



## Arbitration Regulations 2015

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## ARBITRATION REGULATIONS 2015

Regulations to make provision for the conduct of arbitral proceedings, and the recognition and enforcement of arbitral awards, within the Abu Dhabi Global Market, and for connected purposes.

Date of Enactment: 17 December 2015

The Board of Directors of the Abu Dhabi Global Market, in exercise of its powers under Article 6(1) of Law No. 4 of 2013 concerning the Abu Dhabi Global Market issued by His Highness the Ruler of the Emirate of Abu Dhabi, hereby enacts the following Regulations:

### PART 1: GENERAL

#### 1. Title

These Regulations may be cited as the “Arbitration Regulations 2015”.

#### 2. Legislative authority

These Regulations are made by the Board.

#### 3. Application of the Regulations

- (1) These Regulations apply in the whole of the Abu Dhabi Global Market.
- (2) The provisions of Federal Law No.(6) of 2018 on Arbitration, or any other Federal Law in respect of arbitration, shall not apply in respect of arbitrations or arbitral awards that are subject to these Regulations.<sup>1</sup>

#### 4. Date of enactment

These Regulations are enacted on the date specified by the Board in the resolution approving the adoption of these Regulations.

#### 5. Date of commencement

These Regulations come into force on the date of their publication. The Board may by rules make any transitional, transitory, consequential, saving, incidental or supplementary provision in relation to the commencement of these Regulations as the Board thinks fit.

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<sup>1</sup> Amended 23 December 2020

## 6. Language

The English text of these Regulations shall be the official original text. Any translation thereof into another language shall not be authoritative and in the event of any discrepancy between the English text of these Regulations and any other version, the English text shall prevail.

## 7. Interpretation

Schedule 1 contains:

- (a) interpretative provisions which apply to these Regulations; and
- (b) a list of defined terms used in these Regulations. PART 2: SCOPE OF APPLICATION

## 8. Scope of application of Regulations

Unless stated otherwise, Part 3 of these Regulations shall apply to arbitrations where the seat of the arbitration is the Abu Dhabi Global Market, or where an arbitration agreement applies these Regulations. Part 4 of these Regulations shall apply to the recognition and enforcement of arbitral awards in the Abu Dhabi Global Market, irrespective of the state or jurisdiction in which they are made.

# PART 3: ARBITRATION

## Chapter 1 – General Provisions

### 9. Mandatory and non-mandatory provisions<sup>2</sup>

- (1) The mandatory provisions of this Part 3 and Part 4 are listed in Schedule 2 and have effect notwithstanding any agreement to the contrary.
- (2) The other provisions of this Part 3 (the “non-mandatory” provisions) allow the parties to make their own arrangements by agreement but shall apply in the absence of such agreement. For the avoidance of doubt, Part 4 does not contain any non-mandatory provisions.
- (3) The parties may make such arrangements by agreeing to the application of arbitration rules, including those of any institution, or providing any other means by which a matter may be decided.
- (4) The choice of law other than the law of the Abu Dhabi Global Market as the applicable law in respect of a matter provided for by a non-mandatory provision of this Part 3 is equivalent to an agreement making provision about that matter. For this purpose, an applicable law determined in accordance with the parties’

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<sup>2</sup> Amended 23 December 2020

agreement, or which is objectively determined in the absence of any express or implied choice, shall be treated as chosen by the parties.

#### **10. Receipt of written communications**

Unless otherwise agreed by the parties to a dispute:

- (a) any written communication, notification, or proposal is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence, mailing or electronic address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence, mailing or electronic address by any means which provides a record of the attempt to deliver it;
- (b) the communication is deemed to have been received on the day it is so delivered; and
- (c) time periods specified in these Regulations, or to be agreed by the parties or determined by the arbitral tribunal in accordance with these Regulations, shall start to run on the day following the day when a notice or communication is received. If the last day of any such period is an official holiday or a non-business day at the place where the notice or communication is received, the period shall be extended until the first business day which follows. Official holidays and non-business days occurring during the running of the period of time shall otherwise be included for the purposes of calculating the period.

#### **11. Waiver and loss of right to object**

- (1) A party which, knowingly and without a legitimate reason, fails to object to an irregularity before the arbitral tribunal in a timely manner, or if a time limit is provided in any applicable arbitration rules, within such period of time, shall be deemed to have waived its right to object to such irregularity.
- (2) An objection to an irregularity under subsection (1) shall include any objection (a) that the tribunal lacks substantive jurisdiction; (b) that the proceedings have been improperly conducted; (c) that there has been a failure to comply with the arbitration agreement or with any provision of this Part 3; or (d) that there has been any other irregularity affecting the tribunal or the proceedings.
- (3) Where the arbitral tribunal rules that it has substantive jurisdiction and a party to arbitral proceedings who could have questioned that ruling by challenging the award (or pursuant to any other process that may be agreed by the parties), does not do so, or does not do so within the time allowed by the arbitration agreement or any provision of this Part 3, he may not object later to the tribunal's substantive jurisdiction on any ground which was the subject of that ruling.

## **12. Extent of court intervention**

In matters governed by these Regulations, no court shall intervene except to the extent so provided in these Regulations.

## **13. Authority of the Court to perform functions of arbitration assistance and supervision**

The functions referred to in sections 16, 27, 30, 31, 32, 48, 58, 61 and 62 of these Regulations shall be performed by the Court, while the functions referred to in sections 19(3), 19(4), 19(5), 19(6), 21(2), 22(1), 23(2), 39(2) and 56(5) shall be performed by the Court subject to any

process agreed between the parties in the arbitration agreement or by a subsequent written agreement.<sup>3</sup>

## **Chapter 2 – Arbitration Agreement<sup>4</sup>**

### **14. Arbitration agreement**

- (1) An arbitration agreement is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (2) An arbitration agreement shall be in writing. This requirement shall be regarded as satisfied if the content of the arbitration agreement is recorded in any written form by one or more of the parties to it or by a third party with the authority of the parties to the agreement. An arbitration agreement which is in writing but has not been signed (whether in hardcopy or electronically) may be made binding orally or by conduct.
- (3) For the purposes of subsection (2), the requirement that an arbitration agreement be in writing is met by an electronic communication if the information contained therein is accessible so as to be useable for subsequent reference; an electronic communication is any communication that the parties make by means of data messages; a data message is information generated, sent, received or stored by electronic, digital, magnetic, wireless, optical, electromagnetic or similar means.
- (4) Furthermore, an arbitration agreement is in writing if it is contained in an exchange of statements of claim and defence in which the existence of an arbitration agreement is alleged by one party and not denied by the other.

