

## **Arbitration Rules**

### **I) INTRODUCTION**

#### **Scope of Application**

##### **Article 1**

1. Where parties have agreed in writing to subject their disputes to the Arbitration and Mediation Center of the Chilean American Chamber of Commerce (hereinafter "Center"), the arbitration shall take place in accordance with these rules, as in effect at the date of commencement of the arbitration proceeding, subject to whatever modifications the parties may adopt in writing.

2. These rules govern the arbitration, except that, where any such rule is in conflict with any provision of the law applicable to the arbitration which the parties cannot derogate, that provision shall prevail.

3. These rules specify the duties and responsibilities of the Center. The Center may provide its services through its own facilities or those with which it has cooperative agreements in providing its services.

#### **Roster of Arbitrators**

##### **Article 2**

The Center, according to its By-Laws, shall establish and maintain a list of persons who can become Arbitrators. The Center will also provide the administrative support required to facilitate the arbitration proceeding.

### **II) COMMENCING THE ARBITRATION**

#### **Notice of Arbitration and Statement of Claim**

##### **Article 3**

1. The party initiating arbitration ("claimant") shall give written notice of arbitration to the Center and at the same time to the party against whom a claim is being made ("respondent").

2. Arbitral proceedings shall be deemed to commence on the date on which the Center and the respondent receive the notice of arbitration.

3. The notice shall contain a statement of claim which shall include the following:

- (a) a demand that the dispute be referred to arbitration;
- (b) the names and addresses of the parties;
- (c) a reference to the arbitration clause or agreement that is invoked;
- (d) a reference to any contract out of, or in relation to, which the dispute arises;
- (e) the facts and grounds that are supporting it;
- (f) the relief or remedy sought and the amount claimed; and
- (g) may include proposals as to the means of designating and the number of arbitrators, the place of arbitration and the language(s) of the arbitration.

Upon receipt of the notice of arbitration, the Center shall communicate with all parties involved with respect to the arbitration and shall acknowledge the commencement of the arbitration proceeding.

#### **Statement of Defense and Counterclaim**

##### **Article 4**

1. Within 30 days upon notice of the establishment of the tribunal, the respondent shall submit a statement of defense and give notice to the Center and the parties.

2. At the time a respondent submits its statement of defense, a respondent may make counterclaims or assert setoffs as to any claim covered by the agreement to arbitrate, as to which the claimant shall within 30 days submit a written statement

of defense to the respondent and any other parties and to the Center.

3. The arbitral tribunal may extend any of the time limits indicated in this article if it considers such an extension justified.

#### **Amendments to Claim**

##### **Article 5**

During the arbitral proceedings, any party may amend or supplement its claim, counterclaim or defense, unless the tribunal considers it inappropriate to allow such amendment or supplement because of the party's delay in making it, prejudice to the other parties or any other circumstances. A party may not amend or supplement a claim or counterclaim if the amendment or supplement would fall outside the scope of the agreement to arbitrate.

#### **Administrative Conference**

##### **Article 6**

At the request of any party or at the discretion of the Center, an administrative conference with the Center and the parties and/or their representatives will be scheduled in appropriate cases to expedite the arbitration proceedings.

### **III) THE TRIBUNAL**

#### **Nationality of the Arbitrators**

##### **Article 7**

Any person of any nationality can be appointed arbitrator.

#### **Number of Arbitrators**

##### **Article 8**

If the parties have not agreed on the number of arbitrators, one arbitrator shall be appointed unless the Center determines in its discretion that three arbitrators are appropriate because of the large size, complexity or other circumstances of the case.

#### **Appointment of Arbitrators**

##### **Article 9**

1. The parties may, upon mutual agreement, specify the procedure for appointing arbitrators from the list referred to in Article 2, and shall inform the Center.

2. Within 30 days after the commencement of the arbitration proceeding, the respondent shall give his answer to the Center, the claimant and the other parties regarding any proposal of the claimant as to the number of arbitrators, place of arbitration or languages of the arbitration, except when the parties have previously agreed on these matters.

3. The parties by mutual agreement may appoint arbitrators from among the names of the list referred to in Article 2, with or without the assistance of the Center. When such appointments are made, the parties shall notify the Center so that the notice of the appointment can be communicated to the arbitrators, together with a copy of these rules.

