

VIAC Rules

Nomination and Appointment of Arbitrators

Article 14

- 1 The parties can agree that their dispute is to be decided either by a sole arbitrator or by an arbitral tribunal that shall consist of three arbitrators.
- 2 When no such agreement has been made and the parties do not agree on the number of arbitrators, the Board shall determine whether the dispute is to be decided by a sole arbitrator or by an arbitral tribunal. In that context, the Board shall take into consideration in particular the difficulty of the case, the magnitude of the amount in dispute and the interest of the parties in a rapid and cost-effective decision.
- 3 The parties shall be notified of the decision of the Board pursuant to paragraph 2 of the present Article; in the event that proceedings before a sole arbitrator are decided upon, the parties shall be requested to agree on a sole arbitrator and to indicate that person's name and address within thirty days after service of the request. If no such indication is made within that period, the sole arbitrator shall be appointed by the Board.
- 4 If the dispute is to be decided by an arbitral tribunal, the party that has not yet nominated an arbitrator shall be requested to indicate the name and address of an arbitrator within thirty days after service of the request. If the party has not appointed an arbitrator within that time-limit, the arbitrator shall be appointed by the Board.
- 5 If the dispute is to be decided by an arbitral tribunal, the arbitrators nominated by the parties or appointed by the Board shall be requested to agree on a Chairman and to indicate his name and address within thirty days after service of the request. If no such indication is made within that period, the Chairman shall be appointed by the Board.
- 6 The parties are bound by their nomination of arbitrators as soon as the identity of the arbitrator nominated has been made known to the other party.

Multiparty Proceedings

Article 15

- 1 A claim against two or more Respondents shall be admissible only if the Centre has jurisdiction for all of the Respondents, and, in the case of proceedings before an arbitral tribunal, if all Claimants have nominated the same arbitrator, and:

- a) If the applicable law positively provides that the claim is to be directed against several persons; or
 - b) If all Respondents are by the applicable law in legal accord or are bound by the same facts or are joint and severally bound; or
 - c) If the admissibility of multiparty proceedings has been agreed upon; or
 - d) If all Respondents submit to multiparty proceedings and, in the case of proceedings before an arbitral tribunal, all Respondents nominate the same arbitrator; or
 - e) If one or more of the Respondents on whom the claim was served fails or fail to provide the particulars mentioned in Article 10 paragraph 2, b) and c) within the thirty-day time-limit (Article 10 paragraph 1).
- 2 Where a claim against a number of Respondents cannot be served on all Respondents, the arbitral proceedings shall, upon application of the Claimant (the Claimants), be continued against those Respondents on whom the claim was served. The claim against those Respondents to which the claim could not be served shall be subject to separate proceedings.
 - 3 If multiparty proceedings are admissible, the Respondents must agree among themselves whether they wish to have the dispute decided by one arbitrator or by three arbitrators, and, if a decision by three arbitrators is desired, must jointly nominate an arbitrator.
 - 4 In the case covered by paragraph 3 of the present Article, if there is no agreement among the Respondents concerning the number of arbitrators, the Respondents shall be requested by the Secretary General to provide evidence of such agreement within thirty days after service of the request.
 - 5 If no evidence of agreement on the number of arbitrators is presented within the period mentioned in paragraph 4 of the present article, the Board shall determine whether the dispute is to be decided by one arbitrator or by an arbitral tribunal.
 - 6 If the Respondents have agreed that the dispute is to be decided by an arbitral tribunal, but without nominating an arbitrator, they shall be requested by the Secretary General to indicate the name and address of an arbitrator within thirty days after service of the request.
 - 7 If no arbitrator is jointly nominated within the period mentioned in paragraph 6 of the present Article and if the dispute is to be decided by an arbitral tribunal, the Board shall appoint the arbitrator for the defaulting Respondents.
 - 8 In cases other than those mentioned in paragraph 1 of the present Article, the consolidation of two or more disputes shall be admissible only if the same

arbitrators have been appointed in all the disputes that are to be consolidated and if all parties and the sole arbitrator (arbitral tribunal) agree.

