

# **THE LAGOS CHAMBER OF COMMERCE ARBITRATION RULES**

(LACIAC ARBITRATION RULES 2016)



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## SECTION I – INTRODUCTORY RULES

### Article 1: Overriding Objectives

1. The Lagos Chamber of Commerce International Arbitration Centre (LACIAC) Rules of Arbitration 2015 (“the LACIAC Rules”) have the overriding objective of promoting the efficient and effective resolution of disputes at proportionate cost and ensuring that proceedings are carried out in a fair and impartial manner. This is achieved by, in so far as is practicable, by:
  - a. Ensuring that the disputes are dealt with expeditiously and fairly; and
  - b. Dealing with disputes in ways which are proportionate:
    - i. To the amount of money involved;
    - ii. To the complexity of the issues; and
    - iii. To the financial position of each party.
2. The LACIAC Court and arbitral tribunals constituted under the LACIAC Rules shall perform their respective functions with the aim of furthering the overriding objective. Arbitral tribunals constituted under the LACIAC Rules are expected to employ techniques aimed at actively managing cases, including:
  - a. Encouraging that the parties co-operate in the conduct of the proceedings;
  - b. Identifying the issues at an early stage; and
  - c. Ensuring compliance with the relevant timetables or otherwise controlling the progress of proceedings.
3. By electing to resolve their dispute under the LACIAC Rules, parties agree to be guided by the above stated overriding objective. By accepting an appointment to serve as arbitrator under the LACIAC Rules, arbitrators agree to be guided by the above stated overriding objectives and by the International Bar Association Guidelines on Conflict of Interest in International Arbitration<sup>1</sup>. By accepting to act as Legal Practitioner or party representative in to an arbitration conducted under the LACIAC Rules, a Legal Practitioner or party representative agrees to be guided by the above stated overriding objectives and by the International Bar Association Guidelines on Party Representation in International Arbitration<sup>2</sup>.
4. The duty to ensure compliance with the overriding objective shall apply equally to the LACIAC Court, the arbitral tribunal, the parties, Legal Practitioners and party representatives.

### Article 2: Scope of Application

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 LACIAC Rules, as administered by LACIAC (or “the Centre”), then such disputes shall be settled in accordance with these Rules, as amended from time to time, subject to such modifications as the parties may agree. The applicable Rules shall be the Rules in operation at the time the notice of arbitration is served in accordance with article 4.
2. Reference to the Rules shall include all annexes or schedules to the Rules as amended from time to time.

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<sup>1</sup>[http://www.ibanet.org/Publications/publications\\_IBA\\_guides\\_and\\_free\\_materials.aspx](http://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx) or any subsequent amendments

<sup>2</sup>[http://www.ibanet.org/Publications/publications\\_IBA\\_guides\\_and\\_free\\_materials.aspx](http://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx) or any subsequent amendments.

3. LACIAC is the independent arbitration body of the Lagos Chamber of Commerce. LACIAC does not itself resolve disputes but administers the resolution of disputes by arbitral tribunals, in accordance with the Rules.
4. LACIAC is assisted in its work by the Secretariat under the direction of the Chief Executive Officer (the "CEO").
5. Where any written agreement or submission provides for the resolution of a dispute under the *LACIAC Rules* or by LACIAC, the *LACIAC court*, the *LCC*, the *Lagos Chamber of Commerce*, the *Court of the Lagos Chamber of Commerce*, the *Nigerian Chamber of Commerce Arbitration Centre*, the *Lagos Centre of International Arbitration*, or by any similar words which signify an intention to utilize the arbitration service of the Lagos Chamber of Commerce and Industry, the parties shall be deemed to have agreed in writing that any dispute arising under or in connection with such agreement shall be resolved in accordance with the Rules.
6. 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.
7. Reference to article(s) shall be to a provision of the Rules, whereas, any reference to paragraph(s) shall be to a provision in the annexes thereto.

### **Article 3: Notice and calculation of periods of time**

1. All notices, including a notification, communication or proposal, shall be transmitted by email, and, where prescribed, by any other form of electronic communication that provides a record of its transmission such as courier service or hand delivery. Depending on the particular circumstances of a case, additional means of expedient transmission may be agreed.
2. If an email or physical address has been designated by a party specifically for this purpose or authorised 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.
3. In the absence of such designation or authorisation, a notice in the alternative 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 1, 2 or 3, 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, taking into consideration the recipient's time zone.
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.

#### **Article 4: Notice of arbitration**

1. The party or parties initiating recourse to arbitration (hereinafter called the "claimant") shall communicate to the Centre and 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 Centre.
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;
  - 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;
  - h. Where the claimant so wishes, a proposal that the dispute be resolved under the LACIAC Fast Track Rules.
4. The notice of arbitration may also include:
  - a. A proposal for the appointment of a sole arbitrator referred to in article 11;
  - b. Notification of the appointment of an arbitrator referred to in article 11 or 12.
5. Where the claimant has indicated that the Fast Track Rules should apply, the notice of arbitration should comply with paragraph 1 of Annex III.
6. 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.

#### **Article 5: Response to the notice of arbitration**

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 4, paragraphs 3 (c) to (g).
2. Where the respondent approves the claimant's proposal that the dispute be resolved under the Fast Track Rules, within 15 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant a response to the notice of arbitration, in accordance with paragraph 2 of Annex III.
3. 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 appointment of a sole arbitrator referred to in article 11;
  - c. Notification of the appointment of an arbitrator referred to in article 11 or 12;



- d. 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;
  - e. A notice of arbitration in accordance with article 4 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.
4. 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.