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<sup>3</sup> Amended 23 December 2020

<sup>4</sup> Amended 23 December 2020

- (5) The reference in a contract to any document containing an arbitration clause constitutes an arbitration agreement in writing, provided that the reference is such as to make that clause part of the contract.
- (6) An arbitration agreement giving any party a unilateral or asymmetrical right to refer a dispute either to an arbitral tribunal or a court does not contravene these Regulations and shall not be rendered invalid for that reason.

#### **15. Separability of arbitration agreement**

Unless otherwise agreed by the parties, an arbitration agreement which forms or was intended to form part of another agreement (whether or not in writing) shall not be regarded as invalid, non-existent or ineffective because that other agreement is invalid, or did not come into existence or has become ineffective, and the arbitration agreement shall for that purpose be treated as a distinct agreement.

#### **16. Stay of legal proceedings**

- (1) A party to an arbitration agreement against whom legal proceedings in the Court are brought (whether by way of claim or counterclaim) in respect of a matter which is the subject of the arbitration agreement may (upon notice to the other parties to the proceedings) apply to the Court to stay the proceedings so far as they concern that matter.
- (2) On an application being made under subsection (1), the Court shall grant a stay unless satisfied that the arbitration agreement is null and void, inoperative, or incapable of being performed.
- (3) An application may:
  - (a) be made notwithstanding that the matter is to be referred to arbitration only after the exhaustion of other dispute resolution procedures; and
  - (b) not be made by a person before taking the appropriate procedural step (if any) to acknowledge the legal proceedings against him or after he has taken any step in those proceedings to answer the substantive claim.
- (4) Where an application referred to in subsection (1) has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the Court.
- (5) If the Court refuses to stay the legal proceedings, any provision that the award is a condition precedent to the bringing of legal proceedings in respect of any matter is of no effect in relation to those proceedings.
- (6) This section 16 shall also apply where the arbitration is not seated in the Abu Dhabi Global Market, and where no seat has been designated or determined.

## **17. Death of a party**

- (1) Unless otherwise agreed by the parties, an arbitration agreement is not discharged by the death of a party and may be enforced by or against the personal representatives of that party.
- (2) Subsection (1) does not affect the operation of any enactment or rule of law by virtue of which a substantive right or obligation is extinguished by death.

## **Chapter 3 – Composition of arbitral tribunal**

### **18. Number of arbitrators**

- (1) The parties are free to determine the number of arbitrators provided that it is an odd number.
- (2) If there is no such determination, the number of arbitrators shall be one (1).

### **19. Appointment of arbitrators**

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties are free to agree on a procedure for appointing the arbitrator or arbitrators.
- (3) If, and to the extent that, there is no such agreement:
  - (a) in an arbitration with a sole arbitrator, if the parties do not agree on the arbitrator within 30 days of one party requesting the other to do so, he shall be appointed by the arbitral institution administering the arbitration or, where there is no such institution, the Court, on the request of either party; or
  - (b) in an arbitration with three (3) arbitrators, each party shall appoint one (1) arbitrator, and the two (2) arbitrators thus appointed shall appoint the third arbitrator, who shall be the presiding arbitrator (or chairman). If a party fails to appoint an arbitrator within 30 days of receipt of a request to do so from the other party, or if the two (2) arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, upon request of a party, by the arbitral institution administering the arbitration or, where there is no such institution, the Court.
- (4) Where there are multiple claimants and/or multiple respondents, and where the dispute is to be referred to three (3) arbitrators, the multiple claimants, jointly, and the multiple respondents, jointly, shall each appoint one (1) arbitrator in

accordance with the appointment procedure agreed upon by the parties or, where there is no such agreement, in accordance with subsection (3)(b). The presiding arbitrator shall also be appointed in accordance with subsection (3)(b).

- (5) In the absence of a joint nomination pursuant to subsection (4), and where all parties are unable to agree to a method for the constitution of the arbitral tribunal, the arbitral institution administering the arbitration, or where there is no such institution, the Court, may appoint each member of the arbitral tribunal and shall designate one of them to act as president.
- (6) A decision on a matter entrusted by subsection (3), (4) or (5) to any arbitral institution administering the arbitration or, where there is no such institution, the Court, shall not be subject to appeal. The arbitral institution administering the arbitration or, where there is no such institution, the Court, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall also take into account the advisability of appointing an arbitrator of a nationality other than that of any party.

## **20. Grounds for challenge**

- (1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and any arbitral institution administering the arbitration.
- (2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

## **21. Challenge procedure**

- (1) The parties are free to agree on a procedure for challenging an arbitrator.
- (2) In the absence of such agreement, a party who intends to challenge an arbitrator shall, within 30 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in section 20(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral institution administering the arbitration or, where there is no such institution, the Court shall decide on the challenge.

While such a request to the arbitral institution administering the arbitration or, where there is no such institution, to the Court, is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

## **22. Failure or impossibility to act**

- (1) If an arbitrator becomes as a matter of fact or law unable to perform his functions or for other reasons fails to act without undue delay, his mandate shall terminate if he withdraws from his office or if the parties agree on the termination. In the absence of such agreement or if a controversy remains concerning any of these grounds, any party may request the arbitral institution administering the arbitration or, where there is no such institution, the Court, to decide on the termination of the mandate, which decision shall not be subject to appeal.
- (2) If, under this section or section 21(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this section or section 20(2).

## **23. Appointment of substitute arbitrator**

- (1) Where the mandate of an arbitrator terminates under section 21 or section 22 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate:
  - (a) subject to any process agreed between the parties in the arbitration agreement, or thereafter, the parties may agree with the arbitrator as to his liabilities and entitlement (if any) to fees and expenses; and
  - (b) a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced, unless otherwise agreed by the parties.
- (2) If, or to the extent that, there is no agreement in accordance with subsection (1)(a) as to the consequences of resignation, an arbitrator who resigns in the circumstances set out in subsection (1) may, upon written notice to the parties, request the arbitral institution administering the arbitration or, where there is no such institution, the Court to make an order relieving him of any liability incurred by reason of his resignation, together with such order as the arbitral institution administering the arbitration or, where there is no such institution, the Court thinks appropriate with respect to his entitlement (if any) to fees and expenses, which orders shall not be subject to appeal.

#### **24. Liability of arbitral tribunal and others**

No arbitrator, arbitral institution or appointing authority, or any employee, agent or officer of the foregoing shall be liable to any person for any act or omission in connection with an arbitration, unless they are shown to have caused damage by conscious and deliberate wrongdoing.