- 9 The decision whether multiparty proceedings, as per paragraph 1 of this Article, are admissible, shall be taken by the sole arbitrator (the arbitral tribunal) upon application of one of the Respondents. If the admissibility of multiparty proceedings is denied, the arbitral proceedings return to the stage they were in for the Respondents before the sole arbitrator (the arbitral tribunal) was appointed.

Challenge of Arbitrators

Article 16

- 1 An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or that are in conflict with the agreement of the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he participated, only for reasons of which he becomes aware after the participation in the appointment or after the appointment has been made.
- 2 If a party challenges an arbitrator, it must without delay inform the Secretary General thereof, stating the grounds for the challenge.
- 3 Should the challenged arbitrator not withdraw from his office, the Board shall decide upon the challenge on the basis of the particulars in the challenging motion and the evidence attached thereto. Before the Board makes its decision, the Secretary General must obtain the comments of the arbitrator challenged and of the other parties. The Board can also request comments from other persons.
- 4 An arbitrator challenged may continue the proceedings, notwithstanding the challenging motion. However, an award may not be rendered until after the final and binding decision of the Board.

Early Termination of the Mandate of Arbitrators

Article 17

1. The mandate of an arbitrator terminates when
 - (a) the parties agree on the termination,
 - (b) the arbitrator withdraws from office,

ICC Rules

Rules of Arbitration

5

The sole arbitrator or the chairman of the Arbitral Tribunal shall be of a nationality other than those of the parties. However, in suitable circumstances and provided that neither of the parties objects within the time limit fixed by the Court, the sole arbitrator or the chairman of the Arbitral Tribunal may be chosen from a country of which any of the parties is a national.

6

Where the Court is to appoint an arbitrator on behalf of a party which has failed to nominate one, it shall make the appointment upon a proposal of the National Committee of the country of which that party is a national. If the Court does not accept the proposal made, or if the National Committee fails to make the proposal requested within the time limit fixed by the Court, or if the country of which the said party is a national has no National Committee, the Court shall be at liberty to choose any person whom it regards as suitable. The Secretariat shall inform the National Committee, if one exists, of the country of which such person is a national.

Article 10 **Multiple Parties**

1

Where there are multiple parties, whether as Claimant or as Respondent, and where the dispute is to be referred to three arbitrators, the multiple Claimants, jointly, and the multiple Respondents, jointly, shall nominate an arbitrator for confirmation pursuant to Article 9.

2

In the absence of such a joint nomination and where all parties are unable to agree to a method for the constitution of the Arbitral Tribunal, the Court may appoint each member of the Arbitral Tribunal and shall designate one of them to act as chairman. In such case, the Court shall be at liberty to choose any person it regards as suitable to act as arbitrator, applying Article 9 when it considers this appropriate.

Article 11 **Challenge of Arbitrators**

1

A challenge of an arbitrator, whether for an alleged lack of independence or otherwise, shall be made by the submission to the Secretariat of a written statement specifying the facts and circumstances on which the challenge is based.

2

For a challenge to be admissible, it must be sent by a party either within 30 days from receipt by that party of the notification of the appointment or confirmation of the arbitrator, or within 30 days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.

3

The Court shall decide on the admissibility and, at the same time, if necessary, on the merits of a challenge after the Secretariat has afforded an opportunity for the arbitrator concerned, the other party or parties and any other members of the Arbitral Tribunal to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.

Article 12 **Replacement of Arbitrators**

1

An arbitrator shall be replaced upon his death, upon the acceptance by the Court of the arbitrator's resignation, upon acceptance by the Court of a challenge, or upon the request of all the parties.

2

An arbitrator shall also be replaced on the Court's own initiative when it decides that he is prevented *de jure* or *de facto* from fulfilling his functions, or that he is not fulfilling his functions in accordance with the Rules or within the prescribed time limits.

**Section 10
Counterclaim**

- 10.1 Any counterclaim shall be filed with a DIS Secretariat. Section 6 subs. 1 - 4 apply mutatis mutandis.
- 10.2 The arbitral tribunal decides on the admissibility of the counterclaim.

