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Arbitration Rules

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Article 1

Scope of application

These Arbitration Rules shall apply to every dispute in accordance with Article 28 § 2 of COTIF, which is referred to the Arbitration Tribunal in accordance with Title V of COTIF, in so far as the Parties have not agreed to proceed otherwise.

Article 2

Commencement of arbitration proceedings

§ 1 Arbitration proceedings shall commence by referring the dispute to the Arbitration Tribunal. This shall take place by sending the Secretary General the agreement to refer to arbitration concluded between the Parties in accordance with Article 29 of COTIF. Arbitration proceedings shall begin upon the Secretary General's receipt of the agreement to refer to arbitration.

§ 2 The commencement of arbitration proceedings shall have the same effect, as regards the interruption of periods of limitation, as that attributed by the applicable provisions of substantive law to the institution of an action in the ordinary courts or tribunals.

Article 3

Agreement to refer to arbitration

The agreement to refer to arbitration shall, in particular, specify:

- a) the subject matter of the dispute;
- b) the composition of the Tribunal and the period agreed for nomination of the arbitrator or arbitrators;
- c) the place where it is agreed that the Tribunal is to sit.

Article 4

Composition of the Arbitration Tribunal. Appointment of arbitrators

§ 1 A panel of arbitrators shall be established and kept up to date by the Secretary General. Each Member State may nominate two of its nationals to the panel of arbitrators.

§ 2 The Arbitration Tribunal shall be composed of one, three or five arbitrators in accordance with the agreement to refer to arbitration. The arbitrators shall be selected from persons who are on the panel referred to in § 1. Nevertheless, if the agreement to refer to arbitration provides for five arbitrators, each of the parties may select one arbitrator who is not on the panel. If the agreement to refer to arbitration provides for a sole arbitrator, he shall be selected by mutual agreement between the parties. If the agreement to refer to arbitration provides for three or five arbitrators, each party shall select one or two arbitrators as the case may be; these, by mutual agreement, shall appoint the third or fifth arbitrator, who shall be President of the Arbitration Tribunal. If the parties cannot agree on the selection of a sole arbitrator, or the selected arbitrators cannot agree on the appointment of a third or fifth arbitrator, the appointment shall be made by the Secretary General.

- § 3 The sole arbitrator, or the third or fifth arbitrator, must be of a nationality other than that of either party, unless both are of the same nationality.
- § 4 The intervention of a third party in the dispute shall not affect the composition of the Arbitration Tribunal.
- § 5 If the Secretary General has to appoint the arbitrator(s), he shall do so as promptly as possible. In making the appointment, the Secretary General shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.
- § 6 If, within the period agreed, a party has not notified the other party of the arbitrator(s) he has appointed, the second party may request the Secretary General to appoint the arbitrator(s).

Article 5

Challenge of arbitrators

- § 1 A prospective arbitrator shall disclose to those who approach him in connexion with his possible appointment any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, once appointed or chosen, shall disclose such circumstances to the parties unless they have already been informed by him of these circumstances.
- § 2 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence. A party may challenge the arbitrator appointed by him only for reasons of which he becomes aware after the appointment has been made.
- § 3 A party who intends to challenge an arbitrator shall send notice of his challenge within fifteen days after the appointment of the challenged arbitrator has been notified to the challenging party or within fifteen days after the circumstances mentioned in § 1 or 2 became known to that party. The challenge shall be notified to the other party, to the arbitrator who is challenged, to the other members of the Arbitration Tribunal and to the Secretary General. The notification shall be in writing and shall state the reasons for the challenge.
- § 4 When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
- § 5 If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made by the Secretary General.

Article 6
Replacement of an arbitrator

- § 1 In the event of the death or resignation of an arbitrator during the course of the arbitration proceedings, a substitute arbitrator shall be appointed pursuant to the procedure provided for in Article 4 that was applicable to the appointment or choice of the arbitrator being replaced.
- § 2 In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his performing his functions, the procedure in respect of the challenge and replacement of an arbitrator as provided shall apply.

