



## **INTERNATIONAL COMMERCIAL ARBITRATION**

# **Rules of Procedure**

*(As amended January 1, 2000)*

### **THE BRITISH COLUMBIA INTERNATIONAL COMMERCIAL ARBITRATION CENTRE**

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Article - [CLICK ON NUMBERED ITEMS TO HYPER-LINK](#)

## **APPLICATION AND INTERPRETATION**

1. Interpretation and application
2. Receipt of written communications
3. Calculation of time
4. Waiver of right to object and exclusion of liability

## **COMPOSITION OF ARBITRAL TRIBUNAL**

5. Number of arbitrators
6. Appointment of a sole arbitrator
7. Appointment of three arbitrators
8. Method of appointment
9. Proposing and requesting appointment
10. Independence and impartiality
11. Grounds for challenge
12. Challenge procedure
13. Termination of mandate
14. Substitution of arbitrator

## **JURISDICTION OF TRIBUNAL**

15. Jurisdiction pleas
16. Interim measures of protection

## **CONDUCT OF ARBITRAL PROCEEDINGS**

17. Notice of request for arbitration
18. Representation and confidentiality
19. Duty to expedite and preliminary meetings
20. Place of arbitration
21. Language
22. Statements of claim and defense
23. Further written statements
24. Time limits
25. Evidence
26. Hearings

27. Witnesses
28. Default of a party
29. Experts

#### **MAKING OF ARBITRAL AWARD AND TERMINATION OF PROCEEDINGS**

30. Rules applicable to substance of dispute
31. Closure of hearings
32. Decisions
33. Settlement
34. Form and effect of award
35. Termination of proceedings
36. Correction and interpretation of award /  
additional award
37. Costs
38. Apportionment of costs
39. Order for costs
40. Deposit of costs

#### **FEE SCHEDULE**

## **APPLICATION AND INTERPRETATION**

### **Article 1**

#### **Interpretation and application**

- (1) In these Rules
  - (a) terms and phrases have the same meaning as defined in, or contemplated by, the *International Commercial Arbitration Act*, RSBC 1996, c. 233;
  - (b) “Act” means the *International Commercial Arbitration Act*;
  - (c) a masculine gender reference includes a female gender reference, a singular reference includes a plural reference and vice versa;
  - (d) the “Centre” or “BCICAC” means the ***British Columbia International Commercial Arbitration Centre*** in Vancouver, British Columbia, Canada; and
  - (e) the BCICAC Fee Schedule for International Commercial Arbitration in effect at the commencement of an arbitration shall apply.
- (2) Where
  - (a) parties have agreed in writing to submit a dispute which has arisen or may arise between them in respect of a defined legal relationship, whether contractual or not, to arbitration under the rules of the BCICAC; and
  - (b) the arbitration referred to in (a) is an international commercial arbitration, the arbitration shall be conducted in accordance with these Rules.
- (3) The parties to arbitration under these Rules may modify the Rules by agreement in writing.

### **Article 2**

#### **Receipt of written communications**

- (1) Any written communication is deemed to have been received on the day it is delivered to the addressee personally or delivered at the addressee's place of business, habitual residence or mailing address.
- (2) Any written communication required or permitted under these Rules may be delivered personally, by registered mail, by facsimile, or by electronic or other means of telecommunication which provide a record of delivery.
- (3) If none of the places referred to in (1) can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered mail or by any other means which provides a record of the attempt to deliver it.

### **Article 3**

#### **Calculation of time**

- (1) A period of time is calculated by excluding the first day and including all consecutive ensuing days, including holidays and non-business days. However, where the time for doing an act falls or expires on an official holiday or a non-business day at the residence or place of business of the individual who is to perform that act, the period is extended until the first business day that follows.

### **Article 4**

#### **Waiver of right to object and exclusion of liability**

- (1) A party who knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without stating its objection to noncompliance without undue delay shall be deemed to have waived its right to object.
- (2) None of the Centre, its staff or the members of the arbitral tribunal is liable to any party for any act or omission in relation to arbitration under these Rules unless the injury or loss was caused by deliberate and conscious wrongdoing.

