

UNCITRAL Arbitration Rules 2010

Administrative Rules for UNCITRAL Arbitration 2019



JCAA

Standard Arbitration Clause

All disputes, controversies or differences arising out of or in connection with this contract shall be finally settled by arbitration in accordance with the UNCITRAL Arbitration Rules supplemented by the Administrative Rules for UNCITRAL Arbitration of The Japan Commercial Arbitration Association. The place of the arbitration shall be [city and country].

UNCITRAL Arbitration Rules
(as revised in 2010)

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UNCITRAL Arbitration Rules

(as revised in 2010)

Section I. Introductory rules

Scope of application

Article 1

- 1 Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the UNCITRAL Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.
- 2 The parties to an arbitration agreement concluded after 15 August 2010 shall be presumed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules. That presumption does not apply where the arbitration agreement has been concluded by accepting after 15 August 2010 an offer made before that date.
- 3 These Rules shall govern the arbitration except that where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

Notice and calculation of periods of time

Article 2

- 1 A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.
- 2 If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorized.
- 3 In the absence of such designation or authorization, a notice is:

- (a) Received if it is physically delivered to the addressee; or
 - (b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.
- 4 If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.
- 5 A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.
- 6 For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Notice of arbitration

Article 3

- 1 The party or parties initiating recourse to arbitration (hereinafter called the "claimant") shall communicate to the other party or parties (hereinafter called the "respondent") a notice of arbitration.
- 2 Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.
- 3 The notice of arbitration shall include the following:
- (a) A demand that the dispute be referred to arbitration;
 - (b) The names and contact details of the parties;
 - (c) Identification of the arbitration agreement that is

- invoked;
 - (d) Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
 - (e) A brief description of the claim and an indication of the amount involved, if any;
 - (f) The relief or remedy sought;
 - (g) A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.
- 4 The notice of arbitration may also include:
- (a) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;
 - (b) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;
 - (c) Notification of the appointment of an arbitrator referred to in article 9 or 10.
- 5 The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

Response to the notice of arbitration

Article 4

- 1 Within 30 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, which shall include:
- (a) The name and contact details of each respondent;
 - (b) A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3 (c) to (g).
- 2 The response to the notice of arbitration may also include:
- (a) Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;
 - (b) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;
 - (c) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;
 - (d) Notification of the appointment of an arbitrator

- referred to in article 9 or 10;
- (e) A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;
 - (f) A notice of arbitration in accordance with article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.
- 3 The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

Representation and assistance

Article 5

Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine.

Designating and appointing authorities

Article 6

- 1 Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, including the Secretary-General of the Permanent Court of Arbitration at The Hague (hereinafter called the "PCA"), one of whom would serve as appointing authority.
- 2 If all parties have not agreed on the choice of an appointing authority within 30 days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request

the Secretary-General of the PCA to designate the appointing authority.

- 3 Where these Rules provide for a period of time within which a party must refer a matter to an appointing authority and no appointing authority has been agreed on or designated, the period is suspended from the date on which a party initiates the procedure for agreeing on or designating an appointing authority until the date of such agreement or designation.
- 4 Except as referred to in article 41, paragraph 4, if the appointing authority refuses to act, or if it fails to appoint an arbitrator within 30 days after it receives a party's request to do so, fails to act within any other period provided by these Rules, or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party's request to do so, any party may request the Secretary-General of the PCA to designate a substitute appointing authority.
- 5 In exercising their functions under these Rules, the appointing authority and the Secretary-General of the PCA may require from any party and the arbitrators the information they deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority and the Secretary-General of the PCA shall also be provided by the sender to all other parties.
- 6 When the appointing authority is requested to appoint an arbitrator pursuant to articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.
- 7 The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

Section II. Composition of the arbitral tribunal

Number of arbitrators

Article 7

- 1 If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.
- 2 Notwithstanding paragraph 1, if no other parties have responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with article 9 or 10, the appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, paragraph 2, if it determines that, in view of the circumstances of the case, this is more appropriate.

Appointment of arbitrators (Articles 8 to 10)

Article 8

- 1 If the parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.
- 2 The appointing authority shall appoint the sole arbitrator as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:
 - (a) The appointing authority shall communicate to each of the parties an identical list containing at least three names;
 - (b) Within 15 days after the receipt of this list, each party may return the list to the appoint-

- ing authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;
- (c) After the expiration of the above period of time the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
 - (d) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in appointing the sole arbitrator.

