

# MEXICO CITY NATIONAL CHAMBER OF COMMERCE

## ARBITRATION RULES

### SECTION I. INTRODUCTORY RULES

#### **Article 1**

##### **Scope of application**

1. Where the parties have agreed that disputes in relation to a contractual or non-contractual relationship shall be referred to the arbitration of the Mexico City National Chamber of Commerce, or if the parties used expressions showing their intention to submit to such rules, such disputes shall be settled in accordance with these arbitration rules without affecting to the modifications upon which the parties might agree.

In those cases where the amount in dispute is lower than 124,860 UDIS (investment units) the Small Claims Arbitration Rules of the Mexico City National Chamber of Commerce, shall apply.

2. Where the parties have agreed to submit to arbitration according to these Rules, they submit, because of that only fact, to the Rules effective as on the date of the start of the arbitral proceedings, unless they have agreed to submit to the Rules effective on the date of the arbitration agreement.

3. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the public law from which the parties cannot derogate, that provision shall prevail.

4. Any reference to a contract in these Rules shall be understood as also made in any non-contractual juridical relationship from which a dispute has arisen and which the parties have agreed to submit to arbitration.

5. International arbitration shall be deemed in the cases wherein:

a) The parties have their domicile or establishment in different countries at the time of entering into the Arbitration Agreement; or

b) The arbitration site, agreed under the arbitration agreement or arranged thereunder, the site of fulfillment of a substantial part of the obligations implied by a relationship, or the place nearest to the subject of litigation is located outside the country where the parties have set their establishment.

To the effects of this article, if one of the parties has more than one establishment, the establishment keeping a closer relationship with the arbitration agreement shall be taken into account; and, if the party has no establishment, his habitual residence shall be taken

into account.

6. An arbitration which does not fit in the definition of paragraph 5 of this Article, shall be a National Arbitration.

## **Article 2**

### **Notice, calculation of periods of time, documents**

1. For the purposes of these Rules, any notice including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last habitual residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.

2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the date when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at a residence or place of business of the addressee, the period is extended until the next business day which follows. Official holidays or non-business days occurring during the running of the period of time, are included in calculating that period.

3. For the purposes of these Rules, any exchange of letters, telex, telegrams, telefax, electronic mail and any other means of communication leaving written proof of the information contained therein, shall be deemed to be a document.

4. All the documents, as well as all the writings attached thereto, must be communicated to each one of the parties, to each one of the arbitrators and to the Commission. A document shall have no effect until this requisite has been met. The Arbitration Court however may deem that the delay or impediment to fully comply with this paragraph, is justified when there are reasonable causes.

## **Article 3**

### **Notice of arbitration**

1. The party initiating recourse to arbitration (hereinafter named the "claimant"), shall notify it in writing to the Permanent Commission of Arbitration of the Mexico City National Chamber of Commerce (hereinafter named the "Commission") which will proceed to communicate it to the other party or parties (hereinafter named the "respondent").

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

3. The Notice of arbitration shall include the following:

a) Express mention that the dispute be referred to arbitration;

- b) The name and addresses of the parties;
- c) A reference to the arbitration clause which is invoked;
- d) A reference to the contract or to the juridical relationship to which the dispute has arisen or to which the dispute is related;
- e) The general nature of the claim and the indication of the amount involved, if any;
- f) The relief or remedy sought;
- g) A proposal as to the number of arbitrators, who may be one or three, if the parties have not previously agreed thereon.

4. The notice of arbitration may also include:

- a) The proposal for the appointment of a sole arbitrator;
- b) The notification of the appointment of an arbitrator referred to in Article 9;
- c) The statement of claim referred to in Article 23.

#### **Article 4**

##### **Representation and assistance**

During the arbitration proceedings, the parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the Commission, to the other party and to the Arbitration Court; such communication must specify whether the appointment is made for purposes of representation or assistance.

#### **Article 5**

##### **Confidentiality**

Unless otherwise expressly agreed by the parties, the arbitration proceedings shall be confidential. Confidentiality shall not be deemed breached when there is recourse to the public Courts to request the acknowledgment or the enforcement of an award or in any other case foreseen by the Rules or by a norm of public order.