## **COMPOSITION OF ARBITRAL TRIBUNAL**

### **Article 5**

#### **Number of arbitrators**

- (1) The parties may agree on the number of arbitrators before or within 30 days after commencement of the arbitral proceedings.
- (2) If the parties have not so agreed, the number of arbitrators shall be three unless the Centre, in its discretion, determines that a sole arbitrator shall constitute the tribunal.
- (3) In determining whether a sole arbitrator should be constituted as the tribunal, the Centre shall have regard to the amount in dispute, the nature and complexity of the dispute and any other factor it considers relevant.

### **Article 6**

#### **Appointment of a sole arbitrator**

- (1) Where a sole arbitrator is to be appointed, either party may propose to the other the name of one or more persons acceptable to that party as the sole arbitrator.
- (2) Where the parties fail to reach an agreement on a sole arbitrator within 30 days after a party receives the proposal under (1), a party may request the Centre to appoint the arbitrator in accordance with Article 8.

## **Article 7**

### **Appointment of three arbitrators**

- (1) Where three arbitrators are to be appointed, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who will act as presiding arbitrator.
- (2) Where a party fails to appoint an arbitrator within 30 days after receipt of a request to do so from the other party, the other party may request the Centre to appoint that arbitrator in accordance with Article 8.
- (3) Where the two appointed arbitrators fail to appoint a third arbitrator within 30 days after the date of the appointment of the last arbitrator, a party may request the Centre to appoint the third arbitrator in accordance with Article 8.
- (4) If the notice of request for arbitration names two or more claimants or two or more respondents and the parties do not agree on the appointment process within 30 days of delivery of the notice, the Centre shall appoint all three arbitrators under Article 8(2)(d).

## **Article 8**

### **Method of appointment**

- (1) The Centre shall appoint an arbitrator as promptly as possible after the request of a party under Article 6 or 7.
- (2) Unless the Centre determines that it is not appropriate in a particular case, the Centre shall use the following list procedure:
  - (a) the Centre shall communicate to both parties an identical list of at least three names;
  - (b) within a period of 15 days following receipt of the list referred to in (a), each party shall return the list to the Centre after having
    - (i) deleted any name to which it objects, and
    - (ii) numbered the remaining names on the list in the order of its preference;
  - (c) after the 15 day period referred to in (b), the Centre shall appoint the arbitrator from the remaining names on the lists returned to it, taking into account the order of preference indicated by the parties; and
  - (d) if, for any reason the appointment cannot be made according to this procedure, the Centre may, in its sole discretion, appoint the arbitrator.
- (3) In appointing an arbitrator, the Centre will have due regard to
  - (a) any qualifications required of the arbitrator by the agreement of the parties;
  - (b) other considerations likely to secure the appointment of an independent and impartial arbitrator; and
  - (c) the advisability of appointing an arbitrator of a nationality other than those of the parties.

## **Article 9**

### **Proposing and requesting appointment**

- (1) Where a person is proposed for appointment as an arbitrator, the following information shall be given to all parties by the proposer: the person's full name, address and nationality and a description of the person's qualifications.
- (2) Where a request for appointment is made to the Centre, the party making the request shall send to the Centre
  - (a) a copy of the notice of request for arbitration;
  - (b) a copy of the contract out of or in relation to which the dispute has arisen; and
  - (c) a copy of the arbitration agreement if an arbitration clause is not contained in the contract.
- (3) The parties shall supply the Centre with any additional information it considers necessary to fulfill its function.

## **Article 10**

### **Independence and impartiality**

- (1) An arbitrator shall be and remain at all times wholly independent and impartial.
- (2) To accept an appointment, an arbitrator must sign and provide the Centre with a written declaration that the arbitrator knows of no circumstance likely to give rise to justifiable doubts as to the arbitrator's independence and impartiality. The arbitrator shall disclose any such circumstance to the parties without delay should it arise before the arbitration is concluded.
- (3) Subject to (4) and (5), no party shall engage in any communication about the case with any arbitrator or any candidate for appointment as an arbitrator unless the other party or parties to the case is/are present.
- (4) A party or someone on behalf of a party may communicate with a candidate for appointment as a party-appointed arbitrator for the following purposes:
  - (a) to advise the candidate of the general nature of the dispute and the arbitration proceedings; or
  - (b) to discuss the candidate's qualifications, availability, independence from the parties and impartiality in relation to the dispute.
- (5) A party or someone on behalf of a party may communicate with a party-appointed arbitrator to discuss the qualifications and suitability of candidates for the presiding arbitrator.