4. If within 45 days after the commencement of the arbitration proceeding, the parties have not mutually agreed on the procedure for appointing the arbitrator(s) or have not mutually agreed on the arbitrator(s), the Center shall, at the written request of any party, appoint the arbitrator(s) and designate the presiding arbitrator. If all of the parties have mutually agreed upon a procedure for appointing the arbitrator(s), but all appointments have not been made within the time limits provided in that procedure, the Center shall, at the written request of any party, complete the appointment procedure.

5. The Center, after inviting consultation with the parties, shall appoint the arbitrators. At the request of any party or on its own initiative, the Center may appoint nationals of a country other than that of any of the parties.

6. Unless the parties have agreed otherwise, if the notice of arbitration names two or more claimants or two or more respondents, no later than 45 days after the commencement of the arbitration proceeding, the Center shall appoint all the arbitrators.

7. Once the tribunal has been established, the Center shall communicate all the corresponding notices.

### **Impartiality and Independence of Arbitrators**

#### **Article 10**

1. Arbitrators acting under these rules shall be impartial and independent. Prior to accepting appointment, a prospective arbitrator shall disclose to the Center any circumstance likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence. If at any stage during the arbitration, new circumstances arise that may give rise to such doubts, an arbitrator shall promptly disclose such circumstances to the parties and to the Center. Upon receipt of such information from an arbitrator or a party, the Center shall communicate it to the other parties and to the tribunal.

2. No party or anyone acting on its behalf shall have any ex parte communication relating to the case with any arbitrator, or with any candidate for appointment as party-appointed arbitrator except to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability or independence in relation to the parties, or to discuss the suitability of candidates for selection as a third arbitrator when the parties or party-designated arbitrators are to participate in that selection. No party or anyone acting on its behalf shall have any ex parte communication relating to the case with any candidate for presiding arbitrator.

### **Challenge of Arbitrators**

#### **Article 11**

1. A party may challenge any arbitrator whenever circumstances exist that give rise to justifiable doubts as to the arbitrators impartiality or independence. A party wishing to challenge an arbitrator shall send notice of the challenge to the Center within 15 days after being notified of the appointment of the arbitrator or within 15 days after the circumstances giving rise to the challenge become known to that party.

2. The challenge shall state in writing the reasons for the challenge.

3. Upon receipt of such a challenge, the Center shall notify the other parties of the challenge. When an arbitrator has been challenged by one party, the other party or parties may agree to the acceptance of the challenge and, if there is agreement, the arbitrator shall withdraw. The challenged arbitrator may also withdraw from office in the absence of such agreement. In neither case does withdrawal imply acceptance of the validity of the grounds for the challenge.

4. If the other party or parties do not agree to the challenge or the challenged arbitrator does not withdraw, the Center in its sole discretion shall make the decision on the challenge.

### **Replacement of an Arbitrator**

#### **Article 12**

If an arbitrator withdraws after a challenge, or the Center sustains the challenge, or the Center determines that there are sufficient reasons to accept the resignation of an arbitrator, or an arbitrator dies, a substitute arbitrator shall be appointed pursuant to the provisions of Article 9, unless the parties agree otherwise.

#### **Article 13**

1. If an arbitrator on a three-person tribunal fails to participate in the arbitration for reasons other than those identified in Article 12, the two other arbitrators shall have the power in their sole discretion to continue the arbitration and to make any decision, ruling or award, notwithstanding the failure of the third arbitrator to participate. In determining whether to continue the arbitration or to render any decision, ruling or award without the participation of the third arbitrator, the two other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the third arbitrator for such nonparticipation, and such other matters as they consider appropriate in the circumstances of the case. In the event that the two other arbitrators determine not to continue the arbitration without the participation of the third arbitrator, the Center on proof satisfactory to it shall declare the office vacant, and a substitute arbitrator shall be appointed pursuant to the provisions of Article 9, unless the parties agree otherwise.

2. If a substitute arbitrator is appointed according to these rules, the tribunal shall determine at its sole discretion whether all or part of any prior hearings shall be repeated.

#### **IV) GENERAL RULES**

##### **Representation**

###### **Article 14**

Any party may be represented in the arbitration. The names, addresses and telephone numbers of representatives shall be communicated in writing to the other parties and to the Center. Once the tribunal has been established, the parties or their representatives may communicate in writing directly with the tribunal.

