

BVI IAC

Arbitration Rules

In force as from 16 November 2016



British Virgin Islands
International Arbitration Centre
Established in 2013

FOREWORD BY JOHN BEECHEY CBE

In September of last year, the Government of the British Virgin Islands announced the appointment of a Board of Directors for a new BVI International Arbitration Centre (BVI IAC) in Tortola. As the Chairman of that Board, it is a matter of considerable pride to be able to report that, barely twelve months later, a CEO for the Centre is in post, over 190 of the world's leading arbitration practitioners have accepted invitations to join the BVI IAC's panel of arbitrators, such that the Centre can claim to have a culturally, linguistically and gender diverse list to match that of any leading arbitral institution anywhere in the world, new Rules, which draw on the respected 2010 UNCITRAL Arbitration Rules, have been adopted, an experienced Secretariat dedicated to facilitate a proactive, efficient and impartial administration of arbitration proceedings will grow with the caseload and state of the art premises built to world-class standards are ready to open for business.

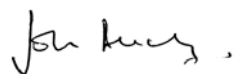
The establishment of the BVI IAC, the independent standing of which is formally recognised by Government, is a further demonstration of the Government of the BVI's significant commitment to international arbitration as a means of resolving disputes. The BVI is the world leader for the establishment of businesses, which reflect interests around the world. That global reach is reflected in the constitution of a panel of arbitrators, which includes practitioners from Argentina, Brazil, Chile, Mexico and Panama, from China and Russia, from all of the leading European civil law jurisdictions, from the USA and the UK as well as from the BVI itself and its Caribbean neighbours.

Government has taken a series of steps over the past few years to enable the BVI to hold itself out as a centre of choice for international arbitration. The BVI has acceded to the New York Convention, it has a modern Arbitration Act, based on the UNCITRAL Model Law, its respected Commercial Court is an arbitration-friendly court of supervisory jurisdiction, supported by the Eastern Caribbean Court of Appeal with an ultimate appeal to the Privy Council in London. The opening of the BVI IAC to business from all over the world is the latest indication of the BVI's intent to be a major player in international arbitration both in, and beyond, the Caribbean and the Americas. In addition to the steps that the BVI Government has already taken to ease immigration formalities for parties and their representatives, who travel to the BVI, the Government is committed to an airport expansion plan, which will make access to the BVI easier and more efficient.

All this bodes well for the BVI IAC, the aim of which is to offer its users a service of the highest quality in conformity with international best practice. It deserves to succeed!

Road Town, Tortola, BVI

November 2016



John Beechey CBE

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BVI IAC Arbitration Rules

In force as from 16 November 2016

Preamble

The BVI International Arbitration Centre Board (the “**Board**”) is the governing body of the BVI International Arbitration Centre (“**BVI IAC**”). The BVI IAC is composed of a Secretariat headed by the Chief Executive Officer (“**CEO**”), who performs such functions as are delegated to him or her by the Arbitration Act 2013 (the “**Act**”) and these Arbitration Rules (the “**Rules**”). The Board makes these Rules in accordance with the powers conferred by section 107 of the Act.

These Rules are based on the 2010 UNCITRAL Arbitration Rules (the “**UNCITRAL Rules**”), with changes in order to:

- (i) describe the services offered by the BVI IAC and the roles of the Chief Executive Officer and the Secretariat of the BVI IAC (e.g., articles 1(5), 6(1), 34(5) and 34(7));
- (ii) provide that agreement to arbitrate under the Rules constitutes a waiver of any immunity from jurisdiction (article 1(4));
- (iii) provide that the arbitral proceedings are deemed to commence on the date on which the notice of arbitration is received by the Secretariat, subject to the BVI IAC’s actual receipt of the registration fee (article 3(2));
- (iv) make clear that prospective arbitrators are required to provide a statement of impartiality, independence and availability (article 11(2));
- (v) establish that challenges shall be decided by a committee composed of one or three members drawn from the BVI IAC’s panel of arbitrators (article 13(5));
- (vi) clarify that, unless otherwise agreed by the parties, not only the award but also all other matters relating to the arbitral proceedings shall at all times be treated as confidential (articles 17(6) to 17(8));