## **Article 11**

### **Grounds for challenge**

- (1) An arbitrator may be challenged only if
  - (a) circumstances exist that give rise to justifiable doubts as to the arbitrator's independence or impartiality; or
  - (b) the arbitrator does not possess the qualifications agreed to by the parties.
- (2) A party may challenge an arbitrator in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made.
- (3) Where an arbitration agreement provides
  - (a) for the appointment of a conciliator or mediator; and
  - (b) that the conciliator or mediator shall also act as arbitrator in the event of the conciliation or mediation failing to produce a settlement,a party shall not object to the appointment of a conciliator or mediator as arbitrator solely on the ground that the person acted as conciliator or mediator in connection with some or all of the matters referred to in the arbitration.
- (4) Where a person is appointed as conciliator or mediator under an arbitration agreement and then declines to act as an arbitrator, another person appointed as arbitrator shall not be required first to act as conciliator or mediator.

## **Article 12**

### **Challenge procedure**

- (1) A party who intends to challenge an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal or becoming aware of any circumstances referred to in Article 11(1), send a written statement of the reasons for the challenge to the arbitral tribunal.
- (2) If the arbitrator challenged under (1) withdraws from office or the other party agrees to the challenge, the mandate of the arbitrator terminates.
- (3) If the arbitrator challenged under (1) does not withdraw from office or the other party does not agree to the challenge, the arbitral tribunal shall decide on the challenge.
- (4) If a challenge to the arbitrator under (1) is not successful, the challenging party may request the Centre, within 30 days after having received notice of the decision of the challenge, to decide on the challenge.
- (5) The decision of the Centre under (4) is final.
- (6) While a request under (4) is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an arbitral award.

## **Article 13**

### **Termination of mandate**

- (1) The mandate of an arbitrator terminates if
  - (a) the arbitrator
    - (i) becomes *de jure* or *de facto* unable to perform the functions of arbitrator or for any reason fails to act without undue delay; and
    - (ii) withdraws from office or the parties agree to the termination;
  - (b) a challenge to the office is successful under Article 12;
  - (c) the arbitrator withdraws from office for any reason; or
  - (d) the parties agree in writing that it is terminated.
- (2) If under (1)(a) or Article 12, an arbitrator withdraws from office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of the grounds referred to in (1)(a) or Article 12.
  - (a) Where the mandate of an arbitrator who is one member of a three arbitrator tribunal is not terminated but the arbitrator declines to participate in the arbitration, the other two arbitrators have the authority to continue the arbitration. Should the two arbitrators decide in their sole discretion to continue, any decision, ruling or award made by them shall be valid.
  - (b) In deciding whether to continue the arbitration, the two arbitrators shall have regard to the stage of the proceeding, the reason(s) given by the arbitrator declining to participate, and such other considerations which they consider relevant.
  - (c) Should the two arbitrators decide in their sole discretion not to continue the arbitration without the participation of a third arbitrator, the Centre may then terminate the mandate of the non-participating arbitrator and appoint a replacement arbitrator.

## **Article 14**

### **Substitution of an arbitrator**

- (1) Where the mandate of an arbitrator terminates under 13(1), a substitute arbitrator shall be appointed according to the provisions of the Rules that were applicable to the appointment of the arbitrator being replaced.
- (2) Subject to the agreement of the parties, where an arbitrator is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.
- (3) An order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator is not invalid solely because there has been a change in the composition of the tribunal.

## **JURISDICTION OF THE TRIBUNAL**

### **Article 15**

#### **Jurisdiction pleas**

- (1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,
  - (a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
  - (b) a decision by the arbitral tribunal that the contract is null and void shall not entail for that reason alone the invalidity of the arbitration clause.
- (2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense. However, a party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator.
- (3) A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.
- (4) The arbitral tribunal may, in either of the cases referred to in (2) or (3), admit a later plea if it considers the delay justified.
- (5) The arbitral tribunal may rule on a plea referred to in (2) and (3) either as a preliminary question or in an arbitral award on the substance of the dispute.