Article 9

- 1 If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.
- 2 If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request the appointing authority to appoint the second arbitrator.
- 3 If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under article 8.

Article 10

- 1 For the purposes of article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.
- 2 If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.
- 3 In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authori-

ty shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

Disclosures by and challenge of arbitrators (Articles 11 to 13)

Article 11

When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

Article 12

- 1 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
- 2 A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.
- 3 In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

Article 13

- 1 A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in articles 11 and 12 became known to that party.
- 2 The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall

state the reasons for the challenge.

- 3 When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
- 4 If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority.

Replacement of an arbitrator

Article 14

- 1 Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.
- 2 If, at the request of a party, the appointing authority determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

Repetition of hearings in the event of the replacement of an arbitrator

Article 15

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced

ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

Exclusion of liability

Article 16

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the appointing authority and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

Section III. Arbitral proceedings

General provisions

Article 17

- 1 Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.
- 2 As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.
- 3 If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
- 4 All communications to the arbitral tribunal by one

party shall be communicated by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.

- 5 The arbitral tribunal may, at the request of any party, allow one or more third persons to be joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

Place of arbitration

Article 18

- 1 If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.
- 2 The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

Language

Article 19

- 1 Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.
- 2 The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhib-

its submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

Statement of claim

Article 20

- 1 The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this article.
- 2 The statement of claim shall include the following particulars:
 - (a) The names and contact details of the parties;
 - (b) A statement of the facts supporting the claim;
 - (c) The points at issue;
 - (d) The relief or remedy sought;
 - (e) The legal grounds or arguments supporting the claim.
- 3 A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.
- 4 The statement of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

Statement of defence

Article 21

- 1 The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in article 4 as a statement of defence, provided that the response to the notice of arbitration also

complies with the requirements of paragraph 2 of this article.

- 2 The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (art. 20, para. 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.
- 3 In its statement of defence, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.
- 4 The provisions of article 20, paragraphs 2 to 4, shall apply to a counterclaim, a claim under article 4, paragraph 2 (f), and a claim relied on for the purpose of a set-off.

Amendments to the claim or defence

Article 22

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

Pleas as to the jurisdiction of the arbitral tribunal

Article 23

- 1 The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the con-

tract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.

- 2 A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.
- 3 The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

Further written statements

Article 24

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

Periods of time

Article 25

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

Interim measures

Article 26

- 1 The arbitral tribunal may, at the request of a party, grant interim measures.
- 2 An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:
 - (a) Maintain or restore the status quo pending determination of the dispute;
 - (b) Take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself;
 - (c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or
 - (d) Preserve evidence that may be relevant and material to the resolution of the dispute.
- 3 The party requesting an interim measure under paragraphs 2 (a) to (c) shall satisfy the arbitral tribunal that:
 - (a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
 - (b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
- 4 With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.
- 5 The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.
- 6 The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

- 7 The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
- 8 The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.
- 9 A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Evidence

Article 27

- 1 Each party shall have the burden of proving the facts relied on to support its claim or defence.
- 2 Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.
- 3 At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.
- 4 The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

Hearings

Article 28

- 1 In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.
- 2 Witnesses, including expert witnesses, may be heard

under the conditions and examined in the manner set by the arbitral tribunal.

- 3 Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.
- 4 The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

Experts appointed by the arbitral tribunal

Article 29

- 1 After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
- 2 The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.
- 3 The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

- 4 Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.
- 5 At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of article 28 shall be applicable to such proceedings.

Default

Article 30

- 1 If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:
 - (a) The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;
 - (b) The respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.
- 2 If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
- 3 If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Closure of hearings

Article 31

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

Waiver of right to object

Article 32

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

Section IV. The award

Decisions

Article 33

- 1 When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
- 2 In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

Form and effect of the award

Article 34

- 1 The arbitral tribunal may make separate awards on different issues at different times.
- 2 All awards shall be made in writing and shall be final

and binding on the parties. The parties shall carry out all awards without delay.

- 3 The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
- 4 An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.
- 5 An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.
- 6 Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

Applicable law, amiable compositeur

Article 35

- 1 The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.
- 2 The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the arbitral tribunal to do so.
- 3 In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

Settlement or other grounds for termination

Article 36

- 1 If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed

terms. The arbitral tribunal is not obliged to give reasons for such an award.