#### **Article 6**

##### **Release from liability**

It is hereby expressly stated that neither the Mexico City National Chamber of Commerce, nor the members of the Commission, nor the Secretary General, nor the members of the Secretary General, nor the arbitrators, shall be responsible before any person for facts, acts or omissions related to this Arbitration.

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

### **Article 7**

#### **Number of arbitrators**

If the parties have not previously agreed on the number of arbitrators (i.e. one or three) and if within 15 days after the receipt by the Commission of the arbitration notice, the parties are not agreed on the number of arbitrators, said Commission shall determine the number of arbitrators unless the Commission determines otherwise.

### **Article 8**

#### **Appointment of arbitrators**

1. Unless agreed by the parties, if a sole arbitrator has been appointed, said arbitrator shall be appointed by the Commission. The parties may propose to the Commission the name of one or more persons to be considered by the Commission appointing the sole arbitrator.

2. The Commission shall appoint the sole arbitrator as soon as possible. In making the appointment, the Commission shall proceed in accordance with the system established hereunder, unless both parties agree not to use the list-procedure, or if the Commission itself discretionally decides that the use of the list-procedure is not appropriate for the case:

a) At the request of one of the parties the Commission shall communicate to both parties an identical list containing at least three names;

b) Within 15 days after the receipt of this list, each party may return the list to the Commission after having deleted the name or names to which he objects and number the remaining names on the list in the order of this preference;

c) After the expiration of the above period of time, the Commission shall appoint the sole arbitrator from among the names approved in the lists returned to it and in accordance with the order of preference indicated by the parties;

d) If for any reason the appointment cannot be made according to this procedure, the Commission may exercise its discretion in appointing a sole arbitrator.

3. The Commission shall take the required steps to guarantee the appointment of an independent and impartial arbitrator; and, if the arbitration is international, the Commission shall take into account the advisability of appointing an arbitrator of a nationality other than the nationality of the parties.

### **Article 9**

Unless otherwise agreed, each party shall appoint one arbitrator, if three arbitrators must be appointed. Each party shall notify the Commission and the other party of the appointment of the arbitrator he has made. In any way, the Commission shall be empowered to ratify or not

said appointment.

2. Unless otherwise agreed by the parties, the third arbitrator, who will act as the presiding arbitrator of the tribunal, shall be appointed by the Commission. For the purpose of appointing the presiding arbitrator, the Commission shall observe the procedure established in Article 8 for the appointment of a sole arbitrator.

3. If within 30 days after receipt of notice from a party appointing an arbitrator, the other party has not notified to the first party the arbitrator named by him, the first party may request the Commission to appoint a second arbitrator. The Commission may exercise its discretion in appointing the arbitrator.

#### **Article 10**

1. If there are several claimant parties or several respondent parties, the sole arbitrator or the three arbitrators shall be appointed by the Commission, and the Commission shall indicate who among the three shall exercise the functions of presiding arbitrator of the tribunal. For the purpose of appointing the arbitrators, the Commission shall observe the procedure established in Article 8 for the appointment of a sole arbitrator.

2. The parties may agree to have the arbitral tribunal made up in a manner different from the manner stipulated in paragraph 1 of this article; however, if the agreement of the parties produces as a consequence that one or more of the claimants or of the respondents will not be granted equal treatment in the setting up of the arbitral tribunal, the provisions of said paragraph 1 of this article shall be applied in lieu of the agreement of the parties.

#### **Article 11**

The Commission may request from any of the parties the information it deems necessary for the performance of its functions in the appointment of arbitrators.

#### **Article 12**

1. A prospective arbitrator shall disclose to the Commission any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. Once appointed or chosen the arbitrator, the Commission shall disclose such circumstances to the parties unless they have already been informed of these circumstances.

2. An arbitrator shall promptly report in writing to the parties and to the Commission any circumstance of a same nature as the circumstances mentioned in paragraph 1 of this article, which could arise or which he could learn after his appointment.

#### **Article 13**

1. Before assuming office, the arbitrators appointed by the parties or by the other arbitrators shall be confirmed by the Commission.