### **Article 16**

#### **Interim measures of protection**

- (1) Unless otherwise agreed by the parties in writing, the arbitral tribunal may, where it is persuaded by a party that it is necessary, order any interim measure, including:
  - (a) security for all or part of the amount in dispute, by way of deposit or bank guarantee or in any other manner and upon such terms as the arbitral tribunal considers appropriate;
  - (b) the preservation, storage, sale or other disposal of property or thing under the control of any party and relating to the subject matter of the arbitration; and
  - (c) any relief which the arbitral tribunal would have power to grant in an award, including an interim order for the payment of money or the disposition of property as between any parties.
- (2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under (1).
- (3) Unless otherwise agreed by the parties in writing, the arbitral tribunal shall have the

authority, upon the application of a party, to order any claiming or counter-claiming party to provide security for the legal or other costs upon such terms as the arbitral tribunal considers appropriate. The location of a party's residence is not itself reason for the arbitral tribunal to order security for legal or other costs.

- (4) In the event that a party does not comply with any order to provide security under (1) or (3), the arbitral tribunal may stay that party's claims or counterclaims or dismiss them in an award.
- (5) An order under (1) or (3) may be established in the form of an interim award and, where it is so established, shall be considered an arbitral award.
- (6) Except in relation to security for costs, the parties agree it is not the intention of these Rules to preclude a party from seeking interim relief from a court or other competent judicial authority either before the arbitral tribunal has been constituted or, in exceptional circumstances, thereafter. Any such application and any order made shall be communicated to the arbitral tribunal and all other parties as soon as possible.

## **CONDUCT OF ARBITRAL PROCEEDINGS**

### **Article 17**

#### **Notice of request for arbitration**

- (1) The claimant initiating the arbitration shall give a notice of request for arbitration to the respondent and to the BCICAC. The required commencement fee, as set out in the current **BCICAC Fee Schedule for International Commercial Arbitration**, shall accompany the notice delivered to the Centre.
- (2) The arbitration is deemed to have commenced when the notice of request for arbitration is filed with the BCICAC and the commencement fee paid. The Centre shall notify the parties when an arbitration has been commenced.
- (3) A notice of request for arbitration shall include the following:
  - (a) a request that the dispute be referred to arbitration;
  - (b) the names and addresses of the parties to the dispute;
  - (c) a reference to the arbitration clause or separate arbitration agreement relied upon;
  - (d) a reference to the contract out of or in relation to which the dispute has arisen;
  - (e) the general nature of the claim and an estimate of the value of the dispute, if any;
  - (f) the relief or remedy sought; and
  - (g) the preferred number of arbitrators, if not already agreed upon.
- (4) A notice of request for arbitration may also include the following:

- (a) a proposal for the appointment of a sole arbitrator referred to in Article 6(1);
- (b) the notification of the appointment of an arbitrator referred to in Article 7(1);  
and
- (c) the statement of claim.

## **Article 18**

### **Representation and confidentiality**

- (1) The parties may be represented or assisted by any person during the arbitral proceedings.
- (2) A party shall advise the other parties in writing of
  - (a) the names and addresses of those persons who are representing or assisting it;  
and
  - (b) the capacity in which each of those persons is acting.
- (3) Unless the parties expressly agree in writing to the contrary, the parties agree to keep confidential all awards arising from the proceedings, together with all evidence and materials created for the purpose of the arbitration and all other documents produced by another party in the proceeding not otherwise in the public domain, except and to the extent that disclosure is required by law, is required to protect or pursue a legal right or is required to enforce or challenge an award in legal proceedings before a court or other competent judicial authority.
- (4) Unless the parties expressly agree in writing to the contrary, the members of the arbitral tribunal and the Centre shall keep confidential all matters related to the arbitration or the award, except and to the extent that disclosure is required by law.

## **Article 19**

### **Duty to expedite and preliminary meetings**

- (1) The parties shall be treated with equality and each party shall be given a fair opportunity to present its case.
- (2) Subject to these Rules, the arbitral tribunal has broad discretion to conduct the arbitration in the manner it considers appropriate so as to avoid unnecessary delay or expense and provide a fair and efficient means for the final resolution of the parties' dispute.
- (3) The power of the arbitral tribunal under (2) includes the power to determine the admissibility, relevance, materiality and weight of any evidence, to exclude cumulative or irrelevant evidence and to direct the parties to focus their evidence or argument on specific issues which may assist in the disposal of all or part of the dispute.
- (4) The parties agree that they shall, at all times, do everything necessary for the fair, efficient and expeditious conduct of the arbitration.