### **Chapter 4 – Jurisdiction of arbitral tribunal**

#### **25. Competence of arbitral tribunal to rule on its jurisdiction**

- (1) Unless otherwise agreed by the parties, the arbitral tribunal may rule on its own substantive jurisdiction, that is, as to (a) whether there is a valid arbitration agreement, (b) whether the tribunal is properly constituted, and (c) what matters have been submitted to arbitration in accordance with the arbitration agreement.
- (2) Any such ruling may be challenged by any available arbitral process of appeal or review that the parties may have agreed, or in accordance with the provisions of this Part.

#### **26. Objection to substantive jurisdiction of tribunal**

- (1) An objection that the arbitral tribunal lacks substantive jurisdiction at the outset of proceedings must be raised by a party not later than the time he takes the first step in the proceedings to contest the merits of any matter in relation to which he challenges the tribunal's jurisdiction. A party is not precluded from raising such an objection by the fact that he has appointed or participated in the appointment of an arbitrator.
- (2) Any objection during the course of the arbitral proceedings that the arbitral tribunal is exceeding its substantive jurisdiction must be made as soon as possible after the matter alleged to be beyond its jurisdiction is raised. The arbitral tribunal may admit a later objection in either case specified in subsections (1) or (2) if it considers the delay justified.
- (3) The arbitral tribunal may rule on an objection referred to in subsections (1) or (2) either as a preliminary question or in an award on the merits. If the parties agree which of these courses the tribunal should take, the tribunal shall proceed accordingly.

#### **27. Determination of preliminary point of jurisdiction**

- (1) If the arbitral tribunal rules on an objection referred to in subsection 26(1) or 25(2) as a preliminary question, the Court may, on the application of a party to the arbitral proceedings (upon notice to the other parties), determine any

question as to the substantive jurisdiction of the tribunal. A party may lose the right to object pursuant to section 11.

- (2) An application under this section shall not be considered unless (a) it is made with the agreement in writing of all the other parties to the proceedings, or (b) it is made with the permission of the tribunal and the court is satisfied that: (i) the determination of the question is likely to produce substantial savings in costs, (ii) the application was made without delay, and (iii) there is good reason why the matter should be decided by the Court.
- (3) An application under this section, unless made with the agreement of all the other parties to the proceedings, shall state the grounds on which it is said that the matter should be decided by the Court.
- (4) Subject to any agreement by the parties, while such a request is pending, the arbitral tribunal may stay the arbitral proceedings or continue the arbitral proceedings and make an award.
- (5) The decision of the Court on the question of jurisdiction shall be treated as a judgment of the Court. The decision of the Court shall not be subject to appeal.

## **Chapter 5 – Interim measures<sup>5</sup>**

### **28. 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 provided that any such request by a party is made upon notice to the other parties in the proceedings.
- (2) An interim measure is any temporary measure, whether in the form of an award or in another form, 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, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to any party or 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

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<sup>5</sup> Amended 23 December 2020

the dispute.

- (3) The party requesting an interim measure under subsection (1) 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 outweighs the harm, if any, that is likely to result to the party against whom the measure is directed if the measure is ordered; 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 section 27(2)(d), the requirements in paragraphs (3)(a) and (b) of this section 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 shall be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

## **29. Power of arbitral tribunal to order security for costs**

Unless otherwise agreed by the parties, the tribunal has the power to order a claimant to provide security for the costs of the arbitration. This power shall not be exercised on the ground that the claimant is (a) an individual ordinarily resident outside the Abu Dhabi Global Market, or (b) a corporation or association incorporated or formed other than in the Abu Dhabi Global Market, or whose central management and control is exercised outside the Abu Dhabi Global Market.

## **30. Recognition and enforcement of interim measures by the Court**

- (1) Subject to subsection (4), an interim measure issued by an arbitral tribunal shall

be recognised as binding and, unless otherwise provided by the arbitral tribunal, enforced upon application to the Court or any competent court (in either case, the “recognising court”), irrespective of the country in which it was issued, provided such application is made on notice to all parties to the proceedings.

- (2) The party who is seeking or has obtained recognition or enforcement of an interim measure shall promptly inform the recognising court of any termination, suspension or modification of that interim measure.
- (3) The recognising court may, if it considers it appropriate, order the requesting party to provide appropriate security if the arbitral tribunal has not already made a determination with respect to security or where such a decision is necessary to protect the rights of third parties.
- (4) Recognition or enforcement of an interim measure may be refused on the grounds set forth in section 62.
- (5) Any determination made by the recognising court under subsection (4) shall be effective only for the purposes of the application to recognise and enforce the interim measure. The recognising court where recognition or enforcement is sought shall not, in making that determination, undertake a review of the substance of the interim measure.

### **31. Power of the Court to order interim measures**

- (1) The existence of an arbitration agreement shall not preclude a party from applying to the Court, before or during arbitral proceedings, for interim measures including in relation to the taking of evidence under section 48 or provisional or conservatory measures under this section.
- (2) The Court shall have the same power of issuing any interim measure in relation to arbitration proceedings as it has in relation to proceedings in the Court.
- (3) The powers conferred by this section apply even if:
  - (a) the seat of the arbitration is outside the Abu Dhabi Global Market or no seat has been designated or determined; or
  - (b) the interim measure is sought against a non-party to the arbitration agreement.
- (4) If the case is one of urgency, the Court may, on the application of a party or proposed party to the arbitral proceedings, make such orders as it thinks necessary for the purpose of preserving evidence or assets.
- (5) If the case is not one of urgency, the Court shall act only on the application of a party to the arbitral proceedings upon notice to the other parties and to the arbitral tribunal.

- (6) In any case, the Court shall act only if, or to the extent that, the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, or a court of competent jurisdiction in relation to the matters set out in subsection (3)(a), has no power or is unable for the time being to act effectively.

### **32. Privacy of arbitration related court proceedings**

- (1) Subject to subsection (4), all arbitration-related proceedings in the Court are to be heard in closed court.
- (2) Where such arbitration-related proceedings are held in closed court, the Court must, on the application of any party, make a direction as to what information, if any, relating to the proceedings may be published.
- (3) The Court must not make a direction permitting information disclosed during arbitration-related proceedings held in closed court to be published, unless:
- (a) all parties agree that the information may be published; or
  - (b) the Court is satisfied that the information, if published, would not reveal any matter (including the identity of any party) that any party reasonably wishes to remain confidential.
- (4) The Court may order arbitration-related court proceedings to be heard in open court if:
- (a) all parties agree that the proceedings may be heard in open court; or
  - (b) in any particular case, the Court is satisfied that those proceedings ought to be heard in open court.
- (5) An order of the Court under this section is not subject to appeal.
- (6) It is not inconsistent with this section for the Court, on its own initiative, to publish a judgment in anonymised form.