2. If the parties propose arbitrators they shall indicate in writing their full name and address as well as their nationality. The Commission can request additional information concerning the good standing and the experience of the arbitrators proposed in that way.

#### **Article 14**

1. The decisions of the Commission concerning the confirmation of, challenge to or substitution of, an arbitrator, shall be final. The reasons leading to those decisions shall not be communicated either to the parties or to the arbitrators.

2. When an arbitrator has been appointed by the Commission, his appointment may only be challenged in accordance to the procedure of Articles 15 to 16.

#### **Article 15**

##### **Challenge of arbitrators**

1. Any party may promote the challenge of an arbitrator within the 15 days following the notice of appointment of said arbitrator, or within the 15 days following the date on which he learned about the circumstances stated in Article 8 to 12 of these Rules.

2. The challenge shall be notified to the Commission, to the other party, to the challenged arbitrator and to the other members of the arbitral tribunal. Said notification shall be done in writing and must be duly motivated.

3. When an arbitrator has been challenged by one party, the other party may accept the challenge. The arbitrator may also, after the challenge, withdraw from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge. Moreover, in both cases the procedure provided in Articles 8 to 12 for the appointment of a substitute arbitrator, shall be used in full, even if, during the process of appointing the challenged arbitrator, one of the parties failed to exercise his right to appoint or to participate in the appointment.

#### **Article 16**

1. If the other party does not accept the challenge and the challenged arbitrator does not withdraw, the decision on the challenge shall be taken by the Commission. The Commission's decision may not be appealed before the judicial authority.

2. When an arbitrator has been appointed by the Commission, his appointment may only be challenged in accordance with the procedure stated in this section.

#### **Article 17**

##### **Removal of arbitrators**

The Commission may remove an arbitrator if it knows that there are justifiable reasons to deem that the arbitrator is not impartial or independent, or when said arbitrator does not carry out his functions or is prevented de facto or de jure from performing same.

## **Article 18**

### **Replacement of an arbitrator**

1. In the event of death or resignation of an arbitrator during the arbitration proceedings, a substitute arbitrator shall be appointed or chosen, pursuant to the procedure foreseen in articles 8 to 12.

2. In case one of the parties considers that an arbitrator has resigned because of non-valid reasons, such party may request the Commission, previous hearing with the interested:

- a) The replacement of that arbitrator; or
- b) The authorization of the other arbitrators to continue the arbitration and to make any decision or award.

3. In case one of the parties considers that an arbitrator fails to fulfill his functions, such party may request the Commission, previous hearing with the interested:

- a) The replacement of that arbitrator; or
- b) The authorization of the other arbitrators to continue the arbitration and to make any decision or award.

4. If the Commission considers that the circumstances of the arbitration justify the appointment of a substitute arbitrator, shall decide if:

- a) It proceeds to apply the procedure provided on Articles 8 to 12 for the appointment of an arbitrator; or
- b) It appoints a substitute arbitrator.

## **Article 19**

### **Repetition of hearings in the event of the replacement of an arbitrator**

Once the arbitral tribunal has been reconstituted after the replacement of an arbitrator, it shall determine, after the invitation to the parties to present their observations, if it is necessary to repeat or make new proceedings, and in such case the way that shall be done.

Once the proceedings are closed, in case of death or replacement of an arbitrator, the Commission may decide, when it considers it appropriate, that the other arbitrators continue with the arbitration. To take that decision, the Commission shall consider the opinion of the other arbitrators and the parties, as well as any other pertinent circumstances.

## **SECTION III. ARBITRAL PROCEEDINGS**

## **Article 20**

### **General provisions**

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such a 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 his case.

2. If either party so requests at any stage of the proceedings, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including experts, or for oral arguments. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the bases of documents and other materials.

3. The arbitral tribunal may, previous request of any party:

a) Declare itself competent about any claim where the same parties are implicated and that is caused by the same legal relation, when such claims are referred to arbitration according to these Rules and an arbitration about that claims has not been initiated .