**Article 6: Registration Fee:**

Upon filing the notice of arbitration, the claimant shall pay a registration fee amounting to US\$250 (two hundred and fifty US dollars)<sup>3</sup>. The same amount shall be paid by the Respondent upon filing a counterclaim. If the registration fee is not paid upon filing the notice of arbitration or the counterclaim, the Centre shall not register the request or the counter claim.

The registration fee is non-refundable.

**Article 7: Representation and assistance**

1. 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, the arbitral tribunal, and the Centre. 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 form as the arbitral tribunal may determine. Until the arbitral tribunal's formation, the Centre may request any party to provide similar proof or confirmation in any form it considers appropriate.
2. For the avoidance of doubt, parties shall have full discretion in selecting their representative. No objections may be raised on the basis of nationality, ethnicity, sex, religion, or other personal quality.
3. If it is alleged in the course of arbitral proceedings that a Legal Practitioner or party representative has committed a Misconduct as defined in the International Bar Association Guidelines on Party Representation in International Arbitration, the arbitral tribunal may, at its discretion, deal with such allegation in the manner set out in the aforesaid IBA Guidelines, or may report such allegation to the LACIAC Court.
4. The LACIAC Court shall review any report of Misconduct notified to it by the arbitral tribunal. Upon receiving such report, the LACIAC Court shall invite the person against whom such report is made to respond in writing to the report within fourteen days, or such further time as the LACIAC Court may consider appropriate in the circumstances. After considering the response, or in the event that the person against whom such report is made does not respond after being invited to respond, the LACIAC Court may, if it considers it appropriate to do so, report the conduct of such person to an appropriate professional regulator, and in particular:

- a. Where the person is a Legal Practitioner within the meaning of the Legal

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<sup>3</sup> Payments said to be in US Dollars can also be made in Naira at the relevant CBN rate of exchange as at the date of the payment.

Practitioners Act (Cap L11 LFN 2004, as amended) to the Legal Practitioners Disciplinary Committee and/or the Legal Practitioners Privileges Committee; and

- b. Where the person is not a Legal Practitioner within the meaning of the Legal Practitioners Act (Cap L11 LFN 2004, as amended), to any other appropriate professional disciplinary authority.

**Article 8: LACIAC Court as Appointing Authority**

1. The LACIAC Court shall be the appointing authority in all arbitral proceedings conducted under these Rules.
2. In exercising its functions as appointing authority under these Rules, the LACIAC Court may require from any party and the arbitrators any information it deems necessary and it shall give the parties and, where appropriate, the arbitrators the opportunity to present their views in any manner they consider appropriate. A person responding to the request for information shall also provide all other parties with all such communication sent to the LACIAC Court.
3. When the LACIAC Court is requested to appoint an arbitrator pursuant to articles 10, 11, 12 or 17, the party making the request shall send copies of the notice of arbitration to the LACIAC Court and, if it exists, any response to the notice of arbitration.
4. The LACIAC Court shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and where necessary shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

**Article 9: Powers of the Arbitral Tribunal**

The arbitral tribunal, may, with the consent of the parties, appoint a Tribunal Secretary.

**SECTION II – COMPOSITION OF THE ARBITRAL TRIBUNAL**

**Article 10: Number of arbitrators**

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 by the LACIAC Court.
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 12, the LACIAC Court may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided under article 11, paragraph 2, if it determines that, in view of the circumstances of the case, this is more appropriate.

**Article 11: Appointment of arbitrators (articles 10 to 12)**

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 LACIAC Court.

2. The LACIAC Court 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 LACIAC Court determines in its discretion that the use of the list-procedure is not appropriate for the case:
  - a. The LACIAC Court shall communicate to each of the parties an identical list containing at least three names.
  - b. Within fifteen days after the receipt of this list, each party may return the list to the LACIAC Court after having deleted the name or names to which the party objects and numbered the remaining names on the list in order of the party's preference.
  - c. After the expiration of the above period of time the LACIAC Court 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 LACIAC Court may exercise its discretion in appointing the sole arbitrator.

#### **Article 12**

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 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 other party's appointment of an arbitrator, the first party may request the LACIAC Court to appoint the second arbitrator.

#### **Article 13**

1. For the purposes of article 12, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or 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. In the absence of a joint nomination pursuant to paragraph 1 and where all parties are unable to agree to a method for the constitution of the arbitral tribunal, the LACIAC Court may appoint each member of the arbitral tribunal and shall designate one of them to act as the presiding arbitrator. In such case, the LACIAC Court shall be at liberty to choose any person it regards as suitable to act as arbitrator taking into account the nationality of the parties, residence, subject matter expertise, and other relationships with the countries of which the parties or the other arbitrators are nationals and the prospective arbitrator's availability and ability to conduct the arbitration in accordance with the Rules.
3. 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. The appointed arbitrators shall then determine the chairman, ensuring that the total number of arbitrators, including the chairman, is an uneven number.
4. In the event of any failure to constitute the arbitral tribunal under these Rules, the LACIAC Court 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.

#### **Article 14: Disclosure by arbitrators**

1. 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 15: Challenge of arbitrators**

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 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 14 shall apply.

**Article 16: Procedure for challenge of arbitrators**

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 13 and 14 became known to that party. The notification shall be in writing and shall state the reasons for the challenge.
2. The notice of challenge shall be communicated to the LACIAC Court through the Secretariat, to all other parties, and 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, the LACIAC Court shall decide on the admissibility and, at the same time, if necessary, on the merits of a challenge after the Centre has afforded an opportunity for the arbitrator concerned, the other party or parties and any other members of the arbitral tribunal to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the arbitrators.

**Article 17: Replacement of an arbitrator**

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 10 to 13 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 participate in the appointment.
2. If, at the request of a party, the LACIAC Court 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 LACIAC Court 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, authorise the other arbitrators to proceed with the arbitration and make any decision or award.