- (vii) provide that Road Town, Tortola, British Virgin Islands is the place of arbitration where there is no agreement as to the place of arbitration (article 18(1));
- (viii) emphasise flexibility and party autonomy. For example:
 - (a) subject to confirmation of appointment by the BVI IAC, parties are free to nominate an individual for appointment as arbitrator, whether or not that person is included in the BVI IAC's panel of arbitrators (article 7(4));
 - (b) the Secretariat has the power to change time periods under these Rules (e.g., articles 4(1), 8(2)(b), 9(3) and 41(4));
 - (c) arbitrations can be brought to the BVI IAC under contracts and other legal instruments (e.g., article 23(1));
- (ix) provide that the responsibility for fixing fees and expenses of the arbitral tribunal, the costs of expert advice and of other assistance required by the arbitral tribunal and the administrative expenses of the BVI IAC lies with the Secretariat (article 42).

A version of the BVI IAC Arbitration Rules highlighting the departures from the UNCITRAL Rules can be found on the BVI IAC website.

A model clause for use in contracts or other legal instruments by parties, which intend to provide for arbitration of existing or future disputes under the BVI IAC Arbitration Rules is set forth in Annex A to these Rules.

These BVI IAC Arbitration Rules comprise this Preamble and the Articles, together with the Annexes as from time to time may be separately amended by the BVI IAC. The BVI IAC may from time to time issue practice notes to supplement, regulate and implement these Rules.



Section I. Introductory rules

Scope of Application * **Article 1**

1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the BVI IAC Arbitration Rules (hereinafter the “**Rules**”) or words to similar effect, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree. The BVI IAC is the only body authorised to administer arbitrations under these Rules and to scrutinize and approve awards rendered pursuant to these Rules.
2. Where the parties to an arbitration agreement have agreed to submit their disputes to arbitration under the Rules, they shall be deemed to have submitted to the Rules in effect on the date of commencement of the arbitration proceedings, unless agreed otherwise.
3. These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
4. Agreement by a State, State-controlled entity, or intergovernmental organization to arbitrate under these Rules with a party that is not a State, State-controlled entity, or intergovernmental organization constitutes a waiver of any right of immunity from jurisdiction in respect of the proceedings relating to the dispute in question to which such party might otherwise be entitled. A waiver of immunity



relating to the execution of an arbitral award must be explicitly expressed.

5. The Secretariat of the BVI IAC (hereinafter the “**Secretariat**”) shall serve as registry for the proceedings and provide administrative services. Such administrative services may include, but are not limited to, the following:

(a) maintenance of a file of written communications;

(b) facilitating communication;

(c) making all necessary practical arrangements and providing logistical support for meetings and hearings, including the provision of:

(i) secretarial or clerical assistance to the arbitral tribunal;

(ii) meeting rooms and break-out rooms for hearings or deliberations of the arbitral tribunal;

(iii) telephone conference and videoconference facilities;

(iv) facilities to enable transcripts of hearings to be made and to assist with the obtaining of visas for shorthand writers and permits for the import of all necessary equipment;

(v) live streaming facilities;

(vi) document management and interpretation services;

(vii) assistance in obtaining entry visas for the purposes of hearings when required;



- (viii) assistance with arrangements for travel and accommodation for parties and arbitrators;
- (d) providing fundholding services;
- (e) ensuring that the arbitral tribunal and the parties are alerted to pending procedurally important dates and advising the arbitral tribunal and the parties in the event that they have not been met;
- (f) proofreading and cite checking of draft procedural orders and awards;
- (g) scrutiny of draft awards;
- (h) as and when required providing assistance, so far as obtaining certified copies of any award, including notarized copies, is concerned;
- (i) to the extent that it is able to do so, providing assistance with the translation of arbitral awards;
- (j) providing services with respect to the storage of arbitral awards and files relating to the arbitral proceedings;
- (k) providing assistance in the appointment of experts;
- (l) providing assistance in the appointment of administrative secretaries.

* A model arbitration clause for contracts or other legal instruments can be found in **Annex A** to the Rules.