- (5) The arbitral tribunal may hold preliminary meetings with the parties
  - (a) to discuss with the parties the procedure to be followed in the arbitration;
  - (b) to fix or determine any periods of time referred to in these rules;
  - (c) to discuss hearing dates; and
  - (d) to determine any other matter required or permitted under the Rules to help to ensure the efficient progress of the arbitral proceedings.

## **Article 20**

### **Place of arbitration**

- (1) In the absence of an agreement by the parties or a decision by the tribunal to the contrary, the place of arbitration shall be Vancouver, British Columbia, Canada.
- (2) The arbitral tribunal may meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties or for inspection of documents, goods, or other property.

## **Article 21**

### **Language**

- (1) Unless the parties otherwise agree, until the arbitral tribunal has been constituted, the parties shall use the language(s) of the arbitration agreement in all communications related to the arbitration. A party shall provide a translation upon request of the Centre.
- (2) The arbitral tribunal shall determine the language to be used in the arbitral proceedings, having regard to the submissions of the parties and the language(s) of the arbitration agreement. Unless otherwise specified by the arbitral tribunal, that determination shall apply to any written statement by a party, any hearing and any arbitral award, decision or other communication by the arbitral tribunal.
- (3) The arbitral tribunal may order that documentary evidence be accompanied by a translation into the language determined by the arbitral tribunal under (2)

## **Article 22**

### **Statements of claim and defense**

- (1) Within 30 days after the arbitral tribunal has been constituted, the claimant shall state, in writing, the facts supporting its claim, the points at issue and the relief or remedy sought and shall submit the statement to the respondent and to the Centre. Any additional required fee shall be delivered with the statement submitted to the Centre.
- (2) Within 30 days after receipt of the statement of claim, the respondent shall state, in writing, its defense in respect of these particulars and shall submit the statement of

defense to the claimant and to the Centre. At the time a respondent submits its statement of defense, it may also make a counterclaim by stating, in writing, the facts supporting its counterclaim, the points at issue and the relief or remedy sought. A statement of counterclaim shall be submitted to the claimant and to the Centre. The required commencement fee must accompany the statement of counterclaim submitted to the Centre.

- (3) A party may submit with its statement all documents considered relevant or may add a reference to the documents or other evidence it will submit.
- (4) The claimant shall submit with the statement of claim a copy of the contract and a copy of the arbitration agreement if not contained in the contract.
- (5) A party may amend or supplement its claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment or supplement having regard to the delay in making it.
- (6) 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.

## **Article 23**

### **Further written statements**

- (1) Subject to (2), the arbitral tribunal may require or permit the presentation of further written statements from the parties and shall fix the periods of time for communicating those statements.
- (2) The arbitral tribunal shall not fix a period of time in excess of 45 days for communicating any written statements.
- (3) Where it determines it to be just and appropriate, the arbitral tribunal may, from time to time, extend a time limit fixed under (1), but in no case shall the time limit be extended for a period of time in excess of 45 days.

## **Article 24**

### **Time limits**

The arbitral tribunal may extend or abridge a period of time required in these Rules or fixed or determined by itself where it considers it to be just and appropriate in all the circumstances. Until the tribunal is constituted, this authority shall lie with the Centre.

## **Article 25**

### **Evidence**

- (1) Each party shall prove the facts relied upon to support its claim or defense.
- (2) The arbitral tribunal may, if it considers it appropriate, require a party to deliver a summary of the documents and other evidence the party intends to present in

support of the facts in issue set out in its statement of claim or defense.