## **Chapter 6 – Conduct of arbitral proceedings<sup>6</sup>**

### **33. Fair treatment of parties**

The parties shall be treated fairly and each party shall be given a reasonable opportunity to present its case.

### **34. Determination of rules of procedure**

- (1) The parties are free to agree on the procedure to be followed by the arbitral

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<sup>6</sup> Amended 23 December 2020

tribunal in conducting the proceedings.

- (2) The parties are free to agree to adopt, in whole or part, the ADGM Arbitration Centre Arbitration Guidelines, regardless of the seat or the applicable rules of procedure.
- (3) In the absence of an agreement on the procedure to be followed, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.
- (4) In all cases, the arbitral tribunal must adopt procedures which are suitable to the circumstances of the particular case, avoid unnecessary delay and expense, and facilitate fair, efficient and expeditious conduct of the arbitration.
- (5) In exercising its discretion under subsection (4), the arbitral tribunal shall consider the use of technology in order to enhance the efficient and expeditious conduct of the arbitration including, as appropriate, for:
  - (a) the submission, exchange or communication of documents by electronic means;
  - (b) the use of electronic signatures for documents submitted, exchanged or communicated;
  - (c) documents being provided in electronic searchable form;
  - (d) the use of an electronic document review system for disclosure or document production;
  - (e) the use of an electronic document management system for hearings;
  - (f) the use of an online case management platform;
  - (g) conducting hearings, in whole or in part, by video conference, telephone or other communication technology; or
  - (h) enhancing by the use of any other technology the efficient and expeditious conduct of the arbitration.

### **35. Seat of arbitration**

- (1) The parties are free to agree on the seat of arbitration.
- (2) If the parties have agreed that the seat of arbitration shall be the Abu Dhabi Global Market, no other connection with the Abu Dhabi Global Market is required for these Regulations to apply.
- (3) Failing the parties' agreement on the seat of arbitration, the seat of arbitration

shall be determined by (a) any arbitral or other institution or person vested by the parties with powers in that regard, or (b) the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties.

- (4) Notwithstanding the provisions of subsections (1) and (3), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.
- (5) For the purpose of subsection (4), a meeting may take place, in whole or in part, in person or by video conference, telephone or other communications technology (or any combination thereof) in one or more geographical places.

### **36. Commencement of arbitral proceedings**

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute shall commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

### **37. Disclosure of a third-party funding agreement**

- (1) A party shall notify every other party to the arbitral proceedings and any members of the arbitral tribunal (nominated or appointed) of the existence of any third-party funding agreement and the identity of the third-party funder in accordance with subsection (2).
- (2) Written notice under subsection (1) must be given:
  - (a) where the third party funding agreement was entered into before or upon the commencement of the proceedings, immediately upon their commencement; or
  - (b) where the third-party funding agreement was entered into after the commencement of proceedings, within seven (7) days of the date of the third-party funding agreement. If the notification was made prior to the constitution of the arbitral tribunal, the notice under subsection (1) must be given to any further arbitral tribunal members immediately following their nomination or appointment.
- (3) Unless otherwise agreed by the parties, the arbitral tribunal may, after consulting with the parties, order the disclosure of other details of the third-party funding agreement.

### **38. Consolidation orders**

- (1) The parties are free to agree on the procedure for:

- (a) arbitral proceedings to be consolidated with other arbitral proceedings; or
  - (b) concurrent hearings to be held.
- (2) Unless the parties agree to confer such power on the tribunal, the tribunal has no power to order consolidation of proceedings or concurrent hearings.
- (3) Any consolidation order made under subsection (1) shall be without prejudice to the date on which any claim or defence was raised for the purpose of applying any limitation periods or similar rule or provision of law.

### **39. Joinder of Additional Parties**

- (1) The parties are free to agree on the procedure for joining an additional party to an arbitration, provided always that the party to be joined is party to the arbitration agreement or has consented to joinder.
- (2) Absent such agreement, and before the confirmation or appointment of any arbitrator, the arbitral institution administering the arbitration or, where there is no such institution, the Court, may, upon the request of a party to the arbitral proceedings and if it considers that it is in the interests of justice to do so, allow one or more third parties to be joined to the arbitration, provided such person:
- (a) is a party to the arbitration agreement; or
  - (b) has consented to joinder in writing,
- unless the arbitral institution administering the arbitration or, where there is no such institution, the Court finds, after giving all parties, including the party or parties to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties.
- (3) No additional party may be joined after the confirmation or appointment of any arbitrator, unless all parties, including the additional party, otherwise agree.

### **40. Language**

- (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. In the absence of such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings.
- (2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

### **41. Statements of claim and defence**

The parties are free to agree whether any, and if so what form, of the written statements of claim and defence are to be used, when these should be supplied and the extent to

which such statements can be later amended. In the absence of such agreement, this shall be determined by the arbitral tribunal having regard to the matters set out in section 34(5).

#### **42. Summary disposal of claims, counterclaims and defences**

- (1) Unless otherwise agreed by the parties, a party may apply to the arbitral tribunal in writing at any time for the summary disposal of part or the whole of a claim, counterclaim or defence, on the basis that any other party has no real prospect of success in respect of the relevant part or whole of the claim, counterclaim or defence.
- (2) The arbitral tribunal shall, in its full discretion, decide whether to allow the application to proceed. If the application is allowed to proceed, the arbitral tribunal shall, after giving the parties an opportunity to make representations, decide the application.
- (3) The arbitral tribunal shall issue any summary determination that is made pursuant to this section in the form of an award.

#### **43. Hearings and written proceedings**

- (1) Subject to any contrary agreement by the parties, the following provisions shall apply to hearings and written proceedings.
- (2) The arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument; whether the hearing is to be conducted, in whole or in part, in person, by video conference, telephone or other communication technology; or whether the proceedings shall be conducted on the basis of documents and other materials.
- (3) Unless the parties have agreed that no hearing shall be held, the arbitral tribunal shall hold such hearings (whether in person, or by video conference or telephone or other communication technology) at an appropriate stage of the proceedings, after consulting the parties. If a hearing is held in person, a party shall be free to apply to the arbitral tribunal for one or more of its fact or expert witnesses to attend the hearing by video conference or telephone or other communication technology.
- (4) The parties shall be given sufficient advance notice as the arbitral tribunal shall decide of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.
- (5) All statements, documents, evidence or other information supplied to the arbitral tribunal by one party shall be communicated to the other party at the same time as it is supplied to the arbitral tribunal.