**Article 18: Repetition of hearings in the Event of the Replacement of an Arbitrator**

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.

**Article 19: Exclusion of liability**

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

**SECTION III – FEES AND ADMINISTRATIVE EXPENSES**

**Article 20: Administrative Expenses**

The administrative expenses of the LACIAC Court shall be determined based on the sum in dispute in accordance with Annex V. The sum in dispute shall be the aggregate value of all claims, counterclaims and set-offs. Where the sum in dispute cannot be ascertained, the LACIAC Court shall determine the administrative expenses taking all relevant circumstances into account.

**Article 21: Fees and expenses of arbitrators**

1. The arbitrators' fees shall be determined based on the sum in dispute in accordance with table 2 of Annex V. The sum in dispute shall be the aggregate value of all claims, counterclaims and set-offs. Where the sum in dispute cannot be ascertained, the Centre shall, in its discretion, determine the fees of the arbitral tribunal taking all relevant circumstances into account.
2. 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.
3. The arbitrator's fees and expenses shall be fixed exclusively by the LACIAC Court as required by the Rules. Separate fee arrangements between the parties and the arbitrator are contrary to the Rules.
4. Promptly after its constitution, the arbitral tribunal shall inform the parties as to the proposed applicable rate, in accordance with Table 2, Annex V.
5. The rates as shown in Table 2, Annex V shall apply to individual arbitrators. Hence the fees for a tribunal of more than one (1) arbitrator shall be multiplied by the number of arbitrators appointed.
6. Within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the LACIAC Court. If the LACIAC Court 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;

7. Throughout the procedure under paragraphs 4 and 5, the arbitral tribunal shall proceed with the arbitration, in accordance with article 23(1).
8. A referral under paragraph 5 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.

**Article 22: Deposit of costs**

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 47 (2)(a) to (g).
2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.
3. The arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the Centre, 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 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.

**SECTION III – ARBITRAL PROCEEDINGS**

**Article 23: General Provisions**

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.

#### **Article 24: Place of Arbitration**

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. Pending constitution of the arbitral tribunal, the Centre shall advise on the place of the arbitration, which, unless the circumstances require special consideration, shall be Lagos, Nigeria. 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.

#### **Article 25: Language**

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 languages to be used in such hearings. The default language shall be English.
2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defence, and any supplementary documents or exhibits 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.

#### **Article 26: Statement of Claim**

1. The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators with a copy to the Secretariat 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 4 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraph 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 contains references to them.

#### **Article 27: Statement of Defence**

1. The respondent shall communicate its statement of defence in writing to the claimant and to each of the arbitrators, with a copy to the Secretariat, 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 (article. 26 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 26, paragraphs 2 to 4, shall apply to a counterclaim, a claim under article 4, paragraph 3 (f), and a claim relied on for the purpose of a set-off.

#### **Article 28: Amendments to the claim or defence**

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.

#### **Article 29: Pleas as to the jurisdiction of the arbitral tribunal**

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 contract. 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 placed before the arbitral tribunal. 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 it 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.

**Article 30: Further written statements**

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.

**Article 31: Periods of time**

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.

**Article 32: Interim measures**

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 and 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 to the subject matter of the arbitration or (ii) prejudice 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;
  - b. There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on the possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination; and
  - c. There is a real need for the arbitral tribunal to act with urgency.
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.

### **Article 32: Emergency Arbitrator**

1. A party that needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal ("**Emergency Measures**") may make an application for such measures pursuant to the Emergency Arbitrator Rules in Annex VI. Any such application shall be accepted only if it is received by the Secretariat prior to the transmission of the file to the arbitral tribunal.
2. The emergency arbitrator's decision shall take the form of an order. The parties undertake to comply with any order made by the emergency arbitrator.
3. The emergency arbitrator's order shall not bind the arbitral tribunal with respect to any question, issue or dispute determined in the order. The arbitral tribunal may modify, terminate or annul the order or any modification thereto made by the emergency arbitrator.
4. The arbitral tribunal shall decide upon any party's requests or claims related to the emergency arbitrator proceedings, including the reallocation of the costs of such proceedings and any claims arising out of or in connection with the compliance or noncompliance with the order.
5. Article 32 and the Emergency Arbitrator Rules set forth in Annex VI (collectively the "Emergency Arbitrator Provisions") shall apply only to parties that are signatories of the arbitration agreement that is relied upon for the application or successors to such signatories.
6. The Emergency Arbitrator provisions shall not apply if the parties have agreed to another pre-arbitral procedure that provides for the granting of conservatory, interim or similar measures or the parties have expressly agreed to opt out of the Emergency Arbitrator provisions.
7. For the avoidance of doubt, paragraph 6 above, shall not prejudice any party's right to apply to a state court or other legal authority.

### **Article 34: Evidence**

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, shall 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 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.

#### **Article 35: Hearings**

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, 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).

#### **Article 36: Experts appointed by the arbitral tribunal**

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 qualification, 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, who 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 provision of article 34 shall be applicable to such proceedings.

#### **Article 37: Default**

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.

**Article 38: Closure of hearings**

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.

**Article 39: Waiver of right to object**

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.

**Article 40: Applicable law, amiable compositeur**

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* if the parties have expressly authorised 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.

## **SECTION IV – THE AWARD**

### **Article 41: Decisions**

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.

In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorises, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

### **Article 42: Form and effect of the award**

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 reasons for the absence of the signature.
5. The Centre shall ensure all procedural requirements are met before the Centre releases the award to the parties. Where there are lapses, the arbitral tribunal will be notified for rectification before release of the award. Before signing any award, the arbitral tribunal shall submit it in draft form to the Court. The Court, without prejudice to the inviolability of the independence of the arbitral tribunal's judgment, may draw their attention to matters of form and procedure required by the Rules, and only exceptionally to matters of substance.
6. Copies of the award signed by the arbitrators shall be communicated to the parties by the Secretariat.
7. Any award may be made public with the consent of all parties or where and to what 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.