- (3) The arbitral tribunal may, from time to time, require a party to produce documents, exhibits or other evidence.
- (4) The arbitral tribunal may set a date or determine a period of time for delivery.
- (5) All statements, documents or other information supplied to, or applications made to, the arbitral tribunal by one party shall be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

## **Article 26**

### **Hearings**

- (1) The arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials.
- (2) Notwithstanding that the arbitral tribunal has decided to conduct the proceedings on the basis of documents and other materials, the arbitral tribunal shall hold oral hearings at an appropriate stage of the proceedings, if so requested by a party.
- (3) The parties shall be given sufficient advance notice of
  - (a) any meeting of the arbitral tribunal for the purpose of inspection of documents, goods or other property; and
  - (b) any hearing of the arbitral tribunal.
- (4) If a party is giving evidence through witnesses, the party shall, within a period of time the arbitral tribunal determines, communicate to the tribunal and to the other party
  - (a) the names and addresses of the witnesses it intends to present; and
  - (b) the subject upon which, and the language in which, those witnesses will give their testimony.
- (5) The arbitral tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if
  - (a) either is deemed necessary by the tribunal under the circumstances of the case; or
  - (b) the parties have agreed to it and have communicated such agreement to the tribunal at least 30 days before the hearing.
- (6) All oral hearings and meetings in arbitral proceedings shall be held *in camera*.

## **Article 27**

### **Witnesses**

- (1) The arbitral tribunal may require a witness to be absent from a hearing during the testimony of another witness.
- (2) The arbitral tribunal may determine the manner in which witnesses are to be examined.
- (3) The arbitral tribunal may allow the evidence of a witness to be presented in the form of written statement signed by the witness.
- (4) Where the arbitral tribunal allows a written statement of a witness to be presented by a party, the other party may require that the witness giving evidence in that manner be present at an oral hearing for examination.

## **Article 28**

### **Default of a party**

- (1) Where, without showing sufficient cause, the claimant fails to communicate its statement of claim in accordance with Article 22(1) or within such further period of time as permitted by the arbitral tribunal under Article 24, the arbitral tribunal shall issue an order terminating the arbitral proceedings with respect to that claim.
- (2) An order made under (1) does not affect a counter-claim made in respect of those arbitral proceedings.
- (3) Where, without showing sufficient cause, the respondent fails to communicate its statement of defense in accordance with Article 22(2) or within such further period of time permitted by the arbitral tribunal under Article 24, the arbitral tribunal shall continue the arbitral proceedings without treating that failure in itself as an admission of the claimant's allegations.
- (4) Where, without showing sufficient cause, a party fails to appear at an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the arbitral proceedings and make the arbitral award on the evidence before it.

## **Article 29**

### **Experts**

- (1) The arbitral tribunal may
  - (a) appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal; and
  - (b) require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for inspection by the expert.
- (2) The arbitral tribunal shall communicate the expert's terms of reference to the parties.

- (3) Any dispute between a party and the expert as to the relevance of the required information or production of it shall be referred to the arbitral tribunal for decision.
- (4) Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion on the report.
- (5) The expert shall, on the request of a party,
  - (a) make available to that party for examination all documents, goods or other property in the expert's possession with which the expert was provided in order to prepare the report; and
  - (b) provide that party with
    - (i) a list of all documents, goods or other property not in the expert's possession, but which were provided to the expert in order to prepare the report, and
    - (ii) a description of the location of those documents, goods or other property.
- (6) If a party so requests or if the arbitral tribunal considers it necessary, the expert who has prepared and delivered a written or oral report shall be present at an oral hearing where the parties shall have the opportunity
  - (a) to examine the expert; and
  - (b) to present other expert witnesses in order to testify on the points at issue.
- (7) Articles 26 and 27 apply to 29 (6).

## **MAKING OF ARBITRAL AWARD AND TERMINATION OF PROCEEDINGS**

### **Article 30**

#### **Rules applicable to substance of dispute**

- (1) The arbitral tribunal shall decide the dispute in accordance with the rules of law designated by the parties as applicable to the substance of the dispute.
- (2) Any designation by the parties of the law or legal system of a given state shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its conflict of laws rules.
- (3) Failing any designation of the law under (1) by the parties, the arbitral tribunal shall apply the rules of law it considers to be appropriate given all the circumstances surrounding the dispute.
- (4) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* if the parties have expressly authorized it to do so.
- (5) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

## **Article 31**

### **Closure of hearings**

- (1) The arbitral tribunal may close the hearings where
  - (a) the parties, on inquiry, have advised that they have no further evidence to give or submissions to be made; or
  - (b) subject to Article 19(1), the arbitral tribunal considers further hearings to be unnecessary or inappropriate.
- (2) In exceptional circumstances and on its own motion or on an application of a party, the arbitral tribunal may reopen the hearings at any time before the final arbitral award is made.