Notice and calculation of periods of time

Article 2

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.

2. If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorized.

3. In the absence of such designation or authorization, a notice is:

- (a) received if it is physically delivered to the addressee; or
- (b) deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.

4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice 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 letter or any other means that provides a record of delivery or of attempted delivery.

5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to



have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.

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

Notice of arbitration

Article 3

1. The party or parties initiating recourse to arbitration (hereinafter the “**claimant**”) shall communicate to the other party or parties (hereinafter the “**respondent**”) and the Secretariat a notice of arbitration.

2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the Secretariat, subject to the BVI IAC's actual receipt of the registration fee prescribed in the BVI IAC's Schedule of fees and costs (the “**registration fee**”).

3. The notice of arbitration shall include the following:

- (a) A demand that the dispute be referred to arbitration;
- (b) The names and contact details of the parties;



- (c) Identification of the arbitration agreement that is invoked;
- (d) Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
- (e) A brief description of the claim and an indication of the amount involved, if any;
- (f) The relief or remedy sought;
- (g) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon;
- (h) Confirmation that the registration fee has been or is being paid to the BVI IAC; and
- (i) Confirmation that copies of the Notice of arbitration (including all accompanying documents) have been or are being delivered to all other parties and to the Secretariat.

4. The notice of arbitration may also include:

- (a) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;
- (b) Notification of the designation of an arbitrator referred to in article 9 or 10.

5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency



of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

Response to the notice of arbitration **Article 4**

1. Within 30 days of the date of commencement of the arbitral proceedings, or such other period as may be set by the Secretariat, the respondent shall communicate to the claimant and the Secretariat a response to the notice of arbitration, which shall include:

- (a) The name and contact details of each respondent;
- (b) A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3 (c) to (g); and
- (c) Confirmation that copies of the response to the notice of arbitration (including all accompanying documents) have been or are being delivered to all other parties and to the Secretariat.

2. The response to the notice of arbitration may also include:

- (a) Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;
- (b) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;
- (c) Notification of the designation of an arbitrator referred to in articles 9 or 10;
- (d) A brief description of counterclaims or claims for the purpose of a set-off, if any, including where



relevant, an indication of the amounts involved, and the relief or remedy sought;

- (e) A notice of arbitration in accordance with article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

Representation and assistance

Article 5

1. Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all parties, to the arbitral tribunal and to the Secretariat. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such form as the arbitral tribunal may determine.

2. It shall be the responsibility of each party promptly to notify the arbitral tribunal, the other parties and the Secretariat of any change in its representation. Any such intended change in its representation shall only take effect in the arbitration subject to the approval of the arbitral tribunal, which shall have discretion to take such measures



as it deems appropriate to preserve the integrity of the proceedings.

Appointing authority

Article 6

1. The CEO of the BVI IAC shall serve as appointing authority.
2. In exercising its functions under these Rules, the appointing authority may require from any party and the arbitrators the information it deems necessary and it shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner it considers appropriate.
3. The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.
4. The appointing authority alone is empowered to appoint arbitrators, having taken account of any nomination made by any party or any written agreement made between the parties as to the constitution of the tribunal or any joint nomination by the parties.
5. In confirming or appointing arbitrators, the appointing authority shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations that are relevant to the impartiality and independence of the arbitrator. The appointing authority shall, inter alia, consider the prospective arbitrator's nationality, residence and other relationships with the countries of which the parties or the other arbitrators are



nationals and the prospective arbitrator's availability and ability to conduct the arbitration in accordance with the Rules. Any decision by the appointing authority to confirm or appoint an arbitrator under these Rules shall be final.

Section II. Composition of the arbitral tribunal

Number of arbitrators **Article 7**

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the date of commencement of the arbitral proceedings the parties have not agreed on the number of arbitrators, three arbitrators shall be appointed.
2. Notwithstanding paragraph 1, if no other parties have responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with articles 9 or 10, the appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, paragraph 2 if it determines that, in view of the circumstances of the case, this is more appropriate.
3. The designation of an arbitrator, whether made by the parties or the arbitrators, is subject to confirmation by the appointing authority, upon which the appointment shall become effective.
4. The parties when designating arbitrators and the appointing authority when confirming or appointing arbitrators pursuant to these Rules are not obliged to draw from the panel of arbitrators maintained by the BVI IAC.