### **Article 43: Settlement or other grounds for termination**

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 tribunal 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 Centre to the parties. Where an arbitral award on agreed terms is made, the provisions of article 42, paragraphs 2, 4 and 5 shall apply.

**Article 44: Interpretation of the award**

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 42(2) to (6) shall apply.

**Article 45: Correction of the award**

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 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 42, paragraphs 2 to 6, shall apply.

**Article 46: Additional award**

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 42, paragraphs 2 to 6, shall apply.

**SECTION V - COSTS**

**Article 47: Definition of costs**

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 registration fee;
  - b. The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed in accordance with article 21;
  - c. The reasonable travel and other expenses incurred by the arbitrators;
  - d. The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;

- e. The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
  - f. 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;
  - g. Any fees and expense of the Centre.
3. In relation to the correction of any award and additional award under articles 45 and 46, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

**Article 48: Allocation of costs and accounting**

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.
3. After a 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.

**ANNEX I**

**IBA GUIDELINES ON PARTY REPRESENTATION IN INTERNATIONAL ARBITRATION**

[http://www.ibanet.org/Publications/publications\\_IBA\\_guides\\_and\\_free\\_materials.aspx](http://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx)



**ANNEX II**  
**IBA GUIDELINES ON CONFLICTS OF INTEREST IN INTERNATIONAL ARBITRATION**

[http://www.ibanet.org/Publications/publications\\_IBA\\_guides\\_and\\_free\\_materials.aspx](http://www.ibanet.org/Publications/publications_IBA_guides_and_free_materials.aspx)

### **ANNEX III**

#### **FAST TRACK ARBITRATION RULES**

Where parties have agreed that disputes shall be referred to arbitration under the LACIAC Fast Track Arbitration Rules (the “**Fast Track Rules**”), then such disputes shall be settled in accordance with these Fast Track Rules. These Fast Track Rules are supplemental to and should be read in conjunction with the LACIAC Rules. Where a conflict arises between the LACIAC Rules and the Fast Track Rules, the Fast Track Rules will apply. References below to ‘**article**’ shall be to the provisions of the LACIAC Rules.

#### **1. Notice of arbitration and statement of claim**

1.1. The provisions of article 4 shall apply except in so far as set out here below.

1.2. The notice of arbitration shall include the following additional information:

- a. A reasoned request for the arbitration to be conducted under the Fast Track Rules, where the arbitration agreement is silent;
- b. A request to the respondent to concur with the appointment of a sole arbitrator and the name and professional qualifications of at least one but no more than three suggested arbitrators as candidates for the role of sole arbitrator;
- c. Where there is prior agreement for a panel of three arbitrators, the claimant's chosen appointee and a request for the respondent to identify its chosen appointee and
- d. A comprehensive statement of claim in accordance with article 21.

1.3. Unless the parties have agreed otherwise, any arbitration conducted under the Fast Track Rules shall be conducted by a sole arbitrator whose appointment shall be agreed in writing by the parties within 7 days of the deemed commencement of arbitration.

#### **2. Response to The Notice of Arbitration**

2.1. Within 15 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 4, and paragraph 1 above;
- c. Any plea that an arbitral tribunal to be constituted under the Fast Track Rules lacks jurisdiction;
- d. The name and professional qualifications of at least one but no more than three suggested arbitrators as candidate for the role of sole arbitrator, or, where there is prior agreement for a panel of three arbitrators, the respondent(s)' chosen appointee;
- e. A comprehensive statement of defence in accordance with article 22;
- f. 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;

2.2. The response to the notice of arbitration may, where relevant, also include:

- a. A list of names and addresses of all potential witnesses;
- b. A list of the location and the categories of all documents in the party's possession, custody or control that may be relevant to the dispute;

### 3. Selection Of Arbitrator

- 3.1. If within 14 days after the receipt by the respondent of the notice of arbitration the parties have not agreed on the identity of the arbitrator, a sole arbitrator shall, at the request of a party, be appointed by the LACIAC Court, as promptly as possible. In making the appointment the LACIAC Court shall use its discretion.
- 3.2. Where the parties have agreed that there will be a panel of three arbitrators, and if within 7 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 LACIAC Court in the same way as a sole arbitrator would be appointed under paragraph 3.2.

### 4. Pre-Hearing Conference

- 4.1. Within 5 business days of appointment of the sole arbitrator or arbitrators (in accordance with paragraph 1.3), the tribunal shall hold a pre-hearing conference with the parties to address the procedural timeline and any other matter which the tribunal or parties believe is relevant.
- 4.2. The tribunal may hold one or more conferences in the tribunal's discretion. Unless the tribunal decides otherwise, these shall be held by telephone or video conference.

### 5. Evidence

- 5.1. Except as otherwise ordered by the tribunal, evidence shall be limited to documentary evidence.
- 5.2. Upon date(s) established by the tribunal, both parties will serve on the other:
  - a. all non-privileged hardcopy and electronic documents that they reasonably believe are relevant to any issue to be resolved in the arbitration;
  - b. a log setting out in adequate detail a description of the categories of documents for which privilege is being asserted, in order for this to be evaluated by the tribunal and the other party; and
  - c. each party may serve a list of particular categories of documents needed with respect to the dispute, which list shall attempt to be as specific as reasonably practicable, and each party shall then serve in response a statement of whether the initial production included the requested documents and, if not, whether the production will be supplemented or whether there is an objection thereto.
- 5.3. Any documents not produced two weeks prior to the arbitration hearing may not be used by the producing party at the hearing, except for rebuttal documents, which may be admitted in the discretion of the tribunal.