Article 7
Procedure

- § 1 The Arbitration Tribunal shall conduct the procedure to be followed having regard in particular to the following provisions:
- a) it shall enquire into and determine cases on the basis of the evidence submitted by the parties, but will not be bound by their interpretations when it is called upon to decide a question of law;
 - b) it may not award more than the claimant has claimed, nor anything of a different nature, nor may it award less than the defendant has acknowledged as due;
 - c) the arbitration award, setting forth the reasons for the decision, shall be drawn up by the Arbitration Tribunal and notified to the parties by the Secretary General;
 - d) save where the mandatory provisions of the law of the place where the Arbitration Tribunal is sitting otherwise provide and subject to contrary agreement by the parties, the arbitration award shall be final.
- § 2 The Arbitration Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at any stage of the proceedings each party is given a full opportunity of presenting his case.
- § 3 If either party so requests at any stage of the proceedings, the Arbitration Tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the Arbitration Tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
- § 4 If under Articles 5 and 6 the sole or presiding arbitrator is replaced, any hearings held previously shall be repeated; if any other arbitrator is replaced, such prior hearings may be repeated at the discretion of the Arbitration Tribunal.
- § 5 All documents or information supplied to the Arbitration Tribunal by one party shall at the same time be communicated by that party to the other party.

Article 8 Representation and assistance

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

Article 9 Language

- § 1 Subject to an agreement by the parties, the Arbitration Tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.
- § 2 The Arbitration Tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the Arbitration Tribunal.

Article 10 Statement of claim

- § 1 If the statement of claim was contained in the notice of arbitration, the Secretary General shall communicate the statement of claim to the defendant and to each of the arbitrators. Otherwise, the Arbitration Tribunal shall determine a period of time within which the claimant must communicate his statement of claim to the Secretary General, the defendant and to each of the arbitrators.
- § 2 The statement of claim shall include the following particulars:
- a) the names and addresses of the parties;
 - b) a statement of the facts supporting the claim;
 - c) the points at issue;
 - d) the relief or remedy sought.
- § 3 The claimant shall annex to his statement of claim all documents he deems relevant or may add a reference to the documents or other evidence he will submit.

Article 11 Statement of defence

- § 1 Within a period of time to be determined by the Arbitration Tribunal, the defendant shall communicate his statement of defence in writing to the claimant and to each of the arbitrators.

- § 2 The statement of defence shall reply to the particulars b), c) and d) of the statement of claim (Article 10). The defendant may annex to his statement the documents on which he relies for his defence or may add a reference to the documents or other evidence he will submit.
- § 3 In his statement of defence, or at a later stage in the arbitration proceedings the defendant may make a counter-claim arising out of the same contract or rely on a claim arising out of the same contract for the purpose of a set-off, if the Arbitration Tribunal decides that the delay was justified under the circumstances.
- § 4 The provisions of Article 10 shall apply to a counter-claim and a claim relied on for the purpose of a set-off.

Article 12 **Amendments to the claim or defence**

During the course of the arbitration proceedings either party may amend or supplement his claim or defence unless the Arbitration Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances.

Article 13 **Further written statements**

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

Article 14 **Periods of time**

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

Article 15 **Notice, calculation of periods of time**

- § 1 For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered. Notice may also be delivered by e-mail.
- § 2 For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business

days occurring during the running of the period of time are included in calculating the period.