- (6) For the purpose of subsection (5), any statement, document, evidence or other information may be supplied or communicated electronically.
- (7) For the purpose of subsections (2) and (5), evidence includes any factual or expert evidence upon which a party relies.

#### **44. Party and Party Representative conduct**

- (1) A Party Representative shall:
  - (a) not engage in activities intended to obstruct or delay the arbitral proceedings, jeopardise the integrity of proceedings or the finality of any award;
  - (b) not knowingly or recklessly make a false statement to the arbitral tribunal;
  - (c) preserve and not knowingly conceal or destroy documents that are likely, or advise a party to conceal or destroy, documents that are likely to be relevant to the issues in dispute in the arbitration or which the arbitral tribunal has ordered to be produced; and
  - (d) make sure that the party for whom he acts understands at all times that he must preserve and not conceal or destroy such documents.
- (2) If the arbitral tribunal (whether following a complaint by one party against another Party Representative or on its own initiative) and after giving the relevant Party Representative an opportunity to make representations, finds that a Party Representative contravened subsection (1), the arbitral tribunal may impose one or more of the following sanctions:
  - (a) a written reprimand or caution to the Party Representative;
  - (b) draw adverse inferences when assessing the evidence relied upon, or legal submissions made by, the Party Representative;
  - (c) make an order or award on costs in relation to the conduct of the Party Representative against the party instructing the Party Representative; and
  - (d) adopt any other appropriate measure that the arbitral tribunal considers necessary to preserve the fairness and integrity of the proceedings.
- (3) The arbitral tribunal's decision under subsection (2) must be in writing, with reasons, and must be communicated to all parties to the arbitration.
- (4) The arbitral tribunal is in all cases entitled to consider the conduct of the parties and the Party Representatives when making any decision allocating the costs of the arbitration between the parties.

#### **45. Confidentiality of arbitral proceedings and awards**

- (1) Unless otherwise agreed by the parties, no party may publish, disclose or communicate any Confidential Information to any third party.
- (2) Nothing in subsection (1) prevents the publication, disclosure or communication of Confidential Information by a party:
  - (a) if the publication, disclosure or communication is made:
    - (i) to protect or pursue a legal right or interest of the party; or
    - (ii) to enforce or challenge the award referred to in that subsection, in legal proceedings before a court or other judicial authority in or outside the Abu Dhabi Global Market;
  - (b) if the publication, disclosure or communication is made to any government body, regulatory body, court or tribunal and the party is obliged by law to make the publication, disclosure or communication;
  - (c) if the publication, disclosure or communication is required in order for a party to be in compliance with its financial reporting obligations or the rules of any listing authority or securities exchange;
  - (d) if the publication, disclosure or communication is made to a professional or any other adviser of any of the parties;
  - (e) if the publication, disclosure or communication is made to potential lenders or investors in connection with financing arrangements; or
  - (f) if the arbitral tribunal determines that it is otherwise in the interests of justice that the publication, disclosure or communication of information be permitted.
- (3) Subject to any contrary agreement by the parties, nothing in subsection (1) prevents a party from disclosing or communicating Confidential Information to a third party who has a substantial legal or pecuniary interest in the outcome of the arbitral proceedings.

#### **46. Default of a party**

Unless otherwise agreed by the parties, if:

- (a) the arbitral tribunal is satisfied that there has been inordinate and inexcusable delay on the part of the claimant or counterclaimant in pursuing his claim, and that the delay:

- (i) gives rise or is likely to give rise to a substantial risk that it is not possible to have a fair resolution of the issues in that claim, or
  - (ii) has caused, or is likely to cause, serious prejudice to the respondent,
- the arbitral tribunal may dismiss the claim. The arbitral tribunal may also terminate the proceedings if it considers it appropriate to do so;
- (b) without showing sufficient cause a party:
    - (i) fails to attend or be represented at an oral hearing of which due notice was given, or
    - (ii) where matters are to be dealt with in writing, fails after due notice to submit written evidence or make written submissions,

the arbitral tribunal may continue the proceedings in the absence of that party or, as the case may be, without any written evidence or submissions on his behalf, and may make an award on the basis of the evidence before it. If the arbitral tribunal terminates the proceedings under sub-paragraph (a) above, unless otherwise agreed by the parties, the arbitral tribunal may issue an award on costs in accordance with section 55 below.

#### **47. Expert appointed by the arbitral tribunal**

- (1) Unless otherwise agreed by the parties, the arbitral tribunal after consultation with the parties:
  - (a) may appoint one (1) or more experts to report to it on specific issues to be determined by the arbitral tribunal; and
  - (b) may require a party to give the expert(s) any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.
- (2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert(s) shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him on the points at issue.
- (3) The expenses and costs of the expert(s) appointed by the arbitral tribunal pursuant to this section shall be borne by the parties in accordance with any determination or award made by the arbitral tribunal in that respect.
- (4) Any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.
- (5) For the purpose of this section, and subject to any contrary agreement by the parties, any report, document, information or evidence to be delivered or

communicated to the arbitral tribunal, an expert, a party or parties may be delivered or communicated electronically.

#### **48. Court assistance in taking evidence**

- (1) The arbitral tribunal or a party with the approval of the arbitral tribunal may request from the Court, or any competent court, assistance in taking evidence, which shall include assistance with:
  - (a) the examination of witnesses, either orally or in writing;
  - (b) the production of documents;
  - (c) the inspection, photographing, recording, preservation, custody or detention of any property; and
  - (d) the taking of samples of any property and the carrying out of any experiment on or with any property.
- (2) The Court, or any competent court, may execute the request under subsection (1) within its competence and according to its rules on taking evidence.
- (3) Sections 31(2), (3) and (6) apply to this section *mutatis mutandis*.

### **Chapter 7 – Making of award and termination of proceedings<sup>7</sup>**

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

- (1) The arbitral tribunal shall decide the dispute in accordance with the rules of law chosen by the parties. Any designation of the law or legal system of a given State or jurisdiction shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State or jurisdiction and not to its conflict of laws rules.
- (2) In the absence of any designation by the parties, the arbitral tribunal shall decide the dispute in accordance with the rules of law it considers appropriate.
- (3) In either case, the arbitral tribunal shall take trade usages into account.

#### **50. Decision making by panel of arbitrators**

In arbitral proceedings with more than one (1) arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. If there is no majority, the award shall be made by the president of the arbitral

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<sup>7</sup> Amended 23 December 2020

tribunal alone. However, questions of procedure may be decided by a presiding arbitrator, if so authorised by the parties or all members of the arbitral tribunal.