### 6. Hearings

- 6.1. Unless otherwise directed by the tribunal, the tribunal will decide the matter on paper. Oral hearings will take place in limited circumstances, where requested and deemed necessary by the tribunal.
- 6.2. In the event of an oral hearing, the tribunal shall give the parties adequate advance notice of the date, time and place thereof. Hearings may be held or witnesses presented by video conference or such other manner as the tribunal deems appropriate.

- 6.3. The tribunal may impose a timed hearing with equal time for either party to present its evidence.
- 6.4. The parties shall produce such evidence as the tribunal deems necessary to understand and to determine the matters in dispute.
- 6.5. The tribunal will aim to use its reasonable endeavors to set a hearing date within 7 days of the deemed commencement date.

## **7. Award**

- 7.1. The award will be rendered within 21 days of the close of hearings.
- 7.2. If, before the award is made, the parties agree on a settlement of the dispute, the tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties, and accepted by the tribunal, record the settlement in the form of an arbitral award on agreed terms. The tribunal is not obliged to give reasons for such an award.

## **8. Costs**

Costs shall be determined in accordance with the cost schedule at Annex V.

## **ANNEX IV MEDIATION RULES**

### **1. Scope and Application**

- 1.1. For the purpose of the LACIAC Mediation Rules ("**Mediation Rules**"), 'mediation' means a process, whether referred to by the expression mediation, conciliation, or an expression of similar import, whereby parties request a third person or persons (the "mediator") to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The mediator does not have authority to impose upon the parties a solution to the dispute.
- 1.2. The Mediation Rules apply irrespective of the basis upon which the mediator is carried out, including agreement between the parties whether reached before or after a dispute has arisen, an obligation established by law, or a direction or suggestion of a court, arbitral tribunal or competent government entity.

### **2. Interpretation**

- 2.1. In the interpretation of the Mediation Rules, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.
- 2.2. Questions concerning matters governed by the Mediation Rules which are not expressly settled in it are to be settled in conformity with the general principles of the Rules.
- 2.3. Except for the provisions of paragraph 2 and 5.3, the parties may agree to exclude or vary any of the provisions of the Mediation Rules, subject to the right of the mediator to terminate the mediation under paragraph 10.1(b).

### **3. Commencement of mediation proceedings**

- 3.1. Mediation proceedings in respect of a dispute that has arisen commence on the day on which the parties engage the mediation proceedings.
- 3.2. Where an arbitral tribunal has been constituted in accordance with the Rules, the party or parties may make a request to the arbitral tribunal that the arbitral proceedings be stayed in favor of mediation (request for mediation). Should the mediation proceedings result in a successful settlement agreement, the arbitral proceedings will automatically terminate.
- 3.3. If a party that invited another party to mediate does not receive an acceptance of the request for mediation within 21 days from the day on which the invitation was sent, or within such period of time as specified in the invitation, the party may elect to treat the lack of response a rejection of the invitation to mediate.
- 3.4. Where an arbitral tribunal has not been constituted a party may initiate mediation by delivering to all other parties, in writing (which for the purposes of the Mediation Rules includes e-mail) a request for mediation, containing:
  - a. A brief explanation of the nature of the dispute;
  - b. The estimated value of any disputed amounts and any specific relief or outcome sought by the requesting party;
  - c. The names, addresses (including e-mail addresses), and contact numbers (including telephone and facsimile where available) of all parties to the dispute

and any legal or other representatives involved, so far as known to the requesting party; and

- d. The nomination or proposal for the appointment of a mediator, which may include suggested qualifications, such as language skills or mediation experience of the subject-matter.

#### **4. Number and appointment of mediators**

- 4.1. Unless otherwise agreed, there shall be one mediator, and in any case no more than three. The parties shall endeavor to reach an agreement on a mediator or mediators.
- 4.2. Should the parties not agree on the identity of the mediator or mediators within 14 days of receipt of the request for mediation, a party or parties may request that the LACIAC Court appoint a mediator or mediators.
- 4.3. Within 10 days thereafter the LACIAC Court [or Secretariat] shall provide, for the consideration of the parties, a list of the names of no less than 3 potential mediators. Should the parties within 7 days thereafter not agree upon the appointment of a mediator (whether from that list or not) the LACIAC Court [or Secretariat] shall appoint a mediator.
- 4.4. The LACIAC Court shall appoint a mediator or mediators within 14 days of receipt of the request by the party or parties.
- 4.5. In recommending or appointing individuals to act as mediator, the LACIAC Court shall have regard to the overriding objectives, and such considerations as are likely to secure the appointment of an independent and impartial mediator.
- 4.6. When a person is approached in connection with his or her possible appointment as mediator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A mediator, from the time of his or her appointment and throughout the mediation proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her.
- 4.7. If, following appointment, a mediator becomes aware of any circumstances that may create a reasonable perception of bias, partiality or lack of neutrality, the mediator shall immediately so inform the parties and, where the mediator was appointed by the LACIAC Court, shall also immediately so inform the LACIAC Court. If any party objects to the continued services of the mediator, the mediator shall be disqualified.
- 4.8. Within 7 days following any disqualification, a replacement mediator shall be appointed by agreement of all parties, failing which, within 10 days of being notified by a party of such failure, and without the need to consult the parties, the LACIAC Court shall appoint a suitable replacement mediator.

#### **5. Conduct of mediation**

- 5.1. The mediator may conduct the mediation proceedings in such a manner as the mediator considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express and the need for a swift and effective settlement of the dispute.

- 5.2. In any case, in conducting the proceedings, the mediator shall seek to maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.
- 5.3. The mediator may, at any stage of the mediation proceedings, make proposals for a settlement of the dispute.
- 5.4. The parties and their representatives shall use their best endeavors to cooperate with each other and with the mediator to settle their differences and enable the mediation to proceed expeditiously.