## **Article 21**

### **Place of arbitration**

1. Unless the parties have agreed upon the place where the arbitration is to be held, such place shall be determined by the arbitral tribunal, having regard to the circumstances of the arbitration.

2. The arbitral tribunal may determine the locale of the arbitration within the country agreed upon by the parties. It may hear witnesses and hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.

3. The arbitral tribunal may meet at any place it deems appropriate for the inspection of goods and other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.

## **Article 22**

### **Language**

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defense, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defense, 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 arbitral tribunal.

## **Article 23**

### **Statement of claim**

1. Unless the statement of claim was contained in the notice of arbitration, within a period of

time to be determined by the arbitral tribunal, the claimant shall communicate his statement of claim in writing to the Commission, to the respondent and to each of the arbitrators. A copy of the contract or, if any, of the document leading to the extracontractual relationship should also be annexed to the statement of claim, as well as a copy of the arbitration agreement if not contained in the contract.

2. The statement of claim shall include the following particulars:

- a) The names and addresses of the parties;
- b) Statement of the facts supporting the claim;
- c) The points at issue;
- d) The relief or remedy sought;

Unless otherwise ordered by the arbitral tribunal, the claimant may annex to his statement of claim all documents he deems relevant or may add a reference to the documents or other evidence he will submit.

#### **Article 24**

##### **Statement of defense**

1. Within a period of time to be determined by the arbitral tribunal, the respondent shall communicate his statement of defense in writing to the Commission, to the claimant and to each of the arbitrators.

2. The statement of defense shall reply to the particulars (b), (c) and (d) of paragraph 2 of article 23. Unless otherwise ordered by the arbitral tribunal, the respondent may annex to his statement the documents on which he relies for his defense or may add a reference to the documents or other evidence he will submit.

3. In his statement of defense, or at a later stage in the arbitral proceeding if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counter-claim arising out of the same contract or extra-contractual relationship, or rely on a claim based on the same contract or on any other relationship which the parties have agreed to submit to arbitration pursuant to these Rules, for the purpose of a set-off.

4. The provisions of paragraph 2 of article 23, shall apply to a counter claim and a claim relied on for the purpose of a set-off.

#### **Article 25**

##### **Amendments to the claim or defense**

During the course of the arbitral proceedings, either party may amend or supplement his claim or defense, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party and 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 agreement.

## **Article 26**

### **Pleas as to the jurisdiction of the arbitral tribunal**

1. The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.
2. The arbitral tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause or agreement forms a part. For the purposes of this article, an arbitration clause or agreement which forms part of a contract and which provides for arbitration under these Rules, shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration agreement.
3. A plea that the arbitral tribunal does not have jurisdiction shall be raised in writing no later than in the statement of defense or, with respect to a counter-claim, in the reply to the counter-claim.
4. In general, the arbitral tribunal should render a preliminary award concerning its jurisdiction. However, the arbitral tribunal may proceed with the arbitration and rule on such a plea in its final award.

## **Article 27**

### **Further written statements**

The arbitral tribunal shall decide, at its discretion, which further written statements, in addition to the statement of claim and the statement of defense, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

## **Article 28**

### **Periods of time**

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim or statement of defense) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

## **Article 29**

### **Evidences**

1. Each party shall have the burden of proving the facts relied on to support his claim or defense.

2. The arbitral tribunal may, if it considers it appropriate, require a party to deliver to the tribunal and to the other party, within such a period of time as the arbitral tribunal shall decide, a summary of the documents and other evidence that party intends to present in support of the facts in issue set out in his statement of claim or statement of defense.

3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents or other evidence within such a period of time as the tribunal shall determine.

### **Article 30**

#### **Hearings**

1. Previously to each hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

2. If witnesses are to be heard at a hearing, at least 15 days before the hearing each party shall communicate to the arbitral tribunal and to the other party the names and addresses of the witnesses he intends to present, the subject upon which such witnesses will give their testimony and, if need be, the language(s) in which they will give said testimony.

3. The arbitral tribunal, with the intervention of the Commission, shall make arrangements for the translation of all the oral statements made at the hearing and for a record of the hearing, if either is deemed necessary by the tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the tribunal at least 15 days before the hearing.