**Section 11
Costs of filing counterclaim**

- 11.1 Upon filing a counterclaim, the respondent shall pay to the DIS the administrative fee in accordance with the schedule of costs in force on the date of commencement of the proceedings (appendix to section 40 sub. 5).
- 11.2 The DIS Secretariat invoices the respondent for the DIS administrative fee and, if payment has not already been made, sets a time-limit for payment. If payment is not effected within the time-limit, which may be subject to reasonable extension, the counterclaim is deemed not to have been filed.
- 11.3 The DIS Secretariat delivers the counterclaim to the claimant and the arbitral tribunal without undue delay. The DIS Secretariat may make delivery of the counterclaim contingent on having received the number of copies of the counterclaim and attachments required pursuant to section 4 as well as payment required pursuant to subsection 1 of this section.

**Section 12
Arbitral tribunal with three arbitrators**

- 12.1 Upon delivery of the statement of claim, the DIS Secretariat calls upon the respondent to nominate an arbitrator. If the DIS Secretariat does not receive a nomination from the respondent within 30 days after receipt of the statement of claim by the respondent, the claimant may request nomination by the DIS Appointing Committee. The DIS Secretariat may extend the 30 day time-limit upon application. A nomination is still timely after expiry of the period of 30 days as long as the DIS Secretariat receives such nomination prior to a request by the claimant for nomination by the DIS Appointing Committee.
- A party is bound by his nomination of an arbitrator once the DIS Secretariat has received the nomination.
- 12.2 The two arbitrators nominate the chairman of the arbitral tribunal and notify the DIS Secretariat thereof without undue delay. When making such nomination, the arbitrators should take into account concurring proposals by the parties. If the DIS Secretariat does not receive a nomination of the chairman of the arbitral tribunal from the two arbitrators within 30 days after calling upon them to do so, each party may request nomination of the

chairman by the DIS Appointing Committee. A nomination is still timely after expiry of the period of 30 days as long as the DIS Secretariat receives such nomination prior to a request by one of the parties for nomination by the DIS Appointing Committee.

**Section 13
Multiple parties on claimant or respondent side**

- 13.1 Unless otherwise agreed by the parties, multiple claimants shall jointly nominate one arbitrator in their statement of claim.
- 13.2 If two or more respondents are named in the statement of claim, unless otherwise agreed by the parties, the respondents shall jointly nominate one arbitrator within 30 days after their receipt of the statement of claim. If the respondents have received the statement of claim at different times, the time-limit shall be calculated by reference to the time of receipt by the respondent who last received the statement of claim. The DIS Secretariat may extend the time-limit. If the respondents fail to agree on a joint nomination within the time-limit, the DIS Appointing Committee, after having consulted the parties, nominates two arbitrators, unless the parties agree otherwise. A nomination made by the claimant side is set aside by the DIS Appointing Committee's nomination.
- The two arbitrators nominated by the parties or the DIS Appointing Committee nominate the chairman of the tribunal. Section 12 sub. 2 applies mutatis mutandis, in which case the request of one party is sufficient.

- 13.3 The arbitral tribunal decides on the admissibility of the multi-party proceedings.

**Section 14
Sole arbitrator**

Where the arbitral tribunal is to consist of a sole arbitrator and the parties do not reach agreement on a sole arbitrator within 30 days after receipt of the statement of claim by the respondent, each party may request nomination of a sole arbitrator by the DIS Appointing Committee.

**Section 15
Impartiality and independence**

Each arbitrator must be impartial and independent. He shall exercise his office to the best of his knowledge and abilities, and in doing so is not bound by any directions.

LCIA Arbitration Rules

interests.

6.3

For the purpose of this Article, a person who is a citizen of two or more states shall be treated as a national of each state, and citizens of the European Union shall be treated as nationals of its different Member States and shall not be treated as having the same nationality.

Article 7

Party and Other Nominations

7.1

If the parties have agreed that any arbitrator is to be appointed by one or more of them or by any third person, that agreement shall be treated as an agreement to nominate an arbitrator for all purposes. Such nominee may only be appointed by the LCIA Court as arbitrator subject to his prior compliance with Article 5.3. The LCIA Court may refuse to appoint any such nominee if it determines that he is not suitable or independent or impartial.