#### **6. Communication between mediator and parties**

The mediator may meet or communicate with the parties together or with each of them separately

#### **7. Disclosure of information**

When the mediator receives information concerning the dispute from a party, the mediator may disclose the substance of that information to any other party to the mediator. However, when a party gives any information to the mediator, subject to a specific condition that it be kept confidential, that information shall not be disclosed to any other party to the mediation.

#### **8. Confidentiality**

Unless otherwise agreed by the parties, all information relating to the mediation proceedings shall be kept confidential, except where disclosure is required under the law or for the purposes of implementation or enforcement of the settlement agreement.

#### **9. Admissibility of evidence in other proceedings**

9.1. A party to the mediation proceedings, the mediator and any third person, including party representatives and those involved in the administration of the mediation proceedings, shall not in arbitral, judicial or similar proceedings rely on, introduce as evidence or give testimony or evidence regarding any of the following:

- a. An invitation by a party to engage in mediation proceedings or the fact that a party was willing to participate in mediation proceedings;
- b. Views expressed or suggestions made by a party in the mediation in respect of a possible settlement of the dispute;
- c. Statements or admissions made by a party in the course of the mediation proceedings;
- d. Proposals made by the mediator;
- e. The fact that a party had indicated its willingness to accept a proposal for settlement made by the mediator;
- f. Documents prepared solely for purposes of the mediation proceedings.

9.2. Paragraph 9.1 shall apply irrespective of the form of the information or evidence therein.

9.3. The disclosure of the information referred to in paragraph 9.1 shall not be ordered by an arbitral tribunal, court or other competent authority and, if such information is offered as evidence in contravention of paragraph 9.1, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted as evidence to the extent required under the law or for the purpose of implementation or enforcement of a settlement agreement.

9.4. The provisions of paragraphs 9.1, 9.2 and 9.3 apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject of the mediation proceedings.

9.5. Subject to the limitations of paragraph 9.1, evidence that is otherwise admissible in arbitral or judicial or similar proceedings does not become inadmissible as a consequence of having been used in mediation.

#### **10. Termination of mediation proceedings**

10.1. The mediation proceedings are terminated:

- a. By the conclusion of a settlement agreement by the parties, on the date of the agreement;
- b. By a declaration of the mediator, after consultation with the parties, to the effect that the mediation proceedings are terminated, on the date of the declaration;
- c. By a declaration of the parties addressed to the mediator to the effect that the mediation proceedings are terminated, on the date of the declaration; or
- d. By a declaration of a party to the other party or parties and the mediator, if appointed, to the effect that the mediation proceedings are terminated, on the date of the declaration.

#### **11. Mediator acting as arbitrator**

Unless otherwise agreed by the parties, the mediator shall not act as an arbitrator in respect of a dispute that was or is the subject of the mediation proceedings or in respect of another dispute that has arisen from the same contract or legal relationship or any related contract or legal relationship.

#### **12. Resort to arbitral proceedings**

Where the parties have agreed to mediate and have expressly undertaken not to initiate mediation during a specified period of time or until a specified event has occurred with respect to an existing or future dispute, such an undertaking shall be given effect by the arbitral tribunal until the terms of the undertaking have been complied with, except to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to mediate or as a termination of the mediation proceedings.

#### **13. Authority and Representation**

13.1. Throughout the mediation, each party must have authority to settle the dispute or be represented by a person or persons having authority to settle the dispute. A party may be assisted by any person(s) it chooses and must keep the mediator, the Centre, and each other party informed of the names, contact details and roles of such persons and of any changes that may occur during the mediation.

#### **14. Enforceability of settlement agreement**

14.1. If the parties conclude an agreement settling a dispute, that settlement agreement will be binding and enforceable.

14.2. No settlement agreement reached during the mediation shall be legally binding unless it is reduced to writing and signed by all parties to that settlement agreement or by their authorised representatives.



## 15. Costs

- 15.1. Unless otherwise agreed or ordered by a court or arbitrator, each party shall bear its own costs of the mediation.
- 15.2. Unless otherwise agreed or ordered by a court or arbitrator, each party shall bear equally the costs and expenses of the mediation including (but not limited to):
- a. LACIAC's administrative expenses;
  - b. The mediator's fees and expenses;
  - c. The costs of any meeting rooms, meals, translations, photocopies, internet access, communications systems, or other reasonable costs relating to the organisation and conduct of the mediation;
  - d. The fees and expenses of any independent witness, expert advice or opinion requested by the mediator with the consent of the parties; and
  - e. Any additional administrative costs relating to the mediation, as may be assessed by LACIAC.
- 15.3. The mediator may at any time during the mediation require the parties to make deposits with the mediator or LACIAC to cover any anticipated fees or expenses and may suspend the mediation until such deposit is made.
- 15.4. Any surplus funds deposited shall be returned pro rata to the parties at the conclusion of the mediation.

## ANNEX V COSTS AND FEES<sup>4</sup>

### Arbitration Costs

#### 1. Registration Fee

Each request to commence arbitration pursuant to the Rules must be accompanied by a non-refundable registration fee of ₦49,000 (Forty Nine Thousand Naira Only)). The same amount shall be paid by the Respondent upon filing a counterclaim. If the registration fee is not paid upon filing the notice of arbitration or the counterclaim, the Centre shall not register the request or the counter claim.

#### 2. Scale of Administrative Expenses

- a. All amounts fixed by the Center, LACIAC Court, or pursuant to the Rules are payable in Naira ₦ except where prohibited by law, in which case LACIAC may apply a different scale and fee arrangement in another currency.

