

# ANNEX 1 TO THE ARBITRATION RULES

## Rules on appointment and confirmation of arbitrators

# Annex 1



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## Article 1. General principles

1. The parties may freely agree on all the arbitrators of the arbitral tribunal. The Center encourages the parties to exercise this right and to appoint, where possible, not only the co-arbitrators, but also the presiding arbitrator, in case of multi-member tribunals, or the sole arbitrator, as the case may be.
2. When, in the absence of agreement between the parties, the Center shall appoint an arbitrator, it will submit to the parties a list of prospective arbitrators or candidates<sup>1</sup> (the “**List for the Parties**”), except in the case provided in paragraph 5 below.
3. The following bodies will participate in the arbitrator appointment and confirmation procedure: the Support Committee for the Secretary General, the Secretary General and the Arbitrator Appointment Committee.
4. The exact number of candidates to be included in the List for the Parties will be as agreed by the parties or, failing this, as determined by the Secretary General having regard to the circumstances of the case.
5. The Center shall directly appoint the arbitrator(s) without previously submitting a list to the parties: (i) upon request by all the parties; (ii) in the case provided in Article 16(2) of the Rules, or (iii) where so determined by the Support Committee for the Secretary General unanimously, in a reasoned decision and having regard to the circumstances.
6. As indicated below, the procedure to prepare the List for the Parties has two stages: the proposal stage and the decision-making stage.

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<sup>1</sup> The terms “candidate(s)” and “prospective arbitrator(s)” will be used interchangeably.



## Article 2. Proposal stage – Secretary General

1. When appointing arbitrators, the Secretary General shall prepare a proposal of prospective arbitrators (the “**Proposal of Candidates**”) for the Appointment Committee, in agreement with its Support Committee. The Proposal of Candidates shall include at least twice as many candidates as on the List for the Parties.
2. If the Support Committee for the Secretary General fails to agree on a Proposal of Candidates, it will be prepared as follows:
  - a) Every Deputy Secretary shall propose as many candidates as there should be on the List for the Parties.
  - b) The Secretary General may disregard up to one third of the candidates proposed by each Deputy Secretary. If one third of the candidates proposed is not a whole number (i.e., 1, 2, 3...), the Secretary General may disregard the immediately lower natural number of candidates.<sup>2</sup> The remaining candidates will be included in the Proposal of Candidates.
  - c) If, for any reason, the available candidates do not add up to twice as many as on the List for the Parties, the Secretary General, having consulted with its Support Committee, shall nominate as many candidates as necessary to complete the Proposal of Candidates.<sup>3</sup>
3. Upon completion of the Proposal of Candidates, the Secretary General will submit it to the Appointment Committee.

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<sup>2</sup> For example, in the case that a Deputy Secretary proposes five prospective arbitrators, one third of five being equal to 1.66, since it is impossible to disregard 1.66 candidates, the Secretary General may only disregard one prospective arbitrator.

<sup>3</sup> This may be the case if a Deputy Secretary proposes fewer candidates than requested or fails to propose any prospective arbitrators within the time period granted by the Secretary General.

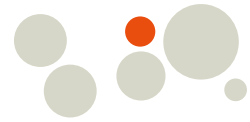


### **Article 3. Decision-making stage – Appointment Committee**

1. The Appointment Committee will examine the Proposal of Candidates to select therefrom those who will be included in the List for the Parties.
2. If the Appointment Committee selects all the required candidates from the Proposal of Candidates, these will be the prospective arbitrators to be included in the List for the Parties.
3. If the Appointment Committee does not select all the required candidates from the Proposal of Candidates, and therefore more candidates are needed, it will request the Secretary General to submit a new Proposal of Candidates to complete the List for the Parties with as many candidates as may be required.<sup>4</sup> Notwithstanding the foregoing, if the Appointment Committee only needs one more candidate to complete the List for the Parties, having consulted with the Secretary General it may directly nominate an additional candidate; this nomination will require a unanimous vote of the members present.
4. Upon completion of the List for the Parties, it will be delivered to the parties.

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<sup>4</sup> This would be the case if, for instance, the List for the parties should include six prospective arbitrators but the Appointment Committee only selects three out of the List of prospective arbitrators.



## **Article 4. Direct appointment of arbitrators**

1. When directly appointing arbitrators, the Center shall follow the procedure provided in Articles 2 and 3 with the following specificities:
  - a) Every Deputy Secretary shall propose two candidates.
  - b) The Secretary General may disregard one of the two candidates proposed by each Deputy Secretary.
  - c) The remaining candidates will make up the Proposal of Candidates.
2. Upon completion of the Proposal of Candidates, the Secretary General will submit it to the Appointment Committee.
3. The Appointment Committee shall appoint one of the candidates or it may issue a reasoned decision requesting a new Proposal of Candidates.

## **Article 5. Criteria for the nomination of prospective arbitrators**

The Proposal of Candidates and the List for the Parties shall be prepared on the basis of the following guidelines:

- a) Main guideline: the candidates' knowledge and experience should be commensurate with the complexity and relevance of the arbitration. Within this context, the following aspects, *inter alia*, will be taken into account: nationality, language, need for specific experience or technical expertise and availability.
- b) Additional guidelines: additional factors may be taken into account, including: the date of his or her last appointment, age, gender, or whether it is appropriate to involve new professionals in the Center's arbitration proceedings.



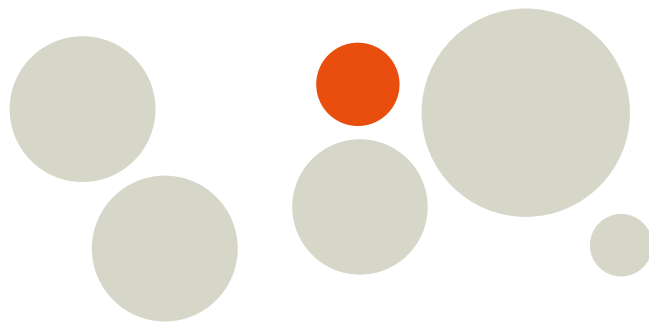
## **Article 6. Confirmation procedure**

The confirmation of arbitrators shall be subject to the following procedure:

- a) If the arbitrator states that he or she has nothing to disclose and the parties fail to submit comments within the required time limit, the Secretary General may confirm the arbitrator without delay if it sees fit.
- b) Otherwise, the Secretary General will submit a proposal to the Appointment Committee, who may accept it or reject it.

## **Article 7. Minutes of the Arbitrator Appointment Committee**

The decisions of the Appointment Committee will be communicated by email from the Secretary General or, failing this, by the Chairperson, to all of its members. These emails will be filed by the Secretariat of the Center and the Secretary General may issue certificates stating the content thereof subject to the Chairperson's approval.



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