



北京仲裁委员会  
BEIJING ARBITRATION COMMISSION  
北京国际仲裁院  
BEIJING INTERNATIONAL ARBITRATION COURT

# RULES FOR INTERNATIONAL INVESTMENT ARBITRATION

Adopted at the Fourth Meeting of the Seventh  
Session of the Beijing Arbitration Commission on July 4, 2019,  
and effective as of October 1, 2019

The name change has been adopted to take effect from  
December 4, 2024.

**BAC**

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# Beijing Arbitration Commission/ Beijing International Arbitration Court Rules for International Investment Arbitration

Adopted at the Fourth Meeting of the Seventh  
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Effective as of October 1, 2019

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## Chapter I General Provisions

### Article 1 Beijing Arbitration Commission

1. The Beijing Arbitration Commission/Beijing International Arbitration Court (**the “BAC/BIAC”**) is an arbitral institution established in Beijing, China.

2. The BAC has previously used the name “Beijing International Arbitration Center” as an alternative name. Where the Parties designate the BIAC as the arbitral institution in their arbitration agreement, the arbitration shall be administered by the BAC.

3. The Chairperson of the BAC (**the “Chairperson”**) or, with the authorization of the Chairperson, one of the Vice Chairpersons or the Secretary-General of the BAC, shall perform the functions and duties vested in the Chairperson by the BAC/BIAC Rules for International Investment Arbitration (**the “Rules” or “BAC/BIAC Investment Arbitration Rules”**).

4. The Secretariat of the BAC shall handle the day-to-day affairs of the BAC. For each case, the Secretariat shall designate a member of its staff as the Case Manager, who shall attend to procedural administration and the provision of services relating to the case.

## Article 2 Application of the Rules

1. Where the Parties have agreed to submit an international investment dispute (**the “Dispute”**) to the BAC for arbitration but have not agreed on the arbitration rules, they shall be deemed to have agreed that the arbitration shall be conducted in accordance with the Rules.

2. Where the Parties have agreed to apply the Rules to arbitrate a Dispute, but have not designated an arbitral institution, they shall be deemed to have agreed to submit the Dispute to the BAC for arbitration.

3. Where the Parties have agreed to submit a Dispute to the BAC for arbitration in accordance with the Rules, but have agreed otherwise on certain procedural matters of the arbitration, the latter agreement shall prevail, unless it is unenforceable or in conflict with the mandatory rules of law of the seat of the arbitration.

4. Where the Parties have agreed to apply a different set of arbitration rules to arbitrate a Dispute, and designated the BAC as the arbitral institution or to provide arbitration administration service(s), the BAC shall perform the corresponding functions and duties. Where the Parties have agreed to apply the UNCITRAL Arbitration Rules, the BAC shall perform the corresponding functions and duties in accordance with the UNCITRAL Arbitration Rules and the procedural guidelines set forth in Appendix F to the Rules.

5. An international investment dispute or “Dispute” under the Rules refers to any dispute arising out of an investment between an investor and a State, a State-authorized entity or an intergovernmental organization.

6. An agreement submitting a Dispute to arbitration (**the “arbitration agreement”**) under the Rules may be expressed in a contract, treaty, statute, regulation or other instrument, or reached through an offer by one Party in a contract, treaty, statute, regulation or other instrument that is subsequently accepted by the other Party by commencing an arbitration or by other means.



### **Article 3 Waiver of Immunity from Jurisdiction and Right to Object**

1. Where the Parties agree to submit a Dispute for arbitration in accordance with the Rules, they shall be deemed to have waived their rights to immunity from the jurisdiction in respect of proceedings relating to the arbitration.

2. A Party who knows or ought reasonably to know of a failure to comply with any provision of the Rules or any term of the arbitration agreement, but nevertheless participates in or proceeds with the arbitral proceedings without promptly and explicitly raising its objection to such non-compliance in writing, shall be deemed to have waived its right to object.

### **Article 4 General Conduct of the Participants to the Arbitration**

The BAC, the Arbitral Tribunal, the Parties and other participants to the arbitration shall act in accordance with the principles of good faith and cooperation throughout the arbitral proceedings.

## Chapter II Commencement of Arbitration

### Article 5 Notice of Arbitration

1. A Party applying for arbitration under the Rules (**the “Claimant”**) shall submit a Notice of Arbitration to the BAC. The Notice of Arbitration shall include:

(a) a written demand that the Dispute be referred to arbitration;

(b) the names, nationalities and addresses, including the postcodes, telephone numbers, facsimile numbers, electronic mail addresses, or any other means of communication of the Parties and their representative(s) (if applicable);

(c) a reference to the arbitration agreement that is invoked;

(d) a reference to the contract, treaty, statute, regulation or other instrument out of or in relation to which the Dispute arises and the relevant provisions thereof;

(e) a brief statement describing the relationship and the nature of such relationship between the Claimant and any relevant State, and the reason(s) why the Parties are bound by the arbitration agreement;

(f) a brief statement describing the nature of the Dispute and the circumstances giving rise to such Dispute, including the relief sought and, where possible, an initial quantification of the claimed amount;

(g) a statement regarding any prior agreement between the Parties on matters such as the number of arbitrator(s), formation of the Arbitral Tribunal and the arbitral proceedings, or any proposal by the Claimant on such matters;

(h) any comment as to the applicable law or rules of law;

(i) any comment as to the language(s) of the arbitration; and

(j) any other information the Claimant considers necessary.

2. Where the Parties have agreed on the language(s) of the arbitration, the Notice of Arbitration shall be made in the language(s) of the arbitration; in the absence of such agreement, the Notice of Arbitration shall be made in either Chinese or English.

3. The Claimant shall, at the same time as it files the Notice of Arbitration with the BAC, send a copy of the Notice of Arbitration to the Party against which arbitration is sought (**the “Respondent”**), and shall specify to the BAC the mode of service employed and the date of service.

4. The Claimant shall pay the registration fee in accordance with the schedule of fees set forth in Appendix A to the Rules (**the “BAC Fees Schedule”**).

5. The Notice of Arbitration shall be deemed complete where all the required items in paragraph 1 are included, or where the BAC determines that there has been substantial compliance with paragraph 1. Where the Notice of Arbitration is incomplete, or where the Claimant has failed to send a copy thereof to the Respondent in accordance with paragraph 3, or where the registration fee is not paid in accordance with paragraph 4, the BAC may request the Claimant to complete such requirements within a specified period of time. If the Claimant fails to comply with such request, the submission of the Notice of Arbitration shall be deemed invalid.

6. The Arbitration shall be deemed to commence on the date the Claimant validly submits the Notice of Arbitration. The BAC shall issue a Notice of Commencement of the Arbitration to the Parties without delay.

## **Article 6 Response to the Notice of Arbitration**

1. The Respondent shall file a Response in writing to the BAC within 30 days of receipt of the Notice of Arbitration. The Response shall include the names, nationalities and addresses, including the

postcodes, telephone numbers, facsimile numbers, electronic mail addresses, or any other means of communication of the Respondent and its representative(s) (if applicable); and may include:

(a) a confirmation or denial of all or part of the claim(s), including, where applicable, any objection to jurisdiction;

(b) a brief statement describing the nature and circumstances of any counterclaim, specifying the relief sought and, where possible, an initial quantification of the amount of counterclaim; and

(c) any comment in response to any statements contained in the Notice of Arbitration, or any comment with respect to the matters covered in Article 5 (1);

2. Where the Parties have agreed on the language(s) of the arbitration, the Response to the Notice of Arbitration shall be made in the language(s) of the arbitration; in the absence of such agreement, the Response to the Notice of Arbitration shall be made in either Chinese or English.

3. Where the Respondent files any counterclaim, it shall pay the registration fee in accordance with the BAC Fees Schedule.

4. The Respondent shall, at the same time as it files the Response to the BAC, send a copy of the Response to the Claimant, and shall specify to the BAC the mode of service employed and the date of service.

## **Article 7 Consolidation of Arbitrations**

1. The BAC may decide to consolidate two or more pending arbitrations under the Rules into a single arbitration at the request of a Party. The following conditions shall be satisfied to consolidate arbitrations:

(a) that the Parties to all the arbitrations agree to consolidate; and

(b) that all the arbitrations are initiated under the same arbitration agreement; or, where the arbitrations are initiated under two or more arbitration agreements, that the legal relationships involved in the Disputes in these arbitrations are the same, and that the BAC considers the arbitration agreements to be compatible.

2. In deciding whether to consolidate two or more arbitrations, the BAC shall consult with the Parties to all the arbitrations and the Arbitral Tribunal(s) (if constituted), and shall have regard to circumstances it considers relevant, including but not limited to the progress of the pending arbitration(s), the efficiency and expeditiousness of the proceedings.

3. Where arbitrations are consolidated, those commenced at later date(s) shall be consolidated into the arbitration that commenced at the earliest date, unless otherwise agreed by all the Parties; the Chairperson may remove any arbitrator(s) already nominated or appointed when necessary.

## Chapter III Arbitral Tribunal

### Article 8 Qualifications of Arbitrators

1. Arbitrators shall be persons of recognized competence in law (particularly knowledge of public international law), high moral character and necessary language skills, and having sufficient availability to determine the Dispute.

2. Arbitrators shall ensure that their conduct conforms with codes of ethics for arbitrators that are internationally recognized.

### Article 9 General Provisions for Nomination or Appointment of Arbitrators

1. The BAC shall maintain a “Beijing Arbitration Commission/ Beijing International Arbitration Court Panel of Arbitrators for International Investment Disputes” (the “**Panel of Arbitrators**”). Arbitrators may be nominated by the Parties from either within or outside the Panel of Arbitrators.

2. The Parties may agree that the Arbitral Tribunal shall be composed of one, three or any other odd number of arbitrators. In the absence of such agreement, the Arbitral Tribunal shall be composed of three arbitrators, except in cases where the expedited procedures set forth in Appendix C to the Rules apply.

3. Unless otherwise agreed or jointly nominated by the Parties, a sole arbitrator, a presiding arbitrator or the majority of arbitrators of an Arbitral Tribunal shall be of different nationality or nationalities from either of the Parties.

4. When appointing the arbitrator(s), the Chairperson shall take into account the nationalities of the Parties, the complexity of the arbitration, the language(s) and seat of the arbitration, the amount involved in the Dispute, the nationality, professional background(s) and availability of the candidate(s) to serve as arbitrator(s), and any other factor(s) the Chairperson considers relevant.

5. After an arbitrator is nominated or appointed, the BAC shall, as promptly as possible, request acceptance from the nominee or appointee. By agreeing to serve, a nominee or appointee undertakes to carry out the responsibilities of an arbitrator in accordance with the Rules. Where a nominee or appointee fails to accept the nomination or appointment, another arbitrator shall be nominated or appointed in accordance with the method applicable to the previous nomination or appointment.

6. Decisions of the Chairperson as to the appointment, challenge and removal of an arbitrator shall be final.

### **Article 10 Three-Member or Multi-Member Arbitral Tribunal**

1. Where an Arbitral Tribunal comprising three or a larger odd number of members (**the "Multi-Member"**) is to be constituted, the Claimant and the Respondent shall, within 60 days of receipt of the Notice of Commencement of the Arbitration, nominate or entrust the Chairperson to appoint an arbitrator or an equal number of arbitrators respectively. If a Party fails to nominate or to entrust the Chairperson to appoint the arbitrator(s) within the above time limit, that arbitrator or those arbitrators shall be appointed by the Chairperson at the request of the other Party.

2. The Parties shall jointly nominate or jointly entrust the Chairperson to appoint a presiding arbitrator within 90 days from the date of receipt by the Respondent of the Notice of Commencement of the Arbitration. Failing such nomination or appointment, the presiding arbitrator shall be appointed by the Chairperson at the request of either Party. Unless the Parties otherwise agree, the Chairperson shall appoint the presiding arbitrator in accordance with the following procedure:

(a) The Chairperson shall invite each of the Parties to comment with regard to the appointment of the presiding arbitrator, and shall require them to reply to the BAC within a specified time limit. The Chairperson shall take into consideration the comments of the Parties, but shall not be bound thereby. Failure of the Parties to reply within

the specified time limit shall not preclude the Chairperson from appointing the presiding arbitrator.

