

OHADAC

Arbitration Rules

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OHADAC ARBITRATION RULES

PART I. AD-HOC ARBITRATION

I.- INTRODUCTORY RULES.

Article 1.- Scope of application.

1. The rules herein shall apply where parties have agreed that disputes between them in respect of any legal relationship shall be referred to *ad hoc* arbitration under the OHADAC Arbitration Rules. The parties shall be presumed to have referred to the rules in effect on the date of commencement of the arbitration, unless they have previously agreed to apply the rules in force on the date of the conclusion of the arbitration agreement.
2. These rules shall also apply where the parties have expressly agreed that arbitration shall be administered by the OHADAC Caribbean Center of Arbitration, in accordance in this event, with the provisions of PART II which sets out the rights and obligations of the said Center where acting as administrator in such procedure.
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.

Article 2.- Definitions.

The following definitions apply to these rules:

- a) “Rules”, the present OHADAC Arbitration Rules.
- b) “CCA”, or the “Center”, the OHADAC Caribbean Center of Arbitration.
- c) “Claimant” and “respondent”, one party or more than one party, respectively acting as claimants or as respondents.
- d) The “party” or “parties”, the claimants and respondents.
- e) “Appointing party”, independent third party responsible, at the request of the parties, for appointing the sole arbitrator or the third arbitrator, where the CCA has not been requested to do so.
- f) “Secretariat”, the CCA Secretariat.
- g) “Arbitral tribunal” means the sole arbitrator or the three arbitrators appointed to resolve the dispute.

Article 3.- Notice of arbitration.

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. In the event of institutional arbitration, the party initiating recourse to arbitration shall communicate such notice to the Secretariat of the CCA.
3. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent or, where applicable, by the institution administering the arbitration.
4. The notice of arbitration shall be made in the form of a written statement and shall contain the following information:
 - a) a request to submit the dispute to arbitration;
 - b) the names and contact details of the parties;
 - c) identification of the arbitration clause or the separately concluded arbitration agreement invoked, where applicable;
 - d) identification of the contract out of or in relation to which the dispute arises;
 - e) a statement of the facts supporting the claim;
 - f) the points at issue and an indication of the monetary amount claimed, where applicable;
 - g) a proposal as to the number of arbitrators (i.e., one or three), if the parties have not previously agreed thereon in the arbitration agreement.
 - h) the place of arbitration.
 - i) the language to be used in the proceedings.
 - j) the nomination of the sole arbitrator or of a co-arbitrator.
5. The notice of arbitration may include the statement of claim.
6. The date of receipt of the notice of arbitration by the respondent or, where applicable, by the institution administering the arbitration, shall be the date of commencement of the arbitral proceedings.

Article 4.- Notice and periods of time.

1. Any notice may be transmitted by any means of communication that provides or allows for a record of its transmission. A notice, including any communication, request or notification by a party, shall be directly addressed to the other party, plus one copy for each arbitrator.
2. In the event of institutional arbitration, the parties shall submit their communications, including any request or notification, to the Secretariat, with one copy for each arbitrator and one for each of the adverse parties.
3. Any notice from the Secretariat and the arbitral tribunal shall be made to the last recorded address of the party. Such communications may be delivered by certified mail with

acknowledgment of receipt, by certified mail, courier, telefax or by any other means of communication that provides or allows for a record of their transmission.

4. If a party fails to designate or allow an address for the purpose of notification, any notice shall be deemed to be effected where:
 - a) the documents have been delivered to the addressee in person,
 - b) they have been delivered to the place of business, residence or postal address of the addressee or,
 - c) if the notice could not be sent in either of the aforesaid manners, where the documents have been delivered to the last known place of business, or to the last residence or last known domicile of the party.
5. Any notice shall be deemed effected on the date the documents have been delivered, or on the date their delivery has been attempted in accordance with the methods described in the previous paragraphs. Communications via email shall be deemed received on the date they are recorded by the server or the date they reach the recipient's email address.
6. The calculation of time limits shall begin on the day following their notification. The calculation shall take into account any holidays or non-working days within the prescribed period. Nevertheless, should the date of the deadline fall on a holiday or a non-working day in the place of destination of the notification, the time limit shall be extended to the next local working day.

Article 5.- Response to the notice of arbitration

1. The respondent shall submit a statement of defense within thirty days from the commencement of the arbitration, responding to the claimant and to any other party where applicable, with respect to the issues raised in the notice of arbitration.
2. Upon submitting a statement of defense, the respondent may also file a counterclaim or request a set-off with respect to any claim under the arbitration agreement, and in this event the claimant may, within thirty days, file a replication in response to the respondent and to any other party, where applicable.
3. The respondent shall respond to the claimant and to any other parties within thirty days from the commencement of the arbitration, regarding all of the proposals that the claimant may have made in respect to the number of arbitrators, the nomination of an arbitrator, the place and language of arbitration, except under prior agreement by the parties.
4. In the event of institutional arbitration under CCA rules, the notice of arbitration and the response thereto may be delivered directly, or through the institution administering the arbitration. Prior to the composition of the arbitral tribunal, the Center may extend any of the deadlines provided for in the present article if it considers that such extension is

justified. In any event, the extension of time shall not affect any decision regarding the legal basis for arbitration, the number of arbitrators, the appointment of a sole arbitrator or a co-arbitrator where applicable, or the place and language of arbitration.