##### **Place of Arbitration**

###### **Article 15**

1. If the parties disagree as to the place of arbitration, the Center may initially determine the place of arbitration, subject to the power of the tribunal to determine the final place of arbitration within 60 days after its establishment. All such determinations shall be made with due consideration to the contentions of the parties and the circumstances of the arbitration.

2. The tribunal may hold conferences or examine witnesses or inspect property or documents at any place it deems appropriate. The parties shall be given sufficient written notice to enable them to be present at any such proceedings.

##### **Oaths**

###### **Article 16**

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

##### **Language**

###### **Article 17**

If the parties have not agreed otherwise, the language(s) of the arbitration shall be that of the documents containing the arbitration agreement, subject however, to the power of the tribunal to determine otherwise based upon the contentions of the parties and the circumstances of the arbitration. The tribunal may order that any documents delivered in another language be accompanied by a translation into the language(s) of the arbitration.

##### **Jurisdiction**

###### **Article 18**

1. The tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.

2. The tribunal shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the tribunal that the contract is null and void shall not for that reason alone render invalid the arbitration clause.

3. The party that challenges the jurisdiction of the tribunal or the arbitrability of a claim or counterclaim shall do so when filing the statement of defense, as provided in Article 4, to the claim or counterclaim that gives rise to the challenge. The tribunal may rule on such objections as a preliminary matter or as part of the final award.

### **Conduct of the Arbitration**

#### **Article 19**

1. Subject to these rules, the tribunal may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

2. The tribunal, at its discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute. It may conduct a preparatory conference or preliminary hearing with the parties for the purpose of organizing, scheduling and agreeing to procedures to expedite the subsequent proceedings.

3. The tribunal may, at its discretion, direct the order of proof, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence, and direct the parties to focus their presentations on those issues which are pertinent to the total or partial solution of the dispute.

4. Documents or information submitted to the tribunal by one party shall at the same time be communicated by that party to the other party or parties and to the Center.

### **Further Written Statements**

#### **Article 20**

1. The tribunal may decide whether the parties shall present any written statements in addition to statements of claims and counterclaims and statements of defense, and it shall fix the periods of time for submitting any such statements.

2. The periods of time fixed by the tribunal for the communication of such written statements should not exceed 45 days. However, the tribunal may extend such time limits if it considers such an extension justified.

### **Notices**

#### **Article 21**

1. Unless otherwise agreed by the parties or ordered by the tribunal, all notices, statements, resolutions and written communications may be served on a party by air mail, courier; facsimile transmission; telex; telegram; or other written forms of electronic communication addressed to the party or its representative at its last known address, or by personal service.

2. For the purpose of calculating time limits under these rules, they shall begin to run on the day following the day when a notice, statement, resolution or written communication is received. If the last day of such period is an official holiday at the place received, the period is extended until the following first business day. In the calculation of this period, official holidays shall be included.

3. All notices shall be done through the Center, which, at the request of any party, shall certify them.

### **Evidence**

#### **Article 22**

1. Each party shall have the burden of proving the facts relied on to support its claim or defense.
2. The tribunal may order a party to deliver to the tribunal and to the other parties a summary of the documents and other evidence which that party intends to present in support of its claim, counterclaim or defense.
3. At any time during the proceedings, the tribunal may order parties to produce other documents, exhibits or other evidence it deems necessary or appropriate.

### **Inspection or Investigation**

#### **Article 23**

If the tribunal considers it necessary to make an inspection or investigation in connection with the arbitration, it shall set the date and time and notify the parties and the Center thereof.

Any party who so desires may be present at such an inspection or investigation. In the event that one or all parties are not present at the inspection or investigation, the tribunal shall make a verbal or written report to the parties and afford them the opportunity to comment.

### **Hearings**

#### **Article 24**

1. The tribunal shall give the parties at least 30 days' advance notice of the date, time and place of the initial oral hearing. The tribunal shall give reasonable notice of subsequent hearings.
2. At least 15 days before the hearings, each party shall give the tribunal and the other parties the names and addresses of any witnesses it intends to present, the subject of their testimony and the languages in which such witnesses will give their testimony.
3. At the request of the tribunal or pursuant to mutual agreement of the parties, the Center may make arrangements for the translation of oral testimony or record of the hearing.
4. Hearings are private unless the parties agree otherwise or law provides to the contrary. The tribunal may require any witness or witnesses to withdraw during the testimony of other witnesses. The tribunal shall determine the manner in which witnesses shall be examined.
5. The testimony of witnesses may also be presented in the form of written statements signed by them.
6. The tribunal shall freely determine the admissibility, relevance, materiality and weight of the evidence offered by any party.