Table 1

#### Administrative Expenses (all figures in Naira)

AMOUNT IN DISPUTE			ADMINISTRATIVE EXPENSES
-	up to	100,000,000	1,500,000
100,000,001	and	Above	2,000,000

- b. The administrative expenses as shown above shall cover the Centre's provision of a transcription service for the duration of the arbitral proceedings.
- c. Subject to the agreement of the parties, a reference or submission to arbitration under the LACIAC Arbitration Rules 2016, implies an agreement to use LACIAC's registrar services at an additional fee of ₦500,000.

<sup>4</sup> Payments said to be in US Dollars can also be made in Naira at the relevant CBN rate of exchange as at the date of the payment.



## **Mediation Costs**

8. Each request to commence mediation pursuant to the Rules must be accompanied by a non-refundable registration fee of ₦29,400 (Twenty Nine Thousand, Four Hundred Naira only). The registration fee is payable in advance and is necessary in order for the request to be registered.
9. A fixed administrative fee of ₦49,000 (Forty Nine Thousand Naira only) is payable upon commencement of the mediation in accordance with the Rules.
10. Mediators will charge at hourly rates, which may vary according to the circumstances of the case and the qualifications of the Mediator. The rates will be advised by the Mediator and agreed with the parties prior to the appointment of the Mediator and will generally be at an hourly rate not exceeding ₦117,600.

## **ANNEX VI**

### **EMERGENCY ARBITRATOR RULES**

#### **1. Application for an Emergency Arbitrator**

- 1.1. A party wishing to have recourse to an emergency arbitrator pursuant to article 28 shall submit its Application for Emergency Measures (the “**Application**”) to the Secretariat. The Application should be made in writing (preferably by electronic means) delivered or notified to all other parties to the arbitration.
- 1.2. The Application shall contain the following information:
  - a. The name in full, address and other contact details of each of the parties;
  - b. The name in full, address and other contact details of any person(s) representing the applicant;
  - c. A description of the circumstances giving rise to the Application and of the underlying dispute referred or to be referred to arbitration;
  - d. A statement of the Emergency Measures sought;
  - e. The reasons why the applicant needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal;
  - f. Any relevant agreements and, in particular, the arbitration agreement;
  - g. Any agreement as to the place of the arbitration, the applicable rules of law or the language of the arbitration;
  - h. Proof of payment of the amount referred to in Annex V; and
  - i. Any Notice of Arbitration and any other submissions in connection with the underlying dispute, which have been filed with the LACIAC Court by any of the parties to the emergency arbitrator proceedings prior to the making of the application.
- 1.3. The Application may contain such other documents or information as the applicant considers appropriate or as may contribute to the efficient examination of the Application.
- 1.4. The Application shall be drawn up in the language of the arbitration if agreed upon by the parties or, in the absence of any such agreement, in the language of the arbitration agreement.
- 1.5. If and to the extent that the LACIAC Court considers, on the basis of the information contained in the application that the Emergency Arbitrator Provisions apply with reference to article 28, the Secretariat shall transmit a copy of the application and the documents annexed thereto to the responding party. If and to the extent the LACIAC Court considers otherwise, the Secretariat shall inform the parties that the emergency arbitrator proceedings shall not take place with respect to some or all of the parties and shall transmit a copy of the application to them for information.
- 1.6. The LACIAC Court shall terminate the emergency arbitrator proceedings if a notice of arbitration has not been received by the Secretariat from the applicant within (10) days of the Secretariat’s receipt of the Application, unless the emergency arbitrator or the LACIAC Court determines that a longer period of time is necessary.

#### **2. Appointment of an Emergency Arbitrator**

- 2.1. The LACIAC Court shall appoint an emergency arbitrator within as short a time as possible, normally within two days from the Secretariat's receipt of the Application.
- 2.2. No emergency arbitrator shall be appointed after the file has been transmitted to the arbitral tribunal. An emergency arbitrator appointed prior thereto shall retain the power to make an order.
- 2.3. Once the emergency arbitrator has been appointed, the Secretariat shall so notify the parties and shall transmit the file to the emergency arbitrator. Thereafter, all written communications from the parties shall be submitted directly to the emergency arbitrator with a copy to the other party and the Secretariat. A copy of any written communications from the emergency arbitrator to the parties shall be submitted to the Secretariat.
- 2.4. Before being appointed, a prospective emergency arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The Secretariat shall provide a copy of such statement to the parties.
- 2.5. An emergency arbitrator shall not act as an arbitrator in any arbitration relating to the dispute that gave rise to the Application.

### **3. Challenge of an Emergency Arbitrator**

- 3.1. A challenge against the emergency arbitrator must be made within three days from receipt by the party making the challenge of the notification of the appointment or from the date when that party was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.
- 3.2. The challenge shall be decided by the LACIAC Court after the Secretariat has afforded an opportunity for the emergency arbitrator and the other party or parties to provide comments in writing within a suitable period of time.

### **4. Place of the Emergency Arbitrator Proceedings**

- 4.1. If the parties have agreed upon the place of the arbitration, such place shall be the place of the emergency arbitrator proceedings. In the absence of such agreement, the LACIAC Court shall fix the place of the emergency arbitrator proceedings, without prejudice to the determination of the place of the arbitration pursuant to the Rules. The default location shall be Lagos, Nigeria, being the city of residence of the Centre.
- 4.2. Any meetings with the emergency arbitrator may be conducted through a meeting in person at any location the emergency arbitrator considers appropriate or by video conference, telephone or similar means of communication.

### **5. Proceedings**

- 5.1. The emergency arbitrator shall establish a procedural timetable for the emergency arbitrator proceedings within as short a time as possible, normally within two(2) days from the transmission of the file to the emergency arbitrator.
- 5.2. The emergency arbitrator shall conduct the proceedings in the manner which the emergency arbitrator considers to be appropriate, taking into account the nature and the urgency of the Application.