- 2 If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.
- 3 Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 34, paragraphs 2, 4 and 5, shall apply.

Interpretation of the award

Article 37

- 1 Within 30 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.
- 2 The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 34, paragraphs 2 to 6, shall apply.

Correction of the award

Article 38

- 1 Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.
- 2 The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
- 3 Such corrections shall be in writing and shall form part

of the award. The provisions of article 34, paragraphs 2 to 6, shall apply.

Additional award

Article 39

- 1 Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.
- 2 If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.
- 3 When such an award or additional award is made, the provisions of article 34, paragraphs 2 to 6, shall apply.

Definition of costs

Article 40

- 1 The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.
- 2 The term "costs" includes only:
 - (a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;
 - (b) The reasonable travel and other expenses incurred by the arbitrators;
 - (c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
 - (d) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
 - (e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
 - (f) Any fees and expenses of the appointing authority as well as the fees and expenses of the

Secretary-General of the PCA.

- 3 In relation to interpretation, correction or completion of any award under articles 37 to 39, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

Fees and expenses of arbitrators

Article 41

- 1 The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.
- 2 If there is an appointing authority and it applies or has stated that it will apply a schedule or particular method for determining the fees for arbitrators in international cases, the arbitral tribunal in fixing its fees shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case.
- 3 Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If, within 45 days of receipt of such a referral, the appointing authority finds that the proposal of the arbitral tribunal is inconsistent with paragraph 1, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal.
- 4 (a) When informing the parties of the arbitrators' fees and expenses that have been fixed pursuant to article 40, paragraphs 2 (a) and (b), the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated;
(b) Within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the appointing authority. If no appointing authority has been agreed upon or designated, or if the appointing authority fails to act within the time specified in these Rules, then the review shall be

- made by the Secretary-General of the PCA;
- (c) If the appointing authority or the Secretary-General of the PCA finds that the arbitral tribunal's determination is inconsistent with the arbitral tribunal's proposal (and any adjustment thereto) under paragraph 3 or is otherwise manifestly excessive, it shall, within 45 days of receiving such a referral, make any adjustments to the arbitral tribunal's determination that are necessary to satisfy the criteria in paragraph 1. Any such adjustments shall be binding upon the arbitral tribunal;
 - (d) Any such adjustments shall either be included by the arbitral tribunal in its award or, if the award has already been issued, be implemented in a correction to the award, to which the procedure of article 38, paragraph 3, shall apply.
- 5 Throughout the procedure under paragraphs 3 and 4, the arbitral tribunal shall proceed with the arbitration, in accordance with article 17, paragraph 1.
- 6 A referral under paragraph 4 shall not affect any determination in the award other than the arbitral tribunal's fees and expenses; nor shall it delay the recognition and enforcement of all parts of the award other than those relating to the determination of the arbitral tribunal's fees and expenses.

Allocation of costs

Article 42

- 1 The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
- 2 The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

Deposit of costs

Article 43

- 1 The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in article 40, paragraphs 2 (a) to (c).
- 2 During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.
- 3 If an appointing authority has been agreed upon or designated, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority, which may make any comments to the arbitral tribunal that it deems appropriate concerning the amount of such deposits and supplementary deposits.
- 4 If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
- 5 After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

**Administrative Rules for
UNCITRAL Arbitration
As Amended and Effective on
January 1, 2019**

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Administrative Rules for UNCITRAL Arbitration

As Amended and Effective on January 1, 2019

PART 1 Administrative Rules for UNCITRAL Arbitration

Rule 1 Purpose

These “Administrative Rules for UNCITRAL Arbitration” (the “**Rules**”) provide for the procedures and other necessary matters integrated into and supplemental to the UNCITRAL Arbitration Rules relating to arbitration administered by the JCAA where the Parties have agreed to resolve their dispute by arbitration under the UNCITRAL Arbitration Rules. With regard to the provisions of Part 2 and Part 3, if the provisions of these Parts are in conflict with the provisions of the UNCITRAL Arbitration Rules, the former provisions are to be applied.