### **Interpreters**

#### **Article 25**

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

### **Interim Measures of Protection**

#### **Article 26**

1. At the request of any party, the tribunal may take whatever interim measures it deems necessary, including injunctive relief and measures for the protection or conservation of property.
2. Such interim measures may take the form of an interim award, and the tribunal may require security for the costs of such measures.

3. A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

4. The tribunal may in its discretion apportion costs associated with applications for interim relief in any interim award or in the final award.

## **Experts**

### **Article 27**

1. The tribunal may appoint one or more independent experts to report to it, in writing, on specific issues designated by the tribunal and communicated to the parties.

2. The parties shall provide such an expert with any relevant information or produce for inspection any relevant documents or goods that the expert may require. Any dispute between a party and the expert as to the relevance of the requested information or goods shall be referred to the tribunal for decision.

3. Upon receipt of an expert's report, the tribunal shall send a copy of the report to all parties and shall give the parties an opportunity to express, in writing, their opinion on the report. A party may examine any document on which the expert has relied in such a report.

4. At the request of any party, the tribunal shall give the parties an opportunity to question the expert at a hearing. At this hearing, parties may present expert witnesses to testify on the points at issue.

## **Default**

### **Article 28**

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

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

3. If one of the parties, duly invited to produce documentary 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 Hearing**

### **Article 29**

1. If the parties state that they have no further testimony or evidence to submit, the tribunal may declare the respective hearing closed.

2. The tribunal, on its own motion or upon application of a party, may reopen the hearing at any time before the award is made.

## **Waiver of Right to Object**

### **Article 30**

A party who knows that any provision of, or requirement under, these rules has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such noncompliance, shall be deemed to have waived his right to object.

## **Awards, Decisions and Rulings**

### **Article 31**

1. When there is more than one arbitrator, any award, decision or ruling of the arbitral tribunal shall be made by a majority of the arbitrators. If any arbitrator fails to sign the award, it shall be accompanied by a statement of the reason for the absence of such signature.
2. When the parties or the tribunal so authorize, the presiding arbitrator may make decisions or rulings on questions of procedure, subject to revision by the tribunal.
3. The arbitrator's resolutions are not subject to any recourse, except the rectification covered by Article 35 of these rules.

#### **Form and Effect of the Award**

##### **Article 32**

1. Awards shall be made promptly in writing by the tribunal, after the closure of the hearing, and shall be final and binding on the parties. The parties undertake to carry out any such award without delay.
2. In the event of failure to comply voluntarily, enforcement of the award may be demanded from the competent tribunal in whose jurisdiction it was issued.
3. The tribunal shall state the reasons upon which the award is based.
4. The award shall contain the date and the place where the award was made, pursuant to Article 15.
5. An award may be public only with the consent of all parties or as required by law. Copies of the award shall be communicated to the parties by the Center.
6. If the arbitration law of the country where the award is made requires the award to be filed or registered, the tribunal shall comply with such requirement.
7. In addition to making a final award, the tribunal may make interim, interlocutory, or partial orders or awards.

#### **Applicable Laws**

##### **Article 33**

1. The tribunal shall decide as amiable compositor or ex aequo et bono and observe in its procedures and in its award the provisions of these rules, without prejudice to the agreement of the parties.
2. As to the substance of the dispute, the tribunal shall make the award pursuant to the substantive law(s) or rules of law designated by the parties as applicable to the dispute. Failing such a designation by the parties, the tribunal shall apply such law (s) or rules of law as it deems to be appropriate.
3. In arbitrations involving the enforcement, interpretation or execution of contracts, the tribunal shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.
4. A monetary award shall be in the currency or currencies of the contract unless the tribunal considers another currency more appropriate. The tribunal may award interests as it considers appropriate, taking into consideration the contract and applicable law.

#### **Settlement or other reasons for Termination**

##### **Article 34**

1. If the parties settle the dispute before an award is made, the tribunal shall terminate the arbitration and, if requested by all parties, may record the settlement in the form of an award on agreed terms.
2. If the continuation of the proceedings becomes unnecessary or impossible, the tribunal shall end the proceedings and notify the parties. The tribunal shall

thereafter issue an order terminating the arbitration, unless a party raises justifiable grounds for objection.