7.2

Where the parties have howsoever agreed that the Respondent or any third person is to nominate an arbitrator and such nomination is not made within time or at all, the LCIA Court may appoint an arbitrator notwithstanding the absence of the nomination and without regard to any late nomination. Likewise, if the Request for Arbitration does not contain a nomination by the Claimant where the parties have howsoever agreed that the Claimant or a third person is to nominate an arbitrator, the LCIA Court may appoint an arbitrator notwithstanding the absence of the nomination and without regard to any late nomination.

Article 8

Three or More Parties

8.1

Where the Arbitration Agreement entitles each party howsoever to nominate an arbitrator, the parties to the dispute number more than two and such parties have not all agreed in writing that the disputant parties represent two separate sides for the formation of the Arbitral Tribunal as Claimant and Respondent respectively, the LCIA Court shall appoint the Arbitral Tribunal without regard to any party's nomination.

8.2

In such circumstances, the Arbitration Agreement shall be treated for all purposes as a written agreement by the parties for the appointment of the Arbitral Tribunal by the LCIA Court.

Article 9

Expedited Formation

9.1

In exceptional urgency, on or after the commencement of the arbitration, any party may apply to the LCIA Court for the expedited formation of the Arbitral Tribunal, including the appointment of any replacement arbitrator under Articles 10 and 11 of these Rules.

9.2

Such an application shall be made in writing to the LCIA Court, copied to all other parties to the arbitration, and it shall set out the specific grounds for exceptional urgency in the formation of the Arbitral Tribunal.

9.3

The LCIA Court may, in its complete discretion, abridge or curtail any time-limit under these Rules for the formation of the Arbitral Tribunal, including service of the Response and of any matters or documents adjudged to be missing from the Request. The LCIA Court shall not be entitled to abridge or curtail any other time-limit.

Article 10

Revocation of Arbitrator's Appointment

10.1

If either (a) any arbitrator gives written notice of his desire to resign as arbitrator to the LCIA Court, to be copied to the parties and the other arbitrators (if any) or (b) any arbitrator dies, falls seriously ill, refuses, or becomes unable or unfit to act, either upon challenge by a party or at the request of the remaining arbitrators, the LCIA Court may revoke that arbitrator's appointment and appoint another arbitrator. The LCIA Court shall decide upon the amount of fees and expenses to be paid for the former arbitrator's services (if any) as it may consider appropriate in all the circumstances.

10.2

If any arbitrator acts in deliberate violation of the Arbitration Agreement (including these Rules) or does not act fairly and impartially as between the parties or does not conduct or participate in the arbitration proceedings with reasonable diligence, avoiding unnecessary delay or expense, that arbitrator may be considered unfit in the opinion of the LCIA Court.

10.3

An arbitrator may also be challenged by any party if circumstances exist that give rise to justifiable doubts as to his impartiality or independence. A party may challenge an arbitrator it has nominated, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made.

10.4

A party who intends to challenge an arbitrator shall, within 15 days of the formation of the Arbitral Tribunal or (if later) after becoming aware of any circumstances referred to in Article

WIPO Arbitration Rules

- (b) If the appointment of the sole arbitrator is not made within the period of time agreed upon by the parties or, in the absence of such an agreed period of time, within 30 days after the commencement of the arbitration, the sole arbitrator shall be appointed in accordance with Article 19

Appointment of Three Arbitrators

Article 17

- (a) Where three arbitrators are to be appointed and the parties have not agreed upon an appointment procedure, the arbitrators shall be appointed in accordance with this Article.
- (b) The Claimant shall appoint an arbitrator in its Request for Arbitration. The Respondent shall appoint an arbitrator within 30 days from the date on which it receives the Request for Arbitration. The two arbitrators thus appointed shall, within 20 days after the appointment of the second arbitrator, appoint a third arbitrator, who shall be the presiding arbitrator.
- (c) Notwithstanding paragraph (b), where three arbitrators are to be appointed as a result of the exercise of the discretion of the Center under Article 14(b), the Claimant shall, by notice to the Center and to the Respondent, appoint an arbitrator within 15 days after the receipt by it of notification by the Center that the Tribunal is to be composed of three arbitrators. The Respondent shall appoint an arbitrator within 30 days after the receipt by it of the said notification. The two arbitrators thus appointed shall, within 20 days after the appointment of the second arbitrator, appoint a third arbitrator, who shall be the presiding arbitrator.
- (d) If the appointment of any arbitrator is not made within the applicable period of time referred to in the preceding paragraphs, that arbitrator shall be appointed in accordance with Article 19.