5.3. In all cases, the emergency arbitrator shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.

## **6. The Order**

6.1. The emergency arbitrator's decision shall take the form of an order.

6.2. In the order, the emergency arbitrator shall determine whether the Application is admissible pursuant to the Rules and whether the emergency arbitrator has jurisdiction to order Emergency Measures.

6.3. The order shall be made in writing and shall state the reasons upon which it is based. It shall be dated and signed by the arbitrator.

6.4. The order shall be made not later than 15 days from the date on which the file was transmitted to the emergency arbitrator pursuant to paragraph 2 of this annex. The LACIAC Court may extend the time limit pursuant to a reasoned request from the emergency arbitrator or on the LACIAC Court's own initiative if the LACIAC Court decides it is necessary to do so.

6.5. Within the time limit established above, the emergency arbitrator shall send the order to the parties, with a copy to the Secretariat.

6.6. The order shall cease to be binding on the parties upon:

- a. The LACIAC Court's termination of the emergency arbitration proceedings pursuant to paragraph 1.6 of this annex;
- b. The acceptance by the LACIAC Court of a challenge against the emergency arbitrator pursuant to paragraph 3 of this annex;
- c. The arbitral tribunal's final award, unless the arbitral tribunal expressly decides otherwise; or
- d. The withdrawal of all claims or the termination of the arbitration before the rendering of a final award.

6.7. The emergency arbitrator may make the order subject to such conditions as the emergency arbitrator thinks fit, including requiring the provision of appropriate security.

6.8. Upon a reasoned request by a party made prior to the transmission of the file to the arbitral tribunal, the emergency arbitrator may modify, terminate or annul the order.

## **7. General**

The LACIAC Court shall have the power to decide, in its discretion, all matters relating to the administration of the emergency arbitrator proceedings not expressly provided for in this annex. In all matters concerning emergency arbitration proceedings not expressly provided for in this annex the LACIAC Court and the emergency arbitrator shall act in the spirit of the Rules and this annex.

## **ANNEX VII MODEL CLAUSES**

### **FUTURE DISPUTES**

Parties wishing possible future disputes to be referred to arbitration under the LACIAC Rules should adopt the following clause. Words and/or spaces in square brackets should be deleted or completed as appropriate.

#### **Standard Model Arbitration Clause**

“Any dispute, controversy or claim arising out of or in relation to this agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this agreement, shall be finally resolved by arbitration under the LACIAC Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause. It is agreed that:

- i. The number of arbitrators shall be [one/three] (**optional** [who is/are to be a [specify any qualifications required];
- ii. The seat, or legal place, of arbitration shall be [City and/or Country]<sup>6</sup>;
- iii. The place of arbitration shall be [Lagos/Nigeria];
- iv. The governing law of this arbitration agreement shall be the substantive law of [the laws of the Federal Republic of Nigeria/England & Wales]<sup>7</sup>; and
- v. The language of the arbitration shall be [English].”

#### **Short Form Model Arbitration Clause**

“Any dispute, controversy or claim arising out of or in relation to this agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this agreement, shall be finally resolved by arbitration under the LACIAC Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause<sup>8</sup>.”

#### **Model Multi-tiered Arbitration Clause**

1. “In the event of a dispute, controversy or claim arising out of or relating to this agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this agreement, the parties shall first seek settlement of that dispute by mediation in accordance with the LACIAC Mediation Rules, which Rules are deemed to be incorporated by reference into this clause.
2. If and to the extent that, any such dispute, controversy or claim has not settled by mediation within [state specific number of regular/business] days of the commencement of the mediation, or such further period as the parties shall agree in writing, such time not exceeding [7] days, the dispute shall be referred to and finally resolved by arbitration under the LACIAC Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause. It is agreed that:

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<sup>6</sup>This will usually correspond to the governing law of the contract or of the arbitration clause (if different)

<sup>7</sup> This will usually be the same as the governing law of the contract or the law of the seat of arbitration

<sup>8</sup> This clause results in adoption of the default provision under the LACIAC Rules



- i. The number of arbitrators shall be [one/three] **(optional)** [who is/are to be a [specify any qualifications required];
- ii. The seat, or legal place, of arbitration shall be [City and/or Country];
- iii. The place of arbitration shall be [Lagos/Nigeria];
- iv. The governing law of this arbitration agreement shall be the substantive law of [the laws of the Federal Republic of Nigeria/England & Wales]<sup>10</sup>; and
- v. The language of the arbitration shall be [English].”

### **Mediation Clause**

“In the event of a dispute, controversy or claim arising out of or relating to this agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this agreement, the parties shall seek settlement of that dispute by mediation in accordance with the LACIAC Mediation Rules, which Rules are deemed to be incorporated by reference into this clause.”

### **EXISTING DISPUTES**

If a dispute has already arisen, but there is no agreement between the parties to mediate and/or to arbitrate, the parties may enter into an agreement for those purposes. In such cases, please contact the LACIAC Secretariat if recommended wording is required.

### **MODIFICATIONS TO RECOMMENDED CLAUSES**

The LACIAC Secretariat will be pleased to discuss any modifications to these model clauses. For example, to provide for expedited procedures.

### **OTHER FORMS OF ADR**

Recommended clauses and procedures for expert determination for adjudication and other forms of ADR, to be administered by LACIAC, or in which LACIAC is to act as appointing authority, are available on request from the LACIAC Secretariat.

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<sup>9</sup>This will usually correspond to the governing law of the contract or of the arbitration clause (if different)

<sup>10</sup> This will usually be the same as the governing law of the contract or the law of the seat of arbitration