## **51. Remedies**

- (1) The parties are free to agree on the powers exercisable by the arbitral tribunal as regards to remedies.
- (2) Subject to any contrary agreement by the parties, the tribunal shall have the power to grant any remedy permitted under the substantive law governing the claim for which the remedy is sought.
- (3) Unless otherwise agreed by the parties, and subject to any contrary provision of any applicable law referred to in subsection (2), the tribunal's powers to award remedies shall include (but shall not be limited to) the following:
  - (a) The tribunal may make a declaration as to any matter to be determined in the proceedings;
  - (b) The tribunal may order the payment of a sum of money, in any currency; and
  - (c) The tribunal has the same powers as the court:
    - (i) To order a party to do or refrain from doing anything;
    - (ii) To order specific performance of a contract (other than a contract relating to land); and
    - (iii) To order the rectification, setting aside or cancellation of a deed or other document.

## **52. Interest**

- (1) The parties are free to agree on the powers of the tribunal as regards to the award of interest.
- (2) Subject to any contrary agreement by the parties, the tribunal's powers as regards to the awarding of interest shall be in accordance with the substantive law governing the claim for which an award of interest is sought.
- (3) Unless otherwise agreed by the parties, and subject to any contrary provision of any applicable law referred to in subsection (2), the tribunal's powers to award interest shall include (but shall not be limited to) the following powers:
  - (a) The tribunal may award simple or compound interest from such dates, at such rates and with such rests as it considers meets the justice of the case –

- (i) on the whole or part of any amount awarded by the tribunal, in respect of any period up to the date of the award; or
    - (ii) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment.
  - (b) The tribunal may award simple or compound interest from the date of the award (or any later date) until payment, at such rates and with such rests as it considers meets the justice of the case, on the outstanding amount of any award (including any award of interest under subsection (3) and any award as to costs).
- (4) References in this section to an amount awarded by the tribunal include an amount payable in consequence of a declaratory award by the tribunal.

### **53. Settlement**

- (1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and agreed to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.
- (2) An award on agreed terms shall be made in accordance with the provisions of section 55 and shall state that it is an agreed award. Such an award has the same status and effect as any award made on the merits of the case.

### **54. Awards on different aspects of matters**

The arbitral tribunal may make more than one award at different times on different aspects of the matters to be determined.

### **55. Form and contents of award**

- (1) The award shall be made in writing.
- (2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under section 53.
- (3) The award shall state its date and the seat of the arbitration as determined in accordance with section 34(1). The award shall be deemed to have been made at the seat of the arbitration, irrespective of where it is written or signed, and regardless of the method whereby it is signed, whether it is signed by the members of the arbitral tribunal in person, it is sent to be signed by each member separately, or it is signed by electronic means.

- (4) An award signed by electronic means shall have the same legal validity and enforceability and constitute the original award for the purposes of section 61(2)(a) of these Regulations, as an award with manually executed signatures of arbitral tribunal.
- (5) After the award is made, an electronic copy shall be delivered to each party. An original hard copy of the award shall be delivered on request of a party.
- (6) The arbitral tribunal shall fix the costs of the arbitration in its award or as provided for in subsection (8) below. Unless the arbitral tribunal determines otherwise, the recoverable costs of the arbitration shall be determined on the basis that they are reasonable and proportionate. The term “costs” includes:
  - (a) the fees of the arbitral tribunal to be stated separately as to each arbitrator;
  - (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 of witnesses;
  - (e) other costs for the conduct of the arbitration, including those for meeting rooms, technological solutions such as electronic document management and virtual hearing platforms, interpreters and transcription services;
  - (f) the costs for legal representation and assistance of the successful party if such costs were claimed during the arbitration;
  - (g) the costs of any party-appointed experts if such costs were claimed during the arbitration; and
  - (h) any fees and expenses of any arbitral institution or appointing authority.
- (7) In fixing the costs of the arbitration, the arbitral tribunal may direct to whom, by whom, and in what manner, the whole or any part of the costs shall be paid.
- (8) If the arbitral tribunal does not fix the costs of the arbitration in its award, a party to the arbitral proceedings may, within 30 days of receiving the award, apply to the arbitral tribunal for a further award on costs. After giving the parties an opportunity to make representations, the arbitral tribunal shall make a further award on costs.
- (9) Subject only to sections 58 and 62, all awards made by the arbitral tribunal shall be final and binding on the parties.

## **56. Termination of proceedings**

- (1) The arbitral proceedings are terminated by the arbitral tribunal's award, or where more than one (1) award is made by the arbitral tribunal's final or last award, or by an order of the arbitral tribunal in accordance with subsection (2).
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
  - (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognises a legitimate interest on his part in obtaining a final settlement of the dispute;
  - (b) the parties agree on the termination of the proceedings; or
  - (c) at the request of a party, the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

If the arbitral tribunal issues an order for termination under this subsection (2) , unless otherwise agreed by the parties, the arbitral tribunal may issue an award on costs in accordance with section 55 above.

- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of subsection (5) and of sections 57 and 58.
- (4) The arbitral tribunal may refuse to deliver a final award or an order for termination of the arbitral proceedings in accordance with subsection (2) until its fees and expenses are paid in full.
- (5) Subject to any process agreed between the parties in the arbitration agreement, if the arbitral tribunal refuses to deliver an award or order until its fees and expenses are paid, any party to the arbitral proceedings may request the arbitral institution administering the arbitration or, where there is no such institution, the Court to determine, by such means as it considers appropriate, the amount of the fees and expenses properly payable to the arbitral tribunal.

## **57. Correction and interpretation of award; additional award**

- (1) The parties are free to agree on the powers of the arbitral tribunal to correct, interpret an award or make an additional award.
- (2) If, or to the extent there is no such agreement, the following provisions shall apply.
- (3) Within 30 days of receipt of the award, unless another period of time has been agreed upon by the parties:

- (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of a similar nature; or
  - (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.
- (4) If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within 30 days of receipt of the request. The correction or interpretation shall form part of the award.
  - (5) The arbitral tribunal may correct any error of the type referred to in subsection (3)(a) on its own initiative within 30 days of the date of the award.
  - (6) Unless otherwise agreed by the parties or in respect of an agreed award made under section 53, a party, with notice to the other party, may request, within 30 days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within 60 days.
  - (7) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under subsection (3) or (6).