II.- COMPOSITION OF THE ARBITRAL TRIBUNAL.

Article 6.- Number of arbitrators.

If the parties have not previously agreed on the number of arbitrators (i.e. one or three), and if within 15 days from 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.

Article 7.- Appointment of arbitrators.

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator within ten (10) days. The two arbitrators thus appointed shall choose the third arbitrator, who will act as presiding arbitrator of the arbitral tribunal.
2. If a sole arbitrator is to be appointed, such arbitrator shall be appointed by agreement of the parties. Failing such agreement, the appointing authority shall exercise its discretion in appointing the sole arbitrator.
3. The appointing authority shall appoint the third arbitrator, or the sole arbitrator, by communicating to the parties an identical list containing at least three names. Within five days after the receipt of this list, each party shall return the list to the appointing 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.
4. The appointing authority shall appoint the sole arbitrator or the third arbitrator from among the names approved on the lists returned to it, and in accordance with the order of preference indicated by the parties, exercising its discretion if the appointment cannot be made according to this procedure;
5. Any nomination for an arbitrator shall include the arbitrator's forename and surname, nationality, address, occupation and legal qualifications supporting its appointment.
6. In any event, the appointing authority shall endeavor to appoint an independent and impartial arbitrator of a nationality different to the nationality of the parties.

Article 8.- Independence and impartiality of arbitrators.

1. The arbitrators nominated by the parties or, where applicable, by the appointing authority, shall either accept or reject their appointment within the prescribed period. By accepting to serve, arbitrators undertake to carry out their responsibilities within the required time frame, and to do so with absolute independence and impartiality.

2. Upon accepting appointment, each arbitrator shall make a statement of independence and impartiality, undertaking to disclose any facts or circumstances which might be of such nature as to call into question their impartiality or independence; the arbitrators shall especially disclose any direct or indirect ties of a personal, commercial or professional nature between the arbitrator and the other arbitrators, the parties, their legal representatives and attorneys.
3. Following the arbitrator's statement of independence and impartiality, the nominating party may reject its appointment, even where the other party did not recuse the said arbitrator.
4. If at any stage during the arbitration, circumstances arise which might be of such a nature as to call into question the arbitrator's independence and impartiality, the arbitrator shall immediately disclose such information to the parties and, where applicable, to the institution administering the arbitration.

Article 9.- Challenge of arbitrators.

1. An arbitrator may be challenged whenever circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality and independence.
2. The notice of challenge shall state in writing the alleged facts or circumstances, within 15 days from the nomination or, where applicable, of the appointment itself.
3. A party may challenge the arbitrator appointed by it only for reasons of which it becomes after the appointment has been made.
4. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other members of the arbitral tribunal. If the appointing authority has appointed the challenged arbitrator, the appointing authority shall also be notified.
5. If the challenged arbitrator agrees to the challenge or negotiates a withdrawal agreement, the said arbitrator shall recuse himself. In neither case does this imply acceptance of the validity of the grounds for the challenge.
6. If all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the dispute shall be resolved in any one of the following manners:
 - a) By the other two arbitrators, where the arbitral tribunal has already been constituted.
 - b) By the appointing authority, where the arbitral tribunal has not yet been constituted.
 - c) By the arbitration council of the CCA, where the arbitrator has been appointed by the appointing authority.

Article 10.- Replacement of arbitrators

1. If an arbitrator withdraws from his or her office, agrees to a challenge or dies, a substitute arbitrator shall be appointed.
2. The substitute arbitrator shall be appointed pursuant to the procedure provided for in article 7.
3. If the sole arbitrator, or the arbitrator presiding the arbitral tribunal, is to be substituted, any hearing previously held shall be repeated. If another arbitrator is to be substituted, the arbitral tribunal shall hear the parties and, at its discretion, shall decide whether to resume the arbitration at the stage where the arbitrator who was replaced ceased to perform his or her functions, or to repeat any hearing previously held.

III.- ARBITRAL PROCEEDINGS.

Article 11.- Rules applicable to the proceedings.

- 1.- The arbitral proceedings shall be governed by the rules agreed upon by the parties in the arbitration agreement, and by the present rules.
- 2.- The arbitral tribunal, having previously consulted the parties, may issue orders setting out the procedural timetable, and governing any matters or circumstances not provided for herein.
- 3.- The arbitral tribunal shall guarantee equality between the parties during the arbitration, and shall ensure the parties' right to discuss the facts giving rise to the dispute and the legal basis for it.

The arbitral tribunal shall make every effort to conduct the arbitration in an expeditious and cost-effective manner, avoiding any unnecessary fees and expenses, and preserving the adversarial nature of the procedure.