Rule 2 Definitions

- 1 The term “**UNCITRAL Arbitration Rules**” means the UNCITRAL Arbitration Rules adopted by the United Nations General Assembly in 1976, 2010 or 2013 applied to the arbitration proceedings in accordance with Rule 3.
- 2 The term “**JCAA**” means the Japan Commercial Arbitration Association.
- 3 The term “**Party**” or “**Parties**” means one or more claimants and respondents.
- 4 The term “**in writing**” includes hard copy and electronic documents. “**Electronic documents**” include electronic, magnetic and any other recording media used in information processing by a computer or other electronic device.
- 5 The term “**Commercial Arbitration Rules**” means the Commercial Arbitration Rules of the JCAA.
- 6 The term “**Interactive Arbitration Rules**” means the Interactive Arbitration Rules of the JCAA.

Rule 3 Application of the UNCITRAL Arbitration Rules 2010

The UNCITRAL Arbitration Rules adopted by the United

Nations General Assembly in 2010 shall apply where an arbitration agreement provides for arbitration under the UNCITRAL Arbitration Rules without specifying which version (*i.e.*, the UNCITRAL Arbitration Rules adopted in 1976, 2010 or 2013).

Rule 4 Application of These Rules

- 1 The JCAA shall, in either of the following cases, provide administrative services for arbitration under the UNCITRAL Arbitration Rules in accordance with Rules 5 through 17 below:
 - (a) Where the Parties have agreed in advance to have the JCAA provide administrative services for arbitration under the UNCITRAL Arbitration Rules; or
 - (b) Where the Parties agree in writing to arbitration conducted under the Rules and notify the JCAA of such agreement (i) after the claimant has requested arbitration under the Commercial Arbitration Rules or the Interactive Arbitration Rules but (ii) before the confirmation or appointment of any arbitrator by the JCAA.

In the case of (b) above, the proceedings conducted under the Commercial Arbitration Rules or the Interactive Arbitration Rules before such agreement is reached shall remain in effect.

- 2 The arbitral proceedings administered under Rule 4.1 shall be conducted under the Rules and, if not provided in the Rules, the UNCITRAL Arbitration Rules.

Rule 5 The Relationships between Part 1, Part 2 and Part 3

Part 2 and Part 3 of the Rules shall apply as the integral part of Part 1 of the Rules.

Rule 6 Derogation from the Rules

Where the Rules apply, the Parties, the arbitrators and the JCAA, and their relationships shall be governed by the Rules, and by any agreements varying any of the Rules except for Part 2 and Part 3 of the Rules.

Rule 7 Interpretation of the Rules

- 1 The authentic texts of the Rules shall be English.

- 2 In the event of any difference as to the interpretation of the Rules, the interpretation of the JCAA shall prevail; provided that the interpretation of an arbitral tribunal as to the provisions of Part 1 of the Rules shall prevail over that of the JCAA in the arbitration proceedings before such arbitral tribunal.

Rule 8 Appointing Authority

Unless otherwise agreed by the Parties, the JCAA shall serve as the appointing authority provided for in the UNCITRAL Arbitration Rules where the Rules apply.

Rule 9 Request for Arbitration

- 1 To request the initiation of arbitral proceedings under Rule 4.1(a), the claimant shall submit in writing to the JCAA a request for arbitration (the "**Request for Arbitration**") setting forth the matters provided for in Articles 3.3 and 20.2 of the UNCITRAL Arbitration Rules.
- 2 Arbitral proceedings shall be deemed to have commenced on the date on which the Request for Arbitration has been received by the JCAA.
- 3 The JCAA, on having confirmed that the Request for Arbitration has been made in conformity with Articles 3.3 and 20.2 of the UNCITRAL Arbitration Rules and the administrative fee has been paid, shall promptly notify the claimant and the respondent thereof. A copy of the Request for Arbitration shall be attached to such notice to the respondent.
- 4 Rules 9.1 through 9.3 shall apply *mutatis mutandis* to a counterclaim made by the respondent.

Rule 10 Withdrawal of Request for Arbitration before the Constitution of the Arbitral Tribunal

Before the constitution of the arbitral tribunal, the claimant may withdraw its claim by submitting a notice to the JCAA in writing (the "**Notice of Withdrawal**") stating that the claimant withdraws the claim. The JCAA shall notify the respondent of the Notice of Withdrawal.

Rule 11 Office in Charge of Administrative Services

The JCAA shall notify, together with the notice of Request for Arbitration under Rule 9.3, the Parties of which of its

offices is taking charge of the administrative services.