## Chapter 8 – Recourse against award

### 58. Application for setting aside as exclusive recourse against arbitral award<sup>8</sup>

- (1) Recourse to the Court against an arbitral award made in an arbitration which has its seat in the Abu Dhabi Global Market may be made only by an application for setting aside in accordance with subsection (2). Such an application may only be made to the Court.
- (2) An arbitral award may be set aside by the Court only if:
  - (a) the party making the application furnishes proof that:
    - (i) a party to the arbitration agreement was, under the law applicable to it, under some incapacity;
    - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the Abu Dhabi Global Market;

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<sup>8</sup> Amended 23 December 2020

- (iii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;
  - (iv) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
  - (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or failing such agreement, was not in accordance with the law of the Abu Dhabi Global Market.
- (b) the Court finds that:
- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the laws of the Abu Dhabi Global Market; or
  - (ii) the recognition or enforcement of the award would be contrary to the public policy of the UAE.
- (c) An application for setting aside may not be made after three (3) months have elapsed from the date on which the party making that application had received the award or, if the parties have agreed to any other arbitral process of appeal or review, the date when the applicant or appellant was notified of the result of that process or, if a request had been made under section 57, from the date on which that request had been disposed of by the arbitral tribunal or after such longer period as the parties to the arbitration have agreed in writing.
- (3) Save as set out in this section, there shall be no other recourse or appeal to the Court against an arbitral award made in an arbitration which has its seat in the Abu Dhabi Global Market.
- (4) For the avoidance of doubt, the Court must not undertake a merits review of the award either on fact or law.

## **59. Waiver of the right to bring an action for setting aside<sup>9</sup>**

- (1) The parties may, by an express statement in the arbitration agreement or by a

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<sup>9</sup> Amended 23 December 2020

subsequent written agreement, waive fully the right to bring an action for setting aside or they may limit it to one or several of the grounds listed in section 58(2).

- (2) If the parties have waived the right to bring an action for setting aside the award and if the award is to be enforced in the Abu Dhabi Global Market, the arbitral award may nonetheless be denied recognition and enforcement pursuant to section 62.

#### **PART 4: THE RECOGNITION AND ENFORCEMENT OF AWARDS**

##### **60. Application of this Part**

- (1) This Part 4 applies to:
  - (a) arbitral awards made in arbitrations where the seat of the arbitration is the Abu Dhabi Global Market;
  - (b) New York Convention Awards; and
  - (c) all other arbitral awards which are sought to be recognised and enforced in the Abu Dhabi Global Market, irrespective of the State or jurisdiction in which they are made.
- (2) For the avoidance of doubt, where the UAE has entered into an applicable treaty for the recognition and enforcement of arbitral awards, that treaty shall apply in the Abu Dhabi Global Market and the Court shall comply with the terms of such treaty. This includes, but is not limited to, the New York Convention.

##### **61. Recognition and enforcement of awards**

- (1) An award within the meaning of subsection 60(1):
  - (a) shall be recognised as binding within the Abu Dhabi Global Market on the persons between whom it was made and may accordingly be relied on by those persons by way of defence, set-off or otherwise in any legal proceedings in the Abu Dhabi Global Market; and
  - (b) shall be enforced within the Abu Dhabi Global Market as if it were a judgment of the Court and all of the Court's powers in respect of the enforcement of judgments shall apply to the enforcement of arbitral awards in the manner prescribed in this Part 4 and any rules made for that purpose.
- (2) The party seeking the recognition or enforcement of an award within the meaning of subsection 60(1) shall provide to the Court:

- (a) the original or a duly certified copy of the arbitral award in respect of which enforcement is sought; and
- (b) a copy of the arbitration agreement pursuant to which that arbitral award was rendered.

If the award or the agreement is not made in English, the Court may request the party to provide a translation thereof.

- (3) Where, upon the application of a party for the recognition or enforcement of an arbitral award, the Court decides that the award shall be recognised or enforced, it shall issue an order to that effect.
- (4) An order recognising or enforcing an arbitral award shall be issued in English, unless the Court shall determine otherwise. If the Court determines that the order should be issued in another language in addition to English, either language version, in its original or certified copy form, shall constitute sufficient proof of the order for recognition or enforcement.
- (5) Subject to Article 13 of the ADGM Founding Law, awards recognised by the Court may be enforced outside the Abu Dhabi Global Market in accordance with the applicable legislation in force and recognition under these Regulations includes ratification for the purposes of any such applicable legislation.

## **62. Grounds for refusing recognition or enforcement**

- (1) Recognition or enforcement of an arbitral award, irrespective of the State or jurisdiction in which it was made, may be refused by the Court only if:
  - (a) the party making the application furnishes proof that:
    - (i) a party to the arbitration agreement was, under the law applicable to it, under some incapacity;
    - (ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;
    - (iii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case;
    - (iv) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions

- on matters submitted to arbitration may be recognised and enforced;
- (v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
  - (vi) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.
- (b) the Court finds that:
- (i) the subject-matter of the difference is not capable of settlement by arbitration under the laws of the Abu Dhabi Global Market; or
  - (ii) the recognition or enforcement of the award would be contrary to the public policy of the UAE.
- (2) If an application for the setting aside or suspension of an award has been made to a court referred to in subsection (1), the Court may, if it considers it proper, adjourn its decision and may also, on the application of the party seeking recognition or enforcement of the award, order the other party to provide appropriate security.
- (3) Any party seeking recourse against an arbitral award made in the seat of the Abu Dhabi Global Market shall not be permitted to make an application under subsection (1) if it has made or could have made an application under section 58 of these Regulations.

## SCHEDULE 1

### INTERPRETATION

#### 1. Rules of interpretation<sup>10</sup>

- (1) In these Regulations, unless a contrary intention appears, a reference to:
  - (a) a statutory provision includes a reference to the statutory provision as amended or re-enacted from time to time;
  - (b) a person includes any natural person, body corporate or body unincorporate, including a company, partnership, unincorporated association, government or state;
  - (c) an obligation to publish or cause to be published a particular document shall, unless expressly provided otherwise in these Regulations, include publishing or causing to be published in printed or electronic form;
  - (d) a day shall refer to a business day, being a normal working day in the Abu Dhabi Global Market;
  - (e) a calendar year shall mean a year of the Gregorian calendar;
  - (f) a reference to the masculine gender includes the feminine and *vice versa*; and
  - (g) words in the singular shall include the plural and *vice versa*.
- (2) The headings in these Regulations shall not affect the interpretation of these Regulations.
- (3) Where a provision of these Regulations leaves the parties free to determine or agree upon an issue, such freedom includes the right of the parties to authorise a third party, including an arbitration institution or appointing authority, to make a determination on that issue.
- (4) A reference in these Regulations to a Part, Section or Schedule by number only, and without further identification, is a reference to the Part, Section or Schedule of that number in these Regulations.
- (5) A reference in a section or other division of these Regulations to a subsection, paragraph, subparagraph or section by number or letter only is a reference to the subsection, paragraph, subparagraph or section of that number or letter contained in the section or other division of these Regulations in which that reference occurs.

