

ANNEX 3 TO THE ARBITRATION RULES

Reference procedure



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Centro Internacional de Arbitraje de Madrid
Centro Iberoamericano de Arbitraje

This Annex contains rules of a reference procedure that the arbitrators may take into account when establishing the procedural calendar and procedural rules.

These rules are offered for guidance purposes but are not binding and do not affect the right of the parties to agree on the procedure they deem appropriate or, in the absence of agreement between the parties, the power of the arbitrator to establish the most appropriate procedural calendar according to the circumstances of the case.

1. Duty to act in good faith

The parties and their representatives shall act in the arbitration in good faith, and shall avoid unnecessary actions and incidents that have the purpose or effect of hindering or delaying the arbitration. In this regard, the parties undertake to comply with the provisions of the IBA Guidelines on Party Representation in International Arbitration.

2. Statement of Claim

1. Within thirty days of the day following the issuance by the arbitration tribunal of the first procedural order, the claimant shall file its statement of claim.
2. The statement of claim shall contain all the arguments and evidence on which the claimant relies. In its statement of claim the claimant shall state:
 - a) The totality of the requests that it formulates.
 - b) The totality of the facts and legal grounds on which its claims are based.
 - c) All evidence in its possession, including witness statements and expert reports on which it relies.

3. Statement of Defense

1. Within thirty days from the day following receipt of the claim, the respondent may file a statement of defense, which must comply with the provisions of the preceding article for the statement of claim.
2. The statement of defense shall contain all the arguments and evidence on which the respondent relies to answer the claims. In this brief, the respondent shall state:

- a) The totality of the specific requests that it formulates.
- b) The totality of the facts and legal grounds on which it bases its defenses.
- c) All evidence in its possession, including witness statements and expert reports on which it relies.

3. Failure to present a statement of defense shall not prevent the arbitration from proceeding properly.

4. Counterclaim and response to counterclaim

1. In the same statement of defense, or in a separate memorial, if so provided, the respondent may file a counterclaim, which must conform to the requirements for the statement of claim.

2. Within thirty days from the day following receipt of the counterclaim, the claimant may file a statement of response to the counterclaim. The provisions of article 3 of this Annex for the statement of defense shall apply to the response to the counterclaim.

5. Production of documents

1. Within fifteen days from the day following receipt of the statement of defense, and if any, the response to the counterclaim, each party may submit a document production request.

2. The document production request shall be submitted in accordance with the Redfern Schedule model and shall contain: (i) a description of the document sought that is sufficiently detailed to identify it, or a description of the particular and specific category of documents sought; (ii) a statement of why the documents sought are relevant to the case and material to its resolution; (iii) a statement that the documents sought are not in the possession, custody or control of the requesting party (or it would be too burdensome for the requesting party to produce them); and (iv) a statement of the reasons why the requesting party assumes that the documents sought are in the possession, custody or control of another party.

3. Within ten days from the day following receipt of the document production requests, the party to whom the request for production of documents is addressed may present its objections to the production of some or all of the documents requested, arguing that they do not meet the requirements set forth in sections

(i), (ii) and (iii) of the preceding paragraph, or there are other reasons why the arbitrator should not grant the production of the requested documents.

4. Within ten days from the day following receipt of the objections, the party requesting the documents may submit its comments on the objections raised by the other party.

5. Within twenty days of receipt of the response to the objections, the arbitrators shall decide on the requests for production of documents. The arbitrators may order the party to whom the request for production of documents is addressed to produce any of the documents requested.

6. Preclusion and new claims

1. Unless otherwise ordered by the arbitral tribunal, after the submission of the pleadings (i.e. statement of claim and defense or counterclaim and response to the counterclaim) neither party may submit any substantive argument or adduce any evidence without the prior permission of the arbitral tribunal. Among its powers, the tribunal may authorize a party to submit new evidence arising from the procedure for the production of documents agreed upon by the parties or from a new fact.

2. The filing of new claims, subsequent to the statements of claim, defense, counterclaims or responses, shall require the authorization of the arbitrators who, when deciding thereon, shall take into account the nature of the new claims, the stage reached in the proceedings and all other relevant circumstances, especially those aimed at guaranteeing full respect for the principles of equality, hearing and contradiction.

7. Memorandums and documents of the parties

1. The parties shall submit their memorandums with all paragraphs consecutively numbered.

2. The annexes attached to the parties' pleadings shall be numbered separately and consecutively. The reference to the documents submitted by the claimant shall be "C-[-]". The reference to the documents submitted by the respondent shall be "R-[-]".

3. Written submissions, scanned documentary evidence and other documents created solely in electronic format must be submitted as digital copies in PDF format.

4. All documents submitted shall be considered true copies of the original unless their authenticity is expressly disputed by the other party.