(b) The Chairperson shall, after seeking the Parties' comments in accordance with sub-paragraph (a) above, communicate to each Party an identical list of at least five candidates to serve as the presiding arbitrator. Within 10 days of receipt of the list, each Party shall return the list to the BAC, after having deleted the name(s) to which it objects and numbered the remaining name(s) on the list in its order of preference.

(c) The Chairperson shall appoint one candidate from among the name(s) approved on the returned lists and take into consideration the order of preference as indicated by the Parties. Where a Party fails to return the list within the specified time limit or the appointment of the presiding arbitrator cannot be made in accordance with this procedure, the Chairperson may appoint the presiding arbitrator without further consulting with that Party or Parties. Such presiding arbitrator may be appointed from outside the list communicated to the Parties.

## **Article 11 Sole Arbitrator**

Where the Arbitral Tribunal is to be composed of a sole arbitrator, the Parties shall, within 60 days from the date of receipt by the Respondent of the Notice of Commencement of the Arbitration, jointly nominate or jointly entrust the Chairperson to appoint the sole arbitrator. Where the Parties fail to jointly nominate or jointly entrust the Chairperson to appoint the sole arbitrator within the above time limit, the sole arbitrator shall be appointed by the Chairperson at the request of either Party in accordance with Article 10 (2) of the Rules.

## **Article 12 Multi-Party Nomination or Appointment of Arbitrator**

1. Where there are two or more Claimants and/or Respondents in an arbitration, the arbitration shall be a multi-Party arbitration.
2. Where a multi-Party arbitration is to be determined by a three-



member Arbitral Tribunal or a multi-member Arbitral Tribunal, all the Claimant Parties and all the Respondent Parties shall, within 60 days of the receipt of the Notice of Commencement of the Arbitration, jointly nominate or jointly entrust the Chairperson to appoint an arbitrator or an equal number of arbitrators respectively. Where the Claimant Parties or the Respondent Parties fail to nominate or entrust the Chairperson to appoint the arbitrator(s), the Chairperson shall appoint the arbitrator(s) at the request of the other side. The presiding arbitrator shall be nominated or appointed in accordance with Article 10 (2) of the Rules.

3. Where a multi-Party arbitration is to be determined by a sole arbitrator, all the Claimant Parties and the Respondent Parties shall, within 60 days from the date of receipt the Respondent Parties of the Notice of Commencement of the Arbitration, jointly nominate or jointly entrust the Chairperson to appoint the arbitrator. Where the sole arbitrator fails to be nominated or appointed within the above time limit, that arbitrator shall be appointed by the Chairperson at the request of either side.

### **Article 13 Constitution of the Arbitral Tribunal and Transmission of the File**

1. The Arbitral Tribunal shall be deemed to be constituted on the date the BAC notifies the Parties that all the arbitrators have accepted their nominations or appointments.

2. The BAC shall transmit the file to the Arbitral Tribunal as soon as the Arbitral Tribunal has been constituted.

### **Article 14 Disclosure by Arbitrator**

1. Any arbitrator nominated or appointed under the Rules shall be and remain impartial and independent.

2. Upon acceptance of nomination or appointment, an arbitrator shall immediately submit to the BAC a signed written statement of impartiality, independence and availability to determine the Dispute,

which shall also disclose any facts or circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence. The BAC shall send a copy of the statement to the Parties and the other members of the Arbitral Tribunal.

3. An arbitrator shall immediately inform the BAC, the Parties and the other members of the Arbitral Tribunal in writing if any facts or circumstances that may give rise to justifiable doubts as to his/her impartiality or independence arise during the course of the arbitration.

## **Article 15 Challenges to Arbitrator**

1. A challenge to an arbitrator may be made by any Party if there exist facts and circumstances that give rise to justifiable doubts as to the arbitrator's impartiality or independence, or if the arbitrator does not possess the qualifications that the Parties have agreed upon.

2. A Party may challenge an arbitrator that it has nominated, or in whose nomination it has participated, only for facts and circumstances of which it becomes aware after the nomination of the arbitrator was made.

3. To challenge an arbitrator, a Party shall submit a written notice to the BAC within 30 days from the date it knew or should have known the facts and circumstances that could justify a challenge to that arbitrator. The notice shall specify the reason(s) for the challenge. Failure to challenge an arbitrator within the specified time limit shall constitute a waiver of that Party's right to make the challenge.

4. Upon receipt of the notice of challenge from a Party, the BAC shall promptly send a copy of the notice to the other Party and to all of the members of the Arbitral Tribunal, and shall provide the Parties an opportunity to submit written comments on the challenge within a specified time limit. Where a comment is submitted, the BAC shall promptly communicate it to the Parties and to all of the members of the Arbitral Tribunal.

5. Where a Party challenges an arbitrator and the other Party concurs with the challenge, or the challenged arbitrator voluntarily

withdraws from office upon being informed of challenge, that arbitrator shall not longer participate in the arbitration. Neither of these circumstances shall imply that the grounds on which the challenge is based are established.

6. Where a Party challenges an arbitrator and the other Party does not agree to the challenge or fails to respond thereto within 15 days of receipt of the notice of challenge, and the challenged arbitrator refuses to withdraw from office voluntarily, the Chairperson shall decide on the challenge. The challenged arbitrator may continue with the arbitration until a decision is made by the Chairperson. Where the Chairperson decides that the challenged arbitrator should remain in office, that arbitrator shall continue with the arbitration. Where the Chairperson decides that the challenged arbitrator should be removed, the decision shall be reasoned and promptly communicated to the Parties and all of the members of the Arbitral Tribunal, unless the Parties otherwise agree.

7. Where an arbitrator voluntarily withdraws from office or is removed by the Chairperson, that arbitrator shall be replaced in accordance with Article 16 of the Rules.

## **Article 16 Replacement of Arbitrator**

1. In the event of the death, voluntary withdrawal from office or removal of an arbitrator by the Chairperson, or where all of the Parties require an arbitrator to be replaced, a substitute arbitrator shall be nominated or appointed in accordance with paragraph 3.

2. Where the Chairperson is of the view that an arbitrator has failed to perform his/her duties in accordance with the Rules or the agreement of the Parties, or that an arbitrator is prevented *de jure* or *de facto* from fulfilling his/her functions and duties, the arbitrator may be replaced. In making a replacement decision, the Chairperson shall provide the relevant arbitrators and the Parties an opportunity to comment in writing within the time limit specified by the Chairperson. Such comments shall be promptly communicated to the Parties and to all members of the Arbitral Tribunal.

3. Unless otherwise agreed by the Parties, the substitute arbitrator shall be nominated or appointed within the time limit specified by the BAC and in accordance with the same procedure that applied to the nomination or appointment of the replaced arbitrator.

4. Subsequent to the replacement of the arbitrator, the Arbitral Tribunal shall decide whether and to what extent any prior arbitration proceedings should be repeated. The Arbitral Tribunal shall, when making such decision, invite the Parties to comment and take into account all relevant circumstances of the arbitration.

### **Article 17 Tribunal Secretary**

1. Upon the written approval of the Parties, the Arbitral Tribunal may at any time during the arbitral proceedings appoint a Tribunal Secretary.

2. The Arbitral Tribunal shall reasonably determine the qualification(s) and function(s) of the Tribunal Secretary after consulting with the Parties. In any case, the Tribunal Secretary shall not be delegated any decision-making authority.

3. Before being appointed, the candidate for Tribunal Secretary shall submit to the BAC and the Arbitral Tribunal a signed written statement with regard to his/her impartiality, independence and availability to provide assistance to the Arbitral Tribunal, and the BAC shall deliver the statement to the Parties without delay. After being appointed, the Tribunal Secretary shall promptly disclose any facts or circumstances that may give rise to justifiable doubts as to his/her impartiality or independence.

4. The Arbitral Tribunal shall ensure that the Tribunal Secretary remains impartial and independent at all stages of the arbitral proceedings in which the Tribunal Secretary is involved.

5. Any Party may challenge the Tribunal Secretary by submitting a written application to the Arbitral Tribunal. The application shall detail the ground(s) of the challenge. The Arbitral Tribunal shall decide the challenge in a prompt manner.

## Chapter IV Arbitral Proceedings

### Article 18 Conduct of the Arbitration

1. Unless otherwise agreed by the Parties or provided for by the applicable rules of law or the Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, after consulting with the Parties, to ensure the fair, expeditious, economical and final resolution of a Dispute.

2. Unless otherwise agreed by the Parties, the Arbitral Tribunal may, if it considers it necessary, issue procedural orders or decisions. With the authorization of the Arbitral Tribunal, the presiding arbitrator may decide on the procedural arrangements for the arbitral proceedings.

3. In all cases, the Arbitral Tribunal shall act fairly and impartially and ensure that each Party shall have an equal and reasonable opportunity to present its case.

4. The Arbitral Tribunal shall consult with the Parties prior to making a procedural order or decision authorized by the Rules to be made by an Arbitral Tribunal on its own initiative.

5. The Parties undertake to comply with any order or decision made by the Arbitral Tribunal.

### Article 19 Working Procedures and Timetable

1. The Arbitral Tribunal shall hold the first case management conference within 30 days of its constitution or such other period as the Parties may agree, for consulting with the Parties on the working procedures and timetable for the case. The first case management conference may be conducted through a meeting in person, or by video conference, telephone conference or other means of electronic communication. The Arbitral Tribunal may invite the parties to provide written comments on the proposed working procedures and timetable for the case before the conference.

2. The Arbitral Tribunal shall decide the working procedures and fix the timetable for the case within 10 days of the first case management conference, and notify the Parties and the BAC. See Appendix B to the Rules for an indicative timetable.

3. To ensure continued effective case management, the Arbitral Tribunal, after consulting with the Parties, may modify the working procedures or timetable.

4. To ensure the efficiency and expeditiousness of the arbitral proceedings, the period of time between the constitution of the Arbitral Tribunal and the issuance of the award shall, as a rule, not exceed 24 months, or 30 months in cases where the Arbitral Tribunal has decided to bifurcate the proceeding in accordance with Article 33. If there are special circumstances justifying an extension, the BAC may decide to extend this period as appropriate at the request of the Arbitral Tribunal.

## **Article 20 Seat of the Arbitration**

1. Where the Parties have agreed on the seat of the arbitration, their agreement shall prevail. Failing such an agreement, the seat of the arbitration shall be determined by the Arbitral Tribunal having regard to the circumstances of the case, provided that the seat shall normally be within the territory of a Contracting State to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

2. The award shall be deemed as having been made at the seat of the arbitration.

3. The Arbitral Tribunal, having consulted with the Parties, may hold hearings or meetings with the Parties at any place it considers appropriate. The Arbitral Tribunal may hold deliberations at any place or in any manner that it considers appropriate.

## **Article 21 Language of the Arbitration**

1. Where the Parties have agreed on the language(s) of the

arbitration, their agreement shall prevail. In the absence of such agreement, the Arbitral Tribunal shall determine the language(s) to be used in the arbitration, having regard to the circumstances of the case. Prior to the constitution of the Arbitral Tribunal, the BAC may provisionally determine the language(s) to be used in the arbitration.

2. If a Party submits a document written in a language other than the language(s) of the arbitration, the Arbitral Tribunal, or the BAC if the Arbitral Tribunal has not been constituted, may order that Party to submit a corresponding translation of the document in the language(s) of arbitration.

## **Article 22 Party Representatives**

1. A Party may be represented by its authorized representative(s) in handling matters relating to the arbitration. In such case, a letter or other instrument of authorization shall be submitted to the other Party, or Parties the Arbitral Tribunal and the BAC.

2. After constitution of the Arbitral Tribunal, any change or addition to its representative(s) by a Party shall be promptly communicated in writing to the other Party or Parties, the Arbitral Tribunal and the BAC.