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<sup>10</sup> Amended 23 December 2020

- (6) Unless the context otherwise requires, where these Regulations refer to an enactment, the reference is to that enactment as amended from time to time, and includes a reference to that enactment as extended or applied by or under another enactment, including any other provision of that enactment.
- (7) References in these Regulations to a writing, filing, instrument or certificate include any mode of communication that preserves a record of the information contained therein and is capable of being reproduced in tangible form, including electronic means.
- (8) Where a provision of these Regulations refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules, including those of any institution, referred to in that agreement.
- (9) Where a provision of these Regulations, other than in sections 46(a) and 56(2)(a), refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim.
- (10) A reference in these Regulations to a hearing, argument or a report being conducted or delivered orally includes a remote hearing, argument or report that allows parties to orally present their case by using technological solutions such as telephone, video conference or other communication technology.

## **2. Legislation in the Abu Dhabi Global Market**

References to legislation in these Regulations shall be construed in accordance with the following provisions:

- (a) Federal Law is law made by the federal government of the United Arab Emirates;
- (b) Abu Dhabi Law is law made by the Ruler, as applicable in the Emirate of Abu Dhabi; and
- (c) these Regulations are the Arbitration Regulations 2015 made by the Board.

## **3. Defined Terms<sup>11</sup>**

In these Regulations, unless the context indicates otherwise, the defined terms listed below shall have the corresponding meanings:

- (a) “Abu Dhabi Global Market” has the meaning given in section 1 of the Interpretation Regulations 2015;
- (b) “arbitral tribunal” means a sole arbitrator, a panel of arbitrators or an

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<sup>11</sup> Amended 23 December 2020

emergency arbitrator appointed pursuant to the rules of arbitration agreed to or adopted by the parties or pursuant to these Regulations;

- (c) “Board” has the meaning given in section 1 of the Interpretation Regulations 2015;
- (d) “Confidential Information” means any information relating to:
  - (i) the arbitral proceedings under the arbitration agreement; or
  - (ii) an award made in those arbitral proceedings;
- (e) “Court” means the Court of First Instance;
- (f) “court” shall mean any competent court of any State or jurisdiction, including the Court, where applicable;
- (g) “Court of First Instance” has the meaning given in section 229(1) of the Court Regulations;
- (h) “Court Regulations” means the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015;
- (i) “dispute” includes any difference;
- (j) “hearing” includes a procedural hearing or a case management conference prior to or after the presentation of evidence or oral argument;
- (k) “legal proceedings” means civil proceedings in the ADGM Courts;
- (l) “legislation” includes regulations or rules made under legislation;
- (m) “ADGM Founding Law” means Law No. (4) of 2013 concerning Abu Dhabi Global Market, as amended by Law No. (12) of 2020, issued by His Highness the Ruler;
- (n) “New York Convention” means the Convention on the Recognition and Enforcement of Foreign Arbitral Awards adopted by the United Nations Conference on International Commercial Arbitration on 10 June 1958;
- (o) “New York Convention Award” means an award made, in pursuance of an arbitration agreement, in the territory of a state which is a signatory to the New York Convention (other than the UAE). An award shall be treated as made at the seat of the arbitration, regardless of where it was signed, despatched or delivered to any of the parties;
- (p) “Party Representative” means any person, including an employee of a party, who appears in an arbitration on behalf of a party and makes submissions, arguments or representations to the arbitral tribunal on behalf of such party (other than as a witness or expert), whether or not they hold a legal qualification

or are admitted to practice law in any jurisdiction;

- (q) “seat” means the juridical seat of the arbitration designated (a) by the parties to the arbitration agreement, or (b) by any arbitral or other institution or person vested by the parties with powers in that regard, or (c) by the arbitral tribunal;
- (r) “these Regulations” means the Arbitration Regulations 2015 issued by the Board of Directors of the Abu Dhabi Global Market, as amended in December 2020;
- (s) “Ruler” means the ruler of the Emirate of Abu Dhabi;
- (t) “third party funding agreement” means an agreement under which a person (“the funder”) agrees to fund (directly or indirectly and in whole or in part) the provision of advocacy or litigation services (by a person other than the funder) to a party in return for a sum payable by the party in specified circumstances; and
- (u) “UAE” means the United Arab Emirates.

## SCHEDULE 2<sup>12</sup>

### MANDATORY PROVISIONS OF THE REGULATIONS

The mandatory provisions referred to in Section 9 of the Regulations are the following:

- Section 11 (Waiver and loss of right to object);
- Section 12 (Extent of court intervention);
- Section 14 (Arbitration agreement);
- Section 16 (Stay of legal proceedings);
- Section 20 (Grounds for challenge);
- Section 22 (Failure or impossibility to act);
- Section 24 (Liability of arbitral tribunal and others);
- Section 26 (Objection to the substantive jurisdiction of tribunal);
- Section 27 (Determination of preliminary point of jurisdiction);
- Section 30 (Recognition and enforcement of interim measures by the Court);
- Section 31 (Power of the Court to order interim measures);
- Section 32 (Privacy of arbitration related court proceedings);
- Section 33 (Fair treatment of parties);
- Section 34(4) and (5) (Determination of rules of procedure);
- Section 35(2) (Seat of arbitration);
- Section 37(1) and (2) (Disclosure of a third-party funding agreement);
- Section 38(3) (Consolidation orders – limitation periods);
- Section 44 (Party and party’s representatives conduct);
- Section 45(2) (Confidentiality of arbitral proceedings and awards);
- Section 47(3) and (4) (Expert report or evidentiary document);
- Section 48 (Court assistance in taking evidence);
- Section 49(1) and (3) (Rules applicable to substance of dispute);
- Section 54 (Awards on different aspects of matters);
- Section 55(1) and (3) to (9) (Form and contents of award);
- Section 56(1) to (4) (Termination of proceedings);
- Section 59 (Waiver of the right to bring an action for setting aside);
- Section 60 (Application of this Part);
- Section 61 (Recognition and enforcement of awards); and
- Section 62 (Grounds for refusing recognition or enforcement).

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<sup>12</sup> Amended 23 December 2020