Article 16 Evidence and hearings

- § 1 Each party shall have the burden of proving the facts relied on to support his claim or defence.
- § 2 The Arbitration Tribunal may, if it considers it appropriate, require a party to deliver to the Tribunal and to the other party, within such a period of time as the Arbitration Tribunal shall decide, a summary of the documents and other evidence which that party intends to present in support of the facts in issue set out in his statement of claim or statement of defence.
- § 3 At any time during the arbitration proceedings the Arbitration Tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the Tribunal shall determine.
- § 4 In the event of an oral hearing, the Arbitration Tribunal shall give the parties adequate advance notice of the date, time and place thereof. If witnesses are to be heard, at least fifteen days before the hearing each party shall communicate to the Arbitration Tribunal and to the other party the names and addresses of the witnesses he intends to present, the subject upon and the languages in which such witnesses will give their testimony.
- § 5 The Arbitration Tribunal shall make arrangements for the translation of oral statements made at a hearing and for a record of the hearing if either is deemed necessary by the Tribunal under the circumstances of the case, or if the parties have agreed thereto and have communicated such agreement to the Tribunal at least fifteen days before the hearing.
- § 6 Hearings shall be held in camera unless the parties agree otherwise. The Arbitration Tribunal may require the retirement of any witness or witnesses during the testimony of other witnesses. The Arbitration Tribunal is free to determine the manner in which witnesses are examined.
- § 7 Evidence of witnesses may also be presented in the form of written statements signed by them.
- § 8 The Arbitration Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Article 17 Interim measures of protection

- § 1 At the request of either party, the Arbitration Tribunal may take any interim measures it deems necessary in respect of the subject-matter of the dispute.
- § 2 Such interim measures may be established in the form of an interim award. The Arbitration Tribunal shall be entitled to require security for the costs of such measures.

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

Article 18

Experts

- § 1 The Arbitration Tribunal may appoint one or more experts to report to it, in writing, on specific issues to be determined by the Tribunal. A copy of the expert's terms of reference, established by the Arbitration Tribunal, shall be communicated to the parties.
- § 2 The parties shall give the expert any relevant information or produce for his inspection any relevant documents or goods that he may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the Arbitration Tribunal for decision.
- § 3 Upon receipt of the expert's report, the Arbitration Tribunal shall communicate a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his report.
- § 4 At the request of either party the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of Article 16 shall be applicable to such proceedings.

Article 19

Default

- § 1 If, within the period of time fixed by the Arbitration Tribunal, the claimant has failed to communicate his claim without showing sufficient cause for such failure, the Arbitration Tribunal shall issue an order for the termination of the arbitration proceedings. If, within the period of time fixed by the Arbitration Tribunal, the defendant has failed to communicate his statement of defence without showing sufficient cause for such failure, the Arbitration 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 Arbitration Tribunal may proceed with the arbitration.
- § 3 If one of the parties, duly invited to produce documentary or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the Arbitration Tribunal may make the award on the evidence before it.

Article 20
Closure of hearings

- § 1 Before the hearing closes, the Arbitration Tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.
- § 2 The Arbitration Tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

Article 21
Waiver of Rules

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 non-compliance, shall be deemed to have waived his right to object.

Article 22
Decisions

- § 1 When there are three or five arbitrators, any award or other decision of the Arbitration Tribunal shall be made by a majority of the arbitrators.
- § 2 In the case of questions of procedure, when there is no majority or when the Arbitration Tribunal so authorizes, the presiding arbitrator may decide on his own, subject to revision, if any, by the Arbitration Tribunal.

Article 23
Form and effect of the award

- § 1 In addition to making a final award, the Arbitration Tribunal shall be entitled to make interim, interlocutory, or partial awards.
- § 2 The award shall be made in writing. An award shall be signed by the arbitrators and it shall contain the date on which and the place where the award was made. Where there are three or five arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature.
- § 3 The Arbitration Tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
- § 4 The award shall be communicated to the parties by the Secretary General.
- § 5 The Tribunal shall determine in its award the amount of costs and expenses and shall decide how they and the fees of the arbitrators are to be apportioned between the parties.
- § 6 The award shall be final and binding on the parties. The parties shall be obliged to carry out the award without delay.