Appointment of Three Arbitrators in Case of Multiple Claimants or Respondents

Article 18

(a) Where:

- (i) three arbitrators are to be appointed;
- (ii) the parties have not agreed on an appointment procedure; and
- (iii) the Request for Arbitration names more than one Claimant;

the Claimants shall make a joint appointment of an arbitrator in their Request for Arbitration. The appointment of the second arbitrator and the presiding arbitrator shall, subject to paragraph (b) of this Article, take place in accordance with Article 17(b), (c) or (d), as the case may be.

(b) Where:

- (i) three arbitrators are to be appointed;
- (ii) the parties have not agreed on an appointment procedure; and
- (iii) the Request for Arbitration names more than one Respondent;

the Respondents shall jointly appoint an arbitrator. If, for whatever reason, the Respondents do not make a joint appointment of an arbitrator within 30 days after receiving the Request for Arbitration, any appointment of the arbitrator previously made by the Claimant or Claimants shall be considered void and two arbitrators shall be appointed by the Center. The two arbitrators thus appointed shall, within 30 days after the appointment of the second arbitrator, appoint a third arbitrator, who shall be the presiding arbitrator.

(c) Where:

- (i) three arbitrators are to be appointed;
- (ii) the parties have agreed upon an appointment procedure; and
- (iii) the Request for Arbitration names more than one Claimant or more than one Respondent;

paragraphs (a) and (b) of this Article shall, notwithstanding Article 15(a), apply irrespective of any contractual provisions in the Arbitration Agreement with respect to the appointment procedure, unless those provisions have expressly excluded the application of this Article.

Default Appointment

Article 19

- (a) If a party has failed to appoint an arbitrator as required under Articles 15, 17 or 18, the Center shall, in lieu of that party, forthwith make the appointment.
- (b) If the sole or presiding arbitrator has not been appointed as required under Articles 15, 16, 17 or 18, the appointment shall take place in accordance with the following procedure:
 - (i) The Center shall send to each party an identical list of candidates. The list shall comprise the names of at least three candidates in alphabetical order. The list shall include or be accompanied by a brief statement of each candidate's qualifications. If the parties have agreed on any particular qualifications, the list shall contain only the names of candidates that satisfy those qualifications.
 - (ii) Each party shall have the right to delete the name of any candidate or candidates to whose appointment it objects and shall number any remaining candidates in order of preference.

- (iii) Each party shall return the marked list to the Center within 20 days after the date on which the list is received by it. Any party failing to return a marked list within that period of time shall be deemed to have assented to all candidates appearing on the list.

- (iv) As soon as possible after receipt by it of the lists from the parties, or failing this, after the expiration of the period of time specified in the previous subparagraph, the Center shall, taking into account the preferences and objections expressed by the parties, invite a person from the list to be the sole or presiding arbitrator.

- (v) If the lists which have been returned do not show a person who is acceptable as arbitrator to both parties, the Center shall be authorized to appoint the sole or presiding arbitrator. The Center shall similarly be authorized to do so if a person is not able or does not wish to accept the Center's invitation to be the sole or presiding arbitrator, or if there appear to be other reasons precluding that person from being the sole or presiding arbitrator, and there does not remain on the lists a person who is acceptable as arbitrator to both parties.

- (c) Notwithstanding the provisions of paragraph (b), the Center shall be authorized to appoint the sole or presiding arbitrator if it determines in its discretion that the procedure described in that paragraph is not appropriate for the case.