The arbitral tribunal shall endeavor to preserve the confidentiality of the arbitration proceedings, and shall take any measures it deems necessary to protect commercial and industrial secrets and any confidential information.

At the request of either party, the arbitral tribunal may require any third party who is a party to the arbitration agreement, to participate in the proceedings.

Article 12.- Place of arbitration.

1. The parties shall designate place of arbitration in the arbitration agreement, or in the Terms of Reference.
2. Failing such designation by the parties, the arbitral tribunal, having consulted the parties, shall designate a place of arbitration, taking into account the circumstances of the arbitration.

3. The arbitral tribunal may hold hearings at any place it deems appropriate, unless otherwise provided by the parties.
4. The tribunal may inspect any property, premises or documents at any place it deems necessary, provided it informs the parties with sufficient advance notice to enable them to be present and witness any proceedings.
5. The tribunal may hold consultation meetings, or deliberate, where it considers appropriate.
6. The award shall be deemed to have been rendered at the place of arbitration, regardless of where it has been drafted.

Article 13.- Language of arbitration.

1. The language of arbitration shall be the language agreed upon in the arbitration agreement.
2. Failing such agreement, the arbitral tribunal shall determine the language of the arbitration, taking into account the language used in the contract, the language used for any communication between the parties regarding the issues in dispute, or any other relevant circumstances.
3. The statements of claim, statements of defense, and any further written statements submitted by the parties shall be drafted in the language of the arbitration.
4. The arbitral tribunal may order that any documents attached to the statements of claim or statement of defense, 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 of the arbitration.

Article 14.- Statement of claim.

1. The claimant shall communicate its statement of claim within thirty (30) days from the constitution of the arbitral tribunal, unless such statement was attached to the notice of arbitration.
2. The statement of claim shall be submitted directly by the claimant to the respondent and to the tribunal, with a copy provided for each of the arbitrators.
3. In the event of institutional arbitration, one copy shall also be deposited with the Secretariat of the Center.
4. The statement of claim need not reiterate the particulars contained in the notice of arbitration, but it shall include at least:
 - a) a statement of all the facts supporting the claim;
 - b) the points at issue;

- c) a reference to any contract or other legal instrument out of or in relation to which the dispute arises, and the legal grounds or arguments supporting the claim.
 - d) The claim or remedy sought.
 - e) The monetary amount claimed, specifying the currency in which any amount or indemnification is payable.
 - f) An indication of the evidence that the claimant intends to rely upon.
5. The claimant may submit with the statement of claim any documents deemed relevant.
 6. If the arbitral tribunal, or the Secretariat where applicable, considers that the claim has not been submitted in accordance with the requirements set out in the present article, it shall grant the claimant a ten (10) day extension to alleviate the deficiencies noted, upon expiry of which the proceedings shall be discontinued, without prejudice to the right of the party to present a new claim.

Article 15.- Statement of defense.

1. The respondent shall communicate its statement of defense in writing to the claimant and to each of the arbitrators, within thirty (30) days of the claim being notified to the respondent.
2. In the statement of defense the respondent shall reply to each of the particulars in the statement of claim.
3. The statement of defense may be accompanied by any document or other evidence relied upon by the respondent, or contain references to them.
4. In the statement of defense the respondent may make a counter claim arising out of the same contract or rely on a claim arising out of the same contract for the purpose of a set-off.
5. Any such counterclaim shall include the same particulars as those required for the statement of claim, as enumerated in paragraph 4 of the previous article.

Article 16.- Consolidation and amendments to the claim or defense.

1. Where multiple claims are presented, and such claims are in connection with a legal relationship in respect of which arbitration proceedings between the same parties are already pending under the rules herein, the arbitral tribunal may, at the request of any party, consolidate the new claim into the pending arbitration, provided the Terms of Reference has not been endorsed at the date thereof.
2. In the event of multiple claims consolidated into a single arbitration, any party may request that the arbitral tribunal allow it to amend or supplement its claim or defense, which shall be deemed admissible unless the 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 defense may not be amended or supplemented in such a manner that the amended or supplemented claim or defense is in conflict with the arbitration agreement or fall outside its scope.

Article 17.- Jurisdiction.

1. The arbitral tribunal, at the request of the parties, shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.
2. A plea that the arbitral tribunal does not have jurisdiction or that the arbitration agreement is not valid shall be raised no later than in the statement of defense or in the counterclaim.
3. Should the respondent fail to appear at a scheduled hearing, the arbitral tribunal shall rule on its own jurisdiction on its own initiative.
4. When ruling on the validity of the arbitration agreement, the arbitration clause shall be treated as an agreement, independent of the other terms of the contract. A decision that the contract is null shall not entail *ipso jure* the invalidity of the arbitration clause.
5. The validity of the arbitration agreement shall be determined according to the law chosen by the parties to the said agreement, or failing such choice, according to the law of the State in which the place of arbitration is situated, or to the law applicable to the merits of the dispute.
6. Any plea to the jurisdiction on the grounds 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.
7. The arbitral tribunal shall deal with the plea to the jurisdiction as a special preliminary question and shall issue a partial award. However, where the arbitral tribunal considers it does not have the elements necessary to do so, it may continue the arbitral proceedings, and rule on the plea to the jurisdiction in the final award.