3. Once the Arbitral Tribunal has been constituted, a Party should not authorize any representative(s) who has a relationship with an arbitrator that would create a conflict of interest, unless the other Party or Parties explicitly waives or waive its or their objection after the arbitrator's disclosure in accordance with Article 14 (3) of the Rules.

## **Article 23 Written Submissions of the Parties**

1. Unless otherwise agreed by the Parties or otherwise determined by the Arbitral Tribunal, the Parties shall make written submissions in accordance with this Article.

2. Unless otherwise agreed by the Parties or otherwise determined by the Arbitral Tribunal that hard copies shall be filed, all submissions

referred to in this Article shall be filed in electronic copy only.

3. The Claimant shall, within a period of time to be determined by the Arbitral Tribunal, send to the Respondent, the Arbitral Tribunal and the BAC a Memorial, setting out in full detail:

- (a) a statement of facts supporting the claim(s);
- (b) the legal grounds or arguments supporting the claim(s);
- (c) any evidence supporting the claim(s); and
- (d) the relief(s) sought, together with the amount of all quantifiable claims.

4. The Respondent shall, within a period of time to be determined by the Arbitral Tribunal, send to the Claimant, the Arbitral Tribunal and the BAC a Counter-Memorial, setting out in full detail:

- (a) a statement of facts supporting its defense and counterclaim(s) (if any);
- (b) the legal grounds or arguments supporting the defense and any counterclaim(s);
- (c) any evidence supporting the defense and any counterclaim(s); and
- (d) the relief(s) sought, together with the amount of all quantifiable counterclaims.

5. By agreement of the Parties or if the Arbitral Tribunal considered necessary, the Claimant and the Respondent shall file a Reply and Rejoinder respectively within a period of time to be determined by the Arbitral Tribunal. The Reply and Rejoinder shall be limited to responding to the previous written submissions to which they relate.

6. A party may amend its claim(s), counterclaim(s) or other submissions unless the Arbitral Tribunal considers it inappropriate to allow such amendment, having regard to the delay in making it or



any other circumstances. However, a claim or counterclaim may not be amended in such a manner that the amended claim or counterclaim falls outside the scope of the arbitration agreement, and may not be amended after the filing of the Memorial or the Counter-Memorial respectively if the amendment substantially expands the scope of the Dispute.

7. The Arbitral Tribunal shall decide whether further submissions are required from the Parties or may be presented by them. The Arbitral Tribunal shall fix the periods of time for communicating such submissions.

8. Any submission referred to in this Article shall be accompanied by copies of all supporting documents and legal authorities that have not previously been submitted by any Party.

9. If the Claimant fails to submit its Memorial within the period of time determined by the Arbitral Tribunal, the Arbitral Tribunal may terminate the case or give such other decision(s) as may be appropriate.

10. If the Respondent fails to submit its Counter-Memorial, or if at any point any Party fails to avail itself of the opportunity to present its case in the manner directed by the Arbitral Tribunal, the Arbitral Tribunal may proceed with the arbitration.

## **Article 24 Hearings**

1. Unless otherwise agreed by the Parties, the Arbitral Tribunal shall hold one or more hearings for the presentation of evidence and/or for oral submissions on the merits of the case or on other issues such as those relating to jurisdiction.

2. The Arbitral Tribunal shall, after consulting with the Parties and the BAC, set the date, time, method and place (if held in person) of any hearing and give the Parties reasonable notice. A party having justified reasons may request a postponement of the hearing. The Arbitral Tribunal shall decide whether or not to postpone the hearing.

3. In cases where the Parties agree that the hearing shall be conducted in public, a Party seeking to use confidential or otherwise protected information in the hearing shall notify the Arbitral Tribunal in advance, and the Arbitral Tribunal shall make appropriate arrangements accordingly to protect such information from being disclosed.

4. In cases where the Parties have not agreed that the hearing shall be conducted in public, the hearing shall be conducted in camera. In such a case, unless otherwise provided in the Rules or agreed by the Parties, any recordings, transcripts or documents used in relation to the arbitral proceedings shall remain confidential, and the Parties and their representative(s), the arbitrator(s), any witness(es), interpreter(s), expert(s) appointed by the Arbitral Tribunal, and all other relevant persons shall not disclose to any third parties any substantive or procedural matters relating to the case.

## **Article 25 Default**

1. Having been duly notified in writing of the hearing, if the Claimant fails to appear at the hearing without any justification, or withdraws from an ongoing hearing without the permission of the Arbitral Tribunal, the Claimant may be deemed to have withdrawn its claim(s). Where the Respondent has raised a counterclaim or counterclaims, the Claimant's default shall not prevent the Arbitral Tribunal from proceeding with the arbitration of the counterclaim(s).

2. Having been duly notified in writing of the hearing, if the Respondent fails to appear at the hearing without any justification, or withdraws from an ongoing hearing without the permission of the Arbitral Tribunal, the Arbitral Tribunal may proceed with the arbitration. Where the Respondent has raised a counterclaim or counterclaims, such counterclaim(s) may be deemed to have been withdrawn.

3. The default of a Party shall not be deemed as acceptance of the claim(s) or counterclaim(s) of the other Party.

## **Article 26 Evidence**

1. Each party shall have the burden of proving the facts relied on to support its claim(s), counterclaim(s) or defense.

2. The Arbitral Tribunal, on its own initiative or upon justifiable request submitted by a Party within the time limit fixed by the Arbitral Tribunal, may:

(a) call upon a Party or both Parties to produce evidence, including but not limited to documents, witness statements and expert reports; and/or

(b) visit any place connected with the Dispute and conduct inquiries in such place, with the Parties having the right to participate in the visit or inquiries.

3. The Parties shall cooperate with the Arbitral Tribunal in the production of evidence and in the other measures provided for in paragraph 2. The Arbitral Tribunal shall take formal note of the failure of a Party to comply with its obligations under this paragraph and of any reasons given for such failure.

## **Article 27 Witnesses**

1. The Parties have the right to produce any individual who has knowledge of the issues in dispute or specific professional or technical knowledge to testify as a witness, including as an expert witness. The Party intending to produce witnesses shall, within the time period fixed by the Arbitral Tribunal, submit a written statement that includes the identities of such witnesses, the subject matter of their testimonies and, so far as possible, their testimonies in written form.

2. The Arbitral Tribunal may allow, refuse or limit the appearance of witnesses to give oral evidence at any hearing.

3. Each of the Parties may examine any witness who gives oral evidence in such manner as the Arbitral Tribunal may determine. Any member of the Arbitral Tribunal may put questions to the witness.

4. Any Party may request that a witness produced by the other Party should attend for oral examination. If the Arbitral Tribunal allows such request but the witness fails to attend for oral examination, the Arbitral Tribunal may place such weight on the written testimony of the witness as it thinks fit, or disregard such testimony.

### **Article 28 Tribunal-Appointed Experts**

1. Unless otherwise agreed by the Parties, the Arbitral Tribunal may, following consultation with them, appoint an expert to report to it on specific issues.

2. The Arbitral Tribunal may require a Party to give any expert appointed under paragraph 1 any relevant information, or to produce or provide access to any relevant documents, goods or property for inspection.

3. Any expert appointed under paragraph 1 shall submit a report in writing to the Arbitral Tribunal. Upon receipt of such written report, the Arbitral Tribunal shall deliver a copy of the report to the Parties and invite them to submit written comments on the report.

4. Unless otherwise agreed by the Parties, if the Arbitral Tribunal considers it necessary or at the request of any Party, an expert appointed under paragraph 1 shall, after delivery of his/her written report, participate in a hearing. At the hearing, the Parties shall have the opportunity to examine such expert.

### **Article 29 Suspension of the Arbitral Proceedings**

1. The Arbitral Tribunal shall suspend the arbitral proceeding at the joint request of the Parties.

2. The Arbitral Tribunal may suspend the arbitral proceeding at the request of a Party or under other circumstances where such suspension is necessary. The Arbitral Tribunal shall give the Parties an opportunity to make comments before ordering the suspension.

3. In its order suspending the arbitral proceeding, the Arbitral Tribunal shall specify the period of the suspension and any appropriate conditions.

4. The Arbitral Tribunal shall extend the period of the suspension prior to its expiry at the joint request of the Parties.

5. The Arbitral Tribunal may order an extension of the period of the suspension prior to its expiry at the request of a Party or under other circumstances where it considers extension is necessary, after giving the parties an opportunity to make comments.

6. The BAC shall suspend the proceedings pursuant to paragraph 1 or extend the suspension pursuant to paragraph 4 if the Arbitral Tribunal has not yet been constituted. The Parties shall inform the BAC of the period of the suspension and any conditions agreed to by them.

7. Any period of time during which the arbitral proceedings were suspended shall not be taken into account for the calculation of the time limits provided for in Articles 19(4) and 41(1).

### **Article 30 Withdrawal and Termination**

1. A Party may withdraw its claim(s) or counterclaim(s) in whole or in part. Notwithstanding a withdrawal of its claim(s) or counterclaim(s) by a Party, the Arbitral Tribunal may proceed to make an award on the claim(s) or counterclaim(s), if the hearing relating to the claim(s) or counterclaim(s) has been closed and the other Party disagrees with the withdrawal.

2. The Claimant's withdrawal of its claim(s) or the Respondent's withdrawal of its counterclaim(s) in whole shall not affect the hearing and determination of the counterclaim(s) or the claim(s) by the Arbitral Tribunal.

3. Where both the claim(s) and counterclaim(s) have been withdrawn in whole, the Arbitral Tribunal, or the BAC if the Arbitral Tribunal has not yet been constituted, may terminate the case.

4. If, before the award is made, the Parties agree to terminate the case, the Arbitral Tribunal, or the BAC if the Arbitral Tribunal has not yet been constituted, shall terminate the case at the written request of the Parties.

5. If a Party requests to terminate the case and the other Party does not object in writing within a time limit fixed by the Arbitral Tribunal, or the BAC if the Arbitral Tribunal has not yet been constituted, the Arbitral Tribunal or the BAC (as the case may be) shall terminate the case.

6. If the Parties fail to take any steps in the arbitral proceedings for six consecutive months or such period as they may agree with the approval of the Arbitral Tribunal, or of the BAC if the Arbitral Tribunal has not yet been constituted, or if it becomes unnecessary or impossible to continue the arbitral proceedings for any reason, the Arbitral Tribunal or the BAC (as the case may be) may, after giving notice to the Parties, terminate the case.

### **Article 31 Closure of the Arbitral Proceedings**

1. The Arbitral Tribunal shall, as promptly as possible, after consulting with the Parties and upon being satisfied that the Parties have no further material evidence to produce or submissions to make with regard to the matters to be decided in the award, declare the proceedings closed. The Arbitral Tribunal shall communicate such declaration to the Parties and to the BAC.

2. Before any award is made, the Arbitral Tribunal may, on its own initiative or at the request of a Party, reopen the proceedings. The Arbitral Tribunal's decision that the proceedings are to be reopened shall be communicated to the Parties and to the BAC. The Arbitral Tribunal shall close any reopened proceedings in accordance with paragraph 1.

### **Article 32 Continuation of the Arbitral Proceedings with Majority of the Arbitral Tribunal**

In the event that, after the closure of the proceeding, an arbitrator on a three-member Arbitral Tribunal is or the minority of a multi-member Arbitral Tribunal are unable to participate in the deliberations and make an award as a result of death or other reasons, the Chairperson may replace the arbitrator(s) with a substitute arbitrator or arbitrators, pursuant to Article 16 of the Rules. Alternatively, provided that the Parties consent and with the approval of the Chairperson, the two remaining arbitrators or the majority of the Arbitral Tribunal may continue with the arbitral proceedings and make decision(s) and/or an award.

