

ANNEX 4 TO THE ARBITRATION RULES

Optional challenge to the award



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Centro Internacional de Arbitraje de Madrid
Centro Iberoamericano de Arbitraje

A. Definitions:

Main Arbitration: The arbitration proceeding giving rise to the challenged award.

Challenge Arbitration: The arbitration proceeding in which the challenge to the challenged award is resolved.

Draft Award: The award drafted in the Main Arbitration pending the resolution of the Challenge Arbitration.

Final Award: The award when the circumstances of article 9 of this Annex are met.

Challenge Award: The award resulting from the Challenge Arbitration.

Challenge Tribunal: The tribunal, always of three members, which shall be appointed in its entirety by the Center in accordance with the direct appointment procedure provided for in Annex I of the Rules to decide on the optional challenge to a Draft Award in accordance with the provisions of this Annex.

B. General rules:

1. The parties may agree that their proceedings shall include a draft award that is subject to the optional challenge provided for in this Annex. Any agreement shall be expressly stated in writing, referring to this Annex, and shall be concluded prior to the appointment or confirmation of any arbitrator in the Main Arbitration.
2. Any request to initiate such a challenge procedure shall be submitted to the Center for approval, which shall have the discretion to reject it if it is not prima facie compatible with the Rules and the provisions of this Annex.
3. In the event of the commencement of the challenge arbitration proceedings, the provisions set forth below shall prevail over any prior agreement of the parties, including in the arbitration agreement. Except as provided below, the Center's Rules shall apply. The provisions of article 43 ("Scrutiny of the Award by the Center") shall apply to the Draft Award and the Final Award.
4. Decisions or awards issued by emergency arbitrators, decisions or awards resolving requests for injunctive relief and awards issued by a Challenge Tribunal -final or of dismissal-, shall not be subject to optional challenge.

5. The Draft Award shall be subject to correction, clarification, rectification for overreach and supplement, and the appropriate “addendum to the Draft Award” or “Additional Draft Award” shall form part of the Draft Award.

6. In matters not provided for in this Annex, the procedure for the optional challenge of the award may be integrated with the other provisions of the Rules.

C. Grounds for the challenge

7. A challenge to any award may only be based on the following grounds:

- i. A manifest violation of the substantive rules applicable to the merits of the dispute; or
- ii. A manifest error in the assessment of the facts on which the decision was based.

D. Consequences of a total or partial challenge

8. The parties expressly agree that any award rendered in arbitral proceedings in which there is a challenge agreement shall be a Draft Award which shall not be res judicata, enforceable, or subject to challenge, subject to the provisions of article 9 below, and shall be notified to the parties by the Center as a Draft Award. The parties may, however, immediately submit a request for clarification, correction or supplement to the Draft Award, in which case the arbitral tribunal shall issue the appropriate “addendum to the Draft Award” or “Additional Draft Award”, which shall form part of the Draft Award.

9. The Draft Award shall become, as the case may be, a Final Award if any of the following circumstances occurs: (i) if the time limit for filing the optional challenge to the Draft Award expires; (ii) if the Center issues a decision not to admit the application to challenge the Draft Award; or (iii) if the Challenge Tribunal issues an award dismissing the challenge in its entirety. In such cases, the parties agree that the Draft Award shall be signed by the sole arbitrator or the tribunal of the original proceeding and shall become final, res judicata, enforceable and subject to annulment.

10. In the event of a full challenge to the Draft Award and its acceptance, the Challenge Tribunal shall, upon acceptance of the challenge, rule *ex novo* on the requests of the parties as set forth in the Draft Award. The parties expressly agree that in such a case the Challenge Award shall be the only final award in force

between them, with res judicata and binding force, susceptible of nullity action. In the event of a total challenge and a partial upholding thereof, the provisions of the following paragraph shall apply.

11. In the event of a full challenge and partial upholding of the award, or in the event of a partial challenge to the Draft Award and full or partial upholding of the challenge, the Challenge Tribunal shall incorporate verbatim in the Challenge Award all nonreversed parts of the Draft Award, so that the Challenge Award shall consist of the nonreversed parts of the Draft Award and the decision of the Challenge Tribunal on the reversed parts of the Draft Award and shall be the only final award in force between the parties with res judicata, enforceable and subject to annulment.

12. In the event of a challenge of a partial award, the Main Arbitration shall be automatically stayed. The arbitral proceedings shall be suspended from the notification of the request for a challenge until (i) in case of rejection, the communication of the Center rejecting the request, or (ii) in case of acceptance, until the notification of the Challenge Award.

13. The parties expressly agree that, in the event of a dismissal of the challenge, the Challenge Tribunal shall decide it in the form of an Award and shall also make a statement therein as to the costs of the challenge. The Challenge Awards shall be to all intents and purposes a separate and independent award from the Final Award.

E. Challenge procedure

14. The challenge to the Draft Award shall be initiated with notice to the Center within fifteen days after the expiration of the time limit for requesting correction, clarification, rectification and supplement of the Draft Award or after the addendum or additional Draft Award has been notified. The request for challenge shall indicate: (i) the alleged grounds for challenge, and (ii) the requests of the requesting party.

15. The Center shall provide the other party with fifteen days to reply, and shall then issue a prima facie decision within five days as to the admissibility or inadmissibility of the application, assessing whether it was made correctly and in due time. In case of admission, the following provisions shall apply.

16. The Challenge Tribunal, which shall always consist of three members, shall be appointed in its entirety by the Centre in accordance with the direct appointment procedure provided for in Annex I to the Rules. By means of the agreement of the parties referred to in section B.1 of this Annex, the parties confirm the interpretation of their arbitration agreement in such a way that the Challenge Tribunal is understood to be suitable for the final resolution of their dispute and accept its

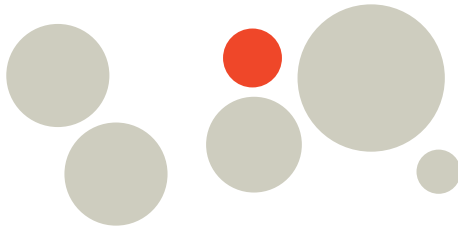
appointment and constitution and the suitability of the procedure leading to the rendering of the Final Award, as shall result from the application of this Annex.

17. Once the file has been received, unless the Challenge Tribunal decides otherwise, only evidence that was submitted in the first arbitration shall be admissible in the Challenge Arbitration. The Challenge Tribunal shall have the power to decide that requests for the production of documents shall not be admitted in the optional challenge, and that cross-examination of witnesses and experts presented in the first arbitration shall not take place.

18. The Challenge Tribunal will consider whether it is appropriate to summon the parties to a hearing and, if so, once the hearing is held, it shall order the closing of the proceedings. In the event that the Challenge Tribunal does not agree to hold such a hearing, it shall directly close the proceedings. Once the proceedings have been closed, the parties shall refrain from submitting any written pleadings, arguments or evidence relating to the issues in dispute, unless requested to do so by the Challenge Tribunal.

19. The Challenge Tribunal shall render the award within forty-five days from the closing of the proceedings.

20. The articles of the Rules on correction, clarification, rectification and supplementation of the award shall be applicable to the Challenge Award.



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