4. Hearings shall be held in camera, unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The arbitral tribunal is free to determine the manner in which witnesses are examined.

5. Evidence of witnesses may also be presented in the form of written statements duly signed by them.

6. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

### **INTERIM MEASURES AND PRELIMINARY ORDERS**

#### **Section I. Interim measures.**

#### **Article 31**

##### **Power of arbitral tribunal to order interim measures.**

1. Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures.

2. An interim measure is any temporary measure, whether in the form of an award or not, by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party to:
- a) Maintain or restore the status quo pending determination of the dispute;
  - b) Take action that would prevent current or imminent harm or prejudice to the arbitral process itself;
  - c) Provide a means of preserving assets out of which a subsequent award may be satisfied;
- or
- d) Preserve evidence that may be relevant and material to the resolution of the dispute.

#### **Article 31 A**

##### **Conditions for granting interim measures**

1. The party requesting an interim measure under paragraph a), b) or c) of paragraph 2 of article 31 shall satisfy the arbitral tribunal that:

- a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
- b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

2. With regard to a request for an interim measure under paragraph d) of paragraph 2 of article 31, the necessary conditions named on paragraphs a) and b) of paragraph 1 of this article shall apply only to the extent the arbitral tribunal considers appropriate.

Section 2. Preliminary Orders.

#### **Article 31 B**

##### **Applications for preliminary orders and conditions for granting preliminary orders**

1. Unless otherwise agreed by the parties, a party may, without notice to any other party, make a request for an interim measure together with an application for a preliminary order directing a party not to frustrate the purpose of the interim measure requested.
2. The arbitral tribunal may grant a preliminary order provided it considers that prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the measure.
3. The conditions defined under article 31 A apply to any preliminary order, provided that the harm to be assessed under paragraph a) of paragraph 1 of the article 31 A, is the harm likely to result from the order being granted or not.

#### **Article 31 C**

### **Specific regime for preliminary orders**

1. Immediately after the arbitral tribunal has made a determination in respect of an application for a preliminary order, the arbitral tribunal shall give notice to all parties of the request for the interim measure, the application for the preliminary order, the preliminary order, if any, and all other communications, including by indicating the content of any oral communication, between any party and the arbitral tribunal in relation thereto.
2. At the same time, the arbitral tribunal shall give an opportunity to any party against whom a preliminary order is directed to present its case at the earliest practicable time.
3. The arbitral tribunal shall decide promptly on any objection to the preliminary order.
4. A preliminary order shall expire after twenty days from the date on which it was issued by the arbitral tribunal. However, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order, after the party against whom the preliminary order is directed has been given notice and an opportunity to present its case.
5. A preliminary order shall be binding on the parties but shall not be subject to enforcement by a court. Such a preliminary order does not constitute an award.

### **Section 3. Provisions applicable to interim measures and preliminary orders**

#### **Article 31 D**

##### **Modification, suspension, termination**

The arbitral tribunal may modify, suspend or terminate an interim measure or a preliminary order it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

#### **Article 31 E**

##### **Provision of security**

1. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
2. The arbitral tribunal shall require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary to do so.

#### **Article 31 F**

##### **Disclosure**

1. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the measure was requested or granted.
2. The party applying for a preliminary order shall disclose to the arbitral tribunal all circumstances that are likely to be relevant to the arbitral tribunal's determination whether

to grant or maintain the order, and such obligation shall continue until the party against whom the order has been requested has had an opportunity to present its case. Thereafter, paragraph 1) of this article shall apply.

### **Article 31 G**

#### **Costs and damages**

The party requesting an interim measure or applying for a preliminary order shall be liable for any costs and damages caused by the measure or the order to any party if the arbitral tribunal later determines that, in the circumstances, the measure or the order should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

### **Article 32**

#### **Experts**

1. The arbitral 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 arbitral tribunal, shall be communicated to the parties.

2. The parties shall give the expert any relevant information or produce for his inspection any relevant documents or goods that he may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

3. 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. The parties shall be entitled to examine any document on which the expert has relied in his report.