Appointment of a sole arbitrator

Article 8

1. If the parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other parties of a proposal of an individual who would serve as a sole arbitrator the parties have not reached agreement thereon or such designation has not been confirmed by the appointing authority, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.

2. The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:

- (a) The appointing authority shall communicate to each of the parties an identical list containing at least three names;
- (b) Within 15 days after the receipt of this list, or such other period as may be set by the Secretariat, each party may return the list to the appointing authority, without copying the other party, after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;
- (c) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on 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 appointing authority may exercise its discretion in appointing the sole arbitrator.

Appointment of three Arbitrators

Article 9

1. If three arbitrators are to be appointed, each party shall designate one arbitrator. The two arbitrators thus designated shall, upon confirmation by the appointing authority, nominate the third arbitrator who, upon confirmation by the appointing authority, will act as the presiding arbitrator of the arbitral tribunal.

2. If within 30 days after the receipt of the appointing authority's confirmation of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has designated, the first party may request the appointing authority to appoint the second arbitrator.

3. If within 30 days after the appointment of the second arbitrator, or such other period as may be set by the Secretariat, the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under article 8, paragraph 2.



Appointment of Arbitrators in cases not covered by articles 8 and 9

Article 10

1. For the purposes of article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall designate an arbitrator.
2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be designated according to the method agreed upon by the parties.
3. In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

Disclosures by arbitrators **

Article 11

1. When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties, the other arbitrators and the Secretariat unless they have already been informed by him or her of these circumstances.



2. The arbitral candidate shall also confirm that, on the basis of the information available to him or her at such juncture, he or she can devote the time necessary to conduct the arbitration diligently, efficiently and in accordance with the time limits in the Rules.

** Model statements of impartiality, independence and availability pursuant to article 11 can be found in **Annex B** to the Rules.

Challenge of arbitrators; non-participating arbitrators

Article 12

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.

3. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

Challenge procedure

Article 13

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in articles 11 and 12 became known to that party.



2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged, to the Secretariat and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.

3. When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.

4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge.

5. A party wishing to pursue a challenge shall submit a written statement to that effect to the Secretariat. The Secretariat shall, within 5 business days, constitute a committee composed of one or three members drawn from the BVI IAC's panel of arbitrators, impartial and independent of each of the parties and of the arbitral tribunal, to review the challenge ("**Challenge Committee**") and shall also fix the amount of the deposit that shall be advanced by the complainant party to cover the administrative fees and charges in respect of the challenge. Any such deposit shall be paid within 7 days from the date of the submission of the written statement. The decision of the Challenge Committee shall be rendered within 28 days of the date of its constitution and shall be rendered in writing. In the event that the Challenge Committee is comprised of three members and they fail to reach a unanimous decision, a majority decision shall prevail. Unless the parties expressly agree that no reasons need be given, the decision upon the



challenge shall be supported by reasons. The decision of the Challenge Committee shall be final. Copies of the decision shall be transmitted by the Secretariat to the parties, the challenged arbitrator and other members of the tribunal (if any). A challenged arbitrator who tenders his or her resignation in writing before the rendering of the decision by the Challenge Committee shall not be deemed to have admitted any part of the written statement submitted by the complainant party.

6. The Secretariat shall determine the amount of fees and expenses (if any) to be paid to an arbitrator, who is the subject of a successful challenge and by which party or parties and in what amount(s) the costs of the challenge procedure shall be borne.

Replacement of an arbitrator

Article 14

1. Subject to paragraph 2 of this article, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to designate or to participate in the appointment.

2. If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to designate a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and



the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

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

Article 15

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

Exclusion of liability

Article 16

1. Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, any person appointed by the arbitral tribunal, the BVI IAC and its employees, including the CEO, any member of its Secretariat and any member of any Challenge Committee in respect of any act or omission in connection with the arbitration.