#### **Rectification or Correction of the Award**

##### **Article 35**

1. Within 30 days after the notice of the award, the tribunal on its own motion or upon application of a party, may clarify doubtful items, rectify omissions or unresolved issues and correct any clerical, reference or computation errors that manifestly appear in the same award.

2. If the tribunal considers such a request justified, it shall comply with such a request within 30 days after the request.

#### **Costs and Expenses**

##### **Article 36**

The tribunal shall fix the costs of arbitration in its award. The tribunal may apportion such costs among the parties if it determines that such apportionment is reasonable, taking into account the circumstances of the case.

Such costs may include:

- a. the fees and expenses of the arbitrators;
- b. the costs of assistance required by the tribunal, including its experts;
- c. the filing fee;
- d. the expenses of the Center;
- e. the reasonable costs for legal representation of a successful party; and
- f. any such costs incurred in connection with an application for interim or emergency relief pursuant to Article 26.

#### **Compensation of Arbitrators**

##### **Article 37**

Arbitrators shall be compensated based upon their amount of service, taking into account their stated rate of compensation and the size and complexity of the case.

The Center, based on such considerations, shall arrange with the parties and with each of the arbitrators an appropriate hourly rate or quantity rate as soon as the arbitration is started. If the parties fail to agree on the terms of compensation, the Center shall establish an appropriate rate and communicate it to the parties.

#### **Deposit of Costs**

##### **Article 38**

1. When a party files claims, the Center may request the filing party to deposit appropriate amounts as an advance for the costs referred to in Article 36, paragraphs (a), (b), (d) and (f).

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

3. If the deposits requested are not paid in full within 30 days after the receipt of the request, the Center shall so inform the parties, in order that one or the other of them may make the required payment. If such payments are not made, the tribunal may order the suspension or termination of the proceedings.

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

#### **Confidentiality**

##### **Article 39**

Confidential information disclosed during the proceedings by the parties or by witnesses shall not be divulged by the arbitrators or the Center, unless otherwise agreed by the parties, or required by law.

## **Liability**

### **Article 40**

The members of the tribunal and the Center shall not be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

## **Interpretation of Rules**

### **Article 41**

The tribunal shall interpret and apply these rules insofar as they relate to its powers and duties. The Center shall interpret and apply all other rules.

## **ADMINISTRATIVE FEES**

The Center shall prescribe nonrefundable administrative fees to compensate it for the cost of providing its services and covering its administrative expenses.

The filing fee shall be advanced by the initiating party or parties, subject to final apportionment by the tribunal in the award.

The filing fees of the Center are based on the amount of the claim or counterclaim.

<u>Amount of Claim</u>	<b>Fee Amount</b>	<u>Filing Fee</u>
Hasta US\$10.000		US\$500
US\$10.001 hasta US\$50.000		US\$750
US\$50.001 hasta US\$100.000		US\$1.250
US\$100.001 hasta US\$250.000		US\$2.000
US\$250.001 hasta US\$500.000		US\$3.500
US\$500.001 hasta US\$1.000.000		US\$5.000

The filing fee for claims in excess of US\$1,000,000 will be negotiated.

When no amount can be stated at the time of filing, the minimum filing fee is US\$2,000, subject to increase when the claim or counterclaim is disclosed.

When a claim or counterclaim is not a monetary amount, an appropriate filing fee will be determined by the Center.

The minimum filing fee for any case having three or more arbitrators is US\$2,000.

## **Hearing Fees**

For each day of hearing held before a single arbitrator, an administrative fee of US\$150 is payable by each party.

For each day of hearing held before a multiarbitrator panel, an administrative fee of US\$250 is payable by each party.

There is no Center hearing fee for the initial Procedural Hearing.

## **Postponement/Cancellation Fees**

A fee of US\$150 is payable by a party which, duly notified and without showing a justifiable reason, causes the postponement of any hearing scheduled before a single arbitrator.

A fee of US\$250 is payable by a party which, duly notified and without showing a justifiable reason, causes the postponement of any hearing scheduled before a multiarbitrator panel.

**Suspension for Nonpayment**

If arbitrator compensation or administrative charges have not been paid in full, the Center may so inform the parties in order that one of them may advance the required payment. If such payments are not made, the tribunal may order the suspension or termination of the proceedings.