Article 18.- Terms of Reference

1. Once the arbitral tribunal has been constituted and, where necessary, the pleas to the competence of the arbitral tribunal or to the validity of the arbitration agreement have been raised by the parties, the president of the arbitral tribunal shall convene the parties to a preliminary hearing whose purpose it is to discuss and draft the Terms of Reference. Such hearing shall be held within thirty (30) days from the constitution of the arbitral tribunal, or where applicable, from the decision on its jurisdiction.
2. The Terms of Reference shall include the following particulars as a minimum requirement:
 - a) the names and contact details of each party and of their representatives;

- b) the address to which notifications arising in the course of arbitration may be sent;
 - c) identification of any contract or other legal instrument out of or in relation to which the dispute arises and a brief summary of the facts;
 - d) a brief description of the claims and remedies sought by the parties;
 - e) a list of the documents submitted by the parties;
 - f) an indication of the monetary amount claimed;
 - g) a list of the issues in dispute to be resolved by the arbitral tribunal;
 - h) a reference to the arbitration agreement and a reference to the jurisdiction of the arbitral tribunal;
 - i) the determination of the nature of the arbitration and whether the tribunal shall decide *ex aequo et bono* or apply the applicable rule of law. Where the decision is based on the law applicable to the merits of the dispute, such law shall be indicated. Where the decision is based on equity, the powers exercisable by the arbitral tribunal for such purpose shall be specified;
 - j) the place and language of arbitration;
 - k) the rules applicable to the proceedings;
 - l) the constitution of the arbitral tribunal;
 - m) any precautionary measures that may have been requested, where applicable;
 - n) any other decisions that the parties may have requested or the tribunal may deem necessary.
3. At the preliminary hearing the parties and the arbitral tribunal shall agree on the contents of a procedural order setting out the timetable for further proceedings.
 4. At the commencement of the preliminary hearing, the tribunal shall issue to the parties a draft Terms of Reference. In the course of the hearing, the President shall invite the parties to express their remarks concerning the draft Terms of Reference, drawing their attention to the possibility of modifying by agreement any of the items thereof. After hearing the parties, the arbitral tribunal shall draw up the final Terms of Reference to be subscribed by the parties and by the arbitrators.

Article 19.- Further written statements (replication and rejoinder).

1. The procedural order shall set out the dates for the presentation by the claimant of the replication to the statement of defense, and for the presentation of the response to the replication (rejoinder) by the respondent. Unless the tribunal decides otherwise, the said statements shall be submitted within thirty (30) days from the notification of the procedural

order as respects the first statement, and within thirty (30) days from the receipt of the replication as respects the second statement.

2. The parties may supplement the replication or rejoinder, respectively, using any legal arguments or case-law references they deem relevant, stating the grounds for their claims in accordance with the law applicable to the merits of the dispute and requesting the taking of any additional evidence they may deem necessary.
3. The parties shall not submit any further statements seeking to amend existing claims or to submit new claims, unless the tribunal deems relevant for them to do so owing to exceptional circumstances.

Article 20.- Precautionary measures.

1. At the request of any party, the arbitral tribunal may grant any interim measures that may be necessary with regard to the issues in dispute, such as prohibitions, measures intended to protect or preserve assets, or the appointment of a third-party custodian for the assets.
2. Such interim measures may be adopted by means of an interim award and the arbitral tribunal may require the party requesting an interim measure to provide appropriate security in order to cover any costs which may result from the said measure.
3. The arbitral tribunal shall, in the final award or in any interim award, determine the amount that each party shall have to pay as a result of the decision on allocation of costs.
4. The arbitral tribunal may modify, suspend or terminate any interim measure it has granted upon application of any party or on the tribunal's own initiative. The parties shall promptly disclose any material change in the circumstances on the basis of which the interim measure was requested or granted, where such change may affect the relevancy or execution of the measure.
5. It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim or precautionary measure, and for the court to grant such measure. The parties shall communicate the adoption of such measures to the arbitral tribunal.
6. Should the adoption of interim measures of protection be a matter of urgency for one of the parties, prior to the constitution of the arbitral tribunal, that party may request from the CCA the appointment of an emergency arbitrator, in accordance with the rules set out in Part II herein.

Article 21.- Evidence.

1. Each party shall assume the burden of proof in order to establish the veracity of the facts substantiating the claim, the counterclaim or the statement of defense.

2. The tribunal may require a party to deliver to the other parties and to the tribunal itself a summary of the documentary evidence and any other evidence it intends to present in support of its claim, its counterclaim or its statement of defense.
3. At any point during arbitration proceedings the arbitral tribunal may order the parties to submit further documentary evidence or any other evidence it may deem necessary or appropriate.
4. The arbitral tribunal shall rule on the receivability and the relevancy of the evidence, the taking thereof, and shall use its discretionary powers to determine the admissibility of such evidence with regard to its decision on the facts in dispute.