## **Article 32**

### **Decisions**

- (1) Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members.
- (2) Notwithstanding (1), a presiding arbitrator may decide questions of procedure.

## **Article 33**

### **Settlement**

- (1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (2) An arbitral award on agreed terms shall be made in accordance with Article 34 and shall state that it is an arbitral award on agreed terms.
- (3) An arbitral award on agreed terms has the same status and effect as any other arbitral award on the substance of the dispute.

## **Article 34**

### **Form and effect of award**

- (1) In addition to the final award, the arbitral tribunal may make interim awards as well as partial final awards.
- (2) An award shall be made in writing and shall be signed by the members of the arbitral tribunal.
- (3) For the purposes of (2), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be

sufficient so long as the reason for any omitted signature is stated.

- (4) An arbitral award shall state the reasons upon which it is based, unless the award is an arbitral award on agreed terms under Article 33.
- (5) An arbitral award shall state its date and place of arbitration as determined under Article 20(1). The award shall be deemed to have been made at that place.
- (6) After an arbitral award is made, a signed copy shall be delivered to each party.
- (7) An arbitral award may award simple or compound interest, including both pre-award interest and post award interest payable until the date the award is satisfied. An award shall be expressed in the currency or currencies determined appropriate by the arbitral tribunal.
- (8) An arbitral award shall not be made public except where disclosure is necessary for purposes of challenge, implementation or enforcement of the award.
- (9) The parties undertake to carry out an arbitral award without delay.

## **Article 35**

### **Termination of proceedings**

- (1) The arbitral proceedings are terminated by the final arbitral award or by an order of the arbitral tribunal under (2) or Article 28(1).
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings where
  - (a) the claimant withdraws its claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on its part in obtaining a final resolution of the dispute;
  - (b) the parties agree to the termination of the proceedings; or
  - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

## **Article 36**

### **Correction and interpretation of award / additional award**

- (1) Within 30 days after receipt of the arbitral award, a party may request the arbitral tribunal to
  - (a) correct in the arbitral award any computation errors, any clerical or typographical errors or any other errors of a similar nature; and
  - (b) give an interpretation of a specific point or part of the arbitral award.
- (2) If the arbitral tribunal considers the request made under (1) to be justified, it shall make the correction or give the interpretation within 30 days after receipt of the request and the interpretation shall form part of the arbitral award.

- (3) The arbitral tribunal may correct any error of the type referred to in (1)(a), on its own initiative, within 30 days after the date of the arbitral award.
- (4) A party may request, within 30 days after receipt of the arbitral award, the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.
- (5) If the arbitral tribunal considers the request made under (4) to be justified, it shall make the additional arbitral award within 60 days after receipt of the request.
- (6) The arbitral tribunal may extend, if necessary, the period of time in which it shall make a correction, give an interpretation or make an additional arbitral award under (2) or (5).
- (7) Article 34 applies to a correction or interpretation of the arbitral award or to an additional arbitral award made under this Article.

### **Article 37**

#### **Costs**

- (1) In this Article “costs” means
  - (a) the fees of the arbitral tribunal, to be stated separately for each arbitrator;
  - (b) the travel and other expenses incurred by the arbitral tribunal, to be stated separately for each arbitrator;
  - (c) the fees, travel and other expenses of the expert(s) appointed by the arbitral tribunal;
  - (d) the fees, travel and other expenses of witnesses approved by the arbitral tribunal;
  - (e) reasonable legal fees and expenses, as determined by the arbitral tribunal, of the successful party where they were claimed during the arbitral proceedings; and
  - (f) any fees or charges of the Centre for administering the arbitration or providing services to the arbitral tribunal or the parties in connection with the arbitral proceedings.
- (2) The arbitral tribunal shall fix the costs of arbitration in its final arbitral award.
- (3) The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrator(s), and any other relevant circumstances.