8. Witnesses

1. Any person who testifies as to their knowledge of any factual matter relating to the dispute, whether or not they are a party to the arbitration, or a party's representative, shall be deemed to be a witness. Provided that the provisions of any law applicable to the case do not prohibit it, the parties or their representatives may interview potential witnesses for the purpose of presenting their testimony (in written or oral form) to the tribunal.
2. The arbitrators may provide that the witnesses shall give their evidence in writing, without prejudice to the possibility that they may also be examined before the arbitrators and in the presence of the parties, orally or by any means of communication that makes their presence unnecessary. The oral evidence of the witness shall be taken whenever requested by one of the parties and agreed upon by the arbitrators.
3. Witnesses shall be proposed by the parties in their pleadings, briefly justifying the reason for their testimony. If a witness called to appear at a hearing for questioning fails to appear without showing just cause, the arbitrators may take this fact into account in their assessment of the evidence and, if appropriate, deem their written statement not to have been given, as they deem appropriate in view of the circumstances.
4. The parties may ask the witness such questions as they deem appropriate, subject to the control of the arbitrators as to their relevance and usefulness. The arbitrators may also ask questions to the witness at any time during the examination.
5. Before beginning their testimony, the arbitral tribunal shall ensure that there is no legal or factual impediment preventing the witness from complying with their obligation to tell the truth.

9. Experts

1. Each expert shall be objective and independent. In their acceptance and in their report, every expert shall expressly declare that they meet these requirements. They shall disclose at the same time any circumstances that may give rise to justifiable doubts as to their objectivity and independence. No expert shall have any financial interest in the outcome of the arbitration.
2. The arbitrators, after consulting the parties, may appoint one or more experts, who must be and remain independent of the parties during the course of the arbitration, to give their opinion on specific issues.
3. The arbitrators shall also have the power to require any of the parties to make available to the experts appointed by the arbitrators relevant information or any documents, goods or evidence to be examined by them.

4. The arbitrators shall give the parties notice of the report of the expert appointed by the arbitral tribunal so that they may submit any arguments they deem appropriate regarding the report. The parties shall have the right to examine any document that the expert may refer to in their report.

5. The fees and expenses of any expert appointed by the arbitral tribunal shall be deemed to be expenses of the arbitration, the advance of which may be requested by the Center from the parties prior to the taking of evidence.

6. Once their report has been submitted, any expert, whether appointed by the parties or by the arbitrators, shall appear, if so requested by any of the parties and whenever the arbitrators deem it appropriate, at a hearing at which the parties and the arbitrators may question them on the contents of their report. If the experts have been appointed by the arbitrators, the parties may, in addition, present other experts to testify on the matters under discussion.

7. The interrogation of the experts may take place successively or simultaneously, in the form of hot-tubbing, as the arbitrators may decide.

10. Hearing

1. In their written submissions, the parties shall notify the arbitrator whether or not they request the holding of an evidentiary hearing. After consulting with the parties, the arbitrator shall decide on the holding of the evidentiary hearing. The arbitrator shall also decide, after consultation with the parties, on the place and date of the hearing. The arbitrator may, after consultation with the parties, decide to hold the hearing virtually.

2. The parties shall ensure the availability of their representatives, witnesses, experts and any other person under their control who must attend the hearing. The parties shall inform the arbitrator and the other party immediately of the existence of supervening circumstances that prevent their attendance at the hearing.

3. Prior to the hearing, the parties shall communicate the witnesses and experts they wish to examine during the hearing. The written statement of the witnesses shall be considered as a direct statement and need not be repeated during the hearing. The party proposing the witness may make a brief direct examination. The experts may make a presentation of their analysis and conclusions prior to their cross-examination.

4. Any witness or expert who has been summoned for direct examination may be cross-examined by the other party and questioned by the arbitrator. The cross-examination shall take place after the direct examination of each witness and expert.

5. Witnesses shall not be allowed to be present in the hearing room before giving their testimony. Expert witnesses shall be allowed to remain in the hearing room at any time. Witnesses who are also representatives of the party shall give their testimony in the course of the hearing as soon as possible.

11. Conclusions

1. At the conclusion of the hearing or, if the proceedings are in writing only, upon receipt of the last written statement of the parties, the arbitral tribunal may give notice to the parties so that, within fifteen days, they may submit their conclusions in writing and simultaneously.

2. The arbitral tribunal may replace the written conclusions with oral conclusions at a hearing, which shall in any case be held in agreement with all parties.

3. At the end of the closing arguments, the arbitrators shall request from the parties a list of the expenses incurred, as well as the supporting documents thereof. Once the lists of expenses have been received, they may establish a procedure for each party to argue on the expenses provided by the opposing party. The arbitrators' decision on the justification of expenses shall be final.



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