Rule 12 Communications

A Party shall transmit a notice or any material submitted in writing in the arbitral proceedings to the arbitrator(s), the other Party and the JCAA; and the arbitral tribunal shall transmit to the JCAA a copy of a notice or any material in writing in the arbitral proceedings to the Parties.

Rule 13 Service or Assistance to the Parties and the Arbitral Tribunal

The JCAA shall, at the request of the arbitral tribunal or either Party, make arrangements for interpreting, making a stenographic transcript of hearings, or providing a hearing room.

Rule 14 Language to be used in Communications between the JCAA and the Parties or between the JCAA and the Arbitrators

Communications between the JCAA and the Parties or between the JCAA and the arbitrators shall be made in either English or Japanese.

Rule 15 Notice of Arbitral Award

- 1 The JCAA shall send the arbitral award to each Party after the Parties have fully paid to the JCAA the amount due under Rule 16.
- 2 The JCAA shall keep one original of the arbitral award.

Rule 16 Fees and Costs

- 1 The claimant, when it submits a Request for Arbitration, shall pay an administrative fee to the JCAA under Part 3 of the Rules. The respondent shall pay such administrative fee when it submits a counterclaim.
- 2 Notwithstanding Articles 43.1 and 43.2 of the UNCITRAL Arbitration Rules, the JCAA, if it considers it necessary, may request either or both of the Parties to pay all or part of the fees and costs in advance.
- 3 If a party fails to pay the fees or costs under Rule 16.1 and 16.2, the arbitral tribunal may suspend or

terminate the arbitral proceedings unless the other Party pays such unpaid amount instead.

- 4 When terminating the arbitral proceedings, the arbitral tribunal shall fix the amounts of the various costs referred to under Article 40 of the UNCITRAL Arbitration Rules and the amount of the administrative fee and the other costs stipulated under the Rules, and apportion these fees and costs between the Parties. Notwithstanding Article 43.5 of the UNCITRAL Arbitration Rules, the JCAA shall render to the Parties an account of these fees and costs paid in advance, and return any unexpended balance to either or both of the Parties.

Rule 17 Other Services

The JCAA may, upon request of the arbitral tribunal or the Parties, provide any services which are not stipulated under the Rules, if the JCAA finds it appropriate.

PART 2 ARBITRATOR'S REMUNERATION

Rule 18 Application of these Regulations

The provisions of Part 2 shall apply to the arbitrator's remuneration and related matters for arbitration under the UNCITRAL Arbitration Rules administered by the JCAA.

Rule 19 Definitions

"Arbitration Hours" shall mean the time reasonably required to conduct the arbitral proceedings; provided that, only one-half of the traveling time the arbitrator spends for arbitral proceedings shall be included in the Arbitration Hours.

Rule 20 Hourly Charge Basis

- 1 The amount of an arbitrator's remuneration shall be based on the hourly rate multiplied by the number of the Arbitration Hours. The amount of each arbitrator's remuneration shall be fixed by the JCAA.
- 2 The JCAA shall determine an hourly rate within the range of USD500 to USD1,500 for each arbitrator

taking into account the arbitrator's experience, the complexity of the case and related matters, and in appropriate cases after giving the Parties an opportunity to comment; provided that the hourly rate for the presiding arbitrator shall not be lower than the hourly rate for the other arbitrators.

- 3 Notwithstanding Rule 20.2, the JCAA may determine any other hourly rate if all of the Parties agree.
- 4 The arbitrator(s) shall provide the JCAA with a monthly report by the 20th of the following month that states the Arbitration Hours under Rule 19 and a description of the work performed for each day.

Rule 21 Reduction of Arbitrator's Remuneration

- 1 If an arbitrator ceases to perform his or her duties due to his or her resignation or other reasons during arbitral proceedings, the JCAA, in consideration of the circumstances that led to the ceasing of his or her duties, may decide to reduce the arbitrator's remuneration calculated under Rule 20.
- 2 When the JCAA decides to reduce the arbitrator's remuneration under Rule 21.1, the JCAA shall consult with the Committee for Reviewing Arbitrator's Remuneration and take into account the Committee's proposal.
- 3 The JCAA's decision to reduce the arbitrator's remuneration under Rule 21.1 shall be final.