Article 22.- Experts.

1. Although a party may rely on a party-appointed expert, the arbitral tribunal may appoint one or several experts to report to it in writing on specific issues in the dispute or related to the dispute.
2. The arbitral tribunal shall communicate to the parties a copy of the mandate assigned to the expert. The parties shall give the expert any relevant information or produce, or provide access to, any relevant documents, goods or other property for inspection. The court shall decide on any controversy arising between a party and the expert in respect of the relevancy of the information or property required for inspection.
3. Upon receipt of the expert's report, the 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 may examine any document on which an expert has relied in such a report.
4. If a party so requests the expert may, after delivery of the report, participate in a hearing where the parties shall have the opportunity to put questions to him and to present other experts in order to testify on and contest the points at issue.

Article 23.- Hearings.

1. The tribunal may, on its own initiative or at the request of a party, hold oral hearings for the taking of evidence or for oral arguments. After hearing the parties the tribunal shall decide on the date, time and place of the hearings and shall give the parties sufficient advance notice thereof.
2. Within the period prescribed under the procedural order, or required by the arbitral tribunal, each party shall inform the tribunal and the other parties of the identity and place of residence of any witnesses it intends to call, of the subject matter of their testimonies and of the language to be used in therein.

3. The arbitral tribunal shall make any necessary arrangements for the translation of oral arguments or the transcription of the hearing.
4. The hearings shall be held in camera unless the parties have agreed otherwise. The arbitral tribunal may require any witness or witnesses to retire during the testimony of other witnesses. The tribunal may also determine the time, manner and form in which the witnesses are to be examined.
5. Testimonial evidence may also be given in the form of a written statement signed by the witnesses and the experts, without prejudice to the right of the other party to cross-examine the said witnesses and experts.

Article 24.- Default of a party

1. The arbitral proceedings may be continued where the respondent fails to submit its statement of defense within the prescribed period without showing sufficient cause for the failure. This rule shall apply to the failure to submit any other relevant written statements (response to the counterclaim, replication and rejoinder where applicable).
2. The arbitral tribunal may also continue the proceedings where a party, duly notified, fails to appear without showing sufficient cause for the failure.
3. If a party fails to produce evidence or to adopt any measure it may have been required to adopt in the course of the proceedings within the period of time prescribed by the arbitral tribunal and without showing sufficient cause for such failure, the tribunal may make an award on the basis of the evidence presented before it.
4. A party's default does not imply any acknowledgment by the tribunal of the facts alleged by the claimant, or of the legal grounds for the claim.

Article 25.- Closure of proceedings.

1. After the parties have submitted their documentary evidence and any other evidence has been taken, the tribunal may close the proceedings and inform the parties thereof. For this purpose, it may require the parties to produce their closing statements, or, with the agreement of the parties, provide for such statements to be presented orally at the last hearing.
2. The arbitral tribunal may, on its own initiative or at the request of a party, owing to exceptional circumstances, decide to re-open the proceedings before the expiry of the period prescribed for making the award.

Article 26.- Waiver of right to object.

A party which knows that any provision or requirement under the arbitration agreement has not been complied with, and yet proceeds with the arbitration without stating its objection to such non-compliance, shall be deemed to have waived its right to object.

IV.- AWARD

Article 27.- Time limit for the delivery of the final award.

1. The arbitral tribunal shall deliberate on, and render its final award within a period of two months from the closure of the arbitral proceedings.
2. Owing to exceptional circumstances, the arbitral tribunal may extend such period for an additional period of thirty (30) days, provided that the award states the reasons for such extension.

Article 28.- Decisions

1. Where the arbitral tribunal is composed of three arbitrators, any decision of the arbitral tribunal shall be made by a majority of all members of the arbitrators.
2. In the absence of a majority, the presiding arbitrator shall make any decisions regarding the proceedings or the award.
3. Any arbitrator disagreeing with a majority award, or an award rendered by the president, may render a dissenting opinion or award.

Article 29.- Form and effects of award.

1. In addition to the final award, the arbitral tribunal may render provisional, partial or interlocutory awards.
2. The award shall be made in writing and shall constitute a definitive settlement of the dispute. The award shall be final and binding on the parties. The parties shall undertake to carry out the award without delay.
3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons need be given.
4. The award shall be signed by the arbitrators and shall include the date and place where rendered. In arbitrations with three arbitrators, if one arbitrator fails to sign, the reason for the omitted signature shall be stated in the award.
5. The award may be made public only with the consent of both parties.
6. After the award is made, a copy signed by the arbitrators shall be delivered to each party.

7. Should the laws of the State in which the award has been rendered require the arbitral tribunal to deposit or register the award, the arbitral tribunal shall comply with the requirement thereto within the time limit prescribed by the said laws.

Article 30.- Applicable law.