4. At the request of either party the expert, after delivery of the report, may be heard at the 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 30 shall be applicable to such proceedings.

### **Article 33**

#### **Default**

1. If, within the period of time fixed by the arbitral tribunal, the claimant has failed to communicate his claim without showing sufficient cause for such failure, the arbitral tribunal shall issue an order for determination of the arbitral proceedings. If, within the period of time fixed by the arbitral tribunal, the respondent has failed to communicate his statement of defense without showing sufficient cause for such failure, the arbitral 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 arbitral tribunal shall order that the proceedings

continue.

3. If one of the parties, duly invited to produce documents, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

#### **Article 34**

##### **Closure of the proceedings**

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the proceedings closed.

2. The arbitral 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.

#### **Article 35**

##### **Waiver to object**

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

#### **Article 36**

##### **Expeditious arbitration**

The parties may reduce the different periods of time foreseen herein, or stipulate a limit of time for the issue of the arbitration award or the termination of the arbitration. The agreement to reduce the periods of time, to set a limit of time to pronounce the arbitration award or to have the arbitration terminated, shall be legally effective upon its approval by the arbitral tribunal. In spite of the existence and legal validity of an agreement by the parties reducing the period of time or establishing the limits of time referred to in this article, the Commission may, upon request of the arbitral tribunal or upon its own initiative, if it deems it justified, extend the period of time agreed upon by the parties.

#### **Article 37**

##### **Waiver to resort to the judicial authority**

If the arbitration proceedings take place in the Mexican Republic, the parties shall waive the legal recourses before the judicial authorities, foreseen in articles 1429 and 1432 of the Code of Commerce effective in Mexico.

### **SECTION IV. THE AWARD**

## **Article 38**

### **Decisions**

1. When there are three arbitrators, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators. In absence of majority, the presiding arbitrator shall pronounce the award on his own.
2. In the case of questions of procedures, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide on his own, subject to revision, if any, by the arbitral tribunal.

## **Article 39**

### **Form and effects of the award**

1. In addition to making a final award, the arbitral tribunal shall be entitled to make interim, interlocutory or partial awards.
2. The award shall be issued in writing and shall be final and binding upon the parties. The parties undertake to carry out the award without delay.
3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
4. The award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was issued. Where there are three arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature. The award shall be deemed as being issued at the place of arbitration.
5. The arbitral tribunal shall communicate the award to the Commission. For this purpose, the arbitral tribunal shall deliver to the Commission copies of the award signed by the arbitrators, in number sufficient for the Commission and for each one of the parties.
6. If the arbitration law of the country where the award is made requires that the award be filed or registered by the arbitral tribunal, said tribunal shall comply with this requirement within the period of time required by law.

## **Article 40**

### **Applicable law, amiable compositeur**

1. The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law it deems applicable.
2. The arbitral tribunal shall decide as amiable compositeur (ex aequo et bono) only if the parties have expressly authorized the arbitral tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.

3. 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 41**

##### **Settlement or other grounds for termination of arbitral proceedings**

1. If, before the award is made, the parties agree on the settlement of the dispute, the arbitral 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 of settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

2. If, before the award is made, the continuation of the arbitral proceeding becomes unnecessary or impossible for any reason not mentioned in paragraph 1 of this article, the arbitral tribunal shall inform the Commission and the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have a power to issue such an order, unless the Commission or a party raises justifiable grounds for objection.

3. The arbitral tribunal shall deliver to the Commission the order of termination of the arbitral proceedings. The arbitral tribunal shall deliver enough copies of the order of termination for the Commission and the parties duly signed by the arbitrators.

Where an arbitral award is issued under the terms agreed by the parties, the provisions of article 39, paragraphs 2 through 6 shall apply.

#### **Article 42**

##### **Interpretation of the award**

1. Within thirty days after the receipt of the award, the Commission or either party, with notice to the other party, may request the arbitral tribunal to give an interpretation of the award.

2. The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award, and the provisions of paragraph 2 through 6 of article 39 shall apply.