2. After the award has been made and there remains no further possibility of any application for an interpretation, correction or additional award pursuant to articles 37, 38 and 39 hereof, neither the BVI IAC (including its CEO, employees, any member of its Secretariat and any member of any Challenge Committee), nor any arbitrator, administrative assistant or expert to the arbitral tribunal shall be under any legal obligation to make any statement about any matter concerning the arbitration, nor shall any party seek to make the BVI IAC or any of these persons a witness in any legal proceedings arising out of the arbitration.



Section III. Arbitral proceedings

General provisions

Article 17

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.

2. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.

3. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. 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 basis of documents and other materials.

4. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties and the Secretariat. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.



5. The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

6. Unless otherwise agreed by the parties or under the circumstances set out in article 34(8), a party, any arbitrator and any person appointed by the Tribunal shall at all times treat all matters relating to the proceedings as confidential. The discussions and deliberations of the Tribunal shall be confidential.

7. In paragraph 6 of this article, “matters relating to the proceedings” includes the existence of the proceedings, and the pleadings, evidence and other materials in the arbitral proceedings and all other documents produced by another party in the proceedings or the award(s) rendered in the proceedings, but excludes any matter that is otherwise in the public domain.

8. The arbitral tribunal has the power to take appropriate measures, including issuing an order or award for sanctions or costs, if a party breaches the provisions of paragraphs 6 and 7 of this article.

Place of arbitration

Article 18

1. The parties may agree on the place of arbitration. Where there is no agreement as to the place of arbitration, the



place of arbitration shall be Road Town, Tortola, British Virgin Islands, unless the arbitral tribunal determines, having regard to the circumstances of the case, that another seat is more appropriate. The award shall be deemed to have been made at the place of arbitration.

2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

Language

Article 19

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 defence, 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 defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Statement of claim

Article 20

1. The claimant shall communicate its statement of claim in writing to the respondent, to the Secretariat and to each of the arbitrators within a period of time to be determined by



the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this article.

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

- (a) the names and contact details of the parties;
- (b) a statement of the facts supporting the claim;
- (c) the points at issue;
- (d) the relief or remedy sought; and
- (e) the legal grounds or arguments supporting the claim.

3. A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.

4. The statement of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

Statement of defence

Article 21

1. The respondent shall communicate its statement of defence in writing to the claimant, to the Secretariat and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in article 4 as a statement of defence, provided that the



response to the notice of arbitration also complies with the requirements of paragraph 2 of this article.

2. The statement of defence shall reply to the particulars (*b*) to (*e*) of the statement of claim (article 20, paragraph 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.

3. In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.

4. The provisions of article 20, paragraphs 2 to 4, shall apply to a counterclaim, a claim under article 4, paragraph 2 (*e*), and a claim relied on for the purpose of a set-off.

Amendments to the claim or defence

Article 22

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.



Pleas as to the jurisdiction of the arbitral tribunal

Article 23

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract or other legal instrument shall be treated as an agreement independent of the other terms of the contract or other legal instrument. A decision by the arbitral tribunal that the contract or other legal instrument is null, void, or invalid shall not entail automatically the invalidity of the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has designated, or participated in the appointment of, an arbitrator. 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. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court or other competent authority.



Further written statements

Article 24

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

Periods of time

Article 25

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

Interim measures

Article 26

1. The arbitral tribunal may, at the request of a party, grant interim measures.

2. An interim measure is any temporary measure 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, for example and without limitation, to:

- (a) maintain or restore the status quo pending determination of the dispute;
- (b) take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) 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.
3. The party requesting an interim measure under paragraphs 2 (a) to (c) 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.
4. With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.
5. The arbitral tribunal may modify, suspend or terminate an interim measure 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.
6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.



7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.

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

9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Evidence

Article 27

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

2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.

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



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

Hearings

Article 28

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.

2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.

3. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.

4. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

Experts appointed by the arbitral tribunal

Article 29

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



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2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.

3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she 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.

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

5. If a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of the report, participate in a hearing where the parties have the opportunity to put questions to him or her and to present expert witnesses in order to testify on the points at issue. The provisions of article 28 shall be applicable to such proceedings.