Nationality of Arbitrators

Article 20

- (a) An agreement of the parties concerning the nationality of arbitrators shall be respected.
- (b) If the parties have not agreed on the nationality of the sole or presiding arbitrator, such arbitrator shall, in the absence of special circumstances such as the need to appoint a person having particular

Swiss Rules

9

1. All designations of a sole arbitrator or of the arbitrators composing a three-member arbitral tribunal, made by the parties or the arbitrators, are subject to confirmation by the Chambers, upon which the appointments shall become effective. The Chambers have no obligation to give reasons when they do not confirm an arbitrator.

2. Where a designation is not confirmed, the Chambers may

(a) either invite the party or parties concerned, or the arbitrators, as the case may be, to make a new designation within a reasonable time-limit; or

(b) proceed directly with the appointment.

NUMBER OF ARBITRATORS

Article 6

1. If the parties have not agreed upon the number of arbitrators, the Chambers shall decide whether the case shall be referred to a sole arbitrator or to a three-member arbitral tribunal, taking into account all relevant circumstances.

2. As a rule, the Chambers shall refer the case to a sole arbitrator, unless the complexity of the subject matter and/or the amount in dispute justify that the case be referred to a three-member arbitral tribunal.

3. If the arbitration agreement provides for a three-member arbitral tribunal and if this appears inappropriate in view of the amount in dispute or of other circumstances, the Chambers shall advise the parties that they may wish to agree to refer the dispute to a sole arbitrator.

4. Where the amount in dispute does not exceed CHF 1'000'000 (one million Swiss francs), the provisions of Article 42, paragraph 2 (Expedited Procedure), shall apply.

APPOINTMENT OF A SOLE ARBITRATOR

Article 7

1. Where two or more parties have agreed that the dispute shall be referred to a sole arbitrator, they shall jointly designate the sole arbitrator within thirty days from the date when the Notice of Arbitration was received by the Respondent(s) unless the parties' agreement provides otherwise.

2. Where the parties have not agreed upon the number of arbitrators, they shall jointly designate the sole arbitrator within thirty days from the date when the Chambers' decision that the dispute shall be referred to a sole arbitrator was received by them.

3. If the parties fail to designate the sole arbitrator within the applicable time-limit, the Chambers shall proceed with the appointment.

APPOINTMENT OF ARBITRATORS IN BI-PARTY OR MULTI-PARTY PROCEEDINGS

Article 8

1. Where a dispute between two adverse parties is referred to a three-member arbitral tribunal, each party shall designate one arbitrator, unless the parties have agreed otherwise.

2. If a party fails to designate an arbitrator within the time-limit set by the Chambers or resulting from the arbitration agreement, the Chambers shall appoint the arbitrator. Unless the parties' agreement provides otherwise, the two arbitrators so appointed shall designate, within thirty days from the confirmation of the second arbitrator, a third arbitrator who shall act as the presiding arbitrator of the arbitral tribunal. Failing such designation, the Chambers shall appoint the presiding arbitrator.

3. In multi-party proceedings, the arbitral tribunal shall be constituted in accordance with the parties' agreement.

4. If the parties have not agreed upon a procedure for the constitution of the arbitral tribunal in multi-party proceedings, the Chambers shall set an initial thirty-day time-limit for the Claimant or group of Claimants to designate an arbitrator and set a subsequent thirty-day time-limit for the Respondent or group of Respondents to designate an arbitrator. If the group or groups of parties have each designated an arbitrator, Article 8, paragraph 2 shall apply by analogy to the designation of the presiding arbitrator.

5. Where a party or group of parties fail(s) to designate an arbitrator in multiparty proceedings, the Chambers may appoint all three arbitrators and shall specify the presiding arbitrator.

INDEPENDENCE AND CHALLENGE OF ARBITRATORS (Articles 9 to 12)

Article 9

1. All arbitrators conducting an arbitration under these Rules shall be and remain at all times impartial and independent of the parties.

2. A prospective arbitrator shall disclose to those who approach him in connection with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him of these circumstances.

Article 10

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

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

Article 11

1. If the arbitrator being challenged does not withdraw, the Special Committee shall decide on the challenge.

2. The decision of the Special Committee is final. The Special Committee has no obligation to give reasons.

Article 12