1. The arbitral tribunal may, if it has been expressly authorized to do so by agreement between the two parties to the arbitration, adjudicate the merits of the dispute in conformity with the rules of equity and fairness (*ex aequo et bono*), without prejudice to the law applicable to the arbitration.
2. With respect to the law applicable to the merits of the dispute, the arbitral tribunal shall apply the governing law expressly chosen by the parties. Failing any designation by the parties, the tribunal shall apply the law determined by the conflict-of-laws rules which it considers applicable, stating the reasons for its decision.
3. In any event, the arbitral tribunal shall decide in accordance with the terms of the contract between the parties, and shall take into account the usages of the trade applicable to the said contract.
4. The arbitral tribunal may take into account the peremptory rules of a State which is closely related to the contract out of which the dispute arises, where the parties are to perform their obligations in the said State, and provided that the content of such rules is in accordance with generally-acknowledged public interests.

Article 31.- Settlement by agreement of the parties.

1. At any time prior to the rendering of the award, the two parties may agree on a settlement that terminates the dispute and may request that the terms of the settlement be recorded by the arbitral tribunal in the form of an arbitral award on agreed terms.
2. In accordance with the will of the parties, the arbitral tribunal shall render the award on the agreed terms, stating the request of the parties and the clauses of the written agreement.
3. The award on agreed terms shall be signed by the parties and by the arbitrators.

Article 32.- Interpretation and correction of award.

1. Within thirty (30) days of rendering the award, the arbitral tribunal may, on its own initiative, correct in the award any clerical or typographical errors, or any errors in calculation.
2. A party may request the arbitral tribunal to correct such errors within ten (10) days from the receipt of the award. The request for correction shall be communicated to the other party and that party shall have the opportunity to comment within ten (10) days therefrom.

3. The tribunal shall correct any errors within a maximum period of fifteen (15) days. A decision to correct the award shall take the form of an additional award or an addendum constituting part of the final award.
4. The parties may request, within the same period of time and following the same procedure as specified in paragraph 2 of the present article, an interpretation of any specific point or part of the award they consider to be imprecise or unclear.
5. The parties may, within the same period of time and following the same procedure as specified in the present article, request the arbitral tribunal to decide on claims omitted from the final award.

Article 33.- Additional award.

1. Within ten (10) days from the notification of the award, any party may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
2. The arbitral tribunal shall communicate such request to the other party, so that the said party may, within ten (10) days, either accept or reject the request for additional award.
3. If the arbitral tribunal considers that the request is justified, and if it considers that the failure to decide a point may be amended without providing additional evidence or holding further hearings, it shall make its additional award within twenty (20) days from the request.
4. The additional award shall be made in accordance with the provisions of the previous articles herein.

Article 34.- Partial award.

1. Any partial award made by the arbitral tribunal at any stage of the proceedings shall be deemed to constitute part of the final award.
2. If the terms of the partial award are in conflict with the terms of the final award, the operative part of the partial award shall be deemed to have been amended or annulled in accordance with the terms of the final award.
3. In arbitration with multiple parties, the arbitral tribunal may make a single final award or several awards in respect of all parties so involved in the arbitration.

Article 35- Decision relative to the costs of the arbitration.

1. The tribunal shall fix the costs of the arbitration in its award. The costs of the arbitration shall include:
 - a) The fees of each arbitrator;

- b) the expenses incurred by the arbitrators for the arbitration;
 - c) the costs resulting from the assistance requested by the arbitral tribunal, including the fees and expenses of any experts, hearing transcriptions, translations and any other reasonable legal and other costs incurred for the arbitration.
 - d) the costs and expenses incurred as a result of any application for precautionary measures;
 - e) the fees and expenses of the emergency arbitrator, where applicable,
 - f) and, where applicable, the fees and expenses of the appointing authority.
2. The arbitral tribunal may divide the costs between the parties if it considers such decision to be fair and reasonable.
 3. The tribunal may also order one party to bear the costs. In this event it shall determine which party shall bear the costs or in what higher proportion they shall be borne by that party.
 4. Where the tribunal orders one party to bear the costs, these may include the costs for legal representation and assistance of the successful party, if such costs were claimed during the proceedings, and only to the extent that the tribunal determines that there is sufficient cause for it.

Article 36.- Advance on the arbitration costs.

1. Any request for arbitration shall contain the proof of payment of a sum of two thousand United States dollars (2.000 US \$), as an advance on administrative costs. Such advance shall be non-refundable, and it shall be considered as a partial payment by the claimant of its share of the advance on costs.
2. Once the arbitral tribunal has been constituted, it may order the parties to pay a provisional advance in an amount intended to cover the expected costs of the arbitration until the Terms of Reference has been drawn up, the said amount including the minimum fees of the arbitrators and any expenses related to arbitration proceedings until such date.
3. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.
4. The amount of the provisional advance on costs may be subject to change and readjustment by the arbitral tribunal with respect to the stage of the proceedings, taking into account fluctuations in the amount claimed, changes in the estimated expenses and fees of the arbitrator, and the evolving difficulty and complexity of arbitration proceedings.
5. The provisional advance on costs shall be payable in equal shares by the claimant and the respondent. Any payment made in advance shall be considered as a partial payment on the advance on costs.