Default

Article 30

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:

- (a) the claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;
- (b) the respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.

2. If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, 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.



Closure of proceedings

Article 31

1. When it is satisfied that the parties have had a reasonable opportunity to present their cases, the arbitral tribunal shall declare the proceedings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the proceedings at any time before the award is made.

Waiver of right to object

Article 32

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.



Section IV. The award

Decisions

Article 33

1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

Form and effect of the award

Article 34

1. The arbitral tribunal may make separate awards on different issues at different times.
2. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards 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. Unless the parties have agreed otherwise, the arbitral tribunal may order that pre-award and post-award interest (either simple or compound) be paid by any party on any sum awarded at such rates as the arbitral tribunal decides to be appropriate (without being bound by rates of interest practised by any state court or other legal authority).



5. The arbitral tribunal shall submit any such award in draft form to the Secretariat. The Secretariat may, as soon as practicable, suggest modifications as to the form of the award and, without affecting the arbitral tribunal's liberty of decision, draw the arbitral tribunal's attention to points of substance. No award shall be rendered by the arbitral tribunal until it has been approved by the Secretariat as to its form.

6. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

7. Copies of the award signed by the arbitrators and affixed with the seal of the BVI IAC shall be communicated to the parties by the Secretariat upon full settlement of the costs of the arbitration.

8. An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.

9. The BVI IAC shall not publish any award or part of an award without the prior written consent of all parties and the arbitral tribunal.

Applicable law,
amiable compositeur

Article 35

1. The arbitral tribunal shall apply the rules of 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 which it determines to be appropriate.

2. The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the arbitral tribunal to do so.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

Settlement or other grounds for termination

Article 36

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the 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 proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators shall be communicated to the parties by the Secretariat. Where an arbitral award on



agreed terms is made, the provisions of article 34, paragraphs 2, and 5 to 9, shall apply.

Interpretation of the award

Article 37

1. Within 30 days after the receipt of the award, a party, with notice to the other parties and the Secretariat, may request that the arbitral tribunal 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 article 34, paragraphs 2 to 9, shall apply.

Correction of the award

Article 38

1. Within 30 days after the receipt of the award, a party, with notice to the other parties and the Secretariat, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.
2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
3. Such corrections shall be in writing and shall form part of the award. The provisions of article 34, paragraphs 2 to 9, shall apply.



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Additional Award

Article 39

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties and the Secretariat, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.
2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.
3. When such an award or additional award is made, the provisions of article 34, paragraphs 2 to 9, shall apply.



Definitions of costs

Article 40

The term “costs” includes only:

- (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator;
- (b) The reasonable travel and other expenses incurred by the arbitrators;
- (c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
- (d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
- (e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
- (f) The fees and expenses of the Secretariat, including the fees and expenses of the appointing authority.

Deposit of costs

Article 41

1. The Secretariat, following the commencement of the arbitration, and at such times as it thinks appropriate, may request the parties to deposit an equal amount, or amounts in such proportions as it may determine, as an advance for the costs referred to in article 40, paragraphs (a), (b), (c) and (f). Such payments deposited by the parties may be



applied by the Secretariat to pay any item of the above-mentioned costs.

2. During the course of the arbitral proceedings the Secretariat may request supplementary deposits from the parties.

3. Any deposit of security for costs ordered by the tribunal pursuant to article 26 shall be directed to the Secretariat and disbursed by it upon order from the arbitral tribunal.

4. If the requested deposits are not paid in full within 30 days after the receipt of the request or such other period as may be set by the Secretariat, the Secretariat shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.

5. After a termination order or final award has been made, the Secretariat shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Fees and expenses of arbitrators ***

Article 42

The costs referred to in article 40, paragraphs (a), (b), (c) and (f), shall be fixed by the Secretariat in accordance with the BVI IAC's Schedule of fees and costs, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any experts or assistants appointed by the arbitral tribunal, and any other relevant circumstances of the case.



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*** The BVI IAC's Schedule of fees and costs as of November 2016 is set out in **Annex C** to the Rules. All amounts are subject to change from time to time by the BVI IAC, subject to publication on the BVI IAC's website.