### **Article 33 Objections to Jurisdiction**

1. Any objection that any claim(s) or counterclaim(s) are not within the jurisdiction of the BAC or the Arbitral Tribunal, including an objection as to the existence, validity or scope of the arbitration agreement, or as to the applicability of the Rules, shall be made in writing as early as possible. A Party shall file the objection no later than the expiration of the time limit fixed for the filing of the Counter-Memorial, or, if the objection relates to any counterclaim(s), for the filing of the Reply, unless the facts on which the objection is based are unknown to the Party at that time, in which case the objection shall be made within 30 days after the facts are known or should have been known to the Party. The Arbitral Tribunal may not accept an objection to jurisdiction raised by a Party beyond the aforementioned time limit unless the Arbitral Tribunal considers the delay justified.

2. A Party is not precluded from raising an objection to jurisdiction by virtue of the fact that it has nominated or participated in the nomination of an arbitrator.

3. The Arbitral Tribunal shall have the power to rule on its own jurisdiction. However, if an objection to jurisdiction is raised by a Party before the Arbitral Tribunal is constituted, the Chairperson may make a decision on whether the BAC manifestly has no jurisdiction,

based on *prima facie* evidence. Where the Chairperson decides that the BAC manifestly has no jurisdiction, the case shall be terminated.

4. Whether an arbitration agreement is contained in a contract, treaty, statute, regulation or other instrument, it shall be treated as an agreement independent of and separate from all other clauses of those instruments. The existence or validity of an arbitration agreement shall not be affected by any decision in relation to the existence or validity of the aforementioned instruments.

5. The Arbitral Tribunal may, on its own initiative or at the request of the Party that raises the objection to jurisdiction, decide to address the objection to jurisdiction in a separate phase of the proceeding and to suspend the proceeding on the merits (the “**Bifurcation**”). Before making the decision, the Arbitral Tribunal shall provide the other Party an opportunity to file comments.

6. Where the Arbitral Tribunal decides to bifurcate the proceedings, it shall, after consulting with the Parties, decide upon the written and/or oral procedure for adjudicating the objection to jurisdiction.

## **Article 34 Early Dismissal**

1. A Party may apply to the Arbitral Tribunal for early dismissal of any claim(s) or counterclaim(s) on the basis that such claim(s) or counterclaim(s) is manifestly without legal merit or manifestly outside the jurisdiction of the BAC or the Arbitral Tribunal.

2. The following procedure shall apply to an application for early dismissal:

(a) a Party shall file an application for early dismissal in writing no later than 30 days after the constitution of the Arbitral Tribunal or within any other time limit agreed by the Parties, specifying the grounds on which the application is based and including a statement of the relevant facts, law and arguments, with any supporting documents;

(b) the Arbitral Tribunal shall fix the time limits for written or oral submissions, as required, on the application for early dismissal;



(c) if a Party files the application for early dismissal before the constitution of the Arbitral Tribunal, the BAC shall fix the time limits for written submissions on the application, so that the Arbitral Tribunal may consider the application promptly upon its constitution; and

(d) the Arbitral Tribunal shall issue its decision or award on the application within 45 days after the latest date of:

- (i) the constitution of the Arbitral Tribunal;
- (ii) the last written submission on the application; or
- (iii) the last oral submission on the application.

3. If the Arbitral Tribunal decides that all claims or counterclaims are manifestly without legal merit or manifestly outside the jurisdiction of the BAC or the Arbitral Tribunal, it shall make an award to that effect. Otherwise, the Arbitral Tribunal shall issue a decision on the application and make procedural arrangements for the further conduct of the proceedings. The decision of the Arbitral Tribunal shall be without prejudice to the right of a Party to file an objection to jurisdiction pursuant to Article 33 or to argue subsequently in the proceedings that any claim(s) or counterclaim(s) is without legal merit.

### **Article 35 Provisional Measures and Emergency Arbitrator**

1. A Party may at any time request that the Arbitral Tribunal grants provisional measures to preserve that Party's rights, including but not limited to measures to:

(a) prevent action that is likely to cause current or imminent harm to that Party or prejudice to the arbitral proceedings;

(b) maintain or restore the *status quo* pending determination of the Dispute; and

(c) preserve evidence that may be relevant to the resolution of the Dispute.

2. The following procedure shall apply:

(a) the request shall specify the rights to be preserved, the measures requested and the circumstances that require such measures;

(b) the Arbitral Tribunal shall fix the time limits for the Parties to make written or oral submissions (if required) on the request;

(c) if a Party requests provisional measures before the constitution of the Arbitral Tribunal, the BAC shall fix the time limits for the Parties to make written submissions on the request, so that the Arbitral Tribunal may consider the request promptly upon its constitution; and

(d) the Arbitral Tribunal shall issue its decision, in an order or in any other appropriate form, on the request within 30 days after the latest date of:

(i) the constitution of the Arbitral Tribunal;

(ii) the last written submission on the request; or

(iii) the last oral submission on the request.

3. In deciding whether to grant provisional measures, the Arbitral Tribunal shall consider all relevant circumstances. The Arbitral Tribunal shall grant provisional measures only if it determines that they are urgent and necessary.

4. The Arbitral Tribunal may order the Party requesting provisional measures to provide appropriate security in connection with the measures requested.

5. A Party shall promptly disclose any material change in the circumstances upon which the Arbitral Tribunal granted provisional measures.

6. The Arbitral Tribunal may at any time modify or revoke the provisional measures previously granted, on its own initiative or at the request of a Party.

7. If the Parties expressly agree on the application of the Emergency Arbitrator Rules set forth in Appendix D to the Rules, a Party requiring emergency interim relief prior to the constitution of the Arbitral

Tribunal may apply for such relief pursuant to Appendix D.

8. The measures and procedures set out in paragraphs 1 to 7 inclusive are without prejudice to the rights of the Parties, based upon the applicable law, to apply to any competent court or other authority for provisional measures.

### **Article 36 Third-Party Submissions**

1. In arbitration cases based upon a treaty, the Arbitral Tribunal shall permit a party to the treaty who is not a Party to a Dispute (**the “non-disputing Treaty Party”**) to make written submissions on a question of treaty interpretation that is directly relevant to the Dispute. The Arbitral Tribunal may also, after considering the views of the Parties and having regard to the circumstances of the case, invite written submissions from a non-disputing Treaty Party under this paragraph.

2. Any person or entity that is not a disputing party (**the “non-disputing party”**), including a non-disputing Treaty Party referred to in paragraph 1, may apply to the Arbitral Tribunal for permission to make written submissions regarding a matter within the scope of the Dispute. The Arbitral Tribunal may also, after considering the views of the Parties and having regard to the circumstances of the case, invite written submissions from a non-disputing party under this paragraph.

3. In determining whether to permit a non-disputing party to make submissions under paragraph 2, the Arbitral Tribunal shall consider all relevant circumstances, including:

(a) whether the submissions would address a matter within the scope of the Dispute;

(b) whether and to what extent the submissions would assist the Arbitral Tribunal to determine a factual or legal issue related to the proceedings by bringing a perspective, particular knowledge or insight that is different from that of the disputing Parties;

(c) whether the non-disputing party has a significant interest in the

proceeding and/or any other related proceedings;

(d) whether the Dispute involves public interests;

(e) whether and to what extent allowing the written submissions would violate the Parties' right to confidentiality;

(f) the identity, activities, organization and ownership of the non-disputing party, including any direct or indirect affiliation between the non-disputing party, a Party or a non-disputing Treaty Party; and

(g) whether any person or entity will provide the non-disputing party with financial or other assistance to file the submissions.

4. The Parties shall have the right to make observations on whether a non-disputing party should be permitted to file written submissions under paragraph 2 and on the conditions for filing them, if any.

5. The Arbitral Tribunal shall ensure that non-disputing Treaty Party submissions under paragraph 1 or non-disputing party submissions under paragraph 2 do not disrupt the proceedings or unduly burden or unfairly prejudice either Party. To this end, submissions under paragraphs 1 and 2 shall be filed no later than 60 days of the filing of the Counter-Memorial by the Respondent. The Arbitral Tribunal may impose further conditions on non-disputing party submissions, including with regard to:

(a) the format, length or scope of the submissions; and

(b) the payment of funds to defray the increased costs of the proceedings attributable to the non-disputing party's participation.

6. The Parties shall have the right to make observations on submissions filed under paragraphs 1 and 2.

7. The Arbitral Tribunal shall decide which further written submissions shall be required from a non-disputing Treaty Party that has filed submissions under paragraph 1 or a non-disputing party that has filed submissions under paragraph 2. The Arbitral Tribunal shall fix the time limits for communicating such further submissions.

8. The Arbitral Tribunal may, if either Party so requests or the Arbitral Tribunal so decides, hold a hearing for a non-disputing Treaty Party or a non-disputing party to explain or be examined on its written submissions.

9. The Arbitral Tribunal may, after consulting with the Parties, order that a non-disputing Treaty Party or a non-disputing party be provided with access to documents related to the proceedings, including submissions, evidence, orders and decisions, as may be necessary for its participation in the proceedings. The Arbitral Tribunal shall take appropriate measures to safeguard the confidentiality of information related to the proceedings.

10. The Arbitral Tribunal may refer to and rely on non-disputing Treaty Party submissions under paragraph 1 and/or non-disputing party submissions under paragraph 2 in its orders, decisions and awards.

### **Article 37 Mediation**

1. At any time before of the award is made, the Parties may jointly request the Arbitral Tribunal to mediate the Dispute, or jointly request the BAC to mediate the Dispute in another appropriate manner and procedure. In either case, the arbitral proceedings shall be suspended.

2. Where the Parties jointly request the Arbitral Tribunal for mediation, the following procedures shall apply:

(a) the Arbitral Tribunal may mediate the case in a manner that it considers appropriate. The mediation proceedings shall be kept confidential.

(b) where the Parties have reached a settlement agreement through mediation by the Arbitral Tribunal, they may withdraw their claims and counterclaims (if applicable), or may request the Arbitral Tribunal to make an award in accordance with the terms of the settlement agreement.

(c) the Arbitral Tribunal shall terminate the mediation if either

Party so requests or if the Arbitral Tribunal considers that further mediation efforts would be futile. Unless otherwise agreed by the Parties, the Arbitral Tribunal shall resume the arbitral proceedings. Where both Parties jointly request the replacement of an arbitrator(s), a substitute arbitrator(s) shall be nominated or appointed in accordance with the procedure that applied to the nomination or appointment of the replaced arbitrator(s). The resulting additional costs shall be borne equally by the Parties.

3. Where the Parties jointly request the BAC to mediate the Dispute in another appropriate manner and procedure, the following procedures shall apply:

(a) where the Parties have reached a settlement agreement through mediation, they may withdraw their claims and counterclaims (if applicable). At the request of the Parties, the Arbitral Tribunal may make an award in accordance with the terms of the settlement agreement.

(b) unless otherwise agreed by the Parties, where mediation is not successful, the Arbitral Tribunal shall resume the arbitral proceedings.

4. Where mediation is not successful, neither Party may adduce evidence of or refer to or use any opinion, view or statement, any proposal or proposition expressing acceptance or opposition by either Party, or any opinion, view or statement by the Arbitral Tribunal made in the process of mediation as grounds for any claim, defense or counterclaim in the subsequent arbitral proceedings, judicial proceedings or any other proceedings.

## **Article 38 Expedited Procedure**

The Parties may agree to expedite the arbitration in accordance with the Rules of Expedited Procedures set forth in Appendix C to the Rules.

### Article 39 Third-Party Funding

1. “Third-party funding” is the provision of funds or other equivalent support for the conduct of proceedings by a person or entity that is not a Party to the Dispute (**the “third-party funder”**) to a Party to the proceedings, an affiliate of that Party or a representative of that Party.

2. Where a Party has a third-party funding arrangement, the Party shall file a written notice to the other Party, the Arbitral Tribunal and the BAC, disclosing in sufficient detail:

(a) the existence of the third-party funding;

(b) the identity of the third-party funder and its actual controller (if applicable);

(c) where an arbitrator has been nominated or appointed, the relationship, if any, between the third-party funder and its actual controller (if applicable) and the arbitrator; and

(d) whether or not the third-party funder has committed to cover adverse costs liability.