#### **Article 43**

##### **Correction of the award**

1. Within thirty days after receipt of the award, the Commission or either party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical, spelling or typographic errors, or any errors of similar nature. The arbitral tribunal may within thirty days after the communication of the award make such corrections on its own initiative.

2. Such corrections shall be made in writing, shall form part of the award, and the provisions of paragraphs 2 through 6 of article 39 shall apply.

## **Article 44**

### **Additional award**

1. Within thirty days after the receipt of the award, either party may request the arbitral tribunal, which shall notify the other party, to issue an additional award concerning claims presented in the arbitral proceedings but omitted from the award.
2. If the arbitral tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidences, it shall complete its award within sixty days after the receipt of the request.
3. When an additional award is made, the provisions of paragraph 2 through 6 of article 39 shall apply.

## **Article 45**

### **Costs**

The arbitral tribunal shall determine in the award the ratio according to which the parties shall contribute to the payment of the costs of the arbitration, the amount of which shall be fixed by the Commission. The expression "costs" shall include only the following:

- a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the Commission;
- b) The travel and other expenses incurred by the arbitrators;
- c) The costs of expert advice and of other assistance required by the arbitral tribunal;
- d) The travel and other expenses incurred by the witnesses, to the extent such expenses are approved by the Commission;
- e) The cost for legal representation and assistance of the successful party if such costs were claimed during the arbitral proceedings, and only to the extent the arbitral tribunal determines in its award that the payment of such expenses should be defrayed by the unsuccessful party;
- f) The administrative fees and expenses of the Commission, to be calculated pursuant to the respective schedule of fees.

## **Article 46**

1. 1. The Commission shall determine the professional fees of the arbitral tribunal and the administrative expenses in accordance with the effective established schedule of fees, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.

2. If the amount in dispute is undetermined, the Commission shall determine at its sole discretion the arbitral tribunal fees and the administrative expenses. The Commission may request the parties or the arbitral tribunal any information considered necessary for that determination.

#### **Article 47**

1. Except as provided in article 45, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

2. With respect to the costs of legal representation and assistance referred to in article 4, the arbitral tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

3. When an arbitral tribunal issues an order for determination of the arbitral proceedings or makes an award on agreed terms, articles 39 and 41 shall apply.

4. No additional fees may be charged by the arbitral tribunal for interpretation, correction or completion of its award, pursuant to articles 42 through 44.

#### **Article 48**

##### **Deposit and payment of costs**

1. The Commission may require, as a requisite for the arbitral tribunal to begin or continue the arbitration, that each party deposit an equal amount as an advance for the costs referred to in subparagraphs a) and f) of article 45.

2. In case that in addition to the principal claim other counterclaims are submitted, the Commission may set separate advance payments for the claim and the counterclaims.

3. The Commission may require the parties one or more partial or total payments, in the appropriate proportions as an advance of the arbitration costs. The Commission may request confidential information from the arbitrators to calculate the arbitration costs.

4. If the required deposits are not paid in full after the expiration of the period of time set by the Commission, the Commission shall so inform the parties in order that each one of them may make the required payment, such payment may be subject of an award on costs. In such circumstances, the party paying the substitute payment shall be entitled to recover the amount as the advance payment is a clear and demandable debt. If such payment is not made, the Commission may order the suspension or the anticipated termination of the arbitral proceedings. The Commission may condition the notice of the award to the previous payment of the balance of the costs, if any.

5. During the course of the arbitral proceedings, the Commission may request

supplementary deposits from the parties

4. After the award has been notified, the Commission shall render to the parties an accounting of the deposits received and return any unexpended balance to the parties.

#### **Article 49**

##### **Administrative contributions**

The amount of the administrative contributions which the Commission shall be entitled to charge as the administrator of the arbitration proceedings, for other services and for reimbursements, are the contributions stated in the annex hereto.

#### **Article 50**

##### **Emergency measures of protection.**

1. Unless the parties agrees otherwise, the provisions set forth in the article 50 shall apply to all arbitrations conducted under any arbitration clauses or agreements executed on or after June 9, 2008.