Rule 22 Payment of Arbitrator's Remuneration

- 1 The JCAA shall pay to the arbitrator his or her remuneration without delay after the time limit under Articles 37 through 39 of the UNCITRAL Arbitration Rules has passed, upon the arbitrator's rendering an arbitral award or making a determination to terminate the arbitral proceedings, or upon termination of arbitral proceedings for any other reason.
- 2 Notwithstanding Rule 22.1, with the consent of all the Parties, the JCAA may pay to the arbitrator his or her remuneration before the time limit under Rule 22.1, if the arbitral proceedings are expected to be prolonged.

Rule 23 Arbitrator's Expenses

- 1 The arbitrator shall be entitled to reimbursement by the JCAA of his or her reasonable hotel and other

expenses.

- The Parties shall bear the above expenses and entrust to the JCAA the necessary work for reimbursement of such expenses. The JCAA shall reimburse the arbitrator's expenses if the arbitrator submits to the JCAA the receipt or any equivalent documentary evidence thereof.

PART 3 ADMINISTRATIVE FEE

Rule 24 Administrative Fee

- The administrative fee that the claimant shall pay at the time of submitting a Request for Arbitration shall be the following amount *plus* applicable consumption tax:

Amount or Economic Value of Claim	Amount of Administrative Fee
Less than JPY20,000,000	JPY500,000
JPY20,000,000 or more but less than JPY100,000,000	JPY500,000 <i>plus</i> 1% of any amount in excess of JPY20,000,000
JPY100,000,000 or more but less than JPY1,000,000,000	JPY1,300,000 <i>plus</i> 0.3% of any amount in excess of JPY100,000,000
JPY1,000,000,000 or more but less than JPY5,000,000,000	JPY4,000,000 <i>plus</i> 0.25% of any amount in excess of JPY1,000,000,000
JPY5,000,000,000 or more but less than JPY10,000,000,000	JPY14,000,000 <i>plus</i> 0.1% of any amount in excess of JPY5,000,000,000
JPY10,000,000,000 or more	JPY19,000,000 <i>plus</i> 0.05% of any amount in excess of JPY10,000,000,000 (JPY 25,000,000 is maximum)

- If the economic value of a claim cannot be calculated or is extremely difficult to calculate, such economic value shall be deemed to be JPY70,000,000.
- Where the claim includes a claim for interest, damages, or other amounts accruing or being caused continuously, the administrative fee shall be calculated based upon the amount of the claim *plus* the amount of interest, damages, or other such amount for a period of one year from the date of submitting the Request for Arbitration.

- 4 Where the amount of claim(s) is denominated in a currency other than Japanese Yen, the amount shall be converted into Japanese Yen at the TTM rate or any other reasonable exchange rate designated by JCAA as of the business day immediately preceding the date of submission of the Request for Arbitration.

Rule 25 Administrative Fee in the Case of Modification of Amount of Claim

- 1 If, after paying the administrative fee, the claimant increases the amount of the claim or adds another claim, the administrative fee shall be the amount obtained by applying Rule 24 to the claim as modified; provided that "the date of submission of the Request for Arbitration" under Rule 24.3 shall be read as "the date of increasing the amount of the claim or adding another claim."
- 2 Rule 25.1 shall apply *mutatis mutandis* if the economic value of the claim which has been deemed to be JPY70,000,000 under Rule 25.2 is found to exceed JPY70,000,000.

Rule 26 Administrative Fee in the Case of Withdrawal of All Claims

If the claimant, within thirty days after the commencement of the arbitral proceedings and before the arbitral tribunal has been constituted, withdraws all its claims, the JCAA shall refund 90% of the total amount of the administrative fee.

Rule 27 Application in the Case of Counterclaim and Third Party Joinder

Rules 24 through 26 shall apply to (a) a counterclaim made by the respondent and (b) a claim made against the third party who has joined the arbitration proceedings.

Supplementary Provisions

- 1 The Rules shall come into effect on January 1, 2019.
- 2 Any arbitral proceedings commenced before the Rules come into effect shall be governed by the former Rules; provided that subsequent proceedings may, upon agreement of the Parties, be conducted pursuant to the Rules. In the event of such an agreement between the Parties, the arbitral proceedings that already have been conducted pursuant to the former Rules shall remain valid.

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