3. The notice referred to in paragraph 2 shall be filed by the Claimant or the Respondent at the same time as, or within 7 days of, the submission of the Notice of Arbitration or the Response to the Notice of Arbitration respectively, or within 7 days of the conclusion of a third-party funding arrangement if the arrangement is concluded after the submission.

4. Each Party shall disclose to the other Party, the Arbitral Tribunal and the BAC any change to the information referred to in paragraph 2 occurring after the initial disclosure, including termination of the funding arrangement, within 7 days of the change.

5. When making a decision on the costs of the arbitration and other costs, the Arbitral Tribunal may take into account the existence of any third-party funding arrangement, and whether the requirements set forth in the preceding paragraphs 2, 3 and 4 have been complied

with by the Party accepting the funding. Where a third-party funder has not committed to undertake adverse costs liability, the Arbitral Tribunal may order the Party accepting the funding by such funder to provide appropriate security for costs where necessary.

## Chapter V Arbitral Award

### Article 40 Applicable Law and Rules of Law

1. The Arbitral Tribunal shall apply the law or rules of law agreed upon by the Parties to the substance of the Dispute. Failing such agreement by the Parties, the Arbitral Tribunal may apply the law or rules of law it considers appropriate. When making decisions on the applicable law or rules of law, the Arbitral Tribunal shall consider the relevant circumstances of the Dispute, including but not limited to the nationality of the Parties, the nature of disputed action(s) and the alleged breaches.

2. Unless otherwise expressly authorized by the Parties, the Arbitral Tribunal shall not decide the Dispute as *amiable compositeur* or *ex aequo et bono*.

### Article 41 Time Limit for the Award

1. The award shall be made no later than 150 days from the date the Arbitral Tribunal declares the arbitral proceedings closed in accordance with Article 31 of the Rules.

2. The BAC may decide to extend this time limit at the request of the Arbitral Tribunal.

### Article 42 Making of the Award

1. The award shall be made in writing, and shall state the date on which it is made and the seat of the arbitration. Unless otherwise



agreed by the Parties, the Arbitral Tribunal shall state the reasons upon which the award is based.

2. Where the Arbitral Tribunal is composed of three or more members, the award shall be made on the basis of the unanimous or majority opinion of the arbitrators. Where the Arbitral Tribunal fails to reach a majority opinion, the award shall be made on the basis of the opinion of the presiding arbitrator. The opinions or statements of the dissenting arbitrator(s) shall be appended to the award, which shall not form a part of the award. The aforementioned rules also apply to other decisions or orders made by the Arbitral Tribunal, except for decisions or orders on procedural arrangements made by the presiding arbitrator with the authorization of the Arbitral Tribunal.

3. Where the Arbitral Tribunal is composed of a sole arbitrator, the award shall be made on the basis of the decision of such arbitrator.

4. The Arbitral Tribunal shall, before finalizing an award, send a draft of it to the Parties for comment(s) and fix a time limit for them to submit their comment(s). The Parties' comment(s) shall be strictly limited to specific aspect(s) of the draft award. The Arbitral Tribunal is not bound to accept the comment(s), but may give appropriate consideration to them where it considers necessary. A Party's failure to submit comment(s) within the time limit shall not preclude the Arbitral Tribunal from making the award.

5. The Arbitral Tribunal shall submit the draft of the award to the BAC before signing it. The BAC may make suggestions on the form of the award, and may draw the Arbitral Tribunal's attention to other matters in the award, without affecting the Arbitral Tribunal's liberty of decision.

6. The award shall be signed by the arbitrators and shall bear the seal of the BAC. At their discretion, dissenting arbitrator(s) may or may not sign the award.

7. Once an award has been signed and sealed, the BAC shall dispatch a copy of the award to each Party without delay. If the costs of the arbitration have not been paid in full by the Parties, the BAC

may withhold the award until such costs are paid in full.

8. The award shall be final and binding on the Parties as of the date it is made, except where an agreement that the award may be appealed has been notified to the BAC in accordance with Article 46.

9. Where an agreement has been notified to the BAC in accordance with Article 46, the award shall become final and binding on the Parties when:

(a) 60 days have lapsed from the date the award was made and neither Party has appealed against the award; or

(b) where an appeal is made, the appellate proceedings have been terminated.

### **Article 43 Settlement**

If the Parties reach a settlement agreement before the award is made, the Arbitral Tribunal may, at the request of the Parties, decide to terminate the case or make an award recording the settlement. The Arbitral Tribunal is not obliged to give reasons for such an award.

### **Article 44 Correction and Interpretation of the Award**

1. The Arbitral Tribunal may correct any clerical, typographical or computational errors in the award or provide an interpretation of a specific matter or part of the award on its own initiative.

2. Within 30 days from the date of receipt of an award, a Party may request the Arbitral Tribunal to correct any clerical, typographical or computational errors in the award or provide an interpretation of a specific point or part of the award. The Arbitral Tribunal shall, if it considers the request justified and after giving the other Party an opportunity to comment on the request, make the correction or provide the interpretation within 30 days from the date of receipt of the request.

3. Any correction or interpretation of an award shall be in writing,

forming part of the award, and shall comply with Article 42 of the Rules (excluding paragraph 4).

### **Article 45 Supplementary Award**

1. The Arbitral Tribunal may, on its own initiative, make a supplementary award on any claim or counterclaim presented in the arbitration but not determined in the award.

2. Within 30 days from the date of receipt of an award, a Party may request that the Arbitral Tribunal make a supplementary award on any claim or counterclaim presented in the arbitration but not determined in the award. The Arbitral Tribunal shall, if it considers the request justified and after giving the other Party an opportunity to comment on the request, make the supplementary award within 30 days from the date of receipt of the request.

3. The Arbitral Tribunal may, where it considers necessary, request the BAC to extend the time limit specified in paragraphs 1 and 2.

4. The supplementary award shall be made in writing, forming part of the award, and comply with Article 42 of the Rules (excluding paragraph 4).

### **Article 46 Appeal against the Award**

1. An award may be appealed against in accordance with Appendix E to the Rules if the Parties have so agreed in writing.

2. The agreement referred to in paragraph 1 shall be notified to the BAC as early as possible, and in any event no later than the expiration of the time limit fixed by the Arbitral Tribunal for the filing of comments on the draft of the award pursuant to Article 42(1) of the Rules.

3. A Party wishing to appeal against the award shall submit a Notice of Appeal in writing to the BAC within 60 days from the date on which the award is made.

4. Where the Parties have agreed with regard to issues including the cause of the appeal, appellate procedures and the appeal award that are different from the provisions contained in the Rules and Appendix E to the Rules, the BAC shall determine whether to accept an appeal pursuant to such agreement.

#### **Article 47 Costs of the Arbitration**

1. The costs of the arbitration shall include:

(a) the fees and expenses of the Arbitral Tribunal;

(b) the fees and expenses of the emergency arbitrator (if applicable);

(c) the fees and expenses of any expert appointed by the Arbitral Tribunal and the cost of any other assistance reasonably incurred, subject to the amount approved by the Arbitral Tribunal;

(d) the fees and expenses of Tribunal Secretary (if applicable); and

(e) the registration fee and administrative fee charged by the BAC.

2. The Arbitral Tribunal shall, before making the award, request the BAC to determine finally the costs of the arbitration. The BAC shall do so in accordance with the BAC Fees Schedule in force at the date of commencement of the arbitration, having regard to the extent to which the Arbitral Tribunal has acted in an efficient and expeditious manner, the complexity of the Dispute and any other relevant circumstances.

3. The Arbitral Tribunal shall include in the award the total sum of the costs of the arbitration as finally determined by the BAC and specify the costs for each item.

4. Unless otherwise agreed by the Parties, the Arbitral Tribunal may, at the request of a Party or on its own initiative, determine in the award the division and amount of the costs of the arbitration between the Parties, having regard to the outcome of the case, each Party's

contribution to the efficiency and expeditiousness of the arbitration and any other circumstances it considers relevant.

5. If the case is terminated before the award is made, the BAC shall determine the costs of the arbitration, having regard to the stage of the arbitration, the work performed by the Arbitral Tribunal and any other relevant circumstances it considers necessary.

6. The Parties are jointly and severally liable to the Arbitral Tribunal and to the BAC for the costs of the arbitration.

7. Unless otherwise agreed by the Parties, the Arbitral Tribunal may, at the request of a Party or on its own initiative, order a Party to pay, in whole or in part, any reasonable costs incurred by the other Party in the arbitration, including the costs of legal representation, having regard to the outcome of the case, each Party's contribution to the efficiency and expeditiousness of the arbitration and any other circumstances it considers relevant.

8. A Party may request that the Arbitral Tribunal order the other Party to provide security for the costs of the arbitration and any reasonable costs incurred by the former Party in this arbitration. In determining whether to order a Party to provide security for costs, the Arbitral Tribunal shall consider the Party's ability to comply with an adverse decision on costs and any other relevant circumstances.

#### **Article 48 Deposit of Costs of the Arbitration**

1. The BAC shall determine the amount and method of the deposit of the costs of the arbitration to be made by each Party.

2. Unless otherwise determined by the BAC or agreed by the Parties, and save that the Claimant shall pay a registration fee in accordance with Article 5(4) of the Rules, the Claimant and the Respondent shall each make a deposit in equal shares. Where the BAC considers necessary, the BAC may require the Parties to make further deposit(s) during the course of the arbitral proceedings.

3. If a Party fails to make a required deposit, the BAC shall

provide the other Party an opportunity to make such deposit within a specified period of time. If the other Party fails to make such deposit, the BAC shall terminate the case in whole or in part.

## Chapter VI Final Provisions

### Article 49 Service and Time Limit

1. Unless the Parties agree or the Arbitral Tribunal orders otherwise, all written submissions, notices, comments, communications and other materials filed by the Parties and all orders, decisions, awards, communications and other materials issued or forwarded by the Arbitral Tribunal or the BAC (collectively referred to as “**arbitration documents**”) shall be delivered by electronic means to be determined by the BAC after consultations with the Parties. An arbitration document shall be deemed to have been properly served if it is delivered by the electronic means.

2. Notwithstanding paragraph 1, the Notice of Arbitration and the Response to the Notice of Arbitration shall be served by non-electronic means in accordance with paragraph 3 below, unless otherwise agreed by the Parties. At the request of a Party, the BAC shall deliver orders, decisions and awards of the Arbitral Tribunal to that Party by non-electronic means in accordance with paragraph 3.

3. Where the Parties agree or the Arbitral Tribunal orders that arbitration documents shall be served by non-electronic means, those arbitration documents may be delivered in person or sent by registered mail or express mail or by any other non-electronic means that provides a record of the service.

(a) arbitration documents shall be deemed to have been properly served if they are sent to the address agreed by the Parties or the address provided by a Party or its representative(s).

(b) where the Parties have not agreed on an address or a Party or its representative(s) has not provided an address, arbitration

documents shall be deemed to have been properly served if they are delivered in person or sent to the addressee's place of business, place of registration, domicile, habitual residence or mailing address, or, where none of the aforementioned addresses can be identified after reasonable efforts by a Party, to the addressee's last known place of business, place of registration, domicile, habitual residence or mailing address by registered mail or express mail, or by any other means that provides a record of the delivery, including but not limited to service by public notary, entrustment or retention.

4. An arbitration document served in accordance with paragraphs 1 to 3 shall be deemed to have been properly served on the date it is delivered or deemed to be delivered.

5. Where arbitration documents are delivered by non-electronic means, each Party shall supply one copy each to the other Party, the arbitrator(s) and the BAC. A copy of each arbitration document from the Arbitral Tribunal to the Parties shall also be supplied to the BAC. The Arbitral Tribunal may rule on the means of supply and service of the arbitration documents.

6. The time limit for service specified in the Rules shall begin to run from the date following the day when an arbitration document is received or should have been received by a Party. Official holidays or non-business days during the running of the period of time shall be included in the period of time. If the last day of such period of time is an official holiday or non-business day at the place of receipt, the period shall expire at the end of the first following business day.

