the Tribunal shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the Tribunal may order the suspension or termination of the arbitral proceedings.
4. After the award has been made, the Secretary of the Tribunal on behalf of the International Bureau shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.