### **Article 38**

#### **Apportionment of costs**

- (1) Subject to (2), the costs of arbitration shall be borne by the unsuccessful party unless the arbitral tribunal determines that it is appropriate, taking into account the circumstances of the case, to apportion the costs between the parties.

- (2) The arbitral tribunal shall determine which party shall bear the costs referred to in Article 37(1)(e) taking into account the circumstances of the case and may apportion those costs between the parties if it is reasonable to do so.

## **Article 39**

### **Order for Costs**

- (1) When the arbitral tribunal makes an order for the termination of the arbitral proceedings or makes an arbitral award on agreed terms, it shall fix the costs of the arbitration in that order or award.
- (2) Where the Centre considers it reasonable and justified in the circumstances, the arbitral tribunal may charge additional fees for an order for interpretation, correction or amendment of its arbitral award.
- (3) Articles 37 and 38 apply to the fees charged under (2).

## **Article 40**

### **Deposit of costs**

- (1) The arbitral tribunal may, at the time it is constituted, require each party to deposit an equal amount as an advance for the costs referred to in Article 37(1)(a), (b) (c) and (f).
- (2) The arbitral tribunal may, from time to time, require additional deposits from the parties.
- (3) Where a party so requests, the arbitral tribunal shall fix the amounts of any deposits or additional deposits only after consultation with the BCICAC which may make any comments to the tribunal it considers appropriate concerning the amount of those deposits and additional deposits.
- (4) If the required deposits are not paid in full within 30 days after receipt of the request, the arbitral tribunal or the BCICAC shall inform the parties in order that one or other of the parties may make the required payment.
- (5) If the required payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
- (6) On request, the Centre will hold any deposits required under this Article.
- (7) The Centre may, from time to time, pay to the arbitral tribunal from any deposit it holds under this Article any amount it considers reasonable and appropriate for fees earned or expenses incurred by the tribunal in the arbitral proceedings.
- (8) After the final arbitral award has been made, the Centre or the arbitral tribunal shall, in accordance with the final award, apply any deposits it holds to the costs of the proceedings, render an accounting to the parties of the deposits received and applied and return any unexpended balance.

**BRITISH COLUMBIA INTERNATIONAL  
COMMERCIAL ARBITRATION CENTRE**

**INTERNATIONAL COMMERCIAL ARBITRATION**

**FEE SCHEDULE**

*(as amended January 1, 2000)*

*All amounts stated are in Canadian Dollars and do not include 12% HST.*

<b>Amount of Claim Or Counterclaim</b>	<b>Commencement Fee (non-refundable)</b>	<b>Administration Fee (after 6 mos.) (per quarter per party)</b>
Up to \$50,000	\$500	\$300
>50,000 to 500,000	\$1500	\$400
>500,000 to 1,000,000	\$3000	\$500
>1,000,000 to 5,000,000	\$5000	\$500
>5,000,000 to 10,000,000	\$7500	\$500
>10,000,000	\$10,000	\$500
Appointing authority only	\$1000	n/a

The non-refundable commencement fee is due with the Notice of Request for Arbitration filed with the BCICAC.

Additional commencement fees are due with the filing of a claim in excess of the amount stated in the Notice of Request for Arbitration, an additional claim, and a counterclaim filed with the BCICAC.

Where an amount in dispute cannot be stated, the Centre shall have discretion to set a fee. In such cases the commencement fee shall generally be not less than \$1500.

The BCICAC will invoice the administration fee quarterly beginning six months after the commencement date. The administration fee will be assessed on the basis of the highest claim or counterclaim value.

The above fees apply where the Centre acts as administrator and appointing authority pursuant to the Rules of the BCICAC or the UNCITRAL Rules. The fee for the BCICAC to act as the appointing authority only is \$1000.

The above fees do not include the fees and expenses of the tribunal. Hourly rates are set by individual arbitrators.

The above fees do not include expenses incurred by the BCICAC in its administration of an arbitration case. The BCICAC may invoice for expenses on an interim basis as it deems appropriate.

Liability for fees and expenses is joint and several between the parties to the arbitration. Where a party does not pay an administration fee or other outstanding amount due to the BCICAC, any other party may pay that amount to ensure that the arbitration proceeds. If payments are not made, the tribunal may order the suspension or termination of the proceedings.