## **Article 50 Transparency of the Arbitration**

1. Where the Parties have agreed in writing, Articles 3 to 7 of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration 2014 (the “**UNCITRAL Transparency Rules**”) shall apply to the arbitration in whole or in part, and shall prevail over the relevant provisions of the Rules.

2. Where the Parties have no agreement on the application of the UNCITRAL Transparency Rules, the Notice of Arbitration, Notice of Appeal (if applicable), orders, decisions and the award of the Arbitral Tribunal and the Appellate Tribunal (if applicable) shall be made public, except for confidential or otherwise protected information therein. The timing and manner of such publication shall be decided by the BAC, taking into account the circumstances of the case.

### **Article 51 Exclusion of Liability**

1. The BAC and the Chairperson, Vice Chairperson(s), the Secretary-General and any other officers and employees of the Secretariat of the BAC, any arbitrator, any member of the Appellate Tribunal, any emergency arbitrator and any person appointed by the Arbitral Tribunal, including a Tribunal Secretary and an expert appointed by the Arbitral Tribunal, shall not be liable for any act or omission in connection with any arbitration administered by the BAC in accordance with the Rules, unless the applicable law of the arbitration provides otherwise.

2. The Parties shall not require any of the persons referred to in paragraph 1 and the BAC to act as a witness in any legal proceedings in connection with any arbitration administered by the BAC in accordance with the Rules.

### **Article 52 Interpretation of the Rules**

1. The Rules shall be interpreted by the BAC.

2. The Appendices to the Rules shall constitute part of the Rules.

3. Any other document issued by the BAC shall not constitute part of the Rules, unless the BAC states otherwise.

4. The headings to the articles of the Rules shall not be used for the interpretation of the content of the articles.



**Article 53 Official Versions of the Rules**

Each of the Chinese, English and other language versions of the Rules published by the BAC is an official version.

**Article 54 Effective Date of the Rules**

The Rules shall take effect as of October 1, 2019.

## Appendix A:

### Schedule of Fees for International Investment Arbitration

#### Rule 1 Registration Fee

Where the Parties submit a Dispute to the Beijing Arbitration Commission (**the “BAC”**) for arbitration, the Claimant shall pay a non-refundable registration fee of Chinese Yuan (CNY) 20,000.

#### Rule 2 Administrative Fee

1. The administrative fee shall cover the necessary expenses and costs of the BAC in handling the arbitration.

2. The administrative fee shall be determined on the basis of the amount in dispute. When determining the amount in dispute, the aggregated sum of claim(s) and counterclaim(s) shall be considered. Where the amount in dispute cannot be ascertained, the BAC shall determine the amount in dispute or the amount of the administrative fee, taking into account the circumstances of the Dispute.

3. The Parties shall pay the administrative fee to the BAC in accordance with the following schedule:

Amount in Dispute (CNY)	Arbitration Administrative Fee (CNY)
Up to 1,000,000	25,000
1,000,001 - 5,000,000	25,000 + 0.70% of the amount over 1,000,000
5,000,001 - 10,000,000	53,000 + 0.50% of the amount over 5,000,000
10,000,001 - 40,000,000	78,000 + 0.20% of the amount over 10,000,000
40,000,001 - 80,000,000	138,000 + 0.12% of the amount over 40,000,000

80,000,001 - 200,000,000	186,000 + 0.10% of the amount over 80,000,000
200,000,001 - 500,000,000	306,000 + 0.05% of the amount over 200,000,000
Over 500,000,000	456,000

4. The BAC may charge for other reasonable costs pursuant to the relevant provisions of the BAC/BIAC Investment Arbitration Rules, including but not limited to the costs of using the BAC hearing rooms and other facilities, translation fees, transcription fees and the costs of using hearing rooms or other facilities other than those of the BAC.

### **Rule 3 Arbitrators' Fees**

1. The arbitrators' fees may be determined on the basis of an hourly rate or on the amount in dispute in the arbitration.

2. The Parties shall decide the method for determining the arbitrators' fees through negotiation. If no such method is determined within 45 days from the date on which the Respondent receives the Notice of Commencement of the Arbitration, the arbitrators' fees shall be determined in accordance with paragraph 4.

3. Where the arbitrators' fees are determined on the basis of an hourly rate, the following rules shall apply:

(a) where an arbitrator is nominated by a Party, the hourly rate applicable to this arbitrator shall be determined by the arbitrator and the nominating Party through negotiation;

(b) the hourly rate applicable to a sole arbitrator or the presiding arbitrator shall be determined by the arbitrator and the Parties through negotiation;

(c) where the Parties cannot reach an agreement on the hourly rate of an arbitrator through negotiation, the BAC may determine such rate; and

(d) regardless of the method of determination, the hourly rate of an arbitrator shall not exceed CNY 5,000 in principle.

4. Where the arbitrators' fees are determined on the basis of

the amount in dispute, the aggregated sum of the claim(s) and the counterclaim(s) shall be considered when determining the amount in dispute. Where that amount in dispute cannot be ascertained, the BAC shall determine that amount in dispute or the arbitrators' fees taking into account the circumstances of the arbitration case. The fee calculated in accordance with the Schedule below shall be the maximum amount payable to each arbitrator:

Amount in Dispute (CNY)	Arbitrator' s Fee (CNY)
Up to 1,000,000	60,000
1,000,001 - 5,000,000	60,000 + 5 % of the amount over 1,000,000
5,000,001 - 10,000,000	265,000 + 2.5 % of the amount over 5,000,000
10,000,001 - 20,000,000	390,000 + 1.0 % of the amount over 10,000,000
20,000,001 - 40,000,000	490,000 + 0.6 % of the amount over 20,000,000
40,000,001 - 100,000,000	610,000 + 0.4% of the amount over 40,000,000
100,000,001 - 200,000,000	850,000 + 0.3% of the amount over 100,000,000
200,000,001 - 500,000,000	1,150,000 + 0.15 % of the amount over 200,000,000
500,000,001-1,000,000,000	1,600,000 + 0.06% of the amount over 500,000,000
1,000,000,001-1,500,000,000	1,900,000 + 0.04% of the amount over 1,000,000,000
1,500,000,001-2,000,000,000	2,100,000 + 0.03% of the amount over 1,500,000,000
Over 2,000,000,000	2,250,000 + 0.02 % of the amount over 2,000,000,000, Up to a maximum of 10,000,000

#### Rule 4 Method of Payment

1. The costs of the arbitration under Article 47(1) of the BAC/BIAC Investment Arbitration Rules shall be paid in CNY.

2. With the approval of the BAC, the Parties may pay the costs of the arbitration in other currencies equivalent to the corresponding amount in CNY.

## Appendix B:

### Indicative Timetable for International Investment Arbitration

Description	Period of Time
Constitution of the Arbitral Tribunal	-
First Case Management Conference	30 days
Decision on Working Procedures and Timetable	10 days
Filing of the Memorial by the Claimant	90 days
Filing of the Counter-Memorial by the Respondent	120 days
Production of Documents	90 days
Filing of the Reply by the Claimant	60 days
Filing of the Rejoinder by the Respondent	60 days
Hearing	60 days
Closure of the Arbitral Proceedings	60 days
Making the Award	150 days

Notes:

1. Each period of time in the timetable shall start to run on the day following the day on which the previous step is completed.

2. The timetable may be changed in the light of developments in the arbitral proceedings.

3. Where a Party makes objection(s) to jurisdiction under Article 33, or applies for early dismissal under Article 34 of the BAC/BIAC Investment Arbitration Rules, the Arbitral Tribunal may make appropriate changes to the timetable.

## Appendix C:

### Rules of Expedited Procedures for International Investment Arbitration

#### Rule 1 Application

Parties who agree to apply the Rules of Expedited Procedures set forth in this Appendix shall jointly notify the BAC in writing of their consent to do so within 20 days of receipt of the Notice of Commencement of the Arbitration by the Respondent.

#### Rule 2 Constitution of the Arbitral Tribunal

1. The Arbitral Tribunal in an expedited arbitration shall consist of a sole arbitrator, unless the Parties jointly notify the BAC in writing of their agreement, within the time limit fixed by the BAC, that the Arbitral Tribunal shall consist of three members.

2. The Parties may jointly nominate the sole arbitrator within a time limit to be fixed by the BAC. In the absence of such nomination, the sole arbitrator shall be appointed by the BAC, after consulting with the Parties, within as short a timeframe as possible.

3. Where the Parties jointly notify the BAC of their agreement that the Arbitral Tribunal shall consist of three members, the following procedure shall apply:

(a) each Party shall nominate an arbitrator and so notify the BAC within 20 days after the notification referred to in paragraph 1;

(b) the BAC shall immediately send the request for acceptance of the nomination to the nominee and shall request a reply within 5 days of receipt;

(c) the Parties shall jointly nominate the presiding arbitrator and so notify the BAC within 20 days of receipt of acceptance of both nominations of the two arbitrators;

(d) the BAC shall immediately send the request for acceptance of the nomination to the nominee and shall request a reply within 5 days of receipt; and

(e) the BAC shall appoint any arbitrator(s) not yet nominated if a nomination is not made within the time limit referred to in sub-paragraphs (a) or (c), or a nominee does not accept the nomination within the time limit referred to in sub-paragraphs (b) or (d).

### **Rule 3 Proceedings**

1. After the Arbitral Tribunal has been constituted, no Party shall make new claims or new counterclaims unless it is permitted to do so by the Arbitral Tribunal, which shall consider the nature of such new claims or counterclaims, the stage of the arbitration, any cost implications and any other relevant circumstances.

2. The Arbitral Tribunal shall hold a first case management conference pursuant to Article 19 of the BAC/BIAC Investment Arbitration Rules within 20 days after the constitution of the Arbitral Tribunal. The first case management conference shall, so far as possible, be held by video conference, telephone conference or other means of electronic communication.

3. The following schedule for written submissions and the hearing shall apply to the expedited arbitration:

(a) the Claimant shall file a Memorial within 60 days after the first session;

(b) the Respondent shall file a Counter-Memorial within 60 days after the date of filing of the Memorial;

(c) the Memorial and Counter-Memorial referred to in sub-paragraphs (a) and (b) shall each be no longer than 200 pages in

length;

(d) the Claimant shall file a Reply within 40 days after the date of filing of the Counter-Memorial;

(e) the Respondent shall file a Rejoinder within 40 days after the date of filing of the Reply;

(f) the Reply and Rejoinder referred to in sub-paragraphs (d) and (e) shall each be no longer than 100 pages in length;

(g) the hearing shall be held within 45 days after the last written submission has been filed;

(h) the Parties shall file statements of costs within 10 days after the last day of the hearing referred to in sub-paragraph (g); and

(i) the Arbitral Tribunal shall render the award as soon as possible, and in any event no later than 120 days after the last day of the hearing referred to in sub-paragraph (g).

4. Any preliminary objection, application for early dismissal, request for provisional measures or other submissions shall be joined to the schedule referred to in paragraph 3. The Arbitral Tribunal shall adjust the schedule if a Party raises any such matter, taking into account the expedited nature of the process.

5. The Arbitral Tribunal may extend the time limits in paragraphs 3 (a), 3 (b), 3 (d) and 3 (e) if it determines that the circumstances so warrant.

6. The Arbitral Tribunal may, after consultation with the Parties, decide not to allow requests for document production.

7. The Arbitral Tribunal may, after consulting with the Parties, decide the Dispute solely on the basis of the documents submitted by the Parties, with no hearing and no examination of witnesses or experts. Where a hearing is to be held, the Arbitral Tribunal may conduct it by video conference, telephone conference or other means of electronic communication.



#### **Rule 4 Reference to other Provisions of the Rules**

In respect of matters not provided for in this Appendix, other relevant provisions of the BAC/BIAC Investment Arbitration Rules shall apply.