6. If within thirty (30) days of the issuance of the order to pay, the advance on costs has not been fully complied with, the arbitral tribunal shall inform the parties thereof so that each party may make the required payment. Failing such payment, the arbitral tribunal may suspend or terminate the arbitration procedure.
7. Once an award has been made, the arbitral tribunal shall remit to the parties an account statement showing the deposits and shall reimburse the amount outstanding, where applicable.
8. A party may pay the unpaid portion of the advance owed by the other party, and the proceedings shall continue in default of that party. If the defaulting party eventually pays the said advance, it shall act as a party to the proceedings without being obligated to repeat any proceedings previously carried out.

Article 37.- Fees of arbitrators.

1. The arbitrators' fees shall be reasonable in amount, taking into account the amount claimed, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.
2. If the parties have agreed on an appointing authority, or if such authority has been appointed by the CCA and if it has stated that it will apply a schedule for determining the fees for arbitrators in the international disputes it is to administer, the arbitral tribunal in fixing its fees shall take that schedule into account to the extent that it considers appropriate in the circumstances of the case.
3. If such appointing authority has not stated that it will apply a schedule for determining the fees for arbitrators in international disputes, any party may, at any time, request the appointing authority to furnish a statement setting forth the basis for establishing fees which is customarily followed in international cases in which the authority appoints arbitrators. If the appointing authority consents to provide such a statement, the arbitral tribunal in fixing its fees shall take such information into account to the extent that it considers appropriate in the circumstances of the case.

PART II.- INSTITUTIONAL ARBITRATION

Article 38.- The CCA as the institution administering the arbitration.

1. Where the parties have expressly requested, in the arbitration clause or the arbitration agreement, that the arbitration be administered by the CCA, regardless of whether such provision was made prior to or following the conclusion of the contract, the CCA shall act both as appointing authority and as institution administering the procedure.
2. As an institution administering arbitration for the purpose of resolving disputes brought before it, the Center shall perform its functions through arbitral tribunals consisting of one

or three arbitrators, in accordance with the stipulations of articles 6 to 10 of the present rules.

Article 39.- Functions of the Secretariat.

1. Where the CCA administers the arbitration process, all notifications made pursuant to articles 3 and 4 of the present rules shall also be sent to the Secretariat.
2. The Secretariat shall monitor the *dies ad quem* and the periods of time for the procedure, communicating any new circumstance to the arbitral tribunal or alerting the said tribunal to the expiry of the prescribed periods.
3. The Secretariat may grant, where applicable, an extension of the time limit for rendering the award, should the arbitral tribunal make such a request.

Article 40.- Functions of the Center.

Where arbitration is administered by an institution, it shall be the Center's responsibility to approve:

1. The Terms of Reference to be submitted by the arbitral tribunal.
2. The draft award, whose purpose shall be strictly limited to rendering a decision on the formal or legal aspects of the dispute, in accordance with any peremptory rules applicable in the place of arbitration.
3. Any correction, clarification or modification of the award.
4. Failing any choice by the parties, the determination of the place or language of the arbitration, after hearing the parties with regard to such determination.
5. Failing any choice by the parties, the appointment of the sole arbitrator or a co-arbitrator, and the appointment of the third arbitrator acting as presiding arbitrator of the arbitral tribunal.
6. The appointment of an emergency arbitrator, where requested by one party or by both parties.
7. The determination of the costs of arbitration, the amount of the advance on costs, and the fees of the arbitrators.

Article 41.- Emergency arbitrator.

1. Any party that needs urgent interim or precautionary measures that cannot await the constitution of an arbitral tribunal may make an application to the Center for the appointment of an emergency arbitrator.
2. The emergency arbitrator shall be appointed by the president of the CCA, or in the event of the temporary absence of the president, by the Secretary within 72 hours from the request,

if having assessed the arguments submitted by the party or parties, such appointment appears necessary.

3. The role of the emergency arbitrator shall be limited to determining the receivability of the requested precautionary measures, adopting such measures, if deemed appropriate, and adopting on its own initiative any other measure which the arbitrator may deem relevant.
4. The emergency arbitrator's decision shall take the form of an order.
5. The emergency arbitrator's fees shall be fixed by the Center, in accordance with the schedule of costs.
6. The requirements applicable to the request for arbitration shall apply to any request for an emergency arbitrator, stating in addition the reasons for such emergency request, and paying a sum amounting to three times the advance on the administrative costs of arbitration, i.e. six thousand United States dollars (US\$6,000).

APPENDIX 1
MODEL OF OHADAC ARBITRATION CLAUSE

OHADAC recommends that parties who wish to resort to arbitration pursuant to its *ad-Hoc* Arbitration Rules, or to arbitration administered by the Caribbean Center of Arbitration, include in their contracts one of the following model clauses.