2. A party seeking an interim measure of protection, prior to the constitution of the arbitral tribunal shall address its request to the Commission. Such petition may be filed by e-mail, facsimile transmission, or any other reliable means.

3. Within the following business day of reception of the above mentioned petition, the Commission shall appoint a single interim arbitrator from a special list of interim arbitrators authorized to rule on interim measures of protection applications. Prior to his/her acceptance to the appointment, the interim arbitrator must disclose to the Commission any circumstance likely to give rise to justifiable doubts to the interim arbitrator's impartiality or independence. Any challenge to the appointment of the interim arbitrator must be made within the following business day of the reception of the communication sent by the Commission to the parties of the appointment of the interim arbitrator and the circumstances disclosed by him/her.

4. The interim arbitrator shall establish, within the following two business days of its appointment, an agenda for the filing of the application of the interim measure of relief. Such agenda shall provide reasonable opportunity to all parties to be heard, and may provide for proceedings by telephone conference or on written allegations, as alternatives to a formal hearing. The interim arbitrator shall have same authority vested in the arbitral tribunal under Article 26, including the authority to rule on his/her own jurisdiction, and shall resolve any disputes over the applicability of this Article 50.

5. The interim arbitrator shall have the power to order any interim measure of protection or preliminary order he/she deems necessary, including injunctive relief and measures for the protection or conservation of title. Such measures may take the form of an interim award or of an order. The interim arbitrator shall reason its decision in either case. The interim arbitrator may modify or vacate the interim award or order, for good cause shown.

6. The interim arbitrator may act as a member of the arbitral tribunal, if the parties agree to it.

7. Any enforcement of an interim award or interim measure of protection may be conditioned to the granting ,by the seeking party, of appropriate security.

8. A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with this article or with the agreement to arbitrate or a waiver of the right to arbitrate. If the Commission is directed by a judicial authority to appoint a special counsel to the court to assist over an application for interim measures, the Commission shall proceed as provided in second paragraph of this article and all requisites applied to the interim arbitrator shall apply to the special counsel, except that the special counsel shall issue an opinion instead of an interim award.

9. Attorney fees and expenses associated with the applications for interim measures shall initially be apportioned by the interim arbitrator, subject to the power of the arbitral tribunal to determine finally the apportionment of such costs.

10. Interim arbitrator's fees shall be determined by the Commission.

#### **Transitory**

##### **SOLE. Unless otherwise agreed by the parties:**

I. The provisions of these Rules shall become effective on August 6, 2007.

II. The modifications on articles 1 and 50 shall become effective on June 9, 2008.

<!--[endif]-->

III. The modification on article 46 shall become effective on March 22, 2010.

IV. The arbitral proceedings being carried out on the date of approval of these reforms, shall continue to be governed according to the effective provisions at the time of their commencement.

#### **MODEL OF ARBITRAL CLAUSE**

The Mexico City National Chamber of Commerce reminds you that commercial disputes may be solved through commercial arbitration, provided the contracts include a clause reading as follows:

"Any litigation, dispute or claim resulting from this contract or related to this contract, its non-compliance, revocation or nullity, shall be settled by arbitration in accordance with the Arbitration Rules of the of the Mexico City National Chamber of Commerce."

The parties are advised to consider adding the following:

- a) The number of arbitrators shall be ... (one or three)
- b) The place of arbitration shall be ... (city and country)
- c) The language which shall be used in the arbitration proceedings shall be ...
- d) The substantive law applicable to the dispute shall be ...

When the litigation has already arise or caused by no contractual relations can be solved through commercial arbitration with the subscription of the next agreement:

1. [Make a brief description of the preceding facts that originated de dispute].
2. "Any litigation, dispute or claim resulting from the facts mentioned on paragraph 1 of this clause or related to them, including its non-compliance, revocation or nullity, shall be settled by arbitration in accordance with the Arbitration Rules of the of the Mexico City National Chamber of Commerce."

The parties are advised to consider adding the following:

- a) The number of arbitrators shall be ... (one or three)
- b) The place of arbitration shall be ... (city and country)
- c) The language which shall be used in the arbitration proceedings shall be ...
- d) The substantive law applicable to the dispute shall be ...