## Appendix D:

### Rules for Emergency Arbitrator in International Investment Arbitration

#### Rule 1 Application for Emergency Interim Relief

1. If the Parties have expressly agreed to the application of the Rules for Emergency Arbitrator set forth in this Appendix, a Party wishing to seek emergency interim relief (**the “Applicant”**) may, concurrent with or following the filing of a Notice of Arbitration but prior to the constitution of the Arbitral Tribunal, file an application for emergency interim relief (**the “Application”**) with the BAC. That Party shall, at the same time as it files the Application, send a copy of it to all other Parties.

2. The Application shall include:

(a) the emergency interim relief sought;

(b) the reason(s) why the Applicant is entitled to such emergency interim relief;

(c) the documentary or other evidence on which the Application is based; and

(d) a statement certifying that all other Parties have been provided with a copy of the Application or, if not, an explanation of the steps taken in good faith to provide a copy to those Parties.

3. The Applicant shall advance the costs for the Emergency Arbitrator Procedure in accordance with Rule 6.

4. Where the Parties have agreed on the language(s) of arbitration, such language(s) shall be the language(s) of the Emergency Arbitrator

Procedure. In the absence of such agreement, the language of the Emergency Arbitrator Procedure shall be English, unless otherwise determined by the Emergency Arbitrator.

## **Rule 2 Appointment of the Emergency Arbitrator**

1. The Chairperson shall, if he/she determines that the BAC should accept the Application, seek to appoint an Emergency Arbitrator within 1 day of receipt of the Application and payment of the costs for the Emergency Arbitrator Procedure.

2. Prior to accepting appointment, a prospective Emergency Arbitrator shall disclose to the BAC any circumstances that may give rise to justifiable doubts as to his/her impartiality or independence. Any challenge to the appointment of the Emergency Arbitrator must be made within 2 days of the communication by the BAC to the Parties of the appointment of the Emergency Arbitrator and the circumstances disclosed, or within 2 days after the reason for a challenge has become known to the Party making the challenge.

3. The Chairperson shall make a final decision on the challenge to the Emergency Arbitrator within 2 days of receipt of the challenge. If the challenge is accepted, the Chairperson shall appoint a replacement Emergency Arbitrator within 1 day of the decision confirming the challenge. The disclosure and challenge procedure shall also apply to the replacement Emergency Arbitrator.

4. Unless otherwise agreed by the Parties, the Emergency Arbitrator shall not subsequently act as an arbitrator in the proceedings to which the Application relates.

## **Rule 3 Seat of the Emergency Arbitrator Procedure**

Unless otherwise agreed by the Parties, the seat of the Emergency Arbitrator Procedure shall be the seat of the arbitration.

## **Rule 4 Emergency Arbitrator Proceedings**

The Emergency Arbitrator shall, as soon as possible but, in any event, within 2 days of his/her appointment, establish a schedule for consideration of the Application. Such schedule shall provide an equal and reasonable opportunity for the Parties to be heard, but may provide for proceedings by video conference, telephone conference, other means of electronic communication or on written submissions as alternatives to a hearing in person.

## **Rule 5 Decisions Made by the Emergency Arbitrator**

1. The Emergency Arbitrator shall have power to grant any emergency interim relief he/she considers necessary, including emergency interim relief that may be granted pending any hearing or written submissions by the Parties. The decision of the Emergency Arbitrator, which may take the form of an order or any other appropriate form, shall be binding upon the Parties.

2. The Emergency Arbitrator shall make his/her decision, with summary reasons given, within 15 days after his/her appointment, unless the BAC extends the time period at the request of the Emergency Arbitrator. The decision shall be signed by the Emergency Arbitrator and bear the seal of the BAC.

3. Any decision by the Emergency Arbitrator may be made conditional on the provision by the Applicant of appropriate security.

4. Where a Party objects to a decision made by the Emergency Arbitrator, it may apply to the Emergency Arbitrator for amendment, suspension or revocation of such decision within 3 days of receipt of it. The Emergency Arbitrator shall decide whether or not to uphold such application after hearing the Parties in an appropriate manner.

5. The authority of the Emergency Arbitrator shall cease on the date of the constitution of the Arbitral Tribunal. The Arbitral Tribunal may reconsider, modify or revoke any decision made by the Emergency Arbitrator.

6. Any decision made by the Emergency Arbitrator shall, in any event, cease to be binding:

(a) if the Arbitral Tribunal is not constituted within 120 days of such decision, which may be extended by agreement of the Parties or by the BAC;

(b) when the Arbitral Tribunal makes an award; or

(c) if all the claims are withdrawn.

### **Rule 6 Costs of the Emergency Arbitrator Procedures**

1. The following fees shall be payable in connection with an Emergency Arbitrator Procedure:

(a) an administrative fee (non-refundable): Chinese Yuan (CNY) 20,000;

(b) the Emergency Arbitrator's fee: CNY 100,000; and

(c) the Emergency Arbitrator's expenses.

2. At the request of the Emergency Arbitrator, or if otherwise deemed appropriate, the Chairperson, having regard to the nature of the case, the work performed by the Emergency Arbitrator and the BAC, and any other relevant circumstances, may decide to increase or reduce the fees set out in paragraphs 1(a) and 1(b).

3. The costs associated with an Emergency Arbitrator Procedure pursuant to paragraph 1 may initially be apportioned by the Emergency Arbitrator, subject to the power of the Arbitral Tribunal to determine finally the apportionment of such costs.

## Appendix E:

### Rules of Appeal Proceedings for International Investment Arbitration

#### Rule 1 Initiation of Appeal Proceedings

1. A Party wishing to initiate an appeal (**the “Appellant”**) under this Appendix shall submit a Notice of Appeal to the BAC. The Notice of Appeal shall include:

(a) a written demand that the arbitral award be referred to the appeal proceedings;

(b) the names, nationalities and addresses, including the postcodes, telephone numbers, facsimile numbers, electronic mail addresses, or any other means of communication, of the Appellant and the Party against whom the appeal is filed (**the “Appellee”**) and their representative(s);

(c) a reference to the agreement of the Parties that an arbitral award may be appealed against;

(d) a brief statement of the grounds of the appeal;

(e) the nature of the decision sought, including a request to make material modification(s) to the arbitral award or to make a new award; and

(f) any other information the Appellant considers necessary.

2. The Appellant shall, at the same time as it files the Notice of Appeal with the BAC, send a copy of it to the Appellee(s), and shall specify to the BAC the mode of service employed and the date of service.

3. The Appellant shall pay an appeal registration fee in accordance with Rules 9 and 10 of this Appendix.

4. The Notice of Appeal shall be deemed complete when all of the items required under paragraph 1 are included, or when the BAC determines that there has been substantial compliance with paragraph 1. Where the Notice of Appeal is incomplete, or where the Appellant has failed to send a copy thereof to the Appellee in accordance with paragraph 2, or where the appeal registration fee is not paid in accordance with paragraph 3, the BAC may request the Appellant to complete such requirements within a specified period of time. If the Appellant fails to comply with such request, the submission of the Notice of Appeal shall be deemed invalid.

5. The appeal proceedings shall be deemed to commence on the date on which the Notice of Appeal is validly submitted. The BAC shall issue a Notice of Commencement of the Appeal Proceedings to the Appellant and the Appellee (**the “Appellate Parties”**) without delay.

6. Once an appeal has been initiated, the Appellate Parties shall not seek enforcement of the arbitral award or apply to any judicial authorities to enforce or set aside the arbitral award during the appeal proceedings, unless the appeal proceedings are terminated.

## **Rule 2 Constitution of the Appellate Tribunal**

1. An Appellate Tribunal shall be composed of three members nominated or appointed from the Panel of Arbitrators. No member of the Appellate Tribunal shall have been a member of the Arbitral Tribunal that made the arbitral award.

2. Unless the Appellate Parties have agreed otherwise, they shall:

(a) each nominate or entrust the Chairperson to appoint a member of the Appellate Tribunal within 15 days after their receipt of the Notice of Commencement of the Appeal Proceedings; and

(b) jointly nominate or entrust the Chairperson to appoint the third

member of the Appellate Tribunal within 30 days of the receipt by the Appellee of the Notice of Commencement of the Appeal Proceedings. The third member shall be the presiding member of the Appellate Tribunal.

3. Any member of the Appellate Tribunal who has not been nominated or appointed in accordance with paragraph 2 shall be appointed by the Chairperson.

4. The Appellate Tribunal shall be deemed to be constituted on the date the BAC notifies the Appellate Parties that all of the members of the Appellate Tribunal have accepted their nominations or appointments.

5. Subject to the provisions of paragraphs 1 to 4 inclusive, the qualifications, nomination or appointment, disclosure, challenge to and replacement of the member(s) of the Appellate Tribunal shall be governed, *mutatis mutandis*, by Chapter III of the BAC/BIAC Investment Arbitration Rules.

### **Rule 3 Grounds of Appeal**

An appeal may only be initiated based on the following ground(s):

(a) that the arbitral award contains error(s) in the application or interpretation of the applicable law or rules of law;

(b) that the arbitral award contains manifest and material errors of fact; or

(c) that the BAC or the Arbitral Tribunal lacked jurisdiction, or the Arbitral Tribunal exceeded its powers, in so far as they are not covered by paragraphs (a) and (b).

### **Rule 4 Jurisdiction of the Appellate Tribunal**

The Appellate Tribunal shall have the power to rule on its own



jurisdiction with regard to the whole or part of the claims made in the appeal, and to make a decision as to jurisdiction.

## **Rule 5 Conduct of the Appeal Proceedings**

1. Unless the Appellate Parties have agreed otherwise, the seat and language of the appeal proceedings shall be the same as those of the original arbitral proceedings.

2. Unless the Appellate Parties have agreed otherwise, the Appellant shall file an Appellant's Submission within 15 days of its receipt of the Notice of the Commencement of the Appeal Proceedings, and the Appellee shall file an Appellee's Submission within 30 days of its receipt of the Appellant's Submission.

3. The Appellate Tribunal shall hold a hearing or hearings to allow the Appellate Parties to present oral submissions and to put questions to the Appellate Parties. The date and place of the hearing(s) shall be determined by the Appellate Tribunal after consulting with the Appellate Parties and the BAC. By agreement of the Appellate Parties, the Appellate Tribunal may decide the Dispute solely on the basis of the documents submitted by them, with no hearing(s).

4. Subject to the provisions of paragraphs 1 to 3, Chapter IV of the BAC/BIAC Investment Arbitration Rules shall apply, *mutatis mutandis*, to the appeal proceedings. Where the Appellate Tribunal deems the application of those provisions inappropriate, it may conduct the appeal proceedings in a manner it considers appropriate, provided that it grants equal treatment to the Appellate Parties.

## **Rule 6 Withdrawal of the Notice of Appeal**

1. The Appellant may withdraw the Notice of Appeal before the constitution of the Appellate Tribunal.

2. The Appellant may apply to withdraw the Notice of Appeal after

the Appellate Tribunal has been constituted. The Appellate Tribunal shall determine whether to allow such withdrawal.

### **Rule 7 Termination of the Appeal Proceedings**

The appeal proceedings shall be terminated in either of the following circumstances:

1. where the Appellate Tribunal makes a decision that it lacks jurisdiction to decide the appeal; or
2. where the Notice of Appeal is withdrawn.

### **Rule 8 Appeal Award**

1. Unless the appeal proceedings have been terminated in accordance with Rule 7, the Appellate Tribunal shall make an award on the appeal (**the “Appeal Award”**) no later than 90 days from the date of the constitution of the Appellate Tribunal. The BAC may, at the request of the Appellate Tribunal, extend such time limit by no more than 30 days. The aforementioned time limit shall not apply to any extension(s) on which the Appellate Parties have agreed.

2. The Appeal Award shall substitute the arbitral award, and shall be made in one of the following forms:

- (a) upholding the arbitral award;
- (b) making material modification(s) to the award; or
- (c) making a new award.