Allocation of costs

Article 43

1. The arbitral tribunal shall specify the costs of arbitration in an award.
2. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
3. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.



Annexes

Model Clause
(article 1 of
the Rules)

Annex A

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the BVI IAC Arbitration Rules.

The number of arbitrators shall be... [one or three];

The place of arbitration shall be... [Road Town, Tortola, British Virgin Islands, unless the Parties agree otherwise];

The language to be used in the arbitral proceedings shall be... [language].”

Note: Arbitrations under the BVI IAC Arbitration Rules may be conducted anywhere in the world and not just at the BVI IAC’s premises in Tortola.

Model
statements of
impartiality,
independence
and availability
(article 11 of
the Rules)

Annex B

No circumstances to disclose

I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties and the other arbitrators of any such circumstances that may subsequently come to my attention during this arbitration.



Circumstances to disclose

I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made pursuant to article 11 of the BVI IAC Arbitration Rules of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances.

[Include statement.] I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the parties and the other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration.

Statement of availability

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules.

Schedule of
fees and costs
(article 42 of
the Rules)

Annex C

This Schedule of fees and costs applies to the following services as of November 2016. All amounts are subject to change from time to time by the BVI IAC, subject to publication on the BVI IAC's website.

A. Administrative charges

1. Non-refundable registration fee (payable in advance with the Notice of Arbitration: article 3 of the Rules): **USD 1,500**

2. Time spent by the Secretariat of the BVI IAC in the administration of the arbitration.

CEO **USD 300**



Legal Counsel **USD 250**
Case Managers **USD 190**
Accounting Staff **USD 160**

3. Acting as an Appointing Authority - non-refundable processing fee: **USD 2,500**

4. Dealing with Challenges to arbitrators: the BVI IAC may at its discretion fix the fees of any member(s) of the Challenge Committee constituted by the Secretariat pursuant to article 13, paragraph 5, of the Rules at a sum not exceeding US\$ 10,000.

5. Acting as a Fundholder: Time spent on providing these services is charged at the published hourly rates of the Secretariat.

6. Provision of Hearing/Meeting Facilities: **as per website rates.**

7. Support and Concierge Services for and in connection with any hearing (e.g., equipment, transcription and interpretation services): **reasonable market rates.**

B. Arbitral Tribunal's fees and expenses and costs of expert advice and of other assistance required by the arbitral tribunal

1. The arbitral tribunal's fees shall be calculated in accordance with the following table. The fees calculated in accordance with the table represent the maximum amount payable to one arbitrator (excluding tribunal secretary fees and expenses, if applicable).



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Sum in Dispute (US\$)	Arbitrators' Fees (US\$)
Up to 50,000	4,500
50,001 to 100,000	4,500 + 13.500% excess over 50,000
100,001 to 500,000	9,500 + 6.500% excess over 100,000
500,001 to 1,000,000	28,000 + 4.800% excess over 500,000
1,000,001 to 2,000,000	45,000 + 2.700% excess over 1,000,000
2,000,001 to 5,000,000	65,000 + 1.200% excess over 2,000,000
5,000,001 to 10,000,000	90,000 + 0.700% excess over 5,000,000
10,000,001 to 50,000,000	115,000 + 0.300% excess over 10,000,000
50,000,001 to 80,000,000	200,000 + 0.150% excess over 50,000,000
80,000,001 to 100,000,000	240,000 + 0.075% excess over 80,000,000
100,000,001 to 500,000,000	250,000 + 0.065% excess over 100,000,000
Above 500,000,000	430,000 + 0.040% excess over 500,000,000 up to a maximum of 1,500,000



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2. The Tribunal's fees may also include a charge for the time reserved but not used as a result of late postponement or cancellation of hearings, provided that the basis for such charge shall be advised in writing to, and approved by, the BVI IAC and that the parties have been informed in advance.

3. Where, with the consent of the parties, the arbitral tribunal appoints a secretary, such secretary shall be remunerated at a rate which shall not exceed US\$200 per hour.