1. For *ad-hoc* arbitration:

Any controversy, dispute or claim arising out of the existence, validity, interpretation, performance or compliance of the present contract, or out of any agreements resulting from, or relating to such contract shall be resolved through *ad-hoc* arbitration, in accordance with OHADAC arbitration rules:

- a) the number of arbitrators shall be [] (indicate: one or three);
- b) the appointing authority shall be [](indicate identity of person or name of institution);
- c) the place of arbitration shall be [] (indicate city and country);
- d) the language of arbitration shall be [](indicate language);
- e) the law applicable to the merits of the dispute shall be [](indicate law).

2. Arbitration administered by the Center:

Any controversy, dispute or claim arising out of the existence, validity, interpretation, performance or compliance of the present contract, or out of any agreements resulting from or relating to such contract shall be resolved through arbitration before the OHADAC Caribbean Court of Arbitration, in accordance with the OHADAC arbitration rules:

- a) the number of arbitrators shall be [] (indicate: one or three);
- b) the place of arbitration shall be [](indicate city and country);
- c) the language of arbitration shall be [] (indicate language);
- d) the law applicable to the merits of the dispute shall be [] (indicate law).

APPENDIX 2
DECLARATION OF INDEPENDENCE AND IMPARTIALITY

Arbitrator: []

I hereby declare that there are no facts or circumstances, past or present, which might be of such a nature as to call into question my independence and impartiality in the resolution of the dispute at hand. I undertake to immediately notify the parties, the arbitrators and the OHADAC Secretariat of arbitration, where applicable, of any personal ties, direct or indirect, with the parties, their legal representatives or attorneys, or with the other arbitrators, and of any subsequent circumstance which might be of such a nature as to call into question my independence and impartiality.

In accordance with the provisions of Article 8 of the OHADAC Arbitration Rules, I hereby proceed to disclose any past or present relationships, of a personal, commercial or professional nature, direct or indirect, existing or having existed at any time between myself and the parties, their legal representatives and attorneys, and the other arbitrators:

(State facts, situations and circumstances below)

.....

I declare additionally that the previously stated facts, situations and circumstances do not affect, in the least, my independence, nor do they affect my stance or attitude, which is absolutely impartial, with regard to the dispute, and I undertake to immediately notify the parties, the other arbitrators, and the Secretariat of the Center, where applicable, of any personal or professional ties, direct or indirect, with the parties, their legal representatives or attorneys, or with the other arbitrators, and of any other circumstance which may occur and which might be of such a nature as to call into question my independence and impartiality.

Delivered in [], on day [] month [], year[].

**APPENDIX 3
OHADAC FEE SCHEDULE**

Amount	Fees	
	Minimum	Maximum
Up to 50,000 \$	2,000 \$	8.000 \$
From 50.001\$to100.000 \$	5.000 \$	10.000 \$
From 100.001\$to 300.000 \$	7.000 \$	12.000 \$
From 301.001\$to 500.000 \$	10.000 \$	18.000 \$
From 501.001\$to1,000.000 \$	12.000 \$	20.000 \$
From 1,000.001\$to 5,000.000 \$	16.000 \$	30.000 \$
From 5,000.001 \$ to 10,000.000 \$	20.000 \$	50.000 \$
From 10,000.001 \$to 20,000.000 \$	30.000 \$	100.000 \$
From 20,000.001\$to 30,000.000 \$	50.000 \$	130.000 \$
From 30,000.001\$to 50,000.000 \$	70.000 \$	160.000 \$
From 50, 000, 001\$to 80,000.000 \$	80.000 \$	190.000\$
From 80,000.001 \$to100,000.000 \$	100.000\$	220.000 \$
Over 100,000.001 \$	120.000\$	250.000 \$

APPENDIX 4
SCHEDULE OF ADMINISTRATIVE COSTS OF THE OHADAC CENTER

Amount	Fee schedule
Up to 50,000 \$	2.000 \$
From 50.001\$to 100.000 \$	+ 3% of the amount exceeding 50.000 \$
From 100.001 \$to 300.000 \$	+ 2% of the amount exceeding 100.000 \$
From 301.001\$to 500.000 \$	+ 1,75% of the amount exceeding 300.000 \$
From 501.001\$to 1,000.000 \$	+ 1,20% of the amount exceeding 500.000 \$
From 1,000.001 \$to 5,000.000 \$	+0.50% of the amount exceeding 1,000.000 \$
From 5,000.001 \$ to 10,000.000 \$	+0,25% of the amount exceeding 5,000.000 \$
From 10,000.001 \$to 20,000.000 \$	+ 0,12% of the amount exceeding 10,000.000 \$
From 20,000.001 \$to 30,000.000 \$	+0,10% of the amount exceeding 20,000.000 \$
From 30,000.001 \$to 50,000.000 \$	+ 0.075% of the amount exceeding30,000.000 \$
From 50,000.001\$to 80,000.000 \$	+0,02% of the amount exceeding50,000.000 \$
From 80,000.001 \$ to 100,000.000 \$	+0,01% of the amount exceeding 80,000.000 \$
Over 100,000.001 \$	Up to 100.000\$