3. The Appeal Award shall be made on the basis of the unanimous or majority opinion of the members of the Appellate Tribunal. Where the Appellate Tribunal fails to reach a majority opinion, the award shall be made on the basis of the opinion of the presiding member of the Appellate Tribunal. The opinions or statements of the dissenting member(s) shall be appended to the award, which shall not form a part of the award. The above-mentioned rules also apply to other decisions

or orders made by the Appellate Tribunal, except for decisions or orders on procedural arrangements made by the presiding member with the authorization of the Appellate Tribunal.

4. The Appellate Tribunal shall submit the draft of the Appeal Award to the BAC before signing the award. The BAC may make suggestions on the form of the award, and may also draw the Appellate Tribunal's attention to other matters of the award, without affecting the Tribunal's liberty of decision.

5. The Appeal Award shall be signed by the members of the Appellate Tribunal and shall bear the seal of the BAC. At their discretion, dissenting member(s) of the Appellate Tribunal may or may not sign the award.

6. Once an Appeal Award has been made, the BAC shall deliver a copy of it to the Appellate Parties without delay. If the costs of the appeal have not been paid in full by the Appellate Parties, the BAC may withhold the Appeal Award until such costs have been paid in full.

7. The Appeal Award shall be final and shall be binding on the Appellate Parties as of the date it is made.

## **Rule 9 Costs of the Appeal**

1. The costs of the appeal shall include:

- (a) the fees and expenses of the Appellate Tribunal;
- (b) the costs of any other ancillary items reasonably incurred during the course of the appeal proceedings, subject to an amount approved by the Appellate Tribunal; and
- (c) the registration fee and the administrative fee of the appeal charged by the BAC.

2. The fees of the Appellate Tribunal referred to in paragraph 1(a) shall be determined on an hourly basis, subject to Rule 3.3 of

Appendix A to the BAC/BIAC Investment Arbitration Rules.

3. The costs of any other ancillary items referred to in paragraph 1(b) shall be charged on the basis of the actual or reasonable costs of such items.

4. The registration fee of the appeal shall be Chinese Yuan (CNY) 30,000, which is non-refundable.

5. The administration fee for the appeal shall in principle be between CNY 50,000 and CNY 200,000. The precise fee shall be determined by the BAC in accordance with the circumstances of the appeal case.

6. The Appellate Tribunal shall, before making the Appeal Award, request the BAC to determine finally the costs of the appeal, and shall include in the award the sum of the costs as determined by the BAC and specify the costs of each item.

7. Unless otherwise agreed by the Appellate Parties, the Appellate Tribunal may, at the request of a Party or on its own initiative, determine in the Appeal Award the division and apportionment of the costs of the appeal between the Parties, having regard to the outcome of the appeal, each Party's contribution to the efficiency and expeditiousness of the appeal and any other circumstances it considers relevant.

8. If the appeal proceedings are terminated before the Appeal Award is made, the BAC shall determine the costs of the appeal, having regard to the stage of the appeal has reached, the work performed by the Appellate Tribunal and any other relevant circumstances it considers necessary.

9. The Appellate Parties are jointly and severally liable to the member(s) of the Appellate Tribunal and to the BAC for the costs of the appeal.

10. Unless otherwise agreed by the Appellate Parties, the Appellate Tribunal may, at the request of a Party or on its own initiative, order one Party to pay any reasonable costs incurred by the other Party in

whole or in part, including the costs of legal representation, having regard to the outcome of the appeal, each Party's contribution to the efficiency and expeditiousness of the appeal and any other circumstances it considers relevant.

### **Rule 10 Deposit of Costs of the Appeal**

1. The Appellant shall pay the registration fee of the appeal in full upon submitting the Notice of Appeal to the BAC.

2. The Appellant shall deposit the administrative fee for the appeal upon submitting the Notice of Appeal to the BAC. The amount of such fee shall be determined by the BAC, with due consideration given to the relevant circumstances of the appeal.

3. After the Appellate Tribunal has been constituted, the Appellate Parties shall, by agreement with or pursuant to a direction by the Appellate Tribunal, deposit the fees and expenses of the Appellate Tribunal.

4. Where the Appellate Tribunal considers necessary, it may require the Appellate Parties to make further deposit(s) of costs of the appeal during the course of the appeal proceedings.

5. If an Appellate Party fails to make the required deposit of costs of the appeal, the BAC or the Appellate Tribunal shall notify the other Party, and shall provide the other Party an opportunity to make such deposit within a specified period of time. If the other Party fails to make such deposit, the BAC may terminate the appeal proceedings, or to recommend the Appellate Tribunal to proceed with the appeal in a manner the Appellate Tribunal considers appropriate.

## Appendix F:

### Procedural Guidelines for Arbitration under the UNCITRAL Arbitration Rules

#### **Rule 1 Application of the Guidelines**

1. Procedural Guidelines set forth in this Appendix (the “BAC Procedural Guidelines”) shall apply in the following circumstances where the Parties:

(a) have agreed to submit a Dispute to the BAC for arbitration in accordance with the UNCITRAL Arbitration Rules; or

(b) have agreed to arbitrate the Dispute in accordance with the UNCITRAL Arbitration Rules and requested the BAC to provide arbitration administration services.

2. Unless otherwise agreed by the Parties, the UNCITRAL Arbitration Rules referred to in the BAC Procedural Guidelines mean the 2013 version of those rules. Where the Parties have agreed to apply other versions of the UNCITRAL Arbitration Rules, the BAC Procedural Guidelines may be applied by reference.

#### **Rule 2 Seat of the Arbitration**

The seat of the arbitration shall be a place agreed upon by the Parties. In the absence of such an agreement, the Arbitral Tribunal shall determine the seat of the arbitration, taking into account the relevant circumstances of the arbitration.

#### **Rule 3 Notice of Arbitration**

The Claimant shall submit a Notice of Arbitration in writing in

accordance with the relevant provisions of the UNCITRAL Arbitration Rules and pay a registration fee in accordance with Rules 7(1) and 8(1) of the BAC Procedural Guidelines.

#### **Rule 4 Arbitration Administration Service**

1. Where the Parties have agreed to arbitrate the Dispute in accordance with the UNCITRAL Arbitration Rules, the BAC may provide the following arbitration administration services, provided that the Parties have reached an agreement with regard to the utilization of any such service through consultation with each other and have submitted a joint letter of entrustment to the BAC authorizing it:

- (a) to act as the arbitrator appointing authority; and/or
- (b) to provide financial management of the arbitration.

2. At the request of a Party or of the Arbitral Tribunal in writing, the BAC may also provide the following services:

- (a) to assist the Parties in forwarding applications for provisional measures;
- (b) to facilitate communication between the Parties, and between the Parties and the Arbitral Tribunal;
- (c) to provide services for oral hearings, which include but not limited to making hearing room(s) available, providing audio, video or audio-visual recording services, providing interpretation services and making records of oral hearings; and/or
- (d) to recommend institutions that can facilitate negotiation or mediation.

#### **Rule 5 The BAC as Arbitrator Appointing Authority**

1. Where the Parties have designated the BAC as the arbitrator appointing authority pursuant to Rule 4(1) of the BAC Procedural

Guidelines, the BAC shall act in such capacity in accordance with the relevant provisions of the UNCITRAL Arbitration Rules, including appointing arbitrators, determining challenges to arbitrators and appointing replacement arbitrators.

2. Unless otherwise agreed by the Parties, where the BAC acts as the arbitrator appointing authority, it may refer to and apply relevant provisions of Chapter III of the BAC/BAIC Investment Arbitration Rules.

3. Where the BAC is requested to decide a challenge to an arbitrator, the challenging Party shall submit to the BAC an application in writing, as required by Article 13(4) of the UNCITRAL Arbitration Rules. The application shall state the reason(s) for the challenge and be accompanied by all necessary evidence.

## **Rule 6 Costs of the Arbitration**

1. In the BAC Procedural Guidelines, “costs of the arbitration” refer to the costs incurred in an arbitration conducted under the UNCITRAL Arbitration Rules which is submitted to the BAC or where the BAC provides arbitration administration service(s).

2. The costs of the arbitration shall include:

(a) the registration fee;

(b) the administrative fee;

(c) the arbitrators’ fees and expenses;

(d) the fees and expenses of any expert appointed by the Arbitral Tribunal and of any other assistance reasonably incurred, subject to an amount approved by the Arbitral Tribunal; and

(e) the administrative fees for any arbitration administration service provided by the BAC.

3. The registration fee referred to in paragraph 2(a) and the administrative fee referred to in paragraph 2(b) shall be paid in



accordance with Rule 7 of the BAC Procedural Guidelines.

4. The arbitrators' fees and expenses referred to in paragraph 2(c) shall be determined by the Parties and the arbitrators through negotiation, and shall be deposited with the BAC in accordance with Article 41 of the UNCITRAL Arbitration Rules.

5. A list of the fees and expenses referred to in paragraph 2(d) shall be sent by the Arbitral Tribunal to the Parties, together with corresponding receipts and/or explanations. Such fees and expenses shall include but not be limited to reasonable expenses for transportation and accommodation.

6. The administrative fees referred to in paragraph 2 (e) shall be paid in accordance with paragraph 3 of Rule 7 of the BAC Procedural Guidelines.

### **Rule 7 Payment of Costs of the Arbitration**

1. The Claimant shall pay a registration fee of Chinese Yuan (CNY) 20,000 upon submitting the Notice of Arbitration to the BAC. The registration fee is non-refundable.

2. Where the Parties submit a Dispute to the BAC for arbitration in accordance with the UNCITRAL Arbitration Rules, the BAC shall charge an administrative fee in accordance with Rule 2 of Appendix A to the BAC/BIAC Investment Arbitration Rules.

3. Where the BAC provides arbitration administration service(s) pursuant to the Parties' agreement, and the Parties have used the service(s) referred to in Rule 4 of the BAC Procedural Guidelines, the following administrative fees shall be paid:

(a) where the BAC appoints arbitrator(s) or replaces arbitrator(s), it shall charge a fee of CNY 10,000 for appointing one arbitrator, CNY 15,000 for appointing two arbitrators, and CNY 20,000 for appointing three arbitrators;

(b) where the BAC determines a challenge to an arbitrator, it

shall charge a fee of between CNY 15,000 and CNY 30,000 for each decision. The BAC shall determine the amount of such fee, taking into account the relevant circumstance of the arbitration;

(c) where the BAC provides financial administration services for the arbitration, it shall charge an administrative fee in the amount of 0.1% of the total costs of arbitration. Such fee shall be between a minimum of CNY 1,000 and a maximum of CNY 100,000;

(d) where a Party has requested the BAC to forward an application for provisional measures, the BAC shall charge a fee of CNY 10,000 for each application;

(e) where a Party has used other service(s) under Rule 4, the BAC shall charge an administrative fee on the basis of the actual or reasonable costs of such service(s).

## **Rule 8 Deposit of Costs of the Arbitration**

1. The Claimant shall pay the registration fee in full upon submitting the Notice of Arbitration to the BAC.

2. The Claimant shall deposit the administrative fee upon submitting the Notice of Arbitration to the BAC. The amount of such fee shall be determined by the BAC, with due consideration being given to the relevant circumstance of the arbitration.

3. After the Arbitral Tribunal has been constituted, the Parties shall, pursuant either to an agreement between them or to a direction of the Arbitral Tribunal, deposit the fees and expenses of the arbitrators.

4. The Arbitral Tribunal may require the Parties to make further deposits of the costs of the arbitration during the course of the arbitral proceedings where it considers necessary.

5. If a Party fails to make a required deposit of costs of the arbitration, the BAC or the Arbitral Tribunal shall notify the other Party, and shall provide the other Party an opportunity to make such deposit within a specified period of time. If the other Party fails to

make such deposit, the BAC may terminate the arbitration case, or to recommend the Arbitral Tribunal to proceed with the arbitral proceedings in a manner the Arbitral Tribunal considers appropriate.







北京仲裁委员会  
BEIJING ARBITRATION COMMISSION  
北京国际仲裁院  
BEIJING INTERNATIONAL ARBITRATION COURT

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