- § 7 The award shall become enforceable in each of the Member States on completion of the formalities required in the State where enforcement is to take place. The merits of the case shall not be subject to review.
- § 8 If the arbitration law of the country where the award is made requires that the award be filed or registered by the Arbitration Tribunal, the Secretary General shall comply with this requirement within the period of time required by law.
- § 9 The award may be made public only with the consent of both parties.

Article 24 **Settlement or other grounds for termination**

- § 1 If, before the award is made, the parties agree on a settlement of the dispute, the Arbitration Tribunal shall either issue an order for the termination of the arbitration proceedings or, if requested by both parties and accepted by the Tribunal, record the settlement in the form of an arbitration award on agreed terms. The Arbitration Tribunal is not obliged to give reasons for such an award.
- § 2 If, before the award is made, the continuation of the arbitration proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the Arbitration Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The Arbitration Tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.
- § 3 Copies of the order for termination of the arbitration proceedings or of the arbitration award on agreed terms, signed by the arbitrators, shall be communicated by the Secretary General to the parties. Where an arbitration award on agreed terms is made, the provisions of Article 23, paragraphs 2 and 4 to 9, shall apply.

Article 25 **Interpretation of the award**

- § 1 Within thirty days after the receipt of the award, either party, with notice to the other party, may request that the Arbitration Tribunal give an interpretation of the award.
- § 2 The interpretation shall be given in writing within forty-five days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 23, paragraphs 2 to 9, shall apply.

Article 26 **Correction of the award**

- § 1 Within thirty days after the receipt of the award, either party, with notice to the other party, may request the Arbitration Tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The Arbitration Tribunal may within thirty days after the communication of the award make such corrections on its own initiative.
- § 2 Such corrections shall be in writing, and the provisions of Article 23, paragraphs 2 to 9, shall apply.

Article 27
Additional award

- § 1 Within thirty days after the receipt of the award, either party, with notice to the other party, may request the Arbitration Tribunal to make an additional award as to claims presented and dealt with in the arbitration proceedings but omitted from the award.
- § 2 If the Arbitration Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within sixty days after the receipt of the request.
- § 3 When an additional award is made, the provisions of Article 23, paragraphs 2 to 9, shall apply.

Article 28
Costs

- § 1 The Arbitration Tribunal shall fix the costs of arbitration in its award. The term "costs" includes in particular:
- a) the fees of the members of the Arbitration Tribunal;
 - b) the travel and other expenses incurred by the arbitrators;
 - c) the costs of expert advice and of other assistance required by the Arbitration Tribunal;
 - d) the travel and other expenses of witnesses to the extent such expenses are approved by the Arbitration Tribunal;
 - e) the costs for legal representation and assistance of the successful party if such costs were claimed during the arbitration proceedings, and only to the extent that the Arbitration Tribunal determines that the amount of such costs is reasonable;
 - f) the costs incurred by the Secretary General as a result of the arbitration proceedings.
- § 2 The fees of the arbitrators shall be determined by the Secretary General. The fees shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitrators and any other relevant circumstances of the case.
- § 3 Except as provided in § 4, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the Arbitration Tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

- § 4 With respect to the costs of legal representation and assistance referred to in § 1 e), the Arbitration Tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.
- § 5 When the Arbitration Tribunal issues an order for the termination of the arbitration proceedings or makes an award on agreed terms, it shall fix the costs of arbitration in the text of that order or award.
- § 6 No additional fees may be charged by an Arbitration Tribunal for interpretation or correction or completion of its award.

Article 29 **Deposit of costs**

- § 1 The Arbitration Tribunal, on its establishment, may request each party to deposit with the Secretary General an equal amount as an advance for the costs referred to in Article 28, paragraphs a), b) and c).
- § 2 During the course of the arbitration proceedings the Arbitration Tribunal may request supplementary deposits from the parties.
- § 3 If the required deposits are not paid in full within thirty days after the receipt of the request, the Arbitration Tribunal shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the Arbitration Tribunal may order the suspension or termination of the arbitration proceedings.
- § 4 After the award has been made, the Arbitration Tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.